

The Climate Show Episode 14

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Transcript

00:00:04 Linnea Nordlander

Hi and welcome to the Climate Show, a podcast that explores the law and politics of climate change.

00:00:09 Linnea Nordlander

This podcast is brought to you by the University of Copenhagen.

00:00:16 Beatriz Martinez

Hi we are by treatment and annoyed Lando.

00:00:19 Alessandro Monti

And Alessandro Monti.

00:00:20 Beatriz Martinez

And we are your host at the climate show.

00:00:31 Beatriz Martinez

In November of 2022, the states met at the Conference of the Parties for the annual Climate change negotiations in Egypt. This year, one of the most contentious issues in the negotiations made it on to the formal agenda for the first time, namely loss and damage.

00:00:46 Alessandro Monti

And beyond making it onto the agenda, parties were even able to come to a historic decision on the matter, agreeing to establish funding arrangements for loss and damage for the first time. This is a significant step that has been 30 years in the making.

00:00:59 Beatriz Martinez

This is a measure that has been difficult to make progress on because it is tied up with the question of who is actually responsible for the impacts of climate change and who should pay for them. In order to unpack the implications of the most recent decision, we sat down to talk with two experts on loss and damage. Kees van der Geest and our very own Linnea Nordlander. We are here today with Kees van der Geest, who is an academic officer and head of the environmental migration, interactions and choices section at the UN University Institute for Environment and Human Security.

00:01:40 Beatriz Martinez

Kees is a human geographer by training and is a leading expert on the impacts of climate change, human mobility and loss and damage.

00:01:47 Beatriz Martinez

We also have Linnea Nordlander with us today. You might recognize her as one of the hosts of the show but today, she's joining us against linear, who works as an assistant professor here at the University of Copenhagen, works at the intersection between human rights law and climate change laws and damage. And she has a forthcoming book on this topic, case Lymia. Thank you so much for joining us on the climate show today. Welcome to the show.

00:02:11 Linnea Nordlander

Thanks for having us.

00:02:14 Beatriz Martinez

So loss and damage has been a high profile issue in climate change negotiations in recent years, but especially this. There is also no agreed definition on what loss and damage even is. How do you understand loss and damage and why is the way in which we understand it so important?

00:02:32 Kees van der Geest

Thank you for your question, Bea. Yeah, I think loss and damage though there is not really an agreed definition like legally and there are some broad understanding what what loss and damage is and you could see loss and damage as like what happens when adaptation to climate change. It is increasingly difficult or not possible anymore. So in that sense, you could talk of like 3 eras of climate change. The first era is the era of mitigation. When we thought that we could avoid dangerous climate change by reducing greenhouse gas emissions. And then around 20 years ago, it became clear that some impacts would be unavoidable. But then there was the idea that we could adapt to such impacts. And and a few years ago, I guess we have entered in the era of loss and damage, which is the era in which we realized that adaptation also has limitations and that such limitations are already being felt in some areas of the world. So loss and damage really is about what happens when communities, people live in places where adaptation to impacts of climate change is no longer possible and increasingly difficult or increasingly costly. So with these three areas of of climate change, the how I explained loss and damage is still a little bit abstract, but maybe one example could help you understand what this is about. So think of. An area in north Burkina Faso. We're in a Savannah in an area close to the desert. People have been farming millet there for centuries and millets are quite drought resistant crop and and this is a very drought grown area. So even like 100-200 hundred years ago, every 10 years you would have maybe one or two years that there was not enough rain. To harvest your Millet, but people had their own like coping strategy. So when there was a harvest failure, they would sell some livestock and with the livestock buy food and they would bridge them to the next year to the next harvest. But if because of climate change you have droughts, not every one or two year, not one or two years in 10, but five or six years out of 10 years. Then those coping strategies do not work anymore. So this is what we what we mean with beyond adaptation beyond coping.

00:05:19 Kees van der Geest

So in a situation where this is the case. That people can no longer sustain their livelihoods in a place where they have been living for for for centuries. So this means that. Either and they have to totally change their way of life if that is possible locally or they would have to move to a different place and

that move also comes with a lot of what we call non economic losses and damages. So moving and and and out of the place where you have lived for centuries also comes and and where your family has been farming for century. Where you identify with that place? If you're forced to move to A to a, to a city, for example, it comes with a loss of community, a loss of social cohesion, and loss of social identity, and and those are what we call non economic losses and damages which are actually. Hard to put a dollar mark on if you want to try to compensate people for such harms that that is really, really difficult, but it's something that's the the work on loss and damage also really emphasizes that there are those, those those, those harms that that are beyond what we can really compensate for it.

00:06:35 Linnea Nordlander

On the question of why this is so important and the lack of an agreed definition being so important, is that of course, it's important to know what counts as loss and damage when developing legal responses to loss and damage. So of course the measures that are adopted need to fit the type and scale of harm. And so things like solutions for massive infrastructural damage, for example, will not be as appropriate to apply to something like loss of cultural heritage sites.

00:07:06 Linnea Nordlander

Example and so of course it becomes very important to have a common understanding in order to be able to develop appropriate responses, which is a big part of the focus of the. Negotiations these days.

00:07:19 Beatriz Martinez

The negotiations around loss and damage have always been contentious. Why is that and what have some of the key points of this agreement been, in your opinion?

00:07:29 Kees van der Geest

So loss and damage, although some people say that the the the topic came up in the negotiations already in the early 90s, it really started to become a more important topic around 10 to 15 years ago and it was a a topic that for the most vulnerable. Countries and you could think of of small island States and and and other vulnerable countries. It was a topic that they found really important because they wanted a kind of recognition by the States and countries that have historically produced most emitted most greenhouse gas emissions, a recognition that what they have done so far to to to avoid dangerous climate change has not been been enough. So loss and damage is partly a recognition of the harm. Cost and it has taken many, many years for for to to have like real progress on this topic in the negotiations. But every year when the when the countries gather at the the Conference of the Parties. That's like the climate summit every year, those countries, the most vulnerable countries, really put a lot of emphasis on this topic and and and demanded progress on this on this topic and for for the richer countries, more developed countries who have historically polluted more. It was a topic that they were not, you know, easily prepared to to, to, to agree on because they did not want to accept what we call liability or let's say guilt for for the the damage that they have caused over over over the years. And their lack of action on on reducing emissions and their there's particularly the fear that admitting to this admitting that. These countries are responsible for the harm caused in other countries would come with

with, with important legal implications, and they're particularly afraid that it would cost them a lot of money.

00:09:56 Beatriz Martinez

So in that context, the latest call means really a success, because parties finally agreed to establish financial arrangement mechanism for loss and damage, including the establishment of a fund. What are the implications of this new decision?

00:10:12 Linnea Nordlander

So as you say, of course this is a pretty considerable step in light of how contentious this has been. But in terms of legal implications, it's a little bit more limited. So when you read the decision, it's clear that it is a framework decision. It doesn't grant any rights or obligations to any particular parties. So what is clear. Is that the fund will be dedicated to assisting developing countries in dealing with these impacts. So there is some groundwork for rights to be developed there, but it's not clear who will pay into the fund on what basis or in what. You and it's also not clear what exactly will be funded, so of course that's why it's important to have a common legal understanding of what loss and damage is which. We were talking about earlier as well. As who will benefit from the payouts and based on what types of events, so sudden onset events, slow onset events, and at what point can you say that a slow onset event has manifested? So ultimately it seems like this is a step in the right direction, but in terms of legal rights and obligations of States and individuals, the landscape seems to be mostly unchanged.

00:11:19 Beatriz Martinez

OK, so the fund still needs to be operationalized. And what is going to be the sources of funding there? How do you think loss and damage could be financed?

00:11:29 Kees van der Geest

Yeah, like you may have said, I think so far it's a little bit unclear. I do have some ideas how I think it should be funded. So currently it's a bit I think like voluntary contribution, so richer. Please I can say like oh look how how how great I am. Here's 100 million for loss and damage fund or actually here is like 5,000,000 or or 6,000,000 for the loss in in damage fund which is really in in there's nothing to do with with the real damages. Caused by them and and they can, you know, show their their their goodwill without actually admitting that you know they've actually caused a lot of harm, for for, for people at the front lines of climate change. So I think that's not the right way to go forward I think ideally. And there should be some system where. Yeah, the polluter pace and I mean I think that there are ideas around taxing like oil companies, the biggest ones to support that fund. I think there could also be a system where if countries they agree on certain targets for emission and for adaptation. And when they don't meet those targets they should like be penalized and and pay into the fund what we want on loss and damage is primarily to avoid it. And the the fund is is to support communities, not to avoid loss and damage, but to deal with losses and damages that are already occurring or that will occur in a nearby. So there's a, there's a bit of a risk that if if people, sorry, if countries start to to do less on the mitigation and adaptation side because they say, Oh well, we're going to cause more harm. But anyway, we're going to pay for it so it's not a problem, and so you want to avoid such a situation, so it's it should rather be like if you don't meet your targets on on, on mitigation and adaptation, you're going to have to

pay. More like the double on the loss and damage fund because in reality avoiding climate change is much cheaper than dealing with the consequences.

00:14:16 Beatriz Martinez

And once finance is in place, how should the funding be distributed? Where what should be the considerations of the criteria that should be bear in mind for distributing distributing this funding?

00:14:28 Linnea Nordlander

Yeah. So there are a lot of questions that are still open-ended in that respect. So one of the big questions is of course, who benefits? Is this directed to developing states or directed to individuals in developing states or communities and developing states that are on the front lines of these impacts and and of course, that might depend on the scale of the harm. So if we think back to the example that I gave earlier between sort of the loss of something that is culturally important, perhaps that makes more sense to it makes more sense to distribute remedies to the communities or individuals that are individually affected, but if it's massive infrastructural damage, then of course it would make more sense to distribute it to the states.

00:15:10 Linnea Nordlander

But of course question or depending on how that is resolved, if it's distributed, for example through states, then of course there would need to be good governance instruments in place in order to ensure that the finances used for the ends that it's intended. Then there's also of course the question of for what harms should finance be distributed? And and there's a lot of disagreement around that, again, because of the lack of a common understanding of loss and damage. So is there a certain threshold of harm that needs to be met in order for it to qualify for finance? So does it need to be intolerable? Is something that a lot of scholars will use a term that a lot of scholars will use. Then there's also the question of unavoidable versus avoidable impact, and that, of course, goes to what you were talking about, case. About adaptation and the limits of adaptation. So if a country doesn't have that sort of adequate adaptive capacity, but technically it would be possible to avoid a particular type of harm should that be remedied, for example, and then of course, there's a question of how you remedy non economic versus economic loss and damage. It would in theory be possible to remedy non economic loss and damage through financial instruments. But perhaps that's not what's most fitting. So that is also important and from my perspective, and and what I've explored in a lot of my research is that a lot of those questions can be addressed by adopting a human rights based approach to loss and damage. And that's also something that we're seeing increased engagement with from the human rights community as well.

00:16:41 Beatriz Martinez

Well, before we wrap up, is there anything else you would like to raise that we haven't talked about yet?

00:16:48 Kees van der Geest

Yeah, I would like. To still say two things, the establish of the establishment of the loss and damage funds, and there there are lots of question marks, but I think it's also important to to celebrate this

moment you can it's like your your glass can be half full or half empty and and and and you can raise concerns about how the money would be used whether there will be money at all. But in the 1st place it it, it is really a a very important recognition. Of the arms cost to to the most vulnerable countries and in the negotiations, the establishment of this fund was also really celebrated. By the the the list of of the most vulnerable countries, and you can think particularly of the Oasis that's the alliance of of Small Islands in negotiations and the least Developed Countries group for them it it was, it was really an important moment. And so I think we don't know what the future will bring, but I think it's a good development. And the other thing I wanted to say. Is that and maybe this is a bit more to to young researchers who might be listening to the podcast. There's a difference between adaptation and loss and damage in the sense that adaptation was an important topic of investigation before it became an important topic in the climate change negotiation. In the early 2000s, when adaptation became important in the climate negotiations, there were already thousands of of researchers around the world working on adaptation to drought adaptation to to other climatic phenomena. It's totally different for loss and damage. Loss and damage was A is a topic that emerged in the climate negotiations and only afterwards became a field of research. So and the the the number of people researchers actually working on loss and damage is relatively small still and it's really if you're thinking of a Topic to study on in the in the next few years, I would really invite you to look at loss and damage because there's a lot of work to be done. One of the things that that there, there are different ways to to to study this. There you have the legal perspective, the political science perspective. There's also like moral, ethical, philosophical questions to be answered. But and I'm a human geographer. And what? What I would really want to research in the in the in the the next years. Is to show have the, the, the, the huge diversity in how loss and damage is being experienced by people around the world. It makes such a big difference whether you're in a small island States and the the the desert margin in a rainforest, and there's a lot of cultural dimensions. To to to how losses and damages are experienced and also what would be like acceptable ways to to remedy loss and damage the way people deal with with, with, with, with harm. With emotion, it's so culturally diverse, and for for the right like. Support to those communities that are really at the front lines of climate change, there needs to be also an understanding of that, that cultural and geographical diversity that's not going to be an easy task. So we need a lot of people to work on this.

00:20:33 Beatriz Martinez

And surely the law has a huge role to play there we want.

00:20:37 Linnea Nordlander

To think I mean, as lawyers, we always want to think that the law has a very important role to play. But I think in this case it it absolutely does. If there are rights and obligations that are developed, then those are ultimately sort of legal tools that states can use and individuals can use in order to. Them sort of get access to the remedies that they they need to deal with these impacts and at the same time we see other areas of the law starting to engage with this. Debate to a much greater extent than it previously had. The upswing in the human rights space has with respect to loss and damage, and is quite notable. Previously, human rights law really didn't engage with questions around loss and damage, and now that's really increasing. But also domestically, things like tort law, for example, are increasingly being used to address these challenges, et cetera. So I think of course the law has an important role to play now and in the future with respect to loss and damage.

00:21:32 Beatriz Martinez

So was a case that very few experts in the world dealing with this item and I have had the pleasure of having this conversation with two of them.

00:21:42 Beatriz Martinez

Thank you so much for taking the time to come to the show today and it's been a pleasure. See you soon.

00:21:49 Linnea Nordlander

See you soon.

00:21:49 Kees van der Geest

Thank you.

00:21:57 Beatriz Martinez

Thank you for listening to this episode if you want to learn more about clays and lineage work, check out the names in the show notes. Stay tuned for our next episode.