

Work of the Spin-off group on Article 11 on [Facilitating implementation and compliance] and related decision paragraphs

30 November 2015 at 23:50

A. DRAFT AGREEMENT

Article 11 *(FACILITATING IMPLEMENTATION AND COMPLIANCE)*

Option I: (paragraphs 1 to 7)

{Establishment}

1. ~~[A[n]] [Implementation] [and] [Compliance] [mechanism][process][Committee] [, including a Committee [as a standing subsidiary body under the CMA]][compliance mechanism for developed country Parties and a facilitative mechanism for developing country Parties][applicable to all Parties] is hereby established. A [mechanism][committee] to promote [compliance with and] facilitate implementation [of the provisions of this Agreement] is hereby established.~~

{Objective and scope}

2. The objective of the [mechanism][process][Committee] referred to in paragraph 1 of this Article is to:
Option 1: ~~[Promote and] facilitate [and incentivize][effective] implementation of [and ~~promote [and enforce]~~ compliance with] ~~[the [applicable] provisions of] [commitments under] [Articles [3] [, 4, 6, 7, 8] and [9] of] this Agreement [and to assess and address questions of implementation arising from each Party's performance in accordance with those provisions]~~
Option 2: Promote compliance by developed country Parties and to facilitate implementation by developing country Parties through provision of adequate financial resources and transfer of technology
Option 3: Address cases of non-compliance by developed country Parties, including through the development of an indicative list of consequences, taking into account the cause, type, degree and frequency of non-compliance and facilitate implementation by developing country Parties~~

{Nature}

3. **Option 1:** The [Committee][mechanism][process][, including the Committee,] shall be [expert-based,] [facilitative] [in nature] [and shall act in a manner that is transparent], [non-punitive], [non-adversarial] and [non-judicial]. [It shall pay particular attention to the respective national capabilities and circumstances of Parties.]
Option 2: For developing country Parties, the nature should be facilitative, non-punitive, non-adversarial and non-judicial.

{Structure}

4. It [shall function through a plenary and] shall consist of [two separate [branches][forums][mechanisms]] [:]
Option 1: [X] members serving in their individual capacity, nominated by Parties and elected by the CMA, with due consideration for equitable geographical representation based on the five regional groups of the United Nations, ensuring the representation of SIDS. The members shall be elected at the first session of the CMA.
The Committee shall make every effort to adopt its decisions by consensus. If all efforts to reach consensus have been exhausted and no consensus is reached, the decisions shall, as a last resort, be adopted by a [X] majority vote of the members present and voting, based on a quorum of two thirds of the members.
Option 2:
 - (a) An enforcement branch for developed country Parties and a facilitative branch for developing country Parties. The Compliance Mechanism may establish technical panels to assist those branches in their tasks;
 - (b) The role of the enforcement branch is to review compliance with commitments made by developed country Parties and [the role of the facilitative branch is to facilitate the implementation by developing country Parties of enhanced action on mitigation, adaptation, and transparency of action in a facilitative, non-punitive and non-adversarial way] [developing country Parties that have made economy-wide

quantified emission reduction commitments with respect to their commitments on mitigation and support as established under this Agreement];

- (c) The enforcement branch may recommend actions that a developed country Party should take to ensure it fulfills its commitments under this Agreement;
- (d) The role of the facilitative branch is to review the implementation of the nationally determined mitigation commitments made by developing country Parties and to assist them in finding ways to incentivize their efforts to meet these commitments.

Option 3: A compliance branch and an implementation branch [, each with equitable and balanced representation of Parties]. Members of the Committee shall have competence in a field relevant to this Agreement and shall collectively reflect an appropriate balance of expertise.

Option 4: A compliance mechanism to address cases of non-compliance with the commitments of developed country Parties on mitigation, adaptation, provision of finance, technology development and transfer, capacity-building, and transparency of action and support;

A facilitative mechanism to facilitate implementation by developing country Parties for enhanced action on mitigation, adaptation and transparency of action.

{Triggers}

5. **Option 1:** The Committee may consider issues on the basis of:

- (a) Written submissions from any Party [or group of Parties] with respect to [itself][its own or other Parties' compliance with or implementation of the provisions of the Agreement];
- (b) Reports [by Parties in accordance with Article X of this Agreement][and questions of implementation arising from the transparency and accountability system under Article [9]][reports from Technical Expert (Review) teams];
- (c) Information derived from Annex [X] with regard to a situation where a Party fails to communicate and inscribe its NDMC[;
- (d) Requests from the CMA].

Option 2: No text on triggers

{Consequences}

6. **Option 1:** Where it has determined that a Party is not in compliance, [the Compliance Branch] shall apply the following consequences, taking into account the cause, type, degree and frequency of the non-compliance of that Party and paying attention to its national capabilities and circumstances as appropriate:

- (a) Declaration of non-compliance;
- (b) Request for the development of a compliance action plan.

Option 2: The measures to be adopted by the CMA shall range from offering advice and assistance to the issuance of a statement of concern][to [be applied or actions to be taken to] [facilitate implementation][and [address cases of non-compliance][promote compliance]].

Option 3: No text on consequences

{Relationship to the CMA}

7. [The Compliance Mechanism shall report annually to the CMA and shall operate under modalities and procedures agreed by the CMA at its first session] [The ~~process~~ mechanism][Committee] [, including the Committee] shall be under the authority of and report annually to the CMA. [It shall elaborate its rules of procedure, which shall be subject to approval by the second session of the CMA.]

Option II:

An International Tribunal of Climate Justice is hereby established to address cases of non-compliance with the commitments of developed country Parties on mitigation, adaptation, provision of finance, technology development and transfer, capacity-building, and transparency of action and support, including through the development of an indicative list of consequences, taking into account the cause, type, degree and frequency of non-compliance.

Option III:

No reference to facilitating implementation and compliance (no Article 11)

B. DRAFT DECISION

FACILITATING IMPLEMENTATION AND COMPLIANCE

104. Requests the [IPC][ADP][COP][SBI] to develop the [additional] modalities and procedures for the [effective operation of the Committee][process][mechanism][International Climate Justice Tribunal][, including the Committee,] referred to in Article 11 of the Agreement, with a view to completing its work on this matter for consideration and adoption by the CMA at its first session;
