

## Plastics INC-2 Highlights: Monday, 29 May 2023

The second meeting of the Intergovernmental Negotiating Committee (INC-2) to develop an international legally binding instrument (ILBI) on plastic pollution, including in the marine environment, convened in Paris, France, on Monday, 29 May 2023. Delegates gathered in plenary throughout the day, hearing opening statements and addressing organizational matters, including conducting a secret ballot to elect bureau members from two regional groups, as well as discussing outstanding matters regarding the draft rules of procedure (RoP).

### Opening

INC Chair Gustavo Meza-Cuadra, Peru, opened the meeting, calling for effective, decisive, and swift negotiations towards an ILBI on plastic pollution. He underscored the importance of collective action to address the whole lifecycle of plastic which affects human health and the environment and pledged to ensure inclusive discussions taking into consideration the views of governments and stakeholders.

Philippe Franc, Permanent Representative to the UN Educational, Scientific and Cultural Organization (UNESCO), France, expressed hope that INC-2 would be a decisive session towards drafting the new treaty.

Via video, President Emmanuel Macron, France, underlined the need to conclusively address plastic pollution by 2040, particularly by addressing unsustainable consumption and production patterns. He highlighted the country's 2020 anti-waste law and stressed the need for an agreed text of the ILBI by 2024. He called for greater innovation in creating new value chains for sorting, reusing, and recycling plastic, and urged the creation of incentives for the private sector to move from linearity to circularity.

Reiterating the need to eliminate unnecessary plastic, Inger Andersen, UN Under-Secretary-General and Executive Director, UN Environment Programme (UNEP), called for a redesign of: products; packaging and shipping; reuse, repair and recycling measures; the justice measures for the informal waste sector and waste pickers; and measures to address legacy plastic. She called on the private sector not to wait for the ILBI to be agreed, but to take the initiative to begin to transform production and manufacturing processes to eliminate unnecessary plastic. She expressed hope that INC-2 would mandate a zero draft of the ILBI to be discussed at INC-3, demonstrating ambition to get the deal done.

Urging delegates to "make Paris count," Jyoti Mathur-Filipp, Executive Secretary, INC Secretariat, expressed hope that delegations will use INC-2 to narrow down options and identify gaps, in order to leave Paris with the mandate for a zero draft. She committed to ensuring more effective participation at future meetings of the INC, lamenting the space constraints at the meeting venue.

### Election of Officers

INC Chair Meza-Cuadra reminded delegations that INC-1 had deferred designation of vice chairs and a rapporteur to allow for further consultations. He proposed to continue with the election of vice chairs, including Antigua and Barbuda (for small island

developing states (SIDS)); Rwanda and Senegal (for Africa); Japan and Jordan (for Asia-Pacific); Ecuador (for GRULAC); Georgia, Estonia, and the Russian Federation (for Eastern European Group); and Sweden and the US (for Western Europe and Others Group).

By acclamation, delegates then elected the vice chairs representing SIDS, the African Group, Asia-Pacific, and GRULAC.

INC Chair Meza-Cuadra then shared that Ukraine had withdrawn their nomination in favor of Georgia, but announced that the Committee would need to hold a vote, by secret ballot, to determine the bureau members for Eastern Europe. He also noted that, due to an objection to a nomination from one member state, a vote by secret ballot would also be conducted to elect bureau members for Western Europe and Others group.

ROMANIA on behalf of Eastern European states, stated that the Committee of Permanent Representatives (CRP) to UNEP had confirmed the nominations of Estonia and Georgia. On a point of order, the RUSSIAN FEDERATION underlined that the INC process is independent of the CPR, and any decision made at other processes have no effect in this process.

BELGIUM lamented that one member state had departed from the long-standing practice in the process of electing bureau members "in favor of their own political preference," and supported a vote.

RUSSIAN FEDERATION decried the politicization of the process and urged to go back to consensus-based decision making. UKRAINE stated that, because of the technical nature of the process, and in the spirit of compromise, they had withdrawn their nomination in favor of Georgia, and voiced their support for Georgia and Estonia to the INC Bureau. The RUSSIAN FEDERATION stated that there were no meetings of the EEG on Sunday or Monday morning to reaffirm or amend the election made by the CRP in Nairobi.

The DEMOCRATIC REPUBLIC OF THE CONGO opined that the nomination process for the INC bureau members from the African Group had not been transparent. SENEGAL clarified that the African Ministerial Conference on the Environment (AMCEN) had approved the nominations of Senegal and Rwanda, and reaffirmed the transparency of the process within the region.

In a point of order, SAUDI ARABIA requested clarification on how the draft RoP would be applied during the vote, since these were only approved provisionally. The Secretariat clarified that at INC-1, the Committee agreed that draft RoP will be applied to their work provisionally until their adoption, noting that they apply to the Committee's work on a provisional basis. SAUDI ARABIA called for further clarification, stating that engaging in voting may not be transparent when using RoP provisionally. They also called for clarification on the application of the number of votes of an economic integration organization (REIO) and their members. The Secretariat informed delegates that the EU, as a REIO, would not participate in the vote.

SAUDI ARABIA, supported by CHINA, BRAZIL, ARGENTINA, INDIA, and IRAN, called for assurances from INC Chair Meza-Cuadra that this practice was exceptional and will not be repeated during future voting procedures, underlining that the operationalization of draft rule 38 (adoption of decisions) should not establish a precedent, noting this rule has been abused in other

processes. INC Chair Meza-Cuadra reiterated his commitment to consensus-based decision making, underlining that this was an exceptional situation.

UGANDA called for clarification on draft rules 1 (definitions) and 37 (voting rights). The Secretariat explained the voting procedure. The RUSSIAN FEDERATION stated that the RoP should be adopted by the Committee before going to a vote.

On a point of order, INDIA, supporting BRAZIL and others, called for application of draft rule 37 only to voting on procedural issues at this session, and not any future substantive decisions undertaken by INC.

INC Chair Meza-Cuadra reiterated that draft rule 41 (conduct of voting) was to be provisionally applied and that points of order could only be made on voting procedures after the ballot process was initiated. He announced that BRAZIL, INDONESIA, SAMOA, and URUGUAY would serve as tellers, after which ballot papers were distributed.

Following the vote on the Eastern European states, INC Chair Meza-Cuadra invited tellers to confirm the secret ballot, stating that of the 159 ballot papers received, there was 1 invalid vote, 158 valid votes, with 17 abstentions. Representatives from Georgia and Estonia were elected as vice chairs with 111 and 104 votes, respectively, with the Russian Federation garnering 51 votes.

Turning to the vote on Western European and Others Group, Stadler Trengrove, UNEP Legal Officer, explained draft rules 45 and 47 (on elections). INC Chair Meza-Cuadra initiated the secret ballot.

Following the vote for vice chairs from Western Europe and Others group of states, INC Chair Meza-Cuadra invited tellers to confirm the secret ballot, stating that of the 149 ballot papers received, there were no invalid votes, 149 valid votes, with 21 abstentions. Representatives from Sweden and the US were confirmed as vice chairs with 119 and 116 votes, respectively.

### Organizational Matters

**Adoption of the agenda:** The Committee adopted the provisional agenda (UNEP/PP/INC.2/1/Add.1). INC Chair Meza-Cuadra informed delegations that other matters, including the date and venue of INC-3, will be taken up on Friday afternoon.

**RoP:** INC Chair Meza-Cuadra informed delegations that he would conduct further informal consultations on the bracketed text contained in rule 37 (voting rights) on the draft RoP (UNEP/PP/INC.2/3) and update delegates on progress later in the week. He stated that the draft RoP are being applied provisionally, as decided at INC-1.

UNEP Legal Officer Trengrove drew attention to the INC-1 meeting report (UNEP/PP/INC.1/L.1), stating that the INC had agreed to apply the draft RoP on a provisional basis, and that the draft RoP, with the exception of bracketed text, do have legal effect, drawing attention to other UN bodies and processes that have applied RoP provisionally.

UGANDA opined that applying RoP provisionally does not make legal sense. IRAN highlighted the different understandings of “provisional.” CHINA emphasized that the draft RoP cannot be seen as agreed and accepted by all, and therefore are not legally binding, opposing, with UGANDA, RUSSIAN FEDERATION, SAUDI ARABIA, and others, the application of the provisional draft RoP, with respect to substantive discussions. RUSSIAN FEDERATION requested the establishment of a contact group to address the RoP, noting it is unacceptable to conduct substantive negotiations using provisional RoP.

SAUDI ARABIA stated that the entirety of the draft RoP are still open for discussion including draft rules 37 and 38. INDIA, with BRAZIL, QATAR, SAUDI ARABIA, BAHRAIN, CUBA, ARGENTINA, and GUATEMALA reiterated a request to bracket the second sentence of draft rule 38.1 (adoption of decisions). SAUDI ARABIA stressed that the INC is a state-driven process, expressed disappointment and stated, “we will absolutely not move forward until our concerns are addressed,” expressing concern that a text could be adopted that is not implementable in the majority of countries. BRAZIL called for a serious discussion on the content of the RoP, expressed it is not possible to adopt a treaty text dealing with a global problem by a 2/3 majority, and

stated, “we do not want to see ourselves in a position negotiating with you, the Chair, or the Secretariat.”

SENEGAL, with SWITZERLAND, the EUROPEAN UNION (EU), UNITED KINGDOM (UK), PERU, and NORWAY, underscored the importance of consensus, and expressed the need for a way forward if consensus cannot be achieved. To this end, they called for ensuring that unanimity is not imposed on delegations, as it risks halting negotiations. SWITZERLAND remarked that being able to vote is often necessary to reach consensus. The UK and NORWAY called for continued work on the basis of extensive discussions from the OEWG. PERU stated that rule 38.1 cannot be bracketed on the request of one delegation.

The US supported informal consultations to resolve “the one outstanding issue” and, with CANADA, URUGUAY, COSTA RICA, CHILE, and EL SALVADOR, proposed the adoption of the RoP. NIGERIA stated that the contentious issue is with rule 37.

BRAZIL requested clarity from the Chair on why the request made by INDIA, which was supported by other countries, to bracket draft rule 38.1 of the draft RoP, was not taken up, highlighting the lack of consensus on continuing the work of the Committee until brackets have been applied. She clarified that this is not a defense for a situation in which one country takes a decision “hostage,” but underlined that “we need everybody on board if we want to end plastic pollution around the globe.”

The RUSSIAN FEDERATION opposed informal consultations on this issue by the INC Chair, remarking that all delegations need to hear each other’s views. SAUDI ARABIA underscored that “absolutely nothing” in the RoP is agreed until everything is agreed and, with INDIA, urged the INC Chair Meza-Cuadra to include the request to bracket rule 38.1 as a prerequisite to opening discussions on substantive matters.

In response to points of order from BRAZIL, SAUDI ARABIA and INDIA, INC Chair Meza-Cuadra reiterated that he would not impede any delegation from making interventions, noting that this discussion would continue on Tuesday.

### In the Corridors

On the first day of work, delegates’ excitement to begin the monumental task before them was hamstrung by procedural issues. Rousing opening statements acknowledged the need for swift action on “the ticking time bomb” that is plastic pollution, urging delegates to make the most of INC-2, recalling that only three further sessions have been scheduled before the Committee is expected to conclude its work in 2024. By late Monday morning, however, delegations embarked on what turned out to be a long road to solve outstanding issues.

Having kicked the can down the road on formally establishing an INC bureau at their first session, delegations now took up the task. After an extended debate about who would be voting and how votes would be counted given the provisional nature of the draft RoP, a number of delegations cautioned that, “this vote cannot set a precedent for the future,” as “voting erodes the good-faith-based nature” of multilateral talks.

This view spilled over into the late afternoon discussion on the RoP, which was unexpectedly protracted. Opposing views emerged, with one camp favoring consensus-based decision making. The other camp noted that “consensus is sometimes tantamount to a veto,” calling for flexibility in decision making procedures to make progress on substantive issues. “We will not move forward until our voices are adequately reflected,” said a number of speakers, forcing the session to conclude earlier than planned.

Forming the bulk of participants at INC-2, observers had a rather quiet day. After a “bit of a fiery” intersessional period in the lead up to this meeting where some took to social media to air their views on reports and papers on the plastic (pollution) crisis and on the elements paper to be discussed this week, a pre-session dialogue with UNEP and the INC Secretariat was held on Sunday. Whether this dialogue will have “done the trick” to calm the waters and settle some of the pressing questions on potential conflicts of interests related to funding, and issues related to transparency and observer participation in the INC process, will likely be seen as the Committee dives into the substantive part of their discussions.