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The Loss & Damage Fund: Will It Leave Greenland Behind?

Natalie L. Nowatzke

University of Maine School of Law

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THE LOSS AND DAMAGE FUND: WILL IT LEAVE GREENLAND BEHIND?

*Natalie Nowatzke**

ABSTRACT

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* J.D. 2024, University of Maine School of Law; B.A. and B.S. 2021, Winona State University. The author would like to thank the editorial staff of the Ocean and Coastal Law Journal for their thoughtful edits, suggestions, and support. She would also like to thank the University of Maine School of Law, in particular Professors Charles Norchi and Anthony Moffa, who provided the opportunity for her to experience Greenland as an Arctic Law Fellow and attend COP28 as an official observer.

ABSTRACT

The United Nations Framework Convention on Climate Change (UNFCCC) maintains three pillars of international climate governance: (1) mitigation, (2) adaptation, and (3) loss and damage. Loss and damage, the newest pillar, refers to the negative effects of climate change that transpire despite mitigation and adaptation measures. This notion has manifested into the newly operationalized Loss and Damage Fund, which is designed to compensate developing nations for the losses and damages that occur. This Comment identifies a gap in the Loss and Damage Fund, which will leave Greenland left out of receiving compensation, despite being extremely vulnerable to climate change, because of its relationship to Denmark.

INTRODUCTION

The Loss and Damage Fund, although designed to alleviate the financial burden on developing¹ countries dealing with the worst effects of climate change, may leave the most vulnerable behind. Greenland, located mostly in the Arctic Circle, is experiencing some of the most pronounced effects of climate change.² However, due to Greenland's complicated relationship with Denmark, it may be ineligible to receive important climate reparations it would otherwise receive.

This Comment will address the potential gap created by the Loss and Damage Fund, assuming further progress is made, and distributions are made as predicted. Part I will cover key background information on climate change in Greenland, a history of loss and damage in international climate negotiations, Greenland's relationship with Denmark, and the potential for Greenland to achieve sovereignty. Part I will conclude with a discussion of the communities in Greenland and the effects of climate change that these communities are already facing. Part II will utilize this background information to discuss the probability that Greenland will in fact be left out of future Loss and Damage Fund distributions to developing countries. Finally, Part III will conclude with recommendations to improve the Loss and Damage Fund mechanisms, with the goal of making it more equitable and including Greenland. This Comment is largely a new contribution to the scholarship on the Loss and Damage Fund, but the created gap in climate finance distributions described here must be considered for an equitable climate future.

1. This Comment will use "developed countries" and "developing countries," in line with the United Nations Framework Convention on Climate Change (UNFCCC) use of the terms. See *Parties & Observers*, UNITED NATIONS CLIMATE CHANGE, <https://unfccc.int/parties-observers> (last visited Feb. 11, 2023) [<https://perma.cc/333L-N2BR>]. There is interesting discourse on whether these terms are appropriate or correct for a variety of reasons, including the implied hierarchy from the terms. See Marc Silver, *Memo to People of Earth: 'Third World' Is An Offensive Term!*, NPR (Jan. 8, 2021, 3:42 PM), <https://www.npr.org/sections/goatsandsoda/2021/01/08/954820328/memo-to-people-of-earth-third-world-is-an-offensive-term> [<https://perma.cc/S4AL-6Q8S>].

2. See *The Arctic in a Changing Climate*, ARCTIC COUNCIL, <https://arctic-council.org/explore/topics/climate/> (last visited Feb. 11, 2024) [<https://perma.cc/8TUS-UEZD>].

I. BACKGROUND

A. *Climate Change in Greenland*

Climate change has impacts worldwide; global temperatures have already increased by approximately 1.3°C due to human activity since the industrial revolution.³ However, this warming is not homogenous across the globe.⁴ The Arctic is considered a hotspot for this warming, and climate change generally—a phenomenon called Arctic amplification.⁵ This phenomenon “is causing dramatic changes for Arctic communities and has also been linked to extreme weather events in the mid-latitudes of the northern hemisphere.”⁶ Arctic amplification manifests in a variety of impacts, including amplified warming, increasing snow and sea ice melting, and rising sea levels.⁷ These impacts, of course, manifest in even more impacts, highlighting the positive feedback loops within climate change.⁸

Over the last few decades, Arctic amplification of climate change has resulted in warming at rates projected between two to four times faster than the global average.⁹ The uncertainty in this rate, and thus significantly different projections, is largely due to uncertainty arising from “‘sea ice, cloud, aerosol, and atmospheric and oceanic heat transport processes.’”¹⁰

3. Ayesha Tandon, *The Arctic Has Warmed ‘Nearly Four Times Faster’ Than the Global Average*, CARBON BRIEF (Aug. 11, 2022, 4:00 PM), <https://www.carbonbrief.org/the-arctic-has-warmed-nearly-four-times-faster-than-the-global-average/> [<https://perma.cc/TYZ4-M3HT>].

4. *Id.*

5. *Id.*

6. Matthew Henry, *Guest Post: Why Does the Arctic Warm Faster Than the Rest of the Planet?*, CARBON BRIEF (Feb. 11, 2022, 10:00 AM), <https://www.carbonbrief.org/guest-post-why-does-the-arctic-warm-faster-than-the-rest-of-the-planet/> [<https://perma.cc/L9PX-F49Y>].

7. *Id.*

8. *How Feedback Loops Are Making the Climate Crisis Worse*, THE CLIMATE REALITY PROJECT (Jan. 7, 2020), <https://www.climaterealityproject.org/blog/how-feedback-loops-are-making-climate-crisis-worse> [<https://perma.cc/GK6D-37TJ>].

9. *See, e.g.*, Henry, *supra* note 6 (stating that average warming in the Arctic is happening “more than two times faster than the global average”); Tandon, *supra* note 3 (stating that the “Arctic has warmed ‘nearly four times faster’ than the global average”); INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2021: THE PHYSICAL SCIENCE BASIS. WORKING GROUP I CONTRIBUTION TO THE SIXTH ASSESSMENT REPORT OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (V. Masson-Delmotte et al. 2021) (stating that “it is very likely that the Arctic has warmed at more than twice the global rate over the past 50 years”).

10. Tandon, *supra* note 3 (quoting Dr. Matthew Henry).

Regardless of the exact number, the Arctic is warming at an alarming rate.¹¹ This warming in turn will contribute to significant melting of ice and snow.¹² This melting is visually depicted in Figures 1 and 2 below.

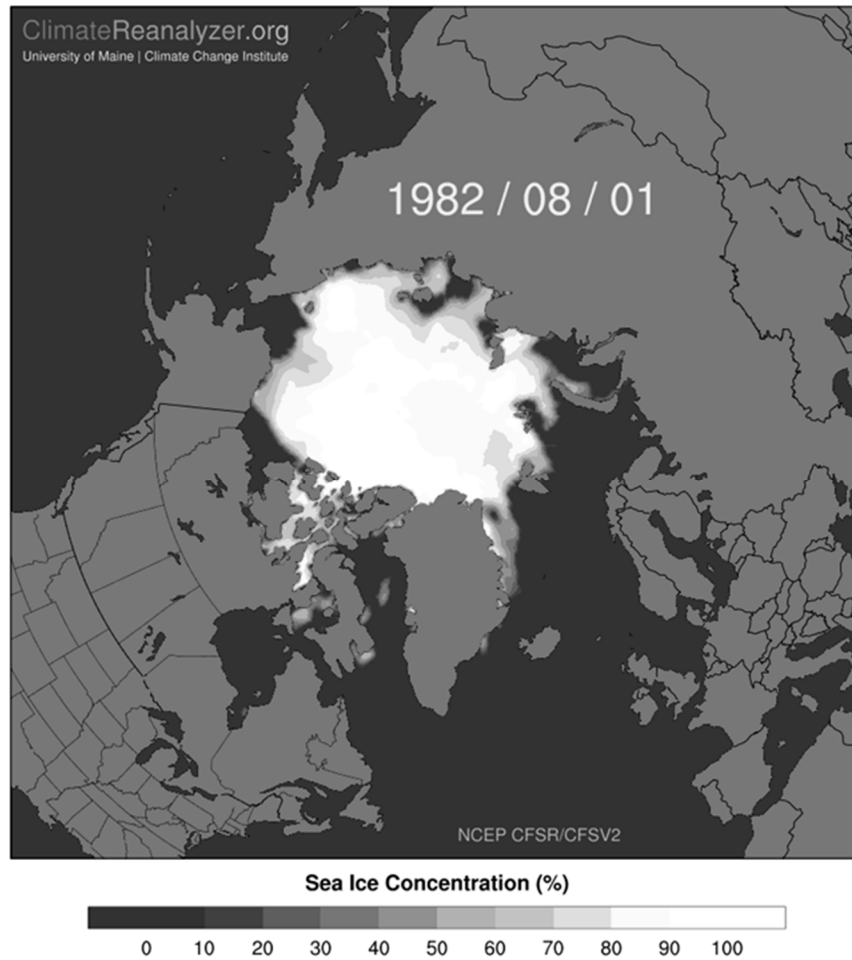


Figure 1: *Sea Ice Concentration 08/01/1982.*¹³

11. *Id.*

12. *Id.*

13. Figure 1 was created using Climate Reanalyzer. *See Monthly Reanalysis Maps*, CLIMATE REANALYZER, https://climatereanalyzer.org/research_tools/monthly_maps/ (last visited Feb. 11, 2024) [<https://perma.cc/5U9A-KED8>].

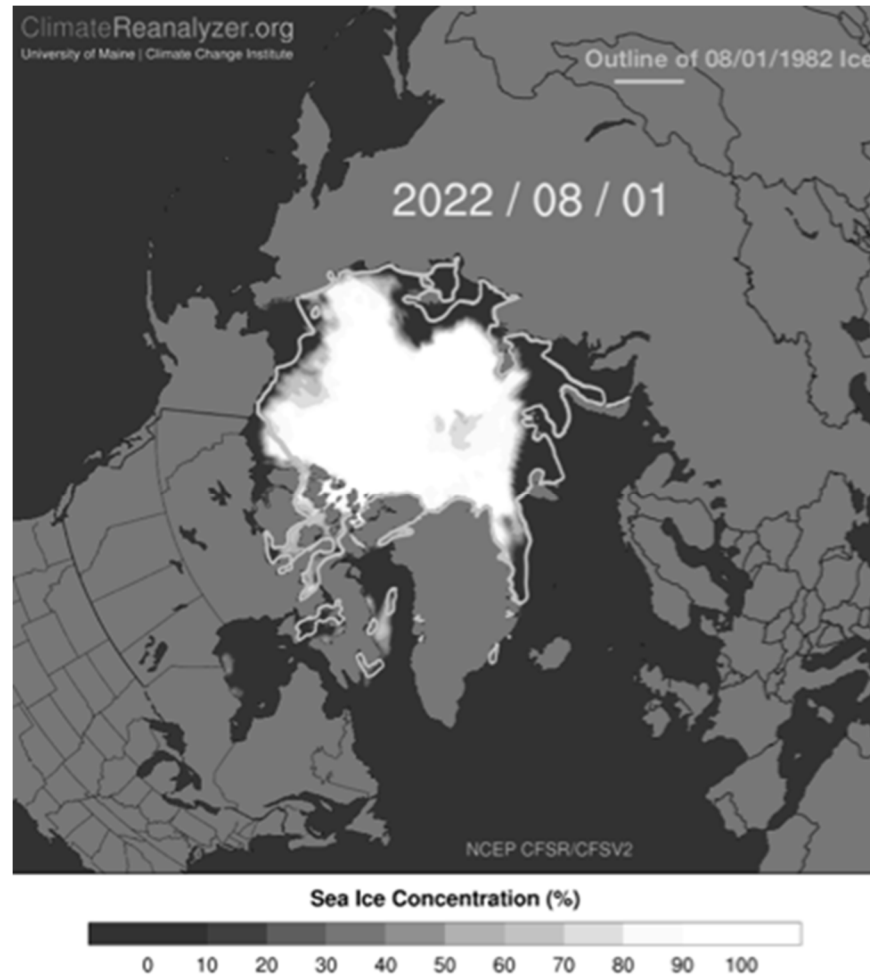


Figure 2: *Sea Ice Concentration 08/01/2022.*¹⁴

As depicted, the sea ice in the Arctic has undergone a significant retreat in the past forty years. This is visually depicted on Figure 2 with the outline, which represents the sea ice area only forty years prior in 1982. This is further confirmed by an annual Greenland review conducted by CarbonBrief, which found that 2022 marked the twenty-sixth year in a row that Greenland has had a net loss of ice.¹⁵ In the twelve months from

14. Figure 2 was created using Climate Reanalyzer. The outline reflects the outline of the sea ice on the same day in 1982. *See id.*

15. Martin Stendel & Ruth Mottram, *Guest Post: How the Greenland Ice Sheet Fared in 2022*, CARBON BRIEF (Sept. 22, 2022, 3:09 PM), <https://www.carbonbrief.org/guest-post-how-the-greenland-ice-sheet-fared-in-2022/> [<https://perma.cc/5X89-ZJES>].

September 2021 to August 2022, the Greenland ice sheet lost eighty-four gigatons.¹⁶ It is normal for the mass of Greenland’s ice sheet to change throughout the different seasons of the year,¹⁷ however, the significant net loss over the year is concerning.¹⁸ Even more concerning is that “[u]nder current climate conditions, 2021-22 can be considered a relatively favourable year for the ice sheet.”¹⁹ From April 1, 2002 to August 31, 2021, the Greenland ice sheet lost an estimated 4,500 gigatons of ice.²⁰ This tremendous ice loss led to significant sea level rise.²¹ In fact, “a recent study estimated that climate change to date means that Greenland is already committed to ‘at least 274mm’ of future sea level rise.”²²

Further, this warming and ice melt will lead to additional significant impacts through the creation of a positive feedback loop.²³ Ice and snow, of course, are white and reflect incoming sunlight.²⁴ However, after this snow and ice has melted, the exposed surface is significantly darker, whether it is open water or land.²⁵ This surface absorbs more sunlight, which will lead to additional warming.²⁶ Thus, a positive feedback loop will continue to create even more localized warming in the Arctic.²⁷

These impacts from climate change have and will continue to have “large impacts on the Arctic ecosystem and social-economic activities in the Arctic. Changes in Arctic ice cover affect ice algae and phytoplankton. Consequently, fish stocks move further to the north, affecting fishery and coastal communities.”²⁸ These changes bring both positive and negative impacts for the people of Greenland.²⁹ However, the longevity of these

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. Stendel & Mottram, *supra* note 15.

22. *Id.*; see also Jason E. Box et al., *Greenland Ice Sheet Climate Disequilibrium and Committed Sea-level Rise*, 12 NATURE CLIMATE CHANGE 808, 808 (2022).

23. *How Feedback Loops Are Making the Climate Crisis Worse*, THE CLIMATE REALITY PROJECT (Jan. 7, 2020), <https://www.climate realityproject.org/blog/how-feedback-loops-are-making-climate-crisis-worse> [<https://perma.cc/GK6D-37TJ>].

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. Torben Koenigk et al., *Climate Change in the Arctic*, in PHYSICS AND CHEMISTRY OF THE ARCTIC ATMOSPHERE 673, 674 (A. Kokhanovsky & C. Tomasi eds., 2020).

29. See generally *The Guide to Climate Change in Greenland*, VISIT GREENLAND, <https://visitgreenland.com/about-greenland/the-guide-to-climate-change-in-greenland/#chapter2> (last visited Feb. 6, 2024) [<https://perma.cc/X25A-S4GD>].

positive impacts remains unclear as the climate continues to change, with stronger impacts of climate change constantly evolving.

B. Loss and Damage Fund History

The Intergovernmental Panel on Climate Change (IPCC) provides the following definition for “Loss and Damage, and losses and damages”:

Research has taken Loss and Damage (capitalized letters) to refer to political debate under the *UNFCCC* [(United Nations Framework Convention on Climate Change)] following the establishment of the Warsaw Mechanisms on Loss and Damage in 2013, which is to ‘address loss and damage associated with impacts of climate change, including extreme events and slow onset events, in developing countries that are particularly vulnerable to the adverse effects of climate change.’ Lowercase letters (losses and damages) have been taken to refer broadly to harm from (observed) *impacts* and (projected) *risks*.³⁰

Thus, both generally and for the sake of this Comment, Loss and Damage will refer to the Fund, and losses and damages refers to the tangible effects of climate change that countries are facing, such as loss of land from sea level rise.³¹ The 2022 United Nations Climate Change Conference of the Parties of the UNFCCC, also known as COP27, famously closed with a breakthrough agreement to create a specific funding arrangement for loss and damage funds.³² However, the concept of a Loss and Damage Fund began much earlier than 2022.³³

The UNFCCC has developed to include three pillars of international climate governance: (1) mitigation, (2) adaptation, and (3) loss and

30. INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *Annex I: Glossary*, in GLOBAL WARMING OF 1.5 °C. AN IPCC SPECIAL REPORT ON THE IMPACTS OF GLOBAL WARMING OF 1.5 °C ABOVE PRE-INDUSTRIAL LEVELS AND RELATED GLOBAL GREENHOUSE GAS EMISSION PATHWAYS, IN THE CONTEXT OF STRENGTHENING THE GLOBAL RESPONSE TO THE THREAT OF CLIMATE CHANGE, SUSTAINABLE DEVELOPMENT, AND EFFORTS TO ERADICATE POVERTY (J.B.R. Matthews ed., 2021).

31. *See id.*

32. COP27 Reaches Breakthrough Agreement on New “Loss and Damage” Fund for Vulnerable Countries, U.N. CLIMATE CHANGE (Nov. 20, 2022), <https://unfccc.int/news/cop27-reaches-breakthrough-agreement-on-new-loss-and-damage-fund-for-vulnerable-countries> [<https://perma.cc/A3QX-628U>].

33. *See* Anna Åberg, *The Historic Loss and Damage Fund*, CHATHAM HOUSE (Feb. 1, 2023), <https://www.chathamhouse.org/2023/02/historic-loss-and-damage-fund>.

damage.³⁴ However, loss and damage has only grown to be this third pillar within the past decade.³⁵ Yet, it was more than thirty years ago when the Alliance of Small Island States (AOSIS) called for losses and damages compensation via an international financial mechanism.³⁶ Parties of the UNFCCC³⁷ first officially “decided that the role of the [UNFCCC] would be promoting approaches to address loss and damage” in 2012 at COP18.³⁸ The following year, at COP19, the Warsaw International Mechanism (WIM) was established.³⁹ The WIM was initially established to address losses and damages, and the implementation of its functions are led “by the Executive Committee under the guidance of the COP” each year.⁴⁰ The WIM was delegated with the following functions:

- (a) Enhancing knowledge and understanding of comprehensive risk management approaches to address loss and damage associated with the adverse effects of climate change, including slow onset impacts, by facilitating and promoting:
 - (i) Action to address gaps in the understanding of and expertise in approaches to address loss and damage associated with the adverse effects of climate change, including, *inter alia*, the areas outlined in decision 3/CP.18, paragraph 7(a);
 - (ii) Collection, sharing, management and use of relevant data and information, including gender-disaggregated data;

34. *Paris Knowledge Bridge: Unpacking International Climate Governance*, INT’L INST. FOR SUSTAINABLE DEV., <https://enb.iisd.org/paris-knowledge-bridge/> (last visited Feb. 6, 2024) [<https://perma.cc/K8VS-Y792>].

35. Liane Schalatek & Erin Roberts, *Deferred Not Defeated: The Outcome on Loss and Damage Finance at COP26 and Next Steps*, HEINRICH BOLL STIFTUNG (Dec. 16, 2021), <https://us.boell.org/en/2021/12/16/deferred-not-defeated-outcome-loss-and-damage-finance-cop26-and-next-steps> [<https://perma.cc/G48C-D4YK>].

36. Åberg, *supra* note 33.

37. The UNFCCC is made up of countries, who are known as Parties to the Convention. *UN Climate Change Conferences*, U.N. CLIMATE ACTION, <https://www.un.org/en/climatechange/un-climate-conferences> (last visited Feb. 6, 2024) [<https://perma.cc/G785-F4RD>]. There are currently 198 participating Parties. *Id.*

38. Schalatek & Roberts, *supra* note 35.

39. *Id.*

40. *Warsaw International Mechanism for Loss and Damage Associated with Climate Change Impacts (WIM)*, U.N. CLIMATE CHANGE, <https://unfccc.int/topics/adaptation-and-resilience/workstreams/loss-and-damage/warsaw-international-mechanism> (last visited Feb. 6, 2024) [<https://perma.cc/9ZM8-HYXN>].

- (iii) Provision of overviews of best practices, challenges, experiences and lessons learned in undertaking approaches to address loss and damage.
- (b) Strengthening dialogue, coordination, coherence and synergies among relevant stakeholders by:
 - (i) Providing leadership and coordination and, as and where appropriate, oversight under the Convention, on the assessment and implementation of approaches to address loss and damage associated with the impacts of climate change from extreme events and slow onset events associated with the adverse effects of climate change;
 - (ii) Fostering dialogue, coordination, coherence and synergies among all relevant stakeholders, institutions, bodies, processes and initiatives outside the Convention, with a view to promoting cooperation and collaborations across relevant work and activities at all levels.
- (c) Enhancing action and support, including finance, technology and capacity-building, to address loss and damage associated with the adverse effects of climate change, to enable countries to undertake actions, pursuant to 3/CP.18 (para. 6) including by:
 - (i) Providing technical support and guidance on approaches to address loss and damage associated with climate change impacts, including extreme events and slow onset events;
 - (ii) Providing information and recommendations for consideration by the Conference of the Parties when providing guidance relevant to reducing the risks of loss and damage and, where necessary, addressing loss and damage, including to the operating entities of the financial mechanisms of the Convention, as appropriate;
 - (iii) Facilitating the mobilization and securing of expertise, and enhancement of support, including finance, technology and capacity-building, to strengthen existing approaches and, where necessary, facilitate the development and implementation of additional approaches to address loss and damage associated with climate

change impacts, including extreme weather events and slow onset events.⁴¹

However, many have critiqued the WIM for focusing only on the first and second functions, while ignoring the third function: action on losses and damages.⁴² The failure of the WIM to take meaningful action on a loss and damage mechanism is felt most by vulnerable developing countries.⁴³ Examples of areas experiencing disproportionate loss and damages include Small Islands, Africa, and Arctic regions.⁴⁴ For Small Islands,⁴⁵ “[s]ea-level rise poses an existential threat” as “[t]here is a risk of permanent and irreversible loss of terrestrial, marine and coastal biodiversity as well as the services that these ecosystems provide, such as coastal protection from storms and supporting livelihoods such as fisheries.”⁴⁶ For Africa, losses and damages are manifesting as “species extinction and reduction, irreversible loss of ecosystems and their services, including freshwater, land and ocean ecosystems.”⁴⁷ These losses come with risks to food security and availability of jobs.⁴⁸ As discussed, the Arctic region is also experiencing significant losses and damages from climate change.⁴⁹ Arctic communities, much like Small Islands, “have to find ways to deal with rapidly changing environmental conditions that are leading to social impacts such as outmigration.”⁵⁰

41. U.N. Framework Convention on Climate Change, *Report of the Conference of the Parties on its Eighteenth Session*, U.N. Doc. FCCC/CP/2012/8/Add.1 (Feb. 28, 2013).

42. *See id.*; Schalatek & Roberts, *supra* note 35.

43. *Loss and Damage: A Moral Imperative to Act*, U.N. CLIMATE ACTION, <https://www.un.org/en/climatechange/adelle-thomas-loss-and-damage> (last visited Feb. 6, 2024) [<https://perma.cc/ER7T-FHX7>].

44. *Id.*

45. Small Islands refers to the nations that make up AOSIS, which “represent[s] the interests of the 39 small island and low-lying coastal developing states in international climate change, sustainable development negotiations and processes.” *About Us*, ALLIANCE OF SMALL ISLAND STATES, <https://www.aosis.org/about/member-states/> (last visited Feb. 6, 2024) [<https://perma.cc/HD5G-5PNV>]. This includes nations in the Caribbean Ocean, Pacific Ocean, and African, Indian Ocean and South China Sea. *Id.*

46. *Loss and Damage: A Moral Imperative to Act*, *supra* note 43.

47. *Id.*

48. *Id.*

49. *See infra* Part I(A); Mia Landauer & Sirkku Juhola, *Loss and Damage in the Rapidly Changing Arctic*, in CLIMATE RISK MANAGEMENT, POLICY AND GOVERNANCE 425, 425 (R. Mechler et al. eds., 2019).

50. Landauer & Juhola at 425.

The next significant climate agreement came in 2015: the Paris Agreement. The Paris Agreement was adopted by 196 Parties at COP21.⁵¹ The overarching goal of the agreement is to keep “the increase in the global average temperature to well below 2 °C above pre-industrial levels” and to pursue limiting “the temperature increase to 1.5 °C above pre-industrial levels.”⁵² The agreement is considered unprecedented in the international climate sphere, as it is “a binding agreement [that] brings all nations together to combat climate change and adapt to its effects.”⁵³ The Parties agreed to include a provision on loss and damage in the Paris Agreement but failed to create a loss and damage mechanism.⁵⁴ Instead, the COP, who the WIM is subject to, was decided to also serve as the meeting of the Parties to the Paris Agreement.⁵⁵

Although the Paris Agreement was a landmark agreement, it still left many Parties with more to be desired regarding losses and damages. At COP25, developing countries used the review of the WIM to demand the WIM take action to support vulnerable developing countries.⁵⁶ These demands spurred the establishment of the Santiago Network.⁵⁷ The Santiago Network was tasked with “[c]atalysing technical assistance of relevant organizations, bodies, networks and experts, for the implementation of relevant approaches for averting, minimiz[ing] and addressing loss and damage at the local, national and regional level, in developing countries that are particularly vulnerable to the adverse effects of climate change.”⁵⁸ However, although the purpose of the Santiago

51. *The Paris Agreement*, U.N. CLIMATE CHANGE, <https://unfccc.int/process-and-meetings/the-paris-agreement> (last visited Feb. 6, 2024) [<https://perma.cc/Y3XB-34WZ>].

52. U.N. Framework Convention on Climate Change, *Report of the Conference of the Parties on its Twenty-First Session*, U.N. Doc. FCCC/CP/2015/10/Add.1 (Jan. 29, 2016) [hereinafter U.N. Doc. FCCC/CP/2015/10/Add.1].

53. *The Paris Agreement*, *supra* note 51.

54. Wil Burns, *Article & Essay: Loss and Damage and the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change*, 22 ILSA J. INT'L & COMPAR. L. 415, 424 (2016). The provision on loss and damage was codified in Article 8 of the Paris Agreement. See U.N. Doc. FCCC/CP/2015/10/Add.1, *supra* note 52, at annex. Article 8 focuses mostly on the importance of “minimizing and addressing loss and damage associated with the adverse effects of climate change” and as mentioned, did not create a mechanism for action on the matter. *Id.* The only call to action stated that “Parties should enhance understanding, action and support, including through the Warsaw International Mechanism, as appropriate, on a cooperative and facilitative basis with respect to loss and damage associated with the adverse effects of climate change.” *Id.*

55. U.N. Doc. FCCC/CP/2015/10/Add.1, *supra* note 52, at annex.

56. Schalatek & Roberts, *supra* note 35.

57. *Id.*

58. *Santiago Network*, UNITED NATIONS CLIMATE CHANGE, <https://unfccc.int/santiago-network> (last visited Feb. 12, 2024) [<https://perma.cc/RK9B-EM9A>].

Network was decided at COP25, its functions and modalities for doing so were not defined.⁵⁹

Next, COP26 in 2021 made progress on the loss and damage front again due to pressure from developing countries.⁶⁰ Parties set a process “for developing its institutional arrangements, modalities, and structure in 2022 with the aim to fully operationalize” the Santiago Network by COP27 the following year.⁶¹ However, the Santiago Network can only accomplish so much without financial backing.⁶² Without sufficient finances, the Santiago Network will not be able to effectively provide technical assistance, let alone funding for losses and damages.⁶³ Although there was further progress at COP26 on the Santiago Network, the calls for financing loss and damage compensation continued.⁶⁴

During the final days of COP26, “China introduced a proposal for a Glasgow Loss and Damage Facility.”⁶⁵ This proposal was largely based on an earlier proposal from the AOSIS and focused on providing financial support to developing countries via a Loss and Damage Fund.⁶⁶ This proposal eventually culminated in the Glasgow Climate Pact, but the proposal was not included in the documentation for this compromise despite being properly submitted to the COP26 presidency.⁶⁷ In responding to a submitted question from Parliament Member Mick Wallace on why the European Union (E.U.) did not accept the Glasgow Loss and Damage Facility proposal,⁶⁸ the E.U. cited concerns about the effectiveness of the potential agreement.⁶⁹ The Executive Vice-President

59. Schalatek & Roberts, *supra* note 35.

60. *Id.* “Developing countries articulated their demands that the Santiago Network be much more than a website and that it deliver concrete support on the ground. In advance of the Glasgow COP developing countries expected to see an agenda item distinct from the report of the Executive Committee (ExCom), which guides the work of the WIM, to discuss the [Santiago Network].” *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. Schalatek & Roberts, *supra* note 35.

65. *Id.*

66. *Id.*

67. *Id.*

68. *Parliamentary Question E-005157/2021: EU Rejection of the G77+China Proposal on a Loss and Damage Facility at COP26*, EUROPEAN PARLIAMENT (Nov. 17, 2021), https://www.europarl.europa.eu/doceo/document/E-9-2021-005157_EN.html [<https://perma.cc/334R-BNER>].

69. *Parliamentary Question E-005157/2021(ASW): Answer Given by Executive Vice-President Timmermans on Behalf of the European Commission*, EUROPEAN PARLIAMENT (Jan. 17, 2022), https://www.europarl.europa.eu/doceo/document/E-9-2021-005157-ASW_EN.html [<https://perma.cc/B7WZ-2KAX>].

of the European Commission, Frans Timmermans, stated “[r]ather than accepting what could have been an empty symbolic gesture, the EU [sic] considers that it may better help affected communities by scaling up the work of institutions that they already turn to when facing impacts in the real world.”⁷⁰

Although this outcome was disappointing to developing countries and those that support financing losses and damages, the Glasgow Climate Pact represented meaningful progress on the matter.⁷¹ The Pact includes agreements to “[strengthen] efforts to build resilience to climate change, to curb greenhouse gas emissions and to provide the necessary finance for both.”⁷² For the first time, nations were urged to phase down coal power and fossil fuel subsidies to close the gap between emission reduction plans and the actions needed to actually reduce global emissions.⁷³ Notably, Parties also “reaffirmed their duty to fulfill the pledge of providing 100 billion dollars annually from developed to developing countries.”⁷⁴ This was a part of a larger section specifically on loss and damage, which also urged the Parties, intergovernmental organizations, and other bilateral and multilateral institutions “to provide enhanced and additional support for activities addressing loss and damage associated with the adverse effects of climate change.”⁷⁵ However, once again, Parties could not agree when it came to “discussion related to the governance of the Warsaw International Mechanism for Loss and Damage.”⁷⁶

The following year, COP27 presented serious hope for the development of a financial mechanism and funding for loss and damage.⁷⁷ Professor Anthony Moffa, who attended COP27 as an observer with the Maine Delegation, wrote “[p]erhaps the most crucial question will be whether the parties can agree to launch a financial mechanism right away or will instead agree to just continue the process with an eye toward 2024

70. *Id.*

71. *See* Schalatek & Roberts, *supra* note 35.

72. *The Glasgow Climate Pact – Key Outcomes from COP26*, UNITED NATIONS CLIMATE CHANGE, <https://unfccc.int/process-and-meetings/the-paris-agreement/the-glasgow-climate-pact-key-outcomes-from-cop26> (last visited Feb. 12, 2024) [<https://perma.cc/V899-92R3>]; *see also* Glasgow Climate Pact, Nov. 13, 2021, FCCC/PA/CMA/2021/10/Add.1.

73. *The Glasgow Climate Pact – Key Outcomes from COP26*, *supra* note 72.

74. *Id.*

75. U.N. Framework Convention on Climate Change, Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on its third session, Decision 1/CMA.3, U.N. Doc. FCCC/PA/CMA/2021/10/Add.1 (Mar. 8, 2022).

76. *Id.*

77. *See* Schalatek & Roberts, *supra* note 35.

(COP29) for a firm commitment.”⁷⁸ Throughout COP27, Parties certainly grappled with this question throughout the negotiation sessions.⁷⁹ Many Parties, especially developing nations, did not intend to leave COP27 without a functional financial mechanism in place.⁸⁰ Contrastingly, developed nations such as the United States, Canada, and the United Kingdom expressed substantial hesitancy in doing more than agreeing to a process for the following year, 2023.⁸¹

However, despite these substantial disagreements, COP27 concluded with what many called a “breakthrough agreement” on losses and damages.⁸² First, a specific Loss and Damage Fund was created.⁸³ A transitional committee was created to be responsible “to make recommendations on how to operationalize both the new funding arrangements and the fund at COP28 next year.”⁸⁴ Further, the Santiago Network for Loss and Damage had institutional changes made to continue to provide technical assistance for developing countries.⁸⁵ COP27 also resulted in significant action on limiting greenhouse gas emissions and mitigation efforts.⁸⁶ However, compelling concerns still existed regarding the ability of these negotiations and solutions to keep pace with the rate of

78. Anthony Moffa, *Lost and Damaged*, THE UNIV. OF ME. CLIMATE CHANGE INST., <https://climatechange.umaine.edu/2022/11/09/cop-27/> (last visited Feb. 12, 2024) [<https://perma.cc/8JTT-VMFE>].

79. *Id.*

80. *Id.*

81. *Id.*

82. *COP27 Reaches Breakthrough Agreement on New “Loss and Damage” Fund for Vulnerable Countries*, UNITED NATIONS CLIMATE CHANGE (Nov. 20, 2022), <https://unfccc.int/news/cop27-reaches-breakthrough-agreement-on-new-loss-and-damage-fund-for-vulnerable-countries> [<https://perma.cc/UBF2-FKGN>]; see also Rachel Cleetus, *The UN Loss and Damage Fund Transitional Committee Must Deliver for Climate Vulnerable Countries*, UNION OF CONCERNED SCIENTISTS (Mar. 27, 2023, 2:55 PM), <https://blog.ucsusa.org/rachel-cleetus/the-un-loss-and-damage-fund-transitional-committee-must-deliver-for-climate-vulnerable-countries/> [<https://perma.cc/4ADF-VXFH>].

83. *COP27 Reaches Breakthrough Agreement on New “Loss and Damage” Fund for Vulnerable Countries*, *supra* note 82.

84. *Id.*

85. *Id.*

86. *Id.* Generally, COP 27 resulted in a re-affirming of commitments “to limit global temperature rise to 1.5 degrees Celsius above pre-industrial levels.”; *Id.* Again this year, nations agreed to take stronger action “to cut greenhouse gas emissions and adapt to the inevitable impacts of climate change, as well as boosting the support of finance, technology and capacity building needed by developing countries.”; *Id.* Regarding adaptation, Parties agreed on how to move forward on the Global Goal of Adaptation and new pledges for the Adaptation Fund reached over \$230 million; *COP27 Reaches Breakthrough Agreement on New “Loss and Damage” Fund for Vulnerable Countries*, *supra* note 82.

climate change.⁸⁷ These concerns aligned with the state of the Loss and Damage Fund as well, as the financial commitments to this fund were nowhere near the promised \$100 billion figure.⁸⁸

Following the completion of COP27, the next step regarding the Loss and Damage Fund was for the Transitional Committee to begin working on the prescribed recommendations from the COP27 decision.⁸⁹ Specifically, the Committee was tasked with considering the following in making recommendations for the operationalization of the Loss and Damage Fund and funding arrangements:

- (a) Establishing institutional arrangements, modalities, structure, governance and terms of reference for the fund referred to in paragraph 3 above [(references the Fund's mandate, which "includes a focus on addressing loss and damage")];
- (b) Defining the elements of the funding arrangements referred to in paragraph 2 above [(references decision to create the Fund and that the Fund shall "complement and include sources, funds, processes and initiative under and outside the Convention and the Paris Agreement")];
- (c) Identifying and expanding sources of funding;
- (d) Ensuring coordination and complementarity with existing funding arrangements[.]⁹⁰

Further, the Parties of COP27 declared that the Committee must inform these recommendations by the following:

- (a) The current landscape of institutions, including global, regional and national, that are funding activities related to addressing loss and damage, and ways in which coherence, coordination and synergies among them can be enhanced;
- (b) The gaps within that current landscape, including the types of gap, such as relating to speed, eligibility, adequacy and access to finance, noting that these may vary depending on the challenge, such as climate-related emergencies, sea level rise,

87. Masood et al., *COP27 Climate Talks: What Succeeded, What Failed and What's Next*, 612 NATURE 16, 17 (2022), <https://www.nature.com/articles/d41586-022-03807-0>.

88. *Id.*

89. U.N. Framework Convention on Climate Change, *Report of the Conference of the Parties on its Twenty-Seventh Session, Decision 2/CP.27*, U.N. Doc. FCCC/CP/2022/10/Add.1 (Mar. 17, 2023) [hereinafter U.N. Doc. FCCC/CP/2022/10/Add.1]; *Transitional Committee*, UNITED NATIONS CLIMATE CHANGE, <https://unfccc.int/process-and-meetings/bodies/constituted-bodies/transitional-committee> (last visited Feb. 8, 2024) [<https://perma.cc/7NDV-SEQ3>].

90. U.N. Doc. FCCC/CP/2022/10/Add.1, *supra* note 89, ¶ 5.

displacement, relocation, migration, insufficient climate information and data, or the need for climate-resilient reconstruction and recovery;

- (c) The priority gaps for which solutions should be explored;
- (d) The most effective ways in which to address the gaps, especially for the most vulnerable populations and the ecosystems on which they depend;
- (e) Potential sources of funding, recognizing the need for support from a wide variety of sources, including innovative sources[.]⁹¹

With these codified instructions, the Transitional Committee then met five times throughout the year period between COP27 and COP28.⁹² The Committee was comprised of twenty-four Party members, “with 10 members from developed country Parties and 14 members from developing country Parties.”⁹³ The Committee, originally scheduled for four meetings throughout the year, struggled to come to a consensus on important topics, such as whether or not to locate the Fund at the World Bank.⁹⁴ This led to the calling of a fifth meeting of the Committee, which took place on November 3 and 4, with the pressure on to reach a decision before COP28 at the end of the month.⁹⁵ The Committee ultimately finished its recommendations at this fifth meeting and submitted its report on November 28, 2023.⁹⁶ The report included a summary of the work performed by the Committee, as well as “a draft decision, the Governing

91. *Id.* ¶ 6.

92. *Transitional Committee*, *supra* note 89.

93. *Membership – Transitional Committee*, UNITED NATIONS CLIMATE CHANGE, <https://unfccc.int/te-membership> (last visited Feb. 8, 2024).

94. Co-chairs’ of the Transitional Committee, *Fourth meeting of the Transitional Committee on the operationalization of the new funding arrangements for responding to loss and damage and the fund established in paragraph 3 of decisions 2/CP.27 and 2/CMA.4* (Oct. 24, 2023), https://unfccc.int/sites/default/files/resource/TC4_CoChairsSummary.pdf; see also Rachel Cleetus, *US Must Change Its Posture for 5th Transitional Committee Meeting on Loss and Damage to be Successful*, THE EQUATION (Nov. 1, 2023, 12:44 PM), <https://blog.ucsusa.org/rachel-cleetus/us-must-change-its-posture-for-5th-transitional-committee-meeting-on-loss-and-damage-to-be-successful/> [<https://perma.cc/F2M9-VCWC>].

95. See Cleetus, *supra* note 94.

96. See Rep. of the Transitional Committee, *Operationalization of the Funding Arrangements for Responding to Loss and Damage and the Fund Established in Paragraph 3 of Decisions 2/CP.27 and 2/CMA.4*, U.N. Doc. FCCC/CP/2023/9/-FCCC/PA/CMA/2023/9 (Nov. 28, 2023) [hereinafter U.N. Doc. FCCC/CP/2023/9/-FCCC/PA/CMA/2023/9].

Instrument of the Fund and recommendations on the new funding arrangements”⁹⁷

Following the submission of the Transitional Committee’s report, COP28 took place from November 30 to December 12, 2023, in Dubai, United Arab Emirates.⁹⁸ Although COP27 is regarded as having made significant progress, there was substantial pressure for more progress in Dubai.⁹⁹ The strong calls for effective climate finance continued, and a negotiator for Barbados, Avinash Persaud, said ahead of COP28, “If loss and damage doesn’t succeed, COP doesn’t succeed.”¹⁰⁰ The other Parties clearly maintained this same sentiment, as surprisingly, the Parties operationalized the Loss and Damage Fund on the first day of COP28.¹⁰¹

In operationalizing the Loss and Damage Fund, the Parties largely adopted the text from the Transitional Committee’s recommended decision.¹⁰² This included creating an independent secretariat and governing Board to supervise the Fund,¹⁰³ as well as making the World Bank the “interim trustee and host of the Fund’s secretariat” for four years.¹⁰⁴ Finally, the Parties adopted the Governing Instrument of the Fund, which established the objectives and purpose of the Fund, as well as eligibility guidelines and factors to be considered in allocating resources from the Fund.¹⁰⁵ Particularly relevant for this Comment, the

97. *Id.* at 1.

98. 2023 UN Climate Change Conference (UNFCCC COP 28), SDG KNOWLEDGE HUB, <https://sdg.iisd.org/events/2022-un-climate-change-conference-unfccc-cop-28/> (last visited Feb. 8, 2024) [<https://perma.cc/3XLQ-KCCH>].

99. UN Foundation Climate and Environment Experts & Sueann Tannis, *Climate Issues to Watch in 2023: Toward COP 28 and Faster, More Urgent Climate Action*, UNITED NATIONS FOUNDATION (Dec. 12, 2022), <https://unfoundation.org/blog/post/climate-issues-to-watch-in-2023-toward-cop-28-and-faster-more-urgent-climate-action/> [<https://perma.cc/VLR9-DA3G>].

100. Will Worley, *Last-Chance Saloon for Loss and Damage Deal Before COP28*, THE NEW HUMANITARIAN (Oct. 31, 2023), <https://www.thenewhumanitarian.org/news/2023/10/31/last-chance-loss-and-damage-deal-cop28> [<https://perma.cc/5MBK-W35A>].

101. See Report of the Conference of the Parties on its Twenty-Eighth Session, *Decision -/CP.28 -/CMA.5*, (Dec. 13, 2023) (unpublished manuscript) (on file with the United Nations Climate Change); see also *COP28 Agreement Signals “Beginning of the End” of the Fossil Fuel Era*, UNITED NATIONS CLIMATE CHANGE (Dec. 13, 2023), <https://unfccc.int/news/cop28-agreement-signals-beginning-of-the-end-of-the-fossil-fuel-era> [<https://perma.cc/UF27-Q4YJ>].

102. Compare U.N. Doc. FCCC/CP/2023/9/-FCCC/PA/CMA/2023/9, *supra* note 96, with Report of the Conference of the Parties on its Twenty-Eighth Session, *supra* note 101.

103. Report of the Conference of the Parties on its Twenty-Eighth Session, *supra* note 101.

104. *Id.* ¶ 15.

105. *Id.* annex II.

operationalization of the Fund set the following eligibility requirements to access the Fund: “Developing countries that are particularly vulnerable to the adverse effects of climate change are eligible to receive resources from the Fund.”¹⁰⁶ Regarding the allocation of funding, the adopted text requires the resource allocation system of the Fund to consider:

- (a) The priorities and needs of developing countries that are particularly vulnerable to the adverse effects of climate change, while taking into consideration the needs of climate-vulnerable communities;
- (b) Considerations of the scale of impacts of particular climate events relative to the national circumstances, including but not limited to, response capacities of the impacted countries;
- (c) The need to safeguard against the overconcentration of support provided by the Fund in any given country, group of countries or region;
- (d) The best available data and information from entities such as the Intergovernmental Panel on Climate Change and/or pertinent knowledge from Indigenous Peoples and vulnerable communities on exposure and sensitivity to the adverse effects of climate change and on loss and damage, recognizing that such data, information and knowledge may be limited for specific countries and regions;
- (e) Estimates of recovery and reconstruction costs based on data and information from relevant entities, in particular national and/or regional entities, recognizing that such data or information may be limited for specific countries and regions;
- (f) A minimum percentage allocation floor for the least developed countries and small island developing States.¹⁰⁷

The final progress on the Loss and Damage Fund at COP28 was in the form of contribution pledges from developed countries. By the close of COP28, developed countries had pledged over \$700 million USD to the Fund,¹⁰⁸ including \$108.9 million USD from France, \$100 million USD from Germany, \$108.9 million USD from Italy, \$100 million USD from the United Arab Emirates, and \$17.5 million USD from the United

106. *Id.* at ¶ 42.

107. *Id.* at Annex I ¶ 60.

108. Gerrit Hansen et al., *COP28: Significance Progress by Disappointing Ambition*, COUNCIL OF COUNCILS (Dec. 15, 2023), <https://www.cfr.org/councilofcouncils/global-memos/cop28-significant-progress-disappointing-ambition> [https://perma.cc/ZND3-ZZVT].

States.¹⁰⁹ Although these are substantial contributions, they fall extremely short of the estimated funding needed to actually compensate for losses and damages being faced by developing countries.¹¹⁰ Economic modeling of losses and damages predicted midpoint estimates of \$425 billion USD in 2020, with losses continuing to increase and reaching \$671 billion USD in 2030.¹¹¹ These projections have led researchers in the field to call for a floor of \$400 billion USD per year, with the caveat that this figure will need to increase over time.¹¹² Thus, \$700 million is progress, but is also just a drop in the bucket of the funds needed to meaningfully compensate developing countries for the losses and damages caused by climate change and the actions of developed countries.

C. *Greenland Sovereignty & Denmark Relationship*

Greenland's geopolitical status, particularly with regard to Denmark, is complicated.¹¹³ Currently, Greenland recognizes "itself as a self-governing, autonomous country within the Kingdom of Denmark."¹¹⁴ Greenland maintains its own government and parliament,¹¹⁵ but is also a part of the Danish Parliament because it is within the Kingdom of Denmark.¹¹⁶ Denmark utilizes a system of governance known as a parliamentary democracy, which is a multi-party structure.¹¹⁷ The Queen of Denmark is considered the head of State, but this role is predominantly ceremonial.¹¹⁸ The Danish Parliament, also known as the Folketing, is made up of 179 Members of Parliament.¹¹⁹ Of these 179 seats, Denmark elects 175 Members, the Faroe Islands elects two Members, and Greenland

109. Joe Thwaites, *COP28 Climate Funds Pledge*, NRDC (January 24, 2024), <https://www.nrdc.org/bio/joe-thwaites/cop-28-climate-fund-pledge-tracker> [https://perma.cc/35R2-GKM9].

110. JULIE-ANNE RICHARDS ET AL., *THE LOSS AND DAMAGE FINANCE LANDSCAPE* 6 (2023).

111. *Id.*

112. *Id.*

113. *Greenland's Modern Path to Independence*, VISIT GREENLAND, <https://visitgreenland.com/articles/greenlands-modern-path-to-independence/> (last visited Feb. 13, 2024) [https://perma.cc/XX7X-A7GL].

114. *Id.*

115. *Id.*

116. *Government and Politics*, DENMARK.DK, <https://denmark.dk/society-and-business/government-and-politics> (last visited Feb. 13, 2024) [https://perma.cc/M6JK-A4HA].

117. *Id.*

118. *Id.*

119. *Id.*

elects two Members.¹²⁰ These seats were granted to the Faroe Islands and Greenland by a Constitutional Act in 1953.¹²¹ However, this system has not always been in place and Greenland's evolving relationship with Denmark has significant impacts on Greenland.¹²²

Greenland's history began as a colony with the arrival of Hans Egede, a Norwegian priest, in 1721.¹²³ Hans Egede aimed to colonize Greenland and spread Christianity.¹²⁴ Egede left a tremendous impact on Greenland, and most Greenlanders today are Christians.¹²⁵ However, Egede remains a largely controversial figure in Greenland.¹²⁶ Greenland maintained its colonial status "until 1953, when Denmark unilaterally changed the status of Greenland to a constituency in the Danish Kingdom."¹²⁷ Although this was a positive change for Greenland, it still left the state without much autonomy.¹²⁸ Greenland still lacked its own government, and Greenlanders had to continually fight and call on Denmark for the right to create one.¹²⁹

These calls for more autonomy were ultimately successful in 1978 with the passing of the Home Rule Act in the Danish Parliament.¹³⁰ It did

120. *Elections and Voting*, FOLKETINGET: THE DANISH PARLIAMENT, <https://www.thedanishparliament.dk/en/democracy/elections-and-voting> (last visited Feb. 13, 2024).

121. *Id.*; see also The Constitutional Act of Denmark, https://www.thedanishparliament.dk/-/media/sites/ft/pdf/publikationer/engelske-publikationer-pdf/the_constitutional_act_of_denmark_2018_uk_web.pdf.

122. See *Greenland's Modern Path to Independence*, *supra* note 113.

123. *Id.*

124. *300 Years: Hans Egede's Mission and Legacy in Greenland*, VISIT GREENLAND, <https://visitgreenland.com/articles/300-years-hans-egedes-mission-and-legacy-in-greenland/> (last visited Feb. 13, 2024) [<https://perma.cc/4JUA-HRP7>].

125. *Id.*

126. *Id.* Hans Egede remains a largely controversial figure in Greenland, leaving a large "division of perspectives regarding [his] character and contribution to society . . ." *Id.* A statue of Hans Egede has long existed in Nuuk's Colonial Harbour, which faces the location where he built his first mission. *Id.* This statue was placed here over 100 years ago, notably by a Greenlandic initiative. *Id.* However, controversy has surrounded this statue for at least the past fifty years. *300 Years: Hans Egede's Mission and Legacy in Greenland*, *supra* note 124. This controversy grew significantly in 2020, as worldwide calls against racism and colonialism grew stronger. *Id.* The statue of Egede was defaced with spray paint, and "DECOLONIZE" was written across the base. *Id.* Yet, the people of Nuuk, in a local referendum, voted affirmatively to keep the statue. *Id.* This is illustrative of the larger debate in Greenland as to whether or not to maintain independence. *Id.*

127. *Greenland's Modern Path to Independence*, *supra* note 113.

128. *Id.*

129. *Id.*

130. Elin Hofverberg, *Greenland's National Day, the Home Rule Act (1979), and the Act on Self-Government (2009)*, LIBRARY OF CONGRESS BLOGS (June 21, 2019),

not have the force of law until 1979, as it required the passing of the act titled: Entry into Force of Act on Greenland's Home Rule and Elections to the Greenlandic Parliament.¹³¹ This legislation was passed as a response to a "Greenlandic referendum, whereby 70.1% of the voters (63% voter turnout) voted in favor of increased autonomy."¹³² The legislation further required a Greenlandic Parliament election to take place in April, 1979, allowing the Home Rule Act to take effect on May 1, 1979.¹³³ The Home Rule Act allowed Greenland to create its own government and Parliament.¹³⁴ Throughout the following decade, Greenland's government "took over the administration of areas such as health, education, taxation, infrastructure, business affairs, domestic affairs, spatial planning, social affairs and housing, which were formerly administered by the Danish state."¹³⁵

Although the Home Rule Act allowed Greenland to gain significant autonomy and control over local decisions, it did not represent complete sovereignty by any means.¹³⁶ Due to this lack of sovereignty, another Greenlandic referendum took place in November of 2008, where the Self-Government Act was on the ballot.¹³⁷ Greenlanders clearly supported this Act, as 75% of voters voted in favor of the Act with a 71.96% voter turnout rate.¹³⁸ The Act was then enacted by both Denmark and Greenland in 2009.¹³⁹ Notably, the Act "recognized Greenlanders as a people under international law (preamble), made Greenlandic the official language of Greenland (§ 20), entitled Greenland to representation at Danish diplomatic missions (although Greenland may be asked to pay for the expense) (§ 20), and granted Greenland power over its mineral resource activities."¹⁴⁰ However, the responsibility of foreign affairs remained with the Danish government.¹⁴¹ The Act of Self-Governance also granted the Greenlandic people the right to declare independence, requiring only "a referendum in Greenland and approval from the Danish Parliament."¹⁴²

<https://blogs.loc.gov/law/2019/06/greenlands-national-day-the-home-rule-act-1979-and-the-act-on-self-government-2009/> [<https://perma.cc/DX5U-RGJL>].

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. *Greenland's Modern Path to Independence*, *supra* note 113.

136. *Id.*

137. *Id.*

138. *Id.*; Hofverberg, *supra* note 130.

139. *Greenland's Modern Path to Independence*, *supra* note 113.

140. Hofverberg, *supra* note 130.

141. *Id.*

142. *Id.*

The right to declare independence was an important step for Greenland. While a majority of Greenlanders support independence, this move would not be as simple as merely initiating a referendum.¹⁴³ If Greenland declared independence, it would become responsible for the entirety of its budget.¹⁴⁴ The Danish government currently “provides a general annual financial subsidy to Greenland to cover the expenses that are a consequence of the areas that have been taken over by the Greenland government.”¹⁴⁵ However, the Self-Government Act froze this subsidy, meaning that even as Greenland’s control expands, the subsidy will not increase.¹⁴⁶ The annual subsidy is 3.9 billion Danish Krone (approximately 511 million USD), and accounts for roughly 20% of Greenland’s Gross Domestic Product (GDP) and over 50% of Greenland’s public budget.¹⁴⁷ Thus, in order for Greenland to declare independence, it would need to ensure it has the financial capacity to do so.

Currently, it is unclear if Greenland has the financial capacity to declare independence from Denmark.¹⁴⁸ However, the Greenlandic government is aiming “to increase revenues by promoting economic diversification and greater development of the fisheries value chain, natural resources, tourism, and clean energy.”¹⁴⁹ This effort includes initiatives to make Greenland’s corporate tax code more competitive, increasing the size and efficiency of Greenland’s airports, and expanding the mineral mining sector.¹⁵⁰ These initiatives will likely take substantial time to complete, but Greenland continues to make progress in achieving independence. Notably, on April 28, 2023, Greenland’s parliament, called the Inatsisartut, released the first draft of its own constitution.¹⁵¹ The draft text is a “49-paragraph document written in Greenlandic,” but reports have noted the document is “still in the draft stage, [and] did not come down firmly on several key issues.”¹⁵² The Inatsisartut is likely to continue to edit the draft text for now, and Denmark will become involved once

143. *Greenland’s Modern Path to Independence*, *supra* note 113.

144. *Id.*

145. *Id.*

146. *Id.*

147. *Other Areas in the Kingdom of Denmark*, U.S. DEP’T OF COM. INT’L TRADE ADMIN. (Nov. 30, 2022), <https://www.trade.gov/country-commercial-guides/denmark-other-areas-kingdom-denmark> [<https://perma.cc/K47S-F6HZ>].

148. *See Greenland’s Modern Path to Independence*, *supra* note 113.

149. *Other Areas in the Kingdom of Denmark*, *supra* note 147.

150. *Id.*

151. *Greenland Unveils Draft Constitution for Future Independence*, VOA NEWS (April 28, 2023, 4:35 PM), <https://www.voanews.com/a/greenland-unveils-draft-constitution-for-future-independence-/7070997.html> [<https://perma.cc/T28A-7ZW4>].

152. *Id.*

approval from the Danish Parliament is necessary on the final draft of the Greenlandic constitution.¹⁵³ For now, it remains unclear if or when Greenland will declare independence from Denmark.¹⁵⁴

D. Greenlandic Communities

Greenland has a population of 56,480 and land area of 836,331 square miles, which places it as the least densely populated area in the world.¹⁵⁵ The large majority of the population in Greenland are Inuit, the indigenous people of the Arctic.¹⁵⁶ The Inuit are thought to have first come to Greenland 4,500 years ago, and the Arctic ecosystem is incredibly important to local culture.¹⁵⁷ Duane Smith, the President of the Inuit Circumpolar Conference Canada and Vice-President of Inuit Tapiriit Kanatami, described this by stating “Inuit culture and relationship are uniquely related to the Arctic ecosystem, and what happened to the species directly affects our fortitude.”¹⁵⁸

In Greenland, approximately one-quarter of the population inhabit Nuuk, the capital city of Greenland.¹⁵⁹ Next, just under 5,300 Greenlanders inhabit Sisimiut, the second largest city in Greenland.¹⁶⁰ Outside of these two cities, the remaining people of Greenland largely inhabit fifty-four distinct settlements.¹⁶¹ These settlements truly are distinct, as there are no

153. *Id.*

154. See *Greenland's Modern Path to Independence*, *supra* note 113.

155. *Population of Cities in Greenland 2024*, WORLD POPULATION REV., <https://worldpopulationreview.com/countries/cities/greenland> (last visited Feb. 9, 2024) [<https://perma.cc/HE9X-96U3>].

156. *Greenland Inuit*, SWOOP | ARCTIC, <https://www.swoop-arctic.com/greenland/inuit> (last visited Feb. 9, 2024) [<https://perma.cc/656E-ZGUW>]; *Greenland: Facts & Stats*, BRITANNICA, <https://www.britannica.com/facts/Greenland> (last visited Jan. 9, 2024) [<https://perma.cc/5C2S-DXHR>].

157. *Inuit -the population and culture in Greenland*, GREENLAND TRAVEL, <https://www.greenland-travel.com/inspiration/culture/inuit-the-population-and-culture-in-greenland/> (last visited Feb. 9, 2024) [<https://perma.cc/K8K3-DZ6L>].

158. Duane Smith, *Climate Change in the Arctic: An Inuit Reality*, UNITED NATIONS CHRONICLE (2007), <https://www.un.org/en/chronicle/article/climate-change-arctic-inuit-reality> [<https://perma.cc/BEE3-EPNK>].

159. *Greenland Inuit*, *supra* note 156.

160. *Population of Cities in Greenland 2024*, *supra* note 155.

161. *Towns and Settlements*, GREENLAND TRAVEL, <https://www.greenland-travel.com/inspiration/towns-and-settlements> (last visited Jan. 2, 2024) [<https://perma.cc/3SH6-K5ES>].

roads that connect these communities.¹⁶² Greenland has approximately ninety-three miles of roads, fifty-six of which are paved.¹⁶³ However, these roads remain largely within these towns and settlements, not connecting them.¹⁶⁴ These communities have long relied on fishing and hunting for sustenance and maintaining Greenland's economy.¹⁶⁵ Although recent industrialization in Greenland has shifted some of these communities to the larger urban centers, this reliance on fishing remains.¹⁶⁶ Fishing accounts for 91% of Greenland's exports, making it an important and vulnerable industry.¹⁶⁷ However, as discussed in Part I(A), the Arctic is particularly sensitive to climate change, which has drastic effects on the ability of Greenlanders to fish.¹⁶⁸ Warming temperatures and more dramatic weather events are bringing invasive species, which has dramatic effects on the entire ecosystem.¹⁶⁹ Retreating sea ice also greatly affects the fishing industry, as well as the ability for Greenlanders to use snowmobiles as a method of transportation rather than roads.¹⁷⁰

Outside of the effects on the fishing industry, lake and river erosion is destroying municipal infrastructure and homes in the poorest areas of Greenland.¹⁷¹ Climate change is also affecting water security for many settlements due to the increased frequency of severe weather patterns.¹⁷² Further, warming temperatures are bringing new diseases that threaten the health and safety of Greenlanders.¹⁷³ The science is clear: the effects of climate change are only going to continue to worsen in the Arctic and the poorest Greenlanders will suffer the most.¹⁷⁴ Greenlanders may soon be forced out of their homes, potentially even becoming climate refugees.¹⁷⁵

162. Ambassador Mark A. Green, *No Two Communities in Greenland Are Connected by Road*, WILSON CENTER (Nov. 22, 2022), <https://www.wilsoncenter.org/blog-post/no-two-communities-greenland-are-connected-road> [<https://perma.cc/F7AX-26GS>].

163. *Id.*

164. *Id.*

165. *The Inuit in Greenland are Surviving Rapid Change*, BORGEM MAG. 2 (Oct. 24, 2016), <https://www.borgenmagazine.com/indigenous-inuit-in-greenland/> [<https://perma.cc/R5ZE-KCS7>].

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. *See id.*; Green, *supra* note 162.

171. *The Inuit in Greenland are Surviving Rapid Change*, *supra* note 165.

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.*; *see also* Avery Ruxer Franklin, *Climate Change Will Create More Refugees and Necessitate New Legal Protections, Says Experts*, PHYS ORG (Oct. 20, 2022), <https://>

II. THE IMPLICATIONS OF A LOSS & DAMAGE FUND WITH THE CURRENT STATE OF GREENLAND

As demonstrated in Part I, the purpose of a Loss and Damage Fund is to alleviate some of the burden that developed countries have placed on developing countries facing the worst impacts of climate change.¹⁷⁶ Further, Part I of this Comment demonstrated that Greenland should fall into the group of developing countries that are receiving these funds.¹⁷⁷ Greenland is clearly a developing nation, and is located in the Arctic, where some of the worst effects of climate change have already begun.¹⁷⁸ It remains clear that even with significant action against climate change, the people of Greenland will still deal with extreme, negative effects. Although financial support will not undo these effects, it would certainly help Greenland to adapt to climate change effects and continue moving towards sovereignty from Denmark.

However, the extremely slow-moving pace of climate negotiations and progress on financing the Loss and Damage Fund may not be the largest barrier for Greenland to receive this compensation. At COP27, António Guterres, the United Nations Secretary General, suggested that the funds will eventually be distributed on a country-by-country basis.¹⁷⁹ This will likely reflect the Westphalian system, meaning only the 195 recognized sovereign nations will be included.¹⁸⁰ Of course, the comments from António Guterres do not guarantee that funds will be distributed only to sovereign nations, but the text of the agreement adopted at COP28 regarding the Loss and Damage Fund indicates that this is the case.¹⁸¹ The text included the eligibility requirement for receiving funds of being a “developing country.”¹⁸² This nomenclature is commonly used by the UNFCCC to separate countries that are Parties to the Convention, further

phys.org/news/2022-10-climate-refugees-necessitate-legal-experts.html [https://perma.cc/SD3F-FXC2].

176. See *infra* Part I(B).

177. See *infra* Part I(A) & (B).

178. *Id.*

179. Mia Bennett, *Blog: COP27—'Loss & Damage' is on the Agenda, But Where do Arctic Communities Fall?*, EYE ON THE ARCTIC (Nov. 9, 2022, 3:52 PM), <https://www.rcinet.ca/eye-on-the-arctic/2022/11/09/blog-cop27-loss-damage-is-on-the-agenda-but-where-do-arctic-communities-fall/> [https://perma.cc/TVS7-BKYW].

180. *Id.*; see also *Member States*, UNITED NATIONS, <https://www.un.org/en/about-us/member-states> (last visited Feb. 9, 2024) [https://perma.cc/6MNP-PACZ].

181. Report of the Conference of the Parties on its Twenty-Eighth Session, *supra* note 101.

182. *Id.*

evidencing that Greenland is not eligible.¹⁸³ The Kingdom of Denmark maintains the responsibility of foreign affairs for Greenland, and thus, represents Denmark, Greenland, and the Faroe Islands at UNFCCC proceedings.¹⁸⁴ Thus, this system likely means that Greenland would be left behind if this system is used.¹⁸⁵ The true contours of the system remain unclear, and only time will tell if this is the system intended by the Parties to the UNFCCC. Further, if Greenland declares sovereignty before future distributions are made from the fund, this may not be a problem for Greenland. However, this potential gap in climate reparation is essential to address regardless of these unknown and difficult to predict variables.

III. RECOMMENDATIONS FOR AN EQUITABLE LOSS & DAMAGE MECHANISM

As discussed in Part II, the likely framework for the Loss and Damage Fund fails to account for a country like Greenland, which would otherwise be included in climate reparations if not for its lack of sovereignty.¹⁸⁶ The Loss and Damage Fund comes from the core idea of equity. And yet, proceeding in this predicted way will certainly not achieve equity. Thus, as progress on the Fund continues, it is essential that this gap is accounted for in negotiations and does not continue to exist in the text of future agreements.

The inclusion of Greenland in the Fund could be accomplished merely by explicitly including Greenland in future language. There are likely many other options that could avoid this issue, which should be explored as soon as possible and brought forward at COP29 in November of 2024. However, it is important that Greenland is included in this conversation. Currently, Denmark represents itself, the Faroe Islands, and Greenland as a single party to the UNFCCC.¹⁸⁷ Denmark is considered a developed nation, so it may be against its own interest to advocate for Greenland. Further, if Greenland is included as a nation deserving climate reparations, there is risk that these funds would be funneled to Denmark. This, again,

183. See *Parties & Observers*, UNITED NATIONS CLIMATE CHANGE, <https://unfccc.int/parties-observers> (last visited Feb. 9, 2024) [<https://perma.cc/2G2S-J52M>].

184. See Hofverberg, *supra* note 130.

185. See *infra* Part I(C).

186. See *infra* Part II.

187. See *Parties to the United Nations Framework Convention on Climate Change*, UNITED NATIONS CLIMATE CHANGE, <https://unfccc.int/process/parties-non-party-stakeholders/parties-convention-and-observer-states> (last visited Feb. 9, 2024) [<https://perma.cc/RW9L-SGW2>].

presents an avenue that would do nothing to help Greenland with the dramatic effects of climate change it is experiencing.

Additionally, significant research should be conducted to find other potential gaps in the Loss and Damage Fund, as well as other climate financing mechanisms. Other nations may fall into the same gap that Greenland has, and if the solution is explicitly mentioning Greenland, this will leave those other nations behind. This fund was born out of goals of equity, and this must be applied to all aspects of climate reparations. Finally, Parties must act with urgency to finance and complete the distribution mechanism, including drastically increasing the amount pledged to the Fund. Loss and damage, because of years without meaningful climate action, is now an essential pillar of addressing climate change internationally.

CONCLUSION

As demonstrated throughout this Comment, the Loss and Damage Fund is an important mechanism in dealing with climate change internationally. However, if the mechanism distributes funds as predicted, Greenland will certainly be left behind. Greenland, and the Arctic generally, is experiencing the effects of climate change at a rate significantly faster than the rest of the world. Greenlanders are already dealing with significant challenges in the fishing and hunting industry, as well as significant damages to essential infrastructure in the poorest areas—and these disastrous impacts will continue to progress. Yet, due to a complicated colonialism-based relationship with Denmark, Greenland may now be left behind from this important funding mechanism. The Parties to future COPs must ensure that this gap does not come to fruition for Greenland, or other nations stuck in the same gap.