

Preparatory meeting mandated by the intergovernmental negotiating committee to develop
an international legally binding instrument on plastic pollution, including in the marine
environment

11 November 2023

Co-facilitators' written summary

The chair of the intergovernmental negotiating committee (INC), Ambassador Gustavo Meza-Cuadra, and the Executive Secretary of the INC Secretariat, Ms. Jyoti Mathur-Filipp, welcomed delegates to the preparatory meeting mandated by the INC to develop an international legally binding instrument on plastic pollution, including in the marine environment. The preparatory meeting represented an important opportunity for an initial, informal exchange of views in a transparent and non-prejudicial manner. The chair invited Ms. Marine Collignon, of France, and Mr. Danny Rahdiansyah, of Indonesia, to co-facilitate the meeting on his behalf.

During the preparatory meeting, as mandated by INC-2, the discussions focused on elements not discussed at INC-2 as well as intersessional work. Members generally welcomed the synthesis report prepared by the Secretariat based on the submissions received from Members, while some noted that limited time had been given to analyze it.

A. Consideration of the synthesis report prepared by the Secretariat, based on submissions received from Members.

1. Part 1 (preamble, definitions, scope and principles)

a. Preamble

On the purpose of the preamble, references were made to the preamble recalling the history, providing the context and setting the tone for the instrument. Some members referred to the preamble as not being legally binding. Some also stressed the importance of having a short preamble.

On the content of the preamble, a number of concepts, approaches and principles were raised by delegations for possible inclusion in the preamble or a separate section. We outline some of these here and others later in the document, without prejudice to whether and where the INC may decide they should be reflected.

Members asked to refer to the 2030 Agenda for Sustainable Development and the Sustainable Development Goals and to plastic pollution as a global concern and the urgent need for a global response. Reference was made to other multilateral environmental agreements, including the Basel, Rotterdam and Stockholm Conventions, the United Nations Convention on the Law of the Sea, and relevant regional agreements. Many members emphasized the need to recall UNEA Resolution 5/14 and earlier resolutions. Several Members pointed out the need to acknowledge the different circumstances of different States, including the special

needs and circumstances of developing States, and the particular needs of small island developing states. Many Members called for a reference to a human rights-based approach, the human right to a clean, healthy and sustainable environment, the right to health, and the rights of Indigenous Peoples and local communities.

References to the eradication of poverty, the importance of plastics for sustainable development, the sustainable management of plastics and the circularity approach were also called for. Some Members expressed the view that the relationship between climate, biodiversity and pollution, and the importance of different sources of knowledge, including Indigenous and local knowledge should also be contained in the preamble.

Finally, some Members suggested that the preamble should be drafted only when the more substantive elements of the instrument have been developed.

b. Definitions

Many Members referred to the need to include existing internationally agreed definitions. Those endorsed in other multilateral environmental agreements (MEAs) or processes, or those contained in documents UNEP/PP/INC.1/6 and UNEP/PP/INC.1/7, could be relied on or used as a starting point, while acknowledging that some specific terms may need to be adapted for the purposes of the instrument.

It was suggested that clear agreed definitions of key terms could provide clarity for the negotiation and avoid ambiguity for the operation and implementation of the instrument.

A number of Members suggested to focus on the definition of terms used in the instrument that are critical to understanding and implementing the obligations. It was also suggested that the need for specific defined terms should be determined by the content of the substantive provisions of the instrument. Some members noted that technical terms specific to plastics needed to be defined. These included, among others, plastics, polymers, the distinction between primary and secondary polymers, the life cycle of plastics, problematic plastic products and chemicals of concern.

Different views were raised as to when the discussions on definition should take place. Some considered that discussions of substantive provisions of the instrument should take place before technical discussions on definitions for inclusion in the text of the instrument. Others considered that discussions on definitions could also take place in parallel to negotiations on substantive provisions. Some suggested that definitions should be agreed on after reaching agreement on scope and principles. Some suggested that technical work on key technical terms could take place during the intersessional period.

c. Principles

Different views were expressed as to where principles should be referred to in the instrument, such as in the preamble, in a separate article of the instrument, or reflected in the operative provisions of the instrument. Some members highlighted that in addition to reflecting

principles in the instrument, it was equally important to operationalize them through its other provisions.

Some Members considered that agreed principles could help guide the development and interpretation of the provisions of the instrument. For some Members, principles should be discussed once there is more clarity on other parts of the text, including core obligations.

There were different views on how principles should be referred to and what principles fell within the mandate of the committee. Many Members referred to the principles set out in the Rio Declaration on Environment and Development (the Rio Principles), in general or with reference to specific principles. The following principles were referred to, in no particular order of priority: common but differentiated responsibilities, the polluter pays principle, the precautionary approach, the prevention principle, sovereignty over the use of natural resources, just transition, the protection of vulnerable communities, shared responsibility, intergenerational equity, non-regression, ecosystems approach, Extended Producer Responsibility, transparency, inclusiveness, bottom-up approach, a gender perspective, general principles relating to marine pollution, circular economy, non-discrimination, best available science, local and Indigenous knowledge, access to information and transparency, equity, sustained economic development, trade, promotion of cooperation at regional and international level, and the three Rs of waste management.

d. Scope

Many members expressed the view that UNEA resolution 5/14 provides the basis for the scope of the future agreement, i.e., that the scope should be on long-term elimination of plastic pollution, based on a comprehensive approach that addresses the full life cycle of plastic. Some members highlighted the relevance of additional specific elements for inclusion in the scope of the instrument, including with reference to the sustainable development goals.

Some members indicated that the life cycle of plastic should be further defined. Different views were expressed on the extent to which raw material extraction and polymer production should form part of the scope of the instrument. Reference was also made to the need to cover in the scope the type of plastics to be addressed by the instrument, including micro- and nano-plastics, and to all types of plastics irrespective of their origin. Some members highlighted that the focus should be on the elimination of plastic pollution rather than plastic.

Some Members noted that the scope of the instrument should be broad enough to cover plastic pollution affecting all ecosystems, including releases in air, water and soil, and that different geographical specificities, including terrestrial and marine and coastal environments, freshwater and mountain areas, should be taken into account.

Some members noted that the scope of the instrument should not overlap with that of other MEAs. Some were of the view that the instrument should not address trade while others indicated that provisions should promote trade development rather than restrictions and should be in full conformity with the World Trade Organization (WTO). Different views were expressed with respect to the possible need for exemptions, e.g., for national security issues and health emergencies.

The transboundary nature of plastic pollution was highlighted by many, and some members were of the view that the instrument should apply both to areas within national jurisdiction and in spaces and territories not falling under the sovereignty of States. It was further suggested that the instrument should cover activities within areas where a Party exercises its jurisdiction or control.

Some members considered that a provision on scope was needed. Other members were of the view that this is not mandated by resolution 5/14 and/or that such a provision was not needed.

Observers were given the opportunity to express their views. In that context, the importance of international labour conventions and standards, the need for coherence and treaty convergence to ensure uniformity in commitments, the importance of referring to the special situation of vulnerable countries and the need for finance in the preamble of the instrument; and the essential role of local and subnational government were noted. It was also suggested that principles of human rights and environmental law should be reflected in the instrument.

2. Institutional arrangements

It was suggested that arrangements in existing MEAs, including under the Minamata, Basel and Stockholm conventions provide a basis for the development of provisions on institutional arrangements, including with respect to the establishment of a governing body, a secretariat, or final provisions. However, while other MEAs can be a source of inspiration, institutional arrangements would need to be tailored to the specific needs of the future instrument.

a. Governing body

Support was expressed for the establishment of one governing body, such as a Conference of the Parties, with functions to be defined in the agreement, adapted to the needs of the instrument. Reference was made in this respect to the functions identified in paragraph 58 of the Synthesis Report. There was a general support for the governing body being able to adopt its own rules of procedure, with some highlighting that decision-making by the governing body should be by consensus and only allow for voting on non-substantive issues. The need to ensure that the governing body meets regularly was noted.

b. Subsidiary bodies

Support was expressed for the establishment of one or more subsidiaries to provide support on specific aspects, to be established either by the governing body or by the instrument itself, on an ad-hoc or permanent basis. The need for flexibility and capacity to adapt to changing needs was noted. It was also suggested that the subsidiary bodies should be Member-driven. It was cautioned that the establishment of too many bodies should be avoided.

Many Members supported the establishment of a subsidiary body for scientific and technical matters to guide decisions by the governing body, in light of the importance of science to this instrument. Some noted that such body could also address economic and social aspects. Some

Members called for the inclusion of local and Indigenous knowledge, and for subsidiary bodies to be balanced in terms of regions, gender and technical expertise. The importance of meaningful participation of developing countries, including small and vulnerable island states, in subsidiary bodies was highlighted.

Different modalities for such body were identified, including scientific, technical and economic panels, or panels of qualified experts that could be called upon to provide timely information and assessments. It was further noted that subsidiary bodies should take into account subsidiary bodies under other MEAs and other scientific bodies to avoid overlap.

Some Members supported the monitoring and assessment of socio-economic aspects, and of financial flows to developing countries. Several Members supported the establishment of a robust financial body and of a dedicated fund under the instrument to provide adequate and predictable financial support to developing countries. Several countries emphasised the need for subsidiary bodies to facilitate capacity building and technology transfer.

Reference was also made to the need for an implementation and compliance mechanism, as well as to monitor progress, to be further elaborated once substantive provisions were more clearly defined. Transparency and a facilitative nature of the compliance body were called for. The view was also expressed that compliance issues should be left for national assessment.

It was suggested that participation of other stakeholders could be decided by the governing body. Support was also expressed for the establishment of a multistakeholder agenda.

One observer highlighted the importance of defining modalities for engagement with independent scientists, including in the INC process itself.

c. Secretariat

Support was expressed for the establishment of a Secretariat, including with functions as described in paragraph 85 of the Synthesis Report. It was suggested that arrangements under existing MEAs, including the Minamata and Stockholm conventions, provided an adequate model for the development of relevant provisions. It was also suggested that the location of the Secretariat should be for the governing body to determine.

3. Final provisions

Several delegates identified the Stockholm and Minamata conventions, as well as the elements reflected in document UNEP/PP/INC.1/8, as possible starting points for the development of final provisions. It was also suggested that such final provisions should be reviewed after the development of substantive provisions.

On dispute settlement, support was expressed for equity, and focusing on dispute resolution through negotiation. A group of Members highlighted that the establishment of a Court of Environmental Issues would be beyond the mandate of this instrument.

Some Members supported the development of provisions on annexes and provisions for their amendment, while others considered that the need for such provisions should be assessed in light of the development of substantive provisions.

On amendments to the instrument itself, some delegates emphasized that amendments should be able to be proposed, based on science. It was also suggested by some that consideration of amendments should also be guided by the precautionary approach.

It was suggested that it would be premature to debate entry into force, but that it should be a simple process. Some delegates also expressed concern that it was too soon to negotiate on reservations and withdrawal. Others noted the importance of consistency with the Vienna Convention on the Law of Treaties in this regard.

Support was expressed for provisions on relations with other MEAs, to avoid duplication.

It was finally suggested that while non-Party references could be appropriate, they should not impose requirements on them.

B. Agenda item 3 (intersessional work)

On intersessional work, the Secretariat presented some general indications regarding the potential timing and modalities for any potential intersessional work that could be mandated by the INC, in light of the overall timeframe of the INC process.

Several Members requested additional time to consider the presentation made by the Secretariat to allow for a thorough discussion on intersessional work. Some felt the discussion was premature and requested that this subject be revisited during INC-3.

Intersessional work was broadly supported, with Members deeming it essential to make the most of the time between INC meetings, beginning with the intersessional period between the Committee's third and fourth meetings. This work could focus on the technical aspects relating to the Convention and should not prejudice its contents, although the possibility of working on the draft of the instrument to advance the text was raised. A mandate for the Chair to develop a first draft of the future instrument was also raised by some Members.

Most members converged on the importance of targeted discussions on scientific and technical aspects of the future instrument. Many members supported the notion of selecting priorities across the life cycle of plastics. Such work could include *inter alia* aspects such as chemicals of concern, avoidable and problematic plastics, design for circularity and eco-conception. Intersessional work on polymers of concern was raised as a priority by many Members, although some deemed such work to be beyond the scope of the instrument.

Most Members also converged on the importance of targeted discussions on means of implementation and mobilization of financial resources. The need to acknowledge the different starting points, capacities and resources of countries, in particular developing countries, and the need to align commitments to financing were noted. Preparation of a study on current financial flows to address plastic pollution, determination of funding gaps and

possible establishment of a subsidiary body on financial resources were raised as potential areas for action. Members supported looking to existing financial mechanisms, an independent mechanism and creation of new innovative approaches to resource mobilization. The inclusion of capacity building and technical assistance in the discussion was also emphasized by some members.

In terms of modalities, there was support by numerous members for convening expert groups. Some favoured small expert groups with regions being invited to nominate Members to maximize efficiency of the work, while others favored a wider representation in intersessional work. All agreed that such group should ensure an inclusive, balanced and transparent approach.

Lastly, an observer coalition underscored its readiness to support any intersessional work with solid scientific knowledge and emphasized the importance of remaining mindful of conflicts of interest.
