

‘Nationally determined contributions’ not an issue for the ADP, says Co-chair

Bonn, 13 March (Meena Raman) – The issue of nationally determined contributions to be made by UNFCCC Parties is not a subject that comes under the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP), according to one of the ADP Co-chairs.

This interpretation was made by Artur Runge-Metzger (the European Union) at the end of the fourth day of the ADP session being held in Bonn.

Some delegates, after the day’s meeting, remarked that this statement by the Co-chair was very surprising, since it was the understanding all along that this issue is to be discussed by the ADP.

The “nationally determined contributions (NDCs)” issue had indeed been the subject of two open-ended consultations held on 11 and 12 March, with another session scheduled to take place on the Friday, 14 March, the last day of the ADP meeting. A workshop on contributions had also been held the whole morning of 11 March, during which countries were invited to give their views on the subject (See TWNN Bonn News Update 3 dated 12 March).

If the ADP had no mandate to discuss or negotiate this issue, why then had the ADP spent so much time discussing it at this session, asked several delegates and observers. Some queried if further time should be spent on the issue at the forthcoming sessions of the ADP in June and October this year.

“Contributions” had in fact been the most contentious issue during the ADP’s meetings during the meeting of the Conference of Parties (COP) of the UNFCCC in Warsaw last November.

The COP almost could not reach any decision on the Durban Platform, because of disagreements over the word “commitments” (to be made by UNFCCC members). Eventually, after a “huddle” at the last hours of the COP, Parties agreed that they would

“initiate or intensify domestic preparations for their intended nationally determined contributions, without prejudice to the legal nature of the contributions ...and to communicate them well in advance of the 21st session of the Conference of the Parties (in Paris) (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.” [Paragraph 2(b) of decision 1/CP.19].

The surprise interpretation by the Co-chair that this issue in paragraph 2(b) does not belong to the ADP was announced during an exchange he had with the Chinese delegation late afternoon of Thursday, 13 March.

China had wanted the Co-chair to make space in the session of the ADP on Friday to discuss matters referred to issues in paragraphs 3 and 4 of the Warsaw COP decision of the ADP (which pertains to various issues to accelerate the full implementation of the decisions constituting the agreed outcome of the Bali Action Plan and to enhance ambition in the pre-2020 period).

Metzger said that the ADP should not discuss the issues in these two paragraphs because the COP decision did not explicitly request the ADP to take up these issues and these were matters for the COP in Lima to address, whether progress had been made on the issues.

China said if this was the case, then other paragraphs in that decision that did not explicitly request the ADP to take them up, would also not be taken up by the ADP. As an example, China mentioned paragraph 2(b) (on the nationally determined contributions) and paragraph 5 (on the workplan for enhancing mitigation ambition). China also asked for

an opinion on this from the UNFCCC's legal advisors.

Metzger in response said that it was for the COP to decide about paragraph 2(b) as the contributions are a nationally determined process. In contrast, he said paragraph 2(c) of the decision requested the ADP to identify, by the 20th session of the COP (to be held in Lima, Peru end of this year) the information that Parties will provide when putting forward their contributions referred to in paragraph 2(b).

He added that in relation to paragraph 5, the issue of the workplan was taken up at the conclusion of the ADP which addressed what the Secretariat or the Co-chairs had to take forward in relation to workstream 2 on the pre-2020 ambition.

He went on to clarify that when it came to paragraph 2(d), the Co-chairs had organised a lunch briefing (on 12 March) and not the negotiating hours as they did not think it was important as this was a 'dating exercise' between organisations providing support and Parties looking for support.

[Paragraph 2(d) urged and requested 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.]

The question that some delegates asked, after the day's meetings ended, was why the issue of contributions had taken up so much time at this session of the ADP if the body had no mandate to discuss it.

In fact, Metzger in convening the open-ended consultations on NDCs on 11 March said that it was the first time the ADP could look at how to flesh them out, and invited Parties to provide further guidance. Parties were asked to consider the following questions posed by the Co-chairs: *"What do Parties understand under the concept of NDCs? Given that contributions are to be nationally determined, what rules or guidance, if any, would be specified by the 2015 agreement? What would be the nature and legal character of the contributions?"*

There was no indication then that the issue of NDCs was not a matter for the ADP to consider, observed a senior delegate.

The open-ended consultations held on 11 and 12 March heard Parties express their views on what are NDCs. Metzger who presided over the consultations said that the issue of "intended NDCs" arose after

intense exchange in Warsaw last year and referred to paragraph 2(b).

Argentina said that NDCs would refer to various elements of the new agreement, consistent with the provisions of the UNFCCC, reflecting common but differentiated responsibility (CBDR) and equity. They have to be understood in a differentiated manner that differentiates between Annex 1 and non-Annex 1 actions. For Annex 1 Parties, they are commitments, with Annex 2 Parties having to also undertake domestic preparations for contributions on the provision of finance and technology support to developing countries, in addition to undertaking emission reductions commitments. For non-Annex 1 Parties, it refers to adaptation and mitigation actions subject to the provision of support for finance, technology transfer, capacity building and the implementation of sustainable development. Non-Annex 1 NDCs depend on the extent of finance and support provided.

Argentina stressed that the concept of NDCs must not be read as departing from the context and structure of the Convention and cannot be open ended and allow for a loosening of the Convention. The Annex 1 NDCs as applied to mitigation has to be guided by developed countries taking the lead consistent with Article 4.2. of the Convention. For non-Annex I Parties, "national determination" of the extent of their contributions should reflect the diversity of their national circumstances and context.

Nauru for the Alliance of Small Island States (AOSIS) said the new agreement should be a legally binding protocol, with fair and legally binding contributions. Developed countries need to show leadership on mitigation and make contributions to the means of implementation. There should be no backsliding of the commitment type. Mitigation and means of implementation must be specific and measurable. Support must be provided to those who need it for their mitigation actions. The NDCs should accommodate the special national circumstances of SIDs and least developed countries (LDCs). It should include information on the aggregate to determine overall ambition.

Turkey said the approach should be fair, with the type and nature of contributions left for Parties. It should be more flexible and ambitious and not hinder sustainable development. CBDR is the guiding principle. There should be systematised and standardised reporting, with a common framework which takes into account respective capabilities and national circumstances of Parties.

China said that in the huddle in Warsaw, as regards the ‘contributions’, this was a diplomatic wording and was a term agreed to as a matter of compromise. There were different wording options proposed which referred this to Article 4 of the Convention. However, Parties cannot ignore the substantial aspects under Article 4. Parties need to focus on the elements of the new agreement which are in the Durban mandate and these are mitigation, adaptation, finance, technology transfer, capacity building, and transparency of action and support. The discussion on contributions must start from the political and legal basis which is the Convention principles and provisions. It should begin from the elaboration of the elements. Otherwise, what are Parties contributing to? Only when the elements are clarified and agreed upon can we negotiate how Parties can contribute to them. It wanted to see the elaboration of elements in an in-depth manner to provide a solid basis to consider commitments and actions.

Bangladesh, referring to the huddles in Warsaw during the ADP session, on the issue of NDCs, said that some Parties wanted the reference to commitments while others were in favour of contributions and now, Parties were ‘facing the music’. All Parties need to have NDCs which are under the Convention’s principles and structure. It wanted a legally binding protocol in Paris and there is no free ride even for Bangladesh. Parties need to say how much they are going to mitigate, for otherwise, the 2 degree C temperature limit cannot be achieved. Mitigation was only one element of the 2015 agreement and contribution. There is also the contribution to adaptation, finance, technology transfer, capacity building and transparency. Needs of LDCs, SIDs and other vulnerable countries should be supported. What if after all NDCs, we fall short of meeting the 2 degree C target, it asked. How can the gap be covered? It said that under the Convention, all Parties were subject to assessed contributions to the UNFCCC budget. It suggested the consideration of a multiplier of that assessed contribution for each Party which might be helpful.

Colombia said the nature and legal character of the NDCs need to take into account the universality of application, but this did not mean uniformity. To ensure equity, there needed to be fair differentiation of Parties according to their capacities and political will. NDCs have to be legally binding. The legal nature must be the same for all while the content will be differentiated. NDCs are not limited to mitigation. It covers means of implementation as well. The contributions are nationally determined based on

capabilities and responsibilities. NDCs are defined under a framework for efforts for information; it should be measurable, comparable, verifiable and be aggregated. There has to be a mechanism for the basis of information which has to be previously established in a format that allows for regional and global aggregation for overall adequacy and environmental integrity. The process of anchoring the contributions must be defined with provisions for accounting, review and updates, based on science. Contributions for adaptation and means of implementation have to be predictable, comparable and understandable.

South Africa said that in Warsaw, the way NDCs were contextualised was that they needed to be pre-determined and for some work to be done before Parties agreed on the agreement to be reached in Paris. On the nature of the NDC, it is supposed to be ‘intended’ only, which means it is a provisional proposal and not a final one. It is from an ex ante multilateral assessment that the final contribution can flow. On the elements, it includes mitigation towards a common long-term global goal of reducing emissions by 50% by 2050 based on 1990 levels. There is also the provision of the means of implementation. There could be individual contributions or a package of actions including targets, efforts and actions ex ante.

The purpose of the ex ante process is for scrutiny and adjustment of the contributions in a constructive and non-threatening manner. It allows Parties to see if it can help ratchet up the ambition for the adequacy of the efforts that science and fairness demands, and this needs to be further developed.

The ex post facto process must be included for enhancement of the contributions and for compliance. The gaps in existing rules need to be addressed, building on existing rules. Enhanced rules for ex post assessment is a central element. There also needs to be a determination of the time frame for the mitigation contribution from 2020. There also has to be a link to the institutions and also for compliance and facilitation in the new agreement.

As regards the information for Lima, there is need to establish a common format for communicating on mitigation. There needs to be a decision on the minimum information and ground rules to explain the intended NDCs and how it is communicated. The principle of CBDR and respective capabilities applies to the information. Depending on the capacity of countries, the response may vary. For determining NDCs, there needs to be compliance with existing commitments taking into account

historical responsibility, and current capability. All Parties under Article 4.1 need to provide the information, depending on the type of information, taking into account for developing countries the growth of emissions in particular for poverty eradication. From 2030 onwards, there needs to be a slowing of emissions growth in developing countries and if encouraged, to undertake economy wide targets and low carbon plans. Relative emission reduction commitments might be expressed as intensity targets, as sets of nationally appropriate mitigation actions (NAMAs), which are measured, reported and verified. Over time, they will have similar accounting rules and there needs to be time for transition. Parties NDCs must be stronger and more ambitious post 2030.

On information regarding how contributions are consistent with science and fairness, it said for developed countries, it has to be absolute economy wide targets with 1990 as the base year and quantified limitation and reduction objectives for multiple years with the target for every year defined. The commitments and targets need to be comparable with common accounting rules, taking into account the Kyoto Protocol rules for the pre-2020 period. There is also need to see how developed countries are contributing to finance, technology transfer and capacity building support.

Singapore said that the mandate for the ADP is from the Durban decision which is under the Convention. The notion of NDCs is the method by which the Durban mandate is operationalised and is for the 2015 agreement. NDCs relate to Article 4.1, which imposes obligations on all to take action under the Convention. They have to be consistent with and be guided by the Convention principles. It is part of the rules-based system. The notion of NDCs does not mean that the Convention's principles can be ignored. All Parties would need to submit NDCs, taking into account their specific national circumstances and all need to make the effort. In that sense, NDCs are a driver for participation in the new agreement and for ambition for the long-term.

It said further that NDCs are meant to be distinct from international decision-making. In the huddle at Warsaw, a distinction was made between national and international determination as it was opposed to NDCs being multilaterally imposed. Any top down allocation or target of contributions based on formulaic approaches or criteria go against NDCs. NDCs require the acknowledgement of national circumstances. In reality, there is a diversity of types of mitigation. Each country decides the type and level of mitigation, taking into account national

circumstances and economic structures. The ability and flexibility for developing countries to choose is critical. NDCs do not negate the leadership of developed countries.

Sudan for the **African Group** said that the context for the NDCs is the Warsaw decision that refers to the Durban decision and to the Convention principles and provisions. The decision refers to 'intended' NDCs which means they are provisional in nature. There is a process that will unfold prior to it being final. Achieving the objective of the Convention is the context. Given the recognition of how the objective is further elaborated by a temperature goal, there is need for the assessment of the adequacy of the contributions. The information that Parties will provide suggests that NDCs are not limited to what Parties will communicate but it needs to be defined in a multilateral process. There is scope for multilateral discussion and assessment. All contributions are inscribed in the 2015 agreement determined by Parties themselves. The information that Parties should provide is informed by a multilateral process. It referred to a principle-based reference framework proposed by the Group for the assessment of the adequacy and fairness.

There is also need for ex ante information which is integral to the process now and beyond. It added that the domestic preparation process for developing countries requires support. At Lima, there needs to be agreement on the rules for ex ante transparency, ex ante assessment, and ex ante design of support in line with Article 12; and the review process should form an integral part of the agreement.

Bolivia said the ADP mandate comes from Durban and Doha. Warsaw did not replace this mandate. The mandate is "for enhanced action" rather than on "contributions". We should not use the word "contributions" to replace "enhanced action". The agreed 2015 outcome in Paris must be in accordance with the principles and provisions of the Convention integrating all the elements contained in the Durban decision. Unless the elements of the draft negotiating text are first elaborated with clarity, there can be no clarity on what contributions mean and how they should be treated. We must take into account especially Article 4 of the Convention in this context.

It also recalled the Bolivian and Cuba interpretation of the word 'contributions' in the Warsaw decision at the closing plenary of COP19. It was recorded that the interpretation of paragraph 2(b) of the decision "shall be applied in strict accordance with Article 4, in particular its paragraph 7, of the Convention." This interpretation therefore refers to three

interconnected aspects: this interpretation means that we must understand the contributions in a comprehensive way including all the elements. Understanding of NDC is contingent upon the overall six elements.

To be consistent with the Convention, ‘contributions’ have to be understood in a differentiated manner that distinguishes between Annex I and Annex II commitments and non-Annex I actions: Annex I Parties should have “nationally determined” economy-wide mitigation commitments (based on Article 4.2, linked to meeting the Article 2 objective of the Convention, and sufficient to show that they are taking the lead in reducing emissions); Annex II parties should continue to have commitments to provide the finance and technology support (under Article 4.3, 4.4, 4.5, 4.7) to developing countries. Therefore, Annex II parties should make their domestic preparations, in particular on their commitments on finance and technology support to developing countries in addition to their commitments on emission reductions.

Non-Annex I Parties would have contributions in relation to adaptation (including loss and damage), mitigation actions subject to provision of support from Annex II Parties, capacity building, implementation of relevant sustainable development actions (including food security). Non-Annex I actions will be “nationally determined” and their ambition levels depend on the extent of the finance, technology and capacity building support by Annex II Parties. The “national determination” of “contributions” must strengthen the existing commitments under the Convention for Annex I Parties and reflect the diversity of national conditions and circumstances for non-Annex I Parties.

For Annex I Parties, the concept of “nationally determined” as applied to mitigation has to be guided by the Convention principle of developed countries taking the lead and in a comparable manner, consistent with their commitments under Article 4.2, in order for them to reduce their emissions to aggregate levels that are comparable and consistent with what the scientific community has indicated developed countries should do. Therefore, Annex I Parties should increase their pre-2020 ambitions firstly, with a view to setting the ambitious starting point and reference level for determining their post-2020 contributions.

For non-Annex I Parties, “national determined” contributions with respect to adaptation, mitigation, capacity building, and sustainable development, should reflect the diversity of their respective

national development conditions and circumstances. It should also take into account that their main priority is socio-economic development and poverty eradication, as recognized in Article 4.7. In this context, the implementation by Annex II developed country Parties of their respective commitments relating to finance and technology transfer under Article 4 of the Convention will be an essential condition and foundation for enhancing the actions and contributions of developing country Parties to avoid or reduce their emissions and to adapt to climate change even as they pursue sustainable development and poverty eradication.

Ecuador understood that contributions are meant to help fulfil the objective of the Convention. Mitigation only will not fulfil the objective of the Convention, because the objective itself goes further than that. The paragraph makes reference to Parties initiating their contributions but it doubted that any Party will need to initiate work on the implementation of the objective as all have already started to contribute. There is need to enhance the implementation of this objective. But how? It was not wondering what the contributions are. It was nationally determining inventories, training and education programs, food security, water management and livestock management adaptation programs, defining nationally appropriate mitigation actions as mitigation contributions and many other things. Developing countries are acting on the basis of their capacities, but the enhancement and assessment of capacities is also clearly stated in Article 4.7 of the Convention.

The conversation is not about “what we will do”, but about how to reflect these actions in an enhanced manner that identifies where Parties have failed in these commitments, and how to take back the control of the ship and steer more effectively so that we can contribute to implement them. Contributions need to also address the causes of the problem and not just the symptoms and Ecuador called for the addressing of unsustainable production and consumption patterns.

The European Union said that the term ‘contributions’ was a compromise reached in Warsaw. For the EU, adaptation and means of implementation are part of the 2015 agreement and the wider package. Contributions are the first step in addressing the collective 2 degree C goal. There has to be a step to review the rules and have a mechanism for review to track the below 2 degree target. Mitigation contributions should be legally binding but the level and type will vary depending on past, present and future emissions and capabilities. It

has to be rules based and subject to measurement, reporting and verification and accounting. What is needed is to view contributions in the context of what it means for the atmosphere; whether it is individually fair. There needs to be agreement on the upfront information and for the contributions to be transparent, comparable, verifiable and ambitious.

On the upfront information, the issue is technical, aiming to get to the facts. Different levels of commitments need information. There needs to be upfront information for all commitment types. NDCs will also require some information which is varied. Parties need to indicate why their offer is a fair one.

Norway said the 2 degree C temperature limit cannot be achieved without every country involved, with industrialised countries taking the lead. All with past, current and future emissions must take part. There are different contributions made by Parties but based on the same overall goal. There is need to look at the mitigation commitment separately from the other elements and to meet the 2 degree goal, all need to take mitigation efforts. It is crucial to agree on common understandings before pledges are on the table. Upfront information is needed to hold Parties accountable. There is need to build on what we have and to improve on it. Information is essential to estimate the emission trends and effects. Common metrics need to be agreed in a way that is quantifiable and for comparability.

The United States said that the nature of NDCs refers to mitigation. The individual and collective effort and the overall aggregate are needed. Adaptation actions are important but there are not central to the collective effort. There has to be flexibility to self-determine the contribution. There is a period of consultation and transparency incentivises the need to put the best foot forward. Each Party should contribute their mitigation effort which is quantified/quantifiable and the content is according to respective capabilities and national circumstances. If Parties are self-differentiating, differentiation will occur in a continuum taking into account unique circumstances with the most capable doing the most. Upfront information is naturally generated by every country.

On the legal nature of the contribution, Parties are pursuing an agreement with legal force. Provisions will be legal and applicable to all. There are options to the legal nature: it could be internationally legally binding; or there could be a legal obligation for a contribution but for the content of the mitigation contribution reflected in a decision, which can be

updated over time; or there could be domestic measures that will have legal force at the domestic level. In the first instance, Parties are expected to make submissions of their contributions well before Paris which are formally communicated when Parties join the agreement.

It said the submission of intended NDCs requires a consultation process for clarification. There is no need for it to be highly structured. It discouraged an iterative process in formal negotiations as countries can come with their best effort. It is helpful to have a cooperative nature with Parties looking to do their best rather than minimal credible effort.

Australia said NDCs are nationally determined and have flexibility. Each country must focus on limiting emissions. There has to be the securing of a level playing field that avoids carbon leakage and does not undermine competitiveness. NDCs are subject to CBDR and respective capabilities with a spectrum of efforts in line with countries' different capacities. There has to be clear upfront consultations on whether Parties are contributing to the global effort and if it is fair and equitable. Developed countries and those with greatest responsibility should take the lead but there needs to be the application of differentiation which is not static but allows for improvements as circumstances and capacities evolve. Contributions have to be made unconditionally. The rules will set the context. The legal form must encourage participation and not discourage Parties. Schedules can be used as a way forward.

Canada said that NDCs are about mitigation. All Parties will contribute according to national circumstances. It did not think that the Annex 1 – non-Annex 1 divide is appropriate. Countries should act according to their national circumstances and capacities. The NDCs need to be quantifiable, accompanied by sufficient information which should not be onerous or present unusual difficulties.

Switzerland said that NDCs were a result of the compromise reached under huddles and there were those who were within the huddle and those not. Hence, no one understands the NDCs. One clear element is that there is a national determination. They should be unconditional and are towards meeting the common objective of the 2 degree C. On the legal form, it is part of the legally binding framework which is internationally legally binding. On the scope of the NDCs, it is about mitigation. It could also be about enhancing adaptation measures but adaptation cannot be a substitute for not doing mitigation. There needs to be rules and guidance

with different guidance for NDCs than for contributions once the agreement is in force. There is need for ex ante information, and need for rules that make sure the contributions are clearly understood.

Japan said that NDCs are self-determined and self-differentiated. Contributions are equal to mitigation commitments. Every Party should present a mitigation commitment which should be quantifiable, comparable and verifiable. Major economies should

have economy wide targets in light of their responsibilities to ensure fair competition in the international market. Others are at liberty to choose from having intensity targets, deviation from business as usual, and policies and measures. There needs to be accountability and transparency and no categorisation by countries. There needs to be upfront information with ex ante consultation and ex post review.