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COP27: Overview and Key Takeaways

Establishment of the loss and damage fund and development in Article 6 of the Paris Agreement were among the major developments in this year's conference.

On November 20, 2022, the 27th annual Conference of Parties (COP27) of the United Nations Framework Convention on Climate Change (UNFCCC), ended in Sharm El-Sheikh, Egypt. After a year of diplomacy by the Egyptian presidency, strenuous informal work before COP27, two weeks of highly complex technical and political negotiations, and attempts to break the negotiation stalemates, nearly 200 countries agreed on the Sharm el-Sheikh Implementation Plan. The plan includes several decisions: a historical outcome on the establishment of a Loss and Damage Fund (defined below), a mitigation work program, the Global Goal on Adaptation, further guidance on the operationalization of Article 6 of the Paris Agreement on international carbon markets, and the overarching "cover decisions" — the high-level political section of the COP.

This Client Alert first provides an introduction to the UNFCCC and the process of COP, followed by more detailed discussions on some of the major developments of COP27, in particular the establishment of the loss and damage fund, the development in Article 6 of the Paris Agreement, and the major announcements in private sectors that aim to promote greenhouse gas (GHG) emissions reductions. For more information, please refer Latham's previous blog post: Updates From Week One of COP27.

UNFCCC Background

The UNFCCC is the foundational underpinning of the international regime for cooperation on climate matters. It was initially signed by 154 states (referred to as Parties)[1] at the Earth Summit in Rio de Janeiro in June 1992, entered into force on March 21, 1994, and sets out the basic legal framework and principles for international climate change cooperation between Parties.

As the name suggests, the UNFCCC is a "framework" convention that contains the Parties' acknowledgement of the threat of climate change and a high-level commitment to take action, but does not, by itself, introduce significant substantive obligations on Parties in relation to taking action to limit climate change. Instead, the UNFCCC focused on calling for continuing scientific research focused on climate change, as well as regular meetings, negotiations, and future policy determinations.

In addition, the UNFCCC also founded the core institutional structure of international climate governance, centered on the COP as the supreme decision-making body. The UNFCCC determined that the COP was to meet each year, and undertake a continuous negotiation process centered around these annual meetings. All Parties are represented at the annual COP events, at which the Parties review the implementation of the UNFCCC and take relevant decisions on further work.

The first key set of implementation measures under the UNFCCC was the Kyoto Protocol, a treaty adopted in 1997 and which operated from 2005 to 2020. The Kyoto Protocol committed industrialized countries and so-called countries in transition to achieve quantified emissions reduction targets for greenhouse gas emissions. The Kyoto Protocol was superseded by the Paris Agreement, a legally binding treaty that was adopted in 2015 and has been in force since November 4, 2016.[2] The Paris Agreement introduces further requirements on parties to determine, plan, and regularly report on their nationally determined contributions — or the self-determined plans that each party sets to mitigate their impact on climate change.

Process of the Conference of the Parties

COP has taken place once a year since 1995 (with the exception of 2020 due to the COVID-19 pandemic), but can take place as often as the Parties decide. The COP meets in a different city each year, with this year's, COP27, held in Sharm el-Sheikh, Egypt, and next year's, COP28, to be held in Dubai. Aiming to monitor progress and adopt decisions to further develop and implement the UNFCCC and its various extensions, each COP consists of three main parts: negotiations, exhibitions, and side events.

Attendance

In-person attendance in COP sessions is open to registered delegates of the Parties, observer states, and admitted observer organizations that undergo an application process to get admission to the COP.

The "Blue Zone" is the area at COP behind the security checkpoint that is under the jurisdiction of the United Nations and is highly controlled. Passes to enter the Blue Zone are extremely difficult to obtain and must be secured through a country or an accredited organization months before the meeting. The Blue Zone includes the official plenary space where the actual negotiations take place, multiple negotiation and side-event rooms, and country and organization pavilions.

The "Green Zone", on the other hand, is open to the registered public and is the platform where the youth, civil and indigenous societies, academia, artists, and fashion communities can organize events, exhibitions, workshops, and talks to promote dialogue, awareness, education, and commitment on climate action. In addition to the Blue and Green Zones, an unofficial program of events takes place across the host city organized by various companies, organizations, and individuals.

The first few COPs consisted mostly of meetings between governments and the United Nations. Over the past 10 years, however, companies and trade associations have participated increasingly in the COP process and used the Blue Zone as an opportunity to showcase their platforms, meet other businesses and government leaders, and negotiate and conclude transactions. More than 35 CEOs of global multinational companies are estimated to have attended COP27, with a large cross-section of global companies now being represented at COP by senior executives.

A Focus on Negotiations

The COP is an opportunity for delegates from the 197 Parties of the UNFCCC to negotiate global goals for tackling climate change, present their individual countries' plans for contributing to those goals, and report on their progress.

Parties to UNFCCC often form groups, or "blocs," to negotiate together, such as the G7 and China, the Africa Group, the Least Developed Country Group, the Umbrella Group, the Alliance of Small Island States, the Climate Vulnerable Forum, the Independent Alliance of Latin America and the Caribbean, the Powering Past Coal Alliance, and the High Ambition Coalition.[3] The negotiations may also include observers, such as United Nations agencies, intergovernmental organizations, and NGOs.

Last year's COP26 culminated in the Glasgow Climate Pact, which included an agreement to "hold the increase in the global average temperature to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C."[4] At COP26, the Parties agreed to deliver stronger commitments in 2022, including updated national plans with more ambitious targets, as well as signing many pledges regarding net-zero commitments, forests protection, and climate finance. The focus of COP27 negotiations, on the other hand, was to move towards planning for implementation of the goals, promises, and pledges made at COP26.

Loss and Damage Fund

After intensive negotiations at COP27, the Parties adopted a decision during the closing plenary to establish "new funding arrangements for assisting developing countries that are particularly vulnerable to the adverse effects of climate change,"[5] including the creation of a "loss and damage" fund to assist nations most vulnerable to the climate crisis (the Loss and Damage Fund). While the details remain to be negotiated, the Loss and Damage Fund is expected to provide support for developing countries suffering losses from droughts, floods, rising seas, and other acute and chronic impacts of climate change. The final announcement at COP27 recognized the need for financial support from a variety of sources, but no decisions have been made on who should pay into the fund, where this money will come from, and which countries will benefit. A Transitional Committee was set up to make recommendations on elements for the operationalization of the new funding arrangements, to be considered and adopted at COP28 next year.

Paris Agreement Article 6 Status Update

Background

Article 6 of the Paris Agreement provides the framework that allows countries to sell and purchase GHG reductions, known as Internationally Transferred Mitigation Outcomes (ITMOs). Under the Paris Agreement, countries have communicated Nationally Determined Contributions (NDCs) pursuant to Article 4 that describe each country's respective GHG emission target (which can be an increase in GHG emissions in the case of certain developing countries). Article 6 of the Paris Agreement recognizes the role of collaboration in countries' efforts to implement their NDCs and to enable them to enhance their climate ambitions by increasing efficiency gains, lowering the marginal cost of abatement, and promoting sustainable development and environmental integrity. Specifically, Article 6 establishes cooperative approaches in the form of bottom-up bilateral or multilateral agreements under Article 6.2 and a Global Carbon Market Mechanism (GCMM) under Article 6.4 whereby countries can purchase ITMOs to meet their NDCs.[6]

COP26 in Glasgow produced initial rules on how the Article 6 market mechanisms would function, collectively known as the "Article 6 Rulebook." However, a number of key issues were left open in the Rulebook for resolution at COP27, including details on how the GCMM would operate, how issuing countries authorize ITMOs, how such authorizations may be "withdrawn," and whether to definitively exclude "avoided emissions" from being eligible under either Article 6.2 or Article 6.4. Despite intense negotiations at COP27, however, the climate conference delivered only a partial decision on these matters, leaving some of the thorniest questions to be tackled in the future.

New Decisions on Article 6.2

One significant decision coming out of COP27 clarifies what information countries need to report when trading ITMOs and whether this reporting may be kept confidential. Parties supplemented the Article 6 Rulebook to grant countries complete control over the confidentiality of information related to trading ITMOs.[7] While some earlier drafts of the supplement would have required countries to explain the basis for withholding any information, the final text makes this optional: "the [p]articipating party should provide the basis for protecting the confidentiality of such information."[8] Significantly, however, the supplemental text asks the Subsidiary Body for Scientific and Technological Advise (SBSTA) — a subsidiary body of the UNFCCC that advises on scientific, technological, and methodological matters — to develop rules that might constrain the use of confidentiality. It asks countries to submit their views on this matter before the next intersessional meeting in Bonn, Germany, in June 2023.[9]

Despite open issues that remain in the Article 6 Rulebook, some countries are already inking agreements under Article 6.2. Switzerland has signed the most deals so far, having committed to purchasing ITMOs from countries such as Thailand, Peru, Morocco, Ghana, and Dominica.[10] Singapore has signed Article 6.2 agreements with five countries and is in negotiations with 15 more. And Sweden recently signed memorandums of understanding with Nepal and the Dominican Republic that lay the groundwork for climate cooperation under Article 6.2, which followed a similar agreement with Ghana at the end of 2021.

New Decisions on Article 6.4

COP27 established a new type of carbon credit known as an Article 6.4 "mitigation contribution emission reduction" (MCER). These emissions reductions are issued under Article 6.4 but not authorized by the host country for international compliance use, meaning MCERs may not be traded as ITMOs.[11] These credits represent emissions reductions (or, potentially, removals) that "may be used, inter alia, for results-based climate finance, domestic mitigation pricing schemes, or domestic price-based measures, for the purpose of contributing to the reduction of emission levels" in the credit-generating jurisdiction.[12]

The text governing the generation and use of MCERs states that MCERs are "authorized for use towards achievement of NDCs and/or for other international mitigation purposes."[13] Some commentators have interpreted "other international mitigation purposes" to include corporate buyers purchasing credits in the voluntary carbon market (VCM). But the Paris Agreement does not have jurisdiction over the VCM, and thus carbon registries and voluntary standard-setting bodies will need to weigh in to provide much-needed clarity on whether emissions reductions or removals that generate credits under Article 6 may also generate credits that may be traded in the VCM.

Negotiations concerning other aspects of Article 6.4 bore little fruit, particularly with respect to "removals" — meaning engineered or natural processes that take GHG emissions out of the atmosphere (for example, afforestation and direct air capture projects). Just before COP27 began, the Supervisory Body — which is tasked with overseeing the development and implementation of the GCMM — released a set of recommendations concerning removals that prompted a negative reaction from certain NGOs, which claimed that the recommendations did not adequately address human rights issues in connection with emissions removal projects.[14] Following this reaction, COP27 ultimately punted on the definition of "removals."

Other issues that remain unresolved include how legacy credits from the Clean Development Mechanism (CDM) — the older credit regime that operated under the Kyoto Protocol and which the GCMM is meant to replace — should be transferred to the GCMM, and the operations of the GCMM's registry (called the Centralized Accounting and Reporting Platform, or CARP) that tracks emissions reductions generated and, in the case of ITMOs, traded under Article 6.4. While a broad framework for CARP exists, operational caps will need to be addressed at COP28 in Dubai.[15]

Major Announcements Made at COP27

Similar to previous COP events, a number of major announcements transpired during events outside of the main pavilion.

Saudi Arabia's Green Initiative and New CCS Project

On November 11, 2022, Prince Abdulaziz bin Salman, the Minister of Energy in Saudi Arabia, announced that the Kingdom would be launching a domestic carbon credit scheme early in 2023. At a side event on November 12, further details on the proposal emerged, revealing that the credits would be Article 6 compliant and eligible for both domestic use and international transfer. The scheme aims to reflect the stringency of the Paris Agreement by imposing additionality, permanence, and baseline-setting requirements, in addition to new measures against double counting.[16]

John Kerry's Energy Transition Accelerator and President Biden's Methane Strategy

As discussed in a previous blog post Updates from Week One of COP27, the US made several announcements during the first week of COP27 that will have significant implications for the private sector.

Early in the week, US climate envoy John Kerry announced plans to use voluntary carbon markets to drive the energy transition. The proposed "energy transition accelerator" would enable corporations to purchase carbon credits from governments (or other jurisdictions) and use those credits to meet their voluntary climate targets. The capital raised from the sales would then fund clean energy projects in developing countries.

Later in the week, President Biden announced that the federal government will soon require domestic oil and gas producers to detect and fix methane leaks. This would be accomplished by introducing regulations targeted at oil and gas entities, as well as a "super-emitter response program" that would require oil and gas operators to respond to credible third-party reports of major methane leaks at their sites.

Africa Emerging as a Climate Leader

The launch of the Africa Carbon Markets Initiative on November 8, 2022, enables Africa to become a frontrunner in the supply of voluntary carbon market offsets. The continent expects to produce 300 million in offsets per year by 2030, scaling to 1.5 - 2.5 billion per year by 2050. Since the initiative expects to generate a revenue of US$6 billion, it hopes to expand energy access, create jobs, and protect biodiversity in some of the world's poorest countries.[17]

On November 10, 2022, Brad Crabtree, Assistant Secretary for the Department of Energy's Office of Fossil Energy and Carbon Management, announced that Nigeria and Kenya will be joining the US in utilizing CCS technology to reduce their greenhouse gas emissions. Crabtree explained that CCS provides emerging economies with the opportunity to develop and industrialize while keeping their carbon footprint low.

Nigeria is currently conducting a comprehensive technology assessment across all sectors and has already collaborated with the World Bank and International Energy Agency to develop a CCS pilot project. The upcoming launch of the Africa Center of Excellence for Carbon Management and Technology

Innovation will aid CCS projects; which Nigeria hopes will serve as a platform for knowledge dissemination and become a "one-stop shop for policymakers and industries."[18]

Indonesia's Just Energy Transition Partnership

On November 15, at the Partnership for Global Infrastructure and Investment event at the G20 Summit, President Joko Widodo of Indonesia and International Partners Group (IPG) leaders launched a Just Energy Transition Partnership. The groundbreaking commitment to mobilize an initial US$20 billion in public and private financing includes an accelerated power sector emissions reduction pathway to net zero by 2050 and a strategy to expand renewable energy development, phase down coal-fired electricity generation, and make further commitments to regulatory reform and energy commitments. The financing will take place over a three- to five-year period and the partnership hopes that this will provide the necessary foundations for Indonesia to achieve its ambitious climate and energy targets.[19]

LEAF and the Forest and Climate Leaders' Partnership

On November 7, 2022, the Lowering Emissions by Accelerating Forest finance (LEAF) Coalition announced its planned collaboration with a number of corporates and governments, including the national government of the Republic of Korea as the first Asian government, to provide an additional US$500 million in private sector funding to the existing US$1 billion in financial commitments for countries seeking to protect their forests. Significantly, Ecuador became the first forest nation to enter into a LEAF memorandum of agreement, a document establishing a roadmap for the country to sign a binding Emissions Reduction Purchase Agreement by April 2023.[20]

On the same day, a voluntary partnership of 26 countries and the European Union announced the launch of the Forests and Climate Leader's Partnership (FCLP). Building on the deforestation commitments made at COP26, the FCLP will identify strategic areas in which members can implement and scale up new and existing solutions. The FCLP intends to work closely with the private sector, community leaders, and civil society. In addition to holding annual meetings to promote member accountability, the FCLP will publish an annual Global Progress Report that will assess global and FCLP progress towards the goal of halting and reversing deforestation and land degradation by 2030.[21]

Opec of Rainforests

In a further effort to promote forest preservation, Brazil, Indonesia, and the Democratic Republic of Congo, the three nations home to more than half of the world's tropical forests, signed a pact on November 14, 2022, agreeing that they would formally cooperate on forest preservation efforts. The alliance contended that they should be paid for their efforts to reduce deforestation and maintain their forests as carbon sinks. The countries have further agreed to negotiate "a new sustainable funding mechanism" to help developing countries preserve their biodiversity.[22]

California Insurance Commissioner's "Sustainable Insurance Roadmap"

Insurance Commissioner Ricardo Lara has announced a "Sustainable Insurance Roadmap" for California's insurance market, marking a shift in strategy for the state's insurance sector. The pioneering sustainability strategy and action plan encourages the sector to actively reduce emissions and increase community resilience to climate-related disasters. Among its top priorities, it lists:

1. greenhouse gas reductions;
2. close protection gaps for vulnerable communities;

3. availability and affordability of insurance; and

4. community protection from climate threats.[23]

Long-Term Climate Strategies and Emission Trading Schemes

On November 14, 2022, India released a long-term climate strategy focused on deploying technological solutions, such as CCS and hydrogen, to meet its goal of net zero by 2070. The plan outlines six key areas for reducing the country's net emissions: electricity, urbanization, transport, forests, finance, and industry. Further, India stressed that developed countries need to provide climate finance to assist the country with its plan, given that transition costs will likely fall within the range of trillions of dollars.[24]

Finally, a number of countries, including Nigeria, Turkey, and China, announced the introduction of, or changes to, their emission trading schemes.

Next Stop — Dubai COP28

COP28, slated to take place in late 2023, will be hosted by the United Arab Emirates in Dubai Expo City.

COP28's biggest challenges will include laying out the operation of the Loss and Damage Fund, while the major points of contention are likely to be which countries would contribute to the fund and which could benefit from it. Negotiations on emissions reduction targets and reduction of fossil fuel use will likely dominate the conference as well, given the limited progress achieved this year.

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Endnotes

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[1] As at the date of this Client Alert, 198 countries have ratified the UNFCCC - https://unfccc.int/process-and-meetings/what-is-the-united-nations-framework-convention-on-climate-change#:~:text=The%20UNFCCC%20entered%20into%20force,called%20Parties%20to%20the%20Convention.

[2] The 30th day after the date at which the Paris Agreement was ratified by at least 55 Parties to the UNFCCC, accounting in total for at least an estimated 55% of the total global greenhouse gas emissions.

[3] Reuters, Fact Box: Countries and Rival Interests at the COP27 Climate Talks (Nov. 8, 2022), available at https://www.reuters.com/business/cop/cop27-major-players-un-climate-talks-egypt-2022-11-04/.

[4] UNFCCC, Glasgow Pact, available at https://unfccc.int/sites/default/files/resource/cop26_auv_2f_cover_decision.pdf.

[5] UNFCCC, COP27 Reaches Breakthrough Agreement on New "Loss and Damage" Fund for Vulnerable Countries, available at https://unfccc.int/news/cop27-reaches-breakthrough-agreement-on-new-loss-and-damage-fund-for-vulnerable-countries.

[6] Unlike the generation of ITMOs under Article 6.2, which are governed by bilateral agreements, Article 6.4 Emission Reductions ("ERs") are generated from a centralized mechanism that is governed directly by UNFCCC for the authorization and issuance of ERs similar to the Clean Development Mechanism credits under the Kyoto Protocol. But Article 6.4 ERs, when authorized for use toward NDC achievement or other international mitigation purposes, are considered ITMOs. *See Guidance on cooperative approaches referred to in Article 6, paragraph 2, of the Paris Agreement,* Paragraph I, Item (g), (UNFCCC, 2022)

[7] *See Guidance on cooperative approaches referred to in Article 6, paragraph 2, of the Paris Agreement and in decision 2/CMA.3*, Annex II, Section VII, Paragraph 22, (UNFCCC, 2022).

[8] *Compare Matters relating to cooperative approaches referred to in Article 6, paragraph 2, of the Paris Agreement (draft decision)*, *with Guidance on cooperative approaches referred to in Article 6, paragraph 2, of the Paris Agreement and in decision 2/CMA.3*, Section VII, Paragraph 22, (UNFCCC, 2022).

[9] The SBSTA and the Subsidiary Body for Implementation ("SBI") meet for regular intersessional gatherings to address issues tasked to them at the prior COP. The next meeting will be in Bonn, Germany, from June 5-15, 2023.

[10] *See, e.g.*, UNDP, Ghana, Vanuatu, and Switzerland launch world's first projects under new carbon market mechanism set out in Article 6.2 of the Paris Agreement (Nov. 12, 2022).

[11] *See* Guidance on the mechanism established by Article 6, paragraph 4 of the Paris Agreement, Annex I, Section IV.A, paragraph 29(b); *See supra*, n. 5, for a brief discussion concerning the relationship between credits generated under Article 6.2 and those generated under Article 6.4.

[12] Guidance on the mechanism established by Article 6, paragraph 4 of the Paris Agreement, Annex I, Section IV.A, paragraph 29(b).

[13] Guidance on the mechanism established by Article 6, paragraph 4 of the Paris Agreement, Annex I, Section IV.A, paragraph 29(b).

[14] UNFCCC, Recommendations: Activities involving removals under the Article 6.4 mechanism, available at https://unfccc.int/sites/default/files/resource/a64-sb003-a03.pdf.

[15] UNFCCC, Overview of A6 Recording and Tracking Infrastructure, available at https://www4.unfccc.int/sites/SubmissionsStaging/Documents/202204152125---Appendix%201_Overview%20of%20infrastructure.pdf.

[16] ARAB News, Saudi Arabia launches 3 climate projects, carbon credit scheme at COP 27, available at https://www.arabnews.com/node/2198586/business-economy.

[17] Africa Carbon Markets Initiative, Roadmap Report (Nov. 2022), available at https://www.seforall.org/system/files/2022-11/ACMI_Roadmap_Report_Nov_16.pdf.

[18] International Institute for Sustainable Development, Carbon Capture and Storage – Where is it in Africa and What Can Be Learned for Emerging Economies (10 November 2022), available at https://enb.iisd.org/carbon-capture-storage-africa-emerging-economies.

[19] The White House, Indonesia and International Partners Secure Groundbreaking Climate Targets and Associated Financing, available at https://www.whitehouse.gov/briefing-room/statements-releases/2022/11/15/indonesia-and-international-partners-secure-groundbreaking-climate-targets-and-associated-financing/.

[20] LEAF Coalition, Leaf Coalition Commitment Top $1.5 Billion (7 November, 2022), available at https://emergentclimate.com/wp-content/uploads/2022/11/PRESS-RELEASE-LEAF-COALITION-COMMITMENTS-TOP-1.5-BILLION.pdf.

[21] UK Govt. World Leaders Launch Forests and Climate Leaders' Partnership to accelerate momentum to halt and reverse forest loss and land degradation by 2030 (7 November 2022), available at https://www.gov.uk/government/news/world-leaders-launch-forests-and-climate-leaders-partnership-to-accelerate-momentum-to-halt-and-reverse-forest-loss-and-land-degradation-by-2030.

[22] Reuters, Biggest Rainforest Nations Form Triple Alliance to Save Jungle (Nov. 14, 2022), available at https://www.reuters.com/business/cop/brazil-rainforest-nations-join-forces-save-jungle-2022-11-14/.

[23] California Sustainable Insurance Roadmap, available at http://www.insurance.ca.gov/01-consumers/180-climate-change/The-Sustainable-Insurance-Roadmap.cfm.

[24] UNFCCC, India's Long-Term Low-Carbon Development Strategy, available at https://unfccc.int/sites/default/files/resource/India_LTLEDS.pdf.