

Contact group established under COP on proposals for new protocols

Cancun, 3 Dec (Lim Li Lin) -At the plenary session of the 16th session of the COP on Wednesday 1 December, in Cancun, the issue of new protocols under the UNFCCC as proposed by countries was discussed. The meeting agreed to establish a contact group to discuss the proposals.

Following the COP session, at the 6th session of the COP acting as the Meeting of Parties to the Kyoto Protocol (CMP) considered the issue of formal proposals by countries for amendments to the Protocol for the second commitment period of emission reductions by Annex I Parties. It was decided that the CMP would wait to hear the report of the AWG-KP Chair on the progress of work before deciding what to do about them.

Parties were also informed by the COP President, Patricia Espinosa, the Minister of Foreign Affairs of Mexico, that the Mexican Presidency is undertaking closed small group consultations on mitigation under the AWG-LCA and AWG-KP (See TWN Update 7).

Many countries are seeking a new treaty instrument under the UNFCCC as the outcome of the AWG-LCA. However, there is no consensus yet on the form of the legal outcome.

Many countries that spoke at the current COP session expressed that the contact group should explore the legal form issue of the final outcome of the AWG-LCA, which has not been determined.

Some countries, however, expressed caution about setting up a contact group on this issue as it might duplicate or prejudice the negotiations under the AWG-LCA, and take away valuable time needed for the AWG-LCA negotiations. Moreover, the survival of the Kyoto Protocol is under serious threat, particularly since Japan recently announced in no uncertain terms that it would never agree to a second

commitment period of the Kyoto Protocol. This should be the focus of discussions, according to some countries.

A total of six new protocols have been proposed by Japan, Tuvalu, the United States, Australia, Costa Rica, and Grenada (on behalf of the Alliance of Small Island States - AOSIS). The proposal by Grenada was officially notified to the Secretariat and the Parties in May 2010. The other five proposals were notified in 2009, and were considered by the 15th COP session in Copenhagen.

In Copenhagen, the five proposals for protocols were not adopted. As such, this issue is still outstanding and was up for discussion again in Cancun, together with the AOSIS proposal from Grenada.

The proposed protocols are all legal instruments envisaged as the outcome of the AWG-LCA. According to the developing countries, their proposals are intended to be legal instruments that sit alongside the existing Kyoto Protocol, and are not intended to replace it.

At the start of the Cancun plenary session, **Grenada** proposed that an open ended contact group under the guidance and facilitation of the Mexican COP Presidency should be set up to discuss the proposed protocols. It said that it was not efficient or useful to consider this issue in plenary, as this needs its own discussion, and a contact group would facilitate transparency, full participation, and ensure the legitimacy of the outcome.

Grenada said that there is no place for proposals that deal with architecture, or legal form, and that a contact group would anchor such a fundamental discussion in this process, and position Parties on the issue of legal form at the next COP in South Africa.

It said that there is a need for legal clarity and certainty as there are deeply different views on substance, especially on mitigation, and no understanding of the end game of the Bali Action Plan. As such, it said that it is important to capture and take forward the general convergence on the end goal for a legally binding outcome, in a process decision that would set out an appropriate strategy toward a legally binding instrument in South Africa. It said that the contact group should discuss legal issues and the inter-linkages with existing instruments already in force.

This proposal for a contact group was supported by many countries including the African Group, Costa Rica, Tuvalu, Cuba, Guatemala, Maldives, Venezuela, Nauru, Cook Islands, Dominica, Solomon Islands, Dominican Republic, Vanuatu, Marshall Islands, Saint Lucia, Guyana and Norway. Venezuela said that the work of the contact group must not contradict the on-going work under the AWG-LCA.

Norway and the EU cautioned that the contact group should not duplicate on-going consultations by the Mexican Presidency.

Brazil stressed that in the AWG-KP, a legal outcome is required as mandated by

Article 3.9 of the Kyoto Protocol. Under the AWG-LCA, there are doubts about the nature of the legal outcome, as its substance concerns enhancing the implementation of the UNFCCC. It said that it was important to find a space to look into options, and discuss the need for a legal outcome. It said that Brazil would like to see a legal outcome in the AWG-KP and the AWG-LCA, and welcomed a space to discuss the legal form issue.

South Africa supported a space to discuss essential aspects of the issue, and said that the value of the proposed protocols is that they provide an opportunity to discuss the future architecture and legal nature of the AWG-LCA outcome, and future steps. The fact that the legal status of the AWG-LCA outcome is in question is a major obstacle, and a decision on the legal nature would unlock many obstacles, it said.

South Africa supported taking a “pragmatic approach”, and said that the COP, CMP, and the two AWGs are complementary and mutually supportive and the proposals should be assessed against the work already done. It said that the determination of the legal status of the outcomes of both the AWGs

should be included, and they must be of the same legal status to ensure a balanced and fair approach. It said that our response must be legally binding and in line with science.

China said that the issue of legal form should be discussed. It said that under the AWG-KP, Parties should adopt the legally binding amendment for the second commitment period, and under the AWG-LCA Parties are discussing how to strengthen the UNFCCC and its implementation. It said that it could accept a legally binding outcome, with legally binding force. More time should be spent on solving the issues so that there can be a meaningful and balanced outcome, it said, and that it did not want a new formal discussion on this, which will compete with the two AWGs. It said that these issues can be resolved under the two AWGs, and suggested finding a more realistic way such as informal consultations by the Chair or for the AWG-LCA to consider this issue.

India said that there were actually two things being proposed - the proposals for new protocols, and legal form. The proposals for new protocols were discussed last year, and there was no agreement among Parties. It said that time should be spent on the outcomes for Cancun, and the serious issue is the threat to the Kyoto Protocol’s continuation and survival. Clouds are hanging over the Kyoto Protocol, and this should be addressed, to manage the balance of the Cancun outcomes. The AWG-KP has fallen way behind the AWG-LCA, it said, and many of the issues are actively being considered under the AWG-LCA and it has not completed its work. It said that we should focus on the two texts from the last meeting in Tianjin, and at this point of time, the proposals for new protocols should be allowed to rest.

On the second issue, India said that “form should follow substance”. All outcomes will be binding, that is how we have always operated, it said. The Marrakech decisions are all binding, and are being implemented. Once we know the nature of the obligation, we can subsequently figure out the form, it said. First, get the substance right, and then the form will follow, it added. It said that practically, there is so much work to do in the two AWGs, and that there could be consultations on this issue.

Saudi Arabia said that there is limited time, and there is a clear threat to the continuation of the

Kyoto Protocol. Some member states have declared that under no circumstance will they accept a new commitment period under the Protocol. It said that we should first discuss how to maintain the Kyoto Protocol before we discuss or debate a new legally binding agreement. By the end of the Conference we must have an agreement on the second commitment period, with emission reduction figures of Annex I countries.

Australia said that it supported a legally binding post-2012 outcome, which includes binding contributions by all major emitters. It supported a process for robust discussion on this issue which brings together all the proposals.

The Mexican COP President Minister Espinosa proposed setting up a contact group, to be chaired by Michael Zammit Cutajar of Malta, to discuss the proposals, specifically the proposals by AOSIS, Costa Rica and Tuvalu, since they requested a discussion space. She said that they (the proponents) have clearly expressed that a result of this kind is not something we can achieve at this session, but the discussion is to give direction to our substantive work. The discussion should not determine the issues in the two AWGs, she said.

Minister Espinosa also said that the Mexican Presidency is conducting consultations on mitigation, and the close link between the AWG-LCA and the AWG-KP.

Grenada confirmed that the proposal for the contact group is intended to support the consultations of the Mexicans, and would facilitate that work.

The 6th session of the CMP began immediately after

the close of the COP plenary to discuss the issue of the amendment proposals to the Kyoto Protocol for Annex I Parties' second commitment period of emission reductions.

A total of 13 proposals have been officially notified. Grenada on behalf of AOSIS submitted their proposal in 2010. In 2009, 12 proposals were made by the European Community, Tuvalu (2 proposals), the Philippines, New Zealand, a group of 37 developing countries, Colombia, Belarus, Australia, Japan, Bolivia (on behalf of Venezuela, Paraguay, Malaysia and Sri Lanka) and Papua New Guinea.

Grenada proposed that this issue should be left open, while the AWG-KP continues its work, and until a report is received by the Chair of the AWG-KP. It said that urgent guidance by CMP is needed to break the deadlock. This was supported by Tuvalu and Saint Lucia.

Tuvalu also wanted the CMP to receive a report from the Chair of the SBI as some of its proposals relate to issues now under consideration by the SBI. Tuvalu insisted that the AWG-KP must conclude its work in Cancun.

The Mexican COP President proposed that the CMP leave this matter open, and hear the reports of AWG-KP and SBI Chairs in order that a decision can be taken on where and how to approach the proposals on the table. She reiterated that the Mexican Presidency is undertaking consultations on the issues that are common to the AWG-LCA and AWG-KP, particularly mitigation. Parties agreed to her proposal.