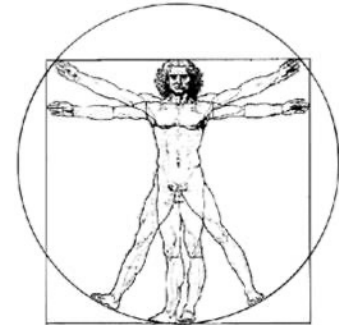


ecbi



# Loss and Damage and Loss and Damage finance

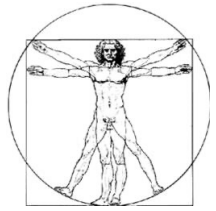
Issues under negotiations

Professor Benito Müller

Director ecbi

for sustained capacity building in support of international climate change negotiations  
pour un renforcement durable des capacités en appui aux négociations internationales  
sur les changements climatiques

# The Spectre of Liability



ecbi

## Oxford Climate Policy Blog

Initiating debates on international climate policy

[HOME](#)

[ABOUT THIS BLOG](#)



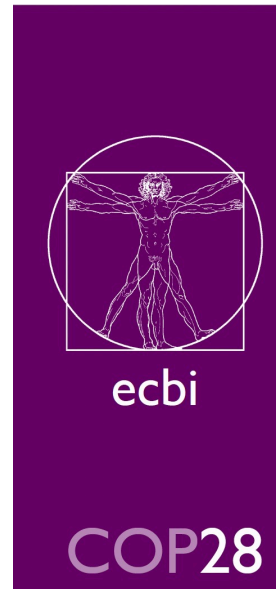
Nomen est Omen!

[Leave a reply](#)

“Loss and Damage”: the liability spectre

Benito Müller

[blog.oxfordclimatepolicy.org](http://blog.oxfordclimatepolicy.org)



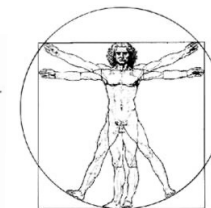
KEY OUTCOMES

[ecbi.org](http://ecbi.org)

# 1991 The AOSIS Insurance Mechanism

A/AC.237/WG.II/CRP.8  
17 December 1991

ORIGINAL: ENGLISH



ecbi

INTERGOVERNMENTAL NEGOTIATING COMMITTEE FOR  
A FRAMEWORK CONVENTION ON CLIMATE CHANGE  
WORKING GROUP II  
Fourth session  
Geneva, 9–20 December 1991  
Agenda Item 2(b)

NEGOTIATION OF A FRAMEWORK CONVENTION ON CLIMATE CHANGE

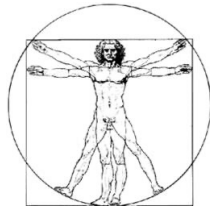
Elements related to mechanisms

Vanuatu:\* draft annex relating to Article 23 (Insurance) for inclusion in the revised single text on elements relating to mechanisms (A/AC.237/WG.II/Misc.13) submitted by the Co-Chairmen of Working Group II)

The mechanism included an **International Insurance Pool** to provide financial insurance “to **compensate** the most vulnerable small island and low-lying coastal developing countries for loss and damage resulting from sea level rise.”[para 1.5]

The pool was meant to be funded by “industrialised developed countries” according to a formula involving GNP and country emission figures “modelled on the 1963 Brussels Supplementary Convention on **Third Party Liability** in the field of Nuclear Energy”[para. 4]

# 2007 Bali Action Plan



ecbi

## Decision 1/CP.13

### Bali Action Plan

- 1 (c) Enhanced action on adaptation, including, *inter alia*, consideration of:
- (iii) Disaster reduction strategies and **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;

# 2010 The Cancun Agreements

FCCC/CP/2010/7/Add.1

26. *Decides* to hereby establish a work programme in order to **consider** [...] **approaches to address loss and damage** associated with climate change impacts in developing countries that are particularly vulnerable to the adverse effects of climate change;

## Decision 1/CP.16

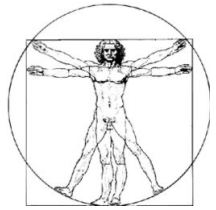
**The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention**

# 2013 The WIM

**Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts.**



PARIS2015  
UN CLIMATE CHANGE CONFERENCE  
COP21·CMP11



ecbi

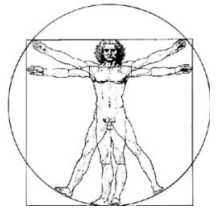
In Paris the negotiating text initially contained an option from developing countries that included liability and compensation, and another from the Umbrella Group – including the US – that deletes all mentions of L&D altogether.

L&D got its stand-alone Art. 8, yet its formulation was somewhat retrograde: While the WIM is solely about “**addressing**” L&D, Art. 8 recognizes “the importance of **averting, minimizing and addressing** loss and damage associated with the adverse effects of climate change” thus referring implicitly also to mitigation (averting) and adaptation (minimizing).

Moreover, in the Paris cover decision the COP “**agrees that Article 8 of the Agreement does not involve or provide a basis for any liability or compensation**” demonstrating that the spectre of liability was perceived by some, particularly the US, as a live and active problem.

# Oxford Climate Policy Blog

Initiating debates on international climate policy



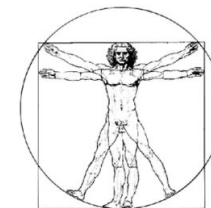
ecbi



**2022** The time is ripe ... for serious discussions on finance to address and indeed respond to L&D through a dedicated pilot fund

Elements of a Pilot Loss and Damage Response Fund

**Benito Müller**<sup>[1]</sup> with contributions<sup>[2]</sup> by **Diann Black-Layne**,<sup>[3]</sup> **Kishan Kumarsingh**,<sup>[4]</sup>



[News](#) > COP27 Reaches Breakthrough Agreement on New “Loss and Damage” Fund for Vulnerable Countries

[← Back](#)

## COP27 Reaches Breakthrough Agreement on New “Loss and Damage” Fund for Vulnerable Countries

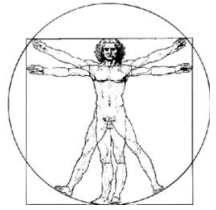
20 November 2022

[Share the article](#)

### Piloting New Loss and Damage Funding Arrangements

Acknowledgment of the “urgent and immediate need” for financial resources to assist particularly vulnerable developing countries “in **responding** to loss and damage associated with the adverse effects of climate change ... **in the context of ongoing and ex post (including rehabilitation, recovery and reconstruction) action**”

Decision to “establish a **fund for responding to loss and damage** whose mandate includes a focus on addressing loss and damage”



## Decision 1/CP.28

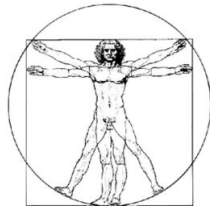
**Operationalization of the new funding arrangements, including a fund, for responding to loss and damage referred to in paragraphs 2–3 of decisions 2/CP.27 and 2/CMA.4**



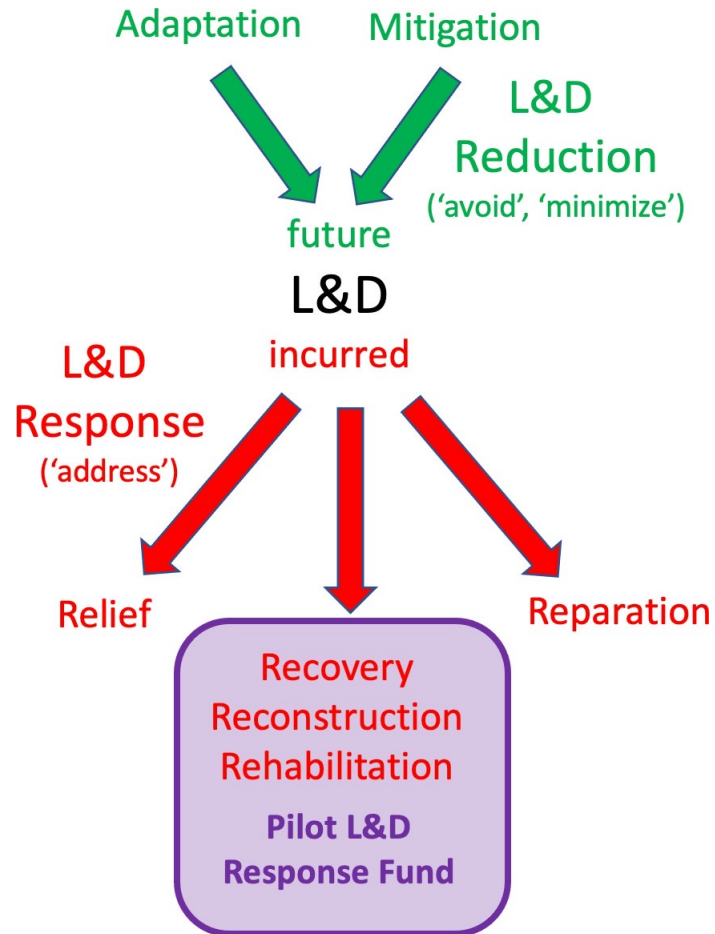
*“The board will also be tasked with giving the fund a name. This came as the US – which for decades resisted the entire concept of “loss and damage” – pushed back against references to a “loss and damage fund”. Instead, US climate envoy John Kerry repeatedly referred to the “**climate impact response**” fund. The US State Department declined to comment on the reasoning behind this to Carbon Brief.”*

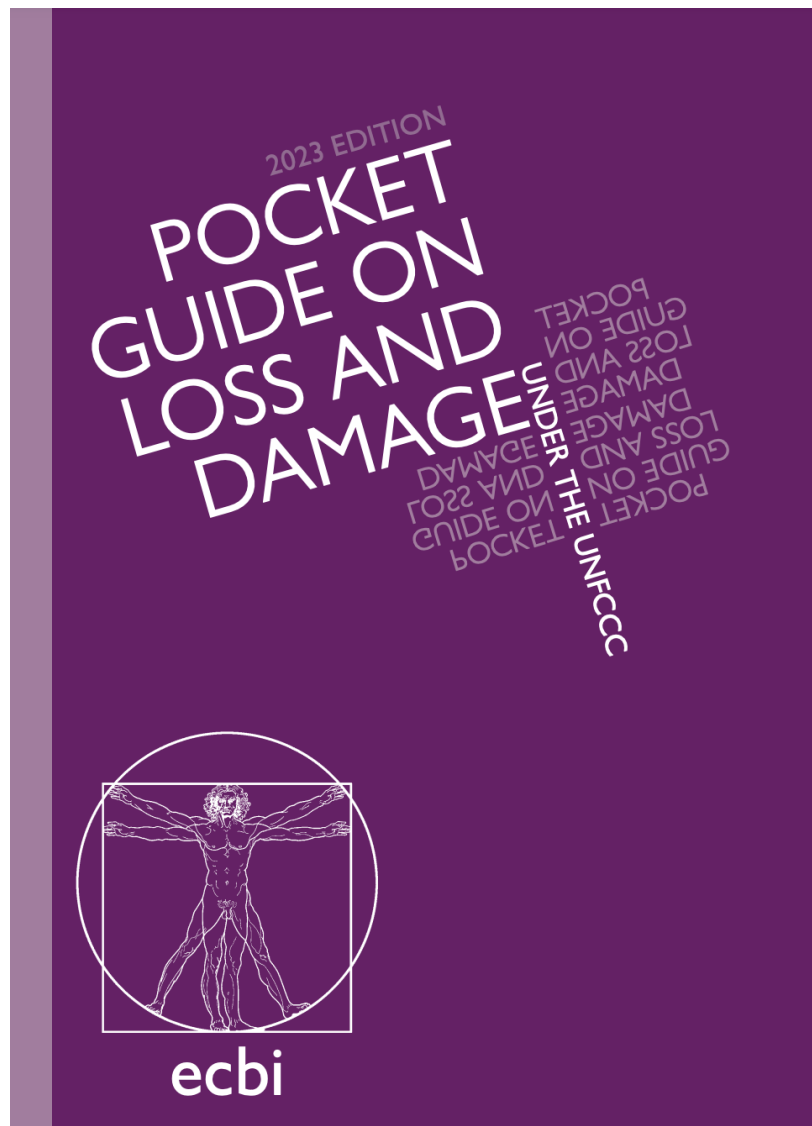
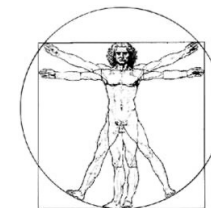


# 2022 Elements of a Pilot Loss and Damage Response Fund



ecbi





POCKET GUIDE ON LOSS AND DAMAGE UNDER THE UNFCCC

**CONTENTS**

FOREWARD	2
WHAT IS LOSS AND DAMAGE?	4
WHY IS IT IMPORTANT TO DISCUSS LOSS AND DAMAGE UNDER THE UNFCCC?	6
<i>Timeline of loss and damage under the UNFCCC</i>	10
HOW HAS LOSS AND DAMAGE EVOLVED UNDER THE UNFCCC?	13
<i>Warsaw International Mechanism</i>	16
<i>A Stand-Alone Article in the Paris Agreement</i>	19
<i>Santiago Network on Loss and Damage</i>	20
<i>Loss and Damage Finance</i>	23
<i>Other Issues Under the UNFCCC of Relevance to Loss and Damage</i>	26
WHAT ARE THE PROSPECTS FOR FINANCE FOR LOSS AND DAMAGE GOING FORWARD?	28
WHAT CHALLENGES DO THE LOSS AND DAMAGE NEGOTIATIONS FACE GOING FORWARD?	30
WHEN CAN LOSS AND DAMAGE BE ATTRIBUTED TO CLIMATE CHANGE?	32
WHAT IS COMPREHENSIVE RISK MANAGEMENT IN ADDRESSING LOSS AND DAMAGE?	35
DOES THE PARIS OUTCOME RULE OUT COMPENSATION AND LIABILITY FOR LOSS AND DAMAGE?	37
WHAT'S NEXT IN THE NEGOTIATIONS?	39
ANNEX I: KEY DECISIONS RELATED TO LOSS AND DAMAGE	40
FURTHER READING	102
ENDNOTES	103