

Huge fight to ensure ‘contributions’ under Paris Agreement are not mitigation-centric

Penang, 4 January (T Ajit) — A proposal by the Like-Minded Developing countries (LMDC), aimed at ensuring that nationally determined contributions (NDCs) under the Paris Agreement are comprehensive and not mitigation-centric, was a hard fought battle that eventually succeeded in being reflected in the Paris Agreement.

During the UNFCCC’s twenty-first session of the Conference of the Parties in Paris (COP21), held from 30 November to 12 December 2015, it took considerable effort for the LMDC to get developed countries to even engage on the proposal in Paris, known as ‘Article 2bis’, that eventually became Article 3 in the Paris Agreement.

The Article was initially contained in the draft agreement text of 23 October that emerged from intersession of the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP) in Bonn, Germany.

Sources told Third World Network (TWN) that the developed countries led by the Umbrella Group, the European Union (EU) and Turkey refused to engage on the LMDC proposal in Paris.

This TWN update captures how Article 2bis evolved from the 23 October text to being reflected in the Paris Agreement as Article 3, along with highlights of some of the closed-door discussions, obtained by talking to several negotiators.

In the 23 October negotiating text under the ADP, Article 2bis was as follows:

Option 1:

1. All Parties shall regularly prepare, communicate and implement [intended] nationally determined contributions towards achieving the [purposes of this Agreement as set out in Article 2 above] [objective of the Convention as set out in its Article 2], in accordance with Article 4 of the Convention.

2. Each Party's [intended] nationally determined contribution

will represent a progression in light of Parties' differentiated responsibilities and commitments under the Convention.

3. The extent to which developing country Parties will effectively implement this Agreement will depend on the effective implementation by developed country Parties of their commitments on provision of finance, technology development and transfer and capacity-building.

4. Successive [intended] nationally determined contribution will be communicated before the expiry of the previous [intended] nationally determined contribution by that Party.

Option 2:

No text

The proposal in option 1 above was from the LMDC for all Parties to regularly prepare, communicate and implement their intended nationally determined contributions (INDCs)/NDCs towards achieving the purpose of the agreement/objective of the Convention. It also stated that the INDCs would represent a progression in light of Parties’ differentiated responsibilities and commitments under the Convention. It also included a provision that successive INDCs would be communicated by Parties before the expiry of the previous contributions. The “no text” option was from developed countries not to have any text in this regard.

The proposal was to ensure that the contributions of Parties are viewed in a comprehensive manner, reflecting the respective obligations they have under the provisions of the Convention, and not to confine the contributions only to mitigation as desired by developed countries.

Since the Warsaw COP in 2013, where the notion of INDCs was born, developed and developing countries have expressed a difference of views on what the INDCs should contain. Attempts by developed countries to define INDCs as only

mitigation contributions were thwarted in Lima last year. For a large number of developing countries, the INDCs of developed countries are also supposed to reflect the contributions they will make on finance and technology transfer in addition to what they will do on mitigation as set out in the Convention, while for developing countries, their contributions could be mitigation and adaptation, coupled with an indication of their financial, technology and capacity building needs.

Hence, the Article 2*bis* proposal was to provide for this comprehensive notion, and for progression to be shown for all the elements and not just limit this to only mitigation.

Referring to Article 2*bis* as an “overarching, crosscutting article”, **Malaysia** for the **LMDC** said at a closed-door meeting in the first week of the Paris climate talks under the ADP, “This proposal is for parity. It will involve clear links to not just mitigation, but also adaptation, finance and so on. The specifics can be detailed in the respective sections,” stressed Malaysia.

Sources said that **China** reminded Parties that in Warsaw, there was a huddle and everyone felt happy about the INDCs, although nobody knew the meaning of INDCs. “There is a general obligation. It is applicable to all. That is why we need to regularly prepare, communicate and implement our INDCs. We are for achieving the objective as set out in Article 2 because that is (the) Warsaw language. Another crosscutting issue is the link between action and support. If you want to deal with the NDC issue, then finance and technology is key (for developing countries). To show progression in finance support is very simple, which is to just scale up (the level of finance),” said China.

However, **Turkey, the EU, the US, Canada, Australia** and **New Zealand** said they preferred the no-text option for Article 2*bis*. **Turkey** said that it did not see a place for Article 2*bis* in the Paris Agreement. It also said that it would not accept any reference to Article 4 of the Convention.

(Article 4 of the Convention sets out the commitments of developed and developing countries in accordance with common but differentiated responsibilities.)

For the **EU**, Article 2*bis* was a “one-size-fits-all approach” and was viewed as “not being helpful in trying to solve everything through one article”,

especially since the nature of the elements are different from each other (referring to mitigation, adaptation, finance, technology transfer and capacity-building). It suggested that the Article be shortened to capture the preparation and communication aspect of the NDCs, stressing that the mitigation contribution was different from the rest of the elements.

The **US** said that Article 2*bis* was not compatible with an ambitious agreement. It was a one-size-fits-all approach and took a strict bifurcated approach, which the US could not accept. “It would undermine the agreement and we strongly oppose this,” the US is supposed to have said. It also said that discussing Article 2*bis* would lead to duplication and confusion since the specific elements were being discussed separately. “In Warsaw, INDCs were focused on mitigation. There were many countries that were concerned about adaptation. We sort of resolved that in Lima, where adaptation was included. By spending our time here (on this Article) we will not make progress,” said the US.

Canada was reported to have said that Malaysia’s explanation took Parties backward. “We have made a lot of effort since Lima within each element ... Consolidating this does not get the parity. It is doing the opposite. We intended to look at each characteristic of each element separately,” said Canada. It added that for the crosscutting consideration, there was a separate global stocktake Article. It was not in favour of Article 2*bis*. In subsequent closed-door discussions, Canada provided an alternative proposal to Article 2*bis* to say that Parties would regularly prepare, communicate and report on progress in implementing their contributions towards achieving the ultimate objective of the Convention as set out in its Article 2, in accordance with the provision of this (Paris) Agreement. It said it was not in favour of paragraph 3 of Article 2*bis*.

Australia said Parties were engaged in a dynamic process in each of the elements (of the Agreement), which should be reflected accordingly, and that progression meant different things in different issues.

According to sources, **Saudi Arabia, India, Brazil, Sudan** and **Malaysia** countered these arguments of the developed countries and objected to their stance of not engaging on the Article.

Saudi Arabia for the **Arab Group** said there were

merits to having the Article. “If you address it here, then you do not need to worry about this in the rest of the places (of the Agreement). We are trying to address differentiation under mitigation; what INDCs are meant for and how it will be linked with means of implementation. That is a prudent way to move forward. This will help us get a streamlined text. If you do not do this here, you will have to contextualize it when you go to mitigation, adaptation or means of implementation. You want to raise ambition, then you can show some sort of reference to that through this Article,” it said. Saudi Arabia also countered arguments by saying that a general provision for all the elements is needed and not just in mitigation.

Sudan for the **Africa Group** said the Group shared the views of those who supported Article 2*bis* as it reflects previous COP decisions, addresses ambition and progression, and also establishes the link to means of implementation. It shared the LMDC concern that there should be balance between mitigation and adaptation as well as on the means of implementation.

India said the context for Article 2*bis* was the Warsaw COP. “If there were no INDCs, we would not have put this here. In Lima, we agreed to expand the scope of INDCs to adaptation. INDCs are the vehicle to undertake action and show how we take forward the new agreement. On scope, we are talking about parity. Adaptation and means of implementation are also part of that parity. This is a general provision. We will bring in the specificities in the specific elements.” India also stressed that there is no legal basis for the idea of a nationally determined mitigation contribution (NDMC), arguing the point that INDCs are not only confined to mitigation.

On the insistence of the developed countries on the use of the term NDMC, India emphasized that, “progression is not just about mitigation, but (should be) in all the elements. It also stressed that if Parties decided not to engage in Article 2*bis*, it would be very difficult for India to engage on the issue of mitigation. “We engaged in mitigation, on the presumption that we will discuss it here (in Article 2*bis*). We have agreed on INDCs ... which also has an adaptation component.”

Brazil said it saw merit in discussing Article 2*bis* pointing out that this brings to the fore having universal obligations applicable to all. It addresses

the question of balance. The separate Articles on mitigation and adaptation and that of means of implementation cannot ensure balance adequately. “We need to improve the language (in Article 2*bis*). We need coherence with other parts of the agreement. The idea of progression is included here so we need to link it to global stocktake. INDCs are not limited to mitigation and we would be reluctant in engaging in an agreement that speaks about an NDMC. We have NDMC in the mitigation Article, an adaptation contribution in the Article on adaptation and in finance we have information to be provided. We need to have a broader look and consider how we could strike a right balance of how they are interlinked ... We are not interested in a process where Parties drastically oppose it because they do not like it. We are here to negotiate. We must be able to show some willingness to consider it and show respect to those who proposed it,” said Brazil.

Malaysia said Article 2*bis* was an honest attempt to deal with crosscutting issues. “This is not perfect. We are willing to engage. This is not a new provision,” it said. In reference to those who were rejecting the notion, it expressed disappointment. In response to the various comments from developed countries that the various elements should be considered separately, Malaysia asked Parties if they will give an undertaking that there would be parity among all the elements. It said that there was no such assurance. Referring to the example of technology transfer and finance, it said that, “We do not have parity there ... Let’s have a fair negotiating field. This provision (Article 2*bis*) talks about the ‘what’ (of the Agreement). The ‘how’, we can deal with. When you say each element is different what are you saying? Does it mean that in mitigation, there will be progression and ambition, and that will not be the case for finance? Why should finance and other means of implementation have different requirements? We are prepared to adjust our proposal, but give us your specificities,” Malaysia urged the developed countries.

“We are talking about the overriding principle that the extent to which developing countries will act will depend on the support provided by developed countries (referring to Article 4.7 of the Convention). This is the principle ... If these proposals are not okay, we cannot engage in mitigation with you (referring to developed countries). Some said they

want an *ex ante* assessment of the INDCs, but no to (the assessment) of the means of implementation. Have you read the INDCs (presented by developing countries)? There are conditions ... These concerns are real which will affect our development. We are expected to peak (in relation to emissions). That will have very serious consequences (for developing countries). Our call is to have parity on all the elements and go on an even pace. Article 2*bis* is an obligation we take upon ourselves. We hope we can discuss this constructively,” said Malaysia.

Malaysia also asserted that no result could be achieved if the agreement was mitigation-centric. “You make it mitigation-centric and it affects our development space. We will not accept it. This (referring to Article 2*bis*) is a genuine attempt to frame (all the elements in the agreement) in broad terms. If the option of no text remains, then we have nothing left to discuss,” it said.

Following these discussions, on 5 December, the draft negotiating text of the ADP was transmitted to the COP21 Presidency for further consideration. Following was the text of Article 2*bis* at that stage:

Article 2bis (GENERAL)

1. *[All Parties [shall] regularly prepare, communicate [and implement] [intended] nationally determined [contributions][components] [on [mitigation] and adaptation] [undertakings in adaptation planning] [and means of implementation]2 [towards achieving the [purpose of this Agreement as set out in Article 2 of the Convention] [objective of the Convention as set out in its Article 2],] [in accordance with Article 4 of the Convention] [in accordance with the provisions of this Agreement, including the specific provisions related to mitigation and adaptation and means of implementation.]]*
2. *[Each Party's [intended] nationally determined contribution will represent a progression in the light of Parties' differentiated responsibilities and commitments under the Convention.]*
3. *[The extent to which developing country Parties will effectively implement this Agreement will depend on the effective implementation by developed country Parties of their commitments on the provision of finance, technology development and transfer and capacity-building.]*
4. *[Successive [intended] nationally determined contributions will be [informed by the result of the global stocktake as defined in Article 10 of the Convention] and communicated before the expiry of the previous [intended] nationally*

determined contribution by the Party concerned.]

Once the COP21 Presidency took over the process, there were further informal closed-door consultations on Article 2*bis*.

Discussions continued to be polarized, with **Japan, New Zealand, Norway** and the **US** out rightly rejecting the need for Article 2*bis*. **Colombia** for the **Independent Alliance of Latin America and the Caribbean (AILAC)** as well as **Alliance of Small Island States (AOSIS)** too expressed that Article 2*bis* was not necessary. Discussions, however, progressed at the insistence of the **LMDC, the Africa Group, India, China** and **Bolivia**. Even though some bridging proposals came forth from some of the developed countries, the reluctance to engage with the proposal was clear, a negotiator told TWN.

India repeated that Article 2*bis* is an overarching framework. “My INDC is about adaptation and means of implementation. What do I say (to the head of state) that there is no frame for (comprehensive) INDCs in the Agreement?”

Malaysia said to Parties that the “Lima (decision) makes it clear that all the elements shall be addressed in a balanced manner. The fact is we have agreed to that. If that is not so, declare that you want to resile from that agreement. That is exactly what we are doing in Article 2*bis*. There are commitments across the board, not just mitigation. If you put in only mitigation, then you are rolling back what you agreed,” said Malaysia in an attempt to explain the rationale for Article 2*bis* all over again.

“For us, Article 4.7 of the Convention is a start. If you look at the INDCs, a large number of them are from developing countries and are conditional upon finance”, reiterated Malaysia.

In a lengthy explanation in a further response to Parties, Malaysia highlighted that the LMDC was talking about INDCs that go beyond mitigation. It stressed that, “Article 2*bis* sets out the obligations of Parties. How it will work out will depend on the various Articles. If we want to be dynamic, which we agree, we can accept that there is a general obligation and we are agreeing that it is beyond mitigation and also includes adaptation. Then we deal with the specific provisions ... We have a general obligation to prepare, communicate and implement (INDCs). Parties have reservations on ‘implement’ and we can work on it (referring to the US reluctance to have an

obligation to implement its INDC). Then we look at the specificities (under the relevant Articles) of each element... We go from the general to the specific. So you have contributions on mitigation, adaptation and means of implementation, and we discuss the specificities ...

“You (referring to developed countries) introduced (the notion of) NDMC. It will not fly. INDCs are there to stay ... There is a conditional component in all of the developing country INDCs. We cannot will it away. If you think there is an adaptation and means of implementation component, then we have to reflect that in the INDCs.”

Further successive versions of Article 2*bis* evolved when the French Presidency prepared further iterations of the text of the Agreement on 9 and 10 December. In the 9 December version of the draft agreement text, Article 2*bis* read:

Option 1:

1. *[All Parties shall undertake efforts defined in Articles 3, 4, 6, 7, 8 and 9 towards achieving the purpose of this Agreement as set out in its Article 2, and communicate such efforts in accordance with the provisions of this Agreement. Over time such efforts will represent a progression taking into account Parties different national circumstances and development stages while recognizing that the extent of the efforts taken by developing country Parties will depend on the extent of support they receive.]*

2. *Subsequent efforts will be informed by the results of the global stocktake as defined in Article 10, and represent a progression taking into account Parties' common but differentiated responsibilities and respective capabilities, in light of different national circumstances.]*

Option 2:

1. *[All Parties [shall] regularly prepare, communicate [and implement] [intended] nationally determined [contributions][components] [on [mitigation] and adaptation] [undertakings in adaptation planning] [and means of implementation]3 [towards achieving the [purpose of this Agreement as set out in Article 2 of the Convention] [objective of the Convention as set out in its Article 2],] [in accordance with Article 4 of the Convention] [in accordance with the provisions of this Agreement, including the specific provisions related to mitigation and adaptation and means of implementation.]*

2. *Each Party's [intended] nationally determined contribution will represent a progression in the light of Parties' differentiated responsibilities and commitments under the Convention.*

3. *The extent to which developing country Parties will effectively implement this Agreement will depend on the effective implementation by developed country Parties of their commitments on the provision of finance, technology development and transfer and capacity-building.*

4. *Successive [intended] nationally determined contributions will be [informed by the result of the global stocktake as defined in Article 10 of the Convention] and communicated before the expiry of the previous [intended] nationally determined contribution by the Party concerned.]*

In the 10 December version of the draft agreement text prepared by COP21 President, Article 2*bis* read:

Option 1:

All Parties shall undertake efforts defined in Articles 3, 4, 6, 7, 8 and 9 progressively towards achieving the purpose of this Agreement as set out in Article 2, while recognizing that enhanced support for developing country Parties will allow for higher ambition in their actions. Over time efforts of all Parties will represent a progression taking into account Parties different national circumstances and stages of development.

Option 2:

1. *All Parties shall regularly prepare and communicate their nationally determined contributions towards achieving the purpose of this Agreement as set out in its Article 2, recognizing that the ambition of developing country Parties in relation to their contributions will depend on the extent of support they receive.*

2. *Subsequent nationally determined contributions should be informed by the results of the global stocktake as defined in Article 10, and represent a progression taking into account Parties' common but differentiated responsibilities and respective capabilities, in light of different national circumstances.*

In the agreement adopted on 12 December, Article 2*bis* is reflected as Article 3 in the agreement. It reads:

Article 3

As nationally determined contributions to the global response to climate change, all Parties are to undertake and communicate ambitious efforts as defined in Articles 4, 7, 9, 10, 11 and 13 with the view to achieving the purpose of this Agreement as set out in Article 2. The efforts of all Parties will represent a progression over time, while recognizing the need to support developing country Parties for the effective implementation of this Agreement.

The above reflects a compromise given that

‘implementation’ is missing from the agreed formulation because the US was against this. The Agreement does cover the comprehensiveness of NDCs that cannot anymore be seen as being only mitigation-centric. (Article 4 refers to the element of ‘mitigation’, Article 7 to ‘adaptation’, Article 9 to ‘finance’, Article 10 to ‘technology development and transfer’, Article 11 to ‘capacity-building’ and Article 13 to a ‘transparency framework for action and support’.)

Following the huge resistance of Parties to Article 2*bis*, the hard fight to have it reflected as Article 3 in the final Agreement represents a big and significant win for the LMDC in the Paris Agreement.

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