

Plastics INC-2 Highlights: Tuesday, 30 May 2023

On the second day of 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, delegates convened at the UN Educational, Scientific and Cultural Organization (UNESCO) headquarters in Paris, France, to continue discussions on the rules of procedure (RoP), mandating open-ended consultations to solve outstanding issues.

Organizational Matters

RoP: Underlining that this is a state-driven process, INC Chair Gustavo Meza-Cuadra underscored that all states would be heard in order to address the differences emerging.

Jyoti Mathur-Filipp, Executive Secretary, INC Secretariat, recalled that INC-1 had agreed to apply the RoP provisionally, reiterating that the INC Chair had undertaken informal consultations on draft rule 37 (voting rights), but that pending agreement on this draft rule, the draft RoP would apply provisionally to the INC.

ESWATINI, with CONGO, REPUBLIC OF KOREA, RWANDA, PARAGUAY, NEW ZEALAND, and COOK ISLANDS, supported voting where consensus could not be reached as well as the application of the RoP on a provisional basis. RWANDA pointed to the negotiating process towards the Minamata Convention on Mercury, noting the provisional application of RoP in that setting. Underscoring the urgency of addressing plastic pollution and noting that “every minute counts,” COOK ISLANDS said that procedural matters should not derail the substantive work of the INC. MOLDOVA stated that bracketing rule 38 (adoption of decisions) was unacceptable.

ESWATINI, IRAN, and CONGO supported establishing a contact group to finalize discussions on this matter. NEW ZEALAND called for establishing contact groups on substantive issues. MEXICO noted that although the RoP are important, they were not the “core of the matter before us,” and urged, with many others, moving to substantive matters, noting plenary was not the right format for procedural deliberations.

IRAN, VENEZUELA, KUWAIT, and EGYPT underlined the need for consensus-based decision making, with IRAN noting that, other than draft rule 37, other rules did not benefit from the necessary discussion during the Open-ended Working Group (OEWG), and called for bracketing draft rule 38. This was reiterated by SAUDI ARABIA, INDIA, CHINA, and the RUSSIAN FEDERATION. EGYPT called to correct procedural errors made during previous discussions.

ANTIGUA AND BARBUDA expressed that, until final adoption, elements of the RoP that were not contentious should apply and urged against vacillating on issues that “do violence” to the Committee’s mandate. TÜRKIYE stated that if agreement on RoP was not possible, a way forward should be found that reflects the concerns of all states. INDONESIA supported the establishment of an open-ended consultation on RoP. FEDERATED STATES OF MICRONESIA (FSM) questioned whether, since the draft RoP apply provisionally and rule 38 had not been bracketed, rule 38.2 (voting on procedural matters) could be applied to resolve the matter.

Reassuring delegates that he would strive to work towards consensus on every step of the process, Chair Meza-Cuadra proposed that delegates convene in open-ended consultations on the text for draft rules 37 and 38, co-facilitated by Hiroshi Ono (Japan) and Marcelo Cousillas (Uruguay) over the lunch break, and report back to plenary. This was supported by SAMOA, for SIDS, RWANDA, BRAZIL, ECUADOR, KENYA, LIBERIA, and TUNISIA. Debate continued in plenary.

CHINA opposed any discussion on new agenda items before reaching consensus on RoP. INC Chair Meza-Cuadra clarified, supported by SENEGAL, UGANDA, ARGENTINA, SWITZERLAND, EU, the UK, and NIGERIA, that the open-ended consultations would address rule 37 (voting rights) and rule 38.1 (voting in cases of non-consensus).

UNEP Legal Advisor Stadler Trengove recalled that delegations had already agreed to informal consultations on draft rule 37 at INC-1.

INDIA, SAUDI ARABIA, and OMAN, opposed by NORWAY and CHILE, requested specifically bracketing rule 38.1. ARGENTINA stressed the need for consensus, but suggested points of contention could be addressed simultaneously. FSM again asked for clarification on whether draft rule 38.2 (voting on procedural matters) could be invoked to resolve the impasse on deciding on how to apply the RoP provisionally and progressing with substantive discussions.

IRAN referenced technical issues and unclear responses by the Secretariat during plenary and cautioned the Chair not to act on behalf of a group of member states. BRAZIL questioned the debate on bracketing rule 38.1 and proposed also addressing issues outside bracketing or not bracketing the text in the open-ended discussions.

KENYA recommended using the RoP of the UN General Assembly if no agreement is reached.

The RUSSIAN FEDERATION stated that in INC-1, many countries had asked to bracket rule 38.1, but they were ignored. He questioned the Secretariat if a country or a group of countries

have the right to bracket text that has not been adopted. UNEP Legal Advisor Trengove responded that the practice is that text can be bracketed during informal consultations and text that has been decided upon by the INC, such as the draft RoP, cannot be revised during a plenary meeting. The RUSSIAN FEDERATION sought further clarification on their question by the Secretariat.

SAUDI ARABIA stated they were willing to engage in the open-ended consultations and recommended to suspend plenary to discuss the issue further.

Ghana, for the AFRICAN GROUP, urged the need to break the stalemate and address substantive issues; and called for the open-ended consultations to provide an objective arena for the views of all members to be expressed and addressed. NIGER underscored that the benefits of plastic are insignificant compared to the costs and the terrible consequences of plastic pollution.

The PHILIPPINES underscored that the spirit of consensus must guide the open-ended consultations. COSTA RICA said that consultations should only consider rule 37, as opening discussions on other rules “would fly in the face of the consensus reached at INC-1” and establish an unhelpful precedent.

Chair Meza-Cuadra reaffirmed that the open-ended consultations would be held on the text of draft rule 37 and rule 38.1 of the provisional RoP during lunchtime.

Reporting back to plenary after the extended consultations at 5:00 pm, Co-Facilitator Ono noted that the consultations focused on draft rule 38.1, including seven possible options. Co-Facilitator Cousillas expounded on the options, noting that some pertained to retaining the original text (voting only when no consensus is achieved), options for scenarios where voting could take place, and the deletion of voting rules altogether.

Chair Meza-Cuadra then proposed resuming the open-ended consultations on Wednesday over lunch, in order to shift the focus of the INC to matters of substance.

INDIA requested clarification on whether the agenda item related to the approval of the RoP would remain open and whether rule 38.1 will be bracketed. He underlined that the session would only be able to move forward if this rule was bracketed, as this was a request from INC-1. SAUDI ARABIA recalled their request to bracket rule 38.1 at INC-1, and stated they were eager to move forward to substantive matters but needed assurances that their concerns were properly heard. She asked for clarity on whether there was an alternative method to indicate a lack of consensus on the RoP.

MOROCCO requested clarification on the voting rights of regional economic integration organizations *vis-à-vis* their Member States.

After consulting with the Secretariat, Chair Meza-Cuadra said that many of the questions raised referred to the request to bracket draft rule 38.1, noting that these were questions to be addressed during the open-ended consultations. He asked Committee members to shift their focus to substantive matters.

CHINA underlined that it was “incorrect” to continue to apply rule 38 on a provisional basis due to the huge divergence among delegates, noting that using this rule on a provisional basis was not legal. He said that rule 38 was important as it tests delegations’ spirit of cooperation. He noted that if matters were to be decided by a simple majority, many countries might be hesitant to participate in the negotiations. He cautioned that if the dais

continued to ignore states’ concerns about bracketing the draft rule, it “could jeopardize” negotiations going forward.

Underlining the importance of the consultations, Chair Meza-Cuadra urged delegates to accept his proposal of opening substantive matters, with the open-ended consultations convening over lunch on Wednesday. Responding to a request from BRAZIL, he suspended the session to allow for another round of informal discussions.

When plenary reconvened at 7:04 pm, MEXICO, supported by PAKISTAN, proposed that, when the substantive part of the agenda was eventually opened, delegations should allow for the delivery of regional and observer statements, with national statements submitted online in order to “to save precious time.” She urged efficiency in the remaining days of INC-2 to be able to deliver a zero draft by the end of the week.

Chair Meza-Cuadra announced that the open-ended consultations would continue at 8:30 pm with a view to arriving at a solution by Wednesday morning.

In the Corridors

If a stranger walked into the plenary room on Tuesday morning, they would likely be unable to tell that this was a gathering to discuss the global scourge of plastic pollution. Picking up from where they left off in their discussions on the rules of procedure, optimism quickly waned as the debate widened (and deepened) the chasm between those in support of consensus-based decision making, versus those in favour of majority voting procedures where consensus cannot be reached. Other cracks emerged, including on how best to continue discussions on the way forward. As the debate raged on in plenary, these fissures became fractures, with some claiming that other delegations were acting in “bad faith,” and even questioning the Chair’s impartiality. Several raised concerns that consensus was being used as an alibi for avoiding agreement, with others fretting that certain delegations were holding “the rest of us hostage.”

Looking back, some noted that “we are here because there was a lack of clarity when we left the preparatory meeting in Dakar in 2022,” with another countering that it was “crystal clear that the only rule still open for debate was on voting rights.” Tempers flared and threats flew as delegates made no progress on the heart of the matter, which had brought thousands to Paris clamoring to make their voices heard. Although protracted discussions on procedural matters are not unusual, what is unusual is the “seeming loss of trust” in the process. One seasoned delegate shared that the “the hardest thing to regain is trust,” at this early stage of negotiations.

Observers, watching quietly from the sidelines, were understandably frustrated that the urgent matters which had brought them to INC-2 had yet to be opened, with many beginning to calculate the cost of participating in these talks. Other, more seasoned, participants looked at the broader picture. “These procedural talks have likely cost the taxpayer almost half a million dollars since Monday!” remarked one observer.

In some quarters, there were whispers about how to best manage the very limited time the INC has to conclude its work. At the end of this session, “we will only have 15 more negotiating days,” recalled one delegation, expressing disappointment that at this meeting, “we lost” two negotiating days trying to “rewrite the rules of engagement.” One seasoned participant noted that, at this rate, “we may have to conjure up some additional days to finalize these talks.”