

## Work of SBI delayed; Russia explains proposal

Bonn, 10 June (Meena Raman) – The UNFCCC’s Subsidiary Body for Implementation (SBI) has not been able to commence its work for one whole week since it first met on Monday, June 3. This is because efforts at finding a resolution through consultations over a proposal by the Russian Federation, Belarus and Ukraine (RBU proposal) to include a new agenda item on the provisional agenda of the 38<sup>th</sup> session of the SBI had yet to yield results, as of Saturday, 8 June.

Chair of the SBI, Mr. Tomasz Chruszczow (Poland), convened a formal plenary on the morning of Friday, June 7, to ask Parties on how to move forward and after an intense exchange of views, a proposal by Tuvalu to convene discussions in an open-ended ‘friends of the Chair’ setting was accepted and the meeting was suspended. It was agreed that discussions are to centre around how to reflect the RBU proposal for a new agenda item on “procedural and legal issues relating to decision-making by the Conference of Parties (COP) and the COP serving as the meeting of the Parties to the Kyoto Protocol (CMP),” under the existing provisional agenda item 17 on ‘Arrangements for intergovernmental meetings’.

Following the consultations, it is learnt that there is a draft text of a statement of the Chair to be read out to the SBI plenary when it convenes. It is not known if this draft is a final one decided on by the ‘friends of the chair’ meeting or whether there would be a further meeting of the ‘friends.’

At the Friday plenary session, Russia gave a lengthy clarification on the substance of its proposal, which it said was about “systemic” issues relating to the conduct of the COP/CMP meetings.

Below are highlights of the Friday plenary meeting of the SBI on this issue.

The SBI Chair began the plenary by asking Parties how to move forward as regards the adoption of the agenda. After an initial pause, when he saw no Party requesting the floor to speak, he proposed the adoption of the supplementary provisional agenda, and that if there were no objections, it would be considered to be adopted.

(The SBI Chair at the opening plenary of the session on Monday, June 3, informed Parties that the RBU proposal was included in a supplementary provisional agenda as a new item 19.)

**Fiji**, speaking for the **G77 and China** said that it had requested the floor before the SBI Chair proposed the agenda for adoption. In responding to the question on how to proceed as initially posed by the SBI Chair, Fiji said that the Group had engaged in lengthy consultations in finding a resolution. It reiterated that the Group’s proposition at the opening plenary on Monday, June 3, had not changed and that it desired to conduct work following the items listed in the supplementary agenda (without its adoption) while holding informal consultations on agenda item 19.

Fiji stressed the importance of proceeding with the work of the SBI, while finding a way forward on the RBU matter, in the spirit of genuinely to finding a resolution.

It said that an overwhelming majority of Parties had no great difficulties in proceeding in the manner it had proposed. It asked that its proposal to be considered once again. Fiji said that discussions over the past days had given a clear indication that the proponents of the RBU

proposal do not wish to proceed as suggested by the G77 and China and expressed that the Group had shown an enormous amount of flexibility on this item and in that spirit, requested that a small measure of reciprocity be exhibited.

Fiji then said that the G77 and China was now willing to go an enormous step further and suggest that it was willing to consider the possibility of discussing the “sentiments” of agenda item 19 under item 17. This it said was a “giant leap” on its part to proceed with the work of the SBI and encouraged Parties to react to this proposition. Fiji said it is necessary for the work to commence, bearing in mind the assurances Parties gave one another on the importance of discussing agenda item 19.

The **European Union** suggested the following- Parties could first agree to discuss the substantive matter under the agenda item 17 on ‘arrangements for intergovernmental meetings.’ In order not to hide the issues raised by RBU, there could be an annotated agenda that makes clear that the RBU proposal is going to be discussed under this agenda item. The SBI Chair could propose a time schedule to the plenary that clearly reflects that these issues will be discussed at the beginning of agenda item 17 and taken up right after the plenary adopts the agenda. This should allay the fears and concerns of RBU.

Should that still not be possible, the EU made an alternative proposal to make a decision to get work on the other agenda items going, and provisionally start work and come back to the issue of the RBU on Wednesday (12 June). It said there were many agenda items that had to be addressed following the decisions from Cancun, Durban and Doha and the SBI could not be seen as wasting tax-payers money. It hoped RBU could join everyone and move forward for the adoption of the agenda.

**Switzerland** for the **Environmental Integrity Group (EIG)** said that Parties have to move forward on the agenda and underlined that it also shared the sentiments on the issues raised by RBU. It supported the addressing of the RBU proposal under the agenda item 17.

The **United States** said that it was supportive of the concerns raised by RBU about the process. It was important for all countries to be recognised and to be heard. It said that there needs to be discussions within the SBI of this issue to ensure

that the process that for the future is smooth and that meetings conclude in an orderly fashion. It also stressed the importance of getting started with the work of the SBI. It said that it did not reflect well on Parties to stall on procedural issues. The US suggested that Parties could proceed as they did in Durban on the COP agenda where the COP did not hold up work. It also agreed that discussions could occur under agenda item 17 and either formally or informally reflected, with some assurances given. It said it had much in common on the substance of the RBU proposal and it would be helpful for proponents to clarify what they would like to discuss on the agenda item and what they want concluded or decided as a result of these conversations.

(In Durban, in relation to a proposal by India to include three additional items on the COP agenda [on equity, intellectual property rights and unilateral measures], the COP decided to launch its work pending consultations among Parties on the Indian proposal).

The SBI Chair then said that the proposal by the EU had not been tested, which was: (i) for the annotations to the agenda to clearly state what kind of work programme this item will include and for a proposal to start a contact group on ‘arrangements for intergovernmental meetings’ after the agenda is adopted; or (ii) for a decision to provisionally launch the work of the SBI and come back on Wednesday to consider the advance of work on all items including the discussion on the RBU proposal. He asked Parties to address these proposals.

**India** expressed full support for the G77 and China proposal. It said that greatest flexibility had been displayed with what was the G77 and China’s fifth proposal. It lamented that all the earlier proposals were not accepted. It did not want to waste time anymore on discussing procedural issues. It stressed that procedures and rules were there but were not being followed. Referring to the G77 and China’s Chair mention of “taking a huge leap of faith”, it explained why this was so. It referred to Article 7.3 of the Convention which states that the COP ‘shall adopt its own rules of procedures as well as those of the subsidiary bodies established by the Convention, which shall include decision-making procedures for matters not already covered by decision-making procedures stipulated in the Convention.’”

This said India, makes it very clear that decision-making lies only with the COP and not with the SBI. This issue therefore does not belong to the SBI. In addition, rule 13 of the draft Rules of Procedure of the UNFCCC states that only an item considered by the COP to be urgent and important may be added to the agenda. While it can be hypothetically assumed that the issue (before the SBI) is important, India was of the view that it is not urgent. The item has to be both urgent and important. It underlined that because Parties are looking at the item in the SBI which is not in conformity with the Convention, the G77 and China was taking a leap of faith. It was willing to discuss the RBU proposal under agenda item 17. It added that the issue did not even belong under agenda item 17.

It was not convinced that there is need to annotate the agenda. India said that an agenda exists. Having the RBU issue under 'arrangements for intergovernmental meetings' when it is not an 'arrangement' and to put it under the SBI agenda, was a matter of concern. It stressed that the proponents have the sovereign right to bring this matter to the COP. The contact group is not a helpful idea at all.

It said Parties cannot have a different yardstick for India and another one for another country or a group of countries and this was unfair. Referring to how it was treated in Durban on its' issues, it said India stepped aside and let the proceedings proceed and accepted decision of the COP. It said that the work of the SBI should start immediately and could not be prolonged any longer.

**Russia** said that it was also interested in the work of the SBI. In order to launch the work, it wanted a clear understanding on what Parties want to do. In response to India, it said that the RBU proposal was fully in line with the Rules of Procedure. It was ready to what it wanted under the agenda, adding that such clarification was already made at the opening plenary on Monday.

**Fiji** for the **G77 and China** said that it was clear that the matter of decision making belonged to the COP. It has shown flexibility but Parties could be accused of procedural impropriety but it was willing to find a way forward. At this stage, it said that the SBI Chair needed to show guidance as there was absolutely no consensus on adopting the agenda and Parties had arrived at wall and need to go past that. Fiji then asked

the Chair to clarify what legal options were available to proceed with the work.

**Russia** in reference to the G77 and China that Parties had hit a wall, it did not agree that this was so. It said that the process of negotiations is country driven and is not for the Chair to take decisions. The most appropriate way to handle the issue is to use all possible efforts to achieve consensus and it was ready to do so. It was ready to participate in any format and provide additional clarification.

**Fiji** for the G77 and China restated its view that having heard all the interventions, it was of the view that there was no consensus on the RBU proposal. It wanted clarification on what the legal options were available to Parties when there was no consensus.

The SBI Chair said that there was consensus that the RBU issue is not under agenda item 19 but under agenda item 17. On the legal options, according to the rules of procedure of the UNFCCC, the presiding officer puts a procedural motion to a vote and there is a motion from three countries to include an item on the agenda. Rule 42 of the Rules of Procedure has never been agreed to and the meeting can only decide by consensus. (Rule 42 refers to the possibility of voting in the event consensus has been exhausted. It has yet to be adopted by Parties).

**Fiji** referring to the Chair saying that there is a consensus for discussion of this under agenda item 17, said there is a group who do not intend to do that in this manner. It did not recollect anyone presenting any motion as there had been a general discussion. It wanted clarification on the legal options available when there was no consensus over an agenda item.

The SBI Chair said that when he said there was consensus on the issue as regards addressing this issue under agenda item 17, he heard all Parties including during the consultations and the willingness of the proponents to discuss this in this manner. He said it was not difficult to remove agenda item 19. From a procedural point, voting was not an option, he said. The only way to decide is via a consensus. He said that the Chair is able to take decision on points of order and not on matters of substance, and that agenda is a point of substance. Hence, he can only ask the meeting whether there is a possibility of finding consensus around one of

the proposals so far. He then outlined the various proposals:

- (i) The proposal submitted by the Chair on Monday that included deletion of agenda item 19 and as Parties were agreeing on having the substantial proposal of RBU under agenda item 17, adding to the headline of this agenda with explanatory notes on what is the content of agenda item 17 viz. “arrangements for future meetings” that is traditionally taken on board on this item. He said the SBI always takes decisions on up-coming COP/CMP and considers dates of future meeting; organisation of intergovernmental matters including procedures and legal matters, i.e. taking on board what RBU wanted so as to have a clear inscription on the agenda;
- (ii) A proposal by G77 and China to delete agenda item 19, and not to amend agenda item 17, but instead provide Parties clarity by the Chair that the RBU proposal will be discussed under agenda item 17, with a statement by the Chair that would be reflected in the report from the meeting and
- (iii) A proposal from the EU that this kind of reassurance could be offered to amended annotations as three Parties wanted to include discussion on this matter under agenda item 17, that would be included and taken on board and be fully considered.

He said that these were the three proposals and that there was a lot in common which is to engage in a substantial discussion. There was readiness not to include the discussion under agenda item 19 but instead in agenda item 17. What is now being discussed, he said, is on how to provide the RBU with the reassurance that this item will be taken seriously and thoroughly discussed in the SBI so that the COP could consider that item. He said there is no legal solution other than arriving where consensus is needed.

**China** supported the proposal of the G77 and China and said it was time to get over the impasse. It respected every Party’s right to make any proposal or submission as this was the sovereignty of each Party. It said Parties needed to be practical and recognise the urgency of the issues that needed to be addressed in the SBI agenda where a lot of work is waiting to be done. Discussions can continue on how to resolve the

RBU agenda as there is no consensus on the adoption of the agenda.

China said there was a procedural suggestion for the SBI Chair to make a ruling without prejudice to adoption of the agenda. It asked for the Chair to rule that the work of the SBI begin while discussions go on. It wanted a ruling that work begin provisionally, without prejudice to the final decision on the adoption of the agenda. It said either the Chair or others appointed by him could hold formal or informal consultations.

**Russia** said that it wanted to provide a clarification on the on the substance of issues it was raising as regards the agenda. In response to China, Russia said that what was being proposed is that the Chair should take a decision which was not in line with the Rules. It said that any proposals that offered by the Chair on the possibility of taking a decision is not in line with process and referred to the adoption of COP/CMP decisions in Doha by the Qatari Presidency. It said that Russia and others were ready to reach a compromise. Russia said it was ready to outline what the substance of their proposal was.

**Fiji for G77 and China** then raised a point of order saying that it wanted a ruling from the Chair, that is to proceed with the work of the SBI provisionally and for discussions to continue in an informal setting.

In response, the Chair wanted to allow Russia to speak freely.

**Fiji** then appealed against the ruling by the Chair, to which the SBI Chair sought legal advice to seek a vote as there was an appeal. The SBI Chair then said that according to rule 34 of the Rules of Procedure, Parties need to decide whether to support the ruling or reject it.

He then asked Parties to vote. When he asked Parties to raise their hands if they were in favour of continuing discussions, no one raised their hand. He then asked if Parties to raise their hand if they were not in favour of continuing the discussions; again no one raised their hand. He then ruled that the appeal had not been supported and asked Russia to speak.

**Russia** then sought to explain why it was making its proposal. It stressed that in its proposal, it wanted it to be introduced as a sub-item under agenda item 17. It stressed that its proposal was directed towards future meetings,

keeping in mind the history of the process. It said that the process “is suffering considerably”. It is linked to situations that arise “when procedures are held hostage to that of emotions.” It wanted to avoid this. It recalled past processes which it characterised as “unfortunate events.” It recalled the COPs at Doha, Durban, Cancun, Copenhagen and The Hague. It said there were “violations of the procedure in The Hague (referring to matters over the adoption of the Kyoto Protocol). It said that the Chair did not fulfil his role properly which led to the COP/CMP falling apart. This led to one of the most important countries which is the largest emitter of GHGs leaving the Kyoto Protocol, referring to the United States.

Referring to the COP in Copenhagen, Russia said “we saw a neglect of technical details.” He said that the Russian President was among others who had worked on the Copenhagen Accord which contributed to what looked like a future agreement. Since the rules and norms of holding negotiations were not followed, it led to a failure.

In reference to the new agreement to be concluded under the Ad hoc working Group under the Durban Platform (ADP), Russia said that 2015 was not far away. It said that “if we do not place the whole process in respecting procedures, and norms and principles, the adoption of the 2015 agreement could once again be in crisis and did not want more countries to leave the process. It wanted to see clarity in the following of procedures.

On the issue of ‘procedural and legal issues’ under the UNFCCC, it wanted the SBI to stress the importance of transparency as part of its conclusion. It also wanted the conclusion to stress the importance of the basic principles of the UN Charter as reflected in Article 2. It said that Parties could also stress that the draft Rules of Procedure for the COP and subsidiary bodies has still not been officially adopted. It wanted the launch an appeal that it is an urgent and important task to work together towards ensuring conditions are ripe for the adoption of the Rules of Procedure to strengthen the process.

On the notion of ‘consensus’ and what it means, has been difficult, said Russia. ‘Consensus’ is not a synonym for full agreement or unanimity, it added. ‘Consensus’ is defined by Parties and not by an official elected to chair the meeting. This could also be reflected in the SBI conclusion,

said Russia. Parties could go further if there is general agreement to ask the UN Secretary-General to give clarification on what the notion of ‘consensus’ means as practiced in the UN system. Another substantive element that could be in the SBI conclusion is the role of presiding officers and how they carry out their functions.

In the end, Russia said, we can talk about what is the most important element of decision making which is the issue of ‘voting’. This is the very problem and reason why the draft Rules of Procedure have not been adopted. Countries have made proposals related to amendments to the Convention and how voting could be carried out. Why should these issues of importance not be looked at? asked Russia.

It also said that the role of the secretariat in supporting the presiding officers could also be addressed. Russia said it wanted a discussion on issues which are of a systemic nature.

The sentiments of Russia was shared by **Ukraine** and **Belarus**.

**Tuvalu** said that it had sympathy for the concerns raised by RBU. It said there was a legal issue of whether the SBI had competency to deal with procedural matters of the COP. In order to find a solution, it proposed a suspension of the meeting and for the SBI Chair to constitute an open-ended “friends of the chair” process to find a solution and come back in an hour.

**EU** thanked Russia for raising issues of “systemic importance”. It wanted to take matters forward after having adopted agenda in context of agenda item 17 and was not sure if there was need for open ended discussions.

**Fiji** for **G77 and China**, in response to Russia that it would like to see their agenda item reflected as item 17 (a), said that what is being requested is a discussion that should be rightfully take under agenda item 2, which is on organisational matters. It said that any discussion regarding agenda item 19 should be under agenda item 2.

On the Tuvalu proposal to suspend the plenary and to engage in informal consultations as “friends of the chair” in a time space of 1 hour, Fiji stressed again the need for the SBI to launch its work, and agreed to the Tuvalu proposal, insisting that it the consultations be limited to an hour. It said the discussions are to consider if

agenda item 19 be included under agenda item 17 and that was the parameter.

The SBI Chair then proposed to convene the “friends of the Chair” on how to take on board within agenda item 17 the procedural and legal aspects of decision making.

The SBI plenary was then suspended but did not reconvene even on Saturday, June 8. Parties were

seen meeting as “friends of the Chair”. Whether a conclusion will be definitely reached on Monday, June 10 remains to be seen.

The daily programme for the Monday meeting has scheduled an SBI plenary at 11 am.