



**UNITED
NATIONS**

UNEP/PP/INC.1/4



**United Nations
Environment
Programme**

Distr.: General
8 September 2022

Original: English

**Intergovernmental negotiating committee to develop
an international legally binding instrument on plastic
pollution, including in the marine environment**

First session

Punta del Este, Uruguay, 28 November–2 December 2022

Item 4 of the provisional agenda*

**Preparation of an international legally binding instrument on
plastic pollution, including in the marine environment**

**Broad options for the structure of the international legally
binding instrument on plastic pollution, including in the marine
environment, taking into account paragraphs 3 and 4 of
United Nations Environment Assembly resolution 5/14**

Note by the secretariat

1. Pursuant to paragraph 5 of United Nations Environment Assembly resolution 5/14 of 2 March 2022, entitled “End plastic pollution: towards an international legally binding instrument”, an ad hoc open-ended working group met in Dakar from 30 May to 1 June 2022 to prepare for the work of the intergovernmental negotiating committee to develop an international legally binding instrument on plastic pollution, including in the marine environment. The open-ended working group agreed on a list of documents that the secretariat would provide to the intergovernmental negotiating committee at its first session. Among other things, the secretariat was requested to provide broad options for the structure of the international legally binding instrument on plastic pollution, including in the marine environment, taking into account paragraphs 3 and 4 of Environment Assembly resolution 5/14. The document set out in the annex to the present note has been prepared in response to that request.
2. The document was developed from a desk review of existing multilateral environmental agreements and other instruments. As most multilateral environmental agreements have a similar structure, the broad options presented in the document could be applied in the development of treaties addressing various subject areas. The document is aligned with the elaboration of potential elements in document UNEP/PP/INC.1/5, entitled “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.1/1.

Annex

Broad options for the structure of the international legally binding instrument on plastic pollution, including in the marine environment, taking into account paragraphs 3 and 4 of United Nations Environment Assembly resolution 5/14

Introduction

1. **This document presents options for the structure of the instrument, based on a review of the structures of multilateral environmental agreements and other instruments.** In accordance with United Nations Environment Assembly resolution 5/14 and a request of the ad hoc open-ended working group to prepare for the work of the intergovernmental negotiating committee to develop an international legally binding instrument on plastic pollution, including in the marine environment (the instrument), this document presents options for the structure of the instrument. It is based on a review of the structures of multilateral environmental agreements and other relevant instruments of global scope. For the purposes of the present document, “structure” refers to the organization of the constituent parts of a legally binding instrument that enables those parts to function as a whole.

2. In identifying possible options for the structure of the instrument, no effort has been made to define or discuss the specific content of the constituent parts.¹ Substantive measures are not specified, nor is there any discussion of how such measures might be implemented, including whether such measures might constitute binding obligations or be considered voluntary.

3. **As is indicated in section I of the present document, nearly all legally binding multilateral environmental agreements have a similar basic structure.** Although the content of the specific treaty provisions within each structural element vary between instruments, the broad categories remain consistent. Section I of the present document briefly outlines the typical overall structure, with a detailed elaboration of the structure provided in document UNEP/PP/INC.1/5.²

4. **While this overall structure is common, the core obligations and control measures of a multilateral environmental agreement may take significantly different forms.** Control measures refer to those provisions of a treaty that are intended specifically to prevent, minimize or redress the problem that prompted the treaty’s adoption. The term does not include, at least for the purposes of the present document, provisions requiring parties to submit national action plans, engage in scientific and technical cooperation, exchange information, report on national implementation or provide financial resources and technical assistance. For further information on core obligations and control measures, see document UNEP/PP/INC.1/5.

5. **Section II of the present document sets out two broad options for how the core obligations and control measures of a comprehensive international legally binding instrument on plastic pollution, including in the marine environment, might be structured.** While the options are presented as two clear categories, neither of them, in practice, has a fixed form: each can occur in several variations, and the characteristics of one can overlap with the characteristics of the other. The essential distinction between the two structural options is whether the core obligations and control measures are contained within a single, comprehensive instrument, including its annexes, or whether the core obligations and control measures are distributed across two or more separate, legally distinct instruments (such as through a convention and its protocol(s)). The two broad options are as follows:

(a) *Specific convention:* The core obligations and some control measures appear in the body of the instrument and may be supplemented or elaborated upon by additional control measures, such as technical information and substantive details found in one or more annexes, which form an integral part of the instrument.

¹ For further information on the possible content of constituent parts, see document UNEP/PP/INC.1/5.

² See document UNEP/PP/INC.1/5, “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”.

(b) *Framework convention*: The convention includes the standard structure, categories and provisions described in section I, but some or all of the control measures appear in one or more separate protocols to the convention. The convention and its protocol(s) are legally distinct instruments that are usually adopted at separate conferences.

6. **Examples can be found in the appendix to the present annex.** A list of the treaties referred to in order to illustrate the approaches discussed below appears in the appendix.

I. Basic structure of legally binding multilateral environmental agreements

7. **Legally binding multilateral environmental agreements of global scope consistently share a similar structural approach.** Each multilateral environmental agreement contains a preamble, introductory provisions, control measures, provisions related to implementation, provisions establishing treaty institutions to support implementation, provisions related to the further development of the treaty and standard administrative provisions, which are often referred to as “final provisions”.³ While the specific text of provisions of multilateral environmental agreements can vary considerably the categories themselves remain generally consistent across different agreements.

II. Broad options for the structure of core obligations and control measures

8. **Existing instruments follow two broad approaches: a “specific” convention or a “framework” convention. The essential distinction is whether the core obligations and control measures are contained in a single instrument (e.g. a specific convention with annexes) or divided between legally distinct instruments (e.g. a framework convention plus protocol(s), with protocol(s) normally agreed later in time).**⁴ Control measures are the provisions of a treaty specifically intended to prevent, minimize or redress the problem that gave rise to the treaty’s development and adoption. The present section discusses two broad options for how control measures of a comprehensive, legally binding instrument on plastic pollution, including in the marine environment, might be structured. The essential distinction between the two options is whether the control measures are contained in a single, legally binding instrument or in a convention and one or more protocols, each of which is a legally distinct instrument. This distinction between the two broad options aligns with the definition of treaties provided by the Vienna Convention on the Law of Treaties, which defines a treaty as “an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation”.⁵ The essential elements of a treaty are therefore that it is a written agreement between States which have decided to so bind themselves, in written form and governed by international law. There are also other terms that are used to describe a treaty, such as “agreement”, “convention”, “protocol” or “covenant”. The broad options are:

<i>Option</i>	<i>Distribution of control measures</i>	<i>Adoption</i>
Specific convention	Core obligations and some control measures are contained in the convention body; additional control measures, such as technical information and substantive details, may appear in one or more annexes.	The convention, including its annexes (where applicable), is a single legal instrument; annexes may be revised after the adoption and entry into force of the convention, and additional annexes may be adopted later.
Framework convention	Some control measures may appear in the convention body; other control measures appear in protocols.	The convention and its protocols are usually adopted at separate conferences; each is a legally distinct instrument. Additional agreements and protocols may be adopted over time.

³ For further information on administrative, or final, provisions, see document UNEP/PP/INC.1/8.

⁴ For further information on the distinction between core obligations and control measures, see document UNEP/PP/INC.1/5.

⁵ United Nations, *Treaty Series*, vol. 1155, no. 18232, art/ 2 (1) (a).

9. **While this section presents the two structural options as distinct types, it is important to recognize that the specific form taken under each option will necessarily vary between instruments and that there is some degree of overlap between the options.** Virtually all legally binding multilateral environmental agreements of global scope employ annexes to some extent. Placing all or some of the details of the control measures in one or more annexes while keeping the core obligations in the main body can make the overall instrument clearer and more manageable. This approach can also help make the main body of the convention more succinct. In addition, because it is possible to include provisions in the main body of the convention to allow for different procedures for the adoption, adjustment and amendment of annexes as compared to the main body, the use of annexes can allow parties to adapt to changed or changing circumstances more quickly and easily than if they were only able to adjust aspects of the control measures by revising provisions found in the main text of the convention. Once it is determined whether the convention will be supplemented by annexes using the specific convention approach or by annexes and protocols using the framework convention approach, additional work can be undertaken during negotiations to determine the level of detail to be contained in the convention body versus the annexes (and protocols where applicable).

A. Specific convention model

10. **The specific convention model establishes a comprehensive instrument with control measures either in the main body or in annexes of varying detail.** Under this option, the core obligations and some control measures of the convention, whether broad or specific, appear in the body of the convention and may be supplemented or elaborated upon by one or more annexes that form an integral and inseparable part of the convention. Such a structure allows a different procedure to be applied to the revision of annexes and makes it possible for such revisions to take effect more easily.

11. **Annexes can have different scopes and varying levels of detail.** Once the decision is made to develop an instrument using this model, negotiators may decide on the content and level of detail to be included in the annexes. Negotiators must also decide on the scope an annex may have, and they will usually specify this in the body of the convention. For instance, under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, “annexes shall be restricted to scientific, technical and administrative matters”, while under the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and the Stockholm Convention on Persistent Organic Pollutants, “annexes shall be restricted to procedural, scientific, technical or administrative matters”. Although annexes have varying levels of detail, they can be broadly categorized as follows:

(a) Annexes with supplementary technical information

A convention using annexes with supplementary technical information should fully elaborate on the control measures within the body of the convention. The annexes are then used to give clarity and effect to the control measures by providing supplementary technical specifications, such as lists of controlled substances (or classes of controlled substances) and other highly detailed information on what may be subject to the control measures. This approach is most often employed when the various substances, products or processes subject to a multilateral environmental agreement can be grouped into more or less broad classes that can be regulated under common control measures.

An example of an instrument that takes this approach is the Montreal Protocol on Substances that Deplete the Ozone Layer. The control measures under the Montreal Protocol, such as phase-down and phase-out timelines for the production and consumption of classes of substances, are set out in the body of the instrument, with annexes containing lists of specific substances or products containing or relying on the substances controlled under the instrument. Other instruments that use this approach include the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter and its 1996 Protocol, the International Convention for the Prevention of Pollution from Ships, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, the Convention on International Trade in Endangered Species of Wild Fauna and Flora the Stockholm Convention on Persistent Organic Pollutants and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.

The placement of control measures may have an impact on the ease of amendment or adjustment of the instrument. When the approach of annexes with supplementary technical information is used, the text in the body of the convention may be longer than when using other forms of the specific convention model indicated below, given that it will need to include most of the necessary details of the control measures. Depending on the provisions related to amendment or adjustment of the instrument, if any, it may also be more difficult to modify control measures if they are contained in the body rather than in annexes.

(b) Annexes with substantive provisions

Annexes may contain substantive control measures, reducing the amount of text in the body of the convention. A convention drafted using this approach does not necessarily require a significant description of control measures within the body of the convention. Rather, the control measures can be described in concise terms in the body of the instrument while the annexes contain substantive information and control provisions, along with technical specifications or lists or classes of controlled substances, if any. This approach may be preferable when the control measures are complex and detailed and when they vary according to substance or class of substance. Such an approach allows the body of the convention to remain succinct, with a focus on the core obligations of parties to the instrument.

One example of an instrument with annexes that further elaborate on substantive information is the Stockholm Convention on Persistent Organic Pollutants. In the Stockholm Convention, both Annex A, part II, on polychlorinated biphenyls, and Annex B, part II, on dichlorodiphenyltrichloroethane (DDT) and part III of perfluorooctane sulfonic acid (PFOS), its salts and perfluorooctane sulfonyl fluoride (PFOSF), specify substantive provisions on control measures. In both cases, the annexes to the Stockholm Convention include significant detail on how parties are to implement and comply with the general control measures in articles 3 and 6 of the convention.

A recent example of this structure is the Minamata Convention on Mercury. In the Minamata Convention, Annex A on mercury-added products and Annex B on manufacturing processes in which mercury or mercury compounds are used provide specific lists of products and processes that are subject to the control measures in articles 4 and 5, respectively. Annex C on artisanal and small-scale gold mining elaborates on the national action plans that were requested in article 7. These annexes represent another example of where significant details on implementation and phase-out are specified in the annexes of a convention.

(c) Annexes containing supplementary agreements – also known as “umbrella Agreements”

Rarely, annexes may also contain additional agreements as part of the broader convention. In rare instances, annexes may also be employed to incorporate additional agreements within the scope of the main instrument. Under this approach, individual substantive agreements could be negotiated and adopted as a package along with the body of the main instrument. Each additional substantive agreement is considered an integral and non-severable part of the whole, with the entire package being a single legal instrument.

The Marrakesh Agreement Establishing the World Trade Organization is an example of a convention that includes additional agreements in its annexes. In the Marrakesh Agreement, virtually all the control measures are found in annexes, which contain a series of additional agreements related to various aspects of international trade, such as the General Agreement on Tariffs and Trade (annex 1A) and the General Agreement on Trade in Services (annex 1B). Parties to the Marrakesh Agreement are also parties to a number of agreements contained in the annexes.⁶

⁶ Annex 4 of the Marrakesh Agreement Establishing the World Trade Organization contains plurilateral agreements that must be accepted separately, whereas annexes 1–3 are binding on all World Trade Organization member States. See United Nations, *Treaty Series*, vol. 1867, no. 31874. Art. 2.

Such an approach has only been very rarely used. It may be taken where the subject matter of an instrument is highly complex and where different categories of control measures either warrant different approaches, structures or procedures or require their own associated annexes, schedules or appendices.

12. **The specific convention model (treaty with specific annexes) is the most frequently used form of multilateral environmental agreement.** This model produces an instrument that can more easily adapt to changing circumstances or evolving needs of parties, with the possibility to amend the convention body, amend or adjust annexes and add new annexes.

B. Framework convention model

13. **The framework convention model allows key details to be placed in legally distinct protocols.** Under the framework convention model, the convention could include the basic overall structure identified in section I above but few, if any, control measures. The control measures would appear instead in separate protocols to the convention, which could be adopted at the same time as the convention or after the convention has entered into force, although protocols are typically adopted after the framework convention has entered into force. The convention and each protocol would be legally distinct treaties; parties to the convention would not be required to ratify, accede to or accept any protocol.

14. **The title of an instrument does not determine its nature.** Although there are several examples of instruments that use the term “framework” in their title, such as the United Nations Framework Convention on Climate Change, the presence or absence of the term “framework” in the name of a convention does not determine its status as a framework convention. Instead, the determining factor is generally seen to be the presence of an article in the body of the convention that permits parties to develop protocols as supplementary to the convention, regardless of whether specific protocols are anticipated at the time of adoption or not.⁷

15. **Framework conventions allow problems to be addressed in an incremental manner.** The framework convention approach allows parties to a convention to address a problem in a step-by-step manner rather than all at once. As a result, the international community can begin to address a problem without waiting for consensus to emerge on appropriate control measures. This approach can help to: (i) reduce uncertainty and produce agreement about relevant facts by, *inter alia*, requiring parties to submit national reports and encouraging research and assessments; and (ii) generate normative consensus by providing an ongoing forum for discussion and negotiation, building trust among participants. Moreover, the institutions established by the convention can play a catalytic role in this process by collecting data, providing technical assistance and issuing reports. This model provides a basis for progressive action to be taken as scientific knowledge expands, as consensus emerges and as regulatory priorities evolve or change.

16. **The success of framework conventions depends on the continued willingness of parties to the main convention to also adopt subsequent protocols.** Although framework conventions are sometimes used to defer decisions on substantive details to a later date, protocols to such conventions can be adopted at the same time as the convention. Each protocol must, however, be adopted and ratified, acceded to or accepted individually, as each is a legally distinct instrument. Accordingly, under the framework convention model, the success of the broader regime may largely be determined by the continued willingness of parties to the main convention to negotiate and become parties to each successive protocol.

17. **Protocols are generally only open for adoption by parties to the main convention and usually contain provisions indicating that the protocol may not contradict the control measures or other provisions set out in the main convention.** Either the body of the convention or the protocol could, however, include provisions that allow Member States that are not party to the main convention and even non-Member States to nonetheless become parties to any protocols.⁸

⁷ The Convention on Biological Diversity, while not containing the word “framework” in its title, can be considered a framework convention because of the inclusion of article 28, which permits contracting parties to adopt protocols to the convention at a meeting of the Conference of the Parties.

⁸ See, for example, the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) (1998) and its Protocol on Pollutant Release and Transfer Registers (2003), art. 24 (stating that the protocol is open for signature by all States that are members of the United Nations); see also the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of

18. **Parties to specific conventions may also adopt protocols.** While there is an expectation that a protocol will be developed following the adoption of a framework convention, nothing precludes parties to a specific convention from deciding to adopt a protocol as a supplementary instrument should they so decide.

19. **There are several examples of multilateral environmental agreements using the framework convention model.** Prominent examples of the framework convention model include the United Nations Framework Convention on Climate Change and its Kyoto Protocol, and the Vienna Convention for the Protection of the Ozone Layer and its Montreal Protocol. One regional example is the Convention on Long-range Transboundary Air Pollution, for which all substantive control measures are found in its eight protocols, dealing with ozone, persistent organic pollutants, heavy metals, sulfur, volatile organic compounds, nitrogen oxides and financing for monitoring and evaluation. All eight protocols share a common structure and use the convention's executive body, implementation committee and secretariat.

ADVANCE

Straddling Fish Stocks and Highly Migratory Fish Stocks (1995), art. 37 and art. 1, para. 2 (b) (allowing non-parties to the United Nations Convention on the Law of the Sea to become parties to the agreement).

Appendix

Multilateral agreements cited in the annex

Vienna Convention on the Law of Treaties (1969)

Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (1972)

Convention on International Trade in Endangered Species of Wild Fauna and Flora (1973, as amended)

International Convention for the Prevention of Pollution from Ships (1973, as amended)

Convention on Long-range Transboundary Air Pollution (1979)

United Nations Convention on the Law of the Sea (1982)

Montreal Protocol on Substances that Deplete the Ozone Layer (1987)

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (1989)

Convention on Biological Diversity (1992)

United Nations Framework Convention on Climate Change (1992)

Marrakesh Agreement Establishing the World Trade Organization (1994)

Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (1995)

1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (1996)

Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (1998)

Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (1998)

Stockholm Convention on Persistent Organic Pollutants (2001)

Protocol on Pollutant Release and Transfer Registers to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (2003)

Minamata Convention on Mercury (2013)
