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ecbi

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INTRODUCTION

The 2016 ecbi Regional Training Workshop for South and South East Asia took place on 14 & 15 April 2016 in Dhaka Bangladesh. It was attended by 16 government representatives from the region.

Saleemul Huq, Director of the International Centre for Climate Change and Development, opened the workshop. He noted that the ability to understand different positions and reach compromise were important skills for negotiators to cultivate. He reassured delegates that all newcomers to the climate process begin as novices, but soon move on to understanding the jargon and become more informed observers.

INTRODUCTION TO THE CLIMATE NEGOTIATIONS

Anju Sharma, Head of the Policy Analysis and Publications Unit of the ecbi, presented on the history and politics of the climate negotiations.

She noted that the opposition to global goal setting by some countries predates the UN Framework Convention on Climate Change (UNFCCC), and was voiced during the early days in the 1980's, soon after global discussions on climate change started.

Sharma said the principle of “common but differentiated principles” (CBDR) that was included in the UNFCCC was already seen as a dilution of the “polluter pays principle” by many developing countries. She described the politics leading up to the Berlin Mandate, and the adoption of the 1997 Kyoto Protocol.

She also highlighted early disagreements on the governance of climate finance, and described the genesis of the Global Environment Facility, Least Developed Country Fund, Special Climate Change Fund, and Adaptation Fund.

INTRODUCTION TO THE PARIS AGREEMENT

Achala Abeysinghe, Head of the ecbi Training and Support Programme, introduced participants to the Paris Agreement. She highlighted the following elements of the Agreement:

- the temperature goal to keep global temperature rise well below 2°C above pre-industrial level, while pursuing efforts to limit it to 1.5°C;
- the aim to reach global peaking of emissions as soon as possible;
- the “nationally determined contributions” (NDCs) that describe national intentions related to mitigation, adaptation and means of implementation;
- the adaptation goal that links adaptation responses to the temperature goal, and adaptation communications;
- the commitment for developed countries to provide financial resources to developing countries, starting with a commitment of US\$100 billion annually until 2025;
- the emphasis on capacity building for least developed countries (LDCs) and small island developing states (SIDS);
- the transparency framework to enhance the transparency of action and support; and
- the global stocktakes every five years, from 2023, to assess collective progress towards achieving the purpose of the Agreement and its long-term goals.

Abeyasinghe said an Ad hoc Working Group on the Paris Agreement (APA) had been formed, to work on the modalities and procedures of implementing the Paris Agreement.

In the discussion that followed, participants discussed market mechanisms under the new Agreement, and its withdrawal provisions, which state that a mandatory compliance period of three years applies to parties who ratify the Agreement.

DECISIONS RELATING TO THE PRE-2020 PERIOD

Ziaul Haque from the Department of Environment, Bangladesh, described the decisions on pre-2020 action in Paris.

Haque emphasised the importance of pre-2020 action in reducing emissions to the levels needed to keep global average temperature rise within 2°C. He said the 17th Conference of Parties (COP 17) to the UNFCCC in 2011 launched the Ad Hoc Working Group on Durban Platform (ADP) to discuss both the Paris Agreement and pre-2020 climate action. In the context of pre-2020 action, meetings were held between 2012-2015 on renewable energy and energy efficiency, urban issues, land use changes, carbon capture, best practice and experiences, and sharing knowledge on adaptation and mitigation.

At the Paris Conference, decisions relating to pre-2020 action relate to:

- a continued technical examination process on mitigation;
- a technical examination process on adaptation;
- regular technical committee meetings on both mitigation and adaptation;
- the appointment of two “high level champions”;
- coordination of annual technical papers and corresponding reports for policymakers;
- annual high-level events during 2016 to 2020 for “new or strengthened” voluntary initiatives;
- facilitating dialogues to “enhance possible mitigation efforts by enhancing provision and mobilization of support and enabling environments”;
- urging developed countries to scale up financial support, and provide a concrete roadmap to achieve the climate finance goal of US\$100 billion annually by 2020;
- encouraging operating entities of the UNFCCC’s funding mechanism to engage in Technical Expert Meetings, and facilitate progress in implementation of policies, practices and actions; and
- welcoming efforts of non-party stakeholders to scale up climate actions and increase engagements.

He said a Technical Expert Meetings would be held in May in November 2016, and a Technical Examination Process would be launched for Adaptation.

MITIGATION

Subhi Barakat from the Legal Response Initiatives presented on mitigation.

He said mitigation actions involve addressing climate change by reducing greenhouse gases (GHG) emissions and removing them from the atmosphere, as the effect of these emissions on the climate is and will continue to cause significant impacts on people, livelihoods, economies and the environment.

He noted that under the Paris Agreement, nations determine their own commitments through their NDCs, reflecting a bottom up approach. These NDCs will be reviewed every five years with the goal of becoming progressively more ambitious, informed by a global stocktake, and include information for transparency and clarity. Under the Agreement, all Parties will have mitigation commitments determined at the national level.

He said Article 4.1 of the Agreement states that global peaking of GHGs will happen as soon as possible and balancing anthropogenic emissions and removals will start to take place in the second half of the century. All parties are responsible to provide adequate reporting, including GHG inventories and information on progress in implementing mitigation contributions that will be submitted biennially. LDCs and SIDS can submit information at their discretion.

Barakat said actions taken to mitigate emissions and address climate change are generally referred to as “response measures”. Developing countries are sometimes against “strong” response measures, as these can sometimes have impacts on other aspects of the economy, particularly for developing economies that are less diversified. This is a “double” problem for LDCs: restricting economic activities can hurt them, but less stringent mitigation activities from developed countries can result in greater impacts of climate change, affecting them more severely.

He noted that developing countries face obstacles in mitigation, mainly financial, but also access to improved technology for clean energy, carbon capture and storage, and more efficiency products.

During the discussion that followed, participants discussed the second phase of the Kyoto Protocol, which will only come into effect once it has sufficient ratifications. Parties can choose to provisionally apply the measures of the commitment period on a voluntary basis. However, there are no penalties if parties don’t comply.

A discussion on baselines revealed how nations can appear to be more ambitious than they are – for instance, by using a later year as a baseline. However, LDCs often lack sufficient data, so it makes sense for them to use a year where data is available as a baseline.

ADAPTATION AND LOSS & DAMAGE

Hafij Khan, Director of the Centre for Climate Justice, Bangladesh, presented on adaptation and loss and damage. He noted both are important issues for LDCs. Khan said adaptation could be both proactive and reactive. He listed five main approaches to shape policy responses for adaptation:

- Observation
- Assessment of impacts from climate change and vulnerability
- Planning
- Implementation
- Monitoring and evaluation

Under the UNFCCC, adaptation is governed by the Adaptation Committee and encompasses the following workstreams and institutions:

- National Adaptation Programmes of Action (NAPAs), which provide means for LDCs to identify and implement urgent and immediate needs.
- The Nairobi Work Programme (NWP), with nine work programmes, to help all parties improve their understanding and assessments of impacts, vulnerability and adaptation and make informed decisions

on practical adaptation actions and measures.

- The LDC Programme, to build and strengthen the capacity of LDCs to address adverse effects of climate change based on their specific and special circumstances.
- The Cancun Adaptation Framework (CAF), established at COP16, to enhance adaptation, including through international cooperation and the coherent consideration of matters relating to adaptation.
- The National Adaptation Plans (NAPs), which are a means of identifying medium- and long-term adaptation needs and developing and implementing strategies to address them.
- The LDC Expert Group (LEG), a body set up to address the special needs and circumstances of LDCs.

Khan defined loss and damage as the impacts of climate change that people cannot cope with, or adapt to. He said in the absence of adequate mitigation and adaptation, the adverse impacts of climate change are causing losses and damages to lives, livelihoods, environment, values, heritage and territory. These losses can be both economic (those that have a market value such as damage to homes and property) and non-economic (those that have no market value and therefore cannot be quantified, such as loss of heritage, cultures and ecosystems).

He said COP19 in Warsaw, Poland, in 2013 established the Warsaw International Mechanism (WIM) for Loss and Damage associated with Climate Change Impacts, to address loss and damage associated with impacts of climate change, including extreme events and slow onset events, in developing countries that are particularly vulnerable to the adverse effects of climate change. WIM will report to the 2016 Marrakech COP22 on the nine action areas:

1. How loss and damage affects particularly vulnerable developing countries, vulnerable segments of society, and the ecosystems that they depend on, and how the implementation of approaches to address loss and damage can benefit them.
2. Comprehensive risk management approaches.
3. Risks of slow onset events and their impacts.
4. Non-economic losses.
5. Capacity and coordination needs.
6. Migration, displacement and human mobility.
7. Financial instruments and tools.
8. Involving existing bodies and expert groups under the Convention, as well as relevant organizations and expert bodies outside the Convention.
9. A five-year rolling workplan for consideration at COP 22.

Khan concluded by saying that after years of negotiations, loss and damage has gained recognition in the Paris Agreement with a separate article being dedicated solely to it. Article 8 of the Agreement talks about averting, minimizing and addressing loss and damage and firmly anchors WIM, looking to it to guide work on this issue under the Convention.

Participants asked about the monitoring, review and verification processes for adaptation activities, highlighting capacity, technical and financial needs in this regard.

TERMINOLOGY GAME

Abeysinghe lead a game session aimed at enhancing the knowledge of participants of the technical terminology in the climate negotiations. The game involved a multiple-choice test of legal language used in the negotiations

under the UNFCCC. The results were scored by peers, and winners were awarded prizes on the final day of the workshop.

LEGAL ISSUES

Abeyasinghe then presented on legal issues under the UNFCCC.

She noted that a legally binding agreement means that parties accept that there are penalties to not fulfilling the terms and conditions of an agreement that they have ratified.

She described how the use of “shall” instead of “should” was controversial in the Paris negotiations – whereas “shall” indicates a legally binding requirement or obligation, “should” merely indicates a recommendation.

Whereas legally binding agreements require the formal approval of the highest level of government through a ratification process, non-binding decisions do not need to go through Parliaments, and are therefore seen to be “weaker” in their legal status.

Abeyasinghe said the Paris Agreement has established a compliance mechanism to facilitate implementation and prevent non-compliance. Several key aspects of the Agreement still need to be further developed, however.

The Agreement will enter into force following a three-step process:

- Countries must sign the Agreement. This does not establish the state’s consent to be bound, but creates an obligation to refrain, in good faith, from acts that would defeat the general objectives.
- Countries must ratify the Agreement. This will indicate their consent to be bound by the multilateral treaty.
- The Agreement will then enter into force when least 55 parties accounting for 55% of total GHGs have deposited their instruments of ratification, approval or accession.

Discussions centered around the grounds for withdrawal. Abeyasinghe noted that countries generally take international agreements very seriously, and do not withdraw lightly. The process of withdrawal is often complicated, and often comes with the embarrassment of “naming and shaming”.

She noted that while certain organizations were advising developing countries against early ratification of the Agreement, ratification will be necessary for them to participate in the process of rule-making to implement the Agreement.

TRANSPARENCY AND THE GLOBAL STOCKTAKE

Dorji Tshewang from the National Environment Commission, Bhutan, presented on this topic.

He said Article 13 of the Paris Agreement calls for a transparency framework. Parties are expected to provide information every two years and move towards “common” modalities, guidelines and procedures. LDCs are given flexibility to report, as the process and frequency can be quite onerous, and a capacity building initiative for transparency has been agreed to help developing countries.

Tshewang said that to properly design and implement the transparency framework, parties need to engage in discussions about procedures, methodologies, guidance, and reporting requirements. The reporting and review needs to be flexible to take proper account of different methods and country circumstances.

He said the global stocktake allows for better accountability in assessing whether goals are met. It is a “review mechanism” to assess the collective progress made by parties towards achieving the purpose of the Agreement and goals, including the temperature goal, adaptation goal and financial flows. The first stocktake will take place in 2023. The APA is charged with developing the modalities of the stocktakes, while SBSTA will provide advice.

DISCUSSION AND FEEDBACK FROM DAY I

The first day ended with a session summarising the day’s learning, and asking participants if they had any questions, and for their feedback.

A discussion took place on what would happen if countries do not ratify the Agreement. The expert advisers noted that it was in the best interests of developed countries to ratify, as they were also feeling the impacts of climate change. Early movers have the advantage of showcasing their commitment.

Participants said they had benefitted from the sessions on the history and science of the process and the explanation of how key principles were agreed, and also the sessions on the Paris Agreement. They noted that the participation of women in the workshop and sessions was particularly encouraging, as they are often excluded in national discussions.

MOCK DRAFTING SESSION

The second day started with a mock negotiating session. Participants were presented with a hypothetical situation, where US \$80 billion has been left to the UNFCCC, and asked to negotiate how the money should be divided for mitigation, adaptation, technology transfer, capacity building and transparency. This exercise helped participants understand diverse country priorities; the importance of influencing group positions; and the need for compromising to reach agreement.

PRACTICAL NEGOTIATION SKILLS

Barakat presented on this session. He introduced some rules of procedure under the UNFCCC.

He said a provisional agenda is distributed at least six weeks before a meeting by the UNFCCC, including items proposed by parties. Parties can propose additional items to be added to a supplementary agenda. The COP can change items when adopting agenda. When there is no consensus on an agenda item, it is held in abeyance and included in next agenda unless COP decides otherwise.

He said a President presides over UNFCCC meetings, while Bureau officers are mainly responsible for questions of process management. The President accords the right to speak; rules on points of order; and can close the list of speakers. Parties can raise a “point of order” when the rules of procedure have not been followed. The President rules immediately, but this decision can be appealed and put to vote.

Countries can also introduce motions, for instance, to call for a decision on the competence of the COP to discuss any matter or to adopt a proposal or amendment; or motions to suspend or adjourn meetings or close debate on an issue.

Barakat listed the following documents, available on the UNFCCC website, as important before a session:

- The annotated provisional agenda
- Note from the Chair
- Draft negotiating text
- Compilation of Parties' submissions
- Expert reports
- Non-papers

He said agreements adopted by the COP include four important components: titles; definitions; preamble; and the operative section. The preamble is not legally binding – it is mainly used to guide interpretation of the operative part, and strategically includes language that puts the operative part into context. The operative part represents the actual “agreement” between Parties, and prevails when it is in direct conflict with preambular language.

When drafting language of negotiating text, Barakat said the key considerations include:

- The nature and degree of commitment
- Specificity
- Enforceability
- Mandatory vs. permissive
- Conditional/qualified
- Procedural or substantive

He noted that in most negotiations, silence signals consensus. He concluded by summarising some of the obstacles faced by developing countries, including a high turnover in small delegations, leading to the loss of institutional knowledge; and the inability to participate in all the meetings where decisions are taken, because of small delegations.

FINANCE

Sharma presented on this session. She described the evolution of the provisions for finance under the UNFCCC, including the establishment of a Financial Mechanism under the UNFCCC in 1992; the establishment of the Global Environment Facility; the roots of the Adaptation Fund in the 1997 Kyoto Protocol; the establishment of the Special Climate Change Fund and Least Developed Countries Fund in Marrakesh in 2001; the governance arrangements of the Adaptation Fund in 2007 in Bali; and the formation of the Green Climate Fund (GCF) in Copenhagen and Cancun.

Sharma described the “enhanced direct access” (EDA) modality of the GCF, which aims to devolve decision making to the national level, and increase country ownership. She noted national-level challenges that need to be addressed in the implementation of EDA, noting that increased devolution comes with the need for increased transparency and accountability. She then described the key finance provisions of the Paris Agreement, including on sources, MRV, and governance arrangements. Participants discussed possible options for streamlining the finance architecture in the aftermath of the Paris Agreement.

CAPACITY BUILDING

Huq presented on capacity building. He noted that several engagements with the formal negotiations, and an understanding of the process of compromising, were necessary for a “novice” to turn into a “negotiator”.

He said capacity building could not be a “one-off” exercise – it was better achieved through setting up capacity building systems in-country, and investing in research institutions and universities.

Huq noted that Article 11 of the Paris Agreement emphasises the need for appropriate institutional arrangements, which will be discussed by the CMA1. He also highlighted the need for collaborations between developing countries.

TECHNOLOGY DEVELOPMENT AND TRANSFER

Brianna Craft, IIED, presented on this session.

She noted that technology transfer refers to actions accompanying the integration of environmentally sound technologies into nations where they had not existed before. “Technology” refers to more than hardware, she said, and includes knowledge, experience and equipment for mitigating and adapting. Meanwhile, “transfer” refers not just to the sale or lease the goods, but to the process of learning/understanding/utilizing and replicating technology (including the capacity to adapt it to local conditions or integrate with local technologies).

Craft noted that the Paris Agreement has two main mentions of technology transfer. Article 10.1 refers to a “long term vision” of fully realizing technology development and transfer; while Article 10.4 refers to the establishment of a “technology framework”, to provide guidance to the work of the Technology Mechanism.

The Technology Mechanism seeks ways of addressing the technology needs of developing countries; bridging the gap between planning of technology actions and implementation; and considers support to scale-up and replicate technology.

Article 10.6 of the Paris Agreement, she said, refers to support, including financial support, to developing country parties, including for strengthening cooperative action on technology development and transfer, and with a view to achieving a balance between support for mitigation and adaptation.

Meanwhile, paragraphs 66 and 69 of the adopting decision call for a “periodic assessment” of the effectiveness and adequacy of support to the Technology Mechanism.

Craft said the meeting of the subsidiary bodies in Bonn, in May 2016, would initiate the process of elaborating the technology framework, and elaborating modalities for periodic assessment of the effectiveness and adequacy of support to the Technology Mechanism.

In the discussion that followed, participants stressed the context-specific needs for technology, and the importance of adapting technology to local conditions.

MOCK NEGOTIATING SESSION

The workshop ended with another mock negotiating session, where participants were asked to select a nation state to represent, and negotiate a mock draft text. The exercise was aimed at allowing participants to understand the negotiating process, practice “negotiating etiquette”, follow the rules of procedure, and understand subtle differences in legal terminology.