

COP: Proposals to amend the UNFCCC

Lima, 8 December (Hilary Chiew and Chee Yoke Ling) – Three proposals to amend the UN Framework Convention on Climate Change were considered in informal consultations during the first week of the ongoing climate talks.

The first informal consultation on the ***proposal from the Russian Federation to amend Article 4 paragraph 2(f) of the Convention*** was held on 5 December.

Article 4 paragraph 2(f) reads: *“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 said its understanding of the matter is that the landscape of the proposal has not radically changed, that the issue is still relevant and even more in the context of the negotiation of the “new climate regime”. It is interested in continuing the discussion and to listen to Parties.

Canada said consistent with its views expressed in the past, it supported the principle behind the proposal that the differentiation of countries between Annex I

and non-Annex I is outdated and that this issue is best discussed under the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP).

As with the proposal for amendment of Articles 7 and 18 of the Convention by Mexico and Papua New Guinea (see below), it said discussion should continue in Lima or in Paris on the nature of such amendments until we have the Paris agreement. Until then, it will continue to listen to views of Parties and look for a way forward.

(Annex I contains a list of developed countries and countries with economies in transition with legal commitments to reduce greenhouse gases emission. Annex II contains a list of developed countries with obligations to provide new and additional financial resources including for technology transfer to developing countries.)

Australia shared Canada’s view particularly on the “outdated nature of the Annexes” and said that discussion of this agenda item is worthwhile and would like to continue in this current manner until the outcome in Paris so that Parties will be in a better position to understand the implications.

China said it does not support amendment as the Convention is a result of balanced

negotiation and any change would undermine the primacy of the Convention.

It said review of the lists of Annex I and II is complex and would require careful consideration. It is not about who goes where in which Annex but about who is doing what to control climate change. It said the proposal goes beyond the scope of the Convention so it is not appropriate to continue debating the proposal. It said Parties had exhausted the discussion and it does not see the need to continue the discussion.

As no other delegation wished to speak the co-facilitator then proposed to continue the discussion at the COP 21 session next year.

To this, the Russian Federation suggested that Parties digest the views expressed and consider what is appropriate to report to the COP President. It called on Parties to report to their respective capitals and for the meeting to be adjourned for now and to be convened one more time (in Lima) to advance the issue.

However, Saudi Arabia supported the facilitator's approach to refer discussion of this item to the next COP as there are too many issues here in Lima.

China reiterated that the issue is beyond the scope of the Convention and may undermine the Convention. It preferred to drop the issue but since it is not acceptable, it would support deferring the matter to COP 21 in Paris.

The Russian Federation said its suggestion for adjournment is for Parties to have time to consult with capitals and to get clearer directions from capitals. It said it is fine if no one wishes to speak and there is no need to

artificially keep people in the room but to reconvene one more time.

The **European Union** said it can accept the proposal to consult capitals. Canada supported the EU.

Saudi Arabia said it heard the idea of the Russian Federation and also the views of China. It said if we decide to consult capitals then it should also include China's view of ending the agenda item. Therefore, at the next meeting, Parties can consider whether or not to continue this discussion.

The co-facilitator concluded that the group will meet again in the following week.

At the informal consultation on the ***proposal from Papua New Guinea and Mexico to amend Articles 7 and 18 of the Convention*** on 5 December, it was decided that the agenda item will be deferred to COP 21 in Paris.

Article 7 covers the rules and conducts of the Convention which include decision-making procedures such as majorities required for the adoption of particular decisions while Article 18 is about the right to vote.

Australia said different rules for different Parties may not be good for enhancing implementation of the Convention.

The **European Union** said the question has to do with timing. It said when Parties consider the text of the 2015 agreement, we can consider carefully these ideas including decision-making by majority.

Mexico said it understands that the current system is a goodwill system and we have seen

how that has created tensions. It said if Parties could not agree (to having a decision here) then we should continue working on this issue until COP 21.

Agenda item 19(c) on the *proposal by the Russian Federation and Belarus on Decision-making in the UNFCCC's process* was dealt with in the informal consultation mode on 6 December after Parties could not agree to the establishment of a contact group as requested by the Russian Federation on 3 December.

China said it is reluctant to have the Convention having its own interpretation of consensus as suggested by Canada which cited the Convention on Biological Diversity as an example. China said consensus (in adoption of decision) is a United Nations practice and used in many UN fora and it is necessary for the UN itself to provide a uniform meaning of consensus. It supports continuing discussion of this issue to build confidence among Parties.

(It is not clear what Canada means in its reference to the Convention on Biological Diversity.)

Mexico agreed that it is good to continue the conversation given the peculiarity that the rules of procedure of the Convention have not been adopted yet, noting that the decision-making process can contribute to confidence-building. (The rules of procedure are applied provisionally since there is no consensus over the voting provisions.)

Norway said the rules of procedure (that are provisionally applied) have worked quite well thus far with a number of exceptions.

However, it has doubts over having a decision on this agenda item.

Australia does not see the need for a decision and continues to support the practice of provisional rules of procedure. It supported the use of the rule of consensus and consider consensus as the best way where even the smallest Party is consulted.

Ghana said in this process, Parties are not able to use the vote as a decision-making approach. It believed that a lot of problems in this process can be solved if Parties are allowed to vote. It said that it is time to bite the bullet and cannot pretend that we can continue to operate with consensus. It said Parties should go beyond talking and start acting on how to reform to make the decision-making process a bit simpler.

This agenda item was considered at the Warsaw COP last November following a proposal from Belarus and the Russian Federation. Parties were to undertake forward-looking, open-ended informal consultations in conjunction with the 40th session of the UNFCCC Subsidiary Bodies (SBSTA and SBI) and the possibility of reporting on the outcomes at the Lima COP.

The Russian proposal first surfaced at the 38th session of the Subsidiary Body on Implementation (SBI) held in Bonn during the June 2014 session. It had explained that the proposal stemmed from its concern that the process of the negotiations these past few years have shown serious deficiencies regarding how the rules of procedures are not applied properly.

[For more details on this matter, please read the five reports of TWN Bonn News Update

(June 2013) at
<http://www.twn.my/title2/climate/bonn.news.11.htm>]