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SBI: Adoption of conclusion on non-state actors with no agreement on private sector conflict of interest

Kuala Lumpur, 30 May (Hilary Chiew) – The 44th session of the Subsidiary Body for Implementation (SBI 44) ended in a stormy closing plenary with procedural disputes over the adoption of the draft conclusion, pertaining to engagement of non-state actors with commercial interests.

A large number of developing countries registered their strong dissatisfaction with the adoption process conducted by the SBI Chair Tomasz Chruszczow (Poland) on this agenda item during the late afternoon on the last day of the United Nations Framework Convention on Climate Change (UNFCCC) inter-sessional meeting on 26 May.

Only a few seconds were taken by the Chair to elicit Parties' responses before he gaveled the adoption of the final conclusion that makes no reference to conflict of interest. It only states that, "The SBI took note of the information provided by the secretariat on existing procedures and practices for the admission of observer organisations." (See webcast of the session.)

Developed countries had objected to any reference to conflict of interest preferring that this and other issues be raised in an in-session workshop at the SBI 46 session in 2017. Several Party delegations and observers note however that this is not the same as an SBI conclusion requesting action. Furthermore, the workshop is to 'enhance the effective engagement of non-Party stakeholders with a view to strengthening the implementation of the outcomes of" the decision that accompanied the Paris Agreement adoption, and it is to be expected that developed countries will continue to resist addressing conflict of interest posed by the commercial interests of private sector engagement.

[The meeting in Bonn from 16 to 26 May 2016 featured the 44th session of the SBI and the Subsidiary Body for Scientific and Technological Advice (SBSTA) as well as the first session of the Ad hoc Working Group on the Paris Agreement.]

SBI44 dealt with a number of other issues, and conclusions were adopted at two separate closing plenary meetings. The first closing plenary was held in the afternoon on 25 May to adopt conclusions that were ready and a second closing plenary was held on 26 May. (A separate article on the other SBI items including Parties' statements will follow soon.)

Ecuador representing the **Like-minded Developing Countries (LMDC)** had requested for the floor before Chair Chruszczow brought down the gavel. Several LMDC countries testified in support of Ecuador's assertion that it had duly waved its flag and pressed the button on the electronic system but went unnoticed by those on the podium. The African Group also lent its support to the LMDC.

Developed country Parties, however, could not support reopening the discussion and noted that it sufficed that the concern of conflict of interests would be discussed at an in-session workshop at SBI 46 next year. The United States and Australia said there was no clear understanding of conflict of interests and are of the opinion that the move is to restrict participation in the UNFCCC process.

The fierce exchanges lasted for nearly an hour on the agenda item '*Arrangements for Intergovernmental Meetings*' which among others discussed the engagement of observer organisations in the context of scaling up of efforts of non-Party stakeholders to address and response to climate changed mandated by decision 1/CP.21 (paragraphs 133 to 136) of the Paris climate conference last year.

Ecuador had tried on behalf of the LMDC to revise paragraph 23 of the draft conclusion (that had been adopted in the plenary) and requested for the reinstatement of a previous paragraph in the version of 24 May at 11am.

(See below for the contentious agreement on paragraph 23 that was reached at the contact group meeting on 24 May.)

"One of our main points of interest on this agenda item was a request for information from the UNFCCC secretariat on existing rules, and procedures or policies related to engagement of non-Party stakeholders to avoid or managed potential conflict of interests with private sector entities especially if such conflict of interests might go against the objective of the Convention and its implementation," said Ecuador from the outset of its intervention.

The originally numbered paragraph 22 read: "*The SBI took note of the information provided by the secretariat on existing procedures and practices aimed at ensuring the integrity of observer organisations in keeping with the ultimate objective of the Convention. It requested the secretariat to prepare a report for consideration at SBI 46 on modalities used within the United Nations system and other intergovernmental forums to identify and minimise the risk of conflict of interest.*"

Paragraph 23 in the draft conclusion presented for adoption read: "*The SBI took note of the information provided by the secretariat on existing procedures and practices for the admission of observer organisations.*"

The LMDC request was rejected by the SBI Chair on procedural grounds that the draft conclusion had just been adopted.

Citing Rule 40 of the draft rules and procedures of the UNFCCC, Chruszczow said when a conclusion was accepted or rejected (in a plenary meeting), it cannot be deliberated again in the same session unless two-thirds of the Parties present vote in favour of its reconsideration.

He also stressed that one of the reasons consensus could not be found was that Parties had difficulties identifying what kind of situation will be covered by the notion of conflict of interests, noting the provision for an in-session workshop to be organised during SBI 46 (in 2017) will provide the opportunity to Parties and observer organisations to share their views on all topics of their interests.

Ecuador explained that it had raised its flag and had several times pushed the button on the public announcement system requesting for the floor but "clearly there is problem with the mechanism".

It pointed out that in the course of discussing paragraph 22 of the draft conclusion of the 24 May version, Parties had faced difficulties with having to move to a smaller room, adding that the appeal for reconsideration of the disputed paragraph is made by a large group of countries.

In response, Chruszczow said he had paid close attention to this particular adoption process with the help of the Secretariat staff by checking the floor for requests from Parties as well as the public announcement system.

"I was quite careful … I looked around (and) nobody was asking for the floor before I said 'it was so decided'. I looked if any flags was raised; I am pretty certain … and colleagues from the secretariat are quite carefully watching especially with this item which was part of a difficult compromise and consensus.

"I was not in a hurry … you raised your flag after this conclusion was adopted. Unfortunately, Rule 40 applies. Your intervention will be recorded in the proceedings. I cannot (in accordance to the rules) change the decision of this body," he asserted and tried to close the procedural discussion but reluctantly acknowledged three Parties that had already asked for the floor.

Supporting Ecuador, **Venezuela** underscored that the Convention and the Paris Agreement are instruments between States, and the inclusion of non-state actors must go through a revision of conflict of interests.

"This is a standard request, a legal request and a moral request. It is unacceptable for our delegation that the concept of conflict of interests was not even considered as the fundamental basis for ethical integrity and the effective implementation of the Paris Agreement.

"We have serious concerns on how this issue was handled, and as it was raised as a concern for the majority of the world represented here, we are astonished that this issue was completely overturned in the conclusion," it said sternly.

Venezuela further said that the approach is against the spirit of the Convention and the Paris Agreement which is inclusive and Party-driven, with respect for the rules of engagement and negotiation between Parties, warning that Parties are breaking the implementation of the Paris Agreement itself at the beginning of her birth.

Egypt said from where it sits, it can confirm that Ecuador raised the flag before the adoption and believed that Ecuador pushed the button when the flag was not recognised (by those on the podium). The same problem with the electronic system, said Egypt, had happened to its delegation the day before.

"In total transparency and frankness, I saw the flag (raised) but was not recognised by the secretariat," it stressed.

China said the matter was an unfortunate one and since this issue is of serious concern for Ecuador, it believed the delegation would have paid close attention during the adoption process and would have pressed the button accordingly, adding that it was possible the electronic system was unstable.

Technical glitch aside, it said Ecuador represented a large number of Parties and their concerns should be dealt with seriously.

Noting the Chair's acknowledgement that the draft conclusion was a difficult consensus, however, it disagreed with his view that there were many Parties that opposed the idea of Ecuador.

"It was not the case. Only a few countries expressed different views … so this whole process is problematic.

"You did not consider the concern expressed by Ecuador and now as a remedy, it is either you reconsider (revised) the paragraph or reflect the overall objection of the Parties (in the proceedings report)," China stressed.

Uganda speaking for **the African Group** said it is extremely important that the rules for greater engagement of non-state actors as well as private sector organisations are set in the proper context.

"Therefore, it is a step in the right direction (to discuss this concern) and we strongly support the consideration of this matter at the next session of the SBI (SBI46) with the view to put in place concrete rules and procedures for engagement of non-state actors in the UNFCCC process without compromising the principle of the Convention and the Paris Agreement," it added.

Bolivia believed the issue is a real concern for a lot of Parties and it is important to acknowledge their concerns regarding the risks of conflict of interests to protect the democratic participation of Parties in this process. It hoped that the statements of concerned Parties will be reflected in the SBI proceedings report.

Malaysia believed that conflict of interests is of importance, that most countries if not all have laws to address this issue, noting that the UNFCCC had no problem talking about safeguards when it comes to its REDD-plus mechanism.

(REDD-plus stands for reducing emissions from deforestation and forest degradation and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries. Parties had adopted environmental and social safeguards for the implementation of the mechanism.)

Malaysia supported the reinstatement of the text in paragraph 22 of the draft conclusion dated 24 May.

El Salvador said while Egypt was physically closer to Ecuador, it can reassure SBI Chair Chruszczow that it saw the flag of Ecuador going up before the adoption of the conclusion.

"Therefore, the rules that you mentioned about not being able to reopen discussion does not apply in light of what actually took place.

"We spent the whole week discussing the issue of transparency in the Paris Agreement. It is, therefore, crucial that SBI recognises the importance of this issue," it added.

India said the fact of the matter is that there are genuine concerns regarding conflict of interests of non-state actors.

Failure to provide the opportunity to take on board whatever objections and concerns highlighted by Parties is tantamount to denying the rights and privileges of Parties.

Nicaragua said on this matter, Ecuador represented more than 60% of the world's poor population and when supported by Uganda representing the African Group, it is 80% of the world's population.

It is deeply concerned with this situation because it saw it as a recurring problem. Recalling the 21st meeting of the Conference of the Parties in Paris (in December 2015), it pointed out that Nicaragua was denied the request to speak before the Paris Agreement was adopted.

"I have no reason to doubt what was said by Ecuador and corroborated by Egypt and I have no reason to doubt you (referring to Chruszczow). We are all humans and this thing happens but we must not go to the extreme.

"We all know what is being discussed … conflict of interests exists. We are not denying participation of non-governmental organisations or non-state actors and Nicaragua has always defended the participation of observers.

"Nor do we want to clamp down on the role of the private sector. The action we are talking about here is to get a better understanding for this particular state we are moving into and we have to be very clear in our mind about transparency," it stressed.

The European Union said it had the impression of a very long and intense debate on conflict of interest in the contact group meetings.

"We carefully took note of the broad debate where we reached consensus in the end with all Parties and we found it in the text now.

"As you (referring to Chruszczow) already reported, … that it is not possible (to reopen discussion) and that we have divergent views on this matter. So for the time being, this is the right way to go and the workshop is the place where the concerns can be discussed," it said, adding that Parties are in a good position to adopt the conclusion now.

The United States said it too recalled the lengthy discussion of the issue and that in the last meeting there was clearly no consensus on the point of conflict of interests but there was consensus on the final conclusion that appeared in the document now.

"As I recalled, there was a moment when you (referring to Chruszczow) asked everyone in the room if there was consensus. All views were there, all perspectives were mentioned and there was agreement to move forward with consensus.

"So besides the procedural issue, we do not agree with the inclusion of conflict of interests. We oppose constraining non-governmental organisation participation in the UNFCCC process," it added.

Australia said as one of the persons who had engaged in the discussion of this agenda item, it would lend its voice to the fact that there was consensus in the room.

However, it recognised that there was a degree of concern around the room now and the proposal to reflect these concerns in the proceedings report is a sensible way forward.

"From Australia's perspective, we appreciate that this is a Party-driven and Party-owned process but Parties are merely custodians of this issue. Australia cannot support something that will lead us to blocking people from having access to this process.

"We are open to participation and is concerned that the concern on conflict of interests is being used potentially to screen people, NGOs etc and that is something that we cannot accept. From our discussion, there is no clear understanding of conflict of interests … it means different things to different people. The workshop will be a good place for discussion," it said.

(UN procedures and practice allow for Parties that are dissatisfied with a draft conclusion to object to so-called consensus that was reached in a contact group setting when the draft conclusion is presented for adoption at the closing plenary. In many cases small delegations are not represented at contact groups and so the opportunity to reopen discussion in plenary is important.)

Saudi Arabia proposed a 10-minute break for constituencies to discuss and to come back with a way forward for this issue.

Before deciding on the break, **Chruszczow** said he fully shares the view of Nicaragua that "we are all humans and we are all making mistakes", acknowledging the possibility of Ecuador's version of what happened and what he himself could see from the podium.

"The fact is we had long discussion in the (contact) group and quite long discussion in this plenary. It is good that we have discussion that is webcasted and all Parties could express their views which are quite diverse and will not necessarily lead us to any convergence. It will be equally difficult to find consensus today if we include the notion (of conflict of interests)," he added.

He said he heard useful suggestions offered by China, Uganda and a few others to reflect the importance of this discussion in the proceedings of the report for the session.

After the break, **Egypt representing the LMDC** said a large number of countries had expressed discomfort with the draft conclusion and proposed that these views should be captured in the report.
"The technical glitch, the big number of countries that had expressed their concern particularly with paragraph 23 and that they had requested for the reinstatement of the old version of paragraph 22 – if this can be allowed then we can move forward," it added.

Chruszczow said the technical glitch will not only be recorded but it will also be raised with the provider of the equipment.

He acknowledged that the discussion after the adoption proved how important the issue of conflict of interests is for many Parties and assured that "together with recognition of possible technical error, we will include as detailed as possible views expressed in this discussion and the issue will be discussed at SBI 46."

Ecuador regretted that the request by a large group of countries that represent the majority of the global population was dismissed. It thanked those who expressed support for Ecuador.

Venezuela stressed the significance of having the majority of the world pushing for this issue and that it was unacceptable that it was "undervalued just because of technical glitch".

"We would like to state that we do not agree to this draft conclusion because the claim of the majority of the world supersedes the one of a technicality. This is a dangerous precedent we are setting here," it asserted.

Climate Justice Now! (CJN!) expressed disappointment that Parties failed to acknowledge the long discussion Parties had on conflicts of interest.

"In this Party-driven process, we do not understand why a simple request for more information coming from negotiation blocs and Parties representing over 75 countries and billions of people worldwide would be so unceremoniously squashed.

"We support the interventions made by Ecuador on behalf of LMDC, Venezuela, Bolivia, Uganda (on behalf of the African Group), China, Malaysia and Nicaragua, and hope that you will honour their requests to continue the discussion about how the UNFCCC can better safeguard this process from those whose interests are counter to the objectives of the Convention," said the CJN! representative Majandra Rodriguez from TierrActiva Peru.

Contact group on 24 May

At the last contact group meeting at 3 pm on 24 May, Chruszczow presented paragraph 22 of version 2 of the draft conclusion dated 11 am, 24 May that was circulated to Parties and made available on the website.

(Paragraph 22 read: "*The SBI took note of the information provided by the secretariat on existing procedures and practices aimed at ensuring the integrity of observer organisations in keeping with the ultimate objective of the Convention. It requested the secretariat to prepare a report for consideration at SBI 46 on modalities used within the United Nations system and other intergovernmental forums to identify and minimise the risk of conflict of interest.*")

Uganda speaking for the African Group said it is happy with the formulation as it takes into account Parties' inputs but suggested a minor amendment to the second sentence to read: "*It requested the secretariat to prepare a report for consideration at SBI 46 on modalities used within the United Nations system and other intergovernmental forums as well as by the UNFCCC to identify and minimise the risk of conflicts of interest in order to support the further consideration of these issues.*"

China requested for the removal of the word 'ultimate' before objective.

At this juncture, the meeting was suspended to enable Parties to vacate the room for another scheduled meeting. Parties gathered again in another smaller room at the opposite side of the conference centre.

When the meeting reconvened, th**e United States** said it could not support the second sentence as "going into conflicts of interest and risks with observers will lead us astray".

"This is not the objective we trying to accomplish with this SBI agenda item. We are looking at how to enhance participation. This is going off-track and we oppose such a request," it emphasised, adding that it could agree to exchanges of views in a workshop instead.

It proposed a general formulation which acknowledged that the secretariat has in place procedures to ensure due diligence.

Brazil found the discussion interesting and sought clarification on the concept of conflicts of interest which was not clear to its delegation and how the idea landed in the draft conclusion text.

Chruszczow said it was a mixture of views but asked Ecuador who first introduced the concept to respond to Brazil.

Ecuador said it would not want to dwell into a lengthy discussion but the point is the need for distinction of the nature of non-state actors that are called to scale up non-Party stakeholders' engagement.

"There are private sector actors that may have very specific commercial interests which are all legitimate but what we want to know is if the secretariat has in place procedures, policies and rules to address possible conflicts of interest in the context of engagement and not accreditation; and if the engagement would affect climate actions in the context of implementation of the Paris Agreement," Ecuador explained.

Chruszczow noted that Ecuador's idea is about whether the secretariat should have in place a system to check if the actions proposed by would-be non-state actors are exposing the engagement to conflicts of interest.

Ecuador said that is why it is important to have such information. "We are not prejudging. We are flexible but cannot agree to delete the notion of conflicts of interest," it added.
Chruszczow then said he is closer to deleting paragraph 22 in its entirety.

"Assuming we will agree what conflicts of interest mean … that is quite an assumption in this room. The question is if this long discussion helps at all the implementation of the Paris Agreement … do not see any usefulness of this.

"If we know what conflicts of interest is we need to know what actions equal to conflicts of interest. I am pretty convinced that to arrive at agreement and achieve a conclusion here is impossible," he added.

He suggested that Parties take note of the issue or there will be no conclusion which "will be quite unfortunate".

India asked if the secretariat has a set of protocols to identify serious stakeholders who want to engage. It said the idea is to have some check and balance and it is not against observers' participation in the UNFCCC process.

To this, Chruszczow said India is giving him more arguments not to have conflicts of interest in the draft conclusion.

"Would you ask who is serious? We cannot start qualifying stakeholders. Anyone who wants to do something is a partner.

"You might ask if a business entity engagement is an opportunity to make some money … there is nothing wrong about that. If a non-profit is doing something that means somebody is giving them money … either from a state budget or private sector sponsors that had made some money before," he argued.

He again proposed to delete paragraph 22, adding that he left the entire issue to Parties.

Uganda said it was reluctant to accept the deletion of the entire paragraph 22.

"Our conviction is that we have made some progress on the issue of conflicts of interest. Our understanding is that the basics of corporate governance will demand that an institution will have to put in place best practices. We believe we need to provide for this; requesting the secretariat to provide such a report is to trigger a process to uphold this basic principle," it added.

Pointing out the objective of keeping temperature rise below 2C, Uganda said big business could use its influence to slow the process.

Chruszczow said nobody can disagree with wanting the world to be honest and transparent. He said that could be a topic for a workshop but the real problem is to identify if the threats are real and if we have the tool to test if the behaviour of a company or person fulfil the criteria of conflicts of interest or not.

"This consideration was just a general concept but now it has been manouevered into an open sea without a compass or GPS that might cause us to land on a deserted island. I suggest deletion or we will never come to a conclusion," he insisted.

He asked India, Ecuador, Uganda and Malaysia to prepare presentations for the workshop at SBI 46 to find the answers to the question "if there is threat at all or maybe not".

He again proposed to delete paragraph 22 and said that he will make an oral statement at the adoption of the draft conclusion during the SBI closing plenary, that the discussions are noted and would be included in the programme of the workshop.

Ecuador said it took note of the Chair's lengthy reflection and pointed out that its proposal on addressing conflicts of interests is on behalf of a significant number of countries and that it enjoyed the support of the African Group.

"We can definitely work on the second sentence and concerns of Parties with the concept. All we are saying is that we request information from the secretariat on modalities used … we are not saying the conflicts exist or not, nor are we saying if the existing procedure is effective or not.

"We are not prejudging what Parties will do with the information. We are already out of time and we appeal for your flexibility for a more constructive formulation," said Ecuador.

Seeing there was no agreement on his proposal of deletion, Chruszczow proceeded with the process of adopting other paragraphs first.

When paragraph 22 was taken up again, t**he European Union (EU)** said it had listened very carefully to all interventions but they do not bring a solution. It suggested for a factual paragraph 22.

"It seems that we are deviating from the original mandate (to scale up non-Party stakeholders participation). We have a broad request for a workshop which will have more time for discussion," it added.

The United States said the discussions could be reflected in the report of the session and supported the EU's call for a factual paragraph 22, referring to the fact that the secretariat has in place procedures to ensure due diligence when engaging with observer organisations.

India suggested to include the words '*keeping in mind the minimisation of conflict of interests*' in paragraph 18 which was related to the workshop. **Bolivia** supported, saying that if the workshop is indeed the place to discuss this issue.

Paragraph 18 reads: "*In this context, the SBI agreed to convene an in-session workshop at SBI 46 (May 2017) on opportunities to further enhance the effective engagement of non-Party stakeholders with a view to strengthening the implementation of the outcomes of decision 1/CP.21*."

Chruszczow said he did not think the views of Bolivia, Ecuador or India are convincing enough to make the US and the EU change their minds.

He said it will be unfortunate that Parties cannot adopt the conclusion just because of this lack of understanding of conflicts of interest and went on to suggest that Parties adopt the revised paragraph 22 that said '*SBI took note of the information provided by the secretariat on existing procedures and practices for the admission of observer organisations*'.

He then asked if there is any objection to a silent room and proceeded to declare that the paragraph is adopted. (The adopted paragraph in the contact group subsequently appeared as paragraph 23 in the L14 document which is the draft conclusion that was presented for adoption in the closing plenary of 26 May.)

(Edited by Chee Yoke Ling)