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Making Good the Loss

Assessment of a Loss and Damage Mechanism under the UNFCCC

Drowning Island Nations – Legal Implications and Remedies
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Ilona Millar, Liz Caldwell & Catherine Gascoigne

Overview

- What is a loss and damage mechanism & why is it needed?
- Legal basis for a mechanism
- Possible content of a mechanism
- Funding and compensation

What is a loss and damage mechanism?

- Process to respond to climate change related risks that cause loss to property and livelihoods – in particular natural disasters & slow onset events
  - Risk management and risk reduction (forms part of adaptation to climate change)
  - Risk sharing and risk transfer mechanisms (e.g. insurance)
  - Rehabilitation measures for events that cannot be adapted to (may include relocation and/or compensation)
- Builds upon existing obligations in UNFCCC – may need to elaborate in post-2012 Agreement
- Engagement with public and private sector to fund and support these measures

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Why is a mechanism necessary?

- Scientific evidence of climate change impacts well documented
- Climate change disproportionately affects the most vulnerable nations with lowest adaptive capacity

Legal basis for a mechanism

International law principles to prevent harm

- **No harm principle**
  - States have a responsibility not to cause damage to the environment of other States or to areas beyond their national jurisdiction; and
  - a duty to redress the damage if the transboundary harm occurs (restitution / compensation)

- Difficulties with enforcement of obligations under international law

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The UNFCCC's existing approach

- UNFCCC obliges developed country Parties to provide such financial resources as are needed by developing country Parties to facilitate their adequate adaptation to climate change (Articles 4.3, 4.4 and 4.5).
- Article 4.8 gives consideration to how such obligations may be achieved by developed countries, stipulating that:

> "the Parties shall give full consideration to what actions are necessary under the Convention, including actions related to funding, insurance and the transfer of technology, to meet the specific needs and concerns of developing country Parties arising from the adverse effects of climate change and/or the impact of the implementation of response measures, especially [in the most vulnerable states]"

- Kyoto Protocol – Art.3.14 obliged to consider measures to minimise the adverse consequences of climate change, including "the establishment of funding, insurance and transfer of technology".

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Adaptation programmes to address climate change impacts and risks

- *Nairobi Work Programme on Adaptation* (under SBSTA) includes work to promote the development, dissemination and use of knowledge from practical adaptation activities.
- *National Adaptation Programmes of Action* for LDCs.
- *Hyogo Framework for Action* on disaster risk management and risk reduction.

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AOSIS proposals for a Loss and Damage Mechanism

- International Insurance Pool to compensate small island and low lying developing nations for loss and damage resulting from sea level rise (1991)
  - Contributions to the Pool from Developed Country Parties based on formula related to GDP and contribution to GHG emissions
- Revisited in 2007 with proposal for a Convention Adaptation Fund
- 2009 – proposal for a Multi-Window Mechanism consisting of three interdependent components:
  - an **insurance** component – to assist particularly vulnerable developing countries manage financial risk from increasingly frequent and severe extreme weather events;
  - a **rehabilitative/compensatory** component – to address loss and damage resulting from un-avoided and unavoidable climate change impacts such as rising sea levels, increasing land and sea temperatures and ocean acidification; and
  - a **risk management** component – to support risk assessment and risk management

Decision 1/CP.16 – work programme on loss and damage

- Recognized the need to strengthen international cooperation and expertise to understand and reduce loss and damage associated with the adverse effects of climate change, including impacts related to extreme weather events and slow onset events
- Established a work programme, overseen by SBI, to consider approaches to address loss and damage associated with climate change impacts
  - Possible development of a climate risk insurance facility to address impacts associated with severe weather events;
  - Options for risk management and reduction; risk sharing and transfer mechanisms such as insurance, including options for micro-insurance; and resilience building, including through economic diversification;
  - Approaches for addressing rehabilitation measures associated with slow onset events; and
  - Engagement of stakeholders with relevant specialized expertise.

Possible content of a mechanism

What may vulnerable developing countries need?

- Country driven approach
- Support for understanding of risks and losses facing vulnerable developing countries
  - identifying gaps in risk exposure data, modeling and regulatory frameworks
  - synthesizing data
  - promoting knowledge sharing
  - enhancing understanding of existing and appropriate response strategies
- Reducing exposure to risk by enhancing prevention and reduction measures and disaster preparedness
- For risks that cannot be prevented or reduced
  - risk sharing
  - risk transfer mechanisms
  - rehabilitation / compensation
- All require some form of funding – who covers the costs?

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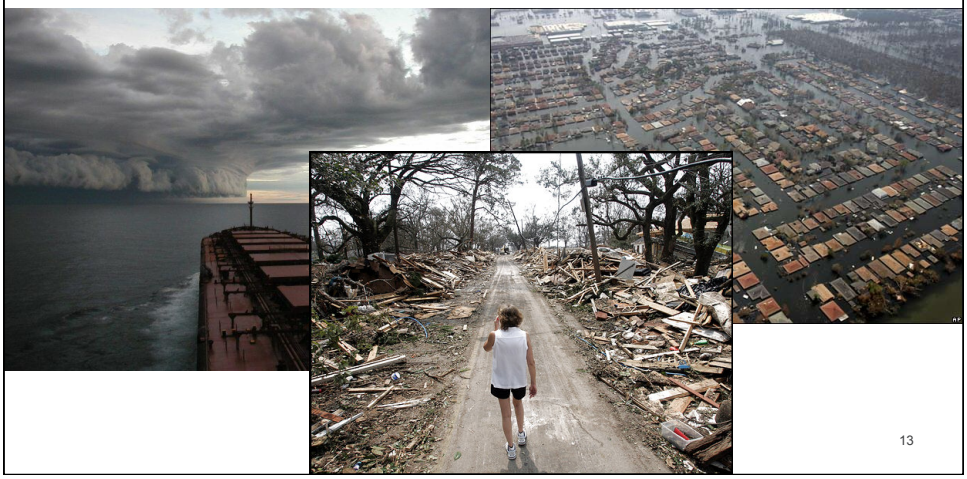
Insurance for climate change-related damage and loss is one of the most contemplated financial mechanisms for dealing with this issue



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Types of climate change-induced loss and damage insurance

- **Traditional insurance:** contractual transaction that guarantees financial protection against stipulated forms of losses in return for a premium. Where the insured experiences a loss of the pre-described type, then the insurer will pay out a previously agreed amount.
- **Micro-insurance:** Micro-insurance, which emerged out of micro-finance, is targeted at LDCs and is characterised by both low premiums and low coverage.
- **Insurance-linked securities:** Insurance-linked securities are insurance policies that are tied to the capital markets, which further allows for the dispersion of risk. Also generally tied to the occurrence of a specified event, which, upon occurrence, will trigger the payment of insurance. The most common type of insurance-linked securities are catastrophe (cat) bonds.

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Problems with insurance

- There are many problems with insurance as a financial mechanism for managing financial loss associated with climate change. These problems include:
  - premiums which are too high, especially for persons in vulnerable states;
  - lack of understanding about insurance and lack of a 'culture' of insurance amongst vulnerable states;
  - limited coverage of policies;
  - "moral hazard" – that is, persons have no incentive to mitigate loss;
  - difficulties that smaller insurance companies face in building up sufficient capital to insure; and
  - insurance may not be appropriate for very slow-onset climate impacts, such as sea level rise.

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Non-insurance risk-financing mechanisms

- **Informal risk-sharing:** involves remittances and financial arrangements of reciprocal exchange amongst community members or persons linked by kinship ties.
- **Micro-savings and post-calamity credit:** Micro-savings involves individuals creating their own personal savings, which is increasingly becoming assisted by MFIs, banks and other agencies.
- **Micro-credit:** involves the provision of small loans to vulnerable communities for the purposes of some kind of development.
- **Post-disaster assistance:** comes in the form of the affected country's government relief, which often supports specific projects targeted at recovery. Some governments have established a post-calamity fund, which accumulates in years without catastrophes and is reduced in years that experience disasters.
  - Governments of vulnerable countries, however, must particularly rely on foreign governments' aid or foreign aid donated by individuals and non-government organisations.

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Funding and Compensation

Adaptation Funding under the UNFCCC

- Existing Funds established under the UNFCCC – none specifically provide for compensation, rather they promote mitigation and adaptation activities.
- Bilateral, regional and multilateral channels – funding provided for in keeping with developed countries' obligations under Article 11.5 of the UNFCCC.
- Commitments under the Copenhagen Accord / Cancun Agreements to provide US$10 billion per year between 2010-2012, scaling up to US $100 billion by 2020, much of which will be provided through the Green Climate Fund.

Compensation and funding to support a loss and damage mechanism

- Convention Adaptation Fund proposal
  - Separate fund or Window in Green Climate Fund
  - Payments comprised of contributions from developed countries, assessed on the basis of each country's levels of GHG emissions, taking into account their respective levels of development, historical contributions to GHG emissions and ability to pay
  - Would require administrative framework and clear rules on priority access to fund and purposes for which the fund could be used (e.g. risk management planning, risk mitigation works, financial guarantees to support the provision of private sector insurance at low cost, compensation)

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In kind support

- Technical assistance with data gathering, knowledge sharing and risk management planning
- Cooperative policies – in particular at the regional level to support coordinated response to disasters and also longer term slow onset events
- Assistance with rehabilitation / relocation

What does this mean for disappearing States?

- Loss and damage mechanism may:
  - assist with risk preparedness and risk management for both natural disasters and slow-onset events
  - facilitate risk transfer for natural disasters
  - compensate for unavoidable loss
- Source of funding to support non-territorial States and their citizens and host States (underwriting migration)
- Could provide leverage in mitigation discussions

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Thank you

Ilona Millar
Senior Associate, Sydney
ilona.millar@bakermckenzie.com