

Towards a UN Plastic Pollution Treaty: Negotiations and Progress before INC2

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Matter commented on: Progression toward negotiation and conclusion of a new UN Plastic Pollution Treaty

1. Introduction

This week marked the beginning of the second round of negotiations of the Intergovernmental Negotiating Committee (INC2) on a new treaty focused on plastic pollution, including the marine environment (the Plastics Treaty). Its mandate, found within [United Nations General Environment Assembly \(UNEA\) Resolution 5/14](#), entitled ‘End plastic pollution: Towards an international legally binding instrument’, was adopted on 2nd March 2022. The negotiations follow an upsurge in attention to the problem of marine plastic pollution that [is predicted to triple by 2040](#) if serious action is not taken. While some international reaction has slowly emerged, the treaty negotiations represent a step further that is imperative to safeguard the world's marine environments from this [rapidly growing problem](#).

This blogpost maps out and examines the development and basis of these negotiations, the process of these negotiations so far, key issues under discussion with respect to marine pollution, and what can be expected from this and the current second round of negotiations – taking place from Monday 29 May until 2 June 2023 at the UNESCO headquarters in Paris, France. Despite clear differences in approaches and opinion within the parties’ submissions, there also exists a level of agreement in certain key areas.

2. Plastics as a global problem

Projections for future plastic pollution make for nauseating reading – [with growth of plastic waste predicted to rise to 430 million tons per year by 2040; with 56% percent of it unmanaged, and with \(currently\) 29 million tons of it leaking into the world’s marine environments every year](#). The causes of this marine plastic pollution are well documented. A [leading analysis of marine plastic pollution](#) identified four trends worsening this grave problem; ‘continued population growth; increases in plastic use driven by increasing production of cheap virgin plastic; shifts to low-value/nonrecyclable materials; and the growing share of plastic consumption occurring in countries with low rates of collection.’

Moreover, a key issue highlighted in the literature indicates that waste management, and the responsible disposal of plastic, is [perhaps the most important factor in combatting ocean plastics pollution](#). This is because the majority of the plastic that does end up in the oceans are most often inadvertently leaked from specific points due to waste management issues. And, furthermore, the vast majority of this waste dissipates into the ocean from a single region: Southeast Asia. The Philippines currently oversees the gravest such predicament, with the country being predicted to [release an uncomfortable 35% of all ocean waste](#) this year. The next five biggest contributors are India, Malaysia, China, Indonesia, and Myanmar. This makes these countries highly important for the strategic goal of reduction of ocean pollution. However, it should be noted that a great amount of the pollution in question originates in other countries – particularly Europe and Japan, [who together export almost 1.3 million tons to Asia alone](#). Plastic wastes are also [now clearly included in the scope of the Basel Convention](#) on the Trade of Hazardous Wastes, and updated technical regulations on plastics waste management were [adopted at COP16 of the Basel Convention](#).

In response to these problems, and connected to recent focuses upon environmental protection, a [plethora of NGOs](#), as well as other international bodies, have been established to pressure the

international community to act. UNEA Resolution 5/14 thus represents a concerted effort of many different parties and sources; as evidenced by the [diverse range of submissions from both states and stakeholders](#) into the INC2 conference.

3. The path to INC2

Though argued [by many as not fast enough](#), and under intense pressure from many sources, the international community has slowly accepted the need for a treaty on plastic pollution. Non-binding commitments have already been made [in the G7](#), [G20](#), the ASEAN [Bangkok declaration](#), and many others. UNGA [Resolution 72/277](#) led to the Secretary-General's [report](#) (A/73/419) on how the law may be used in solving the pollution problem, including in the marine environment. [Subsequent reports have reaffirmed this](#) (A/78/67). Alongside the Secretary-General, Resolution 72/277 also established a working group – whose investigative [work](#) (A/AC.289/6/Rev.2) into plastic pollution was fully adopted in [Resolution 73/277](#) (A/RES/73/333). Alongside and with input from these efforts, the UN Environment Assembly has passed [multiple resolutions](#) that have progressively [recognised the threat of plastic pollution](#) (UNEA 1, 2014); identified [knowledge gaps about such pollution](#) (UNEA 2, 2016); recognised [areas of ineffective \(or no\) governance](#) (UNEA 3, 2017); and attempted to strengthen [coordination between global parties for the purpose of its reduction](#) (UNEA 4, 2019). Following all this cumulative effort, UNEA Resolution 5/14 adopted at [UNEA 5](#), held in 2021-2022, represents a first attempt to create a binding treaty on general plastic pollution through a systemic perspective; looking at the entire lifecycle of plastic. [UNEA 6](#) will follow in March 2024.

[UNEA Resolution 5/14](#) decided on the establishment of an intergovernmental negotiating committee ‘to develop an international legally binding instrument on plastic pollution, including in the marine environment (...) which could include both binding and voluntary approaches, based on a comprehensive approach that addresses the full life cycle of plastic’. It lays out sixteen broad provisions for the potential future Plastics Treaty to include, including ‘To promote sustainable production and consumption of plastics through, among other things, product design and environmentally sound waste management, including through resource efficiency and circular economy approaches’ (para 3(b)) and to ‘To promote national and international cooperative measures to reduce plastic pollution in the marine environment, including existing plastic pollution’ (para 3(c)).

Following UNEA Resolution 5/14, an [Ad-hoc working group \(OEWG\) was established](#) by the UN Environment Programme, (UNEP) Executive Director to map out the road to preliminary completion of an instrument by the end of 2024 under paragraph 1 of the resolution. The [preliminary plan for the negotiations](#) envisages a total of five negotiation rounds (INC2s), occurring in week of 28 November 2022; after the end of April 2023, November 2023; early May 2024; and early December 2024, respectively. [INC1](#) was subsequently held in Punta del Este, Uruguay (28 November – 2 December 2022). As is also the case for the upcoming INC2, states and stakeholders had the [opportunity to issue their opinions to the Secretariat beforehand](#). The [final report of INC1](#) – which also sets out the provisional agenda for INC2 in its [second Annex](#) – gives a anonymised account of which groups of members pushed for certain proposals. We can see very clear parallels between these proposals, and the submissions to INC2.

[Negotiation will thus shortly enter its second round of negotiations](#) at INC2 from 29th May to 2nd June of this year at the Headquarters of UNESCO in Paris, France. In advance of this session, States and stakeholders were encouraged to submit ‘options’ for inclusion in the negotiations for three key areas; substantive elements (objectives and core obligations); implementation measures; and additional input. A [summary of these potential options prepared by the Secretariat](#) was published on 13th April 2023 on the basis of these submissions, and they shall form the basis of the INC2 negotiation round.

4. The purpose and objectives of INC2

The broad objectives of INC2 are laid down in the ‘[scenario note](#)’ prepared by the INC Chair, as follows:

1. To advance development of the instrument using [\[the summary document prepared by the Secretariat\]](#); 2. to identify areas where more information is required to inform and support the negotiations, including any mandate for document(s) to be prepared for consideration at the third session; and 3. to decide on the necessary procedural and organizational matters for the continuation of effective negotiations.

Many of the most often-cited over-arching issues and goals mentioned in the states’ submissions enjoy theoretically broad support; especially the objectives of the ‘reduction of plastic pollution’, ‘protection of the environment’ and, especially in relation to specifically damaging plastics, ‘protection of human health.’ As is examined in greater detail below, many states and other stakeholders almost unanimously support the creation of a ‘circular economy’ in relation to plastics.

4.1. List of possible core obligations

On the basis of the submissions of both states and stakeholders, the Secretariat has prepared a list of 12 core obligations that may be introduced as provisions into the future treaty. They are, in order of appearance in the [summary](#):

1. Phasing out and/or reducing the supply of demand for and use of primary plastic polymers;
2. Banning, phasing out and/or reducing the use of problematic and avoidable plastic products;
3. Banning, phasing out and/or reducing the production, consumption and use of chemicals and polymers of concern;
4. Reducing microplastics;
5. Strengthening waste management;
6. Fostering design for circularity;
7. Encouraging reduce, reuse and repair of plastic products and packaging;
8. Promoting the use of safe, sustainable alternatives and substitutes;
9. Eliminating the release and emission of plastics to water, soil, and air;
10. Addressing existing plastic pollution;
11. Facilitating a just transition, including an inclusive transition of the informal waste sector;
12. Protecting human health from the adverse effects of plastic pollution;

These suggested core obligations stand with respect to the potential treaty as a whole, for all types of plastic pollution. For preventing plastics leakage into the marine environment, some of these potential provisions are particularly significant, and are set out in some more detail next. This is to show that, whilst some of these possible options have garnered widespread support, there remains a level of disagreement on the level of ambition of states, and stakeholders involved in the process.

Possible Core Obligation 1 – phasing out and reducing supply, demand, and use of primary plastic polymers.

A first possible core obligation is a reduction in the supply, demand, and use of plastic polymers altogether. The proposal is primarily backed by the [High Ambition Coalition](#) (a grouping of likeminded countries, including the EU and its members, Canada, Korea, Japan, and many others), and OSEAN. At the same time, some states and stakeholders (industry) have specifically argued against, such as the [International Council of Chemical Associations](#) (ICCA), the [African Petroleum Producers Organisation](#) (APPO), the [Organisation of Petroleum Exporting Countries](#) (OPEC), and [Russia](#). The ICCA, for

example, whose members [account for over 90% of global chemical sales \(including plastics and their chemical components\)](#), is specifically against any forced reduction of either production or consumption of plastics, [though it is nonetheless open to other measures of post-consumption control](#). Some states have moreover chosen to abstain from saying anything on the matter in their submissions.

Possible Core Obligations 2 and 3 - Banning, phasing out and/or reducing the use of problematic and avoidable plastic products; Banning, phasing out and/or reducing the production, consumption and use of chemicals and polymers of concern.

Though there appears to be some support for the phasing out of ‘microplastics’, the ‘most polluting types of polymers’, and (some) ‘single use plastics’, support for this is far from consensus amongst all submitting parties. Supporters of possible core obligations 2 and 3 unsurprisingly include the [EU](#), [UK](#), and [High Ambition Coalition](#) – but also include the [Philippines](#), [Kenya](#), [Sri Lanka](#), and, though implicit, [China](#) too. Though none have specifically argued against it, some major players – such as the [USA](#), the majority of private industry (including the [ICCA](#), [APPO](#), [OPEC](#), [OAPEC](#)) and much of [Latin America](#) – have said nothing on the matter. It seems highly likely that, based on the interests of an important blocking minority also seen with regard to possible core obligation 1, no outright ban on the production of such substances will be possible.

PCO-5 Increased Waste Management

Increased and better waste management, [an especially important factor](#) vis-a-vis ocean pollution, is predictably supported by the US, the EU and other developed states. But supporters also include countries that are particularly prone to inadequate waste management that lie [predominantly in South East Asia](#); including [Indonesia](#), [Thailand](#), [Malaysia](#), and [China](#). Notable absence, however, is support from the Philippines – the landmass from which the most waste [enters the oceans by a significant margin](#). It is, however, open to international assistance of other forms. The EU, [High Ambition Coalition](#), and UK have all asserted that the new treaty should not overlap with the remit of the Basel Convention. China in particular [dedicated almost its entire submission onto the issue of waste management](#) and how it may be solved.

PCO-6 Fostering design for circularity and Transition to a ‘Circular Economy’.

Near unanimous support has been expressed with regard to moving towards a ‘circular economy [of the lifecycle of plastics]’ – including from the [US](#), [Philippines](#), [ICCA](#), [APPO](#), [OPEC](#), [OAPEC](#), [EU](#), [Brazil](#), [Japan](#) and others, with the only major absence being China. Significant discrepancy remains, however, about what this actually means in terms of definition or implementation. Whereas some parties have emphasised the post-consumption recycling of plastics, (For example, the ICCA), others (such as the High Ambition Coalition) have instead focused on removing from the production chain those specific plastics that are by their very nature less able to be recycled, in addition to greater efforts to boost recycling overall, and the ban on ‘single use’ plastics dealt with in potential core obligation 2.

Assistance, including funding, to developing countries.

Though not mentioned as a specific possible obligation, but rather a [\(notably far-reaching\)](#) means of implementation, it is additionally significant to note that there is substantive but mixed support for giving important assistance to developing countries, regarding especially their ‘circular economy’ and ‘waste management’ efforts. While such measures have the support of, unsurprisingly, many developing or transitioning countries, and also some major economies (see the [UK, page 9](#), implicitly

by [Japan, page 7](#), and in principle though not necessarily in monetary form, by [the EU, page 11](#)) some key players in such a proposal are notably entirely absent, such as the US.

5. Concluding Comments and Observations

It should be clear from observations above that there is significant room for the adoption of at least some of the potential obligations suggested. However, there remain good reasons to doubt the approval of many of them. Indeed, Resolution 5/14 itself shows a lack of consensus for many different terms and the basis of objectives. It is not explicitly stated to what ultimate purpose such an instrument may be for, beyond the Resolution's own title of bringing about the 'end' of plastic pollution. In other words, although it is clear that the aim of the future treaty is to end plastic pollution, how to do so is hotly disputed; so much so, that the INC process has not started with a basis on *how* to bring this change about. This leaves a colossal challenge to the negotiating states to rectify; as is clear in the [summary of INC1](#) (Annex II, paragraph 2). With respect to preventing marine plastics pollution specifically, the aim is a little clearer, however. The Resolution states it is to 'reduce plastic pollution in the marine environment, including existing plastic pollution', implying not only a reduction overall, but a duty of continuous waste removal to this end (article 3c). The complexity of plastic pollution and its (hotly debated) ultimate causes can clearly be reflected in a mandate that is largely devoid of specifics – leaving the delegates of the negotiating committee with a large obstacle to circumvent.

In a similar vein, many of the more specific terms are fraught with ambiguity. For example, inclusion of extended producer responsibility (EPR) (Appendix I, (I) Section D.5(f) of the [summary](#)), as a potential principle, is supported by the High Ambition Coalition, Sri Lanka, Morocco and the EU among others. [Although EPR is a commonly adopted market-based mechanism](#), its implementation differs between jurisdictions, and the Philippines (one of the most important parties in the negotiations due to its part in ocean waste) submitted a divergent suggestion of what it terms 'Extended *Exporters* Responsibility'. Whether this is intended to be a variation on EPR, or a different concept altogether, and how EPR will be promoted at the global level, remains unclear.

Provisions that seek to mandate a reduction of the production and consumption of virgin plastic, which currently are predominantly fossil fuel-based, risk opposition in particular from certain petrochemical-based nations, and the lobby of associations that represent petrochemical interests. This will make the mandated reduction in the production and consumption of virgin plastics difficult to achieve.

With the very objectives of the negotiations (prevent pollution, but how?) and key terms and principles left undefined, an enormous amount of ground must still be covered. At the same time, broad agreement can also be seen on some core measures – including to ensure sound waste management, assistance (of some kind) to developing countries, and to reduce the most polluting types of plastic. There is therefore both reason for scepticism, and some room for cautious optimism, as the process to conclude a new Plastic Pollution Treaty continues to unfold.

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