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

First session

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Item 4 of the provisional agenda*

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

**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**

Note by the secretariat

Pursuant to paragraph 5 of United Nations Environment Assembly resolution 5/14, 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 documents, the secretariat was requested to provide 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 might be relevant to furthering implementation and compliance under the future instrument on plastic pollution. The present note is submitted in response to that request.

* UNEP/PP/INC.1/1.

Annex

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

I. Introduction

1. **The present annex builds on the work 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.** During the meeting, the secretariat was requested to develop the present document in order to assist the intergovernmental negotiating committee in completing its work.
2. **The potential elements, set out in section II, are drawn from the common structure found in virtually all multilateral environmental agreements and are supplemented and elaborated on by the specific elements identified in paragraphs 3 and 4 of resolution 5/14.** In virtually every multilateral environmental agreement, the broad headings identified below are present, in that each instrument includes a preamble; introductory provisions; core obligations,¹ including, as appropriate, control measures;² provisions related to implementation; provisions establishing treaty bodies to support the treaty's implementation; and standard administrative provisions, which are often referred to as "final provisions".
3. **Although this overall structure is common, the specific details under each heading of a multilateral environmental agreement may take significantly different forms,** depending on the nature of the problem that prompted the instrument's development and the objectives of the negotiating bodies. The present annex raises preliminary questions related to each potential element in order to assist the intergovernmental negotiating committee in its work.
4. The preliminary questions are supplemented by relevant sources and context, where appropriate, to direct the intergovernmental negotiating committee to similar approaches in existing multilateral environmental agreements or other relevant instruments, institutions or organizations.
5. **Examples can be found in the appendix to the present annex.** A number of multilateral environmental agreements are referred to herein to illustrate the elements identified in paragraphs 3 and 4 of resolution 5/14. A list of those agreements is contained in the appendix.

II. Proposed clustering of elements identified in paragraphs 3 and 4 of resolution 5/14 and guiding questions

6. **In this section, the elements identified in paragraphs 3 and 4 of resolution 5/14 have been set out in a non-prescriptive order under headings.** The elements are accompanied by footnotes indicating to which subparagraphs in paragraphs 3 and 4 of resolution 5/14 and/or other documents prepared for the first meeting of the intergovernmental negotiating committee they relate. The order in which the eight thematic areas are listed does not indicate an order of priority in their discussion. The intergovernmental negotiating committee will be invited to discuss the elements using the guiding questions proposed by the secretariat.

¹ Core obligations relate to legally binding commitments for parties to act or not to act in a certain way in accordance with the objectives of the treaty.

² 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. They give effect to the core obligations. See documents UNEP/PP/INC.1/4, on broad options for the structure of the instrument, and UNEP/PP/INC.1/9, on plastics science, for examples of possible measures for addressing plastic pollution.

A. Preamble

7. *Context.* The preamble sets out the history and context of the instrument; references relevant pre-existing conventions, instruments, institutions or principles; and may act as a repository for statements, including of objectives and recognitions, that are not included in the operative text. When read together with the objective or objectives, scope and principles, preambular text may provide context for the interpretation of operative provisions throughout the text.

B. Introductory elements³

1. Definitions⁴

Preliminary question: What key terms and concepts need to be defined in the instrument?

8. *Context.* Generally, definitions are required for any terms that will be key to the implementation of the instrument. They may be sourced from other treaties or related processes, scientific documents or other relevant documents. Where internationally recognized definitions do not yet exist, they may be developed for the purposes of the instrument. They are usually placed in a definitions section at the beginning of the instrument, with the defined terms then used thereafter. Where certain words or phrases are used less frequently, it may be an option to provide definitions in the particular provision where those words or phrases are found. In addition, multilateral environmental agreements often include “procedural definitions” (e.g., “party” and “parties present and voting”),⁵ as well as substantive definitions, which are terms that are key to understanding and implementing the instrument.

2. Objective or objectives⁶

Preliminary question: What objective or objectives will be set out in the instrument?

9. *Context.* These provisions will set out the broad objective or objectives of the instrument, which may guide the interpretation and implementation of all the other provisions, together with the preambular paragraphs and provisions on scope and principles. When setting the objective or objectives, it is helpful to consider which problem or problems the instrument is aimed at addressing or which goal or goals it is aimed at achieving. The provisions relating to the objective or objectives must be clear and concise, as any ambiguity or uncertainty will ultimately affect the interpretation and implementation of the rest of the instrument. Although some multilateral environmental agreements have a specific provision directed at the objective or objectives, others have no such provision and, instead, the objective or objectives can be derived from the preamble.⁷

3. Scope

10. *Background.* In some circumstances, it may be necessary to define the scope or coverage of an agreement, whether in terms of subject matter, geography or otherwise. There are several approaches to defining scope, for example: (a) defining the products or substances to which the instrument applies (and to which it does not), similar to article 3 of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade; (b) defining the jurisdictional scope of application, similar to article 4 of the Convention on Biological Diversity; (c) defining the uses of resources to which the instrument applies, similar to article 1 of the Convention on the Law of the Non-navigational Uses of International Watercourses; and (d) setting out a type or level of activity that will be controlled under the instrument, particularly in respect of hazardous activities, similar to article I of the Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter. Ultimately, the approach depends on the problem that the instrument is aimed at addressing. Combinations of these approaches may also be used, such

³ The introductory elements may include some or all of the elements set out in the present section.

⁴ See document UNEP/PP/INC.1/6 for previously defined key terms relevant to the instrument and appendix I to document UNEP/PP/INC.1/7 for further key terms related to plastics and plastics science more generally.

⁵ See, for example, *Final Clauses of Multilateral Treaties: Handbook* (United Nations publication, Sales No. E.04.V.3), glossary.

⁶ Resolution 5/14, para. 3 (a) and (b).

⁷ See, for example, the final preambular paragraph of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, which reads: “Determined to protect, by strict control, human health and the environment against the adverse effects which may result from the generation and management of hazardous wastes and other wastes”.

as where an activity is regulated, but only with respect to particular materials, similar to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal.⁸

Preliminary question: Which types of substances, materials, products and behaviours will be covered by the instrument?

11. *Context.* Regulated substances, materials, products and behaviours may be placed in the body of the instrument or in any annexes or protocols thereto (where appropriate). In the context of the future instrument, there may be options to address pre-production or post-production activities related to plastics, categories of substances, including microplastics and macroplastics, and behaviours related to the production, use, disposal and recycling of these substances at stages in the life cycle. More information on structural options is contained in document UNEP/PP/INC.1/4 and more information on how sources of plastic pollution can be addressed is contained in document UNEP/PP/INC.1/7.

4. Principles⁹

Preliminary question: What principles will guide the implementation of the instrument?

12. *Context.* Going beyond the scope and specific objectives of the instrument, certain guiding principles may apply to its interpretation or implementation and may relate to principles of international law, principles of interpretation or other concepts relevant to the subject matter of the instrument, such as the “polluter pays” principle.¹⁰ Together with the preambular paragraphs and text on the scope and objective or objectives, the principles of an instrument may provide context for interpreting the operative provisions in order to ensure effective implementation.¹¹

C. Core obligations, control measures and voluntary approaches (including annexes, if any)^{12,13}

Preliminary question 1: 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?

13. *Context.* One prominent example of a multilateral environmental agreement that takes a life-cycle approach to substances controlled under it is the Minamata Convention on Mercury, which takes into account all stages at which mercury may be released to the environment. Resolution 5/14 provides that the future instrument address plastic pollution at all stages of its life cycle. As set out in document UNEP/PP/INC.1/7, making this principle operational would require that core obligations, control measures and voluntary approaches consider the impacts of all activities and outcomes associated with the production and consumption of plastic materials, products and services at each stage of the life cycle. Further information on core obligations and control measures is contained in that document.

Preliminary question 2: What core obligations will parties have under the instrument?

14. *Context.* The core obligations relate to legally binding commitments for parties to act or not to act in a certain way, in accordance with the objectives of the treaty. They may focus on results by establishing outcomes to be achieved and are generally placed in the body of the instrument. They may include a focus on conduct or process, including how certain activities are managed. In the context of plastic pollution, core obligations may relate to those broad goals that will prompt a systems (or systemic) change, with actions across the life cycle that address the root causes of plastic pollution rather than its symptoms.¹⁴

⁸ The Basel Convention applies to the transboundary movement of listed categories of wastes and their disposal.

⁹ Resolution 5/14, para. 4 (c).

¹⁰ For example, see document UNEP/PP/INC.1/7, under “Policy and legislative tools across the life cycle”, for a discussion of relevant principles.

¹¹ Some instruments indicate how specific principles apply in the context of that instrument. See, for example, the application of the precautionary approach in article 6 of 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 Straddling Fish Stocks and Highly Migratory Fish Stocks.

¹² Resolution 5/14, paras. 3 (c) and 4 (a).

¹³ Including possible solutions and measures set out in document UNEP/PP/INC.1/7.

¹⁴ For more information on possible core obligations, see document UNEP/PP/INC.1/7.

Preliminary question 3: What control measures will be put in place in the light of the objective or objectives and scope of the instrument?

15. *Context.* “Control measures” refer to those provisions intended specifically to prevent, minimize or redress the problem or problems that gave rise to the treaty’s adoption. They relate to the specific steps or approaches towards meeting or achieving the core obligations. The details of the measures may be placed in the body of the instrument or in any annexes or protocols thereto (where appropriate). An elaboration of these structural options is contained in document UNEP/PP/INC.1/4 and examples of control measures that may apply to the instrument are contained in document UNEP/PP/INC.1/7.

Preliminary question 4: What voluntary approaches will be referred to in the instrument?

16. *Context.* Treaties often contain a mix of provisions, including factual statements, obligations and recommendations. Whether particular provisions create legal obligations depends on the language of the provision. Voluntary approaches may be indicated through the use of hortatory or programmatic terms, such as “may” or “should”, while mandatory language tends to be suggested by terminology such as “shall” or “must”, although much will depend on the specific context.¹⁵ For example, the use of “shall” may often be considered as conveying a command to fulfil an obligation, but when accompanied by conditions such as “as appropriate”, an element of voluntariness may be imparted, depending on the context of the broader provision.

Preliminary question 5: How will these voluntary approaches relate to the core obligations?

17. *Context.* Voluntary approaches can be used to supplement core obligations and control measures, allowing for a higher level of ambition that would enhance the effectiveness of meeting the objectives of the instrument. Such approaches may be taken on by both parties and non-party stakeholders in order to encourage broader participation in achieving the objectives of the instrument.

D. Implementation measures¹⁶

1. National action plans¹⁷

Preliminary question 1: How can national action plans contribute to meeting the objectives of the instrument?

18. *Context.* A treaty may require that specific or general actions to be taken at the national level in order to facilitate implementation be set out in a national action plan or similar document. Pursuant to article 7 of the Minamata Convention, for example, parties are to develop and implement national action plans after determining, and notifying the secretariat, that artisanal and small-scale gold mining and processing in their territory is more than insignificant. It is also mentioned in article 7 that parties may cooperate with each other and with relevant intergovernmental organizations and other entities, as appropriate, to achieve the objectives of the article.

Preliminary question 2: How could national action plans promote the prevention, reduction and elimination of plastic pollution and support regional and international cooperation?

19. *Context.* A number of action plans have been developed at the national level. Consideration should be given to what roles national action plans can play in the instrument to promote the achievement of its objectives.

¹⁵ See, for example, the technical annex to the Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution concerning the Control of Emissions of Nitrogen Oxides or their Transboundary Fluxes, which, according to article 10 of the Protocol, has an explicitly “recommendatory” character. See also Daniel Bodansky, *The Art and Craft of International Environmental Law* (Cambridge, Massachusetts, Harvard University Press, 2010), pp. 103–104.

¹⁶ The possible measures set out below are illustrative and not exhaustive.

¹⁷ Resolution 5/14, para. 3 (d)–(e).

2. Scientific and technical cooperation and coordination¹⁸

Preliminary questions: What forms of technical and scientific cooperation and coordination are envisaged under the instrument? What other forms of cooperation and coordination may be considered?

20. *Context.* Although not a common stand-alone section in multilateral environmental agreements,¹⁹ scientific and technical cooperation and coordination are frequently mentioned in those and related agreements. For example, such approaches may be found under exchange of information provisions,²⁰ calls for cooperation and coordination between instruments,²¹ as part of obligations for the parties²² and as part of the mandate of subsidiary bodies.²³ In addition, it is specified in paragraph 4 of resolution 5/14 that the intergovernmental negotiating committee is to consider the possibility of a mechanism to provide policy-relevant scientific and socioeconomic information and assessment related to plastic pollution.

3. Effectiveness evaluation and national reporting²⁴

Preliminary questions: What requirements relating to national reporting will be defined under the instrument, taking into account its objective or objectives and scope? How can reporting processes build on and innovate from past experiences?

What processes will be put in place to periodically assess the effectiveness of the instrument in achieving its objectives?

21. *Context.* A multilateral environmental agreement may include a provision on reviewing the effectiveness of the instrument, pursuant to which parties are to periodically examine how effective the agreement has been in accomplishing its objectives and to consider whether further action is required, often with reference to information gathered under monitoring provisions.²⁵

4. Compliance²⁶

Preliminary question: What would be the scope of the mechanism to address compliance, taking into account the objective or objectives, scope, core obligations and control measures under the instrument?

22. *Context.* Provisions on compliance are directed at proactively facilitating parties to remain in continued compliance with the instrument and assisting them in returning to a state of compliance if necessary (facilitative approach). Provisions on non-compliance are directed at addressing what may or must happen when a party falls out of compliance and may involve a more punitive approach, such as the removal of benefits or the imposition of penalties (enforcement approach).²⁷ Compliance mechanisms often involve some form of compliance or implementation committee, and compliance functions are often based largely on the obligations of parties to submit national communications and to report on key indicators.²⁸ The approach in multilateral environmental agreements is shifting to focus mainly on facilitating implementation and preventing environmental damage rather than punishing non-compliance. Compliance mechanisms are distinct from provisions relating to dispute settlement (considered in sect. H.2 below).

¹⁸ Ibid., para. 3 (k).

¹⁹ An exception is found in section 2 of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, on scientific and technical cooperation.

²⁰ For example, Minamata Convention on Mercury, art. 17.

²¹ For example, Minamata Convention, art. 24.

²² For example, Minamata Convention, art. 7 (4) (c); and Stockholm Convention on Persistent Organic Pollutants, art. 11 (2) (b).

²³ For example, the Subsidiary Body for Scientific and Technological Advice, which was established under article 9 of the United Nations Framework Convention on Climate Change.

²⁴ Resolution 5/14, para. 3 (f).

²⁵ For example, article 14 (1) of the Paris Agreement states that the governing body of the Agreement “shall periodically take stock of the implementation of this Agreement to assess the collective progress towards achieving the purpose of this Agreement and its long-term goals”. See also Minamata Convention, art. 22.

²⁶ Resolution 5/14, para. 3 (p).

²⁷ For example, Kyoto Protocol to the United Nations Framework Convention on Climate Change, art. 17.

²⁸ For example, national reports under article 21 of the Minamata Convention are an important source of information on implementation of and compliance with the Convention. See also article 15 on the Implementation and Compliance Committee.

E. Means of implementation

1. Capacity-building²⁹

Preliminary question: What capacity-building mechanisms will be referred to in the instrument?

23. *Context.* “Capacity-building” relates to the process of developing and strengthening technical skills, institutional capacity and personnel to implement the instrument. Multilateral environmental agreements often contain provisions for parties to provide capacity-building assistance to a specific group of parties to assist in the implementation of obligations under the agreement. In some cases, specific provisions for financing of capacity-building programmes are made.

2. Technical assistance³⁰

Preliminary question: What arrangements for technical assistance will be established through the instrument?

24. *Context.* A multilateral environmental agreement often contains provisions directed at providing technical assistance to a specific group of parties.

3. Technology transfer on mutually agreed terms³¹

Preliminary question: What arrangements for technology transfer will be established through the instrument?

25. *Context.* A multilateral environmental agreement may contain provisions directed at encouraging technology transfer between parties to ensure that all parties benefit from new or relevant technologies that will better equip them to meet the objective or objectives of the instrument.

4. Financial assistance³²

*Preliminary question: What arrangements for financial assistance will be established through the instrument?*³³

26. *Context.* A multilateral environmental agreement often contains provisions directed at providing financial support to a specific group of parties to assist in the implementation of the agreement. These may include, for example, multilateral funding mechanisms or funds dedicated to specific purposes.

F. Institutional arrangements

1. Governing body

Preliminary question: What governing body or bodies will be established under the instrument?

27. *Context.* Multilateral environmental agreements will generally contain a provision or set of provisions establishing the main decision-making authority under the instrument. For conventions, this is usually a conference of the parties, while protocols usually have a meeting of the parties. Such provisions may contain stipulations on who may attend and participate in sessions or meetings of the body, the role of observers in those sessions or meetings and the authority of such bodies to draft rules of procedure. Often, there will be a provision spelling out the general authority of the body, as well as a provision on residual authority, namely to take decisions on action required to meet the objective or objectives of the agreement.

²⁹ Resolution 5/14, para. 3 (n).

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

³³ For further information on financial assistance and mechanisms, see document UNEP/PP/INC.1/9, which provides an overview of funding currently available for addressing plastic pollution through international funding arrangements, including from other processes, programmes, multilateral funds, development banks and private-sector initiatives.

Preliminary question: What will be the functions of the governing body or bodies under the instrument?

28. *Context.* In addition to typical provisions spelling out the general authority of the governing body or bodies, authority may, in some circumstances, be delegated to the governing body or bodies to elaborate on certain details or modalities of control measures, including through the development of additional standards or guidance under the instrument. For example, article 11 of the Montreal Protocol on Substances that Deplete the Ozone Layer contains the functions of its Meeting of the Parties, which include the authority to establish guidelines or procedures for reporting information and the authority to decide on any addition to, insertion in or removal from any annex of substances and on related control measures under the Protocol.

2. Subsidiary bodies³⁴

Preliminary question: What subsidiary bodies will be established through the instrument?

29. *Context.* Some multilateral environmental agreements establish or mandate the establishment of specific, permanent, subsidiary bodies.³⁵ Generally, many of the essential features of these bodies are included in the instrument, including their purpose and functions, composition and decision-making process. Even if such bodies are not established, agreements will usually confer on the governing body the authority to establish such bodies as it deems necessary for the implementation of the agreement.³⁶

Preliminary question: What would be the functions of subsidiary bodies?

30. *Context.* In some cases, a separate delegation of decision-making authority is made to bodies that report to the conference or meeting of the parties and that have the authority to make recommendations to that body on subjects within their mandate. Mandates often relate to technical, scientific or implementation issues. The instrument may provide for the establishment of specific subsidiary bodies or may defer such establishment to a decision of the governing body. The instrument may also include provisions related to rules of procedure that must be followed by subsidiary bodies, including whether the rules of procedure of the governing body apply mutatis mutandis to any subsidiary bodies.

3. Secretariat³⁷

Preliminary question: What will be the functions of the secretariat?

31. *Context.* Multilateral environmental agreements will generally contain a provision establishing a secretariat. Such agreements generally provide that, unless the agreement has already done so, the governing body will designate the entity to administer the secretariat functions at its first meeting. The agreement will usually list the functions of the secretariat, with some of the most common functions being arranging and providing logistical support for meetings of the governing body and its subsidiary bodies, gathering and preparing background information on issues related to the development and implementation of the instrument, and assisting parties in the exchange of information related to implementing the agreement.

4. Financial mechanism³⁸

Preliminary question: Will the instrument establish or designate a financial mechanism?³⁹

32. *Context.* Some instruments (e.g., the Stockholm Convention on Persistent Organic Pollutants and the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa) rely on existing financial mechanisms as a means of funding the implementation of the instrument. The United Nations Framework Convention on Climate Change (UNFCCC) designates one existing international organization with the operation of its financial mechanism (Article 21), and authorizes the governing body to entrust the operation of the financial mechanism to existing international entities (Article 11). Others (e.g., the

³⁴ Resolution 5/14, paras. 3 (i) and 4 (f).

³⁵ For example, the United Nations Framework Convention on Climate Change provides for the Subsidiary Body for Scientific and Technological Advice in article 9 and the Subsidiary Body for Implementation in article 10, while the Stockholm Convention provides for the Persistent Organic Pollutants Review Committee in article 19.

³⁶ For example, Minamata Convention, art. 23 (5) (a).

³⁷ Resolution 5/14, para. 4 (g).

³⁸ Ibid., para. 4 (b).

³⁹ See document UNEP/PP/INC.1/9.

Montreal Protocol) include provisions to establish a unique financial mechanism that serves only that instrument. The Minamata Convention financial mechanism is composed of two separate funding streams and is further supported by the Global Mercury Partnership, which plays a role in catalysing global action on mercury and offering information, capacity-building, and awareness-raising.

Preliminary question: What would be the key features of the financial mechanism?

33. Consideration should be given to the above question by taking into account document UNEP/PP/INC.1/9, an overview of funding currently available for addressing plastic pollution through international funding arrangements, including from other processes, programmes, multilateral funds, development banks and private-sector initiatives.

G. Others⁴⁰

1. Periodic assessment of the progress of implementation of the instrument

Preliminary question: What modalities will be set out for periodically assessing the progress of implementation of the instrument?

34. *Context.* As a preliminary step in assessing the effectiveness of the instrument, parties may wish to include a requirement to assess the extent to which the instrument is being implemented, before or in addition to any assessment of the effectiveness of such implementation.

2. Awareness-raising, education and exchange of information⁴¹

Preliminary question: What mechanisms for awareness-raising, education and exchange of information will be included in the instrument?

35. *Context.* To facilitate the objective or objectives of the instrument, provisions may be included requiring parties to raise awareness and promote education on the topic of the instrument in order to ensure continued public awareness and understanding of the objective or objectives. Multilateral environmental agreements may also include a provision for gathering and sharing information about parties' activities or environmental science relating to the agreement, such as in the form of a clearing-house mechanism.

3. Research⁴²

Preliminary question: What mechanisms will be in place under the instrument to encourage or facilitate scientific research?

36. *Context.* To facilitate the implementation of the instrument, a provision may be included to promote research into and development of sustainable, affordable, innovative and cost-efficient approaches towards the objective or objectives of the instrument. Although not a common stand-alone section in multilateral environmental agreements,⁴³ research is frequently mentioned in those and related agreements.⁴⁴

4. Stakeholder engagement⁴⁵

Preliminary question: What modalities for stakeholder engagement will be included in the instrument?

37. Consideration should be given to the above question by taking into account document UNEP/PP/INC.1/12, an overview of stakeholder engagement frameworks under other instruments and of potential approaches for the international legally binding instrument on plastic pollution, including in the marine environment.

⁴⁰ Resolution 5/14, para. 4 (h).

⁴¹ Ibid., paras. 3 (j) and (o) and 4 (d) and (e).

⁴² Ibid., para. 3 (o).

⁴³ An exception is found in article 5 of the United Nations Framework Convention on Climate Change (research and systematic observation).

⁴⁴ See, for example, Stockholm Convention, art. 11; United Nations Convention on the Law of the Sea, part XIII; International Convention for the Prevention of Pollution from Ships, art. 17 (d); Minamata Convention, art. 19; and Paris Agreement, art. 7 (7) (c).

⁴⁵ Resolution 5/14, para. 3 (l) and (m). See also document UNEP/PP/INC.1/12, providing an overview of stakeholder engagement frameworks under other instruments and potential approaches for this instrument.

H. Final provisions,⁴⁶ including settlement of disputes

1. Reservations

Preliminary question: Will the instrument allow reservations?

38. *Context.* A reservation is a unilateral statement made by a State that purports to exclude or modify the legal effect of specific provisions of a treaty on that State. Some instruments expressly prohibit reservations, while others may allow them in relation to specific provisions. Most multilateral environmental agreements do not allow reservations, in order to promote internal consistency and coherence of implementation.

2. Settlement of disputes

Preliminary question: Which forms of dispute settlement will be referred to in the instrument?

39. *Context.* Generally, multilateral environmental agreements include standard provisions on forms of dispute settlement concerning the interpretation or application of the agreement. As a first step, the parties concerned usually are to seek a settlement of the dispute through negotiation or any other peaceful means of their own choice in accordance with the Charter of the United Nations. The procedures set out in those provisions may be binding and may include recourse to international tribunals or other processes. In contrast, some agreements include an “opt-in” provision whereby the dispute settlement mechanism applies only if a State consents to it when ratifying, accepting or acceding to the agreement or at any time thereafter.⁴⁷ For agreements with such a provision, the procedures relating to the settlement of disputes become binding on those parties that have made a declaration recognizing them as compulsory.

Preliminary question: Will the dispute settlement procedures be included in the main body of the instrument (or annexes) at the time of adoption, or will some be deferred?

40. *Context.* Although many multilateral environmental agreements include dispute settlement procedures in the body of and/or annexes to the instrument, some provide for the adoption of dispute settlement procedures by the governing body at its first session or meeting upon entry into force or as soon as practicable. For example, at the time of adoption, article 11 of the Vienna Convention for the Protection of the Ozone Layer encouraged dispute settlement through negotiation or mediation by a third party while noting that arbitration procedures were to be developed and adopted by the Conference of the Parties at its first ordinary meeting.

3. Amendments to the instrument

Preliminary question: What requirements will be put in place for the adoption of amendments or adjustments to the instrument and any annexes and their entry into force?

41. *Context.* Generally, final provisions in multilateral environmental agreements state that parties are to make every effort to reach agreement on any proposed amendment or adjustment to the instrument by consensus. However, where all efforts at consensus have been exhausted and no agreement has been reached, a vote may be held, with varying majorities required under different agreements. Adoption of an amendment by a three-fourths majority is provided for in the Minamata, Rotterdam, Stockholm, Basel and Vienna Conventions and the United Nations Framework Convention on Climate Change, while a two-thirds majority is provided for in the Convention on Biological Diversity and the Montreal Protocol.

⁴⁶ For a more extensive list of final provisions and textual examples, see document UNEP/PP/INC.1/8, providing a description of standard articles on final provisions that are typically included in multilateral environmental agreements. It should be noted that the term “Final provisions” includes provisions related to further development of the instrument.

⁴⁷ See, for example, United Nations Framework Convention on Climate Change, art. 14 (2), and document UNEP/PP/INC.1/8.

4. Adoption and amendment of annexes

Preliminary question: What will be the voting threshold for the adoption of amendments or adjustments to the annexes to the instrument?

42. *Context.* Generally, provisions are included to indicate whether annexes are considered to be a part of the body of the agreement and whether they require the same number of votes to revise as the body. However, parties may opt to allow for a different (and potentially lower) majority for annexes compared with the body.

Preliminary question: Will the content of annexes adopted after the entry into force of the instrument be restricted to any particular subject or limited in scope?

43. *Context.* For example, additional annexes may be restricted to procedural, scientific, technical or administrative matters.⁴⁸

Preliminary question: What will be the procedure for proposing and adopting new annexes?

44. *Context.* A procedure is generally provided for who may propose revisions and how they may be adopted, including as to voting rules. Amendments to a treaty are usually proposed by a party, while some MEAs provide that, in relation to their annexes, it is a subsidiary body that has the authority to recommend amendments thereto. Under the Stockholm Convention, for instance, Article 8 provides that a Party may submit a proposal to the Secretariat for listing a chemical in Annexes A, B and/or C and this proposal may trigger a subsequent review by the POPs Review Committee that may lead to a recommendation by that subsidiary body for the Conference of the Parties to list the chemical in Annexes A, B, and/or C.

5. Entry into force

Preliminary question: What requirements will be put in place for the entry into force of the instrument?

45. *Context.* Many multilateral environmental agreements, including the Minamata, Rotterdam and Stockholm Conventions and the United Nations Framework Convention on Climate Change, included provisions stating that they would enter into force on the ninetieth day after the date of deposit of the fiftieth instrument of ratification, acceptance, approval or accession. For others, such as the Vienna and Basel Conventions and the Convention on Biological Diversity, they were to enter into force on the ninetieth day after the date of deposit of the eleventh, twentieth and thirtieth instruments, respectively. Treaties may provide additional conditions on entry into force to be satisfied in addition to the deposit of a specific number of instruments of ratification, acceptance, approval or accession. For instance, Article 21, paragraph 1, of the Paris Agreement included a provision stating that it would enter into force on the thirtieth day after the date on which at least 55 parties to the United Nations Framework Convention on Climate Change, accounting in total for at least an estimated 55 per cent of the total global greenhouse gas emissions, had deposited their instruments of ratification, acceptance, approval or accession. Similarly, the Montreal Protocol contained a provision stating that it would enter into force on 1 January 1989, provided that at least 11 instruments of ratification, acceptance, approval of the Protocol or accession thereto had been deposited by States or regional economic integration organizations representing at least two thirds of 1986 estimated global consumption of the controlled substances, and the provisions of article 17 (1) of the Vienna Convention had been fulfilled.

6. Withdrawal

Preliminary question: What will be the conditions for withdrawal from the instrument?

46. *Context.* Parties to the instrument may later decide to withdraw based on varying circumstances, if the instrument does not prohibit this. Withdrawal or denunciation provisions will generally state any conditions for withdrawal, as well as specific time limits for withdrawals to take effect.

⁴⁸ See Minamata Convention, art. 27 (2).

Appendix

Multilateral agreements cited in the annex

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

Vienna Convention for the Protection of the Ozone Layer (1985)

Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution concerning the Control of Emissions of Nitrogen Oxides or their Transboundary Fluxes (1988)

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

Montreal Protocol on Substances that Deplete the Ozone Layer (1989)

Convention on Biological Diversity (1992)

United Nations Framework Convention on Climate Change (1992)

United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (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)

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

Convention on the Law of Non-navigational Uses of International Watercourses (1997)

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)

Minamata Convention on Mercury (2013)

Paris Agreement (2015)
