

In particular, IUCN presents three options for entry points to integrate biodiversity language in the ILBI¹:

- **Option 1.** At a minimum, maintain specific language in articles to draw out biodiversity protection and community inclusion, and mainstream the term “Biodiversity” and/or “Ecosystems” across a number of relevant articles, based on the Compilation Text. This is important, as commonly the term “Environment” is not specific enough to acknowledge the scientifically established characteristics and interdependence of ecosystems and species that is reflected in the term “biodiversity.” Thus, the legal text would benefit of more clarity, by mentioning the term Biodiversity explicitly in order to ensure that the scope of the ILBI clearly includes biodiversity concerns and that future Conferences of the Parties (COP) are able to adapt implementation of the ILBI to address changes in the relationship between plastic pollution and biodiversity over time.
- **Option 2.** Add specific biodiversity language in the “International Cooperation” Article to further strengthen coherence with other MEAs.
- **Option 3.** Insert a dedicated, new article on “Biodiversity Aspects” that promotes implementation and compliance to advance nature positive approaches under international and national laws (and/or add specific language in the “Health Aspects Article”, embracing a holistic *One Health approach*).

To allow future COP decisions and resulting implementation actions considering biodiversity aspects, it is recommended that the future Treaty contain as entry points at a minimum the text as noted for Option 1, for instance in the Preambular text, Scope, Objective, Principles, and further key operative terms, in combination with respective language in the International Cooperation Article (Option 2), to ensure synergies on governance, contributions from other MEAs and reporting burdens.

These and other above mentioned **omitted sections of the Compilation Document that are fundamentally linked to the terms and objectives of UNEA Resolution 5/14** and international treaty law practice, **have been added textual options/entry points in the analysis**, following the article per article structure of the Non-Paper.

The overarching concern underlining this analysis and the accompanying textual options is to ensure that the ILBI be a legally significant treaty that addresses all phases of plastic pollution and the plastics lifecycle, encourages convergence and coherence with existing international treaty law, recognizes the core connections between biodiversity protection and plastic pollution, and ensures that all States, stakeholders and civil society members will be represented in its terms.

¹ IUCN, WCEL, Fauna&Flora and ZSL have issued a legal brief with concrete textual options and entry points based on the Compilation Document, which can be consulted on [Biodiversity in the Future Global Plastics Treaty - resource | IUCN](#).

Annex

Legal Analysis of the Chairs Non-Paper ([INC Chair Non Paper 3](#))

It should be noted that the following **textual options** of legal language are based on the text of the Compilation Document unless otherwise noted, and that textual options for new text from IUCN are further highlighted in **green**.

Additionally, while it will be essential that work will be done between the Diplomatic Conference and COP1, it should be noted that this will have to be carefully prescribed in the decisions made by the Diplomatic Conference and that State participation in these efforts will correlate to their ratification of the ILBI.

Preamble (cf. Part I.1 of the Compilation Document)

Overall, the preamble proposal in the Non-Paper is based on the suggestion of “a preamble text that could facilitate further development.” As is standard practice in international law, the preamble is intended to provide an extensive understanding of the background against which the treaty is being adopted, including the motivations and the existing hard and soft law regimes which interact with it. To establish this, there are many existing sources of guidance in MEAs and other treaty regimes **although they have not been reflected in most of the preambular textual proposal in the Non-Paper.**

At the same time, 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. 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 reW*nBT/F3 12 Tf1 0 0 1 71.05 289.1

environment and biodiversity, and promote effective and progressive action at the local, regional and global levels,

Recalling United Nations Environment Assembly resolutions 1/6, 2/11, 3/7, 4/6, 4/7 and 4/91 and 5/14 and affirming the urgent need to strengthen global coordination, cooperation and governance to take immediate action towards the long-term elimination of plastic pollution, including in the marine environment, and to avoid harms from plastic pollution to ecosystems, biodiversity and human activities dependent on them,

the importance of promoting sustainable design of products and materials so as to encourage their ability to be reused, remanufactured or recycled and thus retained in the economy for as long as possible, and [of minimizing the generation of waste,

the importance of cooperation, coordination and complementarity among relevant regional and international conventions and instruments, with due respect for their respective mandates, to prevent plastic pollution and its related risks to human health and adverse effects on human well-being, the environment and biodiversity, including the International Convention for the Prevention of Pollution from Ships of 1973, as modified by the Protocol of 1978 relating thereto and as further amended by the Protocol of 1997; the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal; the Rotterdam Convention on the Prior Informed Consent Procedure for certain Hazardous Chemicals and Pesticides in International Trade; the Stockholm Convention on Persistent Organic Pollutants; the United Nations Convention on the Law of the Sea; the High Seas Treaty addressing areas of biodiversity beyond national jurisdiction; the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter of 1972 and the Protocol thereto; the Global Framework on Chemicals; the United Nations Framework Convention on Climate Change; the Paris Agreement; the Convention on Biological Diversity; the Kunming-Montreal Global Biodiversity Framework; the World Health Organization Framework Convention on Tobacco Control; the GATT, Marrakesh Agreement and associated legal obligations under the World Trade Organization, and other international organizations, regional instruments and programmes, and recognizing efforts led by non-governmental organizations and the private sector,

the importance of incorporating the best available science, including traditional knowledge, Indigenous and local knowledge, in to measures to address plastic pollution and associated harms to the environment, biodiversity and human health,

the imperatives of a just transition to circular economies as part of efforts to control the full lifecycle of plastics and plastic pollution that incorporates all aspects of the formal and informal workforce, and the creation of decent work and quality jobs, and recognizing the role of international organizations, including the International Labor Organization, and regional organizations in advancing just transitions in the plastics and plastic lifecycle context,

States commitment to respect, protect and fulfil human rights in the context of efforts to address plastic pollution for the benefit of present and future generations,

that plastic pollution has its disproportionate impacts on peoples in vulnerable situations such as children, women, Indigenous Peoples, coastal communities, and workers at heightened risk of occupational exposure including workers in informal and cooperative settings and waste pickers in collecting, sorting and recycling of plastics,

the importance of education, training, public awareness, public participation, public access to information and cooperation at all levels on the matter addressed in this instrument,

that subsidies can play an environmentally harmful role throughout the lifecycle of plastics and in the plastic pollution crisis,

Have agreed as follows:]

Article 1 of the Non-Paper (Part I.2 of the Compilation Document) Objective

The proposed Objectives in the Compilation Document – and throughout the history of the Zero Draft and Revised Zero Draft – demonstrate a commitment by many States to the idea of using terminology derived from UNEA Resolution 5/14. As a

- n. Incorporation of and respect for Indigenous knowledge, traditional knowledge and local community knowledge, including the rights recognized in the United Nations

- consistent with [Part II of annex A] and managed in a safe and environmentally sound manner throughout their life cycle, including for their reusability, repairability, recyclability and final disposal;
- c. Require producers, exporters and importers of chemicals, groups of chemicals and polymers of concern, as well as plastics and plastic products which contain them, covered under this article, to provide to governmental authorities **complete and harmonized information about the impacts of such substances on the environment, biodiversity and human health**, and related implications for their safe use, reuse, repair, refurbishment, recyclability and final disposal, based on the provisions of [Part II of Annex A] of this instrument;
 - d. Require producers, exporters and importers of chemicals, groups of chemicals and polymers of concern, as well as plastics and plastic products which contain them, covered under this article, to mark and label them using the designations for marking and labelling set forth in [Part II.13] of this instrument, and in accordance with the terms of [Part II of Annex A], to facilitate their safe and environmentally sound management, use and handling throughout their lifecycle, including their reusability, repairability, recyclability and final disposal.
3. Each Party **shall** include in its reporting pursuant to [Part IV.3] on reporting on progress any measures it has taken to prohibit or to regulate the use of chemicals, groups of chemicals and polymers of concern that have the potential for adverse impacts on the **environment, biodiversity and human health** throughout the product life cycle, or to hinder the safe and environmentally sound management, including recyclability and final disposal, of the product.
 - a. Problematic and avoidable plastics, including single use plastics
 1. Each Party shall take **all** necessary measures to regulate, not allow and phase out the use of problematic and avoidable plastics and plastic products, including single-use plastics, and take measures to reduce and **eliminate** their manufacture, use, production, sale, distribution, import or export **within the Party's territorial jurisdiction**.
 2. The measures taken to implement this provision shall be reflected in the national plan communicated pursuant to [Part IV.1] on national plans.
 3. The governing body shall develop guidance on the regulation of problematic and avoidable plastics and plastic products, **based on information including but not limited to that derived from** scientific criteria, Indigenous knowledge, traditional knowledge, local community knowledge, and the availability and accessibility of sustainable alternatives.
 4. **Each Party shall promote** the safe, environmentally sound and sustainable alternatives to problematic and avoidable plastics and plastic products, including single-use plastics.

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as provided for in [Part V of Annex B]. Each Party shall take all necessary measures to prevent the leak of unintentionally released microplastics into the environment.

2. The measures taken to implement this provision shall be reflected in the national plan communicated pursuant to [Part IV.1] on national plans.
3. Each Party shall share information on the measures taken pursuant to paragraph 1 through the online registry established under [Part IV.6] on information exchange with the aim of promoting transparency.

Each party shall promote research on the scale and scope of leakage of micro and nanoplastics across the full lifecycle of plastics and plastic products and their impacts on the environment, biodiversity and human health.

Each party shall promote transparency and reduce emissions of intentionally added microplastic ingredients and all other forms of microplastics and microplastic pollution.

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. In particular, provisions and measures to promote and enable the reduction of plastics and plastic products, the performance of design throughout the value chain and the safe and environmentally sound management of reuse, refill, repair, refurbishing, repurposing as well as recycling of plastics and plastic products and on alternatives/substitutes, that are nature positive and/or nature based solutions, will be critical for circular economy solutions. Extended Producer Responsibility Schemes should also be addressed under this Part to ensure that there is equity and inclusion in the plastics lifecycle, and that the communities most impacted by plastic pollution – including indigenous people, local communities, women and youth – are provided options for financial support of endeavours to protect themselves and engage in safe and sustainable innovation regarding plastic products across all stages of the plastics lifecycle.

Further, the ILBI text should be clear that recycling is the last stage of waste management options for product design and that efforts should be made to promote the use of reduction, redesign, reuse, refill and repair as measures of first resort.

Textual options

Textual option

Each Party shall take measures to reduce and manage the demand for and production of plastic products, their constituent elements, and plastic pollution, including measures that are based on the best available science, nature based solutions, circularity, sustainability, Indigenous knowledge, traditional knowledge and local knowledge and which promote circularity. In implementing the terms of this section, Parties shall adopt measures addressing, but not limited to, demonstrated risks to the environment, biodiversity and human health, including:

1. Market and price-based measures;
2. Neither granting nor maintaining subsidies and other fiscal incentives to the production of plastic products, their constituent elements and/or plastic pollution;
3. The establishment, as applicable, of regulatory requirements for primary plastic polymer and secondary plastic polymer producers;
4. The incorporation of the sound management of chemicals used in the production of primary plastic polymer and secondary plastic polymer production;
5. The use of renewable raw materials, of energy efficiency, and recycling of plastic polymers.

Article 7 of the Non-Paper (Part II.8 of the Compilation Document) Emissions and Releases

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.

Textual option

1. Each Party shall take effective measures to regulate, **phase out** and eliminate the emission, release **and leakage** of plastic waste, including but not limited to **primary** plastic polymers, chemicals and groups **of chemicals of concern**, plastics and plastic products across their full lifecycle, microplastics and nanoplastics. **In taking such measures, each Party shall take into consideration the technical feasibility and accessibility of plastic and plastic product alternatives, and the impacts on the environment, biodiversity and human health.**
2. The emissions and releases covered under this article shall include, but not be limited to:

- a. Emissions and releases of any form of plastic pollution, including microplastics and nanoplastics into the air, water, soil, environment and key biodiversity areas;
 - b. Emissions and releases of any form of plastic pollution, including microplastics and nanoplastics, from the production, transportation and use of chemicals, groups of chemicals and polymers of concern, plastics and plastic products, as set forth in [Annex A];
 - c. Emissions and releases of any form of plastic pollution, including microplastics and nanoplastics, from the production, transportation and use of chemicals, groups of chemicals and polymers of concern, plastics and plastic products, as set forth in [Annex A], into the air, water, soil, environment and key biodiversity areas.
3. Each Party shall take effective measures to regulate, phase out and eliminate the emission and release of all forms of plastic pollution, including but not limited to plastic pellets, plastic flakes and plastic powder, from all aspects of the full plastics lifecycle, including but not limited to production, manufacturing, handling, storage, use and transportation.
 4. Each Party shall promote scientific and technical innovation to prevent and capture any emission or release of primary plastic polymer
 5. The governing body*, at its first session, shall adopt guidance and guidelines to facilitate the implementation of this is article, including but not limited to emissions and effluent standards, sector-specific standards, best available techniques and best environmental practices, to prevent emissions and releases of plastic pollution and, where appropriate, to remediate all forms of plastic pollution, including but not limited to microplastics, nanoplastics found in the environment, marine resources and key biodiversity areas.
 6. The measures taken to implement this provision shall be reflected in the national plan communicated pursuant to [Part IV.1] on national plans.

Article 8 in the Non-Paper (Part II.9 of the Compilation Document) Plastic Waste Management

This article of the Non-Paper 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). Thus, it is clear that the intention of the UNEA Resolution is for the ILBI to include legal provisions on waste management along with those at the upstream and mid-stream levels, in order to address the full plastics lifecycle. 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. It should also be remembered that the (non) terms of the Non-Paper regarding preamble and international cooperation will potentially be difficult to implement at present and certainly in the context of this Article.

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

1. Each Party shall take effective measures to address abandoned, lost or otherwise discarded fishing gear and reduce, and where possible eliminate, plastic pollution from all forms of fishing gear and prevent fishing gear from becoming abandoned, lost or otherwise discarded. Such measures shall include, but not be limited to:
 - a. Promotion and encouragement of enhanced design and technological capacities for circularity of fishing and aquaculture gear, including as addressed in [Part I of Annex C], to reduce their environmental and biodiversity impacts, increase durability, reusability, repairability and refurbishability as well as their ability to be dismantled, repurposed, and disposed of in a safe and environmentally sound manner;
 - b. Implementation of...

1. Each Party shall not allow transboundary movement of plastic waste, except for the purpose of its safe and environmentally sound management, with the prior informed consent of the importing State, and in a manner consistent with obligations under this instrument*.
2. Where transboundary movement of plastic waste is permitted pursuant to paragraph 1, each Party exporting plastic waste shall establish and implement an export permit requirement for such exports and track the types, volumes and destination of all its exports of plastic waste.
3. Where transboundary movement of plastic waste is permitted pursuant to paragraph 1, each exporting Party shall:
 - a. not allow the transboundary movement to commence until it has received the written consent of the importing State, which shall include that State's assurances that the exported plastic waste will be managed in an environmentally sound manner;
 - b. require the exporter to:
 - i. Provide to the importing State and the importer complete information about the composition of the exported waste, including its contents in chemicals, **groups of chemicals, polymers, microplastics** and plastics, and any associated **impacts on the environment, biodiversity and human health**, based on the relevant harmonized disclosure requirements contained in annex A, including safety data sheets, as relevant;
 - ii. Mark and label the exported waste in accordance with the relevant harmonized labelling requirements contained in annex A; and
 - iii. Comply with generally accepted and recognized international rules, standards and practices for packaging, labelling and transport.

1. Each Party shall promote and facilitate the development, transfer on mutually agreed upon terms, diffusion of and access to up-to-date, **safe and** environmentally sound technologies **relating to** plastic pollution, including those related to collecting, sorting,

- c. The promotion of technical and scientific cooperation, including regional platforms or databases, technical-scientific cooperation projects, and networks of technical centres;
 - d. The implementation of the monitoring obligations including the monitoring of plastics in the environment and the identification of sources of their leakage;
 - e. The use of existing information exchange mechanisms to promote knowledge, best environmental practices and alternative technologies that are environmentally, technically, socially and economically viable.
 - f. Any other kind of cooperation that may be relevant to the objective of the instrument*.
3. Recognizing the connections between biodiversity, climate change and plastic pollution and all phases of the plastics lifecycle, the governing body shall:
- a. With the aim to enhance mutual supportiveness and increase the effectiveness of addressing plastic pollution, consult and collaborate with the governing bodies of relevant international and regional treaty regimes, including the Convention on Biological Diversity and its Kunming-Montreal Global Biodiversity Framework, the UN Framework Convention on Climate Change, the Paris Agreement, the UN Convention to Combat Desertification, the 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 (BBNJ Agreement), the Convention on Migratory Species, the Sendai Framework for Disaster Risk Reduction 2015-2030, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, the Stockholm Convention on Persistent Organic Pollutants, the Minamata Convention and the Global Chemicals Framework;
 - b. invite, as appropriate, input from relevant scientific and technical bodies, including the Science Policy Panel to be established in accordance with M c w'

Article 15 of the Non-Paper (Part IV.3 of the Compilation Document)

workers in various sectors and also throughout the lifecycle, and that are present in the Compilation Document, would make for a stronger legal text.

Textual option

Re-insert Information exchange, Part IV.6

Recognizing the connections between biodiversity, climate change and plastic pollution and all phases of the plastics lifecycle,

1. Each Party shall facilitate the exchange of information relevant to the implementation of this instrument, including on:
 - a. Best practices and policies on sustainable consumption and production;
 - b. Research and technologies, innovation, and green chemistry on voluntary and mutually agreed terms related to plastic;
 - c. Knowledge, including Indigenous knowledge, traditional knowledge and local knowledge obtained with their free, prior and informed consent and the knowledge of workers in the informal plastic sector, inter alia, on environmentally sound waste management of plastics and plastic waste, sources of plastic pollution, exposure of the environment, biodiversity and human health to plastic pollution and the associated risk management and pollution reduction policies, actions and other options;
 - d. Studies and experiences on circular economy and zero waste initiatives; and
 - e. Other innovative solutions.
2. Parties may exchange the information referred to in paragraph directly, through an online registry, to a clearinghouse mechanism to be maintained by the secretariat or in cooperation with other relevant international instruments and organizations, as appropriate through the cooperation mechanism* to be established under this instrument*, particularly through its clearing-house platform. The Secretariat shall serve as a clearinghouse mechanism for information provided by Parties, intergovernmental organizations, regional organizations, partners and other stakeholders related to the implementation of the instrument*.
3. Each Party shall designate a national focal point for the exchange of information under this instrument*, including with regard to the prior informed consent of importing States under [Part II.10] on trade in plastics and plastic products.

Article 18 of the Non-Paper (Part IV.7 of the Compilation Document) Awareness, Education and Research

These provisions would create a strong legal framework that is also in line with those used by other MEAs.

Article 19 of the Non-Paper (Part IV.8 of the Compilation Document) Health

These provisions are the same as the proposal in the Compilation Document, which would create only a voluntary, non-binding system for the development of national and international measures aimed at addressing the intersections between health

