

Movement of technology mechanism in Durban outcome

Manila, 20 Dec (Elpidio V. Peria)¹ – The technology transfer discussions in the United Nations Framework Convention on Climate Change (UNFCCC) in Durban, South Africa under the Ad hoc Working Group on Long-term Cooperative Action (AWG-LCA) may have been the least reported of all the topics and may not have gotten the attention of international media and activists. However, government negotiators slogged through the entire two-week duration of the Conference of the Parties (COP), to come up with a clear decision on the various pending issues about technology development and transfer, all aimed at making the Technology Mechanism fully operational in 2012.

The Technology Mechanism is the institutional entity created by last year's climate talks in Cancun, Mexico, meant to address the lack of compliance by developed country Parties of their obligations to undertake technology development and transfer of environmentally-sound technologies under the Convention. This was the result of years of persistent demands with various proposals by developing countries to implement a crucial part of the Convention.

It is composed of two entities, a policy-making body called the Technology Executive Committee (TEC) and the Climate Technology Center and Network (CTC&N). The CTC&N currently exists only on paper until it is hosted by another pre-existing organization, will get to implement actual transfer of technologies and perform its functions as mandated by the Conference of Parties of the UNFCCC.

Paragraph 128 of Decision 1/CP.16 from Cancun mandated that the COP in Durban, South Africa resolve the following: (a) the relationship between

the TEC and the CTC&N and their reporting lines; (b) the governance structure and terms of reference for the CTC&N and how the CTC will relate to the Network, drawing upon the results of a workshop authorized by the Cancun decision; (c) the procedure for calls for proposals and the criteria to be used to evaluate and select the host of the CTC&N; (d) the potential links between the Technology Mechanism and the financial mechanism of the Convention; and (e) consideration of additional functions for the TEC and CTC&N.

Durban outcomes

The technology negotiation group of the AWG-LCA in Durban did not come up with a clear articulation of the relationship between the TEC and the CTC&N.

The governance structure agreed upon for the CTC&N is an advisory body, the details of which are to be decided in the next meeting of Subsidiary Body on Implementation, one of two permanent bodies of the UNFCCC and its Kyoto Protocol.

The selection process for the call for proposals for hosting the CTC&N is that the TEC will nominate from within itself the six-person panel who will do the initial technical evaluation of the proposals and ranking of the bidders who want to be the host. The shortlist ranking of the bids will be submitted to the Subsidiary Body on Implementation who in turn will agree on a ranked list of up to three proponents based on the outcome of the assessment conducted by the evaluation panel and to recommend the host of the CTC&N for approval by the COP at its 18th session in Doha, Qatar in 2012.

The Durban meeting sketched out the link between the Technology Mechanism and the financial mechanism, though not to the satisfaction of the developing countries negotiating under the

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umbrellas of the Group of 77 and China and the Least Developed Countries (LDCs)

The consideration of additional functions of the TEC and the CTC&N approved during the informal session of the technology group that came out in CRP.39, was not reflected in the final outcome document produced by the Chair of the AWGLCA, , especially on the giving of advice and support, including capacity-building on the conduct of technology assessments of new and emerging technologies by the CTC&N and the request to the TEC to consider issues related to intellectual property rights related to the development and transfer of technologies

The final outcome document of the AWGLCA was prepared by the Chair of the Working Group and transmitted for the approval of the COP under his our authority, following various objections raised by Parties as to its lack of balance in several areas. The final outcome document was approved as part of the Durban package.

The consideration of issues relating to intellectual property rights as part of a new set of functions for the TEC were also not in the final text presented for adoption by the Conference of Parties but is contained in a separate document for further work next year.

Governance structure of the CTC&N

The decision on having an advisory body that will sit atop the governance structure for the CTC&N is a half-won battle from whichever perspective one takes.

For the two weeks of the negotiations, the US, supported by Canada, Japan, Norway and Australia, and sometimes, the EU, insisted that this body be constituted by the host organization itself.

The Philippines repeatedly hammered on, during several “informal informal” sessions, the serious legal issues arising from this set-up, from several levels:

(i) From the UN side, how can a UN body be governed by an entity which is from outside the UNFCCC itself? This does not appear possible under existing UN rules, especially when the lines of accountability and fiduciary duties are melded in the host organization, who are supposed to be providing hosting services to the CTC&N;

(ii) How can it be that the governance structure of a UN body, in this case, the CTC&N, be outsourced to an outside entity and the terms of the governance reduced to the terms and conditions

of a hosting agreement? Hosting agreements usually detail the specifics of the services to be provided by the host organization, but governance, as a function, is not a service that can just be given out to those who may aspire to abide by it. At best, the Cancun mandate should have been worded as governance “arrangement” and not governance “structure” to suit this kind of proposed set-up;

(iii) If a host organization agrees to take on the tasks of being the host of the CTC&N and agrees to constitute such a board, it will change the character as well as the primary and secondary purpose for the establishment of the host organization, which pre-existed before the hosting assignment or task is taken on.;If the host organization agrees to such change, then such change would have to come at a certain price or consideration which the UNFCCC may not be able to provide;

(iv) Assuming the host organization constitutes such a board, the constituted board will just then be a mere creation or appendage of the host organization, putting more doubt into the independence and integrity of such a constituted organization, which is the CTC&N of the UNFCCC It will be difficult then for the UNFCCC to exact accountability from this organization as it will have to pass through the pre-existing board of the host organization which constituted the board of the CTC&N.

There were no significant and substantive explanations or responses to these questions save for the US saying that the technology group or the Parties for that matter, should not be hung up on governance issues and that this can be dealt with in the hosting agreement. Norway said that it is just the question of the name of the entity which should not be a board, while Japan said that it is a matter of clarifying the reporting lines from the host organization which has constituted the board and to the COP, to which it is accountable.

Since these serious legal issues needed a proper response, the compromise was that there is already this advisory body, which from a G77 and China’s point of view is already a half-won battle, as at least it has spelled out there will be a distinct entity that should be governing the CTC&N, and this is not the same as the host itself.

However, the fight is not yet over until the next SBI meeting, since it has not yet been clearly spelled out how the advisory body links to both the TEC, the CTC&N and the host organization.

It could still be argued by those who want to wrest control of the CTC&N away from the COP that the host organization can do a better job of exacting accountability for the operations of the CTC&N.

Eventually, for practical purposes, it may be useful for the AWGLCA next year to separate the advisory body from that of the host organization in order that the lines of accountability and fiduciary duty are clarified, and they are separate from the host organization.

Composition of the advisory body of the Climate Technology Center

The composition of this advisory body is expected to be another potential flashpoint in the subsequent stages of the negotiations.

In fact, during the last negotiating session of the technology group in Durban, prior to forwarding the informal group's text to the AWG-LCA Chair, the group's facilitator Jukka Uosukainen (Finland) walked out of the discussions when the G77&China, (in retaliation for the US proposal of eight government representatives that will sit in the then called CTC Board), suggested 22 such representatives comprising 4 representatives each from the five UN regional groups and 1 each from the small-island developing states (SIDS) and the LDCs.

The facilitator came back later when the negotiating groups were about to compromise on a US offer of 19 representatives. In making this proposal, the US reversed from its earlier position that this body should just be small and efficient. According to some observers, the idea here was to set up the advisory body as a competitor to the Technology Executive Committee, (which is another twenty-person entity).

All through the negotiating sessions, the US supported by Australia, Canada, Japan and sometimes the EU, consistently questioned the competence of the TEC on dealing with issues related to technology development and transfer, arguing that the TEC was not created for the purpose of implementing technology development and transfer projects.

The G77&China, on the other hand, argued that the TEC is well positioned to be such a body that will exercise oversight and provide guidance to the CTC&N. It will already save the COP time since the lengthy process of selection of its members was already over and done with.

Selection process of the Climate Technology Center

At least, after several contentious exchanges in the course of the duration of the COP, the Parties agreed on a two-step process for selection viz. the technical evaluation phase and then the selection phase.

The G77 and China wanted originally a process similar to the conduct of a double-blind study on the initial technical evaluation of proposals composed of four experts who will evaluate the proposals independently without meeting each other, but this was opposed by the US and the EU arguing that this is not actually scientific even if it may appear to be that and it is difficult to check how these independent experts understood and applied the criteria. After several sessions, Parties have come around to tasking the TEC to do the selection of these experts, even designating its own members to do this evaluation.

The next stage of the process, the selection phase, is what became contentious but the group settled on the SBI to make the selection. It was not clear what will happen if the SBI could not come to a compromise on this item. Thus the technology group asked the SBI to agree on the recommendation to the COP on who will eventually be the host of the CTC&N, as can be found in para. 138(a) of the LCA outcome document, which reads:

“138. *Requests* the Subsidiary Body for Implementation:

a) To agree on, at its thirty-sixth session, a ranked list of up to three proponents based on the outcome of the assessment conducted by the evaluation panel referred to in paragraph 132 (d)(i) above.”

Relationship of the TEC and the CTC&N

While this has not been explicitly spelled out, how this will eventually unfold is seen by how the two entities comprising the Technology Mechanism – the TEC and the CTC&N - will render its report to the COP.

The G77 and China wanted the Climate Technology Center to report to the TEC, but the EU, as well as the US, insisted that the CTC should also be able to report directly as both of them are accountable to the COP.

In one negotiating session, the US even said it did not want TEC to have any role at all in the governance or management of the CTC&N.

The potential links between the Technology Mechanism and the Financial Mechanism

Financing is another key issue that was hard-fought, but references to the Green Climate Fund and the Standing Committee was deleted during one informal group meeting on 8 December, and the Parties came around to the compromise wording that does not really amount to much though it appears to broaden the sources of funding of the CTC&N².

Uganda was the last country to insist on the relationship between the Technology Mechanism and the Standing Committee, which was then in para. 11alt, but even that was deleted, given that there was already a late-night compromise wording on how funding for the operations of the CTC&N are to be provided.

Without clear sources of specific amounts of core budget and short and long-term funding, there is a possibility that the CTC&N will be hampered in its early stages of operations.

Consideration of additional functions for the TEC and the CTC&N

The Philippines fought to have the giving of advice and support as well as capacity-building for the conduct of technology assessments of new and emerging technologies as part of the regular functions of the CTC&N, supported by Bolivia which had numerous repeating texts on this item, including IPRs during the Panama inter-sessional period.

Haiti and Iceland, which were supposed to be fighting for gender considerations, which could have been made part of the technology assessments, did not anymore speak crunch time perhaps they were not as convinced that the technology

assessments would include gender considerations, though they earlier suggested that gender considerations be made a regular basis of the work of the CTC&N.

While the Philippine proposal on the consideration of an additional function for CTC&N on the giving of support and advice and capacity-building on technology assessments for new and emerging technologies and the Bolivian suggestion on the request to TEC to consider intellectual property rights issues related to development and transfer of technologies came out in document CRP.39 on 9 December as prepared by the AWGLCA Chair under his own authority, they are nowhere to be found in the final LCA outcome document. Whether this can be considered again by the AWGLCA when it resumes its further work on this issue is an open question, which is up to the country proponents to raise so this can be resolved by the AWGLCA Chair at that next session.

Looking forward to the next SBI meeting

The advisory body will continue to be contentious, but hopefully, Parties should have a clearer notion of the relationship between the advisory body and the host organization and the legal limitations of fusing the lines of accountability between the host organization that they will agree to make the advisory body an intermediate body between the COP and the host organization. There is no other way around this since the COP, which convenes only once a year, will have to designate an entity, not the host organization itself, which will deal on a regular basis with the host organization. This is how accountability is ensured, it cannot be left to the host organization, which constitutes such board, to determine these things.

The financial aspects of the operations of the CTC&N are another topic for discussion. Things will get clearer when the bidders will make their own proposals on how these activities that will also be participated in by the Network members.

The final question relates to whether the earlier proposals for considering additional functions to the TEC and the CTC&N can be revived in the next session of the AWG-LCA. It remains an open question that can be tested during the next inter-sessional period.

According to one developing country negotiator, to answer the question of who won and who lost, the Durban duel between developed and developing countries on the matter of technology transfer resulted in the following:

2 The LCA outcome document on the chapter on technology development and transfer, has the following paragraphs on the financing of the activities of the CTC&N:

139. *Decides* that the costs associated with the Climate Technology Center and the mobilization of the services of the Network should be funded from various sources, including the financial mechanism of the Convention, bilateral, multilateral and private sector channels, philanthropic sources as well as financial and in-kind contributions from the host organization and participants in the Network;

140. *Requests* the Global Environment Facility to support the operationalization and activities of the Climate Technology Centre and Network without prejudging any selection of the host;

141. *Invites* Parties in a position to do so to support the Climate Technology Centre and Network through the provision of financial and other resources.

- The G77 and China originally wanted the TEC to be the entity that will exercise oversight and provide guidance to the CTC&N. At the start of the negotiations in Durban, they modified their stance to a kind of a board, which is an intermediate body between the COP, the TEC and the CTC&N, leaving some items for the TEC, such as the giving of strategic guidance on some key issues like prioritization and selection of network members, among others. The advisory body created by the Durban COP appears to be something similar, in a general sense to what the G77 and China wanted, though the role of the TEC over this advisory body is not clearly spelled out as the TEC will remain exercising its own mandate on its own concerns, not that of the CTC&N.

- The US, supported by Canada, Australia, Japan, and to a certain extent, the EU, wanted the TEC out of the way in the running of the affairs of

the CTC&N. It was agreed that how this relationship will evolve or how they will relate to each other, to “promote coherence and synergy” as called for by paragraph 127 of Decision 1/.CP16 of Cancun COP. It is a matter of time and the test of such relationship in how the two will agree on the modalities of their reporting to the COP.

- The selection process for the host organization is a partial achievement for the G77 and China, as the TEC got to play a role in doing the technical evaluation of the bids for hosting of the CTC&N though the US prevailed in having the Subsidiary Body on Implementation do a ranking of the list of who may be recommended as the host of the CTC&N.

The final form shape and functions of the Technology Mechanism will continue to be fought out in 2012.