

UNFCCC body SBI in crisis; unable to do work

Bonn, 12 June (Meena Raman) – The 38th session of the UNFCCC’s Subsidiary Body on Implementation (SBI) is in crisis, as it could not adopt its agenda, nor launch its work after 8 days since its first meeting held last Monday, 3 June.

The Chair of the SBI, Mr. Tomasz Chruszczow (Poland) convened a formal plenary meeting at around 12.45 pm on Tuesday, 11 June, and after a 3-hour exchange, adjourned the meeting and informed Parties that the SBI will reconvene on Friday, 14 June, to close its session.

During the 11 June meeting, Chruszczow proposed a solution that included the reading of a Chairman’s statement, the deletion of an agenda item proposed by Russia, Belarus and Ukraine but creating a “contact group” to discuss the proposed issue under an existing agenda item. However, the Chair’s proposal was rejected by the three countries. An appeal to the Chair by the G77 chair to gavel through his proposal nevertheless was also not taken up by the Chair.

After a short break, the Chair announced he was closing the meeting, and implied he would no longer hold further consultations or meetings to try to resolve the issue but only convene a formal closing meeting on Friday. Therefore, the SBI would not have conducted any substantive work during this two-week climate conference under the UNFCCC.

This has thrown the SBI and the UNFCCC into a crisis of procedure and possibly of credibility. The SBI is a vital component of the UNFCCC structure, as it makes decisions on a wide range of important issues on implementing the Convention’s provisions and objectives, and is thus seen as a key action arm of the UNFCCC. The loss of two weeks of its work, with many hundreds of delegates and observers gathered in Bonn in frustration, is a blow to the global climate negotiations.

The 11 June meeting also saw the Russian chief delegate present a lengthy explanation of the issues that his country was seeking to highlight – the problems arising from the Conference of Parties and its presiding officials not following proper procedures. He portrayed this as contributing to the crumbling of credibility of the UNFCCC, using the analogy of the crumbling of ice sheets in the Arctic and the melting of glaciers caused by global warming.

The Russian Federation, Belarus and Ukraine (RBU) had objected to the adoption of the agenda as proposed by the SBI Chair. The agenda could not be adopted due to wrangling over a proposal by the RBU to include a new agenda item.

The three Parties wanted to include an item on the provisional agenda for the 38th SBI session ‘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),’ which was reflected as agenda item 19 in the supplementary provisional agenda.

When the SBI plenary was convened on 11 June, the Chair reminded Parties that they were considering agenda item 2(a) of the supplementary provisional agenda, which was the ‘adoption of the agenda’.

Chruszczow reminded Parties that the agenda had yet to be adopted and as a consequence, the SBI was not able to commence work and 8 days had been lost. He recalled that on Monday, 3 June, the 38th session was opened. He said that when considering agenda item 2(a), Parties were unable to agree to its adoption due to disagreement over agenda item 19. Consequently, no work was launched, he added.

The SBI Chair said further that upon suspension, a heads of delegation meeting was called. No

agreement was achieved and on 4 June, an SBI plenary was convened but Parties were still unable to arrive at a solution to the impasse, he said.

Following this, Chruszczow said bilateral informal consultations were held to consider how a solution might be found but there was no agreement on the solution. On Wednesday, 5 June, the SBI Chair said that he and his Vice-chair sought to bring mutual understanding to allow the SBI work to commence, but a compromise was beyond reach.

He stated that a short stock-taking plenary was convened to inform Parties about the status of the consultations. On Thursday, 6 June, he said bilateral consultations continued and some convergence began to show that the issue raised by the RBU was important and could be discussed under agenda item 17 of the agenda (on 'arrangements for intergovernmental matters'). The Chair said that informal open-ended consultations were convened to allow Parties to further explore matters.

On Friday, 7 June, following 3 days of consultations, a plenary session was convened to take stock of matters, he added. There was an elaboration and clarification by the RBU on the substance of their proposal. Parties expressed readiness to discuss the substance of the issue under agenda item 17, he added further.

According to the SBI Chair, what appeared to be divisive was that the RBU wanted explicit inscription of their proposal on the agenda item, while a majority of Parties wanted to provide an assurance in that regard without amendments to agenda item 17, and for agenda item 19 to be deleted. He said that this reassurance was to be provided by the Chair by a statement which would be reflected in the report of the session.

The Chair said that on Friday, 7 June, Parties entered into an informal meeting in a 'friends of the chair' setting, to find options, paving the way for the adoption of the agenda while taking into account the RBU proposal. He invited Parties to provide submissions on the matter and got responses from the G77 and China and the Environmental Integrity Group (EIG).

On Saturday, 8 June, Chruszczow said the 'friends of the chair' reconvened and discussed possible texts of the statement to be read by the SBI Chair before the adoption of the agenda. The purpose of the statement was a way to

provide assurance to the RBU that their proposal would be captured under agenda item 17, without direct reference in the title of the agenda. He added that the text was based on the two submissions of the G77/China and the EIG and referred to the submission by the RBU to include their proposal, on the understanding that the text would be incorporated in the report of the SBI session. The RBU said that this was useful, but it could not be considered their preferred option. The Chair explained further that on 10 June, the 'friends of the chair' was convened and in the afternoon, consultations were held.

Based on these consultations and deliberations, he proposed the following way forward as a 'solution box':

1. There will be a statement to be read by the Chair as proposed by Parties at the SBI meeting;
2. The text of the statement will be incorporated in the report of the 38th session of the SBI;
3. The agenda of the SBI as contained in the supplementary provisional agenda would be adopted with agenda item 19 deleted;
4. After the agenda is adopted, the SBI Chair will propose the setting up of a contact group on agenda item 17, including the agenda item as proposed by the RBU. The contact group will be chaired by both the SBI Chair and Vice-Chair and will be convened at the earliest time.

The Chair said there was no other solution. He then read out his statement as follows:

"The May/June session of the SBI has traditionally provided Parties with an opportunity to consider how their intergovernmental process is functioning and to exchange views on relevant matters, including providing guidance to presiding officers and the Secretariat. The guiding principles of openness, transparency and inclusiveness will continue to influence the organisation of work and the work of presiding officers. The SBI will now proceed to adopt its agenda with the understanding that the submissions of Belarus, the Russian Federation and Ukraine, entitled "Procedural and legal issues relating to decision-making by the COP/CMP" will be addressed under agenda item 17 of the supplementary provisional agenda and that agenda item 19 will, consequently, stand deleted."

In a response, the **Russian Federation** underscored that it too is interested in the work

of the SBI to begin rapidly, but in order to start its work, it needs to have a clear agenda which takes into account the concerns of Parties. The efforts made have unfortunately not led to a result which might be mutually acceptable. In the course of the informal consultations under the 'friends of the chair', it came to an understanding that the matter it was raising was an important one, on which discussions and negotiations need to take place. It could not understand why the item it raised could not be clearly set out on the agenda and expressed deep regret. It could not work on the basis of such a provisional agenda and issued a warning that such an approach in 2015 could run the risk that there will be a provisional result and an agreement with provisional commitments. It stated that the approach proposed by the Chair did not suit Russia and objected to the adoption of the agenda.

Ukraine also objected to the adoption of the agenda without the inclusion of the RBU proposal. It said that the matter was an extremely important one and it was looking to the future when Parties are on the threshold of a new global agreement and did not want it to be with shortcomings. It did not want the path of past mistakes. **Belarus** also objected to the adoption of the agenda in the format suggested, saying that it wanted greater transparency and that there was a lack of clear rules of procedure.

Fiji speaking for the **G77 and China** agreed with the manner proposed by the Chair stressing that agenda item 19 is deleted and the issues raised be addressed under agenda item 17. Several developing countries supported the G77 and China, as well as developing country groupings which included the Least Developed Countries, Africa Group and the Alliance of Small Island States (AOSIS).

Switzerland for the **EIG** also supported the proposal by the Chair with the assurances given as the way forward. In response to Russia that it was difficult to work on the basis of provisional agendas, it said that Parties have worked in this way before. It said that the Chair had also said that he would establish a contact group on the RBU proposal and it could not understand why the agenda could not be adopted.

The **European Union** also concurred with the Chair's statement and wanted a discussion of this issue as soon as possible through a contact group once the agenda is adopted.

The **United States** also supported the Chair's proposal and that this would allow the matter to be discussed through a contact group.

China, while supporting the G77/China, said that it supported the adoption of the agenda on the understanding that issues raised by RBU would be addressed in context of agenda item 17. It raised a concern that Parties had not gotten into the stage of organisation of work as what was being considered was the matter of the adoption of the agenda. It will come back to the issue when the organisation of work is discussed.

Australia, Japan, New Zealand, Canada and Norway all supported the proposal by the Chair as a way forward.

Singapore in support of the G77/China said that under the UNFCCC rules, any Party can include an agenda item in the SBI. The RBU proposal is within the rules of procedure. At the same time, the rules of procedure also make it clear that there has to be a consensus for the inclusion of any agenda item. It is also abundantly clear that there is no consensus on the RBU proposal to be included as agenda item 19 or to amend agenda item 17 to explicitly reference this in the title of the agenda item. The new agenda item rule is a good rule, for otherwise, every Party can add additional items at every item and at every body of the UNFCCC.

When there is no consensus for its inclusion, we have 2 options, said Singapore: (i) for the proposal to be rejected in absence of consensus; or (ii) the proposed agenda item is held pending or in abeyance while consultations continue and we allow the work to proceed on all agreed items. That is the practice we adopted in Durban (referring to the Indian proposal to include 3 new agenda items to the COP agenda). It said that the RBU have not accepted both courses and Parties have not been able to begin work in the last 8 days.

Singapore said the RBU want an explicit reference on agenda item 17. It said that all sovereign states should be treated equally. In Durban, Parties allowed work to proceed while they had consultations by another party (India). It stressed the need for consistency and that if exemptions are made, then every Party will demand the same exception in the future.

India also supported the G77/China and recalled the Durban precedent and said that Parties had found a way forward on the issues in

a meaningful way. It also agreed with China that Parties were on the issue of the adoption of the agenda and not yet on the organisation of work.

Gambia appealed to the RBU to show some flexibility.

The SBI Chair then said that he had heard clear objections from the RBU and also recalled the Durban precedent. He once again proposed for the adoption of the approach he specified in the solution box. Russia reiterated its objection, as did Ukraine and Belarus.

Tuvalu said an amicable way forward was needed and Parties could not be buried in procedural matters and there was need to make progress in addressing climate change.

The SBI Chair said that Parties had heard one more time the rejection of the compromised solution box. The rules of procedure were clear and all substantial decisions have to be taken by consensus. There is no procedure for voting. It was beyond the Chair, he said, and gave a huge sigh. He said that this body was unable to arrive at consensus.

Fiji said it felt the gravity of the situation and agreed that the rules did not permit a vote. It then suggested that the Chair use the 'principle of necessity' to gavel the way forward, as it was important for him to "save the countries of the world." The suggestion by Fiji was met with applause.

The SBI Chair called for a 15-minute break. The session then resumed with Russia speaking for a long time, saying that the UNFCCC process was "sick" and a "haunted house" that needed the light of "transparency".

Russia said that the time has come to look in a sober fashion, the situation we are in at this moment. It said that the UNFCCC process is in a difficult situation and that the process is "sick". There were constant problems with procedural matters and Parties were forced to resolve problems in circumstances of haste, apprehension and anxiety. This, it said, is not a healthy atmosphere. This is why the RBU have considered it necessary to examine the matter of how decisions are taken.

What is happening now is simply a confirmation that we are giving rise to undesirable precedent, it added. The process is under a country-driven one and emotions must be set aside. Matters are not resolved by emotions. The Chair of the COP carries his or her functions under the authority

of the COP and the same applies to subsidiary bodies. Whatever emotions arise, decisions on matter of substance cannot be a Chair's prerogative and it is the exclusive right of Parties.

Russia said that it is important to take history into account on the process and referred the 'landmarks' in The Hague, Copenhagen, Cancun, Durban and Doha. It asked if rules of procedures were going to be violated, referring to the invocation of the 'principle of necessity', which is outside any legal context. It stressed the importance of transparency. It did not want to have to look at footnotes and explanatory notes, referring to the agenda proposal. It said that it was being viewed as blocking the process but it was those who did not want to reflect matters, which are timely and important who are the blockers.

It went back to recent history of the Convention and Kyoto Protocol (KP) and said that KP came into effect because of Russia. It reiterated the need for transparency in the UNFCCC process. It recalled that the rules of procedure have remained un-adopted. It added that it would not be a bad thing to work together as a matter of urgency towards adoption of the draft rules of procedure.

It said that the UNFCCC process was "melting or thawing" as were the glaciers in the Arctic. It referred to the first commitment period of the KP which was not ratified by the US. Another Party, Canada, has left it and that Parties had reasons to act. In relation to the second commitment period, Russia said there were problems, including for Japan and New Zealand (all of whom did not commit to the second commitment period). In the Doha conference, countries were questioning about their participation in the process. It said that the UNFCCC is a "haunted house", where the light needs to be turned on and that is "transparency". It reiterated its objection on the adoption of the agenda.

The SBI Chair then said there was no consensus to support his proposal and there is no way to launch the SBI work. He then recalled the Convention's objective and said that there was no other process than this to address climate change. He said that necessity could not be used to gavel a decision as transparency, inclusiveness and ownership were important. It was for Parties to save the world, he added.

The UNFCCC Executive Secretary, Christiana

Figueres also spoke and agreed that the final hours of COP 18/CMP 8 in Doha were held in a context, which could have been avoided. The Doha Gateway was important but what happened was not unique. It is the sovereign right of all Parties to be heard, she said. She said that Parties were willing to have discussions on decision-making, including in a formal setting.

She urged Parties not to lose sight of the purpose of collective and urgent action in pursuit of the ultimate objective of the Convention. She asked if Parties are assuming their responsibility.

The SBI Chair then announced that the meeting will reconvene on Friday, 14 June, only to close the 38th session.