

Setting the Stage for INC-5.2

Background

The 5th session of the Intergovernmental Negotiating Committee on Plastic Pollution (INC-5) adjourned without a final text, and is set to resume in August 2025 (INC-5.2) with the hopes of landing a final deal.

The task at hand is significant. Governments have spent the last three years grappling to define the essential elements of a new legally binding instrument that has the capacity to tackle plastic pollution in all sectors, in all environments, including the human body. While an agreement was not reached, significant progress towards understanding the expectations of the ambitious countries was finally laid bare.

At INC-5.2, governments will look to finalise the text, including provisions on control measures and the financial aspects, and agree on the intersessional work required in advance of the first Conference of the Parties (COP) all while also ensuring that the structure of the treaty allows for strengthening over time. All of this and more takes place against the backdrop of a dynamic and ever-changing geopolitical context. But we have never been closer and the voices of those standing up for ambition have never been stronger.

Spectre of No-Deal

Despite no deal, Busan was a success on many fronts.

It amplified areas of convergence and narrowed areas of divergence, clarifying the contours of a future deal. This included defining the key aspects related to product design (Article 5), production (Article 6) and finance (Article 11), among other provisions.

However, Busan also laid the groundwork for some serious soul-searching by ambitious countries who are considering alternative pathways to achieve the mandate in United Nations Environment Assembly (UNEA) resolution 5/14 to end plastic pollution both within the INC process and outside. This energy must be harnessed in order to deliver at INC-5.2 – the make-or-break INC after which, if unsuccessful, we must consider how best to reshuffle the cards to take away the jokers from the blockers. In other words, the INC has already missed its aspirational mandate to conclude negotiations by 2024 and this is likely to be the last session before the 7th session of the UNEA (UNEA-7) in December 2025 where everything can change, noting the possibility that failure to agree a text before UNEA could open the possibility of various initiatives, including using those venues to settle abuses related to rules of procedure and mandate.

The big question to be grappled with includes what happens if we cannot reach agreement at INC-5.2. The answer to that question has the power to shape both the intensity of the negotiations and the concessions made to broker a final package. Timing is critical and to pretend that alternative pathways do not exist runs the risk of a repeat of Busan—not to mention Ottawa, Nairobi, Paris and Punta del Este—therefore in exploring the spectre of no-deal it is critical negotiators are abreast of the alternative pathways.

- **UNEA-7.** 5.2 should be the final INC before UNEA-7. A resolution at UNEA-7, with its unbracketed Rules of Procedure (RoP) and voting, could be the natural progression of the negotiations following an unsuccessful outcome at INC-5.2. If countries cannot reach agreement at INC-5.2, UNEA-7 offers the opportunity for course

correction under a different RoP and a high stakes political moment. On the other hand, blockers could also seek to upend the mandate, pushing progress further into the distance. Therefore, regardless of how UNEA may be used, its spectre should be leveraged to drive momentum at INC-5.2.

- **Ottawa Process.** Similarly, many ambitious countries are considering what a process outside the UN would look like. There is no doubt that the High Ambition Coalition (HAC) plus other similar-minded countries could hammer out an effective deal in a week and, by virtue of their collective plastic consumption, create de facto norms on production, chemicals and product design. Such an initiative would likely only occur after UNEA-7 but could also be leveraged at INC-5.2 and UNEA-7. A critical inflection point will be whether ambitious countries believe that any deal agreed at INC-5.2 can meet their expectations or is likely to be so watered down in pursuit of consensus that it is not worth the paper it is printed on.
- **Voting.** A potential RoP showdown is part of the gamesmanship worthy of exploring ahead of the presumed final session. Since the RoP have been provisionally applied and the only attempt to visit the issue in plenary resulted in several days of fireworks in Paris, most delegates have been wary of opening this Pandora's box. Yet the lack of clarity on the legal status of rules that have been provisionally applied and the hanging weight of existing instruments that have failed to create adequate provisions for decision-making and thus rendered them ineffective means that INC-5.2 could signal the moment to vote, ideally on clean versions of the relevant provisions.
- **Differential Treatment.** Options also exist within the negotiations to adjust the structure of the treaty to accommodate divergent views. For example, an idea has been floated of whether a solution to the current deadlock could be exploring a model that leaves no country behind without holding all other countries back. Many multilateral environmental agreements allow for differential treatment of different parties. This takes many forms, such as: (i) an opt-in or opt-out option for specific articles or annexes, similar to the International Convention for the Prevention of Pollution from Ships (MARPOL); or (ii) differentiated timelines for compliance, similar to the Montreal Protocol and its Kigali Amendment. Clarifying these as legitimate options for consideration is in the interest of consummating a deal, and against the backdrop of a potential RoP showdown and alternative pathways, would further bring pressure.

The context is clear: what we have done before has not worked and, as our last chance to right this ship before alternative pathways become very real possibilities, every option must be on the table and no stone unturned. In addition to openly exploring additional pathways there should also be discussion of alternative negotiation modalities - such as the Vienna Setting.

Intersessional Period

The intersessional period is key for maintaining the momentum created at INC-5 and establishing the enabling environment for a final outcome at the resumed session.

Formal and informal convenings are slated to take place in the margins of diplomatic events in the lead up to INC-5.2, including at the Basel convention COP and the UN Ocean Conference (UNOC), amongst others. In parallel, member-led efforts to facilitate high-level and closed-door convenings should be encouraged to create, on the one hand, political buy in and, on the other hand, negotiator empowerment.

In terms of how negotiators should approach consideration of the Chair's text in their preparations for INC-5.2, a few observations:

- **First**, some provisions should be considered untouchable during the intersessional period, like production (Article 6) based on the text submission from 100+ countries. That text is clear and clean, a complete provision that does not require further refinement, and the opposition is against its inclusion as a matter of principle, not substance. Therefore, the question regarding its inclusion is binary—yes or no—and time intersessionally is better spent elsewhere.
- **Second**, delegates should seek to reach similar binary moments on the other provisions, in particular chemicals and products (Article 3), product design (Article 5) and finance (Article 11). It would be ideal to have text submissions supported by 100+ countries for these provisions in advance of INC-5.2 and efforts should be underway to bring forward clear and clean proposals. With respect to finance, toward the end of Busan, many donor and recipient countries began to indicate in the corridors flexibility on what the deal could look like in terms of an overall financial commitment and framework and its relationship to control measures. It is a fair deal for both sides but has not been fully articulated nor presented. Yet it could be seen as the landing spot if

we aim to go beyond a Paris-style agreement. Efforts in this direction should be country-led, perhaps aided though by a Friends of the Chair group. It was already clear partway through Busan that no concrete initiative around a package was being floated, and while finalisation of any package is unlikely until the final moments of any negotiation, there must be a more concerted use of corridor diplomacy earlier than the final hours of the negotiation if INC-5.2 is going to be a success.

- **Third**, delegates in the intersessional period should strive for agreement on the less controversial provisions or, at least, a methodology for reaching agreement that could be applied in the negotiations. This could take time but would provide a stronger starting point for INC-5.2 given the significant areas of existing convergence and progress made on other provisions at INC-5.

Packaging the Deal

“Nothing is agreed until everything is agreed” recognises that multiple, interdependent compromises make up an overall agreement.

Securing agreement on the global plastics treaty will require flexibility on all sides. In the context of the final deal this must translate into meaningful commitments on means of implementation being tied to meaningful commitments on upstream control measures and decision-making – and vice versa.

Meaningful commitments related to the package described here generally mean:

- **Production.** Mandatory reporting, a collective global target subject to periodic review and national measures to reduce production.
- **Chemicals and Products.** Binding obligation to eliminate annex-listed plastic products and chemicals used or present in plastics.
- **Product Design.** Binding obligation to adopt minimum requirements on design and performance.
- **Decision-making.** The Conference of the Parties shall have the ability to vote on decisions if all efforts to reach consensus have been exhausted.
- **Finance.** New fund that meets specified conditions on governance and design and adequate financial support to cover compliance and implementation costs.

Put another way, control measures, decision-making and means of implementation go hand-in-hand: more meaningful commitments in one means more meaningful commitments in the other

Task at Hand

The challenge in securing a strong final agreement is to avoid the dynamic whereby negotiations on control measures are divorced from negotiations on the means of implementation, making both of them the worse for it.

Unfortunately, this division of work, a literal “upstairs” and “downstairs” dynamic, has plagued the negotiations since the beginning, meaning conversations have stagnated in both camps. For example, there have been hours of discussions of the design of a potential new fund, but the reality of what specific obligations this fund may support delivery of have been entirely absent.

Examples of how this division unfolds include: (i) developing countries leading negotiations on means of implementation take strong positions against meaningful commitments on control measures, undermining the interests of other developing countries open to ambition in both; and (ii) developed countries leading negotiations on control measures take strong positions against meaningful commitments on means of implementation, undermining the interests of other developed countries open to ambition in both.

During the negotiations in Busan, we began to see the contours of what a package deal could look like, with states signalling their willingness to reach a compromise that would ensure meaningful commitments on Article 3

(chemicals and products), Article 6 (production), Article 11 (financial mechanism) and Article 20 (COP decision-making), which represents significant progress given these constitute the more controversial yet necessary provisions.

In broad terms, the deal includes the development of a new multilateral fund, sitting alongside the Global Environment Facility (GEF), to serve the functions and fund activities that the GEF is ill-equipped or was never designed to support, such as institutional strengthening and other enabling activities as well as clearinghouse functions. Whether or not we make the much more significant step forward to ensure this new multilateral fund also provide resources towards specific control measures as “incremental costs of compliance” depends on which measures are included in the deal and their legally binding nature, as well as how horizontal issues are resolved, such as which subset of developing countries will have priority access to the new multilateral fund and the characterisation of the donor base and its responsibilities. With that in mind, ambitious countries should seek to combine ambition on Articles 3, 5, 6 and 20 with greater ambition on Article 11 into a final package that is considered inviolable and defended accordingly.

In order to land such a deal, a new bloc of countries is needed. In the spirit of “nothing is agreed until everything is agreed” ambitious countries from across the aisle, donors and recipients alike, should come together to set out the contours of the final package for one last dance at INC-5.2.

Conclusion

We ran out of time in Busan but it set the stage for what needs to be done in Geneva at INC-5.2 to finalise a package capable of delivering on the ambition of UNEA resolution 5/14.

While the work will continue even after a final agreement on treaty text is reached, such as setting out the level of ambition for the global reduction target or undertaking the myriad of arrangements necessary to operationalise a new multilateral fund, that was always going to be the case. But the deal we must settle now, at INC-5.2, is close. It is now up to those countries leading efforts for an ambitious and effective treaty to bridge the upstairs and downstairs and shape an agreement capable of ending plastic pollution.

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