

Mandate of the AWG-KP contact group on legal matters in dispute

Tianjin, 6 October (Chee Yoke Ling) – Developing countries have insisted on a review of the organization of work of the contact group on legal matters set up under the Ad Hoc Working Group on Further Commitments for Annex 1 Parties under the Kyoto Protocol (AWG-KP), pointing out that issues before the contact group are outside the mandate of the AWG-KP.

At the first meeting of the contact group on legal matters on Tuesday morning (5 October), co-chair Mr. Daniel Ortega of Ecuador outlined the week's work where six slots have been allocated to cover a range of issues set out in paragraph 18 of the scenario note of the AWG-KP Chair, Mr. John Ashe of Antigua and Barbuda. This involves proposed amendments to Articles 3, 4, 9, 15, 18 and 21 of the Kyoto Protocol.

The contact group was tasked to consider the selected parts in Mr. Ashe's draft proposal (FCCC/KP/AWG/2010/CRP.2), remove options, streamline the text, draft solutions where needed, and discuss any other legal issues referred to it by the other three contact groups. Mr. Ortega reminded Parties of the legal nature of this group.

Developing countries have all along stressed that priority must be given to the discussion on the scale of greenhouse gases emissions reductions to be achieved by Annex 1 Parties, in aggregate and individually or jointly, in line with the mandate of the AWG-KP "*to consider further commitments for Parties included in Annex I for the period beyond 2012 in accordance with Article 3, paragraph 9, of the Protocol*". Over the years since the AWG-KP started its work in 2006 a number of proposals have been submitted on various substantive matters, and many developing country Parties have expressed concerns and objections that these go beyond the specific mandate of the group.

(Each session of the AWG-KP needs to agree to the setting up of contact groups, and the necessity of establishing a legal matters contact group has been a point of debate at several meetings of the AWG-KP over the past few years. This group was eventually set up but debate over its scope of work continued. In the Tianjin

session Parties have agreed to the setting up of 4 contact groups. The contact group on the scale of emissions reductions by Annex I Parties, known as the "numbers contact group" has been allocated 8 slots for the Tianjin session, and consensus is still far from sight. The other two groups are on "other issues" including land use, land use change and forestry, methodologies etc, and on potential consequences of response measures.)

At Tuesday's first meeting of the legal matters group, China called for a point of order saying that Parties needed to have a general exchange of views before they can agree to the suggested organization of work.

Australia said that it was happy to work through the issues identified in the AWG-KP Chair's scenario note, and that one missing element was its proposal on provisional application (of amendments to the Protocol until the entry into force of the amendments for each Party).

This was followed by almost an hour on intense exchange.

China voiced its concern on the substantive issues identified for the contact group as well as the organisation of work. It said, "To be frank, for several meetings in the past there has been confusion. We do not see a need for this legal contact group. We have for the past two years said that the mandate of the AWG-KP is very simple - – to agree on the second and subsequent commitment periods. We are not going to revise or amend the whole KP into a new protocol. That is not our mandate. We are not negotiating a protocol here. This needs to be repeated again at the beginning of the discussion here (in Tianjin)".

It agreed with taking the Chair's text as a basis for negotiations but "that does not mean we are prepared to go into proposals that are beyond the mandate of the AWG-KP. We are willing to use the Chair's proposal to move forward but the legal discussions that are happening here should also be consistent with the bigger group's discussion (referring to the AWG-KP) and that is amendment of Annex B of the KP. So we cannot go with scenario note".

It added that it could not go along with the logic of the scenario note as it is a totally wrong logic; nobody has discussed these issues because they are not issues under this body.

China said that in the past some of the issues were discussed in the SBI (Subsidiary Body on Implementation of the UN Framework Convention on Climate Change) and at the CMP (UNFCCC Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol) but never here in AWG – for example, review of the Protocol, immunities (for persons serving on Protocol bodies), and amendment procedures.

It reiterated that it will not go into discussion of proposals beyond the mandate of the AWG-KP, and since time is very limited, “our work should focus on the numbers discussion”. China asked for a clear indication on how much time will be allocated to this discussion.

Saudi Arabia said that there was a lot of panic when the report of Secretariat was published (in the August session of the AWG-KP in Bonn, FCCC/KP/AWG/2010/10: *Legal considerations relating to a possible gap between the first and subsequent commitment periods*).

“Then we came back in good faith and listened in good faith and in a cooperative way. We then said there was no need for a legal group – no need to discuss gap and implications. We agreed that we should discuss Article 3.9 of the Protocol (amendment for the second and subsequent commitment periods). There should be no gap and no phasing out of the KP,” it said.

It also said that when the Group of 77 met with the AWG-KP Chair on Sunday (3 October) it asked about the legal group but did not get an explanation. It cannot accept the organization of work and fully supported China in opposing the proposed work programme.

It added that if there is amendment of Annex B then we can have the legal group and expressed deep concern to hear that there will be 6 meetings (of the legal group) when there are 5 days of the session left.

It also recalled that the AWG-KP Chair had promised at the plenary (on 4 October) that most of the time will be allocated to numbers.

Belgium on behalf of the European Union said that it was willing to engage constructively in this contact group on matters that Parties decide on. It said that the group may not need 6 slots, comparing this to the fewer slots allocated for the group on other issues such as LULUCF. It added that the time allocated should be kept under review.

Australia said the contact group is “crucial for us”. It said that there are several serious proposals and there are legal proposals and Australia has one that it sees as necessary to discuss. “It has not been taken up in numbers group. There have been umpteen meetings over the years and the discussion (in the numbers group) is now sterile,” it added.

“We don’t see how we can adopt a decision if we don’t discuss those issues. Some Parties may think some options are not relevant here but we have not even discussed them yet. I can’t remember how many numbers meetings we have had,” it said.

Brazil supported China and Saudi Arabia. “We fully oppose discussing paragraph 18 (a) to (f) of the scenario note as most of it is completely outside the mandate of the AWG-KP. Articles 4, 9, 15, 18, 21 and even Article 3 other than paragraph 9 are not relevant,” it said.

It said that Parties are free to raise these issues at the CMP but not here under the AWG-KP.

Tuvalu said there are consequential amendments that are required as a result of amendment to Annex B so there is validity for a broader discussion to ensure there is legal consistency. It sees the AWG-KP Chair’s draft proposal as a basis for consideration.

India said that time should be spent on substantive issues (in other contact groups) and also opposed the legal matters contact group.

Bolivia said it is open to discussion of proposals but in the right place. Any Party has the right to present proposals for discussion in the CMP. But this group has a very clear mandate and that is amendment pursuant to Article 3.9 of the Kyoto Protocol.

It added that the legal group has to respond to other contact groups, and fully supported China, Saudi Arabia, Brazil and India, and also called for a revision of the allocation of time slots.

It stressed that it is fully engaged in discussion on Article 3.9 and was surprised that its objection to the scenario note was not reflected in the organisation of work.

Ghana on behalf of the African Group also agreed with China, Brazil and Saudi Arabia.

Micronesia said that a number of the issues tasked to the contact group are proposals that AOSIS (the Alliance of Small Island Developing States) have proposed. The question is of course where to discuss these, it said, adding that there are consequential amendments and so a broader approach is needed.

It gave the example of how to increase stringency of commitment during the next commitment period, saying that it would like to engage but also echoed concerns others have raised on a number of sessions.

Switzerland fully supported the proposed organisation of work that arose from the Chair's scenario note. It said that Parties should not be rigid, and that the group should go beyond the rigidity of negotiators, referring to a ministerial meeting at St Petersburg.

At this point the contact group co-chair summarized the discussion saying that most of the comments were on the mandate of the AWG-KP, and that goes beyond the mandate of the contact group. He said that he and his co-chair (Mr. Gehrard Loibi of Austria) would bring those to the AWG-KP Chair. They would convey the message to the Chair on the time allocated for this work.

He also observed that during the plenary on 4 October the Chair had presented the scenario note and plan of work but there were no comments and the mandate was endorsed. This led to reactions from some Parties.

Saudi Arabia said that at the G77 consultation with the Chair he promised more time would be given to the numbers group. At the plenary the Chair did not say anything about time, otherwise it would have opposed at the plenary. It had also raised the issue of the legal group and the Secretariat paper of the last session (in Bonn) during the G77 consultation.

Egypt said that at the Arab group's statement at the plenary it said that the draft proposal and scenario note presented a good basis for work but it wanted to remind the group that there was no blank cheque given to do whatever even though there was enthusiasm for work on the text.

Brazil said that this is a contact group of the AWG-KP, and it is not superior to that group.

China said that, "enough is enough". It asked who is leading the negotiations – chair or Parties? It said that views have been expressed by the majority of Parties and asked why those have been ignored.

It added that the pure legal question is quite clear: "We don't need to confuse ourselves – the AWG-KP work is about Article 3.9 amendments for the second CP and nothing else. We should focus on this mandate".

On the possible gap (between commitment periods) it said that before we decide to give up any discussion of the second commitment period there is no need to discuss gap.

Australia said it was getting very mystified by the discussion about mandate, and that the decisions of the CMP1 and CMP5 were clear and that the options in the draft proposal of the AWG-KP Chair are important options. It said it was prepared to take on QELROS (quantified emission limitations and reduction objectives) and that the discussion was a very retrograde step.

The meeting ended at 1 pm.