

Strong disagreements over way forward on legal options group

Bonn, 15 June (Meena Raman) – Strong disagreements between Parties surfaced at an informal group meeting in Bonn on 14 June of the Ad-hoc Working Group on Long-term Cooperative Action (AWG-LCA) under the UNFCCC on how to move forward on discussions on legal options for the form of the agreed outcome under the Bali Action Plan (BAP).

Underlying the disagreements is whether the agreed outcome under the BAP should be in the form of a new treaty or be a decision of the UNFCCC Conference of Parties (COP) for it to be legally binding. Several developing countries including India, Bolivia, Saudi Arabia and Venezuela did not want further discussions on the form of the legal outcome when the substance of the legal outcome was still under negotiations in other negotiating groups under the AWG-LCA.

In Cancun last December, the COP requested the AWG-LCA to continue discussing legal options with the aim of completing an agreed outcome based on decision 1/CP.13 (the BAP), the work undertaken at the 16th meeting of the COP (in Cancun) and proposals made by some Parties under Article 17 of the Convention for new protocols.

[A total of six new protocols have been proposed by Japan, Tuvalu, the United States, Australia, Costa Rica, and Grenada (on behalf of the Alliance of Small Island States). The proposal by Grenada was officially notified to the Secretariat and the Parties in May 2010. The other five proposals were notified in 2009. The proposed protocols are all legal instruments envisaged as the outcome of the AWG-LCA. According to the developing countries concerned, their proposals are intended to be legal instruments that sit alongside the existing Kyoto Protocol, and are not intended to replace it.)

At the informal group meeting held in Bonn facilitated by Ms. Maria del Socorro Flores Liera (Mexico), she wanted Parties to discuss which elements under the BAP required COP decisions and which needed other legal instruments.

The **United States** said it supported a legally binding agreement, which has equal force for all major emitters to reflect certainty and seriousness. It said that the mitigation obligations needed a legally-binding agreement. It proposed a new protocol under the BAP. Its premise was that all Parties have legally binding obligations under the Convention. It explained the US proposal that differentiates among Parties based on the principle of common but differentiated responsibilities and respective capabilities.

Developed countries mitigation targets are based on production targets in the 2020 timeframe and reflected in an appendix. For developing countries, those with greater responsibility must implement mitigation actions in the 2020 timeframe (and this is also contained in the same mitigation appendix). It did not expect developing country mitigation actions to be based on production targets. A critical element is that mitigation commitments are not stagnant but based on responsibility and reflects changing circumstances of developing countries. This was consistent with the Convention and the principle of common but differentiated responsibilities and respective capabilities, it said. On the way forward, it wanted implementation of the Cancun decisions and to move towards a legally-binding agreement. However, the US said that at this time, there was a lack of political guidance in this area and a treaty would take time but the mandate has to be clear.

Australia said there is need to know what elements are legally-binding and how particular elements should be treated. For Australia, what is important was that the individual mitigation targets and actions are binding for all and should be linked to responsibility and capabilities of Parties. It was not expecting the poor countries without capacity to do so. The best way, it said, is to have a common legally binding platform with flexibilities (for some countries). The developed country mitigation is bound to an emissions outcome but developing countries mitigation is not bound to an emissions outcome. It supported the idea to build in

differentiation and allow further flexibilities to specify whatever type of actions. Other elements of mitigation include obligations to participate in measurement, reporting and verification (MRV) of the actions. While there could be a common platform, flexibilities could be built in for those without capacity. Also needed was to address accounting rules and market mechanisms. For matters related to institutional structures as in finance and adaptation, flexibility may be needed and could therefore be better off being addressed through COP decisions. It supported the idea for an 'options paper' on the legal form in this regard.

Benin said it did not want to see an agreement that replaces the Kyoto Protocol and the outcome must be consistent with the Convention.

Bangladesh said that the Durban conference could finalise a timeline for a legal text.

Ms. Socoro said that it was clear that there was no agreement on the legal form and she was trying to get a better understanding from Parties and that the discussion needed political guidance. She said that many countries have said that mitigation, MRV, market-mechanisms, accounting rules, adaptation, technology and finance could be included in a possible legally-binding outcome. She invited Parties who have presented proposals for new protocols to view them in the light of all the developments. She said that more specific discussions on the content of the proposals could be useful if they are to be COP decisions or a legally-binding outcome. On mitigation commitments and actions, she wanted to hear views on MRV, market-mechanisms and adaptation.

Saudi Arabia asked what the point was to having lengthy discussions on different proposals, which all Parties already know about if it was clear that there is no agreement on the legal form. It objected to having further discussions in this regard.

In response, the facilitator said that several delegations were not closed to discussing the ideas and wanted to know the content better. She said that there is also the view that COP decisions could work and it was good to compare the advantages and disadvantages of the options.

Colombia supported the facilitator's proposal and said that this could lead to the preparations of an 'options paper'. Delegations had different opinions and the paper could also reflect no agreement on the matter.

The **European Union** said it was keen to hear about the proposals (for the new protocols) on the table.

Russia said that in relation to the legal form, an international treaty is the best form of the outcome.

COP decisions can be a good option in the interim. It said that Russia has proposed amendments to the annexes of the Convention and for regular revisions of Parties to the annexes as there is need to reflect the changes since 1992 when the Convention was adopted.

Bolivia said that in order to advance on the form, there needs to be advance on the substance. It was not against a legal form if the substance was clear. The issue of the legal form could not be resolved if there is no agreement on the substance and to discuss the substance in this informal group would be to replace negotiations in all the other informal groups.

Norway welcomed the discussions and the idea of the options paper, as did **Grenada, Marshall Islands, Ethiopia, Australia, Switzerland, New Zealand** and **Japan**.

India said that the discussions have not matured to where Parties can move to consider options for the legal form. It said that there was need to move in a sequential order to have the substance of the outcome clear. It did not support the idea of looking at options for the legal form and the proposal for the 'options paper'.

Saudi Arabia supported Bolivia and India and did not want further discussions. It said that Parties had fundamental differences on the proposals by Parties for new protocols. What was needed was for the AWG-LCA to focus on substance and not on the legal options issue.

Venezuela supported India, Bolivia and Saudi Arabia.

In response, Ms. Socoro insisted that by discussing the proposals, Parties will learn more and proposed another short session on the issue. Since some Parties were not inclined to have the 'options paper' she suggested the capturing of discussions in a summary form.

Saudi Arabia in response said that there was no need for any additional session on the matter and it would object to any discussions on the different proposals as the proposals have been there and Parties know about them. The issue of substance was being discussed under the different building blocks of the BAP and it was not prepared to discuss the substance of the form of the legal outcome now.

India said that since another meeting is being planned, there was no need for a paper to summarise the discussions, as this was too early and that the time was not right for any paper on the summary of the discussions.

Ms. Socoro then said that she would present the outcome of the discussions to the AWG-LCA Chair and find out if this informal group could have another meeting this week.