

Loss and Damage Fight at COP26

Penang, 19 Nov (TWN) - The issue of loss and damage became a highly charged political matter at the recently concluded climate talks in Glasgow, Scotland, which took place from Oct 31 to Nov 13. Developing countries have been the proponents for the institutionalization of loss and damage in the UNFCCC regime given that the adverse effects of climate change disproportionately impact developing countries more than developed countries in ways that go beyond the adaptation capacities of developing countries.

At Cop 26, developing countries were firmly united under the G77 and China (G77) in advancing the loss and damage agenda which revolved around the following issues:

- loss and damage finance, including through the establishment at COP26 of a new finance facility;
- the further operationalization of the Santiago Network; and
- governance of the Warsaw International Mechanism on Loss and Damage (WIM) under the COP and the CMA (Conference of Parties meeting as the Parties to the Paris Agreement).

Developing countries lost the battle on ensuring a loss and damage finance facility due to very strong opposition from developed countries, especially the United States (US), and only managed to secure in the final decision adopted, the establishment of “the Glasgow Dialogue between Parties...for the funding of activities to avert, minimize and address loss and damage associated with the adverse impacts of climate change.”

However, reaching agreement on the functions of the Santiago Network (SN) and on a process for its institutional arrangements was a significant step forward at COP 26, and a win for developing countries, given strong resistance initially from developed countries.

On the issue of the WIM governance, as wrangling continued between developing and developed countries and with no consensus possible on the matter, the COP 26 Presidency decided to kick the can down the road for a resolution of the matter in the future, while recognizing that both the COP and the CMA have roles to play in having oversight and authority over the WIM.

This update provides highlights of the negotiations that took place on the loss and damage issues, following information obtained from various developing country negotiators close to the process.

LOSS AND DAMAGE FINANCE

The issue of loss and damage finance was a major fight for developing countries and covered two elements: (i) the creation a new financing facility for loss and damage and (ii) the financing for the functioning of the Santiago Network (SN).

During the start of negotiations under the Subsidiary Bodies(SBs) in the first week of the COP 26, the G77 proposed a draft decision containing paragraphs that would recognize: (i) “the need to ensure that the Santiago Network’s institutional coordination arrangements are appropriately financed to enable it to achieve its objective and

implement its activities effectively”; and (ii) “the need for a financing stream on loss and damage to ensure that developing country Parties are able to adequately address the significant impacts currently associated with slow onset events, non-economic losses, comprehensive risk management, displacement, and other loss and damage-related issues.”

In response to the SB co-facilitators’ draft text that was issued on 3 Nov. in which paragraph 12 recognized “the urgent need for scaling-up of action and support, as appropriate, including finance, technology and capacity-building, for the implementation of relevant approaches to averting, minimizing and addressing loss and damage in developing countries that are particularly vulnerable to the adverse effects of climate change” and mandated the WIM Executive Committee to continue its engagement with the Standing Committee on Finance and the Green Climate Fund, the G 77 stated that such recognition of financing for loss and damage needs to be strengthened.

The G77 stated that the draft paragraph proposed by the co-facilitators “does not contain any operational aspects nor how loss and damage finance can be scaled up and accessed.”

In response, developed countries stated consistently that the issue of loss and damage finance could not be the subject of discussion under the loss and damage agenda item but should be discussed in the climate finance negotiating rooms. At the same time, in the climate finance negotiating rooms, developed countries were saying that loss and damage finance should not be discussed at the technical level but rather should be considered at the political ministerial level during the second week of COP26. Hence, by the close of the first week of negotiations, the issue was not substantially addressed by Parties. This resulted in the SB adopting paragraph 12 with virtually no changes.

During the second week, the UK COP Presidency appointed the ministers of Jamaica (Parnell Charles Jr.) and Luxembourg (Carole Dieschbourg) to undertake ministerial consultations on issues relating to loss and damage.

During the ministerial consultations that took place on 9 and 10 Nov. the G77 highlighted the need not only to address funding for the SN, but also by making loss and damage finance be part of the broader climate finance discussions taking place (such as with respect to long-term finance, the new collective quantified goal on climate finance) and by providing space in the transparency of support tables (under the enhanced transparency framework) for the reporting of loss and damage finance provided by developed countries. The developed countries stressed that for them, the issue of loss and damage finance should be limited only to providing finance for the operationalization of the SN and that the broader issue of loss and damage financing is not a topic for discussion at COP26.

In response, on 11 Nov. at the final ministerial consultations, the G77 tabled a textual proposal calling on the COP and CMA to decide to “establish the Glasgow Loss and Damage Facility under the Financial Mechanism ..., and to provide new financial support under Article 9 of the PA, in addition to adaptation and mitigation finance, to developing countries to address loss and damage and requests the Subsidiary Bodies to jointly undertake work in 2022 with the aim of providing recommendations to COP27 on its operationalization.”

Guinea speaking on behalf of the **G77/China** stated that “This will be a historic and significant step forward in further solidifying and enhancing international cooperation on loss and damage under the Convention and its PA. Even as we seek to scale up our collective ambition with respect to mitigation, adaptation, and the provision of the means of implementation, ...it is now very evident that the impacts of climate change on the lives of our peoples, the livelihoods of our communities, on our islands, coastlines, forests, and cities, on our economies and ecosystems, are fast going past the limits of what we can adapt to. This is why this proposal is crucial...It will represent a clear response that all Parties,...share the common resolve to address loss and damage...It will send a clear signal to the rest of the world, to all our peoples, to civil society, to indigenous peoples, to those who are marginalized and most vulnerable

and are calling for help, that we hear, we care, we act.”

In response, the **US** raised questions on whether a new institution is needed as some support might best be undertaken through existing or other types of institutions adding there are issues that need to be better understood in terms of the response that the UNFCCC and others in the multilateral sphere look at, pointing support for language in the draft decision that would request the UN Secretary General to promote system-wide coherence on loss and damage within the UN system. The US said that it could not support the proposal to launch a loss and damage finance facility and instead suggested that the discussion focus on the SN.

The **European Union (EU)** stressed its commitment to work together to find common ground, noting that it is the largest humanitarian aid, trade, and investment provider, as well as being the largest contributor to public climate finance. It recognized the need for technical assistance to implement loss and damage approaches, hence its willingness to work on the functions of the SN and stressed its willingness to provide the Network financial support. However, on the G77’s proposal to establish a loss and damage finance facility, it said that it needed to first assess the proposal.

Following the EU’s statement, ministers and representatives from the developing country constituency groups and the G77 member states spoke up in support of the G77’s proposal, providing further explanation, context and rationale for the proposal. These included **Tuvalu for Least Developed Countries (LDCs)**, **Dominican Republic for the Alliance of Small-island States (AOSIS)**, **Ecuador for the Like-Minded Developing Countries (LMDC)**, **Gabon for the Africa Group**, **Colombia for Independent Alliance of Latin America and the Caribbean (AILAC)**, and **Antigua and Barbuda and Kenya**.

However, the ministerial consultations on the night of 11 Nov. ended without any resolution, as there was no agreement on the G77 proposal. The ministers who co-facilitated said that they would be reporting to the UK COP Presidency on the state of the discussions on the issue.

During the day of 12 Nov. (which was supposed to be the scheduled closing of the COP, but which spilled over to the 13 Nov.), there were informal discussions within the G77 and with developed country negotiators to try to find a way forward on the issue. The G77 then informally circulated in the early evening of 12 Nov. a proposed text as follows:

“(48). Decides to launch a process to develop a facility, fund or other financial arrangements for providing financial support for loss and damage, through a subsidiary body, hereby established under the Convention, known as the Glasgow Ad-Hoc Working Group on Loss and Damage Finance. (49). Further decides that the Glasgow Ad-Hoc Working Group on Loss and Damage Finance shall begin its work as a matter of urgency in xx 2022 by calling for submissions, holding meetings, workshops and multi-stakeholder dialogues, with input from the WIM Executive Committee and other experts, and shall produce a report with recommendations on the operationalization of a facility, fund or other financial arrangements, to be considered and adopted at COP27.”

Later in the evening of 12 Nov., the G77 invited developed country negotiators at the technical level to a self-organized informal discussion facilitated by **Costa Rica** on the Group’s suggestion to launch a process instead on loss and damage finance. During the discussion, the US stated that it thought that progress had been achieved on the SN but that it had no ability to engage in any discussion about a facility, fund, or financial arrangement at that stage of the COP, especially given that the idea of a loss and damage facility had only been raised the day before. The US said that this is not something that is typically done and that it is something that it cannot agree to at that stage.

The **EU** said that it was not prepared to deal with the issue at this COP, that its negotiators did not have any mandate for such a discussion nor any instructions from its member States and the Union to agree to such a facility. It stated that it could not agree to anything at COP26 on a facility or to establish one.

But it said that it heard and understood the calls being raised about the importance of the issue and suggested that it might be then time to discuss how to increase support for loss and damage. It expressed openness to some kind of dialogue on loss and damage finance that is open and does not pre-empt the outcome. It said that it could not engage on the G77 proposal and suggested that the draft paragraphs in the UK COP Presidency's text on a technical assistance facility for the SN be deleted and replaced with a short paragraph calling on Parties to fund the SN.

New Zealand also made similar remarks as the EU and suggested that having an open dialogue process would ensure that the PA is not being re-litigated. It suggested that the landing zone would be to ensure that the SN is properly funded and that there is a process to explore the possibilities going forward. **Japan** indicated that it also had no mandate to deal with the issue of loss and damage finance. It suggested that Parties should first discuss what is important for the SN in terms of its structure and indicated that it could be ready to discuss the issue by 2022. **Australia** said that it was keen to make sure that the SN is provided with support acknowledged that there seems to be agreement on the need to have formal discussions on loss and damage finance. It indicated its willingness to have a solid process such as a dialogue that would be facilitated by the SBs chairs, would be time-bound (e.g. at least two to three years) with enough time for proper discussion, open to participation by other stakeholders, with periodic reporting to the SBs. It pointed out that such a dialogue would identify the issues and how to best deal with these issues so as to enhance loss and damage finance.

In response to the statements made by developed countries, various developing country negotiators spoke in support of the G77 proposal for a loss and damage finance process that is structured under the SBs, focused on the eventual establish of a loss and damage finance facility, and is time-bound.

The **UK COP Presidency** representative then stated that time was running out and that the COP President had instructed his team that all negotiations and discussions among Parties on various issues had to

stop to provide time for the Presidency team to put together their final decision texts that would then be published the next day (13 Nov). The G77 suggested that its proposals could be incorporated into the text in brackets for the plenary to then consider. The UK representative stressed that because the G77 proposals for the establishment of a loss and damage facility nor for a process that would lead to such a facility did not enjoy any consensus, the Presidency would not be able to put such proposals into the text.

At that point, the US stated that it really could no longer engage on any sort of textual exercise on the G77 proposal, whether on the facility or on the process for such a facility and stated that it had nothing left to offer. **Australia, New Zealand** and the **EU** indicated that they were still willing to see if there could still be some agreement that could be reached on a process mandate in terms of starting a dialogue. The **US** indicated that it had no mandate to agree on any kind of process.

On 13 Nov, the final day of the COP, the UK COP Presidency released the draft decision text of the CMA cover decision and for the entire package of decisions to be adopted by the CMA. In the CMA draft decision, paragraphs 67 to 70 provided a mandate for the funding of the SN, including urging developed countries to provide funds for the operation of the Network and the provision of technical assistance. Through paragraphs 73 and 74, the CMA decided to “establish the Glasgow Dialogue between Parties, relevant organizations and stakeholders to discuss the arrangements for the funding of activities to avert, minimize and address loss and damage associated with the adverse impacts of climate change, to take place in the first sessional period of each year of the Subsidiary Body for Implementation, concluding at its sixtieth session (June 2024)” and requested “the Subsidiary Body for Implementation to organize the Glasgow Dialogue in cooperation with the Executive Committee of the WIM for Loss and Damage associated with Climate Change Impacts.” These paragraphs were endorsed by COP26 in paragraph 43 of its own cover decision.

At the closing plenary on the final day, the paragraphs relating to loss and damage in the draft decisions of 1/CMA.3 and 1/CP.26 were subsequently adopted without any changes. After the adoption of the decisions, the Chair of the G77 stated for the record “the Group expresses its extreme disappointment with paragraphs 73 and 74 of draft decision 1/CMA.3 on a dialogue related to loss and damage. This is very far from the concrete call for a loss and damage facility that the Group came together to make and seek an answer for here in Glasgow. But in the spirit of compromise, we will be able to live with these paragraphs as is on the understanding that it does not reflect nor prejudice the unequivocal outcome that we seek on finance for loss and damage to reach the most vulnerable, which due to history and human rights and basic common decency the G77 and China will continue to pursue. To this end, we understand that the dialogue referred to in Paras 73 and 74 has as its end goal the establishment of the LD facility”.

THE SANTIAGO NETWORK’S FURTHER OPERATIONALIZATION – FUNCTIONS AND INSTITUTIONAL ARRANGEMENTS

The SN was established at COP 25 in Madrid in 2019, as part of the WIM and is intended to “catalyse the technical assistance of relevant organizations, bodies, networks and experts, for the implementation of relevant approaches at the local, national and regional level, in developing countries that are particularly vulnerable to the adverse effects of climate change.” However, other than inviting loss and damage-related technical assistance providers to provide reports on their progress to the WIM ExCom and for the latter to include such information in its annual reports, there were no provisions describing what the SN would do, how it should function, nor what its institutional arrangements would be.

The G77/China on 1 Nov. 2021 stated that while the SN was established (in Madrid), its operational modalities were not, and needed to be developed for the Network to be effective in its mandate. The G77 elaborated further that neither the form, functions, institutional coordination arrangements, and financing for the SN had been fleshed out and agreed to

by the Parties. The Group then called on the SBs to include “specific recommendations to the COP and the CMA for a decision on the form, functions, and institutional arrangements needed for the operationalization of the Santiago Network.”

The following day, on 2 Nov., the G77 tabled its proposed elements for the COP26 decision, indicating that “the Santiago Network should enable it and its members to deliver on the objective of catalyzing technical assistance for the implementation of approaches to address loss and damage by engaging proactively with Parties to assist them in identifying and prioritizing their technical assistance and other support needs in relation to loss and damage-related events, including slow onset and extreme weather events, and then actively assisting Parties to source technical assistance and their need for other support, through activities including: (a) channel, link or guide loss and damage-related technical assistance to where these are needed and requested on the ground; (b) disseminate relevant information; (c) undertake pilot projects through technical assistance to unlock larger packages of finance and other support; and (d) facilitate an integrated and coherent scaling up of technical assistance and other support over time to developing countries to address loss and damage under the Convention and its PA. The Network would also provide a channel for the communication of the loss and damage-related needs of Parties to Network partners.”

According to sources, developed countries, in particular the **US**, the **EU**, **Australia**, **New Zealand**, **Switzerland**, and **Norway**, took the position that the functions of the SN should be discussed together with the discussion on its institutional arrangements, to be undertaken during 2022. The G77 and its sub-groupings and individual countries such as the **Philippines** and **Indonesia** countered by stating that a clear outcome on the functions of the SN to be taken at COP26 was needed to lay the basis for ensuring that any institutional arrangements for the Network that may be agreed upon in 2022 would be fit for purpose. Many of the G77 sub-groups stressed that having a substantive outcome at COP26 on the functions of the Network was essential for progress

on loss and damage to be made. The G77 stressed that “form follows function”.

The initial versions of the SB co-facilitators’ draft conclusions and decision that were circulated on 3 Nov. 2021 did not contain any reference as to the functions of the SN which was not acceptable to the G77 and in response, it tabled on 4 Nov. a specific proposal outlining what it viewed to be the functions of the SN.

Negotiations among the Parties on 4 and 5 Nov. centered around the textual proposal of the G77. The main dividing line between developed and developing countries was on what exactly would be the functions of the SN vis-à-vis those of its members in terms of catalyzing technical assistance.

Developed countries in general wanted the SN to be more high level with most of the work to be done by its members, while developing countries wanted it to be more proactive, including through its institutional arrangements, in catalyzing technical assistance and other support. This was because developed countries were concerned about agreeing to functions that would eventually lead to the establishment of a new agency or institution that would need additional resources to be staffed, while developing countries were more concerned about ensuring that any body that would be running the SN is able to assist developing countries in accessing technical assistance and other support.

There was agreement among the Parties on 5 Nov. on an initial set of four functions for the SN based on the functions proposed by the G77 and on the mandate to be given to the SBs for a process in 2022 to discuss and provide recommendations on the institutional arrangements for the SN. However, by the late evening of 5 Nov. the SB Chairs told Parties that negotiating time had run out as the draft decision text had to be prepared and published for adoption by the SBs on 6 Nov. At the final informal consultations held on 5 Nov. 2021, the Parties agreed with the SB co-facilitators that the SB Chairs would convey to the UK COP Presidency the Parties’ request for Parties to be allowed to continue negotiations at the technical level during the second week of COP26.

During the second week, the UK COP Presidency convened informal consultations at the technical level to allow Parties to continue to negotiate on the remaining functions that Parties had started working on during the first week but were not able to conclude. These were on the Network’s functions to assist developing countries to identify, define, and access technical assistance to address their needs, and for the Network to facilitate the consideration of a wide range of topics.

Intensive technical level negotiations took place on these two additional functions on 8 and 9 Nov. among the Parties. The debate among Parties was focused again on the Network’s specific role and activities to assist developing countries catalyze technical assistance both from within and outside of the Network, and on the identification of a specific list of issues that would be considered by the Network and its members as part of their work.

Developed countries largely took the position of wanting the SN to be as hands-off in providing such assistance, preferring instead that such assistance be delivered through the Network’s members, and preferred not to list any specific issue areas. Developing countries, on the other hand, preferred clearer language that would mandate the SN, its convening body or host, and its members to be more direct and proactive in assisting developing countries in identifying and obtaining technical assistance and other support and for the list of topics or issue areas to be more specific as well.

Following the negotiations, the six functions of the SN are now reflected as paragraphs 9(a) to (f) of the COP26 and CMA3’s decision on loss and damage¹, as follows:

“9. Decides that the Santiago Network is to have the following functions:

“(a) Contributing to the effective implementation of the functions⁶ of the Warsaw International Mechanism, in line with the provisions in paragraph 7 of decision 2/CP.19 and Article 8 of the Paris Agreement, by catalysing the technical assistance of organizations, bodies, networks and experts;

¹ https://unfccc.int/sites/default/files/resource/cma2021_L02E.pdf

“(b) Catalysing demand-driven technical assistance including of relevant organizations, bodies, networks and experts, for the implementation of relevant approaches to averting, minimizing and addressing loss and damage in developing countries that are particularly vulnerable to the adverse effects of climate change by assisting in: (i) Identifying, prioritizing and communicating technical assistance needs and priorities; (ii) Identifying types of relevant technical assistance; (iii) Actively connecting those seeking technical assistance with best suited organizations, bodies, networks and experts; (iv) Accessing technical assistance available including from such organizations, bodies, networks and experts;

“(c) Facilitating the consideration of a wide range of topics relevant to averting, minimizing and addressing loss and damage approaches, including but not limited to current and future impacts, priorities, and actions related to averting, minimizing, and addressing loss and damage pursuant to decisions 3/CP.18, and 2/CP.19, the areas referred to in Article 8, paragraph 4, of the Paris Agreement and the strategic workstreams of the five-year rolling workplan of the Executive Committee;

“(d) Facilitating and catalysing collaboration, coordination, coherence and synergies to accelerate action by organizations, bodies, networks and experts, across communities of practices, and for them to deliver effective and efficient technical assistance to developing countries;

“(e) Facilitating the development, provision and dissemination of, and access to, knowledge and information on averting, minimizing and addressing loss and damage, including comprehensive risk management approaches, at the regional, national and local level;

“(f) Facilitating, through catalysing technical assistance, of organizations, bodies, networks and experts, access to action and support (fi-

nance, technology and capacity building) under and outside the Convention and the Paris Agreement, relevant to averting, minimising and addressing loss and damage associated with the adverse effects of climate change, including urgent and timely responses to the impacts of climate change.”

The Parties also agreed that the discussion on the SN’s functions had been completed, and that the process in 2022 would then focus on the Network’s institutional arrangements.

Developing countries were of the view that the functions for the SN that were agreed represented another key step forward in the further institutionalization of loss and damage as a key pillar of the UNFCCC and its Paris Agreement’s institutional architecture.

WIM GOVERNANCE

The third major issue related to loss and damage was the issue of “WIM governance”. This is the debate about which governing body now governs the WIM.

The G77 has had a long-standing position that because the WIM was established by the COP in 2013 and there has not been since then an explicit COP decision withdrawing its oversight over the WIM, the COP retains oversight over the WIM. When the Paris Agreement was adopted, its Article 8.2 states that the WIM “shall be subject to the authority and guidance of the CMA”, thereby giving the CMA concurrent joint authority over the WIM insofar as the conduct by the WIM (and its bodies).

However, because Article 8.2 did not explicitly state that the CMA has “sole” authority over the WIM and neither did the COP explicitly give up its authority over the WIM through a COP decision, the current situation is that both the COP and the CMA have dual governance authority over the WIM and its bodies. This means, in practice, that the WIM’s bodies, such as the Executive Committee and the SN, would be reporting to and are subject to the authority and guidance of the COP and the CMA.

For developing countries, dual governance is important because there are activities that may be undertaken through the WIM on loss and damage that may not necessarily fall under Article 8 of the Paris Agreement. This would include, for example, the provision of loss and damage finance.

The developed countries, on the other hand, state that precisely because of Article 8.2 of the Paris Agreement, the CMA now has sole authority over the WIM (including over the WIM's bodies such as the Executive Committee and the Santiago Network) and that the WIM's functions are solely with respect to the implementation of Article 8 of the Paris Agreement. This would mean that paragraph 51 of decision 1/CP.21 (the decision adopting the Paris Agreement) would then be applicable to the work of the WIM and its bodies insofar as some aspects of loss and damage financing are concerned – i.e. “that Article 8 of the Agreement does not involve or provide a basis for any liability or compensation.”

This issue was again flagged by the G77, with some of its constituency groups such as the LDC Group calling for a specific agenda item under the COP to discuss this issue. The Group also called for any decision on loss and damage to be jointly adopted by the COP and the CMA, such as using “mirrored” decisions.

However, no consultations or negotiations among the Parties were undertaken on this issue during the first week of COP26. Instead, placeholder paragraphs were indicated in the SB decisions on the WIM that were adopted on 6 Nov.

The UK COP Presidency then conducted bilateral informal consultations under its authority on this issue during the second week of COP26. It subsequently concluded following such consultations that there was no consensus on the issue, with Parties and groups standing by their own positions.

The UK COP Presidency decided to take the approach taken by the Chile COP25 Presidency in Madrid to kick the WIM governance issue into the future, while at the same time essentially recognizing that both the COP and the CMA have roles to play in having oversight and authority over the WIM.

Paragraph 13 of decision 7/CMA.3 “Notes that considerations related to the governance of the WIM will continue at its fourth session (Nov. 2022)”, with a corresponding footnote 10 indicating that “It is noted that discussions on governance of the WIM did not produce an outcome; this is without prejudice to further consideration of this matter.”

The COP26 decision 7/CP.26 also noted that “considerations related to the governance of the WIM will continue at its twenty-seventh session (Nov. 2022)”, with identical footnotes stating that “It is noted that discussions on governance of the WIM did not produce an outcome; this is without prejudice to further consideration of this matter.”

Whether and when this WIM governance issue will be resolved in the future remains to be seen.