

## 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 IGC, PSIDS noted the document "strikes a balance among different views," giving it his "whole-hearted support."

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." ERITREA said the revised draft is balanced, accommodates demands and addresses concerns.

The EU said the revised draft had "skillfully accommodated the diversity of views" and reflected common ground on a large number of key issues across ILBI elements. MONACO welcomed efforts to strike a balance and stood ready to accept the draft without amendments. SWITZERLAND and PAKISTAN said they could accept the text as it is.

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

areas of disagreement where more discussions will be required at an IGC; and, with NEW ZEALAND and SINGAPORE, expressed willingness to engage in further discussions in order to exhaust all efforts to reach consensus. CHINA noted that the revised text is an improvement in terms of both content and format, constituting “a sound basis for a successful result.”

The RUSSIAN FEDERATION, noting that the revised draft did not reflect consensus, could not support it in its current state. Acknowledging that “a very large number” of his concerns have been addressed, the US underscored the need for “at least a dozen” revisions before he could join consensus, including deleting reference to a starting date for the IGC as soon as possible, stressing, with CHINA and CANADA, the need to exhaust all efforts to reach consensus; and recalling that he does not have a mandate to join consensus on language on an IGC at PrepCom 4. Noting “the serious efforts to incorporate various comments in a balanced manner,” JAPAN reserved his position pending consultation with capital. Pointing to the absence of agreement, ICELAND said he was willing to continue working towards achieving consensus during the remaining timeframe of PrepCom 4.

PSIDS underscored that while the streamlined non-paper is not referenced in the draft recommendations, it is mentioned in the draft report, stressing that work done during the PrepCom should not be lost.

**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 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 conversations 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/>