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PLASTICS POLICY • MAY 2022



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LAYING THE FOUNDATION FOR SUCCESSFUL NEGOTIATIONS ON A NEW TREATY TO END PLASTIC POLLUTION

A HISTORIC DECISION AND THE CHALLENGE AHEAD

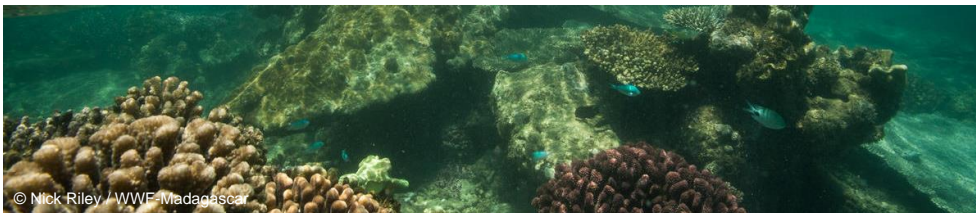
On 2 March 2022, at the resumed fifth session of the United Nations Environment Assembly (UNEA-5.2), [UN Member States adopted Resolution 5/14, titled 'End plastic pollution: Towards an international legally binding instrument'](#). The Resolution requests the Executive Director to convene an intergovernmental negotiating committee (INC) to develop an international legally binding instrument on plastic pollution, including in the marine environment. The INC is to commence its work during the second half of 2022 with the ambition of completing its work by the end of 2024.

After years of advocacy and campaigning, with commitment and support across sectors and stakeholders — including from [95% of UN Member States](#), various global [businesses and financial institutions](#), [civil society](#) and [citizens](#) of more than 100 countries — the historic decision was a cause for celebration as it opened doors for negotiations of necessary measures to sufficiently and effectively stem the tide of plastic pollution, with a comprehensive approach that addresses the full life cycle of plastic.

The resolution marks the beginning of the global community's joint journey to put an end to plastic pollution. In their endeavour to reach the finish line, it is crucial that the INC takes full advantage of the enabling conditions provided by the negotiation mandate, and closely follow the [success criteria](#) drawn from existing treaties and regimes

At the upcoming OEWG meeting, WWF urges all States to:

- Explicitly declare intent to maintain the highest level of ambition throughout negotiations, by emphasising the importance of mandatory provisions in the INC's programme of work, such as global bans on avoidable and harmful plastic products;
- Recommend voting on matters of substance as a tool for productive decision-making during negotiations, to be included in the Rules of procedure for the INC;
- Call for a transparent and participatory negotiation process
- Recommend the INC to prioritise the most ambitious and implementable measures, in the form of mandatory provisions that address the most problematic plastic pollution issues;
- Embrace a start-then-strengthen approach, planning for negotiations of necessary mechanisms to discuss and establish further control measures to improve the effectiveness of the treaty over time;
- Emphasise the need for a robust structure in the treaty to promote participation and compliance, including mechanisms for providing implementation assistance.



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throughout their discussions and deliberations for the design of the new agreement on plastic pollution.

An [ad hoc open ended working group \(OEWG\)](#) will hold one meeting from 30 May to 01 June 2022, to prepare for the work of the INC, whose first meeting is expected in late 2022. The outcome of the OEWG meeting will include recommendations on the timetable and the organisation of work of the INC, taking into account the provisions and elements identified in paragraph 3 and 4 of UNEA Resolution 5/14.

MAINTAIN THE HIGHEST LEVEL OF AMBITION

To *develop* a global treaty on plastic pollution, with a comprehensive approach that addresses the full life cycle of plastic as prescribed by the negotiation mandate, is an ambitious undertaking in and of itself. To ensure its *outcome* — the treaty that will eventually be adopted and implemented by States — is **able to affect the significant changes in policies and practices globally, to end plastic pollution** requires the highest level of ambition to be firmly embedded in and faithfully applied to all elements of the treaty.

This means that, in addition to formulation of an ambitious long-term goal to end plastic pollution: the treaty must specify exactly what states must do, or refrain from doing, through mandatory provisions to achieve its targets; it must include the means to promote participation and mechanisms to ensure and verify compliance; and it must prepare itself for gradual strengthening so that States' actions can be expanded and improved appropriately to enhance the instrument's effectiveness when necessary.

At the upcoming OEWG meeting, States should explicitly declare their intent to maintain the highest level of ambition throughout negotiations, by emphasising the importance of and priority for mandatory provisions in the INC's programme of work. A legally binding instrument can only reach its full potential when containing specific, mandatory provisions for States parties. *Some* voluntary commitments can be helpful in complementing the implementation of mandatory provisions, but they should not be the focus of the treaty. **The negotiation mandate offers an opportunity to develop strong global rules to end plastic pollution — it must not be wasted and co-opted by discussions of unhelpful voluntary actions.**

The history of environmental treaty making suggests that ambition is something that must be fought for and protected throughout the negotiation process. The rules of procedures for the INC — a key agenda point for the OEWG meeting — may have significant influence on the pace of negotiations in the next two years, as it can facilitate productive discussions, prevent gridlock, and protect the aspirations and aims of the most progressive States from being sacrificed in the name of compromise.

Therefore, voting on matters of substance must be allowed by the INC rules of procedure, as a tool for productive decision-making during negotiations. A potential formulation, based on the [Rules of Procedure of the Treaty on the Prohibition of Nuclear Weapons](#), is suggested here in the right column.

The Committee shall make its best endeavours to accomplish its work by consensus. If the Chair of the Committee determines that all efforts to reach consensus have been exhausted, the decisions of the Committee on all matters of substance shall be taken by a two-thirds majority of the States present and voting.

Potential formulation for Rule on decision-making



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Additionally, WWF encourages States to express their support for rules of procedure that allow for meaningful participation by non-governmental organisations, businesses, major groups for children and youth, women, and indigenous peoples, as well as potentially impacted groups such as informal waste workers, in the negotiation process. **A transparent and participatory process of negotiation will further protect the treaty's ambition from being attenuated by disinclined parties.**

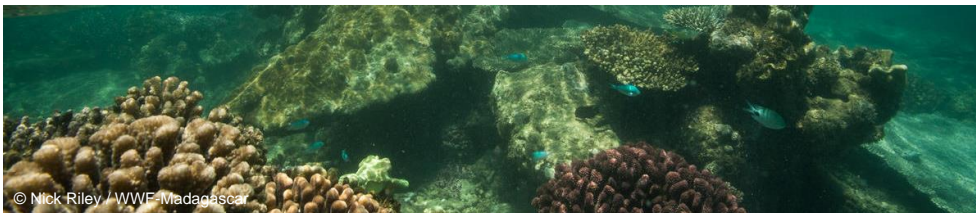
TRANSLATING AMBITIONS TO SPECIFIC PROVISIONS

A treaty with a highly ambitious long-term goal might still fail if it [lacks the tools and mechanisms to achieve it](#). Successful treaties produce shared expectations about principles, norms, rules, and decision-making procedures, and about the change in human behaviour needed to resolve the issue of concern. **The identification of these rules — this common standard of action — will be one of the key challenges in the negotiations on a new treaty on plastic pollution.** Taking into account the provisions and elements identified in paragraph 3 and 4 of the [resolution](#), the negotiation should include discussions on two main groups of provisions:

1. **Introductory provisions, and provisions related to implementation, institutional arrangements, and further development of the treaty:** This group of provisions can encompass specifications on, *inter alia*, scope, objectives, definitions, overarching principles, requirements for submission of national action plans and reporting, monitoring and evaluation, technical and financial assistance mechanisms, organisation of the Conference of the Parties, subsidiary bodies (e.g. scientific body), issues of compliance, liability and disputes, and adoption of amendments and additional instruments.
2. **Provisions on control measures:** This group of provisions specifies what States parties must do or refrain from doing to end plastic pollution, based on a comprehensive approach that addresses the full life cycle of plastic. Accordingly, these provisions should include provisions to:
 - A. **Ban avoidable, unnecessary, and problematic plastic products**, and minimise consumption of the most leakage-prone and harmful items.
 - B. **Harmonize product design standards and requirements** to minimise leakage risk, and increase reusability and recyclability of remaining plastic items on the market.
 - C. **Set up regulatory and economic incentives** to promote innovations, worldwide scale-up of circular economy solutions, and use of recycled materials as the primary input in plastic production
 - D. **Establish common waste management standards** to collect and dispose plastic waste in an environmentally-sound manner. These provisions may also include measures to promote clean-up of plastic already in the environment.

“A treaty’s overall ambition level is [...] a function of all its constituent elements, and how these interact. A treaty can have a highly ambitious long-term goal but lack the tools and mechanisms to achieve it. It can contain specific and proportional core provisions but lack the means to promote participation and compliance. [...] the overall ambition level is an indication of how far States are willing to go—of how much political and financial capital they are willing to invest—to achieve a collective goal.”

Success criteria for a new treaty on plastic pollution, p.19, WWF, 2021



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In determining recommendations for the priorities and the order of discussion of issues, the OEWG should take into consideration: **1) the urgency of the plastic pollution problems** (plastic that is avoidable and most problematic and harmful to the environment should be immediately addressed); **2) the implementability and impact of the solutions** (cost-effective actions with highest potential impact should be prioritised); and **3) the interlinkages of provisions** (discussions of issues that may provide solutions to other challenges should be allotted more attention).

Consideration of the order of discussions of issues should also consider the complementarity of provisions — especially between those on control measures and those related to implementation. For example, provisions to improve waste management and recycling standards would benefit from provisions requiring monitoring of data on waste management and waste leakage.

Priority should always be given to the most ambitious, implementable, and cost-effective measures, in the form of mandatory provisions and global rules, that address the most problematic plastic pollution issues and leakage-prone plastic items.

PREPARING FOR GRADUAL STRENGTHENING

Plastic pollution is a complex issue to regulate, which is illustrated by the fact that no single country on the planet has managed to eliminate it entirely. The OEWG should acknowledge this complexity in their consideration for the INC's organisation of work, especially given the ambition for the INC to complete its work by the end of 2024. This acknowledgement will help to facilitate discussions on prioritisation of negotiation tasks and ensure that the most problematic pollution issues and the most impactful actions are at the top of the agenda. This way, the treaty's ambition can avoid compromises in the face of both its subject matter's complexity and the negotiation time frame.

In determining the INC's organisation of work, the OEWG, and the INC itself, should embrace a start-then-strengthen approach. This opens the possibility for immediately addressing the most urgent issues and implementing the most impactful measures once the treaty is adopted and enters into force, while preparing the necessary mechanisms for States parties to discuss and establish further (or enhanced) control measures to improve the effectiveness of the treaty over time.

The necessary mechanisms for gradual strengthening include a system both at country level and global level for monitoring progress and evaluating efforts, dedicated scientific bodies and mechanisms for developing and sharing new knowledge on the causes and effects of plastic pollution and cost-efficient response options, and provisions that specify how the original agreement can be amended and how additional instruments can be adopted. These aspects should be amongst the prioritised focus of the first group of provisions, besides provisions on control measures, as mentioned in the previous section.

“The new treaty should have provisions that specify how the original agreement can be amended (tightening control measures, shortening timetables, adding new substances in annexes) and how additional instruments can be adopted (protocols, annexes, appendices). The key to preventing gridlock and allowing the regime to be gradually strengthened over time is to avoid a formal consensus requirement.

Success criteria for a new treaty on plastic pollution, p.13, WWF, 2021



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PROMOTING PARTICIPATION AND COMPLIANCE

The new treaty on plastic pollution should provide a robust structure for promoting participation and compliance, and for supporting States in their implementation of the treaty's core provisions. The design of this structure firstly includes a process where the treaty enters into force as an instrument of international law, when a certain number of States consent to being bound by the treaty through signature and ratification or accession. If well designed, the entry-into-force threshold will serve as a tipping point: once a certain number of States have joined, it will be increasingly disadvantageous to remain outside the regime.

Secondly, the treaty must provide States with strong incentives to join — as in, the cost of joining the regime and complying with the common standard of action must be lower than the cost of not doing so. To achieve this, it will be important to make sure that compliance can be verified, and, if necessary, enforced. Since the international system does not have a global executive branch with law enforcement powers, the compliance system must be embedded into the treaty itself, for instance in the form of trade restrictions or certification procedures.

This in turn underscores the importance of making the core provisions specific, unambiguous and, where relevant, measurable. The extent to which States parties prioritise implementation of the treaty's obligations is likely to improve if each party can be confident that the others carry their fair share of the burden.

Finally, accountability must also be coupled with implementation support. Considering both the paramount importance of common global rules to the success of the treaty and the differences in national circumstances and capabilities, it is essential that a just transition is ensured through both cost-effective control measures and sufficient technical and financial assistance where necessary. On aggregate, the international community will be able to do more to tackle the problem if resources are distributed in a way that maximises cost-efficiency and supports developing countries and countries with economies in transition in their efforts to implement their obligations. In their recommendations for the INC's programme of work, the OEWG should emphasise these aspects as part of the treaty's provisions that are beyond those on control measures.

SUCCESS CRITERIA FOR A NEW TREATY ON PLASTIC POLLUTION

To ensure that the new plastic pollution regime gets off to the best possible start, the development of the new treaty should be guided by extensive mapping and solid analysis of existing treaties and regimes, with a view to better understanding how past success might be replicated and past mistakes avoided. Accordingly, [WWF recommends the following success criteria](#), for the design of the new agreement.

1. **Make it legally binding**
2. **Be specific about what states must do**
3. **Prepare for gradual strengthening**
4. **Incentivise participation and compliance**
5. **Be ambitious**

WWF's free online course, '*How to create a treaty that will turn the tide on plastic pollution*', provides key knowledge on the negotiations of this new global treaty, and can be accessed at

www.talentims.com.

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