

**INC3, Nairobi  
(13-19 November 2023)**

**Co-facilitators' summary of discussions**

**Contact group 3**

**19 November 2023**

**1. Co-facilitators**

Contact group 3 was co-facilitated by Ms. Marine Collignon of France, and Mr. Danny Rahdiansyah of Indonesia.

**2. Mandate**

The contact group was mandated to consider the elements addressed in the synthesis report on elements and inputs from Members for the placeholders in the Zero Draft; consider needs and timelines identified for relevant intersessional work, if any, on the substantive matters discussed by contact group 3; prepare recommendations with respect to possible intersessional work and its modalities for issues identified in contact groups 1, 2 and 3, informed by the relevant work in these contact groups.

**3. Overview and summary of discussions**

The group met for 8 sessions from 14 November to 18 November. Over the course of the week, the group also heard a number of interventions by observers.

The group's work is summarized below.

**a. On the elements addressed in the synthesis report**

The group met five times to consider the elements addressed in the synthesis report on elements not discussed at INC-2.

Between 14 and 16 November, the group completed a first consideration of all elements addressed in the synthesis report, building on the [discussions in the preparatory meeting](#). At the Thursday plenary, the co-facilitators reported on this work as described below.

**Part 1**

**a. Preamble**

With respect to the preamble of the agreement, the discussions confirmed a generally shared view that it should be short and concise and reflect the history and context of, and set the tone for, the instrument.

While some members considered the synthesis report provided a starting point for the development of the preamble, other considered that the elements reflected in the synthesis report could benefit from streamlining to make the text more concise.

Several members indicated that the development of preambular language could build upon UNEA resolution 5/14 as well as the language found in other multilateral environmental agreements, including the Minamata Convention.

A view was also expressed that the preamble may need to be finalized at a later stage of the process, after the substantive provisions have been developed, and that it may not need to detail the nature of the actions to be taken under the instrument.

## b. Definitions

On definitions, there was interest in exploring the use of relevant existing definitions in multilateral instruments, including multilateral environmental agreements (MEAs) and trade- or standards- related instruments, as a starting point, while noting the need to ensure the suitability of adopted definitions to the instrument.

The possibility was raised of conducting technical work on specific terms relating to plastics and plastic pollution, with possible input from experts, to support an understanding of terms that may be relied on in the instrument. At the same time, many members considered that discussions on definitions should be informed by, and follow, relevant discussions within other contact groups.

Although the list of terms potentially requiring a definition in the synthesis report was identified as a good starting point, a number of Members identified additional specific terms or definitions not identified for consideration in the Synthesis and requested additional time to provide inputs.

A proposal was made for the secretariat to invite any further inputs from Members on possible definitions and to prepare a working list of possible definitions, to be presented at INC-4.<sup>2</sup>

## c. Principles

The discussions suggested a shared understanding that a number of principles are relevant and important to the instrument. Many delegations referred to the same principles, including many of the Rio Principles, as referred to in UNEA resolution 5/14.

Much of the discussion on principles centered around how these should be incorporated in the instrument, and whether a dedicated provision is needed for this purpose. Overall, the following three approaches, or a combination of them, were suggested to reflect principles relevant to the instrument:

- referring to relevant principles in preambular language;
- a dedicated provision identifying principles to guide the instrument; and/or
- incorporating the relevant principles in the substantive provisions through which they are made operational.

The potential implications of one or the other approach were discussed, including the possibility that a different approach may be appropriate depending on the nature of the principle at issue. It was also suggested that a final decision on references to principles should be taken in light of the relevant substantive provisions.

## d. Scope

Discussions in the contact group confirmed a shared understanding that UNEA resolution 5/14 provides the basis for identifying the scope of the future instrument. There was also a shared understanding that this entails the long-term elimination of plastic pollution based on a comprehensive approach addressing the full life cycle of plastics. There also appeared to be a common understanding that all sources of plastic pollution would fall within this scope.

Different views were expressed on the need for a dedicated scope provision, and what such provision might contain, if included. Overall, three options seemed to prevail:

- no specific scope provision being included in the instrument;
- a short scope provision essentially reflecting the language contained in UNEA resolution 5/14; or
- a detailed scope provision addressing additional aspects, including with respect to what exactly might be covered as part of the “full life cycle” of plastics, including in terms of material, geographical and/or jurisdictional coverage.

Differences of views arose specifically in relation to the possible contents of a detailed scope provision, due to different perspectives on which specific aspects should or should not be the basis for

substantive obligations under the instrument. As was noted by some delegations, this discussion revealed different interpretations of what the life cycle of plastics encompasses.

## **Part 2: institutional arrangements and final provisions**

### **a. Governing body**

There was broad convergence on the establishment of a conference of the parties (COP) as main governing body for the instrument. Views also converged on the possibility of developing the relevant provisions based on those under existing MEAs. It was also suggested that the potential functions identified in the Synthesis report could serve as a starting point, though the final list of functions of the future COP would need to be confirmed later in the process in light of the substantive obligations to be agreed and should be clearly circumscribed.

It was further broadly suggested that the governing body should take decisions by consensus. Some highlighted in addition that voting should be allowed only if all reasonable efforts to reach consensus had failed. It was also suggested that the governing body should have the authority to adopt its own rules of procedure at its first meeting.

### **b. Subsidiary bodies**

There was broad support for subsidiary bodies to be established, with well-defined mandates, either in the instrument or as needed by the governing body. The need for such bodies to be inclusive, representative and gender-balanced was highlighted. It was also suggested that subsidiary bodies could be established in a gradual basis, and that the need for such bodies, and their features, would depend on the needs of the instrument considering its substantive provisions.

Reference was made in particular to the following possible subsidiaries:

- a scientific, technical and socio-economic body, including for information-sharing, identification of chemicals and products to be possibly addressed in the instrument, assessments and recommendations;
- a compliance and implementation committee (though the view was also expressed that matters related to compliance should be left to national jurisdiction);
- a clearing house mechanism for exchange of information;
- a committee to manage the financial mechanism, including to monitor financial flows for developing countries, consider availability of resources and funding for developing countries and transfer of technology;
- a committee on means of implementation;
- a committee to evaluate the effectiveness of the instrument.

### **c. Secretariat**

There was broad support for the establishment of a secretariat. Some members suggested that draft language on the secretariat should be developed based on the text of existing MEAs, including that of the Minamata Convention, and the potential functions identified in the Synthesis Report.

## **Part 3. Final provisions**

Some members were of the view that text on final provisions could be developed based on the text of existing MEAs, such as the Stockholm or Minamata Convention, adapted to the context of the instrument. Other members referred to document UNEP/PP/INC.1/8 as a possible basis for the development of draft text. Some members highlighted preferences or concerns with respect to specific provisions, including those concerning non-parties, the settlement of disputes, or voting rights.

Many Members supported the development of final provisions at a later stage by a legal drafting group to be established by the INC, taking into account the inputs provided by Members in the run up to and at INC-3.

For all these elements, the co-facilitators' assessment was that this initial round of discussions reflected allowed substantial progress in gaining a much better understanding of Members' respective positions, identifying areas of potential convergence, and articulating the range of options under consideration where views are not yet fully convergent.

On this basis, the group entrusted the co-facilitators to develop a document to support further negotiation, including, where possible, preliminary draft text. On this basis, the co-facilitators prepared a document entitled 'Co-Facilitators' proposal regarding Part I, Part V and Part VI of the zero draft text', and a [compilation of written submissions on elements addressed in the synthesis report](#), which were both made available on 17 November,

The co-facilitators' proposed document was intended to provide, together with inputs received from Members, a starting point for the integration of the issues addressed in the Synthesis Report into the draft text of the instrument, through a combination of preliminary draft text language where possible, and of options identified at a conceptual level based on discussions in the group, where it did not seem possible to include draft text at this stage.

This document was discussed on 17 November in the afternoon. Delegations generally welcomed the document, but some expressed a preference for us to go further in the incorporation of the different elements proposed by Members in some parts of the text. It was therefore agreed that the co-facilitators would revise specific aspects of the document, including the draft preambular language, to capture additional concepts based on Members' inputs. A revised version of this document was made available at midday on 18 November and considered in the group that afternoon. An agreement was reached on a final version of this document as part of the outcome of the working group.

It was also agreed that a working document compiling all definitions proposed by Members would be prepared by the Secretariat, and that Members would be invited to provide any further inputs on definitions for inclusion in this document.

#### **4. On possible intersessional work and its modalities**

The contact group first considered intersessional work on Thursday evening, with the benefit of the inputs shared by both contact group 1 and contact group 2 on possible intersessional work in their respective areas at the stocktaking plenary on Thursday.

It was clear that there is much interest in conducting intersessional work. At the same time, the need to be realistic about what can be undertaken between now and INC-4 was stressed, given the very limited time between INC-3 and INC-4, and the limited resources of the Secretariat. The Secretariat informed the contact group that the deadline for preparation of all documentation for INC-4 is 24 January 2024, and that no additional translation or interpretation resources would be available for meetings not already scheduled.

The group discussed proposed intersessional work in two sessions. There was convergence on some basic features of intersessional work, including the fact that it should be inclusive and informative in nature to help the negotiation and build a better understanding between members and not prejudice decisions by the committee. The output of inter-sessional work would be in a form of information document for INC 4.

A number of potential topics were identified for intersessional work, under two broad streams: technical and scientific, and financial aspects and means of implementation.

Potential areas identified for technical work included:

- Chemicals and polymers of concern and problematic and avoidable plastic products, including intentionally added microplastic
- Primary Plastic Polymers
- Design and performance criteria
- Circularity of plastics
- Extended Producer Responsibility (EPR)
- Waste Management

- Fishing and aquaculture gear
- Downstream underdeveloped countries

Potential areas identified for work on financial aspects and means of implementation include:

- a mapping of public and private financial flows related to the objectives of the future instrument, and opportunities to align them;
- work on existing approaches to financing and financial mechanisms, including identifying the resources, modalities, and resource mobilization, under other multilateral environmental agreements as well as lessons learned.
- innovative approaches to financing, considering the polluter pays principle;

A range of potential modalities was identified for the conduct of such intersessional work, including the possibility of technical expert work, open-ended or in smaller setting with regional and gender balance, in-person or hybrid.

The possibility of a mandate for the establishment of a legal drafting group was also identified, to be launched at INC-4 – or later - to work during the INC, or intersessionally between INC-4 and INC-5, on final provisions for the instrument, taking into account exchanges and inputs shared at INC-3. Further mandates might also be given to the legal drafting group by the INC, including on ensuring the consistency of text.

Based on these elements, the co-facilitators presented some recommendations with respect to possible intersessional work and its modalities for consideration by the Committee.

In conclusion, the outcomes of contact group 3 are as follows:

1. Compilation of written submissions on elements addressed in the Synthesis Report;
2. Proposals regarding Part I (preamble, definitions, principles and scope), Part V and Part VI of the zero draft; and
3. Recommendations on possible intersessional work and its modalities.