Call for written submissions – Proposed response template on the potential options for elements towards an international legally binding instrument

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I. Substantive elements

1. Objective(s)

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

Proposed core objectives:

i. Ending plastic pollution in all environments.

ii. Tackling the plastic crisis at source including radically reducing plastic production.

iii. Strict application of the precautionary principle where priority is given to biodiversity, environmental and human health, and climate change mitigation.

Rationale:

On i: Given the sheer scale and scope of the global plastic crisis, the ultimate objective must be to end plastic pollution in all environments. In the short term, the focus must be on tackling the crisis at source, i.e., fossil fuel extraction and the radical reduction of the production of plastics through strong caps including sector-specific caps for non-essential plastics.

On ii: The application of the precautionary principle is critical and will place an obligation on countries to act with foresight and with the intention of preventing danger to the environment and human health from arising in the first place. In the absence of complete and certain knowledge on the impacts of a certain plastic-related activity (e.g., the admissibility of a new type of plastic materials or products) the health of the environment and human health should remain the highest priority. Where there is a potential threat to the environment and/or human health, which can cause irreversible damage, the
lack of scientific certainty should be used to postpone measure to protect the environment and human health. While the body of knowledge and scientific evidence on plastics and its impacts is ever growing, there is enough scientific evidence to act so policy action should not wait on more science. Moreover, the burden of proof of product, material and chemical safety needs to be shifted to the plastic and chemical producers.

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?

Core obligations and control measures:

To ensure that the Instrument takes a comprehensive and full lifecycle approach to the plastic crisis, several core obligations and control measures are necessary for each stage of the lifecycle.

Raw materials: First stage in the plastic production process (Pre-Production)

Each Party should address the sustainable sourcing of raw materials. In this respect, Parties should:
- Adopt legal and administrative measures in their national legislation to end fossil fuels (which are a prime raw material for plastic production; More than 90% of plastics are produced from fossil feedstocks and 99% from fossil sources).
- Decide steps to phase out the use of raw materials (e.g., fossil fuels) that are at the core of plastic production, including cooperating with other relevant fora (e.g., The United Nations Framework Convention on Climate Change – UNFCCC).
- With regard to the sourcing of other raw materials intended to produce plastic alternatives, clear obligations and measures must be included in the treaty text to ensure that regrettable substitutes are avoided.

Production, consumption and use (Upstream)

The proposed objective of the Instrument is to drastically reduce the production and consumption globally. For this, Parties to the Agreement must:
- Adopt precise provisions on the elimination and limit of plastic production (i.e., through the introduction of a plastics tax and strong caps including sector-specific caps for non-essential plastics) as well as limiting the use and consumption.
- The Instrument should furthermore include a mandate for the Conference of the Parties (CoP) to periodically amend decisions towards the elimination of plastic production and consumption.
- Immediate ban on single-use plastic as well as highly problematic and hazardous polymers and chemicals (e.g., polystyrene (PS), polycarbonate (PC), polyvinyl chloride (PVC), polyurethane (PUR), polyfluorinated alkyl substances (PFAS)), as well as plastic materials that shed the most microplastics.
- Report on its national production, consumption and use of virgin plastics.
- The setting of a legally binding reuse and refill targets across all sectors with a clear timeline for the transition.

Safe product design and use (Midstream)
The treaty text should include obligations and control measures on safe plastic product design, use and reuse. The Conference of Parties should establish:
- Safe and eco-friendly criteria for plastic products with a focus on durability, minimum recycled content, reusability, repairability, recyclability, toxicity and safety, i.e., materials and products that are free of hazardous polymers and additives.
- Apart from safety criteria for plastic products, also define sectoral-specific criteria, e.g., for fisheries, agriculture, packaging, textiles, electronics, automotive, medical, construction; and microplastics in cosmetics and personal care products.
- Transparency must be improved through clear labelling requirements.

**Environmentally Sound Management (ESM) of Plastic Waste (downstream)**

Generally, we must be cautious about greening “business as usual,” proposing false solutions to complex problems, or neglecting the role of rigorous independent science in the validation of innovative technology which should aim to provide solutions that are environmentally and socially appropriate. Also, investments in ‘sustainable’ technological innovation should be encouraged to focus ways of tackling the root causes.

ESM guidelines must be protective of environmental and human health and rights, protect against biodiversity loss and climate change. Focus should lie on resource efficiency and zero-waste hierarchy with investments prioritising prevention, reuse and refill systems.

The treaty text should include obligations and control measures on:
- Binding targets for parties for waste management, including clear, time-bound targets on prevention, collection and recycling, restrictions on landfilling, incineration, waste-to-energy and chemical recycling.

**Plastic in the environment, leakage and remediation (leakage)**

The treaty text should include obligations and control measures to end plastic pollution in all environments, including but not limited to the marine environment.

With regard to the marine environment:
- Parties should fully implement existing instruments such as IMO’s MARPOL Annex V and the London Protocol to deal with waste generated by ships and the Voluntary Guidelines for the Marking of Fishing Gear developed by FAO.
- The Conference of Parties should adopt guidelines for the removal of marine plastic pollution by Parties where it poses a threat, utilising Best Available Techniques (BAT) and Best Environmental Practices (BEP) to avoid removal of biomass or exacerbate harm to the environment.
- As marine plastic pollution is a form of transboundary pollution, in Areas Beyond National Jurisdiction (ABNJ), the CoP should define criteria for robust and independent Environmental Impact Assessments and make them mandatory prior to remedial activities. Environmental Impact assessments (EIAs) are an essential conservation tool that helps evaluate the likely environmental impacts of proposed activity at an early stage to protect both human health and the natural environment.
- Each Party should be required to take responsibility to remediate plastic pollution in the environment within their jurisdiction in an environmentally sound manner.
Follow-up and implementation:

For the Instrument to reach its objectives, there must be meaningful efforts to review the status of implementation. The Instrument should include:

- A clear mandate for the administrating body (UNEP) to include in its ongoing program of work measures the periodic assessment of progress on the implementation of the instrument as well as the effectiveness of the provisions of the Agreement.
- The Agreement must, already at inception, decide on the institutional basis (i.e., CoP, scientific bodies, compliance and control mechanism) that ensures the proper implementation of the Agreement. These bodies should be flexible enough to allow for the timely response to emerging developments.

Additionally, the Agreement should include obligations that:

- Facilitate arrangements for capacity-building and technical assistance, the transfer of technology and financial assistance (see more below ‘means of implementation’) to ensure that all countries have sufficient resources to implement the objectives of the Agreement.
- There must be a concrete corporate accountability mechanisms for reducing and ending plastic pollution, including Extended Producer Responsibility (EPR) schemes and the application of the Polluter Pays Principle. This is an important step as it would oblige the private sector to move beyond voluntary commitments, including through the development and scaling up of robust reuse and refill systems. See section below on voluntary approaches.

Control measures need to include both reporting requirements as well as a meaningful compliance mechanism. See section on ‘implementation elements’ for further detail.

Voluntary approaches:

Voluntary approaches are not sufficient to improve the status quo. To date, two general observations on voluntary approaches (i.e., through voluntary commitments) can be made. First, companies have continuously failed to meet their own commitments and governments have not had the legal powers to enforce voluntary commitments. Second, the voluntary commitments entertained by the private sector are largely insufficient in tackling – and solving – the global plastic crisis. In effect, voluntary approaches have a poor track record and have had only little impact. The focus should be on legally binding and enforceable measures and countries are advised to avoid lengthy discussions on voluntary approaches that are difficult to implement, follow-up on and that create imbalances across jurisdictions.

II. Implementation elements

1. Implementation measures

a) How to ensure implementation of the instrument at the national level (e.g. role national action plans contribute to meeting the objectives and obligations of the instrument?)

b) How to ensure effectiveness of the instrument and have efficient national reporting?
c) Please provide any other relevant proposals or priorities here on implementation measures (for example for scientific and technical cooperation and coordination as well as compliance).

General elements

A. To ensure the implementation of the Agreement, the following general elements are critical:
   1. Standardised reporting (i.e., this may include an online interface) on national action plans. This is important to have a uniform reporting process, which also reduces the administrative burden on both the reporting entity and the entity tasked with assessing the report.
   2. A periodic (on-going review) of national action plans that allows for input from all relevant stakeholders.
   3. National-level mechanisms that addresses matters relating to non-compliance (i.e., an Ombudsperson and or national courts).

National reporting

B. Effective and efficient national reporting includes the following aspects:
   1. Appropriate capacity-building measures for countries to understand what expectations emerge from the Plastics Treaty.
   2. Sufficient financial and human resources to ensure proper reporting.
   3. Clear accountability, including one entity (e.g., Ministry, division, unit and or focal point) that is identified as responsible for the reporting effort. It is important to clearly identify who/what is responsible for national reporting.
   4. The administrative burden should not pose any undue burden on governments, which includes providing sufficient time for reporting cycles and a standardised reporting framework.

Compliance regime

C. The development of a strong compliance regime (i.e., especially the appropriate sub-bodies) must be a priority. Recent research (Hoffman et al., 2022) suggests that many international agreements have failed to produce their intended outcomes, although trade and finance treaties are in some respects an exception. Including enforcement measures in treaties has however greatly increased effectiveness. Therefore, the plastic treaty must provide the following elements:
   1. Two steps can be taken:
      - First: A non-confrontational dispute resolution process that allows for unclear aspects of the Agreement to be reviewed and interpreted.
      - Second: The Agreement should develop and establish an independent body to adjudicate cases of non-compliance in the case the dispute resolution process fails. This body will establish facts, identify if cases of non-compliance have occurred and take decisions moving forward (i.e., Recommendations for the Conference of the Parties to Consider). It is important that such a body is established by the Agreement so the Conference of Parties can swiftly address issues of non-implementation without further delay.
   2. The implementation regime must also adhere to principles of strict transparency, including the publication of non-compliance by parties the Agreement, as well as participation (i.e. non-state actors should be able to submit cases to the respective compliance bodies) and good faith.

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1 Countries could draw inspiration from the EU Marine Strategy Framework Directive (MSFD) reporting on the Programm of Measures (PoMs). The aim of the EU Marine Strategy Framework Directive 2008/56/EC, (MSFD), is to protect the marine environment across Europe. The process is not perfect but can nevertheless serve as an inspiration.
Also, the process outlined above should be accompanied by a time schedule to avoid long delays in addressing cases of non-compliance.

**Subsidiary bodies and review of the instrument**

**D.** The Conference of the Parties should establish any subsidiary bodies deemed necessary to implement and review the instrument including the following:

1. **Independent Scientific Body**
   - This body should provide policy-relevant best available scientific evidence and guidance from across the natural and social sciences and assessing potential solutions in a diversity of contexts against a harmonized set of quantitative and qualitative metrics.
   - Specifically, this body should assess the extent of plastic pollution in all environments, its impact on human health, human rights, biodiversity, environment and climate change.
   - This independent scientific subsidiary body should represent a diverse and multi-disciplinary range of robust, independent scientific evidence including qualitative and quantitative, social, natural, and life sciences, including traditional knowledge, knowledge of indigenous peoples, local knowledge systems and citizen sciences.
   - The body should also provide a broad gender and regional representation.

2. **Technical and Socio-Economic Assessment Body**
   - This body should regularly assess the technical and socio-economic information relevant to the control measures within the instrument, as well as other relevant assessments (e.g., potential substitutions) based on the precautionary principle and the Best Available Science and Technology (BAT) and Best Environmental Practice (BEP).

**2. Means of Implementation**

With respect to means of implementation, document UNEP/PP/INC.1/5 covers the following elements: capacity-building, technical assistance, technology transfer on mutually agreed terms and financial assistance.

a) **What measures will be required to support the implementation of the instrument?**

**Capacity-Building and Technical Assistance**

The instrument should state the terms in connection to capacity building and technology transfer to enable all parties to meet their obligations under the instrument. Parties should seek to cooperate with each other, as well as with Multilateral Environmental Agreements and regional networks and initiatives to increase the effectiveness of capacity-building and technical assistance and assist each other in the implementation for their obligations under the instrument.

**Financial mechanisms**

Ensuring the adequate financial backbone is critical for the implementation of the Agreement. The financial mechanism should provide long-term and predictable as well as timely assistance. The respective trust funds should include the following elements:

- Sufficient funds for the Agreement’s institutional basis
- Funds for capacity-building and knowledge transfer
- Dedicated funds to assist developing country Parties and those in transition for support.

**Additional Fund**

Parties may choose to establish a separate fund, under the authority of the Conference of Parties, to provide additional financial support to developing countries to assist in the implementation for their obligations under the instrument. Such additional fund could be funded from taxes, fees, EPR schemes and voluntary contributions from plastic producers and polluters.

## III. Additional input

Please provide any other relevant proposals or priorities here (for example introductory elements; awareness-raising, education and exchange of information; research; stakeholder engagement; institutional arrangements and final provisions).

**Entry into force:**

Entry into force provisions provide the set of conditions required to bring an agreement into force. This includes the number of States that need to join the Agreement through ratification, approval, acceptance, or accession.

While it is important that the plastic Treaty generates as much support as possible, there is no time to waste. To prevent further delay, there needs to be a lower barrier for entry into force will support an expedient entry into force of the Agreement. This involves limited the number of countries required to ratify the Agreement and a limit number of days for the final ratification to be deposited before the Agreement enters into force.

**Key principles of the Agreement:**

There are several key principles that should guide the work of the Agreement, which have to differing extents been adopted and applied in international environmental law. With this in mind, the Agreement should establish the polluter pays principle and the precautionary principle.

The polluter pays principle is based on the notion that the costs of all impacts on the environment and human health are recovered, including the extended producer responsibility.

The precautionary principle, as noted above, is critical in protecting both the environment and human health. The principle is *inter alia* based on shifting the burden of proof to the proponent of an activity, or in this case onto plastic producers. Moreover, the principle emphasizes the important of taking preventative action and pursuing alternatives that are less harmful. At the core of this principle is also the understanding that while more research and scientific studies are needed, enough information is available to avoid inaction.