

Impasse over institutional arrangements for response measures

Kuala Lumpur, 29 Dec (Hilary Chiew) – The 20th Conference of the Parties (COP20) of the United Nations Framework Convention on Climate Change (UNFCCC) concluded without taking any decision on the fate of the forum and future institutional arrangements to deal with the impact of the implementation of response measures after such a decision was postponed from the last COP in Warsaw in 2013.

To the dismay of developing countries, they would have to wait another year to see if a solution can be found to address the negative economic and social consequences of response measures taken to address climate change by developed countries, both actual and potential, that are already facing.

After days of wrangling on the way forward, Parties could not reach an agreement despite intense informal consultations which were conducted following the instructions of the COP20 President Manuel Pulgar-Vidal. By the fourth and last informal consultation which was attended by heads of delegation on 11 Dec, it was clear that the impasse could not be resolved although Parties had, during the three informal consultations conducted earlier in the second week, moved beyond the initial draft decision (FCCC/SB/2014/L.6/Rev.1) arrived at the closing the 41st session of the Subsidiary Body of Scientific and Technological Advice (SBSTA41) on 6 Dec.

Parties had deliberated further on a 3-page draft decision by inserting detailed wordings particularly on institutional arrangements that was bracketed.

Chairing the last informal consultation in the morning of 11 Dec, Subsidiary Body of Implementation (SBI) chair Amena Yauvoli (Fiji), tried to move discussions into bilaterals between Annex I and non-Annex I Parties on the contentious paragraph 6 regarding “or propose other future institutional arrangement” but was strongly resisted by the **European Union** and the **United States**.

As the clock ticked to noon, SBI’s chair Yauvoli conceded that there was no agreement and he would forward the draft decision of 6 Dec. to the COP President. In the afternoon, he reported at the COP stock take plenary that as there was no consensus, Parties agreed to a continuation of the deliberations based on the annex of the draft decision at the next subsidiary bodies’ session.

On 12 Dec, the COP adopted a decision to forward the draft decision containing the three-page annex for further consideration by the SBs at their 42nd session in June 2015, with a view to recommending a draft decision on this matter for adoption by COP21 (in Paris next year). This matter has been dealt with as a joint agenda item of the SBI and SBSTA.

From the start, developed countries were reluctant to enter into textual negotiations proposed by developing countries, citing the need to further share information and improve understanding of the impacts of response measures.

(The forum and work programme have been discussing the impacts and areas of convergence for collaboration for two years since 2012. Decision

8/CP.17 (COP17 in Durban in 2011) adopted a work programme with the objective of improving the understanding of the impact of the implementation of response measures in eight distinct areas. In addition, COP17 decided to establish the forum on the impact of the implementation of response measures mandated to meet twice a year under a joint agenda item of the subsidiary bodies. The SBs had a mandate to review at SB39 in Warsaw, the work of the forum including the need for its continuation, with a view to providing recommendations to COP19. Thus, the forum consolidates all progressive discussions related to response measures under the Convention and the Kyoto Protocol. A total of six in-forum workshops, one expert meeting and one in-forum discussion were held starting from COP18 at Doha with the last in-forum workshop on area (b): cooperation on response strategies held in Warsaw.)

During the first week of the two-week climate talks in Lima, Peru (1 to 12 Dec), eight contact group sessions were held. Developed countries refused to work beyond 6pm as they wanted to stick to the strict time-management prescribed by the COP President. Developing countries sought clarification on the time-management, and were given the informed that an exception can be made for discussions to continue after 6pm with the agreement of all Parties concerned. Developing countries had expressed their deep disappointment over the unwillingness of their developed countries to work beyond official time and were frustrated that the time-management was a convenient excuse to stall negotiations. As time was running out towards the second week, Parties were holding meetings as early as 8am (as proposed by co-facilitators) to progress the work.

Highlights of discussions under the contact group

At the first contact group on 2 December, **Argentina** speaking for **G77-China** reaffirmed that all developing countries face economic and social consequences of response measures (actual and potential) in different ways. The Group reiterated the importance to give full consideration to what actions are necessary, including actions related to funding, insurance and the transfer of technology, to meet the specific needs and concerns of developing countries arising from the impact of the

implementation of response measures, in accordance with the principles and provisions of the Convention. It said the issue has to be seen in the broader objective of the achievement of sustainable development in its economic, social and environmental dimensions and the first and overriding priorities of developing countries of poverty eradication and economic and social development.

“In this regard, we welcome the process agreed in the 40th Sessions of the Subsidiary Bodies for submissions by Parties, experts, practitioners and relevant organizations, as well as the preparation of the technical paper and synthesis report by the Secretariat, with the aim for the SBs to provide recommendations to COP20,” it added.

It further reaffirmed the contents of the recent G77 and China submission, in particular the June and October submissions, for the continuation of the forum and the establishment of a mechanism to avoid and minimize the negative economic and social consequences of response measures taken by developed countries on developing countries, and in particular to address policy issues of concern, such as unilateral measures, adding that it believed the Group’s proposal has key substantive elements towards the achievement of progress in these sessions (SB41) and hoped for the adoption of a decision on the issue in Lima.

It called on Parties to enter into drafting mode as soon as possible, on the basis of the submissions for draft decisions tabled in June and that the elements included in the synthesis paper and technical paper can serve as complementary background for the drafting process, in order to be able to reach a decision on the issue.

In this respect, the G77 and China reiterated some of the key elements of its submissions:

- From the results of the review of the work of the forum on the impact of the implementation of response measures finalised in COP 19 in Warsaw, there are still gaps of implementation of the relevant principles and provisions of the Convention and its Kyoto Protocol to address the specific needs and concerns of developing countries arising from the impact of the implementation of response measures. This signifies that there is a need for further detailed

substantive work and specific action on the matter.

- Even if the forum on the impact of the implementation of response measures has proved useful for exchange of experiences and information, it has been incapable of taking specific actions to address implementation gaps to avoid and minimize negative economic and social consequences of response measures. Thus, any work on the matter must be focused on the specific needs and concerns of developing countries arising from the impact of the implementation of response measures, as any other issue would be beyond the scope of this agenda item.
- Some of the areas where collaboration and cooperation could be enhanced and where there are still gaps of implementation are:
- Exchange of views, sharing information and expertise to inform policy choices of response measures taken by developed country Parties;
- Facilitation of technical collaboration among Parties and experts on tools, including studies, modeling and methodologies, to assist developing country Parties in addressing negative economic and social consequences of response measures, in particular in relation to specific action for economic transformation and diversification;
- Cooperation of modeling teams among Parties, to seek consensus on methodology development and scenarios setting and for models to take into account the specific national economic and social conditions and needs of developing countries;
- Partnership with organizations in the research and assessment of developing countries' concerns and needs rising from the impacts of the implementation of response measures;
- Cooperation under the Convention to enhance the reporting of Annex I Parties of the impacts of their response measures on developing countries, and how they are minimizing the adverse effects on developing countries;
- Promotion of cooperation for the fulfillment of developed countries obligations' in terms of support of financial resources, transfer of technology and capacity building to developing

countries, in order for the latter to be able to deal with the negative impacts of the implementation of response measures;

- Support of multilateral solutions, in opposition to unilateral measures, and that, as agreed in decision 1.CP.18, are policy issues of concern;
- Co-operation to ensure that "measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade" (Article 3.5 of the UNFCCC);
- Co-operation for response measures taken by developed countries not to undermine the development nor constitute a means of transferring the burden of climate change mitigation obligations of developed countries to developing country Parties;
- collaboration for the development of mechanisms for a just transition of the workforce and the creation of decent work, in accordance with nationally defined priorities and through a consultation process involving the relevant stakeholders; and
- Co-operation on the assessment of response measures taken by developed country Parties, and this assessment should include, inter alia, the following: - if the measure is consistent with UNFCCC principles and provisions and Kyoto Protocol's relevant articles; if there has been consultation with potentially affected developing countries and if their special conditions have been duly taken into account; if the measure is based on scientific evidence; if the measures have a legitimate objective, like combating climate change; if the measure is the most effective means to achieve the objective of combating climate change and is less trade restrictive; if there is a fulfillment of the developed countries' obligations related to the provision of specific support to developing countries (transfer of technology, financial resources and capacity building); and the assessment should be undertaken both in quantitative and qualitative terms as well as ex-ante and ex-post and takes into account the specific national conditions of developing countries and their priorities, needs and circumstances.

Ghana representing the **African Group** welcomed the strategy paper and technical paper prepared by the secretariat and viewed them as useful documents for negotiation, noting that there are gaps that need to be addressed. As time was limited, it proposed moving immediately into textual negotiation. **South Africa** also supported progressing into textual negotiations to lead to a decision in Lima.

Saudi Arabia speaking for the **Arab Group** and the **Like-minded Developing Countries (LMDC)** said sustainable development of developing countries needs extreme attention as hasty decision of policy measures would affect employment opportunities in developing countries and the rights of the people to decent living standards. It reminded Parties that this work which was supposed to be done a year ago. “Parties are here for actions and solid actions will need the mechanism (as proposed in the G77-China submission in Warsaw) to address the gaps and establish robust process to implement the findings. Discussions are useful but we need actions. We urge Parties to show seriousness in handling this topic with solid proposals and deal with it in a comprehensive manner,” it stressed.

Singapore said it looked forward to a good outcome at COP20 where Parties could at least agree minimally to the continuation of the forum. **Tanzania** said it expected developed countries to consider the submission of G77-China which is based on the challenges on the ground.

The **United States** said it is clear from the (strategy and technical) papers and statements (of developing countries) that gaps in implementation remained. Therefore, it proposed that ‘we continue our mode of work to improve our understanding especially through exchanging experience, lessons learnt and best practices.

The **European Union** welcomed the technical and strategy papers prepared by the secretariat. It wanted the conversation to be focused on substance aiming at balancing both positive and negative impacts of response measures. To improve cooperation on this issue, it said full exploitation of the potential of the forum is needed to provide guidance and best practices. It said there is no need for a process that focuses on text.

Australia echoed that the papers by the secretariat provided excellent basis for discussions although not

everything in the paper reflected its position. It supported the EU and the US call for continuation of discussions in a more structured way. It said we must not lose sight of the Convention which recognised that growth is threatened by climate change and it is more costly not to act.

Japan said there is a significant gap between developed and developing countries’ understanding of the impacts. It also wanted both negative and positive impacts to be treated in a balanced manner so the best way for cooperation is to continue sharing of information and best practices to further improve understanding via the forum.

In response, **China** acknowledged that every measure and action would have two sides to them noting that “we are gathering here not to prevent implementation of the measures but to provide solutions and improvement of the measures.” While it welcomed the positive impacts, it pointed out that to resolve the problems (arising from implementation of response measures by developed countries on developing countries), Parties should focus attention and use the limited negotiation time on the negative impacts of response measures. It believed that the forum has been a useful platform for addressing the impacts of response measures for the past two years and called for the mandate of the forum to be extended. However, it also stressed the need for some concrete actions; Hence, the proposal for the establishment of a mechanism.

At the third contact group in the morning of 3 Dec, developing countries pushed for discussions to go into drafting mode with remaining time to reach a decision in Lima based on the draft decision that Parties mandated the co-facilitators to prepare.

Australia said it was a bit confused why Parties want to go down the path (of drafting) at this stage. It preferred the United States’ suggestion to have discussions on the basis of the technical paper as it would not support textual negotiations.

Co-facilitator Eduardo Calvo (Peru) explained to Parties how the draft decision was prepared and the origins of the content of the preambular and operational part of the draft decision. He said he took the technical paper as the starting point and he is cognisant that the draft decision cannot satisfy all but it was nevertheless based on convergence of elements, noting that convergence is not agreement

but areas where there is overlap of ideas. He also explained that the preambular texts are taken from Parties' submissions and work of the forum.

To this, the **EU** said it appreciated the process and definitely wanted to support the co-facilitators approach for a draft decision text. However, it expressed surprise by the approach and that its main concern lay with the paragraph which is not looking at convergence but (will take Parties on a) different direction, in reference to paragraph 8 which reads: *"Decides to establish a Mechanism for Enhanced Action on Response Measures, and requests the subsidiary bodies to develop the functions and modalities of the mechanism at their forty-second sessions, for consideration and adoption by the Conference of the Parties at its twenty-first session (November–December 2015)."*

At the contact group meeting at 5pm on 4 Dec, the **United States, Japan** and **Canada** said paragraph 8 was a redline for them, noting that it was premature to establish the mechanism with the difficulties in assessing impacts of response measures.

Argentina speaking for **G77-China** appealed to Parties to continue discussions and that the group was prepared to work through the night.

The **US** said it could not commit to further informal consultations saying that the secretariat and co-facilitators in relation to other agenda items were not available after 6pm. It demanded a clear answer from the secretariat on this directive.

The secretariat replied that the directive from the SB chairs was that Parties work in formal group until 6pm but can continue to working in an informal mode after 6pm (without secretariat presence). It said the special offer made by the co-chairs of the SBs on this agenda item was to complete work in Lima, adding that it was up to Parties if they are prepared to work and the secretariat could help Parties reach agreement.

To this, **Canada** said it was concerned that the revised version of the draft decision text required attentive reading and preferred to continue discussions the following day. **New Zealand** reiterated the concerns of the US and Canada particularly regarding the 6pm stop-work directive.

Co-facilitator Calvo said he heard Parties could not have informal discussions in the evening and asked if they are ready to meet 8am the following day.

In response, **Saudi Arabia** raised point-of-order. It said it has not heard any objections to the SBs' co-chairs offer for Parties to work in informally after 6pm. It urged Parties to approach this item seriously as "we want a just treatment of this topic". It further pointed out that this item was overdue as the work that was supposed to end a year ago.

In response, Calvo said some Parties had objected to working at night, thus the secretariat cannot be blamed for what Parties decide to do with their time but he had proposed that Parties start work at 8am the following day.

Ghana for the **African Group** and **Argentina** for **G77-China** voiced their disappointment with those who were not willing to work. In response, **Canada** said availability of Parties changed with time but in the interest of equity and fairness, no meeting should be held without the presence of all Parties.

At the last contact group on 5 Dec, Parties could not conclude their work and agreed to transmit the heavily bracketed draft decision text (FCCC/SB/2014/L.6/Rev.1) to COP20 for continued consideration. On 8 Dec, during the COP stock take plenary, the COP President Pulgar-Vidal instructed the co-chairs of the SBs to move the issue forward with informal consultations.

Highlights of informal consultations

On 8 Dec, Parties met in the afternoon with discussion focusing on the number of meetings for the forum in paragraph 3 of the draft decision which reads – *"Request the Chairs of the subsidiary bodies to convene the forum, to implement the updated work programme on the impact of the implementation of response measures, which shall meet [once] [twice] a year, in conjunction with the sessions of the subsidiary bodies [, and convene inter-sessionally]"*.

Developing countries argued for meetings twice a year to coincide with the meetings of the SBs and the year-end COP to enable more work to be done while developed countries preferred to have one meeting.

The EU said it witnessed that during the COP there is very little time to go into meaningful work and having one session a year in June would also send a clear signal to observers and experts. **The US** agreed with the EU that maximising participation is extremely important and burdening Parties and

experts with additional meetings will be counter-productive.

In supporting the US and the EU, **Australia** said having one meeting will help focus discussion, noting that in the lead-up to Paris COP, the SBs will be under a lot of pressure. "Having more discussion does not mean we can move more quickly," it added.

Saudi Arabia speaking for the **LMDC** said considering the difficulties of the discussion and that time was never enough, Parties should not avoid giving more time for meetings.

To this, **the EU** replied that since Parties are working on the issue related to climate change, they should avoid travelling (unnecessarily) and aim for maximum participation in a climate-friendly setting.

Argentina representing the **G77-China** asked how Parties could deepen understanding and have in-depth discussions to strengthen the forum when they only want to meet once. It pointed out that the best way to maximise participation is to have the forum both during the SBs and the COP. It appealed for flexibility from Parties, stressing that there is no reason for meeting only once a year "if we are going to be serious about this matter."

At the informal consultations at 6:30pm on 9 Dec, SBI chair Yauvoli said as there was little time left to progress on the matter despite some Parties noting progress, he will brief the COP President to take the matter up to the ministerial level. "I do not have mandate to extend the deliberations as we have exhausted all our time. It is evident to me that we cannot resolve the issue," he said. (Outstanding issues from the SBs were given until noon on 9 Dec to reach an agreement.)

Canada had earlier said it believed the issue had made good progress although it could not be in the room all the time. It said there is still room to make further progress with more time. At this juncture, **the US** said it did not support the issue going to the ministers. "If there is no time, it's disappointing but as it stands, it is not in our position (for the matter) to go to the ministers," it stressed.

(Following this, the COP President instructed the SBs' co-chairs to continue informal consultations.) At the last informal consultation from 10am to

12pm on 11 Dec, which was attended by a number of heads of delegation.

Chairing the meeting, SBI chair Yauvoli proposed that Parties tackle paragraph 6 which in his view is the deadlock. Paragraph 6 reads as follow: "*Requests the subsidiary bodies to review at their [forty-fifth] sessions the work of the forum, including the need for its continuation, [or propose other future institutional arrangements] with a view to providing recommendations to the Conference of the Parties at its [twenty-second session (November-December 2016);]*"

Argentina for **G77-China** agreed with Yauvoli's view to unlock paragraph 6 as key to unlocking the rest of the package. It stressed that the group came with the spirit of flexibility and compromise to support the Peruvian COP Presidency and urged Annex I Parties to not focus on its redline. With regard to the proposed institutional arrangement, it said it came with three different proposals demonstrating its flexibility but it did not see any flexibility from Annex I Parties, which had not proposed any other wording. It said its proposal is for finding a middle ground that would not prejudice any outcome.

The EU said it preferred text that indicated the purpose of the future approach for the institutional arrangement. "As we know in this process, words gather meaning. At this stage it carries too much meaning that we can bear. We do not want to raise expectations falsely and so could not accept the current form contained in the G77-China proposal," it stressed.

Australia, in reference to the institutional arrangement, said it is prejudging (the outcome) which it could not support. In the spirit of compromise, it is for keeping the forum and maintained reference to that.

Saudi Arabia said it came into this informal process to see if there is any possibility to come up with a programme to advance this issue next year. To reach that objective, it stressed the need to know that "we are not closing this option (referring to future institutional arrangement) of improving the forum." "We are really trying to advance our work from a technical point so we can look ahead for possibilities. We are very flexible with the wordings to make the other side happy," it said, adding that "if the other side is trying to close this option", then it would rather work on it next year.

The **EU** said the work programme has significant value to both sides and the best way to capture progress thus far is to go forward with language that strengthened the forum.

At this point, SBI's chair Yauvoli encouraged Parties to hold bilateral discussion.

This was resisted by the **EU** and the **US** citing insufficient common ground and adding new language like "possible options" continued to be prejudicial to the work next year.

As the clock ticked to noon, Yauvoli suggested removing the paragraph or risked losing all the gains

and efforts so far but this was rejected by the **G77-China**, which urged Annex I Parties to engage in bilaterally.

However, in closing the two-hour informal consultations, Yauvoli said the proposed draft decision of 6 Dec will be forwarded to the COP Presidency.

The COP on 12 Dec adopted a decision to forward the draft decision containing the three-page annex for further consideration by the SBs at their 42nd session in June 2015.