

Controversy over Durban Platform provisional agenda

Bonn, 21 May (Meena Raman) – Controversy arose over the provisional agenda of the Ad Hoc Working Group on the Durban Platform (ADP), leading to it not being adopted at the plenary session of the working group which met on Saturday, 19 May.

Although the issue may seem to be procedural, it is actually at the very heart of the substance of the Durban Platform decision (decision 1/CP.17).

The main issue was whether the mitigation issue for the pre-2020 time frame is a matter for the consideration of ADP or for the other two bodies currently dealing with this issue under the Ad Hoc Working Group for Long-term Cooperative Action under the Convention (AWG-LCA) and the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG-KP).

The AWG-KP is dealing with the second commitment period of emissions reductions of Annex 1 Parties, while the AWG-LCA (whose mandate is the 2007 Bali Action Plan) is dealing with the mitigation of developed countries who are not Parties to the Kyoto Protocol. The Bali Action Plan (BAP) requires a comparability of efforts among developed countries that are UNFCCC Parties and there is a firewall between developed and developing countries, respecting the principle of equity and common but differentiated responsibilities (CBDR). Developing countries under the BAP are required to undertake nationally appropriate mitigation actions (NAMAS) which are enabled and supported by developed countries and where both the support and the actions are measured, reported and verified.

The new process of negotiations launched under the ADP is to commence work in the current session in Bonn and is to be completed

no later than 2015 in order for the adoption of a protocol, legal instrument or agreed outcome with legal force by 2015, and for it to come into effect and be implemented in 2020 (for the post-2020 framework).

Many developing countries are concerned that having a discussion for “enhancing mitigation ambition” in the pre-2020 timeframe in the ADP is prejudicial to the on-going negotiations under the AWG-KP and AWG-LCA, since that is a “live” issue in these two working groups with definite mandates.

They fear that the discussion in the ADP on “enhancing mitigation ambition” for the pre-2020 period could remove the comparability of efforts among developed countries and the firewall between the mitigation actions of developed and developing countries.

There were other developing countries from the Least Developed Countries (LDCs) and Alliance of Small Island States (AOSIS) who wanted the issue of enhancing ambition to be under the ADP, and this was also supported by the United States, European Union, Switzerland, Mexico and Costa Rica.

Ms. Sandea De Wet of South Africa, as the person designated by the COP 17 President in the interim, presided over the ADP proceedings, pending the election of the Chair of the working group in Bonn.

De Wet presented the provisional agenda for adoption which included the following items:

- “3. Planning of work in accordance with decision 1/CP.17;
4. Workplan on enhancing mitigation ambition.”

China was concerned about agenda item 4 which relates to paragraph 7 of the decision of

the COP on the Durban Platform (decision 1/CP.17) which reads as follows –

“Decides to launch a 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”.

China said that the COP did not decide that the “launch of a work plan on enhancing ambition” should be given to the ADP. It explained that paragraph 7 concerned matters to be addressed before 2020, and the core task of the ADP was to focus on post-2020, on the basis of equity and CBDR. It was China’s understanding that the issue of mitigation before 2020 was being handled by two other working groups (the AWG-KP and the AWG-LA i.e. for a second commitment period under the Kyoto Protocol and for comparable actions by developed countries not in the KP). The work of the AWG-LCA had not been completed yet.

China stressed that decision 1/CP.17 addressed many elements but that did not mean that all elements belonged to the mandate of the ADP. Paragraph 7 of the decision did not say where (in which body) the work on “enhancing mitigation ambition” must take place. Hence, this issue required further consultations on whether it belonged to the work of the ADP. It was therefore of the view that item 4 of the agenda regarding this issue should not be included in the provisional agenda.

(China was not questioning the need for work on enhancing mitigation ambition, but was concerned about which body or fora was responsible for that discussion.)

China further stressed that in reference to paragraphs 5 and 6 of decision 1/CP.17, the issue of how to raise ambition was not just in reference to mitigation only but also included issues related to the means of implementation (finance, technology transfer and capacity building).

(Paragraph 5 of the decision reads: “Also decides that the Ad Hoc Working Group on the Durban Platform for Enhanced Action shall plan its work in the first half of 2012, including, inter alia, on mitigation, adaptation, finance, technology development and transfer, transparency of action, and support and capacity-building, drawing upon submissions from Parties and

relevant technical, social and economic information and expertise ...”

Paragraph 6 reads: “Further decides that the process shall raise the level of ambition and shall be informed, inter alia, by the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, the outcomes of the 2013-2015 review and the work of the subsidiary bodies ...”

The sentiments of China were also supported by other countries, including the Philippines, Egypt, Malaysia, Iran, Ecuador, Bolivia, Argentina and Venezuela.

On the issue of agenda item 3, **Venezuela** said that the entire mandate needs to deal with the link with the AWG-LCA and its specific mandate. It reminded Parties that it had made a reservation on the adoption of the AWG-LCA outcome decision in Durban as it questioned the basis of the outcome document as the basis for negotiations (given the deficiencies contained the document).

In relation to agenda item 4 on the enhancing of ambition, there was an explicit link to the work going on under the Kyoto Protocol. The Durban decision on the AWG-KP was part of a package of decisions and it was agreed that Annex I Parties would provide their mitigation commitments in the form of quantified emission limitation and reduction objectives (QELROs) and not based on pledges by 1 May and yet we see nothing on the table.

This situation is disastrous, Venezuela said, and made a formal request to introduce a footnote to be introduced under the provisional agenda as the AWG-LCA was being sabotaged by some Parties so that everything is to be under the ADP. What was not resolved since 2007 (under the Bali mandate) is supposed to be resolved through a “miracle cure” with the closure of the AWG-LCA even before it concludes its mandate.

The footnote that Venezuela asked for is to be as follows: “The implementation of decision 1/CP.17, should be reviewed on the basis of conformity with the principle in international law of ‘*pacta sunt servanda*’, in particular on the exception of non-performance of compliance of the UNFCCC and the KP for those Parties that are Parties to the instruments.”

(‘*Pacta sunt servanda*’ is an expression signifying that the agreements and stipulations of the

Parties to a contract must be observed; it is a fundamental principle of international law, viz. a treaty is based on the consent of the parties to it, is binding, and must be executed in good faith.)

Venezuela could not agree to the adoption of the provisional agenda without this footnote.

This proposal received support from Ecuador and Bolivia. It was opposed by the Switzerland, Singapore and the US.

Grenada wanted the provisional agenda to be adopted. It said that the Durban decision 1/CP.17 laid out a clear and progressive approach post-2012 with two work streams – one on enhancing action on mitigation pre-2020 to close the ambition gap; and organization of other work.

Gambia, speaking for the LDCs supported the adoption of the provisional agenda. It also stressed the importance of agenda item 4. **Nauru, speaking for AOSIS** supported Gambia. Others who supported the adoption of the agenda included the EU, the US, Australia, Switzerland, Japan, Mexico, Costa Rica, Indonesia and Barbados.

Barbados expressed frustration and said that agenda item 4 which addresses the work plan on enhancing the mitigation ambition was a priority and supported the adoption of the provisional agenda. It wanted to remind Parties that Durban arrived at a delicate political balance between the AWG-LCA, AWG-KP and the ADP. Referring to the negotiations in Durban, it said that within the context of the Durban Platform, there was initially a draft decision presented to Parties that had the general support of major economies and only contained a negotiation on some agreement post-2020. This was rejected by vulnerable developing countries as a sole focus on 2020 will mean a demise of these countries. A post-2020 outlook was insufficient and immoral and they refused to accept it. Hence, what Parties see in the perambular paragraphs as well as in paragraphs 7 and 8 in decision 1/CP.17, were inserted by vulnerable developing countries as the only way of accepting a post-2020 agreement by major economies.

Switzerland agreed with Barbados and said there was need to deal with three elements in the Durban Platform decision: the decision in

paragraph 1 (which calls for the completion of the work of the AWG-LCA and for its termination at the end of 2012); the launch of the process for a protocol, other legal instrument or agreed outcome with legal force; and the enhancing of the mitigation ambition. It opposed the Venezuelan proposal for a footnote.

The **EU** said it could accept the agenda as it stands. The Durban package involved a ratifiable second commitment period under the KP as part of the Doha package. It also involved a new legal instrument applicable to all. There was pressure in Durban to move the date of the new agreement; some wanted an earlier date and others a later date. The later date of 2020 was not acceptable and so the third element was to raise the mitigation ambition in the ADP to close the ambition gap.

Swaziland speaking for the Africa Group said that it was difficult to understand the discussion on the agenda. The agenda was open for amendments or deletion and it proposed doing that and for the work to move on.

The **US** supported adoption of the provisional agenda. It was opposed to the footnote by Venezuela.

Brazil said that the work plan on enhancing mitigation ambition was part of the work of the ADP. The work plan on mitigation and the means of implementation indicate that it is not comparable with the negotiations on the new instrument called for in the DP decision and there was need to maintain clarity in the separation of the two parts of the work.

The Philippines said that there were important linkages between the ADP, AWG-LCA and the AWG-KP. There was need for catching up on the level of ambition under the AWG-LCA and the AWG-KP. It supported the deletion of item 4 of the agenda and proposed amending item 3 of the agenda as follows: “Planning of work in accordance with *all elements* of decision 1/CP.17”. It did not want a cherry-picking of selected items of the decision.

This proposal received wide support from Egypt, Argentina, Malaysia, China, Iran, Ecuador and Bolivia. It was opposed by the US, Grenada, Barbados, EU, Costa Rica and Mexico.

The US could not support any reference to paragraph 1 of the Durban Platform decision as “this was assigned to another group”. The US was referring to the work under the AWG-LCA.

[Paragraph 1 reads as follows: “Decides to extend the Ad Hoc Working Group on Long-term Cooperative Action under the Convention for one year in order for it to continue its work and reach the agreed outcome pursuant to decision 1/CP.13 (Bali Action Plan) through decisions adopted by the sixteenth, seventeenth and eighteenth sessions of the Conference of the Parties, at which time the Ad Hoc Working Group on Long-term Cooperative Action under the Convention shall be terminated ...]

Singapore said it could accommodate the proposal by the Philippines but agenda item 4 was also important. It said that in the ADP, there were two clusters of issues, not in terms of just substance but of the legal form. One cluster was on the legal instrument post-2020 but the other, on enhancing ambition in pre-2020 that would not lead to a legal framework. This was why agenda items 3 and 4 were separate.

Following a long exchange of views, De Wet suggested that Parties work on the basis of the provisional agenda while consultations were ongoing on the agenda.

China said that this would be a violation of the existing rules of procedure.

The session could not proceed further and the meeting was adjourned to resume on Tuesday, 22 May.

China also said that it wanted a clarification from the legal advisor of the UNFCCC secretariat on the issue of rule 24 of the Rules of Procedure which states that in the event the COP President (currently the minister of foreign affairs of South Africa) could not preside over the meetings, she should appoint any member from the Bureau of the UNFCCC instead of just any person. China had raised this issue at the opening of the ADP session. This question is still pending a response.

Meanwhile, it is learnt that 17 countries were invited to an informal consultation convened by De Wet on Sunday afternoon (20 May): China, Venezuela, Singapore, Saudi Arabia, the Philippines, Gambia, Mexico, EU, Switzerland, Grenada, Brazil, USA, Barbados, Algeria, Australia, Egypt, and Bolivia.

It seems that Algeria and Saudi Arabia did not attend the meeting while others did. The meeting apparently was inconclusive. Some members who attended the meeting had also expressed concerns that the informal consultations were not inclusive and were non-transparent.