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TOWARD A NEW GLOBAL CONVENTION WITH A MULTI-LAYERED GOVERNANCE APPROACH TO ADDRESS PLASTIC POLLUTION

I. BACKGROUND

Following review of 18 international instruments and 36 regional instruments, the United Nations Environment Programme (UN Environment) concluded that “current governance strategies and approaches provide a fragmented approach that does not adequately address marine plastic litter and microplastics.”¹ Given the more than 335 million tonnes of plastic produced every year—more than eight million tonnes of which enters the oceans— and rising production trends, it is clear that in order to prevent marine and other plastic pollution, a new and legally binding global Convention on Plastic Pollution is required with a mandate to manage the lifecycle of plastics, including production.²

Governance of this new global architecture is the most important issue confronting Member States. The new Convention should anchor, build upon, and complement existing regional and global voluntary and binding frameworks, allowing them to contribute within their core competencies, while otherwise filling the significant gaps that have been identified as necessary to address plastic pollution.³

II. PILLARS OF ACTION

Member States have identified several areas where activities are needed, which can be broadly bundled into four pillars of action to form the work of a Convention on Plastic Pollution:

Convention on Plastic Pollution				
Pillar 1	Pillar 2		Pillar 3	Pillar 4
Coordination	Plastic Pollution Prevention		Financial Support	Technical Support
<p>Coordination and Synergies</p> <ul style="list-style-type: none"> ▪ Basel Convention <ul style="list-style-type: none"> – trade in scrap plastic – Partnership on Plastic Waste (guidelines) ▪ MARPOL <ul style="list-style-type: none"> – port reception facilities – ships and fishing vessels – fishing gear ▪ Stockholm Convention <ul style="list-style-type: none"> – persistent organic pollutants ▪ SAICM <ul style="list-style-type: none"> – plastic as issue of concern – additives restrictions ▪ Regional Seas Programmes <ul style="list-style-type: none"> – regional strategies ▪ Others 	<p>Harmonization and Inventories</p> <ul style="list-style-type: none"> ▪ Definitions ▪ Methodologies ▪ Baselines ▪ Monitoring ▪ Reporting ▪ Standardization <ul style="list-style-type: none"> – labelling – certification schemes – industry standards ▪ Product Design ▪ Microplastics (intentionally added) ▪ Pre-Production Pellets ▪ Legacy Plastic Pollution 	<p>Control Measures</p> <ul style="list-style-type: none"> ▪ Global Reduction Target ▪ Global Market Restrictions <ul style="list-style-type: none"> – prohibitions – production – consumption ▪ Microplastics (not intentionally added) ▪ National Reduction Commitments <ul style="list-style-type: none"> – national market restrictions – extended producer responsibility – reuse, collection and recycling – secondary markets – single-use products and packaging – other measures 	<p>Financial Support to Developing Countries</p> <ul style="list-style-type: none"> ▪ Fast-Action Funding ▪ Monitoring ▪ Reporting ▪ Capacity-Building ▪ Institutional Strengthening ▪ Policy Development ▪ Demonstration Projects ▪ Incremental Compliance Costs 	<p>Assessment and Knowledge-Sharing</p> <ul style="list-style-type: none"> ▪ Technical and Scientific Assessment ▪ Socio-Economic Assessment ▪ Knowledge Exchange

PILLAR 1 – COORDINATION

It is well-recognized that a number of existing conventions and agreements could be or are actively taking steps to address aspects of plastic pollution. However, none of the existing frameworks is specifically designed to prevent increasing flows of plastic pollution into the biosphere, nor to comprehensively manage the plastic pollution already present in the biosphere. Nevertheless, coordination with existing actions in these other fora is needed and should be central to the governance of a new Convention on Plastic Pollution, fully recognizing that these are separate bodies with their own mandates and jurisdiction.

Of note are the following conventions and agreements:

- ***Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Basel Convention)***. In *Decision 13/17*, the Parties to the Basel Convention agreed to consider relevant options available to further address marine plastic pollution and develop a proposal for possible further action within the scope to the Basel Convention for its 14th Conference of the Parties (COP).⁴ Among those were two amendments to reclassify solid plastic waste to remove the presumption that it is non-hazardous (Annex IX) and to list it among the wastes requiring prior informed consent (Annex II), which in turn would provide transparency on transboundary shipments of scrap plastic. In advance of the Open-Ended Working Group (OEWG) in September 2018 (OEWG-11), Norway submitted the first of those amendments and indicated its intention to submit the other for consideration at the 14th Conference of the Parties (COP-14) and beyond. Parties are also considering the establishment of a Partnership on Plastic Wastes, which would produce non-binding guidelines on plastic waste management
- ***International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL)***. MARPOL Annex V specifically prohibits the discharge of plastics from ships. At its 73rd session, the Marine Environment Protection Committee (MEPC) adopted the *Action Plan to Address Marine Plastic Litter from Ships*, which outlined several potential measures to be developed in the coming years on fishing gear, passively fished waste, port reception facilities, cost recovery systems and on-board waste management, among others.⁵ This important aspect of marine plastic pollution requires robust action by IMO.
- ***Regional Seas Programmes***. The 18 Regional Seas programmes addressing land-based sources of pollution vary in scope, legal structure and effectiveness.⁶ Nevertheless, they serve as important regional laboratories with the potential to reinforce regional cooperation to address region-specific issues and should therefore be strengthened, where possible, and knowledge exchanged among them.
- ***Stockholm Convention on Persistent Organic Pollutants***. With the potential to regulate the production, use, and disposal of additives used in the manufacture of plastics, to the extent they are persistent organic pollutants (POPs), the Stockholm Convention could play a role, albeit limited to POPs, in greening the lifecycle of a range of plastic polymers, to promote safer design and increase rates of recycling and reuse.⁷ In combination with the Basel Convention, it also addresses the re-entry of regulated chemicals onto the market through recycling of legacy products that contain POPs.
- ***Strategic Approach to International Chemicals Management (SAICM)***. SAICM is a voluntary global policy multi-stakeholder instrument aiming to ensure that, by the year 2020, chemicals are produced and used in ways that minimize significant adverse impacts on the environment and human health. SAICM identifies specific issues of concerns and adopts action plans, strategies, and multi-stakeholder alliances to address specific issues related to chemical and waste management. There are ongoing discussions about the future of SAICM beyond 2020, including consideration of plastic as an issue of concern and certain endocrine disruptors, which encompass certain plastic additives.

PILLAR 2 – PLASTIC POLLUTION PREVENTION

The prevention of plastic pollution should be the primary mandate of any new global instrument with the overall goal being to eliminate plastic pollution entering all compartments of the environment (land, sea, and air). In order to achieve this, a series of control measures will need to be negotiated, such as the elimination of certain single-use plastic products and packaging, caps in the production of virgin plastic, and controls on the use of toxic additives (such as endocrine disrupting chemical and carcinogens), alongside activities to establish baselines and harmonize definitions and methodologies. The activities could therefore be divided into two tracks:

- **Track 1 – Harmonization and Inventories.** The Parties harmonize definitions and methodologies (*e.g.* for purposes of establishing baselines, inventories and monitoring) as well as standards for labelling, certification schemes and product design (*e.g.* to promote safer design, recycling and secondary markets for recyclates). The Parties further establish obligations related to monitoring and reporting (*e.g.* plastic production, consumption, trade, collection, recycling and disposal as well as status of water, air and soil ecosystems, and biomarkers) and outlines measures to reduce intentionally added microplastics and losses of pre-production plastic pellets (flakes and powders included).
- **Track 2 – Control Measures.** In addition to a global target to eliminate plastic pollution, the Parties would set out global market restrictions (*e.g.* prohibitions on certain polymers and additives, certain types of single-use plastics and packaging as well as controls on virgin plastic production and consumption) and measures to address microplastics. At the national level, countries would determine pollution reduction commitments tailored to national circumstances in binding national action plans. These could include, for example, national market restrictions, collection and recycling targets, measures to promote secondary markets and extended producer responsibility schemes. Relevant commitments made elsewhere, such as under regional Conventions and the Regional Seas Programmes, or in the context of the Sustainable Development Goals (SDGs), would be incorporated into the national action plans.

It is essential that, under its mandate of plastic pollution prevention, the Parties are given the ability to revise and update to respond to science and industry innovation, allowing it to be adaptable to the changing landscape – a start-and-strengthen approach.

PILLAR 3 – FINANCIAL SUPPORT

Financial support should be made available for defined categories of costs, such as capacity building enabling activities, monitoring, reporting, institutional strengthening, policy development as well as to support the development of pilot projects and assist with the incremental compliance costs to meet production and consumption reduction targets. Project proposals could be developed and implemented with the assistance of implementing agencies.

PILLAR 4 – TECHNICAL SUPPORT

Technical support and transparency will be required in order to ensure informed science-based decision making and avoid false solutions. For example, ad-hoc bodies could be required to assess emerging issues, such as the overall food chain contamination with plastics or measures to reduce microplastic contributions from tire dust and textiles. In addition, the Convention on Plastic Pollution would provide a mechanism to exchange knowledge on innovative solutions.

III. INSTITUTIONAL ARCHITECTURE

The new global instrument should be governed by a decision-making body—a Conference of the Parties—to oversee and implement the four pillars of action, supported by a secretariat hosted by UN Environment.

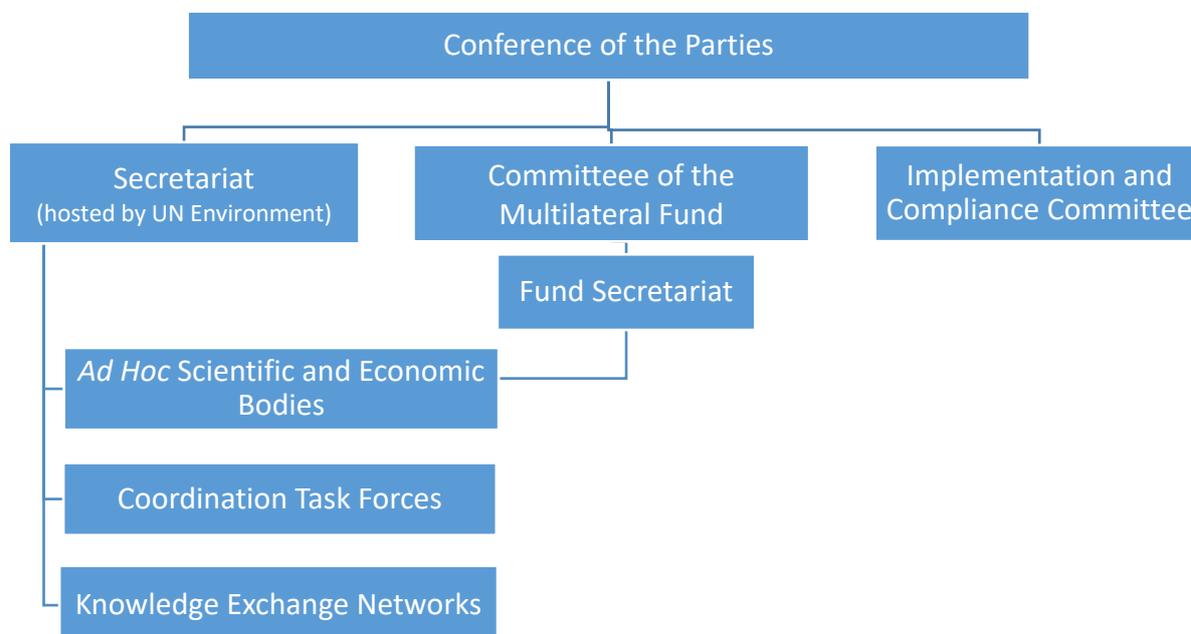
Other institutional arrangements should also be considered and formalized, in particular the following subsidiary bodies, taking into account the possibility of using existing bodies, as appropriate:

- **Multilateral Fund.** Given the critical role of financial support to developing countries for implementation, a funding mechanism should be established and periodically replenished to

provide stable, adequate and sustainable financing for the implementation of the Convention on Plastic Pollution. Such a funding mechanism could take the successful approach of the Montreal Protocol’s Multilateral Fund (MLF), which has its own Secretariat and is overseen by an Executive Committee comprised of geographically representative developing and developed countries. Alternatively, it could rely on an existing fund such as the Global Environment Facility (GEF).

- **Technical Bodies.** To assist with decision-making, institutional arrangements could either establish standing scientific and economic committees or *ad hoc* scientific and economic bodies (overseen by UN Environment, for example), both of which would draw upon experts from academia, industry, civil society (provided adequate conflict-of-interest and transparency policies), and established entities, such as the Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection (GESAMP) and the Regional Seas Programmes.
- **Implementation and Compliance Committee.** In order to ensure the implementation of, and review compliance with, all the provisions of the Convention on Plastic Pollution, a dedicated committee should be established. This includes identifying areas where assistance is needed by countries not meeting their obligations.
- **Coordination Task Forces.** In order to ensure coordinated responses and avoid duplication, the COP may wish to establish coordination task forces, which could operate through both formal means (joint task force between two conventions) and informal means (recommendations to Parties on actions to support in other fora), with consideration given to the potential role of the Regional Seas Programmes.
- **Knowledge Exchange Networks.** Knowledge exchange may also be formalized, building and expanding upon similar efforts already being undertaken, such as the Global Partnership on Marine Litter (GPML) and the recently announced Global Plastics Platform (GPP), through a knowledge exchange network.

Below is one example of what the new institutional structure could look like:



For more information:

Tim Grabiell

Senior Lawyer
Environmental Investigation Agency
timgrabiell@eia-international.org
+33 6 32 76 77 04

David Azoulay

Senior Attorney
Center for International Environmental Law
dazoulay@ciel.org
+41 78 75 78 756

Trisia Farrelly

Senior Lecturer, Massey University
School of People, Environment and Planning
Co-Founder, New Zealand Product Stewardship Council
Co-Director, Political Ecology Research Centre
T.Farrelly@massey.ac.nz
+64 21 1713087 | +64 6 9516664

Christopher Chin

Executive Director
The Center for Oceanic Awareness, Research, and Education
cchin@coare.org
+1 510 495 7875

References

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- ¹ UN Environment, *Combating Marine Plastic Litter and Microplastics Summary for Policymakers: An Assessment of the Effectiveness of Relevant International, Regional and Subregional Governance Strategies and Approaches* (2017), p. 5.
 - ² Center for International Environmental Law, *Fueling Plastics: Fossils, Plastics, & Petrochemical Feedstocks* (2017), available at <http://www.ciel.org/wp-content/uploads/2017/09/Fueling-Plastics-Fossils-Plastics-Petrochemical-Feedstocks.pdf>; Center for International Environmental Law, *How Fracked Gas, Cheap Oil and Unburnable Coal are Driving the Plastic Boom* (2017), available at <http://www.ciel.org/wp-content/uploads/2017/09/Fueling-Plastics-How-Fracked-Gas-Cheap-Oil-and-Unburnable-Coal-are-Driving-the-Plastics-Boom.pdf>
 - ³ See generally UN Environment, *Combating Marine Plastic Litter and Microplastics: An Assessment of the Effectiveness of Relevant International, Regional and Subregional Governance Strategies and Approaches* (15 February 2018), UNEP/EA.3/INF/5.
 - ⁴ See UN Environment, *Possible Options under the Basel Convention to Further Address Marine Plastic Litter and Microplastics* (Nairobi, 29-31 May 2018), UNEP/AHEG/2018/1/INF/5.
 - ⁵ See International Maritime Organization, *Development of an Action Plan to Address Marine Plastic Litter from Ships* (26 July 2018), MEPC 73/8/3.
 - ⁶ See UN Environment, *Combating Marine Plastic Litter and Microplastics: An Assessment of the Effectiveness of Relevant International, Regional and Subregional Governance Strategies and Approaches* (15 February 2018), UNEP/EA.3/INF/5, pp. 49-62.
 - ⁷ See UN Environment, *Combating Marine Plastic Litter and Microplastics: An Assessment of the Effectiveness of Relevant International, Regional and Subregional Governance Strategies and Approaches* (15 February 2018), UNEP/EA.3/INF/5, pp. 17, 32-33 and 64-65.