

Wolfgang Obergassel, Christof Arens, Christiane Beuermann, Carsten Elsner, Lukas Hermwille, Nicolas Kreibich, Hermann E. Ott, Juliane Schell, Max Schulze-Steinen, Meike Spitzner

Last Call for 1.5 Degrees

COP27 in Sharm El Sheikh Schedules Fund
for Loss and Damage for Departure while
Mitigation Stays Grounded

*Originally published in:
Carbon & Climate Law Review,
16 (2022), 4, pp. 225-242
DOI: 10.21552/cclr/2022/4/4*

Wolfgang Obergassel a,
Christof Arens a
Christiane Beuermann a
Carsten Elsner a
Lukas Hermville a
Nicolas Kreibich a
Hermann E. Ott b
Juliane Schell a
Max Schulze-Steinen a
Meike Spitzner a*

Last Call for 1.5 Degrees

**COP27 in Sharm El Sheikh Schedules Fund
for Loss and Damage for Departure while
Mitigation Stays Grounded**

a Wuppertal Institute for Climate, Environment and
Energy, Germany

b ClientEarth

* Corresponding author:
Wolfgang Obergassel
Wuppertal Institute for Climate, Environment and Energy
Döppersberg 19
42103 Wuppertal
Germany
E-mail: wolfgang.obergassel@wupperinst.org
Phone: +49 202 2492 149
Fax: +49 202 2492 250

This is the author's version of a work that was accepted for publication. Changes resulting from the publishing process, such as editing, corrections and structural formatting, may not be reflected in this document. Changes may have been made to this work since it was submitted for publication. A definitive version was subsequently published in the Journal cited above.

Last Call for 1.5 Degrees. COP27 in Sharm El Sheikh Schedules Fund for Loss and Damage for Departure while Mitigation Stays Grounded

Wolfgang Obergassel, Christof Arens, Christiane Beuermann, Carsten Elsner, Lukas Hermwille, Nicolas Kreibich, Hermann E. Ott, Juliane Schell, Max Schulze-Steinen, Meike Spitzner*

Abstract

The twenty-seventh Conference of the Parties (COP27) to the United Nations Framework Convention on Climate Change (UNFCCC) in Sharm el-Sheikh made history by for the first time ever discussing and ultimately even agreeing to establish a fund to address loss and damage caused by climate change. However, the conference did little to limit the occurrence of loss and damage in the first place by containing the extent of climate change. This article discusses the conference's outcomes in the areas of mitigation and adaptation, loss and damage, the Global Stocktake, cooperation under Article 6 of the Paris Agreement, climate finance, and gender-responsiveness. While modest progress can be observed, it is too slow to actually achieve the objectives of the Paris Agreement. This pace is leading many, not least the most vulnerable countries, to search for parallel arenas of cooperation.

I. Introduction

The twenty-seventh Conference of the Parties (COP27) to the United Nations Framework Convention on Climate Change (UNFCCC) in Sharm el-Sheikh finished one and a half days late, the final gavel came down on Sunday morning of 20 November 2022.¹ The conference had taken place against the backdrop of another year of catastrophic extreme weather events, such as the flooding in Pakistan. The most recent assessment report by the Intergovernmental Panel on Climate Change (IPCC) earlier had once again highlighted that these damages will continue to escalate in line with global warming increases.²

Yet, mitigation efforts are still far off track from achieving the objectives of the Paris Agreement. According to the IPCC, global emissions need to peak before 2025 and be reduced to about 30Gt CO₂-eq. by 2030 to maintain a higher than 50% chance of

* Wolfgang Obergassel, Co-Head of Research Unit, Wuppertal Institute; Christof Arens, Senior Researcher, Wuppertal Institute; Christiane Beuermann, Vice-Director and Co-Head of Research Unit, Wuppertal Institute; Carsten Elsner, Researcher, Wuppertal Institute; Lukas Hermwille, Senior Researcher, Wuppertal Institute; Nicolas Kreibich, Researcher, Wuppertal Institute; Hermann E. Ott, Head of German office, Client Earth; Juliane Schell, Junior Researcher, Wuppertal Institute; Max Schulze-Steinen, Junior Researcher, Wuppertal Institute; Meike Spitzner, Senior Researcher, Wuppertal Institute. For correspondence: Wolfgang Obergassel <wolfgang.obergassel@wupperinst.org>, Christof Arens <christof.aren@wupperinst.org>, Christiane Beuermann <christiane.beuermann@wupperinst.org>, Carsten Elsner <carsten.elsner@wupperinst.org>, Lukas Hermwille <lukas.hermwille@wupperinst.org>, Nicolas Kreibich <nico.kreibich@wupperinst.org>, Hermann E. Ott <HOtt@clientearth.org>, Juliane Schell <juliane.schell@wupperinst.org>, Max Schulze-Steinen <max.schulze-steinen@wupperinst.org>, Meike Spitzner <meike.spitzner@wupperinst.org>.

¹ The session also served as seventeenth Conference of the Parties serving as Meeting of the Parties to the Kyoto Protocol (CMP) and fourth Conference of the Parties serving as Meeting of the Parties to the Paris Agreement (CMA).

² IPCC, 'Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change' HO Pörtner et al. (eds), (Cambridge University Press 2022) <doi:10.1017/9781009325844>.

limiting warming to 1.5°C with no or limited overshoot. However, 2030 emissions implied by current policies amount to 57Gt CO₂-eq.³

At the end of COP26 in Glasgow, the UK presidency had claimed that the conference had managed to “keep 1.5 alive”, inter alia by calling on countries to strengthen their nationally determined contributions (NDCs). However, in practice only 24 countries had updated their NDCs by the start of COP27. And according to UNEP’s annual Emissions Gap Report, these updates only reduced projected 2030 emissions by less than 1%. Current policies would lead to 2.8°C of warming, unconditional pledges to 2.6°C, and conditional pledges to 2.4°C.⁴ The UNFCCC NDC synthesis report similarly projects that current NDCs would lead to warming of around 2.5°C by the end of the century.⁵

A key question in Sharm el-Sheikh was therefore whether the conference would be able to take further steps to close the emissions gap. Another key question was international support for developing countries in general and funding to deal with loss and damage caused by climate change in particular. Developing countries demanded the establishment of a dedicated facility to address this issue as one of their priorities.

On site, this COP felt like being at a completely overcrowded airport during the holiday season: the crowds of people were at times unbearable, there was security personnel and surveillance everywhere, the food was overpriced or out of reach, the venue was disorienting, and things just did not move forward. A record number of agenda items could not be finished during the first week and thus spilled over into the second.

In the end, the conference did make history by clearing a loss and damage fund for departure. Whether it will actually take off remains to be seen. Mitigation, however, was grounded, there was only very little progress. If mitigation ambition and implementation are not dramatically ramped up in the near future, staying within the 1.5°C limit with no or only limited overshoot will slip out of reach for good.

II. Little Strengthening of Mitigation Ambition and Implementation

1. Overall Level of Ambition - The Cover Decision

In addition to the outcomes of the many specific agenda items, the annual climate conferences usually also adopt a “cover decision” capturing the most important outcomes and potentially also providing a home for issues that did not have dedicated agenda items. At COP26 in 2021, the UK presidency had managed to

³ IPCC, ‘Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change’ PR Shukla et al. (eds) (Cambridge University Press 2022) <doi:10.1017/9781009157926>.

⁴ UNEP, ‘Emissions Gap Report 2022: The Closing Window — Climate crisis calls for rapid transformation of societies’ (2022) <<https://www.unep.org/emissions-gap-report-2022>> accessed 6 December 2022.

⁵ UNFCCC, ‘Nationally determined contributions under the Paris Agreement, Synthesis report by the secretariat’ (2022), FCCC/PA/CMA/2022/4 <https://unfccc.int/sites/default/files/resource/cma2021_08E.pdf> accessed 7 December 2022.

integrate the most recent scientific findings on the need for urgent action, in particular on the need to roughly half global emissions by 2030, into the cover decision. COP26 had also managed to break new ground by the inclusion of a call to phase-down unabated coal power and to phase-out inefficient fossil fuel subsidies.⁶ This was the first time the climate regime directly targeted fossil fuels, the main driver of climate change.⁷

In Sharm el-Sheikh, the question was whether it would be possible to go beyond Glasgow. Notably, India proposed to broaden the phase-down call from coal to all fossil fuels, which was ultimately supported by around 80 countries. Many countries also demanded a stronger commitment to the 1.5°C limit and to include a call for peaking global GHG emissions before 2025 in order to maintain chances of staying below the 1.5°C limit.

However, the Egyptian presidency preferred a short decision text summarising the negotiation outcomes rather than using the cover decision to advance ambition. Also, while the UK presidency had started consultations on the cover decision very early, the Egyptian presidency started consultations only on Saturday of the first week, at first produced only lists of potential topics and came out with its first complete draft only Friday of the second week, which was supposed to be the last day of the conference. The presidency never included the Indian proposal on fossil fuel phase-out in its proposals, not even in its compilation of parties' views. Reports from behind closed doors indicate that Russia and Saudi Arabia had defined the call for phase-out of all fossil fuels as a red line.⁸

The decision finally adopted, named the “Sharm el-Sheikh Implementation Plan”, essentially repeats texts agreed in Glasgow on the 1.5°C limit, phase-down of coal and phase-out of inefficient fossil fuel subsidies. As in Glasgow, the decision "requests" all countries to revisit and strengthen their 2030 targets “as necessary” to align with the Paris temperature goal.⁹ A phrase calling for the expansion of renewable and “low-emission” energy caught much attention as observers mooted that this phrase might be used to justify expanded use of natural gas. However, the Glasgow Climate Pact had also already used the term “low-emission energy”.¹⁰ Nonetheless, in summary, instead of strengthening the signal from Glasgow to accelerate emission reductions, the Sharm el-Sheikh implementation plan barely held the line on mitigation ambition.

⁶ Decision 1/CMA.3, Glasgow Climate Pact, FCCC/PA/CMA/2021/10/Add.1, 8 March 2022.

⁷ Van Asselt H and Green F, 'COP26 and the Dynamics of Anti-Fossil Fuel Norms' (2022) WIREs Climate Change <<https://doi.org/10.1002/wcc.816>>.

⁸ Chandrasekhar and others, 'COP27: Key outcomes agreed at the UN climate talks in Sharm el-Sheikh' (*Carbon Brief*, 21 November 2022) <<https://www.carbonbrief.org/cop27-key-outcomes-agreed-at-the-un-climate-talks-in-sharm-el-sheikh/>>, accessed 6 December 2022; Lo J and Farand C, 'Late-night fossil fuel fight leaves bitter taste after Cop27', (*Climate Home News*, 24 November 2022) <<https://www.climatechangenews.com/2022/11/24/late-night-fossil-fuel-fight-leaves-bitter-taste-after-cop27/>>, accessed 6 December 2022.

⁹ Decision -/CMA.4, Sharm el-Sheikh Implementation Plan, Advance Unedited Version.

¹⁰ Chandrasekhar and others (n 8).

2. High-Level Ministerial Roundtable and Work Programme to Enhance Mitigation Ambition and Implementation

To help speed up climate action, the Glasgow conference had established a work programme to enhance mitigation ambition and implementation and decided that starting this year each CMA session is to feature a high-level ministerial roundtable.¹¹

However, the first of these roundtables in Sharm el-Sheikh yielded few new insights. Ministers were requested to respond to guiding questions on how to capitalize on opportunities and remove barriers to stronger action. However, many ministers reiterated the need to drastically increase ambition and implementation only in general terms, few went into specific details on how to do so.

Regarding the work programme, Sharm el-Sheikh needed to define the details, in particular its principles, scope and timeline of work, and whether and how to translate its results into political outputs. Developed countries as well as many developing countries were in favour of exploring mitigation sector by sector, in order to be able to better pinpoint opportunities, barriers and potential ways forward. However, in particular the Like-Minded Developing Countries (LMDCs)¹² were opposed. They highlighted the historic responsibility of industrialised countries for creating the climate problem and accused them of having failed to implement their commitments and of now trying to use the work programme to shift the burden of solving the problem to developing countries. Moreover, they were in favour of a short duration of one or two years, while most other parties were in favour of running the work programme until 2030.

The final outcome accommodates concerns about the imposition of new commitments noting that “the outcomes of the work programme will be non-prescriptive, non-punitive, facilitative, respectful of national sovereignty and national circumstances, take into account the nationally determined nature of nationally determined contributions and will not impose new targets or goals”¹³. The scope of the work programme is supposed to be based on “broad thematic areas” and include all sectors covered in the 2006 IPCC GHG inventory guidelines as well as thematic areas in the contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC).¹⁴ The work programme is supposed to continue until CMA 8 in 2026, “with a view to adopting a decision on the continuation of the work programme at that session”¹⁵. It is furthermore supposed to comprise at least two “global dialogues” per year prior to the sessions of the UNFCCC’s subsidiary bodies. In addition, “investment-focused

¹¹ Paras 27 and 31 (n 6).

¹² The LMDCs include among others China and India, Arab countries such as Algeria, Egypt and Saudi Arabia, left-leaning Latin American countries, such as Bolivia, Cuba, and Venezuela, and other countries such as Bangladesh, Indonesia, and Vietnam.

¹³ Decision -/CMA.4, Matters relating to the work programme for urgently scaling up mitigation ambition and implementation referred to in paragraph 27 of decision 1/CMA.3, Advance unedited version, para 2.

¹⁴ Ibid. para 4.

¹⁵ Ibid. para 5

events” are supposed to be conducted on the margins of the global dialogues. The co-chairs of the work programme will have freedom to decide on the topics of the dialogues. The UNFCCC Secretariat will provide annual reports on the outcomes of the global dialogues, focusing on key findings, opportunities and barriers. Also each year, the co-chairs of the work programme will present this report at the annual high-level ministerial round tables on pre-2030 ambition and implementation and the subsidiary bodies are supposed to recommend respective draft CMA decisions.¹⁶

With the reference to the thematic areas of the IPCC WG3 report, it will be possible to discuss sectoral systems such as energy supply, industry, transport, buildings, urban systems, and agriculture and forestry. This should allow countries to identify concrete and sector-specific challenges, barriers, but also opportunities for transformation, and thus hopefully find new levers and starting points for implementing mitigation activities. Moreover, coupling the “dialogues” with “investment-focused events” is an interesting attempt to translate discussion results into actual action.

III. Global Stocktake: Breaking the Negotiators’ Mould

The conference continued the Global Stocktake (GST) under Article 14 of the Paris Agreement, a process by which the international community takes stock of the sufficiency of its collective efforts to achieve the objectives of the Paris Agreement. The outcomes of the GST are supposed to inform countries’ deliberations over subsequent NDCs and enhance international cooperation. This first GST is taking place from 2021 to 2023.

The first round of the Technical Dialogues (TD) for the first GST commenced at the intersessional meeting in June in Bonn. Especially the plenary sessions of the TD were still very much dominated by countries repeating previously stated positions. The co-facilitators of the TD also hosted a world café event that enabled more constructive dialogue among the participants.¹⁷

During the second round of the TD in Sharm el-Sheikh, the co-facilitators finally broke the mold and managed to facilitate a genuine conversation. This was achieved by a transparent and inclusive process, building and expanding on the world café method successfully introduced in the first TD and a wider range of thematic breakout groups during the more formal roundtable sessions. To achieve this, access to the roundtables was managed so that a balance of Party delegates and observers was maintained.

To further facilitate the process, Parties decided to invite submissions on how to organise the political consideration of outputs at COP28. Moreover, a series of additional events were mandated including a hybrid event in April for a first

¹⁶ Ibid. paras 8ff.

¹⁷ UNFCCC, ‘Summary report on the first meeting of the technical dialogue of the first global stocktake under the Paris Agreement’ (10 October 2022), GST.TD.2022.SummaryReport.1, <https://unfccc.int/sites/default/files/resource/GST%20TD1_1_sreport_26_09_2022_Final.pdf>, accessed 23 November 2022.

consultation and an in-person meeting in October to “develop elements for the consideration of outputs”.¹⁸

Overall the progress of the TD was applauded by both parties and observer organisations. According to one delegate, the process design was very effective in leveraging an extremely wide range of inputs. The inclusivity of the 2nd dialogue implied also the participation by a wide range of non-state actors, such as lobbyists from the fossil fuel industry, which “were very visible and vocal”.¹⁹ Consequently, this confers a great deal of power and responsibility to the co-facilitators who will provide a factual summary of each TD session as well as key emerging findings after the conclusion of the final TD in June 2023. These emerging findings will form a key input to the political phase of the GST to be completed at COP28. Whether the GST can ultimately achieve its objective and leverage increased ambition in subsequent NDCs remains to be seen, but certainly, the smooth and inclusive implementation of the second TD was one of the success stories of COP27.

IV. Cooperation under Article 6: Implementation Delayed and Transparency at Risk

The Glasgow summit in 2021 had seen a breakthrough with regard to the voluntary cooperation of Parties under Article 6 of the Paris Agreement: with the adoption of the Article 6 rulebook at COP 26, the basis for international market-based climate action was laid. At Sharm el-Sheikh, Parties discussed further details to operationalise the Glasgow decisions.

1. Cooperative approaches under Article 6.2

Article 6.2 allows Parties to trade Internationally Transferred Mitigation Outcomes (ITMOs) in order to achieve NDCs cooperatively. While some countries, like Switzerland and Ghana, are already establishing such forms of cooperation²⁰, the detailed rules of procedure remain unresolved and especially technical questions are open to debate.

With regard to reporting, Parties made some progress by specifying the content of the reports that Parties participating in cooperative approaches under Article 6.2 must submit.²¹ At the same time, COP27 has given Parties participating in cooperative approaches significant leeway in defining the confidentiality of information to be reported: Parties “may designate information...as confidential”²²,

¹⁸ UNFCCC, ‘Matters relating to the global stocktake under the Paris Agreement, Draft conclusions proposed by the Chairs’ (11 November 2022), FCCC/SB/2022/L.8, <https://unfccc.int/sites/default/files/resource/sb2022_L08E.pdf> accessed 7 December 2022.

¹⁹ Chandrasekhar and others (n 8).

²⁰ UNDP, ‘Ghana, Vanuatu, and Switzerland Launch World’s First Projects under New Carbon Market Mechanism Set out in Article 6.2 of the Paris Agreement’ (12 November 2022) <<https://www.undp.org/geneva/press-releases/ghana-vanuatu-and-switzerland-launch-worlds-first-projects-under-new-carbon-market-mechanism-set-out-article-62-paris-agreement>> accessed 22 November 2022.

²¹ Decision -/CMA.4, Guidance on cooperative approaches referred to in Article 6, paragraph 2, of the Paris Agreement, Advance Unedited Version, Annex V.

²² Ibid. paras 22 and 23.

while an explanation for the need to keep the information confidential remains optional. There is no principle that limits the designation of information as confidential. This raises serious concerns about reduced transparency which may adversely impact the integrity of bilateral cooperation.

Important decisions have also been taken with regard to the Article 6 Technical Expert Review process, the scope of which has been limited considerably. The review is to be focused on checking the consistency of information submitted and "shall be implemented in a facilitative, non-intrusive, non-punitive manner, respectful of national sovereignty and avoid placing undue burden on participating Parties".²³

2. Article 6.4 Mechanism

With the adoption of the Article 6 rulebook in Glasgow, Parties had established the key principles of the UNFCCC-supervised mechanism established by Article 6.4 of the Paris Agreement. At COP 27, Parties discussed various technical and procedural issues regarding its operationalization.

At Glasgow, Parties had agreed that all ITMOs and Article 6.4 emission reductions (A6.4ERs) that are authorised by the host Party require the application of Corresponding Adjustments (CAs) to avoid double counting of emission reductions. For NDC achievement and the fulfilling of obligations under other international mitigation schemes, such as the Carbon Offsetting Reduction Scheme for International Aviation (CORSIA), only authorised units can be used. However, COP26 had not outlined the purposes for which non-authorised units could be used, despite the fact the issuance of such units under the Article 6.4 mechanism had been agreed.²⁴

In Sharm el-Sheikh, non-adjusted units became a key topic in the Article 6.4 negotiations. In the final Article 6.4 decision these units are defined as "mitigation contribution A6.4ERs", which "may be used, inter alia, for results-based climate finance [...] for the purpose of contributing to the reduction of emission levels in the host Party".²⁵ With this terminology, the international level does not only provide some clarity regarding the possible use of non-authorised A6.4ERs but also sends a clear signal to the voluntary carbon market: non-adjusted units should not be used for offsetting by companies that wish to make carbon neutrality or similar climate-related claims. This signal must be seen in the context of the ongoing debate among market stakeholders. The market is still divided on whether companies should be allowed to use such non-adjusted credits for their voluntary climate pledges or whether offsetting claims should only be made on the basis of credits backed by

²³ Ibid. Annex II, para 9.

²⁴ Decision -/CMA.3, Rules, modalities and procedures for the mechanism established by Article 6, paragraph 4, of the Paris Agreement, FCCC/PA/CMA/2021/10/Add.1, 8 March 2022, Annex I, para 43.

²⁵ Draft decision -/CMA.4, Guidance on the mechanism established by Article 6, paragraph 4, of the Paris Agreement, Advance unedited version, Annex, para 29b.

corresponding adjustments. The decision supports the so-called “contribution claim model”, which is being established as an alternative to the existing offsetting approach. Instead of using carbon credits to claim being ‘carbon neutral’, companies support climate action beyond their value chain and transparently communicate on the support provided without ‘netting-out’ any residual emissions.

Another topic intensely discussed was the inclusion of mitigation activities that remove greenhouse gases from the atmosphere. COP26 had tasked the Art. 6 Supervisory Body to develop recommendations on the issue – however, the SB only came up with a very broad definition of removals that was adopted last minute at the SB meeting immediately before the COP. Throughout the year, SB members had held contentious discussions, with some members stressing that for certain technologies such as ocean fertilization the scientific basis and knowledge is too thin to consider them yet, while others argued that environmental integrity and broader sustainable development considerations would be addressed by the provisions of the Glasgow decisions anyhow. At Sharm el-Sheikh, Parties basically echoed the discussion that had taken place in the SB. Finding no consensus, Parties decided to send back the issue to the Supervisory Body, which is to report back to CMA5.²⁶

Further issues deferred include work on methodologies for Art. 6.4 activities, which urgently need to be developed further as baseline-setting and additionality testing have to be adapted to the Paris Agreement architecture in order to safeguard environmental integrity. On the positive side, Parties adopted further guidance on a number of procedural matters, including on the transition of activities from the Clean Development Mechanism (CDM) under the Kyoto Protocol to the Article 6.4 mechanism, processes for the use of CDM credits towards first or updated NDCs, on host Party reporting, the operation of the mechanism registry, as well as processes for administrative and adaptation shares of proceeds, and for delivering an overall mitigation of global emissions (OMGE).

However, decisions on further responsibilities of the Supervisory Body and national arrangements in Article 6.4 host countries were postponed to CMA6, i.e. they will not be decided upon before the end of 2024, making the start of actual mitigation activities under Art. 6.4 in the near future all the more uncertain.

V. Little Movement on Climate Finance but Signals Towards Overall Financial System Reform

Although the “Sharm el-Sheikh Implementation Plan” addresses the need for climate finance, this year’s COP did not deliver on any new global commitments. Instead, the decision again expresses serious concern that not even the pledge by developed countries of mobilising USD 100 billion annually from 2020 has been achieved yet. Furthermore, with the remaining uncertainty on doubling finance for adaptation, it can be noted that apart from a few minor reassurances to deliver on the goals, climate finance rather stagnated at this COP in terms of concrete roadmaps with the notable exception of the fund for loss and damage.²⁷ This is

²⁶ Draft decision -/CMA.4 (n 25), para 20.

²⁷ See the section on loss and damage for more information.

especially disappointing for developing countries as finance had been one of their priorities at this “African COP”.²⁸

One of the few positive aspects was the creation of a dedicated space (Sharm el-Sheikh dialogue) for the discussion on “Article 2.1c” of the Paris Agreement, which calls for a general alignment of finance flows with low greenhouse gas emissions and climate-resilient development. This dialogue might also result in a more action-oriented climate finance agenda at COP28. As another interesting development the cover decision goes beyond citing UN documents in terms of illustrating climate finance needs which underlines the urgency for climate finance. One example is the World Energy Outlook by the International Energy Agency (IEA), which highlights the need for an investment of USD 4 trillion per year into renewable energy in order to reach the goal of net zero emissions by 2050.²⁹ The amount of overall global climate finance flows in 2019-2020 is estimated to be USD 803 billion which still falls far behind meeting the needs to keep the global temperature rise between 1.5 - 2 degrees as agreed in the Paris agreement.³⁰

Although climate finance became slightly more gender-responsive in the course of the NDCs, the topic is still considered to be an 'add-on' instead of placing it at the center of climate finance considerations.³¹ This would translate into a systemic integration of a gender-responsive approach into climate finance considerations for example when it comes to the prioritization of financing climate projects which simultaneously promote gender and/or human rights aspects over other climate-related projects who fail to do so.³²

Meanwhile, the new quantified goal on climate finance that is supposed to replace the USD 100 billion commitment from 2025 onwards remains under negotiation and will conclude in 2024.³³ In terms of the amount that is needed for climate-related issues in emerging markets and developing countries other than China, a report released during COP27 by the Independent High-Level Expert Group on climate finance argued that an annual amount of USD 1 trillion per year is required by 2025 as well as USD 2.4 trillion by 2030. Furthermore, the report suggested that half of that sum should be provided domestically, leaving the other half to be

²⁸ CAN Europe, 'COP27 rescued in overtime with an agreement to set up a fund to address climate loss and damage' (Climate Action Network Europe, 20 November 2022) <<https://caneurope.org/cop27-rescued-in-overtime-with-an-agreement-to-set-up-a-fund-to-address-climate-loss-and-damage/>> accessed 23 November 2021.

²⁹ IEA, 'World Energy Outlook' (*International Energy Agency*, 2022) <<https://iea.blob.core.windows.net/assets/830fe099-5530-48f2-a7c1-11f35d510983/WorldEnergyOutlook2022.pdf>> accessed 23 November 2022.

³⁰ UNFCCC, 'Fifth Biennial Assessment and Overview of Climate Finance Flows Technical Report' (2022) <<https://unfccc.int/documents/619173>> accessed 23 November 2022.

³¹ UNFCCC, 'Gender in climate finance frameworks and NDCs' (2022) <<https://unfccc.int/sites/default/files/resource/UNFCCC-%20Gender-Responsive%20Climate%20Finance.pdf>> accessed 06 December 2022.

³² Schalatek L, 'Climate Finance Fundamentals 10: Gender and Climate Finance' (*Heinrich-Böll Stiftung*, 2022) <https://climatefundsupdate.org/wp-content/uploads/2022/03/CFF10-Gender-and-CF_ENG-2021.pdf> accessed 06 December 2022.

³³ UNFCCC, 'New collective quantified goal on climate finance. Draft decision -/CMA.4' (2022) <<https://unfccc.int/documents/621928>> accessed 23 November 2022.

provided internationally in the form of a strategic mix including public and private finance. In this regard, the report points out that the real issue is not the mere amount of climate finance, but the focus should rather be on taking specific country conditions and their debt situation when setting up a climate finance mix.³⁴ This claim really puts the current goal of USD 100 billion in perspective and is most likely to become a very important topic at future COPs.³⁵

One of the features of last year's COP26 in Glasgow was the announcement of a Just Energy Transition Partnership (JETP) with South Africa in order to provide the financial means for a coal phase-out. However, the partnership still has to prove that it is able to deliver, especially since criticism is rising that justice concerns can only be adequately addressed when finance is provided in the form of grants. This is currently the case for less than 3% of the promised money for the JETP with South Africa.³⁶ Building on these multilateral formats, other partnerships with Vietnam, Indonesia, India and Senegal are currently underway. For example, at the G20 summit in Bali which took place in parallel to COP27, a JETP with Indonesia was announced with the promise to provide USD 20 billion from public and private sources for an accelerated energy transition over 10 years.³⁷ On the one hand, those partnerships have the potential to strengthen the credibility of developed countries in climate negotiations and make a decisive contribution to climate mitigation. On the other hand, the case of the German energy partnership with Senegal illustrates that the gain in credibility and mitigation might be rapidly gambled away through potential German and French investments in new gas fields.³⁸ This would also be a breach of the pledge to end overseas public investments in new fossil infrastructure which was made at COP26 in Glasgow and signed by Germany and France.³⁹

On a more positive note, the Sharm el-Sheikh implementation plan also calls for reform in terms of the practices of Multilateral Development Banks (MDBs) and International Financial Institutions (IFIs) regarding the scaling up of climate finance as well as taking into account the special needs of developing countries. As such, MDBs are called on (*guidance and signal*) to draw from a number of instruments including the mobilisation of private capital while keeping financial

³⁴ Independent High-Level Expert Group on Climate Finance, 'Finance for climate action - Scaling up investment for climate and development' (2022) <<https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2022/11/IHLEG-Finance-for-Climate-Action.pdf>> accessed 23 November 2022.

³⁵ Pauw PW and others, 'Post-2025 climate finance target: how much more and how much better?' (2022) <<https://www.tandfonline.com/doi/full/10.1080/14693062.2022.2114985>> accessed 23 November 2022.

³⁶ Climate Home News, 'South Africa approves \$8.5bn energy transition investment plan' (2022) <<https://www.climatechangenews.com/2022/10/20/south-africa-approves-8-5bn-energy-transition-investment-plan/>> accessed 23 November 2022.

³⁷ Federal Foreign Office, 'Team Germany on the conclusion of COP27' (2022) <<https://www.auswaertiges-amt.de/en/newsroom/news/team-germany-cop27/2564468>> accessed 23 November 2022.

³⁸ IDDRI, 'Just energy transition partnerships in the context of Africa-Europe relations: Reflections from South Africa, Nigeria and Senegal' (2022) <<https://www.iddri.org/en/publications-and-events/report/just-energy-transition-partnerships-context-africa-europe-relations>> accessed 23 November 2022.

³⁹ UN Climate Change Conference UK, 'Statement on international public support for the clean energy transition' (2021) <<https://ukcop26.org/statement-on-international-public-support-for-the-clean-energy-transition/>> accessed 24 November 2022.

burdens and indebtedness of certain countries in mind.⁴⁰ The background of this development is the so-called Bridgetown Initiative, a climate finance plan that was proposed by a group piloted by Barbadian Prime Minister Mia Mottley. The idea here is to assert influence on those institutions through the member states, for example within the board of development banks and financial institutions. The reform of those practices has the potential to redirect large finance flows for climate-related purposes including the de-risking of investments, and has to be seen in a wider global context also discussed at the G20 meeting in Bali.⁴¹

The COP at this meeting once again discussed the quality and definition of climate finance. Most developing countries, already struggling with debt and limited fiscal space for investment, argue that climate finance should not be provided in the form of loans, which would make the situation more severe. Instead, support should be provided in the form of grants.⁴² Nonetheless, developed countries regularly report the full volume of loans as part of their climate finance pledges, which makes up for the lion share of overall climate finance flows from developed to developing countries.⁴³ However, also this COP did not deliver on a definition of climate finance and thus fell behind its initial branding as an “Implementation COP”.

VI. A Framework for the Global Goal on Adaptation but no Details on Doubling of Adaptation Finance

Already in Glasgow, Egypt had announced resilience and adaptation as foci for COP27.⁴⁴ But overall, with the focus in Sharm el-Sheik almost completely on mitigation and loss and damage (see next section), adaptation failed to gain momentum and did not step into the conference's spotlight as it had at the previous COP.⁴⁵

Just a few days before the delegates gathered in Egypt, UNEP had published its annual Adaptation Gap Report, evaluating the progress of planning, (the lack of) financing and implementing adaptation actions.⁴⁶ This year's report, once again, fueled the mistrust of developing countries towards big industrialised emitters. Even though most of the UNFCCC parties have some adaptation plans, strategies, laws or policies, they appear in many cases not to translate those into action and

⁴⁰ Rathi A, 'Biggest Win Yet at COP27? Calls to Reform Multilateral Lenders' (*Bloomberg Green*, 18 November 2022) <<https://www.bloomberg.com/news/articles/2022-11-18/biggest-win-yet-at-cop27-calls-to-reform-multilateral-lenders>> accessed 23 November 2022.

⁴¹ E3G, 'The Bridgetown Initiative, A climate and development plan for COP27' (*Third Generation Environmentalism*, 18 November 2022) <<https://www.e3g.org/news/the-bridgetown-initiative-a-climate-and-development-plan-for-cop27/>> accessed 23 November 2022.

⁴² Chandrasekhar and others (n 8).

⁴³ Nature, 'Why climate finance is a political hot potato — and what to do about it' (2022) <<https://www.nature.com/articles/d41586-022-03790-6>> accessed 23 November 2022.

⁴⁴ Gerretsen I, 'Egypt to host next climate summit, putting a spotlight on resilience' (*Climate Change News*, 12 November 2021) <<https://www.climatechangenews.com/2021/11/12/egypt-host-next-climate-summit-putting-spotlight-resilience/>> accessed 1 December 2022.

⁴⁵ See Leiter in this issue.

⁴⁶ UNEP, 'Adaptation Gap Report 2022: Too Little, Too Slow – Climate adaptation failure puts world at risk' (2022) <<https://www.unep.org/adaptation-gap-report-2022>> accessed 1 December 2022.

there was some shared concern about the low number of new National Adaptation Plans (NAPs) submitted.⁴⁷ Adequate access to adaptation finance for the whole NAP process was highlighted as a need and reason for slow progress. According to UNEP, the monetary flows from developed countries to developing countries for climate change adaptation must be scaled up five to ten times (additional USD 160 - 340 billion by 2030 and further USD 315 - 565 billion until 2050).⁴⁸ The repeated failure to deliver the agreed support of USD 100 billion from 2020 on (see previous section) contributed to the lack of trust mentioned above. COP26 had seen record pledges to the Adaptation Fund (USD 358 million) but parties, for example South Africa on behalf of the African Group, criticized slow progress in implementing these promises.⁴⁹ At COP27, the Adaptation Fund attracted USD 230 million in new pledges and contributions and several governments announced to increase their adaptation finance for vulnerable countries. This again was seen as “incremental progress” by some experts.⁵⁰ Another illustration of the still existing or even widening gap in adaptation finance is that already the Glasgow Climate Pact had urged developed countries to double their adaptation finance from 2019 levels by 2025,⁵¹ which would amount to USD 20 billion annually.⁵² At Sharm el-Sheikh, the G77 and China tried to establish a follow-up process, but with only limited results. They requested, without success, to have a specific item on the agenda of COP27 to discuss implementation of this pledge. In the rally from the draft to the final wording of the Sharm el-Sheikh cover decision, the call for a roadmap on doubling adaptation funds was removed. Instead, it includes a request to the Standing Committee on Finance (SCF) to prepare a report on this,⁵³ criticised as being vague.⁵⁴

Another major agenda item was the work programme on the Global Goal on Adaptation. Under Article 7 of the Paris Agreement, the Parties agreed on “establish[ing] the global goal on adaptation of enhancing adaptive capacity, strengthening resilience and reducing vulnerability.”⁵⁵ This aspirational goal is different from its mitigation counterpart, the Paris Agreement’s temperature goal, as there “are [still] no global metrics that can meaningfully capture what enhanced

⁴⁷ ENB, ‘ENB COP27 Daily Report 8.11.2022’ <<https://enb.iisd.org/sharm-el-sheikh-climate-change-conference-cop27-daily-report-8nov2022>> accessed 1 December 2022.

⁴⁸ UNEP (n 47).

⁴⁹ Chandrasekhar and others (n 8).

⁵⁰ Schmidt J and others, ‘Forward Progress at COP27 in Egypt and the Path Ahead’ (*NRDC Expert Blog*, 21 November 2022) <<https://www.nrdc.org/experts/jake-schmidt/forward-progress-cop27-egypt-and-path-ahead>> accessed 2 December 2022.

⁵¹ Decisions 1/CP.26 para 11, and 1/CMA.3 para 18 on adaptation finance.

⁵² Schmidt and others (n 52).

⁵³ Decision -/CMA.4, Sharm el-Sheikh Implementation Plan, Advance unedited version, para 42.

⁵⁴ Schmidt and others (n 52).

⁵⁵ Decision 1/CP.21, Adoption of the Paris Agreement, FCCC/CP/2015/10/Add.1, 29 January 2016.

adaptation means across all contexts and ecosystems”,⁵⁶ ⁵⁷ A significant step forward on action under the global goal on adaptation was the launch of the two-year Glasgow–Sharm el-Sheikh work programme (GlaSS) at COP 26.⁵⁸ The work programme should support a common understanding among Parties and enhance implementation of the global goal including consultations on what kind of indicators, methodologies, data and metrics are suitable to use. The two-year work programme is carried out jointly by SBI and SBSTA, with input from the current and incoming COP chairs, the Adaptation Committee (AC), IPCC Working Group II, and others. The expected outcome of the two-year process is a draft decision for consideration and adoption at COP28 in 2023.

To prepare COP 27 in Egypt, an unofficial launch and four workshops⁵⁹ were conducted under this work programme. The outcomes were welcomed by the Parties at COP27.⁶⁰ Nonetheless, like many discussions at this COP, the negotiations on the Global Goal on Adaptation were reported to be tenacious and (purposely) delayed by some parties.⁶¹ Negotiations continued until the final hours of the COP and some experts believed the issue did not get the attention it deserved.⁶² However, Parties agreed to initiate the development of a framework on the global goal on adaptation including how the process towards this goal will be tracked.⁶³ Potential dimensions along the policy cycle (e.g. impact, vulnerability, implementation and finance), themes (water, food and agriculture, cities, settlements and key infrastructure, health, poverty and livelihoods, terrestrial and freshwater ecosystems as well as oceans and coastal ecosystems) and cross-cutting considerations are listed⁶⁴. The latter include country-driven, gender-responsive, participatory and fully transparent approaches, guided by the best available science as well as, when appropriate, traditional knowledge and knowledge by indigenous

⁵⁶Beauchamp E, 'IISD deep dive. How to Raise the GlaSS on the Global Goal on Adaptation at COP 27: Four foundations to build upon' (*International Institute for Sustainable Development*, 1 November 2022) <<https://www.iisd.org/articles/deep-dive/glass-global-goal-adaptation-cop-27>> accessed 1 December 2022.

⁵⁷ Leiter, T. & Pringle, P. Pitfalls and potential of measuring climate change adaptation through adaptation metrics (2018) In: Christiansen, L., Martinez, G., & Naswa, P. (Eds.): *Adaptation Metrics: Perspectives on measuring, aggregating and comparing adaptation results*, pp.29-47. UNEP DTU Partnership. https://www.researchgate.net/publication/323838261_Pitfalls_and_potential_of_measuring_climate_change_adaptation_through_adaptation_metrics

⁵⁸ Decision 7/CMA.3, Glasgow-Sharm el-Sheikh work programme on the global goal on adaptation, FCCC/PA/CMA/2021/10/Add.3, 8 March 2022.

⁵⁹ For details of the workshops: <https://unfccc.int/topics/adaptation-and-resilience/workstreams/glasgow-sharm-el-sheikh-WP-GGGA#eq-5>

⁶⁰ Decision 7/CMA.3 (n 60).

⁶¹ Chandrasekhar and others (n 8).

⁶² ENB, 'COP27 Summary Report, 6–20 November 2022' (*Earth Negotiation Bulletin*, 2022) <<https://enb.iisd.org/sharm-el-sheikh-climate-change-conference-cop27-summary>> accessed 1 December 2022.

⁶³ Decision 7/CMA.4, Glasgow–Sharm el-Sheikh work programme on the global goal on adaptation referred to in decision 7/CMA.3, Advance unedited version paras 8f (2022).

⁶⁴ Ibid. para 10b.

groups.⁶⁵ The framework will be reviewed prior to the second Global Stocktake.⁶⁶ It includes provisions for the timeline of the second year of the Glasgow–Sharm el-Sheikh work programme (GlaSS). Parties, finally, appeared generally pleased with the results.⁶⁷ Experts welcomed the proposed linkages to science and the IPCC reports.⁶⁸

Beyond the formal negotiations, the Egyptian presidency tried to make COP27 an accelerator for adaptation action by launching the Sharm el-Sheikh Adaptation Agenda⁶⁹ in partnership with the UN Climate Change High-Level Champions and the Marrakech Partnership. The agenda consists of 30 adaptation outcomes with actions in five ‘impact systems’ (food and agriculture, water and nature, coastal and oceans, human settlements, and infrastructure) and enabling solutions (planning and finance). The COP27 cover decision mentions the Agenda under actions by non-Party stakeholders⁷⁰ and welcomes the leadership of the COP-Presidency and the high-level champions in this context. The High-Level Champions will refine and expand the outcome targets with inputs from state and non-state actors until COP28 and report on the progress achieved in implementing the Sharm el-Sheikh Adaptation Agenda.⁷¹

VII. A Historic Decision on Loss and Damage

Loss and Damage had already entered the centre stage of the climate negotiations at COP26 with heated debates on funding.⁷² And for the first time, the Glasgow Climate Pact included a subheading and entire section of text to Loss and Damage.⁷³ Hence, the handling of loss and damage due to climate change was expected to be a key topic in Sharm el-Sheikh.

Developing countries, which are particularly affected by the negative impacts of climate change, had demanded the establishment of a dedicated financing facility. G-77 and China had requested that funding arrangements for Loss and Damage should be added to the COP27 agenda. Failure to agree would have burdened the conference from the start. Developed countries had originally been hesitant to

⁶⁵ Ibid. para 10c.

⁶⁶ Ibid para 11.

⁶⁷ Chandrasekhar and others (n 8).

⁶⁸ Ibid.

⁶⁹ UNFCCC, ‘Sharm-El-Sheikh Adaptation Agenda. The global transformations towards adaptive and resilient development’ (2022) <https://climatechampions.unfccc.int/wp-content/uploads/2022/11/SeS-Adaptation-Agenda_Complete-Report-COP27_FINAL-1.pdf> accessed 1 December 2022.

⁷⁰ Decision -/CMA.4 (n 9).

⁷¹ Climate Champions, ‘COP27 Presidency launches Adaptation Agenda to build climate resilience for 4 billion by 2030’ (*Climate Champions*, 8 November 2022) <<https://climatechampions.unfccc.int/cop27-presidency-announces-ambitious-climate-resilience-agenda/>> accessed 20 December 2022.

⁷² Obergassel W and others, ‘Turning Point Glasgow? An Assessment of the Climate Conference COP 26’ (2021) 15(4) *Carbon & Climate Law Review*.

⁷³ UNEP, ‘What does COP26 mean for adaptation’ (2021) <<https://www.unep.org/news-and-stories/story/what-does-cop26-mean-adaptation>> accessed 2 December 2022.

engage on this topic, but increasing devastation caused by climate change and extreme weather events and their impacts in 2022 such as heavy flooding in Pakistan and a severe drought in East Africa underscored the need to engage constructively on this issue. Already in its opening statement Pakistan, for the G-77/China, stressed that addressing Loss and Damage would not be charity, but climate justice.⁷⁴

After intense negotiations, Loss and Damage funding arrangements were for the first time ever included as separate item in a COP agenda.⁷⁵ But already the consultations on the draft agenda, which had lasted 48 hours,⁷⁶ indicated that the unresolved 30-year history of contrasting views on Loss and Damage and related “suspicions” and demands between developed and developing countries was not over. Discussions were resolved by a changed item title with a footnote stating that results achieved “are without prejudice to the consideration of similar issues in the future.”⁷⁷ COP President Shoukry also noted that the outcomes of this item did not involve liability or compensation, the item included the Glasgow Dialogue, and would launch a process with a view to adopting a conclusive decision no later than 2024.⁷⁸ This was seen as a concession to reassure developed countries and echoing text accompanying the Paris Agreement.⁷⁹

The original contrasting views in the negotiations were as follows: on the one side the position of G77/China, who were demanding to have a finance facility or fund under the UN established immediately at COP27. In opposition to this, developed countries were determined to further discuss a variety of funding options, align this with the two-year Glasgow Dialogue set up at COP26 and potentially culminating in a new facility in 2024. After nearly two weeks of deadlock, two days before the official close of the COP, EU Commissioner Timmermans proposed a potential package deal: the EU was open to the idea of a new Loss and Damage finance facility, but under the conditions that high-emitting countries (which include China) would also pay into it, that only the most vulnerable countries would be eligible recipients, and that in exchange developing countries would support a strong outcome on mitigation.

The proposal elicited strong reactions and forced Parties to define their positions. The role of China, classified as a “developing country” in the UNFCCC from 1992 and now being asked to pay, caused some sharp reactions and generally fueled the

⁷⁴ ENB, ‘ENB Daily report for 6 November 2022’ (*Earth Negotiation Bulletin*, 2022) <https://enb.iisd.org/sharm-el-sheikh-climate-change-conference-cop27-daily-report-6nov2022> accessed 23 November 2022.

⁷⁵ UNFCCC, ‘COP27 Adopted agenda’ <https://unfccc.int/sites/default/files/resource/COP_27_adopted_agenda_06112022.pdf> accessed 22 November 2022.

⁷⁶ ENB (n 74).

⁷⁷ There are only two footnotes to agenda items and the second footnote with very similar wording also relates to Loss and Damage, i.e item 7 on the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts.

⁷⁸ ENB (n 74).

⁷⁹ Chandrasekhar and others (n 8).

“fair share” debate.⁸⁰ The proposal was also seen as an attempt to split the alliance of developing countries, G-77 and China, but such a split did not materialise. However, the EU proposal revived the negotiations.

Finally, after an extremely hard political bargaining process, a breakthrough and consensus was reached. The new draft text released on Saturday afternoon offered a compromise between demands of both the G-77 and developed countries, opening the fund up to all developing countries and leaving the door open to additional donors with a mention of the potential for a “wide variety of sources”. After some last minute discussions the text was finally approved, marking a historic moment in 30 years of climate negotiations.⁸¹

Parallel to the negotiations on the facility/fund, additional Loss and Damage funding was announced by several governments and initiatives, ultimately amounting to more than 300 million USD, with a majority going to insurance programmes, early-warning systems for extreme weather, and support for the operation of the Santiago Network (see below). On the one hand this represents a significant amount, but on the other hand this is far below estimated needs. However, these announcements again were seen as a turning point, given that funding for Loss and Damage had been a ‘taboo’ in climate finance for decades.⁸² A large proportion of this additional funding (about 210 million Euro) was announced under the “global shield” initiative⁸³ of Germany and the G7 with the V20 group of climate-vulnerable nations. Its aim is to provide climate risk insurance and social protection schemes in developing countries. Criticism on the Global Shield focused on caution and warnings not to replace other funds and that the initiative was being hyped up and given disproportionate focus.⁸⁴

The Global Shield initiative is part of the so-called “mosaic” of solutions that would be required to sufficiently fund Loss and Damage.⁸⁵ Another idea for additional funding was proposed by some AOSIS leaders and UN secretary-general Guterres, namely that non-state actors who cause the problems but benefit from it (oil-and-

⁸⁰ Lo J, ‘Who should pay for loss and damage? Spoiler: not China’ (*Climate Home News*, 29 November 2022) https://www.climatechangenews.com/2022/11/29/who-should-pay-for-loss-and-damage-spoiler-not-china/?utm_source=Climate+Weekly&utm_campaign=5db40aa50b-CW-22-Jul_COPY_01&utm_medium=email&utm_term=0_bf939f9418-5db40aa50b-408009825 accessed 5 December 2022.

⁸¹ Decision -/CP.27 -/CMA.4, Funding arrangements for responding to loss and damage associated with the adverse effects of climate change, including a focus on addressing loss and damage, Advance unedited version, para 3.

⁸² Chandrasekhar and others (n 8).

⁸³ BMZ, ‘V20 and G7 jointly launch Global Shield against Climate Risks at COP27’ (*Federal Ministry for Economic Cooperation and Development*, 14 November 2022) <<https://www.bmz.de/en/news/press-releases/v20-g7-launch-global-shield-against-climate-risks-at-cop27-128244>> accessed 22 November 2022.

⁸⁴ Harjeet Singh [@harjeet11], ‘8 Questions #Climate Journalists Must Ask about the #GlobalShield, Being Launched Today #COP27 Having Worked with Communities & Followed the Evolution of #insurance at #UNFCCC, I Must Say It Is Being Hyped up & given Disproportionate Focus THREAD - 1/7 #LossAndDamage @CANIntl’ <<https://twitter.com/harjeet11/status/1592056887977349126>> accessed 7 December 2022.

⁸⁵ Chandrasekhar and others (n 8).

gas companies, banks, insurance companies) should play a role in funding for Loss and Damage.⁸⁶

Under the radar, COP27 succeeded in providing appropriate support for the Santiago Network established at COP25 in 2019. The vision of the Santiago Network is to catalyse the technical assistance for developing countries that are particularly vulnerable to the adverse effects of climate change and to help to address Loss and Damage at the local, national and regional level. The network was lacking appropriate resources from the beginning and merely consisted of a website. Agreement was reached in order to set up a functioning structure with a network secretariat and to create a real-world advisory board, including representatives from a cross-section of geographical regions, as well as organisations representing women, indigenous people and youth.⁸⁷

VIII. Sabotage against Implementation of Agreed Gender-Responsiveness

COP27 took place at a time when women, feminists, and women's rights activists are advocating for gender-responsive and human rights-based climate action on a daily basis and putting a face on the climate movement. A key agenda item of COP27 was the mid-term review of the five-year UNFCCC Gender Action Plan (GAP), a UNFCCC framework designed to ensure serious, gender-responsive, and human rights-based climate mitigation and adaptation efforts are in place to keep the 1.5°C target within reach. For this reason, hundreds of advocates and technical experts on gender issues in climate policy came to the conference because there are weaknesses in the current GAP and implementation is lacking.

It was also planned to put a focus on funding gender-responsive and human rights-based climate change mitigation and adaptation efforts, which have long been borne primarily by women and indigenous peoples, and on providing adequate resources for National Focal Points on Gender and Climate Change - an important factor also in ensuring that the power to define climate policy at the national level becomes gender-democratic or remains less authoritarian-gender hierarchical and that NDCs are strengthened.

Just in time for COP27, the latest IPCC report was available, which includes a chapter on gender and climate justice, and in which pathways for a just transition are identified - a fundamental starting point for gender-transformative implementation of climate action. Furthermore, clear and substantiated demands to COP27 had been elaborated, both by the United Nations, namely the presidency of UN WOMEN, and by climate policy-reflective gender policy organisations and gender-responsive climate policy organisations worldwide, coordinated in the UNFCCC-acknowledged constituency "Women & Gender".

⁸⁶ Ibid.

⁸⁷ Decision -/CP.27, Santiago network for averting, minimizing and addressing loss and damage under the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts. Advance unedited version.

The latter called for: "strengthening the leadership of grassroots and indigenous women in this process; that the gendered health impacts of climate change need to be better recognised and understood; [realizing] that the intersection of care economy and just transition is critical to creating a dialogue that informs Parties' national plans and low-emission development strategies; and that agriculture and gender, including land rights, are constant intersections for effective climate action but are not incorporated into national planning, [...] that we at least recognise the increasing impact of loss and damage on the lives of women and girls in all their diversity, as well as [differentiated measures for] financing gender-responsive implementation [... and inclusion of] what that means in terms of implementation and direct access for women and grassroots women's groups."⁸⁸

The Executive Director of UN WOMEN formulated "Three asks on gender equality to COP27 COP27". Noting that women "play transformative roles in climate change adaptation and mitigation" but "damaging imbalances in decision-making processes persist at all levels, from national governments to intergovernmental climate negotiations."⁸⁹ She therefore asked:

first, to "take special measures, including quotas, to increase women's and girls' full, equal, and meaningful participation and leadership at all levels of decision-making, and to address inequalities including in their access to and control of productive resources such as finance, technology, and land, especially women from poor and marginalised communities";⁹⁰

second, to "support a just transition for women through an alternative development model. This model would expand gender-responsive public services, universal social protection, health and care systems, integrating measures both to generate a care economy and to prevent and eliminate violence against women and girls in climate policies and actions. It would also foster sustainable transport and infrastructure with guaranteed new and decent jobs. CSW66 [i.e. Agreed Conclusions of the UN Commission on the Status of Women] was clear: we must integrate a gender perspective in the design, funding, implementation, and monitoring and evaluation of all national climate plans, policies, and actions. It also urged its Member States and other stakeholders to expand gender-responsive finance, as does the UNFCCC's Gender Action Plan. Only an estimated 0.01 per cent of global official development assistance addresses both climate change and women's rights. Making the necessary structural measures requires intentional global investments that respond to the crises and support women's organizations, women's leadership, and programmes";⁹¹

⁸⁸ Bigda L, 'No Gender Justice in the Gender Action Plan (GAP)' (*Women and Gender Constituency*, 11 November 2022) <<https://womengenderclimate.org/no-gender-justice-in-the-gender-action-plan-gap/>> accessed 23 November 2022.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Ibid.

third, that “global investments, especially for women and girls in developing countries, intentionally and directly amplify and foster women’s skills, resilience and knowledge, ensure that women’s organizations, including young women, are supported and protected, and include specific investment to remove critical barriers for women and put protections in place [...] Our best counter-measure to the threat multiplier of climate change is the benefit multiplier of gender equality”.⁹²

The result of COP27 however was disappointing in that neither the results of the IPCC report regarding gender, nor the demands of UN Women nor those of the organizations that had coordinated themselves in the Constituency Women & Gender, were at all negotiated substantially.

Instead, some parties tried to roll back the GAP at the politically relevant conceptual level by trying to renegotiate terms and definitions agreed at previous COPs. These attempts were ultimately not successful, but they sabotaged the scheduled improvement and implementation of the GAP.⁹³ Instead, the conference ultimately only re-iterated previous decisions encouraging parties to increase the full, meaningful and equal participation of women in climate action and to ensure gender-responsive implementation and means of implementation, including by fully implementing the Lima Work Programme on Gender and its gender action plan.⁹⁴

No decisions were made to fund the important national focal points on gender and climate change worldwide. Surprisingly positively, however, the cover decision acknowledges the human right to a clean, healthy and sustainable environment.⁹⁵ This could pave the way for this right to be recognised in all areas of environmental policy - possibly also resulting in a civil climate right, in emancipative sufficiency rights.⁹⁶

IX. Conclusions and Outlook

1. Good on Loss and Damage, Bad on Mitigation? Assessing the Outcome of COP27

a. Functions of Global Governance

COP27 made history by finally yielding to the long-standing demand of developing countries to establish a dedicated fund for loss and damage. However, it did little to prevent loss and damage from occurring in the first place by containing the magnitude of climate change. To arrive at a nuanced understanding of the results of

⁹² Ibid.

⁹³ ‘COP27 - Justice Delayed is Justice Denied’ (gender cc, n.d) <<https://www.gendercc.net/genderunfccc/glasgow-2021.html>> accessed 8 December 2022.

⁹⁴ Decision -/CP.27, Intermediate review of the implementation of the gender action plan, Advance unedited version.

⁹⁵ Decision -/CMA.4, Sharm el-Sheikh Implementation Plan, Advance Unedited Version.

⁹⁶ Spitzner M, ‘Für emanzipative Suffizienz-Perspektiven. Green New Deal statt nachhaltiger Bewältigung der Versorgungsökonomie-Krise und Verkehrsvermeidung?’ (2021) 51 Prokla 202(1) <<https://doi.org/10.32387/prokla.v51i202.1934>>.

COP27, we will base our assessment on previous academic work on the functions and effects of global governance and its application to international climate policy.⁹⁷ Based on this work, we consider five key functions of global governance that international institutions can activate to address specific problems (such as climate change).

- **Guidance and signalling:** By agreeing on principles and objectives, international institutions can signal members' determination to pursue a certain course of action, such as decarbonization. These signals can also provide guidance beyond the individual institution by giving businesses, investors, and other stakeholders an indication of the policy trajectories countries are likely to take.
- **Rules and norms:** In addition to charting the course, international institutions can also require their members to take specific actions to achieve the mutually agreed-upon goals.
- **Transparency and accountability:** International institutions can collect and analyze data on the implementation of agreed rules and standards in order to identify and address non-compliance.
- **Means of implementation:** International institutions can co-ordinate the provision of financial support, technology transfer and capacity building among members.
- **Knowledge and learning:** International institutions can promote the creation and dissemination of scientific, economic, technical, and policy-related knowledge about the problem at hand and potential solutions.

The following will apply these governance functions to the outcomes of COP27 to discern to what extent progress was made.

b. Mitigation Norms and Work Programme

Regarding mitigation, the “Sharm el-Sheikh Implementation Plan” failed to go beyond the Glasgow Climate Pact in terms of guidance and signal. But in a longer term perspective one can observe a constant evolution of the objective of international climate policy towards more specificity.⁹⁸ According to Article 2 of the UNFCCC, the ultimate objective of the Convention and of any related legal instrument is to “prevent dangerous anthropogenic interference with the climate system” - but it did not provide a definition of “dangerous interference”. Almost 20 years later, the Cancún Agreements provided a definition by agreeing to a global goal to hold temperature increase below 2°C.⁹⁹ The Paris Agreement in Article 2.1(a) further strengthened this by setting the objective to stay “well below” 2°C and make

⁹⁷ Kinley R and others, 'Beyond Good Intentions, to Urgent Action: Former UNFCCC Leaders Take Stock of Thirty Years of International Climate Change Negotiations' (2021) 21 *Climate Policy* <<https://doi.org/10.1080/14693062.2020.1860567>>; Sebastian Oberthür, Lukas Hermwille, Tim Rayner 'A sectoral perspective on global climate governance: Analytical foundation' (2021) 8 *Earth System Governance* <<https://doi.org/10.1016/j.esg.2021.100104>>.

⁹⁸ See also Athanarious, T. 'Threading the Needle at COP27' (*EcoEquity*, 27 November 2022) <<https://www.ecoequity.org/2022/11/threading-the-needle-at-cop27/>> accessed 8 December 2022.

⁹⁹ 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, FCCC/CP/2010/7/Add.1, 15 March 2012, para 4.

“best efforts” to stay even below 1.5°C. In Article 4.1, the Agreement also translated this into an emission trajectory, stipulating that global emissions should peak as soon as possible and that a balance between sources and sinks should be achieved in the second half of the century. Subsequently, in 2018, the IPCC special report on the 1.5°C limit considered that, to have a reasonable likelihood of achieving this temperature limit, global CO₂ emissions would need to be roughly halved by 2030 and be reduced to net-zero by 2050.¹⁰⁰ COP26 in Glasgow officially recognised these findings, thus going beyond the emission pathway envisaged in the Paris Agreement. COP26 also started a process of putting the challenge in more concrete terms by calling on parties to phase down unabated coal and phase out inefficient fossil fuel subsidies - the first time ever a COP Decision directly addressed fossil fuels.¹⁰¹ COP26 also provided further signalling by the launch of a series of “Breakthrough” frontrunner coalitions in parallel to the official negotiation process.

The conference in Sharm el-Sheik struggled but ultimately failed to go beyond Glasgow by calling for the phase-down of all fossil fuels. However, the issue has now been put on the agenda, which in itself also has some signalling value. Interested parties can be expected to make further attempts to achieve agreement on this at future climate conferences.

The new mitigation work programme is another platform that could be used to move this discussion forward and to also discuss more generally what achieving the Paris objectives will mean in detail. While the scope of work could have been even more specific if it had built directly on the achievements of the Glasgow conference, based on what was ultimately agreed it has the potential to host specific discussions along concrete sectoral systems.

In terms of rules and standards for mitigation, one can observe an acceleration of the “ambition cycle” of the Paris Agreement. In Article 4.9, the Agreement envisaged 5-year intervals of strengthening NDCs, interspersed with 5-yearly Global Stocktakes under Article 14 to inform the subsequent NDCs. The first GST is ongoing and the originally next round of NDCs in 2025 are supposed to cover the period after 2030. However, the “ambition cycle” is not working to the extent needed, current NDCs are still vastly weaker than what would be required to actually achieve the Paris objectives. The Glasgow conference therefore called on parties to strengthen their NDCs by the end of this year and created the new work programme to strengthen ambition and implementation “in this critical decade”. Sharm el-Sheik again called on parties to strengthen their NDCs by the end of next year. The “ambition cycle” is therefore being short-circuited, parties are expected to strengthen their NDCs – and implementation – continuously instead of only every five years.

Indeed, the 1.5°C limit will ultimately not be “kept alive” by adopting COP decisions, but by strengthening and implementing NDCs. The countries who demanded a

¹⁰⁰ IPCC, ‘Global Warming of 1.5°C – Special Report’ (*Intergovernmental Panel on Climate Change*, 2018) <<https://www.ipcc.ch/sr15/>> accessed 7 December 2022.

¹⁰¹ Van Asselt and Green (n 7).

fossil fuel phase-out and other actions are at liberty to write respective targets and actions into their NDCs and then implement them.

c. Loss and Damage

After 30 years of negotiations, Loss and Damage not only made it on the conference agenda but instead of investigating how the issue should be framed in a multi-year process, already at the same COP a decision was made to set up a fund. This is indeed a historic signal that the severe impacts of climate change in particular on most vulnerable countries can no longer be ignored. It remains to be seen whether action follows this signal so that the Loss and Damage facility will indeed take off within one year. The workload for the coming year until COP28 is enormous.

Regarding means of implementation, furthermore, the new fund and additional funding pledges of the “mosaic of funding solutions” have to be seen as a starting point. Experience with the 100 billion USD goal and adaptation funding shows that pledges are the one thing, delivery is another. Means of implementation for Loss and Damage were also strengthened by the decision to make the Santiago Network operable. This is a necessary step in order to implement its vision of catalysing technical assistance for developing countries that are particularly vulnerable.

More generally, it remains to be seen if the negotiation and bargaining process on Loss and Damage in the last days of COP27 may have some impact on the balance of negotiating powers. The EU’s credibility may have been strengthened by cracking the stalemate in negotiating the Loss and Damage Fund. This might open the door for new coalitions at future COPs but has also some potential for new conflict as the traditional roles as cemented in UNFCCC terminology have been openly addressed.

d. Global Stocktake

The Global Stocktake was one of the positive elements of the conference. The second Technical Dialogue enabled a genuine conversation beyond prepared and mostly well-known Party statements and in an inclusive manner that enabled a wide range of actors to participate meaningfully. If successful, the GST can enhance transparency and accountability and facilitate the dissemination of good practices. Most importantly, a strong political call for action could provide guidance and signal for the development of subsequent NDCs. The adopted meeting schedule to prepare the concluding political consideration of outputs of the GST seems appropriate to achieve an effective result at next year’s COP in Dubai, but whether it will ultimately be successful remains to be seen.

e. Market-based cooperation under Article 6

Parties at Sharm el-Sheikh struggled to find consensus on the enormous amount of technical and procedural issues that were on the agenda. Yet instead of focusing on the essentials, Parties once again got tangled up in technical details and lost precious negotiating time without achieving results on major issues such as removals or methodology development for Art. 6.4.

COP27 adopted new rules and standards concerning reporting under Article 6.2, while the decision for Parties to designate certain information of the reporting as “confidential” might restrain transparency and accountability of the Parties. The decision to introduce a new unit called “mitigation contribution A6.4ERs” sends a clear message to the voluntary carbon market at a time of increasing relevance of non-state climate action. This is particularly relevant given the rising concerns about corporate greenwashing, in particular in the context of companies’ net zero targets and the role carbon credits may play therein. It remains to be seen how this signal from the international governance level will impact the largely unregulated voluntary carbon market.

This also holds true for the recommendations and guidelines to increase transparency and accountability of non-state climate action presented on the occasion of COP27, such as the United Nations’ High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities (HLEG) recommendations¹⁰² and the ISO Guidelines.¹⁰³ It remains to be seen whether these recommendations will be taken into account by new market-based cooperation programmes, such as the “Energy Transition Accelerator” (ETA) announced by the US, which is to channel private investments to accelerate the deployment of renewable energy in developing countries.¹⁰⁴ The relevance of these voluntary guidelines must also be seen against the backdrop of stumbling progress in the operationalization of the Article 6.4 mechanism. Both SBSTA and the Supervisory Body have been tasked with an enormous amount of assignments, which will be difficult to comply with before COP28 next year. Together with the decision to defer further governance decisions to 2024, an easy start of Art. 6.4 activities after the Dubai COP seems less likely than ever.

f. Means of Implementation

Regarding the overall provision of means of implementation, there was little progress with regard to future financial needs and associated commitments. Instead, discussions around the future climate finance goal are still ongoing and the cover decision only entails reaffirmations of previous commitments. Meanwhile, the multilateral format of JETPs sounds promising but still has to prove if it is able to deliver on aspects of a just energy transition.

However, COP27 sent a signal on the general need for reform of MDBs and IFIs which has the potential to redirect a large amount of multilateral finance flows for climate-related purposes. In this context, it is especially noteworthy that pressure for reform on those institutions should be built up by its member states. On another positive note, it was decided to start a dialogue on the alignment of global finance

¹⁰² HLEG, ‘Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions’ (High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities, 2022) <https://www.un.org/sites/un2.un.org/files/high-level_expert_group_n7b.pdf> accessed 7 December 2022.

¹⁰³ ISO, ‘Net Zero Guidelines: Accelerating the Transition to Net Zero IWA 42:2022(E)’ (*International Standards Association*, 2022) <<https://www.iso.org/obp/ui/en/#iso:std:iso:iwa:42:ed-1:v1:en>> accessed 7 December 2022.

¹⁰⁴ U.S. Department of State, ‘U.S. Government and Foundations Announce New Public-Private Effort to Unlock Finance to Accelerate the Energy Transition’ (*U.S. Embassy in Egypt*, 9 November 2022) <<https://eg.usembassy.gov/u-s-government-and-foundations-announce-new-public-private-effort-to-unlock-finance-to-accelerate-the-energy-transition/>> accessed 6 December 2022.

flows with low greenhouse gas emissions and climate-resilient development (Article 2.1c, Paris agreement).

Finally, in terms of transparency and accountability, the perennial discussion on a definition of what should be accounted for as climate finance was once again not resolved.

g. Resilience and Adaptation

Resilience and adaptation were early announced to be at the core of COP27 - but adaptation actually did not take off during the COP. It appeared overtaken and eclipsed by the developments regarding Loss and Damage. Regarding means of implementation, pledges for adaptation finance remained far below the Glasgow call to double adaptation finance by 2025.

In terms of guidance and signal, the Glasgow Sharm el-Sheikh work programme on the global goal on adaptation is an attempt to further specify the very general goal included in the Paris Agreement, similar to how the global goal on mitigation is being further specified, as discussed above. As worded in the Agreement, the global goal on adaptation - is to adapt. The work programme is at halftime and timing and implementation of the workshops and discussions were criticised. Nonetheless, the agreement to develop a framework for delivering the goal and tracking progress as well as the provisions for timing of the second year of the GlaSS were welcomed by experts. But the workload and issues to tackle by COP28 remain high. If issues are successfully and timely prepared and resolved, this could make COP28 an adaptation COP with a strong signal on adaptation.

h. Gender Responsiveness and Human Rights

After the Paris Agreement had generally signalled the need for gender responsiveness in its preamble, the enhanced Gender Action Plan (GAP) agreed at COP25 had established rules and standards for how parties are supposed to mainstream gender-responsive climate action. A key issue at COP27 was the mid-term review of the five-year UNFCCC Gender Action Plan (GAP). However, the scheduled progress was sabotaged by some parties who tried to go back on previously agreed language and no decisions on further implementation of the GAP were reached, especially not the scheduled agreement for funding of the agreed national focal points on gender and climate change. Parties are - again - only generally encouraged to increase the full, meaningful and equal participation of women in climate action and to ensure gender-responsive implementation and means of implementation. In addition, however, the measures of the GAP remain in force.

More positively, the conference strengthened the Paris Agreement's call to respect, promote and consider human rights by acknowledging the human right to a clean, healthy, and sustainable environment, which had been recognised by the UN

General Assembly during its 76th session in 2022¹⁰⁵, in the preamble of the Sharm el-Sheik Implementation Plan.¹⁰⁶

2. Outlook

The lack of progress on mitigation in Sharm el-Sheikh once again prompted questions whether these conferences have any use. However, without the UNFCCC process climate policy would most probably be in even worse shape. The annual conferences create political moments which put climate change on the political agenda and force decision-makers to account for their actions - or lack thereof. Moreover, the Paris Agreement, in particular, has provided key legitimacy for citizens and other actors to demand stronger and less gender-biased action. In many countries, climate policy has become stronger not least due to protests by movements such as Fridays for Future - and these movements crucially base their demands on the Paris Agreement. Courts are also increasingly referring to the Paris Agreement in their judgements. And it can be observed that the projected rate of global warming has continuously decreased. While at the adoption of the Paris Agreement projected warming by 2100 stood at around 3.5 to 4°C, nowadays the projection is about 1°C lower.¹⁰⁷

Nonetheless, progress has been too slow and Sharm el-Sheikh missed the opportunity to accelerate mitigation ambition, to make more concrete gender responsiveness, and implementation. COP27 was not the first COP that yielded few results. However, in terms of what should happen, there arguably is no longer a distinction between “large” and “small” COPs. Each and every single COP needs to deliver as much as the process allows if there is to be any chance of still staying within the temperature limit set by the Paris Agreement.

Speaking of large COPs, just in terms of participation and exhibition space, COP27 was the largest COP ever. It was also a convention space or “trade fair” for all sorts of actors and observers. Reviewing these activities in detail is beyond the scope of this article. Still, a few observations may help to complete the picture. The activities of frontrunner alliances, non-state actors and sub-national actors attracted less attention this year compared to last year's flurry of announcements and new targets. The British COP Presidency had prepared a series of “breakthroughs” with considerable diplomatic resources. Understandably, the Egyptian government did not have the same resources at its disposal. Moreover, we observed a shift away from ribbon cutting of new ambitious mitigation commitments towards implementation, transparency and accountability, as well as an increasing focus on adaptation and resilience. Overall, the global climate action agenda remains an important part of the COPs but can by no means save the day vis-a-vis insufficient NDCs.

¹⁰⁵ GA resolution 76/300, The human right to a clean, healthy and sustainable environment, Resolution adopted by the General Assembly on 28 July 2022, A/RES/76/300, 1 August 2022.

¹⁰⁶ Sharm el-Sheikh Implementation Plan (n 9).

¹⁰⁷ Climate Action Tracker, ‘Glasgow’s 2030 Credibility Gap: Net Zero’s Lip Service to Climate Action’ (2021) <https://climateactiontracker.org/documents/997/CAT_2021-11-09_Briefing_Global-Update_Glasgow2030CredibilityGap.pdf> accessed 18 November 2021.

The insufficient pace of the regime to tackle mitigation leads many to search for parallel arenas of cooperation. The underlying idea is to complement the universal approach of the UNFCCC institutions - hamstrung by the inability to agree on majority voting since 1994 - with smaller groups of more ambitious countries that want to speed ahead.

In this spirit, German Chancellor Olaf Scholz renewed his plan at COP27 to set up a “climate club” that he had floated at the G7 meeting in Elmau earlier this year. The strategy has its origins in an idea expressed by economist William Nordhaus, who was convinced that voluntary commitments will not be sufficient to bring about the required change. Instead, more ambitious countries should form a club, which would set ambitious targets supported by climate-related trade tariffs that would apply to imports of non-members. Long-time observers of the UNFCCC process will wholeheartedly agree with the analysis that voluntary agreements are not sufficient when it comes to taking difficult economic decisions.¹⁰⁸ This is true for private actors as well as public actors. Experience shows that, in the majority of cases, short-term economic and financial considerations will prevail.

It is questionable, however, whether the G7 is the adequate forum as the basis for such a club. France, Italy and Canada may want to participate, but the US and Japan are two of the countries most averse to stringent binding obligations, and it will be difficult to convince them. In June, Germany was not successful in getting the support of its counterparts. The German government may be advised to align its approach and look for club members outside of the G7 or G20. If such a club is envisaged to have any chance of flying, it must consist of members that are truly ambitious and agree on an institutional setting that will allow for dynamic decision-making, comparable to that of the Montreal Protocol on ozone depleting substances. This most effective global environmental treaty ever has saved the world from catastrophe and continues to be a model of success.

Another approach that received some attention at COP27 was the initiative to conclude a Fossil Fuel Non-Proliferation Treaty (NPT).¹⁰⁹ Vanuatu paved the way earlier with an announcement to support such an agreement in the UN General Assembly, and Tuvalu joined Vanuatu in Egypt. Maybe spurred by the disappointment that fossil fuels were again not named specifically as one of the main drivers of climate change at COP27, such a treaty outside of the UNFCCC regime looks like a more adequate tool to tackle the roots of the problem by effectively and equitably phasing out fossil fuels, following the precedent of the Nuclear Non-Proliferation Treaty.

The initiative is based on three pillars: (1) non-proliferation, (2) fair phase-out and (3) just transition. So far, the proposal has been endorsed by the European Parliament, the Vatican and the World Health Organisation, and more than 70 cities. However, no major CO₂ emitter has accepted Tuvalu’s request for now. And

¹⁰⁸ Obergassel W and others, ‘COP25 in Search of Lost Time for Action. An Assessment of COP25 in Madrid’ (2020) 14 Carbon & Climate Law Review 3.

¹⁰⁹ ‘The Fossil Fuel Non-Proliferation Treaty Initiative’ (*The Fossil Fuel Non-Proliferation Treaty Initiative*) <<https://fossilfuel treaty.org>> accessed 7 December 2022.

as noted above, while more than 80 parties in their statements referred to the need for a phase-out of fossil fuels, the language did not make it into the final text.

It remains to be seen whether the Pacific Island nations will succeed in convincing other governments to enter into an agreement to phase out fossil fuels. In the meantime, Pacific nations could take interim steps by concluding an agreement among themselves. They could, for example, create a regional fossil free zone treaty, which prohibits the extraction and transportation of fossil fuels throughout the territories and territorial waters of members. A second idea is to demand greater transparency and suggest a global registry of fossil fuels, where countries are obliged to disclose all information about existing and planned fossil infrastructure.¹¹⁰ These could be useful steps towards a more comprehensive agreement, but they might also be concrete elements of a Fossil Fuel NPT.

Vanuatu's initiative is just another sign of the growing unrest of extremely vulnerable island states with regard to the slow improvement of mitigation action. In order to legally underpin its claims for faster climate protection, Vanuatu has furthermore announced its intention to introduce a resolution to the UN General Assembly asking the International Court of Justice for an Advisory Opinion on climate change and human rights. President Vurobaravu repeated his intention in a passionate appeal to world leaders assembled at COP27.¹¹¹ Germany is among a core group of countries supporting this strategy. A comparable move had taken place at COP26 in Glasgow last year, when Antigua and Barbuda and Tuvalu announced that they had established a new international organisation in order to request an Advisory Opinion from the International Tribunal on the Law of the Sea in Hamburg.¹¹²

All these initiatives to take action outside of the UNFCCC are not meant to replace the regime, but to complement its universal efforts. While the 27th Conference of the Parties since 1995 and the innumerable meetings in between have produced a significant deviation from the business-as-usual path, the limits of a consensus-based approach are becoming increasingly visible. Getting effective mitigation action off the ground may require more than just one vehicle.

¹¹⁰ Green F and van Asselt H, 'COP27 Flinched on Phasing out "All Fossil Fuels". What's next for the Fight to Keep Them in the Ground?' (*The Conversation*, 21 November 2022) <<http://theconversation.com/cop27-flinched-on-phasing-out-all-fossil-fuels-whats-next-for-the-fight-to-keep-them-in-the-ground-194941>> accessed 7 December 2022.

¹¹¹ Lesa S, 'Vanuatu Implores World Leaders to Vote for International Court of Justice Climate Resolution' (*SPREP (Secretariat of the Pacific Regional Environment Programme)*, 10 November 2022) <<https://www.sprep.org/news/vanuatu-implores-world-leaders-to-vote-for-international-court-of-justice-climate-resolution>> accessed 7 December 2022.

¹¹² 'Agreement for the Establishment of the Commission of Small Island States on Climate Change and International Law' (2021) <<https://commonwealthfoundation.com/wp-content/uploads/2021/12/Commission-of-Small-Island-States-on-Climate-Change-and-International-Law.pdf>> accessed 7 December 2022.