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Third negotiating session on the Plastics Treaty: discussions stall in Nairobi

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In March 2022, in a very positive atmosphere, the United Nations Environment Assembly (UNEA) adopted a resolution setting out a process and timetable for negotiations leading to the adoption of a treaty to combat plastic pollution by the end of 2024. The 3rd round of negotiations (INC3) in Nairobi ended with a feeling of stagnation, leaving the supporters of an ambitious treaty disconcerted, if not dismayed, and at the very least worried about what lies ahead. Will the next session of UNEA, at the end of February 2024, be an opportunity to get the process back on track?

After Punta del Este (Uruguay) and Paris, Nairobi hosted the new negotiating session for the Plastics Treaty (November 13-19). This time, the discussions were based on a [preliminary version or "zero draft"](#) of the text which, with an ambitious structure, listed the various options put forward by the countries at previous meetings, from limiting production to waste management, and bans on certain substances. However, the negotiations failed to produce a refined version of the text, or even to give the secretariat a mandate to prepare a first draft text: a new "zero draft" will therefore be produced between now and the end of the year, swollen with new options that will make further negotiations more complex and the risk of deadlock even greater.

This result can be explained by two opposing approaches to the purpose and scope of the future treaty.

Two opposing visions of the treaty

On the one hand, there is the vision promoted by the [High Ambition Coalition to End Plastic Pollution](#), chaired by Norway and Rwanda, and bringing together over 60 countries from the OECD (but not the United States), the Latin American-Caribbean region, Africa, Small Island Developing States and the United Arab Emirates. The Coalition builds on the UNEA resolution providing a mandate to deal with the entire plastic cycle, and is therefore calling for an ambitious treaty covering both upstream (polymer production) and downstream (sound waste management) dimensions of the plastic cycle.

On the other hand, a vision supported by a [new coalition](#), announced by Iran at the start of the session and including Saudi Arabia, China, Russia, Iran, Cuba and Bahrain, is seeking to limit the scope of the treaty to waste management and is opposing any regulation or restriction on production.

This opposition was particularly evident during the debates on the objectives of the treaty and its scope of application. For example, the new coalition led by Iran was resolutely hostile to the setting of targets affecting polymer production. Iran and Russia also rejected the idea of drawing up a list of polymers and chemical additives to be eliminated or regulated on the grounds of environmental or human health hazards. The same position was expressed regarding the elimination of problematic plastic products such as single-use plastics, revealing the group's desire not to address production-related issues—and economic issues in general—but to focus on the end-of-life of plastics without setting any limits on their proliferation.

The question of international trade clauses to be included in the new treaty also proved critical, with many countries wishing not to go beyond existing or proposed WTO or Basel Convention provisions. A side event organised by the [Council for International Environmental Law \(CIEL\)](#) provided a pertinent reminder that many environmental conventions include trade clauses that are compatible with the GATT. The challenges of linking the future treaty with existing multilateral agreements on chemical production and waste were also the subject of much debate. The importance of the criteria and standards to be applied to prioritise the reuse of plastic products, in application of the waste management hierarchy which places waste prevention and minimisation on top of the list, was emphasised by representatives of the [International Organisation for Standardisation \(ISO\)](#) and the World Alliance for the Promotion of Reuse ([PR3](#)).

In addition to the expected increased complexity of the next negotiating meeting (INC4, Ottawa, April 2024) in the absence of a first draft text, the procedure for preparing the treaty will also be hampered by the absence of agreement (blocked by the group led by Iran) on the organisation of [intersessional work](#), which had nonetheless been deemed essential for making progress on the technical and legal issues.[1](#)

What remains of Nairobi, therefore, is a sense of unfinished business, a feeling of stalled progress, largely due to the expression of divergent and multiple positions on the very vision of the treaty and its essential components. This situation can also be explained by the procedure applicable to the negotiations: at the Paris session in May 2023, it was tacitly agreed, after lengthy discussions and at the request of countries such as Saudi Arabia, India and China, to proceed by consensus and implicitly to avoid resorting to a majority voting procedure as nevertheless provided for in the rules of procedure.

The oil lobby mobilised

The presence of oil-producing countries in the coalition led by Iran, and of many [industry representatives](#) among the observers, may also have created the impression that the concern to defend the interests of the petrochemicals and plastics industries was particularly strong. The presence of oil-producing countries such as the United Kingdom, Norway and the Emirates in the Coalition of High Ambition, and the existence of companies grouped in a [Business Coalition for a Global Plastic Treaty](#) arguing for a broad scope of application of the treaty², are nevertheless noteworthy.

In addition, countries such as Russia and China are opposed in principle to dealing with economic issues in environmental agreements and are inclined to confine them to dealing with negative impacts and externalities, in this case pollution.

It should also be noted that although the UNEA resolution launching the negotiations in 2022 refers to the need to take into account the principles of the [1992 Rio Declaration](#), countries have tended to "cherry-pick" the principles that seem most favourable to them. Some prefer, for example, to emphasise that Rio Principle 2 recognises their sovereign right to exploit their resources in accordance with their own environmental and development policies, while others choose instead to emphasise Principles 15 (precautionary principle) or 16 (polluter pays principle).

A diplomatic test

Since some doors were closed in Nairobi, it is up to diplomacy to open others.

Active diplomacy, similar to what France undertook in the run-up to the 2015 COP Climate Conference, is needed to facilitate further negotiations. It will be able to rely on the mobilisation of African countries, which showed great consistency in Nairobi, and on the Alliance of Small Island States (AOSIS), which is still very active. The member countries of the High Ambition Coalition, including Kenya, UNEP's host country and a very proactive player, and Rwanda, a country that has been committed to plastics issues for many years, as well as UNEP's management, will have to mobilise at UNEA-6 in February 2024, which will provide an opportunity for an intermediate stocktake and diplomatic work aimed not so much at erasing differences but finding possible ways forward. Otherwise, the fourth session (INC4, Ottawa, April 2024) might once again stall.

¹ These include the adoption of criteria to identify problematic polymers and chemical additives, the definition of circularity criteria, the examination of re-use targets, the life cycle of fishing nets, extended producer responsibility and trade issues.

² <https://www.businessforplasticstreaty.org/latest/statement-on-the-outcomes-inc-3>