

Putting the constructive ambiguity of climate change loss and damage into practice: The early work of the UNFCCC WIM ExCom

Lisa Vanhala 

Department of Political Science, University
College London, London, UK

Correspondence

Lisa Vanhala

Email: l.vanhala@ucl.ac.uk

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Abstract

The establishment within the United Nations Framework Convention on Climate Change of the Warsaw International Mechanism on Loss and Damage associated with Climate Change Impacts (L&D) resulted from a loose consensus that emerged based on a constructively ambiguous understanding of what climate change loss and damage is and how to best address this policy problem. Different actors have understood and advocated for divergent conceptualizations of L&D: some frame it through the lens of risk and see comprehensive disaster risk management strategies, insurance schemes and post hoc humanitarian approaches as most appropriate. Others understand it through the lens of climate justice, emphasizing the harms that arise because of climate change losses and damages and advocate for compensation as an appropriate policy response. How does this ambiguity embedded within the climate regime translate into practice during the implementation stage? This research shows that ideational contestation over L&D has specific implications for institutional development, including: (i) the composition and expertise of the governing Executive Committee (ExCom); and (ii) the practices of agenda-setting and the development of the ExCom's workplan. Drawing on multi-sited ethnographic data and interviews with key stakeholders, this analysis identifies some of the ways in which constructive ambiguity can become embodied and institutionalized in L&D governance. It also points to a paradox in international climate governance—that the very ambiguity that allowed for the institutional embedding of L&D is also the driver of continued contestation, facilitates the re-negotiating of issues already agreed and explains institutional delays in effectively grappling with the losses and damages that are already taking place.

1 | INTRODUCTION

The scientific community has warned of the catastrophic consequences of climate change for decades, yet the publication of the

Sixth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) shed new light on the impacts of climate change and associated losses and damages to nature and people. The IPCC's Working Group II on Impacts, Adaptation and Vulnerability noted that

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'the extent and magnitude of climate change impacts are larger than estimated in previous assessments'.¹ These impacts include an increased likelihood and severity of extreme weather events such as hurricanes and heatwaves, as well as slow onset hazards such as sea-level rise, glacial retreat and permafrost thaw. A growing body of research documents the lived experience and political implications of the myriad different forms of losses, including the loss of lives, livelihoods, homes and homelands.² Over the last decade a variety of mechanisms, bodies and policies have been established at the global level to respond to climate change loss and damage (L&D); many are in the early stages of development. The adoption of the Warsaw International Mechanism (WIM) on Loss and Damage associated with Climate Change Impacts in 2013 at the United Nations Framework Convention on Climate Change (UNFCCC) negotiations and the establishment of an Executive Committee (ExCom)—made up of 10 developed country and 10 developing country members—to guide work under the WIM, marked a critical turning point and came as a surprise to many observers of climate governance.³ This process of formal institutionalization was further bolstered by the inclusion of Article 8 on loss and damage in the Paris Agreement.⁴

As the other contributions to this special issue highlight, L&D has been a repeated sticking point in the climate negotiations with strong divisions between (and within) developed and developing country groupings. At the heart of this has been disagreements over the underpinning principles that should guide governance responses to climate change losses and damages and where responsibility for this lies. Particularly, taboo has been mentions of liability for climate change losses and the perspective that responses are a form of 'compensation'. Before 2013, the United States and other developed countries had long been opposed to any establishment of L&D-related institutions and policies. Yet, since 2014, the WIM ExCom has been meeting regularly to implement the decisions of the Conference of the Parties (COP) and the Parties to the Paris Agreement (CMA) and to establish new bodies to advance understanding, coherence and policy development in this area.

This article examines how historically divergent framings of the idea of climate change loss and damage, and the loose consensus found in the idea of L&D embedded into international law in 2013, were translated into the institutional practices of the ExCom in its early years of operation. I suggest that it is worth scrutinizing this early phase and site of institutional development in the sphere of L&D governance to understand how organizational perspectives and practices are shaped in the emergent stages of development. A plethora of

new L&D related bodies and mechanisms have been established in recent years, including five technical expert groups—the Task Force on Displacement (TFD), the Technical Expert Group on Comprehensive Risk management (TEG-CRM), the Non-economic Losses (NELs) Expert Group, the Slow Onset Events (SOEs) Expert Group and the Action and Support Expert Group (ASEG)—as well as the Santiago Network on Loss and Damage which was established at COP25 in 2019. I argue that taking a closer look at the WIM ExCom gives us the tools to understand how key meta concepts and ways of working were established in the early years of the institutionalization of L&D. These concepts and practices stand to shape the L&D landscape going forward.

The first framing, what I refer to as the *risk* frame, usually advanced by developed countries, emphasizes the uncertainty around climate change impacts (including queries about causality and variability over time and space) and focuses on comprehensive risk management, post hoc humanitarian responses and resilience-building as the appropriate response. The second framing, the *harm* frame, initially articulated by the small island developing States and often put forward by developing countries and their civil society allies, stresses the harms caused by climate change impacts, draws attention to the full breadth of forms of loss and damage (including non-economic losses and damages) and brings a justice lens to the question of impacts, including a focus on historical responsibility for greenhouse gas emissions and, at times, calls for compensation for climate-related harms. This approach responsabilizes the leaders of those countries that have historically contributed the greatest greenhouse gas emissions.⁵

Previous research has shown how the construction of conceptual ambiguity played an important role in reaching a consensus 'in the plural'⁶—the juxtaposition of multiple perspectives to accommodate the concerns of all parties—that was necessary for both the establishment of the WIM in 2013 and the anchoring of L&D in the Paris Agreement. However, scholars have drawn conflicting conclusions about whether this ambiguity is ultimately helpful or harmful in addressing the 'problem' of L&D. For example, Page and Heyward suggest that 'a major stumbling block to further progress in this arena is a series of gaps in our understanding of the meaning, application and justification of the concept of loss and damage'.⁷ Emily Boyd and her co-authors propose a middle ground: that 'whilst there are good reasons for ambiguity in the political domain, when moving from negotiations to implementation greater clarity may prove to be important'.⁸

This prompts the question: how is the 'constructive ambiguity' of L&D being put into practice? The research finds that although there

¹IPCC, 'Summary for Policymakers' in HO Pörtner et al (eds), *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press 2022) 1, 8.

²P Tschakert et al, 'One Thousand Ways to Experience Loss: A Systematic Analysis of Climate-Related Intangible Harm from around the World' (2019) 55 *Global Environmental Change* 58; K McNamara and G Jackson, 'Loss and Damage: A Review of the Literature and Directions for Future Research' (2018) 10 *Wiley Interdisciplinary Reviews: Climate Change* 1; J O'Reilly et al, 'Climate Change: Expanding Anthropological Possibilities' (2020) 49 *Annual Review of Anthropology* 13.

³L Vanhala and C Hestbaek, 'Framing Climate Change Loss and Damage in UNFCCC Negotiations' (2016) 16 *Global Environmental Politics* 111.

⁴Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) 3156 UNTS 107.

⁵Vanhala and Hestbaek (n 3).

⁶This is in contrast to the idea of consensus 'in the singular' which is the formation of a view that reduces the diversity of perspectives by converging on the unanimous perspectives; see R Sabel, *Procedure at International Conference* (Cambridge University Press 2006) 335. See also, K De Pryck, 'Intergovernmental Expert Consensus in the Making: The Case of the Summary for Policy Makers of the IPCC 2014 Synthesis Report' (2021) 21 *Global Environmental Politics* 108.

⁷EA Page and C Heyward, 'Compensating for Climate Change Loss and Damage' (2017) 65 *Political Studies* 356, 358.

⁸E Boyd et al, 'A Typology of Loss and Damage Perspectives' (2017) 7 *Nature Climate Change* 723, 723.

appears to be deepening institutionalization of L&D, this does not mean historically divergent understandings of loss and damage have been overcome. Drawing on a socio-legal approach informed by the sociological tools of Pierre Bourdieu, this article identifies two specific channels through which different ideas about loss and damage become embodied and institutionalized. First, through the pre-reflexive expertise and tacit knowledge of the members appointed to the committee. The research identifies two practical lines of divide that shape the composition of the ExCom (beyond those related to formal institutional design): their background expertise and particularly the appointment of disaster risk management experts among developed country members and the 'dual hats' worn by ExCom members who are also negotiators and how that shapes the content and practices of engagement.

A second way in which the constructive ambiguity manifests during the implementation stage concerns the struggles and delays in the discussion about what themes and activities should be included in the committee's work programme. Practices performed largely (but not exclusively) by developed country negotiators were identified in the research: the subtle re-opening and re-orienting of issues agreed in the negotiations, such as the appropriate forum in which to address L&D; the transplanting of ideational associations between L&D and disaster risk management; and the steering of the ExCom's work towards knowledge generation and away from questions related to climate finance and more practical forms of support. Although these two aspects of the ExCom's practices—the who and the what—are by no means the only places in which symbolic power is instantiated, they provide a useful illustration of the ways in which frame contests are resolved (sometimes explicitly but often implicitly, sometimes permanently but often temporarily) through the building of institutions and the emergence of new and hybridized practices in the L&D field.

Section 2 introduces the theoretical approach taken here, which is informed by the work of Pierre Bourdieu. It also presents an overview of the methods deployed. Section 3 presents the empirical material and findings, summarizing an earlier analysis of the different framings of the loss and damage problem and then turning to the original analysis. This looks at how these ideational frames have shaped the composition of the committee in the early years and then examines some of the practices of agenda-setting through a focus on the negotiation of the ExCom's first 5-year workplan. The concluding Section 4 draws out lessons to highlight the contribution of this type of political ethnographic work in advancing our understanding of how international climate law is constructed.

2 | THEORY AND METHODS

By focusing on the ExCom during the early years of its establishment, this article contributes to theorizing and advances our empirical knowledge in several ways. First, the linkage between frames and actual (rather than possible) action and behaviour merits further exploration in the study of international climate law. The aim is to move beyond the traditional focus of policy frame analysis and its

preoccupation with decisions and policy and legal texts to instead show how frames shape institutional development and emergent practices. Second, this article explores the micro-level processes at the global level giving us a better understanding of international law and policy in action. Examining the ExCom allows us to gain a better understanding of the everyday politics of implementing international legal and policy decisions: the actual relations of states as embodied by their representatives.⁹ As Brunnée and Toope note in their analysis of the climate regime 'law is created, maintained or destroyed through day-to-day interactions in communities of legal practice'.¹⁰ Corson and colleagues highlight that this approach sees policymaking 'as meaningful, processual and dynamic, underscoring the importance of attending to the mundane and seemingly irrelevant as well as the obviously influential ways in which policy is negotiated'.¹¹

Focusing on the WIM ExCom offers a unique opportunity to study how frames shape emergent practices which then become 'institutionalized in the sense of becoming regular' and 'naturalized'.¹² The sociological approach of Pierre Bourdieu's theory of practice offers a set of theoretical tools—including the concepts of field, habitus and symbolic power—which I deploy here to illuminate how certain types of embodied expertise, social technologies and logics of action have become embedded in the WIM ExCom and its work. For Bourdieu, a 'field' is a 'space of social forces and struggles', an analytically distinct sphere of competition over a given stake.¹³ Bourdieu suggests that all actors engaged with the field contribute to the construction of social order but also goes on to emphasize that not all actors have the same capacity, or symbolic power to shape the field's object. This suggests that although not all actors have the same capacity to determine the meaning of L&D, they are constitutive of the terrain, have the potential to produce effects and shape the social construction of the issue. Bourdieu's notion of 'habitus' refers to the internalized schemes guiding agents' behaviour. It refers to a practical sense of reality that is acquired through an individual's particular trajectory and captures the embodied, situated way in which individuals are shaped by their position within social fields and how they act within the field, including in relation to what Bourdieu refers to as 'doxa', or taken-for-granted knowledge or the 'presuppositions of the field'.¹⁴ This knowledge structures actors' perceptions of a problem in an undisputed and pre-reflexive way and the social struggles within the field privileges actors that can claim the authority of these particular ways of knowing.¹⁵

⁹I Neumann, *At Home with the Diplomats: Inside a European Foreign Ministry* (Cornell University Press 2012).

¹⁰J Brunnée and SJ Toope, 'Interactional International Law and the Practice of Legality' in E Adler and V Pouliot (eds), *International Practices* (Cambridge University Press 2011) 108.

¹¹C Corson et al, 'Assembling Global Conservation Governance' (2019) 103 *Geoforum* 56.

¹²Neumann (n 9).

¹³P Bourdieu, *The Social Structures of the Economy* (Polity 2005); see also DM McCourt, 'Practice Theory and Relationalism as the New Constructivism' (2016) 60 *International Studies Quarterly* 475.

¹⁴P Bourdieu, *The Logic of Practice* (Polity Press 1990) 68.

¹⁵R Adler-Nissen, 'Stigma Management in International Relations: Transgressive Identities, Norms, and Order in International Society' (2014) 68 *International Organization* 143; M Kuus, 'Transnational Bureaucracies: How Do We Know What They Know?' (2015) 39 *Progress in Human Geography* 432; HR Hughes, 'Bourdieu and the IPCC's Symbolic Power' (2015) 15 *Global Environmental Politics* 85.

In deploying these sociological tools, this research contributes to the growing ethnographic scholarship on international climate law and governance.¹⁶ Drawing on approaches deployed by anthropologists and sociologists in the study of international organizations, this research understands these organizations as sites where power is exerted, navigated, negotiated and resisted; where normative frameworks are contested, constructed and globally diffused; and where resources and knowledge are applied, denied and distributed.¹⁷ Because it is impossible to encapsulate the breadth of the L&D field, its actors and their struggles in a single article this research presents several snapshots that highlight the embodied dispositions and emergent practices of the ExCom.

The research is focused on the early period of the WIM ExCom's existence but is contextualized within data collected as part of a larger project. This has included ethnographic observation at eight WIM ExCom meetings held between 2016 and 2022, six UNFCCC COPs and several other in-person and online events.¹⁸ This observation activity totalled more than 400 hours. Fieldwork involved meeting observation, conversing and interviewing participants, participating in meetings and side events, and reviewing documents associated with various UNFCCC processes and those produced by actors interested in influencing these processes, including the *Earth Negotiations Bulletins* and the civil society-produced *ECO* newsletter; organizational websites and videos, transcripts and/or notes from negotiating sessions and relevant meetings.¹⁹ Fieldnotes were active and contemporaneous with observed events, oscillating between pure description of context, interactions and behaviours; the capturing of discursive intentions and personal experiences and situated observations; and, in situ analytical insights and theoretical representations. In this article I also

¹⁶See J Barnes et al, 'Contribution of Anthropology to the Study of Climate Change' (2013) 3 *Nature Climate Change* 541; JP Brosius and L Campbell, 'Collaborative Event Ethnography: Conservation and Development Trade-offs at the Fourth World Conservation Congress' (2010) 8 *Conservation and Society* 245; LM Campbell, et al, 'Studying Global Environmental Meetings to Understand Global Environmental Governance: Collaborative Event Ethnography at the Tenth Conference of the Parties to the Convention on Biological Diversity' (2014) 14 *Global Environmental Politics* 1; C Corson et al, 'Everyone's Solution?: Defining and Redefining Protected Areas at the Convention on Biological Diversity' (2012) 12 *Conservation and Society* 190; J Depledge, *The Organization of Global Negotiations: Constructing the Climate Change Regime* (Routledge 2004); De Pryck (n 6); Hughes (n 15); HR Hughes and M Paterson, 'Narrowing the Climate Field: The Symbolic Power of Authors in the IPCC's Assessment of Mitigation' (2017) 34 *Review of Policy Research* 744; H Hughes et al, 'Global Environmental Agreement-Making: Upping the Methodological and Ethical Stakes of Studying Negotiations' (2021) 20 *Earth System Governance* 100121; S Jinnah, *Post-Treaty Politics: Secretariat Influence in Global Environmental Governance* (MIT Press 2014); L Vanhala et al, 'Deploying an Ethnographic Sensibility to Understand Climate Change Governance: Hanging Out, Around, In, and Back' (2022) 22 *Global Environmental Politics* 180; R Witter et al, 'Moments of Influence in Global Environmental Governance' (2015) 24 *Environmental Politics* 894.

¹⁷M Louis and L Maertens, *Why International Organizations Hate Politics: Depoliticizing the World* (Routledge 2021); M Kuus, 'Symbolic Power in Diplomatic Practice: Matters of Style in Brussels' (2015) 50 *Cooperation and Conflict* 368; Kuus (n 15); B Müller, 'Lifting the Veil of Harmony: Anthropologists Approach International Organisations' in B Müller (ed) *The Gloss of Harmony: The Politics of Policy-Making in Multilateral Organisations* (Pluto Press 2013) 1; SE Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (University of Chicago Press 2006).

¹⁸Including ExComs 3, 4, 6 and 8 in-person in Bonn and ExComs 12 and 13 (held online). I also observed the negotiations at: COP22 in Marrakech, Morocco; COP23 in Bonn, Germany; COP24 in Katowice, Poland; COP25 in Madrid, Spain; COP26 in Glasgow, United Kingdom; and COP27 in Sharm el-Sheikh, Egypt.

¹⁹Many people very generously shared their personal meeting notes with me for meetings I was not able or allowed to attend or to complement my own note-taking endeavours. To those individuals I am enormously grateful.

draw on data from 35 semi-structured interviews with former and current ExCom members, negotiators, stakeholders from other international organizations, civil society actors, and other observers, mainly from the early period of the ExCom's work in 2016 to complement the ethnographic data. These interviews included questions related to context, institutional procedures, micro-level practices, resources and areas of expertise. They were coded inductively to draw out information and interpretations to construct a descriptive narrative.

3 | GOVERNING CLIMATE CHANGE L&D

3.1 | Framing climate change L&D

Previous research has shown how international agreement to establish the L&D mechanism was made possible by the ambiguity of the term 'climate change loss and damage' and the way in which that ambiguity was constructed. It shows how from 2008 onwards an overarching and ambiguous 'loss and damage' frame began to replace two more specific historical framings that had been relied on in the negotiations: a 'harm' frame that emphasizes liability and compensation and a 'risk' frame that emphasizes disaster risk management approaches, humanitarian response and insurance as an appropriate remedy (see Table 1).²⁰ This article argues that these frames matter in shaping how institutions develop and what they can achieve.

The harm frame, underpinned by a global justice logic, focuses on the responsibility for greenhouse gas emissions and the attribution of specific impacts to anthropogenic climate change. It emphasizes the harm that climate change will cause to those least responsible for greenhouse gas emissions. For example, the *ECO* Newsletter published by the Climate Action Network has advanced this perspective. As early as 2004 it noted that '[t]he possibility is emerging that life could soon become intolerable in some parts of some countries. The issue will then arise of compensation to these countries.'²¹

This framing also has institutional implications: it suggests that the UNFCCC is the most appropriate international forum in which to consider ways of L&D which should also be recognized as being 'beyond adaptation' and therefore worthy of its own policy work stream, institutions and science.²² For example, Bolivia, Ecuador, China, El Salvador, Guatemala, Thailand, Philippines and Nicaragua noted in a submission to the UNFCCC that '[t]he UNFCCC is the relevant policy forum for discussing loss and damage ... it is directly related to the successful or unsuccessful fulfilment of the objective of the Convention'.²³ By contrast, the risk frame is much narrower and

²⁰Vanhala and Hestbaek (n 3).

²¹*ECO* Newsletter (1 December 2004), cited in Vanhala and Hestbaek (n 3).

²²E Calliari et al, 'The Politics of (and Behind) the UNFCCC's Loss and Damage Mechanism' in R Mechler et al (eds), *Loss and Damage from Climate Change* (Springer 2019) 155; N Hall and Å Persson, 'Global Climate Adaptation Governance: Why Is It not Legally Binding?' (2018) 24 *European Journal of International Relations* 540; Vanhala and Hestbaek (n 3).

²³Submission by Bolivia, Ecuador, China, El Salvador, Guatemala, Thailand, Philippines and Nicaragua, in UNFCCC 'Views and Information from Parties and Relevant Organizations on the Possible Elements to Be Included in the Recommendations on Loss and Damage in Accordance with Decision 1/CP.16' (19 November 2012) <<https://digitallibrary.un.org/record/737998?ln=en>>.

TABLE 1 Framings of loss and damage and their institutional implications.

	Risk and uncertainty framing	Harm and justice framing
Diagnostic frames: what is the problem of loss and damage?	<p>Emphasis on:</p> <ul style="list-style-type: none"> • Uncertainty about whether climate change is the driver of specific impacts. • Uncertainty about whether, when and where climate change impacts will manifest. • Socially and politically constructed vulnerability of countries and communities experiencing climate-related hazards. 	<p>Emphasis on:</p> <ul style="list-style-type: none"> • Attribution of responsibility for climate change to the major emitters (specifically, developed countries). • Injustice of consequences of climate change. • Emphasis on full breadth of forms of harm and damage: from economic and non-economic losses.
Examples of types of policies and governance measures	<ul style="list-style-type: none"> • Comprehensive risk management approaches through techniques such as climate risk reduction, risk management, risk transfer and risk retention. • Resilience-building. • Post hoc disaster and humanitarian responses. 	<ul style="list-style-type: none"> • Identification of liability and payment of compensation for loss and damage (dominant from early 1990s to early 2010s). • Solidarity-based funding, technology and capacity building to address loss and damage (dominant from late 2010s onwards).
Prescribed role of global governance	<ul style="list-style-type: none"> • Queries whether UNFCCC is appropriate venue: looks to development, disaster risk and humanitarian organizations. • Loss and damage policy as part of UNFCCC climate change adaptation workstream. 	<ul style="list-style-type: none"> • Responsibility of developed countries to remedy the harm done by their historic greenhouse gas emissions, including for permanent losses. • UNFCCC as primary forum for addressing the loss and damage issue. • Loss and damage policy as distinct, separate and 'beyond adaptation'.
Prescribed role of WIM ExCom	<ul style="list-style-type: none"> • WIM ExCom to play a 'catalytic role', mobilizing other organizations to consider climate risk. 	<ul style="list-style-type: none"> • WIM ExCom as 'driver' of 'action and support' to vulnerable communities.
Prescribed composition of the WIM ExCom	<ul style="list-style-type: none"> • Expertise on comprehensive risk management; climate change adaptation; sustainable development and resilience. • Preference for members with techno-practical approaches. 	<ul style="list-style-type: none"> • Wide representation and areas of expertise including on migration; permanent losses; non-economic losses and slow onset events. • Preference for those who have an understanding of the political compromises reached during the negotiations stage.
Priorities for agenda-setting in the workplan	<ul style="list-style-type: none"> • Promote knowledge development • Enhance understanding of loss and damage • Catalyse other organizations to take action on climate risks and losses and damages. 	<ul style="list-style-type: none"> • General preference for taking a leadership role, driving more ambitious action and ensuring effective resourcing of the workplan and timely delivery of its activities.

implies a thinner conceptualization of the UNFCCC's role, at least in tackling losses and damages. Historically, developed countries have rigorously avoided the adoption of any language that could be interpreted as placing responsibility for climate change impacts on them and the commitment to this position is apparent in the risk framing.²⁴ This frame emphasizes the uncertainty of the causal linkage between climate change and specific impacts and focuses on technocratic solutions related to managing climate risks and/or promoting adaptation. As Boyd and others note in their description of what they refer to as 'the risk management perspective', for some stakeholders managing L&D can include approaches to risk reduction, risk retention and risk transfer and focuses on a techno-pragmatic problem approach.²⁵ This approach tends to situate the problem of climate change impacts at the local/national level, which then has the effect of shifting responsibility on to the leaders of developing countries with claims that loss

and damage is a result of their failure to develop in a sustainable way or prioritize climate change adaptation measures. A more recent and arguably more practitioner-oriented variation of this framing also focuses on post hoc humanitarian responses. This framing suggests that L&D should be dealt with in other international arenas, such as through the Sendai Framework for Disaster Risk Reduction or through the work of development or humanitarian organizations. The framing also suggests that if L&D is seen to be included in UNFCCC processes, it should be seen as part of the adaptation work stream rather than established as a separate policy track.

Despite the institutional advances with the establishment of the WIM in 2013, there is no agreed upon definition of loss and damage under the UNFCCC. However, it is worth noting that the negotiations and outcome of the Paris COP played some further role in shaping the meaning of L&D. First, the stand-alone paragraph on L&D in the Paris Agreement is a quintessential example of a text produced through achieving consensus 'in the plural'—the juxtaposition of multiple perspectives to accommodate the concerns of all parties.²⁶ It is perfectly exemplified by the broad range of potential areas of

²⁴C Bernstein, 'The Absence of Great Power Responsibility in Global Environmental Politics' (2020) 26 *European Journal of International Relations* 8; F Moore, 'Negotiating Adaptation: Norm Selection and Hybridization in International Climate Negotiations' (2012) 12 *Global Environmental Politics* 30; C Okereke, 'Equity Norms in Global Environmental Governance' (2008) 8 *Global Environmental Politics* 25.

²⁵Boyd et al (n 8).

²⁶Sabel (n 6).

cooperation and facilitation included in Article 8(4) of the Paris Agreement: early warning systems; emergency preparedness; slow onset events; events that may involve irreversible and permanent loss and damage; comprehensive risk assessment and management; risk insurance facilities, climate risk pooling and other insurance solutions; non-economic losses; and resilience of communities, livelihoods and ecosystems. Introducing language on 'averting, minimizing and addressing' loss and damage has also been interpreted as widening the meaning of L&D within the UNFCCC. Second, the introduction of language referring to the explicit exclusion of liability or compensation claims under the UNFCCC in reference to Article 8 offers some clarity, legal scholars have argued that 'all options' are open and that much continues to remain unclear about the meaning, boundaries and operationality of the concept on both a policy and practical level.²⁷ The remainder of this section turns to an analysis of some elements of the WIM ExCom to understand how ambiguity manifests in emergent practices.

3.2 | The Warsaw International Mechanism on L&D Executive Committee

The WIM is guided by an Executive Committee consisting of 20 representatives from parties to the UNFCCC. It generally meets formally at least twice a year, in Bonn, Germany (or online during the COVID-19 pandemic).²⁸ Its activities are determined by workplans, which are carefully negotiated by ExCom members and endorsed by the COP and/or the CMA.²⁹ Following an initial 2-year workplan (2015–2017), the ExCom agreed on a 5-year 'rolling' workplan (2018–2022). A third workplan was adopted in 2022.

3.2.1 | The composition of the Committee: Embodying ambiguity

At COP 20 in December 2014, it was agreed that the Executive Committee would be comprised of members from Parties to the Convention, 10 members from Annex I (developed country) parties and 10 members from non-Annex I (developing country) parties.³⁰ The COP encouraged parties to nominate experts with a diversity of experience and knowledge relevant to L&D governance. However, for some groups the nomination process was contentious, and this delayed the timeline for the launch of the ExCom.³¹

Relying on Bourdieu's concept of 'habitus' provides a tool to analyse the historical socio-cultural background and embodied perspective through which agents understand and interpret social relations and the social world.³² This is a particularly useful sociological tool for studying the establishment of a new body within the UNFCCC. Two types of data were generated to explore the embodied expertise of members of the ExCom. The first involved collecting publicly available information about the professional backgrounds of the individuals who have sat on the interim ExCom and the ExCom. The public profiles of 25 members of the interim ExCom and the ExCom were analysed to identify their areas of substantive expertise. Many of the members listed more than one area of expertise and therefore 42 separate themes were identified. These data are limited in that information about some members was not available, but this was not exclusive to one category of membership. Second, interviews included questions to glean interviewees' professional background, areas of expertise and practical knowledge on substantive issues of relevance to the ExCom.

The analysis of the documentary data shows a correlation between the frames used by developed countries in the lead-up to the establishment of the WIM ExCom and the way in which individuals appointed to sit on the ExCom are described in their public, professional profiles. Many had a background in disaster risk management, resilience building, sustainable development and civil protection (see Figure 1). 'Adaptation' was the term used most frequently by ExCom members in their public profiles, followed by 'risk management'. Terminology associated with the 'harm' frame—terms such as 'climate justice' or 'non-economic losses' or individuals with expertise on 'migration', 'health', 'culture' or 'human rights'—were notably absent according to the publicly available descriptions of members' professional background.

Ethnographic and interview data also pointed to divergent forms of experience and background and capacity that ExCom members brought to the committee's work, evoking not only Bourdieu's notion of habitus but also of symbolic power. The first distinction is between those whose professional background is focused on disaster risk reduction (DRR) and humanitarian work on the one hand, and others in the room who have been less involved in those fields. Two regular observers at the ExCom meetings were struck by this in the early meetings of the ExCom. One interviewee contended: 'The DRR people are all the developed country people ... I mean I came away from the last meeting thinking that some people were viewing this as the 'Warsaw International Mechanism for Disaster Risk Reduction'.³³ The interviewee went on to suggest that 'developed countries were trying to reorient this towards a disaster risk reduction agenda'.³⁴ Another research participant echoed this, noting that 'there was one ExCom member who has a particular DRR background and the way

²⁷MJ Mace and R Verheyen, 'Loss, Damage and Responsibility after COP 21: All Options Open for the Paris Agreement' (2016) 25 *Review of European, Comparative and International Environmental Law* 197.

²⁸The 18th meeting of the ExCom was held in Manila from 28 February to 3 March 2023.

²⁹A Johansson et al, 'Evaluating Progress on Loss and Damage: An Assessment of the Executive Committee of the Warsaw International Mechanism under the UNFCCC' (2022) 22 *Climate Policy* 1199.

³⁰For the non-Annex I members this constitutes: two members from each of: the African States, the Asia-Pacific States, and the Latin American and Caribbean States, one member from small island developing States, one member from the least developed countries (LDCs), and two additional members from non-Annex I Parties. Half of the ExCom members are elected initially for a term of three years, and half for a term of two years.

³¹Interview with ExCom observer (4 February 2016); Interview with advisor to LDC group (27 January 2016).

³²Bourdieu (n 14) 68; T Schatzki et al, *The Practice Turn in Contemporary Theory* (Routledge 2001); L Wacquant, 'Following Pierre Bourdieu into the Field' (2004) 5 *Ethnography* 387.

³³Interview with ExCom observer (25 February 2016).

³⁴*ibid.*

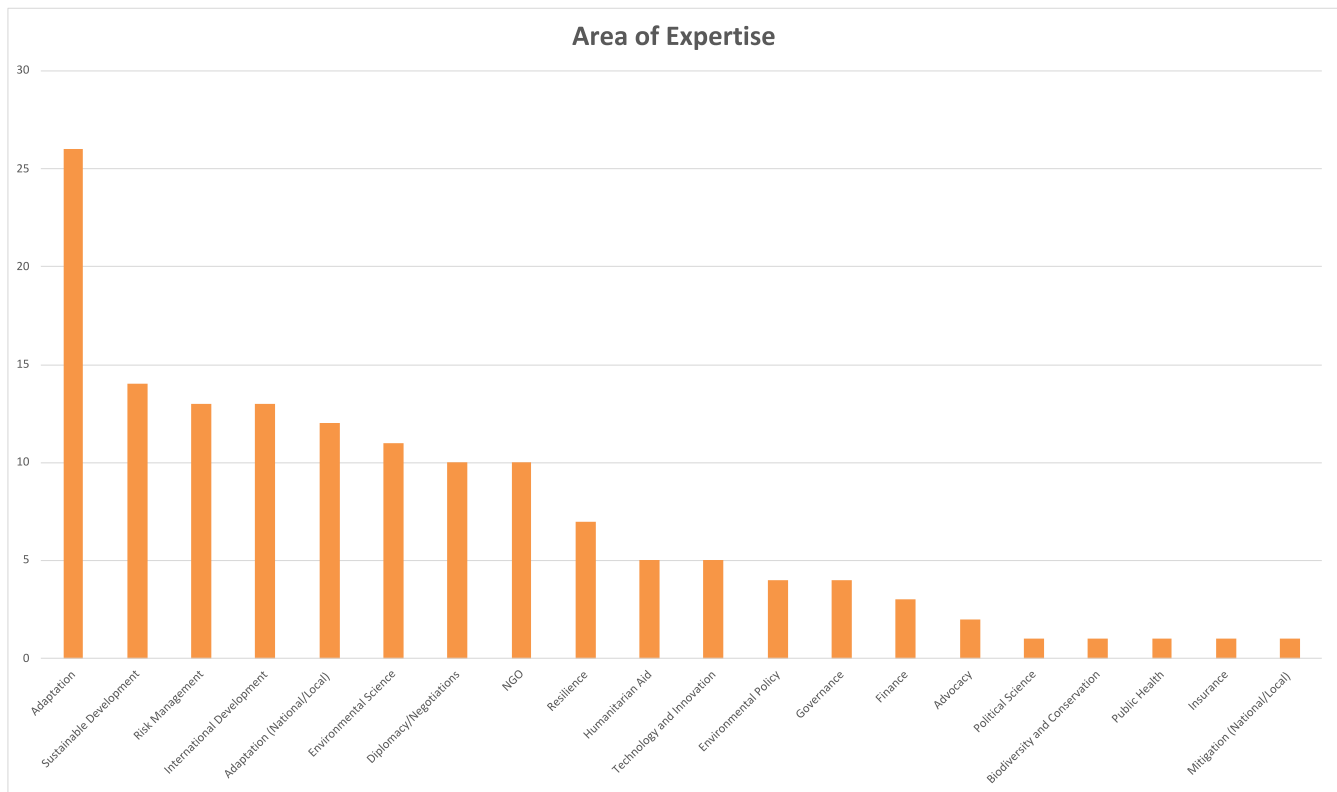


FIGURE 1 Areas of expertise of WIM interim ExCom and ExCom members (2014–2020). *Source:* Coded by author and research assistant from publicly available profiles.

that he responded to some issues was more or less like, “well, we just need to do DRR—we have the Sendai Framework, so what are we talking about?”³⁵ Some interviewees perceived this to be a factor in accounting for some of the behaviour and decisions of the committee. One ExCom member noted that ‘UNFCCC work is being shuttled off to DRR and humanitarian type work’, adding that ‘it was not surprising to me, or to many of us, that there’s that heavy focus of DRR experts from the Annex I countries. It was not a surprise at all.’³⁶ There was no similar thread running across members from developing countries but almost all these profiles indicated a broad set of responsibilities spanning both international engagement and work at the domestic level highlighting potential capacity disparities.

A second distinction, that shaped the practices of (dis)engagement within the meetings, relates to the divide between ExCom members who also serve as negotiators in the UNFCCC process and those not involved in negotiations who bring technical knowledge and experience. One developing country party group advisor noted that this distinction is not meant to matter:

The members of the ExCom have to take off the negotiator hat, and put on the team hat, to say: ‘We have to do a task, we have a job to do and we’re going to

have to do the job’ ... No more arguing about whether this is right or wrong.³⁷

One developed country ExCom member (with a technical background) suggested that there is value in having negotiators in the room to gain an understanding of the political process but also said: ‘I think a balanced mix is what we need. I think at this point there are maybe too many negotiators ... let the politicians and the negotiators deal with the politics and we can do the implementation.’³⁸ However, a developing country ExCom member argued that this can result in miscommunication:

Sometimes an Annex I member might be speaking and totally not meaning to imply anything, it’s just their schooling, their knowledge base, comes with a certain slant, and they say it in a certain way, and it has an impression, or an impact on a non-Annex I [member] that they didn’t even intend. But they may not even have noticed because maybe they’re not even part of the UNFCCC negotiation process, where words are very loaded. So they’re using a word that is just a word, and in UNFCCC language it’s not just a word.³⁹

³⁵Interview with ExCom observer (n 31).

³⁶Interview with ExCom member (12 February 2016).

³⁷Interview with LDC group advisor (27 January 2016).

³⁸Interview with ExCom member (3 February 2016).

³⁹Interview with ExCom member (n 36).

These statements underscore that negotiators carry both substantive knowledge of the ‘political disagreements that went into the decision’⁴⁰ into the implementation phase but also bring experience of a very particular procedural format and a reflexive propensity towards a certain form of discursive engagement and practices of decision-making that emphasize the legal text and relies on ‘agreed language’.

3.2.2 | The practices of agenda-setting: Developing the first 5-year rolling workplan

One of the main tasks for the ExCom in its first 2 years of operation was to develop a 5-year workplan to shape the objectives and activities of the committee in the medium term. The discussions are paradigmatic of the wider set of struggles and forces at play in the L&D field and the process of socially constructing the meaning of L&D. The open discussions of the development of the workplan were protracted and often ran late into the night.⁴¹ This section draws on data from ethnographic observation to illustrate how the legacy of previous frame contestation played out in the discussions and ultimately shaped the detailed—yet incomplete—workplan of the ExCom that was endorsed at COP22. Two specific lines of contention in the development of the 5-year rolling workplan highlight the evolution of frames, and the way in which they are instantiated, shape the institution and its relationships. These are: (i) the role and responsibility of the ExCom in relation to other actors; and (ii) the differing emphasis among members between whether the work of the ExCom should mainly be focused on developing a better understanding of losses and damages as opposed to focusing on concrete action and the provision of support to vulnerable countries.

A point of historic contention in the L&D negotiations concerns the question of whether the UNFCCC is the appropriate forum for governing L&D.⁴² An analysis of the legal and policy language alone—with the establishment of the WIM in the UNFCCC in 2013 and the adoption of the Paris Agreement in 2015—suggest this might be a settled issue, but the questions continually re-surfaced in the shaping of the ExCom’s workplan. For example, developed country members regularly referred to the ‘catalytic (or catalysing) role’ of the ExCom by which they propose that it is the role of the ExCom to promote the activity of other organizations. The following interventions by developed country members of the ExCom were quintessential examples: ‘We have a *guiding* role ... we have an amazing catalytic role. We should catalyse action by existing bodies inside and outside the Convention.’⁴³ Another individual intervened suggesting ‘[w]e should create an enabling environment ... it’s our task and the task of our

successors’.⁴⁴ At this stage, the specific programme that was referred to most often in conjunction with discussions about the ExCom’s ‘catalytic role’ was the (at the time) United Nations International Strategy for Disaster Reduction (UNISDR), which worked to prevent new and reduce existing disaster risk and strengthen resilience.⁴⁵ For some observers this consistent referral to the UNISDR during the ExCom meetings came across as peculiar, particularly as there was no apparent participation by staff from the UNISDR at the meetings whereas staff from the International Organization for Migration, the United Nations Refugee Agency, the United Nations Development Programme and the Platform on Disaster Displacement regularly participated as observers.

Referring to the Sendai Framework and the UNISDR can be seen as a practical way of transplanting an ideational association between L&D and disaster management from the negotiations to the implementation stage. In those discussions some developed State parties argued that loss and damage would be addressed better within the context of the (then) Hyogo (now Sendai) Framework for Disaster Risk Reduction. The Sendai Framework, endorsed in 2015, is a 15-year, voluntary, non-binding agreement which emphasizes that the State has the primary role to reduce disaster risk. As previous research has found, the risk framing that suggests that L&D is a problem that should be dealt with under Sendai Framework minimizes the fact that climate change is the cause (or amplifies the effects) of certain ‘natural disasters’.⁴⁶ In the early ExCom meetings the Sendai Framework was invoked regularly. For example, at the fourth meeting of the ExCom in 2016 one developed country member noted: ‘I can’t believe I’m going to bring up Sendai but since I helped negotiate that one ...’.⁴⁷ Another developed country ExCom member, who rarely spoke during the ExCom’s meetings, intervened to draw linkages to DRR work being done as part of the Sendai Framework and to highlight the role of developed countries as donors.

By contrast, developing country members pointed to a different audience in the discussions to develop the workplan. Repeated appeals to work for ‘vulnerable communities’ and/or ‘vulnerable countries’ were made throughout the discussions. At points this almost appeared to be part of a broader tit-for-tat rhetorical game: Each time the word ‘catalytic’ was used by developed country members, developing country members would evoke the vulnerability of certain countries and/or communities. An example from the third meeting of the ExCom highlights this. One member from a developing country noted that ‘[there is] an expectation on part of vulnerable people ... to see something happening on the ground. I hope this will include implementation ... at least so that the expectations of the most vulnerable could be met.’⁴⁸ Another, from a different continent, acknowledged the points made by a developed country member when she noted: ‘I agree about the catalytic role, I agree about three words

⁴⁰A Moore, *Critical Elitism* (Cambridge University Press 2017) 129.

⁴¹I observed at the third, fourth and sixth meetings of the ExCom in 2016 and 2017 in person. I had access to notes and spoke informally with participants of the fifth meeting. However, many of the discussions were closed and limited to members of the ExCom.

⁴²E Calliari, ‘Loss and Damage: A Critical Discourse Analysis of Parties’ Positions in Climate Change Negotiations’ (2018) 21 *Journal of Risk Research* 725; Vanhala and Hestbaek (n 3).

⁴³Fieldnotes, ExCom 3 (30 April 2016).

⁴⁴ibid.

⁴⁵On 1 May 2019, the United Nations Office for Disaster Risk Reduction officially changed its acronym to UNDRR (from UNISDR) to better reflect its purpose.

⁴⁶Vanhala and Hestbaek (n 3).

⁴⁷Fieldnotes, ExCom 4 (22 September 2016).

⁴⁸Fieldnotes, ExCom 3 (n 43).

[avert, minimize and address] being kept together ... I want to also keep in mind our target audience: vulnerable, developing countries particularly.⁴⁹ Another intervention further insisted on this: 'How can we make the vulnerable feel safe ... how can we build the resilience of these societies? People are suffering.'⁵⁰ One developing country member made a particularly impassioned intervention after some back and forth on these issues:

it's not just about a catalytic role. It's also about providing leadership and oversight ... cases where we are also going to take bold steps ... not be encumbered by bureaucracy; this is about lives. We need—I'm going to be bold and say we need to stop running away from it ... the leadership and oversight role that has really not gotten much attention.⁵¹

At this point the room became uncharacteristically quiet. One of the chairs then asked whether there were any comments from the observers, and this was followed by silence (also a relatively unusual occurrence in the meetings I observed). The chair then called for a coffee break and people left the room. This vignette illustrates the impact that 'consensus in the plural' has during the implementation stage of global policy development; on the construction of the appropriate role of the ExCom and its place within the L&D field.

Finally, developed party members tended to advocate for activities that will enhance knowledge of loss and damage. For example, one suggested it would be a 'good idea to have specific priority on knowledge as in Sendai [the Sendai Framework]. To be complementary. A lot of work is going on in terms of Sendai implementation. In this context, a lot is being done on knowledge. What research is being conducted on extreme events and slow onset?'⁵² Another argued: 'We should not forget about the part on "understanding" ... this is an important element. The more we know the more it gives perspective ... it's a huge responsibility but it's a very exciting responsibility.'⁵³ This was explicitly contrasted by developing country members who emphasize the 'action' and 'support' role of the ExCom. For example, one person suggested that there is a need 'to build on what we have learned to focus on action ... to move beyond information to action. My vision is to go beyond information and collaboration to action on the ground.'⁵⁴ Another said, 'paragraph [3 of Article 8] of the Paris Agreement speaks about enhancing understanding but also enhancing action and support'.⁵⁵

The most contentious point of the discussions was how to refer to the issue of finance in the workplan. These conversations were not about the provision of finance but about how to reference one of the action areas in the workplan that would have a stream of activities related to finance. ExCom members from developing countries were

focused on titling this simply 'finance', whereas developed country members pushed for alternatives that would broaden the focus of the work stream. One developed country member said:

Let me give a final plug for 'financial instruments, tools and approaches'. I wanted to bring in 'approaches' because I was thinking of forecast-based finance ... it could be investment of domestic resources, it could be private sector. So none of the activities we talked about are off the table with 'approaches'.⁵⁶

A developing country member responded 'people understand words similarly. Others have different understandings. Why don't we come back and see what "approaches" means to people. Perhaps leave it to "finance".'⁵⁷ Another developing country member then added: 'So if we can have only "finance" here.'⁵⁸ A third developing country member then came in with the following suggestion when discussions were clearly not advancing: 'What about using "placeholder for finance".'⁵⁹ The chair then made a plea: 'I would like to try a way forward please ... [A few moments of silence] I don't know if the silence means yes or the silence means no.'⁶⁰ A developed country member then spoke: 'At the risk of going around in circles, the two-year workplan has agreed language that there is a level of comfort with ... I don't want a no-consensus document either.'⁶¹ At this stage, with the meeting long over-run, a developed country member put his computer away and packed up his belongings and left. Another developed country member walked out of the room with his phone to his ear. One of the chairs went over to a developing country member, knelt down, and they had a private discussion.⁶² The meeting came to an end with no agreement on the workplan. The development of the workplan was highly contentious and the resulting document, an 'indicative framework for a five-year rolling workplan', that was submitted to the COP contained gaps, thus signalling to the broader global community the lack of consensus.

These vignettes elucidate some of the ways in which the supposedly bureaucratic and technocratic work of the ExCom reproduces unresolved framing contests in the implementation stage and results in particular forms of engagement and delay. Specifically, the snapshot shows, first, how developed country members have sought to 'hollow out' the WIM ExCom's role in global climate governance by promoting a strategy of 'catalysing' other organizations and shifting the problem of climate risks to other forums, most specifically pointing to the DRR community. Second, it highlights how knowledge and the production of new knowledge is relied on by developed country members to evade more concrete forms of action including in areas related to for example slow onset hazards and the provision of funding. This aligns with recent research assessing the WIM ExCom's achievements in

⁴⁹ibid.

⁵⁰ibid.

⁵¹ibid.

⁵²Fieldnotes, ExCom 4 (n 47).

⁵³Fieldnotes, ExCom 3 (n 43).

⁵⁴ibid.

⁵⁵ibid.

⁵⁶Fieldnotes, ExCom 4 (23 September 2016).

⁵⁷ibid.

⁵⁸ibid.

⁵⁹ibid.

⁶⁰ibid.

⁶¹ibid.

⁶²Fieldnotes, ExCom 4 (n 47).

light of the first 5-year workplan, which has highlighted the numerous gaps and delays on the more concrete forms of activity such as the long-delayed establishment of an expert group on action and support.⁶³

4 | CONCLUSION

This research advances understanding of how international climate law is constructed in four ways. First, it draws attention to one by-product of building consensus ‘in the plural’: the slow, protracted and contentious nature of putting ambiguous ideas into practice. By building on earlier research, I highlight a significant paradox in this realm of climate governance.⁶⁴ The existence of two competing L&D frames in the political realm and the ambiguity embedded in international law through the negotiation process shaped both the possibility of establishing L&D within the UNFCCC and the creation of the WIM ExCom. However, these divergent frames and legal ambiguity also limit the possibilities of effective governance of losses and damages. The frame contestation has become part of the very DNA of this institution. This article shows that varying interpretations of the object of governance can have specific implications for the role, responsibilities and resources of different institutions and actors in the policy development and implementation process. This research advances our understanding of some of the practical ways in which ideas matter in international climate governance: historically divergent frames ultimately play a generative role in incipient institutional practices such as who is appointed to a committee, what forms of expertise are represented and excluded, what work will be prioritized and undertaken and in whose interests.

Second, this research highlights some of the specific ways in which agreements can be unravelled later in the policy process. Boyd and her co-authors suggest in their pathbreaking work on different perspectives on L&D that the implementation stage has been overlooked and they note that ‘when moving from negotiations to implementation greater clarity may prove to be important’.⁶⁵ Although their article focuses on perspectives on L&D across a number of different types of stakeholders, areas of expertise and potential sites of activity, this article delves into one critical site of governance: the WIM ExCom. Through the types of expertise appointed and the practices of contestation in agenda-setting during the formulation of the workplan, issues that have the appearance of being resolved in the treaty-making process and celebrated in newspaper headlines are re-opened and re-negotiated in these less observed sites of governance. This research has articulated some of the more mundane, hidden ways in which power manifests during the implementation stage and shows how international agreements can come undone during the implementation stage.

Third, this piece also contributes to existing knowledge by showing how tactics of obstruction deployed by developed countries shape not just the negotiating processes but also the implementation phase

of global policy development. This research shows how ambiguity accommodates practices that reproduce power differentials, capacity imbalances and the reifying of core and periphery status in the construction of international climate law. Falzon and her co-authors show how developed country parties have used a variety of hard and soft bargaining tools to delay action on finance for climate change loss and damage.⁶⁶ This article complements these findings by showing how some of these tactics are also deployed in this important site of loss and damage governance.

Finally, many of the practices and dynamics identified here can be informative when considering some of the latest developments in the institutionalization of L&D within the UNFCCC and beyond. The Global Shield against Climate Risks launched by the G7 and the V20 (‘Vulnerable 20’) embodies many of the understandings of the problem of losses and damages put forward by what I call the risk framing. The divergences in views between key stakeholders within the UNFCCC over the establishment of the Santiago Network for Loss and Damage at COP25 and of a Loss and Damage fund at COP27 also highlight how the two framings are influencing institution building. For example, governments agreed at COP27 to establish a ‘transitional committee’ to make recommendations on how to operationalize the new funding arrangements and new L&D fund.⁶⁷ Diverging from the half-half model of representation of the WIM ExCom (with 10 developed and 10 developing country members), the Transitional Committee comprises 24 members from parties to the Convention and Paris Agreement, with 10 members from developed country Parties and 14 members from developing country parties. This composition and balance hints at potential lessons learned about institutional design; this research also suggests that paying attention to the types of practices developed within this committee will also matter in determining whether and how this body can effectively develop funding arrangements and deliver support to those who need it most. Divisions in the negotiations over the functions, structure and oversight of the Santiago Network also connect with the findings of this study. In those discussions developed country parties called for the WIM ExCom to provide an oversight role, whereas developing countries wanted to establish a separate advisory committee. The Least Developed Countries, among others, have noted that the WIM ExCom is already struggling to carry out all the activities in its workplan and that adding an oversight role would slow progress of the work of the Santiago Network. In addition, the identification of an organization to act as the secretariat for the Santiago Network will also shape the direction of development for the Santiago has also fallen in line with the linkage between competing frames and institutional outcomes. In late 2022, the UNFCCC put out a call for proposals to host the secretariat of the Santiago Network for Loss and Damage.⁶⁸ The research

⁶³Johansson et al (n 29).

⁶⁴Vanhalala and Hestbaek (n 3).

⁶⁵Boyd et al (n 8) 723.

⁶⁶D Falzon et al, ‘Tactical Opposition: Obstructing Loss and Damage Finance in the United Nations Climate Negotiations’ (fc) Global Environmental Politics.

⁶⁷UNFCCC ‘Decision 2/CP.27, Funding Arrangements for Responding to Loss and Damage Associated with the Adverse Effects of Climate Change, Including a Focus on Addressing Loss and Damage’ FCCC/CP/2022/10/Add.1 (17 March 2023).

⁶⁸UNFCCC ‘Call for Proposals to Host the Santiago Network Secretariat’ (31 December 2022) <https://unfccc.int/sites/default/files/resource/message_to_parties_and_observers_hosting_sn_secretariat.pdf>.

presented here provides a framework for understanding how and why some organizations might be deemed more 'appropriate' for taking on this role—the United Nations Disaster Risk Reduction organization, for example—when viewed through the prism of the risk frame. Finally, this research also suggests that the nascent practices established within the early years of this type of techno-practical body will also shape the implementation of L&D governance in important ways. Both of these sets of processes merit further study in terms of understanding whether and how losses and damages will be effectively and legitimately addressed in coming years.

DATA AVAILABILITY STATEMENT

The participants of this study did not give written consent for their data to be shared publicly, so due to the sensitive nature of the research supporting data is not available.

ORCID

Lisa Vanhala  <https://orcid.org/0000-0003-4886-0061>

AUTHOR BIOGRAPHY

Lisa Vanhala is Full Professor of Political Science at University College London. Her current research focuses on the Politics and

Governance of Climate Change Loss and Damage and is funded by a European Research Council Starting Grant (755753–CCLAD). Her research has been published in outlets including *Global Environmental Politics*, *Global Environmental Change*, *Law & Society Review* and *Comparative Political Studies*. She is writing a book entitled *Governing the End: The Making of Climate Change Loss and Damage* that unpacks the politics of climate change loss and damage within the UNFCCC.

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