Proposed response template on written submissions prior to INC-3 (part a)

At its second session, the intergovernmental negotiating committee (INC) requested the secretariat to invite written submissions on:

- Elements not discussed at INC-2, such as principles and scope of the instrument

INC-2 further requested the secretariat to post any submissions received on the INC website and to prepare a synthesis report of the submissions.

The template below was prepared by the secretariat, in consultation with the Chair, and is meant as a guide to assist Members and Observers in preparing their written submissions.

A number of documents prepared by the secretariat for INC-1 and INC-2 are of relevance to this submission, including:

**UNEA resolution 5/14** on ‘End plastic pollution: towards an international legally binding instrument’

**UNEP/PP/INC.1/5** on ‘Potential elements, based on provisions in paragraphs 3 and 4 of United Nations Environment Assembly resolution 5/14, including key concepts, procedures and mechanisms of legally binding multilateral agreements that may be relevant to furthering implementation and compliance under the future international legally binding instrument on plastic pollution, including in the marine environment’

**UNEP/PP/INC.1/6** on ‘Glossary of key terms’

**UNEP/PP/INC.1/8** on ‘Description of standard articles on final provisions that are typically included in multilateral environmental agreements’

**UNEP/PP/INC.2/4** on ‘Potential options for elements towards an international legally binding instrument, based on a comprehensive approach that addresses the full life cycle of plastics as called for by United Nations Environment Assembly resolution 5/14’

**UNEP/PP/INC.2/INF/4** on ‘Additional information linked to the options for the potential elements towards an international legally binding instrument’

**UNEP/PP/INC.2/INF/7/REV.1** on ‘Information submitted by the Secretariat of the Basel, Rotterdam and Stockholm conventions’

All written submissions must be sent to unep-incplastic.secretariat@un.org. As detailed in the mandate, the submissions received will be made available on the INC webpage, a synthesis report of the submissions will also be developed in advance of INC-3.

Please note that not all fields in the template need to be answered in the submission.

**Deadline for submissions:**

1. By **15 August 2023** for written submissions from **observer** organizations.
2. By **15 September 2023** for written submissions from **Members** of the Committee.
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:
Production, import, marketing, disposal of plastics, international cooperation, technology transfer and accountability.
It is important that the future binding international instrument on plastics addresses the issues proposed above in order to be not only a holistic treaty, but also a source of inspiration for the internal laws of States.

The UNEA resolution 5/14 provided the scope of the future instrument on plastic pollution that is:
- To be an International legally binding instrument on Plastic pollution;
- Should be based on a comprehensive approach that addresses the full life cycle plastic pollution including in the marine environment.
- The full life cycle should include chemicals used in the production of plastics.

Scope to be covered by the plastics treaty by lifecycle phase:

<table>
<thead>
<tr>
<th>Upstream</th>
<th>All chemicals and polymers used in plastics production including</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>• Raw materials for production of monomers</td>
</tr>
<tr>
<td></td>
<td>• Plastic polymers</td>
</tr>
<tr>
<td></td>
<td>• All additives used to produce plastics</td>
</tr>
<tr>
<td></td>
<td>All materials and substances made from plastics</td>
</tr>
<tr>
<td></td>
<td>Pollution resulting from the upstream phase, i.e. raw material extraction and polymer production</td>
</tr>
</tbody>
</table>
| **Midstream** | All products made from plastic materials  
Pollution arising from mid-stream, i.e. plastic product manufacturing, trade, sale |
|-----------------|--------------------------------------------------------------------------------|
| **Downstream** | All waste resulting from the use of products made from plastics  
All waste arising from the plastic waste management  
All pollution resulting from the downstream phase, including littering, uncontrolled dumping, burning and landfilling, incineration, collection, sorting, recycling |
|-----------------|--------------------------------------------------------------------------------|
2. Principles

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

Proposed principles:

Principle of polluter pays, prevention, correction at source, accountability, common but differentiated responsibility.

The principles proposed above can guide the application of the future international treaty in order to play its role in contributing to the preservation of the environment and promotion of sustainable development.

UNEA 5/14 resolution affirmed that the principles of Rio Declaration on environment and development be taken into consideration while discussing the treaty.

Specific **Rio principles** that should be considered include:

- **Prevention principle**;
- **Precautionary principles**; The lack of studies on the safety of chemicals should not for instance mean that they are safe. Therefore, there is need for treaty to call for precaution on use of chemicals and polymers until they can are proven to be safe
- **Intergenerational Equity**; The treaty has to ensure that the environmental needs of the future generation is protected by addressing the full life cycle of plastics and preventing any further pollution.
- **Polluter pays principles**; The industries, companies that are responsible for putting plastics into the environment have to ensure that they pay for the plastic impacts and put-up systems and measures to prevent any other pollution.
- **Access to information and public participation in environmental decision making**; Information such as the chemical constituents used to make plastics should be mandated by the treaty. It should also call for robust participation of stakeholders at all levels.
- **Transboundary environmental Justice**; The treaty must ensure that the liabilities and impacts arising from the upstream, midstream and downstream of the plastics lifecycle is not transferred to other countries
- **Liability and compensation**; The treaty should provide for a robust financial mechanism that should be used to address the legacy plastics, environmental remediation and prevention of any further pollution. The chemical, plastics and related companies should contribute towards the fund.
**Human rights:**
The UN General Assembly resolution recognized the human right to a clean, healthy and sustainable environment in 2022. This treaty is supposed to demonstrate how this right is considered in its objectives and throughout the text.

**Substitution Principles:**
This principle calls for substitution of materials with safer alternatives where they exist, avoiding any unintended environmental and socio-economic consequences. The treaty should list chemicals as a class rather than individual chemicals to avoid regrettable substitutions of chemicals of the same class as those listed.

**The zero-waste hierarchy**

The treaty should also put into consideration this principle to change in the design of the essential plastics and sustainable alternatives to ensure that those that eventually end up as waste are phased out, but those that can be retained in the value chain and degrade in the natural environment are prioritised.

Reuse and repair is important when considering the zero waste hierarchy as it will create more jobs than the current waste management system supported by the current design of plastics. This will play a key role in elongating the useful lives of products. However, international standards should be put in place to guide movement of reusable items to developing countries to eliminate waste dumping.

**Just transition**

There are many players within the plastics sector and the new treaty may present some disruption in their operations especially the informal waste pickers and the small and medium enterprises. These special category of vulnerable stakeholders need to be considered to ensure they are not adversely affected by the new treaty, and are included in the consultation process.

Finally, it is important to emphasize the importance of operationalizing these principles throughout the provisions of the instrument, including core obligations, control measures and means of implementation.
3. 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).

Proposed inputs:

It is proposed to create an International Court for Environmental Issues.

The international judicial system, for obvious reasons, lacks an autonomous body for resolving environmental disputes, including the issue of plastic pollution.

**Subsidiary bodies and scientific and technical coordination:**

As is with other conventions such as the BRS, Montreal, CITES, there is need for the establishment of subsidiary review committee/scientific body or bodies, to evaluate chemicals and polymers, to be controlled under the treaty. These bodies should be independent and free from conflict of interest. The assessments should provide guidance and inform the decisions that are to be taken by states.

These processes should be open to observers to ensure that the subsidiary body has access to indigenous people and local contexts, science experts, groups such as waste pickers and any one with knowledge that can support decision making.

**Amendments (Annexes, protocols, etc.):**

The treaty should include clear procedures on adoption of amendments, detailing how amendments could be proposed, reviewed, and approved that can be updated based on evolving scientific evidence, to enable further development and gradual strengthening of the treaty and its integrated components (such as annexes or protocols. A three-fourths majority—as provided for in the Minamata, Rotterdam, Stockholm, Basel, UNFCCC, and the Vienna Convention on the Protection of the Ozone Layer—could be used as a threshold for adoption of amendments.

**Entry into force**

In addition to currently proposed texts in the Final Provisions, supplementary criteria relating to the estimated total volume of plastic consumption of States should be established for the instrument’s entry into force, similar to that of the Montreal Protocol. This design should rely on the most recent data to determine a realistic entry-into-force threshold.