

## Plastic Pollution INC-5 Highlights: Wednesday, 27 November 2024

Delegates met for the third day of the fifth session of the Intergovernmental Negotiating Committee (INC-5) to develop an international legally binding instrument (ILBI) on plastic pollution, including in the marine environment. They met in contact groups during the day and into the night. They engaged in discussions towards convergence on elements to be included in the future ILBI on finance, capacity building, technical assistance and technology transfer, and plastic products and chemicals of concern, before initiating textual negotiations on some, but not all, of these elements. Where possible, they based their discussion on the Chair's [Non-Paper](#), with references to the compilation of draft text ([UNEP/PP/INC.5/4](#)), as well as on state submissions. In the late afternoon, they convened in a stocktaking plenary.

### Contact Group 1

Co-chaired by Maria Angélica Ikeda (Brazil) and Axel Borchmann (Germany), this group met throughout the day to hear proposals related to **plastic products and chemicals of concern** (draft article 3), an element on which the Non-Paper did not provide specific text. Relevant delegations presented their proposals, described below.

Regarding plastic products, the submission from the US submission proposed that each party take measures, through/in accordance with their national action plans, regarding products listed in an updatable annex to the ILBI, which include: the prohibition of production, use, import, or export; reducing or discouraging government procurement, purchase, or sale of the product; and promoting relevant design improvements and innovation, such as increasing the reusability or recyclability of the product. Regarding chemicals of concern, the US proposed that each party take measures, through/in accordance with national action plans, to address the use of chemicals in the production of plastic and plastic products, including prohibiting and/or restricting the production, import, or export of chemicals listed in an amendable annex.

The submission from China proposed that each party: strengthen the management of plastic products based on national circumstances and capabilities; identify national priorities on

plastic products that may cause pollution; and take necessary measures, while considering the socio-economic impacts of such measures. To identify national priorities, the submission proposed parties should take into account certain conditions of the plastic products. The submission noted that parties can request global measures for certain plastic products which would be reviewed by a “scientific-technical-economic-social review committee” under the conference of the parties (COP).

The submission from the UK, Moldova, and Norway proposed an initial list of plastic products which would be subject to global control, with consideration for exclusions or exceptions. This proposal included a list of measures that could be applied to plastic products and criteria that could be applied to identify additional plastic products, as well as a process for the COP to identify further plastic products to be subject to control, including a process to review the lists.

The submission from Türkiye proposed methodologies for developing a list of plastic products and chemicals of concern “that require action,” rather than defining a list, and a provision that mandates parties to refrain from any measure that creates unnecessary obstacles and constitutes discrimination or a disguised restriction on international trade.

The submission from Brazil referred to an inclusive process for adding to a global list of chemicals of concern, in liaison with a technical and scientific committee, with consideration of possible economic and social impacts, local capabilities and circumstances, specific applications, and the availability of feasible alternatives.

The submission by the Russian Federation included an article on plastic products, tasking each state with identifying problematic plastic products based on national circumstances and capabilities. The proposal also defined what constitutes a problematic plastic product and noted that measures should be based on scientific evidence and not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.

The submission by Canada, Georgia, Ghana, Moldova, Norway, Peru, Rwanda, Switzerland, and Thailand includes: control measures; consideration for exclusions; criteria to be applied to identify chemicals of concern; the COP process to identify and list further chemicals of concern to be subject to elimination in

certain applications, including a review process for the list; and consideration of national circumstances and capabilities.

The submission from Kenya suggested “convergence” text for articles 3 and 6 which: compiles an initial list on chemicals, products and problematic polymers; includes a “phase out commencement date” and proposals to reduce production and supply every 5-year cycle; includes baseline inquiries for parties to provide a basis for developing a compliance plan in phasing out listed products and problematic polymers; and proposes applications for exemptions from this compliance plan.

In the ensuing discussion, some delegations strongly opposed an article on this issue, considering this a “red line” in their positions. They noted that chemicals of concern are already addressed by other chemical conventions, and that the mandate of the INC is to address plastic pollution, not chemicals or plastic products.

Proposals also included reference to trade measures that could conflict with World Trade Organization rules. Other delegations highlighted the importance of transparency and consultations among parties, which take into account evolving technological advancements and best scientific evidence.

Several delegations highlighted that the proposals are highly divergent, with one delegate pointing to the “philosophical differences” between them. Others pointed out that many of the proposals deal with two different issues: plastic products, and chemicals of concern. One delegation highlighted as the commonality among the differing proposals, the need for criteria to identify problematic plastic products. Another argued that the proposals were not based on scientific evidence and should not be considered by the contact group. Many delegations requested the Co-Chairs to facilitate convergence, including by providing a text that could form the basis of discussions, or adjourning the contact group to allow for informal discussions.

Offering a way forward, the Co-Chairs encouraged proponents and interested delegations to conduct informal discussions with a view to merging the proposed text, in a bid to present textual options for consideration by the contact group. One regional group questioned this mode of work, arguing that the Co-Chairs did not have the mandate to conduct these informal discussions.

The Co-Chairs then suspended the morning session, allowing members to meet informally about their proposals, merging common elements where possible.

In the afternoon, the group discussed **supply** (draft article 6), an element on which the Non-Paper did not provide specific text. They heard submissions for treaty text by several delegations and groups. The submission by Rwanda, on behalf of 45 African countries, proposed adopting a global target to reduce the production and consumption of primary plastic polymers to sustainable levels and promote circular economy, taking measures across the life cycle of plastics, with an assessment every five years.

The submission by the Cook Islands, on behalf of Pacific Small Island Developing States (PSIDS), proposed promoting the

sustainable production of primary plastic polymers by achieving a global target of 40% reduction by 2040, compared to 2025 levels; taking measures across the life cycle of plastics to implement the global target; adopting the format and methodologies for establishing baselines and annual reports on the production or primary plastic polymers; assessing progress towards the global target every five years; and cooperating to ensure that developing country parties have adequate means of implementation (MoI).

The submission from Iran noted, among others, that any suggestions for reducing production should include a thorough assessment of risks and consequences for states, and highlighted the crucial difference between plastic waste management and primary polymer production.

The submission from Saudi Arabia proposed the deletion of article 6, noting that it: does not align with the mandate of the ILBI; impacts value chain security and creates market distortions; impacts emergency preparedness; disproportionately impacts developing countries; overfocuses on restrictive measures; and stifles innovation and circular economy initiatives.

Some delegations also expressed strong opposition to including a text on production, arguing, among others, that it: is outside the mandate of the INC; disregards the developmental aspirations of developing countries; and undermines the value of plastics to critical sectors such as healthcare and transportation.

To move forward, the Co-Chairs proposed to prepare a text that merges the commonalities of the proposals for draft article 3 and draft article 6 that could be further discussed by the contact group. Opposing this, some delegations insisted that the Co-Chairs did not have a mandate to do so. Other delegates supported the Co-Chairs’ proposal, recalling their mandate from the plenary to further the progress of the text.

### Contact Group 3

Co-chaired by Gwendalyn Kingtaro Sisor (Palau) and Katherine Lynch (Australia), the group met in the morning to discuss provisions on **finance, including the establishment of a financial mechanism** (draft article 11), an element on which the Non-Paper did not provide specific text, focusing their discussions on two textual proposals.

The textual proposal submitted by the US, Australia, Canada, the EU, Iceland, Japan, New Zealand, Norway, Switzerland, Republic of Korea, and the UK provided for the establishment of a mechanism for the provision of financial and technical assistance, composed of the Global Environment Facility (GEF), with all parties contributing on a voluntary basis, “in particular those with both the financial capacity to do so and with high levels of plastic leakage, plastic product production, or polymer production.” The mechanism would, *inter alia*, leverage finances from all sources and provide financial resources on a grant or concessional basis in support of the ILBI’s implementation, recognizing parties most in need, particularly SIDS and least developed countries (LDCs). The proposal further noted that, among other issues: the ILBI would catalyze private finance mobilization; and parties would

take measures to increase the mobilization of private finance and to catalyze private investment.

The textual proposal submitted by the African Group, GRULAC, Cook Islands, Fiji, and the Federated States of Micronesia, provided for, among others: the establishment of a new dedicated independent multilateral fund operating under the authority of the COP, with developed country parties contributing to the fund and including contributions from other parties on a voluntary basis, and other public and private sources. The fund would provide financial resources on a grant or concessional basis. The proposal further highlighted, *inter alia*, that implementation of the ILBI by developing country parties will depend on MoI from developed country parties; and the need to consider the specific needs and requirements of developing countries, in particular LDCs and SIDS.

In the ensuing discussion, several developed country parties highlighted that public funding is inadequate to cover the finances needed to implement the ILBI and drew attention to areas of convergence between the two proposals, including on: providing support for agreed incremental costs and enabling activities; considerations due to SIDS and LDCs; mobilizing a wide range of financial sources; and mobilizing private sources of finance.

Many developing countries, including regional groups, registered their support for the “African Group” proposal serving as the basis for negotiations on this article. They highlighted, among others: the importance of public funding, noting that the private sector cannot be held accountable under the ILBI and reliance upon the private sector would be unstable given “speculative markets.” Several parties stressed the distinction between developing and developed countries, pointing to the principle of common but differentiated responsibility (CBDR) as the cornerstone of the ILBI, with some opposing references that would enjoin developing country parties “with high levels of plastic leakage, plastic product production, or polymer production” as contributors to the financial mechanism. Others highlighted that ILBI provisions on finance must not leave developing countries indebted but should “find opportunities to rise beyond failures of existing multilateral environmental agreements.” Others opposed language on aligning financial flows, noting lack of evidence that this has benefitted developing countries. One delegation suggested additional language related to a fee imposed on primary polymer producers.

Following a discussion on how best to proceed towards textual negotiations and in response to requests from delegations, the Co-Chairs agreed to prepare a synthesis of the two proposals for consideration by the contact group in the evening.

Delegates then embarked on on-screen textual negotiations on **capacity building, technical assistance and technology transfer, including international cooperation** (draft article 12), based on the Non-Paper. One regional group proposed changing the title of the article to capacity building, technical and scientific cooperation and technology transfer. Another regional group called for the title

to include cooperation between states and proposed that the article text also include a call for parties to cooperate with each other and with other relevant entities to support ILBI implementation. Another noted that this cooperation should be done “in a spirit of international solidarity and partnership,” and should be conducted at sub-regional, regional, and international levels. A number preferred a separate article on international cooperation.

One delegation called for this article to be combined with article 11, with the combined article titled, “means of implementation,” and also proposed new preambular text for this part, the latter of which was opposed by several delegations, who noted that discussions on preambular text were being held under Contact Group 4.

One regional group proposed that capacity building and technical assistance also take into account the challenges of landlocked developing countries and developing middle-income countries. Several delegations favored “developed country parties” cooperating to provide capacity building and technical assistance. Other delegations supported capacity building and technical assistance from “other parties who are in a position to do so,” which was opposed by a number of delegations. Some states called for this assistance to be targeted to “countries (most) in need,” with many unwilling to accept this wording. Opposed by some delegations, one delegation highlighted the needs of “countries with special geographical conditions or countries that are considered vulnerable to plastic pollution, including archipelagic states.” Some countries called for “country-driven capacity building based on and responsive to national needs and which fosters ownership” by developing country parties.

Noting the proliferation of text, several delegations called for working on a more concise text, with several calling to revert to the text proposed in the Non-Paper. Others supported simpler language proposed by one regional group, that all parties/developed country parties provide timely capacity building and technical assistance to developing countries to assist them in implementing their obligations under the ILBI. Discussions continued in the evening.

### ***Stocktaking Plenary***

In an early evening stock-taking plenary, delegates heard progress reports from the four contact groups. The Co-Chairs reported that no provisions/articles were ready to be forwarded to the Legal Drafting Group (LDG). The LDG informed the Committee that an introduction session on its work would be held on Thursday, 28 November.

Noting that progress has been “too slow” and underscoring that “time is of the essence,” INC Chair Luis Vayas called upon delegates to significantly increase the pace of their work, focusing on essential elements with additional elements left to the future governing body, and highlighted that a substantive draft of the ILBI is required by Friday, 29 November, in order to give time for review by the LDG.

In the ensuing discussion, COLOMBIA, PANAMA, SWITZERLAND, FIJI, and NORWAY lamented the lack of progress in negotiations, and called for urgency and a change in working modalities. Ghana, for the AFRICAN GROUP, called to mandate the Co-Chairs to merge texts from submissions, and to adjust the size of rooms to properly accommodate delegations. COLOMBIA, SWITZERLAND, and DOMINICAN REPUBLIC noted some delegations are “delaying discussions,” underlining the need for good faith negotiations.

PANAMA stressed that production is part of the full life cycle of plastic, noting some countries’ opposition to the inclusion of this element in the ILBI. MEXICO underlined the need to deliver revised text as soon as possible. Kenya, on behalf of the HOST COUNTRY ALLIANCE, pointed to the responsibility placed on the INC to deliver on its mandate.

CHILE emphasized that line-by-line negotiations will not allow the process to end on time and proposed empowering the Contact Group Co-Chairs to produce textual proposals with the least number of brackets. The US urged building on the Chair’s Non-Paper. The EU urged respecting the mandate of the Co-Chairs to submit bridging proposals.

INDIA said that the limited time should not compromise inclusivity, transparency, and consensus-building, and noted that all articles forwarded to the LDG are still under negotiation. SAUDI ARABIA underscored that this is a state-driven, consensus-based process, which does not allow texts to be “parachuted in.”

IRAN lamented that interventions in contact groups have been addressed in a non-inclusive manner, and said they did not want to be “blamed for blocking negotiations through dirty tactics.” The RUSSIAN FEDERATION emphasized the need to focus on the provisions that are acceptable by all delegations. IRAQ said that three days had been wasted discussing the “wrong issues.” KUWAIT pointed to several issues “derailing process,” including a lack of coherence and cherry-picking proposals for discussions. EGYPT opined that the ILBI text should be forwarded to the LDG “in its entirety” for coherence and to avoid inefficiency.

SWITZERLAND proposed that Contact Group 4 conduct and finalize consideration of the final provisions on Wednesday evening and submit this work directly to the LDG. This was strongly opposed by the RUSSIAN FEDERATION, Saudi Arabia, for the ARAB GROUP, INDIA, EGYPT, and IRAN, who noted that, *inter alia*, final provisions include important elements such as the right to vote, amendment procedures, and adoption of annexes. INC Chair Vayas then announced that these provisions would be discussed in plenary after contact group discussions.

The INTERNATIONAL INDIGENOUS PEOPLES FORUM ON PLASTICS urged delegates to recognize Indigenous Peoples as rightsholders, noting that the Non-Paper only references their knowledge, and shared the disproportionate impacts they face with respect to plastic pollution. GLOBAL YOUTH COALITION ON PLASTIC POLLUTION called for an ambitious ILBI that

addresses the full life cycle of plastics, and which is based on the reduction of plastic production, demand, and supply.

INC Chair Vayas then suspended the plenary to allow contact groups to meet into the night.

### *In the Corridors*

The seemingly endless hours of negotiations were starting to show as delegates made their way to the conference venue for the third day. “We’ve gone until 11:00 pm each night since we got here,” shared one delegate in the morning, “but we may benefit from a more informal setting so that we can work out our differences.” In response to this, contact groups met in a mix of contact and informal sessions throughout the day, giving delegates the latitude to have private conversations on difficult issues.

The discussions on financing were “always going to be difficult,” mostly because, as one delegate put it, “they always are.” However, the Minamata Convention on Mercury and the Multilateral Fund under the Montreal Protocol provided hopeful templates for how all parties to the future plastic pollution treaty may find middle ground between developed country perspectives (whose focus lies in raising funds from all sources, working through the Global Environment Facility) and developing country perspectives (who prioritize a dedicated fund, with finances flowing from the Global North to the Global South).

The discussion raised several questions. How can the new instrument compel the private sector to provide finances for implementation? Should there be a disaggregation of developing parties, in order to single out those developing countries with “high levels of plastic leakage?” And should developing countries with plastic and/or polymer production facilities also be nudged to contribute finances to the ILBI’s implementation in more vulnerable countries?

Contentious discussions ensued on plastic products and chemicals of concern, with some states wishing to exclude this “core” issue from the new agreement altogether, citing familiar reasons, specifically that these issues are addressed by other MEAs. “I wish this were so,” sighed one delegate, “because if it were, we would scarcely need to be here.” Others were more circumspect, pointing to the damning science exposing the health impacts of forever chemicals found in microplastics, which are “now found in us.”

In this context, a key issue resurfaced: what will happen to those elements that some deem beyond the scope of UNEA resolution 5/14, while others view as essential to the ILBI? Some delegations expressed concern about using the little time left discussing “divisive” provisions and warned that if the final draft of the ILBI includes these, the adoption process “might be mired by a vote.” “A vote would definitely affect the adoption of this agreement,” shared one observer, “because it risks excluding key stakeholders from an instrument that demands universal participation to be effective.”

Strong calls for an ambitious treaty were made during the stocktaking plenary, but many shared that at the current pace of discussions, “the end seems far from sight.”