

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 is one of a series of ten targeted legal briefs that 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 can be found on <https://www.iucn.org/incplastics> - or by searching <https://www.iucn.org/search?key=plastics>.

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

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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 challenges 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.
