

## Response to the call for written submissions on elements not discussed at INC-2 (part a)

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## Elements not discussed at INC-2

### 1. Scope

*What is the proposed scope for the future instrument?*

*Which types of substances, materials, products and behaviors should be covered by the future instrument?*

Proposed scope:

Explanatory Text:

### 2. Principles

*What principles could be set out in the future instrument to guide its implementation?*

#### **Proposed principles:**

At its first session, the intergovernmental negotiating committee requested the secretariat to prepare, for consideration by the committee at its second session, a document with potential options for elements towards an international legally binding instrument. This document provides a list of proposed principles to be included in the preamble of the future treaty<sup>1</sup>. The Global Pact Coalition (the GPC) would like to emphasize the absolute necessity of including these proposed principles in the preamble, and in particular the following ones:

- The human right to a clean, healthy and sustainable environment as recognized by United Nations General Assembly resolution 76/300 of 28 July 2022;
- The polluter-pays principle;
- Waste hierarchy;
- The precautionary principle;
- Intergenerational responsibility;
- The principle of common but differentiated responsibilities, and the specific needs and special circumstances of developing and least developed countries, including small island developing States;
- Cooperative approach;
- The Rio Principles.

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<sup>1</sup> UNEP/PP/INC.2/4 on “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”, 13 April 2023 ([URL](#)).

In addition to these proposed principles, the GPC suggests mentioning other principles that it believes are also at the heart of the fight against plastic pollution. They include:

- Principle of prevention
- Principle of non-regression

**Explanatory Text:**

**(a) Human rights, including the human right to a clean, healthy and sustainable environment recognized by UNGA resolution 76/300 of 28 July 2022**

Plastic pollution poses a direct threat to the human right to a clean, healthy and sustainable environment as it “[alters] habitats and natural processes, [reduces] ecosystems’ ability to adapt to climate change and directly [affects] millions of people’s livelihoods, food production capabilities and social well-being”<sup>2</sup>.

Today, most constitutions worldwide recognize the right to a clean, healthy and sustainable environment. This right has also been recognized at the UN level in the General Assembly’s resolution 76/300 of 28th July 2022. Therefore, the human right to a clean, healthy and sustainable environment must necessarily be integrated into all new international environmental instruments, including the future treaty on plastic pollution.

**(b) Polluter-pays principle**

The GPC requests the inclusion of the polluter-pays principle in the preamble of the treaty. According to this principle, all costs of plastic pollution, including that of preventing, mitigating, and restoring, should be borne by the polluter.

Such a principle is crucial to the fight against plastic pollution at its very source. Given that it pushes actors to internalize their environmental externalities, it would work as an incentive mechanism for them to monitor and reduce their plastic pollution, notably by re-thinking the conception of products and considering, from the outset, their entire life cycle.

**(c) Waste hierarchy**

The GPC emphasizes the importance of referring to the waste hierarchy in the preamble of the treaty, in order to avoid the production of plastics as much as possible, and to promote the creation of coherent waste management systems with reduced environmental footprint.

The GPC suggests the following priority order<sup>3</sup>:

- i. prevention;
- ii. preparing for re-use;
- iii. recycling;
- iv. other recovery, e.g. energy recovery; and

<sup>2</sup> UNEP/PP/INC.1/7 on “Plastic science”, 13 September 2022 ([URL](#)).

<sup>3</sup> Directive 2008/98/EC on waste and repealing certain Directives, article 4, 19 November 2008, ([URL](#)).

v. disposal.

When it comes to plastics, the waste hierarchy allows to “minimize adverse impacts of the generation and management of waste” as well as to “improve resource efficiency”<sup>4</sup>.

#### **(d) Precautionary principle**

While it is known that plastic pollution has a harmful impact on human health and the environment<sup>5</sup>, there remain some uncertainties as to the extent of that impact. For example, “it is impossible to know with certainty how long [plastics] last in the marine environment”<sup>6</sup>. Moreover, the impact of plastic waste on soil ecosystems also remains uncertain and understudied<sup>7</sup>.

In light of such considerations, it appears crucial to explicitly recognize the precautionary principle in the preamble of the present instrument. Indeed, it precisely applies in cases of scientific uncertainties, such as when the risks of harmful effects due to an activity are not yet perfectly understood.

Finally, as international jurisprudence has considered that this principle is on the verge of achieving customary status<sup>8</sup>, it is important to include it in all future legally binding instruments related to environmental protection in order to show the commitment of the international community towards this approach.

#### **(e) Intergenerational responsibility**

Intergenerational responsibility means considering the interests and needs of future generations so as to ensure that they do not suffer the harmful consequences of our present actions.

The extent of the harmful impact of plastic pollution on human health and the environment is still unknown, and subsequent generations are therefore exposed to an uncertain future. As highlighted by the Organisation of Economic Cooperation and Development, plastic production “is forecast to triple under a business-as-usual scenario to an estimated 1,231 million metric tons in 2060”<sup>9</sup>. Furthermore, most types of plastics are not biodegradable and some are in fact extremely durable, meaning that “the majority of polymers manufactured today will persist for decades and probably for centuries, if not millennia”<sup>10</sup>.

Given the nature of plastic pollution, the GPC calls for the inclusion of the principle of intergenerational responsibility in the preamble of the future treaty.

#### **(f) The principle of common but differentiated responsibilities, and the specific needs and special circumstances of developing and least developed countries, including small island developing States**

<sup>4</sup> “Waste hierarchy”, *Eur-Lex website* ([URL](#)).

<sup>5</sup> For instance, see: World Health Organization, Technical Document “*Microplastics in drinking-water*”; 2019 ([URL](#)).

<sup>6</sup> “Overview on Plastic Waste”, *Basel Convention website* ([URL](#)).

<sup>7</sup> UNEP/PP/INC.1/7 on “*Plastic science*”, 13 September 2022 ([URL](#)).

<sup>8</sup> ITLOS, Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area (Request for Advisory Opinion submitted to the Seabed Disputes Chamber), 1 February 2011.

<sup>9</sup> OECD, “*Global plastic waste set to almost triple by 2060, says OECD*”, 3 June 2022 ([URL](#)).

<sup>10</sup> “Overview on Plastic Waste”, *Basel Convention website* ([URL](#)).

The GPC believes that the fight against plastic pollution should be guided by methods that reflect the principle of common but differentiated responsibilities (CBDR). Thus, the special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable, should be given special attention. To that end, the GPC suggests taking into account the Parties' CBDR and respective capabilities: due regard must be given to the fact that certain States have played a greater role than others in environmental harms linked to plastics.

For instance, a large amount of plastic waste is exported to developing countries: “the 38 member countries of the Organisation of Economic Cooperation and Development (OECD) are responsible for 87 percent of all plastic waste exports since reporting began in 1988”<sup>11</sup>. The GPC thus considers it essential for the CBDR principle to be included in the preamble of the treaty.

### **(g) Cooperative approach**

Plastic pollution is a transboundary issue and occurs on a global scale. Furthermore, plastic production and conversion from fossil fuels cause very large amounts of greenhouse gas emissions<sup>12</sup>, thereby contributing to the global phenomenon of climate change.

The GPC recalls that cooperation between States is the basis for global environmental governance. It is an obvious requirement when environmental problems, such as plastic pollution, are not contained within States' borders. In fact, the UNEA has already adopted several resolutions calling for stronger global cooperation in relation to the long-term elimination of plastic pollution<sup>13</sup>. Accordingly, the GPC suggests making explicit mention of the principle of cooperation in the preamble of the present treaty.

### **(h) Rio Principles**

The 1992 Rio Declaration on Environment and Development, of more than 40 year old, represents a major milestone in international environmental law. While this instrument is not legally binding, it “[includes] provisions which at the time of their adoption were either understood to already reflect customary international law or expected to shape future normative expectations”<sup>14</sup>. For instance, among the 27 listed principles, the Declaration refers to the principle of prevention, an established customary norm<sup>15</sup>.

Given the Rio Principles' continued contribution to the development of the legal framework for environmental protection, the GPC recommends mentioning them in the preamble of the future treaty.

<sup>11</sup> Report of the Environmental Investigation Agency, “The Truth Behind Trash: The scale and impact of the international trade in plastic waste”, September 2021 ([URL](#)).

<sup>12</sup> UNEP/PP/INC.1/7 on “Plastic science”, 13 September 2022 ([URL](#)).

<sup>13</sup> As stated in UNEP/EA.5/Res.14, the UNEA adopted resolutions 1/6, 2/11, 3/7, 4/6, 4/7 and 4/9 “affirming the urgent need to strengthen global coordination, cooperation and governance to take immediate action towards the long-term elimination of plastic pollution in marine and other environments, and to avoid detriment from plastic pollution to ecosystems and the human activities dependent on them” ([URL](#)).

<sup>14</sup> Günther Handl, “Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration), 1972 and the Rio Declaration on Environment and Development, 1992”, *United Nations Audiovisual Library of International Law*, May 2012 ([URL](#)).

<sup>15</sup> *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports 1996.

## (i) Principle of prevention

The prevention principle is based on the idea that it is better to avoid environmental damage than to repair it. In that regard, the United Nations Environment Programme has pointed out that “[i]nvesting in the prevention of waste and pollution at source is less expensive than remediation”<sup>16</sup>. As such, preventing plastic pollution and waste is not only economically profitable but it is also safer for our well-being and that of our planet. This principle is at the heart of the waste hierarchy.

The prevention principle, being abstract and flexible, “can inform assessments of the level of diligence required of states in the face of plastic problem, help to adapt existing legal frameworks, and encourage creativity in lawmaking”<sup>17</sup>. In fact, the United Nations Environment Assembly (UNEA) had already recognized the central role of the prevention principle in the fight against the plastic problem<sup>18</sup>. Therefore, the GPC suggests that the prevention principle be mentioned explicitly in the preamble of the treaty.

## (j) Principle of non-regression

An increase from an estimated “353 million metric tons per year of plastic waste in 2019 to 1,014 million metric tons per year in 2060 is expected under a business-as-usual scenario”<sup>19</sup>. As such, the GPC suggests making reference to the principle of non-regression which “prohibits States from weakening their domestic levels of environmental protection”<sup>20</sup>. This principle is starting to appear in environmental instruments. For example, it can be found in Article 3(c) of the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean. Moreover, the principle of non-regression has been recognized by several States in their domestic legal systems<sup>21</sup>.

Including the principle of non-regression in the preamble of the treaty would serve to answer concerns about backsliding and insufficient progress over the challenge of plastic pollution. It would also “[facilitate] mutual confidence in the durability and trajectory of each [State’s] commitments”<sup>22</sup>. Therefore, the GPC strongly supports the addition of this principle to the preamble of the treaty.

### 3. Additional considerations

*Provide any other relevant inputs, proposals or priorities here that have not been discussed at INC-2 (e.g. preamble; institutional arrangements, including governing body, subsidiary bodies, scientific*

<sup>16</sup> UNEP/PP/INC.1/7 on “Plastic science”, 13 September 2022 ([URL](#)).

<sup>17</sup> Leslie-Anne Duvic-Paoli, “Fighting Plastics with Environmental Principles? The Relevance of the Prevention Principle in the Global Governance of Plastics”, *AJIL Unbound*, Volume 114, pp. 195-199, 20 July 2020 ([URL](#)).

<sup>18</sup> UNEA resolutions 1/6, 2/11, and 3/7.

<sup>19</sup> UNEP/PP/INC.2/4 on “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”, 13 April 2023 ([URL](#)).

<sup>20</sup> Andrew D Mitchell and James Munro, “An International Law Principle of Non-Regression from Environmental Protections”, *International & Comparative Law Quarterly*, Volume 72, Issue 1, pp. 35-71, 11 January 2023 ([URL](#)).

<sup>21</sup> For example, France, Belgium, Hungary and some Latin American countries.

<sup>22</sup> Andrew D Mitchell and James Munro, “An International Law Principle of Non-Regression from Environmental Protections”, *International & Comparative Law Quarterly*, Volume 72, Issue 1, pp. 35-71, 11 January 2023 ([URL](#)).

*and technical cooperation and coordination, and secretariat; final provisions including dispute settlements; and if appropriate annexes).*

**Proposed inputs:**

The GPC suggests including in the preamble of the treaty a paragraph that lists legal instruments that would frame the spirit of the treaty and contextualize the principles listed in the preamble.

**Explanatory Text:**

The paragraph could be as follows (the list is non-exhaustive):

*“Guided by the Stockholm Declaration of the United Nations Conference on the Human Environment (1972), the Rio Declaration on Environment and Development (1992), the Basel Convention on the control of transboundary movements of hazardous wastes and their disposal (1992), the Johannesburg Declaration of sustainable development (2002), the Stockholm Convention on persistent organic pollutants (2004), the General Assembly’s resolution 76/300 on the right to a clean, healthy and sustainable environment (2022), the Agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (2023).”*