

Parties discuss facilitation of Paris Agreement implementation and compliance

Kuala Lumpur, 30 May (Jade Chiang) – Following a rich discussion, Parties to the UNFCCC's Ad Hoc Working Group on the Paris Agreement (APA) agreed to the call for focused submissions and a round table to promote further understanding of views on facilitating the implementation and promoting compliance of the Paris Agreement (PA).

The exchanges on modalities and procedures for the effective operation of the committee to facilitate implementation and promote compliance (FIPC) referred to in Article 15.2 of the PA took place in the informal consultations under the APA, during the recent climate talks held between 8 and 18 May 2017 in Bonn.

(Under Article 15.1 of the PA, a mechanism for the FIPC was established which, under Article 15.2, shall consist of a committee that shall be expert-based and facilitative in nature and function in a manner that is transparent, non-adversarial and non-punitive.)

Following the informal consultations, Parties are to make their focused submissions by 15 Sept. and the round table will be held on 6 Nov prior to the opening of the 23rd Conference of the Parties to the UNFCCC (COP23) to be held in Bonn later this year.

During the first week of the talks, discussions focused on five general elements: scope and functions of the Committee; commencement/initiation of the Committee's activities ('trigger'); measures and outputs; consideration of national capabilities and circumstances; and linkages and relationships with other arrangements under the PA.

The informal consultations were co-facilitated by **Janine Felson (Belize)** and **Peter Horne (Australia)** who presented Parties with an informal note prepared "under their own

responsibility" to capture Parties' views which has no formal status.

A key fault line between developed and developing countries lay in the operationalisation of the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC) in relation to the treatment of Parties.

Overall, Parties supported discussion on the five focal areas with many stressing that the Committee should be transparent, non-adversarial and non-punitive.

However, some countries expressed the need to advance work with an inter-sessional workshop and a technical paper, and linking discussions to Articles 13, and 14 of the PA. (Article 13 relates to the transparency framework and Article 14 to the global stocktake [GST].)

Some developing countries cautioned against the pre-mature linkage of issues before the issues mature and Parties know what they are committing to. Hence, they were not in favour of moving too quickly with workshop without a deeper understanding of the scope and functions, purpose and nature of the Committee.

Parties also held different views on linking compliance to the provision of the means of implementation.

While agreeing that recommendations and guidance relating to means of implementation are possible measures or outputs of the Committee, the **Independent Alliance of Latin America and Caribbean (AILAC)** said this linkage should be carefully crafted so as not to become a perverse incentive for non-compliance.

Citing the relevance of linking compliance to support enshrined in Article 3 of the PA, some developing countries opined that provision of support is at the core of compliance. (Article 3

relates to what are nationally determined contributions [NDCs], which includes mitigation, adaptation and the means of implementation.)

At the final informal consultation on 16 May, Parties met and commented on the provisional informal note prepared by the co-facilitators. Co-facilitator Horne proposed three guiding questions for targeted submissions by Parties which were: (i) How can potential linkages to other arrangements under the PA be designed to ensure that the Committee operates effectively while still preserving the independence of these arrangements?; (ii) what kind of outputs of the Committee's activity would effectively facilitate implementation and promote compliance, and how? ; and (iii) how would the consideration of national capabilities and circumstances of Parties be operationalized in the modalities for the operation of the Art 15 Committee?

Highlights of some interventions

China speaking for the **G77-China** said that on the purpose of the Committee is to facilitate implementation of and promote compliance with the provisions of the PA and the nature of the Committee is that it is expert-based and facilitative in nature and operates in a manner that is transparent, non-adversarial and non-punitive, paying particular attention to respective national capabilities and circumstances of Parties.

Regarding the structure and composition, the G77 was of the view that it should be a single Committee with the function of facilitating implementation and promoting compliance and consist of 12 members with recognised competence in relevant fields. On the scope of the Committee, it believed that in general, all elements and provisions of the PA shall be covered by the work of the Committee.

It was of the view that the Committee shall pay particular attention to the respective national capabilities and circumstance of Parties both in procedures and outcomes, stressing that engagement with concerned Parties at all stages is critical for the effective implementation of the Committee, adding that it was prepared to move towards a negotiating text at the end of COP23, laying a solid foundation for the timely completion of the work in 2018.

Mali, representing the **African Group** said it was important to understand the different roles of the Committee and that another round of

submissions by Parties could be helpful. "At this stage, our understanding is that if there is a link with other agenda items, compliance may not be in the picture yet ... so maybe the technical paper can focus on that," it added.

It preferred self-trigger (on the Committee's commencement of activities) as compliance is linked to other items of the PA, noting that it needed to see (the requirements for) transparency of action and support which are not clear at this stage.

Mali was concerned by the assertion of some Parties of providing support to those 'Parties who truly need support'. It questioned who is to decide who truly needs support, cautioning that the Committee has no place for political decision and Parties should stick with what was agreed to in Paris that there are differentiated responsibilities.

Saudi Arabia speaking for the **Arab Group** could support further engagement on the elements identified by the co-facilitators, but cautioned against prejudging the outcome with a draft decision. It believed that self-initiation (self-trigger) is the way to go as other options will be intrusive and political. It was of the view that matters arising in the transparency framework will be resolved there; thus there is no need for any triggers stemming from the transparency framework.

On paying attention to national capabilities and circumstances, it rejected the argument of some Parties that said flexibility is on a case by case basis. Pointing to Article 2.2 of the PA, it said CBDR-RC is referred to in its entirety. "We are not outside the Convention framework ... we have developed and developing countries," it stressed.

(Article 2.2 states that the Agreement will be implemented to reflect equity and the principle of CBDR-RC, in the light of different national circumstances.)

Representing the **Alliance of Small Island States, St Kitts and Nevis** said it would like to see the development of some topics for inter-sessional technical workshop or technical paper to inform the workshop as well as a "table of contents" of the list of the elements that Parties need to address. On paying attention to national capacities and circumstances, it saw the core principle applied throughout the mechanism "but in a flexible manner".

Costa Rica speaking for **AILAC** believed that the establishment of the mechanism to FPIC was a key element to show that the PA is a robust legal instrument. While agreeing that recommendations and guidance relating to the means of implementation are possible measures or outputs of the Committee, AILAC said this linkage should be carefully crafted so as not become a perverse incentive for non-compliance.

Precisely because the compliance mechanism is non-adversarial and non-punitive, “we believe it should be more than self-trigger ... trigger itself is not adversarial or controversial besides that would depend on the function of the Committee”. It saw merits in having an objective trigger and that experience can be drawn from other multilateral environmental agreements.

Gambia for the **Least Developed Countries (LDCs)**, supported the call for an inter-sessional workshop and a technical paper. It further said that the content for draft decision can be captured as reflection notes by the co-chairs of the APA and proposed to finalise the work by COP23. It believed that besides an auto-trigger, there could be a corrective approach for a Party before non-compliance happens. There could also be situations in which it would be appropriate for Parties or a group of Parties or constituted bodies to refer (non-compliance) matters to the Committee.

Argentina representing itself, **Brazil and Uruguay (ABU)** supported having a negotiating text in Nov. It also said the compliance mechanism should be linked to Articles 13 and 14 and in this context, only the needs and gaps should be addressed by the Committee. It believed that the Committee can exercise the trigger but it would have to rely on the gaps identified by the transparency framework and with the consent of the Party.

Philippines said particular attention must be made to the respective national capabilities and circumstances as well as the historical responsibilities of each Party. “The mechanism, while inspiring compliance with the goal of reaching our long-term goals, should follow a process where developing countries who fall short will be encouraged to do better, and will be provided the means to implement their contributions. A compliance committee that is expert-based and facilitative in nature will best be able to accomplish this,” it stressed.

On the scope of the Committee, it believed that all elements and provisions of the PA should be opened to the work of the Committee as it is the ideal arrangement to achieve the goals of the PA, understanding that it is only with a balanced and full implementation of all provisions can we do this.

In terms of compliance, it said there may be differences as to the extent that the Committee will process certain provisions with consideration to its nature and logic within the PA, paying particular attention to the principle of CBDR-RC, adding that the work of the Committee must not be restricted to any one circumstance but must take into account surrounding issues that may affect implementation.

It was also in favour of self-trigger ‘as the best option for developing countries,’ adding that the option for non-governmental organisations (NGOs) to trigger goes against the Party-driven nature and would not be facilitative.

On national capabilities and circumstances, it said the discussion needs to strike a delicate balance. Elements of enhanced actions must integrate CBDR-RC and do so in a way that does not impede enhanced actions and that this balance can only be achieved by a Committee that facilitates implementation by developing countries and promotes compliance of developed countries, consistence with the principle of equity.

China said CBDR-RC is the guiding principle for the PA and shall be operationalised in the implementation of the compliance mechanism. On procedures, it said there could be specific arrangements for developing countries in need, for example, developing countries could have more flexible timing requirements when asked to communicate information to the Committee.

“On measures taken, there is the need to distinguish developing countries who fail to comply due to lack of capacity and those countries who fail to comply due to lack of will,” it emphasised.

As for linkages, it noted that as the modalities, procedures and guidelines for the transparency framework and the GST are still being developed, “it is premature to discuss whether or what kind of linkage exist”.

On the linkage with the means of implementation, it stressed that it is vital for the effectiveness of

the Committee and establishing linkages does not mean creating duplication of work. It said at the core of compliance lies the implementation of Article 3 of the PA.

On the ‘trigger’, it felt that the self-trigger mode is most appropriate, noting that the mechanism is not an enforcement mechanism but is facilitative in nature according to the PA.

Egypt said the provisions of the PA are abundantly clear in establishing the principle of differentiation. In response to the US (see below), it agreed “that the provision of Article 2.2 of the PA is not an operative provision but this in our view should by no means detract from the value of the Article of its standing. On the contrary, we see it as an overarching directive that is a common thread which must be respected and upheld throughout the entire process of implementing the PA”. Therefore, it believed that not only CBDR and differentiation enshrined in the PA but also the notion of respective national capabilities and circumstance is further stipulated for in Article 15.2.

“In practical terms, this means that the Committee shall pay attention to these circumstances as well as the absence and/or weakness of national capabilities be it the lack of knowledge or capacity or manpower or financial capacity to implement provisions of the PA. This should be the case throughout all stages of the work of the Committee,” it added further.

Regarding linkages to other institutions within the PA, it believed that it is too early to speak of such linkages particularly since the work in Article 13 and 14 is still unclear.

Iran called for the Compliance mechanism to reflect CBDR-RC in light of different national circumstances and the discussion should be related to progress in other tracts like financial support. It said the self-trigger mode is most consistent with the facilitative nature of the Committee. Allowing a Party or group of Parties to trigger with regards to another Party or group of Parties, it added, could be adversarial and risks politicising the process.

Algeria said the Committee should play a facilitative role in an adequate manner, stressing that it should be facilitative in nature and function in a transparent, non-punitive and non-adversarial manner and paying attention to national circumstances of Parties.

Indonesia said self-trigger is most relevant. It said when the transparency framework identifies the implementation gap, the Committee could link (its work) with the framework on a non-adversarial, non-punitive basis. With regards to Party-to-Party trigger, it said that would contradict the non-adversarial nature, adding that the NGO-trigger does not fit with the Party-driven process.

It viewed the UNFCCC secretariat has a supportive role that can provide relevant information but does not play a triggering role. It is open to trigger by the CMA, noting that this is subject to further discussions, particularly when it relates to systemic issues (of non-compliance).

The **European Union (EU)** welcomed the suggestion to have an outline of the elements and stressed the importance to keep in mind the linkage with other areas of work of the PA. In terms of linking compliance and support, it said the Committee cannot interfere with the independent governing processes such as the financial mechanism. On Article 15.2, it opined that the language does not limit flexibility to developing countries and consideration of causes of non-compliance shall be on a case-by-case basis.

On linking compliance and support, **Canada** said the Committee should not step on the toes of others and create duplication of work. It supported an automatic trigger to all legally-binding provisions of the PA like the communication of subsequent NDCs.

On consideration of flexibility in terms of national capabilities and circumstances, it pointed out that within a broader context of the PA, there is appropriate flexibility built into Article 13.2 which states that “the transparency framework shall provide flexibility in the implementation of the provisions of this Article to those developing country Parties that need it in the light of their capacities”.

Hence, with regard to national capabilities and circumstances, “we are talking about countries that truly need support”, adding that “the term circumstances speaks to a specific term in time ... Parties that need help at one point in time may not need help at another time and vice versa”.

Norway supported suggestion to enhance and deepen the content of the elements and would like to have a workshop and the need for a technical paper. It cautioned against linking the discussion

with the Adaptation Committee, the Technology Mechanism and Financial Mechanism so as not to duplicate efforts and that Parties would need to show that they have exhausted all means to comply before trying to get technical support from the Committee.

It said any Party can write to the Committee that despite its best effort it cannot implement the actions or the submission can be made by the Secretariat in consultation with the Party concerned and the outcome is reported to an expert review that shall identify areas of improvement for the Party. It said the Committee could provide information on possibilities for accessing finance, capacity-building and technology transfer but there should be no duplication of efforts.

On promoting compliance, it suggested a compliance action plan to be used as a compass to guide the Party back to the road of compliance. The action plan should include a description and analysis of non-compliance, measures that a Party has taken or intends to take to get back to compliance and a timeline for this process to report back to the Committee. It added that if non-compliance persists, the Committee can issue a declaration of non-compliance.

On national capabilities and circumstances of Parties, it said it was not necessary to micro-manage the principle as it would be difficult for the Committee to look at 145 national circumstances, noting that “Article 15 does not talk about developing countries only but different

capabilities that we all have.”

The **United States** said the Committee is not a dispute mechanism; thus it will not offer any authoritative or advisory role. In the immediate future, Parties could start with its core functions and add on later. It said it was not necessary to talk about the principle of CBDR-RC as it could “be a loaded one in this process ... one for which there is no shared meaning”. It pointed out that while Parties referred to Article 2.2, that Article is not an operational provision and “if you look at the context ... it uses ‘will’ not ‘shall’ and it simply reflects CBDR-RC.

New Zealand noted that it is natural to see how other areas of the PA are developing and preferred an automatic trigger for non-compliance to all legally-binding provisions of the PA.

Australia said that it was important to develop clear modalities that are in line with the PA. It was conscious of the linkages and would like to avoid prejudging the outcome. It also wanted a workshop before COP23. It has strong preference for self-trigger but was open to an automatic trigger for the Committee to reach out to Parties that are not in compliance of legally-binding provisions.

Japan supported a case by case consideration of national capabilities and saw no need in separating developed and developing countries.

Edited by Meena Raman.