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:**

I. By **15 August 2023** for written submissions from **observer** organizations.

II. 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:**

1. The Russian delegation proposes the following language regarding the scope of the future instrument:

   a) “This Instrument applies to the full life cycle of end-use plastic products that have lost their consumer properties, including environmentally sound waste management (including, collection, sorting, disposal etc.), as well as recycling and reuse of such products, based on the principles of circular economy”.

   b) “Given the understanding of paragraph 1, the following substances, materials and items are exempted from the scope of this Instrument:

      - raw materials, such as hydrocarbons and their derivatives,
      - intermediate products, such as virgin polymers, which have to be further processed for serving end uses,
      - any dual-use items.”

   c) “The Instrument shall cover plastic pollution on land, as well as in the marine environment”.

   d) “The Instrument shall cover all activities within areas where a Party exercises its jurisdiction or control, including the activities of the marine vessels, activities in the contiguous zone, exclusive economic zone and continental shelf.”

2. In addition, certain definitions elaborated within other multilateral environmental agreements (MEAs) and by the polymer science could be helpful, but should be amended to reflect special aims and scope of the future instrument as prescribed by the mandate:
“**Plastics** means complex materials based on macromolecular compounds (polymers) with possible inclusion of different additives. The most widely used plastics are based on synthetic polymers. Plastics are directly related to plastic masses, meaning that these materials are able to be molded under the heating and/or pressure and retain a given shape after cooling or solidification. The molding process is accompanied by transition of a plastic deformable (viscous or highly elastic) state to a solid state (glassy or crystalline).

“**Plastic product** means an end-use product made of plastic as a solid material which contains as an essential ingredient one or more high-molecular-mass polymers and which is formed (shaped) during either manufacture of the polymer or the fabrication of such solid material into a finished product by heat and/or pressure. Plastics have material properties ranging from hard and brittle to soft and elastic. For the purposes of this annex, “all plastics” means all garbage that consists of or includes plastic in any form, including synthetic ropes, synthetic fishing nets, plastic garbage bags and incinerator ashes from plastic products. (Based on the Revised MARPOL Annex V adopted on 15 July 2011; emphasis and strikethrough added.)

3. Moreover, the INC may have to consider the definition of “life cycle”. The ISO’s definition does not seem relevant as it refers to “product systems” and includes upstream stages, which have no bearing for the issue of pollution by improperly disposed plastic waste.

**Explanatory Text:**

The afore-mentioned scope is based on paragraph 3(b) of the mandate as reflected in the Resolution of the UNEA of 2 March 2022 (UNEP/EA.5/Res.14) and is further developed to reflect the idea of life cycle approach through the lens of circularity. In particular, substances and materials enlisted in subparagraph “b” of paragraph 1 should be left outside the scope of the future Instrument due to their absence in the scope of the negotiating mandate. This understanding must have a clear textual confirmation in the main text relating to the scope provisions.

The Russian delegation notes that many proposals contained in the documents UNEP/PP/INC.2/4 of 13 April 2023 and UNEP/PP/INC.2/INF/4 of 23 May 2023 aim beyond the true target of these negotiations, which has been unambiguously stated by the UNEA in paragraph 3(b) of the mandate, and shift the focus of discussion from plastic pollution to upstream restrictions and prohibitions. Such proposals do not give due regard to the following:

- vital role of polymers in the world economy and trade,
- importance of polymers for food security and public health,
- concerns over industry-wide disruptions due to trade measures incompatible with rules of the World Trade Organization (WTO) and preferential trade agreements,
- large variety of national circumstances.

Instead, INC should concentrate on consideration of the root causes of and finding solutions for the issue of plastic pollution itself. In view of the Russian delegation, global solutions to the plastic waste issue should be sought in the domain of rational design, production, consumption, recycling and reuse of final products, based on the principles of circularity, as well as collection, transportation, processing and disposal of plastic waste. Results of consultations in Contact Group 1 during INC-2 implicitly support this understanding because such issues attracted significant convergence among participants as they clearly relate to the protection of environment (possible obligations from 4 to 12). At the same time, issues having economic or even political nature (possible obligations from 1 to 3) relating to fossil fuels, decarbonization, and oppression of virgin plastic production proved highly controversial.
without any signs of convergence among participants.

Overall, it seems that the current agenda of these environmental negotiations has been turned upside down. In view of the Russian delegation, that situation should be rectified as soon as possible, and further negotiations on plastic pollution should be brought back on track of environmental mandate of the UNEP and INC.

2. Principles

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

Proposed principles:

1. The basic principles for implementation of the future instrument should be defined by its overarching objectives. The document with potential elements for negotiation (UNEP/PP/INC.2/4 of 13 April 2023) contains two viable options under subparagraphs 9(a) and 9(b). While being flexible in terms of choosing between them, the Russian delegation favors option 9(b) as a more realistic approach (“Protect human health and the environment from the adverse effects of plastic pollution throughout the life cycle.”).

2. Given the emphasis of paragraph 9(b) on human health and environment, as well as adverse effects of plastic pollution, the following basic principles, as informed by the mandate (UNEP/EA.5/Res.14 of 7 March 2022), should be applied:

   − right of the Parties to choose policy mixes to combat plastic pollution, taking into account national socioeconomic, health, climate, and environmental circumstances,

   − freedom of trade and technology transfer in the areas related to circular economy, including waste collection, processing, recycling, and reuse of end-use plastic products,

   − scientific validity of all proposed regulating measures and of the assessment of their implementation by the Parties,

   − promotion of research in the areas of circular economy and creation of new materials,

   − credibility of scientific research,

   − equal treatment of plastic vis-à-vis all other materials in terms of their impact on human health, environment, and climate,

   − special emphasis on removal of existing (legacy) plastic pollution,

   − the polluter pays principle and its special derivative – the principle of extended producer responsibility,

   − the waste hierarchy principle establishing relative preference of measures on plastic waste management. For example, the secondary use is preferable to recycling, which in its turn is preferable to waste disposal at a landfill,

   − inadmissibility of measures that would hinder the achievement of common goals to combat
climate change, preserve biodiversity, ensure food security, etc. or would make it impossible.

- the principle of intergenerational responsibility (fair distribution between different generations of the burden of taking measures to solve the problem of plastic pollution),

- recognition of existing multilateral instruments, including international treaties and international initiatives covering various aspects of combating plastic pollution, and the need for complementarity between these documents and initiatives and avoidance of duplication of efforts.

- recognition of the vital role of plastic products in national and global economies,

- recognition of the importance of the informal sector,

- recognition of the synergy between the economy, society and the environment in the pursuit of sustainable development (to be placed in the preamble),

- national jurisdiction over the implementation of provisions of the instrument and the respective assessment thereof, provided that in any case a Party's domestic law and its application should grant a non-discriminatory treatment to any other Party as well as any entity or person belonging to its jurisdiction.

Explanatory Text:

The recent Global Plastics Outlook (OECD, 2022) considers the prospects of definitive “end of plastic pollution” across the globe as quite bleak. Currently, due to numerous socioeconomic factors, there is a huge gap between the actual and desired state of national policies even in the “basic” area of waste management and elimination of illegal, unreported, and unregulated dumping. However, these elements are fundamental for any policy mix aimed at ending plastic pollution, and they should become the backbone of the future instrument attracting the majority of attention of negotiators.

Free technology transfer and undisrupted financial flows are particularly important for the effective implementation of any future commitments, especially against the background of economic and technological unilateral discriminatory measures applied by certain participants in these negotiations. The application of such measures and silence of the future instrument in this respect may undermine the overall goal of these negotiations, which is to combat plastic pollution.

When it comes to specific principles, the Russian delegation considers the importance of exercising full national jurisdiction in the area of implementing the provisions of the instrument and carrying out the assessment of such implementation. As a matter of law, the responsibility to solve the issue of plastic pollution should lie with the Parties signing the instrument within their own jurisdictions, and not with individual experts, groups, or officials acting from abroad. However, such individuals or groups may provide information support or advisory assistance relevant for the implementation of the instrument. In this context, the Secretariat should play a supportive impartial role for the Parties and should not be vested with any powers or responsibilities characteristic for them.

The Russian delegation is of the view that scientific evidence based on a multifaceted viewpoint from different fields of knowledge, including polymer science must be in the core of these negotiations, and substantial commitments (including those relating to time bounds, if any) as well as their
implementation should be framed on the basis of scientific data. For example, only end-use products with proved hazardous effects on human health or environment may be limited in production and/or use, while plastic types that are neutral for health or environment should be out of the scope of any prohibitive disciplines. Other examples relate to bold, controversial, and unsubstantiated statements, such as “the production of polymers is the cause of plastic pollution”, which stigmatize this negotiating process because the validity of such statements is similar to the validity of such a broad statement as “the existence of human beings is the cause of plastic pollution”. In the absence of due scientific approach in assessing causality, the scope of the future instrument would expand eternally. Therefore, participants must exercise due restraint to avoid unfounded over-expansion of the negotiating agenda given that the root causes of plastic pollution are mismanagement of waste and current inability of the economy to ensure circularity of plastic products.

Finally, existing plastic pollution is a pressing issue. The future instrument should also be “backward looking” in terms of coping with legacy waste. Perhaps, participants will have to discuss some financial arrangements to cope with “tragedy of the polluted commons”.

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:

1. Any trade-related measures, if included in the future instrument, must be in full compliance with and should not contradict the rules of the WTO. In order to ensure that, the future instrument should include a language along the following lines:

   “This Instrument applies insofar as its rules do not contradict the provisions of the Marrakesh Agreement Establishing the World Trade Organization, including all its annexes, and any measures established by the Parties for the implementation of this instrument shall be in full conformity with that Agreement and its annexes.”

2. Any governing body, if created, shall be composed of representatives of all Parties.

3. Any decisions within the framework of the future instrument shall be made by consensus. Each Party shall have one vote.

4. The role of the Secretariat in the implementation of commitments and assessment thereof should be limited to organizational work and facilitation of interaction between Parties of the future instrument.

5. Any transparency and reporting provisions should be directly linked to substantial obligations of the Parties and serve to their effective implementation within the scope of the future instrument. Any requirements to submit information on top of the amount, which is strictly necessary to fulfill the afore-mentioned purpose, should be formulated as “best endeavor” clauses and be voluntary for all the Parties irrespective of their level of development.
Explanatory Text:

These proposals are based on the scope, principles, and related explanations provided in replies to questions 1 and 2 of the present template (part a). In particular, proposals from 2 to 4 have been discussed in the reply to question 2.

Regarding proposal 1, the Russian delegation submits that the principles of the multilateral trading system, as enshrined in the WTO, must be upheld in their entirety. It will allow numerous industries along the plastic value chain to keep functioning, ensure economic development and increase the standards of living. It should be noted that special provisions allowing certain exceptions from the basic WTO rules are included in the General Agreement on Tariffs and Trade and other WTO Agreements. However, unsubstantiated discrimination of certain products and/or suppliers as reflected in the document UNEP/PP/INC.2/4 of 13 April 2023, would contradict strict rules governing such exceptions. Therefore, establishing primacy of the WTO law is a warranted element for inclusion in the future instrument.

With respect to proposal 5, the Russian delegation is of the view that the majority of reporting elements in paragraph 28 of the document UNEP/PP/INC.2/INF/4 have no relevance to either the scope or substantial obligations of the future instrument. At the current stage of negotiations, any discussion of transparency provisions is premature as their content must be defined by the main disciplines, and the Parties may submit any additional elements based on the “best endeavor” principle.