Many Miles to Go Before We Sleep: The Long Road to Creating a Comprehensive Global Plastics Treaty

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MANY MILES TO GO BEFORE WE SLEEP: THE LONG ROAD TO CREATING A COMPREHENSIVE GLOBAL PLASTICS TREATY

DR. GERRY NAGTZAAM*

I. INTRODUCTION

In a previous paper published in this journal, A Fraying Patchwork Quilt: International Law and Plastic Pollution, the author analyzed the current state of affairs regarding international law and its attempts to deal with the ongoing problem of plastic and its concomitant pollution. The author argued for the need to craft a global treaty to both limit plastic production and ameliorate plastic pollution and its legacy. This article follows on from that article then critically scrutinizes the international community’s current effort in creating a potential global framework for dealing with plastic waste by the sixth session of the United Nations Environment Assembly (UNEA-6) in 2025.

It will first delineate the stakeholder positions regarding the need and contours of an international plastics instrument necessary to resolve global plastic pollution, both for and against such a document. Then the various negotiation meetings fostered by the United Nations Environment Assembly (UNEA) on this issue starting in 2014 will be considered as to their effectiveness in providing a roadmap for negotiations. Representatives at that meeting highlighted that “the threat of marine litter, including plastics and microplastics, was a global issue of pressing concern, given the long period of decay of plastics, their potential for long-distance transport and their tendency to disintegrate into extremely harmful microparticles.”

The article will then outline the role played by a UNEA ad hoc Open-ended Expert Group in driving the negotiating process forward. This section will focus in particular on the draft resolutions offered by Peru, Rwanda, India, and Japan for potential adoption at the 2022 UNEA-5.2 meeting as a basis for ongoing discussions to create a global plastic treaty. The negotiations culminated in the

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UNEA-5.2 meeting in Nairobi, Kenya. However, to truly understand the outcome of that conference, the events leading up to it, including the Resumed Meeting of the Fifth Open-Ended Committee of Permanent Representatives (OECPR) need to be carefully scrutinized, as well as the official negotiations themselves.

The UNEA-5.2 delegates took a historic step towards ending plastic pollution with the adoption of the resolution, *End Plastic Pollution: Towards an International Legally Binding Instrument.*[^1] This resolution will be unpacked in detail and considered for its potential as a template for future global action in this space. The response by stakeholders to the resolution being agreed to will also be sketched out. Then, the creation of an Intergovernmental Negotiating Committee process by an ad hoc Open-ended Working Group (OEWG) will be analyzed with a focus on the first meeting in Dhaka, Senegal in May 2022. That summit was meant to put forth a timeline and process for negotiations for future Intergovernmental Negotiating Committee (INC) meetings but struggled to do so and the reasons why will be delineated.

The first two of four sessions of the INC “to develop an international legally binding instrument on plastic pollution, including in the marine environment” were held from November twenty-eighth to December second, 2022, in Punta del Este, Uruguay (INC-1) and May twenty-ninth to June second, 2023, in Paris, France (INC-2).[^2] This paper will critically examine the two sets of negotiations with an emphasis on the interactions between the stakeholders, the key issues discussed, and the outcomes of the meeting. The conclusion offers some thoughts on the proposed convention and its likelihood of meeting its deadline.


II. Stakeholder Support for a Proposed Global Plastics Treaty

Prior to the UNEA-5.2 meeting, there had been a significant and growing appreciation amongst the public, scientific community, some governments, and non-governmental organizations (NGOs) for the need for a successful negotiation of a global plastics treaty. Non-governmental organizations (NGOs) and environmental groups have campaigned strongly in recent years for an ambitious plastics treaty that moves beyond the emphasis on marine plastic pollution and instead incorporates a life-cycle approach. Environmental groups also called for a clear and strong global standard for plastics creation and usage, which could incentivize nations to adhere to common rules and regulations whilst penalizing environmentally harmful products and practices. There has been resistance, however, to such a convention from industry members, bodies, and large plastic producing nations, specifically concerning potential restrictions on plastic production.

5. William Verity, *Historic UN Agreement to Fight Plastic Pollution*, UNIV. OF WOLLONGONG, AUSTL. (Mar. 8, 2022), https://www.uow.edu.au/media/2022/historic-un-agreement-to-fight-plastic-pollution.php. For example, a survey conducted by the Plastic Free Foundation in collaboration with the World Wide Fund For Nature (WWF) in late 2021 involving more than twenty thousand adults in twenty-eight countries found that over ninety percent of participants considered it important to have a global treaty to combat plastic pollution, illustrating that there “is a clear call by people from all corners of the world that they want their governments to act now” as stated by Rebecca Prince-Ruiz, Founder and Executive Director of Plastic Free Foundation. *Global Survey Sees Nearly Nine in 10 People Supporting a UN Plastic Pollution Treaty but Will Governments Follow?* WORLD WIDE FUND FOR NATURE (Feb. 22, 2022), https://wwf.panda.org/wwf_news/?5120966/Global-survey-sees-nearly-nine-in-10-people-supporting-a-UN-plastic-pollution-treaty-but-will-governments-follow#:~:text=GLAND%2C%20SWITZERLAND%2C%20February%202022,legally%20binding%20global%20treaty%20remains  [hereinafter Global Survey Sees Nearly Nine in 10 People Supporting a UN Plastic Pollution Treaty]. Ms. Prince-Ruiz also noted that globally approximately 140 million people participated in Plastic Free July, indicating a growing concern amongst the community about the impacts of plastic pollution.


It is noted that a treaty that restricts plastic production, use, or design would adversely affect the oil and chemical companies which currently manufacture plastic. Hence, whilst many plastic industry members and bodies have publicly supported a plastics treaty, they are opposed to a treaty that would impose restrictions on plastic production, despite evidence that plastic producers have known for decades that plastics have a deleterious impact on the environment. Rather, industry groups favor a non-restrictive global agreement that incentivizes private businesses to utilize innovative approaches to environmental improvement.

An industry-favored treaty would merely focus on downstream measures such as better recycling and waste collection with, as expressed by industry groups, “a targeted goal to ensure access to proper waste management and eliminate leakage of plastic into the ocean.” This sentiment is consistent with another industry group’s public endorsement of the December 2021 Japan-authored draft resolution calling for a global plastic treaty which “focuses solely on plastic waste in oceans” and waste management and recycling down streaming measures. This same group also opposed the Rwanda-Peru draft resolution of 2021 which advocated for the operations of plastic industry members to be scrutinized.

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11. The Conversation, Here’s How to Design an Effective Treaty to Curb Plastic Pollution Globally, SUSTAINABILITY TIMES (Mar. 10, 2022), https://www.sustainability-times.com/environmental-protection/heres-how-to-design-an-effective-treaty-to-curb-plastic-pollution-globally/ [hereinafter How to Design an Effective Treaty]. Plastic industry members and bodies have publicly opposed a treaty imposing restrictions on plastic production. For example, Joshua Baca, vice president of the American Chemistry Council (ACC), the trade association for chemical manufacturers outlined, imposing restrictions and regulations on plastic production, “is a very short-sighted approach to take” since regulation will be “difficult to implement” and lead to “further supply chain disruption.” Michael Birnbaum & Min Joo Kim, Plastics Production is Skyrocketing, A New U.N. Treaty Effort Could Cap It, WASH. POST (2022), https://www.washingtonpost.com/climate-solutions/2022/02/08/plastic-pollution-un-treaty/.

12. How to Design an Effective Treaty, supra note 11; see also Geddie & Brock, supra note 8.


14. Id. For a further discussion on the Japan and Rwanda-Peru resolutions, see infra notes 107–20.
In addition to denouncing a putative plastics treaty that targets plastic production, there is evidence that plastics and petrochemical industry members and bodies lobbied governments and big businesses in an attempt to “dilute and even squash” a treaty, especially one that attempts to restrict plastic production. Although industry groups representing petrochemical companies including ExxonMobil Corp., Royal Dutch Shell Plc., and Dow Inc. have publicly supported a global agreement targeting plastic waste, a report from Reuters revealed emails, company presentations, and interviews that these organizations in fact: “devis[ed] strategies to persuade [UNEA-5.2] participants to reject any deal that would limit plastic manufacturing . . . .” Moreover, there is evidence that the American Chemistry Council (ACC) and Plastics Europe – the ACC’s European equivalent – met with governmental officials including the U.S. Environmental Protection Agency (EPA) and State Department ahead of UNEA-5.2 to plead their case promoting the benefits of plastics and encouraging alternative measures including chemical recycling and plastic-to-fuel processes. Such options, however, promote plastic production and are deleterious to the environment. The ACC also allegedly “attempt[ed] to forge a coalition of big businesses to help steer treaty discussions away from production restrictions” as indicated by an email sent by the ACC in October 2021.

It should be noted, however, that industry is not monolithic in opposition to a plastics treaty. Companies including Coca-Cola, PepsiCo, Unilever, and Nestlé have committed to EU-mandated targets regarding use of recycled packaging and publicly called for a treaty which imposes restrictions on virgin polymer production and use. Multiple large corporations have advocated for a treaty that “creates a common set of rules around plastic and a level playing field for competition.”

16. Big Oil Aims to Prevent Stop to Plastic Production, supra note 15.
17. Id.
20. Geddie & Brock, supra note 8.
III. **Crafting a Global Plastic Treaty: Negotiation Meetings**

A. The Road to the UNEA 5.2 Negotiations

The UN push to create a global plastic treaty started in 2014 and it is critical to understand the role played by the UNEA in “midwifing” a potential convention. At the first *Proceedings of the United Nations Environmental Assembly of the United Nations Environment Programme at Its First Session* (Nairobi, June 23-27, 2014) the UN Environmental Assembly adopted Resolution 1/6: *Marine Plastic Debris and Microplastics*. The resolution recognized that sea-based sources, particularly plastics, was a “rapidly increasing problem” with significant risks due to the “inadequate management and disposal of plastic”; and acknowledged that it may have a “serious impact . . . on the marine environment, marine ecosystem services, marine natural resources, fisheries, tourism and the economy, as well as the potential risks to human health . . .”

The delegates stressed the urgent need for action to combat the issues posed by plastic debris and microplastic pollution and requested the Executive Director to undertake a study on the issue focusing on “key sources” of plastic debris, possible and best ways to ameliorate the issue, and recommendations for necessary urgent actions. It also called for states and industry “to promote the more resource-efficient use and sound management of plastics and microplastics” and encouraged governments to undertake “comprehensive action to address the marine plastic debris and microplastic issue . . .”

At the 2016 *Proceedings of the United Nations Environmental Assembly of the United Nations Environment Programme at Its Second Session* (Nairobi, May 23-27, 2016), state representatives highlighted the problem of marine pollution, including through microplastics, with one representative drawing attention to their outsized risks posed to small island developing states. The UNEA thereafter adopted *Resolution 2/11: Marine Plastic Litter and Microplastics*.

The UNEA again noted the deleterious effects of marine litter, especially plastic, of which knowledge had only increased in the

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23. *Id.* at 36.
24. *Id.* at 37.
25. *Id.*
27. *Id.* at 51.
The resolution highlighted the First World Ocean Assessment report which detailed the potential threat of nanoplastic waste, the effect of microplastics on marine food chains, and the potential negative effects on the environment and human health. Further, it argued that marine plastic litter and microplastics are serious global problems mandating an urgent global response, and “measures need to be taken and adapted as appropriate to local, national and regional situations” but that states, despite Resolution 1/6, had not yet done so.

At the Proceedings of the United Nations Environmental Assembly at Its Third Session (Nairobi, December 4–6, 2017), the UNEA recognized the rapid increase of plastic products and waste as “another issue of growing global significance.” Plastic wastes, such as discarded plastic bags, have been discovered “in even the most remote marine and terrestrial environments.” A number of delegates noted that their states had either already banned – or were about to ban – plastic bag production and were seeking to broaden the ban to other plastic items in the future. For several representatives, marine litter was considered the paramount issue to address.

The third UNEA meeting in 2018 stressed the importance of long-term elimination of marine litter and microplastics into the oceans. It called for a reduction of marine pollution of all kinds by 2025, with a focus on land-based activities. A number of states, however, were opposed to setting pollution reduction targets, with the United States, China, and India exerting pressure at the third UNEA to ensure that any resolution did not include binding targets.

Member States also acknowledged the report: Combating Marine Plastic Litter and Microplastics: An Assessment of the Effectiveness of

29. UNEA Second Session Proceedings, supra note 26, at 51.
30. Id.
32. Id.
33. Id.
34. Id.
36. Id. ¶ 2.
Relevant International, Regional and Subregional Governance Strategies and Approaches, prepared as per Resolution 2/11.38 This comprehensive report recommended states develop “marine litter action plans,” “global industry-led self-regulated guidelines,” “global labeling and certification schemes,” better national reporting, methodologies and information sharing, and environmentally sound waste management and waste prevention.39 The report also suggested that states research the risks of human consumption of microplastics through marine species, and importantly, create an international body to coordinate these actions.40

The UNEA report also proposed two main potential solutions to the plastic pollution crisis to be considered beyond the status quo.41 The first option is to combat plastic litter using the existing framework of international, regional, and sub-regional environmental treaties and agreements.42 The report, however, acknowledges that the current framework is very fragmented and has major gaps.43 A high level of coordination and expansion of the scope of these different instruments will be required to reduce the gaps, which might be very difficult to accomplish.44 The second option would see the creation of a compulsory convention on planetary plastic waste.45

While there were some hopes that the international community would opt for the second option and come up with a global binding agreement on plastic waste during the third UNEA, the states opted for another non-binding resolution with no targets, which only tackles marine litter instead: the UNEA Resolution on Marine Litter and Microplastics.46 The Resolution reaffirmed the UN General Assembly

38. Id. at 1; see U.N. Env’t Assembly of the U.N. Env’t Programme, Combatting Marine Plastic Litter and Microplastics: An Assessment of the Effectiveness of Relevant International, Regional and Subregional Governance Strategies and Approaches, at 1, U.N. Doc. UNEP/EA.3/INF/5 (Feb. 15, 2018) [hereinafter Assessment of Governance Strategies and Approaches].
40. Id. at 16.
41. Id. at 85-88.
42. Id.
43. Id. at 63–80.
44. Id. at 15, 105.
45. Id. at 86-87. Other studies have also shown that the existing international framework might not be adequate to deal with the problem effectively, as plastic and microplastic litter is not a primary objective of any of the existing instruments. See Karen Raubenheimer, Towards an Improved Framework to Prevent Marine Plastic Debris, Australian Nat’l Ctr. for Ocean Res. & Sec., Univ. of Wollongong, Austl. 105, 108 (2016).
(UNGA) Resolution 70/1 which adopted the 2030 Agenda for Sustainable Development and highlighted Sustainable Development Goal 14 and its target 14.1.\textsuperscript{47} Sustainable Development Goal 14 seeks to “prevent and significantly reduce marine pollution of all kinds, in particular from land-based activities, including marine debris and nutrient pollution” by 2025.\textsuperscript{48} The draft resolution acknowledged that preventive action was essential but noted the challenges facing stakeholders given increased production and consumption.\textsuperscript{49} It also noted that all stakeholders are needed to prevent and reduce marine litter and microplastics through mechanisms including “information sharing, awareness raising, developing new environmentally sound technologies, capacity-building, and clean-up measures.”\textsuperscript{50} At the fourth session of the United Nations Environmental Assembly of the United Nations Environment Programme in March of 2019, the European Union promised “to work constructively to help the Environment Assembly fulfil its mandate of providing global environmental leadership . . . including through an ambitious outcome document [– Resolution 5/14 –] that reflected the urgency . . . of addressing climate change and plastics effectively.”\textsuperscript{51} The Forum of Ministers and Environment Authorities of the Asia-Pacific both identified as key issues “addressing plastic waste through the creation of demand for substitutes for plastics” and “elaborating national road maps that stressed” the need to better regulate plastic and plastic waste and implement sophisticated plastic waste tracking systems.\textsuperscript{52} Representatives of United Nations entities further suggested creative solutions such as “a national Sustainable Development Goal innovation laboratory; ‘green deals’ to stimulate engagement of private partners in the circular economy; [and] incentives for green businesses that recycle waste and reduce the production of wasteful [plastic] products, such as single-use plastic bags . . . .”\textsuperscript{53}

Plastic and microplastic wastes were also highlighted as particularly relevant to sustainable consumption and production, given the fact that it had become a major area of global concern in recent

\begin{itemize}
\item \textsuperscript{47} Id. at 1.
\item \textsuperscript{48} Id.
\item \textsuperscript{49} Id. at 2.
\item \textsuperscript{50} Id. at 5.
\item \textsuperscript{52} UNEA Fourth Session Proceedings, supra note 51, at 5.
\item \textsuperscript{53} Id. at 11.
\end{itemize}
years.\textsuperscript{54} Marine plastic pollution is abundant and is threatening the biodiversity of the world’s oceans. Some representatives also began to highlight the need for “a new international convention or framework on marine litter and microplastics.”\textsuperscript{55}

The fourth session of the United Nations Environmental Assembly of the United Nations Environment Programme was the first session to mention and discuss circular economy as one of the approaches to combat plastic pollution.\textsuperscript{56} Specifically, the European Union representative highlighted that greater resource efficiency and steps towards a circular economy were necessary to fulfill the Sustainable Development Goals.\textsuperscript{57} Likewise, French President Emmanuel Macron, who delivered one of the sessions’ opening statements, expressed that “a radical change in productive systems and the creation of a truly circular economy that avoided waste and mobilized action to tackle major pollutants” is required.\textsuperscript{58} In fact, one of the main themes of the session was the serious environmental challenge presented by “unsustainable consumption and production,” and the immediate need for new solutions, including the shift towards a circular economy.\textsuperscript{59}

At the national level it should be noted, many participating countries had already begun legislative efforts to limit the use of single-use plastics or were otherwise encouraging the uptake of environmentally friendly alternatives domestically.\textsuperscript{60} The representative of the United States, however, said that while the U.S. government recognized the need to urgently reduce the release of plastics into the environment and was satisfied that the problem of plastic pollution in the marine environment was being seriously dealt with, it disagreed with the language used in the draft ministerial declaration of the fourth session of the UNEA.\textsuperscript{61} While the extent of the U.S.’s “disassociation” from the statement remains unclear, the language of the Declaration, which emphasized “impro[ing] national resource management strategies with integrated full life-cycle approaches” in support of “resource-efficient and low-carbon economies”\textsuperscript{62} was

\begin{footnotes}
\item[54] Id.
\item[55] Id.
\item[56] See, e.g., id. at 2.
\item[57] UNEA Fourth Session Proceedings, supra note 51, at 4.
\item[58] Id. at 8.
\item[59] Id. at 10.
\item[60] Id. at 11.
\item[61] Id. at 14.
\end{footnotes}
somewhat at odds with U.S. “[belief] that the declaration should cover all types of emissions,” rather than only carbon.⁶³

The Environmental Assembly at its fourth session adopted Resolution 4/6: Marine Plastic Litter and Microplastics and Resolution 4/9: Addressing Single-Use Plastic Products Pollution.⁶⁴ Resolution 4/6 was concerned with the serious global environmental problem posed by plastic litter and microplastics.⁶⁵ Resolution 4/9 asked states to create and implement national or regional actions to develop environmentally friendly alternatives and ameliorate the environmental impact of single-use plastic products.⁶⁶


An ad hoc open-ended expert group on marine litter and microplastics (AHOEG) was established in 2017 after the third UNEA to discuss a proposed international agreement regarding such waste.⁶⁷ In preparation for the fifth UNEA, the AHOEG had been given the mandate to advise on potential voluntary or legally binding governance options on plastic pollution management across national, regional and international levels.⁶⁸ The AHOEG was also

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⁶⁴. Id. at 18.

⁶⁵. United Nations Environment Assembly Res. 4/6, Marine Plastic Litter and Microplastics, U.N. Doc. EA.4/Res.6 (Mar. 28, 2019) (describing negative effects of plastic litter and microplastics on marine biodiversity, ecosystems, and animal well-being). Microplastics were being found along the food chain and potentially negatively affecting human health. Id. at 1. The resolution urges States to eliminate litter and microplastics entering the oceans for the 2030 Agenda for Sustainable Development and the Sustainable Development Goal. See id. Additionally, the resolution focused on the importance of “sustainable management of plastics throughout their life cycle in order to increase sustainable consumption and production patterns, including but not limited to the circular economy and other sustainable economic models, and the importance of environmentally sound waste management, resource efficiency, and the ‘three Rs’ (reduce, reuse, recycle)[.]” Id. at 1.

⁶⁶. United Nations Environment Assembly Res. 4/9, Addressing Single-Use Plastic Products Pollution, U.N. Doc. UNEP/EA.4/Res.9 (Mar. 28, 2019) (discussing single-use plastic pollution). The resolution addressed topics such as improving waste management processes and legislation, state partnership with industry to develop environmentally friendly alternatives to single-use plastic products, state and industry created environmental education on the costs of plastic pollution, the development of resource-efficient design and production, proper plastic management across its life cycle, and stakeholder cooperation in promoting scientific research and fast tracking the development of environmentally sound alternatives to single-use plastic products. See id. at 1–2 (suggesting actions).


tasked with carrying out a survey of all existing activities and actions addressing marine plastic litter and microplastics with a view to the necessary financial and technical resourcing required and their measurable effectiveness.\textsuperscript{69}

The AHOEG is comprised of Member States, industry representatives, and civil society experts to advise the assembly on governance strategy options to combat marine plastic litter and microplastics from all sources and examine the impediments thereto.\textsuperscript{70} Through reviewing eighteen international instruments and thirty-six regional instruments, the UNEA and AHOEG observed numerous gaps in existing frameworks addressing plastics and plastic pollution.\textsuperscript{71} The AHOEG concluded there is no international instrument or institution whose primary mandate addresses marine plastic litter, or preferably plastic pollution “upstream from the extraction of raw materials, design and use phrases of plastic polymers and additives to final treatment and disposal,” coordinating existing efforts and management of plastic across its lifecycle.\textsuperscript{72} In addition, there is an absence of globally binding standards to mitigate plastic pollution, both land- and sea-based.\textsuperscript{73} The United Nations Environment Programme (UNEP) subsequently concluded that: “current governance strategies and approaches provide a fragmented approach that does not adequately address marine plastic litter and microplastics.”\textsuperscript{74}

1. First Meeting

Discussions of the AHOEG suggest that some representatives consider preventative steps and mitigation efforts to be the most cost-effective option, as opposed to a reactive response once plastic

\begin{itemize}
\item[\textsuperscript{69}] United Nations Environment Assembly Res. 4/6, supra note 65, at 4.
\item[\textsuperscript{70}] AHOEG First Meeting Report, supra note 67, at 1.
\item[\textsuperscript{71}] Id. at 4, 12.
\item[\textsuperscript{73}] Id. at 12. Other gaps noted included the pocketed coverage of existing instruments, the insufficient recognition of the health risks posed by micro and nano-plastics, and the ineffective implementation of the precautionary principle. Id.
\end{itemize}
pollution has already occurred.\textsuperscript{75} One of the options proposed at the first meeting of the AHOEG was the creation of “a new global architecture with a multi-layered governance approach.”\textsuperscript{76} The group further argued that maintaining the status quo is not a viable option and that further action is required given the current lack of enforcement and accountability mechanisms to fully address global plastic pollution.\textsuperscript{77}

Any proposed framework would rely on cooperative action from not only governments, but also the private sectors and civil society to stop plastics before they contaminate the oceans.\textsuperscript{78} Key advantages of this approach include the potential for coordinated action and the creation of a mechanism through which countries can report on their efforts, learn from one another, and establish a best practices approach.\textsuperscript{79}

2. Second and Third Meetings

At the second meeting in December 2018, the AHOEG held two workshops to analyze the key issues of information and monitoring, and governance.\textsuperscript{80} At the third meeting in Bangkok, Thailand in December 2019, the AHEOG asked the Secretariat to do a “stocktaking exercise through a survey and other submissions about ongoing work on marine litter and microplastics, . . .”\textsuperscript{81} The document also had to ensure that the stocktake was accounting for an “effectiveness analysis” of the possible response options.\textsuperscript{82} Lastly, they required the Secretariat to undertake “reports on the financial and technical resources and mechanisms” available to address the marine litter issue, and on the issue of partnerships.\textsuperscript{83}

3. Fourth Meeting

In 2020, the AHOEG was supposed to meet twice, but because of the global COVID-19 pandemic, the UNEA Bureau only met

\begin{thebibliography}{99}
\bibitem{75} See AHOEG First Meeting Report, supra note 67, at 14.
\bibitem{76} Id. at 4, 12.
\bibitem{77} See id. at 12.
\bibitem{79} AHOEG First Meeting Report, supra note 67, at 16.
\bibitem{81} Id.
\bibitem{82} Id.
\bibitem{83} Id.
\end{thebibliography}
once. At the fourth and final meeting, many delegates agreed that “upstream” activities should be targeted in a new agreement. Attendees discussed a stocktaking that the Secretariat had undertaken of current actions and their effectiveness on marine litter and microplastics. That report further determined that the current emphasis was on “downstream” efforts at the national and sub-national level, primarily such campaigns like awareness-raising activities and beach-clean-ups. Delegates concurred that “upstream activities’ related to pollution prevention” are essential to dealing with the issue of marine plastic pollution.

The attendees heard from Inger Andersen, Executive Director of the UN Environment Programme, who stated that marine pollution was a vital part of UNEP’s medium-term strategy to be discussed in 2021. She noted that, as the AHOEG was completing its role, the movement toward action on marine litter and microplastics would underpin the further development of the Global Partnership on Marine Litter. The delegates, in turn, highlighted that there was an “emerging convergence around the need for a new global treaty” but they were unsure how to reflect this position. Some states argued any document needed to signal to the UNEA that an intergovernmental negotiating committee needed to be created to start conversations on a new treaty, while other states disagreed with that approach.

The delegates then considered a revised draft of the Chair’s summary, which was to be the key output of the process. Chair Satoru

84. Id. at 2.
85. U.N. Env’t Assembly of the U.N. Env’t Programme, Draft Report on the Work of the Ad Hoc Open-Ended Expert Group on Marine Litter and Microplastics at Its Fourth Meeting, at 17-18, U.N. Doc. UNEP/AHEG/4/L.1 (Nov. 10, 2020) [hereinafter AHOEG Draft Report]. The upstream activities to be classified as pollution weren’t particularized, but it was noted that “extended producer responsibility and polluter pays mechanisms, as well as taxes, levies and fines . . . could support upstream measures.” Id. at 13. Problematic “upstream issues” of plastic production that were mentioned included “unsustainable plastic production and consumption.” Id. at 17.
86. Id. at 10-12.
88. Id.; see also AHOEG Draft Report, supra note 85, at 18-20.
90. Id.
91. See id.
92. Id.
Iino of Japan noted that the summary arrived at was a reflection of policy discussions on marine litter and expressions of support for a new global agreement.\textsuperscript{94} Delegates in attendance described the summary as a “neutral and factual document” to give to the UNEA.\textsuperscript{95} They further agreed that the summary was a “balance of views shared during the entire AHEG process,” but should not be considered “a negotiated outcome.”\textsuperscript{96} Several states, however, had wished for a more strongly worded summary on creating a negotiating process for a new global plastic pollution agreement.\textsuperscript{97} The delegates then agreed to a Chair’s Summary given to delegates at UNEA-5.\textsuperscript{98} The Summary highlighted potential options for future work by UNEA-5 for consideration including:

- setting forth a global common vision regarding marine plastic pollution drawing off previous work such as the Osaka Blue Ocean Vision and the Ocean Plastics Charter;
- creating national action plans covering the lifecycle of plastic to provide countermeasures on oceanic plastic litter;
- reinforcing regional and international cooperation to enhance national actions such as financial and technical assistance and technology transfer;
- building a “scientific basis,” with a particular focus on the issues of “monitoring, source inventories, and impact assessment”;
- strengthening “multi-stakeholder engagement” both as regards decision-making processes and actions to combat marine litter;
- enhancing “existing instruments, frameworks, and partnerships” such as the Basel, Rotterdam and the Ocean Plastics Charter;
- crafting a new global agreement containing legally binding or non-legally binding sections to assist states with reduced resources and capacities; and

\textsuperscript{94} Kantai & Zaman, supra note 80, at 2.
\textsuperscript{95} Id. at 1.
\textsuperscript{96} Marine Litter and Microplastics Expert Group Forwards Recommendations to UNEA, supra note 87.
\textsuperscript{97} Id.
\textsuperscript{98} Id.
• building and enhancing a “coordination framework” between current and future instruments to strengthen stakeholder collaboration and avoid duplication of existing programs to end plastic pollution.99 Participants also drew attention to the impacts of COVID-19 on single-use plastics.100

C. UNEA 5.1 Meeting

UNEA-5 delegates considered these options, namely whether to endorse a global agreement, when they met in February 2021.101 At the prior AHOEG meetings, despite support for a treaty, there had been much divergence regarding the scope and binding nature of a treaty.102 States at the meeting stressed the need to ensure measures take into account their respective economic and regional circumstances and include technical and financial support for developing countries to meet obligations.103 The United States, Saudi Arabia, Japan, and Canada expressed their opposition to a globally binding agreement, with Japan and the United States arguing for the right to implement measures they deem necessary to address marine litter and microplastics.104 Meanwhile, non-state actors such as the World Wide Fund for Nature presented a proposed treaty framework, while noting that fifty percent of the world supports a new global agreement to address plastic pollution.105 The International Council of Chemical Associations expressed support for a global approach that would be transparent and considers existing measures.106

D. Draft Resolutions to Be Potentially Adopted at UNEA 5.2

In the lead up to the UNEA 5.2 Meeting in 2022, a number of draft resolutions were put forth by states as mechanisms to guide discussions on the contours of a global plastic convention. The plurality of opinion concerning the contents and operation of such

100. Marine Litter and Microplastics Expert Group Forwards Recommendations to UNEA, supra note 87 (describing negative effects). The delegates noted the burden on waste management created by plastic personal protective equipment. Id.
101. See id.
102. Kantai & Zaman, supra note 80, at 11.
103. Id. at 9.
104. Id. at 5, 10.
105. Id. at 8.
106. Id.
an instrument is reflected by the three draft resolutions, which were proposed for consideration at UNEA-5.2, namely, the Rwanda-Peru, Japan and India draft resolutions which are examined below.

1. **Rwanda–Peru Draft Resolution**

The Rwanda-Peru draft resolution was drafted at the 2021 Ministerial Conference on Marine Litter and Plastic Pollution and was thereafter submitted to the UNEP. The resolution was co-sponsored by Chile, Costa Rica, Ecuador, the EU and its members, Colombia, Guinea, Kenya, Madagascar, Norway, the Philippines, Senegal, Switzerland, the United Kingdom, and Uganda. Furthermore, hundreds of NGOs, and more than sixty nations, endorsed the Rwanda-Peru resolution, calling for the establishment of an “intergovernmental negotiating committee (INC) with a mandate to negotiate a legally binding global agreement to address plastic pollution . . . .”

The resolution has been praised for its “clarity, strength, and the inclusion of the human and environmental health element [and] its life-cycle [and circular economy] approach,” as well as its call for global financing to assist developing nations, and the establishment of a scientific advisory committee to ensure nations have the most up to date knowledge. This draft resolution was based on the Paris Climate Agreement since it proposes that nations create action plans and establish targets to cease producing plastic waste. To implement this, nations would be required to create new industry standards for sectors which use plastic and develop effective waste management systems.


109. *Id.* at 1; see also McCarthy, *supra* note 6; Parra & Arkin, *supra* note 18.

110. Cf. Liang Lei, *Countries Have Different Ideas on How to Deal With Plastic*, ECO-BUSINESS (Feb. 17, 2022); *What Are the Chances of a Robust International Plastics Treaty?*, *supra* note 107; see also McCarthy, *supra* note 6; Perra & Akrin, *supra* note 18.

111. *Id.*

112. *Id.*
2. Japan Resolution

The Japan draft resolution was submitted to the UNEP on December sixth 2021. The resolution calls for an “international legally binding instrument on marine plastic pollution” and requests the convening of an Intergovernmental Negotiating Committee (INC). Japan included “provisions to set a common objective and to develop and report national action plans, to review progress, to address increasing of knowledge and raising awareness, to cooperate and coordinate with other frameworks, to promote stakeholders’ actions, to specify arrangements for capacity building and technical and financial assistance, and to promote research and development.” It focused on the fact that “land-based sources are the major causes of marine plastic pollution” and the instrument “would cover the whole life cycle of plastics in a manner that promotes resource efficiency and circular economy while respecting the different national circumstances.”

The resolution has been criticized, however, by NGOs including the Centre for International Environmental Law and the Environmental Investigation Agency for being “significantly weaker” than the Rwanda-Peru resolution because it focuses on marine litter as opposed to plastic pollution more generally, and posits the plastics issues as primarily one of poor waste management, requiring improvements to infrastructure rather than addressing the plastics lifecycle. This resolution received little support from the international community, though the American Chemistry Council gave its support to the Japan draft resolution, claiming that it, unlike the Rwanda-Peru draft resolution, left decision-making to the INC.

114. Id.
115. Id.
116. Id.
117. What Are the Chances of a Robust International Plastics Treaty?, supra note 107; McCarthy, supra note 6.
118. Parra & Arkin, supra note 18.
119. Id.
3. **India Draft Resolution**

The India draft resolution was submitted to the UNEP on January 31,\(^{121}\) Unlike the Rwanda-Peru and Japan draft resolutions, the India resolution does not address the establishment of an INC or the drafting of a global legally binding agreement concerning marine plastic pollution and has been suggested that this resolution implies “the international community should pump the brakes on a plastics treaty.”\(^ {122}\) Specifically, the resolution provides guidance to Member States regarding domestic plastic waste management strategies, outlines the importance of a multi-stakeholder approach, and calls for the establishment of fora and annual meetings with participation from Member States.\(^ {123}\)

Below, in Table 1, there is a comparison between the three draft resolutions to create a global plastic treaty focusing on the issues of: whether to create an INC; what such a body’s mandate should be; when negotiations should conclude; whether it would be a legally binding instrument; the scope and subject matter; whether it incorporates a lifecycle or downstream approach; the inclusion of financial mechanisms; whether to have a distinct scientific and socio-economic body to support treaty implementation; and whether such an instrument addresses the question of additives in plastics.

**TABLE 1: COMPARISON BETWEEN RWANDA-PERU, JAPAN AND INDIA DRAFT RESOLUTIONS.**\(^ {124}\)

<table>
<thead>
<tr>
<th>Topic</th>
<th>Rwanda-Peru</th>
<th>Japan</th>
<th>India</th>
</tr>
</thead>
<tbody>
<tr>
<td>Called for establishment of an INC</td>
<td>Called for the establishment of an INC.</td>
<td>Called for the establishment of an INC.</td>
<td>Not mentioned.</td>
</tr>
</tbody>
</table>


\(^{122}\) Parra & Arkin, supra note 18.

\(^{123}\) India Draft Resolution, supra note 121, at 3-5.

<p>| <strong>INC’s mandate</strong> | <strong>Open mandate:</strong> ‘mandate to prepare an international legally binding instrument to address plastic pollution’ with the INC empowered to ‘consider any other aspects that the [INC] may consider relevant’. | <strong>Closed mandate:</strong> ‘mandate to prepare an international legally binding instrument to address marine plastic pollution’ [limit on what INC members can consider during negotiations]. | Not mentioned. |
| <strong>Negotiations in time for UNEA-6.</strong> | INC to complete work by sixth session of the UNEA. | INC to complete work by sixth session of the UNEA. | Calls for annual meetings with Member States and stakeholders to provide an analysis and way forward addressing single-use plastic product pollution in advance of the sixth session of the UNEA. |
| <strong>Requirement for a global legally binding agreement</strong> | Called for INC to negotiate a ‘legally binding global agreement’. | Called for the development of an ‘international legally binding agreement’. | Not mentioned. |
| <strong>Scope</strong> | Legally binding global agreement to address ‘plastic pollution’. | International legally binding agreement to address ‘marine pollution’. | Resolution concerns ‘plastic pollution’, mainly ‘single-use plastic products’. |
| <strong>Subject Matter</strong> | References national action plans, cooperation and coordination, financial and technical arrangements, research and development into innovative solutions. | References national action plans, cooperation and coordination, technical and financial assistance, research and development into innovative solutions. | References national or regional action plans, cooperation, establishment of technical and financial fora, scientific research for development of alternative materials. |</p>
<table>
<thead>
<tr>
<th><strong>LIFECYCLE OR DOWNSTREAM APPROACH</strong></th>
<th><strong>LIFECYCLE APPROACH:</strong></th>
<th><strong>DOWNSTREAM APPROACH:</strong></th>
<th><strong>LIFECYCLE APPROACH:</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Interventions</strong></td>
<td>Interventions target production, product design and consumption, and waste management.</td>
<td>Makes reference to the ‘lifecycle’ of plastics though emphasis is placed on downstream interventions including monitoring litter entering marine environments, reducing production of plastic pollution, and other waste management interventions.</td>
<td>Emphasizes ‘responsible consumption and production of disposable single-use plastic products’ and mentions not only recycling and waste management but also product design and production.</td>
</tr>
<tr>
<td><strong>Downstream approach</strong></td>
<td>Calls for arrangements for technical and financial assistance and to strengthen scientific and technological knowledge but no special body.</td>
<td>Advocates for formation of legal and policy, technology, finance, and monitoring and reporting fora.</td>
<td></td>
</tr>
<tr>
<td><strong>Financial mechanism, and scientific and socio-economic body to support treaty implementation.</strong></td>
<td>Calls for a financial mechanism to support implementation of priorities and objectives of agreement; and a mechanism to provide scientific and socio-economic advice and guidance via a dedicated body.</td>
<td>Mentions need to address product design and use, including compounds, additives and harmful substances as well as intentionally added microplastics.</td>
<td>Mentions the urgent need to eliminate the discharge of plastic litter and microplastics, though no mention of additives.</td>
</tr>
<tr>
<td><strong>Addresses additives to plastics and microplastics.</strong></td>
<td>Mentions need to address product design and use, including compounds, additives and harmful substances as well as intentionally added microplastics.</td>
<td>Mentions the urgent need to eliminate the discharge of plastic litter and microplastics, though no mention of additives.</td>
<td>No mention of additives or microplastics.</td>
</tr>
</tbody>
</table>

D. Run Up to the UNEA-5.2 Meeting

Prior to the meeting, hopes were raised when the incoming U.S. President, Joe Biden, declared he was a “strong supporter” of a legally binding agreement to end plastic pollution, resiling from the
nation’s previous position under former president, Donald Trump, who was opposed to a plastic treaty as made clear at an expert group meeting in 2019. As Secretary of State Antony Blinken outlined in a statement to the UNEA in Nairobi in November 2021, the U.S.’s goal for a treaty “is to create a tool that we can use to protect our oceans and all . . . life that they sustain from growing global harms of plastic pollution,” which requires nations “to develop and enforce strong national action plans . . . address[ing] this problem at its source.”

Given, however, the United States is the world’s top per capita single-use plastic waste producer and the home of many of the world’s largest chemical companies, the nation indicated some resistance to a treaty that imposes restrictions on plastic production. The United States initially supported, together with China, a “more limited” ocean-focused treaty ahead of UNEA-5.2.

Also, Japan, being the second largest per capita consumer of plastic containers and packages in the world, with a large petrochemical sector, and waste-to-energy projects being undertaken at scale, had outlined that it “preferred to promote the use of alternative materials like bioplastics rather than restricting virgin [polymer production].” Further, they argued any approach adopted by a particular country should depend on their “national circumstances” when determining their response.

E. Open Ended Committee of Permanent Representatives

Discussions

The Resumed Meeting of the fifth OECPR occurred from February 21 to February 25 of 2022 online and in Nairobi, and was chaired by H.E. Ms. Luísa Fragoso, Chair of the Committee of Permanent Representatives, Ambassador and Permanent Representative of Portugal. Marine litter and the issue of microplastics

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125. Verity, supra note 5.
126. Parra & Arkin, supra note 18.
127. Birnbaum & Kim, supra note 11.
128. Geddie & Brock, supra note 8.
130. Geddie & Brock, supra note 8; Taylor Stewart, Japan’s Plastic Footprint Is Larger Than You May Think: It’s more important than ever to be conscious of your plastic consumption, Tokyo Weekender (July 23, 2020), https://www.tokyoweekender.com/2020/07/japans-plastic-footprint-larger-may-think/; Parra & Arkin, supra note 18.
131. Geddie & Brock, supra note 8.
132. The Committee of Permanent Representatives was created in May 1985 with members comprising all accredited UNEP Permanent Members to prepare meetings of the UNEA as well as review its implementation of decisions. Committee of Permanent Representatives, U.N. Env’t Programme, https://www.unep.org/cpr (last visited Sept. 15, 2023); Resumed meeting of the fifth Open-ended Committee of Permanent
was expected to be the original focus of the meeting and formed a key agenda item at the proceedings.\textsuperscript{133} While some States support a global vision and acknowledge the need for action across the plastics lifecycle, many States disagreed about whether a new binding instrument was necessary to achieve this.\textsuperscript{134} A significant proportion of States, including the European Union, Germany, Ecuador, and Ghana expressed support for a global plastics agreement promoting a circular economy approach.\textsuperscript{135} The representative for the EU stated that “[t]he resumed fifth session should be a springboard for ambitious, coordinated action to tackle the triple crisis of climate change, biodiversity loss, and pollution” and urged the Assembly “to make a breakthrough and formally launch negotiations on a legally binding global agreement on plastics.”\textsuperscript{136}

The purpose of the OECPR’s resumed meeting was “to establish two working groups and five clusters to finalize the draft resolutions and draft decisions to be submitted to the [UNEA] for consideration and possible adoption at its resumed fifth session.”\textsuperscript{137} In the first cluster, co-facilitated by H.E. Mr. Dampetey Bediako Asare, High Commissioner and Permanent Representative of Ghana and Mr. Robert Bunbury, Deputy Permanent Representative of Canada, the OECPR considered draft provisions from Rwanda-Peru, Japan, and India, and debated provisions to be included in the text presented for consideration at UNEA-5.2.\textsuperscript{138}


\textsuperscript{134.} Birnbaum & Kim, supra note 11; Kantai & Zaman, supra note 80, at 7.


\textsuperscript{137.} United Nations Environment Assembly of the United Nations Environment Programme, \textit{Open-ended Committee of Permanent Representatives to the United Nations Environment Programme: Fifth Meeting: Draft Chair’s Summary of the Resumed Fifth Meeting of the Open-ended Committee of Permanent Representatives} at 2 (Feb. 25, 2022), https://apps1.unep.org/resolution/uploads/draft_chairs_summary_oecpr-5.2.docx#overlay-context=node/328%3Fq%3Dnode/328 [hereinafter \textit{Draft Chair’s Summary of the Resumed Fifth Meeting of the Open-ended Committee of Permanent Representatives}].

\textsuperscript{138.} \textit{Draft Chair’s Summary of the Resumed Fifth Meeting of the Open-ended Committee of Permanent Representatives}, supra note 137, at 2.
1. **Scope and Implementation of the Proposed Treaty**

At the Plenary on February 21, 2022, the EU outlined that a treaty must address global plastic pollution, not just marine litter, the lifecycle of plastics including upstream and downstream measures, in addition to microplastics, and adopt a circular economy approach. The EU emphasized that “current projections of plastic pollution show that voluntary initiatives are insufficient and urged states to support a legally binding instrument (LBI).” The EU also underlined the need to “listen to the science,” upscale implementation, and enhance funding for nature-based solutions such as bio-plastics.

During Working Group 1, Cluster 1, where the resolution which was subsequently adopted at UNEA-5.2 was scrutinized, the EU, Peru, Japan, Thailand, and the UK wished for the final version of the resolution to retain references to microplastics, tackling the issue at the source, utilizing a lifecycle approach.

In Working Group 1, Cluster 1, where the final text for the draft resolution was prepared, the group discussed the scope of the proposed instrument but was unable to come together on: “whether a future instrument would be legally binding, voluntary or both; whether the instrument would address marine plastic pollution or plastic pollution more generally; . . . whether it would include marine litter”; and the timeframe of the INC.

Chile and Australia wished for the term “legally binding” to remain when referring to the instrument, whereas the United States wished for “legally binding instrument” to be altered to “legal instrument.” Furthermore, the United States called for the phrase “with binding and non-binding provisions” to be added in following a reference to the instrument, with the UK and Australia supporting this in order to clarify the meaning of “legally binding instrument.”

The EU also suggested that merging draft resolutions would be a good basis for discussion; sixty Member States, including the United States, agreed. Alternately, Japan offered to withdraw its draft resolution if Rwanda and Peru withdrew their draft resolution,
but Peru disagreed in the hope that other Member States would consider their proposal in creating a robust resolution at UNEA-5.2.\(^{146}\)

Regarding the India draft resolution, the EU noted that the provision outlining that Member States should develop waste management strategies based on Reduce, Reuse, and Recycle principles had already been integrated into the intended text to be adopted at UNEA-5.2, with Australia agreeing.\(^{147}\) Australia also submitted, with the EU and United States agreeing, that measures addressing volumes and focusing on single-use plastics, as provided for by the India draft resolution, are insufficient to address plastic pollution and that a legally binding global agreement is required.\(^{148}\)

On Tuesday, February 22, 2022, at the resumed fifth session of the Open-ended Committee of Permanent Representatives (OECPR-5.2), delegates continued discussions, particularly on the scope of the draft resolution of a LBI on marine plastic pollution.\(^{149}\) Brazil, supported by Argentina, Sri Lanka, and Cuba, proposed including reference to the Principles of the Rio Declaration. This was opposed by Japan, Australia, Ecuador, and Norway. Chile, Thailand, Uruguay, Colombia, and other nations “supported an explicit reference to microplastics.” This was opposed by Brazil, Cuba, and the United States; Ecuador suggested “a general reference to ‘all types of plastics.’” Argentina, Brazil, and the United States asked to delete the reference to the circular economy, which was opposed by the EU. Thailand, backed by Singapore, Ecuador, Australia, Iceland, and others, suggested language to establish “a broad and open scope for INC discussions.”\(^{150}\)

Delegates discussed the structure for fixing plastic pollution, including India’s single-use plastic product pollution.\(^{151}\) Australia, Rwanda, Peru, and others highlighted that the most complete way “to address [marine] plastic pollution was through a LBI, underscoring, with Thailand, that voluntary measures would not be enough.”\(^{152}\) The EU, Australia, and Peru noted that certain parts of the draft resolution could be “discussed as part of wider negotiations on an LBI.”\(^{153}\) Thailand, Peru, Chile, the Russian Federation, and others asked India “to address any voluntary approaches included under

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146. Id.
147. Id.
148. Notes from Resumed Fifth Meeting of OECPR, supra note 143.
150. Id.
151. Kantai et al., OECPR-5.2 Highlights: Tuesday, 22 February 2022, supra note 149, at 1.
152. Id.
153. Id.
the LBI.”154 Japan stated that “certain elements of the resolution are already being addressed under the Global Platform on Marine Litter.”155

The Russian Federation pointed out that an INC would take time to negotiate a LBI, and that elements of the Indian draft could be started along with the INC process.156 Noting the global unity regarding plastic pollution concerns, India discussed “the difference between collective voluntary action and voluntary actions by individual states.”157 They stated that alternatives to LBIs exist and “progress will be delayed by lengthy treaty negotiations.”158 Co-facilitator Asare then proposed discussions with India and others sharing India’s concerns to resolve the deadlock.159

Regarding the establishing of a Science-Policy Panel, which was discussed by Cluster 3 at UNEA-5.2, a draft proposed by Switzerland was accepted.160 The key issues revolved around the scope of such an entity and how independent it should be in the provision of its advice.161 The final resolution resolved it should be an independent body providing “policy relevant scientific advice” with the goal of contributing to “the sound management of chemicals and waste and to prevent pollution.”162

At the Plenary held on February 23, Working Group 1, Cluster 1 proposed considering a “basket of issues” including scope and concepts emerging from the second operational paragraph of the Japanese and Rwandan draft resolutions, which focused on what should be in any agreement.163 Uruguay proposed additional

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154. Id.
155. Id.
156. Kantai et al., OECPR-5.2 Highlights: Tuesday, 22 February 2022, supra note 149, at 1.
157. Id.
158. Id.
159. Id.
160. Rachael Kupka, Why We Need a Science-Policy Panel on Chemicals, Waste and Pollution, IISD (Dec. 9, 2021) https://sdg.iisd.org/commentary/guestarticles/why-we-need-a-science-policy-panel-on-chemicals-waste-and-pollution/. The Science-Policy panel is intended to establish a science-policy panel on pollution, chemicals and waste, to inter alia “ensure . . . application of the best science to policymaking and solutions . . . .” Id. It was consolidated at UNEA 5.2 in Resolution 5/8, to “support countries in their efforts to take action, including to . . . promote the sound management of chemicals and waste, and address pollution by providing policy-relevant scientific advice on issues.” United Nations Environment Assembly of the United Nations Environment Program Res. 5/8, at 2, U.N. Doc. UNEP/E.A.5/Res.8 (Mar. 7, 2022). A resolution to establish the panel was co-sponsored by various stakeholders and presented at UNEA 5.2. Kupka, supra note 160.
161. Id.
162. Id.
163. Japan Draft Resolution, supra note 113; Rwanda-Peru Draft Resolution, supra note 108.
text asking the Executive Director to provide support of the UNEP Secretariat to the INC.\textsuperscript{164} Antigua and Barbuda, Iceland, and the EU expressed concern “that text supporting civil society and major groups participation had been lost” and recommended stating it earlier in the draft.\textsuperscript{165} One delegate complained that the “text is still a collection of brackets at this point,” but conceded the group was “beginning to see the bigger picture.”\textsuperscript{166}

At Working Group 1’s negotiation on February 24, delegates discussed the Co-Facilitators’ draft on a LBI on marine plastic pollution.\textsuperscript{167} Several states supported text proposed by Palestine allowing participation of “states members of specialized agencies” in the OEWG and in the INC.\textsuperscript{168} The United States, in opposition to the Russian Federation, suggested that the INC develop an international LBI, “with legally-binding and non-binding commitments.”\textsuperscript{169}

Peru suggested that the LBI “could include legally-binding and non-legally binding provisions.”\textsuperscript{170} Switzerland, Zambia, Norway, Democratic Republic of Congo, Thailand, the Russian Federation, Eritrea, Iceland, Rwanda, and Uruguay preferred the creation of an international LBI, which would incorporate both legally binding and non-legally binding provisions.\textsuperscript{171} The EU, supported by Chile, argued for the adoption of the agreed language from the Governing Council decision on Minamata, which would allow further for the embedding of the principles of the Rio Declaration.\textsuperscript{172}

India requested a deletion of the reference to “the whole life-cycle of plastic,” but was opposed by Zambia, Norway, Uruguay, Canada, the Republic of Korea, Australia, Costa Rica, Kenya, the UK, Samoa, and Thailand.\textsuperscript{173} The EU favored a LBI that operates “to prevent and reduce plastic pollution, including microplastics, in all environmental compartments, especially in the marine environment.”\textsuperscript{174} Chile called for “environmental ecosystems,” while the UK

\begin{itemize}
  \item \textsuperscript{164} Tallash Kantai, Asheline Appleton, Mika Schroder & Wanja Nyingi, \textit{OECPR-5.2 Highlights: Wednesday, 23 February 2022}, IISD: \textsc{Earth Negot. Bull.}, at 1 (Feb. 24, 2022).
  \item \textsuperscript{165} Id.
  \item \textsuperscript{166} Id. at 2.
  \item \textsuperscript{167} Tallash Kantai, Asheline Appleton, Mika Schroder & Wanja Nyingi, \textit{OECPR-5.2 Highlights: Thursday, 24 February 2022}, IISD: \textsc{Earth Negot. Bull.}, at 1 (Feb. 25, 2022).
  \item \textsuperscript{168} Id.
  \item \textsuperscript{169} Id.
  \item \textsuperscript{170} Id.
  \item \textsuperscript{171} Id.
  \item \textsuperscript{172} Kantai et al., \textit{OECPR-5.2 Highlights: Thursday, 24 February 2022}, supra note 167, at 1.
  \item \textsuperscript{173} Id.
  \item \textsuperscript{174} Id.
\end{itemize}
suggested “all parts of the environment,” and Eritrea and Australia recommended “referring to the environment as a whole.” Antigua and Barbuda, Uruguay, Chile, and others proposed referencing the “elimination” of plastic pollution.

The United States preferred giving the INC the freedom to determine which specific measures to “address” plastic pollution. Eritrea wanted to delete “marine litter” and recognize “the resolution’s focus on plastic pollution.” India agreed to combine their draft on a “framework for addressing plastic product pollution including single-use plastic product pollution” with the Co-Facilitator’s draft. Discussions continued about what the final text should look like.

On February 25, 2022, the delegates convened for a final day of negotiations, attempting “to resolve outstanding issues on plastic pollution, biodiversity and nature-based solutions, chemicals, green recovery and circular economy, and procedural matters.” One resolution was forwarded to the UNEA for consideration on plastic pollution.

Delegates considered language proposed by the EU “on the design of plastic products as part of a full lifecycle approach, to improve their material and chemical composition towards extending product life.” The Alliance of Small Island States and the African Group requested the INC to “develop an instrument on plastic pollution, including in the marine environment.” China, however, argued INC delegates should be free to determine the scope of any instrument, and further asked for the deletion of the term, “including in the marine environment.”

The group finally agreed on the need to craft an “international legally binding instrument, on plastic pollution, including in the marine environment, which would include both binding and voluntary approaches, taking into account the principles of the Rio Declaration, based on a comprehensive approach that addresses the full lifecycle of plastics.” Members debated a proposal by India

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175. Id.
176. Id.
177. Kantai et al., OECPR-5.2 Highlights: Thursday, 24 February 2022, supra note 167, at 1.
178. Id.
179. Id.
180. Id.
181. Id.
182. Id.
183. Id.
184. Id.
185. Id.
186. Id.
whether such a “comprehensive approach” should take into account nations’ circumstances and capabilities.\textsuperscript{187}

The delegates agreed to separately recognize the impacts of plastic pollution.\textsuperscript{188} Members also agreed to text noting “the contribution made by workers under informal and cooperative settings to collecting, sorting, and recycling plastics in many countries . . . ”\textsuperscript{189} During final discussions, the Co-Facilitator reported that members would continue their work to complete a resolution at the UNEA-5.2 meeting the following week.\textsuperscript{190}

\section*{IV. UNEA-5.2 Meeting}

The official UNEA-5.2 occurred at Nairobi, Kenya, from February 28 to March 2, 2022. 175 UN Member States including seventy-nine ministers and seventeen high-level officials attended, with a total of 3,400 delegates attending in person and 1,500 attending online.\textsuperscript{191} UNEA 5.2 President Espen Barth Eide of Norway opened the meeting, reflecting on achievements of UNEP in contending against “ozone depletion, pollution, climate change, and other crises.”\textsuperscript{192} He reminded Member States that they are “to use diplomacy for the common good” but are “not called to relinquish their sovereignty.”\textsuperscript{193} He argued that “[a]gainst the backdrop of geopolitical turmoil, the UN environment assembly show[ed] multilateral cooperation at its best . . . ”\textsuperscript{194}

Monda Medina, the head of the U.S. delegation at UNEA-5.2, said that “[t]he goal . . . is to give countries the flexibility to develop national action plans that work best for them” and stated that

\begin{itemize}
  \item \textsuperscript{187} Id.
  \item \textsuperscript{188} Id.
  \item \textsuperscript{189} Id.
  \item \textsuperscript{190} Id.
  \item \textsuperscript{191} Id.
  \item \textsuperscript{192} Id.
  \item \textsuperscript{193} Id.
  \item \textsuperscript{194} Id.
\end{itemize}
“[o]verly prescriptive ‘top down’ approaches” can stifle “technological innovation.”195 The representative of Colombia, Mónica de Greiff Lindo, highlighted the challenges faced by developing countries.196 Furthermore, the Colombian representative stated that, “[t]he Group of 77 and China supported the multilateral effort to tackle plastic pollution and welcomed the intent to launch negotiations on an international legally binding instrument on plastic, including in the marine environment with ambitious goals, equally ambitious means of implementation, and wide participation while fully recognizing the different national circumstances and starting points of Member States and observer States.”197

Oman, speaking on behalf of the states of the Asia-Pacific region at the commencement of UNEA-5.2, called for: “a global framework to prevent and reduce plastic pollution that was informed by circular economy principles and the waste management hierarchy, and complemented existing instruments and initiatives” with some states in the region calling for the framework to be based on, “the precautionary approach and the principle of common but differentiated responsibilities.”198

Throughout the day, delegates met both in plenary session and as a Committee of the Whole (COW).199 That committee created three contact groups focusing on the issues of: "sustainable lake management; environmental aspects of minerals and metals management; science policy panel for chemicals, waste and pollution; and nature-based solutions (NbS).”200 Contact Group III dealt with the issue of plastic pollution.201

The COW finalized the plastics draft resolution to be considered by UNEA-5.2, with this completed and tabled in the early hours of the first day of the conference.202

The resolution titled *End Plastic Pollution: Towards an international Legally Based Instrument*
(UNEP/EA5/L23) called for the establishment of an INC on plastic pollution, which they forwarded to UNEA for adoption. Thanking Rwanda, Japan, and India as the original drafters of the resolution, Peru lauded delegates for their commitment to deliver a binding instrument to combat plastic pollution.203

Mr. Dampetey Bediako Asare of Ghana, Co-Facilitator of the OECPR’s Cluster 1, “praised the group for the courage and wisdom in their work on this resolution...”204 Inger Andersen, Executive Director of UNEP, emphasized “the amazing job done by negotiators proffered resolutions and catalyzing action to address the issue.”205 She underscored that the resolution on plastic pollution is a vital first step towards a global plastics agreement.206 She stressed, however, that “resolutions will shift the needle if they create real world impact,” and will need significant state support going forward.207

A. Resolution to End Plastic Pollution: Towards an International Legally Binding Instrument

The UNEA delegates voted unanimously on March 2, 2022, at the closing plenary to pass the resolution to end plastic pollution.208 The resolution establishes an INC to draft a legally binding plastic pollution treaty by 2024,209 a noticeably shorter period of negotiation compared to most global treaties.210

Most notably, as its name suggests, the resolution calls for the “end” as opposed to a reduction to plastic pollution.211 Hence, the Resolution more closely resembles the broad scope of the Rwanda-Peru resolution rather than the Japan or India resolutions by clearly contemplating upstream measures such as restrictions and bans on certain plastic products; as such, it embraces a lifecycle

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204. Id.
206. Id.
207. Id.
209. Perry, supra note 21; How to Design an Effective Treaty, supra note 11.
approach to tackling plastic pollution. The Japanese resolution focuses more discretely on “reducing marine plastic pollution” as a downstream product via national action plans to reduce waste, awareness-raising, and coordination with regulatory frameworks, the Rwandan-Peru resolution proposes more direct emphasis on “sustainable production” and strategies to “address product design.”

The Resolution, like the Rwanda-Peru draft resolution, includes legally binding obligations and provides for financial and technical assistance for developing countries, thus endorsing a ‘capacity-building’ function of the treaty. It also calls for global rules and enforcement mechanisms to regulate plastics from manufacturing through to disposal and “circular economy” approaches. Further, the Resolution addresses not only plastic waste and its environmental and health impacts but also the risks that hazardous chemicals pose to human health, “[reaffirmed]” to be a key policy basis to “prevent plastic pollution.” Christopher Chin, an expert on single-use plastic legislation and executive director of the non-profit Centre on Oceanic Awareness, praised the Resolution’s consideration of “plastic pollution in a more holistic way” and its seeking to integrate a circular economy approach, evident from its dual focus on “sustainable production and consumption” as well as “national and international cooperative measures to reduce plastic pollution.”

Although the Resolution contemplates legally binding obligations in the treaty, the term ‘voluntary’ appears four times in reference to ocean pollution prevention and addressing the plastic lifecycle. Thus, it appears nations will have “wiggle room” in meeting treaty goals conferring discretion upon nations, taking into account their national circumstances, with regard to implementation of certain provisions. Paragraph three, however, notes that the instrument “could include both binding and voluntary approaches, based on a comprehensive approach” which “[accounts]” for “national

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212. Id.
213. See, e.g., Japan Draft Resolution, supra note 113.
214. See, e.g., Rwanda-Peru Draft Resolution, supra note 108.
218. McCarthy, supra note 6; see Resolution 5/14, supra note 51, at 4 § 3(b)-(c).
219. Fletcher, supra note 216.
220. Id.
circumstances and capabilities” in the spirit of common but differentiated responsibility.  

Open-ended working groups would also be able to add new topics that stakeholders perceive as relevant without preventing further discussions on topics not discussed in detail in the current negotiations. Subsequent meetings could potentially address these issues with the goal of creating a more robust plastic treaty, noting the schedule for INC meetings in the coming years.

V. RESPONSE TO ADOPTION OF THE PLASTICS TREATY RESOLUTION

The delegates greeted the Resolution to end plastic pollution with thunderous applause, loud cheers, and a standing ovation. “[It is] the beginning of the end of the scourge of plastic pollution,” a delegate eloquently stated. “This is our Paris!” exclaimed another, recalling UNEP Executive Director’s prophecy from the beginning of the week. Lord Zac Goldsmith, UK Government Minister for International Environment, reflecting the excitement at UNEA-5.2, said that “the agreement by governments at UNEA is truly historic,” and congratulated the UK for their involvement in achieving the adoption of the Resolution. Similarly, Espen Barth Eide, President of the UNEA, described the passing of this resolution as a “cure” for the “epidemic” that is the plastic pollution crisis. Drawing analogies to other environmental instruments, Inger Anderson, the executive director of the UNEP, outlined that the agreement from UNEA-5.2 is the “most important international multilateral environmental deal since [the] Paris [climate accord].” The World Wide Fund for Nature (WWF) stated that it is the “world’s most ambitious environmental action since the 1989 Montreal Protocol, which phased out ozone-depleting substances.”

Despite Japan’s proposed resolution being less ambitious and narrower in scope than that adopted at UNEA-5.2, the nation still signed the Plastics Treaty Resolution, noting that the “country was looking forward to working on beating plastic pollution through the

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221. Resolution 5/14, supra note 51, at 3 § 3.
223. See INC Provisional Agenda, supra note 222.
INC and . . . Osaka Blue Ocean Vision,”226 and that with a united effort “the resolution will clearly take [the world] towards a future with no plastic pollution, including in the marine environment.”227 Although India was initially hesitant to support the Resolution due to it proposing a more ambitious plan than the nation proposed, and its likely impact on the nation’s large petrochemical industry and relations with big business, the nation still signed it.228 The Resolution’s use of the word ‘voluntary’ several times in relation to ocean pollution prevention and attempt to address the entire plastics lifecycle presumably reassured India.229 The U.S. State Department also stressed that the treaty provided important flexibility for countries to address the full lifecycle of plastics in a way suited to their national circumstances.230

Following the adoption of the Resolution at UNEA-5.2, Dr. Jeanne d’Arc Mujawamariya, Rwanda’s Minister of Environment said “the progress made at UNEA reflects [a] spirit of collaboration” which “will be crucial in tackling [the] problem [of plastic pollution],” and that his nation “look[s] forward to working with the INC and [is] optimistic about the opportunity to create a legally binding treaty as a framework for national ambition-setting, monitoring, investment, and acknowledgement transfer to end plastic pollution.”231 After the COW finalized the draft resolution, Peru thanked Rwanda, Japan, and India as the original drafters of the resolution, and lauded delegates for their commitment to deliver a binding instrument to combat plastic pollution.232 Further, Modesto Montoya, Peru’s Minister of Environment, outlined: “[w]e appreciate the support received from various countries during this negotiation process” and that “Peru [would] promote a new agreement that prevents and reduces plastic pollution, promotes a circular economy and addresses the full life cycle of plastics.”233

227. Fletcher, supra note 216.
228. Id.
229. Id.
233. Historic Day in the Campaign to Beat Plastic Pollution, supra note 231.
Although some of the members of International Council of Chemical Associations (ICCA) advocated for an agreement focused on waste as opposed to plastic production, the ICCA stated it was “pleased with the outcome” at UNEA-5.2, noting that the resolution provides nations “with the flexibility to identify binding and voluntary measures across the full lifecycle of plastics, while recognizing there is no single approach to solving this global challenge.”

Industry representatives, however, expressed concern that the resolution goes beyond merely addressing recycling and reusing plastics. Instead, they argued it would limit the oil and chemical industries’ ability to extract chemicals used in plastic production. Despite this concern, the Resolution does not directly address restrictions or bans on plastic production, simply making reference to ‘sustainable production’, though given the broad mandate of the INC, imposing restrictions on production may be possible.

Following UNEA-5.2, governments, NGOs, and the UNEP stated their ongoing commitment to continue to advocate for an ambitious and comprehensive plastics treaty until it is finalized. A press release from the UK Department for Environment, Food and Rural Affairs outlined that there is “much to be done now to [create] an ambitious and far-reaching treaty . . . .” Graham Forbes, Global Plastic Project Lead at Greenpeace USA, reflected this sentiment by outlining that the resolution is a “really momentous agreement.” Its adoption at UNEA-5.2, however, “is really the beginning of the process,” and “[u]ntil a strong global treaty is signed, sealed, and delivered, Greenpeace and its allies will keep pushing for a world free of plastic pollution, with clean air and a stable climate.” Specifically, Greenpeace will be “scaling up [its] efforts to communicate with governments, to pressure corporations to support the treaty” with plans to push for developed

235. Fletcher, supra note 216.
236. See United Nations Environment Assembly Res. 5/14, supra note 3, at 3.
237. Id.
239. Fletcher, supra note 216.
Northern Hemisphere nations, including the United States and the EU, to provide financial and technical support to developing nations.\textsuperscript{241}

Similarly, Inger Andersen, Executive Director of the UNEP, stated that the INC’s mandate “does not grant any stakeholder a two-year pause” and like for negotiations of any international binding agreement, the “UNEP will work with any willing government and business across the value chain to shift away from single-use plastics, as well as to mobilize private finance and remove barriers to investments in research and in a new circular economy.”\textsuperscript{242}

Carroll Muffett, the president of the U.S.-based Center for International Environmental Law (CIEL) said that “the commitment to make a legally binding plastics treaty [evinced by the passing of the resolution at UNEA-5.2] signaled an important shift in political and public debate.”\textsuperscript{243} Muffett suggested that “it means that the era of unrestricted plastic production, use and disposal has a limited lifetime,”\textsuperscript{244} and that “everyone working in those sectors are going to have to address that reality very soon [or else] … a new litigation risk will arise”\textsuperscript{245} when the treaty comes into effect. Similarly, Graham Forbes, Global Plastic Project Lead at Greenpeace USA, outlined on March 2, 2022, that the passing of the resolution would have the effect of “keep[ing] the pressure on big oil and big brands to reduce their plastic footprint and switch their business models to refill and reuse.”\textsuperscript{246}

Considering the impact on industry, Christopher Chin stated that the broad wording of the resolution surrounding the “full life cycle” of plastics, depending on when the life of plastic is considered to “begin,” may not only affect the plastic production industry but also fossil fuel companies,\textsuperscript{247} which have not previously been implicated in dialogue concerning the plastic crisis.\textsuperscript{248}

VI. CREATING AN INTERGOVERNMENTAL NEGOTIATING COMMITTEE

The Resolution to “end plastic pollution” adopted at UNEA-5.2 requested the UNEP’s executive director to convene an INC,

\begin{thebibliography}{99}
\bibitem{fletcher216} Fletcher, supra note 216.
\bibitem{historic231} Historic Day in the Campaign to Beat Plastic Pollution, supra note 231.
\bibitem{kaminski10} Kaminski, supra note 10.
\bibitem{id} Id.
\bibitem{id} Id.
\bibitem{id} Global Plastics Treaty: Big, Bold Step to End Plastic Pollution, supra note 241.
\bibitem{id} Id.
\bibitem{bryce202} Bryce, supra note 202.
\end{thebibliography}
a team of negotiators from a variety of geographical regions,\textsuperscript{249} to
develop an international legally binding instrument on plastic pol-
lution, “based on a comprehensive approach that addresses the full
lifecycle of plastic.”\textsuperscript{250} Accordingly, the ad hoc OEWG convened in
Dakar, Senegal, from May 13 to June 1, 2022 with a mandate to cre-
ate a procedural foundation for the work of the INC.\textsuperscript{251} The Group
was expected to address two issues. One, create the rules of pro-
dure to govern the INC’s future work and decision-making and two,
determine the INC’s meeting schedule over the next few years.\textsuperscript{252}
The rules of procedure include how decisions will be made, how any
bureau will be structured, and who will participate in meetings.\textsuperscript{253}

In her opening address, Inger Andersen spoke of the global
consensus that existed to ameliorate plastic pollution in an expe-
ditionary manner, and that any negotiating process needed to be
science-based.\textsuperscript{254} Such consensus, however, was not readily apparent
at the OEWG meeting.\textsuperscript{255} The delegates could not reach a consensus
about whether the rules of procedure should include voting rights
for regional economic integration organizations; this issue was left
for resolution at INC-1.\textsuperscript{256} The issue of the detailed set of documents
to inform INC-1 also proved contentious.\textsuperscript{257} Locally determined
contributions (LDCs) wished to prioritize a dedicated negotiating
stream on any treaty’s financial mechanism and on the methods of
implementation with other delegates, arguing that the relationship

\textsuperscript{249} Fletcher, supra note 216.
\textsuperscript{250} Paul Hagen et al., Negotiations to Launch on a New Global Plastics Treaty,
to-launch-new-global-plastics-treaty; see United Nations Environment Assembly Res.
5/14, supra note 3, at 2.
\textsuperscript{251} UNEA Launches Negotiation of Plastic Pollution Treaty, Science Body on Chem-
icals, IISD (Mar. 10, 2022), https://sdg.iisd.org/news/unea-launches-negotiation-
of-plastic-pollution-treaty-science-body-on-chemicals/ [hereinafter UNEA Launches
Negotiation of Plastic Pollution Treaty]; see also United Nations Environment Assembly
Res. 5/14, supra note 3, at 4.
\textsuperscript{252} Wins for Public Participation in Plastics Treaty Negotiations at Agenda and
Rule-Setting Meeting, Ctr. for Int. Env’t L., (June 2, 2022), https://www.ciel.org/
news/wins-for-public-participation-in-plastics-treaty-negotiations-at-agenda-
and-rule-setting-meeting/; Summary of the Ad hoc Open-Ended Working Group to Pre-
pare for the Intergovernmental Negotiating Committee to Develop an International Legally
Binding Instrument on Plastic Pollution, including in the Marine Environment: 30 May-
org/sites/default/files/2022-06/enb3601e.pdf [hereinafter Ad Hoc Working Grp.
Summary].
\textsuperscript{253} See Ad Hoc Working Grp. Summary, supra note 252.
\textsuperscript{254} Ifedayo Ogungbemi, World Takes Steps Towards Global Treaty To End Plastic
Pollution, Nigerian Trib., (June 2, 2022), https://tribuneonlineng.com/world-takes-
steps-towards-global-treaty-to-end-plastic-pollution/.
\textsuperscript{255} Id.
\textsuperscript{256} Id.
\textsuperscript{257} Id.
of any plastic treaty to other multilateral environmental agreements (MEAs) needed to also be delineated.\footnote{258}{Wins for Public Participation in Plastics Treaty Negotiations at Agenda and Rule-Setting Meeting, supra note 252; see Ad Hoc Working Grp. Summary, supra note 252, at 1.}

Many delegates wanted to base the INC rules of procedure on the relatively recent negotiations of the \textit{Minamata Convention on Mercury (2010 and 2013)}, and delegates agreed to utilize much of that treaty to guide this new process.\footnote{259}{See Ad Hoc Working Grp. Summary, supra note 252, at 3, 6, 7.} Some members, however, argued that technology facilitating virtual participation had greatly improved and should be adopted to allow delegates to ameliorate the time and financial costs of traveling to such meetings and to quicken the negotiating process.\footnote{260}{Id. at 9.} Others argued that meeting should be fully in person because unstable internet connections could stifle the contributions of online participants.\footnote{261}{Id. at 10.} The matter was not resolved, and INC delegates will decide the matter in the future.\footnote{262}{Id.}

Delegates also debated which current conventions could provide a template for a plastic treaty. Some claimed the \textit{Minamata Convention on Mercury (2013)},\footnote{263}{See Minamata Convention on Mercury, UNEP, http://www.mercuryconvention.org (last visited Jan. 28, 2023).} with its controls on various products, is the most appropriate model. Others argued the \textit{Paris Agreement (2015)}\footnote{264}{See The Paris Agreement, U.N. CLIMATE CHANGE, https://unfccc.int/process-and-meetings/the-paris-agreement (last visited Oct. 14, 2023).} was a better template because it allows each state to decide its own policies via nationally determined contributions (NDCs). Again, the issue was not decided, with delegates asking that states determine which convention model to adopt before INC-1.\footnote{265}{Wins for Public Participation in Plastics Treaty Negotiations at Agenda and Rule-Setting Meeting, supra note 252; see Ad Hoc Working Grp. Summary, supra note 252, at 10-11.} The delegates also agreed to a tentative INC meeting timetable over the next two years. Delegates, however, would only agree to forward the proposed timetable to INC-1 for consideration and possible adoption.\footnote{266}{Id. at 4.}

Arguably, states made reasonable progress on the INC rules of procedures with an almost clean text to forward to the first INC meeting. Additionally, a number of regions have finalized their bureau representatives to the INCs, and a program of work has been
decided on for the secretariat to work through in the intersessional period before the INC-1 meeting.\footnote{Wins for Public Participation in Plastics Treaty Negotiations at Agenda and Rule-Setting Meeting, supra note 252.} Key decisions around rules of procedure, negotiating streams, timetables, and the modes of INC meetings, however, were left undecided. These should have been easy decisions and the failure to resolve them at the OEWG meeting bodes poorly for achieving the goal of a complete global plastics treaty by UNEA-6 given the number of more difficult decisions that will need to be addressed.

The INC will also report to the UNEA on its progress over the next two years.\footnote{UNEA Launches Negotiation of Plastic Pollution Treaty, supra note 251.} It is anticipated that a diplomatic conference will occur where the INC’s outcomes will be adopted, and the treaty opened for signature by Member States,\footnote{Fletcher, supra note 216; UNEA Launches Negotiation of Plastic Pollution Treaty, supra note 251.} with the INC striving towards completion in early 2024, in time for UNEA-6.\footnote{See United Nations Environment Assembly Res. 5/14, supra note 3, at 2.}

The Resolution to “end plastic pollution” has given the INC a broad mandate to draft a treaty targeting plastic waste in all environments, including marine plastic waste and microplastics,\footnote{Perry, supra note 21.} as well as consider any relevant matters other than those outlined in the draft resolution.\footnote{United Nations Environment Assembly Res. 5/14, supra note 3, at 3.} Civil Society groups have praised the INC’s broad mandate, as well as the resolution’s ambitious goal of addressing all plastic pollution, arguing it reduces the likelihood of INC negotiators producing a ‘narrow and toothless treaty.’\footnote{See, e.g., Bryce, supra note 202; Geddie & Brock, supra note 8.}

VII. INTERNATIONAL NEGOTIATING COMMITTEE-1 URUGUAY MEETING

The first of four sessions of the Intergovernmental Negotiating Committee “to develop an international legally binding instrument (ILBI) on plastic pollution, including in the marine environment (INC-1)” was held from November 26 to December 2, 2022 in Punta del Este, Uruguay.\footnote{INC Provisional Agenda, supra note 222. The other meetings are slated to occur in Paris, France in May 2023; Nairobi, Kenya in November, 2023; and Canada and Korea in 2024.} Discussions at the meeting focused predominantly on both formal, rigid elements of the ILBI (objectives, structural options and scope) and substantive provisions (obligations, control measures and voluntary/binding approach mechanisms) to
be included.\textsuperscript{275} The meeting first addressed its own procedural composition. Representatives from more than 160 countries and over 2,300 registered delegates were present when Executive Secretary, INC Secretariat, and Jyoti Mathur-Filipp, officially opened the meeting on November 28.\textsuperscript{276}

A draft version of the rules of procedure (RoP) was presented, previously settled by the Open-ended Working Group in June 2022, but for Rules 37.1 and 37.2 relating to voting rights for regional economic integration organizations such as the European Union (EU)\textsuperscript{277} Rule 37.1 provided that “[e]ach Member shall have one vote” except for when Rule 37.2 applies, which varies the voting power in circumstances involving a “regional economic integration organization” to be “equal to the number of” Member States participating in the Committee.\textsuperscript{278} Rule 37.2 was also annexed with three alternative formulations to be settled for adoption of the RoP.\textsuperscript{279}

The task of settling Rule 37 became a particular point of controversy. In negotiations, a variety of informal consultations with (and proposals from) delegates from nations such as Saudi Arabia, Egypt, and Qatar transpired. The United States and EU, for example, presented a submission to quantify number of votes under Rule 37 based on “the number of . . . member States (of a regional economic integration organization) duly accredited and present” rather than “the number of member States participating in the Committee” in favor of Alternative 3 for Rule 37.2.\textsuperscript{280} The Chair, however, found no compromise on the approval of Alternative 1,

\begin{itemize}
    \item \textsuperscript{275} See, e.g., UNEP INC Secretariat, Broad Options for the Structure of the International Legally Binding Instrument on Plastic Pollution, Including in the Marine Environment, Taking into Account Paragraphs 3 and 4 of United Nations Environment Assembly Resolution 5/14, UNEP/PP/INC.1/1/4 (Sept. 8, 2022) [hereinafter UNAE Broad Options].
    \item \textsuperscript{276} Summary of the First Meeting of the Intergovernmental Negotiating Committee to Develop an International Legally Binding Instrument on Plastic Pollution: 28 November – 2 December 2022, IISD: EARTH NEGOT. BULL. https://enb.iisd.org/sites/default/files/2022-12/enb3607e.pdf (last visited Oct. 14, 2023) [hereinafter Summary of First Meeting].
    \item \textsuperscript{277} See UNEP INC Secretariat, Draft Rules of Procedure for the Work of the Intergovernmental Negotiating Committee to Develop an International Legally Binding Instrument on Plastic Pollution, Including in the Marine Environment, UNEP/PP/INC.1/3 (Sept. 8, 2022).
    \item \textsuperscript{278} Id.
    \item \textsuperscript{279} Id.
    \item \textsuperscript{280} Proposal from the USA and the EU for a Consolidated Language of Paragraph 2 of Rule 37, Reflecting Consultations with Interested Parties Having Expressed Concern on this Matter at the OEWG, https://wedocs.unep.org/bitstream/handle/20.500.11822/41322/Proposal%20for%20consolidated%20language%20on%20rule%2037%20of%20the%20draft%20Rules%20of%20Procedure.pdf?sequence=3&isAllowed=y (last visited Oct. 14, 2023).
\end{itemize}
2, or 3 of Rule 37.2. As a result of this disquiet, the RoP were applied provisionally but for Rule 37, which was left in brackets (i.e. undecided), which in the future could potentially see a call to halt voting on any agreement. While the Chinese delegation sought to introduce amendments to other particular RoP, the informal consultations were limited only to considering the formulation and eventual adoption of Rule 37.

A provisional agenda was also adopted on the first day of the meeting. As per the Resolution, the main substantive item on the agenda was the “preparation of an international legally binding instrument on plastic pollution, including in the marine environment.” The Secretariat put forward a scenario note to address Item 3(c). The note set forth inter alia meeting objectives, which included the launch of negotiations on the ILBI, and exploration of, “a preliminary way the issues set out in paragraph 3 and 4 of the Environment Assembly resolution 5/14.”

Member States presented their “priorities for the INC process” during the first two days of the meeting. On the question of a legally binding instrument on plastic pollution, including in the marine environment, states outlined, “their (individual) priorities for the INC process.” While not espousing detailed particulars, the need for a collective ethos of urgent action, proactive negotiations, and the comprehensive assessment of the plastics problem as a life-cycle issue were common points expressed by the delegates, particularly those in the high-ambition coalition.

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281. Summary of First Meeting, supra note 276.
284. INC Provisional Agenda, supra note 222.
285. Id.
286. Id.
287. Id.
288. Summary of First Meeting, supra note 276.
289. Id.
290. The High Ambition Coalition to End Plastic Pollution comprises a coalition of states that argue for a more comprehensive eventual convention based on the Minamata Convention on Mercury or the Montreal Protocol on Chlorofluorocarbons (1987) and seeks to end plastic pollution by 2040. It is currently chaired by Norway and Rwanda and is comprised of fifty states. See End Plastic Pollution by 2040, High Ambition Coal. to End Plastic Pollution, hactoendplasticpollution.org (last visited Sept. 15, 2023).
the general statement from the United Kingdom emphasized the need for the INC-1 to direct negotiations on a “critical path to a new treaty by 2024,” and that collection, sorting and recycling were critical practices to avoid leakage to the environment.\textsuperscript{291} The statement from the Republic of Korea expressed wishes for the INC-1 to be “a rich and constructive discussion which leads . . . to options for essential elements and ultimately informs . . . drafting.”\textsuperscript{292} Iceland similarly called for “the active involvement of civil society” and “the start of substantive negotiations . . . in an effective manner” at INC-1.\textsuperscript{293}

The meeting negotiations under Item 4 focused on the substantive particulars of the ILBI.\textsuperscript{294} Both were based on operative paragraphs 3 and 4 of the Resolution 5/14.\textsuperscript{295} These were also in accordance with the structure of discussion under Item 4 proposed by the scenario note on the organizational work of the INC, requiring two “different but related considerations” to be discussed: “(a) [w]hat should be included in the ILBI?” and “(b) [h]ow could the process be structured in order to reach agreement by the end of 2024?”\textsuperscript{296}

The focus of the UN documents presented for both respective points were: “(a) [o]ptions for the structure of the international legally binding instrument on plastic pollution;” and “(b) [p]otential elements, including key concepts, procedures and mechanisms of legally binding multilateral agreements that may be relevant to furthering implementation and compliance under the ILBI.”\textsuperscript{297} Delegates made a variety of statements regarding Item 4.\textsuperscript{298} The Group of Latin American and Caribbean Countries’ (GRLUAC) statement similarly emphasized the need to “go beyond voluntary national

\textsuperscript{294} INC Provisional Agenda, supra note 222.
\textsuperscript{295} Id.
\textsuperscript{296} Id.
actions and country-driven measures,” and the importance of “effective implementation of the future instrument.”

Delegates then set out broad structural options including scope, aim, and structure of the instrument for potential integration into the instrument. The reference UN document on this point was divided into two focuses: the “basic structure of legally binding multilateral environmental agreements,” and “road options for the structure of core obligations and control measures.”

The informal negotiating group further requested the secretariat. The substantive revelations within this document were unremarkable and echoed many of the structural options iterated in paragraphs three and four of Resolution 5/14. For example, it noted the possibility of including “both legally binding and voluntary measures”; as well as “control measures” and “a comprehensive approach that addresses the full life cycle of plastics . . . .”

A. Scope of any Convention

Scope was a key consideration at the negotiations. Unsurprisingly, the delegates largely preferred the comprehensive approach believing it would better address the question of full life cycle of plastics implementation (consistent with the overarching aim in 5/14). The particular substantive focuses of the ILBI was supported since it would be dealing with the crucial issue of legacy (deteriorated) plastic waste in the environment (Peru and Pakistan, for example), and issues such as identifying and limiting (or ending) sources of plastic pollution including from the polymerization phase, feedstocks, and marine plastics.

Norway’s general statement exemplified this approach, noting “[t]he scope should be wide enough to enable us

300. UNAE Broad Options, supra note 275.
301. Id.
303. Id.; Resolution 5/14, supra note 51, at 3-4.
305. Summary of First Meeting, supra note 276; Resolution 5/14, supra note 51, at 3–4.
to address all drivers and sources of plastic pollution as well as the full breadth of materials, products, chemical substances including additives, uses and processes applied in the value chain of plastic . . . .”

B. Specific or Framework Approach to any Treaty

There was significant discussion on whether to favor a “specific” or “framework” approach for the ILBI. A specific approach is where “obligations and . . . measures are contained in a single instrument,” where a framework approach involves obligations, “divided between legally distinct instruments . . . .” Norway, supported by nations such as Switzerland, Peru, and Armenia, preferred a “dynamic, legally binding treaty” supported by “general and specific commitments for all parties.” Iran, however, favored adopting a “framework convention.” Despite the seeming impasse, flexible options were also presented. Egypt, for example, noted the possibility of including adaptive annexes to the ILBI, where nations such as China and the United States put forth the possibility of adopting a hybridized specific-framework structure.

Delegates from nations such as Japan and Canada, however, regarded determinations of any treaty structure at the preliminary stage of INC-1 determining the objectives of the ILBI before its structure was a more advisable approach. In relation to the objectives of the ILBI, the delegates supported the mantra that the ILBI, “protect the environment and human health from plastic pollution, and ultimately end plastic pollution.” This aligned with Norway’s proposal for the objective of the treaty, echoed in generic but important iterations in statements from nations such as the United Kingdom, emphasizing the need to “protect the environment from plastic pollution” as part of a “brief [but] clear objective” of the ILBI.

308. UNAE Broad Options, supra note 275.
309. Id.
311. Id.
312. Id.
313. Id.
314. Summary of First Meeting, supra note 276.
Other ancillary aims and objectives were also negotiated. Switzerland’s argument that any agreement to promote the “environmentally sound management of plastic waste,” was supported by the delegates with various general statements to address the “hazardous” nature of “environmental [plastic] pollution” expressed. Nations such as Australia and Montenegro, seeking to better enable the ILBI, reinforced the needed emphasis on circular economy approaches. Further, many LDC delegates supported interweaving the underpinning doctrines into the ILBI including the precautionary principle, extended producer responsibility, and common but differentiated responsibilities.

Moreover, delegates focused particularly on the barriers, priorities, and needs that were impeding plastic pollution mitigation strategies at the national level. Delegates preferred control measures for ILBI implementation that addressed the overall lifecycle of plastics. Delegates such as the EU prioritized “upstream measures including . . . curbing production; midstream measures including design standards (also addressing hazardous chemicals and harmful additives), packaging, and labeling standards; and downstream measures related to, among others, reducing consumption, recycling, and waste management.”

When discussing the adoption and utilization of national action plans (NAPs) as the vehicles for national commitments under the ILBI, however, delegates debated and “diverged on the role of these plans” in the implementation of the instrument. The United States expressed strong support for the role of NAPs in hosting “nationally determined measures and policies” that would enable a globally cooperative effort to combat plastic pollution. While delegates such as Japan contended NAPs could be the cornerstone of ILBI implementation, others

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319. Id.
320. UNEP INC Secretariat, Priorities, Needs, Challenges and Barriers Relating to Ending Plastic Pollution at the National Level, UNEP/PP/INC.1/11 (Sept. 15, 2022) [hereinafter Priorities, Needs, Challenges and Barriers].
321. See generally Plastics INC-1 Highlights Wednesday 30, November, 2022, supra note 306; Summary of First Meeting, supra note 276.
322. Summary of First Meeting, supra note 276.
323. Id.
325. Summary of First Meeting, supra note 276.
C. Financing, Capacity Building and Technology Sharing

The delegation from Indonesia emphasized that finance, capacity building, and technology would be critical for effective means of implementation and necessary to address the entire lifecycle of plastics, particularly for developing countries lacking the appropriate infrastructure to manage plastic pollution.\(^{326}\) Multiple nations, including Syria, recommended a financial mechanism for assisting developing nations in implementing their ILBI obligations.\(^{327}\) Nations such as Saudi Arabia, the United States, and Pakistan, however, regarded consideration of monitoring and evaluation mechanisms premature at INC-1, temporarily relegating discussions of capacity building, technical assistance, and technology transfer as more ancillary matters to be discussed at a later date.\(^{328}\)

D. Monitoring and Evaluation

Delegates prioritized the development of a uniform global reporting framework, modeled after the Minamata Convention, when it came to attempting to resolve questions of monitoring and evaluation.\(^{329}\) Brazil, however, noted that inventory volume would have to be significantly larger than under Minamata.\(^{330}\) Thailand noted the importance of technical guidelines for monitoring processes and suggested a model-system based on the evaluation framework under the Global Partnership on Marine Litter.\(^{331}\) Kenya also noted the importance of any monitoring system to regard accountability mechanisms on both state and non-state stakeholders relating to their upstream, midstream, and downstream obligations.\(^{332}\)

E. Science Policy Integration

Science-policy integration under the ILBI was also a major substantive focus for the negotiator. The documents UNEP/PP/INC.1/7, UNEP/PP/INC.1/10, and UNEP/PP/INC.1/13 call for

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\(^{327}\) Plastics INC-1 Highlights Wednesday 30, November, 2022, supra note 306, at 4.


\(^{329}\) Id.

\(^{330}\) Id.

\(^{331}\) Id.

\(^{332}\) Id.
the coordination with regional and international instruments – such as Basel, Rotterdam and Stockholm – and institutions, to amalgamate the “best science” from existing science-policy information relevant to policy.\textsuperscript{333} Ecuador supported scientific and technological cooperation and coordination to inform practices such as awareness raising, education, and information exchange that could plausibly engage with the World Trade Organization.\textsuperscript{334} In contrast, nations such as Japan argued that the different views expressed by delegates of their understanding of the complex relevant science, necessitated the creation of a separate impartial subsidiary science-policy entity to determine appropriate strategies.\textsuperscript{335} Similarly, Micronesia proposed that any such scientific, economic, and technical entity should be the preeminent advisory and rights-based apparatus of the ILBI.\textsuperscript{336}

F. Flexibility

The Solomon Islands supported flexible obligations whereby states could reformulate national laws prior to codifying ILBI laws domestically.\textsuperscript{337} Canada supported the adoption of the entry into force provision under Minamata\textsuperscript{338} Delegates such as Chile and Uruguay supported the incorporation of a no reservations clause, whereas Mexico proposed “a party and non-party system” akin to the Montreal Protocol.\textsuperscript{339} Noting the preliminary nature of INC-1, however, delegates from Japan and Cuba intuitively assessed that despite synergy with standard articles included in final provisions within existing multi-lateral environmental agreements, and found that devising the substantive nature of the ILBI would be a key determinant for the appropriate standard articles.\textsuperscript{340}

G. Stakeholder Participation

Delegates fully supported stakeholder engagement under the ILBI at all stages of the plastic lifecycle, consistent with the

\textsuperscript{333} UNEP INC Secretariat, Plastics Science, UNEP/PP/INC.1/7 (Sept. 13, 2022); UNEP INC Secretariat, Overview of Information to Promote Cooperation and Coordination with Relevant Regional and International Conventions, Instruments and Organizations, UNEP/PP/INC.1/10 (Sept. 9, 2022); UNEP INC Secretariat, Existing Information that Might Assist Policymakers, UNEP/PP/INC.1/13 (Sept. 8, 2022).

\textsuperscript{334} Daily report for 1 December 2022, supra note 328.

\textsuperscript{335} Id.

\textsuperscript{336} Id.

\textsuperscript{337} Id.

\textsuperscript{338} Id.

\textsuperscript{339} Daily report for 1 December 2022, supra note 328.

\textsuperscript{340} Id.
multi-stakeholder approach envisioned in Resolution 5/14.\textsuperscript{341} The statement from the delegate of Tanzania, for example, particularly emphasizes the need for the “process toward [the ILBI] to be transparent and inclusive,” and that the process should involve “all key stakeholders in all stages of plastic lifecycle,” even going so far as to include even “informal sector” entities “such as waste pickers.”\textsuperscript{342} Both a multi-stakeholder forum and informal dialogue were hosted to consider the role of non-state stakeholders in the formation of the ILBI.\textsuperscript{343} An overview of stakeholder engagement frameworks under comparable instruments and potential approaches for the ILBI was also presented, and a document on the approach for multi-stakeholder action agenda to end plastic pollution was tendered.\textsuperscript{344}

Delegations generally agreed on the need for substantial stakeholder participation in both the development and implementation of the ILBI. Australia supported all stakeholders’ key roles in facilitating the implementation of the ILBI via education sessions in various forms.\textsuperscript{345} In contrast, some delegates, such as Tonga, sought better clarity on the stakeholder engagement modality under the ILBI. Norway’s delegation supported stakeholder engagement in intersessional periods but not formal negotiations.\textsuperscript{346}

Non-state participants also highlighted the need for better integration between Multi-lateral Environmental Agreements (MEAs) and stakeholder support. The group Action on Smoking and Health emphasized the key role to be played by industry stakeholders under the United Nations Framework Convention on Climate Change (UNFCCC).\textsuperscript{347} Other non-state stakeholders present at the negotiations emphasized different modalities of their role in devising the ILBI.\textsuperscript{348} The Children and Youth Major Group focused on imbuing the ILBI with intergenerational equity principles.\textsuperscript{349} Despite these discussions, the exact nature and contribution of non-state groups to the negotiating process has yet to be delineated.

\textsuperscript{341} Summary of First Meeting, supra note 276.
\textsuperscript{342} Tanzania Opening Statement, supra note 317.
\textsuperscript{343} Summary of First Meeting, supra note 276.
\textsuperscript{344} UNEP INC Secretariat, Overview of Stakeholder Engagement Frameworks Under Other Instruments and of Potential Approaches for the International Legally Binding Instrument on Plastic Pollution, Including in the Marine Environment, UNEP/PP/INC.1/12 (Sept. 9, 2022); Priorities, Needs, Challenges and Barriers, supra note 320.
\textsuperscript{345} Summary of First Meeting, supra note 276.
\textsuperscript{346} Daily report for 1 December 2022, supra note 328.
\textsuperscript{347} Id.
\textsuperscript{348} Id.
\textsuperscript{349} Id.
VIII. INTERNATIONAL NEGOTIATING COMMITTEE-2 PARIS MEETING

The second session of the INC was hosted by France, chaired by H.E. Gustavo Meza-Cuadra (Peru), and took place in Paris, France, from May 29 to June 2, 2023. Over 1,700 participants, with 700 delegates from 169 Member States and at least 900 observers, met at the UN Educational, Scientific and Cultural Organization (UNESCO) headquarters with the goal of further advancing an international legally binding instrument on plastic pollution. That venue, however, was too small for the number of attendees leading to last minute attendance caps for civil society groups being implemented by the UN secretariat. This limited observer groups to only one participant and procedural delays limited participation and hampered the progress of discussions. Civil society members expressed frustration at the move arguing that limiting observer participation denied key viewpoints from being expressed at the negotiations.

INC Chair Gustavo Meza-Cuadra opened the meeting asking negotiators to move both effectively and decisively in a collective and inclusive manner to address the entire lifecycle of plastic. Inger Andersen, UN Under-Secretary-General and UNEP Executive Director focused in her opening remarks on the necessity to eradicate unnecessary plastic in packaging and shipping, redesign products, improve repair and recycling measures, implement “justice measures for the informal waste sector and waste pickers,” and introduce global action to address legacy plastic. She further issued a “call to arms” for the private sector “to take the initiative to begin to transform production and manufacturing processes to eliminate unnecessary plastic.” The Executive Director outlined her hope that by the end of INC-2 the delegates “would mandate a zero draft of the ILBI” to be further discussed at the INC-3 meeting in Nairobi, Kenya.


354. Id.

355. Id.

356. Id.
A. Election Tension

Before substantive measures could be discussed, however, administrative issues proved both fraught and delaying. Given INC-1 had not created a bureau, that issue was the first agenda item. Convention bureau members are traditionally nominated by their regions and elected by acclamation. Such approbation had proved difficult in recent times, however, due to the Ukraine conflict. At this meeting, candidates from the Russian Federation, Estonia, and Georgia were nominated to fill two seats on the Bureau. The Eastern European Group, however, was unable to reach agreement on two nominees. This led to the highly unusual move to vote by secret ballot which saw Estonia and Georgia elected to the bureau. Following that vote, the election of approved bureau members at INC-1 was challenged which saw another vote taking place to allow Sweden and the United States being allowed to be bureau members. The use of secret ballots rather than traditional consensus voting saw a number of delegations concerned that underlying tensions were threatening progress on the substantive negotiations to come.

B. Adoption of the Rules of Procedure Debate

By the afternoon of the first day, “the draft [RoP] remained another source of tension.” The working group tasked with crafting the RoP at the Dakar, Senegal meeting in 2022, was unable to conclusively finish their work, so the group merely put forth a provisional set of draft RoP to INC-1. At INC-1, delegates agreed to provisionally apply the draft RoP, “with one rule in brackets . . . and defer further consideration to INC-2.” A number of delegations, led by Saudi Arabia – which raised the matter as a point of order –, India, Brazil, and Iran, harked back to INC-1 where they had requested to “bracket a rule that provides for the possibility of voting on substantive matters” if efforts to reach consensus were not successful. The delegates from these nation-states maintained that

357. Id. at 7.
359. Id.
360. Id.
361. Id.
362. Id.
364. Id.
365. Id.
366. Id.
367. Id.
368. Summary of the Second Meeting, supra note 353, at 7.
they would not allow substantive talks to begin before their objections to such voting was put on the record." They argued given the differing views held by states regarding the substantive issues to be discussed, taking votes on these matters rather than adopting a traditional consensus seeking approach would mute their views and bind them to a process where their concerns were sidelined.

The Secretariat further clarified that in their opinion at INC-1, the Committee agreed that the draft RoP will be applied to the negotiations provisionally until their formal adoption. Saudi Arabia asked for clarification arguing that any votes carried out would not be transparent under the draft RoP. Their position was supported by China, Brazil, Argentina, India, and Iran, who asked the Chair for assurances that the proposed voting mechanism – rule 38: adoption of decisions – was to be considered exceptional and not a precedent for future action and Meza-Cuadra agreed that he was committed to consensus-based decision making. The Russian delegation argued that the issue of the RoP should be adopted by the Committee before seeking a vote. The Chair maintained that draft rule 41– conduct of voting – was to be provisionally applied.

The Chair then informed the Plenary that he would conduct further informal consultations on the bracketed text contained in draft rule 37 (UNEP/PP/INC.2/3) and update delegates on its progress but in the interim as per the INC-1 ruling, and supported by UNEP Legal Officer Stadley Trengrove, the draft RoP would be applied provisionally. After a protracted debate lasting until Wednesday, delegates went into open-ended consultations, and informal discussions (proposed by Brazil) before eventually agreeing to an interpretative statement to reflect differing views of the rules around voting rule 38.1 (the adoption of decisions by a two-thirds majority as a last resort if every effort to reach consensus has been exhausted) that would be applied provisionally.

For a number of delegations, those states seeking to bracket the rules on voting were adjudged to be seeking to either undermine or
stall the ongoing negotiating process. For states seeking to create a strong treaty that dealt with plastic production as opposed to waste, relying on a consensus approach could allow one delegation or minority of delegations to prevent such an outcome. Environmental non-governmental organizations (ENGOs) in particular noted that states with oil and petrochemical industries were adopting this as a delaying strategy and/or seeking to create a less ambitious document. Civil society groups predicted that the issue of provisional RoPs will come up again at INC-3 or later once decisions will have to have been agreed upon.

IX. Preparation of an ILBI on Plastic Pollution, including in the Marine Environment

This was meant to be the main substantive agenda item to be discussed but because of the debate on administrative matters it was only addressed at the Plenary on Wednesday, and in two contact groups that convened on Wednesday evening, Thursday morning, and Friday morning. Before the meeting, 243 written submissions were received from Member States and other interested stakeholders and analyzed by the Secretariat to serve as potential negotiation points going forward. Various options for the ILBI were canvassed including: “objectives; [12 possible] core obligations, control measures and voluntary approaches; implementing elements; and additional input) as well as introductory elements related to the preamble, definitions, scope, principles and institutional arrangements related to the governing body, subsidiary bodies, scientific and technical cooperation and coordination, and the secretariat.” These options papers formed the basis of discussions in both of the contact groups created: the first on objectives and substantive obligations, and the second on the means of implementation and other implementation measures of any agreement.

The meeting devolved to a point where some states engaged in what was coined “TikTok diplomacy,” whereby oral statements were

378. Id. at 8; Maigret, supra note 351.
379. Summary of the Second Meeting, supra note 353, at 8; Maigret, supra note 351.
380. Summary of the Second Meeting, supra note 353, at 8; Maigret, supra note 351.
382. Summary of the Second Meeting, supra note 353, at 3-4.
made merely to be circulated via social media and not to engage in substantive debate within the INC process. The Chair abruptly adjourned the Plenary meeting to allow the contact groups to begin their work and he did not allow the placeholder text to be included. States led by Saudi Arabia and China protested that he was ignoring their requests to speak and openly questioned the impartiality of the Chair. After further discussions the contact Groups were allowed to meet for the first time.

Kingtaro Sisior (Palau) and Axel Borchmann (Germany) co-facilitated Contact Group 1. Its task was to consider the objectives and substantive obligations of any future treaty including:

- phasing out and/or reducing the supply of, demand for, and use of, primary plastic polymers; 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; reducing microplastics; strengthening waste management; fostering design for circularity; encouraging “reduce, reuse and repair” of plastic products and packaging; promoting the use of safe, sustainable alternatives and substitutes; eliminating the release and emission of plastics to water, soil and air; addressing existing plastic pollution; facilitating a just transition, including an inclusive transition of the informal waste sector; and protecting human health from the adverse effects of plastic pollution.

On Friday, the co-facilitators put forward a report. They had sought to identify non-exhaustive areas of potential convergence and additional elements/options to be considered for inclusion in any zero-draft agreement. Of note was that states held divergent views for including a time-bound target for ending plastic pollution; delegates were widely in favor of regulating and encouraging reduction and reuse of plastics; delegates were open to creating platforms for information sharing including for some creating a technical review committee to advise on potential alternative and substitute options; delegates called to address releases throughout the entire

385. Id. at 8.
386. Id.
387. Id.
388. Id.
390. Id.
391. Id.
plastic lifecycle (including fishing gear) and microplastics with some calling for binding provisions upstream, whereas others wanted to focus on downstream provisions and the adoption of guidelines at the national level.\(^{392}\)

When it came to addressing existing plastic pollution, the majority of delegations saw the issue as urgent desiring additional awareness raising, particularly as regards best available techniques including plastic alternatives and environmental practices, adapted to national indicators.\(^{393}\) There was also broad agreement on alleviating the poverty of the most vulnerable – with a particular emphasis on the role played by waste pickers – based for some on the UN General Assembly resolution “on the right to a clean, healthy, and sustainable environment.”\(^{394}\) Many delegations also favored the creation of a subsidiary body to synthesize research and science on the impacts of plastic and plastic pollution with a view to cooperation and exchange amongst potential treaty members.\(^{395}\)

Looking forward to INC-3 and beyond, Co-Facilitator Borchmann provided a summary of possible intersessional work including:

- definitions, including problematic and avoidable plastic polymers and products, microplastics, and circularity . . .
- specific criteria, such as substances of concern in plastics; problematic and avoidable plastic polymers and products; design; and substitutes/alternatives to plastic polymers and products . . . potential targets, including for the phaseout of problematic and avoidable plastic polymers and products, and for reuse and repair of plastic products . . . [as well as] potential substances of concern in plastics, problematic and avoidable plastic polymers and products; and potential sources of release of microplastics (products and sectors).\(^{396}\)

The co-facilitators of Contact Group 2 examined the means of implementation, implementation measures, and any potential additional actions. Delegations focused on the elements in the options paper related to: “[National Action Plans] (NAPs); exchange of information; stakeholder engagement; awareness raising and education; research; cooperation and coordination; financial assistance; capacity building; technology transfer on mutually agreed terms; technical

\(^{392}\) Id. at 4-5.
\(^{393}\) Id.
\(^{394}\) Id.
\(^{395}\) Summary of the Second Meeting, supra note 353, at 5.
\(^{396}\) Id.
assistance; compliance; periodic assessment and monitoring of progress; and national reporting.”

Co-facilitator Lynch gave a summary on Friday to the meeting which noted convergence on the utilization of NAPs to both coordinate and support implementation of the treaty across the plastics lifecycle. The report, however, also highlighted the caution exhibited by some delegates that NAPs could not be the only legally binding provision of any mooted treaty. Some delegates also wanted the presence in any NAP of indicators by which progress could be mapped and recorded across the plastic lifecycle. Problematically, Lynch noted that for some delegations any NAPs were best conceived of as a “nationwide-driven process with countries setting their own targets, and conducting their own reviews, updates, and/or resubmissions.” Lynch went on to note that there was trepidation amongst the delegates around the issue of mandatory disclosures. Further discussions took place on issues including: “best practices, knowledge, research and technologies; sustainable consumption and production, environmentally sound waste management, sources of plastic pollution, human and animal exposure to plastic pollution and the associated risks and reduction options, among policymakers, stakeholders and the public; and information exchange on Indigenous knowledge systems and practices.”

Regarding stakeholder engagement, there was comity around promoting “active and meaningful participation in the development and implementation” of the treaty and the need for awareness raising and education on the issue of plastic and plastic pollution. Similar to Group 1, delegates were broadly supportive of creating a scientific and technical body to evaluate scientific and socio-economic data; its impacts; with a particular focus on problematic plastics, polymers, and chemicals of concern. The report observed that any compliance mechanism should be, in the view of the delegations, facilitative in nature but the concept was not defined at this time. There was, however, strong concurrence amongst the high-ambition states that any national reporting should be a legal obligation upon

397. Id.
398. Id.
399. Summary of the Second Meeting, supra note 353, at 5.
400. Id.
401. Id.
402. Id.
403. Id.
404. Summary of the Second Meeting, supra note 353, at 5.
405. Id. at 5-6.
406. Id.
all signatory nations with an option to progressively expand reporting over time.  407

When it came to financial matters, some states argued for two distinct articles on financial resources and/or assistance, and on a financial mechanism.  408 They further maintained there was a need to consider the role to be played by both the Global Environment Facility (GEF) as well as a dedicated fund.  409 Many delegations, particularly LDCs, argued that any treaty would need to enshrine the principle of common but differentiated responsibilities with others arguing that it should reference the Rio Principles as well.  410 Other states noted that any successful treaty would require technology transfer on fair and equitable terms.  411 Co-facilitator Lynch also mentioned matters that should be prioritized at the intersessional before INC-3.  412 Such issues included:

the potential role, responsibilities and composition of a scientific and technical body; NAPs; provisions within existing MEAs on cooperation and coordination; monitoring; options to define technology transfer on mutually agreed terms; modalities for potential financing mechanisms; options to mobilize and align private and innovative finance; mapping current funding and finance available to address plastic pollution and determining the need for financial support for each Member State; and identifying capacity building and training gaps.  413

X.  Discussing the Options Paper

When INC members were given the opportunity to finally discuss the options paper it was on Wednesday night, three days after the scheduled start.  414 It became quickly apparent that the issue of whether any agreement would contain a legal mandate would be the main point of contention going forward.  415 Influential states such as the United States, Saudi Arabia, China, and India—which either produced the raw materials for plastic or had, or desired in the case of

407.  Id. at 6.  
408.  Id.  
410.  Id.  
411.  Id.  
412.  Id.  
413.  Id.  
414.  Summary of the Second Meeting, supra note 353, at 8.  
415.  Id.
India, large petrochemical facilities – demanded any agreement be “bottom-up” based on the Paris Agreement where individual states would regulate their commitments based on their capacity and best intentions.416 LDCs and the high ambition coalition states wanted strong legal commitments applied to all states but ameliorated by including the principle of common but differentiated responsibilities given the sheer quantity of legacy plastics left by the developed states since the introduction of plastic.417 Difficult questions were not able to be answered at this point.418 Who should pay for the implementation of the treaty? Should a new fund be created as per the Minamata Convention on Mercury, or would the GEF be the best financial vehicle going forward, as for example, the Stockholm Convention on Persistent Organic Pollutants?419 How will any technology transfer that occurs be managed?420

In what may yet prove to be a schism between, to date, natural allies, developing states wanted strong controls on the upstream part of the plastic life cycle.421 Other states, including those over eighty countries comprising the High Ambition Coalition, preferred to focus on upper-midstream and downstream measures, “such as on product design and sustainable waste management, citing principles of circularity.”422 Some delegates noted that getting to any agreement given the strong disagreement shown at INC-2 will require both imagination and flexibility if they are to meet the timetable set of early 2025.423

XI. The Way Forward

Both contact group reports were annexed to the Meeting report and noted by the delegates.424 Given the lack of progress to date, however, INC Chair Meza-Cuadra suggested that delegates discuss the way forward.425 These discussions were co-facilitated by Marine Collignon of France and Maria Angélica Ikeda of Brazil.426 They made an oral report of the decision on intersessional work
which was adopted by the Committee. It encouraged states and observer groups to send submissions from INC-2 to the Secretariat to be posted on the website. More importantly, it requested INC Chair Meza-Cuadra, supported by the Secretariat, to prepare a “zero draft” text of the instrument with a “full range of options” for further consideration at INC-3, guided by the views expressed at previous INCs.

Observers and Member States were further allowed to make submissions on issues that were not included in the options paper, for example, on principles and scope and areas for further consideration for intercessional work which would then be developed into a synthesis report to be discussed at a one-day preparatory meeting back-to-back with INC-3. That decision was greeted by relief by Member States who had feared leaving the negotiations with no way forward but now some argued that the process had survived being stress tested and was “back on track.” At the end the next venues were announced. INC-3 would take place in Nairobi, Kenya, INC-4 in Ottawa, Canada, and INC-5 in the Republic of Korea.

XII. Conclusion

As Espen Barth Eide, UNEA President and Minister of Climate and Environment of Norway, outlined at UNEA 5.2, “[c]ountries are increasingly seeing [plastic pollution] as a top-level threat.” It is true that we can observe that in only nine years states have agreed to create a global plastic pollution treaty with the laudable difficult goal of having it completed by UNEA-6 in 2025, but it is obvious to all that the current fragmented and poorly regulated international system of patchwork laws covering this field is not up to the task. It is heartening that the scope of the proposed instrument, as set out in the resolution, has widened from a focus on just marine plastic pollution to one that considers the full lifecycle of all plastic, opening the door for potential caps on virgin plastic and other measures to address both upstream and downstream plastic pollution.

Given the widespread range of interests involved in the plastics sector, it is also promising that the INC members have stated

427. Id.
428. Id.
430. Id.
431. Id. at 8-9.
433. Birnbaum & Kim, supra note 11.
434. Fletcher, supra note 216.
they wish to adopt a highly collaborative approach in preparing the treaty, drawing upon civil society organizations and businesses for their expertise and perspectives. As the experience of INC-2 showed, however, selecting small venues to host proceedings limited civil society effectiveness such groups argued and needs to be avoided at future meetings.

Furthermore, the text of the mandate is the first environmental resolution to specifically reference the contributions of those who earn a living recycling plastics in the informal economy, also known as “waste pickers.” Similarly, the resolution acknowledges the role of Indigenous Peoples, indicating that stakeholders who are disproportionately impacted by plastic waste will have a seat at INC negotiations. It remains unclear how much influence such groups will have in the decision-making process, but their inclusion can be considered a good step in ensuring their views are heard.

At the time of writing, the United States is attempting to build a coalition of states that will call for a global plastic treaty based on the 2015 Paris Climate Accord, which only allows for voluntary national action plans to be the basis for any action. Monica Medina, the U.S. official leading the treaty negotiations, argued prior to INC-1 that the United States remains committed to the goal of ending plastic pollution by 2040. She argues that “[t]he best way [to end plastic pollution] is through a Paris-like agreement that helps countries take ambitious action and holds them accountable, let’s [sic] them be innovative on finding solutions, and leads to action now and not later.” Japan has supported such an approach, arguing that a “one-size-fits-all approach” is inappropriate because states have different “circumstances” and “priorities” towards upstream measures such as plastic production, and downstream measures, such as waste collection.

In contrast, many groups and states argue for a stricter universal approach to curbing plastic pollution. States such as Rwanda, Ecuador, Mexico, the European Union, and other members of the High

435. Id.
436. McVeigh, supra note 191; see United Nations Environment Assembly Res. 5/14, supra note 3, at 3.
437. See United Nations Environment Assembly Res. 5/14, supra note 3, at 3.
438. How to Design an Effective Treaty, supra note 11.
440. Id.
441. Id.
442. See id.
Ambition Coalition reiterated the need for global reduction targets on plastic production. This stricter position is also supported by the ENGOs, who have publicly called for coordinated curbs on virgin plastic production and the creation and implementation of universal design standards to increase the recyclability of plastics. Such stringent measures may, however, prove difficult to implement due to fierce opposition by plastic producers which have been lobbying state governments, in particular the US, to not craft any agreement that limits plastic manufacturing. ENGOs are concerned that on the progress to date, any instrument would merely be a ‘waste management treaty’ only which would allow for their goal to stop plastic production to be realized.

Further, given the lengthy debate at INC-2 around the RoPs (thought settled in the interim at INC-1) it is clear from their actions at the meeting that states such as Saudi Arabia, China, and the United States fear that allowing any majority decision on the implementation of any new treaty will likely see a more robust instrument created rather than their preferred Paris Accord model which is the more likely outcome if the traditional consensus UN model is adopted. It is evident that this issue will remain problematic right up to the point when Member States will have to vote on the preferred option in 2024 when the adoption of any new treaty and its provisions are called for.

At best, INC-1 and INC-2 represent a consolidation of post-UNEA 5.2 progress toward an intergovernmental commitment to end plastic pollution by 2024. Overcoming this gargantuan plastics issue and the various intersectional complexities of global plastic pollution, however, will require a multi-year coordinated effort. As such, although few robust decisions on the fate of the ILBI were settled at the two INCs, the topics and matters considered, and progress from negotiations toward developing the ILBI, represent successful, albeit preliminary efforts, to develop a global response to plastic pollution. The INC-2 meeting ended by setting forth a path for the intersessional period leading to INC-3, by requiring the crafting of a “zero draft” of the new treaty for consideration at that meeting. It also allowed for a one-day pre-meeting event to debate creating a synthesis report of key elements not considered at the Paris Meeting.

443. Lackluster Outcomes, supra note 381.
444. Id.
445. Maigret, supra note 351.
Some of the key matters that were left for the subsequent INC’s to consider and negotiate include:

- What qualifies as a “plastics” for the purposes of the treaty;
- How microplastics should be addressed, noting that microplastics are considered to be plastic pollution as per the Resolution;
- Which obligations should be legally binding, and which should be addressed by national action plans or voluntary provisions;
- How the new treaty will interact with existing environment treaties such as those governing chemicals and recycling of plastics.  

For those who wish for a comprehensive and stringent convention, the first two INCs do not give rise to much optimism. States were unable to agree on either the timeline to be adhered to, the RoPs to act under or the shape of the architecture of the negotiations that would best facilitate access for all delegates. At the moment, we can observe deferment of any difficult or contentious decisions. This is not unusual at this stage of negotiations. The inability to proceed smoothly to date on problematic issues, however, does not bode well for negotiations to be complete by the UNEA-6 meeting deadline. There was talk amongst the participants of having to do two weeks of negotiations at the INCs in 2024 to make up for lost time but this is yet to be officially confirmed. The INC negotiators will need to act quickly and decisively at the remaining meetings to prevent the world from being awash in plastic pollution in the years to come.

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448. Hagen et al., supra note 250, at 2.