Elements not discussed at INC-2

1. Scope

What is the proposed scope for the future instrument?

Which types of substances, materials, products and behaviors should be covered by the future instrument?

Proposed scope:

The United Nations Environment Assembly adopted Resolution 5/14 on 2 March 2022 to End plastic pollution: towards an international legally binding instrument (ILBI), through a comprehensive approach that addresses the full lifecycle of plastic including the marine environment. This statement obtained from UNEA Resolution 5/14 is in essence, defines the Scope of the ILBI agreed by the member states.

Explanatory Text:

UNEA Resolution 5/14 does not provide a mandate to define ‘Scope’ in the ILBI, while noting 3(a) states the need to ‘specify the objectives of the instrument’, as more substantive areas that member states need to focus extensively on. That said, a provision for Scope is not necessary, unless used to include the mandate from UNEA Resolution 5/14 on the full lifecycle of plastic.

We emphasise the focus on a comprehensive approach that addresses the full lifecycle of plastic – as stated in Part 5 & 6 of Appendix II of the INC Options Paper UNEP/PP/INC.2/4:

5. A life cycle approach to plastic considers the impact of all the activities and outcomes associated with the production and consumption of plastic materials, products and related services – from raw material extraction and processing (refining, processing, cracking, polymerization) to design, manufacturing, packaging, distribution, use (and reuse), maintenance and end of life management, including segregation, collection, sorting, recycling and disposal. Transportation and trade of plastic products also occur at each stage of the life cycle.21

6. Plastic pollution can happen at any stage, although the end-of-life and use stages are
where the biggest share originates. Solutions across the life cycle will need to consider an integrated combination of policy, regulatory, economic, business, technological and behavioural instruments, as well as the use of trade policies with instruments established at the global, regional and national levels.

The Cook Islands listed these phases in its INC submission in February 2023:

1. Sourcing/extraction phase [otherwise referred to as ‘upstream’] – extraction of organic or inorganic materials for the production of conventional fossil fuel-based plastics, alternatives, or substitutes.
2. Chemical and Material phase [otherwise referred to as ‘midstream’] – production and chemical processing of polymer, commodity, and speciality chemicals. The materials phase includes substances or mixtures of substances that constitute an object such as metal, plastic, wood, glass etc.
3. Dematerialization phase [otherwise referred to as ‘downstream’] – waste management and final treatment by waste facilities.

A working definition of the full lifecycle of plastic from the open-ended working group (OEWG) for the INC process supports the definitions above. However, it is noted that definitions of ‘plastic pollution’ and ‘circular economy’, amongst other terms as in Appendix I of the INC Options Paper UNEP/PP/INC.2/4, should be defined comprehensively throughout the terms of the ILBI to avoid ambiguity and misinterpretation. We note the working definition provided in UNEP/PP/INC.1/7, Appendix I:

**Plastic pollution** is defined broadly as the negative effects and emissions resulting from the production and consumption of plastic materials and products across their entire life cycle. This definition includes plastic waste that is mismanaged (e.g., open-burned and dumped in uncontrolled dumpsites) and leakage and accumulation of plastic objects and particles that can adversely affect humans and the living and non-living environment (working definition).

The Cook Islands therefore wishes the scope to include GHG emissions across the life cycle of plastics to be firmly included in the ‘negative effects and emissions,’ and integrated into the preamble of the agreement as well as the control measures, where appropriate. The Cook Islands is extremely threatened by sea level rise and other climate impacts, and strongly supports the decarbonisation of the plastics sector in its entirety.

### 7. Principles

*What principles could be set out in the future instrument to guide its implementation?*

Members of the Committee under UNEA Resolution 5/14, agree to take into account the principles of the Rio Declaration on Environment and Development, which was adopted in Rio de Janeiro, Brazil, in 1992. Outside of the Rio Declaration on Environment and Development, there is no mandate specified in UNEA Resolution 5/14 for member states to negotiate on the Principles.
The relevant principles under the Rio Declaration on Environment and Development in the context of plastic pollution, are further made clear in Appendix I (D)(5) (a to m) of the INC Options Paper UNEP/PP/INC.2/4.

In light of the above and the limited time available for the INCs, the Cook Islands firmly believes that future INCs should not be focused on negotiating and debating principles, but rather to focus on effective control measures given the specificities and level of granularity required to address the full lifecycle of plastics.

The Cook Islands have picked these key principles, considering the Rio Declaration on Environment and Development and Appendix I (D)(5) (a to m) of the INC Options Paper UNEP/PP/INC.2/4, to provide an explanation note on key principles that are important for the Cook Islands as a SIDS and Pacific member state:

1. The principle of equity, and the specific needs and special circumstances of developing and least developed countries, including small island developing States
2. Precautionary principle
3. Zero Waste hierarchy 8.0
4. Polluter pays
5. Human rights, including the human right to a clean, healthy and sustainable environment
6. Intergenerational equity
7. The principle of proximity

Explanatory text

1. The principle of equity, and the specific needs and special circumstances of developing and least developed countries, including small island developing States (Rio Principle 6, 7)

The Cook Islands is a large ocean state in the Pacific Ocean, the largest ocean state in the world in terms of the proportion of ocean to land. Within our EEZ, we are 99.995% ocean and 0.005% land. Within our vast oceans and coastlines, we are subject to transboundary colonial waste, filled with plastic waste and debris from all over the world. Our oceans and reefs are filled with ghost fishing gear – we all know this is a significant marine litter problem that is entangling and killing threatened and protected marine species, and not forgetting the impacts of ingesting microplastics for marine life and our marine food chain.

The Cook Islands and many Small Islands Developing State (SIDS) are responsible for less than 1% of plastic consumption, as well as 1% of global greenhouse gas emissions, insignificant contributions to climate change and pollution – yet we are extremely vulnerable to their consequences. It is our smallness, remoteness, fragile and marine ecosystems, and exposure to natural hazards that exposes our vulnerability.

These factors should be taken into account in the principle of equity, to ensure there is just transition from the consideration of our specific needs and circumstances of developing and least developed countries, including small island developing states. This principle can be operationalized in the design of these measures.
There should also be support for SIDS to level the playing field through financial mechanisms, to support the implementation of control measures.

2. Precautionary principle (Rio Principle 15)

Decisions will be made on areas that may cause harm to the environment and human health, consistent with the 1992 Rio Declaration on Environment and Development. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

For the Cook Islands and SIDS, marine litter and microplastics are a concern that prompts the need to reduce global production and alleviate its leakage to the environment, threat to our food security and impact on human health.

The Pacific Environment Ministers Declaration on the Prevention of Marine Litter and Plastic Pollution and its Impacts, includes the Precautionary Principle in its call for international commitments. The Ministers further noted that they are:

- Deeply concerned about the accelerating rate of plastics consumption and production, underscoring the fact that 50% of all plastics produced are intended for the manufacture of single-use products, that the current 368 million metric tons of virgin plastics produced annually is set to double by 2040; that only 9% of all plastics ever produced have been recycled, and 12% have been incinerated; and that 79% of all plastics produced have accumulated in landfills or the environment.
- Further expressing our grave concern for migratory marine species such as seabirds, marine turtles, whales and sharks, as they are especially vulnerable to the impacts of marine plastics through entanglement and ingestion of plastic and reaffirming these species as important cultural icons for Pacific peoples.
- Acknowledging the actions taken to reduce and eliminate single use and problematic plastics in the region and the need for more ambitious action and global and regional policy frameworks such as extended producer responsibility, container deposit systems and consumer awareness and responsibility.

With these commitments, the Precautionary Principle is a key principle that is important for the Cook Islands and Pacific SIDS to call for action now.

3. Zero Waste hierarchy 8.0

The Zero Waste hierarchy 8.0 is not a Rio Principle; however, it enforces the priority of reduction, waste prevention and reuse, rather than focused on just recycling and waste management. The Cook Islands National Sustainable Development Agenda (NSDA) national target for zero waste is to be achieved by 2045.

The Cook Islands and other Pacific SIDS have limited waste management infrastructure and our shorelines and oceans are subject to transboundary and colonial plastic waste and debris. The primary focus of this instrument should be on redesigning systems and products to end plastic pollution as per the top of the
Zero Waste Hierarchy 8.0. hence why the Cook Islands is calling for some form of global target to minimise/reduce the aggregate volume of plastics produced and consumed globally.

The Cook Islands is committed to upstream and midstream measures that operationalise the Waste Hierarchy principle in our national legislation, while being heavily involved in the ILBI negotiations to drive global commitments to focus on prevention, as no country can address the plastic crises alone. There are significant commitments for the Cook Islands to implement nationally, however our focus is to call for global targets to complement our work at the national level.

4. Polluter pays (Rio Principle 16)

To promote a safe circular economy for accountability and sustainable development, the polluter is responsible for the cost burden of providing proof that the products they profit from are safe and sustainable, traceable, and labelled and that they cover any unintentional externalities caused by the release of their product onto the market including safe and sustainable management.

The polluter pays principle is important to the Cook Islands to ensure accountability is factored into the ILBI for producers and traders of plastic raw materials and products, and not to solely focus on waste management only.

The Pacific Environment Ministers Declaration on the Prevention of Marine Litter and Plastic Pollution and its Impacts, acknowledge the actions taken to reduce and eliminate single use and problematic plastics in the region and the need for more ambitious action and global and regional policy frameworks such as extended producer responsibility, container deposit systems and consumer awareness and responsibility.

5. Human rights, including the human right to a clean, healthy and sustainable environment (Rio Principle 1, 22)

The ILBI should recognise the need to have a human-rights based approach that includes the rights of indigenous peoples who have been custodians of our land and oceans for thousands of years. There needs to be better understanding and appreciation of the role of traditional knowledge and systems and how it plays a pivotal role in sustainable alternatives and plastic reduction. Indigenous knowledge should be treated with equal value to other knowledge systems in the Treaty.

It is important for the Cook Islands and many Small Islands Developing State (SIDS) that a holistic approach to the problem of plastics is taken to recognise the full life cycle of plastics. Taking a precautionary rights-based approach will mean that the rights of Pacific Islanders and Indigenous communities are protected. This is essential to safeguarding a healthy environment, including the marine environment.

The Pacific Regional Declaration on the ‘prevention of marine litter and plastic pollution and its impacts emphasizes the use of Indigenous and traditional knowledge systems:

- Stressing the importance of incorporating Indigenous and Traditional Knowledge Systems, Practices, and Innovations as appropriate and with their free prior and informed consent that have evolved through generations into nature-based solutions for the sustainable conservation of ecosystems.
• Emphasize that Indigenous and Traditional Knowledge Systems, Practices, and Innovations with their free prior and informed consent must be an integral part of the solution to the plastic pollution crisis.

Provisions for Indigenous and Traditional Knowledge Systems should be included in elements of the treaty. Indigenous Peoples should be supported to fully and meaningfully participate in the instrument’s science-policy interface and the Conference of the Parties.

6. Intergenerational Equity (Rio Principle 3)

The Cook Islands and Pacific SIDS are deeply rooted in our connection to nature and the protection of natural resources and the environment for the future generation. These values are instilled in Pacific peoples and derived from indigenous and traditional knowledge systems and passed on from generations to generations.

The Pacific Regional Declaration expresses our grave concern about the environmental, social, cultural, economic, human health and food security impacts of plastics pollution at each stage of its life cycle on the human rights for current and future generations. The declaration emphasises the leakage of plastic pollution into our environment, particularly colonial and legacy waste in our marine environment. Intergenerational responsibility is key for Pacific peoples to ensure our future generations’ livelihoods are not threatened by plastic pollution. It is the utmost level of responsibility and accountability that we need to embed in the ILBI to cement a strong foundation that our future generations will benefit.

7. The proximity principle (Basel Convention)

The Basel Convention (Art. 4.2) requires each Party to take the appropriate measures to:
   a) Ensure that the generation of hazardous wastes and other wastes within it is reduced to a minimum, taking into account social, technological, and economic aspects, and
   b) Ensure the availability of adequate disposal facilities, for the environmentally sound management of hazardous wastes and other wastes, that shall be located, to the extent possible, within it, whatever the place of their disposal.

The Cook Islands believes strongly that all efforts must be taken to reduce the generation of plastics waste, particularly those that are hazardous to human health and the environment. The Cook Islands would also like to see each country develop the capacity to adequately treat their waste, including safe and sustainable export, where appropriate.

8. Additional considerations

Provide any other relevant inputs, proposals or priorities here that have not been discussed at INC-2 (e.g., preamble; institutional arrangements, including governing body, subsidiary bodies, scientific and technical cooperation and coordination, and secretariat; final provisions including dispute settlements; and if appropriate annexes).

The Cook Islands supports creation of standing subsidiary bodies while also empowering the governing body to establish subsidiary bodies under the ILBI to expedite the implementation of the global treaty to
Such bodies should work to their terms of reference as defined by the governing body and be free from conflict of interest. These arrangements should also include the capacity to establish ad hoc temporary committees or task forces under the subsidiary bodies, depending on needs identified by the governing body.

Subsidiary bodies will provide policy-relevant scientific, technical and socioeconomic information and assessment related to plastic pollution and to inform the implementation of the instrument.

For the Cook Islands, it will rely on the Subsidiary bodies to obtain sufficient means of implementation that includes technical and scientific assessments, environmental monitoring of plastic pollution and its impacts, and the collection of data and research.

A further priority for the Cook Islands is the establishment of a dedicated multilateral fund to provide stable, predictable financing, in addition to any hybrid financing from the private sector and other sources to complement this.

Key governance measures are expected to strengthen the administration of the Subsidiary bodies to ensure fair decisions are provided to us as SIDS.

The sharing of technical information is important to the Cook Islands. As a country with few resources, the Cook Islands finds it challenging to test products and technologies for safety to human health and the environment. This applies to the large variety of resins, additives and primary microplastics entering our markets from international sources. In addition, the technologies to deal with the waste generated from imported products must be adequately assessed to ensure the safety of our communities and our fragile ecosystems upon which our economy depends heavily.