



Legal Response Initiative

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International mechanisms for loss and damage¹

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Introduction and background

At the Warsaw Climate Conference in November 2013, the Parties to the United Nations Framework Convention on Climate Change (UNFCCC) formally agreed to establish the Warsaw International Mechanism for loss and damage associated with climate change impacts (the “Mechanism”). In summary, the Mechanism is tasked with enhancing knowledge and understanding of comprehensive risk management approaches to address loss and damage, strengthening dialogue, coordination, coherence and synergies among relevant stakeholders and enhancing action and support, including finance, technology and capacity-building². The precise role of the Mechanism will be developed by the Parties through its executive committee over the coming years, including resolving the issue of finance for the Mechanism³.

Whilst all Parties agree that the Mechanism is about knowledge, dialogue and action, some Parties (particularly those in the Least Developed Countries’ group) think that it also includes approaches to compensation and rehabilitation. It should be noted, however, that this has not, as yet, been taken up by the Mechanism (nor has it to

date been a sustained and central feature of the negotiations). Notwithstanding this and without prejudging the outcome of the negotiations on the issue, this paper offers some observations that may be relevant to the design of the new Mechanism, drawing on existing international mechanisms in the environmental field, through which redress for specific types of loss and damage can be sought. It looks in broad terms at a range of responses developed by the international community and it addresses specific issues, such as causes and types of harm, the basis of claims, who can claim and the types of redress available.

This paper is not intended to be an analysis of the COP decisions made in Doha and Warsaw and the negotiations that preceded them, rather to contribute to the discussion on possible elements of the Mechanism that might facilitate rehabilitation or compensation.

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² Decision 2/CP.19, paragraph 5, FCCC/CP/2013/10/Add.1.

³ Decision 2/CP.19, paragraphs 2 and 9.

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2 Legal approaches to loss and damage

The primary functions of any legal system are two-fold: first, to manage the risk of significant loss and damage by regulating human behaviour and secondly to prepare society for the consequences of disasters. In the context of the environment and climate change, loss and damage may result from a wide range of human behaviour, such as agricultural or industrial activity, or from natural events, such as hurricanes and earthquakes.

Domestic legal systems typically approach the first function by balancing social utility against risk and regulating the human behaviour which may cause damage. They may prohibit this behaviour entirely where the risks far outweigh any social utility in the activity⁴ or control it via licenses and permits, and they may make provision for assisting parties which suffer loss and damage. The second function is approached by a variety of means which include: planning controls to promote resilience, emergency powers to enable authorities to respond to events and the promotion of risk transfer or pooling arrangements.

In the case of loss and damage resulting from human activity, victims may be able to make a claim in contract or tort in the domestic courts against the party regarded as the cause of the relevant event. Depending on the circumstances, this remedy may be supplemented by criminal sanctions imposed by the state, insurance protection provided by the market or the state, and other state relief.

The starting point in the environmental context is typically that the “polluter pays”, with others stepping in, where appropriate, if that is not possible. In the case of loss and damage from natural events, domestic responses would typically focus on private and state sector insurance as well as emergency relief and recovery by the state.

The international community has developed a range of responses which complement such domestic provision in circumstances where the loss and damage itself is cross-border or its scale is such that countries should not be expected to bear the burden alone. These include provision for claims between states and between private parties, risk sharing via insurance and other financial security requirements, international funds and collective compensation arrangements.

3 International compensation mechanisms – some examples

Examples of such compensation mechanisms designed by the international community include: the international oil pollution compensation funds for oil spills from tankers (the 1971 Fund, the 1992 Fund and the Supplementary Fund), the liability regime for nuclear accidents under the Convention on Third Party Liability in the Field of Nuclear

Energy (“1960 Paris Convention”), the 1963 Supplementary Convention (Brussels) and the IAEA Vienna Convention on Civil Liability for Nuclear Damage (“1963 Vienna Convention”) and Annex VI of the Protocol on environmental protection to the Antarctic Treaty (“Antarctic 1991 Protocol”).

Other examples are the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (“HNS Convention”), the International Convention on Civil Liability for Bunker Oil Pollution Damage (“Bunker Pollution Convention 2001”) and the Nagoya–Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety (“Nagoya-Kuala Lumpur Supplementary Protocol”).

Outside the environmental arena, the UN Security Council established a Compensation Commission in 1991 to process claims and pay compensation for losses resulting from Iraq's invasion and occupation of Kuwait, and the “Hull Doctrine” of international investment law requires prompt, adequate and effective compensation to investors whose property or rights are diminished by a host state.

a) Oil spills

States have created complex civil liability regimes to supplement domestic rules regarding extremely hazardous activity such as oil transportation. These regimes address the difficulties which claimants might otherwise encounter in claiming compensation for damage suffered in one country against a party from another country who has caused an event such as an oil spill at sea.

The 1992 International Convention on Civil Liability for Oil Pollution Damage (“CLC”) provides that a state or person suffering oil pollution damage resulting from a tanker spill may claim against the relevant ship owner in the courts of the state where the damage or any preventative measures have occurred. The ship owner's liability is ‘strict’ which means that the claimant does not have to prove any fault or intention, but liability is capped at financial limits set by reference to the ship's tonnage.

Victims of loss and damage are protected from the risk that the ship owner will not have sufficient funds to pay by: (i) the requirement that ships carrying greater than 2,000 tons of oil must maintain insurance or other financial security in sums equivalent to the owner's total liability for one incident⁵; and (ii) the creation of supplementary funds

⁴ For example, in 1959, states with interests in the Antarctic decided to ban outright any nuclear explosions and the disposal of radioactive waste in the region (Antarctic Treaty 1959, Article V). In 1987, the majority of states undertook a much more complex balancing of social utility against risk and agreed to the phasing out of the use of ozone-depleting substances under the Montreal Protocol.

⁵ Article VII of CLC.

to be drawn upon in the event of any shortfall or gap in cover.

The 1992 International Convention on the Establishment of an International Fund for Compensation of Oil Pollution Damage (“the 1992 Fund”) provides compensation to any party unable to obtain full compensation under the CLC. The 1992 Fund is financed by contributions levied on any person who has received in one calendar year more than 150,000 tons of crude or heavy oil in the territory of a party to the 1992 Fund Convention⁶. Further supplementary funds have been created to address any shortfall in cover from the 1992 Fund⁷.

b) Nuclear accidents

The international legal framework on nuclear accidents comprises the 1960 Paris Convention, the 1963 Vienna Convention, and the 1997 Protocol to the Vienna Convention. They apply the following principles to ensure that in the case of an accident, meaningful levels of compensation are available with a minimal level of litigation and difficulty⁸:

i) Strict liability of the nuclear operator - In the case of an accident, the operator will be liable without the need to establish any fault or negligence. There are certain exceptions to this, such as in the 1963 Vienna Convention, if the incident is caused by “a grave natural disaster of an exceptional character.”

ii) Exclusive liability of the operator of a nuclear installation - Regardless of an accident’s cause, all claims are to be brought against the nuclear operator. This means that others, such as suppliers or builders of the plant, are protected from public litigation.

iii) Mandatory financial coverage of the operator's liability - The operator is required to be insured, thereby ensuring that funds will be made available by the operator or their insurers to pay for damages. The minimum amount of protection required is set by national laws which are usually set by reference to international treaty obligations.

iv) Exclusive jurisdiction - Only the courts of the country in which the accident occurs have jurisdiction over damage claims. This prevents what is known as forum shopping, whereby litigants choose courts that are thought to be more favorable to them, and gives nuclear operators a degree of certainty and protection.

v) Limitation of individual nuclear operator’s liability in amount and in time - Beyond a certain level of damage, liability shifts from the individual operator to the state or a mutual collective of nuclear operators, or both. In essence, this limitation recognizes the benefits of nuclear power and the tacit acceptance of the risks a state takes by permitting power plant construction and operation.

c) Activities in Antarctica

Since the conclusion of the Antarctic Treaty in 1959, the protection of the Antarctic environment has been continuously strengthened through legislation within the Antarctic Treaty System. The Protocol on Environmental Protection to the Antarctic Treaty was adopted in 1991 and entered into force in 1998. It establishes basic principles applicable to human activities in Antarctica and prohibits all mineral resource activities, except for scientific research.

The Protocol envisages that parties elaborate further rules and procedures relating to the liability for damage arising from activities taking place in the Antarctic Treaty area. Subsequently, an Annex VI on Liability Arising from Environmental Emergencies was adopted in 2005, but has not yet entered into force.

Under the Annex all entities that organize activities in the Antarctic Treaty area are required to take prompt and effective action to respond to environmental emergencies arising from their activities. If an operator does not take prompt and effective response action, the state parties are encouraged to take such action.

The Annex further provides for the creation of a fund to pay for response actions to environmental emergencies. Operators and parties (with certain exceptions) who fail to take prompt and effective action when necessary are strictly liable to pay the costs of the response action “which should have been undertaken”⁹ into the fund. Parties may also make voluntary contributions.

4 Alternative mechanisms – The Caribbean Catastrophe Risk Insurance Facility (“CCRIF”)

CCRIF¹⁰ is a risk pooling facility for Caribbean governments. It is designed to limit the financial impact of catastrophic hurricanes and earthquakes by quickly providing short term liquidity when a policy is triggered. It is the world’s first, and to date, only regional fund utilizing parametric insurance – i.e. payout is triggered by parametric data relating to storm or earthquake intensity/impact.

Countries buy coverage for any given year of up to US\$100 million. There is no limit on the number of events

⁶ Article 10 of the 1992 Fund.

⁷ The 2003 Supplementary Fund Protocol entered into force on 3 March 2005 and will be financed by contributions payable by oil receivers in the States which opt to ratify it.

⁸ <http://www.world-nuclear.org/info/Safety-and-Security/Safety-of-Plants/Liability-for-Nuclear-Damage>.

⁹ Article 6(2) (a) and (b) Annex VI of the Protocol on Environmental Protection to the Antarctic Treaty.

¹⁰ For more information, see <http://www.ccrif.org>.

a policy can cover and payouts are proportional to the estimated impact of an event on each country's budget. The estimated impact is derived from a probabilistic catastrophe risk model developed specifically for the Facility.

There is no relationship between CCRIF and private insurance companies. CCRIF is a regional insurance fund for the governments and different from indemnity type products offered by the traditional insurance companies. It aims to provide business interruption coverage for governments and does not make coverage available for private companies.

CCRIF represents a shift in pre-disaster planning and the way governments treat risk. It was developed through funding from the Japanese government, and was capitalized through contributions from various donors to a trust fund and membership fees by participating governments.

5 Analysis of international arrangements – some elements

The above mechanisms provide some snapshot examples of structures that deal with hazardous activities and disasters. They reflect a policy decision that the activity has sufficient social utility to be permitted subject to stringent controls but that victims of resulting loss and damage should not be denied compensation. They all deal with discrete and particular risks, a relatively narrow and homogenous set of interests and focus on the economic, financially quantifiable consequences of time-bound events.

Anthropogenic climate change in comparison blurs the traditional distinction between immediate loss and damage caused by human behaviour and that caused by natural events. It increases the likelihood, impact and intensity of extreme weather events and also results in slow-onset processes such as sea level rise, ocean acidification or loss of ecosystems. Damage is caused by the cumulative effects of what may usually be regarded as “normal” conduct.

This is conceptually and practically different to most civil liability regimes and risk-transfer tools considered in this note, and may require a fundamental transformation of the way policymakers balance risk against social utility. Creating new risk management and compensation structures across the broad range of social and economic interests that contribute to the climate problem would be a challenge. In addressing this challenge, the international community could draw on the following legal approaches that are to varying degrees already reflected in different international regimes:

a) Causes and types of harm

The causes specified under existing treaty regimes include, for example, incidents at installations, discharges of harmful materials, accidents at nuclear installations or during

transport of nuclear material, dumping or incineration of wastes at sea, incidents occurring during the trans-boundary movement of hazardous wastes and the impact of space objects on either the surface of the Earth or aircraft in flight. Other treaties exclude certain causes of harm, for example damage caused by third parties or government authorities.¹¹

However, not all treaties specify their jurisdiction over specific types and/or causes of harm - for example, one treaty covers undefined categories of harm resulting from a specified cause¹². There are also international mechanisms that provide payments after the occurrence of a damage-causing event (hurricanes, earthquakes, etc.) without requiring proof of the harm caused.¹³

Treaties drafted in the 1960s-1980s cover a narrow area of loss and damage, namely death, personal injury, hazards to human health, loss or damage to property and the first occurrence of harm (where there are a series of damage causing events).¹⁴ More recent multilateral environmental agreements (MEAs), drafted in the 1990s to the present day, also cover loss of income deriving from an economic interest in any use of the environment, the costs of measures of reinstatement of the impaired environment, the costs of preventative measures, further loss or damage caused by such measures and any other economic loss.¹⁵

Some treaties look beyond immediate loss and damage to cumulative damage “both by itself and in combination with other activities”.¹⁶ Some regimes have the flexibility to expand the scope of damage through subsequent protocols or amendments.¹⁷ In this way, modern treaties encompass more remote and potentially unforeseeable forms of harm.

Certain treaties specify a minimum level of damage that needs to arise in order to trigger liability. Conversely, some treaties seek to limit the extent of damage that can be claimed by specifying liability caps¹⁸ or conditions such as

11 Article III(2) (b) and (c), CLC at http://www.iopcfunds.org/uploads/tx_iopc_publications,text_of_conventions_e.pdf

12 Article 1.9(a), Bunker Pollution Convention 2001, <http://www.official-documents.gov.uk/document/cm66/6693/6693.pdf>.

13 The Caribbean Catastrophe Risk Insurance Facility.

14 For example Article 1(7), 1962 Brussels Convention on the Liability of Operators of Nuclear Ships and Article 1, 1972 Convention on International Liability for Damage Caused by Space Objects (“1972 Space Liability Convention”).

15 For example, Article 2(c), 1999 Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and their Disposal to the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (“Basel Liability Protocol”), the 2004 Protocol to the 1960 Paris Convention (nuclear), and the 1997 Protocol to the 1963 Vienna Convention (nuclear).

16 Article 3.2(c)(ii), 1991 Protocol on Environmental Protection to the Antarctic Treaty.

17 2004 Protocol to the 1960 Paris Convention and the 1997 Protocol to the 1963 Vienna Convention (nuclear).

18 For example, the 1976 Convention on Limitation of Liability for Maritime Claims (and its 1996 and 2004 Protocols).

expenses “reasonably incurred” or claims “reasonably made”¹⁹.

None of the environmental treaties surveyed for the purposes of this paper mention any form of non-economic losses such as the loss of ecosystems, cultural heritage, community values and traditions or local and indigenous knowledge.

b) Basis of claim

Most international compensation regimes impose a strict liability on the operator (of nuclear installation, nuclear ship, mineral resource activities in the Antarctic, etc.) or ship owner (in the case of oil pollution damage). In all cases, however, it must be established that the act complained of has caused the relevant damage.

Some regimes envisage both strict and fault based liability. For example, the 1972 Space Liability Convention provides for strict liability for damage caused by a space object on the surface of the earth or to aircraft flight and fault based liability for damage to another state’s space object. Under the Basel Liability Protocol, there is a strict liability on the person who possesses the waste, and a fault based liability on the person who caused or contributed to the damage by his lack of compliance with the Convention or by his wrongful intentional, reckless or negligent acts or omissions.

Whilst the general position is that of strict liability, the regimes surveyed usually contemplate limited exceptions where strict liability does not apply. This is where loss and damage has been caused by specified events: an act of war, a grave and unforeseeable natural disaster, third party sabotage, negligence of public authorities in maintaining lights or other navigational aids (oil) or compliance with a compulsory measure from a state authority (waste). It will be the duty of the operator to prove in all cases that any of the exceptions should in fact operate and that damage has been wholly caused by the specified event.

In addition, where an operator can prove that the loss and damage resulted wholly or partly from the gross negligence of the victim, he may be relieved from the obligation to pay compensation (see further below in section on redress).

c) Claimant

In some of the regimes surveyed, the claimant is the state; in others, the individual suffering qualifying damage. Whether it is one or the other largely depends on who (international body or national courts) decides whether redress is available. Some regimes (oil, nuclear) provide for both: actions may be brought by the victim or by the state on that person’s behalf.

Some regimes have evolved to ensure that claimants are not barred from obtaining redress on grounds of domicile, residence, or nationality. In the 1960 Paris Convention (nuclear regime), for example, damage had to occur in the territory of a contracting state for the claimant to be able

to claim. By contrast, the 1963 Vienna Convention, as amended by the 1997 Protocol, applies to nuclear damage wherever suffered.

As mentioned earlier, under the oil regime, supplementary funds have been created to address any shortfall or gap in the cover available to a claimant. The 1992 Fund supplements the CLC protection where there is no liability under the CLC, where the ship owner is liable under the CLC, but incapable of meeting his financial obligations or where the damage exceeds the ship owner’s liability. Similarly, the 2003 Supplementary Fund is available to any person who has been unable to obtain full and adequate compensation for an established claim under the 1992 Fund.

d) Decision-making authority

The body that decides whether a claim is valid varies from regime to regime. It can be an international court or tribunal (as in the case of the 1996 London Dumping Protocol), an international committee or commission (as in the case of the 1991 Protocol on Environmental Protection to the Antarctic Treaty which provides for the liability of a state operator to be resolved by the Antarctic Treaty Consultative Meeting), national courts (as in the case of the Antarctic-non-state operator, transboundary movements of hazardous waste and oil and nuclear regimes) and diplomatic channels (as in the space regime)²⁰.

Where national courts have jurisdiction over damage claims some regimes grant exclusive jurisdiction to the courts of the state in which the accident occurred (e.g. nuclear²¹ and oil regimes) whilst others give a choice: under the 1999 Basel Liability Protocol, for example, a claim may be brought in the national courts of the state in which the damage was suffered, the incident occurred (if different) or the defendant is resident.

e) Types of redress

Redress for loss and damage is generally available at both international and national levels. Redress is typically in the form of monetary compensation and is made available through national legal systems. States parties to different international regimes are required to ensure that claimants for loss and damage compensation have recourse in the national system of the liable state or person, with

¹⁹ Article V(8), CLC.

²⁰ The 1972 Space Liability Convention provides that, if a claim is not settled through diplomatic channels, parties may establish a claims commission who will decide on the merits and amounts of compensation.

²¹ 1960 Paris Convention (as amended) and 1963 Vienna Convention (as amended by the 1997 Protocol); If the damage occurred outside the territory of a contracting state; however, jurisdiction will lie with the courts of the contracting state in whose territory the nuclear installation of the operator liable is situated.

²² Articles IX and X, CLC; Articles 9 and 10, 2001 Bunker Pollution Convention.

judgments by competent authorities in that state being recognized and enforceable in any other state.²²

While monetary compensation is the most common type of redress, equitable remedies and other forms of redress are also possible.²³ Some regimes provide for redress in the form of assistance where the loss and damage is on a grave scale or where further loss and damage could result if preventative action is not taken.²⁴ The costs of reasonable preventative actions taken by non-responsible parties will normally be recoverable from the liable party.²⁵

f) Sources of funding

Where monetary redress is available, funds come from a variety of sources, private and public.²⁶ The burden of funding claims for compensation often rests on the private parties operating under the various international regimes. This burden and risk is shared by requiring compulsory insurance or other financial guarantees, sometimes depending on tonnage for example.²⁷

Whereas the majority of private funding for compensation is generated from compulsory insurance or other financial guarantees, there are examples where regimes impose a contribution levy to raise funds for future loss and damage claims.²⁸ Depending on the regime, state parties may also be required to provide public funds to supplement private liability cover to the extent that the latter is below the required liability cover stipulated under the regime.²⁹

As mentioned above³⁰, under the oil pollution regime in particular, a separate convention was adopted to establish an international fund for compensation for oil pollution damage for the purpose of providing redress to the extent that the protection afforded by CLC was inadequate.³¹ A further protocol provided yet more funding and raised the limits of the compensation regime.³²

g) Limitation on redress

The maximum liability and therefore redress available for compensation is usually capped for each incident with funds apportioned among successful claimants. Claims for redress must also be brought within a stipulated period after the damage occurred.

In some cases the upper limit to liability is on a sliding scale depending on factors such as the tonnage of the particular vessel.³³ Different types of claims can also have different upper limits for liability.³⁴ State parties may also raise or lower the upper limit to liability under some regimes, though provisions relating to the lower limit to liability are typically not capable of being altered in the same way.

The United Nations Compensation Commission takes a flexible approach to limits on redress by setting pre-determined compensation amounts for some types of claims, setting upper limits for other types of claims, and determining appropriate compensation on a case-by-case

basis for yet other types of claims.

Liability limitation provisions tend not to apply where the liable party acted or omitted to act with intent to cause damage or did so recklessly and with knowledge that loss and damage would result.³⁵ At the opposite end of the spectrum, no liability attaches and no redress is available where loss and damage was the result of force majeure circumstances.³⁶ It is common for grave natural disasters to be excluded from liability in the same way as acts of war and other types of hostility.³⁷

Claims for redress also typically need to be made within a stipulated period. The time limit within which to bring a claim varies from regime to regime and generally begins to run from the time the harm occurred or alternatively when the loss and damage and the identity of the liable party are known or when those facts should reasonably have been learned.³⁸

23 Article XIII, 1972 Space Liability Convention allows States affected to agree on a form of compensation other than monetary compensation.

24 See the 1972 Space Liability Convention under which redress may also be available in the form of assistance by States Parties, and in particular the Launching State, if the damage caused presents a large-scale danger to human life or seriously interferes with the living conditions of the population or the functioning of vital centres; and Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty, Liability Arising from Environmental Emergencies (1991) under which required response actions can include clean-up in appropriate circumstances as well as determining the extent of an emergency and its impact.

25 See CLC; redress may also be in the form of preventative measures to avoid or minimize oil pollution damage after an incident, but the party responsible for the damage is ultimately responsible for the costs of reasonable preventative measures taken by others.

26 A somewhat unique example of public funding for compensation is the percentage of Iraqi oil revenue collected to cover claims under the United Nations Compensation Commission.

27 See Article VII, CLC.

28 See Article IV, Convention on Supplementary Compensation for Nuclear Damage (1997).

29 See Article III, paragraphs I(a)(i) and I(b), Convention on Supplementary Compensation for Nuclear Damage (1997).

30 See p.2.

31 See the 1992 Fund.

32 See the 2003 Supplementary Fund Protocol; also note that participation in this third tier of protection for claimants under the oil pollution regime is voluntary.

33 See for example Article V(1), CLC.

34 Despite not yet being in force, the Convention on Civil Liability for Damage caused during Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels (1989), Article 9, distinguishes between loss of life or personal injury from other types of claims for loss and damage and stipulates a higher upper limit on redress for the former.

35 See for example the Basel Liability Protocol, Article 12.

36 See for example the 2001 Bunker Pollution Convention, Article 3(3).

37 See for example the 1960 Paris Convention as amended by the Additional Protocol of 1964 and by the Protocol of 1982, Article 9.

38 See for example the 1972 Space Liability Convention, Article X, paragraphs 1 and 2.

6 Conclusion

The Mechanism will be primarily focused on enhancing knowledge and understanding of comprehensive risk management approaches: the COP Decisions to date have clearly prioritized this approach. Whilst recognizing that anthropogenic climate change is very different conceptually and practically to the regimes surveyed in this paper, which tend to deal with discrete and particular risks, it is nonetheless useful to draw on approaches to loss and damage taken by other international and multilateral treaty regimes concerned with environmental and man-made disasters. Taken together, these regimes illustrate that a risk management mechanism, such as that contemplated by the UNFCCC COP, often includes ways to efficiently transfer risk of loss and damage and often seeks to enable effective compensation and rehabilitation if and when such disasters strike.

This paper has identified a selection of these mechanisms, explaining how domestic approaches to loss and damage differ from, but also underpin international approaches to redress from transboundary harm. It has looked at

examples of approaches tailored to the type of harm caused – for example, oil and nuclear – as well as approaches tailored to specific environments and contexts – the Antarctic. It has suggested that one alternative to compensation payments is that of risk transfer and parametric insurance, as demonstrated by the CCRIF. Finally, this paper has developed a list of criteria that would need to be addressed should the Mechanism extend to matters of compensation, rehabilitation and/or risk transfer. These criteria include: (a) the type of harm to be dealt with by the mechanism; (b) the approach taken to fault or intention of harm caused; (c) those individuals or entities eligible to make a claim; (d) the nature of the entity in charge of deciding the claim; (e) the type of remedy available, recognizing that financial compensation may not be appropriate in every case; (f) where compensation is granted, the source of such funds; and (g) the limitations on any claims for redress. In providing these criteria, the paper seeks to inform present discussions on the Mechanism, providing information on the broader elements relevant to risk management, without taking any position on the correctness of any particular approach to dealing with the Mechanism's design.

The international negotiations under the United Nations Framework Convention on Climate Change (UNFCCC) are amongst the most complex multilateral law and policy making processes ever. Meetings are characterized by the use of technical jargon, reference to legal principles and procedural norms. The Legal Response Initiative (LRI) supports delegates from poor and particularly climate vulnerable developing countries as well as civil society observer organizations free of charge through a global network of lawyers from law firms, barrister chambers and universities. They provide hands-on assistance during meetings, publish briefing papers and build the capacity of lawyers and negotiators from developing countries. We constantly seek experienced lawyers with expertise in one or more areas of the law from any jurisdiction with a good command of English to extend our network of pro bono legal expert advisers. Please contact the advice coordinator directly if you are interested in joining the network: coordinator@legalresponseinitiative.org. If you require legal advice in connection with the international climate negotiations please contact: enquiries@legalresponseinitiative.org



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