

Plastic Pollution INC-5 Highlights: Thursday, 28 November 2024

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, reconvened on Thursday. Delegates met in four contact groups throughout the day and into the evening, to find convergence on text to be included in the ILBI. 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](#)). In other cases, they based their discussions on state submissions or text proposed by the Co-Chairs.

Contact Group 1

Co-chaired by Maria Angélica Ikeda (Brazil) and Axel Borchmann (Germany), this group met throughout the day in three sessions to address definitions (draft article 2), exemptions (draft article 4), plastic product design (draft article 5), plastic products and chemicals of concern as used in plastic products (draft article 3), and supply (draft article 6).

At the start, several delegations shared their concern about having three contact group sessions in parallel, with one stating they would not recognize the legitimacy of all the contact groups' outcomes.

The Russian Federation then introduced their submission on **definitions**, including for: plastics; plastic products; microplastics; and plastic pollution. This proposal received support from some delegations as a good starting point, with others considering these restrictive.

Some noted that the proposed definition for plastic pollution excludes mention of microplastics and other leakages and highlighted that the definition of microplastics excludes "intentionally added microplastics." Divergence also emerged on the agreed dimensions of microplastics, with many delegations considering the size of microplastics to be below 5 mm.

Delegations shared opposing views about defining plastic pollution more expansively than plastic waste. Many suggested focusing only on the most relevant definitions, with others recommending only including agreed definitions from other multilateral environmental agreements and bodies. Some delegations called for a definition on primary plastic polymers, with others opposing, noting that these will not be included in the ILBI.

On **exemptions**, delegations highlighted this provision is closely linked to the provision on plastic products and chemicals of concern. They said that it would be premature to discuss this element without having agreed on those provisions first. One regional group stated their preference for global unified measures that apply to all parties, noting that exemptions would be an important provision for flexibility. Other delegations called to delete this article, in alignment with their view that plastic products and chemicals of concern should not be included in

the ILBI. Another delegation suggested including provisions on exemptions within draft article 3. Some delegations underscored the need to highlight the national circumstances of countries.

In the afternoon, delegations engaged in textual negotiations on an article that proposed measures for the **design of plastic products** (draft article 5), with main divergences including: the legally binding nature of this provision; whether the measures would be based on criteria-based global requirements; and whether these measures would recognize national circumstances, the principle of common but differentiated responsibilities (CBDR), and the precautionary principle.

While delegations added text and brackets to the document, some cautioned about the need to have agreed text to forward to Plenary. Discussions continued into the evening.

Contact Group 2

Co-chaired by Oliver Boachie (Ghana) and Tuulia Toikka (Finland), the group met in the morning and evening. They began with line-by-line negotiations on **plastic waste management** (draft article 8), on the basis of the Co-Chairs' synthesis of state submissions.

Delegates considered a provision requesting parties to take measures ensuring that plastic waste is managed in an environmentally sound manner, with debates on whether the provision would take into account national circumstances and capabilities, and relevant guidelines developed under the Basel Convention.

Divergence emerged on whether the provision should be legally binding or voluntary. Proposals were made to specify that measures be "appropriate," and would encompass those of a "legal, administrative, or other" nature.

Delegations also debated whether the provision should include reference to CBDR and the waste hierarchy. Further proposals were made to also take into account guidelines adopted by the future conference of the parties (COP), and/or guidelines developed under other relevant agreements and organizations.

On whether implementing the non-exhaustive list of implementing measures would be voluntary or mandatory, delegates had differing views. Discussions ensued on the different measures, where many delegations suggested bracketing a reference to fishing gear, noting it would be better addressed under emissions and releases (draft article 7), and the promotion of just transition (also contained in draft article 10).

Delegates suggested that relevant waste systems and infrastructure should be "environmentally sound" and "disaster resilient," and refer to specific stages of waste management. Some delegates noted the need for further discussion on the definition of terms such as a "circular economy approach."

The Co-Chairs highlighted that evening discussions would focus on the remaining paragraphs on plastic waste management and noted that they would circulate texts on emissions and releases (draft article 7), existing plastic pollution (draft article 9), and just transition (draft article 10), for consideration during that session.

Contact Group 3

Co-chaired by Gwendalyn Kingtaro Sisior (Palau) and Katherine Lynch (Australia), the group met in the afternoon and evening. They first discussed **finance, including the establishment of a financial mechanism** (draft article 11). The Co-Chairs presented a revised text, which merged the two submissions discussed on Wednesday. They invited delegates to highlight “critical additions” which had not been included in the new text. These included, *inter alia*: a remediation fund utilizing both public and private sources of finance; a voluntary fund, to facilitate the participation of developing country parties; a primary plastic polymer fee; and extended producer responsibility (EPR) schemes. The group then engaged in paragraph-by-paragraph negotiations on the new text. Divergence emerged on whether to refer to “developing countries” in a provision on countries requiring financial resources for implementation of the ILBI with one delegate noting that “developing country” is a constrained term with little relevance, while other delegates cautioned against using terms not clearly defined such as countries “most in need.” One delegate called on the group to focus on elements of convergence, such as the extent to which some parties will depend on the effective implementation of the financial mechanisms.

At the end of the first session, the Co-Chairs asked the group to consider a suggestion by a delegate to delete an alternate paragraph, to move forward and streamline the additional changes made. Discussions continued in the evening.

Contact Group 4

Co-Chairs Han Min Young (Republic of Korea) and Linroy Christian (Antigua and Barbuda) pointed to Wednesday night’s discussions on **settlement of disputes** (draft article 22) and **amendments** (draft article 23). The group discussed **adoption and amendments of annexes** (draft article 24). Delegations debated whether the ILBI would contain annexes at all. Others called for “consensus” on the amendment of annexes. Some requested deferring discussions on this issue, noting that there was no clarity yet on the nature of annexes under the future ILBI. Others preferred forwarding the Non-Paper text on this article to the legal drafting group (LDG), noting that this is standard treaty language.

On the **right to vote** (draft article 25), delegations considered whether voting should apply to both procedural and substantive matters and were unable to agree. Views diverged on the voting rights of regional economic integration organizations (REIOs).

Delegates also considered draft articles 26-32: **signature; ratification, acceptance, approval or accession; entry into force; reservation; withdrawal; depositary; and authentic texts**. On text related to reservations and withdrawal, delegates considered whether to retain the original language, delete the article, modify it using language from the High Seas Treaty, or defer discussions. Delegates considered whether entry into force should occur after 90 or 120 days, and the number of states necessary for entry into force (50, 60, or 97).

Delegates then jointly addressed **information exchange** (draft article 17) and **awareness, education and research** (draft article 18). Under information exchange, they considered, among other issues, whether this should be a mandatory or voluntary provision, how to include the knowledge of Indigenous Peoples, whether to include a reference to “green chemistry,” and matters related to the protection of confidential information. On draft article 18, delegates considered, *inter alia*, whether measures are to be mandatory or voluntary, whether to revise the title to “public information, awareness, education and research,” and whether advancing scientific and technical research should also apply to improving methods for monitoring or “modelling” or “accessing” plastic pollution, including in “the marine environment.”

On **health** (draft article 19), views diverged on whether health should be addressed in a standalone provision, throughout the ILBI and/or in overarching provisions, or not at all. Some pointed to duplication of work under other organizations, specifically the World Health Organization (WHO), stressing “lack of scientific

evidence demonstrating health risks of microplastics.” Several other delegations underscored the importance of addressing this issue, noting health implications of plastic pollution. Some delegations noted flexibility on the placement of health provisions in the ILBI, stating it is a cross-cutting issue. Support was indicated, among others, for the One Health approach, as well as for collaboration with the WHO and the Food and Agriculture Organization of the UN.

On the **COP, including ability to establish subsidiary groups** (draft article 20), some delegations called to amend the title to “Conference of the Parties.” Others suggested that COP 1 should be convened by an “interim secretariat,” and not UN Environment Programme (UNEP). Some delegates called to include a voting option to adopt its rules of procedure and financial rules, when consensus cannot be achieved. On a list of issues that the COP will keep under review, some states suggested deleting reference to annexes under the ILBI and decisions related to convening meetings. Others called for this list to include issues of compliance and work programmes. They considered submissions to establish subsidiary bodies on, respectively: scientific, technological, socioeconomic, and cultural advice; and scientific, socioeconomic, and technical issues. They also considered establishing a subsidiary body on implementation.

On the **secretariat** (draft article 21), discussions focused on its functions, including whether it will facilitate: assistance in implementation of the ILBI on requests; and coordination on implementing means of implementation. Proposals were also made for the secretariat to compile and publish national reports, and national implementation plans, and assist in the exchange of information. Views were also expressed on which entity is to perform the secretariat functions, with some indicating strong preferences for UNEP, and others preferring that COP 1 decide to entrust these functions to (an) other international organization(s), or an independent entity.

The Co-Chairs called on delegates to submit any additional textual proposals for streamlining, which would be included, in brackets, in a Co-Chairs text submitted to the INC Chair.

In the Corridors

With at least six hours of negotiating time per contact group on Day 4, the ILBI talks had certainly shifted into high gear. Responding to INC Chair Luis Vayas’ call to forward text to the Legal Drafting Group by 9:00 pm on Thursday, delegates gave their all to clear text. As the deadline loomed, delegates rushed through their interventions at a breathless pace, in some cases introducing text for the first time. One seasoned delegate lamented the rushed discussions, noting “I have been in this job for more than twenty years, but I have never seen a mode of operation so confusing!” One delegate was of the opinion that “discussions in the corridors may be more effective in breaking some of the deadlocks.”

“Which came first, the chicken or the egg?” wondered one delegate, alluding to the ongoing debates among delegations about whether substantive provisions should be finalized before addressing definitions and scope—or vice versa. “At the moment,” he remarked, “the ILBI is simultaneously a treaty addressing plastic production, and also one focused solely on plastic waste.” Zooming out, one delegate confided that, “this is turning into a mini climate COP,” pointing to “similar delay tactics” witnessed during those negotiations.

Meanwhile, as contact groups concentrated on “adding text and brackets rather than streamlining,” delegates were stunned when one of the texts under negotiation ballooned from 200 words to 1399 words. Reflecting on this, one participant voiced “serious doubts” about the feasibility of producing an adoptable text by the week’s end. She questioned whether this approach was “a deliberate strategy” or merely reflected “a process unravelling into entropy.” Another was confident that the INC Chair “is working some magic,” the result of which will be that INC5 delegates “will soon have a clean text.”