



In 2022, the **IUCN World Commission on Environmental Law (WCEL)** created the Plastic Pollution Task Force to provide insights and support to the Treaty negotiation process. The following series of targeted legal briefs are part of the present IUCN Submission for the second Intergovernmental Negotiating Committee to develop an international legally binding instrument on plastic pollution, including in the marine environment.

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IUCN WCEL Briefings for Negotiators for INC-2

These are updated briefings of the INC-1 submissions, please note, and are considered version 2.

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IUCN BRIEFINGS FOR NEGOTIATORS Plastic Treaty INC-2 Session

BRIEFING 1 of 6: Key Elements for Plastic Pollution Treaty

Key Messages:

In United Nations Environment Assembly (UNEA) resolution 5/14 and subsequent discussions at INC-1, the issue of elements of the Plastic Pollution Treaty became quite important. Following INC-1, it is clear that the Plastic Pollution Treaty could benefit from many key elements developed throughout treaty practice, especially that of multilateral environmental agreements (MEAs). At the same time, the issues raised by plastic pollution and potential State responses are highly complex, often quite technical, and may require nuanced responses that are not necessary in other treaty regimes. Examining standard concepts from treaty regimes and MEAs allows for negotiations to focus on the ways in which these distinctions can be accommodated and benefit from the strengths of international law and established practice.

1. Preamble

What? The use of a preamble is a standard and accepted practice across international treaty law and regimes including but not limited to multilateral environmental agreements. As noted in UNEP briefing note 5 in advance of INC-1, the preamble includes historical and contemporary understandings that informed the creation of a treaty, along with potential nexuses with other treaty regimes, and serves as an interpretive tool for the future. In this context, the drafting of the preamble will be critical to the Plastic Pollution Treaty.

How? The preamble may include historical references, treaty regime references, as well as emphasising the core interpretive principles of international law that form the underlying terms of the Plastic Pollution Treaty. In this context, principles such as the polluter pays principle, the precautionary approach, national capabilities and circumstances, sustainable development, the rights of future generations and intergenerational equity could play a significant role in the framing of the Treaty in the preamble content. As was stressed by States during INC-1, the transboundary nature of plastic pollution is an important element for the Plastic Pollution Treaty to include. In this context, including this as a thread from the preamble onward could serve as a comprehensive tool for holistically addressing plastic pollution.

2. Introductory elements including definitions, robust objectives, scope and principles

What? Definitions are essential to the functioning of any treaty regime. This will also be the case for the Plastic Pollution Treaty in particular because of the highly nuanced and technical nature of the issues raised by the cycles of plastic pollution.

How? As discussed in the IUCN Briefing for Negotiators addressing the glossary of key terms, one way for the Plastic Pollution Treaty to maximise its legal and technical impact is through a strong and extensive set of definitions. These definitions could reflect the science of the plastics life-cycle as well as the role of science and scientific knowledge in plastic pollution and associated impacts.

What? The objective is a foundational element of treaties. While some multilateral environmental agreements do not contain these provisions, objectives can play an important framing role for a treaty regime in a way that have legal significance for the interpretation of the terms of the treaty and for its effective implementation. Caution is needed, however, when using a narrow objective or

set of objectives since that could later result in questions of whether a treaty regime or the governance system for it is exceeding the scope of the underlying treaty.

How? A carefully worded set of objectives reflecting the needs of the international community, the plastics pollution questions and issues of future growth could play a valuable role in crafting a meaningful treaty. This includes the use of objectives that are clear and can be reviewed for implementation and effectiveness. With this in mind, the objectives could include quantified or quantifiable terms that provide methods to assess the effectiveness of the treaty's implementation of these objectives. At the same time, the Plastic Pollution Treaty could benefit from objectives that are flexible and dynamic so that they will remain relevant to and reflective of new and emerging scientific knowledge. To reflect the complex interconnections between plastic pollution and international law, the objectives could include links to sustainable development, sustainable finance, efforts to address climate change, and the protection of biological diversity.

What? As highlighted in UNEP briefing note 5 in advance of INC-1, the scope of a treaty regime has taken on several classifications of format under multilateral environmental agreements depending on the underlying objectives of the treaty. There is no requirement that a treaty regime use only one form of parameter for scope, especially in the context of the complex legal, regulatory and technical issues raised by plastic pollution.

How? The use of a combination of legal, regulatory and scientific parameters that can be measured and reviewed could allow the Plastic Pollution Treaty to contain a holistic scope. This could be used for the generation of information on the treaty's effectiveness.

What? The inclusion of fundamental principles for the implementation of a treaty regime can serve a vital role at the time of adoption as well as in future negotiations for amendments, annexes, protocols, agreements, or other interpretive actions. These principles should reflect the underlying assumptions and shared knowledge through which a treaty regime was negotiated. Given the many sub-sections of international law involved in efforts to address plastic pollution, a clear articulation of these principles would be valuable.

How? The principles designed could include principles of international law addressed from the outset of the negotiations for the Plastic Pollution Treaty, including the precautionary approach as well as national capabilities and circumstances, non-regression, progressive realisation or progression, circularity, circular economy, and just transitions.

3. Core obligations, control measures and voluntary approaches, accompanied by Annexes

What? Obligations represent the core of any treaty, including multilateral environmental agreements. They are the methods through which State Parties entrench their collective understanding of what international law is and will be under the treaty regime, including those that are binding and those that can be viewed as persuasive. Binding obligations are typically subject to treaty terms and may be subject to treaty-based compliance systems. Persuasive commitments are voluntary State Party commitments in terms of much of their implementation and enforcement. The negotiations for the Plastic Pollution Treaty will need to include discussions on the type of commitments under the treaty, their classification as binding or voluntary, procedural or substantive, and the methods used to define control measures. Moreover, states will have to agree on the nature of the commitments are being substantive or procedural in nature, and whether the treaty should have a "top-down" character or whether the content of commitments should be defined by the parties themselves through, for example, the formulation of national plans ("bottom up").

How? In defining the core obligations of the Plastic Pollution Treaty, care should be taken to ensure that choices regarding binding and voluntary classification reflect the theoretical and practical implications of control and voluntary measures.

4. Implementation measures including national action plans, mechanisms for scientific and technical cooperation and coordination, effectiveness evaluation and national reporting, and compliance measures

What? National action plans have been used across various multilateral environmental agreements. They are typically used as a tool through which State Parties articulate their legal, regulatory and policy plans to address certain issues for a dedicated time period. These national action plans are then made available to the public, civil society, other State Parties to a treaty, and to the governance mechanisms for the treaty regime. In many cases, the governance mechanisms then have the opportunity to provide comments and the State Parties are required to file subsequent national action plans that address steps taken to implement previous commitments as well as new commitments for the future.

How? National action plans in the plastic pollution context should be centred on the fundamental issues posed by the problem at the national level and could also include provisions regarding subnational entities. In designing the requirements for national action plans, the bridge between law and science offers a strong option to ensure that the terms reflect the objectives, principles, scope and core obligations of the treaty regime. The plans would benefit from being cumulative in nature, allowing for an understanding of how past practices have/have not caused changes that can be further advanced into future laws and policies. National action plans can be valuable tools for government planning and implementation if they are carefully designed and if State Parties have assistance, such as technical and financial assistance, to alleviate the potential for excess burdens being placed on governmental entities. National action plans should be designed to increase ambition over time (“progression”) and contain a safeguard against regression (“non-regression”). It would be preferable that the national action plans be communicated on the same time, iterative for all State Parties rather than on staggered timelines. The content of national action plans should be informed by the objectives of the Plastic Pollution Treaty and designed to fulfil these objectives.

Starting from the bottom-up approach through national action plans, the Plastic Pollution Treaty should include a strong system of international oversight. This would apply to robust binding guidance for national plans, binding requirements for reporting on implementation and achievement of these plans (possibly by using indicators), independent review and a mechanism for facilitating implementation and compliance. It might also be helpful to graphically illustrate how these elements fit together. To address increasing ambition over time, inclusion of the requirement for iterative processes for all State Parties, the need for progression of ambition in national action plans, global stocktakes which inform the level of ambition in the next round of national plans, and common timeframes for reporting and next round of national actions plans should be considered as critical elements.

In designing national action plan requirements, it would be important to ensure a structure that avoids duplication of information gathering and analysis with other international treaty reporting requirements. Given the financial and technical burdens of reporting on States, particularly SIDS and developing States, alleviating the pressures of duplication in reporting could result in more robust insights from the national action plans. This could also advance an understanding of how to coordinate their implementation in conjunction with other relevant national laws and international treaties.



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What? The nature of plastic pollution, the plastics lifecycle, the circular economy, and environmental impacts of plastic pollution make the inclusion of scientific and technical coordination and cooperation essential. In the plastic pollution context, there is a strong likelihood that this will require coordination and cooperation between State Parties as well as State Parties and the private sector, national and sub-national actors, and academic institutions works in relevant areas of innovation.

How? The Plastic Pollution Treaty could consider the use of control measures and voluntary measures that facilitate scientific and technical cooperation and coordination between public sector actors and public-private actors.

What? National action plans constitute one form of oversight for the implementation of a treaty, however, they are rarely used alone when creating procedures to oversee the effectiveness and accomplishment of a treaty regime. Instead, treaties – including multilateral environmental agreements – often use reporting requirements, stocktakes and similar benchmarking requirements to measure and assess the success of a treaty in application. These methods of assessment can be used to determine the need for amendments, annexes, protocols, agreements or other similar instruments in the future, giving them connections to both the specific convention structure and the framework convention structure discussed in the IUCN Briefing for Negotiators on the Structure of Plastic Pollution Treaty.

How? Effectiveness and accomplishment oversight for the Plastic Pollution Treaty could be a valuable tool if crafted in a way that thoroughly evaluates the legal and technical aspects of plastic pollution. This type of oversight could be entrenched through a recurring stocktake system similar to that adopted for the Paris Agreement or could be triggered by another measure, although a sense of predictability of assessment would be valuable. These stocktakes could be used to assess progress regarding plastic pollution at the national level and international level, adoption and implementation of laws and rules relating to plastic pollution, economic transitions away from plastics intensive industries, reductions in biodiversity loss connected with plastic pollution, and reductions in carbon emissions attributable to the plastics industry, to name a few potential options. This could be used to generate a reliable assessment process that could increase the legitimacy of the Plastics Pollution Treaty. Care would need to be taken so that the assessment system designed is sufficiently rigorous to allow for in-depth measures while also accommodating unforeseen situations that could have an impact on implementation. The Covid-19 pandemic highlighted this need across multilateral environmental agreements with reporting requirements as well as in the context of the Sustainable Development Goals.

What? Compliance in any treaty regime is essential to ensuring the viability of the treaty and the protections it contains. As UNEP briefing note 5 in advance of INC-1 highlights, recent trends in multilateral environmental agreements have been toward designing compliance mechanisms that are focused on using committees or similar bodies to provide non-punitive mechanisms of remedying failures of State Parties to comply. A primary example of this is the Paris Agreement Implementation and Compliance Committee. The design of compliance mechanisms is a necessary element of any treaty regime, and given the complex issues presented by plastic pollution and the different capacities of States to respond to these issues, the balance between finding non-compliance and designing a practical response can be critical.

How? The Plastic Pollution Treaty could include a compliance mechanism that is forward looking and seeks to ensure that compliance is a lynchpin of the treaty regime that is used for corrective guidance rather than punishment. This could be accomplished through the careful drafting of rules of procedure for a compliance mechanism as well as the use of an oversight assessment mechanism for the compliance system. The latter could be modelled on the system used by the World Trade Organization, in which permission for a State Party to take a retributive action against

another State Party requires permission from the plenary governing body, during which the decisions of the Dispute Settlement Body are necessarily reviewed.

5. Means of implementation including capacity-building, technical assistance, technology transfer on mutually agreed terms, and financial assistance

What? As highlighted in UNEP briefing note 5 in advance of INC-1, capacity building has become an important element of many multilateral environmental agreements. Capacity-building was repeatedly stressed as integral to the Plastic Pollution Treaty by States experiencing all aspects of the plastics life-cycle during INC-1 discussions. To entrench the use of capacity building as integral in achieving the objectives of the Plastic Pollution Treaty, the design and adoption of a governance mechanism, such as the Paris Committee on Capacity-Building could prove useful.

How? Capacity-building in the plastic pollution context differs from that in the context of multilateral environmental agreements, and inclusion of a nuanced understanding of capacity building needs in responding to plastic pollution could be valuable. When designing the governance mechanisms to be used in the Plastic Pollution Treaty, the inclusion of a dedicated mechanism for capacity-building could offer an important opportunity. Similarly, the inclusion of technical assistance and technology transfer elements in the Plastic Pollution Treaty could be used to entrench these aspects of equity within the objectives, scope and principles of the Treaty.

What? UNEA resolution 5/14 includes specific reference to a financial mechanism to assist in implementing the Plastic Pollution Treaty. Thus, the financing issue was resoundingly discussed as a critical element of the Plastic Pollution Treaty by States and stakeholders during INC-1 and will remain an issue for future negotiations.

How? Given the complex nature of plastic pollution and associated responses to it, the financial mechanism could be designed in a way that assists States in need of financial support across a variety of activities. To reflect the impacts and threats of plastic pollution on Small Island Developing States and developing States, the financial mechanism should include principles of equity in lending and financial assistance and provide priority to those States most in need of support.

6. Institutional arrangements, including governing bodies arrangements and subsidiary bodies

What? The governance mechanism for the Plastic Pollution Treaty will be crucial to addressing the oversight and implementation of the Treaty, providing guidance, support and capacity-building to State Parties, and facilitating the adoption of either new amendment and annexes or new protocols and agreements. As UNEP briefing note 5 in advance of INC-1 highlights, the standard multilateral environmental agreement provides for a Conference of the Parties system for a treaty regime and a Meeting of the Parties system for other associated agreements. There is a variation in conference frequency across these treaty regimes. These conferences are typically the decision-making bodies for subsequent measures under the treaty. Increasingly, the Conference of the Parties system in multilateral environmental agreements has been used to facilitate the incorporation of civil society and the private sector in information sharing efforts.

How? The Plastic Pollution Treaty could adopt the Conference of the Parties system as a governance mechanism. If this decision is made, critical questions will include the frequency of conferences, the use of inter-sessional meetings, the location of conferences, the duration of conferences, and the extent of civil society and private sector engagement during the conferences. Interactions with Conferences of the Parties and similar governance systems for other treaties with overlapping interests could be a critical element to avoid duplication of legal efforts and ensure

synergies in knowledge relating to the holistic impacts of plastic production, consumption and pollution.

What? Subsidiary bodies are common within treaty regimes. They can facilitate dialogue and information-gathering, serve as consultative entities, or serve other functions as provided for in the text of a treaty or in subsequently adopted measures. Treaty regimes can be designed to create permanent subsidiary bodies or subsidiary bodies with a limited portfolio and lifespan.

How? The complexities of issues involved in plastic pollution could make the use of subsidiary bodies within the Plastic Pollution Treaty integral to achieving its objectives and purposes. Based on the changing nature of law and technology in the realm of plastics, treaty terms creating specific subsidiary bodies as well as allowing for the creation of unspecified subsidiary bodies in the future could be quite useful to the implementation and responsiveness of the Plastic Pollution Treaty. As was highlighted by many States during the INC-1 discussions, a dedicated scientific advisory body could play an important role in this context, particularly it can bridge the science and policy issues of plastic production, consumption and pollution.

7. Final provisions, including settlement of disputes

What? As noted in UNEP briefing note 5 in advance of INC-1, decisions regarding the use of reservations are central to the legitimacy of State intent to be bound by a treaty's terms. The idea of reservations has been discussed as an effort to balance sovereignty and international law, however in relation to topics such as environmental harms they are rarely used.

How? The decision regarding the use of reservations in the Plastic Pollution Treaty is a critical one in that it has the potential to shape the ways in which State Parties view their obligations and commitments. In the negotiations, the discussion surrounding reservations could be a pivotal one for assessing the level of State commitment to the terms of the proposed Treaty.

What? In UNEP briefing note 5 in advance of INC-1, there is a discussion of the effective date of a treaty as potentially being linked to critical thresholds or State constituencies for the ability to meet the objectives of the treaty. The methods used can include a required number of State Parties, State Parties constituting a combined required percentage of the activity or industry addressed in the treaty, and State Parties representing the largest sector of an industry or activity. These types of measures can be valuable for the legitimacy of a treaty in practice, since it will be difficult to attain the objectives and commitments of a treaty when the State most heavily involved in the targeted activities are not State Parties.

How? In recent examples, such as the Paris Agreement, a calculation was used to determine the necessary State Parties for entry into force. The complex nature of plastic pollution will make the use of a similar calculation difficult, however there are other potential factors to be considered for establishing the benchmark for entry into force. These could include: a majority of the plastic producing States, a majority of the plastic polluting States, a majority of the plastic consuming States, a majority of the States experiencing plastic pollution, or a combination of two or more of these factors.

What? Dispute settlement provisions are essential to provide certainty regarding issues that arise in the context of any treaty regime. Often, treaty regimes will attempt to settle disputes between State Parties through less onerous dispute settlement systems, including the use of good offices by international actors and the use of mediation by neutral third parties. Beyond that, treaty regimes will often designate the International Court of Justice as having jurisdiction to hear claims arising under their terms. This is possible because the International Court of Justice is empowered to hear these types of issues under the terms of its foundational text.



How? Dispute settlement will be important to framing the oversight of the Plastic Pollution Treaty. In this context, a phased approach starting with good offices and mediation and escalating to the International Court of Justice where necessary could offer a path that allows the States involved and the Treaty to benefit from the experience of an increasingly environmentally aware international court that is also versed in intricate issues of sovereignty and international law. The inclusion of dispute settlement provisions within the main text of the treaty structure decided upon for the Plastic Pollution Treaty could be considered as an important element that should not be left for the conclusion of a subsequent instrument.



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IUCN BRIEFING FOR NEGOTIATORS Plastic Treaty INC-2 Session

BRIEFING 2 of 6: Glossary of Key Terms

Key Messages:

In United Nations Environment Assembly (UNEA) resolution 5/14 one of the critical areas designated for early negotiation in the Plastic Pollution Treaty is the generation of a glossary of key terms. One of the initial topics selected for discussion during INC-1 was the glossary of key terms to be used in the Plastic Pollution Treaty. At the end of INC-1, no clear set of key terms emerged, although States did provide insights into many topics that will require them moving forward in the negotiation process. The generation of a holistic and meaningful glossary of key terms that reflects the need to combine legal and technical realities relating to plastics is essential to framing the Plastic Pollution Treaty. This briefing addresses and follows the format of the briefing note generated by the UNEP Secretariat in advance of INC-1, highlighting areas of importance for INC-2.

1. Terms used in Environment Assembly resolution 5/14 that have definitions adopted or endorsed by an intergovernmental process

What? *Environmentally sound waste management* – at present, the proffered definition reflects the definition used in the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal. As the UNEP Secretariat has noted, this definition was intended to apply in the specific context of hazardous waste.

How? Refinement and tailoring of the definition to reflect the scientific realities of plastic pollution and plastic waste management, building upon scientific knowledge and leaving open the option for this to be an expansive definition based on future advances in knowledge and technology.

What? *Microplastics* – at present, the proffered definition reflects the terms of United Nations Environment Assembly resolution 2/11. Since the adoption of this resolution, States and regional organisations have enacted laws and rules regarding plastics that have created more concrete definitions which are at the forefront of technical knowledge. Examples include the European Union and the United Kingdom

How? Refinement of the UNEA resolution definition to reflect the changes in these legal and regulatory measures that have been enacted to allow for specificity in the proposed Treaty's parameters.

What? *Resource efficiency* – at present, the proffered definition is framed on the International Resource Panel glossary. Given the number of resources implicated by plastic pollution and its impacts, this definition could be seen as creating uncertainty regarding what constitutes a covered resource under the proposed Treaty.

How? Incorporate a definition of 'resource' to be covered by the proposed Treaty as part of the glossary of key terms similar to those contained in the Convention on Biological Diversity and the United Nations Convention on the Law of the Sea.

What? *Sustainable production and consumption* – at present, the proffered definition reflects the progression from the 1972 Stockholm Declaration to Principle 8 of the Rio Declaration to the terms of Sustainable Development Goal 12. Sustainable production and consumption, however, is about doing more with less impact. It thus depends on decoupling human well-being and economic growth on the one hand, and resource use and environmental degradation on the other hand.



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How? Optimizing production and consumption patterns has thus far not achieved to bring about sustainable production and consumption. Furthermore, pursuing greater resource efficiency often, in practice, leads to an increase in consumption, something which is called the rebound effect, and which needs to be avoided. This is particularly important in the context of plastics. A distinction might therefore be made between 'sustainable production and consumption patterns', and 'sustainable production and consumption volumes.'

What and how? To give full effect to the intent of the Plastic Pollution Treaty and reflect the nexus between UNEA resolution 5/14 and existing international instruments, the inclusion of definitions for 'sustainable development' and 'climate change' could be valuable. Similarly, by making an inclusive reference to the Rio Declaration Principles, UNEA resolution 5/14 would include terms such as national capabilities and circumstances, the precautionary approach, prevention and the polluter pays principle.

2. Terms used in Environment Assembly resolution 5/14 that do not have definitions adopted or endorsed by an intergovernmental process but that may be relevant to the development of the instrument

What? The provisions of UNEA resolution 5/14 offer many critical terms that should be considered in the glossary of key terms because they are at the core of framing the Plastic Pollution Treaty and means for implementation. These terms include:

1. Best available science
2. Economies in transition
3. National action plans
4. Recycling
5. Sustainable alternatives
6. Sustainable design
7. Circular economy
8. Circularity

How? Incorporate these terms into the negotiations along with the terms suggested by the UNEP Secretariat.

3. Terms not used in Environment Assembly resolution 5/14 that may be related to those used in the resolution and that have definitions adopted or endorsed by an intergovernmental process

What? Throughout the legal, policy and scientific literature on plastic pollution there are several terms that often occur and could play an interpretative role in the Plastic Pollution Treaty. This is reflected in the other briefing documents authored by the UNEP Secretariat in advance of INC-1.

How? Consider the incorporation of these terms into the negotiations along with the terms suggested by the UNEP Secretariat. Such terms include:

1. Adverse effects
2. Airborne pollution
3. Alternative substances
4. Best available techniques
5. Biological diversity
6. Capacity-building
7. Chemical/banned chemical/severely restricted chemical



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8. Cultural heritage
9. Cryosphere
10. Disposer
11. Dumping
12. Environmental effect
13. Environmental Impact Assessment
14. Environmental information
15. Fishing
16. Fishing related activities
17. Generator
18. Groundwater
19. Harmful substance
20. Hazardous substances
21. Intangible cultural heritage
22. Just transition
23. Land-based pollution
24. Land-based sources
25. Marine debris
26. Marine environment
27. Marine litter
28. Natural heritage
29. Non-point-source of water pollution
30. Point-source of water pollution
31. Pollution
32. Ship
33. Small Island Developing States
34. State of export
35. State of import
36. State of transition
37. Transboundary impact
38. Transboundary movement
39. Transboundary waters
40. Underwater cultural heritage

4. Other relevant terms not used in Environment Assembly resolution 5/14 or having definitions adopted or endorsed by an intergovernmental process

What? Plastic pollution is a scientific issue requiring the bridging of technical and legal knowledge to generate a comprehensive treaty regime. Thus, there are a number of terms that will need to be defined to reflect the current and future state of scientific capacity in the plastics industry. A number of these terms are referenced in the UNEP Secretariat in its briefing note on Plastic Science.

How? Consider the incorporation of these terms into the negotiations along with the terms suggested by the UNEP Secretariat. Such terms include:

1. Agricultural plastics
2. Best practices
3. Bio-degradable plastic
4. Bioplastics
5. Chemical additives
6. Chemical recycling
7. Chemicals used in manufacturing



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8. Commercial/industrial plastics use
 9. Compostable
 10. Consumer plastics use
 11. Forms of plastic
 12. Global carbon cycle
 13. Greenhouse gases (GHGs)
 14. Harmful additives
 15. Macroplastics
 16. Mechanical recycling
 17. Micropollutants
 18. Necessary plastic products
 19. New forms of plastic
 20. Non-recyclable plastic
 21. Open burning
 22. Plastic additives
 23. Plastic leakage
 24. Post-consumer use
 25. Primary microplastics
 26. Recyclable plastic
 27. Secondary microplastics
 28. Sensitive ecosystems
 29. Short-lives plastics
 30. Single-use plastic
 31. Terrestrial environment
 32. Virgin plastics
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IUCN BRIEFING FOR NEGOTIATORS Plastic Treaty INC-2 Session

BRIEFING 3 of 6: Structure of Plastic Pollution Treaty

Key Messages:

Given the ever-evolving nature of science and the complex, varied nature of plastic pollution, it is clear that the instrument to be adopted will need to be sufficiently flexible to allow for further adjustments and additions to the obligations. The different structural approaches found in environmental treaties to date provide a good guide and starting point. It is pivotal, however, that the treaty should include binding core obligations to fill existing regulatory gaps in relation to plastic pollution, including international trade restrictions (bearing in mind the Basel Convention regime), production caps, and financial and technical assistance. The Plastic Pollution Treaty should also include mechanisms to ensure its effectiveness, such as a non-adversarial non-compliance mechanism (in line with recent MEAs). While some States provided initial preferences regarding the structure of treaty used during INC-1 statements, it is clear that this issue is still undecided and requires careful consideration during INC-2 and subsequent negotiations. It is also evident that, regardless the structure used for the Plastic Pollution Treaty, the inclusion of scientifically informed requirements that can be updated based on advances in technology and the state of knowledge will be crucial

1. Specific convention use for structure

What? As noted in the UNEP briefing note 5 in advance of INC-1, the use of a specific convention structure involves a more thoroughly defined set of provisions in the body of the main treaty regime text and can be accompanied by an annex or series of annexes that contain more concentrated scientific and technical knowledge. In this context, the States wishing to become bound to the treaty sign onto the holistic combination of the main treaty terms and the annexes and become legally bound to that text provided they ratify it as required under their domestic legal requirements.

Why is this an issue? There are several concerns with the use of the specific convention system for the Plastic Pollution Treaty. First, this type of treaty represents the extent of known and foreseen scientific, technical and industrial knowledge as of the time it is negotiated and adopted. However, past practice from various multilateral environmental agreements has shown that the nature of scientific and technical knowledge expansion is such that it is easy for it to become outdated quite quickly. Should that be the case, there is a risk of the Plastic Pollution Treaty becoming dated before it can achieve its terms and targets, thus, potentially allowing States and the private sector to use lower benchmarks and standards than those that subsequently develop. This then could pose a challenge in terms of undermining the purpose of the Plastic Pollution Treaty.

Second, the standard method of updating a specific convention is through the use of amendments to the treaty text or new annexes provided the original text allows for these actions. Amendments to the treaty text can be problematic because they will typically require very high levels of State Party ratification and can create an issue where not all State Parties agree to be bound to the terms of the amendment itself. Similarly, annexes have the same issue in terms of questions of binding legal requirements when not all State Parties agree to them.

Third, it is conceivable that, based on the extensive scope of plastic pollution, which extends far beyond international environmental law, a number of annexes would be needed for the Plastic Pollution Treaty. These would potentially include scientific and technical annexes, industrial

commitment and state of knowledge annexes, pollution assessment annexes, and the ability to generate multiple annexes as needed to respond to changing realities and challenges.

2. Framework convention use for structure

What? As noted in the UNEP briefing note 5 in advance of INC-1, the use of a framework convention structure involves a less thoroughly defined set of provisions in the body of the main treaty regime text. Thus, the framework convention system functions to allow States the opportunity to commit to core principles and essential terms in the main text while relying on the use of protocols and subsequent agreements to codify scientific, technical and other issues. In this context, the States wishing to become bound to the treaty sign onto the framework convention from the outset. Subsequent protocols or agreements are negotiated separately, though within the parameters established by the framework convention, and must be ratified by each State. Should a State fail to ratify a protocol or agreement, it remains legal bound to the terms of the framework convention alone.

Why is this an issue? There are several concerns with the use of the framework convention system for the Plastic Pollution Treaty. First, should a framework convention be used for the structural model of the Plastic Pollution Treaty, there is significant latitude in the control term placement. For this reason, the control terms would be further interlinked with the main elements of the treaty while allowing the State Parties to determine the parameters of the full implementation over time in subsequent protocols and agreements.

Second, as highlighted in UNEP briefing note 10 in advance of INC-1, the use of framework agreements can be speculative in that the terms and commitments undertaken in subsequent protocols and agreements will necessarily vary with time. This can be seen as a potential for undermining a framework convention in the sense that the full weight of commitments could potentially be undermined in the future by weak protocols or agreements. And the potential for the subsequent negotiations within the framework convention not to yield results does exist, making it possible for State Parties to commit to the framework convention and nothing else.

However, it must be remembered that good faith in the treaty implementation process is among the foundational principles of international law. This has been codified by the Vienna Convention on the Law of Treaties and is also reflective of customary international law practices. At this early stage of the negotiations process for the Plastic Pollution Treaty, questioning the good faith principle in application has not yet been proven necessary.

Third, the nature of plastic pollution, the plastics industry, damage caused by terrestrial and marine plastics, regime interactions, along with many other issues in the realm of regulating plastics at the global level is an evolving practice. Knowledge and technological capacities have and will continue to grow and become nuanced in ways that are unforeseeable at the present moment. Additionally, the need for details regarding financing and governance systems may change over time as well, as has been seen with the Global Environment Facility in the UNFCCC context. This suggests that, if properly tailored, a framework convention offers the possibility of rapid legal and technical responses to current and emerging issues.

Additionally, it should be noted that there is precedent for allowing States to sign onto the terms of protocols or amendments even if they are not State Parties to the underlying framework agreement. Core examples of this include many human rights treaties, such as the Convention on the Rights of the Child, which has not been ratified by the United States although it is a State Party to the subsequent Optional Protocol on the Rights of the Child on the involvement of children in armed conflict.



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3. Other considerations for structure

What? Every treaty regime, including MEAs, reflects differing legal and technical issues facing the global community. As a result, their terms and structure are often related and share overlapping areas of convergence, yet they are still expressions of the particular needs of the topic. Given the depth and breadth of plastic pollution and the scope of legal, regulatory, technical and financial issues involved in its regulation, the possibility of a hybrid specific and framework convention structural model could offer a potential solution.

How? It is crucial that a robust set of definitions in the key terms section of the Plastic Pollution Treaty from the outset and ensuring that legal and scientific needs are communicated to negotiators and members of civil society. With this background, it would possible for the Treaty to be crafted in a way that contains significant control measures in the main text (specific convention model) while allowing for the development of subsequent protocols and agreements to address emerging issues (framework convention model).

Regardless the form of convention used for the Plastic Pollution Treaty, starting from the bottom-up approach through national action plans, the Plastic Pollution Treaty should include a strong system of international oversight. This would apply to robust binding guidance for national plans, binding requirements for reporting on implementation and achievement of these plans (possibly by using indicators), independent review and a mechanism for facilitating implementation and compliance. It might also be helpful to graphically illustrate how these elements fit together. To address increasing ambition over time, inclusion of the requirement for iterative processes for all State Parties, the need for progression of ambition in national action plans, global stocktakes which inform the level of ambition in the next round of national plans, and common timeframes for reporting and next round of national actions plans should be considered as critical elements.

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BRIEFING 4 of 6: Just Transition and the Plastic Pollution Treaty

Key messages:

The Plastic Pollution Treaty's scope, as articulated by United Nations Environment Assembly (UNEA) resolution 5/14, includes the circular economy and elements of the plastic life-cycle as vital elements for addressing plastic pollution and production. The fundamental connections between the circular economy, plastic life-cycle and global efforts to address plastic pollution were affirmed by States and stakeholders throughout the INC-1 discussions. At the same time, a number of States and stakeholders expressly referenced the need to include just transition as part of the Plastic Pollution Treaty during INC-1. In the plastics context, the transition away from plastic production as well as plastic-intensive industries and the informal sector can be seen as essential yet also carries with it the potential to cause unemployment and poverty. Just transition could offer a bridge through which to address the immediate issues of job loss as well as underlying socio-economic barriers and achieve synergies with other treaty systems. This should be done by including just transition terms in the core measures of the Plastic Pollution Treaty, the governance system adopted for the Treaty, and the amendments, annexes or protocols adopted depending on the structural choice made for the Treaty.

1. Basic background on Just Transition

Just transition is most often equated with labour rights movements. This is with good reason, since the origins of just transition philosophies are firmly rooted in union efforts to counter impacts of coal mine closures in the United States during the 1980s and 1990s. From that point onward, just transition has spread and moved beyond one country or industry. While it is still tied to the coal sector, it has been diversified to include fossil fuels generally, and to balance efforts at transitioning away from high-carbon fuels. Just transition is a larger concept, however, and can be translated across a variety of sectors and issue areas with thorough legal and regulatory measures.

2. Just Transition in the plastics life-cycle and circular economy

What? In the plastics context, the transition away from plastic production as well as plastic-intensive industries and the informal sector can be seen as essential yet also carries with it the potential to cause unemployment and poverty. A number of States and stakeholders expressly referenced the need to include just transition as part of the Plastic Pollution Treaty during INC-1. As has been seen in efforts to transition away from coal and fossil fuel extraction sectors due to climate change law, transitions must be done carefully and inclusively.

How? A just transition in the context of the plastics life-cycle and circular economy will depend on the national or sub-national setting in which it occurs but also will require international law to guide and oversee full implementation.

Based on experiences with transitions in other industries, it has become clear that legal and regulatory efforts should focus on not only the individuals losing their jobs but also their families and communities since there are impacts across these layers. In the plastics context, this will be particularly critical for those engaged in the informal economy, such as waste pickers, who are often at the margins of society to begin with and frequently are women, children, the extreme poor or Indigenous peoples. Thus, they already face structural barriers to education, career choice and career advancement without the added stress of transitioning to another sector or job. To address this, the Plastic Pollution Treaty could include wide-ranging provisions for coordination with and

engagement of affected stakeholders, educational assistance with a focus on vocational training, and transitions to green and blue jobs. This would be benefitted by a funding mechanism to aid States and stakeholders engaged in these efforts as well as capacity-building and technology transfer provisions.

Further, transitions and responses to them will require tailoring to the communities in which they are taking place to avoid entrenching discrimination against women, the poor, and members of marginalised communities. Understanding the social and economic issues facing those who are engaged in the plastics industry would be key to facilitating transitions that are realistic for the communities in which these workers live while also advancing equity, non-discrimination and justice. Previous just transitions efforts in the coal sector have demonstrated the need to address issues not directly connected with re-education or training, especially domestic violence and abuse that can come with economic stress in a household.

Additionally, efforts at just transition in the context of the Plastic Pollution Treaty could benefit from exploring synergies with other treaty systems addressing transitions. In this context, the obvious connection would be with the United Nations Framework Convention on Climate Change and Paris Agreement. However, just transition has become an issue in a number of areas, including in the marine context, the energy context and the healthcare context, to name a few. Thus, a broad view of just transition and the sectors that will be impacted by efforts to regulate plastic pollution under the Treaty could facilitate significant shifts that assist multiple treaties in achieving their goals.

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BRIEFING 5 of 6: Treaty Regime Interaction

Key Messages:

A core theme in United Nations Environment Assembly (UNEA) resolution 5/14 and subsequent discussions at INC-1 was the impact of treaty regime interactions upon the Plastic Pollution Treaty. In this context, comprehensive, integrated regulatory response to the ever-growing challenge of waste plastics in the environment requires a complex mix of legal measures applied in a coherent manner at the global, regional and domestic levels of administration to a range of environmental media and related activities, including sustainable production and consumption, circular economy, waste management, freshwater resources management, biodiversity protection, and marine pollution. Measures to address the problem of plastic pollution are to be found across several sub-fields of international law, biodiversity law, natural resources law, international wildlife law, fisheries and oceans laws, and international freshwater law. Therefore, a clear need for effective mechanisms of interaction between any new plastics treaty and other pertinent international regimes exists. This reflects recent efforts of Conferences of the Parties for various multilateral environmental agreements to create synergies and mechanisms of coordination between treaty regimes with overlapping terms and areas of regulation.

1. Utilise an expansive scope of understanding the impacts of plastic pollution

What? Plastic pollution effects nearly every aspect of life at the individual, community, national, regional and international level. During INC-1, States and stakeholders emphasised these impacts and stressed that the Plastic Pollution Treaty should be responsive to the multiple levels of effects caused by plastic production, consumption and pollution. This includes the lives of producers and consumers as well as those working in the formal and informal economies. These impacts are environmental and also span a variety of other areas, implicating many forms of legal rights and obligations at the international and regional levels. In addition to the regimes discussed in the UNEP briefing note 10 in advance of INC-1, many other regimes should be considered when designing the potential interactions with the Plastic Pollution Treaty.

How? In recognition of the many forms of **human rights** that are fundamentally connected to plastic pollution and its impacts, the negotiations should examine regime interactions with the core international human rights law treaties, including topics such as non-discrimination, the right to life, food rights, water rights, labour and employment rights, adequate standard of living, women's rights, children's rights, Indigenous and traditional communities' rights, and protections for rural communities. These linkages were affirmed by a number of States during the INC-1 discussions. Specific treaty regimes of relevance:

- International Covenant on Civil and Political Rights (ICCPR) – including the right to life and non-discrimination.
- International Covenant on Economic, Social and Cultural Rights (ICESCR) – including the right to work, right to just working conditions, right to an adequate standard of living, right to health, housing rights, the right to food, and adequate standard of living rights.

Of note, in General Comment 26 on Land and Economic, Social and Cultural Rights (2022), the Committee on Economic, Social and Cultural Rights (CESCR) links land rights and sustainable land use to right to clean, healthy and sustainable environment, climate change and land use stresses, as well as right to food, water, agricultural production capacities,

and an adequate standard of living. The General Comment further stresses the need for free, prior and informed to comply with the requisite participation, transparency and consultation elements of the ICESCR in its implementation. These are issues that have also emerged in the first stages of the Plastic Pollution Treaty negotiations.

In General Comment 23 on the right to just and favourable conditions of work (2016), the CESCR notes that the scope of covered work under the ICESCR has evolved to include the informal sector as well as those who are self-employed. The informal sector is critical to many aspects of the plastics life-cycle and, as highlighted by States and stakeholders during INC-1, it is vital that the workers in this sector be included in the terms of the Plastic Pollution Treaty.

- Convention on the Rights of the Child (CRC) – including the right to life, the right to health, the right to food, incorporation of the evolving capacities and best interests of the child standard in all aspects of law and policy that affect them, the rights to involvement in legislative and other decision-making, and protections from exploitative working conditions. Children and future generations have an integral link with the outcomes of the Plastic Pollution Treaty from a health and human rights perspective, including those working in the informal sector and facing increased risks of potential harm as a result.

While still in draft form, Draft General Comment 26 on children’s rights and the environment with a special focus on climate change emphasises that pollution and waste have contributed to and exacerbated climate change, as well as the impacts of pollution on all aspects of children’s lives and experiences. It places an emphasis on the concerns of future generations in this context, noting that there are intragenerational and intergenerational effects that can take several generations to manifest. Critically, it highlights the ways which pollution and environmental degradation can impact all aspects of the child’s right to health. Additionally, the General Comment highlights the particular impacts of environmental damage and pollution on Indigenous children, including through efforts to implement adaptation and mitigation at the national level.

- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) – including multiple elements of non-discrimination rights, the right to life, labour and employment rights, rights to participation in public life, the economy and family life, and the right to health.

In General Comment 27 on older women and protection of their human rights (2010), the Committee on the Elimination of All Forms of Discrimination against Women emphasises that climate change and natural disasters pose a special and significant threat to older women across the world because of status as women, elderly, and often marginalised. Pollution plays a role in these harms. Further, in General Comment 34 on the rights of rural women (2016), the Committee stresses the varied identities of rural women, including as part of the fishing industry as well as agricultural sectors, and the need for them to be specifically addressed as such under international and national laws. Given the connections between plastic pollution of the seas and in the agricultural sectors, these are critical considerations for the Plastic Pollution Treaty as well.

- International Convention on the Elimination of All Forms of Racial Discrimination (CERD) – including rights to be implemented free from racial discrimination in housing, working rights and employment, payment, and the right to health and medical care.
- Convention on the Rights of Persons with Disabilities (CRPD) – including the right to life, participation and non-discrimination rights, the right to health, the rights of women with

disabilities, the rights of children with disabilities, the right to adequate standards of living, and State obligations during times of risk and emergencies.

- International Labour Organization Convention 182 - Worst Forms of Child Labour Convention – including forms of employment and activities that are likely to cause harms to the health and safety of children as a one of the worst forms of child labour within the covered definition of the Convention.
- International Labour Organization Convention 169 – Indigenous and Tribal Peoples Convention – including requirements that in State Parties “special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.” This is further reflected in terms relating to the nexus between Indigenous community rights and interests in land as being critical from a cultural, environmental and economic perspective, as well as the obligations of State Parties to recognise and protect Indigenous ownership and forms of ownership. Protection obligations are also established on the part of States in regard to traditional forms of occupation and subsistence, including fishing and agricultural practices. Given the repeated emphasis by States and stakeholders at INC-1 on the impacts of plastic pollution on Indigenous communities and the need to incorporate traditional knowledge as part of the Plastic Pollution Treaty, the terms of Convention 169 serve a critical point of regime overlap.
- United Nations Declarations on the Rights of Indigenous Peoples – including essential land and natural resource rights recognitions for Indigenous peoples and communities, requirements for consultation and free, prior and informed consent. Given the repeated emphasis by States and stakeholders at INC-1 on the impacts of plastic pollution on Indigenous communities and the need to incorporate traditional knowledge as part of the Plastic Pollution Treaty, the terms of UNDRIP serve a critical point of regime overlap.
- United Nations General Assembly Resolution on the Right to a Clean, Healthy and Sustainable Environment (2021) – while not binding international law, the recognition of this right represents an important and evolving trend that has been reflected in the policies and decisions of many international treaty bodies.

At the regional level, synergies may be found with the Inter-American Human Rights system, the European Charter of Human Rights, and the African Charter of Human Rights as well as the associated court systems. Indeed, these courts have created case law that can be quite critical to support elements of the Plastic Pollution Treaty in terms of environmental protection and the nexus between human rights and the environment.

How? In recognition of the connections between regulation of plastic pollution and **international trade**, the negotiations should examine regime interactions with several forms of trade agreements, including:

- World Trade Organization system – as UNEP briefing note 10 in advance of INC-1 highlights, there are foundational connections between the treaties comprising WTO law and the regulation of plastic pollution. What should be further emphasised is the need to ensure that the terms and implementation of the proposed Plastic Pollution Treaty do not pose the threat of non-compliance with the WTO legal system to the point where a State Party to both regimes would face compliance issues and potential Dispute Settlement Body claims while seeking to comply with obligations under the Plastic Pollution Treaty. In this context, the requirement of a potential waiver from the WTO, similar to that issued to

facilitate implementation of the Kimberley Certification Process, should be considered from an early point in the negotiation process.

- Free Trade Agreements/Regional Trade Agreements – there are currently more than 250 free trade agreements and regional trade agreements between members of the international community. An increasing number of these agreements contain environmental protection, sustainable development, and climate change related provisions and some, for example the NAFTA/USMCA regime, have created environmental compliance oversight organizations under their auspices.

The nexuses between these regimes and the Plastic Pollution Treaty should be explored throughout the negotiation process.

2. Develop synergies between existing treaty regime governance systems and the proposed Plastic Pollution Treaty

What? The issue of plastic pollution intersects with a number of multilateral environmental agreements (MEAs), as highlighted by the discussion in UNEP briefing note 10 in advance of INC-1. Beyond those referenced, there are other treaty regimes, such as the Convention on the International Trade of Endangered Species (CITES) and those that relate to multilateral shared natural resources, such as the Rhine and Danube Rivers, that should be discussed for areas of treaty regime convergence. Similarly, a number of bi-lateral and regional agreements regarding transboundary pollution and shared natural resources exist and there will be correlations between them and the proposed Plastic Pollution Treaty.

How? In recognition of the many forms of **multilateral environmental agreements** that are fundamentally connected to pollution, plastic pollution and its impacts, the negotiations should examine regime interactions, including terms relating to transboundary impacts and harms, impacts on vulnerable communities, impacts on Indigenous communities, impacts on women and children, reporting and oversight mechanisms potentially overlapping with the National Action Plans foreseen for the Plastic Pollution Treaty. Additionally, negotiations should consider the several treaties which have already designated certain plastics, plastic waste and plasticisers as hazardous or otherwise problematic substances under their terms. Specific treaty regimes of relevance:

- Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat – including requirements for the listing of national wetlands and associated habitats on the List of Wetlands of International Importance, recognising the transboundary impacts of harms to wetlands and associated habitats. Given the extent of plastic pollution harms and potential damage to wetlands nationally and internationally, there is an important connection between the Ramsar Convention and the Plastic Pollution Treaty.
- Stockholm Convention on Persistent Organic Pollutants – including several forms of plastics and plasticisers in covered and excepted lists of pollutants.
- Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal & Protocol – including multiple forms of plastics and plasticisers in covered and excepted lists of pollutants.



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- Minamata Convention on Mercury – stressing the transboundary nature of mercury as a pollutant and agent of harm to human health and the environment, links to sustainable development, stresses impacts of mercury pollution on multiple vulnerable communities, particularly women, children, and future generations, includes similar elements to persistent organic pollutants regarding Indigenous communities and Arctic impacts of mercury, and emphasises the ways in which mercury pollution issues intersect with other treaty regimes. These elements overlap with issues raised for inclusion in the Plastic Pollution Treaty discussions.
- Convention on Long-Range Transboundary Air Pollution
- Vienna Convention for the Protection of the Ozone Layer
- Montreal Protocol on Substances that Deplete the Ozone Layer
- Convention on the Conservation of Migratory Species of Wild Animals – including provisions recognising State Party obligation to adopt measures relating to pollution and other safety threats to migratory species. It should be noted that many of these interlinkages are amplified in the CMS Strategic Plan for Migratory Species 2015 – 2023. Given the impacts of plastic pollution on multiple migratory species, the potential overlaps with the Plastic Pollution Treaty are numerous.
- International Treaty on Plant Genetic Resources for Food and Agriculture – including State Party requirements for “the conservation and sustainable use of plant genetic resources for food and agriculture and the fair and equitable sharing of the benefits arising out of their use, in harmony with the Convention on Biological Diversity, for sustainable agriculture and food security.” Given the impacts of plastic pollution on groundwater, soil, and agriculture, the potential overlaps with the Plastic Pollution Treaty are numerous.
- United Nations Convention to Combat Desertification – including involvement of Indigenous and local communities in order to facilitate entrenchment across all levels of government and society, use of National Action Plans as reporting tools for State Parties, which could lead to some overlaps with plastics pollution in terms of terrestrial sources, and capacity-building, technology transfer and community engagement.

In COP 15 (2022) Decision 20, State Parties adopted measures recognising the intertwinement of desertification and drought issues with sustainable land management terms more broadly and cross-cutting treaty regimes. This was expanded in Decision 8 from COP 15, highlighting the ways in which reporting requirements under the UNCCD and other related treaty regimes could be beneficial to each other through information sharing and data collection practices.

- Convention on International Trade in Endangered Species of Wild Flora and Fauna – notably, the Strategic Vision for 2021 – 2030 stresses the potential opportunity for advancing the principles of CITES through collaboration with other related treaty regimes. Given the impacts of plastic pollution on all species, including endangered species, the potential overlaps with the Plastic Pollution Treaty are numerous.
- United Nations Framework Agreement on Climate Change & Paris Agreement on Climate Change – including a stress on the role of human activity in generating greenhouse gas emissions, which would cover plastic production, and damage to the environment as well as threats to humankind. The UNFCCC’s terms and functioning directly connect with the understanding that the science of climate change and greenhouse gas emission impacts

will expand and change, requiring flexibility in legal and regulatory responses. Principles used include equity, precaution, future generations protection and sustainable development.

The Paris Agreement includes just transitions, food security, human rights, Indigenous communities and local communities, gender equity and the rights of children and future generations. It establishes Nationally Determined Contribution reporting requirements, which could represent areas of significant overlap with National Action Plans in the plastics context. Similar overlaps and potential for complementarity are provided for in terms of mitigation and adaptation, as well as loss and damage, capacity-building, and transparency framework.

Recent decisions from COP 27 (2022) have focused on the expansion of just transitions and highlighting of intersections between UNFCCC and other treaty regimes for achieving this, the connections with the Sustainable Development Goals, creation of increased goals for global levels of adaptation, recognition of impacts of climate change on agriculture, soil health and food security along with cross-connections to Sustainable Development Goals and biodiversity issues, and financing for loss and damage with a focus on climate vulnerable States.

Taken together, there are important areas of overlap between the UNFCCC, Paris Agreement and subsequent decisions of the Conferences of the Parties that will be critical to maximising the effectiveness of the Plastic Pollution Treaty.

- United Nations Convention on Biological Diversity (CBD) & Protocols – including the importance of biodiversity to the global environment, and damage to biodiversity as a threat to humankind. The CBD's terms and functioning directly connect with the understanding that the science of biodiversity loss and conservation will expand and change, requiring flexibility in legal and regulatory responses. Principles used include equity, future generations protection and sustainable development. There is also an express recognition of the connections between Indigenous and traditional communities and biodiversity.

Requires the adoption and reporting of national biodiversity strategies and action plans by State Parties. Provisions address in situ conservation, which is of importance for the plastics context, and sustainable use measures for biological diversity at the national level. Includes provisions for impact assessments that include potential damage to biological diversity including in emergency circumstances. Additional elements include technology transfer, scientific cooperation, and financing.

During COP 15 State Parties and adopted decision stressed connections with ocean degradation, land degradation, pollution and health concerns, mainstreaming biodiversity issues across all elements of law and policy at the national level of State Parties, gaps in information and compliance after a stocktake of the latest national biodiversity strategies and action plans submissions and implementation of Aichi Targets, sustainable wildlife management and regime convergence to support this, expansion of Indigenous and local community inclusion and participation, connections between biodiversity, natural resources and cultural heritage, connections between the conservation and sustainable use of marine and coastal resources, scientific knowledge, and oceans protection, connections between biodiversity and agricultural practices, including sustainable use of soils, highlighting pollution as one of the key threats in this area, connections between biodiversity conservation and human health, inclusion of sub-national governments in the development and implementation of national laws and policies relating to biodiversity, and

implementation of a Gender Plan of Action to address responses to biodiversity threats and associated impacts.

The core decision taken during COP 15 was the adoption of the Kunming-Montreal Global Goals for 2050 alongside the 2050 Vision for Biodiversity. Many of these goals and targets are reflective of pollution-related harms and concomitant protections as well as those relating to marine resources and biodiversity protections. The new Kunming-Montreal Framework also includes an updated reporting requirement for national biodiversity strategies and action plans.

Taken together, there are important areas of overlap between the CBD regime and subsequent decisions of the Conferences of the Parties that will be critical to maximising the effectiveness of the Plastic Pollution Treaty.

How? In recognition of the many forms of **environmental impact assessment agreements** that are fundamentally connected to plastic pollution and its impacts, the negotiations should examine regime interactions, including terms relating to access to information, public participation, free, prior and informed consent, the precautionary principle, prevention, the polluter pays principle, interlinkages with human rights, interlinkages with sustainable development, non-discrimination in environmental rights, entrenching the rule of law, environmental justice, rights of future generations, and capacity-building, and the creation of information clearing house mechanism for information sharing. Specific treaty regimes of relevance:

- Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazu Convention) – including specific obligations for State Parties to include access to justice elements in law and policy regarding environmental protection and environmental matters, with a special focus on human rights defenders in terms of access to information as well as protection from harm. During the INC-1 statements, many Escazu Convention State Parties emphasised the connections between efforts to combat plastic pollution and the terms of the Convention.
- Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) – including obligations for notification and consultation between States where there is an expected transboundary impact as well as mechanisms through which this is to be achieved and the results are to be communicated.
- Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context – including provisions that frame issues such as pollution in a broader context of strategic environmental assessment.
- UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) – including a significant emphasis on transparency, public participation and access to information, and the links between development and health for present and future generations.

How? In recognition of the many forms of **marine and fisheries agreements** that are fundamentally connected to plastic pollution and its impacts, the negotiations should examine regime interactions, including terms relating to pollution prevention, control and prohibitions, sustainable development, the rights of future generations, control measures for wastes, restrictions on activities in State Party territorial waters including those that could extend to plastic pollution, fishing gear-related pollution and methods of disposal, groundwater and freshwater resource protections, restrictions on activities of State Party flag ships including those that could extend to plastic pollution, and training and technology transfer. Specific treaty regimes of relevance:



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- International Convention for the Prevention of Pollution from Ships & Protocol – including terms in the annexes addressing restricted wastes that could cover plastics. Protocol provisions include prohibitions on the dumping of hazardous substances at sea as well as the incineration of wastes at sea, charging State Parties with enforcing these measures. State Party obligations under the Protocol extend to activities in their territorial waters as well as flag ships and ships loading and unloading in their waters. However, the Protocol is optional for States to enforce in purely internal waters such as lakes. Places classifications of covered wastes for the purposes of triggering the Protocol in the annexes. Annex III establishes examples of criteria that could be used in evaluating permit applications, including environmental and human health, and could extend to various forms of plastic pollution.
- Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas – including requirements that State Parties acting as flag states for ships to adopt and enforce measures that ensure “fishing vessels entitled to fly its flag do not engage in any activity that undermines the effectiveness of international conservation and management measures.”
- Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing
- Agreement for the Establishment of the Regional Commission for Fisheries
- Asia-Pacific Fishery Commission
- Agreement for the Establishment of the General Fisheries Commission for the Mediterranean
- Agreement of the Central Asian and Caucasus Regional Fisheries and Aquaculture Commission – including a wide range of focus areas for activity and regulation, many relating to fishing operations and practices in relation to environmental and natural resource protection.
- Convention on Future Multilateral Cooperation on North-East Atlantic Fisheries
- Convention for the Protection of the Marine Environment of the North-East Atlantic – including pollution from land-based sources, pollution generated by dumping or incineration, and pollution from other sources.
- Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean
- Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region & Protocols – including pollution caused by ships, pollution from dumping, land-based pollution, pollution stemming from sea-bed activities, “airborne pollution,” and the creation of certain forms of protected areas under national jurisdiction. Further, there are environmental impact assessment provisions that focus on pollution and associated impacts. The latter was subsequently expanded in the dedicated Protocol Concerning Specifically Protected Areas and Wildlife and the Protocol Concerning Pollution from Land-Based Sources and Activities.
- Convention on the South East Atlantic Fisheries Organization



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- Convention for the Co-operation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region (Abidjan Convention) – including pollution caused by ships, pollution from dumping, land-based pollution, pollution stemming from sea-bed activities, “airborne pollution,” and the creation of certain forms of protected areas under national jurisdiction.
- Convention was amended by the Convention for the Protection of the Marine Environment and the Coastal Region – including dumping and pollution by aircraft, ships, and incineration at sea, pollution from sea-bed activities, pollution from terrestrial sources, and pollution caused by transboundary shipment of hazardous materials.
- Bamako Convention – including restrictions for wastes resulting from plastics and certain forms of plasticisers as covered hazardous substances.
- Convention on the Protection and Use of Transboundary Watercourses and International Lakes & Protocol on Water and Health to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes
- Convention for the Strengthening of the Inter-American Tropical Tuna Commission – including requirements that conservation and management are to be governed with transboundary impact and the precautionary approach in mind.
- Waigani Convention – including wastes resulting from plastics and certain forms of plasticisers as covered hazardous substances.
- Convention on the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention)
- Convention on Cooperation for the Protection and Sustainable Use of the Danube River – including pollution and other impacts from fishing activities and focusing on groundwater and drinking water impacts as well as pollution of the Danube itself. Several forms of plastics and plastic compounds are identified as being within the industrial sectors and industries contributing to pollution and waste issues in the Danube Region.
- Convention on the Protection of the Rhine
- Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin

How? In recognition of the many forms of **cultural heritage** that are fundamentally connected to plastic pollution and its impacts, the negotiations should examine regime interactions, including terms relating to cultural heritage protections, traditional knowledge protection, underwater cultural heritage protection and preservation, and rights of and duties toward future generations. Specific treaty regimes of relevance:

- UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage
- UNESCO Convention for the Safeguarding of Intangible Cultural Heritage – including protections for and recognition of traditional knowledge as a form of intangible cultural heritage.
- UNESCO Convention on the Protection of the Underwater Cultural Heritage



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- UNESCO Declaration on the Responsibilities of the Present Generations Toward Future Generations – including the interlinkages between environmental health and protection and the rights of future generations, including the need to “ensure that future generations are not exposed to pollution which may endanger their health or their existence itself.”

What? A core part of most international and regional treaty regimes is the existence of one or more governance mechanisms for the implementation of the treaty. Often, these mechanisms include sub-committees or other structures that specialise in regime convergence and allow for coordination between treaty regimes with overlapping or similar interest areas. For example, the Food and Agriculture Organization (FAO) and World Health Organization (WHO) have a dedicated, shared governance entity for the adoption, review and periodic updating of the Codex Alimentarius, the internationally accepted standards for food practices. These systems offer a formal structure within which to discuss and take decisions on critical issues of shared knowledge.

How? Consider the inclusion of these forms of governance systems within the proposed Plastics Pollution Treaty from the beginning of the negotiations, bearing in mind the many different types of treaty regimes that are implicated in efforts to address plastic pollution.

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BRIEFING 6 of 6: Circular Economy and Plastic Life-Cycle Issues

Key messages:

The Plastic Pollution Treaty's scope, as articulated by United Nations Environment Assembly (UNEA) resolution 5/14, includes the circular economy and elements of the plastic life-cycle as vital elements for addressing plastic pollution and production. The fundamental connections between the circular economy, plastic life-cycle and global efforts to address plastic pollution were affirmed by States and stakeholders throughout the INC-1 discussions. To address these issues, the Plastic Pollution Treaty should consider the value of explicit and implicit inclusion of circular economy provisions so as to address the potential for technological growth and change. The plastic life-cycle should be understood as multi-phased, with each phase requiring inclusion in the Plastic Pollution Treaty as well as the national action plans and other potential oversight and compliance mechanisms. It is critical that the Plastic Pollution Treaty include methods for national oversight of efforts to address plastic pollution throughout all phases of the plastic life-cycle.

1. Circular Economy

What? There is a need to develop a common understanding of what constitutes a circular economy for plastics that also promotes sustainable production and consumption, and to identify how this can best be promoted through the new plastics agreement. These elements are often linked together, and the text of UNEA resolution 5/14 makes it clear that these are important considerations for the Plastic Pollution Treaty. In this context, it is necessary that the concept of a circular economy as well as sustainable production and consumption be defined.

How? There are several potential options through which the concept of the circular economy could be included within the Plastic Pollution Treaty. The first option would involve the explicit definition of a circular economy. There are several existing definitions, such as those used in the European Union and United States' legal and regulatory systems, and these could be used as starting points in the development of a definition that reflects the needs and capacities of State and private sector actors across the development spectrum. An element of an explicit definition could be the design of materials and products in such a way that their value is maintained as high as possible and for as long as possible, and that harmful environmental impacts be minimised throughout the whole life cycle. This would mean considering, among other things, the choice of feedstock (renewable or not), pollution from usage, the risks of leakage into the environment, and end-of-life options as part of the definition.

The second option would be an implicit definition of a circular economy in the Plastic Pollution Treaty. This option could allow for greater flexibility in the sense of allowing for the organic development of aspects of circularity in the plastic industry without the need for concerns over whether these activities would still be covered by the Treaty. In this option, the critical consideration would be identifying factors that inhibit greater circularity in the global plastics economy as well as ways in which international law and national action plans under the Plastic Pollution Treaty could act as drivers for change. Encouraging such questions may lead to materials substitution where a particular outcome cannot be guaranteed with a specific material, to making inherently linear products with a short lifespan from biodegradable plastics instead, to developing standards for sustainable polymers, and beyond. The Plastic Pollution Treaty using this option for the incorporation of circularity could foster smart design choices for a more circular economy by setting out commonly agreed design principles. These principles should build on the already well-known 12 principles for green and sustainable chemistry that encourage life cycle thinking and environmental trade-offs to be made at the early stages of chemical manufacturing.



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Finally, the third option could involve a combination of a flexible and dynamic definition of the circular economy in the Plastic Pollution Treaty that provides latitude for the use of the concept throughout the implementation of the Treaty. In this context, certain links should be made in an explicit way, for example those between the circular economy and national action plans, while others could be allowed to develop as appropriate based on legal, scientific and technical advances in the future.

What? As noted in UNEA resolution 5/14, there is an inherent link between circular economy in the plastics industry and sustainable consumption and production for the Plastic Pollution Treaty. This link is often discussed in a positive light alone; however, it should be remembered that there is the potential for unintended and unwanted side-effects that could cause harms to the constituencies which the Plastic Pollution Treaty is intended to assist.

How? To address the potential for these consequences, the Plastic Pollution Treaty could include terms to avoid the 'rebound effect', whereby greater efficiency and minimising harmful environmental impacts lead to an increase in consumption. While it is important for the Plastic Pollution Treaty to act as a catalyst for greater recycling activities, including through national action plan requirements, it should also address the need for innovation in recycling technologies so as to prevent the use out-dated or inefficient methods that utilise significant energy resources and result in increased carbon emissions. The Plastic Pollution Treaty could address these issues through the inclusion of production and consumption criteria and targets, with the aim of fostering environmentally sound plastic recycling and entrenching the circular economy.

2. Plastics life-cycle focus

What? UNEP briefing note 11 in advance of INC-1 provides an outline of the phases of the plastics life-cycle, ranging from the upstream phase to the mid-stream phase and, ultimately, to the downstream phase. The information it contains is drawn from responses by nearly two dozen States to questions about the plastics life cycle and the legal and technical challenges experienced in efforts to regulate it. Through these responses, it is clear that a multiphase understanding of the plastics life-cycle will be necessary for the Plastic Pollution Treaty. These findings were supported during INC-1, with multiple States emphasising the need for the Plastic Pollution Treaty to address all phases of the plastics life-cycle. This understanding will require a holistic approach in which the phases of the plastics life cycle are connected to the core terms of the Plastic Pollution Treaty as well as the national action plans and compliance mechanisms. It should be noted that some disagreement regarding primacy in regulating various phases of the plastic life-cycle emerged from INC-1. In this context, some States advocated the immediate focus being on upstream production activities while other States, especially SIDS, advocated focusing on downstream activities and adaptation in the plastic pollution context.

How? At the upstream phase, much emphasis is placed on the need for regulation and market control mechanisms for elements of plastic generation, the creation of virgin plastics, and the use of fossil fuels as feedstock for the production of plastic. The inclusion of terms regarding the regulation of and facilitating technological innovations in the plastics life-cycle in the Plastics Pollution Treaty could include State commitments to reducing incentives and other means of support to the creation and production of virgin plastic. Similar commitments could be made regarding the use of fossil fuels in the production of virgin plastic. In drafting these commitments, it would be critical that the Plastic Pollution Treaty acknowledges and seeks to reconcile the potential impacts on World Trade Organization (WTO) law as well as State commitments under the United Nations Framework Convention on Climate Change (UNFCCC), Paris Agreement, and other multilateral environmental agreements. Additionally, it should be noted that UNEP briefing note 11 in advance of INC-1 references several responding States as indicating that their current legal

systems regarding environmental impact assessment have posed challenges to their abilities to transition from fossil fuel-based plastic production. The Plastic Pollution Treaty negotiations should consider the potential relationship between the Treaty and treaty regimes such as the Aarhus Convention, the Espoo Protocol on Strategic Environmental Assessment, and the Escazu Agreement when addressing all phases of the plastics life-cycle.

At the midstream phase, UNEP briefing note 11 in advance of INC-1 stresses State responses regarding issues in the labelling systems currently used to inform consumers of the content, sustainability, and 'green' status of products within their territories. Labelling is an important issue and it should be a part of the Plastics Pollution Treaty negotiations. At the same time, it must be recalled that labelling issues can, and often do, intersect with the terms of World Trade Organization laws. This means that care and coordination should be exercised in addressing these issues so as to promote the use of accurate and informative labelling information for plastics that would also allow States to comply with their obligations as WTO members.

Finally, at the downstream phase, UNEP briefing note 11 in advance of INC-1 emphasises several areas in which responding States have experienced challenged for sustainable recycling and related practices for plastic products. One common theme is the potential for law and regulatory practice to play a role in hindering innovation and development at the downstream phase. These types of issues could be addressed in the Plastics Pollution Treaty through the reporting requirements in the national action plans as well as the potential global stocktake options for Treaty review, as discussed in the IUCN Briefing Note on Key Concepts from Multilateral Environmental Agreements for Plastic Pollution Treaty.

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