

ENVIRONMENTAL INVESTIGATION AGENCY AND CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW

Sequencing of Work of the Intergovernmental Negotiating Committee

4th July 2022

In March 2022, the United Nations Environment Assembly (UNEA) adopted resolution 5/14 titled “End plastic pollution: Towards an international legally binding instrument.” Resolution 5/14 convenes an intergovernmental negotiating committee (INC) to develop the new global agreement on plastic pollution.

The mandate to the INC calls for addressing plastic pollution in all environments through a comprehensive approach addressing the full plastics lifecycle and sets out a series of provisions to be developed. The negotiators now have the task of organising and prioritising the topics for discussion during the upcoming five sessions of the INC. Based on previous INCs for Multilateral Environmental Agreements (MEAs), structuring the programme of work requires considering the availability of knowledge, the sensitivity or relative importance of various issues and the complexity and interrelationship of issues to be considered. When considering the approach to negotiations it will be important to understand which topics may need be visited multiple times during negotiations and those which can be addressed easily. Furthermore, some topics may require dedicated research or working groups to be established to progress the drafting of the relevant text intersessionally. When designing the programme of work, Parties must also consider the need to create distinct technical working groups for negotiations around specific areas and topics as a basis for developing instrument text. This will assist in ensuring that modes of clustering do not diminish the prominence of important exchanges on key areas (e.g. primary / virgin plastic production).

Op3(b) sets out the need for provisions on each of three main stages of plastic once it becomes a material (sustainable production and consumption, product design and environmentally sound waste management). The Environmental Investigation Agency (EIA) and Center for International Environmental Law (CIEL) strongly recommend a separate cluster for each life cycle stage considering the mandate to address the ‘full life cycle of plastics’ and the intrinsic difference in measures and obligations that will need to be developed at each stage. This approach also responds to and aligns with several interventions calling for clusters to encompass aspects of the full lifecycle of plastics, including both the upstream and downstream made by parties, during the Open-Ended Working Group (OEWG). This will allow technical working groups to develop tailored measures and approaches that will be required for each stage while not pre-empting the outcome of negotiations by preferencing one of these stages over the other. All three life cycle clusters should also consider the socio-economic consequences of systemic changes to the global plastics economy and consider how best to facilitate a ‘just transition’ to minimise impacts on workers and communities.

Both this sequencing and the clustering of topics is vital to successful negotiations and the provisions that will ultimately be adopted at the Meeting of Plenipotentiaries in 2025. To this end, EIA and CIEL recommend the following clustering:

Preliminary Cluster (1): Objectives, Definitions and Structure of Work

Relevant sub-paragraph(s): Op3(a).

The negotiation process for the Minamata Convention on Mercury recognised the need for early delineation of objectives, definitions and timetables.

Following this precedent, EIA and CIEL recommend that negotiators establish a ‘preliminary cluster’ to convene at the onset of and only during INC-1 to specify the objectives of the new instrument (Op3a), codify definitions and plan the programme of work. Considering the lack of discussion pertaining to the timetable of work at the OEWG, as was initially planned, such an approach would ensure that this work is concluded at INC-1, guiding the further work of the INC and avoiding unnecessary reconsideration of foundational elements.

Without clear objectives, the INC will be inhibited from the outset through a lack of a commonly agreed direction and an inability in proposed clusters 2, 3 and 4 to develop targets. Such objectives could be, for example, ‘to eliminate plastic pollution in all environments’, ‘to reduce the overall amount of plastic being produced and used’, and ‘to achieve full circularity protective of human health for all remaining plastics.’

As plastics are both products and pollutants with pollution sources ubiquitous and varied, dedicated global programs of work tailored to specific sources and sectors will be required. This will include for example, specific strategies (including reduction targets) for agricultural plastics, fishing gear, packaging and automotive, *inter alia*.

Cluster 2: Institutional Framework

Relevant sub-paragraph(s): OP3(h); OP3(j); OP3(n); OP3(p); Op3(k); OP4(b); OP4(e); OP4(f); OP4(g); OP4(k); Op5.

The institutional framework of the incoming instrument concerns the structure and functions of the governing, legislative, scientific, and regulatory bodies and agencies. Resolution 5/14 contains multiple subparagraphs directly and indirectly related to the institutional framework, which given their interrelatedness EIA and CIEL believe would be best served through a concurrent negotiation within a single technical working group.

This would include negotiations concerning the science-policy interface, including the possibility of a dedicated mechanism to provide policy relevant scientific and socio-economic information and assessment (Op4(f)) and arrangements for capacity-building and technical assistance (OP3(n)). It would also include negotiations on the financial mechanism, in particular consideration of a dedicated multilateral fund, to support the implementation of the instrument (OP4(b)). Given the crucial importance of both a dedicated scientific mechanism and fund to support capacity-building and implementation, these pillars of the institutional framework should have specific sub-streams within this thematic track.

This cluster would also address the need for periodic assessment of the progress of implementation of the instrument OP3(g), its effectiveness in achieving its objectives; OP3(h), how to address compliance (OP3(p)), and coordination with other instruments (Op4(k)).

EIA and CIEL believe that these negotiations could be considered separately yet concurrently in the same cluster, beginning early in the INC process to revisit different elements as negotiations progress. Such an approach would allow distinct yet connected discussions to take place throughout the INC process.

Cluster 3: Sustainable Production and Consumption

Relevant sub-paragraph(s): Op3(b), Op15.

Countries are increasingly inundated by an acute overabundance of inexpensive primary (virgin) plastic, undermining secondary markets for recycled material and investments in collection and recycling. Being inherently distinct from the design of plastic products themselves, a ‘*Sustainable Production and Consumption of Plastics*’ cluster would provide a dedicated space for negotiators to consider what is ‘sustainable’ production and consumption of plastics and how this relates to current and projected

levels. As upstream (production) controls are key enablers of preventing pollution further downstream, EIA and CIEL recommend such discussions also begin early in the negotiation process.

At a minimum, this will require reporting on primary (virgin) plastic production to establish baselines and measure progress toward sustainability. It should also include a mechanism for controlling aggregate primary (virgin) production, phase-outs of problematic or hazardous polymers and other constituent chemicals through a start-and-strengthen approach that can be undertaken through adjustments and listing without amendment, similar to the approach taken in the Montreal Protocol or Stockholm Convention. This would provide the instrument with high degree of agility that would allow parties to act adaptively as new information becomes available. This cluster would also be inclusive of discussions around measures related to the extraction of raw materials and sourcing of feedstocks, which could themselves create impetus for the achievement of UNFCCC climate targets.

Cluster 4: Sustainable Product Design and Manufacture

Relevant sub-paragraph(s): Op3(b).

Product design is referenced directly in Op3(b) as one of the topics upon which tailored measures must be developed. The physical design and chemical makeup of plastic products themselves is a distinct life cycle stage that is largely conceptualised as ‘midstream’, *i.e.* belonging below ‘sustainable production and consumption’ and above ‘environmentally sound waste management’ in the value chain. Under this cluster, it will be essential for negotiators to establish early on what the parameters for the discussion on product design and use will be, including how best to address the issue of transparency and elimination of toxic substance use in plastic products which undermine a safe circular economy for plastics.

Negotiators must consider the “what” (such as polymer, additive, and application restrictions, recycled content targets, common criteria for unnecessary, avoidable, and problematic plastics and reuse and refill requirements), in addition to the “how” (e.g. through standards, minimum requirements or decisions on eco-design). Following the Waste Hierarchy, the priority for negotiators in this cluster must be to develop measures to minimise waste generation, maximise the efficiency of resources, and ensure chemical safety from an environmental and human health perspective. For this to be realised, plastic products need to be designed to be reusable, refillable, repairable, and highly durable in all but a few exceptional circumstances (e.g., medical uses), and eliminate chemical families that are known to be hazardous or harming damaging to human health as well as the environment.

Cluster 5: Environmentally Sound Waste Management

Relevant sub-paragraph(s): Op3(b).

Under this cluster, negotiators must consider the role of the agreement in addressing the ‘downstream’ stage of the plastics life cycle - environmentally sound waste management (ESM). Separating out discussions on ESM from midstream and upstream stages is critical to avoid conflation and develop measures tailored to the very end of the plastics life cycle once all other options for its retention in the economy have been exhausted. As waste management (*i.e.* downstream) approaches inherently rely upon measures enacted further upstream, EIA and CIEL believe such discussions could take place later in negotiations after core provisions for upstream and mid-stream have been agreed.

This cluster will require consideration of how this work will align with efforts already underway under the Basel Convention, which has attempted (rather imperfectly) to describe and address it but not within the context of resource efficiency and circular economy approaches and in the absence of robust means of implementation. For example, it will be essential to differentiate between mechanical and so-called ‘chemical’ (or ‘advanced’) recycling in the context of the discussion on circularity and resource efficiency. Chemical recycling is a term that has been used to describe multiple technologies that

thermally or chemically destroy plastic at very high heats, such as pyrolysis and gasification, with little resemblance to mechanical recycling and much greater environmental and climate impacts.

EIA and CIEL recommend that the Basel Secretariat engage fully in the INC negotiations with a view to identify areas of necessary development for the Draft Guidelines for Environmentally Sound Management of Plastic Waste (ESM Guidelines). It will be particularly important to focus on areas requiring significant development, including priority orders of action for waste management operations that consider hazardous emissions, efficiency scenarios of different recycling processes and climate trade-offs. For example, negotiators will need to consider when incineration, waste-to-energy and other end-of-life treatments fall out of the scope of 'environmentally sound' – something not elaborated upon in the existing ESM guidelines. As a priority, negotiators must develop the Basel Convention's existing work and to advance legally binding provisions on waste management.

Further to this, EIA and CIEL advise negotiators deploy 'systems thinking' as a diagnostic tool when considering what constitutes ESM. This involves contemplating how outputs and impacts of different waste management methods can influence one another within integrated systems such as ecosystems and the wider environment. For example, landfilling plastic waste with a single as opposed to a double liner may be considered 'environmentally sound', but this would not consider toxic effluent polluting aquifers or water which is destined for human consumption. This is especially important considering the ability for plastic pollution and associated chemicals to migrate through physical and biological systems, having secondary, tertiary, and compounding impacts.

Cluster 6: National Action Plans

Relevant sub-paragraph(s): OP3(d); OP3(e).

Both Op3(d) and Op3(e) discuss the need for the INC to include within the treaty provisions on the promotion, development, implementation and update of national action plans to ensure they work towards the prevention, reduction, and elimination of plastic pollution.

National action plans will be the mechanism that translates (rather than develops) international obligations and measures, setting out the specific policies and measures taken or to be taken to prevent plastic pollution in different national contexts. As such, EIA and CIEL recommend that negotiations around national action plans require a distinct working group to develop their structural, operational, and practical characteristics and ensure no conflation with the development of international control measures for each life cycle stage. This would include, *inter alia*, obligations to report (communicate) these plans to the secretariat by a certain date and to update them periodically. This would also provide opportunity for negotiators to decide upon the process for developing national action plans. For example, this could include: (i) preparatory activities, such as data-gathering to establish inventories, sources, and pathways of plastics and plastic pollution; (ii) needs assessment and intervention opportunities, particularly as it relates to promoting a non-toxic circular economy and preventing leakage; and (iii) policy development and implementation. Stage (iii) could consist of market restrictions, separate collection and recycling, infrastructure improvements, measures promoting secondary markets and sustainable financing mechanisms, *inter alia*.

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