

IUCN WCEL BRIEFING FOR NEGOTIATORS

Plastic Treaty INC-1 Session

Treaty Regime Interaction

Key Messages:

Through United Nations Environment Assembly (UNEA) resolution 5/14 and subsequent efforts by the Open-Ended Working Group, during INC-1, States and stakeholders have the opportunity to engage in the first steps toward the conclusion of a Plastic Pollution Treaty. One of the initial topics selected for discussion at INC-1 is 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, resources law, international wildlife law, and international freshwater law. Therefore, a clear need for effective mechanisms of interaction between any new plastics treaty and other pertinent international regimes exists.

1. Utilize 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. 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, 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, specifically:

- International Covenant on Civil and Political Rights (ICCPR) – including the right to life and to non-discrimination.
- International Covenant on Economic, Social and Cultural Rights (ICESCR) – including the right to life, right to health, labour and employment rights, family rights, housing rights, the right to food, and adequate standard of living rights.
- Convention on the Rights of the Child (CRC) – including the right to life, the right to health, food, incorporation of the evolving capacities and best interests of the child standard, the rights to involvement in legislative and other decision-making,
- 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, the right to health.

- 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.
- Convention on the Elimination of All Forms of Racial Discrimination (CERD) – including the right to life, non-discrimination rights and State obligations, the right to health, labour and employment rights, and participation rights.

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.

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 the UNEP briefing note 10 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? 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 specialize 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.

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. 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 and the Guarani Aquifer, 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? Consider the inclusion of these forms of treaty regimes within the Plastic Pollution Treaty from the beginning of the negotiations, bearing in mind the many different forms of regimes implicated in efforts to address plastic pollution.

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