

**Meaning of 'averting, minimizing and addressing' loss and damage**

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This advice is provided in response to **Query 40/22**

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**Query:**

What is meant by each of these terms in relation to Loss and Damage: 'address, avert and minimise'? Are these concepts linked to loss and damage and/or adaptation and/or mitigation? Which arguments support the interpretation that these three concepts are part of the L&D provisions?

**Advice:**

1. Background and context

The Paris Agreement in Article 8(1) states that '[p]arties recognize the importance of averting, minimizing and addressing loss and damage associated with the adverse impacts of climate change, including extreme weather events and slow onset events, and the role of sustainable development in reducing the risk of loss and damage'. In this regard, the Warsaw International Mechanism for Loss and Damage (WIM) was established under the UNFCCC in 2013 to implement approaches to address loss and damage (Decision 2/CP.19). One of the main functions of the WIM includes 'enhancing action and support, including finance, technology and capacity-building to address loss and damage associated with the adverse effects of climate change (...)'. This function has attracted the most attention recently, with finance for loss and damage (L&D) developing as a central topic in recent COP meetings.

To date, developed and developing country parties have not been able to agree on financial arrangements related to L&D. Developing countries that have historically contributed the least to climate change are now the most vulnerable to deal with its impacts, yet the least equipped in terms of financial resources. Deliberations at the COP meetings have now progressed to acknowledging that L&D needs to be financed, but there is no agreement on a separate financial mechanism for L&D. This is evident from the Glasgow Climate Pact (Decision 1/CMA.3) that reinforced the need for financing mitigation and adaptation measures, but only went so far as establishing the two-year Glasgow Dialogue to discuss ways to operationalise finance for loss and damage rather than providing for an L&D facility. Para.73 of Decision 1/CMA.3 states the Dialogue is established for the purpose of discussing 'arrangements for the funding of activities to avert, minimise and address loss and damage associated with the impact of climate change'.

The controversy surrounding L&D stems in part from the fact that there is no formal definition of L&D and that different stakeholders hold very different views as to what it actually covers and how it

should be tackled. In broad terms, developed country parties argue that L&D can be averted, minimized and addressed through mitigation, adaptation and disaster response or recovery and humanitarian assistance and the terms 'averting' and 'minimizing' L&D in this context are thus considered as referring to mitigation and adaptation actions respectively. Developing countries do not necessarily dispute this categorization but argue that too much focus has been placed on averting and reducing L&D (through mitigation and adaptation), with the result that L&D is being treated as an issue on the margins of adaptation. They maintain that L&D is a distinct issue and that more attention should be given to addressing occurring L&D. During negotiations at SB56 some parties argued that a potential L&D finance mechanisms (to be developed) would only apply to 'addressing' L&D, as 'averting' and 'minimising' is dealt with under other mechanisms related to adaptation and mitigation.

We understand that the question has been raised with this context in mind, and we will thus explore whether arguments can be made that support the notion that 'averting' and 'minimizing' L&D indicates approaches and actions that go beyond mitigation and adaptation measures respectively. And that consequently potential financial mechanisms related to L&D need to cover activities that are oriented towards 'averting, minimising and addressing' L&D, and not just 'addressing' L&D.

## 2. Analysis

### 2.1 Paris Agreement

The terms 'avert', 'minimise' and 'address' have not been expressly defined in the UNFCCC framework. Applying the general rule of interpretation under the Vienna Convention on the Law of Treaties (Article 31)<sup>1</sup> that a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose, we can understand 'avert' L&D as meaning avoiding L&D; and 'minimize' L&D as reducing L&D. Both denote precautionary approaches, whereas 'address' – particularly when used after 'avert' and 'minimize' - indicates dealing with L&D that is occurring or has occurred. Whilst the terms have not been defined, they have been used together as a phrase and associated with L&D in relevant provisions of the PA and subsequent decisions.

The phrase 'avert, minimise and address' is contained in the Paris Agreement as part of a standalone Article on Loss and Damage, separate from adaptation, signalling L&D as a distinct concept. Article 8(1) states that '[p]arties recognize the importance of averting, minimizing and addressing loss and damage associated with the adverse impacts of climate change, including extreme weather events and slow onset events, and the role of sustainable development in reducing the risk of loss and damage'. The adoption and placing of the phrase in the L&D provision suggests a recognition that L&D is a multi faceted concept requiring multi pronged approaches, including some that go beyond mitigation and adaptation.

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<sup>1</sup> 1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. 2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes: (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty; (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty. 3. There shall be taken into account, together with the context: 12 (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation; (c) any relevant rules of international law applicable in the relations between the parties. 4. A special meaning shall be given to a term if it is established that the parties so intended.

Article 8(4), PA highlights areas for cooperation and facilitation, some of which fall into the category of precautionary approaches, illustrating how L&D can be averted and minimized through these types of approaches. Some of the same approaches, however, such as early warning systems and the resilience of communities, livelihoods, and ecosystems are also included in decisions on adaptation under the Convention and in Article 7, PA which focuses on adaptation, which shows that the same approaches may be relevant to both adaptation and L&D and that the line between the two is not always clear.<sup>2</sup>

## 2.2 Decisions by parties

In the decision adopting the Paris Agreement, the ExCom was requested to ‘establish a clearing house on risk transfer and a task force (...) to develop recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change.’ (Decision 1/CP.21, paras 48-50). The phrase has been used consistently in subsequent COP and CMA decisions. Decision 5/CP.23 (on further guidance to the ExCom) for example notes the urgent need to avert, minimize, and address extreme weather events and slow onset events through comprehensive risk management approaches, including early warning systems, measures to enhance recovery and rehabilitation, social protection instruments, etc.

Decision 2/CMA.2 established the Santiago Network on L&D, to catalyse technical assistance in furtherance of the WIM’s work. The purpose of the SNLD is ‘averting, minimizing and addressing loss and damage associated with the adverse effects of climate change, to catalyse the technical assistance of relevant organizations, bodies, networks and experts, for the implementation of relevant approaches at the local, national and regional level, in developing countries that are particularly vulnerable to the adverse effects of climate change’.

The latest decision on the WIM, [Decision 17/CP.26](#), sets out the functions of the Santiago Network. This includes ‘Facilitating the consideration of a wide range of topics relevant to averting, minimizing and addressing loss and damage approaches, including but not limited to current and future impacts, priorities, and actions related to averting, minimizing and addressing loss and damage pursuant to decisions 3/CP.18 and 2/CP.19, the areas referred to in Article 8, paragraph 4, of the Paris Agreement and the strategic workstreams of the five-year rolling workplan of the Executive Committee’ (para.9 (c)).

Similarly, a number of decisions call for funding L&D, using the same phrase and not making any attempt at distinguishing ‘averting’ and ‘minimizing’ from ‘addressing’. Equally none of them elaborates on where the funding for averting, minimizing and addressing L&D should come from and whether this should be from mitigation or adaptation funding sources or other sources: thus Decision 17/CP.26 encourages - recognising the urgent need for scaling-up action and support, including finance, technology and capacity-building, for the implementation of relevant approaches to averting, minimizing and addressing loss and damage - the ExCom to continue engaging with the Standing Committee on Finance and to explore potential ways to enhance collaboration with the operating entities of the Financial Mechanism to inform the work of the ExCom and its expert group on action and support;

Decision [1/CMA.3](#) in Para.63 ‘reiterates the urgency of scaling up action and support, as appropriate, including finance, technology transfer and capacity-building, for implementing approaches for averting, minimizing and addressing loss and damage associated with the adverse effects of climate change in developing country Parties that are particularly vulnerable to these effects.’ Following this, in Para.73, ‘decides to establish the Glasgow Dialogue between Parties, relevant organizations and

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<sup>2</sup> ‘Loss and Damage (Article 8)’ by L.Siegele *in* The Paris Agreement on Climate Change, D.Klein et al., 2017, p.231.

stakeholders to discuss the arrangements for the funding of activities to avert, minimize and address loss and damage...'

By contrast, decisions taken before the adoption of the Paris Agreement, such as for example [Decision 3/CP.18](#), which concerns approaches to address loss and damage, uses only the term 'address' ('Decides to establish, at its nineteenth session, institutional arrangements, such as an international mechanism (...) to address loss and damage ...'). It appears the term was used broadly to *respond to*, or *acknowledge initiatives* relevant to loss and damage. The same decision, however, also reaffirms the need for states to 'take precautionary measures (...) to anticipate, prevent, or minimize the causes of climate change and mitigate its adverse effects, and underlining that the lack of full scientific certainty should not be used as a reason for postponing action (related to loss and damage).'

The following [Decision 2/CP.19](#) that established the WIM under the Cancun Adaptation Framework also uses the term 'address', but includes 'providing information and recommendations for consideration by the Conference of Parties when providing guidance relevant to reducing the risks of loss and damage and, where necessary, addressing loss and damage...' This again suggests that at that point already loss and damage was linked to approaches that are precautionary and to those that address actual loss and damage. Importantly, the preamble of the decision also "*acknowledg[es]* that loss and damage associated with the adverse effects of climate change includes, and in some cases involves more than, that which can be reduced by adaptation,". This was seen as a compromise, given the placing of the WIM within the adaptation framework of the Convention.

### 2.3 Other state practice

Pledges made by some countries seem to integrate the terms 'avert', 'minimise' and 'address' in their plans for funding loss and damage. The [UK Government](#), for instance, has committed £11.6 billion to support efforts to 'avert, minimise and address loss and damage alongside other relevant sources such as humanitarian finance'. In terms of areas for action, the paper highlights finance for adaptation and the need for aligning disaster, humanitarian and climate communities and financing. Thus it is not entirely clear how much, if any, of this money represents 'new' funding that goes beyond adaptation funding.

Similarly, as the first UN member to offer direct cash to communities affected by climate change, [Denmark](#) has announced 100 million DKK to support climate adaptation and concrete activities to avert, minimize and address climate change. In October, 2022, The First Minister of Scotland, Nicola Sturgeon, while commending Denmark's pledge, spoke of [Scotland's commitments](#) to financing loss and damage at COP26. She stated that loss and damage requires additional finance, and not repackaging funding that has been committed to other climate priorities. She also recognised that insurance could be a useful source of finance to minimize loss and damage.

A press release of the Council of the [European Union](#) ahead of COP27 shows the EU's commitment to implementing the Glasgow Climate Pact. On loss and damage, in para.14, it states that the EU is committed to the need to strengthen the action, support and global coordination for averting, minimising and addressing loss and damage associated with negative impacts of climate change. In this regard, the EU welcomes the launch of the Glasgow Dialogue, where the arrangements for the funding of activities to avert, minimise and address loss and damage are discussed. The EU also welcomes international initiatives designed to better shield developing countries from the adverse effects of climate change, including by mobilising innovative tools and sources of finance, such as the G7 initiative of the Global Shield against Climate Risks aiming to strengthen the global climate and disaster risk finance and insurance architecture to become more coherent, systematic and sustained.

### 3. Conclusion

In our view, the phrase ‘averting, minimizing and addressing’ cannot be divorced from the concept of L&D to which it is linked. While there is no politically agreed legal definition for the concept, and there are different views as to what it actually covers (and the changing reality of a world under climate change can make it difficult to define where the limits to adaptation lie), there is broad acceptance that L&D is an independent concept, distinct from mitigation and adaptation<sup>3</sup>, and that it points towards impacts that are residual in nature and cannot be adapted to, even with reasonable measures to mitigate and adapt to climate change in place. Loss and damage applies to both economic and non-economic losses that cannot be overcome due to the failure of adaptation measures, or the impossibility of implementing adaptation measures because of lack of resources. Such a framing of loss and damage provides clarity about ways to finance it regardless of funding options for adaptation and mitigation.

The international community’s understanding has been informed by the latest science emerging from the IPCC. It has acknowledged limits to mitigation and adaptation: the IPCC’s 6<sup>th</sup> Assessment Report, 2022 found that whilst limiting heating to 1.5C will substantially reduce losses and damages, it cannot eliminate them all. The same report also acknowledged two types of adaptation limits – (i) soft adaptation limits where options for adaptation exist but cannot be met due to social, financial technical or political constraints; and (ii) hard adaptation limits where no reasonable prospects exist for avoiding intolerable risks (found [here](#)).<sup>4</sup>

So whilst the PA and decisions on L&D within the UNFCCC framework reference the terms ‘avert’, ‘minimize’ and ‘address’ collectively, they do not define them. The terms must thus be understood in their ordinary meaning of ‘avoiding’, ‘reducing’ and ‘giving attention to or dealing with’. Based on the context in which they appear, there is broad acceptance that the first two terms, when linked to L&D, overlap with mitigation and adaptation respectively. But there is also an acknowledgment within the UNFCCC (and informed by science) of the existence of residual risks that cannot be adapted to, even with mitigation and adaptation measures in place.

We would, therefore, argue that the terms ‘averting’ and ‘minimizing’ cannot unequivocally be linked to mitigation and adaptation only. The better interpretation is that the terms cannot be divorced from L&D, itself a concept whose contours are undefined, and therefore encompass situations where L&D cannot be ‘averted’ or ‘minimized’ notwithstanding mitigation and adaptation measures. This interpretation may provide support for the view that potential financial mechanisms on L&D ought to apply to ‘averting, minimizing and addressing’ L&D rather than only ‘addressing’ L&D.

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<sup>3</sup> As we saw earlier, the UNFCCC has acknowledged that L&D results from climate change impacts that cannot be avoided or reduced by adaptation (Preamble of Decision 2/CP.19)

<sup>4</sup> “the acknowledgement that such limits exist, and that residual risks are inevitable, especially for those most vulnerable to climate shocks in the developing world, provides a clear basis for conceptualising loss and damage as an issue that must be distinguished from adaptation and mitigation.” ‘Addressing Loss and damage’, S. Addison et al., IIED Paper (2022)