



for a toxics-free future

May 2023

IPEN QUICK VIEWS:

SECOND SESSION OF THE INTERGOVERNMENTAL NEGOTIATING COMMITTEE (INC-2) TO DEVELOP AN INTERNATIONAL LEGALLY BINDING INSTRUMENT ON PLASTIC POLLUTION

Background

During INC-2, delegates will advance in the development of the treaty, using document [UNEP/PP/INC.2/4](#) on potential options for elements as a basis for discussion and will decide on mandates for documents to be prepared between INC-2 and INC-3 as well as any other work that will be needed between these sessions.

IPEN Key Messages for INC-2

The member states and groups of member states that submitted their views on the elements of the Plastics Treaty have in a large majority (about 74% of the submissions) expressed that the Plastics Treaty should protect human health, and over half of submissions (64%)¹ call for some form of control measure on chemicals in plastics.

For the Plastics Treaty to protect human health and the environment from the impacts of plastics throughout their lifecycle the Treaty must address chemicals in plastics. IPEN therefore believes that the Plastics Treaty must include the following elements:

- **Health protection:** The protection of human health and the environment should be the primary objective of the Treaty and should be integrated throughout the control measures of the treaty.
- **Reduced production:** The Treaty should achieve sustainable production and consumption of plastics, with a focus on reduction and minimization while promoting innovation to safer, sustainable materials. Where the INC focuses on waste management it should be to prioritize reducing the generation of plastic waste and the sound disposal of existing plastic materials, including the prohibition of recycling plastics containing toxic chemicals.
- **Bans or restrictions on plastic trade:** To avoid loopholes and address the international trade of

plastics at the upstream, midstream, and downstream levels, it will be essential to ensure that bans, prohibitions, or restrictions on the production and use of plastics, plastics products, and chemicals are mirrored by trade bans, prohibitions, and restrictions between Parties and between Parties and non-Parties.

- **Funding:** The Treaty needs to contain a mechanism providing new, additional, predictable, sustainable, and adequate funding for the implementation of the Treaty and to require the chemical and petrochemical industries to contribute to financing the prevention and remediation of the pollution, health impacts, and other costs related to toxic exposures from their materials.
- **Basic key principles:** Principles, including the precautionary principle, the polluter pays principle, and human rights should inform the provisions of the Treaty, and should guide implementation and interpretation of the Treaty. For example, the polluter pays principle should be implemented by requiring plastic producers to cover the costs of plastic pollution, including legacy pollution. As in the Stockholm Convention, the precautionary principle should be incorporated in control measures on plastics to ensure that action to protect human health and the environment from hazardous substances can proceed without the need for full scientific certainty.
- **Chemical controls:** The Treaty should include obligations to ensure that plastics that remain in the economy are free of hazardous chemicals, including hazardous polymers. These chemicals should be identified with science-based criteria, building on criteria already identified under other multilateral environmental agreements, including the precautionary principle. The Treaty should avoid mistakes made in previous chemicals management regimes by adopting class-based approaches to phasing out chemicals that are similar in structure and properties.

IPEN Views on the Overall Outcomes for INC-2

- States should agree on the objectives [and scope] of the legally binding instrument, which include the protection of human health and the environment from all emissions and negative impacts arising from and the life cycle of plastics, from extraction/sourcing to their production and design, to their use, consumption, and disposal. It should also address all sources of plastic pollution, covering materials, products, chemicals, additives and microplastics, recognizing the risks of plastics to human health.
- The INC should give a mandate to the INC Chair to develop a zero draft of the Treaty text to be discussed by INC-3.
- The INC should plan on country-led intersessional work including creating working groups that discuss criteria for identifying a list of chemicals of concern used in plastics to be annexed to the Treaty, and that take up the issue of funding implementation of the Treaty and holding companies responsible for plastic pollution.
- Both the work during the INCs and intersessional work should focus on legally binding measures. Possible voluntary approaches should be left for future discussions or for discussions in other fora.
- To improve upon the INC-1 meeting report, the meeting report for INC-2 should reflect the actual flow of the meeting and include substantive discussions that have been carried out, including countries' and observers' positions on key issues.

Views on the document: “Potential options for elements towards an international legally binding instrument” (UNEP/PP/INC.2/4)

The Elements Paper (UNEP/PP/INC.2/4) contains options for elements of the Treaty, including objectives and potential core obligations. It contains several references to human health and chemicals. IPEN believes that the objective to protect human health and the environment is crucial and should be embedded throughout the control measure, particularly in relation to identifying, restricting, and phasing-out chemicals of concern, including plastic monomers and polymers.

Objective(s)

The objective of the instrument will be crucial in guiding its interpretation. In the Elements Paper (UNEP/PP/INC.2/4), three options for the objective of the Treaty are presented and IPEN's view is that the formulation of the objective under paragraph 9(b) best reflects the needs as expressed by countries: “Protect human health and the environment from the adverse effects of plastic pollution throughout the life cycle.” However, the objective would benefit from referring to the precautionary principle, as is the case in the Stockholm Convention, as well as the need to reduce the production, use, and discharges of plastics.

Possible Core Obligation: “phasing out and/or reducing the supply of, demand for, and use of primary plastic polymers”

Reducing plastic production is a necessary step toward achieving sustainable production and consumption. To achieve a significant reduction of plastic production and trade, delegates should agree that the Treaty includes legally binding provisions to track types and volumes of plastic polymers, precursors, and feedstocks manufactured, imported, and exported as well as the quantities and types of chemicals used in production, through transparency and reporting requirements. Legally binding reduction targets should be agreed. In addition, plastic production reduction strategies should also prioritize reduction and elimination of plastics with toxic chemicals (including toxic monomers and polymers).

This section of the document suggests that reducing the use of primary plastic polymers and increasing the use of recycled materials would be beneficial, with a greater flow of plastics being cycled back into the economy as “secondary plastics.” However, the downsides of this scenario are not acknowledged. Independent scientific studies have repeatedly shown that recycled plastics contain hazardous chemicals that harm human health and the environment. Recycling can combine and concentrate hazardous chemicals from different plastics and create new hazardous materials, all of which end up in the recycled plastic product, leading to exposures to consumers. Recycling workers are exposed to toxic chemicals and their communities are contaminated by chemicals from plastics. Some plastic recycling technologies create massive toxic waste streams that can also create environmental and health hazards. It is therefore crucial that delegates agree that hazardous chemicals should be phased out of plastics

and should prohibit the recycling of plastics containing hazardous chemicals as these should be unacceptable in a safe, toxics-free, circular economy.

Possible Core Obligation: “banning, phasing out and/or reducing the production, consumption and use of chemicals and polymers of concern”

The Elements Paper reflects the view presented by many countries that there needs to be bans, restrictions, and phase-outs of the production, use, and trade of hazardous chemicals, including polymers. Delegates should ensure that the language in the paper on control measures for chemicals is strengthened and that consideration of impacts of hazardous chemicals is included also under other relevant proposed control measures such as provisions on circularity, emissions and microplastics. Learning from the shortcomings of existing approaches, the objective should be to develop a chemical class-based approach, rather than aim to apply criteria chemical by chemical.

The Elements paper also suggests transparency measures. Delegates should also retain the proposed language on transparency measures necessary for identifying and phasing out chemicals of concern throughout the value chain and based on a globally harmonized approach. These include tracking types and volumes of polymers and chemicals as well as providing full transparency throughout supply chains.

At INC-2 countries should work toward establishing criteria and mechanisms to identify and phase out toxic chemicals (including monomers and polymers) that are used throughout the plastics life cycle. Building on the experience of the Stockholm Convention, the INC should create a “criteria expert group” to start working between INC-2 and INC-3 on criteria for identifying chemicals of concern without pre-empting the outcome of the negotiations and the outcomes of the zero draft text to be prepared for INC-3.

Possible Core Obligation: “reducing microplastics”

The Elements Paper suggests both measures for intentional and unintentional releases of microplastics. In discussing these control measures, when releases cannot be fully eliminated, delegates should ensure that materials with a high potential of generating microplastics are not made of polymers and chemicals that are hazardous and toxic to human health and the

environment.

Possible Core Obligation: “strengthening waste management.”

The focus of the INC on waste management should be the reduction of plastic waste generation and the sound disposal of existing plastic materials. The Elements Paper stresses a long list of potential measures to increase the quantity of plastics that are recycled. Delegates should include under this control measure a prohibition on all forms of recycling plastics containing hazardous chemicals, similar to the Stockholm Convention’s prohibition on the recycling of waste containing Persistent Organic Pollutants.

Further, delegates should not allow for increased trade in plastics, particularly towards low- and middle-income countries as suggested under this control measure. The Elements Paper suggests the use of extended producer responsibility (EPR) as a tool for increasing recycling of plastics. On the contrary, EPR should be used as a tool to reduce the production of plastic products and to ensure producers bear the societal costs of plastic pollution.

As stressed in the Elements Paper, delegates should prioritize environmentally sound end-of-waste policies with a focus on best available techniques such as zero-waste strategies and non-combustion technologies. To prevent the production and releases of toxic emissions from plastics waste management, policies should prevent the following dangerous practices: open burning, incineration, co-firing in coal-fired power plants and waste-to-energy processes, co-processing in cement kilns, and chemical recycling.

Possible Core Obligation: “fostering design for circularity”

Hazardous chemicals in plastics make them unsustainable and unfit materials for a circular economy. As the mandate underlies the importance of promoting sustainable design, the Treaty must ensure that hazardous chemicals are eliminated in the production of plastics and in plastic materials, and that plastics with hazardous chemicals are not recycled (non-circular plastics). Delegates should make specific reference to the importance of eliminating toxic chemicals when designing plastics for a transition to a circular economy. Detoxifying the life cycle of plastic should be the building block for implementing circular economy approaches and creating material cycles that do not

harm human health or the environment. Harmonised design standards for plastic materials and products should also include provisions on chemicals. Further, delegates should specify that any recycled content provisions should only be allowed for plastics that can be ensured to be free of hazardous chemicals and materials.

Possible Core Obligation: “promoting the use of safe, sustainable alternatives and substitutes”

When discussing measures to promote sustainable alternatives to plastics, such as biodegradable and compostable plastics, delegates should be guided by a scientific approach. Studies have shown that materials made from biobased and biodegradable plastics have similar toxic characteristics as conventional plastics.² Therefore, delegates should avoid introducing provisions that would allow shifting from fossil fuel-based plastics that harm human health and the environment to biobased plastics that would have similar impacts.

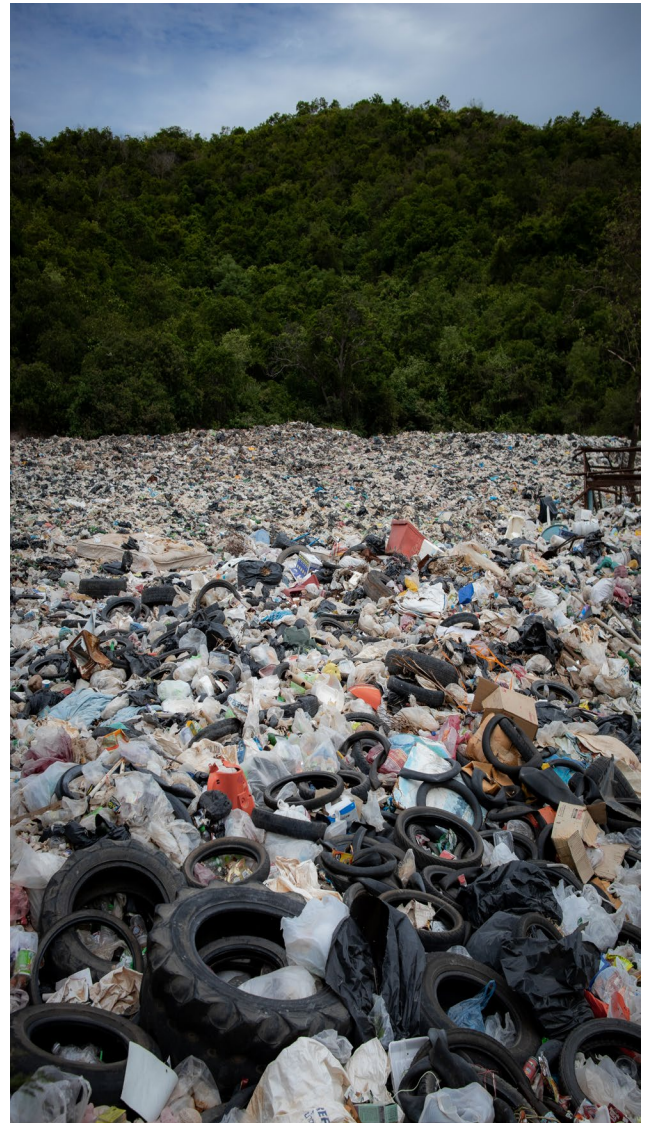
Possible Core Obligation: “protecting human health from the adverse effects of plastic pollution”

The Elements Paper includes a potential provision for protecting human health from the adverse effects of plastic pollution which should include all emissions and adverse impacts throughout the life cycle. However, the suggested control measures are weak and ineffective. Health should be considered a cross cutting issue to be addressed in the Treaty throughout its control measures. Experience under Article 16 of the Minamata Convention has shown that a dedicated article on “health aspects” is ineffective without consideration across the control measures.

Possible Core Obligation: “addressing existing plastic pollution”

The Elements Paper suggests creating control measures to address existing plastics pollution and stockpiles. Delegates should include a mechanism to mobilise and collect funds to address legacy pollution, such as a “Plastic Pollution Legacy Fund” made up of contributions from sectors that produced the materials that comprise legacy pollution. The Plastics Treaty can build on the example of the Stockholm

Convention approach to addressing obsolete pesticide stockpiles which engages the relevant sectors to fund activities to remediate pesticide-contaminated sites and hotspots. Techniques to address plastic waste-contaminated sites must follow Best Available Techniques (BAT) and Best Environmental Practices (BEP) such as non-combustion technologies.



Coordination with BRS Conventions and other MEAs

UNEA Resolution 5/14, which gives mandate to the INC, notes the importance of preventing threats to human health and the environment from toxic plastics and calls for coordination with the Basel, Rotterdam and Stockholm Conventions and the Strategic Approach to International Chemicals Management (SAICM). Therefore, delegates in discussing control measures should consider how to fill the governance gaps with existing MEAs on chemicals and waste and how to avoid duplications. This could include:

- Ensuring that POPs used in plastics are identified and prioritized for phase-out.
- Ensuring that transparency provisions are prioritised for chemicals of concern in plastics based on hazard characteristics applied so that plastics containing toxic chemicals, including POPs, can be identified and safely disposed of.
- Ensuring transparency across all aspects of plastics waste management including waste generation waste management, given that under the Basel Convention transparency is relevant only for transboundary movement.

Means of implementation

States should establish a dedicated plastics multilateral fund or funds through the new instrument, with Member States and other funding sources contributing funds for support. The chemicals and waste cluster is severely underfunded and despite a substantial GEF replenishment for the period 2022-2026, funding is insufficient to cover the implementation of existing MEAs.³ In order to ensure that the implementation of the Plastics Treaty is duly funded, it is urgent to create a multilateral fund that has sufficient and predictable funding for the Plastics Treaty and other related chemicals and waste MEAs. Pollution is recognized as a planetary crisis but, unlike climate and biodiversity, it does not have its own funding to implement the necessary measures.

Additionally, as many member states have pointed out that the polluter pays principle should be one of the underlying principles of the Treaty, the fund should be, at least in part, replenished through funds coming from the plastics, chemicals, and related industries, through fees, taxes, and extended producers' responsibility schemes that ensure the internalization of costs.

Robust implementation will need financially supported enabling activities that are required to implement the obligations under the Treaty. These enabling activities would require financial support for, for example, capacity building, monitoring, reporting, and stakeholder participation.

Additional information:

- [INC-2 Website](#)
- [Scenario note](#)
- [BRS \(2023\). Global governance of plastics and associated chemicals](#). Secretariat of the Basel, Rotterdam and Stockholm conventions, United Nations Environment Programme, Geneva. Karen Raubenheimer, Niko Urho.
- [UNEP/PP/INC.2/4 Potential options for elements towards an international legally binding instrument](#)
- [UNEP \(2023\), Chemicals in Plastics - A Technical Report](#)
- [IPEN Website](#)

Endnotes

¹ Calculation made by CIEL and EIA.

² Lisa Zimmermann, Andrea Dombrowski, Carolin Völker, Martin Wagner, "Are bioplastics and plant-based materials safer than conventional plastics? In vitro toxicity and chemical composition," Environment International, Volume 145, 2020, <https://www.sciencedirect.com/science/article/pii/S0160412020320213>

³ For example, it is estimated to require \$2.39 billion USD to eliminate stockpiles of PCBs by 2028 under the Stockholm Convention, while only 406 million are allocated to the Stockholm Convention implementation for the 2022 – 2026 period.