

COP 15 meeting suspended to resolve differences on legal outcome

Copenhagen, 10 December (Chee Yoke Ling) -- The second meeting of the 15th session of the Conference of the Parties to United Nations Framework Convention on Climate Change was suspended on Wednesday when there was no consensus among the Parties to set up a contact group on proposed new protocols under the Convention.

Developing country proponents led by Tuvalu sought to have the Copenhagen Conference of Parties (COP) sign off on a new ambitious legally binding agreement (a protocol under the Convention) due to the urgency of climate change impacts and the need to not procrastinate anymore.

On the other hand, Parties that did not support the setting up of a contact group explained that such a move would open the door to the merging of the two distinct tracks of negotiations, the Ad-hoc Working Group on Long-term Cooperative Action under the Convention (AWG-LCA) and the Ad-hoc Working Group under the Kyoto Protocol (AWG-KP). The result could be a weakening and possible termination of the existing legally binding Kyoto Protocol.

Five countries –Australia, Costa Rica, Japan, Tuvalu, and the United States – have formally forwarded their submissions to the Convention Secretariat by 5 June 2009 under Article 17 of the Convention, proposing new legally binding protocols. Article 17(1) states the Conference of the Parties may, at any ordinary session, adopt protocols to the Convention. Article 17(2), provides that the text of any proposed protocol shall be communicated to the Parties by the secretariat at least six months before such a session.

The submissions were first made prior to the negotiating session on 1-12 June 2009 in Bonn during the meetings of the Ad-hoc Working Group on Long-term Cooperative Action under the Convention (AWG-LCA) and the Ad-hoc Working Group under the Kyoto Protocol (AWG-KP).

Among the different proposals are a new 'Implementing Agreement' under the Convention (proposed by the US that is not a Party to the Kyoto Protocol) and a new protocol under the Convention (as proposed by Australia, Costa Rica, Japan and Tuvalu).

Australia and Japan have also submitted their proposed new protocols to the AWG-KP that would effectively merge actions under the Convention and the Kyoto Protocol, and create new commitments for developing countries. These proposals have also been submitted under Article 20 of the Kyoto Protocol to amend the Protocol.

[Some developing country Parties at the Meeting of Parties of the Kyoto Protocol on Thursday (10 December) said that some of the proposals submitted by developed countries for the amendment of the Protocol under Article 20 are outside the scope of the provisions of that Article. This would apply to the new protocols proposed under the Convention that have also been submitted under Article 20 of the Kyoto Protocol.]

Australia has submitted additional inputs to the AWG-KP on land, land use and forestry (LULUCF) and legal aspects of the second commitment period in the context of the Kyoto Protocol.

Tuvalu has submitted separate proposals to amend the Kyoto Protocol.

In its letter to the Secretariat proposing a new protocol Costa Rica said that it “does not claim ownership of the full text of this Protocol. While reflecting some national positions, the text also incorporates in the entirety of the ‘Negotiation Text’ prepared by the (AWG-LCA) Chair” in response to an earlier request from the AWG-LCA. It proposed that this text “be the basis for negotiation, in the event that Parties collectively decide to adopt a Protocol” at COP 15. Costa Rica’s proposal for a legally binding agreement was submitted to the AWG-LCA and the COP.

At the second plenary meeting of the COP 15 on Wednesday morning, the five Parties introduced their respective proposals under agenda item 3 on “Consideration of proposals by Parties under Article 17 of the Convention”.

Tuvalu proposed that a contact group be set up to discuss its proposal stressing that its proposed legally binding protocol closely follows the Bali Action Plan (BAP) and is not a replacement of but a complement to the Kyoto Protocol. It is prepared to sign two legally binding agreements next week in Copenhagen: an amendment to the Kyoto Protocol and a new protocol.

It said the provisions follow closely the BAP highlighting the importance of actions to maintain temperature rise below 1.5 degrees C and stabilization of greenhouse gases at 350 ppm stressing that “our survival is contingent on these numbers”.

Japan also called for a formal contact group. It reiterated that it is indispensable to have a fair and comprehensive

post-2012 framework where all major economies participate and adopt new single protocol.

[There is no definition of “major economies”.]

A considerable exchange followed reflecting views on the implications of having a contact group.

[Under UN procedures, a contact group can only be established with the consensus of all Parties and the work of a contact group would relate to an agenda item in its entirety. In this case a contact group under item 3 would have to address all five proposals some of which could amount to replacing the Protocol.]

Grenada, on behalf of the Alliance of Small Island Developing States (AOSIS), supported Tuvalu, reiterating that the Declaration of the Heads of States and Governments of AOSIS urged all Parties to work with an increased sense of urgency and purpose towards an ambitious, comprehensive and meaningful outcome that preserves the legal nature of the international climate change regime and the existing commitments under the UNFCCC and its Kyoto Protocol.

Other Parties that also supported Tuvalu’s proposal for a new protocol and a contact group included the Solomon Islands, Cook Islands, Jamaica, Marshall Islands, Sao Tome and Principe, Barbados, Fiji, Palau, Samoa, Sierra Leone, Senegal and Togo.

India said that we already have a good Protocol and referred to the ambitious plan adopted by Parties in Bali to advance implementation of the Convention. It characterised as premature proposals for new protocols while we are still engaged in negotiating an agreed outcome in implementing the Bali Action Plan (BAP). We are all bound by the Kyoto Protocol and the BAP and any attempt to deviate from that would be not only a prejudgment but we should discourage this at this juncture.

China in supporting India said the main task of this COP is to adopt an agreed outcome of the BAP and we should focus on that. It stressed that it has full sympathy with some proposals made by Parties and understand that some of these are done with good intentions. However, it also doubts the intentions behind some of the proposals. We have the Convention and the KP and the BAP. There are important tasks to give full effect to the BAP and hopefully we can adopt an ambitious binding outcome for its implementation. It said proposals (such as new protocols) would distract from the BAP discussion and defeat the main purpose of the COP. Issues raised in various proposals can be discussed under the BAP as the building blocks are there already.

Other Parties that did not support new Protocols, stressed the need to focus on the two tracks (Kyoto Protocol and the Convention/BAP) and therefore did not see the need to set up a contact group included Kuwait, Oman, Saudi Arabia, Algeria, Bahrain, Botswana, South Africa.

At the end of this first round of views, the COP President Connie Hedegaard proposed that a contact group be set up on this item. This was supported by **Grenada on behalf of AOSIS, Barbados, Tuvalu, Costa Rica, Dominican Republic, Belize, Bahamas, Senegal, Kenya, Solomon Islands, Cook Islands.**

In response, **Saudi Arabia, India, Kuwait, Venezuela, Algeria, Kuwait, Oman, Nigeria, Ecuador and China**, disagreed with this and proposed instead that the COP presidency conduct informal consultations.

This led to another round of views on how to proceed that provided more clarifications on the two different proposals from the Parties.

Tuvalu supported by a number of other Parties said that the issue was too important to be dealt with in a small room and that there should be open and transparent discussion. It asked for a suspension of the COP meeting if there is no contact group set up.

Barbados said that it has been a staunch supporter of the KP and the keeping of the two tracks (of negotiations). It wants the BAP agreed outcome to take the form of a legal nature, and wanted a contact group to consider all the proposals on the table.

Venezuela explained that while it totally agreed with the sense of urgency, it could not support the creation of a contact group because Article 17 talks about setting up new protocols and at this point we have a working group on a new commitment period of the KP. Issues like quantified emissions reductions and compliance are part of that working group. “If we set up a contact group now what are we saying to the (AWG-KP)?” It said there are already legally binding commitments that are not being fulfilled, so what is needed is political will.

China said that it fully understands, respect and support the SIDS. The crux is not that we don’t discuss the issues but how to discuss them.

Developed countries remained silent throughout the exchange.

Since there was no consensus a contact group was not set up and informal consultations on how to proceed are still going on as of Thursday afternoon.