

Law and Politics

WHEN STANDING IS NO LONGER AN OPTION: CREATION OF A LOSS AND DAMAGE FUND AT COP27

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At the conclusion of the 27th Conference of the Parties (COP27) of the United Nations Framework Convention on Climate Change (UNFCCC) (in Sharm el-Sheikh, Egypt, November 6–18, 2022), countries agreed to set up a new fund to support vulnerable countries suffering losses and damage from climate change (UNFCCC 2022a, para. 3; 2022b, para. 46). Although the modalities of this fund have yet to be determined, its creation will mark a turning point in international climate negotiations. And with good reason: this avenue has long been rejected by developed countries, despite the repeated insistence of those countries particularly vulnerable and sensitive to the harmful effects of climate change. These countries consider such a fund to be vital, since they suffer disproportionately from the damage caused by climate change, without being responsible for it and without having the necessary resources to deal with it.

This article takes a closer look at the creation of this new fund and outlines the main advances made at COP27 on the issue of loss and damage (L&D). To do so, it first offers some definitions of this generally little-known concept, and then situates the issue of L&D in the broader context of international climate negotiations. Finally, based on field observations and an analysis of the decisions handed down in Sharm el-Sheikh, it looks at the concrete achievements of COP27 on the issue of L&D, as well as the next steps leading up to COP28 (November–December 2023).

COPs, or Conferences of the Parties to the UNFCCC, are annual gatherings of around two weeks during which countries negotiate on how to mitigate climate change and its impacts. The 27th Conference of the Parties, or COP27, was held in November 2022 in Sharm el-Sheikh, Egypt.

What Is Loss and Damage?

Simply, *loss and damage* refers to the negative impacts of climate change that cannot be avoided despite the implementation of measures to mitigate or adapt to climate change. These damages may result from rapidly evolving climatic events (e.g. violent storms, extreme heat waves, floods) or from slowly evolving ones (e.g. rising sea levels, soil desertification, biodiversity loss). To varying degrees, they give rise to economic losses (e.g. destruction of infrastructure, reduced agricultural yields) and non-economic losses (e.g. loss of human life, damage to cultural heritage) (UNFCCC, 2018a).

Developing and least-developed countries are generally the hardest hit by L&D, while their geographical location and lack of resources make them particularly vulnerable to the impacts of global warming. Think, for example, of the countries of Sub-Saharan Africa, which are suffering the aftershocks of increasingly frequent and intense droughts, or of small Pacific islands, whose very existence is threatened by rising sea levels.

An Issue Long Neglected

The idea for a financial mechanism to respond to the damage caused by climate change is not new. It first appeared in international climate negotiations in 1991, when the UNFCCC was being negotiated. This treaty laid the foundations for global climate governance and the various international climate actions we know today.

At the time, the Alliance of Small Island States proposed the creation of a collective loss-sharing system to compensate developing countries threatened by rising sea levels. The proposal was not accepted.

This setback set the tone for negotiations on L&D until the late 2000s. No action or structuring mechanism emerged during this period. It wasn't until 2013, at COP19, that the issue officially returned to the table, with the creation of the first official structure dedicated to the issue of loss and damage: the Warsaw International Mechanism for Loss and Damage (WIM). Although it was a significant first step, this new structure did not address the very essence of the problem, namely, the question of the liability of major greenhouse gas (GHG) emitters and the ensuing compensation. Even today, WIM aims, at best, to 1) improve understanding of the concept of loss and damage; 2) facilitate discussion between the stakeholders involved; and 3) strengthen action and support in the event of loss and damage (UNFCCC, 2018b).

Subsequently, in 2019, COP25 led to the creation of the Santiago Network on Loss and Damage, a new WIM structure made operational at COP27. Today, it enables vulnerable countries to benefit from technical assistance from experts to help them cope with the impacts of climate change (UNFCCC, 2020). Once again, this new mechanism did not address the issue of compensation nor the creation of a fund, much to the dismay of the most vulnerable countries affected by climate disruption.

The main bone of contention was, and still is, the reluctance of developed countries to be held legally responsible for the impacts of the climate changes we are experiencing today, though they have historically been mainly responsible for them (Dunne et al., 2022). This would legally oblige them to provide compensation, which could be colossal, to countries suffering L&D. This is a Pandora's box they do not want opened. Moreover, the question remains: who would pay such compensation? This question is another major sticking point in the negotiations, as developed countries want emerging countries such as China and India, which have also become major GHG emitters, to also contribute to paying this massive bill (Sguazzin and Rathi, 2022).



Figure 1. Historical overview of the issue of L&D in international climate negotiations

Nevertheless, a way forward opened up at COP26 in Glasgow in 2021, with the establishment of the Glasgow Dialogue, a three-year platform to “discuss modalities for financing activities to prevent, minimize and address loss and damage from the adverse effects of climate change” (UNFCCC, 2021, para. 73). Although this Dialogue makes no reference to the notions of responsibility or compensation by developed countries, it does not close the door to the creation of a fund for the L&D of the most vulnerable countries. Such a fund was central to negotiations at COP27 in 2022 and will be again at COP28 in November–December 2023.

Outcome of COP27 and Follow-up for COP28

Expectations for COP27 were particularly high from member states and observers alike. Presented by the Egyptian presidency, with a slogan of “Together for Implementation,” the conference was billed as the implementation COP. It was intended to accelerate the fulfillment of climate commitments in the areas of GHG emissions reduction, climate financing, and adaptation to climate change, in addition to advancing discussions on L&D. (Beaudoin et al., 2023). In this respect, an analysis of the decisions handed down at COP27, combined with observations in the field, lead us to conclude that the issue of L&D saw several significant advances.

At the symbolic level, COP27 led to a more explicit recognition of the existence and severity of the problem of L&D. This was reflected in the conference’s closing decision, in which, for the first time countries, “underline[d] the importance of an adequate and effective response to loss and damage” and expressed their “deep concern regarding the significant financial costs associated with loss and damage for developing countries” (UNFCCC, 2022b, para. 44-45). In political terms, this recognition now makes the issue of L&D a challenge to which the international community must respond, specifically by tackling its financial dimension.

The decision to set up a dedicated fund for L&D appears to have been the biggest breakthrough on this issue of COP27, and perhaps even of the Conference itself. It is both a political and symbolic victory for the developing and most vulnerable countries, which have been campaigning for decades for such a fund to be established and which redoubled their efforts in the

run-up to COP27 in order to present a common position. It also represents an important step forward in terms of climate justice. For the first time we see the potential for the planet’s major GHG emitters to help pay for the damage caused by climate change, which they are primarily responsible for.

However, much remains to be done to put this decision into practice, as the operating procedures and sources of financing for this new fund have yet to be determined. This will be the subject of negotiations during COP28 (November–December 2023), notably via a Transitional Committee set up by COP27. This committee of 24 members, including 10 from developed countries and 14 from developing countries, is mandated to issue recommendations for consideration and adoption at COP28 (UNFCCC, 2022a). More particularly, the committee will aim to make the new fund operational by the end of COP28, by seeking to do the following, among other things:

- Establish the form this new fund will take, i.e., its mandate, structure, governance, modalities, and institutional arrangements;
- Define aspects of other financing terms;
- Identify and expand funding sources; and
- Ensure coordination and complementarity with existing financing mechanisms (UNFCCC, 2022a, para. 5).

Clearly, negotiations at COP28 will have to determine the technical details and major parameters of this new fund. Some thorny issues will need to be resolved (Åberg, 2023), including the one mentioned above: which of the developed and/or emerging countries will finance this fund? Also, who will benefit, and under what circumstances? The Sharm el-Sheikh decision states that the new financing modalities agreed to at COP27 will be used to assist “developing countries that are particularly vulnerable to the adverse effects of climate change” (UNFCCC, 2022a, para. 5). However, the list of countries in this category has yet to be determined, as has the list of L&D that will be covered by the fund. What’s more, there is no guarantee at present that the fund will be sufficiently endowed to meet the growing needs of the countries affected. Therefore, what mechanisms and provisions should be put in place to encourage, or even compel, financing countries to contribute sufficiently? This is another question to be answered at COP28.

Conclusion

COP28 is already attracting the attention of many observers, not least because it will be held in Dubai, in the United Arab Emirates, one of the world's largest oil-producing and exporting countries. This conference should enable significant progress to be made on reducing GHG emissions, adapting to climate change, climate financing, and loss and damage (Beaudoin et al., 2023). It will also be decisive for the countries most vulnerable to climate change, which impatiently await the creation of a fund to enable them to repair the damage caused by the growing impacts of climate change. These countries and civil society organizations have high hopes for this fund. Will the international community be able to deliver the goods?

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