

Deep divide over Russian proposal to amend UNFCCC Article 4.2(f)

Durban, 7 Dec (Chee Yoke Ling) – There is deep divide over the proposal from the Russian Federation to amend Article 4.2(f) of the UN Framework Convention on Climate Change, with the majority of Parties supporting continued discussions at the 18th meeting of the COP 18 next year and the Russian Federation requesting for a vote by the Conference of Parties.

The fourth informal consultation ended at 11.30 am today (7 December) with the facilitator Ambassador Javier Diaz of Costa Rica promising to take into account every single view expressed by Parties in his report to the COP Presidency. He said that this issue is extremely important for all delegations and that he will give warning to the Presidency that at any time the issue may be opened by the proponent (the Russian Federation).

The UNFCCC provision concerned is as follows:

Article 4.2 - The developed country Parties and other Parties included in Annex I commit themselves specifically as provided for in the following:

(f) The Conference of the Parties shall review, not later than 31 December 1998, available information with a view to taking decisions regarding such amendments to the lists in Annexes I and II as may be appropriate, with the approval of the Party concerned;

The Russian Federation on 24 May 2011 submitted an amendment text to insert after the words “with the approval of the Party concerned”, the following sentence:

“A further review of amendments to the lists in annexes I and II shall be conducted on a periodic basis, as determined by the Conference of the Parties, until the objective of the Convention has been achieved.”

In its letter accompanying the proposed text, it stated that “taking note of the changes in economic and technological development that have taken place since the adoption of the Convention in 1992

and are continuing to do so, the Russian Federation considers it of primary importance to clearly specify the need for a periodic review of annexes I and II to the Convention in the light of the most up-to-date scientific information, objectively reflecting the dynamics and reality of the current socio- economic development of the Parties to the Convention”.

(Annex I to the Convention contains developed countries and countries with economies in transition, with obligations to reduce greenhouse gas emissions. Annex II to the Convention contains developed countries based on the list member States of the Organization for Economic Cooperation and Development in 1992, with obligations to provide new and additional finance to developing countries. The Annexes reflect the principle of “common but differentiated responsibilities and respective capabilities” of the respective Parties to fulfill their obligations under the Convention.

One of the controversial issues in the ongoing negotiations is the move by developed countries to reinterpret “common but differentiated responsibilities” that will require developing countries to assume the same obligations as developed countries. The Russian proposal is supported by other developed countries but India in the 3 December informal consultation warned that it would not like the Convention to be amended “when we see another document that will see its grave in Durban”, referring to the Kyoto Protocol.)

At the final informal consultation the facilitator began with a summary of the previous 3 sessions’ discussions. He said there is general agreement on the procedure of the amendment [under Article 15(2) of the Convention], set out some of the views expressed, and sought comments on his summary.

Singapore said that overall the summary is a fair representation of the discussions. However, several delegations including itself have expressed concerns

on the profound implications that this particular proposal will have on the Convention and this needs to be reflected in the summary as well.

Namibia said that in the summary read out it does not entirely capture the sentiments expressed yesterday (6 December); it gives a rosier picture than it was with a sort of agreement (implied) but a number of delegations had expressed reservations regarding the amendment. It said that it is more like a one sided summary giving a rosier picture that is not entirely correct and that the summary should reflect both sides.

The facilitator stressed that we are extremely open here and we will reflect the concerns of all Parties.

India said that the proposal has very serious implications and that our Russian colleague agreed (in a previous discussion) that there are implications.

It felt that this is not a priority issue, not because we do not think it is, but there are principles that are enshrined in the Convention and not to be taken lightly. Every article was very carefully drafted. India said that there are broader implications than the legal. It has been a very constructive exchange to help us understand the Russian proposal but we just don't think this is the time to consider this. There are bigger issues like the Indaba that are going on.

India further said that it may be useful to continue informal consultations like this at the next COP – there is a very deep divide, not just among a few but a very deep divide on this.

Bahamas associated itself with India pointing to one more thing that was not captured, that there were some Parties who suggested that this proposal be dropped. It said that it did not hear this in the summary. It shared India's view that this matter needs more discussion, and as Russia said yesterday there are implications, and so Parties need more time to consider this carefully. It supported continued consultations at COP 18.

The facilitator said that any proposal that meets the procedural requirements can be dropped.

Bahamas responded that it did not want to be misunderstood; it was not saying drop the proposal but that the view be reflected in the summary.

The **European Union** said it did not want to get into negotiating the summary with the facilitator, and that the summary is fair. However, there are some issues raised by colleagues as to the intention about the proposal going forward. Its preference is for the issue to be addressed in the wider negotiations, but that it is not comforted by the

wider negotiations.

The **Russian Federation** said it had made a simple legalistic statement that amendment (of the subparagraph concerned) has implications. Any amendment of any legal instrument does have implications. It underscored that any amendment has implications and that it would be over stretch to say its statement referred to substantive implications.

New Zealand said that like EU it believed there are details that would be useful to discuss and as a lawyer she agreed that any legal amendment has implications, but of course there are wider implications and that is why New Zealand thinks the proposal is important.

At this point the facilitator said that he will report to the COP President and the group can continue discussing how to find a way forward.

Zimbabwe stressed that the issue we are discussing is very, very important for all of us. Why should we rush; at the end of the day every Party must be comfortable with this. It agreed with Bahamas that the views of the body must be reflected and said that there is divergence. It emphasized the need to know the implications behind this amendment.

China fully supported India and Bahamas and others also that the proposal from Russia merits continuous discussion of our group at the next COP. On the summary it said that in the discussions Parties' ideas were very clear and everyone agrees we should consider the proposal but there are strong difference of opinions whether we should amend the Article 4.2(f). Procedurally no one is against the proposal, it said. We have to make implications and wisdom of the amendment very clear.

On whether the Convention should be dynamic or evolving, some Parties have said that the document is evolving and the Annex is evolving on a case by case. Therefore many Parties have said there is no need to amend.

The **United States** commended Russia for raising this very important topic and that the discussion is healthy and good for us. It wants to have the Convention evolving with the changing world. It did not see agreement today and said Parties should continue discussions but it would like to see how to introduce the concept of a review.

Namibia said that given the time at our disposal and that this is our last session the time allocated may not have been sufficient for all of us to have

full understanding of the issue to provide convergence and conclusion here. It shared the view of those who need more time on this and said that the opportunity would be the next COP (meeting).

The **Russian Federation** said this is indeed an important opportunity to tackle one of the most important issues that is at the core of the negotiations that we are going through in Durban.

Observing that no other delegation wanted to take the floor, it asked if the group was finishing the meeting at that point.

The facilitator said that we have time if anyone wants to discuss this. Some delegations expressed the need to continue discussion in the next COP and he would take this into consideration.

Zimbabwe stressed that the continued discussion be in an informal mode.

The facilitator said that he will put all the flavour of the discussion in his report to the President and that we will move this to COP 18.

The **Russian Federation** said that having received the facilitator's clarification its judgment is that it is indeed an issue of paramount importance. It is more appropriate to tackle this issue when we are in the midst of negotiations of the future climate regime, on the way forward on what we are going to do after Durban, and that it is not by chance that it chose this time to submit this proposal.

It said that a case-by-case approach is not sufficient to enhance the implementation of the Convention and that we need a holistic assessment. It then said that its judgment is that we have exhausted the possibilities to reach a consensus and that the proposal should be adopted by $\frac{3}{4}$ majority at the COP. It asked the facilitator to report to the Presidency that that is what it are requesting.

When asked by the facilitator to clarify the comment on a vote, the Russian Federation said we are under the formal process to consider amendments submitted by Parties and that the Convention provides that when all efforts to reach consensus have been exhausted, the amendment shall be adopted by a $\frac{3}{4}$ majority. It said that is what the Convention provides, not what it is requesting.

[Article 15.3 provides that "*The Parties shall make every effort to reach agreement on any proposed amendment to the Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting*".]

The facilitator asked if the Russian Federation is

asking for a vote at the COP on Friday and if it wants him to report to the President that consensus is not reached and the COP will vote.

The Russian Federation replied that yes we are requesting for a vote, and will not prejudge – it could be Friday, Thursday, Monday.

India then sought clarification on who judges that all efforts at consensus have been exhausted. Is it the proponent of the amendment? The President? The Parties? Only when a determination is done shall the vote take place. My guess is that Parties do have a say to call for a vote, it said.

The facilitator said that it has to be decided by the COP according to the rules of procedure and it is not for this group to say yes or not.

When India asked if the facilitator's summary will include Russia's call for a vote, he said that Russia is not saying that here but that it may call for a vote at COP.

Zimbabwe expressed strong concerns that we are setting a precedent and that it did not know where the kind of conclusion that Russia is pushing would take us. It appealed that we continue to discuss as many have proposed and said it is afraid what this kind of push will cause.

The facilitator said it is the prerogative of Russia under the rules of procedure to make this proposal and that he will take all concerns of Parties here. He added that it is good for all of us to know about the implications and the idea of what Russia intends to do. I will then warn the President about the possibility that this will happen, he said.

Singapore expressed appreciation that the facilitator will report everything from these sessions. It said that the facilitator's report to the President where he will indicate Russia's proposal for a vote, should also reflect that there are Parties here that request for this to be continued at COP 18.

The **Russian Federation** said it is not pushing for anything and would like our discussions to stay within the legal procedures and that it was even less appropriate to talk about precedent. It suggested that the Secretariat could look more into the matter and the Presidency could come up with a note.

Zimbabwe then said that it trusts the facilitator but given the importance of the issue it requested for a copy of the facilitator's text (summary) that will go to the Presidency. It is your prerogative but we request the text of your summary, it said.

Russia said while it is for the chair to decide on this, a summary is not for negotiations; it is

prerogative of the facilitator to circulate a summary but it has no legal status and it is entirely up to the discretion of the facilitator.

The facilitator said that his summary of every single session here is to guide discussion and that he has not received any instruction from President to circulate summaries. He asked Parties to trust him to convey his report and that he is not going to circulate his summary, adding that the President requested him to report and he will report every single thing that happened here.

Zimbabwe said that it also has instructions to report back to its minister. For us what is discussed here is a matter of life and death, so we have no option – it is a matter of principle. We trust your judgment – but at the same time we need to give our ministers a report too.

China said it fully supports the chairmanship and guidance of the facilitator, and that it respects the request by Russia and the right of Russia to make the request. It can go along with idea that the facilitator report this request (to the Presidency). But in your report please report that the majority of Parties here request continued discussion at the next COP, it said.

China added that it cannot be said that all efforts are exhausted. Some Parties also raise very clearly that they cannot agree that all efforts have been exhausted and China cannot agree with that conclusion too (that all efforts have been exhausted). We have good discussions on many perspectives but this is a very initial discussion.

India said that these discussions have been very useful but it understands the spirit of what Zimbabwe said. It trusts the facilitator to reflect all views especially since there is a deep divide.

On the question of whether all efforts at consensus have been exhausted, India said that determination must be done by the COP by consensus, and asked for clarification on this.

The facilitator closed the discussion with a promise to take into account every single view, He said that this is not an exhausted item, and that discussions may continue at the next COP and Russia said that we must continue discussion based on the provisions of the Convention (related to exhaustion of consensus and a vote). He stressed that this issue (the proposed amendment) is extremely important for all delegations and extremely important for the legal implications of all that are proposed here.