

Interesting discussion on decision making process in the UNFCCC

Geneva, 29 Nov (Meena Raman and Zhenyan Zhu)- A series of informal consultations were convened during the 19th meeting of the Conference of Parties of the UNFCCC in Warsaw to deal with a proposal by the Russian Federation on ‘decision making in the UNFCCC process,’ which saw an interesting expression of views on how to strengthen a Party-driven process.

No conclusion was reached on the issue but the consultations provided a space for the frank airing of views among countries on how the UNFCCC process can be improved and be made more transparent, inclusive, legitimate and credible. Parties agreed that this matter will continue to be discussed at the next meeting of the Subsidiary Bodies in June next year and at COP 20 in Lima, Peru.

At the outset of COP 19 and even before its opening, there had been concerns whether the COP provisional agenda would be adopted as the Russian Federation had proposed a new sub-item 17 (d) on “*Decision making in the UNFCCC process*” under the agenda item on “*Administrative, financial and institutional matters*”.

A similar proposal to include this matter on the agenda item of the Subsidiary Body for Implementation (SBI) in Bonn, in June this year, was made by the Russian Federation, Belarus and Ukraine. Due to wrangling over the inclusion of this item in the agenda, the SBI agenda was not adopted and no substantive work could commence.

However, in Warsaw, the COP opening session did not experience an agenda fight as Parties were given a number of reassurances by the COP 19 President, Marcin Korolec (Poland), that the Russian proposal would not duplicate other agenda items on the “adoption of the rules of procedure” [item 2 (b) of the provisional agenda] and item 6(b) [relating to a proposal by Papua New Guinea (PNG) and Mexico

to allow for voting under the Convention except for rules relating to finance and the financial mechanism, when consensus could not be reached].

(The UNFCCC process has continued to apply the draft rules of procedure with the exception of rule 42 which relates to the issue ‘voting’).

Also addressed at the Warsaw talks were the PNG and Mexico proposal as well as another proposal by the Russian Federation relating to amendments to the Annexes of the Convention. (See below for reports on this).

On the issue of item 17(d), it was agreed by Parties that informal consultations be held on this item which will be facilitated by Vice-ministers Gabriel Quijandria (Peru) and Beata Jaczewska (Poland).

When the first session of the informal consultations were held on Nov 16, the Co-facilitator, Jaczewska informed Parties that the COP19 President had provided an assurance that this agenda item 17(d) will be forward looking and that agenda items 2(b) and item 6(b) will be separate and distinct agenda items; and that no agenda item has a special status and all items are equal. The President had also given an assurance that discussions on item 17(d) should not prejudice any outcome. Parties then gave their views.

Belarus said ‘this process’ needs to have clear, transparent and efficient decision-making rules for presiding officers and for conduct of meetings.

China referred to the background information (provided by the Russian Federation on the agenda item) which talked about decision-making and compliance with the draft rules of procedure of the UNFCCC to be applied. The note also referred to the performance of elected officers and of the Secretariat. The note referred to elements of transparency and inclusiveness in the process, which China said are important issues. Another element

referred to in the background document was the definition of consensus. China said that any definition or clarification of the meaning of consensus relates to very specific terms of the Convention and the rules of procedure, which should be dealt with in the context of agenda item 2(b) and that should be the understanding of Parties.

Mexico sought clarification over what the consultations will address. If it is not dealing with agenda item 6(b) (which is about voting in the UNFCCC) and if we are talking about functions of the presiding body, then it is important to deal with that and start the ball rolling.

Russia said it was cognisant of the explanation and clarification provided by the COP Presidency on the scope of agenda item 17 (d) and concurred with that. Russia believed that 'we need to clean up the house and provide a conducive environment for the processes to follow'. It said that we are in a historical process from Cancun, Durban and Doha and need to set the landscape for a long-term perspective. There needs to be a clear legal environment conducive for informed decision making when we come up with decisions and not deviate from procedures. We believe that we have to go through a 'healing process' in arriving at certain conclusions. It appreciated Belarus for indicating issues, which are all important like transparency and inclusiveness, and added other issues such as the role of presiding officers and the role of Secretariat. It is important to address how decisions are made and the issue of consensus. We are not focused on consensus but we have to face the issue. The UNFCCC's rules of procedure have not been adopted for two decades and relate to the voting procedure. We have to deal with that. Our proposal is a future oriented exercise; it does not imply the overruling of decisions taken (in an obvious reference to the way decisions were adopted in Doha under the Kyoto Protocol); we are not going to reopen that chapter of history, said Russia. We think that it will be extremely useful to have a decision containing all the things, which are a reminder about the process on how informed decision-making is for the future.

India said the reassurances from the Co-facilitators regarding how this agenda item is to be addressed is important and needs to be in writing. It is important to keep agenda items 2(b) and 6 (b) apart and the most contentious issues in this regard 'have been kicked out' and there is a separate process for that. India viewed this 'exercise' as a Party driven process. Ultimately, the discussions should

strengthen a Party driven process and we do not want decisions in corridors and backrooms. Everyone should participate in a manner to convey their views. Transparency can only strengthen this. It is useful to discuss how the Party driven process is strengthened. The scope in the background paper (of the Russian proposal) goes beyond the mandate we have now in the informal consultations.

United States said all Parties have had concerns over this issue getting it mixed up with the rules of procedure and voting. It wanted to proceed on discussing how to improve our practices in arriving at decisions, emphasizing the importance of transparency and that we should be forward looking. We all know the different issues related to decision making and have different interpretations and we want much better focus on what we can all do to improve the Party driven process for Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP). It said it was starting to see commonalities with emphasis on a Party driven process; respect for all countries that come to participate and for Parties' sovereignty. It said that a potential for improvement in going forward is to get away from texts from a wide area of subject matters in a 'package deal'. It referred to negotiations under the Bali Action Plan where there was a 'sprawling mandate' in trying to resolve many things linked together. 'Take it or leave texts' are difficult for Parties to accept and it is helpful to return to negotiations where there is 'no presumption of package texts'.

South Africa supported India in stressing the need to focus on what is meant by a process that is Party driven. It recalled the 'harrowing experience' it had as the COP Presidency (referring to the Durban COP). It said that nothing is done in a big-setting and asked what a 'small-setting' means. There is need to breakdown what it is that we are talking about in terms of transparency and inclusiveness. A Party driven process in a 'big process does not work' (referring to the ADP discussions) and asked if we really need the meetings of the Subsidiary Bodies twice a year, wanting more time for the ADP. It did not know if in a plenary session we would get a decision. The COP Presidency is under a tremendous amount of pressure to 'deliver a miracle'. On talks about transparency, it said not all countries are vocal during the negotiations and asked if there could be negotiations through major groups. It said there is need to set up a process that allows for an inclusive process.

Saudi Arabia said transparency and inclusiveness are the cries of developing countries and there

needs to be a paradigm shift in the process. It recalled how invitations to pre-COP meetings go to selected Parties and some are not invited for some reason or another. On other related meetings under the thematic bodies, to ensure consensus and to put in practice transparency, it was agreed that developed and developing countries will be equally represented. However, it said that due to budget constraints and with the placing of thresholds on those developing countries whose GNP per capita are more than USD7500, these representatives cannot be funded to attend meetings (even though they represent regions which are poor) and it is not known who set such policies, complained Saudi Arabia. It stressed the importance of transparency and inclusiveness over decisions relating to the Secretariat's budget and administrative matters. The process needs to be fair to everyone and so must the outcome. It underscored that voting is not about transparency.

Australia supported the US against decisions being adopted as 'a package of outcomes'. This leads to procedural problems where linkages are made to items and merged. It wanted clarity on scope of the discussions.

Singapore said that it had supported the inclusion of agenda item 17 (d) on the COP agenda with the understanding that it will be separated from the other two agenda items in 2(b) and 6(b) and that the discussions under 17 (b) will not prejudice any outcome. As a small country, it attached the deepest importance to transparency and inclusivity and what happened in Copenhagen had a 'bitter aftertaste', (referring to how a small group of countries and their leaders were negotiating the Copenhagen Accord which was then 'dropped' on the floor of the COP for all to agree). The kind of processes at the COP in Copenhagen did not allow all Parties to participate. It stressed the importance of transparency, inclusiveness and legitimacy. From its' perspective, small countries are seen as being marginal to an outcome because of some other players who are larger. Balance is important and legitimacy and credibility of the process is important. At the initial stage, the objective is to build trust and confidence about what is needed for a strong multilateral process for an inclusive and legitimate outcome. In a multilateral process, the COP President has a special responsibility; the Secretariat and every Party have to exercise responsibility with care. Singapore noted some comments on the need to be efficient, and expressed concerns that legitimacy and inclusiveness should not be sacrificed at the altar of efficiency.

There is need for balance between legitimacy and efficiency. It said the conversation was helpful and forward looking but at this stage, it did not want to be fixated with a formal outcome as a product of this conversation. We need to build confidence and not be fixated on an outcome with a decision.

The informal consultation on this agenda item was convened for the second time on 18 Nov. The discussion focused on identification of the scope of the discussion under this agenda item. The Russian Federation made a request to the Secretariat to prepare a simple paper containing the issues that all delegations could discuss and it wanted to be absolutely clear which thematic discussions Parties would discuss in more detail.

On the basis of Parties' suggestions and comments during the consultation, the Co-facilitators distributed a document titled '*Preliminary open list of possible elements of the scope of discussions*' on 20 Nov and invited Parties to comment on this list.

On 21 Nov, an updated version of this list was distributed, which incorporated comments and suggestions raised by the Parties and the Co-facilitators clarified that the list was not a closed one and Parties were welcome to make further comments on this updated list. The list was as follows: "*Preliminary open list of possible elements of the scope of discussions*:"

Box A. Overarching elements- Legitimacy of the process; Forward-looking

Box B. Possible elements of the scope -Process related

- *Party driven; Transparency/Openness; Inclusiveness; Fairness and equal treatment; Efficiency; Effectiveness; Consistency; Ownership*
- *Role and responsibility of: President; Presiding officers; Secretariat*
- *Organization of the intergovernmental process, including high-level engagement*
 - *Outcome related - Managing expectations of COP outcomes; Process for achieving outcomes*

Box C. Elements outside of the scope

- *2(b)-Adoption of the rules of procedure;*
- *6(b)-Proposal from Papua New Guinea and Mexico to amend Article 7 and 18 of the Convention. These items are distinct and separate agenda items and will continue to be addressed under distinct processes from 17(d) and in accordance with the established practice."*

Bolivia doubted the bullet point on 'legitimacy of the process' in Box A. It questioned if 'we are

saying the process is not legitimate or the process can be better' and it reminded Parties to be careful in sending the impression that the process is not legitimate.

Saudi Arabia responded that Parties were talking about the validity of the process and not its legitimacy and proposed to delete Box A and C but focus on Box B. This position was supported by **China**. China further clarified that, if we delete Box C, the elements in Box C cannot be brought back to Box B.

The Co-facilitator responded that Box C was proposed by Parties and they wanted to present every Party's proposal in this paper. Meanwhile, the Co-facilitator clarified that keeping Box C is to avoid someone bringing it back to the scope of the discussion.

Russian Federation sought to add 'tools of decision-making' into the scope of discussion, i.e. voting and consensus as two basic tools, to indicate that Parties have these tools for decision-making, and clarified that this does not mean we would go into substantive discussion and details of consensus and voting.

Saudi Arabia expressed caution against this suggestion on the grounds that voting is discussed under agenda item 6(b) and Russia's addition would be misleading.

Since there was no agreement on the list of elements on the scope of discussions, Parties agreed to continue the informal consultations on this item at the 40th session of Subsidiary Bodies next June and also at COP 20.

Parties agreed to the draft conclusions following some modifications in document (FCCC/CP/2013/L.3). Meanwhile, the Co-facilitator underscored that this issue would not clash with ADP negotiations and clarified that the document of the preliminary list has no official legal status and it is used only for Parties' understanding of what happened in Warsaw.

The draft conclusions which were proposed by the COP President and accepted by Parties were as follows:

"1. The COP noted the initial exchange of views on this agenda item and decided to continue discussions on decision-making in the UNFCCC process.

2. The COP requested the President, in collaboration with Peru as the host of COP 20, to undertake forward-looking, open-ended informal consultations on decision-making in the UNFCCC process in conjunction with the fortieth sessions of

the subsidiary bodies (June 2014) and with the possibility to report back to the COP at its twentieth session (December 2014).

3. The COP agreed that items 2(b) and 6(b) of the COP 19 agenda would continue to be considered under distinct and separate processes from this item.

4. The COP also agreed to continue its consideration of this item at its 20th session."

Item 6(b) Proposal from Papua New Guinea and Mexico to amend Article 7 and 18 of the Convention.

In May 2011, PNG and Mexico submitted to the Secretariat a proposal for amendments to Article 7 and 18 of the Convention. At the COP 17 in Durban, the COP President noted that a revised proposal had been received and at COP 18, it was decided this item be included in the provisional agenda for COP19.

At the COP 19 opening session, PNG following the adoption of the agenda said that it had made requests since the Bali COP for adoption of the rules of procedure (which is still pending adoption as Parties have not been able to agree on rule 42 on 'voting' when consensus is not possible). It said that without having effective and transparent processes, the hands of Parties were being tied. It wanted resolution of this.

On a proposal by the President, the COP 19 decided to establish informal consultations, facilitated by Iwona Rummel-Bulska (Poland), on this matter. The informal consultation on this agenda item was held on 18 Nov.

The two proponents were of the view that the rules of the procedures have to be reviewed. **PNG** highlighted the importance of efficiency in the negotiation process and said their proposal was an attempt to improve the practice and processes under the Convention. It pointed out that majority voting is accepted by the many international bodies, such as Basel Convention, Montreal Protocol and most financial institutions and it clarified that voting should be the last resort when the effort to reach consensus is exhausted and no agreement is achieved.

However, most developing countries still insisted that consensus is the basis of the decision-making in the UNFCCC process.

Bolivia said consensus is the basis we have built on under the UNFCCC and that this should be the basis of our work. It had great concerns over the term 'efficiency'. We need to have enough time to

share views and positions in order to reach agreement. On inclusiveness and transparency, the process has to include all Parties. The neutrality of the Secretariat is very important. The views expressed by Chair or facilitator sometimes might be contradictory to the views of the Parties; so we need Chairs and facilitators to express the positions of the Parties.

The European Union reminded Parties that it takes time for an amendment to the Convention to enter into force and would be very difficult for the amendment, if any, to enter into force by 2015.

Australia agreed on the importance of consensus in this process and stressed that the decision taken by Parties must have legitimacy and agreed with Bolivia's view that efficiency is not in fact the concept of the decision making of the Convention.

Canada questioned how the voting would be operated if it were applied.

Venezuela said we are at risk by giving up consensus and reaching a decision that is not mature enough. It was of the view that Parties should not be too hasty on this issue.

China said consensus is the usual basis in the last 20 years and saw no need to modify it as it functioned very well. It highlighted that what we should enhance is not the rules of procedure, whether voting or not, but we should enhance the willingness to implement the decisions taken.

India said we should continue to have consensus in decision-making.

Saudi Arabia questioned how voting would be operated and if voting is helpful, the rules should also be applied to matters related to finance (which PNG and Mexico were opposed to in their proposal).

Mexico said this is a matter of ownership of the process and we should not be afraid of voting. If we go for voting, we know which Party votes against a decision and this creates more opportunity for a more inclusive process. It stressed that their proposal is based on consensus and the logic is to have the right to vote only as a last resort. **PNG** fully associated with this position.

As for a way forward, Mexico proposed to have specific feedback on their proposal. The Facilitator proposed that she would inform the President about this discussion which was still on going and that countries want more time to discuss this; hence the issue will continue to remain on the COP agenda in the future.

Item 6(a): Proposal from the Russian Federation to amend Article 4, paragraph 2(f) of the Convention

In addition to agenda item 17(d), there was another agenda item (item 6[a]) which was also proposed by the Russian Federation. It submitted a proposal for an amendment to Article 4, paragraph 2 (f) of the Convention early in May 2011, to periodically review the lists of Annex I and II of the Convention. COP 18 decided to include the item on the provisional agenda for COP19. Article 4.2 (f) of the Convention currently reads as follows:

"Article 4.2 The developed country Parties and other Parties included in Annex I commit themselves specifically as provided for in the following:(f) 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 Annex I and II as may be appropriate, with approval of the Party concerned;"

The **Russian Federation** proposed a text to insert after the sentence *"with the approval of the Party concerned"* the following: *"A further review of amendments to the lists in Annex I and II shall be conducted on a period basis, as determined by the Conference of the Parties, until the objective of the Convention has been achieved."*

On a proposal by the President, COP 19 decided to establish informal consultations, facilitated by Iwona Rummel-Bulska (Poland), on this matter. The informal consultations were held on 18 and 20 Nov.

This proposal was supported by **Belarus**. It said since the adoption of the Convention in 1992, there have been changes in social and economic circumstances and in terms of countries' capacities; the differences of the countries and their commitments should be reviewed.

Saudi Arabia was of the view that the agenda item being discussed had already been discussed in Doha (COP18) and it did not see it proper for a discussion now. Instead, Parties should focus on the negotiations under the ADP.

The **United States** said that if Parties continue to keep the Annexes as they are, it would not be operational because there would be a new agreement in 2015. Some Parties may be moved to Annex I in view of their future capacities. It is best to discuss this in the ADP but it did not resist discussing this agenda item. It said the Annex I should not only be revisited but should also allow for the 'graduation' of some Parties to the Annex.

The **Russian Federation** insisted that the discussion might be conducive and helpful, as

Parties can better understand the issue of categorization of the countries. It pointed out that its proposal was raised before the ADP started and ADP does not provide a forum to address this specific issue.

Singapore reiterated its views that had been expressed in Doha that the mechanism to amend the Annex is already in the Convention so there is no need for any additional feature.

China also highlighted that the present mechanism involving the Annexes functioned very well so there is no need to review this. During the current discussions of ADP, many Parties emphasized that

the aim of ADP is to enhance the full implementation of the Convention. So, a review of the Annexes is very dangerous. The review process would erode the foundation and would not be helpful to the negotiations under the ADP.

In response to China, the **Russian Federation** said it was surprised that changing the Annex of the Convention would be dangerous.

The facilitator proposed to maintain the item in the COP agenda and to allow more time to the delegations for further discussions on a bilateral basis and return this subject at the next COP.