

SHARM EL-SHEIKH CLIMATE CHANGE CONFERENCE: COMMENTARY ON SELECTED ISSUES / Lucia Bakošová

Mgr. Lucia Bakošová, PhD.
Research Assistant
Pavol Jozef Šafárik University
Faculty of Law
Kováčska 26
040 75 Košice, Slovakia
lucia.bakosova@upjs.sk
ORCID: 0000-0001-9403-5092

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Abstract: *The year 2022 offered the international community an opportunity to take concrete steps in reducing the impacts of climate change. In November 2022, the State Parties of the United Nations Framework Convention on Climate Change and the Paris Agreement, as well as representatives of international organizations, corporations, civil society and activists met in Sharm el-Sheikh, Egypt to discuss the current state of climate change and measures that are capable to protect future generations from adverse effects of climate change, mitigate or adapt to them. The paper comments on the outcome documents and key issues that were discussed at the Sharm el-Sheikh Climate Change Conference (COP27), as well as measures that were adopted. Particular attention is focused on the Sharm el-Sheikh Implementation Plan. The key issues that are addressed in this paper are related to the rising amount of emissions, failure to move away from fossil fuels, and the newly established loss and damage fund.*

Key words: *Climate change; Paris Agreement; United Nations Framework Convention on Climate Change; Sharm el-Sheikh Climate Change Conference; Sustainable Development, International Environmental Law*

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1. INTRODUCTION

The year 2022 offered the international community an opportunity to take concrete steps in addressing environmental challenges of our lifetime and to work towards greener and more sustainable future. Among the important milestones is the adoption of the United Nations General Assembly resolution no. 76/300, which recognises the right to a clean, healthy and sustainable environment as human right¹ or the Stockholm 50+ Meeting, which adopted recommendations for accelerating action towards a healthy planet and prosperity for all.² However, the main focus of this paper is on the anticipated 27th UN Climate Change Conference, which took place from 6th November to 18th November 2022 in Sharm el-Sheikh, Egypt. The main themes of the conference were justice and ambition. Justice for those on the forefronts who did so little

¹ UN General Assembly: The human right to a clean, healthy and sustainable environment, 28 July 2022, A/RES/76/300, para. 1.

² United Nations: Stockholm+50: a healthy planet for the prosperity of all – our responsibility, our opportunity, Stockholm, 2 and 3 June 2022, A/CONF.238/9, paras. 43–56.

to cause the crisis and ambition to keep the 1.5 degree limit alive.³ The paper comments on the outcome documents and key issues that were discussed at the Sharm el-Sheikh Climate Change Conference (hereinafter "COP27"), as well as measures that were adopted. Particular attention is focused on the *Sharm el-Sheikh Implementation Plan*. The key issues that are addressed in this paper are related to the rising amount of emissions, failure to move away from fossil fuels, and the newly established loss and damage fund.

2. SHARM EL-SHEIKH CLIMATE CHANGE CONFERENCE

The history of the COP is interconnected with the adoption of the *United Nations Framework Convention on Climate Change* (hereinafter "UNFCCC") in 1992, at the Rio Earth Summit. With 198 Parties, the UNFCCC has almost universal membership. The objective of the UNFCCC is to achieve stabilisation of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.⁴ In accordance with art. 7, the UNFCCC establishes Conference of the Parties, which keeps under regular review the implementation of the Convention and any related legal instruments that the Conference of the Parties may adopt, and makes, within its mandate, the decisions necessary to promote the effective implementation of the Convention.⁵ During COP, several key international documents were adopted, such as the *Kyoto Protocol*, *Marrakech Accord*, *Bali Road Map*, *Copenhagen Accord*, *Cancon Agreement*, *Paris Agreement*, and *Glasgow Climate Pact*.

During the COP27, numerous documents were adopted.⁶ The most notable is the *Sharm el-Sheikh Implementation Plan* (hereinafter "SESIP"), which addresses the urgency to limit global warming to around 1,5 °C, as well as the issues connected with mitigation, adaptation, loss and damage, early warning and systematic observation, implementation, finance, technology transfer and deployment, ocean, forest, agriculture, and actions by non-Party stakeholders. The main outcomes of COP27 include: (1) rising amount of emissions and failure of States and stakeholders to move away from fossil fuels; (2) climate finance reform, especially in connection with global financial institutions such as the World Bank and the International Monetary Fund; (3) the establishment of loss and damage fund for the most vulnerable countries to climate change; (4) announcement of the "Early Warnings for All" initiative, which aims to ensure that every person on Earth is covered by an early-warning system for hazardous weather by the year 2027; and (5) steps towards reviving ecosystems, such as peatlands. The following chapters elaborate on two main outcomes, namely rising emissions and failure to move away from fossil fuels, and the establishment of loss and damage fund.

3. RISING EMISSIONS AND FAILURE TO MOVE AWAY FROM FOSSIL FUELS

Like the previous years of COP, one of the main topics was the issue of rising emissions and the use of fossil fuels, which heavily contributes to climate change. In 2022, the participating parties were acquainted by two UN Environment Programme

³ Statement by the Secretary-General at the conclusion of COP27 in Sharm el-Sheikh, 19 November 2022, Sharm el-Sheikh. Available at: <https://www.un.org/sg/en/content/sg/statement/2022-11-19/statement-the-secretary-general-the-conclusion-of-cop27%C2%A0-sharm-el-sheikh%C2%A0%C2%A0> (accessed on 15.06.2023).

⁴ United Nations Framework Convention on Climate Change, New York, 9 May 1992, United Nations Treaty Series, Vol. 1771, p. 107, art. 2.

⁵ *Ibid.*, art. 7.

⁶ For the full list of COP27 adopted decisions visit: <https://unfccc.int/cop27/auv>

(hereinafter "UNEP") reports on emission and adaptation gap,⁷ and two reports of the Intergovernmental Panel on Climate Change.⁸ *The 2022 Emission Gap Report* highlights that States adopted inadequate actions on the global climate crisis. For instance, there has been very limited progress in reducing the immense emissions gap for 2030, the gap between the emissions reductions promised and the emissions reductions needed to achieve the temperature goal of the Paris Agreement. Policies currently in place with no additional action are projected to result in global warming of 2.8°C over the 21st century.⁹ Parties are, currently, at serious risk of experiencing adaptation limits and intolerable losses and damages.¹⁰ Based on the abovementioned, the Parties emphasised the urgent need for immediate, deep, rapid and sustained reductions in global greenhouse gas emissions by Parties across all applicable sectors, to limit global warming to 1.5°C above pre-industrial levels. These reductions can be achieved by low emission and renewable energy, just energy transition partnerships and other cooperative actions.¹¹ However, low emission energy is oftentimes referred to natural gas. This presents a considerable concern that States are unable or unwilling to move away from fossil fuels. At COP27, States were particularly hesitant to support phasing out all fossil fuels, as it was proposed by India, due to availability and high cost of energy. Particularly active in this area was the European Union, which called on all Parties of the UNFCCC Parties to phasedown coal extraction and to end inefficient fossil fuel subsidies to accelerate their energy transition, and to deliver on the Glasgow Climate Pact.¹² This call is in line with goals of the European Green Deal¹³ and European green diplomacy, which aims to create a more effective, coherent diplomatic strategy and toolbox to influence third actors towards the green transformation that the European Green Deal envisions (Petri, 2020, p. 6). However, when

⁷ See United Nations Environment Programme: *Adaptation Gap Report 2022: Too Little, Too Slow - Climate adaptation failure puts world at risk*. Nairobi: United Nations Environment Programme, 2022. Available at: <https://www.unep.org/resources/adaptation-gap-report-2022> (accessed on 15.06.2023); United Nations Environment Programme: *Emissions Gap Report 2022: The Closing Window - Climate crisis calls for rapid transformation of societies*. Nairobi: United Nations Environment Programme, 2022. Available at: <https://www.unep.org/resources/emissions-gap-report-2022> (accessed on 15.06.2023).

⁸ See International Panel on Climate Change: *Climate Change 2022: Impacts, Adaptation, and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*. Cambridge: Cambridge University Press, 2022, 3056 pp. Available at: https://report.ipcc.ch/ar6/wg2/IPCC_AR6_WGII_FullReport.pdf (accessed on 15.06.2023); International Panel on Climate Change: *Climate Change 2022: Mitigation of Climate Change. Working Group III Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*. Cambridge: Cambridge University Press, 2022, 2258 pp. Available at: https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_FullReport.pdf (accessed on 15.06.2023).

⁹ United Nations Environment Programme: *Emissions Gap Report 2022: The Closing Window - Climate crisis calls for rapid transformation of societies*. Nairobi: United Nations Environment Programme, 2022, Executive Summary, p. IV.

¹⁰ United Nations Environment Programme: *Adaptation Gap Report 2022: Too Little, Too Slow - Climate adaptation failure puts world at risk*. Nairobi: United Nations Environment Programme, 2022, Executive Summary, pp. IV - IX.

¹¹ Sharm el-Sheikh Implementation Plan, Decision -/CP.27, Sharm el-Sheikh, 20 November 2022, paras. 8 - 10. Available at: https://unfccc.int/sites/default/files/resource/cop27_auv_2_cover%20decision.pdf (accessed on 15.06.2023).

¹² Council of the European Union: *Preparations for the 27th Conference of the Parties (COP27) of the United Nations Framework Convention on Climate Change (UNFCCC)* (Sharm el-Sheikh, 6-18 November 2022), 13735/1/22 REV 1, Brussels, 24 October 2022, para. 13. Available at: <https://www.consilium.europa.eu/media/59789/st13994-en22.pdf> (accessed on 15.06.2023).

¹³ For more see: *Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: The European Green Deal*, Brussels, 11 December 2019, COM(2019) 640 final.

engaging with countries like the United States, China, and India, for example, Europe's own story does not offer many lessons for how to convince a reluctant public of the need for sacrifice or the difficult path to achieving it (Torney and Cross, 2018, p. 53).

Tuvalu and Vanuatu went even further on the issue of fossil fuel phasedown and called for a Fossil Fuel Non-Proliferation Treaty, whose objective is tied to the achievement of the Paris Agreement in order to effectively address the climate crisis by tackling its root cause: oil, gas and coal production and to guarantee the right of all to a dignified life and a healthy planet, especially the most vulnerable communities.¹⁴ The scope of the treaty should include all fossil fuels and fossil fuel extraction, infrastructure (such as pipelines or coal-fired power plants), both future and existing production and investments in fossil fuels. However, a problematic aspect seems to be the setting of targets for production limits, which would need to avoid the scenario in which countries claim their plans to expand fossil fuel production are compatible with the temperature goal of the Paris Agreement because their emissions will be captured through carbon capture and storage, offset through carbon trading, or offshored as the fossil fuels are exported (and burnt) in other countries (Newell, van Asselt and Daley, 2022, p. 2). Furthermore, without an effective sanction mechanism, it is very likely that States will not (be forced to) adopt appropriate measures in this area. The proposed treaty stands on three pillars: (1) non-proliferation, (2) fair phase-out, and (3) just transition. The non-proliferation of fossil fuels is envisaged through an assessment of those fossil fuel reserves which, if burned, would carry us across the 1.5°C warming line, and to monitor their non-use and any measures likely to lead to the proliferation of fossil fuels. Under the second pillar, States should rapidly substitute clean energy for fossil fuels and to manage decline of existing fossil fuel infrastructures and investments. In particular, through reducing energy demand, promotion of energy efficiency, and measures to address air pollution. The third pillar envisages a massive expansion of existing initiatives to provide poorer countries with access to clean energy and the technology needed for development (Newell and Simms, 2018, p. 6). It is important to note that currently, there is only a limited support for such international treaty.¹⁵ In the end, para. 13 of the SESIP calls upon Parties to accelerate the development, deployment and dissemination of technologies, and the adoption of policies, to transition towards low-emission energy systems, including by rapidly scaling up the deployment of clean power generation and energy efficiency measures, including accelerating efforts towards the phasedown of unabated coal power and phase-out of inefficient fossil fuel subsidies, while providing targeted support to the poorest and most vulnerable, in line with national circumstances and recognizing the need for support towards a just transition.¹⁶

Lastly, the relevant parts of SESIP need to be read in close connection with the newly recognised right to clean, healthy and sustainable environment, which was recognised by the UN General Assembly in 2022. Although resolutions of the UN General Assembly are *per se* non-binding, as UN Special Rapporteur on Human Rights and the

¹⁴ Fossil Fuel Non-Proliferation Treaty: Energy Charter Treaty vs. Fossil Fuel Non-Proliferation Treaty: Out with the old, in with the new, 2023, p. 1. Available at: <https://static1.squarespace.com/static/5dd30c5b7fd99372fbb04561/t/63eba9695e082859dc4d3f72/1676388714142/Energy+Charter+Treaty+vs.+Fossil+Fuel+Treaty.pdf> (accessed on 15.06.2023).

¹⁵ For the full list of supporting governments, international organizations and non-state actors see: <https://fossilfuel treaty.org/endorsements>. The Fossil Fuel Non-Proliferation Treaty was endorsed by Vanuatu, Tuvalu, Fiji, Solomon Islands, Tonga, Niue, the European Parliament, the World Health Organization, President of Timor-Leste etc.

¹⁶ Sharm el-Sheikh Implementation Plan, Decision -/CP.27, Sharm el-Sheikh, 20 November 2022, para. 13. Available at: https://unfccc.int/sites/default/files/resource/cop27_auv_2_cover%20decision.pdf (accessed on 15.06.2023).

Environment *David Boyd* noted, they can serve as catalysts for action.¹⁷ The resolution notes that this new universal human right is linked to other rights and parts of existing international law¹⁸ and affirms that the promotion of the human right to a clean, healthy and sustainable environment requires the full implementation of the multilateral environmental agreements under the principles of international environmental law.¹⁹ We argue that the failure to reduce the level of emissions and further extensive use of fossil fuels, eventually, violates the right to clean, healthy and sustainable environment. It may be expected in the near future, that numerous complaints will be lodged at the United Nations Human Rights Treaty System, seeking to confirm the right to clean, healthy and sustainable environment in connection to other human rights, such as the right to life. Similar process can be seen in *Ioane Teitiota v. New Zealand*, where the Human Rights Committee confirmed that the effects of climate change may expose individuals to a violation of the right to life and prohibition of torture, cruel, inhuman and degrading treatment or punishment.²⁰

4. LOSS AND DAMAGE FUND

One of the underlining themes of COP27 was the issue of climate finance reform and the loss and damage caused by climate change. Loss and damage is oftentimes characterised as the third pillar of climate action, beside mitigation and adaptation. As *Bodansky (2022)* clarifies, mitigation seeks to avert loss and damage by reducing net emissions and thereby limiting climate change. Adaptation seeks to minimise the damage caused by whatever climate change cannot be mitigated. Lastly, loss and damage refers to the damages caused by climate change that mitigation and adaptation fail to prevent (*Bodansky, 2022*). Loss and damage can also refer to economic and non-pecuniary harm, such as loss of life, ecosystems, cultural heritage, livelihoods etc. (*Appadoo, 2021, p. 315*). Although the first initiative on this issue came from the Alliance of Small Island States in 1991, loss and damage was first referred to in the *2007 Bali Action Plan*, which called for disaster reduction strategies and means to address loss and damage associated with climate change impacts in developing countries that are particularly vulnerable to the adverse effects of climate change (*Hirsch et al., 2019, p. 22*). Subsequently, in 2013, the Warsaw International Mechanism for Loss and Damage was set up. Its aim is to enhance knowledge and understanding of comprehensive risk management approaches; to strengthen dialogue, coordination, coherence and synergies among relevant stakeholders; and finally, to enhance action and support, including, finance, technology and capacity-building.²¹ Two years later, States included the issue of loss and damage into the text of the Paris Agreement. In accordance with art. 8 of the Paris Agreement, Parties recognise the importance of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events, and the role of sustainable

¹⁷ United Nations: Why the UN General Assembly must back the right to a healthy environment, UN News, 22 July 2022. Available at: <https://news.un.org/en/story/2022/07/1123142> (accessed on 15.06.2023).

¹⁸ UN General Assembly: The human right to a clean, healthy and sustainable environment, 28 July 2022, A/RES/76/300, para. 2.

¹⁹ *Ibid.*, para. 3.

²⁰ UN Human Rights Committee: *Ioane Teitiota v. New Zealand*, CCPR/C/127/D/2728/2016, 7 January 2020, para. 9.11.

²¹ Warsaw international mechanism for loss and damage associated with climate change impacts, Warsaw Climate Change Conference, Decision 2/CP.19, Warsaw, November 2013, para. 5.

development in reducing the risk of loss and damage.²² However, the Agreement does not offer legal definition of this term, as well as it lacks liability and compensation mechanism. This is due to rejection of the argument by the UN and most developed States, that loss and damage should be conflated with liability or compensation (Appadoo, 2021, p. 320).²³ In a recent study by Åberg and Jeffs (2022), it is concluded that developing States prefer provision of financial resources from the developed States (which are confirmed in numerous documents of the UN or UNFCCC) and a reform of existing funds (2022, p. 39), rather than difficult discussions on liability and compensation through political and judicial organs. Currently, developing countries lack a legal basis that would allow them to attribute liability and compensation for losses and damages caused by developed countries under international law. Furthermore, developed States in climate change litigation oftentimes argue that climate change is a problem of collective causation, and therefore, it would be scientifically impossible to attribute specific climate impacts to individual emitters (Nedeski and Nollkaemper, 2022).

When it comes to previous COPs, at the COP25, Parties established the Santiago Network for Loss and Damage, in order to connect potential providers of assistance with each other and with developing countries²⁴ and at COP26, the Glasgow Climate Pact established the Glasgow Dialogue to discuss funding arrangement for activities to avert, minimise, and address loss and damage.²⁵ At the COP27, Parties decided to establish new funding arrangements for assisting developing countries that are particularly vulnerable to the adverse effects of climate change, in responding to loss and damage, including with a focus on addressing loss and damage by providing and assisting in mobilizing new and additional resources, and that these new arrangements complement and include sources, funds, processes and initiatives under and outside the Convention and the Paris Agreement.²⁶ Although the establishment of the Loss and Damage Fund is oftentimes referred to as historic, all the details on the form, contributing States, and provision of financial assistance will be announced at COP28, which will take place in Dubai. In the meantime, a transitional committee on the operationalization of the fund is tasked with making recommendations on: (a) establishing the institutional arrangements, modalities, structure, governance and terms of reference for the fund; (b) defining the elements of the new funding arrangements; (c) identifying and expanding sources of funding; (d) ensuring coordination and complementarity with the existing funding

²² Paris Agreement, Paris, 12 December 2015, United Nations Treaty Series, Vol. 3156, art. 8 (1).

²³ For instance, Danish statement at the UN General Assembly in 2022: *"It is not fair that the poorest communities, who have contributed the least to climate change, have to suffer the most from its impact. This new support demonstrates that we are turning words into action and cooperate with civil society, local authorities, private sector and experts to solve one of the greatest challenges of our time. I am not talking about compensation or legal responsibilities. I am talking about finding the right means to help the most vulnerable people who suffer the most from the consequences of climate change."* Denmark announces new 100 million DKK support to climate adaptation and concrete activities to avert, minimize and address climate-induced loss and damage for the world's poorest. In: *Udenrigsministeriet*, 22 September 2022. Available at: <https://via.ritzau.dk/pressemeddelelse/denmark-announces-new-100-million-dkk-support-to-climate-adaptation-and-concrete-activities-to-avert-minimize-and-address-climate-induced-loss-and-damage-for-the-worlds-poorest?publisherId=13560888&releaseId=13660205> (accessed on 15.06.2023).

²⁴ Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts and its 2019 review, Decision 2/CMA.2, Madrid, December 2019, paras. 43-45.

²⁵ Glasgow Climate Pact, Decision 1/CMA.3, Glasgow, November 2021, para. 73.

²⁶ Funding arrangements for responding to loss and damage associated with the adverse effects of climate change, including a focus on addressing loss and damage, Sharm el-Sheikh Climate Change Conference, 20 November 2022, para. 2. Available at: https://unfccc.int/sites/default/files/resource/cma4_auv_8f.pdf (accessed on 15.06.2023).

arrangements.²⁷ As *Naylor and Ford* state, it is clear that the fund will not take the form of direct reparations from industrialised Parties to the most vulnerable. Instead, it appears likely that loss and damage will build upon and expand financing mechanisms geared toward loans and grants already existing within the UNFCCC (2023, pp. 1-2).

5. CONCLUSION

The Sharm el-Sheikh Climate Change Conference can be characterised as ambivalent. Over the course of two weeks, Parties to the UNFCCC discussed numerous climate change issues, however, with only limited success when adopting appropriate measures. Probably the most discussed was the establishment of the loss and damage fund for the most vulnerable countries to climate change. It may be considered as an important step towards climate justice. However, details on who will get the funding, how will the funds be delivered, who will contribute to the fund, and how will the fund be managed, are yet to be defined. The international community has witnessed several attempts to address loss and damage at previous COPs, however, with only limited improvement. For instance, the Santiago Network was lacking appropriate resources from the beginning and consisted merely of a website (Oberghassel, Arens, Beuermann et al., 2022, p. 29). We have to be quite sceptical, whether the new established fund will appropriately address the loss and damage caused by climate change. Furthermore, reports of UNEP and IPCC conclude, that Parties and stakeholders did very little to prevent the occurrence of loss and damage. COP27 highlighted that Parties did not take significant steps in climate mitigation and adaptation. The urgent need for immediate, deep, rapid and sustained reductions in global greenhouse gas emissions is still present and it goes hand in hand with phase-down of coal and fossil fuels. Although the Fossil Fuel Non-Proliferation Treaty presents an interesting initiative in this area, its success is questionable due to political interests of States profiting from the extraction of fossil fuels. Eloquent are the words of the UN Secretary-General, António Guterres, in his concluding statement: "COP27 concludes with much homework and little time." Upcoming months and years will determine whether the international community is committed to fulfil its obligations in climate action, or whether it resigned on a greener and more sustainable future. For now, it seems the latter is closer to the reality.

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²⁷ *Ibid.*, para. 5.

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