



It takes two to tango: the second session of negotiations (INC-2) for a global treaty to end plastic pollution

Emily Cowan¹ · Karl Holmberg² · Emmy Nøklebye³ · Idun Rognerud³ · Rachel Tiller¹

Accepted: 9 March 2024 / Published online: 20 March 2024
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Abstract

The United Nations (UN) Intergovernmental Negotiating Committee (INC) has completed its second round of negotiations on a new international legally binding instrument to ‘end plastic pollution’. This paper examines the results of the second session of negotiations, which took place May 29–June 2, 2023, and analyses the trends, barriers, and themes shaping the emerging legally binding instrument. The paper considers the discussion surrounding the Options Paper as presented by the INC Secretariat and United Nations Environmental Program based upon written submissions received by UN member states prior to the second session of negotiations. These include potential elements the future treaty text may include—namely objectives, core obligations, and implementation and monitoring measures. At the second session of negotiations, progress towards consensus on these items was severely lacking. We draw on close observations via event ethnography of participants during the negotiations and document analysis. We conclude by looking towards the third round of negotiations by discussing the ongoing ‘dance’ of sorts as submissions are being asked of member states and like-minded groups to contribute to the zero draft treaty text.

Keywords Plastics · Treaty · UNEP · Global · INC · Negotiations

Introduction

‘Plastic Pollution is a ticking time bomb and it’s our duty to put an end to it.’ -Emmanuel Macron, President of France, video address on day 1 of INC2 in Paris, France

The adverse effects of plastic pollution in the environment are well documented (Tiller et al. 2022; Cowan and Tiller 2021; Cowan et al. 2021; Tiller et al. 2019a; Dauvergne 2018; Ferraro and Failler 2020; Haward 2018; Ritchie and Roser 2018; Harris et al. 2023; Nyberg et al. 2023). Global plastic production rates reached well over 460 million tonnes in 2019 alone (Ritchie and Roser 2018). Meanwhile, plastic waste released into the environment is expected to reach up to 53 million tonnes by 2030 (Borrelle et al. 2020), with an estimated cost to the world’s economies at nearly 2.5

trillion USD annually (Beaumont et al. 2019). To address the growing plastics crisis, United Nations (UN) Member States (MS) adopted Resolution 5/14 in the second half of the fifth United Nations Environmental Assembly (UNEA 5.2) to end plastic pollution and forge a Global Plastics Treaty (GPT) by the end of 2024 (UNEP n.d.). The first session of the Intergovernmental Negotiating Committee (INC) to develop an international legally binding instrument (ILBI) on plastic pollution (INC-1) took place in Punta del Este, Uruguay, from 28 November to 2 December 2022. Although there was wide consensus at INC-1 on the harm caused by humans’ dependency on plastics, substantial elements of the future treaty text were not yet discussed.

This perspective article describes the events at INC-2, which took place from 29 May to 2 June 2023 in the French capital of Paris, with UN delegates from 175 countries in attendance. Like INC-1, statements and procedural issues took up a lot of negotiation time, which led to substantive negotiations not commencing until the evening of day 3. As such, the INC could only discuss the [potential] ‘Options for Elements’ document (UNEP 2023a) for 1 full day in the two parallel contact groups (CGs). Despite the condensed time

✉ Emily Cowan
Emily.cowan@sintef.no

¹ SINTEF Ocean, Brattørkaia 17c, 7010 Trondheim, Norway

² Lund University, Lund, Sweden

³ Norwegian Institute for Water Research, Økernveien 94, 0579 Oslo, Norway

for negotiations, the INC concluded with a mandate for the Secretariat to develop a zero draft ahead of INC-3.

To this end, we highlight patterns and trends throughout different stages of the negotiation process, in this case at INC-2. Our goal in this manuscript is to provide factual updates on the negotiation process, rather than expressing personal opinions on the potential outcome. Our methods of data collection and analysis therefore include narrative analysis of public statements, process tracing, and event ethnography (methods detailed in among others (Tiller et al. 2023; Mendenhall et al. 2019; Hughes et al. 2021)). This mix of methods allows us to construct a richer overall understanding of the negotiation process. We draw inspiration from a suite of articles on the negotiations towards the ILBI to govern ‘Biodiversity Beyond National Jurisdiction’ (BBNJ), which was adopted on June 19, 2023, after 5 years of negotiations (Tiller et al. 2019b; Mendenhall et al. 2023). This current paper first discusses the main points of convergence and divergence during the negotiations at INC-2, followed by a summary of each of the parallel CGs and their discussions on the substantive elements presented in the ‘Options for Elements’ paper. We conclude with an analysis of the path towards a zero draft for INC-3.¹

The first 3 days: rules of procedure (RoP)

‘We really must insist on the bracketing of Rule 38.1 before we move forward to the substantive issues of this meeting’—delegate of Saudi Arabia, plenary intervention on day 2 of INC-2 in Paris, France.

The phrase ‘it takes two to tango’ can be seen as a metaphor for the events that transpired during INC-2 and how a majority of the first days of negotiations were at a standstill. To reach a meaningful agreement, it will require commitment and will from all UN MS. The Chair had in the Provisional Agenda (UNEP 2023b) intended to elect officers to the Bureau and adopt the ‘Draft RoP’ (UNEP 2023c), which included the questions on voting and consensus that had been postponed from INC-1 into the intersessional period. As no consensus was reached among the two committee members², there would have to be a vote, according to the draft RoP. As such, the start of INC-2 was faced with a ‘double whammy’, where two unfortunate conditions for

the success of multilateral negotiations on plastic pollution are happening in parallel.

After a lengthy voting process in which the nominees from Georgia and Estonia for the Eastern European group were voted into the Bureau, along with the nominees from the United States and Sweden for the Western European states and others, Saudi Arabia asked for the microphone with a point of order around this procedural issue on voting. This marked a new phase of discussions around the RoP. Rule 37 under ‘Voting Rights’, states that: ‘*Each Member shall have one vote [except as provided for in paragraph 2 of the present rule]*³’. On paper perhaps there is not much to argue about, as the bracketed text primarily relates to how the EU-27 vote should be counted. The text had remained bracketed since the Open-Ended Working Group (OEWG) to prepare for the INC process, which took place in Senegal a year earlier, and had been provisionally adopted at INC-1. However, the Saudi Arabian delegation suggested that since the RoP on voting rights were not set, Rule 38 on how the adoption of a decision will be made should also be bracketed, as voting rights precede the adoption of a decision. This centred on whether substantial decisions must be taken by consensus or if a two-thirds majority decision can be taken if all other options are exhausted. The Saudi Arabian intervention was followed by supporting sentiments from China, Brazil, Iran, Argentina, the Russian Federation, and India.

The EU, the United States, the group of Small Island Developing States (SIDS) and many other African and Latin American countries insisted on not reopening negotiations on Rule 38 from INC-1 and not putting this text on consensus and majority voting into brackets. To their understanding, there had been no dispute about this during its provisional adoption at INC-1 and reopening negotiations on the RoP would delay the ‘real’ talks on substantial elements. This prolonged discussion on procedural matters raised concerns by some delegates on whether INC-2 would even reach the point where substantial elements could be discussed in CGs before the end of the week of negotiations.

To speed the process towards negotiations, specifically on the ‘Elements paper’, Brazil assumed leadership and took the floor on day 2 and proposed a ‘...*quick recess to consult with some countries ...*’. The chair agreed to suspend the meeting for 15 min, which turned into 1.5 h of informal discussions among delegates huddled together on the plenary floor. Soon after, the plenary was closed,

¹ The analysis took place before INC-3 happened. For more information on progress at INC-3, please see the upcoming paper from Cowan et al. (2024). The Rule of Three: The third session of negotiations on the global treaty to end plastic pollution. Journal of Environmental Science and Studies

² One committee member was from the Eastern European Group and the other was from the Western European and Other States Group.

³ Paragraph 2: ‘A regional economic integration organization shall, on matters within its competence, exercise its right to vote with a number of votes equal to the number of its member States participating in the Committee. Such an organization shall not exercise its right to vote if any of its member states exercises its right to vote, and vice versa’

Table 1 Versions of the treaty text negotiated during INC-2 ('shall's' may indicate stronger language, whereas 'options' and [brackets] indicate divergence of opinion)

Version	Section	'Options' ¹	'Shall's' ²	Bracketed 'shall's'	Brackets (search '[')	Word count (incl. titles)
'Options' ³ paper—13 April 2023–Pre-INC2	Full draft	Not relevant for INC-2				17,157
	Objectives	To be updated with zero draft text after INC-3 and draft treaty text versions thereafter				182
	Core obligations (12)					4138
	Means of implementation					1357
	Implementation measures					1132
	Additional matters incl. national action plans (NAPs)					1210

¹For the purposes of this table, an 'option' is a place in the draft text with multiple options, not the number of options in total. Each 'option' could actually contain two or more options and/or include options under options. For example, article A may have option 1 and option 2. That is counted as one 'option' because it is one place with options. If there are two options under option 2, that is one more place with option.

²Includes [shall...] as in [shall consider...]

³This document included boxed comment paragraphs with background information. Such paragraphs were meant to help readers navigate the document and were not intended for negotiation. Headings and subheadings were included to provide a structure for the document and were also not intended for negotiation.

and informal discussions followed long into the night to come up with a solution to these inherited challenges from INC-1 so that substantive issues could move to the forefront. The solution delegates agreed upon in the end was that the RoP would continue to be adopted provisionally, without changes, on the condition that it was noted in the meeting report that there were still conflicting views remaining on Rules 37 and 38.1, pushing the challenging discussions on this again ahead to other INCs without a final agreement on the RoP around consensus and voting.

Contact groups

During the afternoon plenary of the third day of negotiations, the parallel CGs were finally formed and moved into separate chambers for negotiations. A delegate from Mexico even raised her flag for the floor and urged her colleagues '[...] to turn off their microphones and roll up their sleeves [...]' encouraging everyone to stop talking and start working. Followed by a short round of interventions by additional MS encouraging their colleagues to move into CGs, the meeting was adjourned, and delegates moved to the respective CG for late-night negotiations. The CGs discussed two different parts of the 'potential elements' paper for the next 2 days. Interventions were guided by the question of 'What options would best achieve the goal of ending plastic pollution?' with further attention given to whether the elements addressed in the options paper included considerations of existing governance gaps and whether discussions would require intersessional work before INC-3 as well.

Potential options for elements

'The option paper reflects the high level of ambition - we listen carefully to opinions of others and provide targeted comments'—delegate from EU, on the second day of negotiations on agenda item 4.

During the Intersessional Period between December 2022 and May 2023, the Secretariat prepared and published an 'Options for Elements' paper (UNEP 2023a) upon the request of INC-1. This paper was based on submissions received from Regional Groups and UN MS which drew inspiration from Stakeholder submissions. Published on April 13, 2023, it presents options for elements in the future instrument, including its main objective, core obligations, means of implementation, and implementation measures.

For this piece, we have developed a matrix to trace changes over time in the draft text. Table 1 provides a visualisation of the negotiation process and serves as a starting point for examining the changes in how the text in the future treaty develop. As INC-2 did not negotiate the text of the instrument, we only consider the 'Options for elements' document in this paper and will include changes to text derived from this document, as well as the future zero draft proposal, in coming papers. We will compare draft versions with this baseline version, indicating increases or decreases in these variables.

Contact group 1

For two-and-a-half days during INC-2, CG1 discussed the future instruments' main objective and core obligations, coupled with potential control measures and voluntary approaches (see Table 2). Several delegates favoured

Table 2 Number of times delegates asked for the microphone to intervene on specific core obligations in CG1 during INC2

Contact group 1	Core obligations ⁴	Member states	Regional groups	Observers ⁵	Support for observer statements
'Potential options for elements' ⁶ paper— 31 May–02 June 2023–INC2	Obligation 1 —phasing out and/or reducing the supply of, demand for and use of primary plastic polymers	44	1	–	–
	Obligation 2 —banning, phasing out and/or reducing the use of problematic and avoidable plastic products	43	3	–	–
	Obligation 3 —banning, phasing out and/or reducing the production, consumption and use of chemicals and polymers of concern	36	1	–	–
	Obligation 4 —reducing microplastics	30	2	11	4
	Obligation 5 —strengthening waste management	43	4	–	–
	Obligation 6–8 —fostering design for circularity; encouraging RRR of plastic products and packaging; promoting the use of safe, sustainable alternatives and substitutes	43	6	5	6
	Obligation 9 —eliminating the release and emission of plastic to water, soil and air	20	1	–	–
	Obligation 10 —addressing existing plastic pollution	17	3	–	–
	Obligation 11–12 —facilitating a just transition, including an inclusive transition of the informal waste sector; protecting human health from the adverse effects of plastic pollution	25	4	8	2

⁴Some obligations were combined as they were in CG1 to save time on obligations that are closely related.

⁵Observer statements were taken at the end of discussions – which could include the coverage of multiple obligations.

⁶This document included boxed comment paragraphs with background information. Such paragraphs were meant to help readers navigate the document and were not intended for negotiation. Headings and subheadings were included to provide a structure for the document and were also not intended for negotiation. See: UNEP/PP/INC.2/4: Potential options for elements towards an international legally binding instrument, based on a comprehensive approach that addresses the full life cycle of plastics as called for by United Nations Environment Assembly resolution 5/14

merging elements of the objectives. Concerning including timebound targets in the zero draft (i.e. end plastic pollution by 2030/2040/2060), some expressed it could underline the urgency of the issue and facilitate monitoring of progress, whilst others indicated it could limit the lifetime of the instrument. Several delegations suggested references to additional aspects in the objective text such as including 'in the marine environment', just transition, and acknowledging the important role of informal waste pickers. Other significant points made in this discussion evolved around ensuring alignment with sustainable development, utilising the precautionary principle and human rights-based approaches, and addressing all sources of plastic pollution, including legacy plastics and the environment sound management of plastic waste.

On day 4, the first full day of substantive negotiations, 12 possible 'core obligations' were discussed by delegates.

These core obligations focus on production and consumption, transition to circular approaches, and sound management of waste. The obligations are listed in Table 2, where the number of statements made on each obligation is reflected. It quickly became clear that delegates stressed the need to include national circumstances in the core obligations. However, to some, this meant potentially weakening the future instrument with nationally determined plans without top-down guidance or monitoring. The first three core obligations proposed options for phasing out, banning or reducing of (1) *primary* plastic production, (2) *problematic products*, and (3) *additives and polymers* of concern. A fault line appeared from the very first obligation which suggested to establish global targets to reduce plastic pollution, *including the primary production* of plastics, or to impose a moratorium on the same. A different view expressed, however, was that plastic pollution was mainly

caused by mismanagement of waste, and not from plastic production or its primary polymers, and an ILBI would be better served focusing on nationally determined plans based on capabilities and capacities to manage waste. According to these views, plastic pollution should not be related to the amounts of plastics *produced*, but rather how they are *handled as waste*.

The final core obligation discussion took place in the early hours of day 4 followed by the start of the last day of negotiations. The obligations in this section included protecting human health by eliminating the release of plastics to the environment, addressing existing pollution and ensuring a just transition to a low-plastic consumption society. Numerous delegations called for the future instrument to address plastic pollution through a lifecycle approach, for most delegations this meant including provisions on the production, use, and end-of-life of plastics to the instrument. However, others called for more concrete definitions of what a ‘life cycle’ approach means with the inclusion of the ‘circular economy’. There was a clear split between having global rules to address pollution compared to national-level guidelines that are self-determined.

Broad consensus appeared though when discussing matters regarding a just transition and protecting human health. The inclusion of the most vulnerable communities (i.e. indigenous peoples and waste pickers) was deemed vital, including the need for more research on the adverse effects of plastic pollution on human and environmental health.

Contact group 2

The second CG was tasked with means and measures of implementation of the future instrument, alongside ‘additional matters’ such as awareness-raising, capacity building, technology transfer, education, and the exchange of information to promote research considering traditional and indigenous knowledge and coordination with relevant international institutions. After some debate, the CG agreed to begin with ‘additional matters’ noting that this agenda item was likely to allow for convergence and progress at the end of 3 long days of discussions on non-substantive issues.

In terms of means of implementation and anticipating the differing capacities of countries to establish elements to end plastic pollution, MS first considered financial assistance to aid in the implementation of an international instrument. This sensitive matter generated immediate contention around the terminology preferred to denote financing—‘assistance’, as stated in the elements paper, or ‘mechanism’, consistent with wordings used in other international instruments. MS were also divided on whether financing should occur through a new resource-intensive dedicated mechanism, allowing for predictable, sustainable, adequate, accessible, and timely provisions, or integrated into an existing multilateral

fund, such as the Global Environment Facility (GEF). MS also suggested other means of leveraging finances, such as through fees, taxes, levies, or extended producer responsibility schemes. This too was met with different opinions from different MS.

Interventions on financing the implementation of the instrument for plastic pollution itself also triggered a debate regarding differing culpability for and capability of addressing the problem, with relation to the customary principle of international environmental law for Common but Differentiated Responsibility (CBDR). Established in the 1992 Rio Declaration, CBDR provides that all nation-states are responsible for addressing the environmental crisis yet are not equally responsible. On this topic, one state refused to include CBDR as a general principle in the instrument, which was met with immediate and exacting opposition from a Less Developed Country (LDC), pointing out that the principle was agreed to in UNEA Declaration 5/14 (UNEA 2022) and refusal to include it would invalidate their common objective as outlined in this document.

In terms of measures for implementation, delegates perceived National Action Plans (NAPs)⁴ as the ‘backbone’ for fulfilling their obligations defined by the treaty. Some countries called for NAPs to be mandated and harmonised using templates set out in the international agreement, whilst others called for greater flexibility based on national circumstances. Others suggested to abandon NAPs in favour of National Implementation Plans (henceforth, NIPs), stressing that different countries have different capacities to address and diffuse plastic pollution sources and outputs at all levels of global governance. Some MS raised concerns about national reporting, compliance, periodic assessment, and monitoring being resource intensive, particularly for LDCs. Nevertheless, means and mechanisms of implementation were recognised as essential for ensuring the effectiveness of the instrument, as well as rectifying gaps in the governance landscape.

Indeed, the instrument itself could not be considered a silver bullet to end plastic pollution—when in fact it could risk being little more than an aspirational instrument if countries chose not to follow through by adopting, ratifying, legislating, and enforcing its provisions—and that this needed monitoring and reporting. Whether this would be done in an approach that was top down in the fashion of the Minamata Convention on Mercury or bottom-up similar to the Paris Agreement was critical for many delegates. Adjacent to the matter of resource availability, MS cautioned against adopting elements that duplicated or contradicted

⁴ NAPs entail country-driven approaches for implementation, including legislative and institutional arrangements that reflect specific domestic conditions and capacities for addressing the plastics crisis.

existing multilateral environmental agreements (MEAs). They referred to institutions such as the Basel, Rotterdam, and Stockholm Conventions, the International Maritime Organisation, and the World Trade Organisation, and stressed the value of voluntary standards and codes of conduct under the Food and Agriculture Organisation (FAO, L.G.F 2011), the International Standards Organisation, and other consumer standards organisations. The importance of coordination and cooperation among discrete international institutions is captured in the concept of regime complexity, referring to the presence of partially overlapping non-hierarchical regimes, or sets of principles, rules, norms, and decision-making procedures (Young 1996; Tiller and Hansen 2013; Tiller and Nyman 2018; Maes et al. 2023). This is reminiscent of similar discussions during the negotiations for the BBNJ treaty as well, where the concept of ‘do not undermine’ referred to this potential overlap and interplay of environmental multilateral instruments and the avoidance thereof to ensure respect for their respective competencies. By the end of both informal sessions, it remained unclear whether NAPs and/or NIPs had the potential to supplement an ILBI. This echoed discussions during INC-1 that ‘*form follows function*’, meaning that the organisation of elements can only be decided once the nature of the instrument is decided upon.

Conclusion and expectations

On the final day of negotiations, the delegations reconvened again in plenary, where the path towards a potential mandate for the Chair to compile a zero draft for INC-3 was discussed. A central thread of disagreement during the negotiations, which could potentially challenge this, however, was the question of the RoP and whether decisions should be made by consensus only, or if there should be options for non-consensus-based voting as well. This was a fine dance to master as it was clear that consensus would be difficult to achieve on some issues. Despite the many hurdles over the week and the unresolved issue of the RoP, the MS did in the end secure a path forward with the mandate for the INC Chair and Bureau to compile a zero draft of the text of the future instrument.

Whilst much time was lost during INC-2 to the debate on RoP, there was a surge of energy around discussions on substantive issues in the CGs. However, disagreement around potential options discussed illustrates the complexity of the future instrument. Whilst INC-2 was largely an exercise in countries expressing their lists of wishes for the future instrument, the following INCs will likely prove to be a much more challenging as the substance and practical applications are to be negotiated with the basis in a zero draft text. It is important to note that as long as the RoP

remains contested, so does to some degree the substance of the future instrument itself. A legitimate fear is that the group of countries who calls for a consensus decision will grow the longer into the process the INC comes, as elements of the treaty text might not fit their agenda. The words from the Senegalese delegation in the afternoon of the first day of INC-2 during the discussion on the RoP captures this frustration, when the delegate exclaimed that in his opinion: ‘*Consensus kills democracy, it imposes unanimity [...] if only one or two countries are not in agreement, then the whole thing comes to a grinding halt*’. On the other hand, as others pointed out, on a topic as critical as curbing plastic pollution, multilateralism must prove itself as a worthy arena of negotiations and consensus is important to ensure the effectiveness of the instrument. All agreeing on every aspect of the treaty to be implemented may not be achievable. Completing negotiations by 2024 will require middle ground from both sides of the aisle.

Acknowledgements We would like to express our gratitude to Babet de Groot and Patricia Villarrubia-Gómez for contributing to an earlier version of this paper. The authors would also like to mention that this paper was written when the co-author Idun Rognerud was employed at NIVA.

Author contribution Conceptualisation: Emily Cowan, Rachel Tiller; methodology: Emily Cowan, Rachel Tiller; formal analysis and investigation: all; writing—original draft preparation: Emily Cowan, Rachel Tiller, Karl Holmberg, Emmy Nøklebye, Idun Rognerud; writing—review and editing: all; supervision: Rachel Tiller.

Funding Open access funding provided by SINTEF.

Data Availability The data that support the findings of this study are available from the United Nations Environmental Assembly (UNEP), but restrictions apply to the availability of these data, which were used for the current study and so are not publicly available. Some of the data are, however, available from the authors upon reasonable request and with the permission of UNEP.

Declarations

Competing interests The authors declare no competing interests.

Funding The publication has received funding from the Horizon Europe Research and Innovation Programme under grant agreement no. 101060213 and from the Research Council of Norway under project number 318730–PLASTICENE and 315402–GOMPLAR.

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