Call for written submissions – Proposed responses on the potential options for elements towards an international legally binding instrument by the Center for International Environmental Law (CIEL)

Name of country (for Members of the committee)	N/A
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This submission is not intended to be exhaustive. Given the limited time to prepare this submission and the many other submissions focusing on outlining control measures for the Midstream and Downstream sections, this initial submission will focus on Upstream control measures.

CIEL intends to provide further insights to inform other potential elements of the future treaty, including core provisions applicable to Midstream and Downstream level at a later stage.

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I. Substantive elements

1. Objective(s)

a) What objective(s) could be set out in the instrument?

Proposed Objective:

To protect human health and the environment from all impacts, hazards and risks associated with plastics, including microplastics, throughout their full lifecycle, based on the precautionary principle and following a rights-based approach.[1]

Explanatory text:

The objective should reflect a holistic approach to the problem of plastic pollution in order to meet the objective set in the UNEA resolution 5/14. Other Multilateral Environmental Agreements (MEA) have included the environmental and human health dimension of an issue within their overall objectives as well as the precautionary principle. The reference to a rights-based approach reflects the evolution of international law in this respect since the adoption of the last MEAs, including the recognition by the United Nations General Assembly of the human right to a clean, healthy, and sustainable environment.[2] The overall objective given by the UNEA mandate is broad and ambitious ("to end plastic pollution"). Given the ubiquity of plastic in our society, and the interconnection with the other two planetary crises of climate change and biodiversity collapse, reaching this objective will require major societal evolutions. It is critical to ensure that the transition is fair and just for all populations involved and does not compound the other two crises. A rights-based approach is absolutely needed to ensure a holistic consideration of these aspects in the future implementation of the treaty towards the end of plastic pollution.

2. Core obligations, control measures and voluntary approaches

a) What core obligations, control measures, and voluntary approaches would provide a comprehensive approach to addressing plastic pollution, including in the marine environment, throughout the full life cycle in line with the future objective(s) of the instrument?

Introduction

Specific control measures and core obligations will need to be reflected in articles/chapters of the treaty. INC negotiators are tasked with an ambitious work plan that will require clear focus and organization of work. In that respect, negotiations should focus on globally mandatory

[1] See BRS Secretariat. 2023. "Global Governance of Plastics and Associated Chemicals."
[2] United Nations General Assembly. 2022. "A/RES/76/300: The human right to a clean, healthy and sustainable environment".

provisions establishing control measures, including identifying those that will have to be adapted to national circumstances and capabilities.

Voluntary provisions should be left for consideration at a later stage of the process through decisions by the governing body.

Should negotiators decide to include the development of voluntary provisions in the context of the INC negotiations, these should be designed to become mandatory after a predetermined amount of time, or once they reach a threshold decided by the governing body, or [x] years after the entry into force of the treaty.

The structure of the treaty should contain provisions and annexes covering all stages of the full lifecycle of plastics and incorporate obligations and control measures in each of the stages.

Table 3: Value chain phases and users across the life cycle of plastics

Life cycle phase	Value chain phase	Users
Sourcing/ extraction phase	**1. Extraction of raw materials** **A) Organic raw materials (hydrocarbons):** • Fossil raw materials from oil drilling, fracking and mining: crude oil, natural gas and coal • Bio-based raw material: land-based crops, aquatic algae or seaweed, waste and residue oils, etc. **B) Inorganic raw materials** • Many chemicals used in plastics are prepared from inorganic compounds, including fillers (mica, talc, calcium carbonate, etc.), reinforcements (glass fibers, etc.), and pigments	**Oil & gas industry** (fossil fuels are extracted from wellheads or drill pads, then transported by pipeline or rail to refineries and processing plants) **Bio-based raw materials producers** **Mining and smelting industry** (inorganic materials)
Chemical phase	**2. Production** **Step 1: Building block production** • Refining crude oil, natural gas and coal (or bio-based raw materials) through a "cracking"/ "gasification" process and subsequent reactions to produce initial building blocks (e.g., ethylene, styrene, vinyl chloride, etc.)	**Refiners:** • Petrochemical refineries • Biorefineries
	Step 2: Chemical processing **A) Polymer production** • Includes <200,000 polymers **B) Production of commodity and speciality chemicals** • Includes up to 13,000 additives, monomers, processing aids used for plastics, as well as NIAS	**Polymer and chemical producers:** • Chemical manufacturers (including polymer manufacturers)

Material phase	**3. Manufacturing** **Step 1: Manufacturing of materials (e.g., compounding)** • Consists of preparing plastic formulations by mixing and/or blending polymers and additives to achieve the desired characteristics	**Compounders / masterbatchers:** ● Companies specialized in this field ● Polymer producers and manufacturers also undertake this work
	Step 2: Manufacturing of intermediates and final products • Intermediate molding, spinning, drawing and cutting • Manufacturing and remanufacturing of final products	**Product producers / brand owners:**
	4. Consumption • Use and reuse	**Retailers, transporters, and consumers**
Dematerialization phase	**5. Waste management** • Collection • Sorting	**Waste management companies**
	6. Remediation	**Local councils, NGOs, CBOs, fishermen**
	7. Final treatment	**Waste treatment facilities**

Table © BRS Secretariat. 2023. "Global Governance of Plastics and Associated Chemicals."

Provisions providing control measures in the treaty should be structured along chapters covering each of the stages of the life cycle.

Furthermore, each of these sections of the instrument providing control measures for each stage of the life cycle should address the following cross cutting issues:

- Emissions and releases into the physical environment (atmospheric, terrestrial, aquatic, cryospheric) and biota
- Climate and biodiversity impacts
- Health aspects
- Human and labor rights

Given the limited time to prepare this submission and the many other submissions focusing on outlining control measures for the Midstream and Downstream sections, this initial submission will focus on upstream control measures.

Definition of terms

Throughout this document the use of terms such as Upstream, Midstream and Downstream as well as Plastic Feedstocks, Plastic Precursors and Plastic Material will be used in reference to the following stages of he value chain as described in the above table: Value chain phases and users across the life cycle of plastics;

- **Upstream**: Sourcing/extraction phase, chemical phase and step 1 of the material phase.
- **Midstream**: Step 2 of the chemical phase.
- **Downstream**: Dematerialization phase.
- **Plastic feedstocks**: Materials produced and used in the Sourcing extraction phase (e.g.: Organic and inorganic raw materials).
- **Plastic Precursors**: Materials produced in the chemical phase (e.g.: Building blocks such as ethylene and propylene, Polymers and commodity and special chemicals)
- **Plastic Material**: Materials produced and used during Step 1 of the material phase (e.g.: Blended polymers and additives, intermediates).
- **Plastic products**: Products used during step 2 of the material phase (e.g.: Plastic packaging, woven and non-woven textiles, etc…).
- **Plastic Waste**: All of the above moving through the dematerialization phase.

Core Obligations and Control Measures

PART I - UPSTREAM

- **Control measure to reduce and phase out the Production and Consumption of most problematic Plastic Precursors and Materials:**

The INC should develop a list of criteria to identify the most problematic Plastic Precursors and Materials on the basis of their health, environmental and environmental justice impacts throughout their life cycle.

A separate set of criteria should be developed for those destined for production, consumption and use phase out (Annex [A]) and those destined for production, consumption and use reduction (Annex [B]).

All Parties shall be required to adopt and implement legal and administrative measures into national legislation to significantly reduce the production of Plastic Precursors and Materials according to legally binding global and national targets established in the Treaty.

- Parties shall adopt binding measures at the national level to prevent the amount of Plastics Precursors and Materials listed in Annexes [A] and [B] produced, consumed and used in [year] from exceeding [%] of production, consumption and use in [baseline year].

- The governing body shall be empowered to adopt decisions to amend Annex [A] to phase out production, consumption, import/export and use of listed Plastics Precursors and Materials, and specify any general exemptions, if relevant.

- The governing body shall be empowered to adopt decisions to amend Annex [B] to limit production, consumption, import/export and use of listed Plastics Precursors and Materials, for example a freeze or phase-down to sustainable levels, and specify any general exemptions, if relevant.

- A Party may request a specific exemption from limits/phaseout requirements for intentional production, consumption, import/export and use of Plastics Materials, to Annex [A] or [B], for a specific period of time. These exemptions should only be available for essential uses and for Plastic Materials for which alternatives do not exist yet or are not readily available.

- All Parties should be allowed under the treaty adopt national restrictions of certain types of plastic feedstocks, plastics, or plastics products that are not banned by the treaty.

- All Parties shall adopt legal and administrative measures to minimize toxic air, water and soil releases and emissions from the production, consumption and and use of Plastics Precursors and Materials.

Explanatory text

According to Eunomia's most recent study: *"Even given all these uncertainties, the modeling suggests that plastic consumption will need to be reduced to limit cumulative emissions even if concerted action takes place. The scenarios in this study suggest that to come close to the (carbon) budget, rather than growing by 4% annually, the demand for plastics would need to reduce by 3% each year whereby the annual consumption would be halved by 2050 which would result in a per capita consumption reduction of around 75%*".[3]

While all Plastic Precursors and Materials have impacts on health, environment and environmental justice, they are not all equal when it comes to their specific impacts. The treaty should allow for a prioritization of the most problematic plastics to ensure their priority elimination and reduction in order to minimize impacts of plastics throughout their life cycle.

[3] See Eunomia. 2022. "Is Net Zero Enough for the Materials Production Sector?" (p.24).

Allowing stricter measures to be adopted by Parties would strengthen the implementation of the Treaty and allow for the consideration of specific national and/or regional circumstances.

- **Phase-out of Petrochemical Subsidies for Plastic Feedstocks and Precursors:**

  All Parties shall be required to adopt and implement legal and administrative measures into national legislation to eliminate subsidies for fossil fuel production and use, where those fossil fuels are used or destined for:

  - Production of Plastic Precursors from fossil-derived hydrocarbons feedstocks;
  - Fossil fuel used to power facilities for Plastic Feedstocks, Precursors, Materials and Products;
  - Petrochemical facilities that produce plastics Feedstocks and Precursors;
  - Facilities producing Plastics Precursors, Materials and Products;
  - Plastic Materials and Products;
  - Export credits and/or guarantees for Plastics Precursors, Materials and Products production facilities, including outside the Party's jurisdiction.[4]

Explanatory text

The Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes (A/76/207)[5], as well as data from the IMF fossil fuel data base[6] make it very clear that fossil fuel subsidies have sizable fiscal costs (leading to higher taxes/borrowing or lower spending), promote inefficient allocation of an economy's resources, encourage pollution and human rights violations. As such, subsidies and export credit and guarantees for plastics production facilities and plastic-to-energy projects strongly contribute to compounding the plastic pollutants crisis and will require being phased out to reach the overall objective of the treaty, as laid out by the UNEA mandate.

[4] See UN Stats. 2021. "SDG Target 12.c Indicator Metadata"; & United Nations Environment Programme, "Preparation of an international legally binding instrument on plastic pollution, including in the marine environment" (Plastics Science); .
[5] UN Special Rapporteur on Toxics and Human Rights. 2021. "Implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes" (par. 110.j, 2021)
[6] International Monetary Fund. 2022. "Fossil Fuel Subsidies." IMF https://www.imf.org/en/Topics/climate-change/energy-subsidies

- **Reduction of Production, Consumption and Use of fossil-based Plastics Feedstocks, Precursors and materials:**

    - All Parties shall be required to adopt legal and administrative measures into national legislation to ensure the progressive elimination of reliance on fossil fuel for the production of Plastic Feedstocks and Precursors.

    - All Parties shall be required to adopt legal and administrative measures into national legislation to implement a moratorium on permitting of new petrochemical facilities or expansion of existing petrochemical facilities producing plastic precursors.

    - All Parties shall be required to adopt legal and administrative measures into national legislation to implement a moratorium on the authorization of new facilities producing plastics materials relying on fossil feedstocks and the expansion of existing ones.

Explanatory text

As indicated in the introduction and demonstrated by extensive research, fossil fuel based plastic production compounds the triple planetary crisis of climate change, biodiversity collapse and pollution. Furthermore, petrochemical facilities, in particular those dedicated to plastic production, have been demonstrated to have severe impacts on all three planetary crises as well on human rights of fenceline communities. Furthermore, according to the International Energy Agency (IEA), no new oil and gas sources should be exploited to adhere to the 1.5-degree warming objective set at the Paris climate conference.[7]

Compounding this argument, the UN Committee on the Elimination of Racial Discrimination recommended in 2022 to the US to establish a moratorium on "on the authorization of new heavy industry facilities and the expansion of existing ones, such as petrochemical plants."[8]

The overall objective of the Plastic treaty to protect human health and the environment from all impacts, hazards and risks associated with plastics through their full lifecycle, therefore requires the phase down and ultimately phase out the use of virgin fossil use in plastic production.

- **Specific provisions related to microplastics:**

The treaty should include specific provisions relating to microplastics as these represent a unique challenge. The treaty should include measures to:

[7] See International Energy Agency. 2021. "Net Zero by 2050 A Roadmap for the Global Energy Sector".
[8] See United Nations Committee on the Elimination of Racial Discrimination. 2022. "Concluding observations on the combined tenth to twelfth reports of the United States of America".

- **Phase-out of intentionally added microplastics:** All Parties shall prohibit the manufacture, import or export of microplastics designed for intentional addition to Plastic Products after [the phase-out date specified].

- **Minimize Intentional release of microplastics:** All Parties shall adopt measures to minimize and gradually end the intentional release of microplastics, including to the soil (i.e. fertilizers and pesticides, and oil and gas offshore exploitation chemicals with microplastics) and to the air.

Explanatory text

Microplastics represent a unique challenge because of their impossibility to clean up and their biological availability. For more information on microplastics, please refer to NIVA submission.

- **Compliance of Plastics Feedstocks, Precursors and Materials Production with Human Rights and Environmental Justice Standards and protection of Environmental Justice:**

From the effective date of the Treaty each Party shall ensure, through national legal and administrative means, that the production of Plastic Feedstocks, Precursor, Materials and Products minimizes impacts on the environment, human health, and human rights, particularly in frontline and fenceline communities, including through compliance with:

- Strict human rights and environmental impact assessments and management/control measures that eliminate or minimize the environmental and health impacts of extraction, processing and production of plastics Feedstocks, Precursors, Materials and products and associated infrastructure[9], in accordance with criteria to be developed by the governing body of the instrument at its [first][second] meeting and included in a dedicated annex of the instrument.

- Criteria ensuring the use of biobased feedstock and alternatives with no negative impacts on biodiversity, ecosystems, land and water use and human rights of fenceline communities, and generating the fewest possible greenhouse gas emissions, including by taking measures to prevent the conversion of environments with high carbon stocks or land used for the production of agricultural feedstock into bio-based plastic feedstock production. Such criteria should be developed by the governing body of the instrument at

[9] Booker, C., & Merkeley. J. 2022. "Protecting Communities from Plastic Act" (draft bill).

its [first][second] meeting and included in a dedicated annex of the instrument.[10, 11, 12]

- To that effect each party shall be required to adopt legal and administrative measures into national legislation to ensure that any facility covered under this instrument be subject to a human rights and environmental assessment and due diligence plan with particular attention to groups in vulnerable situations.[13] The governing body shall, at its [first][second] meeting, adopt clear guidance on the human rights and environmental assessment and due diligence plan.

Explanatory text:

The Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes (A/76/207)[14] as well as extensive research and interventions by several stakeholders groups and impacted communities during INC-1 established clear human rights violations and environmental justice impacts on a variety of communities, in particular fenceline communities of facilities producing or managing plastic at every stage of the life cycle. In that regard, the UN Committee on the Elimination of Racial Discrimination recommended in 2022 to the US to establish a moratorium on "on the authorization of new heavy industry facilities and the expansion of existing ones, such as petrochemical plants."[15]

Ensuring a fair and just transition and guaranteeing that reaching the treaty's objective does not result in further impacts on communities should be built into the treaty and will require special attention and provisions.

- **Production, Collection, and Reporting of Data on Plastics Feedstocks, Precursors and Materials:**

Each Party shall be required to produce, compile, and notify other parties, through the treaty secretariat, on an annual basis of data and statistics on:

[10] See European Union Commission. 2022. "EU policy framework on biobased, biodegradable and compostable plastics" (3.2 Feedstock sustainability).
[11] See Rognerud, I., et al. 2021. "International, Sustainability Criteria for Plastic Products in a Global Agreement on Plastic Pollution" (p.44, 2021).
[12] See United Nations Environment Programme, "Preparation of an international legally binding instrument on plastic pollution, including in the marine environment" (Plastics Science - Appendix VI on "Minimum sustainability standards for bio-based feedstock for plastics (e.g., no competition with food, zero deforestation, no sourcing from organic soils)).
[13] Booker, C., & Merkeley. J. 2022. "Protecting Communities from Plastic Act" (draft bill, p.33).
[14] UN Special Rapporteur on Toxics and Human Rights. 2021. "Implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes" (par. 110.j, 2021)
[15] See United Nations Committee on the Elimination of Racial Discrimination. 2022. "Concluding observations on the combined tenth to twelfth reports of the United States of America".

- The location of plastics Feedstocks and Precursors production,
- The domestic volume of consumption (as defined in the Montreal Protocol as production plus imports minus exports) of plastics Feedstocks and Precursors,
- Import/export, destination and use of plastics Feedstock and Precursors in polymer production,
- Production, consumption and use of listed plastics materials in Annex [A] and [B],
- Production, consumption, type, and intended uses and applications of all Plastic Precursors and Materials
- The energy and water used to produce Plastics Feedstocks, Precursors and Materials.[16]

The secretariat should develop a dedicated database to compile and collate this information and ensure full transparency and accessibility for all stakeholders. This process should also include a requirement to cross-check with other relevant databases and actors to ensure the reliability of the information collected as well as to avoid duplication of efforts.

Explanatory text:

The implementation of the future treaty will largely depend on accurate data to both ensure implementation and monitoring progress to allow effective decisions by the governing body of the instrument and stakeholders engaged in its implementation. This is particularly true for the Upstream focused measures (but should be complemented with equivalent provisions for Midstream and Downstream measures).

- **Non-Party provisions on the trade of Plastic Feedstocks, Precursors and Materials**

The INC should develop non-Party provisions preventing the trade of Plastic Feedstocks, Precursors and Materials.

Explanatory text

To avoid the possibility to circumvent treaty obligations through imports or export with non-Parties, the same types of trade restrictions should be applied between Parties and

[16] See Eurostat. 2022. "EU Energy Balanced Lists and Statistical Classification of Economic Activities in the European Community - classification 19, 20 and 22, 2022"; & Center for International Environmental Law & Breaking Free From Plastics. 2022. "Winter is Coming, Plastic Has To Go".

non-Parties. This type of measure also offers a major incentive for non-signatory States to sign the agreement. They are a common feature of a variety of MEAs, including the Montreal Protocol, the Basel Convention, the Stockholm Convention or Convention on Biological Diversity. Existing measures can serve as models to develop such provisions under the future plastic treaty.

- **Financing mechanism, taxes, charges and fees**:
    - The treaty should include a coordinated fee mechanism to be levied on Plastic Precursor and Material production (and/or on certain Plastic Products). The proceeds of such fee would abound to the "Plastic Pollution Trust Fund", in order to provide financial assistance for the implementation of the treaty.[17]
    - The "Plastic Pollution Trust Fund" will be part of the financial mechanism established to support the implementation of the treaty[18].

Explanatory Text:

The implementation of the plastic treaty will require the mobilization of significant financial resources to support Parties and stakeholders. Existing limitations on the mobilization of funds for the implementation of MEAs are well known and extensively documented (see for example the severe underfunding of the MEAs making up the chemical and waste cluster). Furthermore, existing fund mobilization strategies from external donors have proven to be insufficient. Such a coordinated fee would be aligned with the implementation of the Polluter Pays Principle and would guarantee the mobilization of sufficient funds for the implementation of the Treaty. A globally coordinated fee would further present the following advantages: being unique in its capacity to raise sufficient, sustainable revenues; eliminating national piecemeal approach with the risks of creating unfair competition' and eliminating the burden of establishing national cost recovery mechanisms. Furthermore, levying product taxes on a per-unit basis is common in all countries.

There are many variables for designing the specific modalities of such a fee but should take into consideration the following:

- A fee would be easier to collect upstream, because the plastics supply chain has relatively high upstream concentration (relatively few polymer producers/countries) with increasing fragmentation downstream. A fee could be part of an EPR scheme.

[17] ADD: UN Habitat Report: Leaving no one behind: How a global instrument to end plastic pollution can enable a just transition for the people informally collecting and recovering waste, 2022 p. 45
[18] Please refer to EIA submission for more details.

- A fee could be ad valorem or a specific amount per tonne of production; the fee could vary across class and types of plastics materials to create incentives for circular plastics (e.g., a lower fee for more recyclable polymers/plastics).

- A uniform fee would ensure a level competitive playing field; however, a treaty (or annex) could set a minimum fee, leaving countries discretion to vary the fee upwards; the treaty could include border measures to address imports from non-parties.

The producing country could retain a portion (e.g., 10-25%) as an "administration" fee, to cover collection costs and incentivize participation. The retained portion would ensure that the fee generates considerable revenues for a producer country. The remainder could be distributed to pay for full treaty implementation, in particular to pay for environmental sound management of past, present and future waste.

It should be noted that this idea has already been explored or mentioned by several stakeholders

- The OECD proposes a tax on virgin plastic as a key policy element to reduce consumption (reaching USD 750/tonne by 2030; then doubling to 1500/tonne by 2060).[19] Based on 2019 data, a USD 750/tonne tax would raise around USD 345 billion/year.[20]
- UN Habitat proposes a fee to contribute to ending plastic pollution as part of a "globally coordinated" Extended Producer Responsibility ("EPR") scheme.[21]
- UNEP identifies a plastic tax among its policy options, with reference to the OECD proposal.[22]
- Under the Strategic Approach to International Chemicals Management ("SAICM"), the Africa Group has proposed a fee on chemicals to address pollution; this proposal was discussed at the SAICM intersessional meeting in August/September 2022.[23]
- Germany recently announced that it will impose a pollution fee on producers of certain plastics.[24]

[19] OECD, "Policy Scenarios to 2060" (June 2022). The OECD also proposes a tax on packaging that is one third higher.
[20] A USD 750/tonne tax on 460 million tonnes of plastic per year (based on 2019 global plastic production) would result in around USD 345 billion per year. This ballpark estimate does not take into account the fact that plastic production is expected to increase well beyond 2019 levels (increasing revenue) or that the tax will reduce demand (reducing revenue).
[21] UN Habitat, "Leaving no one behind – How a global instrument to end plastic pollution can enable a just transition for the people informally collecting and recovering waste" (2022).
[22] UNEP, "Plastic Science" (UNEP/PP/INC.1/7, 13 September 2022).
[23] See "Africa Group on Financing the Sound Management of Chemicals and Wastes beyond 2020" (13 November 2020); see also Notes by the Secretariat, "Study on industry involvement in the integrated approach to financing the sound management of chemicals and waste" (SAICM/IP.4/INF/22, 28 July 2022); and "Compilation of recommendations regarding the Strategic Approach and the sound management of chemicals and waste beyond 2020, for consideration by the fifth session of the International Conference on Chemicals Management" (SAICM/IP.4/Rev.1, 15 July 2022).
[24] Under the German proposal, from 2025, producers of certain single-use plastics will contribute to a national fund managed by the government to pay for the clean-up of the plastics. It is estimated that the fee will raise 450 million USD in its first year.