Initial Considerations for the Intergovernmental Negotiating Committee on the UNEA Resolution 5/14 to End Plastic Pollution: Towards a Legally Binding Global Instrument

We have the tools, now let's build the house

In March 2022, the United Nations Environment Assembly (UNEA) adopted resolution 5/14 titled "End Plastic Pollution: Towards a Legally Binding Instrument."[1]

Resolution 5/14 convenes an intergovernmental negotiating committee (INC) to develop the new global agreement on plastic pollution. The expressed aim is to conclude negotiations by the end of 2024, after which it would be adopted and opened for signature at a Conference of the Plenipotentiaries in 2025.

The mandate to the INC calls for addressing plastic pollution in all environments through a comprehensive approach addressing the full plastics lifecycle and sets out a series of provisions to be developed.

The negotiators now have the task of organising and prioritising the topics for discussion during the upcoming (five) sessions of the INC. Based on previous INCs for Multilateral Environmental Agreements (MEAs), structuring the programme of work is likely to take into consideration the availability of knowledge, the sensitivity or relative importance of various issues and the complexity and interrelationship of issues to be considered.

When considering the approach to negotiations it will be important to understand which topics may need be visited multiple times during negotiations and those which can be addressed easily. Furthermore, some topics may require dedicated research or working groups to be established to progress the drafting of the relevant text intersessionally.

Outlining the programme of work will be a key task of the Open-Ended Working Group (OEWG) which will meet in Dakar from 29 May to 1 June, in addition to considering rules of procedure for the negotiations and electing bureau members, as well as potentially agreeing dates and locations for the future INC meetings.

In this briefing we provide a first look – our initial considerations — of the various elements in two of the key operative paragraphs in the mandate (OP3 and OP4) in Resolution 5/14 in order to support the deliberations during the OEWG.

OPERATIVE PARAGRAPH 3	
3. Decides that the intergovernmental negotiating committee is to develop an international legally binding instrument on plastic pollution, including in the marine environment, henceforth referred to as the instrument, which could include both binding and voluntary approaches, based on a comprehensive approach that addresses the full lifecycle of plastic, taking into account among other things,	▪ **Scope**. OP3 chapeau sets out the scope of the instrument: "plastic pollution, including in the marine environment … based on a comprehensive approach that addresses the full lifecycle of plastic." ▪ **Full lifecycle**. Negotiators will need to define "full lifecycle of plastic" and break down its stages, which as a material consists of: **(i)** production and consumption (upstream); **(ii)** product design and use (midstream); **(iii)** waste prevention and management (downstream); **(iv)** plastic in the environment (leakage). An additional stage for consideration is **(v)** pre-production (raw materials), namely oil and gas extraction and processing followed by petrochemical production, which comprises 90% of the climate emissions associated with plastics.[2]

the principles of the Rio Declaration on Environment and Development, as well as national circumstances and capabilities, including provisions:	▪ **Binding vs voluntary**. Negotiators will need to consider which measures should be binding at the global level, which should be voluntary and which should be a combination of the two. Although there is no one-size-fits-all approach given the diversity of countries and their relationship with plastics, voluntary approaches represent the status quo, meaning negotiators should have a bias toward binding measures where appropriate. ▪ **National circumstances and capabilities**. Some measures will require tailoring to accommodate national circumstances and capabilities, particularly those further downstream related to waste prevention and management.
(a) To specify the objectives of the instrument;	▪ **Objectives**. At the outset, negotiators must specify the objectives (in the plural) of the new instrument. For example: to eliminate plastic pollution in all environments, and to achieve a circular economy for plastics protective of human health. ▪ **Objectives in other conventions:** – **Minamata Convention**: "to protect the human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds." – **Vienna Convention/Montreal Protocol**: "to preserve human health, and to protect the environment from any harmful effects of the depletion of the ozone layer." – **SAICM**: "achievement of the sound management of chemicals throughout their life cycle so that by the year 2020, chemicals are produced and used in ways that minimize significant adverse impacts on the environment and human health."
(b) To promote sustainable production and consumption of plastics, including, among others, product design and environmentally sound waste management, including through resource efficiency and circular economy approaches;	▪ **Lifecycle stages**. OP3(b) sets out the need for provisions on each of three main stages of lifecycle of plastic once it becomes a material. ▪ **Sustainable production and consumption of plastics**. Negotiators must consider what is "sustainable" production and consumption of plastics and how that relates to current and future levels. At a minimum, this will require reporting on virgin plastic production and consumption to establish baselines and measure progress toward sustainability. It should also include a mechanism for controlling

	polymers—now or in the future—that can be undertaken without amendment, similar to the approach taken in the Montreal Protocol. ▪ **Essential element**. EIA published a briefing note on controlling virgin plastic production and consumption under the new instrument (available here). ▪ **Product design**. Negotiators must consider how to promote product design and use, which in addition to the "how" (through industry standards or decisions on eco-design) should also consist of early consideration of the "what" (such as polymer and additive restrictions, recycled content targets, common criteria for unnecessary, avoidable and problematic plastics and reuse and refill requirements). It will be essential to establish early on what the parameters for the discussion on product design and use will be and how best to address the issue of transparency and elimination of toxic additives in plastics which undermine a safe circular economy for plastics. ▪ **Waste management**. Negotiators must consider the role of the agreement in addressing environmentally sound waste management (ESM) and how this work will align with efforts already underway under the Basel Convention, which has attempted (rather imperfectly) to describe it but not within the context of resource efficiency and circular economy approaches. For example, it will be essential to differentiate between mechanical and so-called chemical (or advanced) recycling in the context of the discussion on circularity and resource efficiency. Chemical recycling is a term that has been used to describe multiple technologies that thermally or chemically destroy plastic at very high heats, such as pyrolysis and gasification, with little resemblance to mechanical recycling and much greater environmental and climate impacts. Negotiators will also need to consider when incineration, waste-to-energy and other end-of-life treatments fall out of the scope of "environmentally sound."

	▪ **Human health**. Within this discussion should be consideration of the impact of plastics on human health, particularly as it pertains to a circular economy for plastics.
(c) To promote national and international cooperative measures to reduce plastic pollution in the marine environment, including existing plastic pollution;	▪ **Global commons**. Marine plastic pollution is transboundary and increasing at alarming rates, posing an immediate threat to marine life and ecosystems and the communities depending on them. Without undermining scope to address plastic pollution in all environments, OP3(c) directs negotiators to develop a body of work specific to reducing marine plastic pollution. ▪ **Existing plastic pollution**. Although impossible to reduce all existing plastic pollution, negotiators will need to consider how to reduce and remediate existing marine plastic pollution, for example in instances where it poses a risk to local communities, biodiversity hotspots, fisheries, tourism and navigational safety.
(d) To develop, implement and update national action plans reflecting country-driven approaches to contribute to the objectives of the instrument;	▪ **National action plans**. At the heart of the global agreement will be country-level plastic pollution reduction plans — or national action plans — setting out the specific policies and measures taken or to be taken to comply with the settled international obligations and other related commitments. The process for developing national action plans can be broken down into three main phases: (i) preparatory activities, such as data-gathering to establish inventories, sources and pathways of plastic and plastic pollution; (ii) needs assessment and intervention opportunities, particularly as it relates to promoting a circular economy and preventing leakage; and (iii) policy development and implementation, for example market restrictions, separate collection and recycling, infrastructure improvements, measures promoting secondary markets and sustainable financing mechanisms. ▪ **Procedure**. In this paragraph, negotiators are tasked with setting out the procedural requirement to develop, implement and update nation action plans, not unlike the procedural requirement in the Paris Agreement.

	▪ **Develop and update**. Initial national action plans should be submitted by a certain date, and should be periodically reviewed and updated according to a set timeframe, such as every three or five years.
(e) To promote national action plans to work towards the prevention, reduction and elimination of plastic pollution and to support regional and international cooperation;	▪ **Substance**. In this paragraph, negotiators are tasked with addressing the content of the national action plans (towards prevention, reduction and elimination), which should entail a combination of mandatory (e.g. minimum criteria) and voluntary approaches (e.g. flexibility on policy approaches). ▪ **Regional and international cooperation**. National efforts to reduce plastic pollution require regional cooperation as plastic products cross porous borders as well as international cooperation on topics such as virgin plastic production and consumption, product design and plastic waste exports. ▪ **Implementing and bilateral agencies**. The role of implementing and bilateral agencies and in assisting with national action plans and the development of regional networks like those for ozone under the Montreal Protocol should be part of the consideration here.
(f) To specify national reporting, as appropriate;	▪ **Relationship to scope and objectives**. National reporting must be designed to match the scope and objectives of the agreement. For example, it is not possible to promote "sustainable" production and consumption of plastics without statistical data on "actual" production and consumption of plastics. Other categories of statistical data will be needed as well, including on product design and use and waste management. ▪ **Essential element**. EIA published a briefing note on reporting (available here). ▪ **Harmonisation**. National reporting will require harmonisation, including on definitions formats, content and methodologies, to ensure comparability and usefulness of data. ▪ **Relationship to environmental monitoring**. Measuring progress towards eliminating plastic pollution and promoting a circular economy for plastics will

	require a combination of national reporting (bottom-up) and environmental monitoring (top-down). ▪ **Periodicity**. National reporting should be annual. ▪ **Financial assistance, capacity-building and training**. Developing well-functioning and reliable national reporting systems will require early investment and support to institutionalise reporting into the industrial and bureaucratic landscape and make it regular and systematic while ensuring its utility as a performance and planning tool. In addition to financial assistance to developing countries and countries with economics in transition, implementing and bilateral agencies should be tasked with providing capacity-building and training on national reporting and data-gathering.
(g) To periodically assess the progress of implementation of the instrument;	▪ **Assessment of implementation**. Negotiators must develop provisions to assess periodically the implementation of the existing measures in the instrument, both at the country level and convention level. This is distinct from assessing periodically whether the existing measures in the instrument are effective to achieve the objectives of the instrument in OP3(h). ▪ **Country-level implementation**. This should include an assessment of the progress of implementation by countries. For example in OP3(d) on developing, implementing and updating national action plans and OP(f) on national reporting, which in turn relates to promoting compliance in OP(p). ▪ **Periodicity**. This assessment should be regular, such as annually based on national reporting from the previous year.
(h) To periodically assess the effectiveness of the instrument in achieving its objectives;	▪ **Assessment of effectiveness**. Negotiators must develop provisions to assess periodically whether the existing measures in the instrument are effective to achieve the objectives of the instrument and determine whether additional measures are needed. This is distinct from assessing periodically the implementation of the existing measures in the instrument in OP3(g).

	▪ **Environmental monitoring**. Negotiators will need to design a global monitoring framework against which effectiveness of the instrument in achieving its objectives can be determined. Depending on the final expression of the objectives of the instrument, this will likely require monitoring plastic pollution in the biosphere (marine, freshwater, terrestrial and atmospheric) and in bioindicator species as well as exposure risks and thresholds. ▪ **Essential element**. EIA published a briefing note on monitoring (available here). ▪ **Harmonisation**. Environmental monitoring will require harmonisation, including on definitions, formats, content and methodologies, to ensure comparability and usefulness of data. ▪ **Relationship to national reporting**. Measuring progress towards eliminating plastic pollution and promoting a circular economy for plastics requires a combination of environmental monitoring (top-down) and national reporting (bottom-up). ▪ **Periodicity**. This assessment should be regular, such as every three to five years.
(i) To provide scientific and socio-economic assessments related to plastic pollution;	▪ **Relationship to reporting and monitoring**. Fact-finding is policymaking and good policymaking requires good fact-finding. The scientific and socio-economic assessments will rely heavily on — but not be limited to — the national reporting and environmental monitoring, underscoring the importance of those activities. International scientists have called for negotiators to establish a global framework for reporting and monitoring that covers plastic production, plastic product manufacture, trade, consumption, waste management and retrieval, alongside monitoring of plastic pollution including microplastics and plastics related toxic pollutants in all environments (marine, freshwater, terrestrial and atmospheric) and in biota.[3] ▪ **Periodic and ad-hoc assessments**. In addition to periodic assessments, there will be the need for ad-hoc assessments. For example, the governing body may wish to explore the alternatives to plastics in the agricultural sector and impacts on

	farmers and food production, which could be undertaken by a task force constituted for that purpose comprising of relevant experts. ▪ **Dedicated scientific and socio-economic mechanism**. Scientific and socio-economic assessments should be responsive to the needs of the governing body and tailored towards achieving the objectives of the agreement. To this end, negotiators should establish a dedicated scientific and socio-economic assessment mechanism—a subsidiary body to the governing body--whose terms of reference are adopted via decision, consideration of which is referenced in OP4(f).
(j) To increase knowledge through awareness-raising, education and information exchange;	▪ **No comment**
(k) To promote cooperation and coordination with relevant regional and international conventions, instruments and organisations, while recognising their respective mandates, avoiding duplication, and promoting complementarity of action;	▪ **Purpose**. There are several instruments, both binding and voluntary, as well as regional and global, that cover various elements related to addressing plastic pollution. While the current regulatory framework is fragmented, negotiators will need to agree on the most appropriate method by which to promote cooperation and coordination and avoid duplication. For example, it could take the form of a dedicated workstream overseen by the secretariat or the establishment of joint working groups between various conventions. ▪ **Beware of assumptions**. Negotiators should not make assumptions about the willingness of another convention to act or its ability to act comprehensively to address an issue, which would continue the fragmentation and gaps at the international level. For example, the International Maritime Organization (IMO) addresses pollution from ships, including fishing vessels, but several years following adoption of its Action Plan to Address Marine Plastic Litter from Ships it has become evident that very few of the measures needed to address lost fishing gear are forthcoming at IMO. Similar caution is needed with the Food and Agricultural Organisation (FAO) on fishing gear and agricultural plastics, the Basel Convention on plastic waste, Stockholm Convention on polymers and additives

	that are also persistent organic pollutants and the United Nations Framework Convention on Climate Change (UNFCCC) on the climate impact of plastics, among others. ▪ **Essential element.** EIA published a briefing note on the role of the new instrument in addressing fishing gear, touching upon issues of cooperation and coordination with other conventions, instruments and organisations (available here).
(l) To encourage action by all stakeholders, including the private sector, and to promote cooperation at the global, regional, national and local levels;	▪ **No comment**
(m) To initiate a multi-stakeholder action agenda;	▪ **Complementarity**. There have been multiple multi-stakeholder efforts on plastic pollution in the past. This includes the Global Partnership on Marine Litter (a multistakeholder partnership) and the multi-stakeholder platform established under Resolution 4/7, which was intended "to take immediate action towards the long-term elimination, through a life-cycle approach, of discharges of litter and microplastics into the oceans." The challenge with multistakeholder initiatives is that, for all the energy and effort that goes into them, few to no concrete commitments and obligations come out of them. Here, the primary challenge will be how to ensure the multi-stakeholder action agenda is not a waste of time that detracts from concrete commitments and obligations under the new instrument. To this end, we propose a priority for this workstream should be to agree objectives, modes of participation and resourcing to be effective in supporting the objectives of the instrument. One area where the stakeholders including the private sector can focus is on solving some of the more challenging problems related to plastic pollution stemming from product design (e.g. mixed polymers, chemical additives) and lack of transparency (e.g. material composition).

(n) To specify arrangements for capacity-building and technical assistance, technology transfer on mutually agreed terms, and financial assistance, recognising that the effective implementation of some legal obligations under the instrument is dependent on the availability of capacity building and technical and adequate financial assistance;	▪ **Capacity-building and technical assistance**. Implementing and bilateral agencies will be key providers of capacity-building and technical assistance. ▪ **Financial resources**. Negotiators must specify the arrangements for providing financial assistance from donor countries to recipient countries, which can be categorised into: (i) enabling activities, such as for institutional strengthening, capacity-building and training, reporting and monitoring, and policy development and implementation; (ii) incremental costs of compliance; and (iii) other forms of financial assistance. ▪ **Financial mechanism**. Negotiators must specify the arrangements for delivering financial assistance from donor countries to recipient countries. The strongest financial mechanism available is a dedicated multilateral fund such as the one established under the Montreal Protocol, which requires specific consideration by negotiators in OP4(b). ▪ **Essential element**. EIA has published a briefing note on the financial aspects, including the financial assistance to be provided and the financial mechanism for delivering it (available here).
(o) To promote research and development of sustainable, affordable, innovative and cost-efficient approaches;	▪ **Sustainable solutions**. In the rush to solve plastic pollution, there have been many attempts to promote solutions ranging from transitioning to plastic alternatives such as biodegradable, bio-based and compostable plastics, as well as innovations on waste treatment and remediation, such as ocean and river clean-ups. An important consideration for the negotiators will be sift through the myriad of proposed solutions and regrettable substitutions connected to plastic pollution and promote research and innovation in genuinely sustainable solutions that get at the root causes of the problem. This could also include promotion of traditional knowledge and systems approaches in areas where they have proven historically effective, and investment in the scaling of reuse and refill system infrastructure to support the reduction of single-use plastic packaging.

(p) To address compliance;	▪ **Implementation and compliance committee**. Negotiators would be well-served in looking to the non-compliance procedures of other MEAs, such as the Montreal Protocol and Minamata Convention, which outline processes for raising issues of non-compliance with the secretariat and setting terms and timeframes.

Operative Paragraph 4	
4. Also decides that the intergovernmental negotiating committee, in its deliberations on the instrument, consider the following:	▪ **No comment**
(a) Obligations, measures and voluntary approaches in supporting the achievements of the objectives of the instrument;	▪ **Intentionally vague language**. Due to differences of opinion on the inclusion of explicit references to the role of targets, standards and guidelines in supporting the achievement of the objectives, this subparagraph was introduced to provide a placeholder for their consideration at the INC. ▪ **Role of targets**. Negotiators should consider the potential role for global targets for plastic pollution, such as for reductions in virgin plastic production, rates of collection and recycling, concentrations of microplastics in the marine environment and an end date for plastic pollution, in a similar vein to the 1.5°C target under the Paris Agreement or climate-neutrality by 2050. Negotiators should also consider the potential role for national targets, either internationally or

	nationally determined, for reductions in virgin plastic consumption or rates of reuse, collection and recycling, for example. ▪ **Role of standards**. Not all measures under the agreement will be binding and some can be achieved through voluntary initiatives, such as industry standards for product design. Negotiators should consider, based on an objective evaluation of the success of current voluntary and industry-led approaches, how product design can best be addressed and the role of standards within it.
(b) The need for a financial mechanism to support the implementation of the instrument, including the option of a dedicated multilateral fund;	▪ See OP3(n)
(c) Flexibility that some provisions could allow countries discretion in implementation of their commitments taking into account the national circumstances;	▪ No comment
(d) The best available science, traditional knowledge, knowledge of indigenous peoples and local knowledge systems;	▪ **Other types of knowledge**. Scientific and other knowledge systems, like traditional knowledge, knowledge and innovation of Indigenous Peoples and local communities should enlighten negotiations and be reflected as part of the solutions to end plastic pollution. In order to achieve that, adequate means and safeguards should be enabled together with right holders. ▪ **Meaningful participation**. States and the INC secretariat should ensure meaningful and equitable involvement from Indigenous Peoples at all stages of the negotiations and implementation process, according to the UNDRIP and other international obligations.
(e) Lessons learned and best practices, including those from informal and cooperative settings;	▪ **Waste pickers**. Waste pickers are a critical part of the informal waste collection sector and a valuable source of information about practices and challenges related to waste collection, sorting and management. Listening to the experience of waste

	pickers and supporting participation and access to enable this group to share knowledge of the plastics value chain and provide expertise on problematic solutions will be essential for developing effective approaches, as well as enabling workers to have visibility, protection and the opportunity to be part of solutions.[4]
(f) The possibility of a mechanism to provide policy relevant scientific and socio-economic information and assessment related to plastic pollution;	▪ See OP3(i)
(g) Efficient organisation and streamlined secretariat arrangements;	▪ No comment
(h) Consider any other aspects that the intergovernmental negotiating committee may consider relevant;	▪ **Open mandate**. Resolution 5/14 contains an open mandate to negotiators, underscored by this paragraph that explicitly provides for the INC to consider other aspects it may consider relevant. ▪ **Other aspects for consideration**. Other aspects that merit consideration, either because referenced in the preambular paragraphs or can be considered an outgrowth therefore, include: (i) specific work programmes to address the different categories of microplastics, including tyre dust, textiles, pellets, paint, fertilisers and intentionally added microplastics; (ii) the relationship between plastics and human health and well-being; and (ii) the role of safety and sustainability criteria for chemicals in plastic products, in particular on the use additives, monomers, catalysts, polymerisation aids and internationally added microplastics.

Conclusion

The adoption of UNEA Resolution 5/14 was a historic moment in international environmental policymaking. While the task at hand may seem daunting, a substantial body of work has already been undertaken in preparation for the negotiations, not least the discussions and research delivered by the Ad-hoc Open-Ended Expert Working Group on Marine Litter and Microplastics.

We are not starting from scratch and, in other instruments, have effective models from which to draw inspiration, particularly the Montreal Protocol which is widely considered the most successful MEA in the world.

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References

[1] Resolution text available here
[2] Nature Climate Change (2019). Strategies to Reduce the Global Carbon Footprint of Plastics. Available here. Nature (2021). *Growing Environmental Footprint of Plastics Driven by Coal Combustion*. Available here.
[3] See Scientists' Declaration on the Need for Governance of Plastics Across Their Lifecycles, 2022
[4] See further data on waste pickers around the world here and the Global Declaration of the 1st Conference of Waste Pickers here, provided by the Global Alliance of Waste Pickers.