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The third session of the Intergovernmental Negotiating Committee to develop an international legally binding instrument on plastic pollution, including in the marine environment (INC-3), is scheduled to take place from 13 to 19 November 2023 at the UN Environment Programme (UNEP) Headquarters in Nairobi, Kenya.

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 briefing is a part of a set of ten targeted legal briefs are part of the present IUCN Submission for the third 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-3

These are updated briefings of the INC-1 and INC-2 submissions, please note, and are considered version 3 – for submission to INC-3 as annexes for Forms A and B from IUCN. Further information and updates can be found on <https://www.iucn.org/incplastics> - or by searching <https://www.iucn.org/search?key=plastics>.

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- **BRIEFING 1 of 10: Key Elements for Plastic Pollution Treaty**

**IUCN WCEL BRIEFING FOR NEGOTIATORS
International Legally Binding Instrument INC-3 Session
Key Elements for Plastic Pollution Treaty**

Key Messages:

In United Nations Environment Assembly (UNEA) resolution 5/14 and subsequent discussions at INC-1 and INC-2, the issue of elements of the International Legally Binding Instrument (ILBI) became quite important. Following INC-1, it was clear that the ILBI 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. These issues continued throughout INC-2, where discussions included some aspects of potential Treaty elements and it was agreed that further information would be gathered from States and stakeholders before the release of the mandated Zero Draft. 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. In the main IUCN Submission in advance of INC-3, a number of elements for the ILBI have been proposed and the below sections are intended to complement these recommendations.

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



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regimes, and serves as an interpretive tool for the future. In this context, the drafting of the preamble will be critical to the ILBI.

How? The preamble may include historical references and treaty regime references, as well as emphasizing the core interpretive principles of international law that form the underlying terms of the ILBI. 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 ILBI in the preamble content. As was stressed by States during INC-1 and INC-2, the transboundary and interdisciplinary nature of plastic pollution is an important element for the ILBI 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 ILBI 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 WCEL Briefing for Negotiators addressing the glossary of key terms, one way for the ILBI to maximize 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. At the same time, they will need to retain some level of flexibility, perhaps linked to elements in the anticipated annexes, to accommodate advances in scientific and technological knowledge and capacities.

What? The objective is a foundational element of treaties. While some MEAs do not contain these provisions, objectives can play an important framing role for a treaty regime in a way that has 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 ILBI 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 incorporating just transitions, 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 MEA 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



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and reviewed could allow the ILBI 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 ILBI Pollution Treaty, including the precautionary approach as well as national capabilities and circumstances, non-regression, progressive realization 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. 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 voluntary. Binding obligations are typically subject to treaty terms and may be subject to treaty-based compliance systems. Voluntary commitments are 'voluntary' State Party commitments in terms of much of their implementation and enforcement. The ongoing negotiations for the ILBI will need to focus 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 as being substantive or procedural in nature, and whether the ILBI 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 ILBI, care should be taken to ensure that choices regarding binding and voluntary classification reflect the theoretical and practical implications of control and voluntary measures. At the same time, binding and voluntary obligations should be designed to be reinforcing and supportive of each other and the shared objectives and scope of the ILBI.

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 MEAs. 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



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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 ILBI and designed to fulfil these objectives. In addition, the use of national implementation plans should be considered to serve as a potential complementary system in which State Parties.

Starting from the bottom-up approach through national action plans, the ILBI should include a strong system of international oversight. This would apply to robust binding guidance for national action plans and potential national implementation 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.

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 ILBI 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. Additionally, as outlined in the main IUCN Submission in advance of INC-3, a dedicated subsidiary body on science-policy should be established as a core element of the ILBI governance system. As the negotiations for the creation of a Science-policy panel to contribute further to the sound management of chemicals and waste and to prevent pollution, as mandated in UNEA Resolution 5/8, progress, there should be efforts to bridge the work of this Panel with the ILBI.

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 MEAs – 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 WCEL Briefing for Negotiators on the Structure of the ILBI.



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How? Effectiveness and accomplishment oversight for the ILBI 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 ILBI. 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 MEAs 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 ILBI 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 ILBI by States experiencing all aspects of the plastics life-cycle during INC-1 and INC-2 discussions. To entrench the use of capacity building as integral in achieving the objectives of the ILBI, 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 MEAs because of the complexity of the issues raised across environmental law as well as trade law and many aspects of human rights law. The 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 ILBI, 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 ILBI could be used to entrench these aspects of equity within the objectives, scope and principles of the Treaty.



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What? UNEA resolution 5/14 includes specific reference to a financial mechanism to assist in implementing the ILBI. Thus, the financing issue was resoundingly discussed as a critical element of the ILBI by States and stakeholders during INC-1 and INC-2. It remains an issue for future negotiations and many States and stakeholders have stressed the need for any such mechanism to be functional and responsive from the outset of the ILBI's effective date onward.

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 ILBI 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, standard MEA terms provide 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. As suggested in the main IUCN Submission in advance of INC-3, in light of the pressing need to address plastic pollution at the global level, the Conference of the Parties should meet annually, with intersessional meetings similar to the UNFCCC system, and a strong stakeholder presence.

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 ILBI 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 ILBI. For these reasons, the main IUCN Submission in advance of INC-3 proposes the creation of three standing subsidiary bodies, a Subsidiary Body for Science-Policy Advice, a Subsidiary Body for Implementation, and a Subsidiary Body for Regime and Organization Convergence.

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 ILBI is a critical one in that it has the potential to shape the ways in which State Parties view their obligations and commitments. For these reasons, the main IUCN Submission in advance of INC-3 proposes that reservations expressly not be allowed for the ILBI.

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 ILBI. 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. Reflecting the most common practice across international treaty systems and the need for the ILBI to become operational on a rapid schedule, the main IUCN Submission in advance of INC-3 proposes an effective date of ninety (90) days following the ratification of the ILBI by the fiftieth (50th) State Party.

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 ILBI. 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 ILBI can be considered as an important element that should not be left for the conclusion of a subsequent instrument. For these reasons, the main IUCN Submission in advance of INC-3 proposes the use of internal methods of mediation followed by the ability to seek recourse at the International Court of Justice.

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- **BRIEFING 2 of 10: Glossary of Key Terms**

**IUCN WCEL BRIEFING FOR NEGOTIATORS
 International Legally Binding Instrument INC-3 Session
 Glossary of Key Terms**

Key Messages:

In United Nations Environment Assembly (UNEA) resolution 5/14 one of the critical areas designated for negotiation in the International Legally Binding Instrument (ILBI) is the generation of a glossary of key terms. 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 same issues were experienced during INC-2, and thus the issue of definitions is among those highlighted for State and stakeholder submissions in advance of INC-3. 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 ILBI. This briefing addresses and follows the format of the briefing note generated by the INC Secretariat in advance of INC-1, highlighting areas of importance for INC-3 in addition to the discussions from INC-1 and 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 UNEA resolution 2/11. Since the adoption of this resolution, States and regional organizations 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 ILBI'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 ILBI.

How? Incorporate a definition of 'resource' to be covered by the ILBI 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.

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 ILBI 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 ILBI and means for implementation. These terms include:

1. Best available science
2. Economies in transition



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3. National action plans
4. Recycling
5. Sustainable alternatives
6. Sustainable design
7. Circular plastics economy
8. Circularity

How? Incorporate these terms into the negotiations along with the terms suggested by the INC 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 ILBI. 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
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. Public Procurement
33. Ship



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34. Small Island Developing States
35. State of export
36. State of import
37. State of transition
38. Transboundary impact
39. Transboundary movement
40. Transboundary waters
41. 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 INC 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 INC 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
8. Commercial/industrial plastics use
9. Compostable
10. Consumer plastics use
11. Extended Producer Responsibility
12. Forms of plastic
13. Global carbon cycle
14. Greenhouse gases (GHGs)
15. Harmful additives
16. Macroplastics
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- 33. Repair
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BRIEFING 3 of 10: Structure of Plastic Pollution Treaty

**IUCN WCEL BRIEFING FOR NEGOTIATORS
International Legally Binding Instrument (ILBI) INC-3 Session
Structure of the ILBI**

Key Messages:

Given the ever-evolving nature of science and the complex, varied nature of plastic pollution, it is clear that the ILBI will need to be sufficiently flexible to allow for further adjustments and additions to the obligations. Based on discussions during INC-1 and INC-2, as well as State and stakeholder submissions in advance of these negotiating sessions, there seems to be an emerging consensus regarding the need for flexibility in this context to include the use of an annex system.

The different structural approaches found in environmental treaties to date provide a good guide and starting point. It is pivotal, however, that the ILBI should contain binding core obligations to fill existing regulatory gaps in relation to plastic pollution, including international trade restrictions (bearing in mind the Basel Convention regime as well as a number of regimes discussed in IUCN WCEL's briefing on Treaty Convergence), production caps, capacity-building, and financial and technical assistance. The ILBI should also include mechanisms to ensure its effectiveness, such as a non-adversarial non-compliance mechanism, in line with recent MEA terms and practice. 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-3. The timing of these discussions is critical given the pending release of the Zero Draft for debate at INC-3. It is also evident that, regardless the structure used for the ILBI, the inclusion of scientifically informed requirements that can be updated based on advances in technology and the state of knowledge will be crucial.



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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 ILBI. 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 ILBI 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 ILBI, especially given the emerging scientific knowledge regarding the effects and extent of plastic pollution.

Second, the standard method of updating a specific convention is through the use of amendments to the treaty text or the adoption of 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 ILBI. 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 ILBI. First, should a framework convention be used for the structural model of the ILBI, 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 ILBI, 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 all States although some non-Party States have gone on to ratify the subsequent Optional Protocol on the Rights of the Child on the involvement of children in armed conflict.

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 particularized 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 ILBI 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 ILBI to be crafted in a way that contains significant control measures in the main text (specific convention model) and annexes while allowing for the development of subsequent protocols and agreements to address emerging issues (framework convention model).

Regardless the form of convention used, starting from the bottom-up approach through national action plans, the ILBI should include a strong system of international oversight. This would apply to robust binding guidance for national plans, binding requirements for reporting on



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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 10: Just Transition and the International Legally Binding Instrument

**IUCN WCEL BRIEFING FOR NEGOTIATORS
International Legally Binding Instrument INC-3 Session
Just Transition and the International Legally Binding Instrument**

Key messages:

The International Legally Binding Instrument (ILBI)'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 and INC-2 discussions. At the same time, a number of States and stakeholders expressly referenced the need to include just transition as part of the ILBI during INC-1 and by the end of INC-2 this became a significant area of focus. 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 ILBI, the governance system adopted for the ILBI, and the amendments, annexes or protocols adopted depending on the structural choice made for the ILBI.



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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 labour 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.¹

Just transition should also be understood as a necessary legal and policy tool through which to facilitate labour and employment transitions at all levels of an industry or entity produced. In the context of the ILBI negotiations, there has been an emphasis on the need to include waste pickers and members of the informal sector. These workers are critical to the implementation of a ILBI that is environmentally effective, protects biodiversity and human health, and advances the rights of those in vulnerable and marginalized community. At the same time, it must be remembered that just transition in the plastic pollution context is a broader issue and includes workers at all phases of the plastics life-cycle, from the engineers and chemists who are specialized in plastic production to those producing plastics and plastics-containing elements to those using plastic products in the course of their employment and, ultimately, to those who work in waste management. These are some of the many forms of intersection between labour and employment and the plastics life-cycle and each requires a nuanced understanding of what a just transition would entail in the appropriate context. This highlights the need for the ILBI to include legally binding terms to ensure that just transition is a required element in Treaty obligations as well as in national action plans and other reporting practices and in evaluation of compliance with the Treaty.²

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, underemployment and poverty. A number of States and stakeholders expressly referenced the need to include just transition as part of the ILBI during INC-1 and this became more prominent as a call for inclusion in the ILBI during INC-2. 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, involving not only the workers themselves but also their families and communities.

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 in the legal and regulatory realm as well as in policy and economic practice.

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

¹ See Alexandra R Harrington, *Just Transitions and the Future of Law and Regulation* (Palgrave MacMillan 2022).

² For proposed language for several elements of the Plastic Pollution Treaty that include just transition provisions see the IUCN Submission Form A and Form B in advance of INC-3.

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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, those in extreme poverty 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 ILBI 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 provide assistance to 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 marginalized 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.

At the same time, care must be taken to ensure that the legal requirements of the ILBI are beneficial for all sectors of labour and employment in the plastics life-cycle, as noted above. This would include educational and vocational assistance but also protections for those who would transition to working with plastic substitutes and alternatives, for example those in the production and waste management sectors.

Additionally, efforts at just transition in the context of the ILBI 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. Cooperation with international organizations, such as the International Labour Organization, the International Maritime Organization, and the World Health Organizations, as well as the applicable core human rights treaty bodies would offer an additional method to strengthen the implementation of just transition requirements in the ILBI. Thus, a broad view of just transition and the sectors that will be impacted by efforts to regulate plastic pollution under the ILBI could facilitate significant shifts that assist multiple treaties in achieving their goals.

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BRIEFING 5 of 10: Regime Convergence and the International Legally Binding Instrument

**IUCN WCEL BRIEFING FOR NEGOTIATORS
International Legally Binding Instrument INC-3 Session
Regime Convergence and the International Legally Binding Instrument**

Key Messages:

A core theme in United Nations Environment Assembly (UNEA) resolution 5/14 and subsequent discussions at INC-1 and INC-2 was the impact of treaty regime interactions upon the International Legally Binding Instrument (ILBI). 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. Outside the context of multilateral environmental agreements (MEAs), there are inherent connections between efforts to adopt the ILBI and international trade law, multiple aspects of human rights law, and human health law treaties, as well as soft law instruments such as the Sustainable Development Goals (SDGs). Regional treaties across a variety of legal areas are also important to the idea of treaty regime convergence necessary for a holistic ILBI.

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

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the Parties for various MEAs to create synergies and mechanisms of coordination between treaty regimes with overlapping terms and areas of regulation. It builds on a steadily evolving understanding of these many forms of international legal regimes as interdependent and able to function together to reinforce their areas of shared overlap rather than as potential areas of conflict or a reason for not taking strong legal and regulatory action in these areas as part of the ILBI.

1. Utilize 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 and INC-2, States and stakeholders emphasized these impacts and stressed that the ILBI 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 ILBI because plastic pollution has wide-ranging legal, regulatory, economic and social connections.

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 just transitions, 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 discussions at INC-1 and INC-2, especially regarding the need for just transitions as part of the terms and application of the ILBI and the need to incorporate traditionally marginalized communities in the creation of the ILBI. Specific treaty regimes of relevance:

- International Covenant on Civil and Political Rights (ICCPR) – including the right to life (Art 6) and non-discrimination (Art 2, 26), equality between genders (Art 3), freedom of association and the right to join trade unions (Art 22), rights of children generally (Art 24), and the rights of minority communities (Art 27).

In General Comment 36 on the right to life, the Committee on Civil and Political Rights addressed the impacts of environmental harms and noted that “environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life. . . Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors. States parties should therefore ensure sustainable use of natural resources, develop and implement substantive environmental standards, conduct environmental impact assessments and consult with relevant States about activities likely to have a significant impact on the environment, provide notification to other States concerned about natural disasters and emergencies and cooperate with them, provide appropriate access to information on environmental hazards and pay due regard to the precautionary approach.”

- International Covenant on Economic, Social and Cultural Rights (ICESCR) – including non-discrimination (Art 2), the right to work (Art 6) (including ongoing State obligations to provide opportunities for vocational, technical and educational training “to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual”), the right to just working conditions (Art 7) (including equality in pay and “safe and healthy working conditions”), the right to an adequate standard of living (Art 11), the right to health (Art 12) (including State obligations to ensure “the improvement of all aspects of environmental and industrial hygiene”), housing rights (Art 11), the right to food (Art 11), and adequate standard of living rights (Art 11).

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 consent 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 ILBI 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 and INC-2, it is vital that the workers in this sector be included in the terms of the ILBI.

- Convention on the Rights of the Child (CRC) – including non-discrimination against children (Art 2), the right to life (Art 7), the right to health (Art 24) (including State obligations to advance this “through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution”), the right to food (Art 24), the right to education including State obligations to ensure “the development of respect for the natural environment” (Art 29), the right to State action providing for protections of working children (Art 32), incorporation of the evolving capacities and best interests of the child standard in all aspects of law and policy that affect them (Arts 3, 5), and the rights to involvement in legislative and other decision-making (Arts 3, 4). Children and future generations have a fundamental connection to the outcomes of the ILBI from a health and human rights perspective, including those working in the informal sector and facing increased risks of potential harm as a result.

The May 2023 General Comment 26 on children’s rights and the environment with a special focus on climate change adopted by the Committee on the Rights of the Child emphasizes 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 emphasizes 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 in which pollution and environmental degradation can impact all aspects of the child’s right to health. Additionally, the General Comment highlights the 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 (Arts 1, 2), labour and employment rights (Arts 11, 14), specialized rights and requirements of rural women (Art 13), rights to participation in public life (Art 15), and the right to health (Art 12).

In General Comment 39 (2022) on the rights of Indigenous women and girls, the Committee on the Elimination of All Forms of Discrimination against Women emphasized the critical and intersectional role of women and girls in Indigenous communities and in society overall. The Committee’s assessment focused in relevant part on the role of Indigenous women as holders and guardians of Indigenous and traditional knowledge. Further, the Committee noted that “environmental degradation, including biodiversity loss, pollution and climate change, are direct threats to the self-determination, cultural integrity and survival of Indigenous women and girls, as are the unauthorized use and appropriation of their technical knowledge, spiritual practice, and cultural heritage by State actors and third parties. States should protect and preserve Indigenous languages, culture and knowledge, including through the use of digital tools; sanction the unauthorized appropriation and use of such languages, culture and knowledge; and respect and protect the lands, territories and sacred places of Indigenous Peoples.”

General Comment 39 also stresses that “human-caused pollution, contamination, deforestation, burning of fossil fuels and loss of biodiversity threaten that link. The failure of States to take adequate action to prevent, adapt to and remediate these serious instances of environmental harm constitutes a form of discrimination and violence against Indigenous women and girls that needs to be promptly addressed. Moreover, States should take steps to recognize the contribution of Indigenous women through their technical knowledge of biodiversity conservation and restoration, including them in decision-making, negotiations and discussions concerning climate action and mitigation and adaptation measures.”

General Comment 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change is also important because it highlights the inherent threat posed by transboundary pollution and toxic waste pollution to all populations, especially women and marginalized communities. It stresses the ways in which the triple planetary crisis can be seen as contributing to increasingly severe disasters and threats in the future and the need for the international community and State Parties to take steps toward mitigating this.

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 emphasizes 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 marginalized. 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 ILBI as well.

- International Convention on the Elimination of All Forms of Racial Discrimination (CERD) – including rights to be implemented free from racial discrimination in working rights and employment (Art 5), payment (Art 5), and the right to health and medical care (Art 5). In the First draft General recommendation No. 37 (2023) on Racial discrimination in the enjoyment of the right to health, the Committee on the Elimination of All Forms of Racial Discrimination emphasized the ways in which racial discrimination



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is linked to exposure to environmental harms across the world, harms which ultimately result in health issues.

- Convention on the Rights of Persons with Disabilities (CRPD) – including the participation and non-discrimination rights (Art 3), the right to health (Art 3, 25), the rights of women with disabilities (Art 6), the rights of children with disabilities (Art 7), the right to employment and adequate standards of living (Art 27, 28), and State obligations during times of risk and emergencies (Art 11).
- 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 “special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned” within State Parties. 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 recognize and protect Indigenous ownership and forms of ownership. Given the repeated emphasis by States and stakeholders at INC-1 and INC-2 on the impacts of plastic pollution on Indigenous communities and the need to incorporate traditional knowledge as part of the ILBI, 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 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 and INC-2 on the impacts of plastic pollution on Indigenous communities and the need to incorporate traditional knowledge as part of the ILBI, the terms of UNDRIP serve a critical point of regime overlap.
- United Nation 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.
- ILO Convention 170 – Chemicals Convention (1990) – containing significant provisions for State Parties’ obligations to regulate and provide safe working conditions for those workers exposed to chemicals and hazardous chemicals. Included in the categories of exposure and working conditions covered by the Chemicals Convention are “(i) the production of chemicals; (ii) the handling of chemicals; (iii) the storage of chemicals; (iv) the transport of chemicals; (v) the disposal and treatment of waste chemicals; (vi) the release of chemicals resulting from work activities; and (vii) the maintenance, repair and cleaning of equipment and containers for chemicals.” Other relevant provisions are requirements for the labelling of chemicals, and especially hazardous chemicals. While much of the onus of the Chemicals Convention is on employers and States as regulators of employers, it also contains disclosure requirements for chemical exporting States.

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 ILBI in terms of environmental protection and the nexus between human rights and the environment.

- African Charter of Human and Peoples' Rights – contains employment rights, namely “every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work” (Art 15), the right to health (Art 16), the right to education, and State recognition that “the promotion and protection of morals and traditional values recognized by the community shall be the duty of the State” (Art 17), and the rights of women and children (Art 18(3)).
- Inter-American Charter of Human Rights – contains freedom of association rights, including for labour or economic purposes (Art 16), and the right of the child to protection based on minority status in law (Art 19). Additionally, in 2017 the Inter-American Court of Human Rights issued its Advisory Opinion on “the Environment and Human Rights,” recognizing the existence of a regional human right to a healthy environment.
- Charter of Fundamental Rights of the European Union – includes freedom of association rights for trade unions and other purposes (Art 12), the right to education, including vocational and technical training (Art 14), the right to freedom of choice for occupation as well as the core right to work (Arts 15, 27), the right to equality and non-discrimination as a matter of law (Arts 20, 21, 23), the rights of the child (Art 24), and the right to health (Art 35), and the right to environmental protection (Art 37) (providing that “a high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development”). Using these fundamental rights, the European Court of Human Rights has heard seminal cases involving the concept of environmental pollution as constituting a human rights violation and has created case law which enshrines this connection.

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 – there are foundational connections between the treaties comprising WTO law and the regulation of plastic pollution. In the joint IUCN, IUCN WCEL and QUNO submission for INC-3, it has been highlighted that subsidies will represent an area of significant overlap in terms of plastics and related products and the potential for substitutes and alternatives to fall within the parameters of substitute elements. What should be further emphasized is the need to ensure that the terms and implementation of the ILBI do not pose a 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 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. For more on these issues, see the joint IUCN, IUCN WCEL and CIEL brief on trade issues made prior to INC-2.
- 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, labour law, intellectual property law, labelling requirements, biological diversity protections, and climate change related provisions and some have created environmental compliance oversight organizations under their auspices. For more on these connections, please see the IUCN Briefing for Negotiators on Free Trade Agreement Convergence with the ILBI ahead of INC-3.

How? In recognition of the connections between regulation of plastic pollution and **sustainable development**, the negotiations should examine regime interactions with multiple elements of the Sustainable Development Goals (SDGs). Although the SDGs are soft law, they have been incorporated across a spectrum of treaty body implementation measures and targets, and have a number of connections to plastic pollution, including:

- SDG 1 – end poverty in all its forms, everywhere – the inclusion of just transitions elements in the Plastic Pollution Treaty offers the ability to ensure economic opportunity and inclusion for all, which could provide a pathway to reduce national and global rates of poverty for men and women.
- SDG 2 – end hunger, achieve food security and improved nutrition and promote sustainable agriculture – targeting plastic pollution for elimination, along with recognition of and efforts to address the connections between plastic pollution and agriculture in the ILBI would offer an opportunity to advance the targets relating to food security and agricultural advancement.
- SDG 3 – ensure healthy lives and promote well-being for all at all ages - In Target 3.9, States commit to “substantially reduce the number of deaths and illnesses from hazardous chemicals and air, water and soil pollution and contamination” by 2030. The reduction of plastic pollution is inherently linked to achievement of Target 3.9 both in terms of the emissions needed to produce plastic and the increasingly understood connections between plastic contamination and human health issues.
- SDG 6 - ensure availability and sustainable management of water and sanitation for all – eliminating plastic pollution would substantially impact the achievement of most aspects of SDG 6, especially Target 6.3, in which States undertake to “improve water quality by reducing pollution, eliminating dumping and minimizing release of hazardous chemicals and materials, halving the proportion of untreated wastewater and substantially increasing recycling and safe reuse globally.”
- SDG 8 – promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all – the inclusion of just transitions elements in the ILBI, as well as reductions in harmful elements of plastics and plastics-containing products, would advance multiple elements of SDG 8. Additionally, the inclusion of circularity and the plastics life-cycle in the ILBI would assist in accomplishing Target 8.4 to “endeavour to decouple economic growth from environmental degradation.”
- SDG 9 – build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation – Target 9.4, “upgrade infrastructure and retrofit industries to make them sustainable, with increased resource-use efficiency and greater adoption of clean and environmentally sound technologies and industrial processes, with all countries taking action in accordance with their respective capabilities,” is linked to the issue of plastics pollution across all levels of the plastics lifecycle. From infrastructural and industrial practices at the production level to consumption level to disposal and end of the product lifecycle, the elimination of single use plastic pollution and plastic pollution generally will require inherent changes.
- SDG 11 – make cities and human settlements inclusive, safe, resilient and sustainable – given the reality of plastic pollution concentration in and caused by urban settlements, there is a connection between the elimination of plastic pollution and the requirements of Target 11.6 and Target 11.7. At a general level, eliminating plastic pollution on an



ambitious timeline could have a supporting effect for State commitments to “protect and safeguard the world’s cultural and natural heritage” in line with Target 11.4.

- SDG 12 – ensure sustainable consumption and production patterns – eliminating plastic pollution and regulating the plastics lifecycle could assist States with achieving many commitments under SDG 12.
- SDG 13 – take urgent action to combat climate change and its impacts – the connection between aspects of plastic production and carbon emissions, as well as the fossil fuels used in plastics, creates a nexus between efforts to regulate climate change and to eliminate plastic pollution generally.
- SDG 14 - conserve and sustainably use the oceans, seas and marine resources for sustainable development – in Target 14.1, the importance of combatting marine pollution on a more advanced timeframe is clear, providing that “by 2025, prevent and significantly reduce marine pollution of all kinds, in particular from land-based activities, including marine debris and nutrient pollution.” Relatedly, including ghost gear and similar products within the scope of plastic pollution to be eliminated in the Plastic Treaty would allow States to further the elements of Target 14.7, “by 2030, increase the economic benefits to Small Island developing States and least developed countries from the sustainable use of marine resources, including through sustainable management of fisheries, aquaculture and tourism,” when combined with an ambitious timeline for the elimination of plastic pollution.
- SDG 15 – protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss – given the potential impacts of eliminating single use plastic pollution, and plastic pollution generally, on preventing degradation of multiple ecosystems through soil, water and associated damage, the ILBI offers the potential for States to take steps toward their commitments in Target 15.3 (“By 2030, combat desertification, restore degraded land and soil, including land affected by desertification, drought and floods, and strive to achieve a land degradation-neutral world”) and Target 15.4 (“By 2030, ensure the conservation of mountain ecosystems, including their biodiversity, in order to enhance their capacity to provide benefits that are essential for sustainable development”).

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 and during elements of discussions during INC-1 and INC-2. 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 ILBI.

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 ILBI. Additionally, negotiations should consider the several treaties which have already designated certain plastics, plastic waste and plasticizers 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



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habitats on the List of Wetlands of International Importance, and recognizing 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 ILBI.

- Stockholm Convention on Persistent Organic Pollutants – including several forms of plastics and plasticizers in covered and excepted lists of pollutants. The preamble includes awareness “of the health concerns, especially in developing countries, resulting from local exposure to persistent organic pollutants, in particular impacts upon women and, through them, upon future generations.” Core terms of the Stockholm Convention involve identifying, banning and regulating the lifecycle of POPs. The Stockholm Convention also contains reporting and evaluation requirements at the national levels.
- Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade – core objectives show layers of responses and measures needed to address the issue of transboundary transportation (Art 1) (“The objective of this Convention is to promote shared responsibility and cooperative efforts among Parties in the international trade of certain hazardous chemicals in order to protect human health and the environment from potential harm and to contribute to their environmentally sound use, by facilitating information exchange about their characteristics, by providing for a national decision-making process on their import and export and by disseminating these decisions to Parties”). The Rotterdam Convention creates information sharing/gathering requirements, information review, permission and permitting system that could be replicated for ILBI and also could require consultation when there are cross-regulated substances.
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal & Protocol – the preamble and general terms stress the interconnected nature of hazardous waste practice and human health concerns as well as environmental protections. The Basel Convention contains requirements to ban the transport of certain listed wastes, limit the production and transport of restricted wastes, regulating and targeting illegal trafficking of wastes. The Annexes include multiple forms of plastics and plasticizers in covered and excepted lists of pollutants.
- 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 emphasizes the ways in which mercury pollution issues intersect with other treaty regimes. These elements overlap with issues raised for inclusion in the ILBI discussions.
- Convention on Long-Range Transboundary Air Pollution – within the ILBI context, it is important to acknowledge the intersections given scientific parameters of plastic pollution and particles being found in the air that can become transboundary pollution.
- Vienna Convention for the Protection of the Ozone Layer and Montreal Protocol on Substances that Deplete the Ozone Layer – within the ILBI context, it is important to consider as part of regime convergence because of increasing scientific

data demonstrating the impacts of some plastics production methods and waste disposal, especially involving incineration, on the ozone layer.

- Convention on the Conservation of Migratory Species of Wild Animals – including provisions recognizing 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 ILBI 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 ILBI 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 recognizing 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 ILBI 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 maximizing the effectiveness of the ILBI.

- 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 biodiversity protections. The new Kunming-Montreal Global Biodiversity Framework 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. These include GBF Target 7, addressing the reduction of pollution and negative pollution impacts by 2030. The GBF 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 maximizing the effectiveness of the ILBI.

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. General principles include “Each Party shall guarantee the right of every person to live in a healthy environment and any other universally-recognized human right related to the present Agreement” (Art 4(1)). During INC-1 and INC-2, many Escazu Convention State Parties emphasized 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 (Art 1). Includes certain chemicals related to plastics and plastics containing products within the scope of annexes of activities requiring information disclosures and impact assessments.

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 include:



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- United Nations Convention on the Law of the Sea – enshrining the prevention of maritime pollution as one of the duties of a Flag State (Art 94), State Party obligations regarding conservation and management of living resources within their maritime territories (Sect 2), obligation to protect the marine environment, including in relation to pollution (Art 145), and obligation to protect human health (Art 146). Additionally, UNCLOS includes discharge prevention as part of the duties of ships and aircraft in transit (Art 39), cooperation and mutual requirement of States bordering in Straits to prevent pollution (Art 43), the general obligation of States to protect the marine environment (Art 192), State obligations for prevention and reduction of marine pollution (Art 194, 195), State duties to share information on actual or potential transboundary marine pollution and to develop contingency plans to address this pollution (Art 198, 199), State undertakings on knowledge sharing regarding marine pollution (Art 202), State monitoring obligations that include pollution (Art 204), and State obligations to generate laws and rules relating to marine pollution, sources and impacts (Sect 5).
- Agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (High Seas Treaty) – in the preamble, reinforcing State Party obligations under UNCLOS, incorporating Indigenous communities and traditional knowledge (Art 13), also “recognizing the need to address, in a coherent and cooperative manner, biological diversity loss and degradation of ecosystems of the ocean, due, in particular, to climate change impacts on marine ecosystems, such as warming and ocean deoxygenation, as well as ocean acidification, pollution, including plastic pollution, and unsustainable use.” The High Seas Treaty contains general principles (Art 7) including “the non-transfer, directly or indirectly, of damage or hazards from one area to another and the non-transformation of one type of pollution into another in taking measures to prevent, reduce and control pollution of the marine environment,” as well as requirements to protect and restore the Area as well as Marine Protected Areas from harms including marine pollution (Art 17), and the inclusion of pollution evaluations as part of environmental impact assessment practice (Arts 28, 30),
- International Convention for the Prevention of Pollution from Ships & Protocol (MARPOL) – 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 – including a focus on the need to promote food security, and



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generally including a focus on the designation of allowable fishing gear and practices as well as inspections and sanctions for prohibited forms of fishing gear.

- Agreement for the Establishment of the Regional Commission for Fisheries – through which State Parties are tasked with providing for conservation and species management, including through the regulation of fishing gear used in the region (Art III).
- Asia-Pacific Fishery Commission – creating the Commission, which is tasked with oversight and protection of marine resources from pollution (Art IV), “to keep under review the economic and social aspects of fishing and aquaculture industries and recommend measures aimed at improving the living and working conditions of fishermen and other workers in these industries and otherwise at improving the contribution of each fishery to social and economic goals” (Art IV (c)).
- Agreement for the Establishment of the General Fisheries Commission for the Mediterranean – preamble including “recognizing the economic, social and nutritional benefits deriving from the sustainable use of living marine resources in the area of application,” and an overall objective to “to ensure the conservation and sustainable use, at the biological, social, economic and environmental level, of living marine resources, as well as the sustainable development of aquaculture in the area of application” (Art 2).
- 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 for the Protection of the Marine Environment of the North-East Atlantic (OSPAR) – including pollution from land-based sources (Art 3), pollution generated by dumping or incineration (Art 4), pollution from offshore sources (Art 5) and pollution from other sources (Art 7), as well as efforts to address and combat transboundary pollution in the marine environment (Art 21). Notably, OSPAR has generated annexes that key to each of the main pollution provisions and provide lists of processes for designating qualifying pollutants.
- Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean – preamble noting the importance of conservation generally and also for food security, biodiversity, Principles and measures for conservation and management (Art 5) (“(e) adopt measures to minimize waste, discards, catch by lost or abandoned gear, pollution originating from fishing vessels, catch of non-target species, both fish and non-fish species, (hereinafter referred to as non-target species) and impacts on associated or dependent species, in particular endangered species and promote the development and use of selective, environmentally safe and cost-effective fishing gear and techniques; (f) protect biodiversity in the marine environment”.
- 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 (SEAFO) – containing commitments to sustainable use and management of fish and marine resources (Art 2), precautionary approach (Art 2), and regulation of fishing gear as part of Commission function (Art 6).
- 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 plasticizers as covered hazardous substances (Art 1), waste importation bans for identified hazardous wastes (Art 4), transportation and transboundary pollution restrictions (Art 4(3)), notification and approval requirements for transboundary shipments of hazardous wastes in the African context (Art 6).
- 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 – general provisions include “(a) To prevent, control and reduce pollution of waters causing or likely to cause transboundary impact; (b) To ensure that transboundary waters are used with the aim of ecologically sound and rational water management, conservation of water resources and environmental protection”, incorporating polluter pays, precaution, and the rights of future generations (Art 2), and cooperation in research and development to combat pollution and its effects (Art 5).

Measures to foster prevention, control and reduction of “(a) The emission of pollutants is prevented, controlled and reduced at source through the application of, inter alia, low- and non-waste technology; (b) Transboundary waters are protected against pollution from point sources through the prior licensing of waste-water discharges by the competent national authorities, and that the authorized discharges are monitored and controlled; (g) Appropriate measures and best environmental practices are developed and implemented for the reduction of inputs of nutrients and hazardous substances from diffuse sources, especially where the main sources are from agriculture (guidelines for developing best environmental practices are given in annex II to this Convention); (h) Environmental impact assessment and other means of assessment are applied; (k) Additional specific measures are taken to prevent the pollution of groundwaters; (l) The risk of accidental pollution is minimized.” (Art 4(1)).

- 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.



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- Waigani Convention – including wastes resulting from plastics and certain forms of plasticizers as covered hazardous substances.
- Convention on the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention/HELCOM) – providing extensive definitions of pollution (Art 2) (“1. ‘Pollution’ means introduction by man, directly or indirectly, of substances or energy into the sea, including estuaries, which are liable to create hazards to human health, to harm living resources and marine ecosystems, to cause hindrance to legitimate uses of the sea including fishing, to impair the quality for use of sea water, and to lead to a reduction of amenities”), and pollution from land based sources (Art 2) (“‘Pollution from land-based sources’ means pollution of the sea by point or diffuse inputs from all sources on land reaching the sea waterborne, airborne or directly from the coast. It includes pollution from any deliberate disposal under the seabed with access from land by tunnel, pipeline or other means”).

Using the precautionary principle and polluter pays, the general principles include “the Contracting Parties shall individually or jointly take all appropriate legislative, administrative or other relevant measures to prevent and eliminate pollution in order to promote the ecological restoration of the Baltic Sea Area and the preservation of its ecological balance.” (Art 3). Incorporates best available technology and best environmental practices as standards and guidelines for addressing pollution (Art 3). Uses annexes to set out harmful and banned substances, as well as elements for best available technology and best environmental practices, prevention of pollution from land-based sources, prevention of pollution from ships.

- 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 – committing Parties to sustainable development of the Rhine (Art 3), “(a) maintaining and improving the quality of the Rhine’s waters, including the quality of suspended matter, sediments and groundwater, notably by — preventing, reducing or eliminating as far as possible pollution caused by noxious substances and by nutrients from point sources (e.g. industry and municipalities) and diffuse sources (e.g. agriculture and traffic) — including that from groundwater —and pollution from shipping, (e) ensuring environmentally sound and rational management of water resources”.
- Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin – including provisions “to protect the environment, natural resources, aquatic life and conditions, and ecological balance of the Mekong River Basin from pollution or other harmful effects resulting from any development plans and uses of water and related resources in the Basin” (Art 3).

How? In recognition of the many forms of **cultural and natural 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 include:



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- UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage – beginning with a preamble statement “noting that the cultural heritage and the natural heritage are increasingly threatened with destruction not only by the traditional causes of decay, but also by changing social and economic conditions which aggravate the situation with even more formidable phenomena of damage or destruction.” From this point, the Convention places the onus on State Parties to create primary legal and regulatory protections for the designated areas and parallel international oversight (Art 5, 7).
- UNESCO Convention for the Safeguarding of Intangible Cultural Heritage – including protections for and recognition of Indigenous and traditional knowledge as a form of intangible cultural heritage.
- UNESCO Convention on the Protection of the Underwater Cultural Heritage – providing definitions of underwater cultural heritage (Art 1), regulating State-based activities that impact on underwater cultural heritage (Art 5) (“Each State Party shall use the best practicable means at its disposal to prevent or mitigate any adverse effects that might arise from activities under its jurisdiction incidentally affecting underwater cultural heritage”), and extending the rules stemming from the Convention to State territorial waters and the contiguous zone and continental shelf (Art 8).
- 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, notably the need to “ensure that future generations are not exposed to pollution which may endanger their health or their existence itself” (Art 5) as well as obligations of current generations as stewards of natural resources for future generations (Art 4). Also providing that “the present generations have the responsibility to identify, protect and safeguard the tangible and intangible cultural heritage and to transmit this common heritage to future generations.” (Art 7).

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 ILBI 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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IUCN WCEL Briefings for Negotiators for INC-3

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BRIEFING 6 of 10: Circular Economy and Plastic Life-Cycle Issue

**IUCN WCEL BRIEFING FOR NEGOTIATORS
International Legally Binding Instrument INC-3 Session
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 all aspects 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 and INC-2 discussions. To address these issues, the International Legally Binding Instrument (ILBI) negotiations should consider the value of explicit and implicit inclusion of circular economy provisions so as to address the potential for technological growth and change while remedying existing gaps in the plastics life-cycle. The plastic life-cycle should be understood as multi-phased, with each phase requiring inclusion in the ILBI as well as the national action plans, national reporting and related requirements, and other potential oversight and compliance mechanisms. It is critical that the ILBI include methods for national oversight of efforts to address plastic pollution throughout all phases of the plastic life-cycle and ensure space for public-private engagement on these issues.

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, environmentally sound management, and to identify how this can best be promoted through the ILBI. These elements are often linked together, and the text of UNEA resolution 5/14 makes it

IUCN WCEL Briefings for Negotiators for INC-3 (Intergovernmental Negotiating Committee to develop an international legally binding instrument on plastic pollution)

clear that these are important considerations for the ILBI. In this context, it is necessary that the concept of a circular economy as well as sustainable production and consumption be defined in a robust yet flexible manner.

How? There are several potential options through which the concept of the circular economy could be included within the ILBI. The first option would involve the explicit definition of a circular economy. There are several existing definitions, such as those used in States and regional organizations including the European Union, some Canadian provinces, some Australian states, Japan 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 minimized 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 ambit.

The second option would be an implicit definition of a circular economy in the ILBI. 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 ILBI. 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 ILBI 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 ILBI 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 making chemicals.

Finally, the third option could involve a combination of a flexible and dynamic definition of the circular economy in the ILBI that provides latitude for the use of the concept throughout the implementation of the ILBI. 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 ILBI. 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 ILBI is intended to assist.

How? To address the potential for these consequences, the ILBI could include terms to avoid the 'rebound effect', whereby greater efficiency and minimizing harmful environmental impacts leads to an increase in consumption. While it is important for the ILBI 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 utilize significant energy resources and result in increased carbon emissions. The ILBI 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 and many aspects of the discussions at INC-2 included aspects of establishing the phases and the required laws and regulations for them. 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 ILBI. These findings were supported during INC-1 and INC-2, with multiple States emphasizing the need for the ILBI 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 ILBI 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 and continued throughout INC-2. 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 ILBI 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 ILBI acknowledges and seeks to reconcile the potential impacts on 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 ILBI 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 and the terms of many free trade agreements and regional trade agreements. 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 emphasizes 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 ILBI 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 WCEL Briefing Note on Key Concepts from Multilateral Environmental Agreements for the ILBI.

Another identified common theme is the issue of traceability for plastics and plastic-containing products once they reach the downstream phase, including links with illegal trade in the waste sector. This is a critical area for the ILBI to address and would offer the opportunity to bridge the legal and technical knowledge necessary to understand how traceability might work from a scientific and regulatory perspective. The ILBI could build upon this knowledge to include traceability provisions in the national action plan and national reporting requirements. There may be the need for differing tracing technologies depending upon the products at issue, in which case negotiations should include analysis of potential intersections with and methods to address relevant WTO law. Finally, the issue of open burning and similar environmentally damaging means of plastic waste disposal was identified as a key challenge in the downstream phase. The ILBI could address this throughout, ensuring that it is referred to in the preamble, objectives, control measures, and as part of the content for national action plans.



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BRIEFING 7 of 10: Legal Process of Treaty Negotiations

**IUCN WCEL BRIEFING FOR NEGOTIATORS
International Legally Binding Instrument INC-3 Session
Legal Process of Treaty Negotiations**

As part of the triple planetary crisis, pollution is one of the major drivers of biodiversity loss and ecosystem degradation, on land, in the air, in water and in the marine environment. At the same time, the human right to a healthy environment has been recognised by the UN and associated bodies.¹ Additionally, science increasingly has supported the many connections between the impacts of plastic pollution and damage to environmental and human health. While many multilateral environmental agreements (MEAs) address aspects of pollution, especially plastic pollution, none directly govern the full lifecycle of plastic production and pollution, including the many related areas such as trade law and human rights law. In 2022, the UNEA adopted Resolution 5/14, opening the process of negotiating an International Legally Binding Instrument on plastic pollution, including in the marine environment (ILBI).² The Resolution establishes parameters for the process of negotiating the ILBI and functions against the backdrop of international law as well as the established process for negotiating, drafting and creating benchmarks for the treaty creation in existing MEA practice.

There are many steps in the process of advancing from opening negotiations to concluding a final treaty and, for this reason, the IUCN World Commission on Environmental Law has issued the following brief outline for the legal process of treaty negotiations. This outline is framed within the context of the negotiations for an ILBI although this is meant to serve as an

¹ See UNGA, The human right to a clean, healthy and sustainable environment, A/76/L.75 (26 July 2022).

² UNEA, "End plastic pollution: Towards an international legally binding instrument," UNEP/PP/OEWG/1/INF/1 (10 May 2022). IUCN WCEL Briefings for Negotiators for INC-3 (Intergovernmental Negotiating Committee to develop an international legally binding instrument on plastic pollution)

illustration of the general international law norms and practices. Thus, it is widely tailored to explain the common practices of treaty negotiation practice, using standardised terminology although this terminology may differ in practice across the various treaty negotiating systems.

1. Authorization of Treaty Negotiations

In order to begin a formal treaty negotiation process under the auspices of an international organization, it is necessary that there be an authorization of these negotiations by the appropriate governance body within the organization.³ The governance body authorized to make this decision is typically designated in the terms of the organization's foundational text or charter. For instance, UNEA Resolution 5/14 authorized the organization of the process of negotiations with the aim of creating a Plastics Treaty. Consequently, the Intergovernmental Negotiating Committee (INC) on Plastic Pollution was created.

The parameters of the treaty negotiations will be dictated by the terms of the authorizing instrument. For this reason, it is critical to fully understand the contents, intent and scope of the authorizing instrument as well as the procedural requirements it may set out for the negotiation process. These may be subsequently amended by the INC sessions.

2. Conduct and Timing of Negotiations

Much of the timing for the negotiations process is determined by the terms of the authorizing instrument. The questions raised by the timing of negotiations will focus on whether there is a timeframe for the final date of the treaty's conclusion. For example, UNEA Resolution 5/14 established the target ambition date of late 2024 for the conclusion of a draft treaty, with the hope that this would subsequently be adopted in 2025.

There is no limit to the number of sessions that may be held in a standard treaty negotiation, however considerations such as the viability of frequent meetings, the costs and burdens of frequent meetings, and the likelihood of benefits from frequent meetings may influence this decision. For instance, in the ILBI context, it was decided that there would be five INC negotiating sessions between late 2022 and late 2024 in order to generate the draft treaty. The decision was made to hold the events approximately every 5 – 6 months (November 2022, May 2023, November 2023, April 2024 and November 2024).

The question of location is also important for the treaty negotiation process. In some instances, there will be a decision to hold all negotiation sessions in one central location. For instance, over the course of the multiyear negotiations for the High Seas Treaty these sessions were consistently convened under the auspices of the United Nations Convention on the Law of the Sea (UNCLOS) and held in New York, where it is headquartered. In other instances, there may be a decision to hold each negotiation session in a different geographic region. Again, in the Plastics Treaty negotiation context, the decision was made to hold the opening INC – INC-1 – in Punta del Este, Uruguay, with subsequent INCs in France, Kenya, Canada and South Korea, respectively.

3. Role of Stakeholders and Observers

Depending on the scope of the authorization and mandate, stakeholders – whether intergovernmental organizations (IGOs), international organizations (IOs) or non-governmental organizations (NGOs) or scientific experts – have been invited to join the treaty negotiation process as observers. This is critical to ensuring that the expertise levels needed to address

³ For more background on treaty negotiation processes see Alexandra R Harrington, *International Organizations and the Law*, 1st ed (Routledge, 2018); Malcolm N Shaw, *International Law*, 9th ed (CUP, 2021).

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the triple planetary crisis are included throughout the treaty process, including scientific knowledge and vulnerable communities. The place of stakeholders is similar to their roles as observers in a number of international organizations. In this capacity, once accredited by the relevant organizing entity, stakeholders have the ability to attend negotiation sessions and, often, to make statements following the debates of States.

4. Intersessional Meetings

In addition to the main negotiating sessions, there is the possibility for intersessional meetings to be held where there are issues that would benefit from specific discussion prior to the next negotiating session. These are entirely optional, and their use will depend on assessments of factors such as potential utility, the viability of convening the States and stakeholders for them, and the feasibility of holding them if there is a short duration between the main negotiating sessions themselves. The ILBI is an example of a negotiation process where, thus far, the decision has been made not to hold intersessional meetings because of the tight timeframe for the overall negotiations. However, the INC and other partners have engaged in many webinars and events addressing critical topics to allow the discussion process to continue.

Additionally, it should be noted that in some treaty negotiations the States and stakeholders have the ability to submit comments in general or on specific questions raised by the organizing body during the intersessional period. These comments allow States to provide their own views on the issues being addressed in the treaty negotiation process, giving all States the opportunity to make themselves heard in advance of the negotiations and to help guide them. This has been the process in the ILBI negotiations to date.

5. Plenary Meetings and Contact Groups

During the negotiation rounds, meetings of States involved in the negotiations are referred to as plenary meetings. These meetings are places where all States can express their views and where formal, binding votes take place at the appropriate time. Depending on the boundaries established by the organizing body, accredited stakeholders will be seated as observers for the plenary meetings. This means that stakeholders have the ability to listen and, often, may offer interventions in the form of comments made following comments from States. Stakeholders typically do not have the opportunity to make comments during the voting discussions.

In standard procedure, contact groups – issue-focused meetings of smaller groups of States that take place outside the plenary meetings – may be established. The use of contact groups, which are headed by chairs approved by vote of the plenary session, is to clarify certain questions that have arisen and to report back to the plenary. There is no limit on the number of contact groups that can be created during any negotiation round, and they are open to all States that express an interest. Additionally, it is common for accredited stakeholders to be able to attend contact group meetings as observers although they are unable to participate in the discussions.

6. Decision-Making Mode

In the early rounds of treaty negotiations, the intent is to foster discussion and start to build consensus around issue areas and potential terms of the final treaty. When there is agreement by the States, the negotiations will switch from discussions to “decision-making mode,” during which proposals and votes on terms for inclusion in the draft of the treaty will be made. It should be noted that many negotiation rounds will feature both discussions and decision-making modes and that the shift between these phases will often focus on the readiness of the States to come to an agreement on a particular topic (for example, the structure of the treaty).

7. Zero Drafts

When significant progress has been made in the discussion portions of the treaty negotiations process, it is not uncommon for a “zero draft” of the treaty to be offered. This is not a binding document and does not mean that debates or discussions have concluded. Instead, the zero draft is used as a starting point for formal suggestions and proposals from States officially – or for stakeholders making suggestions – to advance toward the proposal of terms during treaty-making mode. In the context of the ILBI, INC-2 mandated that the Secretariat issue a zero draft in advance of INC-3.

8. Treaty Format

Generally, there are two options for the format of a treaty – a specific convention or a framework convention – although a hybrid option is always possible if approved by the States. 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. Examples include the Montreal Protocol and the Basel, Rotterdam and Stockholm Conventions in the environmental law context, as well as the majority of human rights and trade law treaties.⁴

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. Perhaps the most prominent example of this is the United Nations Framework Convention on Climate Change (UNFCCC).

In any treaty format, the use of a preamble is an important aspect for framing the definition and understanding of the issues to be addressed, the core foundational objectives of the treaty, and the interlinkage between the treaty and other existing treaties. For example, in the ILBI context it will be essential that the preamble reference core MEAs as well other human rights treaties and trade agreements.

9. Regime Convergence

There are many MEAs that have intersecting focus areas, and this is particularly true in the case of plastic pollution. For example, the UNFCCC, the Convention on Biological Diversity, and the Basel, Rotterdam and Stockholm Convention have direct connections. At the same time, it should be remembered that a treaty will have impacts in many other fields as well, such as human rights law and trade 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

⁴ For a further discussion of these interrelationships, see IUCN WCEL Briefing for Negotiators, Treaty Regime Interaction (2023), available at <https://www.iucn.org/resources/information-brief/iucn-briefings-negotiators-plastics-treaty-inc-2-session-compilation>. IUCN WCEL Briefings for Negotiators for INC-3 (Intergovernmental Negotiating Committee to develop an international legally binding instrument on plastic pollution)



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agreements to create synergies and mechanisms of coordination between treaty regimes with overlapping terms and areas of regulation.

10. Voting Procedures

Voting procedures are crucial in any setting, and particularly in the context of a treaty negotiation. Typically, these are relatively standardized and agreed upon as a formality in the first round of treaty negotiations. The common practice in treaty negotiations is that each State has one vote and that regional entities may vote together as a block.

11. Approval and Adoption of Treaty Text

When the terms of the treaty have been agreed to by the States through the designated voting procedure, the entirety of the draft treaty text will be voted on by the States. Should this vote for the entirety of the treaty text be positive, the work of the negotiations will be complete but the treaty itself will not be legally binding. Instead, it will be forwarded to the body that requested the negotiations for review and for a vote on adoption. Assuming this body approves the text of the treaty, it will then adopt it and the treaty will be open for signatures. Following the national procedures for ratification, States will provide official notice when this is accomplished and at that point they will be bound by the terms of the treaty.

12. Date of Effectiveness of Treaty

It should be noted that one of the essential terms in any treaty is the designation of the date on which it goes into effect at the global level for those States that have become Parties to it. The choice of this date will reflect the priorities and concerns of those drafting the treaty in terms of ensuring that it has sufficient support to be meaningfully put into place. There are many options, including those that are more general – such as a designated date – or specific – such as when a certain number of States have ratified it or when a certain percentage of producing or consuming States have ratified it.

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BRIEFING 8 of 10: Connections between IUCN’s Plastic Pollution Elimination Timeline and the SDGs

**IUCN WCEL BRIEFING FOR NEGOTIATORS
 International Legally Binding Instrument INC-3 Session
 Connections between IUCN’s Plastic Pollution Elimination Timeline and the SDGs**

In September 2015, the United Nations General Assembly (UNGA) adopted the Sustainable Development Goals (SDGs) as part of its Agenda 2030 Resolution. The UNGA created the SDGs as the successor entities to the Millennium Development Goals (MDGs), which were operational from 2000 – 2015 and intended to address the most pressing global problems at the dawn of the new millennium.

Following the expiration of the MDGs, the decision was made to create the SDGs as a more in-depth and nuanced set of 17 Goals, over 160 targets and several hundred associated indicators to guide UN operations and Member State actions from 2015 to 2030. Generally, the target dates for accomplishment of the SDG are 2030 with some exceptions. The SDGs are voluntary and thus non-binding under international law yet reflect many aspects of customary international law as well as intersections with various treaty regimes.

At its 2020 World Conservation Congress, IUCN’s Members adopted Resolution 7.019 on *Stopping the global plastic pollution crisis in marine environments by 2030*. To accomplish this goal, the Resolution asked the international community to reach a global agreement to combat marine plastic pollution, in order to:

- a. Ensure resource efficiency and circular economy through the elimination of unnecessary production and use of plastic, in particular single-use items, and through the promotion of innovation along the entire value chain, facilitating responsible

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management of plastic waste and scrap and stopping leakage in nature and in the oceans;

- b. Promote responsible management of single-use plastic waste and scrap that prevents its leakage into the environment;
- c. Invest in environmentally sound plastic waste collection and recycling and disposal systems, based on separate collection of plastic waste and recycling in the first instance, and other forms of recovery, prevention and alternatives to plastic, where recycling of environmentally sound plastic waste is not possible, considering all their impacts on the environment;
- d. Introduce measures that take appropriate national actions for the prevention and significant reduction of discharges of plastic litter to the ocean, in partnership with relevant stakeholders;
- e. Work with other international efforts, including the Alliance to End Plastic Waste, New Plastics Economy, Consumer Goods Forum Plastics Working Group and Basel Convention Plastic Waste Partnership, to improve knowledge of the sources of plastics and their impact on the environment, and particularly on biodiversity and human health;
- f. Carry out public-awareness measures aimed at sustainable consumption and improved waste management; and
- g. Mobilise technical and financial support to facilitate implementation of these actions.

To facilitate this and in recognition of the increasingly dire issue of plastic pollution, Resolution 7.019 designated 2030 as the target date.

Also at its 2020 World Conservation Congress, IUCN Members adopted Resolution 7.069, *Eliminate plastic pollution in protected areas*, with priority action on single-use plastic products, and urged State Members to act to implement this by 2025.

IUCN's proposed timeline of ending pollution from single use plastic by 2025 and ending all plastic pollution by 2030 in the International Legally Binding Instrument (ILBI) could serve a significant role in facilitating the accomplishment of many SDGs and their targets at a time when all progress in this direction is critical. In the below discussion, this briefing highlights the ties between State accomplishment of a number SDGs and the ILBI, emphasizing the need to use IUCN's robust timelines for ending plastic pollution as a tool for States to implement their commitments under the SDGs.

SDG 2 - End hunger, achieve food security and improved nutrition and promote sustainable agriculture

Target 2.4 provides that States will “ensure sustainable food production systems and implement resilient agricultural practices that increase productivity and production.” In the context of the Plastics Treaty, the adoption of an ambitious timeline such as that proposed by IUCN would allow States to take measures toward sustainability in food and agriculture by mandating transitions away from practices that generate plastic pollution and waste.

SDG 3 – Ensure healthy lives and promote well-being for all at all ages

In Target 3.9, States commit to “substantially reduce the number of deaths and illnesses from hazardous chemicals and air, water and soil pollution and contamination” by 2030. The reduction of plastic pollution is inherently linked to achievement of Target 3.9 both in terms of the emissions needed to produce plastic and the increasingly understood connections between plastic contamination and human health issues. By adopting the ambitious timeline for the elimination of plastic pollution proposed by IUCN, States could also implement measures that advance their commitments to human health under Target 3.9.



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SDG 6 - Ensure availability and sustainable management of water and sanitation for all

In Target 6.3, States undertake to “improve water quality by reducing pollution, eliminating dumping and minimizing release of hazardous chemicals and materials, halving the proportion of untreated wastewater and substantially increasing recycling and safe reuse globally.” By ending single use plastic pollution by 2025 and plastic pollution overall by 2030, IUCN’s proposed timeline for the ILBI would support States in their efforts to implement the requirements of Target 6.3 across the spectrum of water quality as well as recycling and reuse efforts throughout the plastics lifecycle.

SDG 8 - Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all

Included in Target 8.4 is the commitment of States to “endeavour to decouple economic growth from environmental degradation.” By using the ambitious IUCN timeline for ending plastic pollution, the ILBI could further Target 8.4 by requiring the implementation of circular economy, design substitution and sustainable consumption in practice. This would allow for global and national advances in the process of decoupling economic growth from environmental degradation as well as the use of sustainability throughout the supply chain.

SDG 9 - Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation

Target 9.4, “upgrade infrastructure and retrofit industries to make them sustainable, with increased resource-use efficiency and greater adoption of clean and environmentally sound technologies and industrial processes, with all countries taking action in accordance with their respective capabilities,” is linked to the issue of plastics pollution across all levels of the plastics lifecycle. From infrastructural and industrial practices at the production level to consumption level to disposal and end of the product lifecycle, the elimination of single use plastic pollution and plastic pollution generally will require inherent changes. By requiring these changes on an ambitious timeline, the ILBI would also facilitate State implementation of Target 9.4 by 2030.

SDG 11 - Make cities and human settlements inclusive, safe, resilient and sustainable

Given the reality of plastic pollution concentration in and caused by urban settlements, there is a connection between the elimination of plastic pollution and the requirements of Target 11.6 for States to “reduce the adverse per capita environmental impact of cities, including by paying special attention to air quality and municipal and other waste management.” There are also connections between waste management and plastic pollution in the context of cities. Each of these aspects of Target 11.6 would be advanced by adoption of IUCN’s proposed timeline for the elimination of plastic pollution for the Plastics Treaty. As a corollary, reductions in plastic pollution in urban areas could also contribute to the aspects of Target 11.7 regarding State commitments to “provide universal access to safe, inclusive and accessible, green and public spaces.”

At a general level, eliminating plastic pollution on an ambitious timeline could have a supporting effect for State commitments to “protect and safeguard the world’s cultural and natural heritage” in line with Target 11.4. This is especially important since so many of the designated UNESCO sites of natural heritage are linked to water and marine ecosystems that are also impacted by plastic pollution.

SDG 12 - Ensure sustainable consumption and production patterns

Eliminating plastic pollution and regulating the plastics lifecycle on an ambitious timeline such as that proposed by IUCN could assist States with achieving many commitments under SDG 12, notably:

Target 12.1 – “Implement the 10-Year Framework of Programmes on Sustainable Consumption and Production Patterns, all countries taking action, with developed countries taking the lead, taking into account the development and capabilities of developing countries.”

Target 12.5 – “By 2030, substantially reduce waste generation through prevention, reduction, recycling and reuse.”

Target 12.6 – “Encourage companies, especially large and transnational companies, to adopt sustainable practices and to integrate sustainability information into their reporting cycle.”

Target 12.7 – “Promote public procurement practices that are sustainable, in accordance with national policies and priorities.”

SDG 13 - Take urgent action to combat climate change and its impacts

The connection between aspects of plastic production and carbon emissions, as well as the fossil fuels used in plastics, creates a nexus between efforts to regulate climate change and to eliminate plastic pollution generally. In this way, using IUCN’s proposed timeline for plastic pollution elimination could assist States in achieving Target 13.2, “integrate climate change measures into national policies, strategies and planning.”

SDG 14 - Conserve and sustainably use the oceans, seas and marine resources for sustainable development

In Target 14.1, the UNGA can be seen as highlighting the importance of combatting marine pollution on a more advanced timeframe, providing that “by 2025, prevent and significantly reduce marine pollution of all kinds, in particular from land-based activities, including marine debris and nutrient pollution.” Thus, adopting IUCN’s proposed timeframe for eliminating plastic pollution would be critical to ensuring States are able to implement these requirements in relation to plastic wastes within the designated timeframe.

Relatedly, including ghost gear and similar products within the scope of plastic pollution to be eliminated in the ILBI would allow States to further the elements of Target 14.7, “by 2030, increase the economic benefits to Small Island developing States and least developed countries from the sustainable use of marine resources, including through sustainable management of fisheries, aquaculture and tourism,” when combined with an ambitious timeline for the elimination of plastic pollution.

SDG 15 - Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss

Given the potential impacts of eliminating single use plastic pollution, and plastic pollution generally, on preventing degradation of multiple ecosystems through soil, water and associated damage, the ILBI offers the potential for States to take steps toward their commitments in Target 15.3 (“By 2030, combat desertification, restore degraded land and soil, including land affected by desertification, drought and floods, and strive to achieve a land degradation-neutral world”) and Target 15.4 (“By 2030, ensure the conservation of mountain ecosystems, including their biodiversity, in order to enhance their capacity to provide benefits that are essential for



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sustainable development). To facilitate the achievement of these Targets, however, it is necessary to adopt an ambition timeline on the elimination of plastic pollution such as that proposed by IUCN.

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BRIEFING 9 of 10: Connections between IUCN’s Plastic Pollution Elimination Timeline and the GBF

**IUCN WCEL BRIEFING FOR NEGOTIATORS
International Legally Binding Instrument INC-3 Session
Connections between IUCN’s Plastic Pollution Elimination Timeline and the GBF**

In December 2022, the Conference of the Parties (COP) of the Convention on Biological Diversity (CBD) was held in Montreal and adopted the Kunming-Montreal Global Biodiversity Framework (GBF). The GBF represents the next phase of implementation methods for the CBD and associated Protocols and builds from the 2010 – 2022 Aichi Targets. Although non-binding international law, the Parties adopted the GBF to reflect many aspects of customary international law as well as accepted treaty requirements from the CBD and other treaty regimes such as the United Nations Framework Convention on Climate Change (UNFCCC).

Generally, the GBF is organized along parallel timelines of targets to be achieved by 2030 in order to implement established overarching goals by 2050. In this context, the most pressing timelines have been created for the targets which must be achieved by 2030. Within the GBF Targets for 2030 there are many connections with plastic pollution.

At its 2020 World Conservation Congress, IUCN’s Members adopted Resolution 7.019 on *Stopping the global plastic pollution crisis in marine environments by 2030*. To accomplish this goal, the Resolution asked the international community to reach a global agreement to combat marine plastic pollution, in order to:

- a. Ensure resource efficiency and circular economy through the elimination of unnecessary production and use of plastic, in particular single-use items, and through the promotion of innovation along the entire value chain, facilitating responsible



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- management of plastic waste and scrap and stopping leakage in nature and in the oceans;
- b. Promote responsible management of single-use plastic waste and scrap that prevents its leakage into the environment;
 - c. Invest in environmentally sound plastic waste collection and recycling and disposal systems, based on separate collection of plastic waste and recycling in the first instance, and other forms of recovery, prevention and alternatives to plastic, where recycling of environmentally sound plastic waste is not possible, considering all their impacts on the environment;
 - d. Introduce measures that take appropriate national actions for the prevention and significant reduction of discharges of plastic litter to the ocean, in partnership with relevant stakeholders;
 - e. Work with other international efforts, including the Alliance to End Plastic Waste, New Plastics Economy, Consumer Goods Forum Plastics Working Group and Basel Convention Plastic Waste Partnership, to improve knowledge of the sources of plastics and their impact on the environment, and particularly on biodiversity and human health;
 - f. Carry out public-awareness measures aimed at sustainable consumption and improved waste management; and
 - g. Mobilise technical and financial support to facilitate implementation of these actions.

To facilitate this and in recognition of the increasingly dire issue of plastic pollution, Resolution 7.019 designated 2030 as the target date.

Also at its 2020 World Conservation Congress, IUCN Members adopted Resolution 7.069, *Eliminate plastic pollution in protected areas*, with priority action on single-use plastic products, and urged State Members to act to implement this by 2025.

IUCN's proposed timeline of ending pollution from single use plastic by 2025 and ending all plastic pollution by 2030 reinforces these commitments and could be critical to the accomplishment of the GBF Targets by States and the international community as a whole. In the below discussion, this briefing highlights the ties between State accomplishment of a number GBF and the International Legally Binding Instrument (ILBI), emphasizing the need to use IUCN's robust timelines for ending plastic pollution as a tool for States to implement their commitments under the GBF.

GBF Targets

GBF Target 7, addressing the reduction of pollution and negative pollution impacts by 2030, has arguably the most obvious connections to efforts to end plastic pollution, especially the statement in (c) that this is to be achieved by methods including “by preventing, reducing, and working towards eliminating plastic pollution.” Beyond this, however, ambitious targets for the Plastics Treaty such as those proposed by IUCN would assist in the accomplishment of many other GBF Targets.

By eliminating single use plastic pollution by 2025 and plastic pollution generally by 2030, the Plastics Treaty could support the terms of GBF Target 1, “Ensure that all areas are under participatory, integrated and biodiversity inclusive spatial planning and/or effective management processes addressing land- and sea-use change, to bring the loss of areas of high biodiversity importance, including ecosystems of high ecological integrity, close to zero by 2030, while respecting the rights of indigenous peoples and local communities.” The intersections here focus on the scientifically established connections between plastic pollution and biodiversity loss on land as well as at sea. Reducing the flow of plastic pollution into these

ecosystems would represent a concrete step toward lowering the overall rates of biodiversity loss and ecosystem damage.

Similar connections can be made to the terms of GBF Target 2, “Ensure that by 2030 at least 30 per cent of areas of degraded terrestrial, inland water, and marine and coastal ecosystems are under effective restoration, in order to enhance biodiversity and ecosystem functions and services, ecological integrity and connectivity,” and the portions of GBF Target 3 addressing the use of management techniques and protected area status for marine and coastal biodiversity. By ending single use plastic pollution first, followed rapidly by ending plastic pollution generally, the Treaty would necessarily reduce the amount of pollution to threaten the integrity of biodiversity in these areas, helping to facilitate the ways in which Targets 2 and 3 could be accomplished and the burdens placed on States in the process. Incorporating these timelines into the Plastics Treaty could also advance many related aspects of GBF Target 11, “restore, maintain and enhance nature’s contributions to people, including ecosystem functions and services, such as the regulation of air, water and climate, soil health, pollination and reduction of disease risk, as well as protection from natural hazards and disasters, through nature-based solutions and/or ecosystem-based approaches for the benefit of all people and nature.”

Science continues to demonstrate the existential threat to posed by plastic pollution to all species, including the most vulnerable, and to the ecosystems that are essential to their survival, such as spawning grounds and beach hatching grounds. Against this background, the timelines for ending plastic pollution proposed by IUCN could advance GBF Target 4 as it seeks to reduce the threats to species on the verge of extinction as well as those identified as being at risk and those in the process of recovery.

GBF Target 8, “Minimize the impact of climate change and ocean acidification on biodiversity and increase its resilience through mitigation, adaptation, and disaster risk reduction actions, including through nature-based solutions and/or ecosystem-based approaches, while minimizing negative and fostering positive impacts of climate action on biodiversity,” raises another aspect of connection to plastic pollution. At their core, plastics are based on fossil fuels, and efforts to eliminate plastic pollution will potentially result in the reduction of emissions from fossil fuels as a result. This connection can be advanced through the inclusion of circular economy provisions in the ILBI as well.

The focus of GBF Target 10 is to “ensure that areas under agriculture, aquaculture, fisheries and forestry are managed sustainably, in particular through the sustainable use of biodiversity,” and includes aspects relating to food security. An ambitious timeline for ending plastic pollution by 2030 would facilitate Target 10 given the connections between fisheries and forestry-related plastic pollution, including single use fishing gear and the practice of abandoned or ghost-gear. Further, a timeline such as that proposed by IUCN would facilitate Target 10 by reducing the amount of plastics which can enter the food system through plastic waste.

Given the prevalence of plastic pollution in urban areas, especially in large urban areas, GBF Target 12 could also benefit from an ILBI with ambitious timelines for ending plastic pollution such as those proposed by IUCN. Target 12 provides that, by 2030, States commit to “significantly increase the area and quality, and connectivity of, access to, and benefits from green and blue spaces in urban and densely populated areas sustainably, by mainstreaming the conservation and sustainable use of biodiversity, and ensure biodiversity-inclusive urban planning, enhancing native biodiversity, ecological connectivity and integrity, and improving human health and well-being and connection to nature, and contributing to inclusive and sustainable urbanization and to the provision of ecosystem functions and services.”

As has been highlighted by IUCN, plastic pollution is inherently connected to biodiversity, and the inclusion of this nexus is critical for the ILBI as well as for laws, rules and policies relating to these areas at the national level. Recognition of this and inclusion of an ambitious timeline for eliminating plastic pollution would thus further the terms of GBF Target 14, to “Ensure the full integration of biodiversity and its multiple values into policies, regulations, planning and development processes, poverty eradication strategies, strategic environmental assessments, environmental impact assessments and, as appropriate, national accounting, within and across all levels of government and across all sectors, in particular those with significant impacts on biodiversity, progressively aligning all relevant public and private activities, and fiscal and financial flows with the goals and targets of this framework.” Relatedly, GBF Target 15 addresses the role of the private sector in achieving the GBF as a whole, stressing the need for monitoring and reporting that includes business and private sector actions to assist in biodiversity-related measures. Accomplishing this could be tied in part to private sector requirements and measures relating to ending plastic pollution, especially if this is done on an ambitious timeline which will require robust action from the private and public sectors.

GBF Target 16, addressing sustainable consumption and consumer choices, could be advanced by using the proposed IUCN timeline since the elimination of single use plastic pollution and plastic pollution overall would necessitate a shift to more sustainable consumption practices. This would also advance the elements of Target 16 related to the reduction of waste.

In connection with trade issues, GBF Target 18 provides for measures to “identify by 2025, and eliminate, phase out or reform incentives, including subsidies, harmful for biodiversity, in a proportionate, just, fair, effective and equitable way, while substantially and progressively reducing them by at least \$500 billion per year by 2030, starting with the most harmful incentives, and scale up positive incentives for the conservation and sustainable use of biodiversity.” Including the elimination of single use plastic pollution by 2025 in the Plastics Treaty could allow States and the international community to take significant steps toward this and could ensure that subsidies and other reforms are implemented in a coordinated manner that is also in accord with WTO law.

In terms of reporting and monitoring, the GBF provides for the use of global means of analysis, as well as national reporting procedures and national biodiversity strategies and action plans.¹ As a part of this, efforts have been taken to identify early indicators that can be used for these reporting systems, several of which could also be reflective of the impacts of an ambitious Plastics Treaty timeline for ending plastic pollution. These indicators include air quality and pollution emissions, those relating to forest health and quality, those relating to water and marine health and quality, fishing practices that would relate to abandoned ad ghost gear, life cycle regulations, and trade and financial measures.²

¹ GBF sect J.

² Monitoring framework for the Kunming-Montreal Global Biodiversity Framework, CBD/COP/DEC/15/5 (19 December 2022). IUCN WCEL Briefings for Negotiators for INC-3 (Intergovernmental Negotiating Committee to develop an international legally binding instrument on plastic pollution)

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BRIEFING 10 of 10: Free Trade Agreement Convergence and the Plastic Pollution Treaty

**IUCN WCEL BRIEFING FOR NEGOTIATORS
International Legally Binding Instrument INC-3 Session
Free Trade Agreement Convergence and the Plastic Pollution Treaty**

Key messages:

The envisaged scope of the Plastic Pollution Treaty, as articulated by United Nations Environment Assembly (UNEA) resolution 5/14, includes all aspects of product design and use, the circular economy and elements of the plastic life-cycle as vital elements for addressing plastic pollution and production. As recognized in UNEA Resolution 5/14 and discussed more fully in the IUCN WCEL Briefing for Negotiators on Regime Convergence, the creation and implementation of the International Legally Binding Instrument (IBLI) will involve connections across multiple fields of law and policy. Following INC-1 and INC-2, it is clear that a number of suggestions for the IBLI – including the regulation of the plastics life-cycle, encouragement of alternatives and substitutes, mandatory reporting of certain chemicals and polymers in plastic products and labelling of plastics products – will connect to international trade law. While much of the discussions on these connections has focused on ensuring compliance with World Trade Organization (WTO) laws and practice, this briefing addresses the relationships between Regional Trade Agreements and Free Trade Agreements (collectively, FTAs) since such agreements are often the site of significant legal advancements in environment, labour, intellectual property and related laws and rules.

These relationships will be critical for negotiating the IBLI in a way that facilitates trade law commitments, ending plastic pollution, addressing environmental impacts of plastic pollution, incorporating just transitions, protecting human health, ensuring the viability of intellectual property law systems, and generating sustainable innovations in design, use and management

of plastic products. As the briefing emphasizes, there are areas of intersection between FTAs and many aspects of the IBLI but this can be seen as a complementary system rather than a source of competition or concern. Whether through providing areas in which the regulation of plastic pollution can be coordinated in a way that does not impede trade or reinforcing commitments to human rights, just transitions, sustainable development and environmental commitments that connect to the IBLI or ensuring that activities such as the disclosure of certain elements of plastics comply with intellectual property requirements and labelling protections, FTAs represent an important consideration in creating coherence with the IBLI and existing international legal regimes.

1. Relevant FTA Preamble Elements

The specific inclusion of environmental protection, conservation, and legal regimes relating to the environment are staple elements of many FTAs, as are statements regarding the interconnected nature of trade law and environmental commitments at the international and national levels.¹ Some FTAs also reference the need to address climate change, marine protection and fisheries as unifying elements for trade and environmental practice.²

Many FTAs, particularly more recent agreements, feature preamble statements regarding the commitment of State Parties to the fundamental rights of workers, their need for protection, and cooperation between State Parties in the field of labour issues.³ Often these statements are linked to endorsement of the agreement as a means to increase employment opportunities and standards, as well as standards of living within the State Parties *per se*. Inclusion of references to the work of the International Labour Organization (ILO) and ILO conventions in preambles is another method of linking trade and labour concerns in the FTA context.⁴

Referencing, and reiterating the role of, human rights and trade agreements and the Universal Declaration of Human Rights is a common practice in FTA preambles.⁵ Similarly, FTAs often include preamble language that includes international human rights law generally, and in some instances references to regional human rights law regimes are included as well.

Many FTAs contain references to the promotion and inclusion of sustainable development as a general matter⁶ and often specifically include the Sustainable Development Goals (SDGs). Additionally, some FTAs containing references to sustainable development also link directly to international or regional treaties, including MEAs, and collaboration with international

¹ For direct links to the RTAs and FTAs discussed in this brief, see World Trade Organization, Regional Trade Agreements, <https://www.wto.org/english/tratop_e/region_e/region_e.htm>, accessed 13 August 2023. Korea Canada FTA; Korea US FTA; Korea EFTA RTA; New Zealand Taiwan FTA; EU, Colombia and Peru RTA; EU UK FTA; UK Georgia FTA; UK Turkey FTA; UK Ukraine FTA; EFTA Central America RTA; EFTA Hong Kong RTA; EFTA Indonesia RTA; EFTA Philippines RTA; EFTA Ukraine RTA; Korea Peru FTA; Japan Peru FTA; EFTA Montenegro RTA; New Zealand Korea FTA; EU Moldova FTA; CETA; EU Singapore FTA; EU Vietnam FTA; PACER; USMCA; CPTPP; Canada Ukraine FTA; Canada Honduras FTA; Canada Korea FTA; Canada Jordan FTA; Canada Panama FTA; US Panama FTA; US Colombia FTA; Canada Colombia FTA; Canada Costa Rica FTA; Canada Israel FTA; Singapore New Zealand FTA; CAFTA – DR; US Morocco FTA.

² See EU UK FTA; UK Georgia FTA; UK Turkey FTA; UK, Iceland, Norway and Liechtenstein RTA; EU Central America RTA.

³ See Korea Canada FTA; Korea EU FTA; Korea US FTA; USMCA; CPTPP; Canada Ukraine FTA; Canada Honduras FTA; Canada Jordan FTA; Canada Panama FTA; US Panama FTA; Canada Colombia FTA; Canada Israel FTA; CAFTA-DR.

⁴ CARIFORUM UK RTA; Bosnia and Herzegovina EFTA FTA; EFTA GCC RTA; EFTA Georgia FTA; EFTA Hong Kong FTA; EFTA Indonesia RTA; EFTA Philippines RTA; EFTA Ukraine RTA; UK, Iceland, Norway and Liechtenstein RTA; CETA; Korea US FTA.

⁵ Korea EFTA RTA; Bosnia and Herzegovina EFTA FTA; UK Georgia FTA; UK Ukraine FTA; EFTA Georgia RTA; EFTA Hong Kong RTA; EFTA Indonesia RTA; EFTA Philippines RTA; EFTA Ukraine RTA; UK, Iceland, Norway and Liechtenstein RTA; EU Central America RTA; Korea US FTA; Canada Korea FTA; Canada Jordan FTA; Canada Panama FTA.

⁶ Korea Canada FTA; CARIFORUM UK FTA; Turkey Denmark FTA; EU Pacific States RTA; EU, Colombia and Peru RTA; UK Georgia FTA; UK Ghana FTA; UK Japan FTA; UK Moldova FTA; EFTA Central America RTA; EFTA GCC RTA; EFTA Georgia RTA; EFTA Montenegro RTA; EFTA Hong Kong RTA; Korea EU FTA; Iceland China FTA; UK Kenya FTA; UK Pacific States RTA; NZ Korea FTA; EU Central America RTA; EU Moldova FTA; CETA; EU Singapore FTA; PACER; Indonesia Australia FTA; Canada Ukraine FTA; Korea China FTA; Canada Honduras FTA; Canada Korea FTA; Hong Kong Chile FTA; Canada Jordan FTA; Canada Panama FTA; Canada Colombia FTA; Canada Costa Rica FTA

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organizations.⁷ The incorporation of sustainable development into the economic development practices of the State Parties and connections between aspects of human rights protections, labour practices, environmental protection and conservation and sustainable development are areas of particular focus.

A smaller number of FTAs contain preamble text recognizing the connection between development and Indigenous and traditional knowledge preservation, protection and fair compensation.⁸ Taken together, the preambles of FTAs offer support for many elements of the ILBI and its enforcement, providing support for the understanding that FTAs and the ILBI can be reinforcing in their convergence.

2. Free Trade Agreements Referencing Multilateral Environmental Agreements

An increasing trend in FTAs has been explicit reference to, and provisions governing, the nexuses between trade and State Party commitments under MEAs. While there are multiple forms to these commitments, overall the use of these references stresses that potential sources of tension between trade agreements and the ILBI can be mitigated. In some instances, the language used in these provisions includes references to compliance with the terms of specific MEAs without reference to the interactions between future MEAs and the free trade agreement regime.⁹ In other examples, the treaty language used includes an express list of MEAs to which the States Parties have obligations yet note that this list can be amended with the agreement of all Parties.¹⁰ In these instances, there is space for the inclusion of the Plastic Pollution Treaty on the list of included treaties in the future. Generally referencing specific MEAs, efforts to be inclusive have included explicit statements regarding the inclusion of annexes, amendments, protocols and other related aspects of MEA practice as with the ambit of the covered definition of the MEAs themselves.

Further, other FTAs have opted to avoid the use of references to specific MEA regimes, instead recognizing that State Parties also have international and national legal obligations under MEAs to which they are parties. As the Korea-Australia FTA makes clear, “the Parties shall continue to seek means to enhance the mutual supportiveness of multilateral environmental agreements and international trade agreements to which both are party,” while also requiring that “the Parties shall consult, as appropriate, with respect to negotiations on trade related environmental issues of mutual interest.”¹¹ Relatedly, the CPTPP provides that “the Parties emphasise the need to enhance the mutual supportiveness between trade and environmental law and policies, through dialogue between the Parties on trade and environmental issues of mutual interest, particularly with respect to the negotiation and implementation of relevant multilateral environmental agreements and trade agreements.”¹²

Some FTAs have made express reference to the connection between their MEA commitments and their labour commitments under various ILO conventions. In this context, language used references commitments made by the State Parties respectively, though it is generally unclear from the text whether this is an ongoing commitment or only extends to commitments in place at the time of FTA ratification. For example, the EU Singapore FTA expressly includes references to the UNFCCC, Kyoto Protocol and the Paris Agreement as a shared commitment. Similarly, the EU Vietnam FTA contains provisions specifically relating the application and

⁷ See UK Turkey FTA; EFTA Central America RTA; UK Southern and Eastern African States RTA; EU Central America RTA.

⁸ Canada Korea FTA; USMCA; Canada Jordan FTA; CPTPP; Singapore New Zealand FTA.

⁹ See Canada Korea FTA; Korea US FTA; USMCA; Canada Ukraine FTA; Canada Honduras FTA; Canada Jordan FTA; Canada Panama FTA; Canada Chile FTA; Chile Central America RTA.

¹⁰ US Panama FTA; US Colombia FTA.

¹¹ Korea-Australia FTA; see also EU Singapore FTA; EU Vietnam FTA; Peru Australia FTA; CPTPP.

¹² CPTPP; see also Korea US FTA.

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sharing of best practices regarding the UNFCCC system, the CBD system, and CITES. More generally, this FTA also contains provisions encouraging conservation of biological diversity, the sustainable use of biodiversity, and measures to address agriculture.

3. FTAs with Dedicated Human Rights Provisions

As a fundamental matter, some FTAs incorporate human rights and related issues, whether as legally binding principles or as dedicated topics of provisions within the agreement. It should also be noted that many FTAs follow the terms of GATT Article XX regarding allowable exceptions to their provisions in the event of legitimate concerns for public safety, health and the environment. Additionally, these FTAs tend to contain provisions in which States commit not to use trade arguments as a rationale for lowering health, environmental and labour law protections. Thus, these provisions can be linked to many aspects of the expected terms of the ILBI as well as the human rights associated elements of them.

Indigenous Communities and Traditional Knowledge

Increasingly, FTAs across multiple jurisdictions have included provisions relating to Indigenous communities and the role of traditional knowledge in trade as part of human rights considerations. Where all State Parties to an FTA have strong Indigenous community presence and governance engagement, these agreements often stress the ability of communities to work with each other as well as through the governments of their respective States.¹³ In this capacity, the treaty terms stress that collaboration is intended to foster information sharing and collaboration in the economic and non-economic spheres, including biodiversity preservation as well as traditional knowledge.

Indigenous and traditional knowledge has also been linked to biodiversity and the CBD, especially Article 8(j), in some FTAs. These FTAs tend to emphasise the connections between such issues and trade as well as being freestanding international legal obligations of the State Parties.¹⁴ Links are also established between the application of these FTA provisions and access and benefit sharing for genetic resources, conservation efforts regarding biodiversity and the sustainable use of biodiversity. Additional connections have been made between compliance with TRIPs and the protection of Indigenous and traditional knowledge as elements of these FTAs.

Gender and Women's Rights

While it is not uncommon for FTAs to contain provisions against discrimination *per se*, some have extended this to include dedicated articles and chapters relating to gender rights. Through such provisions, these FTAs seek to end multiple forms of legal, regulatory and societal inequalities in women's ability to enter into commercial and trade-related activities, limited their employment and professional opportunities, and restricted their business participation opportunities.¹⁵

Rights of the Child

Efforts to protect children in FTAs can be seen to exist broadly in the sense of State Parties agreeing to incorporate international labour laws and standards because these include prohibitions on certain types of child labour and protections for working children. Additionally, there is some precedent for the inclusion of international laws on the rights of the child,

¹³ See New Zealand Taiwan FTA Ch 19, arts 1 & 2.

¹⁴ EU, Colombia and Peru RTA Ch 2, art 201; UK Ukraine FTA art 219; Korea Peru FTA art 17.5; EU Ukraine FTA 229.

¹⁵ COMESA Ch 24; Canada Israel FTA Ch 13.

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including for social and economic contexts as well as trade and labour related practices.

4. FTAs with Labelling and Packaging Restrictions

Following INC-1 and INC-2, it has become clear that one of the areas of nexus between potential ILBI provisions and international trade law is that of imposing labelling and packaging requirements for plastics and plastics containing products. With this in mind, it should be highlighted that many FTAs have expanded to include marketing and labelling provisions that seek to ensure compliance with the WTO TBT Agreement and ensure that labelling and packaging does not constitute a practical barrier to trade.¹⁶

5. FTAs with Investment and Environment Provisions

In recent years, FTAs have consistently expanded in scope to include provisions, and often dedicated chapters, on investment as well as strictly trade measures. At the same time, these investment provisions tend to include elements on investment and environment which uniformly enshrine the principle that State Parties should not derogate from their laws relating to environment, health and safety.¹⁷ Given the need for public and private investment as part of the ILBI, these intersections across the FTA and ILBI provisions are vital.

6. FTAs with Relevant Intellectual Property Provisions

FTA provisions relating to intellectual property protection tend to be framed within the setting of regime convergence in relation to WIPO and associated treaty regimes that relate to many aspects of products, trade and services. In keeping with commitments at the WTO level and within the confines of the WIPO related treaties, FTAs tend to contain provisions requiring the extension of national treatment in all aspects of intellectual property. Based on the discussions at INC-1 and INC-2 regarding the need for plastics and plastic-related product composition disclosure for at least some elements under the ILBI, these intersections will be important to ensuring the continued viability of the FTAs and the ILBI system.

Patents

Of note in the context of efforts to potentially require disclosure of certain aspects of chemical, polymer and other plastics and plastic-containing product contents as part of the IBLI are the connections between the FTA provisions on intellectual property that incorporate the Patent Cooperation Treaty and the Patent Law Treaty. While one of the key points for the FTAs containing provisions on intellectual property is the idea of patent eligibility regardless of nationality, these allowances are not absolute. In the context of the IBLI discussions, it is notable that exceptions typically exist for patent applications where there is a threat to human, animal or plant health or to the environment generally as a result of the proposed patent.¹⁸

At the same time, provisions in these FTAs tend to contain expanded protections for those seeking to market certain classes of products in the pharmaceutical and agricultural chemicals

¹⁶ EU, Colombia and Peru RTA; EU Armenia FTA art 131; UK Georgia FTA art 48; UK Ukraine FTA art 56; EEU Vietnam RTA art 6.6; EU Central America FTA art 138; EU Ukraine FTA art 58; EU Moldova FTA art 175; EU Georgia FTA art 49; EU Vietnam FTA art 5.9.

¹⁷ Korea Canada FTA art 8.10; New Zealand Taiwan FTA Ch 12, Sect A, art 16; EFTA Philippines RTA Ch 7, art 7.1; New Zealand Korea FTA art 10.13; Korea Chile FTA Pt III, Ch 10, art 10.18; PACER Art 19; Indonesia Australia FTA art 14.16; USMCA art 14.16; Peru Australia FTA arts 8.16, 8.18; CPTPP art 9.16; Canada Korea FTA art 8.10; Canada Panama FTA art 9.16; US Panama FTA art 10.11; US Colombia FTA art 10.11; Korea US FTA Art 11.10; Canada Colombia FTA art 9.16; Australia US FTA art 11.11; Colombia Costa Rica FTA art 12.8; CAFTA-DR art 10.11; US Morocco FTA art 10.10.

¹⁸ Korea US FTA art 18.8; EU Korea FTA art 20.36; Hong Kong Georgia FTA art 8.

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context. These provisions ensure that domestic producers or others with access to the required marketing disclosures not use them in a way that would cause damage to the rights holder.¹⁹ Considering the discussions surrounding content disclosure requirements for chemicals, polymers and other aspects of plastics and plastic containing products, this model could be useful as a model to balance the interests of producers and the application of the IBLI.

Technology Transfer

Technology transfer is a common provision in many elements of recent FTAs. Some have included parameters for facilitating technology transfer and for the evolution of these needs and practices within the scope of their intellectual property provisions. For example, the EU Korea FTA contains an agreement for the Parties to continue their dialogues on technology transfer, noting that “particular attention shall be paid to the conditions necessary to create an adequate enabling environment for technology transfer in the host countries, including, inter alia, issues such as development of human capital and legal framework.”²⁰

7. FTAs with Sustainable Development Provisions

Many FTAs adopted following the 2015 contain references to the SDGs as an element of their commitments to incorporate sustainable development in trade and related practices. Additionally, FTAs with provisions relating to sustainable development tend to include references to a number of MEAs as well as ILO Conventions and Declarations as supporting laws and tenets. These provisions also mirror many of the issues discussed for inclusion in the ILBI, again emphasizing points of beneficial convergence.

Human Rights

FTAs with chapters or provisions relating to sustainable development are inherently connected with legal and societal protections for human rights and public participation as part of the development process. For example, in the CARIFORUM UK FTA, the State Parties stated that the objective of sustainable development would form a part of the agreement and that “the application of this Agreement shall fully take into account the human, cultural, economic, social, health and environmental best interests of their respective population and of future generations.”²¹

Cooperation in international fora

FTAs using sustainable development provisions tend to include basic yet vital terms requiring that the State Parties “shall endeavour to cooperate in all international fora where issues relevant to this partnership are discussed.”²² Other iterations of this provision include bilateral and regional fora within the ambit of covered activities.²³

Governance

In a number of FTAs, issues relating to sustainable development and connected provisions are placed under the jurisdiction of a dedicated committee structure for guidance and support to the State Parties. Where issues such as MEAs, which would fall under the jurisdiction of other

¹⁹ Korea US FTA art 18.9; EU Korea FTA 20.45 (applicable to agricultural chemical products only), 20.48, 20.50 (applicable to pharmaceutical products only).

²⁰ EU Korea FTA art 10.3.

²¹ CARIFORUM UK RTA Pt I, art 3(2)(a).

²² Id. at Pt I, art 6; EU Pacific States RTA art 5.

²³ See EFTA Bosnia and Herzegovina RTA art 40; UK Ghana FTA art 9; EFTA Central America RTA art 9.10; EFTA Georgia RTA art 10.9; EFTA Indonesia RTA art 8.11; EFTA Philippines RTA art 11.9; EFTA Montenegro RTA art 38.

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FTA-created committees, are identified as having connections to the work of committees responsible for sustainable development, there tend to be provisions facilitating the coordination and cooperation of all implicated aspects of the committee structure. In many instances, the designated committees are required to hold meetings with and facilitate involvement of members of civil society.

When questions of mutual interest exist between State Parties regarding sustainable development provisions or related topics, many FTA regimes have established a system for intergovernmental consultations, with the option of including designated experts as part of the evaluation process.²⁴

Trade and Investment Favouring Sustainable Development

In the FTA context, provisions have encouraged and supported the adoption of environmentally focused production, research and development, technological advances and alternative forms of energy. Importantly for the IBLI context are the aspects of these provisions seeking to encourage the use of eco-labelling for goods and services in the State Parties.²⁵

Biodiversity Connections

Many FTAs with sustainable development provisions include explicit references to and encouragement of trade policy that also includes the protection and conservation of biodiversity, with pollution reduction measures often falling under this rubric. These provisions contain references to the CBD – and sometimes the CITES as well – in the trade context as well as within the parameters of domestic law and regulation in the State Parties.²⁶

Forests and Forestry

Forests and forestry are the subject of efforts to ensure sustainable management and transparent harvesting of timber within the context of FTAs with focuses on sustainable development.²⁷ In some instances, connections with the CITES regime are made in these provisions, and often there are soft law connections to voluntary certification and reporting schemes existing to ensure the traceability and legality of forestry and timber harvesting.

Fish and Fisheries

Many FTAs discussed in this section contain specific terms relating to fish and fisheries management. Included in these elements are the conservation of fish-related resources as well as sustainable management of these resources and their ecosystems and relationships with applicable Regional Fisheries Management Organizations. Other aspects of fisheries included are illegal, unreported and unregulated fishing practices, intersections with the work of the FAO in relation to these issues, and data and information sharing.

8. FTAs with Labour Provisions

²⁴ See EU, Colombia and Peru RTA arts 283 – 286; UK Georgia FTA art 234; UK Japan FTA art 16.17 – 16.18; UK Moldova FTA art 345 – 346; UK Ukraine FTA art 287; Korea EU FTA art 13.14 – 13.15; EU Ukraine FTA art 301; EU Moldova FTA art 378 – 379; EU Georgia FTA art 242 – 243.

²⁵ EFTA Bosnia and Herzegovina RTA art 39; EU Armenia FTA art 276; UK Georgia FTA art 223; UK Japan FTA art 16.6, 16.12; UK Moldova FTA art 334; UK Ukraine FTA art 279; EFTA Georgia RTA art 10.8; EFTA Philippines RTA art 11.7; Korea EU FTA art 13.6; EFTA Montenegro RTA art 37; EU Ukraine FTA art 293; EU Moldova FTA art 367; EU Georgia FTA art 231.

²⁶ See EU, Colombia and Peru RTA art 272; EU Armenia FTA art 277; EU UK FTA art 402; UK Georgia FTA art 224; UK Japan FTA art 16.6; UK Moldova FTA art 335; EU Moldova FTA art 368; EU Georgia FTA art 232.

²⁷ EU, Colombia and Peru RTA art 273; EU Armenia FTA art 278; EU UK FTA art 403; UK Georgia FTA art 225; UK Japan FTA art 16.7; UK Moldova FTA art 336; EFTA Central America RTA art 9.8; EFTA Georgia RTA art 10.6; EFTA Indonesia RTA art 8.8; EFTA Philippines RTA art 11.8; EU Moldova FTA art 369; EU Georgia FTA art 233.

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General principles

In recognition of the links between international labour law and free trade practices, the FTAs with labour specific chapters and provisions tend to include explicit reference to and connections with ILO Conventions and related tenets of human rights law. For the majority of these FTAs, the core elements of the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up are included as both rights and guiding principles. In the context of the ILBI, critical elements of the ILO Declaration that feature in these FTAs are abolishing child labour and “the elimination of discrimination in respect of employment and occupation.”

Outside of these core principles, some FTAs have expanded the objectives of labour-related chapters and provisions in relation to trade practices and the enforcement of State Parties’ laws and rules.²⁸ For example, the New Zealand Taiwan FTA articulates the objectives of its labour chapter as including the “promot[ion of] the common aspiration that free trade and investment should lead to job creation, decent work and meaningful jobs for workers, with terms and conditions of employment that adhere to internationally recognized fundamental labour principles and rights; . . . promot[ion of] the improvement of working conditions and living standards within the Parties, and protection and observance of fundamental labour principles and rights.”²⁹ In the UK Georgia FTA, there is agreement that “the Parties shall strengthen their dialogue and cooperation on promoting the Decent Work Agenda, employment policy, health and safety at work, social dialogue, social protection, social inclusion, gender equality and anti-discrimination, and corporate social responsibility and thereby contribute to the promotion of more and better jobs, poverty reduction, enhanced social cohesion, sustainable development and improved quality of life.”³⁰ Expansively, the EU Central America FTA includes cooperation between the State Parties to “(a) ensure decent work for all; (b) create more inclusive and well-functioning labour markets; (c) extend social protection coverage; (d) exchange best practices in the field of workers mobility and transfer of pension rights; (e) promote social dialogue; (f) ensure the respect for the fundamental principles and rights at work identified by the International Labour Organization's Conventions, the so-called Core Labour Standards, in particular as regards the freedom of association, the right to collective bargaining and non-discrimination, the abolition of forced and child labour, and equal treatment between men and women; (g) address issues relating to the informal economy; (h) give special attention to disadvantaged groups and to the fight against discrimination; (i) develop the quality of human resources through the improvement of education and training, including effective vocational training; (j) improve the health and security conditions at work, notably by strengthening labour inspectorates.”³¹

Governance systems

In most FTAs with specific labour chapters and provisions, a system of institutional collaboration tools between designated governmental ministries exists to facilitate dialogue and, where requested, consultations on matters of shared concern. Included in these practices is often the creation of cooperative action in labour generally, particularly including safety, working conditions, and the availability of multiple forms of training.

Collaboration in international fora

²⁸ See CETA art 23.3; USMCA art 23.12; Peru Australia FTA art 18.7; CPTPP art 19.10; Canada Jordan FTA art 11-2, 11-3; Canada Panama FTA art 18.02; Canada Colombia FTA art 1603; Canada Israel FTA art 12.1.

²⁹ New Zealand Taiwan FTA ch 16, art 1.

³⁰ UK Georgia FTA art 322; see also UK Moldova FTA art 32; EU Georgia FTA art 348.

³¹ EU Central America RTA art 42; see also EU Georgia FTA art 349.

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To reinforce the terms of FTAs in relation to labour laws and practices, many agreements contain provisions for cooperation in both employment and social policy issues at international and regional fora, including organizations.

9. FTAs with Dedicated Environmental Provisions

Overall, the FTAs which address the trade and environment relationship can be seen as encompassing a series of ongoing requirements that are typically expansively written and can be argued to provide space for the inclusion of new international treaty regimes such as the IBLI. These elements include reference to MEAs as well as the use of environmental law principles such as the use of impact assessments, the principle of prevention, the principle of precaution, and the polluter pays principle.

Sustainable Use of Natural Resources

The idea of sustainability is key to many FTAs with environmentally focused chapters and provisions. In connection with this, there are often express links between State Party commitments to sustainable use of natural resources and environmentally sound management. Additionally, some FTAs with environmental provisions contain elements to foster trade that favours the environment, including renewable energy sources, the development of environmental technologies, and the use of energy efficient goods and services.

Related Areas of Intersection between Environment and Trade Provisions

FTA provisions relating to trade and environmental intersections address a number of areas critical to negotiations and implementation of the IBLI. These areas include: mandatory and voluntary environmentally focused labelling,³² technology transfer and capacity building,³³ natural resources, especially forests, fish and fisheries, and agriculture,³⁴ renewable energy and energy efficiency,³⁵ market mechanisms and voluntary market mechanisms,³⁶ sustainable production,³⁷ green economy provisions,³⁸ waste management,³⁹ air quality,⁴⁰ water quality,⁴¹ industrial pollution,⁴² chemicals and chemicals management,⁴³ climate change regulation,⁴⁴

³² CARIFORUM-UK RTA art 190; EU Central America RTA art 288; EU Singapore FTA art 12.10.

³³ CARIFORUM-UK RTA art 190; EU UK FTA art 390.

³⁴ See CARIFORUM-UK RTA art 190; EU Armenia FTA art 45; UK Georgia FTA art 283; UK Iceland/Liechtenstein/Norway RTA art 13.26, 13.27, 13.28; EU Central America RTA art 289; EU Ukraine FTA art 361; CETA art 24.10; EU Singapore FTA art 12.7; USMCA art 24.17 – 24.21; CPTPP art 20.17.

³⁵ El Salvador-Ecuador FTA art 6; CPTPP art 20.15.

³⁶ New Zealand Taiwan FTA ch 17 art 4; EU Armenia FTA ch 4.

³⁷ EU Armenia FTA art 45; UK Ukraine FTA art 338.

³⁸ EU Armenia FTA art 45; EU Ukraine FTA art 360; EU Georgia FTA art 301; CPTPP art 20.15.

³⁹ EU Armenia FTA art 46 – 48; EU UK FTA art 390; UK Georgia FTA art 283; UK Ukraine FTA art 338; UK Iceland/Liechtenstein/Norway RTA art 13.29; Israel Ukraine FTA art 7.2; Peru Australia FTA art 19.1; CPTPP art 20.1; Canada Ukraine FTA art 12.1.

⁴⁰ EU Armenia FTA art 46 – 48; EU UK FTA art 390; UK Georgia FTA art 283; UK Moldova FTA art 79; UK Ukraine FTA art 338; EU Ukraine FTA art 361; EU Georgia FTA art 302; USMCA art 24.9; CPTPP art 20.5; Chile Thailand FTA art 11.5.

⁴¹ EU Armenia FTA art 46 – 48; EU UK FTA art 390; UK Georgia FTA art 283; UK Moldova FTA art 79; UK Ukraine FTA art 338; UK Iceland/Liechtenstein/Norway RTA art 13.23, 13.24; EU Ukraine FTA art 361; EU Georgia FTA art 302; Chile Thailand FTA art 11.5.

⁴² EU Armenia FTA art 46 – 48; EU UK FTA art 390; UK Georgia FTA art 283; UK Moldova FTA art 79; UK Ukraine FTA art 338; EU Ukraine FTA art 361; EU Georgia FTA art 302; Israel Ukraine FTA art 7.2; USMCA art 24.1; Peru Australia FTA art 19.1; CPTPP art 20.1; Canada Ukraine FTA art 12.1.

⁴³ EU Armenia FTA art 46 – 48; EU UK FTA art 390; UK Georgia FTA art 283; UK Moldova FTA art 79; UK Ukraine FTA art 338; UK Iceland/Liechtenstein/Norway RTA art 13.22; EU Ukraine FTA art 361; EU Georgia FTA art 302, ch 4; USMCA art 24.1; Chile Thailand FTA art 11.5.

⁴⁴ EU Armenia FTA ch 4; UK Georgia FTA ch 4; UK Moldova FTA ch 4; UK Ukraine FTA art 338; Korea Peru FTA art 9.8; Chile Thailand FTA art 11.5.

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biodiversity protection and conservation,⁴⁵ marine and aquatic environment protection,⁴⁶ and agriculture and food security.⁴⁷

Governance

There is a split in governance practice between FTAs granting capacity for State Parties to create committees or similar governance systems to facilitate the implementation of environmental commitments and those that create dedicated bodies from the outset. In some instances, these provisions contain advanced systems for the use of consultations and convening of expert panels to address issues raised between the State Parties.

Monitoring and Compliance

As in other areas of trade cooperation, FTAs with environmental provisions often include processes for monitoring of the agreement's terms and consultation between the State Parties. Additionally, a core of FTAs with environmental provisions either contain terms that commit State Parties to enforce their environmental laws and rules and then create the capacity for investigations of claims of non-compliance or that utilize separate side agreements to enshrine stand-alone compliance mechanisms.

Interrelationship with MEAs

In some of the applicable FTAs, there is an agreement that State Parties will also assist each other with the implementation of their shared MEA obligations as well as in the negotiations of environmental issues in which all State Parties are interested. At the same time, there are commitments on the part of many FTAs to facilitate the implementation of shared MEA provisions as a matter of their domestic law, including trade practice.

⁴⁵ EU Armenia FTA art 46 – 48; COMESA art 125; Korea Peru FTA art 9.6; UK Iceland/Liechtenstein/Norway RTA art 13.25; USMCA art 24.1; Peru Australia FTA art 19.1; CPTPP art 20.1; Canada Ukraine FTA art 12.1; Chile Thailand FTA art 11.5.

⁴⁶ EU UK FTA art 390; UK Iceland/Liechtenstein/Norway RTA art 13.26; CETA art 24.11; EU Singapore FTA art 12.8; USMCA art 24.10, 24.12 (including references to controlling marine litter, plastic litter and microplastics in the marine environment); CPTPP art 20.6; Chile Thailand FTA art 11.5.

⁴⁷ EU UK FTA art 390; UK Iceland/Liechtenstein/Norway RTA art 13.30.

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