

Global Plastics Treaty: Initial Considerations for INC-5

“The greatest threat to our planet is the belief that someone else will save it”

– Robert Swan (environmentalist and explorer)

For the fifth (and potentially final) round of the global plastics treaty negotiations (INC-5), expectations are high, in particular in consummating an agreement on an instrument capable of ending plastic pollution and reducing harm across the entire plastics lifecycle. From the outset, it has been clear that this is a generational undertaking with no quick fixes. At INC-5, political will must take centre stage to resolve several contentious issues and find both agreement and ambition. This pivotal session will show whether the years of work undertaken to reach this point have provided a sufficient foundation to craft an instrument fit for the task and whether agreeing to a new international legally binding instrument to end plastic pollution can be achieved by the aspirational 2024 deadline. This briefing provides our initial—and potentially final—considerations on the INC process, focusing on high-level considerations to get the job done.

Initial considerations on the final session of negotiations

Overview

- **Chair's non-paper.** For specific reflections on each article, EIA has produced a separate briefing (please contact us, if interested). But a few general reflections are provided here. First, the Chair's non-paper is what it is. Yes, it is remarkable that a non-paper proposed to set out a global plastics treaty mentions "packaging" only once (in the context of plastic waste management) and completely avoids the use of "fishing gear" or "polymer" or many other key words anywhere. To have any hopes of a successful outcome in Busan, however, it should be accepted with two important caveats on horizontal issues:

(i) Nature of the Legal Obligations. Acceptance of the Chair's non-paper should not prejudice, or prejudice, the nature of the legal obligations. For example, on national plans, the Chair's non-paper states "Each Party may develop and implement a national plan," setting out the national plans as completely voluntary. This does not even match the ambition in the Paris Agreement, which is the low bar some have set here. A better approach would have been to use brackets to preserve divergent views, such as "Each Party [shall/should/may] develop and implement national plans." This horizontal issue plagues all control measures. EIA recommends negotiators be upfront about divergence of views on the nature of the legal obligations and in the instructions to the co-facilitators.

(ii) Omissions. Nor should acceptance of the Chair's non-paper prejudice, or prejudice, articles that were omitted. For example, it is unclear why, despite substantial discussion and support, the Chair's non-paper excludes reference to or suggested text for an article on dedicated programmes of work – one of the more important implementation measures. Other notable omissions include fishing gear, which could have been combined with dedicated programmes of work or be placed in a standalone article, and there are only quick references to extended producer responsibility and reuse. EIA recommends negotiators submit text on, and ensure time during sequencing for, dedicated programmes of work, including fishing gear, as well as extended producer responsibility and reuse.

With these horizontal issues addressed, EIA supports moving quickly toward accepting the Chair's non-paper and into discussions in contact groups where negotiators can propose improvements and find compromise through the bracket game. The non-paper can be an a la carte buffet rather than a fixed menu.

- **Production.** What else is there to say? It is no secret that, without reporting and a global target, at a minimum, any obligations across the lifecycle of plastic, the treaty will be a failure before the ink is even dry. Negotiators will have violated their mandate to "promote sustainable production and consumption of plastics" that is "based on a comprehensive approach that addresses the full lifecycle of plastic." Moreover, without mandatory reporting, it is simply not possible to monitor progress or evaluate effectiveness of the treaty in any meaningful way, as scientists have consistently noted, and without a global target the treaty will be rudderless with no clear benchmark for ambition nor indication of the scale and magnitude of the financial resources that are required for developing countries. Indeed, the early years of treaty implementation will be plagued by this realisation until such time as it is corrected, similar to setbacks that delayed progress on climate and biodiversity. EIA recommends that, if a compromise cannot be reached, this issue is voted on.
- **Draft Rules of Procedure.** Negotiators have a narrow—but doable—pathway to consummate an effective outcome in Busan. Seven days is sufficient time to determine the core obligations while leaving implementation aspects to be developed and adopted by the COP. It will require, however, that delay tactics be quickly addressed. EIA reminds negotiators that committee members agreed, at its first session, that the draft Rules of Procedure provisionally apply to all of the committee's work with the exception of any text that remained in brackets. This is a matter of public record, and the only rule with brackets is Rule 37. Therefore, Rule 38 applies provisionally subject only to the interpretative statement that accompanies it:

"The intergovernmental negotiating committee understands that, based on discussions on the draft rules of procedure for the intergovernmental negotiating committee, there are differing views among intergovernmental negotiating committee members on rule 38, paragraph 1, and its reflection in the report of the intergovernmental negotiating committee on the work of its first session. Therefore, the provisional application of rule 38, paragraph 1, of the draft rules of procedure has been a subject of debate. In the event that rule 38, paragraph 1, is invoked before the rules are formally adopted, members will recall this lack of agreement."

In light of the above, EIA recommends that decisions on procedural matters be taken quickly under rule 38, paragraph 2, and that, when decisions on substantive matters must be taken, negotiators recall the lack of agreement and move on quickly to resolve the issue. Yes, there will be theatrics and righteous indignation and thinly veiled arguments for consensus serving to justify veto authority, but our planet and children demand decisive action.

- **No more upstairs-downstairs silos.** Negotiations to date on control measures (upstairs) and the means of implementation (downstairs) have taken place in silos. As we inch closer to the finish line, delegates must consider what the final package looks like—the Grand Busan Bargain—and how to bring together. It is time to grapple with and settle key questions, including: whether mandatory money should be linked to mandatory obligations, and how to channel financial resources to binding upstream measures where the biggest bang for buck is. Moreover, it is clear that donor countries are unlikely to fund waste management in perpetuity—nor should they—but there is still a role for financial and technical assistance to kickstart sustainably financed waste management systems in developing countries through policy development and strategic investments. If we are to move away from the paradigm of voluntary money for voluntary measures that undermine other (less effective) instruments, the package agreed at INC-5 must ensure that mandatory money is linked to the binding upstream provisions.
- **Triage.** There is no substitute for taking the time to develop a treaty fit for purpose, but more time does not always mean more political will. In this regard, negotiators have some difficult waters to navigate. As we head into the final seven days, the INC should prioritise work to make the most of the limited time remaining. This means taking quick decisions on topics that must be addressed in treaty text and those that can be deferred to the COP, ensuring a structure that can be filled out and strengthened over time. By the end of the session, the agreed text should cover core obligations across the full lifecycle of plastic, even if some aspects are skeletal in nature, and a plan to prepare work for COP-1 and beyond. Such an approach is easily accomplished for most provisions.
- **Role of the INC Chair.** The INC Chair, Ecuador's Luis Vayas Valdivieso, has no easy task. Faced with a compiled text of over 70 pages and featuring more than 3000 brackets, it is widely agreed that this document cannot serve as the basis of negotiations if the meeting is to conclude on time, yet no formal mandate was given from INC-4 for the Chair to prepare his own draft. Therefore, ensuring support for the Chair's non-paper as a working document will be the session's first test. If the paper is accepted, in order to avoid a scenario where the non-paper is simply flooded with text and effectively creating more compilation or compiled texts, the Chair must provide clear guidance with desired outcomes to the co-facilitators of the contact groups while also ensuring that as many articles as possible, such as final provisions, can proceed early in the week to the legal drafting group. In this spirit, the Chair should provide clear mandates to the co-facilitators in the spirit of getting the job done:
 - (i) **Single Texts.** Rather than solicit multiple conference room papers (CRPs), direct co-facilitators to task negotiators to work together to produce single text proposals that serve as the working basis for negotiations on those articles, in particular where no text has been provided, and avoid situations where multiple CRPs effectively result in compilation 2.0.
 - (ii) **Informal Groups.** Establish informal groups to advance specific topics outside of contact groups.
 - (iii) **Triage.** Provide clear guidance on what issues must be resolved at INC-5 and those for which work can be undertaken before the first session of the Conference of the Parties (COP-1) so that time is not lost during INC-5 on things that can be developed later.

Undoubtedly this meeting will require late nights and flexibility, therefore the Chair must resist objections to finish early or to defer decisions to a later session. We are not in Busan on holiday rather we are here to burn the midnight oil and complete a decade-long journey that started at UNEA-1 in 2014 and a task that we unanimously set out for ourselves at UNEA-5 in 2022.

- **Consensus is a process.** Part of the process of reaching consensus is through the possibility of voting. Consensus does not mean unanimous consent. We believe in an equitable plastics treaty that works for all, but “leave no country behind” does not mean “hold all other countries back” – as characterised by some. On the contrary, it means working together to identify and design measures so countries that would otherwise fall behind can keep pace and providing adequate support for implementation. In addition to our views on the provisional rules of procedure for the INC, EIA recommends keeping a close eye on the discussions on rules of procedure for the functioning of the eventual instrument where the right to vote must be preserved. In particular this relates to ensuring that the adoption of rules of procedure that govern COP decisions in Article 20 of the Chair’s non-paper are also subject to a vote when consensus cannot be reached – rather than require consensus for their adoption as currently proposed. As we have seen in existing multilateral environmental agreements (MEAs), maintaining the right to vote in brackets for the rules that govern COP decision-making undermines its effectiveness.

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