



MARINE BIODIVERSITY WORKING GROUP HIGHLIGHTS: THURSDAY, 22 JANUARY 2015

On Thursday, delegates negotiated on the basis of the draft prepared by New Zealand and Mexico as Co-Facilitators of Wednesday's informal group and a proposal by the G-77/China. Negotiations continued into the evening on a revised draft ("working document").

CO-FACILITATORS' DRAFT

In the morning, Co-Chair Lijnzaad proposed discussing the Co-Facilitators' draft paragraph by paragraph, underscoring that "nothing is agreed until everything is agreed." The G-77/CHINA informed plenary they had not yet reached agreement on text related to: convening an intergovernmental conference; establishing a PrepCom; recognizing minimum and non-exclusive elements for negotiations; appointing co-facilitators of consultations to determine negotiating modalities; and establishing a calendar of preparatory meetings and a timeline for negotiations. In the afternoon, the G-77/China tabled a proposal in that regard.

RIO+20 MANDATE: On a draft recommendation for the General Assembly to reaffirm "The Future We Want," the EU proposed adding reference to "the commitment in paragraph 162" of the Rio+20 outcome document. On text referring to states' commitment to addressing issues of conservation and sustainable use of BBNJ, the G-77/CHINA suggested adding "building on the work of the Working Group." Following a query from CANADA, Co-Chair Lijnzaad explained this addition reflects language from General Assembly Resolution 69/245.

PROGRESS BY THE WORKING GROUP: On a draft recommendation for the General Assembly to welcome the progress made by the Working Group to prepare for a decision on the development of an international instrument under UNCLOS, the RUSSIAN FEDERATION, opposed by the EU, proposed welcoming the "exchange of views" on the scope, parameters and feasibility, rather than "progress," and deleting reference to the development of an international instrument.

LEGAL GAPS: On a draft recommendation for the General Assembly to note with concern the absence of a comprehensive global regime to address the legal gap relating to BBNJ and the need for an implementing agreement, the EU proposed referring to a "coherent and integrated," rather than "comprehensive," global regime, and deleting text on addressing the legal gap. The G-77/CHINA favored referring to "a new agreement to address this problem," rather than to an implementing agreement. The

EU emphasized that a new agreement should become a third implementing agreement under UNCLOS, expressing willingness to compromise on "a new agreement under UNCLOS." The US, ICELAND, the RUSSIAN FEDERATION, JAPAN and CANADA did not support the paragraph, with the US arguing that there are existing tools to address the conservation and sustainable use of BBNJ. ICELAND considered the paragraph "too political," pointing to its focus on "legal gaps" and "the status quo." The RUSSIAN FEDERATION opined that there have been no discussions in the Working Group on legal gaps in the current regime. JAPAN reserved his right to further comment on the paragraph. NORWAY suggested as compromise language "noting the need to improve the global regime," with the EU emphasizing that the paragraph reflected the view of a "significant majority." The RUSSIAN FEDERATION recalled the need for the Working Group to work on the basis of consensus.

2011 PACKAGE: On a draft recommendation for the General Assembly to consider that negotiations should be based on the topics identified in the 2011 package, the G-77/CHINA preferred for the Assembly to "decide" that negotiations "shall address" the topics of the 2011 package. The EU suggested referring to the "elements" of the package, rather than to "topics." NORWAY encouraged making the text more comprehensible to outside stakeholders, suggesting quoting the text of the package and adding a reference to the General Assembly resolution that endorsed it. The RUSSIAN FEDERATION expressed reservation in relation to references to "negotiations," as these are linked to references to a "PrepCom" in other sections of the draft.

FEASIBILITY: On a draft recommendation for the General Assembly to also consider that the elaboration of the international instrument is feasible from a political, legal and technical standpoint, the G-77/CHINA preferred that the Assembly "affirm" such feasibility. CANADA, the US, the REPUBLIC OF KOREA, the RUSSIAN FEDERATION and JAPAN recommended deleting the whole recommendation, opposed by the EU, who considered it an "important sign of political commitment" and recalled that the Working Group is mandated to reach conclusions on feasibility.

NON-PARTIES TO UNCLOS: The G-77/CHINA suggested additional text, whereby future negotiations "will not prejudice the accession to UNCLOS by states non-party to it." Noting that although the G-77/CHINA is "a big family," the position on states non-party to UNCLOS is delicate, and recalling her national delegation's reservation on the Rio+20 outcome document related to BBNJ, VENEZUELA offered an alternative

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proposal text on “ensuring that the recommendation on a binding instrument and the resulting negotiations be open to all states, particularly states non-party to UNCLOS, without implying the acceptance of any legal obligation from instruments that have not been explicitly accepted by these states.” Co-Chair Lijnzaad noted that this matter has already been addressed under the UN Fish Stocks Agreement. The EU said that a future, third implementing agreement under UNCLOS should be open to states non-party to UNCLOS. In the afternoon, the G-77/CHINA offered text on “recognizing that neither the participation in the negotiations nor their outcome may affect the legal status of non-parties *vis-à-vis* UNCLOS and/or any other related agreement or instrument they are not party to,” and VENEZUELA withdrew her proposal.

FORMAT AND TIMELINES OF A FUTURE PROCESS:

The G-77/CHINA tabled a proposal “to convene, under UN auspices, an intergovernmental conference on BBNJ to elaborate a legally binding instrument under UNCLOS,” whereby: a PrepCom, open to all UN states members, members of specialized agencies, parties and non-parties to UNCLOS, and UN observers, prepares for, and make recommendations to the conference on the elements to be included in the agreement, as well as provisional rules of procedure, taking into account the views expressed in the Co-Chairs’ reports and compilation of submissions to the Working Group, with the Group being terminated; the precise mandate, rules of procedure and calendar of meetings of the PrepCom will be established by the General Assembly, with the PrepCom starting its work in 2016; and the Assembly will decide, before the end of its 71st session, on the specific date of the intergovernmental conference and a timeline for the negotiations taking into account progress reports from the PrepCom. The G-77/CHINA then proposed deleting text on the need for the negotiations to comply with minimum and non-exclusive elements, arguing that the list of elements have not been agreed upon and that the PrepCom would discuss them.

ICELAND, NEW ZEALAND, MEXICO, JAPAN, the RUSSIAN FEDERATION, CANADA, AUSTRALIA and the REPUBLIC OF KOREA expressed concern over the proposed deletion, particularly of text calling for recognizing, respecting and complementing the existing legal framework and the competence and mandates of existing global and regional organizations. NEW ZEALAND, supported by MEXICO, CANADA, AUSTRALIA, the REPUBLIC OF KOREA and the RUSSIAN FEDERATION, proposed alternative text to “affirm the need to recognize and respect the existing legal frameworks and the competence and mandates of global and regional bodies,” with JAPAN adding that the negotiations also do “not undermine” existing legal frameworks. SWITZERLAND recommended referring also to the CBD, including with regard to the Nagoya Protocol, and UNEP; and the REPUBLIC OF KOREA suggested also adding FAO. ARGENTINA cautioned that the PrepCom may need to refer differently to existing regional and sectoral organizations. The RUSSIAN FEDERATION suggested tasking the PrepCom with deciding which issues should be dealt with under a new instrument and which under existing instruments.

WORKING DOCUMENT

Delegates agreed to reaffirm the “commitment in paragraph 162 of the Rio+20 outcome document.” The G-77/CHINA, supported by the EU and MEXICO, agreed to welcome the exchange of views on the scope, parameters and feasibility of an international instrument under UNCLOS and the progress made within the Working Group. Delegates also retained text regarding the development of an international instrument under UNCLOS.

The G-77/CHINA, opposed by CANADA, ICELAND, JAPAN and the US, insisted on retaining reference to “the legal gap” as the reason for a new implementing agreement. NORWAY proposed alternative text on the need to address “any legal gaps” and for a new implementing agreement.

The EU recommended that the General Assembly “decide that the negotiations shall address the elements” of the 2011 package. The RUSSIAN FEDERATION argued that, as endorsed by the General Assembly, the package includes not only subject-matter elements but also a process to identify ways forward including through the implementation of existing instruments. ARGENTINA, supported by the EU, objected that the package only refers to subject-matter elements “together and as a whole,” whereas the process foreseen in 2011 has been superseded by Rio+20. The RUSSIAN FEDERATION reiterated that without common understanding of gaps, a PrepCom should indicate which elements of the package can be included in a new instrument and which can be addressed through implementation of existing instruments.

Delegates also supported text affirming that elaborating the international instrument is politically, legally and technically feasible.

AUSTRALIA, supported by the EU, the RUSSIAN FEDERATION, ICELAND, CANADA and JAPAN, but opposed by the G-77/CHINA, proposed new text reflecting the need to “recognize, respect and not undermine UNCLOS and other relevant legal instruments and frameworks, and relevant global, regional and sectoral bodies and arrangements.” The EU, with NORWAY, proposed retaining reference to “fostering coordination and cooperation” between a new and existing instruments.

The US and the RUSSIAN FEDERATION, opposed by the G-77/CHINA, could not support convening an intergovernmental conference, but favored moving forward on “an international instrument” through a PrepCom. The EU restated its position on the need for a “legally binding” instrument under UNCLOS. NEW ZEALAND, with NORWAY, supported taking steps towards launching negotiations by convening a conference.

IN THE CORRIDORS

As negotiations got underway on the Co-Facilitators’ draft, the recurring dividing lines which have haunted the Working Group since its inception resurfaced in full force: are there legal gaps in the international landscape *vis-à-vis* BBNJ? Is there a need for a new implementing agreement under UNCLOS to fill them? And if so, what about states that are non-party to UNCLOS? In other words, has the Working Group over the past year and a half been able to shed necessary light on the possible scope, parameters and feasibility of a new instrument on BBNJ, considering the various ways states may be interpreting the Rio+20 mandate?

As the clock ticks and scientists warn that we are on the verge of mass extinctions in the oceans, the Working Group proceeded in fits and starts on its penultimate day, as the G-77/China appeared to struggle to find a common position on the format and timelines (if any) for next steps. Several veterans were already speculating that if the process moves into formal negotiating mode, country groupings will need to be re-adjusted to better reflect differing stakes in relation to deep-sea biodiversity and the implications of its enhanced conservation.

ENB SUMMARY AND ANALYSIS: The *Earth Negotiations Bulletin* summary and analysis of the BBNJ Working Group will be available on Monday, 26 January 2015, online at: <http://www.iisd.ca/oceans/marinebiodiv9/>