

# AFRIPAC



## The Intergovernmental Negotiating Committee Chair's Non-Paper Comparisons

A legal analysis for negotiators

Written for the IUCN GRID-Arendal AFRIPAC Project

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## Introduction to this legal brief

As discussed in the previous [IUCN WCEL legal briefing in advance of INC-5](#), the INC Chair issued his [Non-Paper 3 \(30 October 2024\)](#) as a public facing document containing his suggestions for how to potentially create a framework for an international legally binding instrument on plastic pollution (ILBI), including in the marine environment. This was a suggested way forward, not mandated by INC-4, however after much debate during the opening session of INC-5 it was adopted as the negotiating text to be used although with the caveat that Members could offer additional textual proposals as they wished.

During INC-5, the Chair attempted to break the deadlock in negotiations by issuing two subsequent iterations of Non-Papers, the [Non-Paper \(29 November 2024\)](#) and the most recent [Chair's Text \(1 December\)](#). Ultimately the INC-5 session finished without a textual agreement and was adjourned to INC-5.2. Among the uncertain aspects of logistics and details for INC-5.2 is which version of the non-papers will be used for as the basis for negotiations since there were voices of opposition to and support for all of these documents during the closing Plenary session.

With this in mind, and until there is clarity on the documents to be used, this briefing addresses the progression in the texts of the various non-papers, highlighting areas of commonality and differences between the documents as well as discernible trends. Since the article numbers varied in some instances across the text, this briefing uses the topic headings rather than the article numbers.

Throughout this brief, the following documents are referred to in bold:

- **[IUCN WCEL 2024 analysis of Non-Paper 3](#)** (building on the [Compilation Document](#) Text)
- **[Non-Paper 3 \(30 October 2024\)](#)**
- **[Non-Paper \(29 November 2024\)](#)**
- The most recent **[Chair's Text \(1 December\)](#)**

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Table 1, over the next three pages, summarises the points of difference in each non-paper for ease of review.

## Summary of Comparisons

Table 1. Summary Table of Comparisons

Element/Article	Non-Paper 3 (30 Oct 2024)	Non-Paper 2 (29 Nov 2024)	Chair's Text (1 Dec 2024)
Preamble	Several proposed provisions were removed entirely from subsequent Non-Papers. 5 provisions carried over.	Opened with 2 main preamble provisions, including Option 1 & 2 with some proposed, updated provisions.	Lacks language relating to critical legal and regulatory topics. See the list of 5 provisions carried over.
Objective	Proposed Objective does not bridge proposals which were suggested as most widely accepted among States.	Proposal for the Objective text was differently phrased at this point.	Objective was rewritten in full, but it is noted that without brackets, links back to Non-Paper 3 Objective
Scope	Did not provide for Scope	Provided 2 options.	Omitted Scope
Principles/Principles and Approaches	Unlike the CompDoc, did not include an article containing Principles.	Principles included.	Principles included, but modified from Non-Paper 2, though under the heading of Principles and Approaches, included a no-text option as Option 0.
Definitions	Contained a proposal for a Definitions article that would include "Party," "Regional economic integration organization," "Plastics," "Plastic products," "Plastic waste," "microplastic." Some terms defined.	Contained similar options and definitions, and proposed definitions for new terms, notably "life cycle," "nanoplastics," "plastic pollution," "Primary Plastic Polymer," as well as proposal to include "recycled plastics" and "secondary plastic" though without terminology.	Significantly shorter, containing only one set option for text for terms: "Party," "Plastic," "Plastic pollution," "Plastic product," "Plastic waste," "Regional economic integration organization." The definitions for "Party" and "Regional economic integration organization" remained the same as in the previous iterations.
Plastic Products and Chemicals of Concern	Space for a dedicated article, as provided for in a Revised Zero Draft and Compilation Document, reflecting aspects of experts' discussions at Bangkok intersessional. Did not include text.	Contained textual proposals under the heading "Plastic Products [and Chemicals of Concern as Used in Plastic Products".	Proposal here represents the potential for a stronger system of regulating plastic products and chemicals of concern than the second non-paper. Also contains several new proposals, two controversial annexes.
Exemptions	Generally, the terms of the Exemptions provisions were the same between the three iterations of the Non-Papers.	Included.	The primary differences include the removal of references to chemicals in the reporting element of 4(b) in the Chair's Text version.
Plastic Product Design	Proposed text suffers from several critical weaknesses which do not correlate to the discussions at the Bangkok intersessional meetings.	Expanded on previous Non-Paper, contained bracketed elements that would have made terms of article either binding or voluntary.	Committed to use of binding, "shall," terminology, though with the qualification of "taking into account national circumstances and capabilities." Also reduced some aspects of terms proposed in previous Non-Paper.
Supply/Sustainable Production	Does not include specific textual proposals.	Includes proposal.	Includes proposals that build on Non-Paper 2.
Emissions and Releases/Releases and Leakages	In this text, there is a regulatory issue as some listed entities are contingent on being included in ILBI; also does not address issue of leakages per se.	Included brackets with options for the terms to be either binding or voluntary; focus shifted to "Releases and Leakages."	Made the provisions of article strictly binding using "shall" only; expanded on the list of covered items to be eliminated, including provisions relating to lost and otherwise abandoned fishing gear.
Plastic Waste Management	Article is essential for ILBI to meet full lifecycle task mandated by UNEA Res. 5/14; it is important that the proposal begins with a binding requirement in (1). Proposed commitments in (2) are voluntary, which is	Text is bracketed in terms of "shall" versus "should," which is a change from the binding language used throughout Non-Paper 3. Additionally, it should be stressed that both the second Non-Paper. Contained	Switched back to binding "shall" language in the Chair's Text (1 December) with the exception of the provisions on EPR in (4) and the ability of the COP to authorize methods of coordinating with the Basel Convention.

Element/Article	Non-Paper 3 (30 Oct 2024)	Non-Paper 2 (29 Nov 2024)	Chair's Text (1 Dec 2024)
	problematic for certainty in terms of connected financing, and other reasons. The efforts to address trade in plastic waste products under (3) and (4) do not meet the necessary specificity for these measures to be applied in a uniform way; on in compliance with existing WTO, trade law commitments of State Parties.	provisions which would make it mandatory for State Parties to ensure environmentally sound management of transboundary plastic waste shipments.	Contained provisions which would make it mandatory for State Parties to ensure environmentally sound management of transboundary plastic waste shipments as in Non-Paper 2.
Existing Legacy Plastics Pollution	Proposed (1) in this non-paper is concerning because it removes many of the bracketed options which would have included multiple stakeholders in process of identifying and mitigating legacy plastics; provisions of (3) weaken efforts to bring in multiple voices. In (2), the language used is legally imprecise.	Bracketed "shall"; shifts obligations under (1)(a) from "Identify, evaluate and prioritize" to "Identify, evaluate and monitor," which was retained in the Chair's Text. Similar modifications of other text throughout.	Removed the brackets on "should" while removing the binding, "shall" option. The ability of the COP to authorize work programmes in order to facilitate the implementation of the article was added here.
Just Transition	Legally problematic, it does not use a definition of just transition accepted in international or regional settings.	Significantly reduced binding textual elements regarding implementation and facilitation of just transition-related measures.	Further weakened in context as provision was made voluntary.
Financial Mechanism	Chair suggested potential elements rather than making a set of textual recommendations.	Proposed title and scope of this article had changed to "Financial [Resources and] Mechanism," reflecting the orientation of Chair and INC-5 discussions.	A shift in inclusion of proposed, bracketed language that would, depending on the iteration used, potentially shift burden of financing solely and explicitly to developed States. Also would potentially make the requirement of developing State Parties, particularly LDCs and SIDS, implement the obligations of the ILBI dependent upon their ability to receive financing and financial support as well as capacity building and technology transfer assistance.
Capacity Building, Technology [Technical] Assistance and Technology Transfer, including International Cooperation	Would combine multiple articles in Compilation Document into one set of both binding and voluntary measures. Absent is potential for a dedicated cooperation mechanism for technology transfer (currently proposed in the Compilation Document).	Expanded to 7 articles and shifted wording of paragraph (1) to the focus to provision of assistance rather than the idea of capacity as the first priority. Paragraph (3) of here placed emphasis on elements of safety and sustainability for alternatives, non-plastic substitutes.	Expanded and includes specific references to assistance for LDCs, SIDS, developing State Parties. Paragraph (3) of Non-Paper 2 provisions were removed here.
Implementation and Compliance	Absent here is the potential for a dedicated cooperation mechanism for technology transfer within the governance structure, as is currently proposed in the Compilation Document. Provisions to ensure that technology transfer is accomplished in a way that is agreeable to all sides is omitted. Further, international cooperation has been omitted.		Created a Committee to "facilitate the implementation of, and promote compliance with," the ILBI and vesting it with extremely limited powers.

Element/Article	Non-Paper 3 (30 Oct 2024)	Non-Paper 2 (29 Nov 2024)	Chair's Text (1 Dec 2024)
National [Action] Plans	Entirely voluntary provision.	Revised title to include "Action."	Would make the requirement that developing country Members comply with terms of article dependent on effective implementation of the Financial Mechanism article of the ILBI.
Reporting	Dedicated article, potentially strong.	Retained.	Shortened many elements of these terms, added in language that would make developing country reporting obligations dependent on the operationalization of funding from the Financial Mechanism provisions of the ILBI.
Effectiveness Evaluation [and Monitoring]	Dedicated article, potentially strong.	Provisions were condensed.	Provisions were condensed.
Information Exchange	Dedicated article, potentially strong.	Condensed and renamed.	Similar to Non-Paper 2 text but renamed.
Health	Dedicated article, potentially strong.	Was weakened in 2 subsequent papers, as well as for a no text option in Non-Paper 2	Proposed either to remove the article and ensure references to human health throughout the ILBI text or to await the potential drafting of a new article
Conference of the Parties	Proposed that the COPs would meet every two years. There was a significant paring down of the articulated functions of the COP in the Chair's Text.		
Secretariat	Contained article for the Secretariat but text that is shorter and less specific in 2 later Non-Papers.		
Settlement of Disputes	Article introduced use of arbitration as an option in a way that is not typical of a MEA.	Remained the same in the Non-Paper (29 November 2024) and the Chair's Text 1 December.	
Amendment of the Convention	Contained a dedicated article which stayed the same in later iterations although the Chair's Text 1 December included brackets around the reference to the ¾ majority vote provision in (3).		
Adoption and Amendment of Annexes	Contained a dedicated article and remained the same in subsequent versions.		
Right to Vote	Contained a dedicated article and remained the same in subsequent versions.		
Signature	Contained a dedicated article and remained the same in subsequent versions.		
Ratification, Acceptance, Approval or Accession	Contained a dedicated article and remained the same in subsequent versions.		
Entry into Force	Contained a dedicated article that remained the same in subsequent versions, except subsequent versions had options for either 50, 60 or 97 State Party ratification as a requirement and entry into force as happening either 90 or 120 days thereafter.		
Reservations	Contained a dedicated article and remained the same in subsequent versions.		
Withdrawal	Contained a dedicated article and remained the same in subsequent versions.		
Depositary	Contained a dedicated article and remained the same in subsequent versions.		
Authentic Texts	Contained a dedicated article and remained the same in subsequent versions.		

## Preamble

[Non-Paper 3 \(30 October 2024\)](#) contained multiple proposals for text in the preamble, including five which were then transferred to the second [Non-Paper \(29 November 2024\)](#) and the most recent [Chair's Text \(1 December\)](#).

These five provisions included in the Chair's Text are:

- “Noting with concern that the high and rapidly increasing levels of plastic pollution, including in the marine environment, represent a serious environmental and human health problem at a global scale, negatively impacting the environmental, social and economic dimensions of sustainable development,”
- “Recognizing that this Convention and other international agreements in the field of the environment and trade are mutually supportive,”
- “Emphasizing that nothing in this Convention is intended to affect the rights and obligations of any Party deriving from any existing international agreement,”
- “Understanding that the above recital is not intended to create a hierarchy between this Convention and other international instruments,”
- “Noting that nothing in this Convention prevents a Party from taking additional domestic measures consistent with the provisions of this Convention in an effort to protect human health and the environment from plastic pollution in accordance with that Party's other obligations under applicable international law.”

At the same time, **several of the proposed provisions from Non-Paper 3 (30 October 2024) were either removed entirely from the subsequent Non-Papers or significantly changed in terms of content.**

As noted in the [IUCN WCEL 2024 analysis of Non-Paper 3](#), there are legal issues surrounding many aspects of these proposed provisions. The references made to the interaction of treaty regimes are legally without meaning and fail to address the potential challenges and opportunities posed by regime convergence in plastics and related topic areas. This is problematic because a lack of clarity in the preamble could be seen to constrain the future activities of the COPs and could be the source of disagreement between the Parties in the implementation of the ILBI and other treaty obligations. The language proposed in reference to the UN Charter is not the standard used to address and include the growth of international law from the UN Charter onward, and there are many examples of text that has been used in other treaty regimes to more accurately reflect the development of international law in this regard. Similarly, the use of references to the Rio Declaration is incomplete and would benefit from specificity in the applicable and prioritized Rio Principles, as is often standard treaty practice. Additionally, the proposed preamble lacks references to the very instruments which form its history and inform the INC process, such as UNEA Resolution 5/14.

The proposed preamble lacks language relating to legal and regulatory topics that are critical to addressing plastic pollution, including biodiversity, subsidies, a clearly articulated system for imports and exports of plastics products and wastes, and Extended Producer Responsibility (EPR). Further the language “recognizing also the important role played by plastic in human society” does not reflect the provisions of Resolution 5/14 or the legal justifications for convening the INC process and generating the ILBI.

In terms of equity and justice issues, many of the proposed preambular terms are not drafted using standard international law language, resulting in a lack of clarity as to their meaning and future utility, while also failing to reference integral hard and soft law regimes, such as the United Nations Declaration on the Rights of Indigenous Peoples. Similar issues can be found in the text attempting to address the

nexus between labour concerns and plastic, where the language proposed is not standard and is also quite limiting in scope and understanding of the rights of workers and communities throughout the plastics lifecycle.

The second **Non-Paper (29 November 2024)** opened with two main preamble provisions and then provided Option 1 and Option 2 with a variety of proposed, largely updated provisions. One of the two main preamble provisions was the “noting with concern...” text above, and the other, “*Acknowledging* the important role played by plastics in human society and stressing the importance of establishing effective mechanisms throughout the plastic lifecycle to promote plastic circularity and prevent leakage of plastics in the environment,” was retained in the **Chair’s Text (1 December)**. In both Options 1 and 2 of the **Non-Paper (29 November 2024)**, it is clear that despite the new text updates, the terms themselves suffer from the same legal issues as outlined in the **Non-Paper 3 (30 October 2024)** analysis by IUCN WCEL [posted here](#).

It should be noted that the **Non-Paper (29 November 2024)** contains language which would have recognized Indigenous and traditional knowledge, however without including an explicit reference to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), as well as the impacts of plastic pollution on Small Island Developing States (SIDS). While the provisions regarding Indigenous and traditional knowledge were retained in the **Chair’s Text (1 December)**, the provisions regarding the SIDS were removed.

The **Chair’s Text (1 December)** removed references to Options and instead proposed 10 preambular provisions that were largely reflective of those proposed in **Non-Paper 3 (30 October 2024)** and the **Non-Paper (29 November 2024)**. It also contained a new element, “*Noting* the importance of taking into account national circumstances and capabilities in the implementation of relevant provisions of this Convention.”

## Objective

As noted in the [IUCN WCEL 2024 analysis of Non-Paper 3](#), there are legal issues surrounding many aspects of these proposed provisions. As a matter of international law practice, especially in the MEA context, the use of an Objective is an important method of framing the current and potential future trajectory of the ILBI in implementation, thus including these terms is important. However, the concern is that the Objective can also be used to limit the application of the ILBI depending on the phrasing used. In the current instance, the proposed Objective does not bridge the proposals which were suggested as being the most widely accepted among the States. Instead, by using the language “with the ambition of ending plastic pollution,” the proposed text weakens the idea of ending plastic pollution that can be found in UNEA Resolution 5/14 itself.

The **Non-Paper (29 November 2024)** proposal for the Objective text was differently phrased, stating: “*The objective of this Convention is to end plastic pollution, including in the marine environment, [based on a comprehensive approach that address the full life cycle of plastics,] in order to protect human health and the environment.*” This represented a reorientation of the focus in the text to place the main priority on ending plastic pollution, which would have been better aligned to the provisions of UNEA Resolution 5/14.

Finally, in the **Chair’s Text (1 December)** iteration, the Objective was again rewritten to: “The objective of this Convention is to protect human health and the environment from plastic pollution, including in the marine environment [based on a comprehensive approach that address the full life cycle of plastics].” Without the bracketed text, this would revert largely to the **Non-Paper 3 (30 October 2024)** text and associated legal issues. The additional text would include some aspects of UNEA Resolution 5/14 that were not included previously.

## Scope

The proposed text included in **Non-Paper 3 (30 October 2024)** did not provide for a Scope. However, during the INC-5 discussions, it became clear that some Members of the INC felt strongly regarding the potential for including a dedicated article on Scope within the ILBI.

Thus, the second **Non-Paper (29 November 2024)** contained a dedicated Scope article with two options. The Option 1 provision was effectively an Option 0 text in that it is a no text option. Option 2 was largely a rephrasing of the Objectives proposal accompanied by a list of 6 sectors which would have been excluded from the Scope of the treaty and, thus, from the ILBI's provisions. The proposed list of exclusions covered: *“(a) Feedstock such as hydrocarbons and their derivatives, which have to be further processed for serving end uses, and any dual-use items, including among others, monomers and polymers in primary forms made thereof; (b) Plastics use in healthcare; (c) Plastics use in scientific research; (d) Plastics use in experimental research; (e) Plastics use in emergency response to public health incidents and natural disasters; (f) Security applications, including national security.”*

However, the **Chair's Text (1 December)** omitted a Scope article.

## Principles/Principles and Approaches

Unlike the [Compilation Document](#) and previous iterations of negotiating texts, **Non-Paper 3 (30 October 2024)** did not include an article containing Principles. However, as with Scope, during the INC-5 discussions it was clear that some INC Members were committed to the necessity of including them in the ILBI text and, as a result, they were included in the second **Non-Paper (29 November 2024)** text.

Subsequently, the **Chair's Text (1 December)** contained the same textual proposals, though under the heading of Principles and Approaches, and included a no-text option as Option 0. Many of the terms in the Principles and Principles and Approaches textual iterations mirrored elements of the [Compilation Document](#) proposals, including those which IUCN WCEL analysis identified as being legally problematic because they contain concepts that are not recognized principles in international law. Among these problematic terms under Option 1 are 1(f), 1(g), 1(h), and 1(i). Option 2 in both texts is more legally tailored in that it sets out largely well-established principles of international law. Option 3 is a general statement regarding the recognition and incorporation of accepted principles of international law, though combined with an attempt to weight some of these principles more heavily than others.

## Definitions

**Non-Paper 3 (30 October 2024)** contained a proposal for a Definitions article that would include “Party,” “Regional economic integration organization,” “Plastics,” “Plastic products,” “Plastic waste,” and “microplastic.” Proposed text for these definitions was made only for “Party” and “Regional economic integration organization” terms.

The second **Non-Paper (29 November 2024)** contained multiple options for potential textual definitions of “microplastics,” “plastics,” “plastic product,” and “plastic waste.” It also contains the same textual proposals for “Party” and “Regional economic integration organizations” as set out in the **Non-Paper 3 (30 October 2024)** proposal. In addition, it contained proposed definitions for new terms, notably “life cycle,” “nanoplastics,” “plastic pollution,” “Primary Plastic Polymer,” as well as proposal to include “recycled plastics” and “secondary plastic” in the definition section although without proposed terminology.

The Definitions article of the **Chair's Text (1 December)** is significantly shorter, containing only one set option for text for each of the following terms: “Party,” “Plastic,” “Plastic pollution,” “Plastic product,” “Plastic waste” and “Regional economic integration organization.” The definitions for “Party” and “Regional economic integration organization” remained the same as in the previous iterations. In the second **Non-Paper (29 November 2024)**, the definition of “Plastic” is roughly connected to Option 3 for this term, the

term “Plastic pollution” is a combination of Options 2 and 4 here, “Plastic product” is loosely based on Option 2 here, and the definition of “Plastic waste” is based on Option 3 in the second non-paper.

## Plastic Products and Chemicals of Concern

The text of **Non-Paper 3 (30 October 2024)** included space for a dedicated article potentially addressing plastic products and chemicals of concern, as provided for in the Revised Zero Draft and the [Compilation Document](#) and reflecting aspects of the experts’ discussions during the Bangkok intersessional work. This proposal did not include the suggested text, but rather contained a list of the areas in which the Chair believed there could be an agreement.

Both the second **Non-Paper (29 November 2024)**, and the **Chair’s Text (1 December)** contain textual proposals for this article, although the second non-paper uses the heading “Plastic Products [and Chemicals of Concern as Used in Plastic Products]” while the 1 December Chair’s Text simply uses the “Plastic Products” heading. Most of the provisions in the second non-paper are reflected in this most recent non-paper, although they are expanded upon in many instances while also being subject to the use of additional brackets throughout.

Despite the heavy use of brackets in the **Chair’s Text (1 December)**, it represents the potential for a **stronger system of regulating plastic products and chemicals of concern** than the second non-paper, especially in terms of the potential elements of criteria under (1) of the article. However, the second **Non-Paper (29 November 2024)** is clearer, in that it is less bracketed.

The **Chair’s Text (1 December)** also contains a number of new proposals, some of which would address the reporting and governance structure of the ILBI regarding plastic products while others would address trade elements that were largely missing in the **Non-Paper 3 (30 October 2024)** text. This expansion is of note in the context of the creation and operationalization of the proposed Review Committee to oversee application of the article’s terms. The import, export and production elements of the **Chair’s Text (1 December)** include information sharing as well as prohibitions and reporting measures.

Controversially, the **Chair’s Text (1 December)** contains two proposed Annexes with at least basic elements included. The first, referred to as Annex Y, would contain a list of Plastic Products, including, potentially, chemicals, as well as a targeted phase out date for each such covered entity. The second, referred to as Annex [X], would appear to create a list of products to be banned or otherwise removed from domestic markets, although without an explicit place for the use of phase out dates.

## Exemptions

The concept of allowing for exemptions to the phase out dates for covered products under the ILBI has been suggested from the Revised Zero Draft discussions onward and was included in **Non-Paper 3 (30 October 2024)**, the second **Non-Paper (29 November 2024)**, and the most recent **Chair’s Text (1 December)**.

As noted in the [IUCN WCEL 2024 analysis of Non-Paper 3](#), there are legal issues surrounding many aspects of these proposed provisions. The inclusion of primary, and potentially secondary, plastic polymers in the ILBI has been the subject of much discussion from INC1 onward, including during some portions of the Bangkok intersessional meetings. While there has been debate in the definition and inclusion of polymers in the ILBI context, a significant body of States and scientific experts have made strong arguments for the need to include them in the main text of the ILBI’s legal requirements as well as associated annexes. Given the scientific importance of polymers to all phases of the plastic lifecycle, retaining a dedicated article on this topic would strengthen the legal and policy impacts of the ILBI in practice. Similar concerns can be expressed in relation to chemicals of concern and plastic products,

which have been envisioned in separate, dedicated article of the ILBI throughout the treaty drafting and negotiations process, and were discussed in this manner during the Bangkok intersessional work as well

**Generally, the terms of the Exemptions provisions were the same between the three iterations of the Non-Papers.** The primary differences include the removal of references to chemicals in the reporting element of 4(b) in the **Chair's Text (1 December)**.

### Plastic Product Design

**Non-Paper 3 (30 October 2024)** contained a short version of text for a voluntary provision on Plastic Product design that was intended to be further refined in the work of the Diplomatic Conference to COP1 intersessional period. The proposed text for this article in Non-Paper 3 suffers from several critical weaknesses which do not correlate to the discussions at the Bangkok intersessional meetings on the topic and which do not directly support the terms of UNEA Resolution 5/14. These gaps begin with the use of voluntary language, under which *“Each Party is encouraged to take measures.”* In (1)(a), the language used regarding the appropriate standards to be potentially implemented by State Parties is quite vague and fails to contain any binding elements. This can lead to legal uncertainty and uneven application of norms and standards across jurisdictions as well as concerns regarding uniformity in the application of reporting and evaluation requirements under the ILBI. The language used in (1)(b) is similarly non-specific as a matter of law and the links with reporting, national action plans, capacity building, financing and other intersecting elements of the ILBI are not clarified. Overall, the proposal would leave significant gaps in the forms of products to be regulated and the legal entrenchment of circularity and the plastic lifecycle within the binding elements of the ILBI. It should also be emphasized that there are no standards provided for performance of plastic product design and very little on the use of recycled contents in subsequent plastic product design.

The second **Non-Paper (29 November 2024)** contained bracketed elements that would have made the terms of the article either binding or voluntary. It expanded on the terms of **Non-Paper 3 (30 October 2024)** and provided more guidance for the COP as well as the potential for a binding requirement that States ensure the compliance of goods manufactured in their territory with the terms of the ILBI.

Conversely, the **Chair's Text (1 December)** committed to the use of binding, *“shall,”* terminology, though accompanied by the qualification of *“taking into account national circumstances and capabilities.”* It also reduced some aspects of the terms proposed in the second **Non-Paper (29 November 2024)**, notably in terms of condensing the requirements for the COPs and providing more information regarding the articulation of stages for the plastics lifecycle and waste management systems.

### Supply/Sustainable Production

The **Non-Paper 3 (30 October 2024)** proposal does not include specific textual proposals for this article. Both the **Non-Paper (29 November 2024)** and the **Chair's Text (1 December)** contain textual proposals for Supply/Sustainable Production, including an Option 1 which would function as a traditional Option 0/no text option.

The Chair's Text of 1 December builds on the terms of the second **Non-Paper (29 November 2024)**, but contains far more bracketed text and indicates that there was less agreement on what to include in this iteration, although the use of *“shall”* throughout was retained.

### Emissions and Releases/Releases and Leakages

**Non-Paper 3 (30 October 2024)** contained a dedicated article on “Emissions and Releases,” which was discussed from a legal perspective in the IUCN WCEL brief. In (1) of this proposed article, there is a regulatory issue because some of the listed entities are still contingent on being included in the ILBI at all, as is the case for chemicals of concern and plastic products. At the same time, others are precisely

referenced, such as “plastic pellets, flakes and powder from the supply chain” although there is no express agreement on what these terms mean in the ILBI or link to a proposed annex, which could create legal uncertainty and enforcement issues. Further, the Non-Paper iteration of emissions and releases provisions does not address the issue of leakages per se, although this has consistently been raised as an issue by States and stakeholders throughout the INC process.

In second **Non-Paper (29 November 2024)**, the textual proposal included brackets with options for the terms to be either binding or voluntary and the focus of the article was shifted slightly to “Releases and Leakages.”

The **Chair’s Text (1 December)** notably made the provisions of this article strictly binding through the use of “shall” only and expanded on the list of covered items to be eliminated, including provisions relating to lost and otherwise abandoned fishing gear. However, this iteration contains a reduced and voluntary provision regarding research on plastic releases and leakages.

### Plastic Waste Management

**Non-Paper 3 (30 October 2024)** contained a dedicated article on “Plastic Waste Management,” which was discussed from a legal perspective in the IUCN WCEL briefings. This article of Non-Paper 3 is essential for the ILBI to meet the full lifecycle task mandated by UNEA Resolution 5/14 and it is important that the proposal begins with a binding requirement in (1). The specific tie between this article “*taking into account the waste hierarchy and relevant guidelines developed under the Basel Convention*” is legally problematic, however, because it can be seen to link the terms of the ILBI to the decisions of another treaty regime. This is not standard practice in international law, unless the ILBI COP were to expressly adopt such guidelines for use, and even then, there have been debates in other MEA contexts regarding the legality of this practice. The proposed commitments in (2) are entirely voluntary, which is problematic for a number of reasons, including the need for certainty in terms of connected financing, as well as the engagement of sub-national and local communities, and the need to adopt ESM across the plastics lifecycle. The efforts to address trade in plastic waste products under (3) and (4) do not meet the necessary specificity for these measures to be applied in a uniform way or to ensure that they will be used in compliance with existing WTO and other trade law commitments on the part of State Parties. The lack of specificity is also problematic in the sense that they do not use the legal model established in most MEAS which contain trade provisions. This includes the omission of trade-related measures such as subsidies.

Many of these issues regarding the use of aspects of other treaty regimes in the text of the ILBI carried through the second **Non-Paper (29 November 2024)**, and the **Chair’s Text (1 December)**. In the second non-paper the text is bracketed in terms of “shall” versus “should,” which is a change from the binding language used throughout Non-Paper 3. Much of this switched back to binding “shall” language in the **Chair’s Text (1 December)** with the exception of the provisions on EPR in (4) and the ability of the COP to authorize methods of coordinating with the Basel Convention.

Additionally, it should be stressed that both the second **Non-Paper (29 November 2024)**, and the **Chair’s Text (1 December)** contained provisions which would make it mandatory for State Parties to ensure the environmentally sound management of transboundary plastic waste shipments, although again there are some legal issues in the ways in which there are links with the provisions and practices of the Basel Convention.

### Existing/Legacy Plastic Pollution

**Non-Paper 3 (30 October 2024)** contained a dedicated article on “Existing Plastic Pollution,” which was discussed from a legal perspective in the IUCN WCEL briefing. The proposed (1) in this non-paper is concerning because it removes many of the bracketed options which would have included stakeholders,

international organizations, non-governmental actors, academics, scientific and research institutes, various forms of financing institutions and other institutions in the process of identifying and mitigating legacy plastics. By shifting the focus to only State Parties, a number of the constituencies which UNEA Resolution 5/14 identified as essential to the generation of a meaningful ILBI have been removed from this role. The provisions of (3) weaken efforts to bring in these voices as well. In (2), the language used is legally imprecise and it would be more accurate to include something such as *“Parties shall take into account their obligations under relevant international agreements, including but not limited to the BBNJ Agreement.”*

The use of *“shall”* in the **Non-Paper 3 (30 October 2024)** text was subsequently bracketed in the **29 November Non-Paper** which included a potential for the inclusion of *“should”* language as well, and ultimately the **Chair’s Text, 1 December** removed the brackets on *“should”* while removing the binding, *“shall”* option. Additionally, the second **Non-Paper (29 November 2024)** shifts obligations under (1)(a) from *“Identify, evaluate and prioritize”* to *“Identify, evaluate and monitor,”* which was retained in the **Chair’s Text, 1 December**.

Similarly, the text of (1)(b) progressed from *“Take mitigation and remediation measures”* in **Non-Paper 3 (30 October 2024)** to *“Take appropriate mitigation, removal and remediation measures”* in the second Non-Paper to *“Take appropriate removal measures.”* Additionally, the ability of the COP to authorize work programmes in order to facilitate the implementation of the article was added in the **Chair’s Text, 1 December** iteration.

## Just Transition

**Non-Paper 3 (30 October 2024)** contained a dedicated article on *“Just Transition,”* which was discussed from a legal perspective in the IUCN WCEL briefing. The retention of the just transition article is an essential element for ensuring that the ILBI functions in an equitable way that benefits people and the planet. The iteration of just transition in **Non-Paper 3 (30 October 2024)** is legally problematic, however, because it does not use a definition of just transition that has been accepted in international or regional settings. This version of just transition also obliquely references workers who are not waste pickers or otherwise in the informal sector and yet will still be impacted by the application of the ILBI. The voluntary nature of State commitments in (2) and (3) can lead to this provision being weak from a legal, regulatory and enforcement perspective as well.

The second **Non-Paper (29 November 2024)** significantly reduced the binding textual elements regarding the implementation and facilitation of just transition-related measures under the ILBI, instead making even the binding provisions subject to national circumstances. The remainder of the just transitions text in this iteration uses only *“should”* language, including in reporting requirements and the requirements of the COPs, as well as in connection to financing mechanisms under the ILBI. These provisions were further weakened in the **Chair’s Text, 1 December** iteration, which made the entire provision voluntary through the use of only *“should”* and features a parred down set of potential terms.

## Financial Mechanism

The topic of *“Finance, Including the Establishment of a Financial Mechanism,”* was included in the terms of the **Non-Paper 3 (30 October 2024)** proposal although the Chair suggested potential elements rather than making a set of textual recommendations.

By the second **Non-Paper (29 November 2024)** and the **Chair’s Text, 1 December** the proposed title and scope of this article had changed to *“Financial [Resources and] Mechanism,”* reflecting the orientation of the Chair and the INC-5 discussions more concretely on the issue of the financing mechanisms. Significantly, all iterations of the Non-Papers demonstrate that there is little cohesion among the Members of the INC regarding how the financing mechanism should operate and where it should be housed.

Significantly, from the second **Non-Paper (29 November 2024)** to the **Chair's Text, 1 December** there is a shift in the inclusion of proposed, bracketed language that would, depending on the iteration used, potentially shift the burden of financing solely and explicitly to developed States alone.

Additionally, the proposed text in (2) of the **Chair's Text, 1 December** would potentially make the requirement of developing State Parties, particularly LDCs and SIDS, to implement the obligations of the ILBI dependent upon their ability to receive financing and financial support as well as capacity building and technology transfer assistance. This is an expanded version of (2) in the second **Non-Paper (29 November 2024)** text. Importantly, both iterations include provisions on the alignment of financial flows as a potential element of ensuring that all aspects of financial cooperation and assistance, including those in conjunction with the private sector, are advanced for implementation of the ILBI.

### Capacity Building, Technology [Technical] Assistance and Technology Transfer, including International Cooperation

**Non-Paper 3 (30 October 2024)** contained a dedicated article on “Capacity Building, Technology Assistance and Technology Transfer, including International Cooperation,” which was discussed from a legal perspective in the IUCN WCEL briefing. This proposal would combine multiple articles in the [Compilation Document](#) into one short and condensed set of both binding and voluntary measures between State Parties. Absent from this proposal is the potential for a dedicated cooperation mechanism for technology transfer within the governance structure of the ILBI, as is currently proposed in the [Compilation Document](#). Provisions to ensure that technology transfer is accomplished in a way that is agreeable to all sides, which has been stressed by developing countries, LCDs and SIDS, is similarly omitted from these provisions. Further, international cooperation, which provided significant potential legal authority for the Secretariat and the COP to work with other relevant treaty regimes, international agreements, international and regional organizations, and stakeholders has been omitted. Given the cross-cutting and transboundary nature of plastic pollution, omitting this authorization will potentially limit the ability of the ILBI's governance structure to fully function.

From the initial **Non-Paper 3 (30 October 2024)** proposal of a 4-paragraph article, subsequent Non-Papers have caused an expansion to 7 articles and additional brackets throughout. The second **Non-Paper (29 November 2024)** starts by restructuring and ordering the wording of paragraph (1) in a way that shifts the focus to provision of assistance rather than the idea of capacity as the first priority, also addressing a potential issue in legal language from the Non-Paper 3 text.

This was then further expanded on in the **Chair's Text, 1 December** including specific references to assistances for LDCs, SIDS and developing State Parties. Although **paragraph (3) of the second Non-Paper placed an emphasis on elements of safety and sustainability for alternatives and non-plastic substitutes, these were removed within the Chair's Text, 1 December** text. Additionally, this non-paper would potentially establish a dichotomy between developed States and other designated classes of State Parties to the ILBI in terms of implementing the terms of the article in a way that is not as bluntly phrased in the second **Non-Paper (29 November 2024)**.

### Implementation and Compliance

**Non-Paper 3 (30 October 2024)** contained a dedicated article on “Implementation and Compliance,” which was discussed from a legal perspective in the IUCN WCEL briefing. This proposal in Non-Paper 3 would combine multiple articles in the [Compilation Document](#) into one short and condensed set of both binding and voluntary measures between State Parties. Absent from this proposal is the potential for a dedicated cooperation mechanism for technology transfer within the governance structure of the ILBI, as is currently proposed in the [Compilation Document](#). Provisions to ensure that technology transfer is

accomplished in a way that is agreeable to all sides, which has been stressed by developing countries, LCDs and SIDS in particular, is similarly omitted from these provisions. Further, international cooperation, which provided significant potential legal authority for the Secretariat and the COP to work with other relevant treaty regimes, international agreements, international and regional organizations, and stakeholders has been omitted. Given the cross-cutting and transboundary nature of plastic pollution, omitting this authorization will potentially limit the ability of the ILBI's governance structure to fully function. These provisions were shortened somewhat in the second Non-Paper text, which was itself dramatically shortened in the text of the Chair's Text of 1 December.

Ultimately, the text of the **Chair's Text, 1 December** is quite short, simply creating a **Committee to "facilitate the implementation of, and promote compliance with," the ILBI and vesting it with extremely limited powers** to receive requests for review. Issues such as rules of procedure to be used by the Committee were referred to future COPs for decision making.

### National [Action] Plans

**Non-Paper 3 (30 October 2024)** contained a dedicated article on "National Plans," which was discussed from a legal perspective in the IUCN WCEL briefing. The proposed language for national plans in Non-Paper 3 would create **an entirely voluntary reporting system in this context**, which is in many ways weaker than the nationally determined contributions used in the Paris Agreement. It lacks a set timeframe for the filing of national plans as well as required elements of them or other details on their contents as well as on how the COP would review and assess them.

The second **Non-Paper (29 November 2024)** altered the heading of this article to "National Action Plans," although this was changed back to "National Plans" in the **Chair's Text, 1 December**. It should be noted that the language used regarding requirements for State Parties is heavily dependent on the contents of national circumstances and capacities in both iterations, though the 1 December Non-Paper would set a to be determined date by which these plans should be transmitted to the COP. There is a typographic error in this iteration as well, and the same text regarding the "shall" requirement for States to update these plans is listed twice. Additionally, the **1 December Non-Paper** would make the requirement that developing country Members comply with the terms of the article dependent on the effective implementation of the Financial Mechanism article of the ILBI.

### Reporting

**Non-Paper 3 (30 October 2024)** contained a dedicated article on "Reporting," which was discussed from a legal perspective in the IUCN WCEL briefing, which highlighted the need for additional information to be included in the text.

While the **Non-Paper (29 November 2024)** largely retained these provisions, the **Chair's Text 1 December Non-Paper** shortened many elements of these terms and added in language that would make developing country reporting obligations dependent on the operationalization of funding from the Financial Mechanism provisions of the ILBI.

### Effectiveness Evaluation [and Monitoring]

**Non-Paper 3 (30 October 2024)** contained a dedicated article on "Effectiveness Evaluation and Monitoring," which was discussed from a legal perspective in the IUCN WCEL briefing as being a strong proposal. These provisions were condensed in the largely duplicative article proposals under both the **Non-Paper (29 November 2024)** and the **Chair's Text 1 December**.

### Information Exchange

**Non-Paper 3 (30 October 2024)** contained a dedicated article on "Information Exchange," which was discussed from a legal perspective in the IUCN WCEL briefing. In the proposed text, there are many

strong elements. There are several proposals which would facilitate additional forms of information exchange, such as that of workers in various sectors and also throughout the lifecycle.

Many elements of this proposal were condensed and retained under the terms of **Non-Paper (29 November 2024)**, which continued to indicate that these provisions would be binding and use “shall” terminology throughout. However, the **Chair’s Text 1 December** changed this by removing all “shall” terminology and instead making the article entirely voluntary for State Parties.  
Public information, Awareness, Education and Research

**Non-Paper 3 (30 October 2024)** contained a dedicated article on “Awareness, Education and Research,” which was discussed from a legal perspective in the IUCN WCEL briefings as being a strong proposal. Subsequently, this was retitled as “Public Information, Awareness, Education and Research” in both the **Non-Paper (29 November 2024)** and **Chair’s Text 1 December** iterations. While many of the provisions remained the same between these two versions, it should be noted that the terms on promotion and facilitation are less clearly articulated in the **Chair’s Text 1 December**.

## Health

**Non-Paper 3 (30 October 2024)** contained a dedicated article on “Health,” which was discussed from a legal perspective in the IUCN WCEL briefing as being potentially strong yet highlighting concerns over the voluntary nature of the commitments.

The health article was weakened significantly in the **Non-Paper (29 November 2024)**, which also featured a no text option. Ultimately, the fate of this article is left quite unclear in the **Chair’s Text 1 December**, which proposed either to remove the article and ensure references to human health throughout the ILBI text or to await the potential drafting of a new article version by Brazil with assistance from other interested members of the ILBI and largely dependent on being addressed by future COPs.

## Conference of the Parties

**Non-Paper 3 (30 October 2024)** contained a dedicated article on “*Conference of the Parties, including the Ability to Establish Subsidiary Groups,*” and the subsequent Non-Papers changed this wording only to “*Conference of the Parties.*” In both iterations, it was proposed that the COPs would meet every two years. There was a significant paring down of the articulated functions of the COP in the **Chair’s Text 1 December**, making these proposed terms unusual for a standard MEA-based COP provision.

Additionally, both the **Non-Paper (29 November 2024)** and the **Chair’s Text 1 December** contained very basic provisions authorizing the creation of subsidiary bodies as a separate article.

## Secretariat

**Non-Paper 3 (30 October 2024)** contained a dedicated article on “Secretariat.” While subsequent iterations were largely the same, it should be noted that **the articulated powers and functions of the Secretariat were reduced in both later versions, with the result being text that is shorter and less specific** than that typically used in the MEA context.

## Settlement of Disputes

**Non-Paper 3 (30 October 2024)** contained a dedicated article on “Settlement of Disputes,” which was problematic in that it introduced the use of arbitration as an option in a way that is not typical of a MEA. The terms used for this section remained the same in the **Non-Paper (29 November 2024)** and the **Chair’s Text 1 December**.

## Amendment of the Convention

**Non-Paper 3 (30 October 2024)** contained a dedicated article on “Amendment of the Convention.” These terms stayed the same in later iterations although the **Chair’s Text 1 December** included brackets around the reference to the  $\frac{3}{4}$  majority vote provision in (3).

## Adoption and Amendment of Annexes

**Non-Paper 3 (30 October 2024)** contained a dedicated article on “Adoption and Amendment of Annexes,” and these remained the same in subsequent versions.

## Right to Vote

**Non-Paper 3 (30 October 2024)** a dedicated article on “Right to Vote,” and remained the same in subsequent versions.

## Signature

**Non-Paper 3 (30 October 2024)** contained a dedicated article on “Signature,” and remained the same in subsequent versions.

## Ratification, Acceptance, Approval or Accession

**Non-Paper 3 (30 October 2024)** contained a dedicated article on “Ratification, Acceptance, Approval or Accession,” and these remained the same in subsequent versions.

## Entry into Force

**Non-Paper 3 (30 October 2024)** contained a dedicated article on “Entry into Force.” These remained the same in subsequent versions, except that the subsequent versions included options for either 50, 60 or 97 State Party ratification as a requirement and entry into force as happening either 90 or 120 days thereafter.

## Reservations

**Non-Paper 3 (30 October 2024)** contained a dedicated article on “Reservations,” and remained the same in subsequent versions.

## Withdrawal

**Non-Paper 3 (30 October 2024)** contained a dedicated article on “Withdrawal,” and remained the same in subsequent versions.

## Depositary

**Non-Paper 3 (30 October 2024)** contained a dedicated article on “Depositary” and remained the same in subsequent versions.

## Authentic Texts

**Non-Paper 3 (30 October 2024)** contained a dedicated article on “Authentic Texts,” and remained the same in subsequent versions.