



# CSSN Briefing

## CSSN Primer 2022:2

# Loss and Damage Finance: Four Periods of Obstruction in the UN Climate Negotiations

Countries in the Global South have been advocating for funds to cover the losses and damages they will face due to climate change for more than three decades. In that same time, countries in the Global North – the U.S. in particular – have repeatedly prevented those funds from becoming a reality. In this briefing paper, we detail the history of obstruction to loss and damage finance under the United Nations Framework Convention on Climate Change (UNFCCC). When this history is traced across three decades of climate negotiations, the consistency and deliberateness of this obstruction becomes clear.

### Summarizing Four Periods of Obstruction

We have divided the three decades of climate negotiations into four periods, based on major events in the Global South's efforts to seek funds for loss and damage. In each period we identify the key actors advocating for and obstructing loss and damage finance, the demands being made by advocates, and the strategies of obstruction being used by opponents. To our knowledge, such a detailed assessment of obstruction to loss and damage finance has not yet been outlined. Our hope is that this timeline will prove valuable to advocates and negotiating teams pushing for loss and damage finance at COP27 and in future climate negotiations.

Though the UNFCCC was established in 1992, our first period begins the year prior. In 1991, Vanuatu advanced a landmark proposal for the developing UN climate convention to establish an insurance program funded by the states most responsible for climate change. States ultimately excluded this proposal from the 1992 adoption of the UNFCCC. The second period traces the developments from the 2007 Bali Action Plan to the 2013 Warsaw International Mechanism (WIM) for loss and damage, including a multi-window facility proposed by the Alliance of Small Island States (AOSIS), the 2010 Cancun Work Programme on loss and damage, and the 2012 Doha Agreement and its institutional arrangements. The third period assesses the road from the 2013 WIM to the 2015 Paris Agreement, which included a standalone Article on loss and damage. Finally, the fourth period examines the aftermath of the Paris Agreement, including how the WIM has evolved and how states are addressing renewed calls for a loss-and-damage financial mechanism in contemporary negotiations.

Period	Loss and Damage Finance Advocates	Loss and Damage Finance Obstructionists
(1) 1991 - 2007	<ul style="list-style-type: none"> <li>• Vanuatu/AOSIS worked to get L&amp;D into the Framework Convention, including proposing an insurance mechanism for the impacts of sea-level rise</li> <li>• L&amp;D discussed through language of “adverse effects” and “risk transfer”</li> <li>• Meetings held on the possibility of an insurance mechanism</li> <li>• The phrase “loss and damage” was finally included in UNFCCC texts in Bali in 2007</li> </ul>	<ul style="list-style-type: none"> <li>• Excluded Vanuatu’s proposal for L&amp;D insurance from UNFCCC drafting negotiations</li> <li>• Accepted insurance as an instrument under Article 4.8 of the UNFCCC, but without a binding funding mechanism</li> <li>• Excluded L&amp;D from official texts (until Bali)</li> <li>• Agreed to explore new issues through workshops outside of official negotiations</li> </ul>
(2) 2008 - 2013	<ul style="list-style-type: none"> <li>• AOSIS again introduced a proposal for a compensation mechanism for L&amp;D</li> <li>• AOSIS, the Least Developed Countries (LDC) Group, and the African Group of Negotiators (AGN) formed a coalition on L&amp;D, which the broader Group of 77 + China (G77) bloc later supported</li> <li>• L&amp;D coalition came prepared with robust proposals for texts</li> </ul>	<ul style="list-style-type: none"> <li>• Kept L&amp;D in work programmes as long as possible</li> <li>• Removed and weakened proposed texts for the WIM</li> <li>• Pulled funding for organizations advancing L&amp;D efforts</li> <li>• Connected and conflated L&amp;D with adaptation</li> </ul>
(3) 2014 - 2015	<ul style="list-style-type: none"> <li>• L&amp;D advocates strategically broadened the framing of their appeals</li> <li>• Increased media and NGO attention to L&amp;D</li> <li>• Standalone Article on L&amp;D included in the 2015 Paris Agreement (Article 8)</li> </ul>	<ul style="list-style-type: none"> <li>• Broadened L&amp;D to be applied to all Parties</li> <li>• Ensured that L&amp;D was not connected to existing financing mechanisms, e.g. for adaptation</li> <li>• Explicitly foreclosed the possibility of liability and compensation from the Paris Agreement (Paragraph 51 of Decision 1/CP.21)</li> </ul>
(4) 2016 - present	<ul style="list-style-type: none"> <li>• G77 repeatedly requested an agenda item on L&amp;D at Subsidiary Body meetings</li> <li>• Work to get L&amp;D into considerations for the Global Stocktake</li> <li>• Work to keep the WIM under the jurisdiction of the COP</li> <li>• Explicit advocacy for a financing mechanism and L&amp;D Fund</li> <li>• Dedicated agenda item on L&amp;D financing at COP27 in Sharm el-Sheikh</li> </ul>	<ul style="list-style-type: none"> <li>• Keeping L&amp;D off the agenda</li> <li>• Staying silent in L&amp;D discussions</li> <li>• Refusing additional financing for L&amp;D, including the formation of a new fund</li> <li>• Suggesting weak and partial alternatives for finance, i.e. insurance</li> <li>• Attempting to move the WIM under the COP serving as the meeting of the Parties to the Paris Agreement (CMA) to preclude claims of liability and compensation</li> </ul>

## Period 1: The Convention to the Bali Action Plan (1991-2007)

Efforts to secure finance for losses and damages due to climate change began in 1991, when countries gathered to negotiate the establishment of what would become the UNFCCC. On behalf of the Alliance of Small Island States, Vanuatu proposed establishing an **International Insurance Pool**, distinct from an International Climate Fund, “to compensate the most vulnerable small island and low-lying coastal developing countries for loss and damage resulting from sea level rise”.<sup>1</sup> AOSIS specified that the Pool’s revenue should be “new, additional, and adequate” with mandatory contributions from developed states. They stipulated that half of the revenue should be based on a developed state’s Gross National Product (GNP) relative to the total GNP of all developed Parties, and the other half should be based on a developed state’s carbon emissions relative to the total emissions of all developed Parties. In other words, money would be owed according to wealth and contributions to climate change.

### Period 1 Milestones

1991:  
Vanuatu submits  
an insurance  
mechanism on  
behalf of AOSIS

2007:  
“Loss and  
Damage” enters  
official UNFCCC  
text in the Bali  
Action Plan

Instead of adopting the proposal in the UNFCCC, states failed to include any mention of a mechanism to compensate countries for climate impacts. Articles 4.3 and 4.4 outline an **obligation to support particularly vulnerable countries**. “[D]eveloped country Parties...shall provide new and additional financial resources to meet the agreed full costs incurred by developing country Parties ... The developed country Parties...shall also assist the developing country Parties that are particularly vulnerable to the adverse effects of climate change in meeting costs of adaptation to those adverse effects”.<sup>2</sup> Article 4.8 further specifies nine categories of states that require attention to their “specific needs and concerns...to which Parties shall give full consideration to what actions are necessary under the Convention, including actions related to funding, insurance and the transfer of technology”.<sup>3</sup>

On responsibility for climate impacts and action to address them, the language in the Convention is vague. The extent of the causal language on damages is contained in the Preamble, which notes Parties’ “responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction”.<sup>4</sup> On action, the Conventions states that Parties should act “on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof”.<sup>5</sup> The following Article acknowledges that vulnerable and developing states generally “bear a disproportionate or abnormal burden under the Convention” and that these states “should be given full consideration”.<sup>6</sup>

Altogether, the Convention suggests that developing states suffer losses and damages from climate change disproportionately and that developed states should assume greater responsibility for climate action, but any responsibility to act or to compensate developing states is absent. The United States in particular opposed any text that would more directly incorporate notions of liability or compensation.<sup>7</sup> This laid the groundwork for the obstruction to loss and damage finance that would continue for at least three decades.

The next time finance for losses and damages from climate change was raised was at the Seventh Conference of the Parties (COP) meeting. Following the release of the IPCC Third Assessment

Report, which revealed new evidence about the projected impacts of climate change in the Global South, AOSIS began pushing harder for an insurance mechanism. The group introduced such a provision in 2001, and it was ultimately incorporated into the Marrakesh decisions.<sup>8</sup> AOSIS' efforts in Marrakesh led Parties to agree on a series of workshops on the adverse effects of climate change, on extreme weather events, and on "insurance-related actions to address the specific needs and concerns of developing country Parties arising from the adverse effects of climate change and the impact of the implementation of response measures".<sup>9</sup>

Progress on loss and damage finance was slow following the decision in Marrakesh. The issue gained some traction alongside the advance of adaptation with the Nairobi Work Programme in 2005, but loss and damage itself did not re-enter the conversation until 2007. The **2007 Bali Action Plan** mandated that Parties *explore* "means to address loss and damage associated with climate change impacts in developing countries that are particularly vulnerable to the adverse effects of climate change".<sup>10</sup> Once again, AOSIS leaders were at the forefront of efforts to include this language, particularly during the workshops that took place from 2003 to 2007, per the Marrakesh decisions.

## **Period 2: Post-Bali to the Warsaw International Mechanism (2008-2013)**

After Bali, loss and damage advocates wasted no time in further advancing the issue. At COP14 in Poznan in 2008, AOSIS submitted a proposal for a "**Multi-Window Mechanism to Address Loss and Damage from Climate Change Impacts**" to the Ad Hoc Working Group on Long-term Cooperative Action (AWG-LCA), which Parties established to implement the Bali Action Plan. The proposed mechanism contained three interdependent components, including a "**rehabilitation/compensatory**" component along with an insurance component and a risk management component.<sup>11</sup> The submission also laid out guiding principles for the multi-window mechanism. These included Principle 13 of the Rio Declaration, the Polluter Pays Principle, common but differentiated responsibilities and respective capabilities, precautionary measures, principles of equity and intergenerational equity, and international solidarity.

This proposal in Bali was an extension of AOSIS' initial proposal in 1991. This time, however, it was broader in scope. The proposal sought to establish a "**Convention Adaptation Fund,**" separate from the Kyoto Protocol's Adaptation Fund, to serve as the primary financial vehicle for the loss and damage mechanism. The proposed source of revenue for the Convention Adaptation Fund would come from states in the Global North based on their respective levels of Gross Domestic Product (GDP) as a measure of "*capability*" and GHG emissions as a measure of "*responsibility*." AOSIS did not explicitly state that contributions to the Fund would be "mandatory," as they did in their 1991 proposal. They did, however, extend the parameters of the compensatory component beyond sea level rise to include "temperature increases, loss of land, damage to coral reefs, loss of fisheries, [and] salinisation of aquifers" or, alternatively, an "all-risk" parameter. This proposal was not institutionalized into any official text in Bali, but informed the submissions the following year, in Poznan at COP14 that would shape the Copenhagen meeting in 2009.

Although Parties failed to include AOSIS's proposal in the COP14 decisions, they agreed to discuss the facility at COP16 in Cancún in 2010 via a "**work programme**".<sup>12</sup> The work program would address loss and damage in developing states that are particularly vulnerable to the adverse effects of climate

## Period 2 Milestones

2008:  
AOSIS introduces  
a proposal for an  
insurance and  
compensation  
mechanism

2010:  
Parties agree to  
a loss and  
damage work  
program

2012:  
Institutional  
arrangements  
are made for a  
loss and damage  
mechanism

2013  
Parties agree to  
establish the  
Warsaw  
International  
Mechanism on  
Loss and  
Damage

change, and would recognize damages from slow onset events like sea level rise, glacier melt, and salinization.<sup>13</sup> The COP additionally requested the Subsidiary Body for Implementation (SBI) to consider issues under the work program to make recommendations to COP18 in 2012. For loss and damage finance, the most significant provision in the Cancun Agreements was **Paragraph 18**, which requests that developed country Parties provide developing country Parties with “long-term, scaled-up, predictable, new and additional finance, technology, and capacity-building.”

COP17 in Durban in December 2011 defined the elements of the work program, which mandated states to focus on three thematic areas: (1) assessing the risk of loss and damage associated with the adverse effects of climate change and the current knowledge on the same; (2) a range of approaches to address loss and damage associated with the adverse effects of climate, including impacts related to extreme weather events and slow-onset events, taking into consideration experience at all levels; and (3) the role of the Convention in enhancing the implementation of approaches to address loss and damage associated with the adverse effects of climate change.<sup>14</sup> The decision text also calls for a **series of expert meetings** to discuss the first two thematic areas and the range of potential approaches to address loss and damage. The Decision also calls on Parties to develop submissions on the third thematic area before COP18, specifically on the role of the UNFCCC in this new work program.

Matters would become more complicated at the end of the work program when states would need to come to a collective decision on a loss and damage mechanism. After the meeting in Durban, advocates for the **Least Developed Country (LDC) group** held a meeting in Bangladesh to tackle the agenda items for the next COP. With the encouragement of Koko Warner and other advocates, LDC representatives became convinced of loss and damage’s relevance to the LDC group, in addition to adaptation, which had previously been their primary concern. This newfound coalition between the

LDCs and AOSIS on loss and damage caught the developed states off guard at the next COP meeting in Doha. While, initially, conversations between developed and developing states were cordial, they turned agitated and personal. We heard from one source that divisions became so intense that country representatives even unfriended each other on social media.

The debates at the thirty-eighth SBI session in June 2012 and later at COP18 in Doha were highly combative. Negotiations repeatedly stalled. Significant tensions emerged in discussions on finance and institutional arrangements, particularly on the issue of liability and compensation. Nauru issued a submission on behalf of AOSIS that, once again, advocated for a **three-pronged international mechanism** to address loss and damage.<sup>15</sup> This submission was bolstered by similar calls for loss and damage finance from other country coalitions. Bolivia, China, Ecuador, El Salvador, Guatemala, Nicaragua, the Philippines, and Thailand issued a joint submission that called for creating a “solidarity fund to provide compensation for residual or unavoidable loss and damage from the adverse effects of climate change from slow-onset processes.”<sup>16</sup> Ghana also echoed the need to establish a compensation and rehabilitation fund in an international loss-and-damage mechanism.<sup>17</sup> The Gambia, on behalf of the LDC Group, noted that functions of the international

mechanism should include new and additional finance for residual or unavoidable loss and damage, including for individuals, among other areas.<sup>18</sup>

Despite the growing interest in establishing a loss and damage fund among the G77, the US and other countries in the Global North claimed it would inhibit adaptation efforts and place a monetary value on lives and livelihoods in vulnerable countries.<sup>19</sup> When a text was eventually proposed in Doha, the United States was particularly resistant. U.S. representatives sought to remove the paragraph that would establish a mechanism for loss and damage, and opposed the idea that finance for loss and damage would be above and beyond the \$100 billion that wealthy states had already pledged in 2009 for mitigation and adaptation. In response, developing states refused to agree to any outcome that failed to establish a mechanism for loss and damage, delaying the finalization of the Doha Agreement. After 36 hours of deliberations in Doha, state representatives agreed to concretize the work program further. The United States conceded to include the text on the condition that it fall under the Cancun Adaptation Framework, which worked against developing states' priority of distinguishing loss and damage from adaptation.

Three elements of the **Doha Agreement** paved the way forward for multilateral action on loss and damage. First, COP19 would establish institutional arrangements, including an international mechanism to address loss and damage. Second, the Secretariat would carry out three intersessional activities under the work program, prior to the Thirty-ninth meeting of the Subsidiary Body on Implementation (SBI) the next year:

- (i) conduct an expert meeting to consider future needs, and prepare a report to be considered at the Thirty-ninth SBI;
- (ii) prepare a technical paper on non-economic losses; and
- (iii) prepare a technical paper on gaps in existing arrangements within and outside of the UNFCCC to address loss and damage, including those related to slow-onset events.

Lastly, states also tasked the SBI with improving the understanding of how climate change affects patterns of migration, displacement, and human mobility.

Before the Warsaw summit, both developed and developing states decided to take stock and prepare for the loss and damage negotiations. The incoming Polish presidency wanted these negotiations to succeed, so they appointed Minister Edna Molewa from South Africa and Minister Lena Maragareta Ek from Sweden to support the issue.<sup>20</sup> According to two of our informants, developed states also began to investigate who was funding the groups collaborating on loss and damage. The Climate and Development Knowledge Network, for example, had previously received funding from the UK government, but the UK withdrew that funding before Warsaw. Despite logistical and financial challenges, developing states still managed to coordinate ahead of Warsaw. Through a Rockefeller grant, members of the G77 and other experts met at the Bellagio Center in Lake Como, Italy, to devise a draft text for what would become the **Warsaw International Mechanism on Loss and Damage (WIM)**.

The G77 brought their draft text to Warsaw, receiving significant **support from civil-society organizations**. Early in the first week of the COP19, Super Typhoon Haiyan, the most powerful storm to ever make landfall, struck the Philippines, among other states. During the COP Plenary, the head of the Philippine delegation, Naderev "Yeb" Sano, announced that he would begin a hunger strike to demand ambitious decision-making during the negotiations. This impassioned call set the stage for the WIM discussions and received widespread support from international media and civil society organizations. According to one of our sources, this development constituted a "public-relations nightmare" for wealthy states that sought to deny the G77 a mechanism for loss and

damage. In their publication *ECO*, the Climate Action Network argued that “[t]ackling loss and damage is about climate justice. It is about protecting people, their livelihoods, and, most importantly, their human rights and dignity. It is time for those who are mainly responsible for climate change to act here in Warsaw.”<sup>21</sup>

Despite this development, developed states still sought to water down the G77’s draft text. While some developed country Parties, such as the European Union (EU), tried to bridge the divide, others were more hostile. The G77 particularly resented Australia for failing to take the negotiations seriously, including by attending negotiations in casual wear. This prompted the Group to walk out of the meeting, followed by an unprecedented walk-out of civil society the next day. Shortly after this second walk-out, Tim Gore, Oxfam’s climate spokesperson, spotlighted developed states’ efforts to obstruct the loss and damage mechanism in a press release: “Loss and damage, the support poor countries need where there is no hope of adaptation, is vital. ... The decision to walk out highlights the level of exasperation there is with rich countries at these talks—particularly the Australian delegation which has blocked every attempt of progress and turns up to negotiations in t-shirts.”<sup>22</sup>

Eventually, states reached **an agreement on the WIM text**, albeit on a version that differed significantly from the G77’s original proposal. For example, the original text referred to financial and technical support, among other components that would have made the mechanism robust and substantive. Several of our informants noted that what came out of the negotiations was relatively weak and that the United States and Canada specifically pushed back against finance-related components. Furthermore, the mechanism remained **under the Cancun Adaptation Framework**, which frustrated developing country Parties, particularly in light of the recently published IPCC Fifth Assessment Report, which made clear the limits of adaptation.

### Period 3: The Road from Warsaw to Paris (2013-2015)

Long before Paris, developing states started to broaden their appeals for a loss-and-damage provision in the UNFCCC. The initial calls for loss and damage were highly legal in framing, emphasizing **liability and compensation**.<sup>23</sup> In contract law, for instance, loss and damage clauses typically emphasize the responsible party’s liability to compensate the claimant. This remained a red line issue for many Global North countries, particularly the United States. As former U.S. Secretary of State John Kerry said in an interview prior to Paris, “[The United States is] not against [considering loss and damage]. We’re in favor of framing it in a way that doesn’t create a legal remedy, because Congress will never buy into an agreement that has something like that... [T]he impact of it would be to kill the deal.”<sup>24</sup>

Given the divisive nature of liability, developing states began to strategically broaden the framing of their loss-and-damage appeals, increasingly emphasizing the moral and risk ramifications of the issue. “From 2008 onward, an overarching and ambiguous ‘loss and damage’ frame began to replace two more specific historical framings—a ‘liability and compensation’ frame and a ‘risk management and insurance’ frame—in the discussions.”<sup>25</sup> This constructively ambiguous framing had several effects in the lead-up to Paris. It increased the coalition of non-state actors that supported international action on loss and damage, and it strengthened the relationship between state and non-state actors and the relationship among some blocs of developing states like LDCs and SIDS.

It also led to **increased media and NGO attention to loss and damage**. For instance, the frequency of loss and damage references in media sources increased by more than 1,400 percent between 2010 and 2015 (Allen and Hadden 2017). These dynamics raised the stakes of failing to include a loss and damage provision in the Paris Agreement. Many NGOs also referenced loss and damage as a top priority during the opening press conference.<sup>26</sup> On November 30<sup>th</sup>, ECO printed that “[T]he extreme position from the US, Japan, Canada, Australia and Switzerland of no reference to loss and damage in the Paris agreement (Article 5, Option 2) is not an option if we want a fair agreement.”<sup>27</sup>

Despite the increased attention to and support for loss and damage in and beyond the UNFCCC, its substance and institutional implications remained one of—if not the—most contentious issues in the lead-up to the Paris meeting. Draft text ahead of Paris underscored divergent positions among negotiating blocs. Option I, supported by all 134 members of the G77, included a standalone article on loss and damage that avoided language on compensation or specific responsibilities.<sup>28</sup> This option represented a significant political compromise from developing states given longstanding U.S. resistance to explicitly mentioning liability and compensation. By contrast, Option II, led by the United States with support from the Umbrella Group, **failed to mention loss and damage in the text** at all.

As the pre-Paris negotiations proceeded, it became increasingly clear that vulnerable states, particularly small-island states, would not accept an outcome that failed to include text on loss and damage. In other words, a loss and damage provision constituted a “red line.”<sup>29</sup> Meanwhile, developed states, particularly the United States, continued to endeavor to obstruct a delineation between loss and damage and adaptation, as well as any mention of liability.

Ultimately, in the final hours of the Paris meetings, the 196 Parties to the UNFCCC agreed to a standalone article, Article 8, on loss and damage: “Parties recognize the importance of averting, minimizing, and addressing loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events, and the role of sustainable development in reducing the risk of loss and damage.”<sup>30</sup> Article 8 is the product of a somewhat secret, **behind-the-scenes negotiation** among the heads of state of Jamaica, St. Lucia, Tuvalu, and the United States. The draft text stemming from this meeting was presented to the Parties in the final moments of the Paris meetings. With little time to spare and a take-it-or-leave-it presentation, developing states had to choose between a weak provision or risk failing to reach an agreement in Paris. **Paragraph 51** was added to the Agreement’s “Decision Text” specifically excluding a compensation mechanism.

Article 8 reflects a significant political compromise and milestone. While it excludes language around liability and compensation, some view the outcome as a win for developing states and NGOs that had long been advocating for a standalone provision. Article 8 differentiates loss and damage from adaptation and increases the visibility of the issue. Yet, despite these achievements, there are at least **three shortcomings**. First, the language in Article 8 is less robust than many developing states had been advocating for. Paragraph 49 of the Decision text arguably weakens mandate of the WIM from “avoid[ing] and reduc[ing]” loss and damage to “avert[ing], minimize[ing], and address[ing]” loss and damage.<sup>31</sup> In addition, Article 8 vaguely commits Parties to “areas of

### Period 3 Milestones

2014:  
Parties begin a two-year workplan for loss and damage under the WIM

2015:  
Parties agree to the Paris Agreement with standalone Article 8 on loss and damage accompanied by Paragraph 51 in the Paris Decision text



cooperation and facilitation to enhance understanding, action and support.”<sup>32</sup> This “we’re-all-in-this-together” language arguably moves the Convention away from a mechanism for developing states only, which had characterized earlier texts.

Second, Paragraph 51 of the decision text states that “Article 8 of the [Paris] Agreement does not involve or provide a basis for any liability or compensation.”<sup>33</sup> This text reflects a significant compromise from the closed-door meetings on Article 8, leaves fundamental issues related to finance unresolved, and forecloses the possibility of responsibility-based compensation. It also fails to address the increasingly critical need for support beyond compensation, including foregone development opportunities and loss of livelihood and territory as developing country representatives have previously outlined.<sup>34</sup> For these reasons, many long-time advocates for loss and damage consider the Paris Agreement a failure. Others, by contrast, acknowledge that states would never agree to text that included a provision on liability and compensation.

Furthermore, Article 9, which covers financing, does not specify finance for loss and damage. Article 9.1 states that “[d]eveloped country Parties shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation in continuation of their existing obligations under the Convention.” The word “shall” is significant, as it is more robust than “should.” Still, Article 9 fails to include language on how the Convention will fund the “areas of cooperation and facilitation” referenced in Article 8.

#### **Period 4: Loss and Damage After Paris (2016-Present)**

After states agreed to a standalone article on loss and damage in the Paris Agreement, it seemed the issue would finally be fully acknowledged and integrated into the negotiations as the third pillar of climate change. The Paris Agreement entered into force in November 2016, less than a year after its signing. The entry happened faster than many had expected. Rather than working on implementing Article 8 post-entry, **Parties left loss and damage off the agenda** of the Ad-hoc Working Group on the Paris Agreement (APA), which put together the Paris Rulebook. Although the U.S. announced its intention to withdraw from the Paris Agreement in June 2017, the U.S. and its allies in the Umbrella Group continued to obstruct efforts to finance loss and damage, to establish a system to track losses and damages across the world; and to connect loss and damage to other key issues in the negotiations.

At the 2016 COP22 in Morocco, WIM negotiations centered on the five-year rolling workplan of the Executive Committee. Finance was off the table during these discussions. In the workplan document, finance was given a **placeholder**—meaning that its place in the document was noted, but not filled with substance. At the same time, the Standing Committee on Finance presented its Biennial Assessment summary without mentioning finance for loss and damage. At this meeting, the main focus on finance for loss and damage mostly coalesced around climate risk insurance. Although this constitutes a partial mechanism for providing financial support for loss and damage, risk insurance does not cover all circumstances and has significant shortcomings.

The following May, at the Forty-sixth Subsidiary Body meeting in Bonn, loss and damage remained off the agenda entirely. However, given Fiji’s COP presidency later that year, there was hope that states would make it a central focus of COP23 later that year. Perhaps in response to this “island COP,” wealthy countries doubled down on their obstruction tactics.<sup>35</sup> One of their first moves was the decision to **remove observers** from the negotiating room, reducing transparency around the talks. At the request of a Kuwaiti delegate, even the typically-open *informal* meetings were closed.

## Period 4 Milestones

2016:  
Review of the  
WIM

2017:  
Parties agree to  
a five-year  
workplan for loss  
and damage

2018:  
The Suva Expert  
Dialogue on Loss  
and Damage is  
held

2021:  
Developing  
country Parties  
call for the  
establishment of  
a fund for loss  
and damage

In addition, most of the substantive negotiations happened in *informal informals*, which are closed to observers, and the times and locations do not appear on the conference schedule.

Finance was again one of the key debates in the meetings. On behalf of the African Group of Negotiators, Mali submitted possible activities for the five-year rolling workplan. The submission noted that **market-based instruments like insurance are not appropriate** for developing states, particularly those in sub-Saharan Africa, given the “differing financing needs associated with loss and damage, including compensation.”<sup>36</sup> To date, this is the last Party submission to refer to compensation.

In opposition, developed states prevented loss and damage finance from becoming a reality. First, the WIM was left **under-resourced**, limiting the scope and impact of its work. Second, the US, backed by Australia, Canada, and the EU, suggested deleting references to climate finance from the working text. In response to this move, the Climate Action Network awarded these states their “Fossil of the Day,” an ignominious designation for the states “doing the most to achieve the least” in the UNFCCC. The US and its backers further worked to **keep finance out of the WIM** discussions by arguing that it would be more appropriate to deliberate on this issue in the Standing Committee on Finance and other bodies under the COP. Yet, conversations in these forums also consistently neglected to cover loss and damage. When these forums did raise finance, discussions centered mostly on insurance and related claims that humanitarian and disaster aid already account for loss and damage. Ultimately, the final text from these negotiations was weak and did not specify sources or structures of loss and damage finance.

States met for two sets of Subsidiary Body negotiations between COP23 and COP24—the first in Bonn in May and the second in Bangkok in September. Rather than making loss and damage a standing item on the agenda for these meetings, loss and damage was relegated to a separate consultation called the **Suva Expert Dialogue**. Country delegations, civil society representatives, industry, and other experts met to discuss the logistics of loss and damage over two three-hour meetings during two afternoons of the SB meeting. Civil society groups and climate-vulnerable states advocated for a more comprehensive approach to climate finance and raised many concerns about the shortcomings of insurance. Despite these efforts, alternatives failed to emerge. Meanwhile, developed states were uncharacteristically silent throughout these discussions, perhaps to delegitimize or limit the scope of the debates. Later that year, Japan, the US, and Australia failed to include loss and damage in their reporting under the enhanced finance-transparency framework—once again deliberately ignoring the issue.

Another area of obstruction that emerged during the Bonn meeting pertained to loss and damage in the **Global Stocktake**. Perhaps the most important mechanism of the Paris Agreement is the Global Stocktake, which, every five years, assesses states’ progress in achieving their NDCs and, by extension, the fundamental goals of the 2015 Agreement. Despite Article 8, however, Parties argued to keep loss and damage off the agenda for the Global Stocktake and the agenda of other negotiating tracks, including transparency, at the Subsidiary Body meetings. These moves effectively relegated loss and damage discussions to the WIM. These tactics continued through

COP24, during which the Climate Action Network, through ECO, called out wealthy states for “gaslighting” vulnerable countries about their commitment to loss and damage.<sup>37</sup>

At COP 25 in Madrid the following year, obstruction on loss and damage came to a head during the **institutional review of the WIM**. After disputes over whether to include developing states’ needs in the terms of reference of the WIM review, it became clear that operationalizing the WIM beyond conversations and expert groups would be an uphill battle. Finance moved to the center of the debate, as developing states demanded additional money for action on loss and damage. A representative from Vanuatu even stated that they are “not afraid of the word ‘compensation’ and [are] already being pushed, due to WIM inaction on Loss & Damage, to explore legal justice pathways for climate finance.” In addition to U.S. efforts to block discussions on additional finance for loss and damage, other developed states, including Japan and Australia, once again emphasized insurance mechanisms as an alternative. Meanwhile, Russia suggested removing human rights and gender from the loss and damage negotiations altogether.

Ultimately, the talks led to a mandate to establish the **Santiago Network on Averting, Minimizing, and Addressing Loss and Damage (SNLD)**, which would “catalyze the technical assistance of relevant organizations, bodies, networks, and experts for the implementation of relevant approaches at all levels in vulnerable developing countries.” However, Parties failed to determine how they would establish the SNLD or the constitution of its modalities.

In 2020, international negotiations on loss and damage stalled entirely—along with the broader climate negotiations—as COVID-19 spread across the globe. When discussions resumed at the virtual SB52 in June 2021, states once again left loss and damage off the agenda. However, by COP26 in Glasgow in November 2021, loss and damage was front and center. Loss and damage negotiations at COP26 included determining 1) the modalities and procedures for the SNLD; 2) the governance of the WIM; and, eventually, 3) the financial mechanism for funding losses and damages. States reached an agreement on the first dimension, on the modalities and the procedures for the SNLD. Yet, states discussed this matter under the agenda item of reviewing the report of the WIM ExCom, rather than providing the issue with its own agenda item as developing states had hoped and expected. Unsurprisingly, the SNLD discussions progressed with relative ease; it is reminiscent of earlier times when the issue of loss and damage remained at a hypothetical planning stage rather than on decisive and specific action. More surprising was the pledge to provide financial support for the SNLD.

The second item on governance was more contentious. On October 29, 2021, just before the start of COP26, Bhutan made a submission on behalf of the LDCs requesting that the WIM agenda items be covered identically and in a balanced manner between the COP and the Meeting of the Parties to the Paris Agreement (CMA). Initially, the agenda listed most of the loss and damage items under the CMA. Developed states prefer to keep the WIM work under the CMA, where it is beholden to Paragraph 51 of the Paris Agreement decision text that precludes liability and compensation for loss and damage. Meanwhile, developing states prefer to keep the WIM under the COP and Cancun Agreements, so that it is not accountable to Paragraph 51 and other concessions made in the Paris Agreement. Despite Bhutan’s early submission and discussions on the topic from the first week of the COP, states failed to decide on the WIM’s governance in Glasgow. The conversation will continue at COP27 in Sharm el-Sheikh.

Although finance was a contentious issue from the start of COP26, tensions only rose as the negotiations progressed. During the first week of the Glasgow talks, states bracketed all text related

to finance. During the second week, the G77 called for establishing a **“Glasgow Loss and Damage Facility”** under the Glasgow Climate Pact, the final negotiated text of the COP26 negotiations. This request, however, was denied. Through high-level negotiations that extended beyond the last scheduled day of the summit, the COP agreed only to a dialogue on “arrangements for the funding of activities to **avert, minimise and address loss and damage.**” The United States, Australia, and the EU led this effort to obstruct a more ambitious and decisive text. They argued that states could not establish a new fund without a greater understanding of how states would deliver loss and damage funds in practice.

Rather than establish a funding facility at COP26, Parties agreed to a series of Dialogues on the matter of loss and damage finance. The tactics from the COP continued in the first Glasgow Dialogue during the fifty-sixth Subsidiary Body meeting in June 2022. AOSIS, the LDCs, and the G77, made strong statements advocating for a new funding mechanism that would address loss and damage in all its diverse forms (economic and non-economic), wealthy countries such as the US argued that funding streams such as humanitarian aid and disaster risk reduction were already sufficient and could be improved. The language of “averting, minimizing, and addressing” loss and damage also became a key rhetorical signal as wealthy countries consistently used the full phrase while the G77 emphasized *addressing* loss and damage, saying that averting and minimizing referred to mitigation and adaptation, respectively.

## Looking forward

Now, in the lead-up to COP27 in November 2022, loss and damage finance is poised to be a central issue. For the first time, it has been included as an official agenda item and, well in advance of the meeting in Sharm el-Sheikh, Parties and civil society members have been preparing for the key points of contention that will likely arise. We anticipate that many of the obstruction strategies that wealthy countries have employed in the past will be used again, including delaying progress through policy perfectionism and redirecting attention to action happening outside of the UNFCCC.<sup>38</sup> Despite this, it appears that in the near future obstruction to loss and damage finance may finally be defeated. What a loss and damage financial mechanism will look like, however, remains to be seen.

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