THE PARIS AGREEMENT'S APPROACH TOWARD CLIMATE CHANGE LOSS AND DAMAGE

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Article 8 of the Paris Agreement introduces obligations upon the Parties to the Agreement "with respect to Loss and Damage associated with

adverse impacts of climate change." According to Paragraph 52 of the Conference of the Parties' Decision, Article 8 is not a basis for liability or compensation. Therefore, the problem is whether violation of obligations leads to a state responsibility. Using a dogmatic method, this research contends that "recognizing the significance of averting, minimizing, and addressing Loss and Damage" means acceptance of responsibility for a breach of obligations. Although the means of seeking reparation would not be compensation, States are obliged to eliminate sources of damage and take precautionary measures to address loss and damage. Notwithstanding this, placing the issue of loss and damage under the Agreement into a separate article can reflect to a great extent the significance of the matter.

Keywords: Climate Change, Climate Justice, Liability, State Responsibility, Environmental Law, Risk Management, Warsaw International Mechanism, Climate Change Loss and Damage, Insurance System, Definition of Loss and Damage, Responsibility versus Liability, COP Decision Paragraph 52.

El enfoque del acuerdo de parís hacia las pérdidas y los daños por el cambio climático

El artículo 8 del Acuerdo de París introduce obligaciones para las Partes del Acuerdo "con respecto a las pérdidas y daños asociados con los impactos adversos del cambio climático." Según el Párrafo 52 de la Decisión de la Conferencia de las Partes, el artículo 8 no es una base para la responsabilidad o compensación. Por lo tanto, el problema es si la violación de las obligaciones genera una responsabilidad del Estado. Usando un método dogmático, esta investigación cree que "reconocer la importancia de evitar, minimizar y abordar las pérdidas y los daños" significa aceptar la responsabilidad por el incumplimiento de las obligaciones. Si bien el medio para buscar la reparación no sería la compensación, los Estados están obligados a eliminar las fuentes de daño y tomar medidas de precaución para abordar las Pérdidas y los Daños. No obstante, ubicar el tema de Pérdidas y Daños bajo el Acuerdo en un artículo separado puede reflejar en gran medida la importancia del asunto.

Palabras clave: Justicia Climática, Responsabilidad, Responsabilidad del Estado, Mecanismo Internacional de Varsovia, Sistema de Seguros, La Definición de Pérdida y Daño, La Distinción entre Responsabilidad y Obligación, Párrafo 52 de la Decisión COP.

《巴黎协定》在气候变化损失与损害方面的应对方法

《巴黎协定》第 *8* 条就"与气候变化不利影响相关的损失和损害"一事，对缔约方规定了义务（*obligation*）。根据缔约方会议决议第 *52* 段，第*8*条并不是义务或赔偿的依据。因此，问题在于，违反义务是否会导致国家责任（*responsibility*）。通过采用教条主义方法，本文认为，"认识到'对损失和损害（*Loss and Damage*）进行避免、最小化和解决'的重要性"意味着接受违反义务的责任。尽管寻求赔偿的手段并非赔偿本身，但各国有义务消除损害来源并采取预防措施来解决损失和损害。尽管如此，将协议下的损失和损害问题单独放在一个条款中，可以在很大程度上体现该事项的重要性。

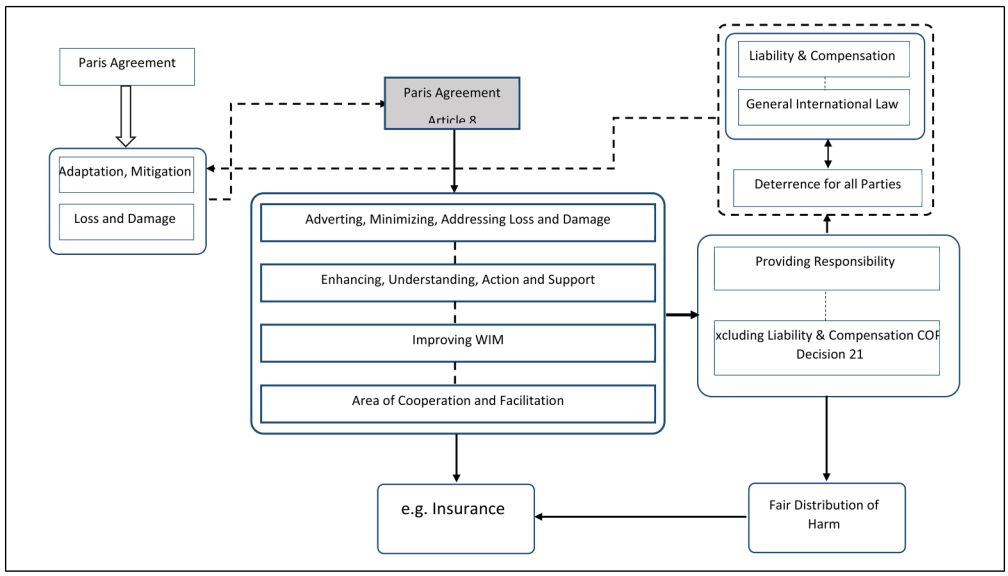
关键词**:** ：气候正义，义务，国家责任，华沙国际机制，保险制度，损失和损害的定义，责任与义务的区别，缔约方会议决议第 52 段。.

The Paris Agreement (PA) was adopted in 2015 by 196 States at the 21st meeting of the United Nations Framework Convention on Climate Change (UNFCCC 1992). The central goal of the PA is "to strengthen the global response to the threat of climate change by keeping a global temperature rise this century well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase even further to 1.5 degrees Celsius" (Zhongxiang 2017, 102). The issue of liability has historically been an obstacle to the conclusion of the Agreement (Lees 2017). The approach within the PA for reaching an agreement on responsibility for climate change loss and damage (L&D) indicates the formation of an unusual legal structure for responsibility. The PA calls for a voluntary cooperative approach (The Paris Agreement 2015, Articles 6.1, 7.7, and 8.4) that has been established by the Warsaw International Mechanism (WIM) adopted by the 19th Conference of the Parties (COP) in 2013 (Karimi-Schmidt 2020).

Several pieces of research have been conducted on the matter of L&D. Among them, Lees (2017) considered L&D provisions of the PA and alternative approaches to L&D. Simlinger and Mayer (2019, 190) studied the legal literature on L&D and the feasibility of private and administrative climate change litigation and Mace and Verheyen (2016) reviewed related Paris outcomes, and focused on the issues of compensation, liability, governance, financial support, insurance, and displacement. In the current research, we discuss whether: (1) States are bound to eliminate or mitigate sources of L&D and take preventive measures to avoid causing L&D and (2) according to the nature of L&D and difficulties to attribute it to a certain State's act or omission, there is a legal theoretical basis for the approaches presented by the PA and COP paragraph 52.

Thus, when classifying L&D, we scrutinize Article 8, paragraphs 1–4, para. 1 of which speaks of Averting, Minimizing, and Addressing Loss and Damage (AMALD) "associated with adverse impacts of climate change and enhancing related understanding, action, and support." We discuss whether this paragraph results in placing responsibility on States. Subsequently, we focus on the distinction between liability and

Figure 1.
Developed Framework for Research Methodology.



responsibility and the possibility of consolidating Article 8 and paragraph 52 of the COP decision, before finally presenting our conclusions.

Materials and Methods

This research has used a dogmatic methodology (see Figure 1), to study normative materials and to enable the clarification of the meaning and significance of the rule and has been based on logical and logistic analyses. The following has been assessed:

(I) Analysis of paragraphs 1–5 of PA Article 8, which refer to AMALD (para. 1), Improving the WIM (paras. 2 and 5), "Enhance Understanding, Action, and Support" (para. 3) and "Areas of Cooperation and Facilitation" (para. 4).
(II) Expressing the connection between Article 8 and paragraph 52 of the COP decision which excludes liability and compensation from the scope of Article 8.
(III) Emphasis on the importance of distinguishing between responsibility and liability and the implementation of responsibility and other forms of reparation in the L&D context.
(IV) Discussing the barriers on restricting a PA provision by a COP decision; however, even if we assume the possibility of such restrictions, responsibility is still referable under Article 8. In addition, liability and compensation are still a recourse under the general rules. Section (e) represents the fair distribution of harm as an equitable means to distribute the harm between developed and developing States, and we believe that the approach is admitted in the PA, for example, through the insurance mechanism.

Results

Loss and Damage: A New Classification

UNFCCC (1992) established "mitigation" as the first pillar of climate change law, and "adaptation" as the second. Pursuant to the negative impacts of climate change, Small Island States (SIS) and other vulnerable States have, for many years, been seeking to address L&D (Parties Submission 2009) and have emphasized that L&D are different from adaptation (Kreienkamp and Vanhala 2017, 4). The reason for such an assertion was that adaptation potentially focuses on restricting the implications of climate change and the costs of trying to avoid such negative impacts or averting them have been expended. Adaptation is a

management and policy-making approach and deals with variability in a system due to reduced vulnerability against external drivers, forces, and stresses of the system (Smit and Wandel 2006). The Intergovernmental Panel on Climate Change (IPCC 2014, 118) defines adaptation as "the process of adjustment to actual or the expected climate and its effects. In human systems, adaptation seeks to moderate or avoid harm or exploit beneficial opportunities. In some natural systems, human intervention may facilitate adjustment to expected climate and its effects." It is expressed that adaptation to climate change is an activity that should be locally beneficial and, as a result, the obligation is upon the local authority that looks after adaptation measures, including the necessary financial resources (Amini, Mianabadi, and Naddaf 2018, 167). "L&D," on the other hand, is retrospective and relates to impacts that occurred in the past or are inevitable (Lees 2017, 64).

Although in 2013, at the COP held in Warsaw, the Parties established the WIM to address L&D associated with the impacts of climate change, particularly on vulnerable countries, there was a huge disagreement on whether L&D should be addressed as part of adaptation or be considered independently under the PA (McNamara 2014, 244–45). On the one hand, developed countries such as the United States have firmly opposed this reasoning as they were concerned that it comes as a pretext for developing countries to file claims for liability and compensation (Broberg 2020a, 529) and emphasized on adding paragraph 52 to the COP decision, based on which Article 8 "does not require any liability or compensation" (UNFCCC 2013a, 1–3). On the other hand, the Parties disagreed that most vulnerable countries believed that L&D differs from adaptation, while developed countries are of the opinion that L&D should be considered in the framework of adaptation to climate change (Klein *et al.* 2017, 228; Bodansky, Brunnée, and Rajamani 2017, 316). Nevertheless, paragraph 52 of the COP Decision kept the issue of L&D away from its essential components; that is, liability or compensation (Toussaint 2021, 19; Pidcock and Yeo 2017). Under paragraph 52 of the COP decision (1/CP.21), countries agreed that Article 8 is not considered as a basis for any kind of liability or compensation (Reins and van Calster 2021).

In Warsaw, the Parties agreed to create a new framework under the Cancun Adaptation Framework, but they also agreed on its review in 2016 (UNFCCC 2013). In 2014 in Lima, the Parties compromised over a biennial working plan on the Executive Committee (ExCom) of the WIM (UNFCCC 2014). Since the review of the mechanism related to L&D had been postponed to 2016, several developed countries did not

assume that the issue would be raised in Paris (Taub *et al.* 2016). However, given the importance of the issue for vulnerable countries, they succeeded in inserting a provision on L&D under the PA (UNFCCC 2013). The PA added "L&D" as the third pillar. Prior to the adoption of the PA, L&D was essentially viewed as part of adaptation (Broberg 2020a, 528). However, according to the PA, L&D issues shall no longer be treated in the field of adaptation and are referred to as beyond the adaptation approach (Broberg 2020b, 212). The PA is the first global climate change agreement that includes an explicit reference to human rights, confirming the international community's recognition that human rights obligations apply in the context of climate change (Duyck 2015, 5). The preamble and the main body of the PA recognized that climate change can affect several human rights.[1] In addition to environmental adverse impacts (Nightingale *et al.* 2020), the PA mentioned the social, economic, and cultural impacts of climate change and the necessity to take action in this regard. Thus, the linkage between climate change L&D and the violation of human rights reveals the importance of addressing L&D.

Article 8 of the PA which is provided for L&D, is significant for two reasons: (1) it expressly puts L&D in the realm of the PA; and (2) as an independent rule, it undoubtedly separates L&D from adaptation (Mechler *et al.* 2019).

Generally, the PA acknowledges the importance of addressing L&D and not merely averting and minimizing it (Klein *et al.* 2017). Article 8.1 recognizes the role of sustainable development in mitigating the risks from L&D (First meeting of the Expert Group 2016; United Nations General Assembly 2015).[2] Not only does it link the efforts for addressing risk from L&D to other articles of the PA (i.e., Article(s) 2.1, 4.1, 7.1, and 10.5) but also connects them to a broader action plan for sustainable development; that is, UN Sustainable Development Goals (SDGs) (Sindico 2016, 135–36). In the preamble of the PA, the

[1]The preamble to the Paris Agreement includes an acknowledgement "that climate change is a common concern of humankind" and that "Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights." It also adopted provisions to promote gender equality, and participation, sustainable development, and poverty eradication as side-benefits, or, more generally, as a context for climate action.

[2]See especially Goal 13: "Take urgent action to combat climate change and its impacts, which amongst other things calls for strengthening resilience and adaptive capacity to climate-related hazards and natural disasters in all countries."

intrinsic relationship among actions, responses, effects of climate change, and fair access to sustainable development is emphasized, while the provision related to sustainable development in Article 8.1 once again affirms the importance of this concept (Sharma 2020, 73–74). It seems that limited focus on risk reduction, however, indirectly acknowledges that sustainable approaches to development will not be sufficient, especially in situations where impacts of climate change eliminate the effect of development efforts and result in permanent and irreversible L&D. The international community accepted that L&D is the result of negative impacts of climate change and needs direct attention (Doelle 2015).

Reviewing the provision of Article 8.1, the definition of the two terms "loss" and "damage" is quite ambiguous. In other words, the PA does not provide an accurate definition for these two terms, and this ambiguity can itself be a deliberately planned tool for restricting the implementation of Article 8. The PA gives examples of L&D, including "extreme weather events" and "slow onset events," hence the key element for the definition of L&D in the text of the PA is that L&D is associated with the negative impacts of climate change. This is a broad concept of L&D, while the PA does not provide any clear strategy on what constitutes L&D in nature (Wallimann-Helmer 2015).

At first, it might be alleged that L&D are similar concepts, but a question may be raised about the reason for employing both concepts together. In this regard, it is worth noting that L&D are not fixed concepts and have experienced developments during international negotiations. Both concepts in the PA refer to the negative impacts of climate change that human beings are unable to avoid and adapt to through mitigation activities of Greenhouse Gas (GHG) emissions (Warner and Van der Geest 2013). In this regard, "loss" is defined as "an undesirable outcome of a risk, disappearance, or diminution of value, usually in an unexpected or relatively unpredictable way" (Garner 2004). Some losses, like famine and crop failure, can be valued in money, but the value of some other losses, such as losing a homeland or the disappearance of a traditional religious ritual, might not be calculated in money (Schäfer and Kreft 2014). In other words, "loss" in the PA refers to the effects of climate change whose "*restitutio in integrum*"[3] is impossible, like melting polar glaciers that destroy freshwater resources. Damage, on the other hand, refers to negative impacts whose "*restutio in integrum*" is possible, like damage following a cyclone (Burkett 2014, 120–21;

[3]Restoration to a whole or uninjured condition: restoration to the *status quo ante*.

Mathew and Akter 2017). It is worth noting that not all forms of "damage" give rise to a right to action; for example, an occupier of land must put up with a reasonable amount of noise from his neighbors, while the law generally gives no compensation to relatives of an accident victim for grief or sorrow, except in the limited statutory form of damages for bereavement (Earnshaw 1982). However, Walliman-Helmer (2015) reveals that the distinction between the terms of loss and damage is mostly a matter of goal and practical effects.

Undoubtedly, failure in actively pursuing an emission pathway consistent with a 1.5 °C rise in temperature can serve as a basis for compensation and liability for mitigation of GHG emissions; since this goal forms part of the primary accepted obligations of the Parties of the PA.[4] Many Intended Nationally Determined Contributions (INDCs) have been provided before the Paris conference in the framework of a 2 °C scenario and were void of necessary ambition. Therefore, the 1/CP.21 decision requested the Parties to provide new and updated INDCs until 2020 (UNFCCC 2016b). Several studies have been conducted on the details of significant risks and effects of a 2 °C temperature rise compared to 1.5 °C. Following the results of the 2013–2015 review (UNFCCC 2015a) the Parties have been warned about these growing risks and effects. Consequently, all Parties have acknowledged through 10/CP.21 that pursuing a 1.5 °C limit will significantly mitigate risks and effects of climate change (UNFCCC 2015b).

A far-reaching review has been carried out on how to explain the key terms of L&D accurately and brings out challenges in terms of precisely assessing the nature of implications from inserting an article like Article 8 in the text of the PA (Mechler *et al.* 2019). Reference of Article 8 to the WIM also helps with the clarification of L&D. Primarily, the discussion had been theoretical and focused on the matter surrounding to what extent L&D can and should be distinct from approaches related to adaptation and mitigation. Although much success is achieved through mitigation and adaptation, some L&D has remained and will occur in the future. This is precisely what has been referred to as L&D. "L&D" is a post-adoptive issue and is being raised when mitigation and adaptation

[4]Article 2.1(a) reads as follows: "This Agreement aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by: holding the increase in the global average temperature to well below 2 °C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 °C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change."

activities have not been sufficient to prevent the adverse impacts of climate change (Lees 2017).

The Warsaw International Mechanism: Linking Climate Change Impacts to L&D

L&D was explicitly referred to in a formal decision first in the Cancun Accords of 2010, which launched approaches to address L&D associated with climate change impacts, especially regarding vulnerable developing countries (UNFCCC 2010). In 2013 the WIM was established on L&D. The WIM was intended to be the main instrument of the Convention to promote the implementation of approaches addressing L&D associated with the adverse impacts of climate change in a comprehensive, integrated, and coherent manner (UNFCCC 2013). The WIM can operate in critical areas, including early warning systems, emergency preparedness, slow-onset events, irreversible and permanent L&D, risk insurance facilities, and climate risk consolidation (Calliari *et al.* 2020). The existing mechanism has left its footprint in the PA under Article 8.2 of the PA. Nevertheless, the Paris COP has the authority to improve and strengthen the WIM such that it paves the ground for the development of this mechanism.

According to paragraph 47 of Decision 1/CP.21, "the Parties decided to continue the WIM following the 2016 review of the COP," (UNFCCC 2016b) indicating the survival of this mechanism after the PA enters into force. Not only did the 2016 review provide an opportunity for assessing the current performance of the WIM, but it also offered a forum for review and consultation on how this mechanism can be enhanced and strengthened so that it is deemed to be fit for this purpose over the long-term period (UNFCCC 2016).

The PA identifies the WIM to cooperate with existing expert bodies and groups in the PA as well as related expert bodies outside the PA, reflecting its permanent role as an institution to address L&D. This type of cooperation is the *modus operandi* of the Convention, which has been strengthened through Decision 2/CP.19, as well as an initial biennial working plan of the ExCom of the WIM (UNFCCC 2013). Consequently, the outcome of the WIM review in 2016 indicates that this mechanism continues to operate.

According to paragraph 5, it was decided that the WIM shall fulfill its role under the Convention for promoting the implementation of approaches to address L&D associated with the adverse effects of climate change, pursuant to Decision 3/CP.18, in a comprehensive, integrated, and coherent manner (UNFCCC 2013). The WIM also mandated to complement, draw upon the work of, and involve, as appropriate,

existing bodies and expert groups under the Convention as well as on that of relevant organizations and expert bodies outside the Convention, at all levels (national, regional, and international). Regarding activities of the WIM, under paragraph 7, it was decided that, in exercising the functions outlined in paragraph 5 of the same decision, the WIM will, *inter alia*:

1. facilitate support of actions to address L&D;
2. improve coordination of the relevant work of existing bodies under the Convention;
3. convene meetings of relevant experts and stakeholders;
4. promote the development of, and compile, analyze, synthesize, and review information;
5. provide technical guidance and support;
6. make recommendations, as appropriate, on how to enhance engagement, actions, and coherence (UNFCCC 2015a).

The WIM will not be fully operational until it includes a financial mechanism to provide resources to developing countries to address L&D (Shawoo 2020). The WIM review at COP25 provides a new opportunity to break the deadlock (Hirsch *et al.* 2019, 50). At COP25 in Madrid, a clear demand emerged from the international community, particularly the Least Developed Countries (LDCs) and Small Island Developing Countries (SIDCs) for the WIM ExCom to establish an L&D fund to provide finance and compensation to vulnerable countries. A project carried out by Stockholm Environment Institute aimed to address this demand by developing a design for such an L&D fund. The overall aim of the project is to provide a set of options for the design of this fund to be presented to, and considered by, the ExCom of the WIM under the UNFCCC (Byrnes and Surminski 2019, 7).

At COP26, countries established a two-year Glasgow Dialogue to discuss possible arrangements for L&D funding, with the first discussion to be held in June 2022. They also agreed to operationalize and fund the Santiago Network on Loss and Damage (Decision 2/CMA.2 2019, para 43),[5] which aims to provide developing countries with technical assistance on how to address L&D in a robust and effective manner (UNFCCC 2021, 8).

[5]The vision of the Santiago Network is to catalyze the technical assistance of relevant organizations, bodies, networks, and experts, for the implementation of relevant approaches for averting, minimizing, and addressing L&D at the local, national, and regional level, in developing countries that are particularly vulnerable to the adverse effects of climate change.

Cooperation, Evaluation, and Future Outlook

The PA has appropriately paid attention to the Parties' duty to address L&D and how this duty should be exercised. The Parties are bound to enhance understanding, action, and support, to address L&D on a cooperative and facilitative basis (The Paris Agreement 2015, Article 8.3). The responsibility of the Parties to enhance and support action on L&D can be broadly interpreted so that results in a progressive action plan for L&D and can be accompanied by sufficient funding (Article 8.3 of the PA). It is worth noting that the provision related to support (which is generally understood to include financial assistance) is unable to have a direct relationship with the financial mechanism of the Convention (Udo 2022, 16). However, the broad interpretation of the applicability of PA rules and financial mechanisms can generally be such that it includes L&D as well (The Paris Agreement 2015, Article 9.8). The decisions of Doha and the Warsaw COP also have links to the need for financial support for L&D, the WIM, and the obligations of developed countries to assist particularly vulnerable developing countries to provide funds for dealing with the adverse impacts of climate change (UNFCCC 2013a, 2013b).

The second part of Article 8.3 highlights that the Parties should contribute to L&D on a cooperative and facilitative basis through the WIM. Initiating cooperation on L&D outside the scope of the WIM provides grounds for the Parties to develop L&D through higher interactions in the framework or outside the procedure of the PA (Klein *et al.* 2017). On the other hand, the precise wording of "the Parties should take a cooperative and facilitative approach to address L&D" enhances the opinion that adversarial judicial procedures to deal with L&D under the PA are not applicable at present (Legal Response Initiative 2016). Thus, as some scholars express, for a better understanding, the meaning of the concepts of "cooperative and facilitative" in Article 8.3 should be read with paragraph 52 of the Paris COP together, where all Parties agreed that Article 8 does not require any basis for liability or compensation (Legal Response Initiative 2016).[6]

In the 24th meeting of the COP in Katowice, Poland, in 2018, the Parties agreed on a road map on L&D mentioned in Article 8 of the PA to include,

[6]This should not be read as precluding Parties from exercising existing rights under international law. In fact, a number of SIDS (Marshall Islands, Nauru, and Tuvalu) have reinforced this interpretation through explicit statements in declarations accompanying their instruments of ratification of the Paris Agreement.

for example, a "commitment of $190.4 billion beginning January 2019 through December 2024" (UNFCCC 2018a). It should be noted that in this COP, by the efforts of the representative of Iran and Saudi Arabia, a developed definition of L&D was recognized successfully. Accordingly, it includes the costs of action for the decarbonization of 14 members of OPEC to try to address climate challenges (UNFCCC 2018b, 4–5).

The list under Article 8.4 contains highly prioritized areas, such as slow-onset events (like sea-level rise, acidification of oceans, and constant temperature rise), irreversible, permanent, and non-economic L&D for particularly vulnerable developing countries. The list also includes areas like early warning systems and resilience of communities, livelihoods, and ecosystems (UNFCCC 2015a) that have been inserted in both previous decisions on adaptation under UNFCCC and Article 7 of the PA focusing on adaptation with adverse impacts of climate change (Article 7.7 (c)). These may also lead to confusion in identifying the boundary between adaptation and L&D, under the guidelines on climate change adaptation and L&D.

The link between adaptation and L&D refers to the fact that there is a range of extreme human-made impacts of climate change—from those that are available to those that are not—on which similar approaches can be appropriate. As the action on adaptation and L&D proceeds under the Convention and the PA, it is expected to raise the awareness of the limits of adaptation (ensuring the need to address L&D), whereas it may overlap between integrated management of adaptation guidelines and L&D.

In addition to future working areas on L&D that have been specified under the PA, the Paris COP decision made the development of current actions on L&D under the Convention obligatory, requesting the ExCom of the WIM to (1) establish a Clearing House for risk transfer, and (2) create a special task force to develop recommendations for integrated approaches to AMALD displacement from adverse impacts of climate change (UNFCCC 2013). These two demands stem from the proposal of the least developed countries, which were later amended and incorporated in a proposed scheme for a decision on L&D submitted by a group of developing countries (UNFCCC 2013). Accordingly, the requirement to establish a Clearing House and a special task force represents a compromise on how to proceed with ongoing action on L&D under the Convention. The ExCom of the WIM commenced its activity to create these two new workflows and has recognized complementary areas to those in its current working plan (Summary of ExCom 2 Conclusions 2016).

The function of the WIM, which was established two years before the conclusion of the PA, is now in progress, and its present working plan involves most areas of cooperation under Article 8.4, including comprehensive risk management, slow-onset events, and non-economic losses (UNFCCC 2014). No matter to what extent countries mitigate GHG emissions or how efficiently adaptive measures can be taken, countries with the most significant efforts to include L&D in the PA as a separate article (Article 8) are those that will suffer from irreversible L&D, according to recent scientific predictions (Burkett 2015). In fact, before the Paris Conference, many—particularly vulnerable developing countries—expressed clearly that an agreement would not be accepted if it did not recognize L&D distinctively and separately (Burns 2015, 415; AOSIS 2019). Thus, for particularly vulnerable developing countries, requesting to recognize L&D as a distinct component from the climate change equation in the PA, was beyond just symbolism.

It may be too early to evaluate whether relevant regulations of L&D under the PA provide climate justice (Wallimann-Helmer *et al.* 2019)[7] for the least developed countries. The answer to this question depends on the mitigation and adaptive efforts that the PA can deliver. Since the PA is the starting point for long-term global efforts to deal with climate change of human origin, it would be possible to reach climate justice provided that there exists a political will. On the other hand, relevant regulations on L&D not only frame the way concerning how to deal with the issue in the future but also should be used as a guidance for the WIM action.

There are a number of core areas that the ExCom and the WIM need to focus upon in order to facilitate the address of L&D. These include: setting up a new and independent finance arm; establishing ExCom Expert Group on Action and Support for better monitoring; listing L&D as a permanent agenda item for Subsidiary Bodies (SBs); and providing an accurate method of the Gap Report for assessing L&D. The Alliance of Small Island States (AOSIS) submission on the 2019 review of the WIM also mentioned that similar practical actions could be taken to assist SIDS to meet their needs, including: the development of

[7]When L&D occurs, it is important to pursue who is responsible for it and how it should be repaired. Here is the place for the theory of "distributive justice." Distributive justice is more applicable since the theory focuses on the necessity for redistribution of injustice harms and not compensation based on miscued emissions. It should be noted that the PA has taken this view when the COP 21 revealed that Article 8 is not a basis and does not provide any basis for liability and compensation.

a standardized approach to risk assessment and reporting on L&D; establishing and strengthening action and support; developing areas for further works such as expansion of the work of the ExCom; and integrating L&D with other areas of work under the Convention and PA (e.g., Enhanced Transparency Framework and Global Stocktake, as well as related work outside the process (de Chazournes 1998).

Descriptive Analysis on Hierarchy of Article 8 and Paragraph 52

The PA, like any other international treaty, comes into force with the signature and ratification of its Parties, but other States may accede to it as new members (The Paris Agreement 2015, Article 21). COP, which is usually convened annually, takes decisions on how to implement the PA and makes interpretations where necessary (The Paris Agreement 2015, Article 16.4). Therefore, COP decisions are generally taken by consensus (The Paris Agreement 2015, Article 16.5) and in case of any serious objection, by a majority of votes. The decisions cannot be opposed to the PA or make new rights and obligations for the Parties (see Decision 2/ CP.15 of the Copenhagen Accord: UNFCCC 2009; The Geneva Ministerial Declaration 1996; Decision 1/ CMP.8 of the Doha Amendment: UNFCCC 2013b; Depledge 2001; Vihma 2015; Vogel 2014).[8] Regarding the legal position of COP decisions, it should be said that these decisions are not formally legally binding unless the PA gives COP an explicit authority to make binding decisions.[9] Nevertheless, COP decisions have gained operational and legal importance in the climate regime (Bodansky 2015, 4).

COP decisions develop the normative core of the climate regime by elucidating the rules of the PA (Kyoto Protocol 1997, Articles 6.2, 12.7, and 17, Decision 2/CMP.1 2005), scrutinizing the details of their contents (UNFCCC 1992, Article 4.2(d)), and providing a ground for negotiations to provide more agreements (Decision 1/CP.1 of the The Berlin Mandate: UNFCCC 1995a, 1995b, Decision 1/CP.17 of the Durban

[8]However, what this means in practice is open to interpretation, most importantly by the COP President whose task it is to announce that a decision is adopted, often in highly tense situations. The challenges of decision making in the context of the default consensus rule has triggered dispute on several occasions, including over the 2009 Copenhagen Accord and the1996 Geneva Ministerial Declaration (neither of which were adopted), as well as the Cancún Agreements and the 2012 Doha Amendment to the Kyoto Protocol (which eventually were).

[9]From a formal legal perspective, COP decisions are not, absent explicit authorization, legally binding.

Platform: UNFCCC 2011). These decisions have also established a fundamental institutional structure for monitoring performance and compliance with the obligations of the PA (see the Marrakesh Accords of 2002).[10] Hence, the significance of operationalizing COP decisions shall be more evident concerning L&D since, in most cases, the context and language of climate regime treaties are ambiguous, which reflects and predicts enduring inconsistencies. Therefore, the settled context, even in COP decisions, is often being narrated and reproduced in subsequent prominent legal texts (Bodansky, Brunnée, and Rajamani 2017). As an example, the selected context for the Berlin Mandate as a COP decision has explicitly been reflected in the operational rules of the Kyoto Protocol (de Chazournes 1998). Besides, COP decisions like the Berlin Mandate, the Bali Action Plan (UNFCCC 2007), and the Durban Platform created frameworks and associated boundaries that the Parties seldom diverged from. For instance, the Berlin Mandate excluded new obligations for developing countries (UNFCCC 1995a, 4) and the Kyoto Protocol was finally unable to contain any new obligation for these countries (de Chazournes 1998). Nevertheless, acknowledging the fact that, contrary to international treaties, COP decisions are not an official source of law, they do contain a normative force. These decisions (The Paris Agreement 2015, Article 16.4) may, in certain cases use the mandatory language of "shall" (see Rajamani 2016). As a result, COP decisions, to a great extent, can affect and qualify State behaviors concerning the indeterminate and sporadic regulations of the PA and can even lead to compliance (Bodansky 2015).[11] In short, COP decisions are not legally binding unless there is a "hook" in the Framework Convention that gives it a legal force. There is no identifiable provision in the UNFCCC that would lend legal force to the prohibition of claims for compensation based on Article 8 of the Agreement.

Paragraph 52 of the Paris COP decision states: "Parties agree that article 8 of the PA does not require any liability or compensation." This language was part of the Parties' compromise in negotiations on including L&D in the PA. Although some observers were concerned about the

[10]For example, bodies with considerable influence and consequences for State and non-State actors—such as the Clean Development Mechanism Executive Board, the Joint Implementation Supervisory Committee, and the Compliance Committee—were all constituted by COP decisions.

[11]Explaining that an agreement in legally binding terms signals stronger commitment, according to Daniel Bodansky, though political agreements can have greater influence on country behavior.

potential consequences of such language for the existing rights of States about compensation under public international law (Goering 2015). A COP decision, which is not binding by itself, cannot nullify the general rules of responsibility that involve full reparation for internationally wrongful acts under international law. Also, some developing countries issued several declarations when ratifying the PA aiming to place a safe margin to maintain their rights on compensation from climate change under public international law (Legal Response Initiative 2016).

The fact that recognition of L&D in Article 8 does not lead to liability or compensation, can be problematic for some countries. As the provision is part of the COP decision and not the PA, there is a possibility for its revision and for predicting compensation in the text of the PA in the future. It is generally confirmed that COP decisions form the current inference from the rules of UNFCCC, but it cannot change the nature of legally binding provisions of the PA. Thus, there is an opportunity in the future for clarifying or updating the 21st decision of COP (Brunnée 2002, 1). Hence, there is not a certain legal status on the effect of COP decisions regarding the interpretation of the PA (Mace and Verheyen 2016).

Further, regardless of the nature of the Decision text, many commentators and delegates note that there are existing avenues for liability and compensation under international law that paragraph 52 cannot foreclose (Clark 2015; Millar, Gascoigne, and Caldwell 2013).[12] The no-harm and polluter-pays principles, for example, are cornerstones of international environmental law, as are prohibitions against, and compensation for, transboundary harm (UNFCCC 2001; Schwarte and Frank 2014; Doelle 2015). All these principles and others proposed are relevant to the circumstances of global climate change (Crosland 2015).[13]

Discussion

In this section, we discuss the features and benefits of consolidating Article 8 of the PA and paragraph 52 of the Paris decision. First, we consider the distinctions between the two terms "responsibility" and

[12]"We believe we already have avenues for liability and compensation under international law and international agreements. The discussion going on right now is a discussion among lawyers. How do we end up with a text that allays the fears of the U.S., the EU and other countries that we are creating a mechanism for liability and compensation? And how do you address our concern that we do not give up any rights that we presently already have under international agreements."

[13]Crosland (2015) notes that successful climate litigation may no longer be elusive.

"liability" and subsequently the importance of determining State responsibility. Then, we focus on a logical way to consolidate PA Article 8 and paragraph 52 of the COP decision before finally discussing the insurance system in the PA.

As Emma Lees (2017, 63) notes,

> A distinction can be found between responsibility (that is to say, a link between actor and factual outcome, be that a causal or other link as defined by the legal system) and liability (i.e. the legal consequence or burden which befalls them), in other words, responsibility is the relevant factual connection between the act and the "real world" outcome, and liability is a legal or other normative consequence of finding that such a connection exists whereby the connection is treated as *a priori* justification for that consequence. Thus, "to establish responsibility, it must be shown that the harm was done … by the agency that the law treats as a potential basis for liability."

According to the 2001 Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA), what is meant by State responsibility is responsibility for "internationally wrongful acts" (ILC's Articles on Responsibility of States 2001, Article 1) toward another state. For state responsibility to be applied (Crawford, Peel, and Olleson 2001), the two underlying criteria include: first, "a breach of an international obligation of the [responsible] State" in respect of the second State which is called "objective fault" (ARSIWA 2001, Article 2(b)) and second, that breach "is attributable to the [responsible] State under international law (ARSIWA 2001, Article 2(a))." In other words, two elements which in many domestic legal systems are (additionally) indispensable criteria for defining a wrongful act do not count on the international level: the element of subjective fault or "culpa"—that is, knowingly or even purposefully violating a rule—and the element of damage. The mere attributable breach of an international obligation, without subjective fault and without damage (whatever the exact definition and scope of that term), is already enough to incur State responsibility. The term "liability," on the other hand, just as with the term "responsibility," is a long-standing concept. As opposed to (State) responsibility, liability is derived for a large part from domestic legal orders. Perhaps this already accounted for this first measure of confusion. An almost uniform element, however, could at least be found in the close relation of liability to the concept of damage. An internationally wrongful act can lead to damage or consist itself of the causation of damage. In other words, the damage is most often a crucial element to define the existence of an internationally wrongful act. Thus, when acts

of one State cause damage to another State, its nationals, or its property, both principles can simultaneously become involved with all due consequences. This already became clear in cases of transboundary environmental pollution, where the causation of damage or harm through pollution to another State's territory (and not the actual activity causing the harm) was the perfect example of the violation of an international obligation not to do so (Von der Dunk 1991, 363–64).

That said, from an environmental perspective, determining State responsibility is important when dealing with the effects of climate change on SIDS (Falez Omari 2020). Of legal consequences for the internationally wrongful act which hold a State responsible according to ARSIWA are continued duty of performance (ARSIWA 2001, Article 29), cessation and non-repetition (ARSIWA 2001, Article 30), and reparation (ARSIWA 2001, Article 31). "Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination" (ARSIWA 2001, Article 34). "Full reparation" is understood here as reparation for the full value of the injury. Restitution often consists in re-establishing the situation which existed before the wrongful act was committed (ARSIWA 2001, Article 35), whereas compensation—in practice the most common form of reparation—covers any financially assessable damage including loss of profits insofar as it is established (ARSIWA 2001, Article 36). Satisfaction relates to measures such as apologies, usually limited to reparation for symbolic harms (Simlinger and Mayer 2019).

One of the consequences involved by State responsibility is the obligation to make good for any injury caused by the internationally wrongful act (ARSIWA 2001, Article 36). In the Chorzow Factory case, the Permanent Court of International Justice (PCIJ 1928) stated in paragraph 47 that "reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed."

The existence of an internationally wrongful act is a challenging discussion in the field of climate change. State responsibility may be raised if a State breaches its treaty-based obligations, particularly obligations to limit or reduce GHG emissions under the UNFCCC (Article 4), the Kyoto Protocol (Article 3), and the Doha Amendment to the Kyoto Protocol (Erbach 2015) or other conventional obligations such as the obligation to phase out the production and consumption of ozone-depleting substances which is emphasized in the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer (Secretariat

Ozone 2000), to reduce long-range transboundary air pollution (United Nations 1979; Wettestad 2001), or to combat pollution of the marine environment (United Nations Convention on the law of the sea 1982, Part XII; Nordquist 2003).

However, the main basis to invoke State responsibility derives from the general principles in international environmental law such as the "no harm principle" (Tsang 2021). According to this principle, States must prevent activities that cause cross-boundary environmental injuries (Mayer 2016, 81). The principle has been confirmed by the Stockholm Declaration (principle 21) (Sohn 1973), Rio Declaration (principle 2) (Declaration 1992) and has been recognized by the International Court of Justice as customary international law in advisory opinion 1996 (ICJ 1996, 29). The Court also recognized that States have a duty of due diligence to control activities within their territory which may cause transboundary environmental harms (ICJ 2010, 14). As mentioned above, State responsibility led to two main legal consequences: the continued duty of performance (ARSIWA 2001, Article 29) and the obligation to make reparation for any injury (ARSIWA 2001, Article 31). Hence, the breach of the no-harm rule requires States to cease the emissions to apply the continued duty of performance (ARSIWA 2001, Article 30).

The causal connection between GHG emissions and its adverse impacts seems to be one of the challenges facing State responsibility for climate change. Yet, the law of State responsibility appears flexible in this regard. Rather than a strict limitation to the "direct" consequence, injury in international law is extended to any consequence unless it is "too indirect, remote, and uncertain to be appraised" (Kuhn 1938). The consolidation of Article 8 of the PA and paragraph 52 of the COP decision by the State responsibility rules and principles is therefore one of the significant questions for State responsibility in the L&D context.

Consolidating PA Article 8 and the COP Decision

The PA as a legal instrument has provided rights and obligations for its Parties (Bodansky 2015) and States have recognized the duties to AMALD, meaning accepting the responsibility for a breach of such obligations. Though, as expressly stated by paragraph 52, the means of redress for a breach of obligations under Article 8 is not compensation (Raman 2018), State Parties are committed to eliminate or reduce sources of L&D as a deterrent and take precautionary measures for addressing L&D. Compensation is thus not the only goal of the rules of

responsibility; deterrence and prevention are among the goals of the law of responsibility (Badini 2005, 322–25).

As mentioned above, there are legal distinctions between the two concepts of "responsibility" and "liability." While the former is a general concept, the latter is limited to monetary responsibilities and compensation is related to "liability" (Kecskés 2008, 223). In other words, while paragraph 52 excluded liability and compensation, it does not mean that State responsibility and other forms of reparation (other than compensation) cannot be invoked. The reasoning is reinforced by the PA itself, where the PA provided shared responsibility of the States and applied monetary funds in this regard (Legal Assistance Paper 2016).

Leghari v. Federation of Pakistan Federation (2015) is an example of such cases. In this case, the supreme court of Lahore in 2015 acknowledged that the delay and failure of the government to implement the guideline led to a violation of the fundamental rights of citizens who should have been protected. Accordingly, the court ruled that the Pakistani government should act upon improving adaptation to climate change under the control of a special expert panel and submit its report to the court.[14] Here, the court made the government bound to take measures that led to improving adaptation to climate change instead of condemning it to compensation (Simlinger and Mayer 2019, 180–85); that is, while it recognized the State responsibility, it abstained from condemning the government to compensation, and so this case indicates the responsibility to compensate (liability) well.

When there is the responsibility to AMALD and the means of redress include forcing States to avert, minimize, and address L&D, compensation should logically be sought in the case of a breach of these obligations, a result that has been negated by paragraph 52 of the Paris Decision. Therefore, it should be said that, as Article 15.2 explained, the word "non-punitive" in this Article can indicate that it is not possible to punish a State Party that did not comply with the above-mentioned obligations, in the form of compensation. However, it can be argued that a non-punitive manner is different from indemnification through compensation and the subsequent one is punitive while the latter one is restorative. Believing in a lack of liability does not prevent one from predicting

[14]Lahore High Court Green Bench, Orders of September 4 and 14, 2015. In a far-reaching judgment, the Green Bench of the Lahore High Court ordered the Pakistani government to appoint a focal person on climate change and develop a list of adaptation measures to be implemented by 2015. The court also established a Climate Change Commission to oversee the government's compliance with its orders.

future remedies as compensation since Article 16.4(b) provided for the exercise of certain functions and guidelines that may be required for the implementation of this agreement. However, as paragraph 52 has provided for a lack of liability and compensation, it is possible to reach a future agreement on compensation due to a breach of obligations to AMALD. Explaining that paragraph 52 is intended to provide an interpretation made from Article 8 (but that such an interpretation is provisional and flexible), the wording of Article 8 can take the exegesis from which compensation could be inferred. Although Article 8 provides the obligation to AMALD, paragraph 52 excluded "liability" from the scope of the Article and considered the means of reparation regardless of compensation. However, States are obliged to adopt preventive measures, and responsibility should be recognized considering this approach. Article 8.4 of the PA supports the approach by counting the areas of cooperation; in other words, Article 8.4 commitments on cooperation shape the preventive measures approach and reinforce it.

Such interpretations bring the principle of "precautionary measures" and the institution of "attempt to damage" to mind which are mostly based on general rules and domestic law. Accordingly, if an individual commits an act or omission that (under reasonable grounds and based on the ordinary course of affairs in the future) could lead to L&D, the potentially injured Party can invoke cessation of the act/omission and also force elimination of the source of harm, or take precautionary measures to prevent the occurrence of harm in the future (Jourdain 2012, 59).

It could be alleged that, along with developed States, many developing States' approaches were effective in the occurrence of climate change L&D, hence the developing States are responsible in this regard. We admit that the approaches of developing States can lead to L&D as well; clearly, these States are also responsible for their wrongful acts/omissions. However, in this research, we have focused on equitable grounds to show that "fair distribution of harms" and the principle of common but differentiated responsibility—which is admitted in the PA itself—provide that developed States bear a major share in the distribution of responsibility. In other words, one of the purposes of the rules of responsibility is a fair distribution of harm to refrain from the imposition of it merely on the injured Party (Badini 2006, 413–16, 450, and 452). It is scientifically proven that 63 percent of GHG global emissions from 1800 to 2005 have been released by only seven countries (the United States, China, Russia, Brazil, India, Germany, and the United Kingdom) and 20 high-ranked emitters are responsible for 82 percent of emissions

(Matthews *et al.* 2014). Thus, industrial States have played a crucial role in climate change and L&D. However, developing countries and AOSIS may be responsible for the approaches which led to L&D, but are mostly potentially affected by the Parties from climate change. Therefore, it is only fair that industrial countries shoulder the greatest share to pay for the costs of L&D (Dellink *et al.* 2009). Moreover, the basics of "responsibility," such as the theory of risk versus benefit, justify their greater share of responsibility—the insurance system which is provided in the PA contains this reasoning (The Paris Agreement 2015, Article 8.4(f)).

Insurance System in the PA

AOSIS widely insisted on the necessity to establish an insurance system to compensate L&D imposed on vulnerable developing countries (Dialogue Working Paper 14 2007). Under Article 8.4(f), one of the areas of cooperation and facilitation for understanding, support, and action spans risk insurance facilities, climate risk pooling, and other insurance solutions. It means that for compensating possible L&D from the negative impacts of climate change, States could resort to insurance. In the short term, COP Decision 1/CP.21 requests the ExCom of the WIM to establish a Clearing House for risk transfer that operates as a reservoir for relevant information on insurance and risk transfer, through which the Parties' efforts are facilitated to develop and implement comprehensive risk management strategies (UNFCCC 2013).

Vulnerable Parties have been seeking insurance-based approaches to deal with slow-onset events and extreme weather events and this turns out to be of great importance when recognizing and taking into consideration the additional burden and costs that they are facing in response to the anthropogenic effects of climate change. For instance, these countries have shown their interest in risk sharing, risk transfer, and risk pooling (Lavell, FLACSO, and LA RED n.d.). These are insurance-based concepts that should include:

- elements of international support (i.e., risk-sharing between developing and developed countries),
- a shift in the financial burden of impacts from affected countries toward those with the greatest role in causing these effects (risk transfer),
- and a system in which the Parties financially support an international fund which assists those vulnerable countries in need (risk pooling) (AOSIS 2007).

Although recognizing L&D without considering financial resources does not provide much hope for vulnerable countries to compensate L&D, the PA refers to existing financial support and the G7 commitments since June 2015. This commitment ensures that 200 million people in vulnerable areas will access climate insurance until 2020, and it was predicted, to begin with 50 million people in 2015 (Clémençon 2016).

The Climate Ambition Summit (CAS) 2020 was held and heads of State, along with regional and city leaders, and heads of major businesses delivered a raft of new measures, policies, and plans aimed at making a big dent in GHG emissions, and ensuring that the warming of the planet is limited to 1.5C. It was approved that the number of countries coming forward with strengthened national climate plans (NDCs) has grown significantly with commitments covering some of the world's biggest emitters (Earth Negotiations Bulletin 2020).

In this summit, a total of 75 leaders announced new commitments, including 45 relating to NDCs, 20 relating to adaptation and resilience plans, and 24 relating to net zero emission commitments. Regarding the commitments relating to net zero emissions, countries announced new commitments, strategies, or plans to reach carbon neutrality, and a number of states set out that they are going even further, with ambitious dates to reach net zero—Finland by 2035, Austria by 2040, and Sweden by 2045. Pakistan announced that it is scrapping plans for new coal power plants, India will soon more than double its renewable energy target, and China committed to increasing the share of non-fossil fuel in primary energy consumption to around 25 percent by 2030 (IISD 2020).

Leaders in the summit also highlighted green recovery plans—namely, combining climate action with job creation to recover from the pandemic—and the need for further support to developing countries for climate action. Youth, indigenous peoples, and other civil society speakers called for action, including higher ambitions on mitigation, adaptation, and finance, and for their inclusion in decision making and the implementation of climate action (Earth Negotiations Bulletin 2020).

In December 2020, The European Union environment ministers reaffirmed on raising the EU's climate target to at least 55 percent by 2030. They also agreed that this objective would be presented as a new contribution of the EU and its member States to the fulfillment of the PA commitments (Climate Action Tracker 2020a, 2020b). Also, In September 2020, China announced that it will strengthen its 2030 climate target (NDC) on peak emissions before 2030 and aims to achieve carbon neutrality before 2060 (Climate Action Tracker 2020a, 2020b).

As an optimal financial solution for risk management and addressing L&D, "insurance" faces several problems. For example, one of the problems of this strategy is the high risk of an issue like sea-level rise and the extremely heavy insurance premiums for countries that are not able to pay (UNFCCC 2014). Besides, insurance is unable to be considered as a solution to include all kinds of L&D. Nowadays its application is normally in the extremely short term with high-impact weather events. The short-term slow onset events take place over a long period and have permanent risks that are difficult to quantify.

Conclusion

Some scholars argue that the UNFCCC and COP's decisions excluded the application of international law customs and principles such as the no-harm principle and the law of State responsibility for L&D. The doctrine of *lex specialis* ("special law") is claimed to be the basis of this argument. The doctrine prescribes that a more specific rule prevails over a general one. The International Law Commission stated that, for the *lex specialis* doctrine to apply, "it is not enough that the same subject matter is dealt with by two provisions; there must be some actual inconsistency between them, or else a discernible intention that one provision is to exclude the other." Thus, *lex specialis* can only apply when there is an actual norm conflict between the two rules. In the current issue, while there is not an actual inconsistency or discernible intention to exclude the general rules or principles, both rules should "be interpreted as to give rise to a set of compatible obligations," therefore, the *lex specialis* is not applicable in this regard, and it is possible to invoke general rules to give a better interpretation.

In the climate change context, there is no logical ground to prove that States, as a whole, intend to exclude the application of the no-harm rule. Similarly, inconsistencies between the climate regime and the no-harm rule do not necessarily arise. The ultimate objective of the UNFCCC to 'prevent dangerous anthropogenic interference with the climate system' is certainly not inconsistent with the no-harm principle. In fact, treaty-based commitments do not limit the scope of more demanding obligations under customary international law. The obligation to prevent significant transboundary harm, insofar as it may apply to GHG emissions, should thus be interpreted consistently with the climate regime "so as to give rise to a single set of compatible obligations." Hence, obligations arising from the climate change treaty-based regime do not replace the customary provisions such as the no-harm rule.

In the current study, Article 8 of the PA was investigated and analyzed. This article provides the duty to "Averting, Minimizing, and Addressing Loss and Damage associated with adverse impacts of climate change and enhancing related understanding, action, and support." However, paragraph 52 of the Paris Decision states that Article 8 does not require any basis for liability and compensation. This superficial conflict has provoked differences over the issue of responsibility and liability as a permanent obstacle in the way of the PA. Although the placement of L&D in the PA in an independent Article can, to a great extent, reflect the importance of this issue, Article 8 is of a symbolic significance rather than its substantive aspect.

To consolidate Article 8 and paragraph 52, the present study made an effort to distinguish between "responsibility" and "liability." While Article 8 recognizes the significance of averting, minimizing, and addressing L&D and provides the duty of cooperation to realize this provision, logically, it contains State responsibility in this regard. However, even if we assume that a Conference of the Parties has the power to restrict the scope of the PA, it is possible to invoke liability and compensation according to the general rules (other than the PA). Moreover, compensation is not the only means of reparation, States are obliged to eliminate and reduce the sources of L&D and take precautionary measures for addressing L&D as preventive approaches as well. This is a solution compatible with the fair distribution of costs; insurance facilities for L&D are provided under Article 8.4, and it can realize the goals of risk sharing, risk transfer, and risk pooling. Notwithstanding this, achieving climate justice for vulnerable countries in the light of the PA, particularly provisions on L&D, depends on the State's political will, mitigation, and adaptive efforts.

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