

## Kyoto Protocol “second commitment period” remains uncertain

Beijing, 16 Dec (Chee Yoke Ling) – The Kyoto Protocol was given a political boost in a decision on the “Outcome of the work of the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol at its sixteenth session” adopted on 11 December.

However, what emerged from Durban were still pledges by developed countries that have indicated their intention to take on a second commitment period under the Kyoto Protocol (KP) to reduce greenhouse gases emissions. Even these are conditional on the domestic processes of some developed country Parties or a new legally binding agreement on greenhouse gases emissions reduction that would effectively replace the KP.

Several developing country Parties were concerned that there is still no legally binding second commitment period as envisaged under the KP; the ambition level is too low compared to what is required by science; there is no aggregate number for the overall reduction; and the length of the commitment period is uncertain (can be 5 or 8 years to be decided in 2012). Some expert observers are of the view that the essentially voluntary nature of the Durban decision, with no political support for any more commitment periods, will mark the effective end of the KP.

The Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWGKP) was mandated at the end of 2005 to “*to consider further commitments for Parties included in Annex I (of the UN Framework Convention on Climate Change) for the period beyond 2012 in accordance with Article 3, paragraph 9, of the Protocol*”. The specific mandate is to agree on the reduction targets in aggregate and individually or jointly of Annex 1 Parties (developed countries and countries with economies in transition as listed).

Up until the end of the Durban conference that was

extended by a full day and night, there was no consensus in the AWGKP on the draft decision on the second commitment period prepared by the AWGKP Chair, Adrian Macey of New Zealand.

After a heated debate at the closing plenary session of the AWGKP on Saturday night (10 December), with several developing country Parties expressing frustration and disappointment, Macey decided to transmit the draft decision under his own responsibility for approval by the Conference of Parties to the UNFCCC serving as the Meeting of Parties to the Kyoto Protocol at its 7<sup>th</sup> session (CMP 7).

During the AWGKP plenary, Nicaragua, on behalf of the Bolivarian Alliance of the Peoples of Our America (ALBA), Bolivia and Kenya proposed specific amendments to strengthen the draft decision expressing deep concerns over the weak operative paragraphs through the use of terms such as “takes note” (rather than “acknowledge”) and “invites” (rather than “mandate”). The paragraphs concerned and later adopted by the CMP 7 without any change are as follows:

Para 3: “*Takes note* of the proposed amendments to the Kyoto Protocol” developed by the AWGKP contained in the Annexes of the Decision;

Para 4: “*Further takes note* of the quantified economy-wide emission reduction targets to be implemented by Parties included in Annex I as communicated by them ... and of the intention of these Parties to convert these targets to quantified emission limitation or reduction objectives (QELROs) for the second commitment period under the Kyoto Protocol”;

Para 5: “*Invites* Parties included in Annex I listed in Annex 1 to this decision to submit information on their QELROs for the second commitment period under the Kyoto Protocol by 1 May 2012 for consideration by” the AWGKP in its 17<sup>th</sup> session in

2012.

Other Parties including Venezuela and Saudi Arabia also spoke strongly on the weakness of these paragraphs as a way forward for the KP.

**Bolivia** also pointed out that the weakness of preambular paragraph 9 that states, “*Aiming to ensure that aggregate emissions of greenhouse gases by Parties included in Annex I are reduced by at least 25-40 per cent below 1990 levels by 2020 ...*”

It expressed concern that this range (25-40%) is too big; it does not give a clear answer of how much of the greenhouse gases should be reduced for the next years. What is needed are single numbers of intention of how much reduction will be made, Bolivia said.

**Kenya** proposed the insertion in the preamble para 8 the words: “to ensure no gap between the first and second commitment periods of the KP”. It asked for replacement of preamble para 9 with “Reaffirming that immediate action shall be taken by Annex 1 Parties to ensure that the emissions reduction commitments are science-based and sufficient to contribute in an equitable manner towards limiting the global average temperature increase to well below below 1.5 degrees Centigrade above industrial levels in a time frame that protects the ecosystem, food production and sustainable development”.

It concurred with those who find the language in paras 3, 4, 5 and 6 as weak and this should be strengthened. It also proposed para 6bis: “Decides that the second CP shall apply to all Parties immediately upon the conclusion of the first commitment period ... and shall apply on a provisional basis until entry into force of the amendment of each Party”.

Nicaragua made several proposals that it repeated at the CMP 7 final plenary (see below).

The European Union made three amendment proposals. The first was to include the option of ending the second commitment period in 2020 (Macey’s text stated 2017) and this was accepted even though several countries including Grenada, Bolivia, Gambia, Kenya and Colombia had spoken against the change.

**Connie Hedegaard, the EU’s Climate Change Commissioner**, said it had been raised in the ministerial consultations and that there is a general understanding that there has to be a symmetry between what we do in the KP and the LCA (long term cooperative action under the UNFCCC that is

addressed by a separate ad hoc working group), and so it must be 2020.

(The year 2020 relates to the decision subsequently adopted by the UNFCCC COP on a new process of negotiations to commence work in the first half of 2012 and to be completed no later than 2015 in order for the adoption of a protocol, legal instrument or agreed outcome with legal force under the Convention, applicable to all Parties, in 2015 and for it to come into effect and be implemented from 2020. See TWN Durban Update No. 25: Major clash of paradigms in launch of new climate talks.)

The EU’s other amendments were to delete part of a paragraph relating to units acquired from emissions trading under the Article 17 of the KP and to include a paragraph on land use, land-use change and forestry.

**Japan** and the **Russian Federation** also had proposals for amendments.

**Saudi Arabia** had some proposals but the Chair did not allow the delegate to proceed stating that, “we have passed the time for amendments. Any amendments that Parties really want to propose will have to be done in the plenary”.

When Saudi Arabia retorted that the Chair had accepted from other Parties proposals that went into brackets (referring to the EU), the Chair responded by saying that he had not accepted proposals from other Parties. “They were read out quickly. I listen to other proposals. It is unlikely that any of the proposals can achieve consensus and that remains my view. We are past the stage to listen to long lists of amendments,” Macey said.

The only change that was allowed was the proposal by the EU to include the option of 2020 as the end of the second commitment period.

The adopted decision now reads: “*Decides* that the second commitment period under the Kyoto Protocol shall begin on 1 January 2013 and end either on 31 December 2017 or 31 December 2020, to be decided by the AWGKP at its 17<sup>th</sup> session (in 2012)”.

### *Only pledges with QEROLS deferred to 2012*

In addition to the weak nature of the operational paragraphs 3 to 5 of the decision that developing countries had raised, what currently exist are only pledges and even then, not all Annex 1 Parties have submitted those.

Annex 1 to the CMP 7 decision contains a table that is to be the new Annex B to the Kyoto Protocol

setting out the greenhouse gases emissions reduction targets of developed countries and countries with economies in transition that are Parties to the Protocol. Annex B is designed to contain the quantified emission limitation or reduction objectives (QELROs) of each Party concerned.

[The QELRO, expressed as a percentage in relation to a base year (1990 for the first commitment period), denotes the average level of emissions that an Annex B Party could emit on an annual basis during a given commitment period. Pledges represent the end point of a trajectory of emissions that a Party sets itself to achieve. The transformation of pledges into QELROs situates the pledges in the context of a commitment period and related accounting of emissions and removals under the KP. In practical terms, it involves calculating the average annual emissions relative to a base year that would fit the emissions trajectory leading to the pledged target. Source: UNFCCC Secretariat.]

The EU has inscribed its 20% emissions reduction pledge in Annex 1 of the CMP decision, which is already legislated as its own internally agreed emissions reduction target. “As part of a global and comprehensive agreement for the period beyond 2012”, the EU makes “a conditional offer to move to a 30% reduction by 2020 compared to 1990 levels, provided that other developed countries commit themselves to comparable emission reductions and developing countries contribute adequately according to their responsibilities and respective capabilities” [footnote (g) in Annex 1 of the Decision].

Australia and New Zealand have not inscribed any numbers and indicate they are “prepared to consider” submitting information on their QELRO pursuant to the CMP Decision “following the necessary domestic processes and taking into account” the rest of the Durban package and the new decisions on the accounting and other rules under the KP [footnotes (a) and (l) in Annex 1 of the Decision].

Whether there will be QEROLS from all Annex 1 Parties by 1 May 2012 (the deadline for submission) remains to be seen.

Meanwhile on 8 June 2011, Canada had notified the UNFCCC Secretariat that it did not intend to participate in a second commitment period of the Kyoto Protocol. This was followed by an announcement on 12 December (the day after the Durban conference ended) by Environment

Minister Peter Kent that Canada is invoking its legal right to withdraw from the Protocol. Kent was in Durban.

(Canada is not able to meet its first commitment period reduction target by 2012 when the period ends.)

In December 2010 the Russian Federation and Japan were the first to inform the UNFCCC Secretariat that they did not intend to take on a second commitment period.

### *Weak decision adopted*

Despite the continued efforts by some developing countries to strengthen the decision during the final formal CMP 7 plenary, the take-it-or-leave-it approach to the adoption of all the key decisions in Durban also played out for this one.

In her opening remarks when the plenary convened in the early hours of Sunday, 11 December, South African Foreign Minister Ms. Maite Nkoana-Mashabane, in her capacity as President of the COP/CMP reminded Parties of the undertaking that was made on the work of the AWGKP.

[At an informal joint plenary of the COP and CMP shortly before, the “Durban package” was presented to Parties comprising (i) the second commitment period for emissions reductions by Annex 1 Parties under the Kyoto Protocol; (ii) a decision on the work of the AWGLCA; (iii) a decision on the Green Climate Fund; and (iv) an agreement on the establishment of a new ad hoc working group on the Durban Platform for Enhanced Action. The “Durban Platform” document triggered strong statements, disagreements among developed and developing countries and considerable frustration and confusion.

Mashabane asked Parties to adopt each of the decisions without further debate and amendments when they are presented during the formal sessions of the COP and the CMP respectively, saying that Parties required “assurances from each other to agree to all the draft decisions”, clearly suggesting a “take-it-or-leave-it” approach. See TWN Durban Updates No. 25 on “Major clash of paradigms in launch of new climate talks”, and No. 26 on “AWGLCA Chair transmits report for adoption despite strong protests”.]

Macey as Chair of the AWGKP reported on the work during the past year on other issues and said that unfortunately the group was not able to agree on the text (on the second commitment period) which he had presented under his own responsibility and based on his best assessment of

what is a balanced and achievable outcome. He then said he was forwarding that text to the CMP for its consideration.

He said further that during the closing plenary of the AWGKP Parties indicated a number of areas where they would like changes made. He reviewed these carefully aiming to assess which changes could be agreed and whether these could impact on the delicate political balance needed to be achieved.

Macey said that a primary issue of concern to Parties was the length of the commitment period. You will see in the text that the option of 5 or 8 years have been left in brackets – 2017 and 2020. There are consequential brackets to the rest of the text. He added that since the text was issued, his understanding is that the length would be decided at the next session of the AWGKP.

**Bolivia** said that in the AWGKP plenary it had supported a Party (Gambia on behalf of LDCs) that suggested the deletion or bracketing of para 12bis (to be added to Article 3 of the KP). This had not been done and Bolivia asked for an explanation.

(Para 12bis reads: “Any units generated from market-based mechanisms to be established under the Convention or its instruments may be used by Parties included in Annex I to assist them in achieving compliance with their quantified emission limitation and reduction commitments under Article 3. Any such units which a Party acquires from another Party to the Convention shall be added to the assigned amount for the acquiring Party and subtracted from the quantity of units held by the transferring Party”.)

**Papua New Guinea** said that it was very comfortable to work with Bolivia on non-market options and we will expect that they will work with us on market options. It is not about vetoing one country’s ideas against another’s. It did not accept deletion.

Bolivia replied that its observation on paragraph 12bis was not because it is linked with market mechanisms of the KP but because it makes a linkage with future market based mechanisms under the Convention. It implies the possibility – that is a question – to have those mechanisms in the context of the LCA. We still have to consider those documents in the context of the LCA; it is written in future terms, market-based mechanisms that we have not designed yet. We have not approved it yet. We suggest to put that paragraph in brackets.

**Nicaragua (on behalf of ALBA)** said the group had proposed amendments in both the ministerial

meeting and on the floor in the AWGKP. Para 4 “takes note” of intentions, and to have a truly binding second commitment period it should be “acknowledges commitments” rather than taking note of intention. Furthermore if we have amendments to the KP, para 3 that states “takes note of the proposed amendments” should be “approves the proposed amendments”.

On para 1 that decides that the second commitment period shall begin on 1 January 2013 and end on 31 December 2017 and para 5 where QELROs will be decided by 2012 Nicaragua said ratification would not be available for all Parties between May 2012 and 1 January 2013. This would open up the issue of a gap. So we had requested amendment to eliminate the gap because there was a consensus of all concerned to avoid a gap.

It was also concerned in the preamble about noting the importance of developing a comprehensive global response to climate change – we see this as contradictory with Article 10 (of KP on common but differentiated responsibilities). It added that language needs to be introduced to reinforce that we are not abandoning under any circumstances CDDR nor should this be interpreted as leading to merging both tracks (KP and LCA) or erasing everything from the blackboard and starting again. So instead of global response there should be language to reflect CDDR.

Nicaragua stressed it was disconcerted that after the 2 presentations (at the ministerial and AWGKP) not one of ALBA’s proposed changes had been introduced into the text. Nor were we given any explanation why they were not. So we raise once again for the third time the serious concerns we have. The purpose is to get to agreement, we want to reach agreement, but under conditions that we can all accept.

The **EU** said it was a little bit surprised by this discussion because in the light of the package that we have adopted why are we spending so much time on this? Of course I can also make a little change dear to our heart on page 9 para 12 ter to delete “If these units are acquired under Art 17”. I am happy to take that back if we all stick to the package that we just approved a few moments ago.

At this point the COP President said she thought questions were asked for clarity which she was going to give to the AWGKP Chair to quickly respond to. I intended to remind without sounding like we will no longer be inclusive, frank. We’ve spent hours on this in the joint informal plenary on the package. If you are to open one side of the

package we are inviting other delegations to go back to open – and we start tit for tit and then back to chicken and egg and then we will get ourselves back to where we started which will not be correct.

She repeated that the AWGKP Chair will respond for clarity, which she did not think was intending to open the document.

Macey said that in the course of the last few days and most recently at the plenary of the AWGKP Parties would be very well aware of the major concerns of Parties on parts of our text. It is a difficult process to reach consensus here. He said Parties had been working on issues for 5 and half years and we have made more progress in a space of 2 weeks than we have in previous 5 years on some of them. So it is going to be difficult for some Parties to give up on their strongly held proposals.

He reiterated that he did review very carefully all proposals and suggestions heard at the (AWGKP) plenary and he needed to assess if any of the changes could be agreed and whether this could disturb the very delicate political balance that we have achieved. He reiterated that the text before the CMP was his assessment of where consensus could be found.

The President then continued to read the other elements of the decision (on matters related to emissions trading, greenhouse gases inventories etc) and proposed that these decisions be a part of our comprehensive Durban outcome.

She gaveled and in the midst of applause Bolivia asked to speak.

**Bolivia** said it asked for the floor and waited respectfully for the President to finish. I was referring to the document to make observations and suddenly it is approved. We as Parties have the right to make observations. We do not want to be an obstacle to that but we have the right to present observations. We want an outcome. Please register that Bolivia does not agree with para 3, 12 bis of the last document that you have approved. It has to be registered that we do not agree with that. We are a Party and we ask you please to respect our opinion.

Mashabane told Bolivia its request would be noted and immediately proceeded to resume the 10th meeting of the UNFCCC COP at its 17th session to adopt COP decisions.

The Secretariat at this point drew her attention to Nicaragua that had also asked to speak.

**Nicaragua** said it also had asked for the floor previously. It clarified that the ALBA group had made its proposal twice, once in the ministerial and the second time in the AWGKP meeting. Therefore we would expect that if the (Chair) had his observation, that (Parties) could receive an explanation for why the Chair of the working group was not in agreement rather than having a wholesale elimination of all the proposals. This is essential so that the approval by the (Parties) is done with full information and that our queries and our preoccupations, our concerns can be addressed in a spirit of frank, open and fraternal dialogue looking at producing a real consensus and not an apparent consensus.

It said that when our concerns here have not been clarified - we have had no dialogue on them – this even becomes a matter of whether the consultation processes are real when we present something two times and they are ignored. It does not mean every recommendation is going to be approved. Quite obviously, you win some and you lose some. But to lose them all, and you do not get any explanation really does not seem to be appropriate.

As for the package that the EU mentioned – how can this be the case – not all of us were in on the package. There are not two classes of sovereign states here– those in the package and those outside. Our opinions are just as worthy in international law and just as worthy in reaching these decisions as those inside the package.

Nicaragua said that the AWGKP Chair does not have to waste time and could dialogue with us on our proposals. We could do so in the spirit of improving and fortifying the document as well as addressing our concerns.

Mashabane said she would allow the AWGKP chair to dialogue with Nicaragua and went on to say with your permission I ask that we continue, and I thank you for your contribution and your understanding.

**Japan** said that in the AWGKP meeting it proposed amendment to para 5 (of the decision in L3/Add.1) but it was not amended in the document we are looking at. We are in a position to follow the consensus but I like to make sure we are not in a position to submit our QELRO and we will send a letter to the Secretary to make sure our position is respected.

With that the CMP 7 plenary was ended.