

ABS 9 HIGHLIGHTS: SATURDAY, 27 MARCH 2010

Following the break-down of negotiations over compliance mechanisms on Friday night, a meeting of the G-77/China, regional consultations, meetings with the Working Group Co-Chairs and a Bureau meeting took place in the morning. The inter-regional group met in the afternoon. In the evening, regional group representatives met *in camera* to discuss the way forward. As a result of the understanding reached, the inter-regional group was suspended.

INTER-REGIONAL GROUP

Working Group Co-Chair Fernando Casas (Colombia) informed delegates that the outcome of the inter-regional group will be an L document, the “Cali Annex,” to be adopted in plenary on Sunday and to be circulated by the Secretariat on 18 April 2010 in compliance with the six-month deadline for adoption of legal instruments. He also noted that the resulting draft protocol is not expected to fully resolve all issues or to contain all necessary elements. On procedure, he proposed that the inter-regional group examine the draft protocol paragraph by paragraph to signal “significant” problems by “shading” the respective text. As a second step, he requested delegates to provide brief explanations. As a next step, he called upon delegates to reflect progress achieved on Thursday in the text of articles 4 (benefit-sharing), 5 (access) and 12-14 (compliance), with a view to inserting them in the L document. He announced that future intersessional work will be discussed in plenary on Sunday, clarifying that “nothing is agreed until everything is agreed” and that the meeting report can be used to put on record issues that have not been addressed and proposals for additional provisions.

All regional groups expressed commitment to continue negotiations as proposed by the Working Group Co-Chairs, and work towards the protocol’s adoption in Nagoya. Nonetheless, several speakers raised questions about the status of the L document, and the specific rules of engagement, noting their unconventional nature. CANADA expressed concern about the process leading to the adoption of an instrument for which

“true negotiations” started only the previous day, and reiterated that decisions in Cali do not prejudice a COP decision on nature and composition of the regime in Nagoya. NEW ZEALAND stressed the need to bring back to capitals clear indication of countries’ positions and the content of the protocol, noting that the balance in the overall protocol is yet to be achieved. Working Group Co-Chair Timothy Hodges (Canada) clarified that the L document, once adopted, will not prejudice delegations’ final positions on all protocol articles, informal discussions that may be held intersessionally, and discussions in Nagoya on the protocol’s adoption.

Delegates addressed the draft protocol paragraph by paragraph indicating which ones raise concerns and should be shaded. Most paragraphs were shaded, with the exception of: a few preambular references; institutional arrangements (articles on the secretariat, relationship with the CBD, monitoring and reporting) and the final clauses (signature, entry into force, reservations, withdrawal and authentic texts); and parts of the operative articles on national focal points and competent national authorities, the clearing-house and information sharing, awareness-raising, capacity, financial mechanism and resources, the COP serving as the meeting of the parties to the protocol, and subsidiary bodies.

Delegates were then asked to articulate the reasons for “shading” text. GRULAC and AFRICA indicated that they did so in numerous cases, to request that reference be made to “genetic resources, their derivatives and associated traditional knowledge” and not just genetic resources. Regarding preambular paragraphs, the EU and others asked to keep “shaded” certain provisions that related to operative paragraphs. SWITZERLAND requested inclusion of a specific reference to the Multilateral System of the International Treaty on Plant Genetic Resources for Food and Agriculture in the provision on other international instruments. LIKE-MINDED ASIA-PACIFIC expressed concern regarding preambular paragraphs referring to the “existing” rights of indigenous and local communities; and AFRICA asked to specify “consistent with national legislation.” New Zealand, for the LIKE-MINDED IN SPIRIT GROUP OF WOMEN, asked to include specific reference to women as traditional knowledge holders.

Regarding the protocol's objective, the REPUBLIC OF KOREA observed it includes no reference to access. NEW ZEALAND asked to also refer to CBD Articles 8(j) and 15. AFRICA requested inclusion of the additional provision on access to traditional knowledge associated with genetic resources, in the overall provision on access.

In the evening, following a brief break, AFRICA proposed, and delegates agreed, to hold an *in camera* meeting among the representatives of the regional groups to consider the way forward.

AFRICA then reported to the inter-regional group on the discussions and conclusions of the closed-door meeting. He said the draft protocol tabled by the Working Group Co-Chairs provided a basis on which all parties can negotiate and which can be presented to ministers. Further pointing to mutual understanding and progress achieved in contact groups during the meeting, he noted the *in camera* meeting's understanding that the "shading" exercise had already been performed several times in the past in different formats, and that the draft protocol was not a negotiated document. On behalf of the *in camera* meeting, he proposed that the inter-regional group stop its work, and to add a footnote to the draft protocol noting that this document: was not negotiated; reflects the efforts by the Working Group Co-Chairs to elaborate the elements of a draft protocol; is without prejudice to the rights of parties to make further amendments and additions to the text; and should be read together with the ABS 9 report reflecting parties' views expressed at the meeting. He said Sunday's plenary should hear parties' views on outstanding issues, and agree on a roadmap from Cali to Nagoya. He proposed that ABS 9 be suspended and resumed at a later date in order to conclude its work.

JAPAN invited parties to reflect and express their views on how the inter-sessional process will be financed. Working Group Co-Chair Casas thanked delegates for finding "a way out" and announced that the Working Group Co-Chairs have been developing a clear roadmap from Cali to Nagoya which was circulated and will be discussed in plenary on Sunday. CANADA said they need to seek instructions from capital regarding the status of the draft protocol, but asked in the meantime to bracket it in its entirety. Inter-regional group Co-Chair Bodegård congratulated delegates on taking control of the process, considering it a positive sign for the future.

IN THE BREEZEWAYS

In the morning, tempers had noticeably cooled down following a series of regional, inter-regional and informal consultations. Most delegates evaluated Friday night's meltdown as something that was "not pretty, but quite common" in the "final" stages of negotiations on politically sensitive issues. The commitment by all regions in the inter-regional group was widely echoed in the breezeways and, in contrast to the previous night's accusations of bad faith, nobody doubted the intention of all parties to "finish what we started."

With the traditional African saying, "If you always do what you've always done, you will always get what you've always got" serving as a wake-up call, delegates rekindled their hope that negotiations on the draft protocol text could continue. Nevertheless, it soon turned out to be a day of "procedural confusion." While most delegates had received in their regional group meetings a briefing by the "big" Co-Chairs on the way forward, these efforts did not seem to be sufficiently enlightening on the rules of engagement for the ensuing discussions in the inter-regional group. Many were wondering about the continuing moratorium on brackets, in particular since the Working Group Co-Chairs, supported by all regions, had suggested that issues on which no agreement could be reached at this meeting would be left aside, allowing swift progress on issues for which a solution was within reach.

Others asked how the practice of "shading" articles with which parties had "serious concerns" was more constructive than the usual practice of square-bracketing such language, particularly when the whole draft protocol, with few minor exceptions, ended up shaded. Strolling around the room, it turned out that the majority of delegates had actually used brackets in their notes to indicate which text was shaded.

At nightfall, small groups of delegates were still trying to make sense of the procedure. The contact group co-chairs, having achieved a number of breakthroughs during the week, looked the most disconcerted, wondering how their work was reflected in the text with all its different "shades" of objections. A few scattered optimists contended that the shading exercise increased the ownership delegates felt over the draft protocol text.

Rumors that had been circulating throughout the week persisted that there would be at least two inter-sessional meetings. Pragmatically, another group was speculating about the possibility of suspending the ABS 9 Working Group and holding a resumed session between now and COP 10. While several thought this would be a viable and legally feasible option to extend negotiation time, others felt that there was no use in holding another Working Group meeting. "I'm afraid it has to be now or never" one participant noted as he ventured off to get the umpteenth coffee of the day, and shrugging he added "Right now it looks more like never than now!"

Minutes later, the African initiative to request negotiations between regional groups came as a ray of light. "We just need agreement on the way forward, the work already done cannot be lost," said one participant, looking up at the windows through which one could sneak a peak of the closed-door meeting. The brief meeting that followed heard with relief the agreement reached. A way out had been found.

ENB SUMMARY AND ANALYSIS: The *Earth Negotiations Bulletin* summary and analysis of ABS 9 will be available on Wednesday, 31 March 2010 online at: <http://www.iisd.ca/biodiv/abs9/>