PREPCOM 4 HIGHLIGHTS: THURSDAY, 20 JULY 2017

On Thursday, 20 July, in an afternoon plenary, Chair Duarte provided a brief overview of the informal consultations held on Wednesday afternoon, noting some progress on, inter alia: the relationship between the international legally binding instrument (ILBI) and other existing relevant legal instruments and frameworks, and relevant global, regional and sectoral bodies; adjacency; strategic environmental assessments (SEAs); and institutional arrangements.

Delegates then considered a Chair’s further revised draft including: a draft recommendation to the General Assembly on the substantive elements of an ILBI, indicating that the structure and elements reflect the outcome of PrepCom discussions, and are not exclusive and without prejudice to the position of states during the negotiations; a procedural recommendation to the General Assembly to take a decision, as soon as possible, on convening an intergovernmental conference (IGC) under the auspices of the UN, to consider the PrepCom’s substantive recommendations and to elaborate the ILBI text under the UN Convention on the Law of the Sea (UNCLOS), with a starting date as early as possible; and two sections, one on elements of the draft ILBI text (section A) and the other on “elements that require most attention towards further progress in the development of a draft ILBI text” (section B).

RECOMMENDATIONS TO THE GENERAL ASSEMBLY

Noting that it was not easy to accommodate all the interests of delegations, the G-77/CHINA stressed that the Chair’s further revised draft does an “excellent job in finding an acceptable middle ground.” The AFRICAN GROUP, with the Alliance of Small Island States (AOSIS), underscored that the revised draft is an improvement and “captures the delicate balance of views raised in the room,” urging delegations not to reopen the text for further deliberations, with the DOMINICAN REPUBLIC noting that, even though it does not capture all states’ requirements, the draft still reflects that “we have fulfilled our mandate” and can move to an IGC. AOSIS emphasized that the text includes satisfactory qualifiers and caveats allowing important issues to be brought up at the next stage of the process. Appreciating the sense of urgency in the draft, but lamenting the absence of a starting date for the negotiations; a procedural recommendation to the General Assembly to take a decision, as soon as possible, on convening an intergovernmental conference (IGC) under the auspices of the UN, to consider the PrepCom’s substantive recommendations and to elaborate the ILBI text under the UN Convention on the Law of the Sea (UNCLOS), with a starting date as early as possible; and two sections, one on elements of the draft ILBI text (section A) and the other on “elements that require most attention towards further progress in the development of a draft ILBI text” (section B). Supporting the revised recommendations and the draft report, Least Developed Countries (LDCs) proposed that the IGC be convened “as soon as possible, preferably in 2018,” and stressed that the PrepCom has finalized its mandate, having exhausted all means to reach consensus on substantive elements. Supporting the adoption of the revised recommendations and the draft report, the Caribbean Community (CARICOM) noted that she would have wished to see certain elements reflected under section A, but stated that the draft recommendations represent a delicate balance of interests. MEXICO, also for Costa Rica, Chile, El Salvador, Honduras, Panama, Uruguay, Brazil, Colombia, Guatemala and Ecuador (GROUP OF LIKEMINDED COUNTRIES), supported by CARICOM, expressed satisfaction with the draft report and revised recommendations. Calling for adoption of the draft recommendations and report “as early as this afternoon,” SOUTH AFRICA said that he was “prepared to defend the delicate balance” reflected in the revised recommendations; and stressed that the text should not be reopened as “we will not end up with something better than we have now.” MOROCCO cautioned against a drafting exercise at this stage, noting that the forum for further discussions is an IGC. The PHILIPPINES thanked the Chair for having “exhausted all possible efforts to reach consensus.” SENEGAL stressed that the document “is balanced, addressing all concerns.” INDIA emphasized that it is a “strong basis for the next stage.”

Welcoming the flexibility in the chapeau and the rest of the text, CANADA emphasized that the revised draft is “fair and cautiously built,” providing a “valid basis” for further work. Supporting the draft as reflecting a delicate balance, NORWAY expressed willingness to engage further to ensure that all efforts to gain consensus have been exhausted, and lent his support to “whatever route the Chair proposes” to reach consensus. Supporting the draft, AUSTRALIA, with NEW ZEALAND and ARGENTINA, welcomed the caveat that the draft does not prejudice states’ positions at an IGC; noted that section B captures
possibility of convening additional PrepCom sessions should not be
Assembly to decide on convening the IGC, arguing that the
during the PrepCom sessions.

divergence, noting this would not do justice to the work undertaken
Resolution 69/292. The FEDERATED STATES OF MICRONESIA
to convening an IGC as soon as possible in accordance with
forward towards an IGC, noting that the revised recommendations
would enable the UN General Assembly to make a decision on an
IGC, preferably in 2018. MONACO said that it is time to move

INTERGOVERNMENTAL CONFERENCE: The G-77/
China noted that deeper and more substantive discussions will be
held during the IGC, underscoring that additional concerns can be
addressed there. CARICOM and INDONESIA highlighted their
continued support for an IGC in 2018. MEXICO, also for Costa
Rica, Chile, El Salvador, Honduras, Panama, Uruguay, Brazil,
Colombia, Guatemala and Ecuador (GROUP OF LIKEMINDED
COUNTRIES) and supported by CARICOM, noted the need for
further detailed discussions towards an ILBI at an IGC as early as
possible in 2018. COSTA RICA stressed that it is time to call for an
IGC in 2018. SOUTH AFRICA supported an IGC in “early 2018,”
with KENYA, the DOMINICAN REPUBLIC and SURINAME
underscoring the need not to lose momentum, and SENEGAL
noting efforts over the past two years to address concerns.

Noting that there could not be complete consensus at this stage and
that the IGC is the appropriate forum to continue discussions, the
EU expressed confidence that the substantive recommendations
would enable the UN General Assembly to make a decision on an
IGC, preferably in 2018. MONACO said that it is time to move
forward towards an IGC, noting that the revised recommendations
do not jeopardize the rights of states to refine their positions at a
later stage. PERU stressed that the PrepCom 4 outcome document
would have to be assessed by the General Assembly with a view
to convening an IGC as soon as possible in accordance with
Resolution 69/292. The FEDERATED STATES OF MICRONESIA
argued that Resolution 69/292 already takes a decision on the
IGC, objecting to reporting to the General Assembly on areas of
divergence, noting this would not do justice to the work undertaken
during the PrepCom sessions.

The RUSSIAN FEDERATION said that it is up to the General
Assembly to decide on convening the IGC, arguing that the
possibility of convening additional PrepCom sessions should not be
excluded. CHINA stressed that the PrepCom should not prejudge
the decision on when to start an IGC. Noting lack of consensus, the
US, ICELAND and JAPAN suggested eliminating reference to a
starting date for the IGC in the recommendation.

SUBSTANTIVE ELEMENTS: COSTA RICA lamented the
absence of: with PERU and ERITREA, a reference to the
common heritage principle; and greater detail on the clearinghouse
mechanism, marine genetic resources (MGRs) and area-based
management tools (ABMTs). ERITREA also regretted lack of
reference to equitable benefit-sharing, leakage, traditional
knowledge, access to MGRs, and monetary benefit-sharing.
IRAN emphasized intellectual property rights (IPRs), mandatory
disclosure of origin, benefit-sharing regimes, and compliance and
review mechanisms.

The RUSSIAN FEDERATION pointed out that section A
contains various proposals lacking consensus, including on MGRs,
ABMTs and marine protected areas (MPAs), environmental impact
assessments (EIAs) and institutional arrangements, which should not
be included in that section; and that section B serves as a good basis
for considering non-consensus elements.

Adjourning the session, Chair Duarte acknowledged that
the revised draft did not fully reflect all positions; noted some
delegations expressing concerns and those requesting more time to
make a decision; and expressed willingness to exhaust every effort
to arrive at a consensus, in line with the PrepCom mandate, inviting
delegates to share suggestions with him.

IN THE CORRIDORS

On Thursday, the penultimate day of what many still hope will
be the final PrepCom session, a sense of confusion permeated the
proceedings. In the morning, the plenary session scheduled to report
on the previous day’s informal consultations did not convene, to
the surprise of some participants. Meanwhile, certain delegations
struggled to get their hands on the newly minted revised draft
recommendations. When plenary finally convened, many delegates
supported the “delicate balance” reflected in the revised draft, on
the basis of the Chair’s previous indication that it would be offered
on a “non-objection basis.” But, as a few pointed to intractable
issues in the draft, plenary was abruptly adjourned, leaving
delegates perplexed, waiting for further instructions. Eventually,
the remaining participants grouped in huddles, engaging in whispered
communications about the persisting obstacles.

“Perhaps the Chair’s text was presented too soon on a take-it-or
leave-it basis,” said one delegate, noting that Wednesday’s informal
consultations could have been “pushed into the night.” Another
nonplussed participant opined, “and why should we entertain the
concerns of a delegation that has repeatedly indicated that they have
no mandate to agree to an IGC at this PrepCom?” With tensions
running high, another participant speculated on whether outstanding
questions should be brought to a “higher level,” which left others
wondering how long the road ahead would be.

ENB SUMMARY AND ANALYSIS: The Earth Negotiations
Bulletin summary and analysis of PrepCom 4 will be available on
Monday, 24 July 2017, online at: http://enb.iisd.org/oceans/bbnj/
prepcom4/