



The Rule of Three: the third session of negotiations (INC-3) on the global treaty to end plastic pollution

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Introduction

"Kenya is delighted to host this session particularly because it was here in Nairobi that humanity spoke in one voice at the United Nations Environmental Assembly 5.2 when 170 nations agreed to launch negotiations towards a globally binding instrument."

- His Excellency DR. William Samoei Ruto, President of the Republic of Kenya

Bracketing treaty text is a normal practice in any global negotiations. Nations come together to negotiate [and] [[agree] or disagree] on what words, sentences or even commas will be included in a future treaty. This inherently means that before an agreement is reached, deletions of text and changing of words will inevitably happen (e.g. "should" to "shall"), and brackets will have to all be lifted for a treaty to have reached a consensus and be adopted, signed and eventually ratified thereby coming into force. This perspective article examines the events that transpired at the third session of the United Nations Environment Program's (UNEP) global treaty negotiations to end plastic pollution, where brackets were added — en masse during INC-3. This session of negotiations took place from November 13 to 19, 2023 at the UNEP headquarters in Nairobi, Kenya. The negotiations included over 1900 attendees, with delegates from 161 UN Member States (MS) represented. Contrary to INC-2, statements from UN Member States (MS) on procedural matters did not take up precious time during INC-3 (Cowan et al. 2024). Instead, MS were eager to move forward with progress towards

advancing the Zero Draft,¹ which led to substantive discussions and negotiations on the content and text of the future treaty already on day two of negotiations.

The overarching objective of this series of articles² following the negotiations is to understand the factors that helped to shape the treaty text, scheduled to be finalised before 2025. To this end, we highlight patterns and trends that become evident throughout different stages of the negotiation process. Our methods of data collection and analysis include narrative analysis of public statements, process tracing and event ethnography (methods detailed in amongst others works on the Intergovernmental Conference on an international legally binding instrument 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) (Mendenhall et al. 2019; Tiller et al. 2019; Mendenhall et al. 2023; Hughes and Vadrot 2023; Langlet and Vadrot 2023a). This mixed-method approach allows us to construct a richer overall understanding of the negotiation process and analyse how decisions are made in multilateral negotiations such as the INC for an International Legally Binding Instrument (ILBI) to end plastic pollution as well as in the development of instruments related to climate, nature and other pollution issues. These methods also allow us to identify emerging trends and obstacles in consensus building amongst delegates towards this ILBI, and at this stage in the process, the path towards the decision to ask the INC Chair and Secretariat to develop the draft treaty text containing all possible options for articles subject to negotiation at INC-4. These explanatory factors include elements such as treaty design, content and assignment of decision-making responsibilities. We trace statements made in the negotiating rooms at INC-3, developing an explanatory narrative of the treaty-making process.

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¹ For more information, see <https://wedocs.unep.org/bitstream/handle/20.500.11822/43239/ZERODRAFT.pdf>

² To read the publications on INC-1 and INC-2, please see Cowan (2024) and Cowan et al. (2024)

Table 1 Overview of contact groups and their mandates to negotiate on

CG	Co-facilitators	Sessions held	Tasks mandated to negotiate
1	Ms. Gwen Sisior of Palau and Mr. Axel Borchmann of Germany	10	Part I — Objective Part II — Core Obligations 1–13
2	Ms. Kate Lynch of Australia and Mr. Oliver Boachie of Ghana	6	Part III — Financing, capacity building, technical assistance and technology transfer Part IV — National plans, implementation and compliance, reporting on progress, periodic assessment and monitoring, international cooperation, information exchange, awareness-raising, education and research and stakeholder engagement
3	Ms. Marine Collignon of France and Mr. Danny Rahdiansyah of Indonesia	8	Part I — Preamble, definitions, principles, scope Part V — Institutional arrangements (governing body, subsidiary bodies, secretariat) Part VI — Intersessional work

The table includes the names of the co-facilitators as well as the number of times the CGs met throughout the negotiations from November 14 to 19, 2023

Elements of the future plastic treaty

The first step towards an ILBI during the negotiation phase of the treaty development is producing text for delegations to examine and negotiate, moving talks beyond reading pre-prepared statements and into negotiations on substantial matter. The Zero Draft text of the future plastics instrument was prepared by the UNEP INC Secretariat upon the request of the UN MS during the intersessional period between INC-2 and INC-3, that took place over the summer of 2023. The text was based on submissions received from Regional Groups (made up of UN MS) and individual UN MS leading up to this third round of negotiations. The MS were able to draw inspiration from stakeholder submissions which were submitted the month prior. The Zero Draft was first published on September 4, 2023, presenting options for elements of the future instrument, including its main objective, core obligations, means of implementation and measures thereto (UNEP 2023). Over the course of 7 days of negotiations at the UNEP headquarters in Kenya, differing perspectives were presented by UN MS and Regional Groups and deliberated upon on the Zero Draft, leading to the incorporation of these views into the revised drafts of the treaty text before closing the session at INC-3. The negotiations took place in three Contact Groups (CG) tasked with discussing and providing views on the various parts of the treaty text. The CGs met regularly and often for longer sessions during the week, at times in parallel,³ and with different frequencies and total meetings, as presented in Table 1.

³ There were never more than two negotiating sessions running in parallel at INC-3. This allowed the team of ethnographers to follow all negotiations throughout the week.

For this analysis, we have built on similar methodologies applied to previous MEA tracing work (Mendenhall et al. 2023), tracing changes in a draft environmental treaty text over time. Table 2 provides a visualisation of the negotiation process and serves as a starting point for examining the changes in what elements the future instrument may include. The table shows how the Zero Draft and updated draft treaty text differ in terms of strength of language (“shall” representing strength) and divergence of opinions (using “options” and brackets as proxy) of opinions. We will assess subsequent draft versions against this initial baseline, highlighting any changes in variables and conducting an overall quantitative analysis to track how the treaty text evolves over time.

In summary, the initial 31-page content of the Zero Draft expanded significantly from the start until the end of INC-3, resulting in documents from CGs 1 and 2 that exceeded 60 pages. This does not take into account the text from CG3 (Parts V and VI) that was not agreed upon and thus could not be concluded and integrated within the given timeframe. Two out of the three CGs did successfully produce revised treaty texts in preparation for INC-4 though, focusing on the objective of the treaty as well as its 13 core obligations, and implementation and monitoring of the future instrument. The outcomes of the contact groups and the potential outlook for INC-4 are examined below.

Core obligations of the treaty and the prominent but unspoken issue

"We believe that our mission here is to fight plastic pollution, not the production—we believe this element [primary plastic polymers] will not be effective in

Table 2 Versions of the treaty text negotiated during INC-3

Version	Section	“Options”	“Shall’s”	Bracketed “shall’s”	Brackets (search “J”)	Word count (incl titles)
PRE INC-3 Zero Draft Text September 4th, 2023	Full draft	28	153	0	79	14520
	PART I	2	0	0	2	220
	PART II	22	85	0	51	7879
	PART III	2	18	0	0	912
	PART IV	2	50	0	26	2999
	PART V	Placeholder text only.				25
	PART VI	Placeholder text only.				28
Version	Section	“Options” ⁴ <small>not including alternatives</small>	“Shall’s”	Bracketed “shall’s”	Brackets (search “J”)	Word count (incl titles)
POST INC-3 Draft Treaty Text from CGs November 19 2023	Full draft	Not available directly post INC-3 only CG1 and CG2 finalised and agreed upon text into full compilations of the revised zero draft text				
	PART I (including input from CG3)	30 ↑	7 ↑	0 ↔	49 ↑	4 488 ↑
	PART II	111 ↑	480 ↑	0 ↔	247 ↑	37 831 ↑
	PART III	17 ↑	72 ↑	19 ↔	208 ↑	4 399 ↑
	PART IV	55 ↑	117 ↑	30 ↔	484 ↑	7 063 ↑
	PART V (not agreed upon text)	0 ↔	10 ↑	1 ↔	2 ↑	1 077 ↑ (No text previously)
	PART VI (not agreed upon text)	Not available – still a placeholder text only at time of publications of article.				

⁴For 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 (Mendenhall et al. 2023)

Red indicates that there is a negative trend and green indicates that there is a positive trend (irrespective of arrows). An increase in “shalls” for example may indicate the stronger language, whereas an increase in “options” indicates a divergence of opinions

addressing pollution and will have a significant impact on sectors and will hinder economic development.”
– A member state from the Global South on the second day of negotiations in CG1

The future instrument will not operate within a vacuum but in a landscape with a kaleidoscope of regimes and agreements that are tangibly or intangibly related to the same issues that it is going to handle, namely ending plastic pollution. Similar to the previous negotiations from INC1-2, there is still a clear divide between countries who believe ending plastic pollution involves limiting the production of primary plastic polymers and those who believe it is merely a waste management problem (Cowan 2024; Cowan et al. 2024).

These topics of discussion in CG1 will inherently determine the overall scope and implications if the future instrument will include top-down legally binding measures or bottom-up voluntary ones. It is important to note that environmental agreements are almost never purely top-down agreements. In reality, international environmental agreements often blend elements of both top-down and bottom-up approaches (Andresen 2015). What was still left uncertain at the end of CG1 negotiations during INC-3 was the type of scope each of the core obligations will include. Multiple MS and even IGOs themselves pointed out how existing agreements should work together with plastics to not duplicate efforts.

As such, substantive negotiations throughout the week consistently focused on utilising synergies with existing

Table 3 Number of times delegates and observers intervened on specific core obligations during contact group 1 in the first session of the draft text reading between 14 to 17 November 2023

	Part II of the Draft Treaty text on the obligations of the future treaty	Member States	Regional groups	Observers⁵
Interventions on each core obligation during CG1 in the third round of negotiations from – 14th – 17th November 2023	I. Primary Plastic Polymers	52	2	5
	II. Chemicals and polymers of concern	47	3	6
	III. Problematic and avoidable plastic products	55	4	
	IV. Exemptions	10	0	
	V. Product design, composition and performance	44	3	3
	VI. Non-plastic substitutes			
	VII. Extended producer responsibility	54	3	6
	VIII. Emissions and releases of plastic	61	7	
	IX. Waste management			
	X. Trade in listed chemicals, polymers and products			
	XI. Existing plastic pollution, including in the marine environment	35	6	
	XII. Just transition			
	XIII. Transparency, tracking, monitoring and labelling			

^aObserver statements were taken at the end of discussions — which could include the coverage of multiple obligations

agreements, especially concerning chemicals of concern (Stockholm Convention), trade and transboundary movement of plastic waste (Basel Convention), as well

as limiting the production of primary plastic polymers (UNFCCC) ensuring safe disposal and ‘do no harm’ practices on the environment (Convention on Biological

Diversity) throughout the plastic life cycle. Emphasis on how this new ILBI needs to complement existing governance structures without imposing and duplicating their work is not new, and something that has been analysed within the context of multi-level governance structures before in other environmental arenas as well (Maes et al. 2023; Langlet and Vadrot 2023b; Tang 2024; Mendenhall et al. 2019; Blanchard et al. 2019; Tiller et al. 2023). This contextual setting was also one of agreement in CG1 discussions, with representatives of UN MS making interventions on topics where they have jurisdiction and experience prior, or where the new ILBI would provide a complementary role and work could benefit from the existing effort that has been achieved. Table 3 provides the insights into the negotiating process, aiding in a clearer comprehension of the core obligations that MS prioritise in providing their input to the treaty. The table also highlights the limited time available during the week to cover all topics. The initial approach of addressing each item individually swiftly shifted to grouping items together, with observer statements being postponed until the end. From the table, one can identify the number of times the floor was taken to discuss an obligation, as well as where obligations were systematically combined due to time constraints (i.e. 5 and 6, 8–10, 11–13). As demonstrated in the table, the speaking time for observers was extremely limited during INC-3 and written statements from NGOs were not accepted on the official INC-3 website for input to the CGs.

Financing, capacity building and national plans

"...based on experiences in implementation, the Montreal Protocol – successfully worked – in addition financing technical assistance for public policy."

– A member state from the Global South on the second day of negotiations in CG2

Whilst negotiating what the potential core obligations of the future instrument may include CG2 took to discuss financing and implementing the future plastics instrument. Historically, financial mechanisms and funding are crucial for the effective implementation and compliance with international environmental agreements and treaties (Matz 2002) without which the agreement may fail to be enforceable. The main focus of negotiations in CG2 was situated within Part III of the Zero Draft published prior to INC-3. The options for negotiating financing the future treaty included finding consensus on whether or not a newly established fund would be necessary (option 1) or if funds should be incorporated into existing financial arrangements (option 2), such as the

Global Environment Fund (GEF).⁴ Another option was to have a hybrid approach including a new financial mechanism as well as integrating an existing one like the GEF (IISD 2023).

Moreover, leading up to INC-3 researchers and NGOs alike attempted to understand the importance of implementing global commitments at the national level. Regardless of the treaty, MS will need to ratify and take up a global treaty at the national level, already at INC-1 MS intervened on the importance of National Action Plans (NAPs) to cover this task. However, likeminded nations not members of the HAC are seen using NAPs as a means to weaken the treaty's global strength and leave it up to the national level to determine the best actions for ending plastic pollution, as the current implementation style of NAPs has limited knowledge of the overall effectiveness (University of Portsmouth 2023).

CG2 demonstrated efficiency in addressing significant matters within their delegated tasks. With two sections to cover and only two 3-hour sessions available at the start of the week, both facilitators and delegates proficiently delivered concise and precise interventions. They successfully concluded the first reading of the draft text within the allocated time. Notably, these sections of the Zero Draft dealt with issues that were arguably less contentious than those in Part II, specifically the life cycle of plastics. Certain matters were deferred as they were deemed dependent on the outcomes from CG1. Subsequently, delegates prepared modifications, additions and deletions for incorporation into the treaty text, allowing for a revised draft for a second reading before the conclusion of INC-3.

The beginning and end of the treaty text

"To focus on waste management is figurative and literal dumping on the poorest and most vulnerable... This is a matter of immorality."

– A member state from the Global South on the second day of negotiations in CG3

CG3 negotiated the beginning and end of the future instruments' text. This included items such as the preamble, definitions, scope and institutional arrangements. Although this CG engaged in negotiations on the preamble, known as the introductory section of the future instrument, this was also brought up as a potential risk to prejudging the conclusion of the future text. The disagreements surrounding finalizing the preamble before finalizing the other CG's work became a difficult obstacle to work through in CG3, which

⁴ The GEF provides funding to the Global South to meet objectives of international environmental agreements with the support of governments, civil society, and the private sector.

by the end of the week of negotiations was left unresolved. Moreover, agreeing to the future instrument's definitions held a significant amount of sway within the negotiations, as both MS and NGOs brought up the question of how it is possible to negotiate when we are not speaking the same language for what definitions are. For example, enabling a robust Extended Producer Responsibility (EPR) scheme is part of the core obligations being negotiated in CG1, however without a clear definition of what an EPR scheme entails nations risk losing cooperation on monitoring and reporting of this obligation with no legal certainty of what EPR is defined as within the future treaty. It is also worrisome to note that if definitions are not defined by INC-4 the risk of having to go back and negotiate on previously agreed-upon text can become a reality as MS may change their opinion once definitions become clear.

At the same time in CG3, a group of like-minded countries with shared perspectives known as INC-3 "The global coalition for plastic sustainability" (which at the time of writing included Russia, Saudi Arabia, China, Cuba, Iran and Bahrain) decided that because of the lack of definitions and consensus on the scope they favoured pausing negotiations completely, expressing concerns about the path of the INC process.

During the second session of CG3, which occurred on the third day of negotiations, MS who had not yet had an opportunity to express their views were able to provide input on the preamble, definitions, scope and principles of the future instrument. Following inputs from four NGOs, MS successfully persuaded the session facilitators to shift the discussion to institutional arrangements in Part V. This adjustment ensured that this section would no longer be left blank in the draft treaty text. Almost all participants who spoke concurred that the governing body of the future treaty should take the form of a Conference of Parties, commonly referred to as a COP. This move leads to the suggestion that the future plastic instrument will follow in the footsteps of previous environmental agreements on biodiversity and climate.

Conclusion

"Your constructive engagement on the basis of the Zero Draft you had entrusted me to prepare has demonstrated that beyond our differences, there is more that unites than what drives us apart."

— **Mr. Gustavo Meza-Cuadra Velasquez, Chair of the INC during INC1-3**

Whilst the journey ahead remains with a substantial amount of work to be done, the trajectory and hurdles are becoming clearer. Consensus will be relatively easy to reach

on core obligations related to the end-of-life management of plastics (i.e. waste management, just transitions). The opposite is also true; numerous MS are actively taking a stance and making interventions in the closed contact groups that they will not sign on to a treaty that will limit their production and use of primary plastic polymers. Future scholars may analyse the effectiveness of such a treaty that will not include these core obligations at the heart of both the HAC core negotiating points, as well as the call from NGOs.

The target for finalising the treaty is currently set for the end of 2024, paving the way for its future adoption, ratification and subsequent evolution into a COP by 2025. The future plastic agreement aims to unify and streamline the previously fragmented governance institutions responsible for overseeing the entire life cycle of plastics. The Rule of Three is a principle that suggests that things that come in threes are inherently more satisfying, effective and memorable than other numbers, with the third element providing an unexpected twist or punchline. Although INC-3 may not have achieved the level of progress envisioned by some ambitious MS and NGOs, it successfully defined both common ground and a better understanding and seriousness of the differing perspectives. As UN MS prepares for negotiations in Ottawa, Canada April 23–29, 2024, it is imperative to focus on what *can* be included in the future instrument to make sure ample uptake by MS, whilst at the same time identifying areas of compromise for the obligations without consensus. Applying inclusive decision-making to environmental policy development is critical, ensuring the active involvement of diverse stakeholders. This approach guarantees that a wide range of perspectives, needs and concerns are considered, fostering a more comprehensive and equitable strategy to address remaining challenges by 2024. Not letting perfection get in the way of good enough is a strong example of making sure in the short two sessions left of negotiations there is a treaty that is able to be ratified by the most amount of UN MS, and understanding of how the future COP can strengthen it can be developed in the intermediary.

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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.

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Authors’ statement The authors are not depositing research data for this article. Though we do rely to some extent on data from a database that is under development (since the project period is not finished before the last INC has been concluded for the plastics treaty), the article is a Viewpoint piece — and not a research article per se. When the research team concludes the data acquisition period, by the end of the treaty negotiations, and publishes a research article on the topic, the database will also be shared. At that point, it will have been properly coded and made possible for external users to navigate so t it is both accessible and discoverable.