

Contact Group 1 Co-facilitators' summary of discussions INC-3, Nairobi, 13-19 November 2023

The contact group was co-facilitated by Ms. Gwen Sisior of Palau and Mr. Axel Borchmann of Germany and reviewed part I (text on the objective) and part II of the annex to the Zero Draft (document 3/4), and mandated to consider:

- The zero draft and inputs from Members to be incorporated in a revised version of the Zero Draft; and
- inputs on the possible relevant intersessional work, if any (to be reported to the plenary on Thursday and communicated to Contact Group 3 for further elaboration).

The group met for 10 sessions from 14 to 18 November, and started with interventions on objective under part I and the 13 elements under Part II of the zero draft. The interventions focused on concepts, preferences of options, and proposals of new texts.

Delegations were invited to send written submissions to the secretariat for compilation, the secretariat then compiled the written submissions, and posted the compilation of revised zero draft text in batches. Members' proposals were captured and included as alternative options, as additional paragraphs and as proposals for no provisions.

The first round of discussions was concluded on Thursday 16 November at 10pm. The second round of discussions started from 11 am on Friday 17 November, with a review of the compilation text uploaded in batches. Members were then invited to review and validate the compiled text and bring to the attention of the Co-facilitators and the Secretariat any missing text proposals or any incorrectly captured text proposals.

The co-facilitators prepared in the meantime possible mergers for Members' proposals, which the group went through on Friday 17 November and 18 November, with the exception of the possible mergers for Members' proposals on Part II. 11, which was uploaded in the morning of 19 November, and Members were invited to send their comments in track changes to the secretariat.

The outcome(s) of Contact Group 1 is uploaded on the INC-3 website under contact group 1, in-session documents. These outcomes include the Co-facilitators' full compilation of the revised zero draft text (version 18 November), updated Co-facilitators' full compilation of the revised zero draft text (version 19 November), the Co-facilitators' compilation of revised zero draft text after the first round of discussions uploaded after the second round of discussions, and the Possible mergers for Members' proposals.

Overall, Members had rich and constructive discussions. Varied views were expressed on the different options of the zero draft, and in some elements, new proposals, including null options, were added.

Co-facilitators' summary of the discussion

I. Part I Objective

There were converging views that the objective should include ending plastic pollution, the protection of human health and environment, including in the marine environment, from plastic pollution. Different views were expressed on whether to put the primary focus on ending plastic pollution or on protecting human health and the environment, including the marine environment.

Many stressed the need for the instrument to encompass the full life cycle of plastic while others were of the view that this was better placed in the scope section. A number of Members supported adding Sustainable Development in the objective.

Reference was made to just transition and the inclusion of all sources of pollution. Many pointed out to UNEA 5/14 as a basis, with some highlighting the need for consistency with other MEAs.

There was some agreement that the objective should be broad, with some emphasizing it needed to be concise, short and constructive.

A few Members expressed support for timebound target, while others expressed reluctance to that proposal. Some members suggested that targets could be dealt with in other sections of the instrument, and one Member stated that timebound targets could only be considered if based on best available science.

A number of Members supported the option of managing both the utilization of plastics and plastic waste, while contributing to the achievement of sustainable development. A few members stressed that the focus of the instrument should be plastic pollution and waste management, while some Members considered this was not an objective but a means.

Other points made included consideration of all workers in the life cycle of plastics, technical support especially for SIDS, inclusion of the reference to other aquatic systems like cross boarder rivers, and definitions.

A few delegations made suggestions on the Spanish translation.

II. Part II

1. Primary plastic polymers

Many Members were in favour of including in the new instrument provisions to prevent and mitigate the potential adverse impacts on human health or the environment from the production of primary plastic polymers, while a group of Members objected to the inclusion of this item and suggested a null option for the element.

A few members disagreed with the inclusion of polymers or primary polymers across the instrument. Other views expressed included focusing on primary plastic polymers of concern to human health and the environment, or problematic and avoidable polymers not suitable for a safe circular economy. There were divergent views on whether to include market-based measures or fiscal incentives. Other views included the need to take into account national circumstances of developing countries, the special circumstances of SIDS, socio-economic and cultural impacts of measures, as well as base measures on science and on the availability of adequate alternatives or substitutes. Divergent views were expressed on the consideration of the common but differentiate responsibility and respective capabilities. Different views were expressed on the content and status of the annex.

2. Chemicals and polymers of concern

Divergent views were expressed. While there was broad support for measures on the use of chemicals, groups of chemicals, a group of Members objected to the inclusion of this item in the future instrument and requested adding a null option.

A number of Members warned against duplication with other MEAs should be avoided. It was also pointed by some Members that chemicals and polymer are two different concepts.

Various views were expressed on globally harmonized information. Different views were expressed on Annexes.

Support was expressed on the need for science-based, risk-based, hazardous-based approaches and safe and non-toxic circularity. Some cautioned against technical barriers that could disrupt trade.

The availability of alternatives, Indigenous Knowledge, and limited capabilities for small states were emphasized. Attention was also paid to vulnerable groups including waste pickers, women, and youth, who are at most risk.

A subsidiary body was proposed to address amendment of the list of chemicals and polymers of concern overtime.

A group of Members suggested merging elements 2, 3, and 4 to propose measures adapted to the level of risks while allowing flexibility

3. Problematic and avoidable plastic products, including short-lived and single-use plastic products and intentionally added microplastics

Various views were expressed on the options of the zero draft. A group of Members expressed support for a null option.

Some Members stressed the need for exceptions for essential uses, in particular from the medical or food sectors. Some countries cautioned about possible adverse impacts of measures on vulnerable populations and workers, including waste pickers, in particular in developing countries.

Some Members requested language on means of implementation, development of a list of criteria or list of products, such as cigarette filters, alternatives, science-based approach, traditional knowledge, and consideration of human health and the environment, technological availability, feasibility and accessibility, and the need to avoid harmful alternatives or substitutions. Some highlighted the consideration of national circumstances.

There was general support for addressing microplastics, with some indicating the need for more work on defining.

4. Exemptions available to a Party upon request

Some Members have expressed openness to discuss this element further, with others emphasizing the need to wait for the conclusion on substantive discussions on other matters. Views were expressed on the procedure and expiration periods. Other Members expressed reservations about the inclusion of exemptions.

5. Product design, composition and performance

There was broad recognition that this element is important and Members expressed their varied views on this element, its subparts and its options.

A number of Members supported option 1 throughout all 4 sub-elements, with global criteria, targets, minimum recycled plastic contents to be included, and not encouraging research and development of plastic alternatives. The waste hierarchy and 3R principle were stressed by some.

Other Members supported option 2 throughout all 4 sub-elements, allowing nationally determined measures, taking into account national circumstances. Some Members pointed out that there should be no direct reduction of primary plastic polymers, and the measures taken should be contingent on availability of technical, social and economic feasible alternatives and substitutes, based on life cycle assessments.

There was request for definitions under this element, and reservation was expressed until such clarity is provided. There was expression that the development of annex is not supported.

A few Members selected a mixture of options, with preference for global criteria for design and performance, and nationally determined measures for the rest of the sub-elements.

One Member proposed a new article with a sector and product specific approach, which could include packaging, fishing, agriculture and textiles with the reference that the prioritization of sectors should be further elaborated. Under this article, some members also referred to the need to ensure the safety of water and food.

Some Members discussed whether bio-based alternatives should be included or not.

6. Non-plastic substitutes

There was broad support of this element, with some suggesting that this element should be moved to 5.d (alternative plastics and plastic products), or 5.b (reduce, reuse, refill and repair of plastic and plastic products).

Science-based approach, full life cycle approach, cooperation mechanism, schemes to encourage sustainable solutions, national circumstances were mentioned.

There was also a mention of encouraging scientific community and industry to develop substitutes.

7. Extended producer responsibility

Many Members stated that EPR is crucial and there is broad support for the polluter pays principle as a core element of the treaty, with emphasizing producer accountability, and some also referring to CBDR.

Some Members see EPR as one of several instruments and therefore propose a no option. Consideration was also given to placing EPR under Item 9 on waste management. Few members proposed a new option and emphasized the sovereign right of each country and national capabilities.

Several members pointed out the link to just transition and the importance of waste pickers. The flexibility for SIDS was raised.

Several members consider the sectoral approach.

One member referred to innovative solutions such as crediting systems.

It was requested to review the Spanish translation on the term of EPR.

8. Emissions and releases of plastic throughout its life cycle

Many Members expressed support for the element, stressing the importance of preventing emissions and releases of plastic throughout the life cycle. Some called for changes in the scope of the provisions, questioned the potential overlap with other provisions such as the one on waste management and pointed to issues that could be more appropriately addressed under other provisions. The challenge of tackling unintentional emissions and releases of microplastics was highlighted, with a sectoral approach in that regard also proposed. Some members asked for main sources of emission and release pathways to be identified. Applying best available technique and best environmental practices and promoting technological innovation were considered important.

9. Waste management

There was varying levels of support among members for the various options set out in the zero-draft document. Repeated mention was made of the importance of consistency and avoiding duplication with existing international instruments and mechanisms such as the Basel Convention, with reference to its technical guidelines on the environmentally sound management of plastic waste, and those under IMO and FAO. It was also important to take into account national circumstances including existing national measures on waste management and varying national capacities for plastic waste management for which financing and technology transfer would need to be considered. The importance of just transition was highlighted. Proposals for taking a sectoral approach and gradual implementation of provisions were made. On the issue of fishing gear, some members stressed the need for the instrument to address fishing gear throughout its life-cycle and existing pollution from such, with proposals for alternative placement of the related provisions while others called for their deletion.

10. Trade in listed chemicals, polymers and products, and in plastic waste

There was varying levels of support among members for the various options set out in the zero-draft document. Some members expressed reservations about or called for the deletion of this provision from the instrument or were opposed to restrictions on trade. Some indicated that provisions to apply to chemicals only. Many pointed out that any trade measures should not go beyond WTO rules, should be based on sound scientific evidence and apply global standards. It was pointed out by some that trade with non-Parties should be included. Many members asked to avoid duplication with the Basel Convention that adequately covers the transboundary movement of plastic waste and that provisions of the new instrument should address gaps, non-hazardous plastic waste and aim at restricting illegal traffic. For some members, promoting transparency in trade was important. The special circumstances SIDS, including limited plastic waste recycling capacities, should be taken into account.

11. Existing plastic pollution, including in the marine environment

There was general support on the importance of provisions to address existing plastic pollution in diverse ecosystems. Some members argued that stronger provisions were necessary for the instrument to be effective. The importance building on existing instruments such as MARPOL and local, traditional knowledge and Indigenous Knowledge was stressed. Measures on assessing the current state of plastic pollution, including at the national level, and monitoring plastic in the environment were proposed. The need to sharing of information on relevant technologies and apply common approach collect data was highlighted. Members drew attention to existing national actions, varying capacities and need for adequate financing. There were divergent views on measures to be applied beyond national jurisdiction.

12. Just transition

This element was considered crucial by many Members, with special consideration given to Indigenous Peoples and vulnerable groups, women and youth, and recognition of the importance and integration of waste pickers. Some Members made explicitly reference to the inclusion of Indigenous Peoples in the text. In addition, several Members called to refer to the term waste pickers, which must be defined and to also included more strongly in the provision. One Member referred to a clear link to the means of implementation for justice, another to the reduction of inequality. The measures could be included in the national plans.

13. Transparency, tracking, monitoring and labelling

Many supported this element and stressed the importance of promoting transparency, and global harmonized labelling and information disclosure to enable informed decisions, while ensuring complementarity with existing efforts, such as the global chemicals framework. Reporting obligations were stressed. There was support to disclose chemicals composition on a publicly accessible database.

There was also support to universal obligation for producers and importance to provide information on chemicals included.

Some emphasized national circumstances, with one suggestion being to include this element under national plans. It was also suggested to move this element under element 5 on product design. Exporters were suggested to be added for the obligation to disclose harmonized information on the chemical composition of all plastics and plastic products throughout their life cycle.

Some opposed covering primary plastic polymers under this provision. It was also pointed out that no trade barriers should be created by this provision.

Intersessional work was also proposed for monitoring and tracking.

Written submissions sent to the secretariat included proposals on the annexes, but no discussions were held in the meetings on the matter.

Intersessional work

The following points were raised by members for intersessional work:

- Common target or global targets and timeline for managing and/or reducing the global production and supply of primary plastic polymers including baselines of polymers, levels of sustainable consumption impacts on GDP
- Criteria for identifying chemicals and polymers of concern and a list of such chemicals and polymers
- Criteria for problematic and avoidable plastic products, short-lived and single-use plastic products, impacts of bans, and a list of such products
- Exemptions
- Minimum sustainable design and performance criteria, including circularity criteria
- Minimum reduction, reuse, refill and repair targets
- Health and environmental impacts of micro- and nanoplastics
- Sources of emissions and releases, methodologies for monitoring existing plastic pollution
- Establishment of minimum reduction, reuse, refill and repair targets
- Sectoral approaches
- Life-cycle management of fishing gear
- Modalities for EPR
- Financial needs to meet provisions
- Trade issues
- Definitions: Primary plastic polymers, bio and fossil-based; Chemicals and polymers of concern; Problematic and avoidable plastic products, including short-lived and single-use plastic products; Microplastics; Alternative plastic products; Open dumping; Just transition; Producer

On the way forward with the possible mergers, the groups considered that the merged texts should serve as the starting point for further work.