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COP27
Key takeaways for in-house legal

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Introduction

Stephen Shergold
Global ESG Leadership Group Chair
stephen.shergold@dentons.com

The cost of climate change

If COP21 was the moment the world reached consensus on arresting the global temperature increase, COP27 was the moment the world began to confront responsibility for damage caused by the emission of greenhouse gases. The headlines of COP27 include the creation of a loss and damage fund for vulnerable countries, a "Global Shield" against climate risks and a plan to ensure everyone on the planet is covered by an early warning system for extreme weather within the next five years. Climate justice is undeniably an important issue and these are essential steps to minimising the consequences of climate change, particularly for countries that have had a negligible contribution in terms of emissions yet will be among the worst affected. However, it is difficult to get away from the feeling that the shared triumph of Paris has faded, and that state-led pursuit of net zero has weakened.

A litigious road ahead

The first alarm bell that should be ringing for General Counsel is liability. In law, loss and damage means compensation. With developed countries now accepting that vulnerable nations need an avenue to redress the damage caused by historic emissions, pressure will also come to bear on corporates in high emitting industries such as extractives, agriculture and transport to provide some form of compensation for damage caused by climate change.

Expect to see more cases like that of Luciano Lliuya v RWE, where a Peruvian farmer has brought a claim against Germany's largest electricity supplier for damages stemming from its contribution to climate change. The second key takeaway for companies is in relation to greenwashing, with the UN publishing a framework for businesses making net zero claims during COP27. Expect to see non-governmental organizations (NGOs) and in the future, governments, using this framework to scrutinise the detail behind these claims, and a growing risk of litigation where these plans are not detailed enough.

It's time to step up

Perhaps this view is too myopic. After all, the COP27 agreement does reaffirm the commitment to 1.5 degrees. It also paves the way for increased financing and technology to mitigate greenhouse gas emissions where they are most needed.

Progress, albeit slow, was made on the Article 6 carbon market and forestry solutions and steps have been taken to address the problem of greenwashing by non-state actors. The raft of new initiatives announced at COP27 provide genuine opportunities for corporates positioned to provide finance and expertise to help meet the 1.5 degrees target. Commitments were made in areas including energy storage, renewables and conservation that will require private sector action to be successful. More broadly we need corporates to drive meaningful innovation across their business models.

Now more than ever, General Counsels play a critical leadership role in tracking and monitoring their organization's unique ESG legal risk. Their expertise will provide confidence around the setting of ambitious targets and their role in embedding ESG across the business will ultimately help facilitate the delivery of this meaningful change.

Summary of key outcomes

The final pact – the positives

The final agreement was hard-fought, with negotiations extended for two days following a gridlock over the loss and damage fund. Many left feeling underwhelmed with the outcome, but some progress was undoubtedly made. Despite fears that the new agreement would regress from Glasgow's 1.5C temperature increase limit, the final text ultimately resolved to "pursue further efforts" to stay within this target. The pact also encouraged parties, for the first time, to consider nature-based solutions (NBS) or eco-system based approaches in their mitigation and adaptation actions. The Enhancing Nature-based Solutions for an Accelerated Climate Transformation (ENACT) initiative was also developed in order to bring coherence to, and strengthen collaboration between, existing NBS efforts and partnerships. ENACT has identified seven areas of focus including food security, mobilising private funding and biodiversity. There was also a decided shift away from net zero targets to a new focus on adaptation and mitigation.

The final pact – the negatives

Despite some steps forward many felt there were more steps back, including the failure to reach an agreement on stepping up the pace of emissions cuts or reducing the use of fossil fuels. The final agreement, instead, notes the need for a 'global transition to low emissions' energy and calls upon parties to accelerate efforts towards the "phasedown of unabated coal power." This disappointed those hoping for a shift towards the phasing out of fossil fuels, especially given the final compromise in fact allows for the continued production of fossil fuels when paired with carbon capture.

Additionally, the final pact notes that current nationally determined contributions (NDCs) which represent each countries' commitment to reduce GHG emissions and adapt to climate change – are still not sufficient to keep the global temperature rise to 1.5C however the requirement to do so is still not binding.

Enhanced pledges and commitments

Several of the pledges and commitments made at COP26 were expanded on this year, including significantly more countries becoming supporters of the Global Methane Pledge. This pledge involves supporters taking voluntary action to reduce methane emissions. Additionally, almost one hundred new signatories pledged to halt gasoline-driven vehicle sales under the Zero Emissions Vehicles Declaration (ZEVD) including France, Spain and Coca Cola. Another example of progress is the decision by more countries to quit the Energy Charter Treaty, which gives energy companies the right to sue governments over climate action. This is a very welcome development as the existence of the treaty remained a major obstacle to anything agreed at COP27.

Finance

In the run up to COP27, a lot of the focus related to loss and damage and whether a specific loss and damage fund would be established. In a surprising turn of events, given how the conference had been progressing, the establishment of such a fund was eventually agreed in the final hours. A committee has been set up with the purpose of forming the fund by COP28, however, at present there is no visibility of what the fund will look like or how it will work. The committee will also have the difficult task of encouraging developed countries to contribute, despite there being no legal liability if they do not.

The loss and damage fund is distinct from, but supported by, the Global Shield against Climate Risks, which was also launched at COP27. This is hosted by the World Bank and aims to systematise climate risk finance for poor and vulnerable peoples in order to develop mitigation and adaptation measures, as well as providing immediate assistance where disaster strikes. So far, six countries (including Germany, Scotland and New Zealand) have pledged over £250 million.

On top of both of the above, the final agreement called for more pressure on multilateral development banks, such as the World Bank, to drive capital flows for climate change mitigation and adaptation by reforming their "practices and priorities" and defining "a new vision...fit for the purpose of adequately addressing the global climate emergency".

New pledges and commitments

A number of new pledges and commitments came from COP27, which largely represent the focus on finance for adaptation and mitigation.

Some examples include:

- **The Forest and Climate Leaders' Partnership** – a partnership of 26 countries, which will help to deliver the commitment made at COP26 to halt and reverse forest loss and land degradation by 2030;
- **The Nexus on Food, Water and Energy** – this agreement will provide funding to develop specific projects, including solar parks and energy storage innovations. It is expected to mobilise billions in private sector finance.
- **The US Energy Transition Accelerator** – a global carbon credit trading initiative that the US say will be "critical" in helping developing countries transition to cleaner forms of energy.
- The big three tropical rainforest nations – Brazil, Indonesia and the Democratic Republic of the Congo – have signed a strategic alliance to coordinate on UN climate and biodiversity talks relating to tropical forests, with a focus on finance, sustainable management and restoration.
- The EU and the African Union announced a new **Team Europe Initiative on Climate Change Adaptation and Resilience** in Africa, as part of the EU-Africa Global Gateway Investment Package. The initiative will bring together existing and new climate change adaptation programmes of over €1 billion.
- **The Sharm-El-Sheikh Adaptation Agenda** – this was launched by the presidency and aims to mobilise $140-300 billion in adaptation funding from both public and private sources.

Net zero guidelines

Both the High-Level Expert Group on Net Zero Emissions Commitments of Non-State Entities (UNHLEG) and the International Organization for Standardization (ISO) took the opportunity of COP27 to publish new standards for net zero plans, pledges and commitments. The UNHLEG report provides a set of ten recommendations, which focus on how non-state actors should ensure that their net zero pledges are clear and verified, whilst the ISO's guidelines provide a common reference points for the net zero pledges of all governance actors, in the hope of tackling the incredibly fragmented existing net zero landscape.

The UNHLEG was set up by António Guterres to combat net zero greenwashing and in the seven months since its creation the group has conducted many consultations, and used hundreds of written submissions, to formulate their practical recommendations on setting short, mid and long-term commitments for businesses, investors, cities and others. These include, for example: all non-state actors having short term emission reduction targets of five years or less, prioritising deep emissions reductions over offsetting, and ensuring that all pledges and reporting covers all scope emissions and all operations across the full supply chain. The ISO guidelines were developed following an open process involving more than one thousand, two hundred experts from over one hundred countries and include, for example: definitions of crucial terms such as 'net zero', 'offset' or 'value chain', high-level principles for achieving climate neutrality, and guidance on creating a clear and transparent strategy to get to net zero as soon as possible.

Both of these publications address a very real gap in climate change governance, emphasised by the fact that the final COP27 text specifically 'welcomes' the UNHLEG's recommendations. If the documents have their desired effects, they should result in more governance bodies implementing shorter term net zero strategies, which are more ambitious and do not have any elements of greenwashing.

Revamping COP27

Several commentators questioned the structure of COP and have urged for a reboot. The format has been criticised for allowing lobbying by fossil fuel companies in the blue zone, which is considered the physical heart of the summit. There is also concern that the current format is inundated with business roundtables, panel talks and presentations by businesses, banks, industries and campaigners. These have mostly led to eye-catching promises that ultimately fall flat and further the perception of COP as a greenwashing exercise.

Christiana Figueres, formerly the UN's top climate official who helped to shape the Paris Agreement, suggested that the first week of COP be devoted to progress reports on concrete achievements from governments and the private sector, with the second week focusing on identifying where further and faster action is needed. This approach echoes many people's desire to see more scientific rigour and accountability in respect of COP commitments. In contrast, Brazil's president-elect, Luiz Inácio Lula da Silva, has argued for the opening up of COP to include civil society, as he feels that poor people, indigenous communities, black communities and trade unions do not currently exist on the agenda.

Timeline of what happened when?

7 November

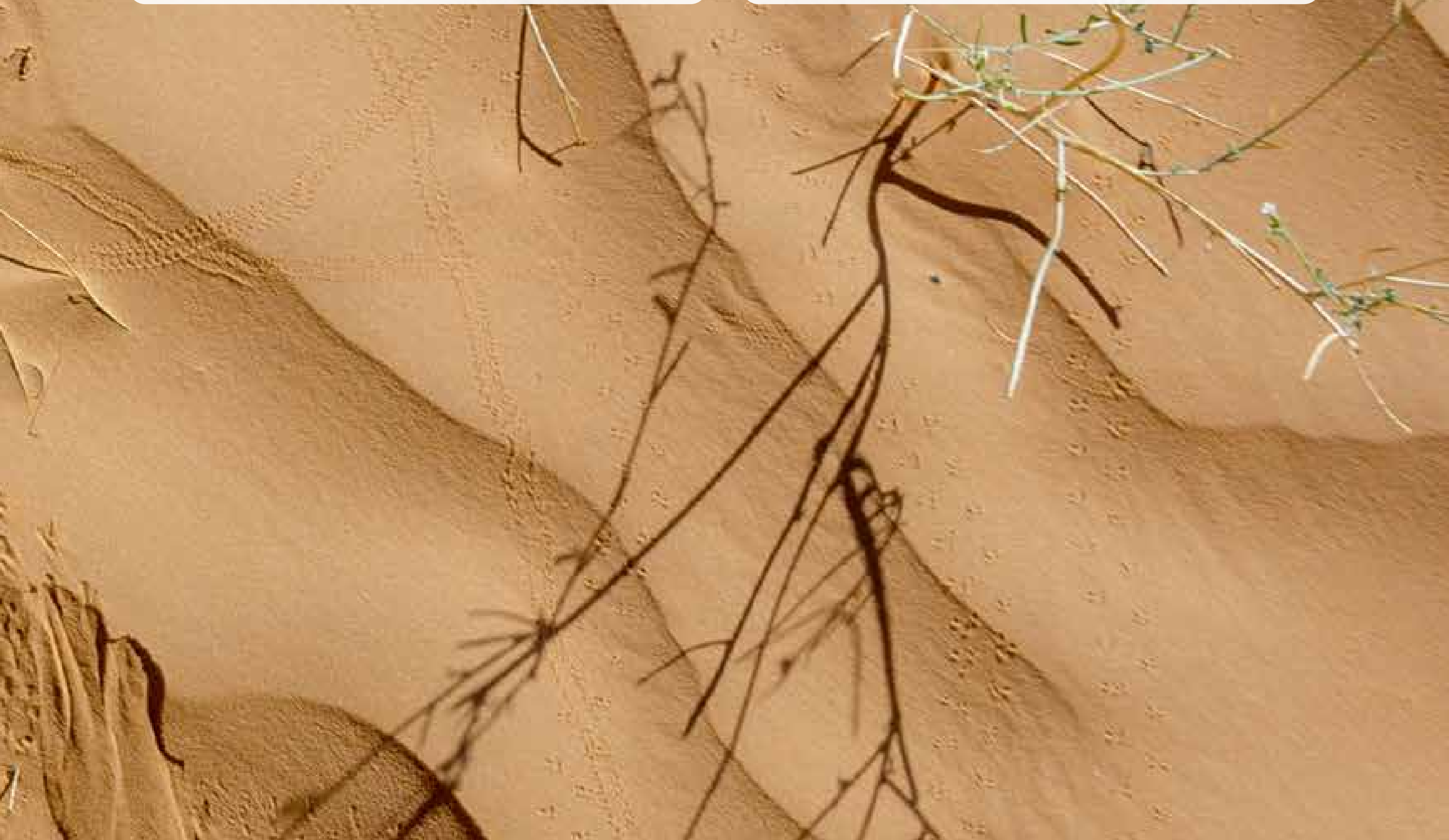
1. In a row over oil and gas exploitation, NJ Ayuk, Executive Chairman of the African Energy Chamber, said the pressure from "rich Western forces, especially in Europe" for an immediate shift away from fossil fuels, is hypocritical and impacting Africa's oil and gas industry – with investments in new oil and gas projects dwindling and announcements from majors divesting African oil and gas assets.
2. António Guterres, the UN Secretary General, highlighted the subject of loss and damage, one of the dominant topics at COP27. Guterres told the conference: "Loss and damage can no longer be swept under the rug. It is a moral imperative. It is a fundamental question of international solidarity -and climate justice".
3. Emmanuel Macron insisted he will not sacrifice climate commitments to the energy crisis caused by the war in Ukraine. He also echoed Guterres in noting that the West needs to come to terms with financial solidarity which means rich, polluting nations handing over money to poorer, vulnerable nations.
4. The Forest and Climate Leaders' Partnership (FCLP), a voluntary partnership of 26 countries committed to accelerating momentum to halt and reverse forest loss and land degradation by 2030, was launched. FCLP will run annual events to build the delivery of and accountability to global forest commitments.
5. The UK pledged:
    - Financial support for Egypt's flagship COP27 initiative, the 'Nexus on Food, Water and Energy'. The funding will develop projects including solar parks and energy storage innovations, and is expected to mobilise billions in private sector finance
    - £90m "for conservation in the Congo Basin, a vital tropical rainforest which is home to some ten thousand species of tropical plants and several endangered species, including forest elephants, chimpanzees and mountain gorillas"
    - £65 million in funding for the Nature, People and Climate Investment Fund, which supports indigenous and local forest communities
    - New financing for Treevive, which is working to conserve and restore two million hectares of tropical forest".
    - To triple funding for climate adaptation as part of its international climate finance budget, from £500m in 2019 to £1.5bn in 2025

8 November

1. The World Bank will host the facility that will help countries that suffer heavy economic loss due to climate change-driven disasters – it will be called the Global Shield Financing Facility.
2. Loss and damage funds continue to dominate the conversation and some wealthy nations are beginning to make pledges to the Global Shield Financing Facility:
   - Austria $50m
   - Belgium €2.5m
   - Denmark $13m
   - Germany €170m
   - New Zealand $12m
   - Scotland £7m
3. Experts call out the US for acting in bad faith by historically blocking loss and damage funds.

9 November

1. China confirmed it is "willing" to contribute to the loss and damage fund.
2. John Kerry, the US Climate Envoy, unveiled a new global carbon credit trading initiative – the Energy Transition Accelerator. He said it would be "critical" in helping developing countries transition to cleaner forms of energy. Kerry said the new scheme (launched in conjunction with the Rockefeller Foundation and the Bezos Earth Fund) would generate funding through voluntary "high quality" carbon credits. It has received a mixed initial reaction from environmental groups.
3. The UK said it would allow some debt payment deferrals for countries hit by climate disasters.
4. A Kulkalgal activist from the Torres Strait Islands has said that the voices of indigenous people are being ignored and 'it's humiliating'.



10 November

1. It was announced that Slovenia is the latest in a long line of European countries to quit the Energy Charter Treaty, which gives energy companies the right to sue governments over climate action, and remains a major obstacle to anything agreed at COP27.
2. Israel, Iraq and Lebanon pledged to act in a coordinated way on mitigation of carbon emissions and adaptation policies through partnerships, communication, collaboration and exchange of best practices. They pledged to meet again in four years to review their progress.
3. Experts warn against the limits of adaptation in their offering of ten new essential insights on climate change, which include ever more frequent and severe drought, storms and floods.

11 November

1. Joe Biden gave his first speech and announced new support of $100m for adaptation. He said there will be support for early warning systems in Africa, for strengthening food security and supporting a new training centre in Egypt to transition to renewables across the continent. He also asserted that “cutting methane by at least 30% by 2030 can be our best chance to keep in reach of the 1.5C target.”
2. Biden’s speech was interrupted by youth and indigenous activists from the US. They argued that “we need to accelerate the transition but that’s not going to happen by partnering with big polluters like Amazon and PepsiCo...”. This was in reference to an announcement earlier the same week by US Climate Envoy John Kerry, the Bezos Earth Fund, and PepsiCo among others about plans to design an Energy Transition Accelerator.

14 November

1. The big three tropical rainforest nations – Brazil, Indonesia and the Democratic Republic of the Congo – signed a strategic alliance to coordinate at their conservation at G20. The three countries will coordinate on UN climate and biodiversity talks related to tropical forests, with a focus on finance, sustainable management and restoration.
2. Developing countries criticised the G7's loss and damage strategy. The G7 countries are denying the need for a loss and damage fund and are pushing the Global Shield insurance scheme as an alternative.
3. A former Number 10 advisor, Sam Richards, has today unveiled plans for a wide-ranging new campaign – Britain Remade – designed to drive UK economic growth through the development of new clean energy infrastructure, housing, and local transport networks.
4. In negotiations some countries pushed for the wording around 1.5C to be weakened. Alok Sharma warned this will be the COP where this goal is lost and has insisted that there be no backsliding from the commitment to limit temperatures to 1.5C.
5. A clear set of guidelines was published by the ISO establishing standards for the pathway to net zero with the aim of driving higher standards and countering greenwashing accusations.

15 November

1. Indonesia is the world's 5th largest greenhouse emitter. The US, Japan and partners have announced a coalition of countries will mobilise $20 billion (around £17bn) of public and private finance to help Indonesia shut coal power plants and bring forward the sector's peak emissions date by seven years to 2030 – the Indonesia Just Energy Transition Partnership (JETP). Experts are calling for transparency and respect for human rights to be built into the deal saying "the JETP deal should be transparent and involve communities affected by the climate crisis".
2. Mexico pledged to double its renewable energy capacity by 2030 – specifically, to deploy an additional 30GW of combined wind, solar, geothermal and hydroelectricity. Carlos Flores, an Energy Policy Expert in Mexico, said that coming up with 30GW of new clean energy in eight years will be "almost impossible"
3. Negotiating proposals on loss and damage submitted to the UN framework convention on climate change by the negotiating bloc of the G77 developing countries plus China centre a new fund. This fund would be separate and additional to the current climate adaptation and mitigation funding facilities "to assist developing countries in meeting their costs of addressing non-economic and economic loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events."

16 November

1. The EU and the African Union announced a new Team Europe Initiative on Climate Change Adaptation and Resilience in Africa as part of the EU-Africa Global Gateway Investment Package. The initiative will bring together existing and new climate change adaptation programmes of over €1 billion and leverage its impact by improved coordination and a reinforced policy dialogue on adaptation between the EU and AU.
2. At the Beyond Oil and Gas Alliance (**BOGA**) event, Fiji and the US state of Washington were announced as new members of the alliance. Costa Rica which now has a new leader, has backed away from the coalition it co-founded at COP26.
3. Luiz Inácio Lula da Silva, Brazil's President-Elect announced the creation of a ministry of indigenous people, vowing to "take very good care" of the region's communities. He also announced that Germany and Norway are restarting the Amazon Fund which was shut down under the previous Brazilian President, Jair Bolsonaro. He proposed a meeting of the Amazon countries to look at the integrated development of the region. Finally, he reminded rich nations of the need for financial mechanisms to remedy loss and damage caused by climate change.
4. Thérèse Coffey told journalists at COP27 that a deposit return scheme in the UK will not be in place for a further two years.

17 November

1. The President of COP27, Sameh Shoukry, said he was very worried about the slow progress of the negotiations and issued a stern message to country delegates. "While some of the discussions have been constructive and positive, others did not reflect the need to move collectively to address the gravity and urgency of the climate crisis," he declared.
2. Brazil's President-Elect, Luiz Inácio Lula da Silva, met indigenous leaders and said that those most impacted by the climate emergency are not represented at these negotiations. He also noted that nothing was said about the issues of civil society during them – "poor people don't exist on the agenda, do not exist on their agenda ... indigenous communities, black communities ... trade unions".

18 November

1. Frans Timmermans launched a proposal on behalf of the EU that would see it agree to establishing a loss and damage fund focusing on the most vulnerable and with 'clear conditions'.
2. Steven Guilbeault said Canada was supportive of the EU's proposal on loss and damage, but said countries such as China, Saudi Arabia and Qatar should contribute to the fund given their historical emissions and wealth.
3. Sameh Shoukry, who chairs the COP27 talks, told delegates that negotiations would spill into Saturday as the climate talks had become gridlocked over funding for developing countries affected by weather disasters and ambition on curbing global warming.

19 – 20 November

1. It was announced that next year's COP will be in the United Arab Emirates.
2. A loss and damage fund was agreed and will be housed both under the Paris Agreement and Convention. The fund will be focused on those who are 'particularly vulnerable'. The document also establishes a committee to come up with rules to make the fund happen. That committee will report back at next year's COP. But, right now, it is an empty fund, and it is still left for developed countries to be encouraged to contribute to it, in line with justice and equity.
3. Many have lamented the outcome only speaking of the 'phasedown of unabated coal power' as a disaster for the climate. It has been advocated that oil and gas needs to be phased out, but the word 'unabated', creates a huge loophole and risks becoming a down payment on disaster unless emissions are urgently cut in line with the 1.5C goal. Lidy Nacpil, of the Asian Peoples Movement on Debt and Development stated, "we welcome an initial partial win on Loss & Damage Fund – it is there but buried with other 'financial arrangements.' And this win is overshadowed by lack of progress on fossil fuel phase-out and the continued inclusion of false solutions, which means more loss and damage!"
4. The Mitigation Work Programme was established as part of the UN climate negotiations and sets out how countries will deliver emissions cuts to close the large gap between where the world is now and where it needs to be. It will run until 2030, rather than just a year as some nations wanted. But it also rules out any new targets or goals, according to Tom Evans, policy advisor at thinktank E3G. And that would mean no faster timelines for the delivery of better emissions-cutting pledges from countries.
5. Saudi Arabia (SA) announced plans for the circular carbon economy in partnership with the national oil company, Aramco. The plan primarily involves the construction of the world's largest carbon capture and storage (CCS) hub, operated by Aramco, in the kingdom's eastern region of Jubail. The centre will begin functioning in 2027, initially extracting and storing 9m tonnes of carbon dioxide a year with an aim to capture and store 44m tonnes by 2035. Experts are cynical and feel this focus on CCS technology is to distract from SA's desire to avoid scaling down fossil fuel consumption.

What are the key areas of relevance to General Counsel and in-house legal teams?

Net zero and decarbonisation

Whilst financing and loss and damage stole the headlines at COP27, progress was made on net zero and decarbonisation, albeit not as much as some may have hoped. The twelve months following COP26 were characterised by a flurry of net zero commitments from corporates who realised the reputational, (as well as environmental) benefits of appearing "green". These commitments were made into a regulatory ether, with limited guidance on how they should be achieved and no mechanism to enforce against bad actors who had no intention of meeting their pledges. In the absence of an established framework for making net zero claims, scrutiny has grown on dishonest carbon accounting, the purchase of cheap carbon credits over investment in emissions abatement and the presence of fossil fuel companies in so called "green" funds. COP27 set out to draw a red line around these practices, known as greenwashing.

The highlight of this work was the release of a report prepared by a UN Expert Group that attempted to provide some structure around net zero pledges. The report identifies five principles and ten recommendations that non-state actors should follow, including transparency, the importance of science-based plans and how to use voluntary market (VCM) credits. Corporates making net zero commitments are advised to pay attention to the recommendations in the report, which may be used as a framework to hold companies to account in the courts over the coming years when pledges are not met (or quietly shelved). In particular, the report states that corporations cannot claim to be net zero whilst continuing to build or invest in new fossil fuel supply. Whilst this obviously has application to fossil fuel companies, it also has ramifications for pension funds and asset managers claiming their investments are carbon neutral. For these companies, a choice between divesting or scaling back net zero claims will need to be made swiftly, before greenwashing litigation begins to crystalise.

General Counsels can separately take comfort in the progress made on the infrastructure of the Article 6 carbon markets mechanism, seen as a vital component in channelling climate finance to developing countries and helping companies purchase verified offsets. There are also opportunities: the launch of the UN's Carbon Payments for Development provides an incentive for private sector investment in climate change mitigation projects that would add credence to any green claims made by companies.

Finance

It is hard to think of a loss and damage fund as progress if it represents a recognition of the inevitability of climate catastrophes? Could it instead mean that developed nations are now more prepared to agree to this, being more confident and certain of taking climate action to reduce climate risks? One should hope the latter is the case, to spur instead of distract from necessary climate mitigation and climate adaptation. How fast and effective the world can move towards reducing emissions and building resilience is even more critical ahead of considering and agreeing details and related risk assessments for the loss and damage fund in future COPs.

Indeed, there is great emphasis on the need for finance for countries and markets to deliver on transition pathways towards a low-carbon global economic system. Trillions are required annually to fund this transition, leading to the question "where's the finance"? As a recap, $4 trillion per year needs to be invested in renewable energy until 2030 to reach net zero emissions by 2050, and further, at least $4-6 trillion per year for a global transformation to a low-carbon economy. This is calling for a transformation of the global financial system, its structures and processes, engaging governments, central banks, commercial banks, institutional investors and other financial actors. Taking stock, there are tremendous gaps to overcome, both on existing commitments to-date and going forward.

Tied with financial support to be provided by developed countries to developing countries are technology transfer and capacity building, therefore the nature, reach and outcomes of financial resources are just as important as the availability of funds. COP27 calls on multilateral development banks and international financial institutions to reform current practices and priorities in order to align and scale up funding for simplified access and to mobilize climate finance from various sources.

What underlies just transition is a need for a new vision and operating model for finance that encompasses new channels and instruments that take into account debt burdens of developing countries while addressing risk appetite of funders to increase and accelerate climate finance, including risk capital to drive innovation and accelerate impact. This highlights the clear and unequivocal need for public-private partnerships and strategic private sector support in the global response to the climate crisis.

Some may see Sharm el-Sheikh as disappointing. As with Glasgow last year, global momentum continues to build and there are again some private sector updates that can be celebrated as building blocks and foundations for progress. One of the most notable of these is the announcement of a new Partnership Framework by the International Sustainability Standards Board (ISSB) with more than 20 partner organisations, to support capital market stakeholders and investors on preparation to use the proposed IFRS Sustainability Disclosure Standards.

A welcome move towards alignment of a global baseline in sustainability reporting standards. IFRS climate-related disclosures standards will also be incorporated into CDP's global environment disclosure platform. The review of the Investor Climate Action Plans (ICAPs) convened several key investor groups of asset owners, asset managers and investor networks in reviewing transition planning and enabling policy frameworks for Paris-aligned portfolios, the launch of the Circular Finance Roadmap for International Financial Institutions, and the launch of the California Sustainable Insurance Roadmap led by UNEP FI Principles for Sustainable Insurance.

Greenwashing

It's worth considering the global landscape and context before COP27; a combination of extreme weather events and the energy crisis triggered by the war in Ukraine should perhaps have meant that governments were more focused than ever on fighting the climate crisis. Instead, we saw countries backtracking on climate commitments and in some cases reverting to, or threatening to revert to, fossil fuel use. Perhaps frustrated at the lack of government action, the UN launched a new report during COP27 on the need for real action on net zero. "We must have zero tolerance for net zero greenwashing" said the United Nations Secretary General António Guterres. As mentioned the UN's High-Level Expert Group Report on the net zero emissions commitments, outlines ten practical recommendations in four key areas towards achieving this goal. The private sector, both companies and investors (the latter of which have been progressively more visible at COP) are now seen as key levers to drive faster progress. And indeed, the business imperative for doing this is now extremely obvious.

So, what should General Counsels be thinking about following a COP that didn't significantly move us forward? Firstly it's important that organizations don't shy away from making robust commitments in relation to their contribution to fighting climate change. Even when they don't have all the answers, it's important to be open and honest. Secondly and crucially they must also be able to demonstrate what actions they have taken and the extent of progress so far. Sweeping statements will no longer suffice, stakeholders are looking for specific and detailed facts and figures to substantiate claims being made. The challenges we are facing today are complex and interwoven; solving the concurrent climate, food and energy crises is not the work of one country, one meeting or one company. No one organization has all the answers. Companies should not therefore claim that they do or try to cover up shortcomings or gaps in their ESG strategy. It is far better to talk about where they are on the journey and the bumps in the road ahead than present a glossy version of the truth that poses serious reputational and legal risks.

Human rights

With an increasingly louder cry for a change in behaviours in those areas that immediately impact society, the United Nations Human Rights Council declared that having a clean, healthy, and sustainable environment is a human right. Climate change will continue to exacerbate existing inequalities and human rights violations impacting frontline communities, including the especially vulnerable indigenous people, women, children, LGBT+ people, and those already living below the breadline. Supported by robust scientific evidence, it is well known that the world's most vulnerable people and communities are located in the climate hotspots for loss and damages. At present, the capacity of these governments to mitigate against these disasters and to inevitably rebuild itself is severely strained.

COP27 had been popularly termed as the 'African COP' because of the anticipation and expectation of a long-awaited focus on African, and other developing, countries seeking climate justice. In arriving at COP27, there had always been a general consensus that governments need to adopt and commit to obligations that are bold and efficient in urgently reducing greenhouse gas emissions, absent which, the position of the global vulnerable becomes increasingly impossible to protect. Developing countries primarily attended COP27 with three hopes in mind; delivery on the 2009 promise of $100 billion in climate financing, decarbonisation on a global scale, and funding for loss and damages. In what was described as the 'thorniest' negotiations to take place at COP27, it was only the establishment of the loss and damages fund that was achieved to some degree.

Operationally the funds should be employed to firstly mitigate against the effects of climate change, and then progress to mechanisms of adaptation, and lastly, to rebuild from the loss and damages of climate change-induced shocks that are unavoidable. The establishment of the loss and damages fund was recognised as an important step towards justice, by the UN Secretary-General António Guterres. While the establishment of the fund is a step in the right direction, the operationalisation of the fund and the targets of the fund are at least two key issues that have been placed on hold until COP28. Until then, developing nation governments and societies will continue to apply pressure on developed nations to pledge funding.

With growing social and environmental justice demands being placed on the private sector, especially through developing ESG sentiments, General Counsel and in house legal teams can expect that those private actors in support of achieving climate justice are more likely to focus on creating sustainable profitability. Moreover, it will be expected that governments who have obligations in respect of loss and damages will look to lean on private sector actors in their own attempts at mitigating against, and adapting to, climate change.

Let's continue the discussion

Irrespective of the stage of your ESG journey or the maturity of your ESG strategy, we're here to help. Get in contact at any point, to discuss the specific ESG legal risks and opportunities impacting your organization. You can explore more right now at **www.dentons.com/en/cop27**

Dentons Global ESG Leadership Group

Helen Bowdren
Partner, Energy, Transport & Infrastructure
UK
helen.bowdren@dentons.com

Ipshita Chaturvedi
Partner, Environment and Natural Resources Law
Singapore
ipshita.chaturvedi@dentons.com

Matthew Clark
Shareholder and Co-Leader, Corporate National Practice Group
US
matthew.clark@dentons.com

Vanessa Gore
Partner
Australia
daniela.jaimes@dentons.com

Daniela Jaimes
Partner, Corporate/commercial, Banking & Finance
Venezuela
daniela.jaimes@dentons.com

Gail Lione
Prior to joining Dentons, Gail served as General Counsel of three companies in three different industries: global marketing /manufacturing; publishing, printing and digital imaging; and insurance banking and financial services. Gail is also a Fellow of the ESG Center of The Conference Board.

Senior Counsel, US
gail.lione@dentons.com

Alex MacWilliam
Partner, Canada Leader for Global Environment and Natural Resources group
Canada
alex.macwilliam@dentons.com

Sivakumaren Mardemootoo
Partner, Banking, Corporate Finance and Commercial
Mauritius
sivakumaren.mardemootoo@dentons.com

Nicky McIndoe
Partner, Environment and Planning
New Zealand
nicky.mcindoe@dentons.com

Anderson Moura
Partner, Environment and Natural Resources
Brazil
anderson.moura@vpbg.com.br

Itweva Nogueira
Partner, Oil and gas sector specialist
Certified compliance trainer (CIPE.Org)
Angola
itweva.nogueira@dentons.com

Andrew J. Park
Partner, Corporate & Commercial
South Korea
andrew.park@dentons.com

Ewa Rutkowska-Subocz
Partner, Head of Europe Public Law, Regulatory practice and Environmental Protection
Europe
ewa.rutkowska-subocz@dentons.com

Stephen Shergold
Partner, Global Chair, ESG Group
UK
stephen.shergold@dentons.com

Sivi Sivanesan
Partner, Corporate
Singapore
sivanesan.s@dentons.com

Zaeem Soofie
Partner, CEO of the South Africa office of Dentons
South Africa
zaeem.soofie@dentons.com

Birgit Spiesshofer
Europe Chief Sustainability & Governance Counsel
Adjunct Professor for International Economic Law and Business Ethics, University of Bremen.
Germany
birgit.spiesshofer@dentons.com

Aragon St-Charles
Global Head of Environmental, Social & Governance for Dentons' ESG program implementation
Japan
aragon.st-charles@dentons.com

Vivien Teu
Partner, Asset management & ESG
Hong Kong
vivien.teu@dentons.com

Jodie Wauchope
Partner, Planning Environment & Government
Australia
jodie.wauchope@dentons.com

Gary Yang
Before joining Dentons, Gary was Director Legal and Government Affairs at two Fortune 500 MNCs, AkzoNobel and Air Liquide.

Partner, Litigation, Government Investigations, Environmental
China
gary.yang@dentons.com

Dentons Global Advisors

Melissa Estok
Principal, Dentons Global Advisors
mestok@albrightstonebridge.com

Kimberly Kriger
Partner, Dentons Global Advisors
kimberly.kriger@dentonsglobaladvisors.com

Jennifer Walmsley
Partner, Dentons Global Advisors
jennifer.walmsley@dentonsglobaladvisors.com

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Stephen Shergold, Sam Ahmad, Amy Gault, Amanda Kinglsey,
Vivien Teu, Jennifer Walmsley, Khatija Kapdi and Niamh O'Connor.

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