

# WHAT'S THE STATUS OF THE UN TREATY TO END PLASTIC POLLUTION?

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December 06, 2023 06:00 am | Updated 06:00 am IST

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A shoal of fish swims around floating plastic items off the coast of Indonesia, May 20, 2021. | Photo Credit: Naja Bertold Jensen/Unplash

The Intergovernmental Negotiating Committee (INC), under the United Nations Environment Programme, met in Nairobi on November 13-19 for its third round of negotiations to develop an international legally binding instrument to end [plastic pollution](#) worldwide. Under the UNEA Resolution 5/14, the INC is responsible for delivering a global plastics treaty by 2025

The INC-3 was a make-or-break opportunity as countries came together to negotiate the 'zero draft' text developed by the Committee's Secretariat, with various options for core obligations and control measures. The zero draft was a good starting point for the negotiations because it catered to ambitions at all levels: strong and binding, moderate and flexible, weak and voluntary.

The expected outcome of INC-3 was to assess the zero draft, select favourable options from the draft, and adopt a mandate proceeding with the development of a first draft for the global plastics treaty.

INC-3 fared relatively better than INC-2, in Paris earlier this year, by being able to discuss the substantive contents of the treaty instead of debating only the rules of procedure. This said, what were the outcomes?

The zero draft as prepared by the Secretariat contained strong options for an international legally binding treaty to end plastic pollution. But during negotiations, member states managed to water down their core obligations, particularly those pertaining to some high-impact elements: primary polymer production, chemicals of concern, problematic and short-lived plastics, trade, and financial mechanisms, among others. Some states also disagreed on the objective and scope under UNEA Resolution 5/14.

Most countries agreed that the treaty's objective should be to end plastic pollution and protect human health and the environment. But a group of like-minded countries – including Saudi Arabia, Russia, China, Iran, and some members of the Gulf Cooperation Council – argued to include the clause “while contributing to the achievement of sustainable development”, to ensure their economic interests and investments can be protected in the name of development.

The most important provision, reduction in production of primary polymers, also stirred controversy because of its implications for industry. Indeed, the industry's influence was apparent by its presence – with [36% more lobbyists](#) for the fossil fuels and chemicals sector than in INC-2 – at the negotiations. Some member states also submitted that “to even discuss ... reducing plastic production was completely out of the scope of the mandate of UNEA Resolution 5/14 and that such a provision should be completely deleted from the draft” and that “UNEA Resolution 5/14 calls to end plastic pollution and not plastic production”.

While it is agreed that plastic pollution can be managed only with strong, concrete measures at each stage throughout the lifecycle of plastics, many countries disagreed where the lifecycle begins. Common sense dictates this should be at ‘birth’, i.e. at the point of sourcing raw materials for production. But some countries argued that the lifecycle starts at product design, in order to exclude production from the scope of the treaty.

Similarly, the same like-minded group objected to including provisions pertaining to eliminating compounds and polymers of concern and problematic and avoidable plastics, which are key in ending plastic pollution, and called for a ‘null option’ despite broad agreement from other countries that were pushing for a binding agreement.

A financial mechanism is one of the cornerstones of the treaty to determine how it will be implemented, and it was yet another point of divergence.

The zero draft contains options such as imposing a plastic-pollution fee, to be paid by plastic polymer producers, and another on reducing the financial flow into projects with a high carbon footprint. But the like-minded countries demanded that these provisions be deleted altogether from the draft.

Should these provisions be included, they will have considerable implications; in particular, countries will have to cut, if not eliminate, fossil-fuel subsidies and investments in environmentally disfavoured technologies such as incineration and waste-to-energy plants. This would have been a big victory for the environment and human health if they hadn't been blocked by the like-minded countries.

Another crucial provision that the same bloc argued against was the trade in polymers, chemicals, plastic products, and waste. While the plastics treaty is expected to plug the holes left open by the Basel Convention, any restrictions on trade is considered to be impinging on the freedom and sovereignty of nations, or so the bloc contended.

However, the Centre for International Environmental Law (CIEL), a non-profit in Washington, D.C., has found that the bloc misconstrued the World Trade Organisation (WTO) rules to their advantage. According to CIEL's analysis, the WTO rules provide for sufficient scope for trade restrictions when they are “necessary to protect human, animal or plant life or health” and nothing prohibits States under international law to regulate or restrict the trade of certain products and materials.

Indeed, the group of like-minded countries rejected every single upstream measure, and diluted midstream measures with the inclusion of voluntary measures and phrases (such as “national circumstances”, “national priorities”, “bottom-up approach”, etc.).

Excluding the provision on waste management, in fact, almost all other provisions were watered down to account for “national circumstances and capabilities”. Even under waste management, there is a high risk of these countries insisting on the treaty accommodating unsound solutions. This is because the phrase “environmentally sound management” isn't well-defined even as

terms such as “best available science” and “best available technology’ continue to be used.

At INC-2, representatives of the member states debated the rules of procedure for two days with no concrete outcome, even as a handful of countries, including India, continued to demand consensus-based decision-making instead of a two-thirds vote majority.

The rules of procedure continued to apply provisionally at INC-3, without any final determination, and the meeting passed the buck to INC-4 to deal with them. If a decision had been made on the voting procedure and the rules of procedure were formally adopted, the negotiators could have better staved off the objections of the like-minded countries at INC-3.

In this context, the African group of countries and Small-Island Developing States (SIDS) played an important role. They advocated for strong binding provisions for the high-impact elements in the treaty. Their submissions stood out from the rest as they championed the voices of waste-pickers and Indigenous peoples, and approached the treaty from human-rights and public-health perspectives.

Recall that at INC-3, members were to study the zero draft, pick between the options, and adopt a mandate ahead of preparing the treaty’s first draft. But the draft text has now tripled in size, with member states adding and deleting the text as befits their national interests. The meetings themselves were frequently delayed and stretched into the wee hours because of the stalling and blocking by the like-minded countries.

In fact, one of the closed-door meetings that discussed the synthesis report and possible list of topics for intersessional work was unable to reach a consensus until the very end. As a result, no intersessional work will happen between now and INC-4. This is a big setback: many countries were counting on this work to make some headway in hammering out the finer points, such as the definitions, targets, and timelines, before INC-4.

Thanks to the stalling, INC-3 didn’t adopt the mandate to proceed with developing the first draft. One delegate from the African group said in reply: “No State has the right to keep others hostage ... Those who don’t want to move ahead with us are free to stay behind.” As such, INC-3 exposed the considerable influence of industry and revealed those member states that are opposed to a strong binding treaty to end plastic pollution.

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