

Disaster in Tuvalu

General instructions for all parties

Anselm Dannecker,^{*} Leah Kessler,[†] Monica Giannone[‡]

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Enclosed an memo describing the recent events and current situation in the context of upcoming negotiations.

^{*} Anselm Dannecker, Senior Fellow, Negotiation and Conflict Resolution Collaboratory, (NCRC) Center for Public Leadership (CPL), Harvard Kennedy School.

[†] Leah Kessler, Research Assistant, NCRC, HKS, Harvard Kennedy School.

[‡] Monica Giannone, Director, NCRC, HKS, Harvard Kennedy School.

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General Memorandum Regarding Tuvalu Cyclone (October 30, 2022)

Date: October 31, 2022

October Cyclone and Updates

It is October 31st. One day ago, on October 30th, a cyclone hit the island nation of Tuvalu. Luckily, the cyclone was—relatively—weak. Everyone survived. But the event will significantly reduce the nation's GDP, threaten Tuvalu's already low food and water security, and has already created a refugee crisis that is capturing international attention. The port, which acts as the main landing station for any food, water and other products coming in has been destroyed. The small island nation is devastated and requires immediate aid to rebuild its housing and infrastructure and to ensure that its population receives water and food in the coming months.

The Tuvaluan Prime Minister has called on the international community for

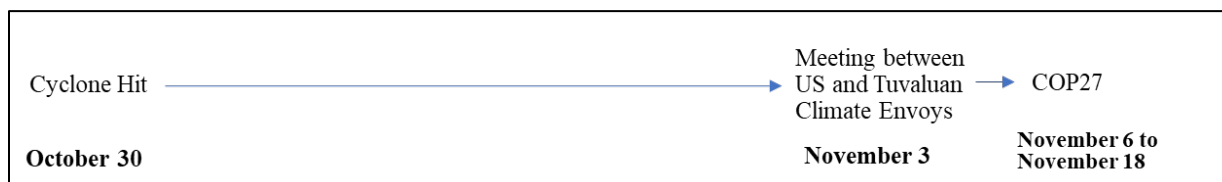
- 1) immediate relief and
- 2) for long-term funding to help it make the country crisis resilient.

In a passionate plea, he noted that this disaster is the consequence of reckless and unfettered fossil fuel-based economies. U.S. President Biden committed publicly to “decisive action and support.” The Chinese government came out publicly offering funding for specific projects.

The cyclone took place at a special point in time: This year's Conference of Parties (COP), the highest decision-making body under the United Nations Framework Convention on Climate Change (UNFCCC) is happening in just six days, on November 6th. A key contentious issue for the upcoming COP27 discussion has been the issue of Loss & Damage (for details, see background). In light of recent events, Tuvalu and other nations have redoubled their efforts to include the topic of Loss and Damage as an official agenda item at COP27. The US has not publicly supported this request.

A bilateral meeting between US Climate Envoy John Kerry and the Tuvaluan Climate Envoy Seve Paeniu (who is also the Minister of Finance and Pacific Climate Champion on Loss & Damage) in New Zealand on November 3rd had been planned for months—only three days before the start of COP27. This meeting had been intended as symbolic showing of global efforts between developed and developing countries to combat climate change. The two countries wanted to send a joint signal for an ambitious COP. The plan was to have a private bilateral conversation between the two climate envoys followed by a joint public statement.

Original Timeline:



Context of the Meeting

A key topic that was already bound to make the discussion between Kerry and Paeniu difficult was their countries' ongoing disagreement over Loss & Damage, which has been a contentious issue for the past 30 years of international negotiations. Vulnerable nations have consistently called for financial compensation for the climate-change induced economic and non-economic losses they are experiencing due to the historic emissions of developed economies. Fearing that a Loss & Damage fund would imply a legal liability to cover the costs of all climate-change induced losses, developed countries have sidestepped the issue in international negotiations.

Loss & Damages has featured prominently in the discussion around this year's COP. The **G77+China**, a group of more than 134 developing countries, of which Tuvalu is a member, has called for making Loss & Damages an agenda item insisting that a new Loss & Damage fund must be created. The **Alliance of Small Island States (AOSIS)**, which is part of the G77+China and the key alliance through which Tuvalu advances its interests, has been leading the effort to unite the G77+China around this call. Developed countries continue to resist the request of making Loss & Damages an agenda item. Whether it will be on the agenda will be decided at the beginning of COP.

Last minute change:

Given the recent disaster, the agenda for this meeting between the Climate Envoys will need to change. With the cyclone hitting Tuvalu, the world expects that the two climate envoys, Paeniu and Kerry will announce an agreement on how the US will support Tuvalu in this desperate time.

On short notice, two additional meetings have been scheduled.

- **Chief of Staff meeting | Negotiation Simulation Round II:**
The Chiefs of Staff of the US Climate Envoy and the Tuvaluan Climate Envoy will meet in advance of the meeting between their bosses to discuss the terms of a relief package.
- **High-level internal meeting | Negotiation Simulation Round I:**
 - Various ministers and other high-ranking ministers from the US government are holding an internal meeting to determine the specific mandate of the Climate Envoy's Chief of Staff.
 - Various ministers and other high-ranking ministers from the Tuvaluan government are meeting to determine the specific mandate of the Climate Envoy's Chief of Staff.

Overview of New Timeline:



The two Chief of Staffs have set a tentative agenda for what they aim to discuss in preparation for the meeting of their respective bosses, the Climate Envoys:

Discussion Items for Chief of Staff meeting

Discussion Item 1: Total Amount of Funding

Tuvalu has prepared a overview budget noting its funding needs and indicating where other countries, specifically China, have indicated a willingness to contribute funds.

| Short-term Funding | |
|---|--|
| Flood relief and food security assistance | \$75mill |
| Infrastructure funding, with focus on port | \$25mill <i>China has offered these \$25 million of infrastructure funding in exchange for limited operating rights to the port</i> |
| Long-term Funding | |
| Agriculture and food security, health, economic growth, education, protection, and governance | \$25mill |
| Disaster resilience and adaptation | \$25mill <i>China has offered these \$25 million of funding incl. the provision of satellite technology for disaster monitoring</i> |
| Migration and education | \$25mill |

Discussion Item 2: Funding Vehicles

The Tuvaluan and U.S. Chief of Staffs have collected options for disbursing whatever funding amount is agreed to. Options include:

1. *Official Development Assistance (ODA)*
ODA paid out bilaterally to Tuvalu directly from the US federal budget. The main advantage of ODA is that it can be disbursed very quickly.
2. *UN Non-Climate Funds*
The UN through its World Food Program (WFP), its Office for Humanitarian Affairs (OCHA), and through the UN High Commissioner for Refugees (UNHCR) releases funds. The US would pay into the UN and the UN funds would disburse them to Tuvalu.
3. *Green Climate Fund (GCF)*
The GCF is the main climate related fund under the UN umbrella. It is currently not designed to cover immediate funding needs but rather to fund specific projects. It has no funding window for losses and damages. Tuvalu has made calls to alter the GCF to both disperse funds more rapidly and to cover long-term costs associated with climate disasters.

Discussion Item 3: Public Communication of the Results

A press conference will follow the meeting of the Climate Envoys. The Climate Envoys initially had planned to come out with a joint statement. However, given that the topic of their discussions has changed to discuss funding for the ongoing humanitarian disaster, it is up for discussion,

- i) whether there should be a press statement or not,
- ii) if there is a press statement, whether the parties agree to make it a joint statement, or
- iii) whether the parties will hold separate press statements.

In all cases, the question remains of what will or will not be mentioned in any public statement. Undoubtedly, the statement will cover the funding arrangement. It is less clear, however, whether the issue of Loss & Damages will be mentioned.

Potential Discussion Item 4: COP27 (Strictly Confidential)

Upon request from the Tuvaluan Chief of Staff, the Chief of Staffs agreed that the parties will discuss in what way the current disaster informs the upcoming discussions at COP27, specifically regarding Loss & Damage. Thus far, the U.S. has publicly resisted efforts for Loss & Damage to become an official agenda item at COP27. According to the Tuvaluan Chief of Staff, the current context makes clear the importance of creating an international Loss & Damage fund to deal with such disasters and highlighting the urgency of advancing the issue more broadly.

Annex: Background Information

Tuvalu

Tuvalu is designated as a Small Islands Developing States (SIDS). It is a member of the negotiating group AOSIS and a member of the Vulnerable 20 (V20) group—a coalition comprised of 58 nations, totaling 1.5 billion of the world's population, who together have only contributed to 5% of global emissions. Tuvalu is an extremely small and isolated island nation. It is one of the countries that is most vulnerable to climate risks, including, but not limited to, sea level rise, coastal erosion, and intense storms. Due to factors such as its limited resources and low-elevation, Tuvalu is not resilient to natural hazards and has relied heavily on international aid during disasters in the past—a predicament that is only worsening with climate change.

Loss & Damage

To date, **there is no official definition of losses and damages** under the UNFCCC. The term **losses and damages**ⁱ has been taken broadly to refer to **economic and non-economic damage** from observed impacts resulting from **slow onset events** and **extreme weather events** caused by climate change.ⁱⁱ These events could include anything from the loss of coastal heritage sites from rising sea levels to the loss of lives and homes due to extreme floods. “Non-economic losses” (e.g., when cultures or languages disappear, as the consequence of climate related displacement), and “slow onset events” (e.g., sea level rise, agricultural losses due to changing weather patterns) complicate the definition of what qualifies as losses and damages.

The term **Loss & Damage (hereafter L&D)** refers to the long-standing contentious political debate in the UNFCCC about the issue of losses and damages.

Several issues in the debate have been particularly controversial:

- Legal Liability

John Kerry recently said, “[T]he U.S. and many other countries will not establish some sort of a legal structure that is tied to compensation or liability. That’s just not happening.”ⁱⁱⁱ A key issue for developed countries has been their unwillingness to accept an unspecified legal liability for financial compensation. Acknowledging a direct link between the specific losses countries face and specific actions of developed countries could expose developed countries to legal charges and compensation. While liability can be a tricky matter to prove with specific weather events, as climate science gets increasingly precise, it is becoming more feasible to tie such events to greenhouse gas emissions and develop metrics and models that underscore liability.

- What is Loss and Damage?

A related issue concerns the general ambiguity surrounding the definition for L&D, which has led to divergent interpretations. For example, crisis situations like cyclones tend to get more attention and resources than slow onset events. Yet, developing and vulnerable countries are heavily impacted by slow onset events, non-economic losses, and more long-term effects of climate change for which, they believe, funds should be provided. For example, health outcomes, migration, declining crop yields, and hunger due to food shortages are the consequence of climate change. They can be linked to the actions of countries with higher historical emissions. Thus, many countries argue that such consequences should be covered by L&D in various funding categories.

Developed countries have resisted such broad definitions. In the existing funding apparatus, developed countries have usually favored using terminology for financial support that focuses on the proximate cause, rather than the deeper underlying link to climate, such as “disaster/risk reduction,” “migration/refugee,” or “humanitarian aid.”

- Operational Challenges

In addition to the principled concerns over what L&D should cover and whether there can be any implied legal liability, there are several concerns with respect to the operationalization of L&D funding schemes. If entire regions were to be flooded or human lives were lost, the losses and damages associated with such an event seem both, immeasurable and infinitely high. Even for more limited events, the relationship between potential L&D funding arrangements and existing institutions (such as the UN World Food Program, or the Office for Humanitarian Affairs) are unclear.

Loss & Damages in the UNFCCC

In 1991, Vanuatu, on behalf of the AOSIS, submitted a proposal to a UN conference to include an “International Insurance Pool to provide against the consequences of sea level rise.” In its proposal, Vanuatu specified that the “financial burden of loss and damage suffered by the most vulnerable small island and low-lying developing countries... as a result of sea level rise shall be distributed in an

equitable manner amongst the industrialized developed countries.” Developed countries rejected the proposal. The treaty ultimately stipulated that “the Parties shall give full consideration to what actions are necessary under the Convention, including actions related to funding, insurance and the transfer of technology, to meet the specific needs and concerns of developing country Parties arising from the adverse effects of climate change.”^{iv}

Two decades later, in 2013, COP19 established the first formal mechanism to address L&D associated with impacts of climate change in developing countries that are particularly vulnerable: **the Warsaw International Mechanism (WIM) and its Executive Committee (ExCom) on Loss and Damage.**^v It was tasked with establishing a research base for further discussion. The WIM ExCom has no associated funding support and covers five thematic work areas on which it aims to develop standards and policies: 1) slow onset events; 2) non-economic losses; 3) comprehensive risk management approaches; 4) human mobility, including migration, displacement and planned relocation; and 5) action and support, including finance, technology and capacity-building.

The 2015 Paris Agreement witnessed the first ever Article devoted to addressing L&D: In it, countries agreed to “minimize, avert, and address” losses and damages.^{vi} There was no mention of “liability” or “compensation” in the Paris Agreement and no specific funds were dedicated to L&D. At COP25 and COP26, developing countries mobilized and pushed for the establishment of a L&D finance facility or fund. The call for a dedicated finance facility was opposed.^{vii} The Santiago Network was established and charged with advising the UNFCCC parties on how the process should address Loss & Damages. At COP26, the Glasgow Dialogue on Loss and Damage (the “Glasgow Dialogue”) was launched. It is mandated to “discuss arrangements for the funding of activities to avert, minimize, and address L&D” in cooperation with the WIM ExCom.^{viii}

In 2022, **Denmark** became the first country to pledge funds specifically to address losses and damages in developing countries, creating a precedent for further negotiations and discussions.

ⁱ When capitalized, “Loss and Damage” refers to the ongoing debate under the UNFCCC.

ⁱⁱ Loss and Damage.” Center for Climate and Energy Solutions, <https://www.c2es.org/content/loss-and-damage/>.

ⁱⁱⁱ “The United States Agrees to Loss and Damage Fund at COP27.” American Journal of International Law, vol. 117, no. 2, Apr. 2023, pp. 330–35. Cambridge University Press, <https://doi.org/10.1017/ajil.2023.13>; Shah, Saeed, and Matthew Dalton. “COP27 Talks Weigh Who Should Pay for Climate Damage to Poor Countries.” Wall Street Journal, 16 Nov. 2022. [www.wsj.com, https://www.wsj.com/articles/cop27-talks-weigh-who-should-pay-for-climate-damage-to-poor-countries-11668598218](https://www.wsj.com/articles/cop27-talks-weigh-who-should-pay-for-climate-damage-to-poor-countries-11668598218).

^{iv} “The United States Agrees to Loss and Damage Fund at COP27.” American Journal of International Law, vol. 117, no. 2, Apr. 2023, pp. 330–35. Cambridge University Press, <https://doi.org/10.1017/ajil.2023.13>.

^v IPCC 2022; Warsaw Mechanism.

^{vi} Loss and Damage.” Center for Climate and Energy Solutions, <https://www.c2es.org/content/loss-and-damage/>.

^{vii} Why COP27 Will Be Remembered as the Loss and Damage COP and What to Expect Next.” Grantham Research Institute on Climate Change and the Environment, <https://www.lse.ac.uk/granthaminstitute/news/why-cop27-will-be-remembered-as-the-loss-and-damage-cop-and-what-to-expect-next/>.

^{viii} <https://unfccc.int/event/first-glasgow-dialogue-gd1#:~:text=COP%2026%20established%20the%20Glasgow,adverse%20impacts%20of%20climate%20change>.