

APA Agenda Item 8a: Informal Consultations on Issues Related to the Adaptation Fund

November 14, 2017 – 13:00-14:00, Room Nairobi

Informal Session Summary:

This meeting continues earlier discussions on the Adaptation Fund potentially serving the Paris Agreement. In the previous meeting, submissions were made and discussed by Parties, whereas in this session, the co-facilitators have prepared an informal note based on these submissions for discussion. This is the final version of the informal note, based on two earlier iterations, and is available [here](#).

Overall, conversations have moved away from the contentious discussion regarding the source of funding, the order of decision-making, and when various specific items (governance, institutional arrangements, safeguards, and operating modalities) would need to be agreed upon. Instead, parties have agreed to submit an informal note which captures some of (though not all, and not in perfect detail) the discussions throughout these past two weeks. In this final session of the APA 1-4 Informal Consultations for Agenda Item 8a, there were two major points of discussion:

- 1) The addition to the informal note a mention of the compilation of previous decisions related to the Adaptation Fund. This point was strongly supported by the Philippines on behalf of the G77 and China, and can be found [here](#).
- 2) Second, a point of contention was raised over the inclusion of the G77 and China's submission as an annex to the informal note, while other submissions were not included. According to the G77 and China, this follows legal precedent from COP22 in Marrakech, where it was acknowledged that draft decisions (which is the form that the G77 and China submission takes) have a different legal status than other submissions. The G77 and China happily invited other parties to submit similar draft decisions that would have an equivalent legal status and could therefore be included as annexes. The United States disagreed on this point and suggested all inputs should be included as annexes, and Australia went so far as to call the characterization of the legal status of draft decisions by the G77 and China "factually inaccurate." To resolve this issue, the co-facilitators agreed to include all submissions as annexes, but to include language that made clear that a) the content of these submissions is not agreed upon and b) there is some disagreement about the varying legal statuses of these submissions.

Following this, the meeting closed, and there appear to be no remaining items for negotiation under this agenda item, unless a legal challenge is made. Moving forward, it seems likely that several draft decisions will be prepared in advance of the next session of the APA, where those texts will then be combined, bracketed, and textual negotiations will begin.

- *Kevin M. Adams, Stockholm Environment Institute*

Co-Facilitator

- Recap:
 - What issues need to be addressed and when?
 - What work is needed to address these issues?

- No agreement on parties to engage in this text, which is reflected in the informal note
- Main changes to note:
 - Page 1, last paragraph, refer to text by G77 and China, but recognize no agreement to engage in text
 - P2, third paragraph from bottom...[few others]

Philippines

- On behalf of G77 and China
- We did ask the secretariat to respond to the conclusions that were reached in APA in Bonn and request in paragraph 16(b), which is a request mainly by developed country parties to compile and make available a list of all previous decisions that have been taken on the adaptation fund that touch on governance, institutional arrangements, safeguards, and operating modalities
- Did ask in the last meeting that this was made available in hard copy
- I understand that the secretariat has a link to this compilation online
- We have a rich body of decisions that look at governance, institutional arrangements, safeguards and operating modalities, and in response to the request if developed country parties, this will save us a lot of time talking about governance decisions that have to be taken before the CMA can determine whether the AF shall serve the PA
- Other institutions like the GCF, the AF, the SCF, the LDCF, the SCCF, there was a decision that they should serve the PA
- We did say that the decision could be taken to have the AF serve the PA
- The questions that arose were on institutions etc., which is why we bring to the table these decisions
- I can assure that these decisions have broad coverage and are agreed by all Parties – the principles the modalities and governance, we have negotiated and agreed it, and I feel it can be undertaken in total mutatis mutandis to the CMA
- This was a decision taken by the CMA itself – it is a simple intuitional decision to say only members of the CMA are parties to the PA
- When taking the decision of the GCF to serve the PA, we did not look in to their governing instruments of these institutions
- I believe this would help us move forward in our discussions
- It is a very simple decision that will do what is done for the other operating entities for the financial mechanism under the convention.
- The fund under the Kyoto protocol, I will remind us that the COP established the AF, and then it was made part of the KP because of the funding channel
- I understand that the CMA still has to continue the discussions on the funding channels of article 6.4 of the Paris Agreement, and that may be therefore reflected when the AF serves the PA, but this does not prevent
- We did establish the AF before the first entry into force (in 2005) of the KP
- This is the proposal made by the G77 and China
- We will have to look at this register when we look at the details

Comoros

- Support comments made by G77 and China
- AOSIS would like to highlight two points
 - APA does not preclude the CMP to take any decision related to the AF, which is the governing authority of the fund

- On the decision making, we should make a decision between now and 2018, if there is no operating gap

Malawi

- Would like decision text available in French
- Need translators

Co-Facilitator

- Can make decision links available in French and other UN languages

United States

- Will all of the input be annex to the note, or just the current submission attached?

Co-Facilitator

- This is following procedure from Marrakech where only one party requested their input to be included, and this is an update on that input

Philippines

- Would like to call attention to 5/CMP/2 and 1/CMP/3
- 5/CMP/2 contains all the principles modalities and criteria for the AF, which will be a good reference
- And the operationalization of this took place in 1/CMP/3
- Both good resources to read

Australia

- What are we proposing to have translated?
 - If this is the decisions we have here that would be appropriate, but perhaps not for the reflections

Co-Facilitators

- Just the decisions. Informal notes only published in English

United States

- Suggest that all Parties' inputs are included if one is, or alternatively to provide a link to these documents in order to represent more than one view

Philippines

- The form of our submission is that of a draft decision, which could be annexed
- Submissions can be made by all parties and we welcome positions
- This was a proposal made by Australia in the last May meeting with support from the other members of the group
- We would like not all of them to be reflected, but in response to the proposal made by parties in May we could add this link saying that this is in response to the Australian proposal
- Our submission has a different legal standing, it is a conference room paper (CRP), and the legal opinion suggest we can Annex it to the conclusion which is regular UN procedure

Co-Facilitator

- Believe this is an issue that can be solved with those Parties who have made submissions, so we ask that those parties meet and see if there is a solution you can find

Philippines

- In legal procedure, a draft decision is not an agreed text, which is annexed to conclusions of any subsidiary body
- The APA is an ad-hoc subsidiary body of the convention
- Therefore, we ask, like we did in Marrakech, that our submission (CRP) has a legal standing as a draft decision
- And, of course, other parties are free to send in their draft decisions if they have them
- This is a clean clear negotiating process which has been done from the beginning
- You have conclusions from the SBs, they attach the draft decisions

Co-Facilitator

- Would like to break privately to discuss this issue
- [Break]
- All inputs will be reflected as annexes to the formal note

Philippines

- I have made it clear that our input has a different legal standing
- I have made it clear that if our partners want to give their views in the form of a draft decision, then they will do so
- Eventually, we will look over the draft decisions, ask the co-facilitators to put them together, everything is bracketed, and that is how we start serious negotiations not based on views etc. but based on text on what this is going to be
- Please, when you submit it I would like to make clear that we have put on the table a draft decision that has a different legal standing
- I am willing to ask the legal counsel here as I did in Marrakech
- Co-facilitator, I've negotiated a lot, and this is always the process
- I do not understand this new procedure that seems to be undermining the open transparent intergovernmental process

Australia

- We do support your proposal to have these annexed to the informal note
- What we've just heard is factually inaccurate – the draft decision does not have a different legal status
- What has been proposed by you is a constructive way to move forward
- What we've heard insisted on is contrary to how other items on this agenda are operating, and how we negotiate on finance items on other bodies
- This suggestion is offensive to the inclusive party driven nature of this process
- To reiterate we support your way forward

Co-Facilitator

- Proposal: on the informal note, we will add all the inputs as well as a sentence that captures this discussion about the different views on the legal status of the inputs

Philippines

- Parties are free to make submissions in the form they prefer

- A series of bullet points is not the same as a draft decision

Japan

- There is no agreement among Parties to use either of these inputs as the basis for a discussion – this is the kind of language you could use

Co-Facilitators

- Three modifications
 - Link to complication
 - Attach all inputs we received as annexes
 - Will reflect this discussion we've had here about the different legal status of their submissions

*** *Close* ***