

Developed countries blocking progress on key issues

Panama City, 6 October (Meena Raman)- Mid-way in the climate change negotiations in Panama City, developing countries expressed deep concerns that some developed countries were blocking progress on key issues relating to long-term finance, adaptation and impacts of response measures under the Ad-hoc Working Group on Long-term Cooperative Action (AWG-LCA).

Frustration and exasperation ran high among many developing country delegations as movement on these key issues, critical for a balanced outcome in Durban, were being blocked as some developed countries did not want to engage with formal submissions by developing countries on these issues. Parties have therefore not been able to produce any negotiating texts on long-term finance, adaptation and impacts of response measures, which also dealt with the issue of unilateral trade measures. (See TWN Panama News Update 9 on the unilateral trade issue yesterday....)

As progress on these issues are blocked, the atmosphere in Panama does not bode well for the climate talks in Durban, with developing countries, led by Venezuela and supported by the Least Developed Countries, the Africa Group, the Alliance of Small Island States (AOSIS), China and Saudi Arabia, expressing the lack of good faith and political will on the part of developed countries to advance the decisions reached in Cancun last year on these issues.

In an emotional plea for progress, Gambia, speaking for the LDCs (at the informal group meeting on 'legal options' held on 5th October) said that the confidence and trust that was built in Cancun was dissipating as developed countries were backtracking on the decisions reached there and were not translating their words into action. If this was the atmosphere here in Panama, it warned that it was difficult to make compromises in Durban at the forthcoming meeting of the Conference of Parties.

These views were expressed during the contact group meeting of the AWG-LCA held on 5 October to take

stock of progress in the various informal groups, as well during an informal group meeting on 'legal options'.

At the contact group meeting, which took place in the morning, **Venezuela** said that developed countries were strategically blocking progress on finance, adaptation and in addressing the economic and social consequences of response measures by ignoring the formal submissions of developing countries which had textual proposals for decisions to be adopted in Durban.

Egypt, speaking for the **Africa Group** said that the issue of finance was part of a comprehensive package for Durban and it was important to have a negotiating text on long-term finance and appealed to developed countries to be more constructive in this regard.

AOSIS, **China** and **Saudi Arabia** echoed the views of Venezuela and the Africa Group.

At the informal group meeting on 'legal options'; which met in the afternoon, Venezuela said that any legally binding agreement has to have good faith and the political will to respect the legal outcome. It said that some developed countries were stepping away from the Kyoto Protocol, the Convention and even from the "Copenhagen Disaccord". It said that the US at the finance informal group (in relation to long-term finance) was raising procedural issues and the European Union was asking to have a discussion on what climate financing was and there was no movement on any text in this regard. This was sad, it said as if there was no finance, there could be no mitigation or adaptation and there was nothing to measure, verify or report (MRV).

Among the informal group meetings that were open to observers were the group on 'legal options' and the group to address the 'economic and social consequences of response measures'.

Intense exchanges took place in these two groups and there was no progress on any negotiating texts as there was no consensus among Parties.

Informal group on 'legal options'

In the informal group on 'legal options', Parties were asked to focus on a menu of options available on the form of the legal outcome for the AWG-LCA. (See TWN Panama News Update 10 yesterday on legal options issue).

The facilitator of the session, Ms. Maria Flores del Socorro of Mexico circulated a paper on the menu of options which included the option of for a (i) a legally binding instrument and (ii) a COP decision.

Grenada speaking for AOSIS referred to its proposal for possible elements for a protocol or other legally binding instrument under the United Nations Framework Convention on Climate Change (UNFCCC) as the "agreed outcome" from the AWG-LCA.

The proposal by Grenada drew interest from several developed countries including the European Union, United States, Switzerland and Norway.

China said that Parties needed to be clear on what the terms of reference was of this group. The mandate was to have continued discussions of the legal options with aim to completing the agreed outcome based on the Bali Action Plan (BAP), the Cancun decision and submissions of Parties. It was not to create a new mandate or process. It said that Parties were discussing the legal options, which related to the procedural legal issues and not enter into the substance or content of the proposals, as it was only about the legal form to reflect the outcome of the negotiations under the AWG-LCA.

It reminded Parties about the history of the Bali negotiations where the original version of the BAP referred to reaching an "agreement" and was later revised to an "agreed outcome" through a compromise reached among Parties. On the various forms to reflect the results under the AWG-LCA, China was flexible on various legal options whether it was in the form of a COP decision, an implementing agreement under the Convention or even a protocol but that depended on the content and not the other way around and must relate to the full, effective and sustained implementation of the Convention.

The **United States** said it found common ground with the AOSIS proposal, which reflected symmetry in relation to the obligations of developed and developing countries. On the issue of "symmetry" the US said that this was needed so that Parties could solve the global problem of climate change where there was need to build confidence that all Parties were acting. It stressed

however that what was needed was for the "capture" of the largest economies, those that were responsible for 80% to 90% of the emissions. The content of the obligations were however, not the same. While developed countries took economy wide actions, major developing countries could take actions commensurate with their national circumstances. This reflected the "common" part of the principle of common but differentiated responsibilities and the "differentiated" was based on national circumstances. Any obligation to do mitigation action had to have the same legal character – it was "shall" for developed countries; it must also be "shall" for developing countries and this could not be conditional or contain escape patches. The need for funding to do mitigation actions did not reflect symmetry, it added.

The US also explained that another aspect that was important was the idea of "modernization" of the UNFCCC. The world it said had changed since 1992 and that as of 2009, 4 of the top 10 and 9 of the top 20 emitters of CO₂ from fossil fuels were from non-Annex 1. There were two ways to accomplish this modernization and it could imagine either keeping the Annex I/non-Annex I approach or adopting a continuum approach. If it were to retain the Annex I/non-Annex I approach, there would need to be a way to move countries to Annex I upon meeting certain criteria just as the Montreal Protocol, which was about "graduation".

The other option would be to eliminate the Annex I-non-Annex I distinction and take more of a continuum approach. The continuum would apply common but differentiated responsibilities and respective capabilities, by reflecting the respective responsibilities and capabilities of the Parties along a spectrum, and their responsibilities would reflect where they stand. Membership in the Annex 1 or Non-Annex 1 categories would no longer determine such responsibilities. The US said these ideas were consistent with the UNFCCC as all Parties had legally binding obligations under Article 4.1 (b).

Philippines in response said that the specific legal form depended on what Parties have agreed on in relation to the content. It said that it was not convinced that the Convention was not symmetrical. It said that Article 4.1(b) of the Convention reflected the word "shall" for all Parties and that the US could not choose to read the Convention in parts and not look at the entire context of the provisions of the Convention which had other articles relating to the mitigation commitments of developed countries as well as the need to provide finance and technology transfer to

developing countries. The Convention was a legally binding instrument and had the element of symmetry as well as “differentiation”. In order to reflect the changing realities, Article 4.2(g) of the Convention provides for non-Annex 1 Parties who are interested in being bound to take commitments on mitigation to use this and there was no need for a new protocol for this.

Saudi Arabia said that it was important to recognise historical responsibility and that Parties know where most of the GHGs have come from the past but the future was not clear. It echoed the view that it was premature to discuss the type of legal instrument needed without dealing with the content first.

Venezuela in reference to the issue of “major economies” said that the level of development has many criteria and is not only related to GDP per capita. It was not the mandate of the UNFCCC or the KP to resolve this issue.

India in response to the issue of changing realities, what was clear is that in the emissions of the past, a large part of this was due to developed countries and that was why there was a differentiation between Annex 1 and non-Annex 1 countries. It said that there was need to continue discussion on the legal options but this depended on content, coverage, compliance and consequences. On content, the question was what was being covered. Was it only mitigation and symmetry or will it also cover adaptation, finance and technology

transfer. In relation to technology transfer, the issue of intellectual property rights as a barrier is important and this was not even being discussed.

It said that on the issue of financial resources, India has to mobilize scarce resources and needed to address if it would spend money on poverty alleviation or on adaptation, given that 300 million people in the delta are vulnerable to sea-level rise and 400 million are affected by glacial melt. India asked if there was to be a treaty or a protocol, could Parties agree to ratify this. It said that there was need for more clarity on the type of legally binding instrument Parties wanted.

Gambia, speaking for the **LDCs** said that there was need for a legally-binding agreement on the two tracks (the AWG-LCA and under the KP). The outcome under the AWG-LCA was contingent on agreement under the KP for a second commitment period. Under the AWG-LCA, the focus should not only be on the issue of mitigation but also on the other pillars of adaptation, finance, technology transfer and capacity building and if the focus was only on mitigation, the other pillars would be empty. The legal form was important but so was the substance.

The informal group will continue to meet on Thursday, 6 October.