

## **Fight over developed-developing country differentiation in 2015 ‘agreement’**

Geneva, 26 Nov (Meena Raman) – The final plenary of the UNFCCC’s Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP) took place the afternoon of Saturday, 23 Nov, in Warsaw and saw the adoption of a decision, as well as conclusions by the Co-chairs, which were agreed to by Parties. They were adopted almost 2 days later than ADP’s scheduled closure on Thursday, 21 Nov.

The final plenary saw deep divide and exchanges between developed and developing countries in relation to preparations for the 2015 ‘agreement’ over attempts by developed countries to break down the ‘firewall’ and ‘differentiation’ between developed and developing countries, as currently exists in the Convention and its annexes. A last minute huddle to resolve differences during the plenary led to a text that allowed the decision to be adopted. The conflict over the issue of ‘differentiation’ is expected to intensify next year and is central to the new agreement to be concluded in 2015.

Parties had since Monday, 18 Nov, been engaging without much sleep in open-ended consultations on the negotiating a draft text proposed by the Co-chairs of the ADP (Kishan Kumarsingh [Trinidad and Tobago] and Artur Runge-Metzger [EU]), which comprised a draft decision, an annex with indicative elements for the 2015 agreement and draft conclusions. There were 5 versions of the draft decision with the final 6<sup>th</sup> version amended during the closing plenary of the ADP session on Saturday afternoon. The ADP outcome decision was later adopted by the 19<sup>th</sup> session of the Conference of Parties (COP19).

The final version of the conclusions by the ADP Co-chairs was adopted at the ADP plenary without the ‘annex of the indicative elements for the 2015 agreement’ (later referred to as a ‘non-exhaustive

list of areas for further reflection’) following disagreement to its inclusion especially by the Like-minded developing countries (LMDC) and Singapore, who viewed the list of areas as premature for inclusion and preferred that it be contained in a reflections’ note of the Co-chairs rather than in a decision or conclusions of the ADP.

During the ADP final plenary session on Saturday afternoon, Kumarsingh asked Parties to consider the draft decision text which he said was “sensitive to a diversity of views and does not prejudice the 2015 agreement.” He added that given the concerns raised by some Parties around the annex while others expressed the desire to capture the rich discussions for more focused work, the chapeau of the annex provided a non- exhaustive list of areas for further reflection and states that it does not prejudice the content of the 2015 outcome.

The final version of the contentious annex contained the following list of areas:

- Institutional arrangements: ways of building on and strengthening them;
- Differentiation: ways of reflecting;
- Commitments: ways of characterizing them, including parameters;
- Mitigation: ways of putting forward intended nationally determined commitments and of considering ambition, equity and fairness, informed by science; means of implementation;
- Adaptation: exploring a global goal; ways of strengthening the implementation of national adaptation plans; linking national and global efforts;

- Finance: ways of enhancing mobilization, scaling up, predictability and delivery of climate finance;
- Technology: ways of addressing barriers and enabling environments; facilitating access to and the deployment of technology; promoting innovation, delivery and education;
- Capacity-building: exploring institutional arrangements, country ownership and development priorities;
- Transparency: ways of enhancing the measurement, reporting and verification of actions and support; developing accounting rules;
- Compliance and periodic review: the exploration thereof.

In response to the Co-chair, **India** (represented by Ambassador Tirumurti), speaking for **BASIC** (Brazil, South Africa, India and China) raised a few areas of concern. He wanted to make suggestions to strengthen and ensure a more balanced text. India said the draft text seemed to overemphasise the mitigation element. The sense and context of the urgency needed is missing and called for the ratcheting up of the ambition by Annex 1 Parties in reducing emissions by at least 40% by 2020 based on 1990 levels. It lamented that there was no roadmap on finance or a goal of mobilising USD 70 billion by 2016.

India recalled that the BASIC ministers (during the open-ended consultations) proposed text in relation to paragraph 2(b) of the draft decision and mentioned that they were extremely concerned at the way the paragraph was structured as it referred to all Parties and commitments in the same sentence. (India was referring to the 4<sup>th</sup> version of the draft decision text which provided in 2 (b) as follows: *“To invite all Parties to initiate or intensify domestic preparations for their intended nationally determined commitments towards achieving the ultimate objective of the Convention and to communicate them well in advance of the 21<sup>st</sup> session of the COP in a manner that facilitates the clarity, transparency and understanding of the intended commitments;”*)

India said that the BASIC ministers wanted the words “in accordance with article 4 of the Convention” in the paragraph to bring some balance to the text as it was lopsided. In the spirit of being constructive and as a practical way forward, we engaged in a huddle and the idea was to find compromise, said India adding that draft text before the ADP plenary did not address its

concerns. India reiterated that as long as we have the word ‘commitments’ and reference to ‘all Parties’ there needs to be a specific context and that context includes the reference to “in accordance with the provisions of the Convention”.

(The final text for the consideration of the plenary in paragraph 2 (b) read as follows: *To invite all Parties to initiate or intensify domestic preparations for their intended nationally determined commitments in the context of adopting a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties towards achieving the objective of the Convention as set out in its Article 2 and to communicate them well in advance by the 21<sup>st</sup> session of the COP (by the first quarter of 2015 by those Parties in a position to do so) in a manner that facilitates the clarity, transparency and understanding of the intended commitments;*)

India also underlined the importance of paragraph 3 (b), which was its proposal. (This paragraph in the decision referred to the resolve to accelerate the full implementation of the decisions from the Bali Action Plan, in particular in relation to the provision of means of implementation, to enhance ambition in the pre-2020 period).

India added that when Parties start the detailed process (in relation to the 2015 agreement), it should start on “the right foot and without a false start” in confronting the same problem. On the draft conclusions by the Co-chairs, India said that embedding the annex on the list of areas for further reflection disturbed the balance Parties were trying to strike and called for the annex to be removed and including any reference to it in the conclusions. It suggested that the annex could be part of the Co-chairs’ reflections note.

**China** (represented by Su Wei) expressed surprise that at the end of long consultations on the text, the draft decision remained the same and was not a party driven outcome. Referring to textual changes proposed by the Like-minded developing countries (LMDC) on several rounds of the text, it felt that “nothing was captured” and expressed serious problems in relation to the balance with more emphasis on ‘mitigation’ and less on the ‘means of implementation’. It also referred to the proposal by the BASIC ministers, which was supported by many Parties but was not reflected. It said that after the huddle during the consultations, when India presented the proposed text in relation to paragraph 2(b), China reiterated the insertion of the phrase “in accordance with Article 4 of the Convention”. In the course of the consultations, there were references to ‘commitments’ without the

link to the Convention provisions. It stressed that the whole ADP exercise is for enhanced action and not for a new climate regime in terms of mitigation, adaptation, finance, technology, capacity building and transparency of actions and support as contained in paragraph 5 of the Durban Platform decision. The ADP process and the outcome must respect the principle of equity and common but differentiated responsibilities (CBDR) and as it is under the Convention, its provisions will also apply. There is differentiation between developed and developing countries. For developing countries it is about enhancing actions while commitments will apply to developed countries. China referred to the compromise in Doha where the term ‘enhanced actions’ was agreed to in place of commitments and actions.

It also referred to “other serious flaws” in the decision text and the imbalance between mitigation and adaptation for the pre-2020 time frame. It said there is no reference to effectively raise the emission reduction targets of Annex 1 Parties to a higher level. In the second commitment period (CP2) of the Kyoto Protocol, the emission reductions of Annex 1 Parties is only 18% while a study has showed that the EU had already achieved 18% reductions at end of 2012. It wanted developed countries to be urged to raise their emission reduction targets to at least 40% by 2020. China also raised the concern over the lack of implementation in relation to finance and supported India in the call for USD 70 billion by 2016.

It also raised concerns over the annex on the list of areas for further reflection, which it said contained elements which have not been negotiated. A number of the elements were selective, unbalanced and misleading. China said it did not want this to be put in a trash-can but suggested that it be captured in the reflections note of the Co-chairs. It called for further consultations on the draft text.

**Saudi Arabia** and **Philippines** also supported the views of India and China. As regards the pre-2020 time frame, they referred to paragraph 4(c) of the decision and the need to reflect a 40% reductions in emissions by Annex 1 by 2020 and in paragraph 4(e) to set a target of USD70 billion by 2016 as a roadmap for mobilising finance. They also did not want the annex to be part of the conclusions of the ADP.

**Singapore**, represented by its Minister of Environment, Vivian Balakrishnan, referred to the need for an ‘appendectomy’ in parts of the text, and echoed similar views as India and China. It

noted the omission in paragraph 2 (b) on the reference to ‘under the Convention’; it wanted the removal of the annex on the non-exhaustive list of areas, which it said was not discussed and may confer undue legitimacy on the issues and asked that it be moved into the Co-chairs’ reflections note. For the pre-2020 ambition, it also echoed the call for inclusion in the text for repeated calls for emission reductions of 40% by 2020 for Annex 1 Parties and for numbers in relation to the roadmap for 2013-2020 as regards the USD100 billion.

**United States**, represented by Todd Stern, supported the draft decision and paragraphs 2 (b) and 2(c) of the decision as well as the annex. Stern said he was in the ‘famous huddle’ during the open-ended consultations, which lasted some 2 hours and thought it landed on language which was pretty good. On the proposal by the BASIC countries to have the reference to Article 4 of the Convention in paragraph 2 (b), the US was of the view that the ADP was “launching new negotiations” and the suggestion was not helpful and makes the negotiations “cloudier”. Stern asked what commitments meant under Article 4 where Article 4.1 refers to commitments that are common to all Parties or differentiated as in Article 4.2. He said that there was a great deal of un-clarity and this was not useful.

Stern said that the (BASIC) suggestion was a bad idea as it results in differentiation (between developed and developing countries) and the role of the annexes (Annex 1 non-Annex 1 categories). There are strongly held views on how differentiation should be captured and how the annexes should figure in the new agreement. What we should do is to seek language that would lead to serious discussions and not prejudice and tilt the playing field as what the BASIC suggestion would do.

He was astonished to hear China’s views that commitments are for developed countries and said that this was in the “Bali time warp”. Stern said that most countries understand the Durban Platform to be different from the Bali Action Plan with the use of the term “applicable to all”. He said that China’s response suggests that it would not assume new commitments in the 2015 agreement and this is not the impression it got from many of the conversations it has had with China. The US did not want a movement backwards in this regard.

The **European Union** referred to the huddle during the open-ended consultations and said that it is true that the BASIC had put forward their proposal but many times, the EU had responded

that “it would not fly”. To do so in plenary would not lead to a conclusion. We have made concessions and are concerned that the decision lacks reference to markets and hydro-fluorocarbons (HFCs). It expressed surprise that there were some countries that were against the reference to the ultimate objective of the Convention so there could not be an assessment (of the efforts) with the long term goal (of limiting temperature increase). It could live with the text, including the annex on the list of areas for further reflection. The EU said that the principle of CBDR and respective capabilities will continue to apply but the 2015 agreement had to take into account new and evolving realities. An approach which is binary forever (of developed and developing countries) in relation to mitigation, adaptation and means of implementation is not an approach which is negotiable or fair. There is need for a conversation about how to reconcile this which will take place over the years and the decision should not prejudge that. Referring to the BASIC proposal, the EU said this would lead to a perception of loss of competitiveness. It also expressed disappointment by remarks that the EU is not showing ambition.

**Fiji** for the **G77 and China** reiterated that the 2015 agreement must include all elements.

**Nauru**, speaking for the **Alliance of Small Island States (AOSIS)** said that paragraph 5 of the decision (see below for details) unlocks the opportunity to limit warming to well below 1.5 degree C. Referring to paragraph 2(b), it wanted Parties to go home and do the homework for decisive action in relation to the new agreement.

**Gambia** for the **LDCs** expressed concern that the need for urgency was not addressed in the text or the mobilisation of resources. It was a compromise text as it did not address the views of all Parties. On the BASIC suggestion that led to the huddle, Gambia said it raised the question of the status of the huddle but there was no answer. It said that nothing is agreed until everything is agreed. It raised some concerns. The national adaptation programmes of action (NAPAs) of LDCs would need USD 5 billion to be implemented by 2020. The text does not take into account what is required by science. It had called for the ADP process to take into account the CBDR-RC principle as we know we have different capabilities. The issue of finance and implementation of commitments has not been adequately addressed and called for consultations on the text to resume and sought compromise.

**Colombia** for the **Independent Alliance for Latin America and the Caribbean (AILAC)** expressed regret over the situation Parties were in. It said all Parties need to work within their respective capacities and that the decision is within the framework of the Convention. It also supported the inclusion of the annex on the indicative list of areas for further reflection.

**Bolivia** also supported the views of India, China, Saudi Arabia, the Philippines and Singapore and stressed the need for reference to Article 4 of the Convention in paragraph 2(b) of the decision and for the deletion of the annex on the indicative list of areas. It was concerned about the uniformity in approach between developed and developing countries in communicating their nationally determined commitments and this is a big challenge for a small economy like Bolivia. In order to accept this challenge, it wanted to have clarity on the financial resources available for both the preparation and implementation of the commitments. Hence, reference to Article 4.7 of the Convention is important. Otherwise, it was at risk of taking on commitments without the resources to ensure compliance. **Nicaragua** also supported the proposal by BASIC.

**Russia** also asked how Parties are to prepare commitments without knowing conditions for such commitments. It however supported the decision as it is as it is a workplan to enable preparations to be done for the 2015 agreement.

Kumarsingh proposed that another effort be made to see if the issues could be resolved. In response, **Venezuela** (represented by its Vice-minister Claudia Salerno Caldera) raised a point of order saying that delegates had been working for more than 30 hours without sleep and for small delegations, this was a challenge. She said we are human beings and not machines, adding that many delegations were already leaving Warsaw. She asked how much more time was going to be spent on this to wide applause from exhausted delegates.

Kumarsingh said without a consensus, there could be no decision from the ADP.

**Swaziland** for the **African Group** also said that its delegation size is very small and it had already lost its key negotiators who had left Warsaw. If we continue without sleeping, then delegations with small capacity cannot think properly. There is a divergence of views and the decision should not prejudice the positions of Parties. The red lines of all Parties must be respected and not be closed.

The Co-chairs then allowed a half hour break (that extended for about an hour) for an informal huddle among Parties to resolve issues over the draft text. Following the huddle, Tirumurti of India read out the changes agreed to.

- Paragraph 2 (b) is to be amended to read: *“To invite all Parties to initiate or intensify domestic preparations for their intended nationally determined contributions, without prejudice to the legal nature of the contributions, in the context of adopting a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties towards achieving the objective of the Convention as set out in its Article 2 and to communicate them well in advance of the twenty-first session of the COP (by the first quarter of 2015 by those Parties ready to do so) in a manner that facilitates the clarity, transparency and understanding of the intended contributions, without prejudice to the legal nature of the contributions;”*
- As regards paragraph 2(c), the word ‘commitments’ be replaced with ‘contributions, without prejudice to the legal nature of the contributions’ and will read: *“To request the ADP to identify, by the 20<sup>th</sup> session of the COP, the information that Parties will provide when putting forward their contributions, without prejudice to the legal nature of the contributions, referred to in paragraph 2(b) above.”*
- In relation to the Co-chairs draft conclusions, the words in paragraph 2 - ‘including on the non-exhaustive list of areas for further reflection contained in the annex’ are deleted, including paragraph 3, which is also deleted. India said that the annex could be captured in the Co-chairs’ reflections note.

Kumarsingh then invited Parties to adopt the decision and the conclusions as amended, noting in the ADP outcome decision, a placeholder proposed by the Philippines, a reference to the COP 19 decision on the work programme on long-term finance.

Parties agreed to the adoption of the decision and the conclusions, to wide applause and relief as the Co-chairs were seen giving each other a ‘high five’.

Following the adoption of the decision, **Bolivia** read out an interpretative statement as follows: Bolivia “interprets that paragraph 2, sub-paragraph (b), contained in document FCCC/ADP/2013/L4.Ad1 shall be applied in strict accordance under Article 4, in particular with paragraph 7 of the UNFCCC.” **Cuba** also endorsed the Bolivian interpretation as regards paragraph 2(b) of the

decision and wanted that recorded in the report of the ADP.

(Article 4.7 of the Convention states that: *“The extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementation by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology and will take fully into account that economic and social development and poverty eradication are the first and overriding priorities of the developing country Parties.”*)

### **Highlights of the ADP decision entitled ‘Further advancing the Durban Platform’**

*The Conference of the Parties, ...*

1. *Requests* the ADP to accelerate its development of a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties in the context of decision 1/CP.17, paragraphs 2.6, and its conduct of the workplan on enhancing mitigation ambition to identify and to explore options for a range of actions that can close the ambition gap with a view to ensuring the highest possible mitigation efforts by all Parties in the context of decision 1/CP.17, paragraphs 7 and 8;

2. *Decides*, in the context of its determination to adopt a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties at its twenty-first session (December 2015) and for it to come into effect and be implemented from 2020:

(a) To request the ADP to further elaborate, beginning at its first session in 2014, elements for a draft negotiating text, taking into consideration its work, including, inter alia, on mitigation, adaptation, finance, technology development and transfer, capacity-building and transparency of action and support;

(b) To invite all Parties to initiate or intensify domestic preparations for their intended nationally determined contributions, without prejudice to the legal nature of the contributions, in the context of adopting a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties towards achieving the objective of the Convention as set out in its Article 2 and to communicate them well in advance of the twenty-first session of the COP (by the first quarter of 2015 by those Parties ready to do so) in a manner that facilitates the clarity, transparency and understanding of the intended

contributions, without prejudice to the legal nature of the contributions;

(c) To request the ADP to identify, by the twentieth session of the COP, the information that Parties will provide when putting forward their contributions, without prejudice to the legal nature of the contributions, referred to in paragraph 2(b) above;

(d) To urge and request developed country Parties, the operating entities of the financial mechanism and any other organizations in a position to do so to provide support for the related activities referred to in paragraphs 2(b) and 2(c) above as early as possible in 2014;

3. *Resolves* to accelerate the full implementation of the decisions constituting the agreed outcome pursuant to decision 1/CP.13 (Bali Action Plan), in particular in relation to the provision of means of implementation, including technology, finance and capacity-building support for developing country Parties, recognizing that such implementation will enhance ambition in the pre-2020 period;

4. *Also resolves* to enhance ambition in the pre-2020 period in order to ensure the highest possible mitigation efforts under the Convention by all Parties by:

(a) Urging each Party that has not yet communicated a quantified economy-wide emission reduction target or nationally appropriate mitigation action, as applicable, to do so;

(b) Urging each developed country Party to implement without delay its quantified economy-wide emission reduction target under the Convention and, if it is also a Party to the Kyoto Protocol, its quantified emission limitation or reduction commitment for the second commitment period of the Kyoto Protocol, if applicable;

(c) Urging each developed country Party to revisit its quantified economy-wide emission reduction target under the Convention and, if it is also a Party to the Kyoto Protocol, its quantified emission limitation or reduction commitment for the second commitment period of the Kyoto Protocol, if applicable, in accordance with decision 1/CMP.8, paragraphs 7.11;

(d) Urging each developed country Party to periodically evaluate the continuing application of any conditions associated with its quantified economy-wide emission reduction target, with a view to adjusting, resolving or removing such conditions;

(e) Urging developed country Parties to increase technology, finance and capacity-building support to enable increased mitigation ambition by developing country Parties;

(f) Urging each developing country Party that has communicated its nationally appropriate mitigation action to implement it and, where appropriate, consider further action, recognizing that nationally appropriate mitigation actions will be taken in the context of sustainable development, supported and enabled by technology, finance and capacity-building;

5. *Decides* to accelerate activities under the workplan on enhancing mitigation ambition in accordance with decision 1/CP.17, paragraphs 7 and 8, by:

(a) Intensifying, as from 2014, the technical examination of opportunities for actions with high mitigation potential, including those with adaptation and sustainable development co-benefits, with a focus on the implementation of policies, practices and technologies that are substantial, scalable and replicable, with a view to promoting voluntary cooperation on concrete actions in relation to identified mitigation opportunities in accordance with nationally defined development priorities;

(b) Facilitating the sharing among Parties of experiences and best practices of cities and subnational authorities, where appropriate, in identifying and implementing opportunities to mitigate greenhouse gas emissions and adapt to the adverse impacts of climate change, with a view to promoting the exchange of information and voluntary cooperation;

(c) Inviting Parties to promote the voluntary cancellation of certified emission reductions, without double counting, as a means of closing the pre-2020 ambition gap;

(d) Considering further activities to be undertaken under that workplan at the twentieth session of the COP;

6. *Notes* the convening of the climate summit on 23 September 2014 by the United Nations Secretary-General aimed at mobilizing action and ambition in relation to climate change;

7. *Calls* upon Parties to intensify their high-level engagement on the Durban Platform for Enhanced Action through an in-session high-level ministerial dialogue to be held in conjunction with the fortieth sessions of the subsidiary bodies (June 2014) and

another such dialogue to be held in conjunction with the twentieth session of the COP.’

The next session of the ADP will be held in Bonn, Germany, from 10 to 14 March 2014.