

Battle of interpretation over Paris Agreement begins

Bonn, 17 May (Indrajit Bose and Meena Raman) — On the first day of the climate talks in Bonn which began on May 16 under the United Nations Framework Convention on Climate Change (UNFCCC), disagreements have begun between developing and developed countries over the provisional agenda of the Subsidiary Body for Implementation as regards a matter relating to the Paris Agreement.

The disagreement related to agenda item 5 of the provisional agenda on the *“Registry of nationally determined contributions referred to in Article 4, paragraph 12, of the Paris Agreement.”*

This “agenda fight” is seen by observers as reflecting an underlying battle over the interpretation of the scope of the nationally determined contributions (NDCs) in the Paris Agreement and how they are to be reflected, as well as the decision adopted in Paris at the twenty-first session of the Conference of the Parties (COP21) in December 2015.

Although the disagreement related to the agenda item on the ‘Registry’, in issue was whether the Registry should cover only mitigation contributions or whether it should also cover adaptation as well as the means of implementation. Developed countries argued that the mandate from COP 21 relates to the Registry for mitigation contributions only while developing countries said that the scope should be comprehensive to also include adaptation as well.

Following the divergent views among developed and developing countries and exchanges with the SBI Chair Tomasz Chruszczow (Poland), the provisional agenda of the SBI was adopted with the exception of the agenda item in controversy.

The adoption was possible after the SBI Chair said that he would hold informal consultations with Parties on agenda item 5.

Parties are meeting in an official negotiating session for the first time since the Paris Agreement was adopted.

At the Bonn session, three of the bodies under the UNFCCC are convening: the forty-fourth sessions of the Subsidiary Body for Implementation (SBI 44), the Subsidiary Body for Scientific and Technological Advice (SBSTA 44) and the first session of the Ad Hoc Working Group on the Paris Agreement (APA 1), a new body constituted by COP 21.

SBI 44 and SBSTA 44 convened on 16 May and work of the APA is expected to begin on 17 May. The Bonn climate talks will end on 26 May.

The opening sessions of the subsidiary bodies was preceded by an opening ceremony in the morning of the 16 May. (More on this in a separate article).

During the opening ceremony, **H.E. Mr. Manasvi Srisodapol of Thailand, the Special Representative of the Chair of the G77 and China on Climate Change**, informed Parties that he had communicated to the Chairs of the subsidiary bodies as well as to the Executive Secretary of the UNFCCC of the Group’s proposals for changes to the proposed provisional agendas of all the three bodies.

G77 and China had proposed that agenda item 5 be changed to, *“Registry of nationally determined contributions,”* with the deletion of the reference to Article 4 (12) of the Paris Agreement.

According to sources, the developing countries rationale for proposing the change was to reflect the comprehensiveness of the notion of NDCs as reflected in Article 3 of the Paris Agreement and that the Registry should not be mitigation-centric and must encompass all the other elements as well, including adaptation, finance, technology transfer, and capacity building.

(Article 3 of the Paris Agreement reads: *As nationally determined contributions to the global response to climate change, all Parties are to undertake and communicate ambitious efforts as defined in Articles 4, 7, 9, 10, 11 and 13 with the view to achieving the purpose of this Agreement as set out in Article 2. The efforts of all Parties will represent a progression over time, while recognizing the need to support developing country Parties*

for the effective implementation of this Agreement)

However, the developed countries rejected the proposed amendment by the G77 and China citing paragraph 29 of Decision 1/CP.21. They said that Article 4 of the Agreement relates to mitigation only.

(Paragraph 29 of Decision 1/CP.21 reads: *Also requests the Subsidiary Body for Implementation to develop modalities and procedures for the operation and use of the public registry referred to in Article 4, paragraph 12, of the Agreement, for consideration and adoption by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its first session*)

During the SBI opening, when the SBI Chair Chruszczow proposed the adoption of the agenda without making a reference to G77 and China's request, Thailand intervened to ask for a clarification.

"If I can kindly refer you to the letter that I sent on behalf of G77 and China yesterday requesting for an amendment to one of the items on your provisional agenda. I don't know whether you are able to update us on the consideration of the request that we put forth to amend paragraph 5 of the draft agenda," **Thailand** asked of Chruszczow.

Saudi Arabia added, that this is the request of the G77 regarding this agenda item and that it is fair the request to be considered and given an explanation before the adoption of the agenda.

Providing its interpretation of agenda item 5, **Tuvalu** said, "From our understanding INDCs (intended NDCs) may be used for a country to determine their NDC in the Paris Agreement when they deposit their instrument of ratification. Many countries have submitted their INDCs that include adaptation, so it is reasonable that NDCs could contain mitigation and/or adaptation elements and this is confirmed in Article 6.1 of the Paris Agreement where it makes reference to NDCs enhancing action on mitigation and adaptation. In that regard we think there is validity in considering adaptation considerations in the registry of NDCs."

(Article 6.1 reads: *Parties recognize that some Parties choose to pursue voluntary cooperation in the implementation of their nationally determined contributions to allow for higher ambition in their mitigation and adaptation actions and to promote sustainable development and environmental integrity.*)

Tuvalu stressed further that "we don't necessarily believe that Article 4 is restricted to consideration of mitigation issues only. It is up to Parties to consider what components of their NDCs they would like to see reported in the registry. My delegation is reasonably comfortable with the agenda item as it is. We interpret it as a process of establishing a registry

that could include NDCs that are both mitigation and adaptation and we should be having a discussion on the modalities of how they are reported."

Providing a background, **Saudi Arabia** said in relation to the Paris Agreement said that "we had a package that was not negotiated until the last minute. That package came out and in a few minutes and we adopted it because we felt it represented all of us. Now I have an Agreement that clearly outlines in the same language in Article 4 a mitigation registry as well as Article 7 an adaptation registry. I also have a decision that clearly asks for a mandate to implement part of the registry and not the other part. Either because we have been in a hurry in trying to come up with a package that we left certain parts of the mandate out, or we really felt that that part of Article 4 covers both parts."

Saudi Arabia added that this discussion (on what the Registry should cover and its scope) should be discussed after the agenda was adopted following the amendment proposed by the G77 and not at this stage. It expressed concerns over the lack of balance in dealing with both mitigation and adaptation.

Providing an explanation, the SBI chair said that the basis for the inclusion of the agenda item in the provisional agenda was the mandate given by COP in paragraph 29 of Decision 1/CP.21. He said that even though he had heard concerns of adaptation registry missing from the agenda, it was "extremely difficult" legally for the SBI to change its agenda.

He said that "within the consideration of item 5, it is perfectly possible to discuss all the concerns and include in the conclusions of the discussions on agenda item 5 the recommendations for the COP 22 in Marrakesh to give such a mandate for development of a registry for adaptation... and that would be legally feasible, especially keeping in mind the decision of the COP is taken by heads of delegation and even higher level."

He further added that it was advisable that the agenda be adopted as proposed originally and that it is the COP who has the right to determine the mandate for its subsidiary body and not for the subsidiary body to change this mandate. The SBI Chair added that "this is a Party driven process and it is in the hands of Parties to provide interpretations."

Saudi Arabia in response said that they were not ready to take a decision and were willing to have further discussions.

Meanwhile, developed country groupings such as the **Umbrella Group** and the **European Union (EU)** said they could not support the amendments G77 and

China had proposed as that would mean that the SBI was going against the mandate of COP21 decision.

Speaking on behalf of the **Umbrella Group**, **Australia** said the provisional agenda reflected the delicate balance that came out of Paris. It added that it could not support the proposed amendment by G77 and China as that would mean going beyond the mandate in paragraph 29 of 1/CP.21. “Paragraph 29 of the COP decision asks us to do something very specific and we feel to go outside of the scope of the decision would be to go outside of the mandate. There is a very clear, specific decision we have been asked to work on which is very properly reflected in the proposed agenda. As we understand, some of the concerns in the proposed amendment reflect the concern about adaptation not being addressed. In our view, the work agenda out of Paris and decision is infused with adaptation and a fundamental delicate balance of adaptation was achieved in Paris. Attempting to get it into an area where it wasn’t mandated we don’t think is the right way of going about the mandate,” said Australia.

The **European Union (EU)** spoke in the same breath and said that they would like to get started with the implementation of the Paris Agreement “swiftly”. “We are happy with the agenda as you have proposed it. It strikes the delicate balance achieved in Paris. And we have a very clear mandate regarding the registry of NDCs and we think we have to stick to this mandate that is given in Article 4 under mitigation,” said the EU.

The EU further added that there was a separate registry established for adaptation and adaptation communications, which was a different instrument and that Parties had already agreed that adaptation and

mitigation have an equal footing, “but they are a very different area and they have to be addressed differently, so we don’t see the merit of changing this agenda item”.

The **United States** said it was open to discussing how and whether Parties would develop guidance on the adaptation registry, which captures adaptation communications that can be submitted either as a component of or in conjunction with other communications or documents, including a national adaptation plan, a NDC referred to in Article 4, paragraph 2, and/or national communication. “There is a repository for communication that comes through whatever the vehicle is.”

The US added that the discussion is on developing a registry for NDCs as they pertain to Article 4 and it was open to dealing with the registry for communications in some distinct way. Its suggestion was to agree on the agenda (without the amendment proposed) but to have this discussion informally on how we bring this discussion into the work of the SBI either here or at the COP, said the US.

As a way ahead, Chruszczow proposed that the agenda be adopted with the exception of agenda item 5 so that work of the SBI could be initiated for the other items on its agenda.

Chruszczow said that after the agenda was adopted, the SBI would continue to establish contact groups and informal consultations for the other items to launch the work and he would invite heads of groups to have a quick exchange to try and find consensus on how to deal with Item 5. He also said that the SBI would reconvene on 17 May for a short plenary, where they would adopt item 5 of the agenda and listen to groups’ statements.