



Coastal Fisher Folks of Bangladesh, the Victims of Climate Change and the Legal Response to Loss and Damage : The Context of Liability and Compliance

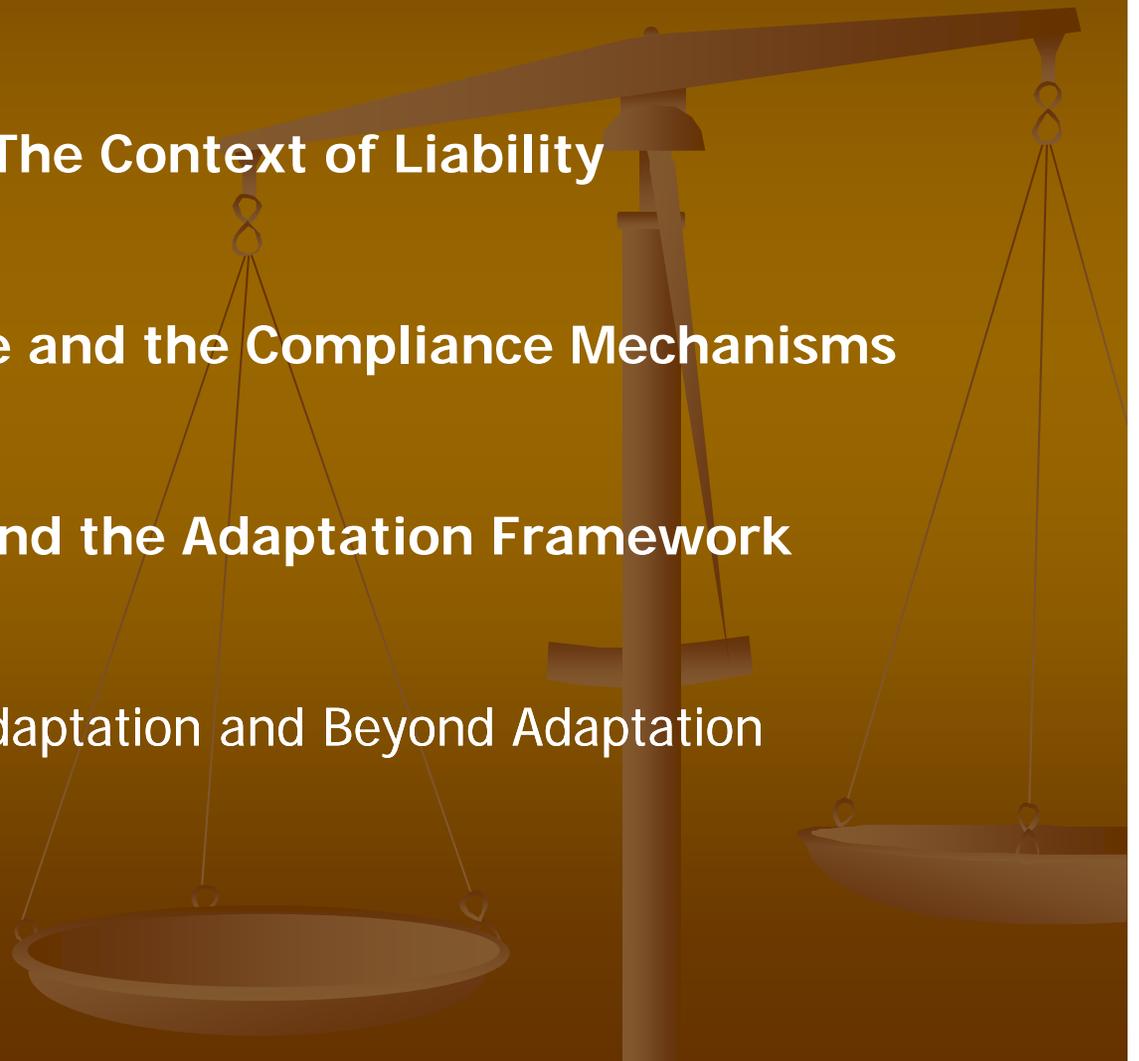
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Presentation Outlines

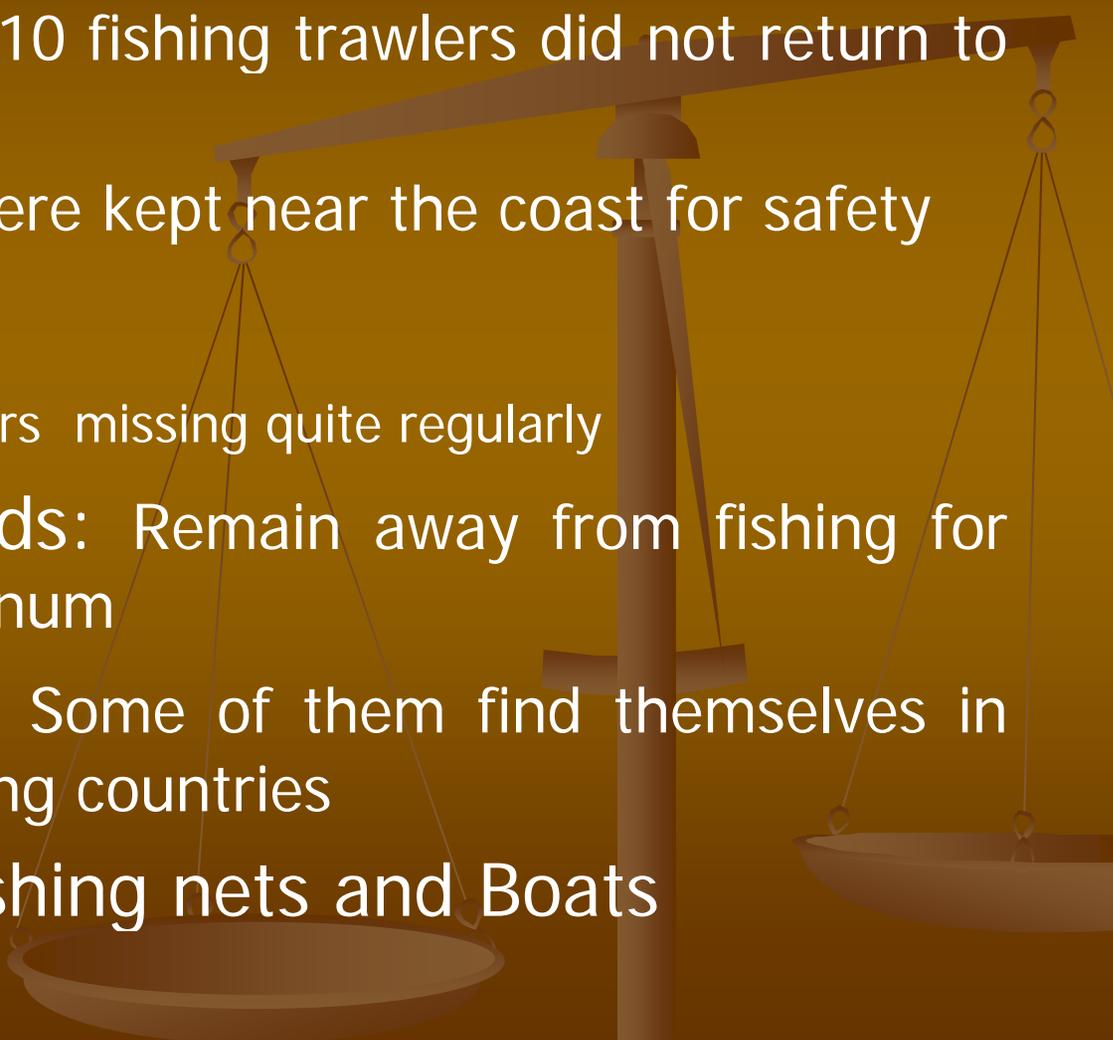
- Coastal Fisher Folks of Bangladesh, the Victims of Climate Change
- Loss and Damage: The Context of Liability
- The Legal Response and the Compliance Mechanisms
- Cancun Decisions and the Adaptation Framework
- Loss and Damage: Adaptation and Beyond Adaptation



Coastal Fisher Folks of Bangladesh, the Victims of Climate Change

- In the coastal Bangladesh, fisheries based livelihoods range between 140,000 and 160,000



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- Micro-scale disasters: Signal Number 3: October 8, 2010:
 - 100 fishers missing as 10 fishing trawlers did not return to the coast,
 - While 7,000 trawlers were kept near the coast for safety
 - The loss of lives: Fishers missing quite regularly
 - The loss of livelihoods: Remain away from fishing for number of days in an annum
 - The Loss of Liberty: Some of them find themselves in the custody of neighboring countries
 - The Damage: The Fishing nets and Boats



■ Macro-scale disasters: November the 15th. the super Cyclone Sidr:

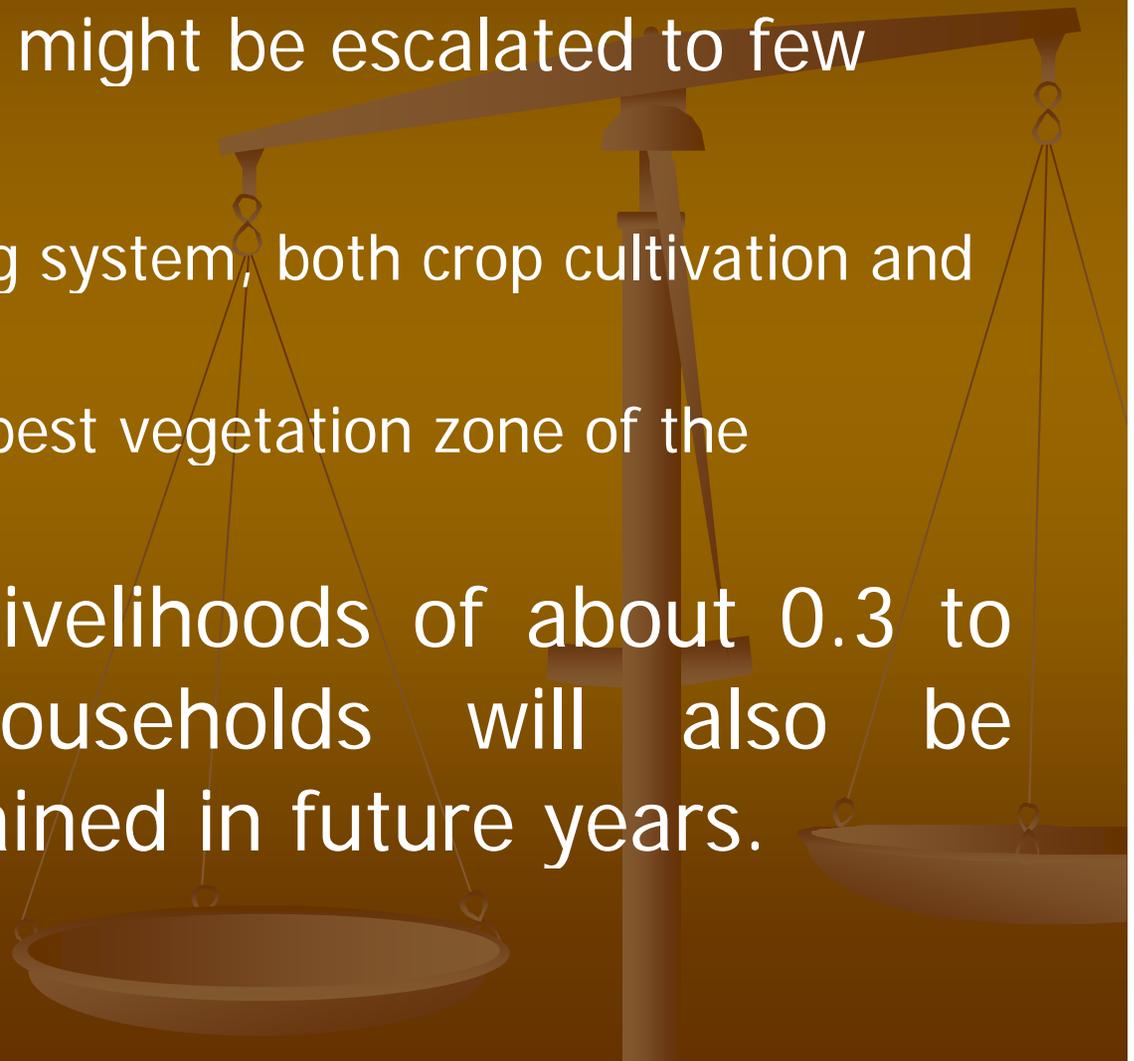
- Lose of lives over 6,300

- Damages, which might be escalated to few Billion dollars

- Coastal farming system, both crop cultivation and shrimp

- Destroyed the best vegetation zone of the Sundarbans,

Predicted that livelihoods of about 0.3 to 0.5 million households will also be severely constrained in future years.



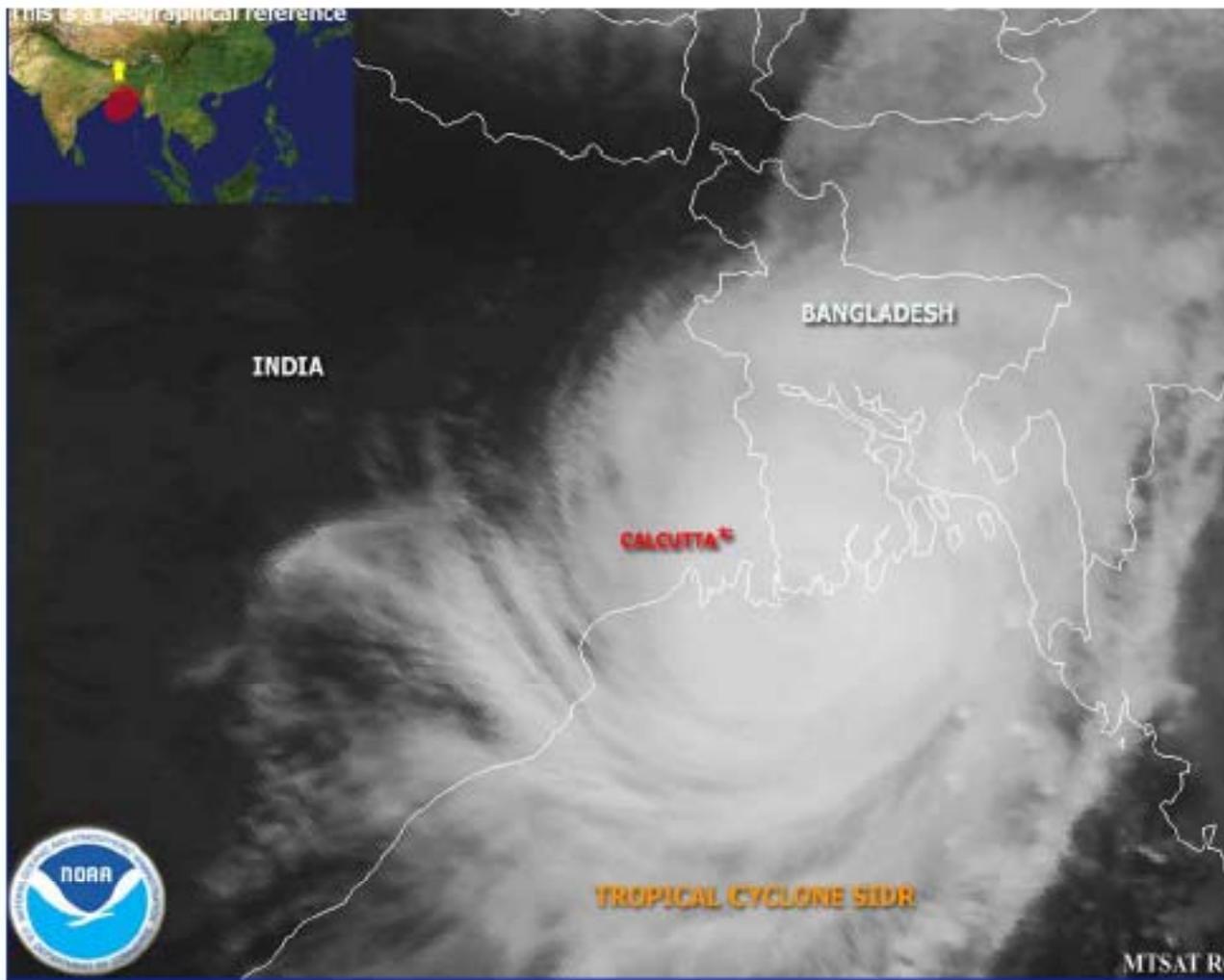
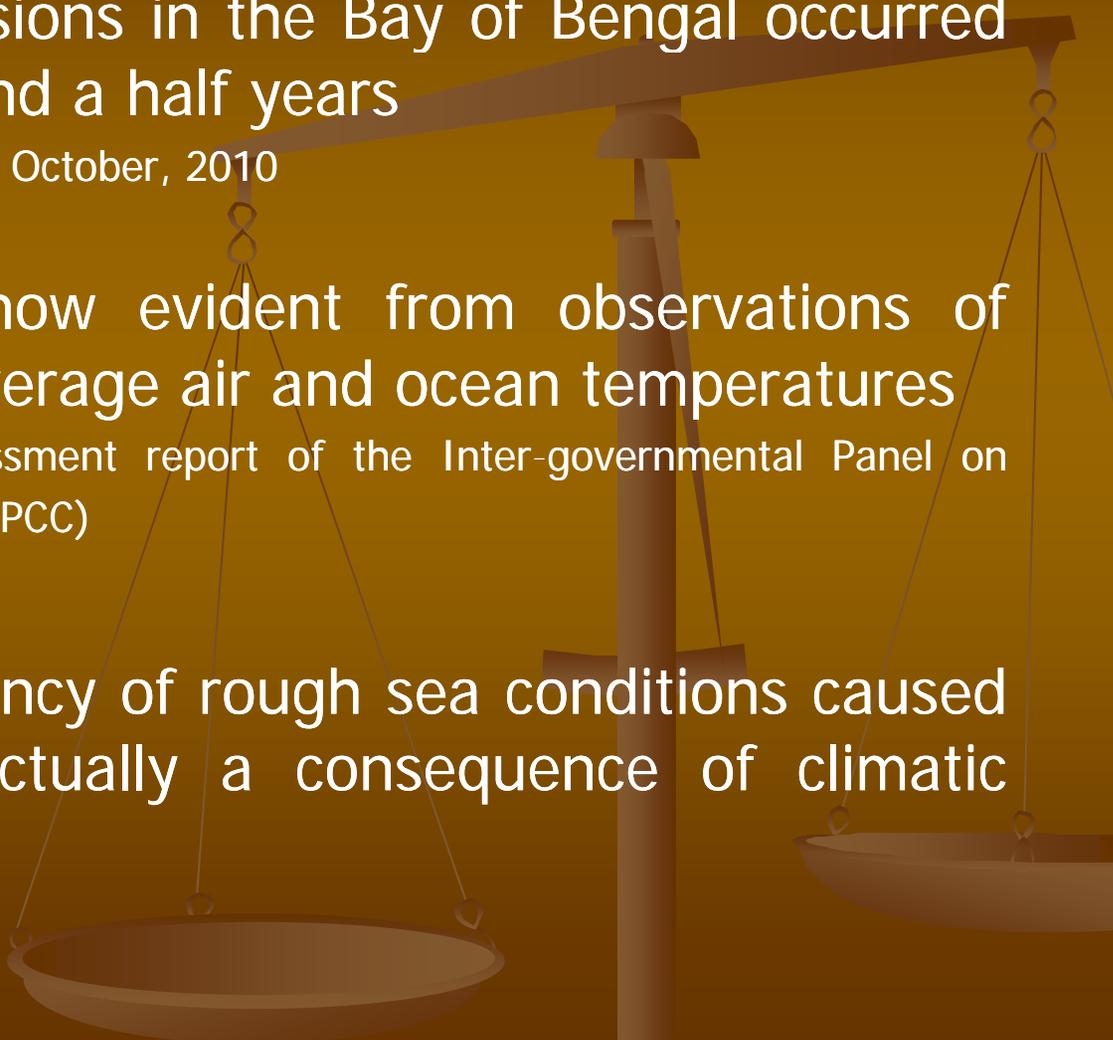


Figure-1: Super Cyclone Sidr that affected the coastal region of Bangladesh on the 15th of November, 2007.
Photo courtesy: NOAA.

Climate Change and Frequency of Rough Sea Events

- Increasing Sea Surface Temperature (SST) fulfils one of the major preconditions for the formation of an increasing number of depressions and low- pressure systems in the Bay of Bengal
- 2007, 12 out of 22 incidents of formation of low-pressure and depressions in the Bay of Bengal occurred during July and mid-November, the peak of the fishing season along the Southeastern coastal region
- The Port Authority issued a total of 89 signals throughout the year, of which 12 signals were issued during July and mid-November, which were higher than "potentially dangerous" signal number 3 or above.
 - 'Livelihood of Coastal Fishermen in Peril: In Search of Early Evidence of Climate Change Induced Adverse Impacts' Ahsan Uddin Ahmed and Sharmind Neelormi, CSRL, 2007

Climate Change and Frequency of Rough Sea Events: cont.

- 10 cyclones and 50 incidents of formation of low-pressure and depressions in the Bay of Bengal occurred during the last two and a half years
 - BD News, 12 October, 2010
 - Climate change is now evident from observations of increases in global average air and ocean temperatures
 - The fourth assessment report of the Inter-governmental Panel on Climate Change (IPCC)
 - The increased frequency of rough sea conditions caused by depressions is actually a consequence of climatic change
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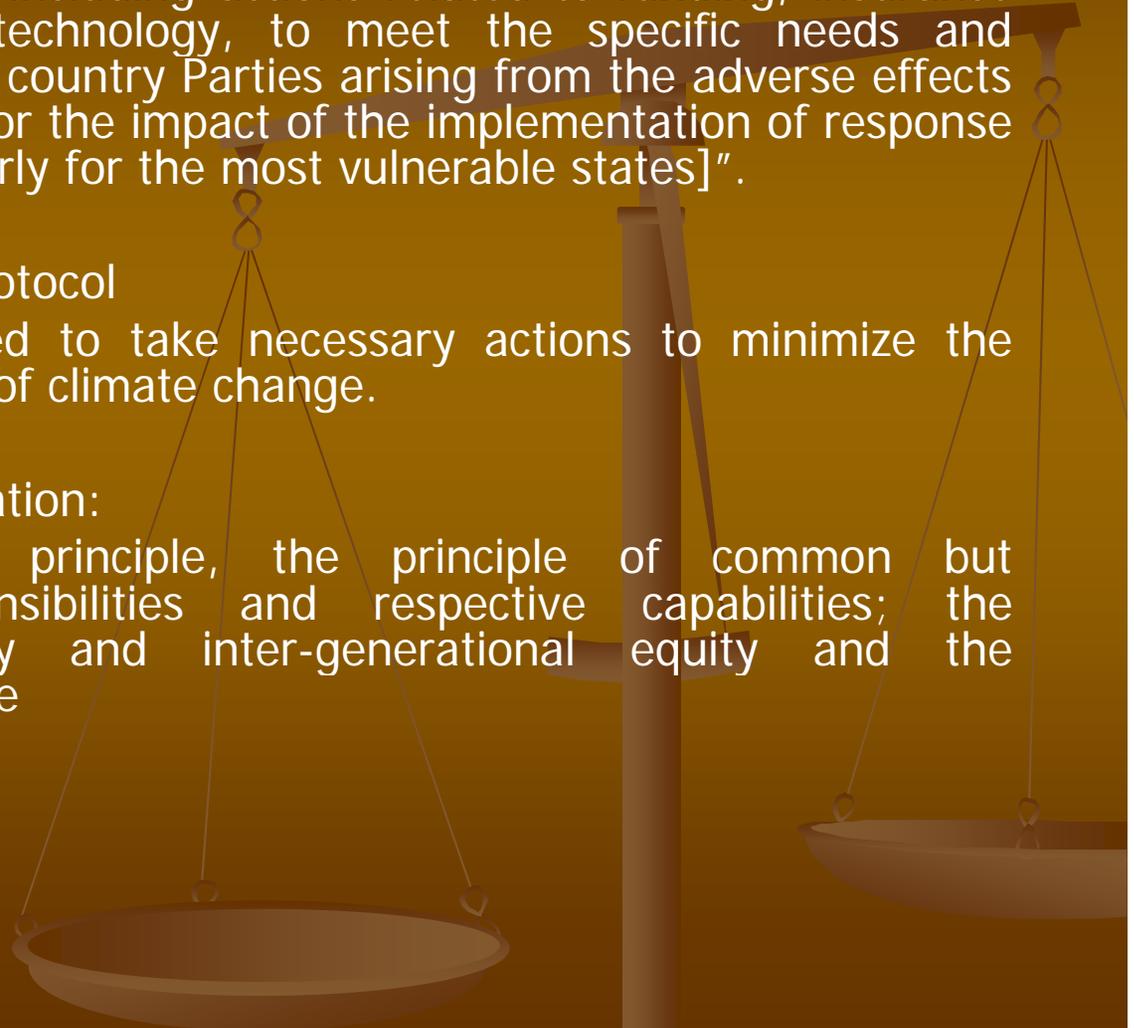
Loss and Damage: The Context of Liability

- Causal Liability in terms of contribution to the causes and sufferings from the consequences
 - Climate Change and Historical Responsibility: '[L]argest share of historical and current global emissions of greenhouse gases has originated in developed countries..', *Preamble, UNFCCC*
- Causal liability shifts the burden to the industrialized countries to take entire responsibility for mitigation, adaptation and to compensate for ***unavoidable loss and damage related to climate change***



The Legal Response and the compliance Mechanisms

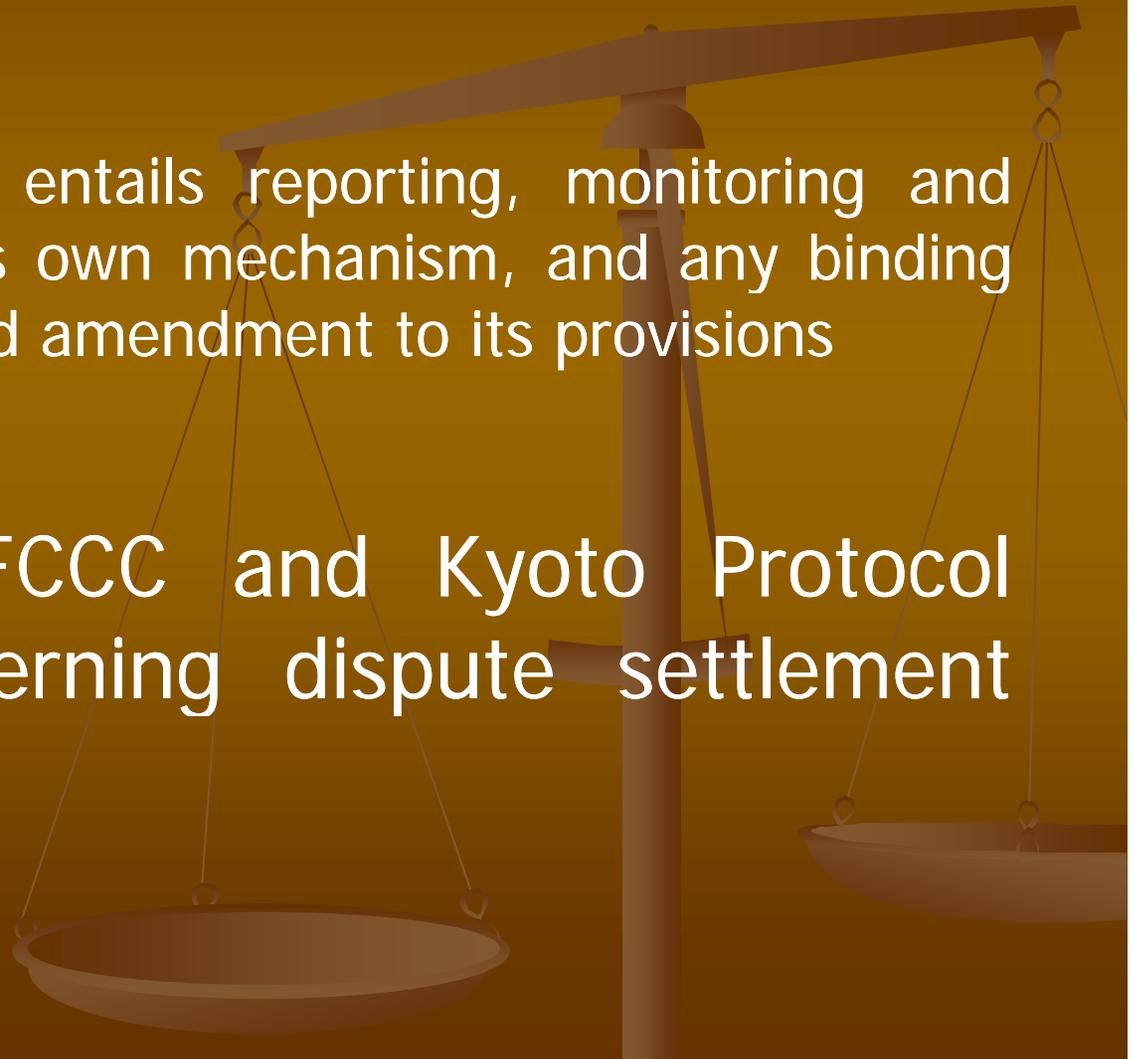
- Article 4.8 of UNFCCC,
 - [T]he Parties shall give full consideration to what actions are necessary under the Convention, including actions related to funding, insurance and the transfer of technology, to meet the specific needs and concerns of developing country Parties arising from the adverse effects of climate change and/or the impact of the implementation of response measures...', [particularly for the most vulnerable states]".
- Article 3.14 of the Kyoto Protocol
 - The Parties are obliged to take necessary actions to minimize the adverse consequences of climate change.
- Responsibility for compensation:
The polluter pays principle, the principle of common but differentiated responsibilities and respective capabilities; the principles of equity and inter-generational equity and the precautionary principle



Compliance Mechanisms

- The compliance mechanism of UNFCCC suggests a consultative process
- The Kyoto Protocol entails reporting, monitoring and compliance within its own mechanism, and any binding requirements demand amendment to its provisions

Therefore, UNFCCC and Kyoto Protocol prefer self-governing dispute settlement mechanisms



Customary International Law and forums

■ No-harm Principle and State Responsibility

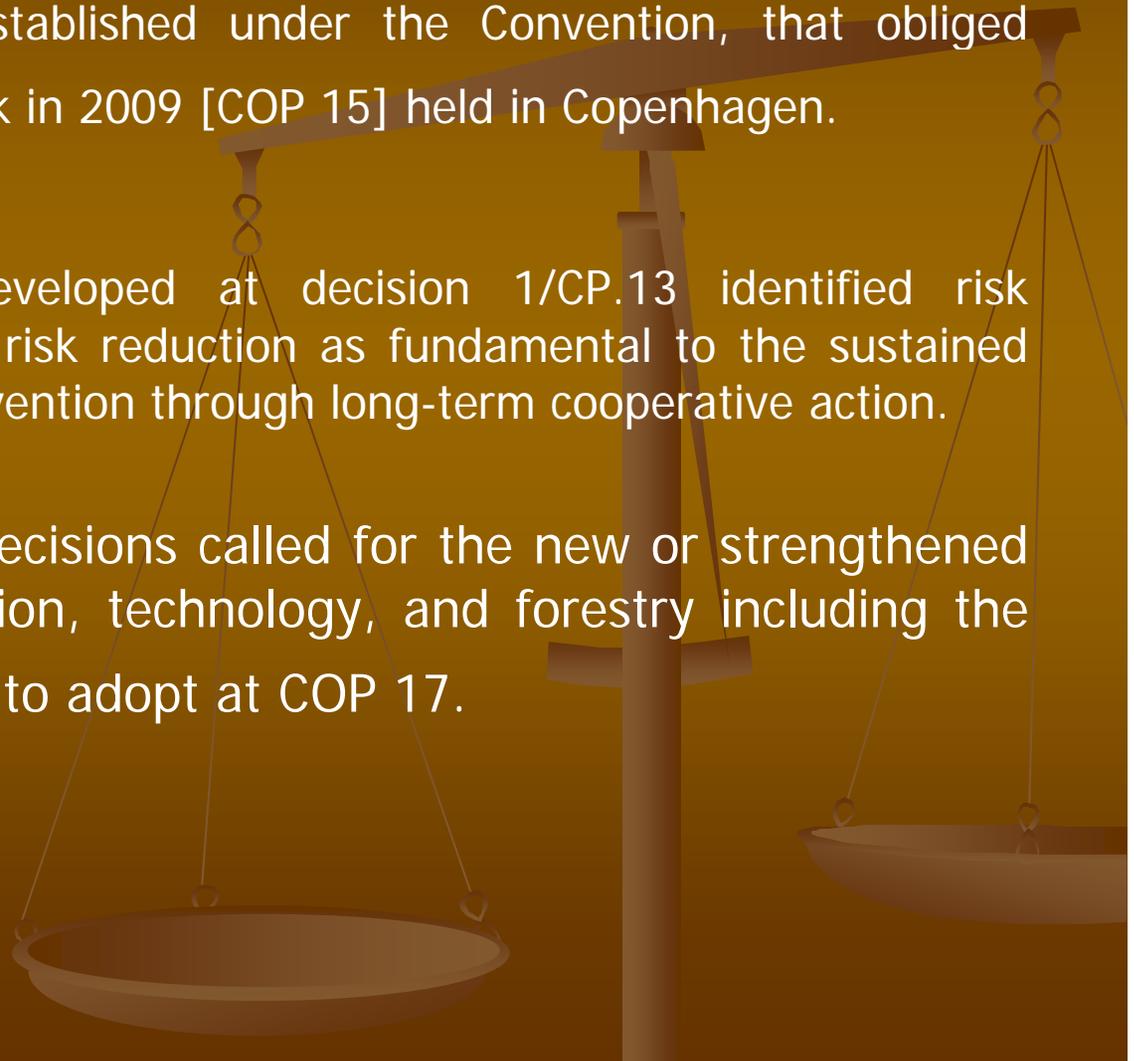
- A state's failure to comply with the no-harm rule is an internationally wrongful act that gives rise to an obligation to take responsibility. A state's breach of obligations not to cause damage, to prevent harm, or to minimize the risk of harm occurring, would constitute an internationally wrongful act, which entails the international responsibility of that state.

■ International and Domestic Forums

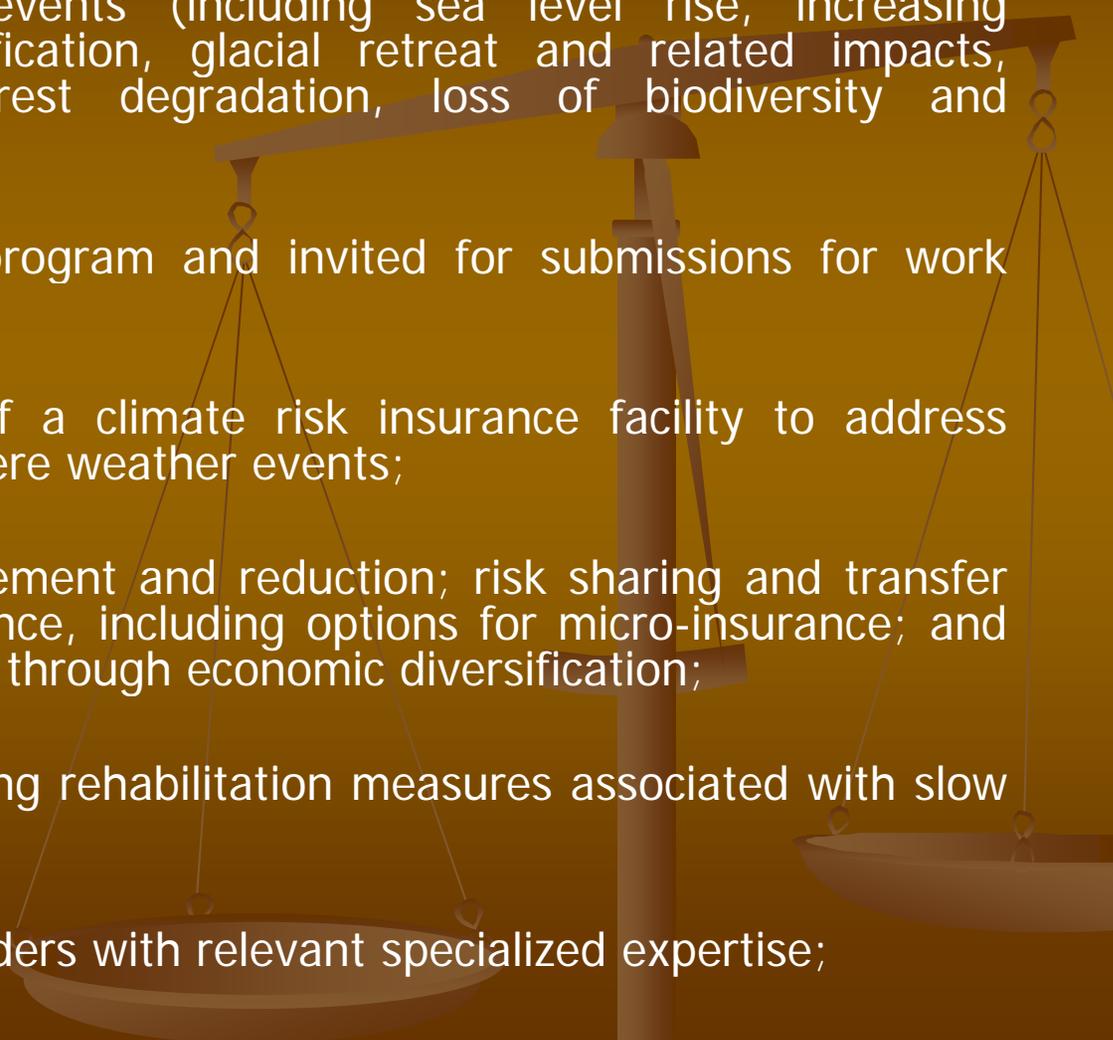


Cancun Decisions and the Adaptation Frameworks

- **Decision 1/CP.13**, the Ad Hoc Working Group on Long-term Cooperative Action [AWG-LCA] was established under the Convention, that obliged [*shall*] to complete its work in 2009 [COP 15] held in Copenhagen.
- The Bali Action Plan developed at decision 1/CP.13 identified risk management and disaster risk reduction as fundamental to the sustained implementation of the Convention through long-term cooperative action.
- Cancun: The LCA track decisions called for the new or strengthened mechanisms on adaptation, technology, and forestry including the Green Climate Fund and to adopt at COP 17.

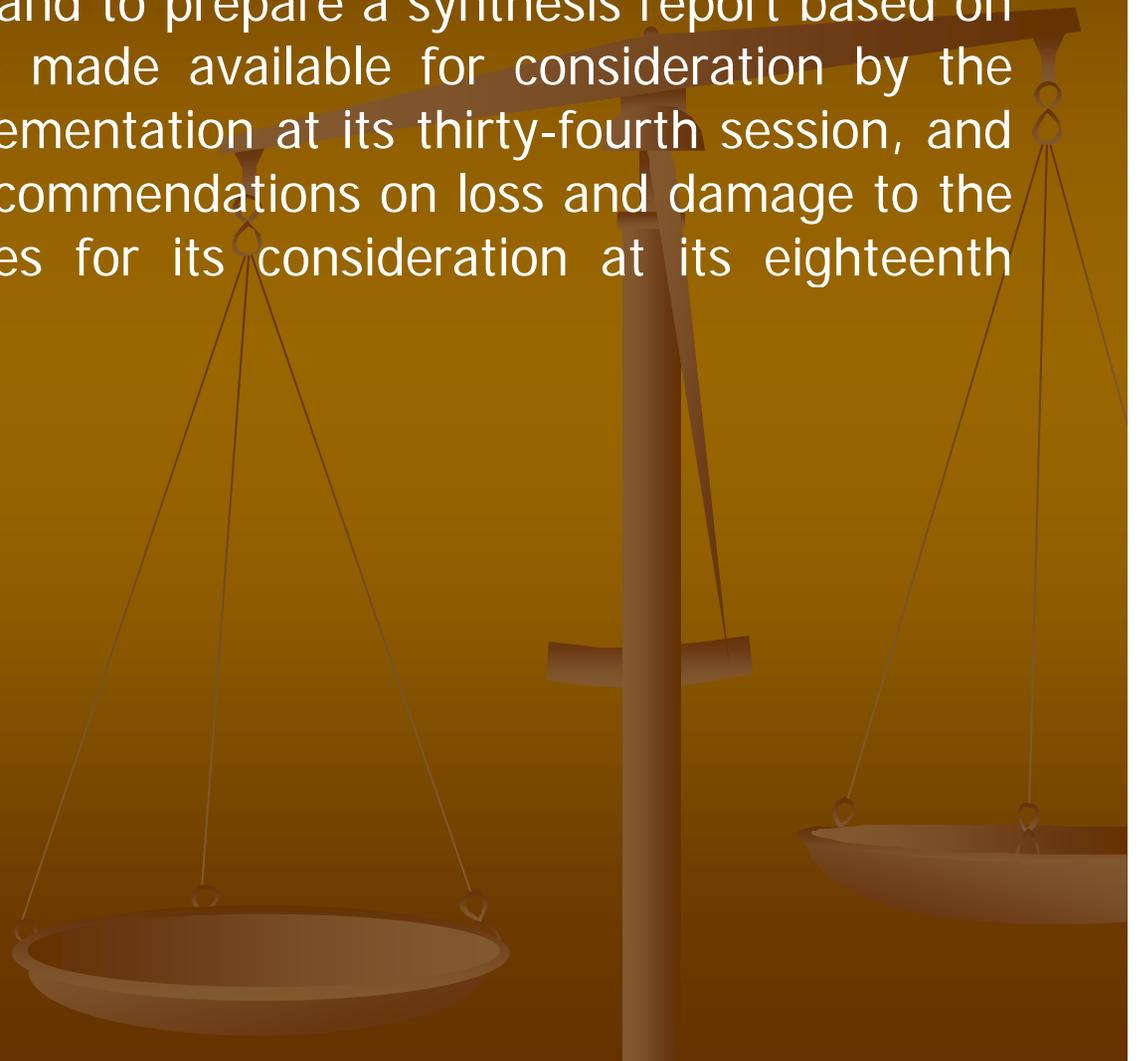


Loss and damage and the Cancun Decisions

- *Recognizes* the need to strengthen international cooperation and expertise to understand and reduce loss and damage associated with the adverse effects of climate change, including impacts related to extreme weather events and slow onset events (including sea level rise, increasing temperatures, ocean acidification, glacial retreat and related impacts, salinization, land and forest degradation, loss of biodiversity and desertification).[Para-25]
 - *Decide* establish a work program and invited for submissions for work program including:
 - a) Possible development of a climate risk insurance facility to address impacts associated with severe weather events;
 - (b) Options for risk management and reduction; risk sharing and transfer mechanisms such as insurance, including options for micro-insurance; and resilience building, including through economic diversification;
 - (c) Approaches for addressing rehabilitation measures associated with slow onset events;
 - (d) Engagement of stakeholders with relevant specialized expertise;
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Loss and damage and the Cancun Decisions, Cont.

- *Requests* the secretariat to compile these submissions into a miscellaneous document and to prepare a synthesis report based on those submissions to be made available for consideration by the Subsidiary Body for Implementation at its thirty-fourth session, and with a view to making recommendations on loss and damage to the Conference of the Parties for its consideration at its eighteenth session. [Para-29]



Loss and Damage: Adaptation and beyond Adaptation

- In terms of adaptation to slow on set events including climate induced migration and disaster risk reduction as sudden onset issue, policy approaches should be anticipatory to reduce loss and damage along with reactionary approaches on rehabilitation measures with insurance, compensation and other related mechanisms.
- it is significant to establish an autonomous international organ with micro level institutional arrangements, so that bottom up approach can assess the real loss and damage.
- It is also important to form a **Compensation Fund** in the context of climate justice along with an *Independent International Climate Tribunal* to deal with the claims of loss and damage caused due to climate change.
- Decisions should be taken with Adaptation Framework at COP 17.

Thank You

