

Divergent views over ‘vision’ of outcome under Durban Platform

Penang, 19 Dec. (Meena Raman) – With the conclusion of work by the Ad Hoc Working Groups under the Kyoto Protocol and the Bali Action Plan under the UNFCCC at the recently concluded climate talks in Doha, work will intensify next year under the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP) to develop “a protocol, another legal instrument or an agreed outcome” to be completed no later than 2015.

Discussions under the ADP in Doha on the ‘vision’ of the outcome, which is to be implemented in 2020, saw divergent views among developing and developed countries and provides a foretaste of the views which can be expected next year in the working group’s meetings.

Parties had, at the 17th meeting of the Conference of Parties (COP 17) in Durban, agreed to “launch a process to develop a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties...” under the ADP. They had also agreed 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”.

In Doha, the ADP co-chairs, Mr. Jayant Mauskar (India) and Mr. Harald Dovland (Norway) organised roundtable discussions around two workstreams – workstream 1 to deal with the post-2020 arrangements and workstream 2 on the pre-2020 “mitigation ambition”.

The roundtable discussions under workstream 1 were held on Wednesday, 28 November and Friday, 30 November. The ADP co-chairs asked Parties address several questions which were as follows: how the principles of the Convention will be applied in the new agreement; how national circumstances and changes thereof should be taken into account; how the new agreement will be “applicable to all” in practice, including

approaches to defining differentiated commitments and ways to incentivise full and ambitious participation and ensure effective implementation and compliance arrangements.

Many countries spoke at the roundtable discussions. While several developing countries including India, China, Ecuador, Bolivia, Pakistan and Gambia (for the LDCs) said that on the issue the new agreement being applicable to all, universality of application did not mean uniformity of application, and stressed the importance of the principles of equity and common but differentiated responsibilities (CBDR). Many of them also said that there should be no renegotiation and reinterpretation of the Convention and its principles under the new agreement.

Developed countries on the other hand, including the European Union, the United States, Russia, Japan, Australia, New Zealand and Norway expressed the view that the new agreement being applicable to all means uniformity of legal application but not uniformity of commitments. Many of them stressed that the principles of the Convention (of CBDR) should not be applied in a static way but should be evolved for the post 2020 world, taking into account the responsibility and capacity of countries in relation to mitigation commitments and called for a spectrum of commitments. On the principles of the Convention, New Zealand specifically said they were not up for negotiation, but up for re-interpretation with new circumstances, a view which is shared by all developed countries.

Dovland, the ADP co-chair, in his concluding remarks said that many issues were raised which included - the idea of “bottom-up versus the top down approach” (in deciding mitigation commitments); how to combine a pledge and review approach (on setting mitigation targets) while meeting the objective of the Convention (in stabilising greenhouse gas emissions);

consideration for a spectrum of commitments, elements of a new agreement and references to principles.

India said that the post 2020 arrangements have to be built under the Convention. Hence, the principles of the Convention namely the principles of equity and common but differentiated responsibility (CBDR) will fully apply. The Rio +20 Conference has reiterated this principle very recently. Hence, this principle cannot be ignored, it added.

India said the CBDR principle is recognition of the scientific and environmental fact that the historical contribution of Parties to climate change is different. However, equity is a more fundamental principle which governs the manner in which the responsibilities and commitments are articulated and implemented. In devising the future arrangements, Parties will have to be conscious of this fact. The actions and commitments of Parties in the post 2020 arrangements have to be differentiated on the basis of equity in terms of historical contributions and the fundamental imperatives of social and economic development and poverty eradication.

On the issue of national circumstances, India's view was that they are an important element as they provide choice to countries in choosing the form or nature of their actions. Their importance lies in providing them the policy space to determine how they can contribute sustainably to combating climate change. But this is a subjective fact. The choice of future arrangements should be also strengthened by the objective fact of equity which is expressed by the Convention's principles enshrined in Article 4. The objective fact of social and economic development and the overriding consideration of poverty eradication need to be captured when we elucidate the idea of national circumstances, said India.

For India, 'applicability to all' is a legal form question. It speaks to the issue of binding-ness which means that all Parties will contribute to global efforts. This is a huge advancement over the global arrangements that have so far existed. The fact that all developing countries have agreed to internationalise their actions following Cancun is reflective of this universal responsibility. But applicability does not automatically translate itself to a binding nature of the commitments unless the principles of the Convention are also satisfied.

India believed that the binding-ness of the legal form will depend on how each of the countries gives legal force to what Parties can all agree or what is the agreed outcome. How Parties give it the legal force will be nationally determined.

India said that to encourage broader participation, assurance is needed on how the principles are applied and how the rules of compliance and consequences are operated. Parties need not only give an assurance that the social and economic and developmental imperative will be respected, but the considerations for equitable access to technology and finance are also smooth and facilitative. The arrangement should be operated in a manner that ensures that multilateral rules are fully respected and that threat of unilateral actions is permanently removed. A big incentive for broader participation will be how comprehensively the new arrangement embraces all aspects of climate change including mitigation, adaptation, finance and technology transfer and how effectively the developed countries take the lead.

China said that the mandate of the ADP is to develop "a protocol, another legal instrument or an agreed outcome with legal force under the Convention." This means adherence to the provisions of the Convention, with no amendment, replacement or reinterpretation of the Convention and its annexes. The responsibilities and obligations of all countries in any period must be built on the principles of equity and CBDR. This was also underscored by the Heads of State in Rio plus 20. Historical responsibility is another aspect that must be underscored in the new agreement. Hence, it is important for developed countries to take the lead in combatting climate change. This is not to say that developing countries will do nothing but as was agreed under the BAP, developing countries will continue to undertake nationally appropriate mitigation actions (NAMAs).

On the issue of how national circumstances and changes should be taken into account, China said the Convention already provided for this and national circumstances is not a new idea or concept as evident in Articles 4.1 and Articles 4.2 as well as paragraphs 1 (b)(i) and 1(b)(ii) of the Bali Action Plan (BAP). The BAP approach is consistent with the Convention and its principles, especially of CBDR and this can be the approach under the new agreement, while reflecting national

circumstances. China stressed that the notion of national circumstances should not be abused by developed countries to avoid undertaking their commitments. Further, it should also not be used to begin categorising developing countries into various categories as this would amount to a re-negotiation of the Convention. It would lead to prolonged and difficult negotiations that may not be able to conclude by 2015.

On the issue of applicable to all any outcome under the ADP, said China, must ensure that universality of application is not uniformity of application, since the latter concept implies that there would be the same mandatory nature of obligations for both developing and developed countries and which would go against the principle of CBDR. China said further that the concept is also not new as the Convention is applicable to all as is the BAP and the Kyoto Protocol. In terms of defining the differentiated commitments, China said that differentiation can only be on the basis of equity and CBDR. This was recognised under the BAP in relation to the mitigation of Annex 1 and Non-Annex 1 Parties.

On ways to incentivise full and ambitious participation, China said that the provision of finance, technology transfer and capacity building to developing countries as reflected in Article 4.7 of the Convention is vital and there is also need to address the issue of intellectual property rights (IPRS) which impede technology transfer. Developed countries should not take unilateral measures that will not be an incentive to participate, it added.

Gambia for the **LDCs** said the principles of the Convention applied to the ADP, and the new agreement must be an internationally legally binding protocol, which is applicable to all. It called for universal participation based on the leadership of developed countries and said that the principles of equity and CBDR must apply. There should not be a weakening of the current climate regime. National circumstances cannot be abused for inaction. Universality of application does not mean uniformity of application. The special circumstances of groups like the most vulnerable, small islands and Africa as recognised by the Convention must be taken into account. It also stressed the need to take into account historical responsibility.

On the compliance system that can be in place, it called for lessons to be learnt from the existing rules based regime, which needs to be stronger and lead to higher ambition. Strong compliance and accounting rules must be in place.

Ecuador said that any new instrument builds on what has been worked under the Kyoto Protocol and the BAP. The mandate of the ADP is under the Convention and all the principles will have to apply. The DP must strengthen the current multilateral rules based system, including the principle of equity and CBDR. It is not for a new process for a new regime, which is a reinterpretation of the Convention. Historical responsibility is important and the ecological debt must be paid by developed countries.

On the issue of national circumstances, Ecuador expressed caution that this must not lead to the avoidance of undertaking commitments under the Convention. It should also avoid the re-categorisation of developing countries. On the new agreement, which is to be applicable to all, universality of application is not uniformity of application. Developed and developing countries should not have the same mandatory obligations. The principle of CBDR is important for developing countries who also have to address poverty and inequality. The greatest challenge is to maintain the right to development and also respect Mother Earth and rights of nature.

Bolivia stressed the importance of the CBDR principle and that its basis is derived from history and science as the historical responsibility of developed countries has led to the climate crisis. There is also need to take into account the special circumstances of developing countries, of which poverty is also a national circumstance. The structural situation of the economy must also be taken into account and the biggest challenge for developing countries is to eradicate poverty. There is need for financial resources, technology transfer including the addressing of IPRs for developing countries to have access to technologies and to produce them to meet the climate challenge.

Singapore said that the post 2020 agreement has to acknowledge the national circumstances of Parties. Mitigation actions have to nationally determined, and should not be imposed internationally. Each party will decide themselves what they would nationally contribute, taking into account their own national circumstances. On

what are aspects of national circumstances which are important, Singapore said that they have to be considered in holistic manner and changes can occur over time. It said that changes do occur in areas of socio-economic conditions and that is for the better as this was what development is about. The other aspect of national circumstances is aspects that do not change like being a small-island or a land-locked country or countries whose economic structure deeply depend on agriculture or fossil-fuels which aspects will not change as quickly. Aspects that do not change relate to the vulnerabilities or other physical or geographical attributes.

On the issue of applicable to all, Singapore said that this means that there are common legal obligations for all Parties and this legal obligation has to be the foundation of a new agreement, which is applicable to all. However, having common obligations does not mean the commitments are common. Developed countries need to demonstrate leadership because of their historical responsibility, said Singapore. For any global agreement, it has to be equitable and politically acceptable, with the leadership of developed countries demonstrated in a visible and tangible way. On ways to incentivise the participation of all countries, one element was the provision of means of implementation for developing countries.

Pakistan said the principles of equity and CBDR are important and apply to the DP and developed countries must take the lead in mitigation. The nature of the obligations is in the Convention and historical responsibility is a key issue that cannot be ignored, in taking into account the responsibilities of countries. The notion of applicable to all does not override the principles of equity and CBDR and does not imply uniformity of application. Pakistan added that taking account of national circumstances cannot mean avoidance of action.

Barbados said that its vision of the new agreement is to respond to the urgency of the climate crisis. A strengthened multilateral rules based response must guide a new protocol from 2015. On principles, all of them must apply including equity, CBDR and respective capabilities (CBDR-RC) and the precautionary principle. The Convention is a framework for action, and not an excuse for inaction. On the idea of being applicable to all, it said there must be legally-

binding obligations for all under the new agreement. The nature and time frame for implementation could be varied for some countries. It expressed concern that a pledge and review approach may not be climate effective. The new agreement needs to build on the existing system under the Convention and the Kyoto Protocol. Providing the means of implementation is crucial for incentivising action.

South Africa said that the principles of the Convention must apply, reflecting the science, equity, CBDR-RC, prioritisation of development and the right to development and historical responsibility. It is important to ensure that what is done is fair, rules based and gives content to the right to equitable sharing of atmospheric space informed by the cumulative historical responsibility and use of resources by Annex 1 Parties. The outcome should be balanced as regards mitigation and adaptation, with the provision of finance and technology transfer and for developing countries to achieve sustainable development. On the issue of national circumstances, it said that this is already part of the Convention as seen in the differentiated commitments between developed and developing countries.

South Korea said that the principles of CBDR and equity continue to be valid and relevant today and future and can accommodate a changed context. The new agreement should accommodate differing national circumstances. It echoed the views of Singapore that the “one size fits all” and a formulaic approach will not work.

United States said that the principles of the Convention would apply but when it was drafted, it was meant to evolve over time. Things were not static in 1992 or today. There is need to look at emission trends and the notion of capabilities in meeting the objective of the Convention. The question is not whether the principles apply but how they apply in the new agreement. The agreement needs to be equitable. In practice, mitigation commitments will vary around national circumstances.

The issue is how to craft a regime that is environmentally ambitious, applicable to all with countries acting consistent with their capabilities, said the US. Applicable to all reflects the idea that the legal binding-ness is not different. Any rules for mitigation should apply to all, like reporting

and review. Those rules must be flexible to accommodate national circumstances. The agreement must incentivise broad participation of countries and must be attractive for countries to join. It must also be fair where countries do not feel that they are forced to do something as it is not fair to push them. Their level of effort is similar to others in the same situation.

The US favoured a bottom-up approach, which is self-determined. It is not probable for countries to take actions that undermine their economic development. It said that another aspect of equity is fairness which is to make commitments in a collective effort and that is also adequate, where Parties hold each other to account. The post 2020 agreement needs to be environmentally ambitious, and needs to have a process for incentives.

Russia said that the post 2020 outcome has to be universally applicable, legally-binding and comprehensive. The participation of “major emitters” is needed. It agreed with the US that only an outcome which is satisfactory to all would have Parties accede to it. It favoured a bottom-up approach. While the principles of the Convention are relevant, the issue for Russia was how they will apply. The CBDR principle needs to take into account twenty-first century changes and socio-economic conditions. It suggested a reviewing of the annexes to the Convention. It also supported the view of other developed countries that the new agreement must be internationally binding but the quality in terms of the content and form could differ between developed and developing countries.

Japan said that the principles of the Convention will apply but their interpretation should not be fixed but needs to evolve according to the changes in the world in 2020. There needs to be a dynamic interpretation of the principles. As regards national circumstances, it was of the view that this depended on geo political, economic and complex metrics with different parameters for the future framework. The notion of applicable to all means universal participation and the new framework needed to be climate effective.

Australia, referring to the UNEP Emissions Gap Report said that there needs to be a broad platform of action. It supported international carbon markets for both developed and developing countries. On the principles to be applied to the new agreement, it said that CBDR-

RC, equity and cost-effectiveness can be applied. There needed to be climate-effectiveness and wide coverage of the agreement.

On the issue of applicable to all, it said that this is not one size fits all approach. Parties have to do things in common and there are also differences. All Parties have a common responsibility to demonstrate to act and take action on mitigation. All Parties need to act on the same platform, with the same rules based system. For wide participation, the agreement needs to accommodate the differences in responsibilities and capacities. The types of commitments may differ. It expected developed countries to take on ambitious economy-wide commitments while developing countries work within their capacity, but expect both to be legally binding.

New Zealand said that Parties needed to know the rules of the game. They want to know if national circumstances will be taken into account. Comparability (which it said is a form of equity) is another important idea where Parties need to know if others are doing their fair share. Actions must be self-nominated, and cannot be imposed by others. On the principles of the Convention, it is not up for negotiation, but up for re-interpretation with new circumstances. All Parties should have a common commitment to act; type of legal binding-ness and level of commitment should reflect national circumstances. Rules set are common to all Parties, but with flexibility to reflect national circumstances.

The architecture of the new agreement, it said, could be a hybrid of top down and bottom up, with a top down approach for the global goal, obligations to report and accountable transparently, with obligations to take national action. The bottom up could apply to choice of common rules to apply, and the level of commitment. The structure of the agreement should accommodate a range of applications--sectoral goals, actions regarding research and investment. The agreement should establish processes to encourage increased ambition over time. The agreement should encourage the global goal of climate change by incentives instead of punitive consequences.

The **European Union** said that the Convention principles do apply and it is clear that Parties do not renegotiate the Convention and its principles. However, this does not mean that the principles

are static. For the EU, there is need to see how the principles evolve especially in the post 2020 world. The EU is not looking at uniformity of commitments but of uniformity of legal application. All Parties will need to take on ambitious targets and wanted to see how we do it in way that takes into account Parties responsibilities and capabilities. On the issue of applicability of all, the EU is for a new protocol which has legally-binding obligations for all Parties. There has to be stringency and a reflection of a spectrum of commitments. Countries with greatest responsibility and capacity have to take ambitious targets which are economy wide and Parties with less capacity and responsibility take on less commitment. The EU said there is need to have consideration about the architecture of the new agreement in 2013.

Norway said that the principles of the Convention are only tools and means and are not objectives in themselves. Their application should

be in the context of meeting the objective of Convention. The principles should apply in a practical and operational way to enable climate effectiveness. National circumstances must be taken into account. As regards the notion of applicable to all Parties, this means a common legally binding framework under the Convention. All Parties take basic commitments and there is a duty to act in a common endeavour. The differentiation of commitments should be within the common framework and the process should look at cumulative efforts.

Switzerland said that the principles under the Convention are important but the Convention and the regime should be dynamic. National circumstances are the heart of any regime. Some national circumstances (referring to physical circumstances of countries) may not change but others do change. On the issue of being applicable to all, the core idea is that each Party is committing to act and no one is excused.