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## Geneva News Update

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### Parties Exchange Views on Structure of 2015 Climate Agreement

Geneva, 12 February (Indrajit Bose) – Parties at the Geneva climate change meeting under the UNFCCC's Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP) exchanged views on the structure of the 2015 agreement on 11 February.

ADP Co-chair Daniel Reifsnyder (the United States) presented a few questions to the Parties for their consideration: what is it Parties think this agreement should do? How will it advance what we have in the Convention? Are we negotiating a one-time agreement or is it meant to endure through multiple commitment periods? How will the institutional mechanisms created since Copenhagen be dealt with in the new agreement? Should identical provisions apply to both mitigation and adaptation or should it be of a different nature? The same question stands for means of implementation. Some said it is useful to discuss rules of the agreement. What would belong to the agreement and what would be better suited to COP (Conference of Parties) decisions and why?

In response, many Parties gave their views. Broadly, there were differences between developed and developing countries on what should feature in the agreement and what should feature in COP decisions. A number of developing countries were of the view that it is too early to discuss the issue and that the content and the legal form of the agreement needed to be agreed upon first.

Some developing countries also responded sharply to developed countries' proposals on differentiation.

**Malaysia**, for the **Like Minded Developing Countries (LMDC)**, said there should be no backsliding, especially on the principle of common but differentiated responsibilities (CBDR) and the agreement should be aligned with the Convention and the Lima decision. Referring to some Parties (the United States and New Zealand) who talked about

having an approach based on 'bifurcation' and not 'differentiation', Malaysia said that this is a dangerous route to travel and sows the seeds of collapse (of the climate talks).

(On 10 February, the US had proposed a bifurcation approach on the basis of new annexes that do not differentiate between developed and developing countries but on the basis of new categories of countries that could be based on World Bank criteria.)

Echoing the views of the LMDC, **India** said that 'the present exercise is not meant to steam roll a new Convention by the backdoor with new definitions, categorization, annexes ... Going down that road may call for another ad hoc platform for enhanced interpretation, if all Parties are willing to embark on that journey.'

While several members of the **Umbrella Group** called for the Paris agreement to be one that is durable, several developing countries including the **LMDC** and **China** said that the Convention is the durable agreement, which should be enhanced in its implementation.

Responding to Switzerland's statement that the objective of the new agreement is not to have more finance, but to have more impact, **Brazil** said, 'If we are aiming at a balanced outcome, such statements are not helpful at all.'

There were several other key proposals by Parties and some sharp responses by developing countries, which are presented below.

Speaking for the **LMDC**, **Malaysia** said that Parties are enhancing action under a durable Convention. Parties should consider the durability of the Convention. There is a very clear durable regime in Articles 2 (Objective), 4 (Commitments), 7 (COP) and 12 (Communication of Information related to Implementation) of the Convention, it said. 'So we have an extremely durable agreement. It should deal with enhanced action at every stage to enhance the implementation of the Convention.'

Referring to Switzerland's intervention on changed technology and prices (see below Switzerland's intervention), Malaysia said that it is important to know what kind of resources will be made available to implement the obligations under the agreement.

On whether there should be identical provisions between the different elements, Malaysia said that they are not talking of different nature with regard to the elements. 'We are talking about balanced treatment of the elements. We need to treat the ambition issue and have the same time frame for mitigation and finance. The idea is to provide synergy between the elements like mitigation and finance and not de-link the two; or look at them as being of a completely different nature,' it said.

On the rules of the agreement, Malaysia said that the LMDC feels that the new rules must be directed to strengthening of the existing rules. For example, MRV (Measuring, Reporting and Verification) of support needs to be strengthened, it said.

On what goes to the agreement and what is in the decisions, it said that there should be no hierarchy and COP decisions could provide the details. 'We must look at the nature of the agreement, the content of the provisions and only then can we decide what are the methods and the minutiae,' it said, adding that it is premature to have that discussion.

On institutions, it said that there seems to be convergence that existing institutions should be strengthened, with a mandate for new institutions.

The structure, it said, should reflect and operationalise the durable aspect of the Convention, and focus on action with respect to the six core elements and differentiation between developed and developing countries.

Malaysia said that it heard with concern the reflection of some Parties who talked of 'bifurcation not differentiation', stressing that, 'This is a dangerous road to travel and sows the seeds of collapse.' Developed countries must fulfil their commitments and not shift the burden, it said. 'We are talking about enhanced action; we are not talking about everybody starting at the same level. We will be building on the Convention. There should be no backsliding, especially on the CBDR principle and it should be aligned to the Convention and the Lima decision,' it stressed.

Speaking for the **Arab Group** on the structure of the agreement, **Saudi Arabia** said that there is a mandate that sets a structure for the text. The mandate is clear: the six elements (mitigation, adaptation, finance, technology development and transfer, capacity building and transparency of action and

support) need to be the structure of the text. We need to make sure we achieve a balance. 'Once the structure is acceptable to all, comes the form and then the objective is to deliver on the form. The form is nothing but a tool and the legal nature is a tool to execute the agreement. These tools should not be discussed before we discuss content,' it said.

Speaking for the **Least Developed Countries (LDCs)**, **Tuvalu** said it is comfortable with the structure of the elements text since there is a logical flow. 'Of course, as we are aware, there is a separate section on loss and damage that is reflected in a footnote in the document.'

It added that elements related to transparency and MRV apply across the agreement. 'We would not like to see those brought into other sections. We need to see a parallel approach to MRV with respect to the other elements,' it said and added that Parties are in a new world where developing countries are being asked to make efforts in mitigation. 'We need to have a clear indication of what support will be made available for that effort,' it said.

Calling for a protocol, Tuvalu said the new agreement should be a Marshall Plan to address climate change. It also said that while there is a need to give existing institutions a permanent base since Parties are in a 'new world', new institutions should also be there. 'New institutions for loss and damage are critical,' it said. It called on all the elements to be reflected in a balanced way. It said it is premature to discuss what belongs to the agreement and what should be in COP decisions.

Speaking for the **Alliance of Small Island States (AOSIS)**, the **Maldives** said that the Durban mandate is clear on the options on the legal form that Parties will adopt in Paris. It said that the objective needs greater specificity and for loss and damage to have its own dedicated heading. It called for clarity on markets and said that institutional arrangements need attention as a cross-cutting issue. It said that Parties would be crafting text in a legal way that will be for a 'serious' duration and that the text needs to be structured for this purpose. 'We need clear and concise articles for an extended timeframe into the middle of the century,' said the Maldives. On agreement versus accompanying decisions, it said that it is premature to discuss that and would need to see further work on structure.

Speaking for the **Independent Association for Latin America and the Caribbean (AILAC)**, **Guatemala** called for an agreement that is ambitious and universal, applicable to all, one that has political buy-in and is a race to the top with no backsliding and gradual scaling up of commitments.

**China** said that the structure of the agreement has been laid out by the Convention itself and matters on structure have to be alongside the Durban mandate. The 2015 agreement should be based on Articles 4 (Commitments) and 12 (Communication of Information related to Implementation) of the Convention and the annexes which reflect differentiation between developed and developing countries.

On the purpose of the agreement it said that the purpose is to reach the objective in Article 2 and which can be done only through enhanced action in mitigation, adaptation, finance, technology transfer and capacity building in accordance with the principles and provisions of the Convention. On whether it is a one-time or durable agreement, China said that the only durable thing in the entire exercise is the Convention itself, which is long-lasting. The 2015 agreement is about implementing the Convention, not replacing it, stressed China. The agreement could also contain trigger on a post-2030 timeframe, it said.

On institutional arrangements, China said the existing institutional arrangements could be anchored and enhanced in the agreement, but any other new institution to be established should also be anchored.

It said paragraph 2 of the Lima decision says Parties should address all the elements. The balanced manner should apply for both content and legal nature, it said. It called for equal treatment of the mandated elements. On what should go to the agreement and what should be part of accompanying decisions, China said it is too early to discuss the issue and that the content and the legal form need to be agreed upon before embarking on such a discussion. It also said that the current structure of the negotiating text cannot pre-judge the structure of the final agreement.

**India** said that it is for a short preamble and the objective section must cover the essential elements. ‘The Durban mandate provides what we can call the kernel of the 2015 outcome, for the enhanced implementation of all elements. This was further reiterated in the Lima decision. The nature of information and level of details may vary for each of them, but all these elements have to find a place in the core agreement. We may have details of implementation or MRV for all of them worked out in subsequent decisions.’

‘We need to make sure that the elements text is in line with the Lima decision, without backsliding or reopening the consensus achieved there. The 2015 outcome must be under the Convention, it must be balanced, in accordance with CBDR, also focus on

Adaptation, Loss and damage as another element, emphasize on Finance. There should be no ex-ante process of assessment for INDCs as they are country driven,’ said India.

‘The present exercise is not meant to steamroll a new Convention by the backdoor with new definitions, categorization, annexes X, Y, Z or whatever you want to call it. Going down that road may call for another ad hoc platform for enhanced interpretation, if all Parties are willing to embark on that journey,’ said India and added that it is clear that the Durban mandate is for enhanced implementation by all Parties under the Convention and in accordance with its principles and provisions.

On the legal nature, it said that countries are still unclear about the legal nature of the 2015 outcome and therefore the organisation of the contents would have to be deferred till Parties obtained clarity on it. India also suggested a workshop ‘to clarify the three options – an agreement or Protocol or an agreed outcome with legal force – to understand what implications they have on the Parties, compliance and so on and so forth’.

On the question of what should feature in the core agreement and what would be appropriate for COP decisions, India said that it would depend on the content of the agreement. ‘But what we certainly know is that the 2015 outcome must address all elements in a balanced manner,’ it stressed.

India said it cannot agree to a process ‘that drives us towards a mitigation centric agreement at the core and relegates all other elements to COP decisions. Clear articulation of Means of implementation and specific goals for enhancing them – Finance, Technology Transfer and Capacity Building – in the core agreement is a necessary and integral part of it,’ it said.

India clarified that while the agreement would have universal application, it would not be a uniform application. Equity and differentiation will inform each and every aspect of the entire 2015 outcome – each of its elements and provisions for MRV etc. ‘Developing countries would definitely contribute but in a differentiated manner,’ it said.

On the question of institutions, India said many institutions had not delivered. ‘We need to plug the loopholes, reorient and strengthen them and anchor them in the 2015 outcome,’ it said. India also emphasised on a ‘crucial design issue, which needs to be addressed’. ‘How are the results on 2013-15 Review, IPCC 5th AR, and work of subsidiary bodies (SBI, SBSTA, GCF, Technology Mechanism) going to inform the ADP work, especially the draft text, between Geneva and Paris?’ it asked.

India also highlighted that Workstream 2 (on pre-2020 ambition) decisions and texts for the same and timelines need to be finalised before Paris.

Speaking in its own capacity, **Saudi Arabia** said, 'We have already discussed what we want in the agreement are ambition and universal participation. It is very important to take the mandates we have and build a good agreement that takes into account those objectives that we have already agreed to.' On mitigation and adaptation, Saudi Arabia said that both are very important. 'They have different characteristics but we need to have clarity in the general main objective. We need to make sure we are helping both the processes,' it said. One is performance oriented and the other is facilitative. 'If we are doing one, then how much do we have to do on the other? If we want to do more, without means of implementation, that will never happen,' it said.

**Argentina** stressed that it is essential to align the elements text with the Lima decision by deleting concepts such as 'evolving CBDR' and 'Parties in a position to do so' that were left out in Lima. Argentina also called for the land sector to be excluded in the new agreement since the terms proposed were not in accordance with the Convention and is against food security, social development and poverty eradication.

**Iran and Pakistan** also supported the LMDC in their interventions.

**Venezuela** said to those who think that ADP is about creating a new regime that the process did not begin in Durban. It is a long-term process that builds on the Convention and Kyoto Protocol and the Bali Action Plan. It stressed on the need to build on what is existing and how to transition.

**Brazil** agreed with the EU that for accountability, there needs to be a mandate in the agreement and the details could be in the decisions. It said it was disappointed to hear Switzerland say that the objective is not to have more finance. 'If we are aiming at a balanced outcome, such statements are not helpful at all,' it said. It also added that Switzerland's proposal on flexibility to reflect different circumstances was not in line with what was agreed in Lima. 'The Lima decision refers to the Convention and CBDR,' it said.

In response to Japan, it said, on allowing accounting for markets at national level, any Party is free to implement domestic market as per its own legislation, but at the international level, it is important to have common understanding of agreed accounting rules.

On the objective of the agreement, Brazil said that Switzerland had made an interesting comment

about the need for a new agreement. 'There is a clear demand from our societies that we act and that is what motivates us to be together to make rules that are ambitious and fair and for us to provide them a greater response,' it said. Article 2, it said, is the starting point, not the end point. 'We need to know what we need to include, which is a common goal and that is a temperature limit relative to pre-industrial levels. When temperature limit is mentioned, it is not about mitigation, but also about adaptation and means of implementation,' it stressed.

On what goes into the agreement versus COP decisions, Brazil said that there should be no hierarchy of elements. It is important to keep the balance, it said. COP decisions in this regard will provide the package, procedures and methodologies, it said. It also said that it is important to have a general section and address differentiation in each of the components.

**The European Union** said that it wants a legally binding agreement, a protocol. 'It is important to distinguish between what needs to be in the agreement and what needs to be in decisions and it is not an issue of importance here. We need to adopt an agreement as part of the political package and see what needs to be endured and what needs to be adjusted,' the EU said. It also said that its priorities are transparency and accountability and that while the basic mandate for accountability should be set out in the agreement, more detailed rules and methodologies could be part of decisions. It also said that while it agrees that mitigation, adaptation and means of implementation should be in the agreement, they are not the same and the provisions need to be worked on, which reflect the needs of these different issues. 'We need to focus on what is needed for each one and not let one hold hostage to the others,' it said. The EU said the agreement needs to have all the structures for a protocol. The EU also called for a provision and the need to start working on a compliance regime and said the structure would assume priority for the session planned in June 2015.

**Norway** said the agreement's structure should promote overall clarity of provisions; it should be simple and concise; and avoid duplication. Referring to its submission on structure, Norway took Parties through its proposal where it groups provisions into eight sections. It added that universal commitment on mitigation and adaptation should be clearly set out in the agreement and that commitments for both would be different and set out in different paragraphs. On institutions, Norway said that those established under the Convention should serve the new agreement.

**Switzerland** said that MRV should be tied to specific thematic areas and it would be better to develop understanding on what it should look like for finance, adaptation and mitigation. It also reflected on why Parties agreed in Durban in 2011 to move towards a new agreement. The reason is some felt the need for a new regime to bring everybody on board post-2020, a regime that offers the flexibility required to reflect the very different circumstances of each of us.

On institutions, Switzerland said that there are many new institutions and the question is of anchoring them. It referred to the changes in investment flow and prices of green technology and said that Paris needs to reflect on technology and finance flows. It added that Paris must make sure there are no duplications. 'We need not anchor certain institutions that we might have to build in the future. We were doing very well without anchoring new institutions. We need to streamline them, which is a continuous process and not stop them by locking them in one process,' it said.

On the treatment of mitigation and adaptation, Switzerland said that adaptation would be given importance. 'Switzerland is ready for commitments but the question is do they have to be in the same article. Not necessarily,' it said. The objective of mitigation is to reduce emissions and the objective of adaptation is resilience, it said. 'We need rules to help reach that resilience. We need a framework that does not control but which helps us reach that resilience,' it said. On finance, the objective is not to have more finance but to have more impact and therefore different rules are needed to achieve these in different elements. On agreement versus decisions, Switzerland said putting something in an agreement or a decision is not an issue of flexibility. It may be of dynamism and the degree of detailing will be different, it added.

**The US** said that the agreement can add significant value by creating a durable framework that is built to last, which is applicable to all and which evolves over time and promotes more effective action. There is huge value in establishing an agreement where we are able to focus on implementing the agreement, it said. On structure, it said that it agreed with Parties that see the structure of the agreement as different from the elements text. 'Going forward in this (the elements text's) structure does not mean we have settled the structure,' it said. It added that the preamble should state the objective of the Convention and no general section is required, which should be embedded with the provisions of the agreement itself. It said the agreement must

define what Parties are expected to do in mitigation and adaptation and the provisions for adaptation and mitigation must reflect the distinct nature of responses to climate change. It said that review provisions on mitigation and adaptation support should go into their respective parts.

It did not see the need for an annex for the nationally determined contributions, adding that this is not the Kyoto Protocol. 'We cannot expect to reflect 195 NDCs, which will be voluminous, reflect diversity since they will be nationally determined.' It said there should be another more appropriate format for this.

On existing institutions, the US said that the institutions that have been created are appropriate for the new agreement. We would like to evolve our approach over time and reflect institutions in a way that allows us to do that. On what is in the agreement versus decisions, the US said that they see an outcome to include an agreement that is durable and concise and which would have accompanying decisions that evolve over time and need updating. 'For us, upfront information and reporting are areas where we see a hook in the agreement and accompanying decisions. Those are very important areas for us and the content of the decisions is just as important as what is in the agreement itself. There is no hierarchy of importance,' it said. The US also called for 'a cover decision that could be short to enable the outcome to be achieved'.

**Australia** said that the agreement must be effective to reduce emissions and build resilience. It needs meaningful participation by all and it should be durable. It highlighted five guiding principles: effectiveness, simplicity, durability, participation and no duplication. It said form must follow function and a one-size-fits-all approach will not help. The core agreement, it said, needs to be precise, 'something that politicians and public can understand'.

**Japan** stressed it would be useful to clarify what is the right vehicle for the elements. 'We had a similar discussion in the run up to COP20 on INDCs. INDCs are not the only vehicle and we can see what vehicle fits where.' Each vehicle should facilitate Parties' efforts. The legal agreement should be simple and stand the test of time, it said. The core of the agreement should be durable and should contain a package of COP decisions. Some go to COP decisions not because they are not important, but because they fit there. Those that do not need ratification should also be COP decisions, it said.

Stressing on markets, Japan said that markets may be used for INDCs and market enables more effective emissions reduction. On adaptation, Japan

said that the core agreement should encourage Parties to evaluate their effort and adaptation options. It said it recognises the differences in the nature of mitigation and adaptation and there is no need to have 'parallelism' between mitigation contributions and adaptation. On finance, it said that since the core agreement would stand the test of time, it should encourage not just developed countries but those countries in a position to do so.

**New Zealand** said that they would structure the agreement to focus on key obligations to meet the Convention's Article 2 objectives and have obligations around those areas. On institutions, it said it is important to clarify the role of existing institutions in the agreement.

On what goes into the agreement and COP decisions, New Zealand said Parties must think of the principles that should be applied. 'Fitness for purpose is our guiding objective in placing the elements,' it said and added that universality is the thing that will be legally binding on all Parties. It also added that it wants the agreement to be durable. 'We want something that has longevity and something that does not need to be negotiated frequently,' it said. Those that require prior certainty, review cycles for instance, should be outside the legal

agreement. Then, if an institution has been created by a COP decision, it has to be amended by a COP decision.

Details of processes to review, update and formalise schedules should be for COP decision. 'We need to establish hooks for these processes in the core agreement but the details should be in supporting decisions. The technical guidelines on land sector and use of markets should be in decisions.' Accountability mechanisms should also be through COP decisions, it said and added that the emphasis of what would figure where would be determined by 'fitness of purpose'.

**The Russian Federation** said that the structure of the agreement should not be subject to extensive innovative approaches. It should be a durable, universal agreement. 'We should have core chapters that would be needed for the legal instrument, including objectives, principles and major thematic issues such as mitigation and adaptation. The important thing is it should be implementable. For that we need compliance.' It added that Parties should build on all the principles of the Convention, including CBDR. 'We have to learn from the Kyoto Protocol and have to be wise enough to envisage the type of provisions for entry into force such that the treaty becomes operational as soon as possible.'