



# Earth Summit Bulletin

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## PREPCOM HIGHLIGHTS FRIDAY, 3 APRIL 1992

### 70TH MEETING OF THE PLENARY

The 70th meeting of the Plenary began at 10:00 am on Friday to approve all the remaining documents produced at PrepCom IV. The first document addressed was PC/L.74, "Status of the European Economic Community at the UNCED". This draft decision recommends that the General Assembly amends the rules of the Conference to allow the EEC to participate in UNCED. The EEC will not have voting rights; only the 12 member states can vote. As there was no objection, it was adopted.

The next document discussed was PC/WG.I/L.44, "Conservation of biological diversity." Working Group I Chair Bo Kjellén explained that some of the remaining brackets will be removed after the INC completes its negotiations. After a few minor amendments were made, the document was adopted with existing brackets in place.

The Plenary then took up PC/WG.I/L.45 and Corr.1, "Environmentally sound management of biotechnology". A number of brackets remained in this document in Programme Area D, "Enhancing safety and developing international mechanisms for cooperation," linked to the issue of biotechnology safety. Brackets also remain in paragraph 14(c) on fertility-related mechanisms. After a review of changes in the corrigendum and a few minor amendments, the document was adopted.

Both Finland and the US attempted to make amendments after Koh had closed discussion. Although controversy remained whether these requests for the floor had been made prior to closure, Koh was adamant in his ruling that negotiations could not be reopened on any text after closure, fearing that a precedent setting exception would lead to re-opened debate on other items. Koh's ruling and the failed attempt to amend the text set the stage for treatment of a similar situation that would occur more than twelve hours later during discussions on the Rio Declaration.

The Plenary then quickly approved PC/L.57/Rev.1, which gives UNCED observer status to associate members of regional commissions. As no other documents were ready to be dealt with, the Plenary adjourned before noon.

### 71ST MEETING OF THE PLENARY

The 71st session of the Plenary was convened at 3:40 pm and took up WG.I/L.47 and Corr.1, "Protection of the Atmosphere". Kjellén said that some of the bracketed text can only be removed after the INC completes its work. Yemen, on behalf of the Arab Group, stated that this document does not fit the mandate of UN Resolution 44/228 nor does it meet the Arabs' concerns. He added that since it prejudices the work of the INC the entire document should be in brackets. Argentina asked if these brackets also go around Programme Area C on ozone depletion. Yemen reiterated that the entire document is to be bracketed. Argentina responded, "This proposal is irrational." Thus, with the entire text in brackets, the document was adopted.

The next document addressed was PC/WG.I/L.46, the statement on forest principles. Kjellén explained that consultations on this statement went until late last night and presented additional amendments. The Plenary then began a debate that resembled the work of the contact group. Finally, Koh said that there was no time for debate and asked if the group could adopt the document. The document will now be sent to Rio as bracketed.

Koh then asked Bjornar Utheim, "Can we discuss technology transfer?" To which Utheim, the group's coordinator, responded, "I hope so." Thus, the Plenary then turned its attention to PC/L.69 and Corr.1. Utheim introduced the document, explaining that four options for the title of this document remain in brackets, as do a number of paragraphs including amendments requested by Saudi Arabia on "environmentally [safe and] sound technology." Paragraph 13, on the terms of transfer of technology, was the most difficult paragraph to negotiate. Two sets of brackets remained in the paragraph, including brackets around a single comma. The

US stated that this problem could have been resolved had there been more time and requested that the paragraph be put in brackets. The document was adopted as bracketed.

The Plenary then heard an oral report on the status of financial resources. Discussions on financial resources had broken down last weekend. Koh then took over and called on a group of countries to draft a non-paper to be the starting point for negotiations. He asked Mexican Ambassador Andrés Rozental to coordinate the new round of talks.

Jorge Montaña, on behalf of Rozental, explained to the Plenary what had taken place over the last three days. Representatives from Japan, some members of the European Community and the Nordic Group put together a draft text, which Koh transmitted to a G-77 contact group for comments. Thursday night the G-77 contact group, Japan, the EC and the Nordics met together to discuss the text. Although some headway was made, they could not agree on a formula. The G-77 proposed that in view of the sensitive nature of the issue, consideration of L.41/Rev.1 (the G-77 text that had been tabled earlier in the Prepcom) should continue in Rio. Montaña concluded by saying in the coming weeks they would come up with ways to resolve these issues. This oral report was followed by statements by Pakistan (G-77), Denmark (Nordics), Canada (CANZ), the Russian Federation, Japan, the US, China, Poland and Gambia. All expressed gratitude to John Bell, coordinator for financial resources and Rozental and expressed hope for success in Rio. Koh then adjourned the Plenary for dinner.

### 72ND MEETING OF THE PLENARY

The Plenary reconvened at 8:00 pm with the goal of working without a break until it had completed all unfinished business. The first item on the agenda was PC/WG.II/L.25/Rev.1, the "Oceans" chapter of Agenda 21. Three pages of amendments were distributed along with the document, reflecting consultations that had been held on the issue of straddling and highly migratory fish stocks. Governments were close to consensus on this issue by the end of the week but needed more time. Thus, paragraphs on certain high seas fishery issues remain in brackets. The Republic of Korea attempted to bracket paragraph 66, which encourages states to join regional high seas fisheries organizations, but was met by resistance around the room. Upon adopting the document, as amended, Koh expressed the need for greater cooperation on high seas fisheries and appealed to the European Commission to be as helpful as possible in Rio.

The next document addressed was PC/WG.III/L.31 on institutions. Ismail Razali, the coordinator on this issue, introduced CRP.3/Rev.3, the results of continued consultations on institutions. Although a few brackets remain in CRP.3/Rev.3, remarkable progress had been made on an Agenda 21 chapter that had been stalled just a week ago. Mauritania intervened on paragraph 18, which addresses secretariat support structure for the follow-up of Agenda 21. The tension rose as New Zealand requested that a paragraph on dispute resolution, that was part of the original negotiating text, be reinserted into CRP.3/Rev.3 under section L., "Legal Matters". The US said this paragraph could only be reinserted if it was amended. Argentina and Colombia stated that they did not accept the inclusion of this paragraph (para. 37 from L.31) in the document. Koh called for a five minute recess to meet with Razali, New Zealand, Argentina, Colombia and the US to try to work out a compromise. Upon return, Koh announced that the Plenary could only accept amendments if there is consensus and since there was not, New Zealand's amendment was rejected. New Zealand objected, but Koh insisted, saying that this is the only way for the Plenary to finish its business. When New Zealand questioned the decision by the Chair, Koh invited the governments to challenge his rule. None did and debate continued on several other proposed amendments before the document was finally adopted at midnight.

Koh then moved to WG.I/L.43 and Corr.1, "Combating deforestation." Malaysia expressed its opposition to text that calls for negotiating an appropriate legal instrument on forest management and requested that this text in paragraph 21 bis remain bracketed.

Several other amendments were proposed and the document was adopted at 12:30 am.

The Plenary then addressed WG.III/L.32 on legal instruments. Philippine Ambassador Reynaldo Arcilla, the coordinator on this issue, introduced the document, and Koh immediately asked if the document could be adopted. With no further discussion the document, as bracketed, was adopted.

The next document discussed was PC/L.76, a proposal submitted by the Chair on the preamble for Agenda 21. Koh explained that a draft of this document had been submitted to all regional groups and negotiated in a contact group Thursday night. Two parts of this text remain in brackets: reference to "political commitment at the highest level" on development and environment cooperation; and paragraph 4 on financial resources. Several amendments were proposed and, upon the understanding that the preamble would be readdressed in Rio, the document was adopted.

The next document was PC/L.77, a draft decision that changes the rules of procedure for the Conference so that Brazil, the host country, would be added as an *ex officio* Vice President. Tunisia objected to the last sentence of the document, in that it implied that there would be sub-groups and sub-committees at Rio and that this would prejudice the participation of developing countries that could not send large delegations to Rio. Upon Koh's promise that Tunisia's concerns would be addressed in another draft decision, the document was adopted.

The Plenary then addressed PC/L.78, on guidelines for the preparation of Agenda 21. India, Tunisia, Mauritania and others expressed concern about the status of paragraphs in the introductions of the Agenda 21 chapters, since not all working groups negotiated the introductory texts. After considerable debate, Koh asked the working group chairs if they were willing to undertake a joint responsibility with the Secretariat to determine which introductory paragraphs should remain in the text. The Chairs agreed, paragraph 3 was reformulated to reflect this, and the document was adopted at 2:20 am. Koh then read a draft decision, prepared upon Tunisia's request earlier in the evening, on the participation of developing countries at UNCED. This decision was quickly adopted.

Discussion then turned to PC/WG.III/L.33/Rev.1, "Principles on General Rights and Obligations" (the "Rio Declaration", formally the Earth Charter). Koh introduced the document saying, "After today I am no longer Chair of the PrepCom and I want a present from you." He explained that on Wednesday morning he heard a report on the Rio Declaration from the Chair of Working Group III and the two coordinators. They felt that negotiations had gone as far as they could and that it was time for the PrepCom Chair to take over. That morning, Koh held a meeting with Chairs of the regional and interest groups and decided to form a restricted contact group to negotiate text. Seven OECD countries, seven G-77 countries, China and the Russian Federation made up this contact group that met on Wednesday night and Thursday and adopted a bracket-free text at 6:30 pm Thursday. Koh explained that each of these principles is carefully balanced and crafted and appealed to everyone to let this be the only clean text to be brought to Rio for further consideration. "Any amendment will lead to the unravelling of the entire package," he added.

The G-77, EC, Nordic Group and CANZ all supported sending this text unbracketed to Rio, even though it was far from a perfect document. Israel then took the floor to decry the "threat of political pollution at PrepCom" and referred specifically to the "innocuous" reference to "people under occupation" in Principle 23. "Is Rio going to be another Middle East battleground?" he asked. He then requested that the entire Declaration be put in brackets. Koh responded that there are to be no brackets or amendments. Delegates from a number of other countries intervened to support sending the document unbracketed to Rio. Even Maurice Strong spoke on behalf of "this historic document". Finally, Koh asked if the Plenary could adopt the document, with Israel's reservation, without brackets and quickly gavelled the discussion closed. Israel, who had requested the floor before the document was adopted, protested. Koh said, "Do whatever you feel is necessary." To which Israel responded, "I will."

At 3:45 am, the Plenary turned its attention to the last chapter of Agenda 21 it had to adopt: PC/L.72, "Strengthening the role of major groups." A Youth delegate gave an accusatory statement and then the debate started. France lifted reservations it had placed on the text. Malaysia expressed concern that some parts of this document blur the distinction between the work of NGOs and the work of governments. Several amendments were proposed and discussed before Kenya suggested that the Plenary adopt the document as it stands and let the coordinator, Leon Mazairac, continue consultations. Thus, the document was adopted.

The final document approved was PC/L.73, the report of the PrepCom. Then at 4:30 am, Maurice Strong took the floor to express his admiration and gratitude for the work of the PrepCom, and especially the work of its Chair, Tommy Koh. He added that between now and Rio there is a need to "revitalize political will

and elevate vision". Koh thanked everyone and apologized to the PrepCom for not having achieved more. The leaders of the regional groups then took the floor one by one to express their thanks to Koh. Michael Kokeev of the Russian Federation returned to his metaphor from PrepCom I and told Koh, "With a captain like you, we are ready to sail to the end of the world." When Macedo Soares from Brazil spoke, he said, "We don't have to sail to the end of the world, only as far as Rio." At 5:00 am, with a final note of apology to members of the PrepCom, especially New Zealand and Israel, Tommy Koh adjourned the final meeting of the UNCED Preparatory Committee. The delegates, NGOs, interpreters and Secretariat staff, who had lasted through the night, headed home as the sky brightened over the East River.

## THINGS TO LOOK FOR BETWEEN NOW AND UNCED

The final chapter of the UNCED process, to be played out in Rio, will be less denouement and more conflict resolution as the climax is yet to come. After 5 weeks of negotiations and, according to UN sources, 24 million pages of documentation produced at PrepCom IV, there are a number of problems that still need to be resolved before the Rio Conference. These include the following:

- **THE MIDDLE EAST CONFLICT:** Both Israeli and Palestinian delegates politicized the UNCED debate last week with diplomatic sparring. The representative from Palestine introduced several amendments with wording familiar to the Arab-Israeli conflict as it has been played out within the UN. Look for Israel to lodge a protest for its treatment by PrepCom Chair Tommy Koh, when he "quick-gavelled" Israel at 3:45 am Saturday morning.
- **FINANCIAL RESOURCES:** Unbridgeable gaps existed between the EC proposals and the G-77 expectations (especially on the GEF) as negotiations on financial resources broke down at the end of PrepCom IV. Although official statements during the PrepCom had downplayed the chances of an agreement here, progress was made and negotiators were close to agreement. Observers both within and outside the US delegation commented that the US could have reached agreement at PrepCom IV on the basis of the last G-77 proposal. Brackets remain in all chapters of Agenda 21 within the "Means of implementation" sections since the cost of the programmes cannot be finalized until the source of funds and mechanisms for their disbursement are found. Look for discussions on these matters at the following events: both the GEF participants meeting and the IMF and World Bank Development Committee meeting at the end of the month; the meeting in early May of EC environment ministers; the OECD talks in Paris on the Climate Change convention; the meeting of environmental ministers from developing countries to be held in Malaysia this month; the meeting of "eminent persons" to be held in Japan; and the final negotiating sessions for both the Climate Change and Biological Diversity Conventions.
- **FORESTS:** The discussions on the Forest Principles document at PrepCom IV ended up having very little to do with forests and a lot to do with the North-South debate. The document is a political bombshell and may never make it to Rio. Look for Bo Kjellén to draft a new version that could be proposed as a "Chair's text" from the floor in Rio after extensive inter-sessional private consultations and general de-politicizing.
- **THE RIO DECLARATION:** Despite Strong's pleas that there be an "Earth Charter" in Rio, the name remains the "Rio Declaration". An unbracketed Chair's draft will go to UNCED only because Tommy Koh borrowed heavily on his great reservoir of personal and political capital. If it had not been for Koh's insistence, the late hour and a very fast gavel, debate would have been protracted. Many countries have problems with the text that looks much more like a Second Committee compromise than the inspirational document that had been hoped for.
- **OTHER AGENDA 21 PROBLEM AREAS:** A number of unresolved issues that were taken "bracketed" from the contact and working groups and through Plenary are being passed on to Rio for resolution. These issues include: straddling and migratory fish stocks; terms of technology transfer; disposal and storage of radioactive wastes near the marine environment; future legal instruments for both forests and semi-arid and arid lands; safety concerns related to biotechnology; military use of radioactive and hazardous waste-producing substances; consumption patterns in developed countries; brackets around the entire chapter on atmosphere; and, finally, family planning.