

# Negotiation Timelines of International Legal Instruments:

## Key Considerations for the Future Plastics Treaty

In March 2022, United Nations Environment Assembly (UNEA) resolution 5/14 was adopted to develop an international legally binding instrument on plastic pollution, including in the marine environment. The resolution requested that the United Nations Environment Programme (UNEP) convene an Intergovernmental Negotiating Committee (INC) to begin its work during the second half of 2022 “with the ambition of completing its work by the end of 2024.”<sup>1</sup> The fifth and final scheduled INC is set for Busan, Korea, from November 25 to December 1, 2024.<sup>2</sup>

Two years is a short timeline for negotiating a new multilateral environmental agreement (MEA), and it is especially ambitious to negotiate an MEA to address the complex problem of plastic pollution. To finalize a treaty that is fit for purpose and addresses plastic pollution across the lifecycle, it may be useful for Members to look to examples from recent negotiations, including the Rotterdam and Minamata Conventions, to understand potential pathways forward.

## Historic Precedents for Negotiating Timelines

MEAs have taken varying amounts of time to negotiate treaty text due to a range of factors, ranging from just over a year to nearly five years between the start of negotiations and treaty adoption.<sup>3</sup> In addition, depending on the number of countries required to ratify, it is not unusual for several years to pass between adopting the treaty and its entry into force. Prior negotiating committees have taken a number of different approaches when additional sessions beyond those outlined in the initial timeline have been needed.

For example, the INC for the Rotterdam Convention missed the deadlines set in two UNEP Governing Council decisions but nevertheless continued its work to conclude treaty negotiations successfully. The Rotterdam Convention INC then continued to meet after the diplomatic conference adopted the treaty, but before the first meeting of the Conference of the Parties (COP), for a total of eleven sessions over the course of more than eight years. The Intergovernmental Conference (IGC) on an international legally binding instrument under the United Nations Convention on the Law of the Sea (UNCLOS) on the conservation and sustainable use of marine biological diversity of

areas beyond national jurisdiction (BBNJ) held five sessions over nearly five years but met seven times by holding a “resumed” fifth session and a “further resumed” fifth session, detailed below.

The Diplomatic Conference of Plenipotentiaries can also provide an opportunity for negotiations to continue. In addition, certain types of work can occur after the Diplomatic Conference adopts the treaty text and before the first Conference of the Parties. The Diplomatic Conference to Conclude an International Legal Instrument Relating to Intellectual Property, Genetic Resources and Traditional Knowledge Associated with Genetic Resources under the World Intellectual Property Organization (WIPO) took place 13–24 May 2024, with meetings on text scheduled up until the adoption of the agreement on the penultimate day.<sup>4</sup> While the INC for the Minamata Convention met seven times over the span of six years to complete its work, two of these INCs met after the Diplomatic Conference.

Below are additional details on the extension of meetings to develop the Rotterdam Convention, BBNJ, and Minamata Convention.

### **Rotterdam Convention**

The INC for the Rotterdam Convention missed the deadlines set in two UNEP Governing Council (GC) decisions but continued its work on the treaty until completion. The first mandate adopted in 1995 stipulated that the INC would start its work no later than January 1996,<sup>5</sup> but the first meeting of the INC was not convened until March 1996.<sup>6</sup> The decision also stated that a diplomatic conference would be convened, “preferably no later than early 1997.” The second GC resolution from February 1997 adjusted the timeline, as the INC had not yet completed its work and, therefore, it was impossible for the diplomatic conference to take place in early 1997.<sup>7</sup> The GC invited the INC to continue its work “with the aim of concluding negotiations in 1997,”<sup>8</sup> but the INC did not complete the draft treaty text by the end of 1997. Without another decision by the GC, the INC met for a fifth session in March 1998 to conclude the treaty text.<sup>9</sup> The decision also requested the UNEP Executive Director to convene, in 1997, a diplomatic conference to adopt the instrument,<sup>10</sup> but the diplomatic conference was not held until September 1998,<sup>11</sup> again without a decision by the GC extending the 1997 timeline. After the Diplomatic Conference, the INC held another six sessions as an interim forum leading up to the first COP in 2004,<sup>12</sup> for eleven total meetings of the INC.<sup>13</sup> Prior to the first COP, the INC functioned as an interim secretariat; developed and implemented an interim Prior Informed Consent (PIC) procedure; created an interim Chemical Review Committee that included fourteen additional chemicals in the interim PIC procedure and recommended them for inclusion in Annex III for PIC procedures; and prepared a range of documents and procedures for COP 1, including rules of procedure, financial rules for the operation of the Convention, non-compliance, dispute settlement, and conciliation and arbitration.<sup>14</sup>

## **BBNJ**

The UN General Assembly (UNGA) proposed an Intergovernmental Conference (IGC) on an international legally binding instrument under the United Nations Convention on the Law of the Sea (UNCLOS) on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ).<sup>15</sup> The UNGA initially proposed four negotiating sessions of 10 days each: one in the second half of 2018, the second and third in 2019, and the fourth in the first half of 2020.

Sessions one, two, and three of the IGC occurred as scheduled, but the fourth was scheduled for March 2020 and postponed due to the COVID-19 pandemic.<sup>16</sup> The fourth session took place in March 2022 but failed to conclude the agreement. A fifth IGC session was convened in August 2022, but again, Members could not reach consensus. The Conference, in considering the way forward, “decided to suspend the fifth session and resume it at a later date to be determined.”<sup>17</sup> The fifth session was resumed in March 2023<sup>18</sup> and “further resumed” for a third time in June 2023, where the BBNJ was finally adopted<sup>19</sup> 17 years after the initial BBNJ Working Group in 2006.

## **Minamata Convention**

In February 2009, the UNEP GC agreed to further international action to develop a legally binding instrument on mercury.<sup>20</sup> It called for one Open-Ended Working Group in 2009 and an INC to begin meeting in 2010 to finish by GC-27/Global Ministerial Environment Forum (GMEF) in 2013. Although the INC met five times between 2010 and 2013 and the Diplomatic Conference adopted the Minamata Convention in 2013, key issues outside the already finalized and adopted treaty text required work during the interim period before the first COP.<sup>21</sup>

The INC met for the sixth time in 2014 and also convened an ad-hoc Working Group on the financial mechanism in 2014, after which the INC met for the seventh time in 2016,<sup>22</sup> concluding the initiative to control mercury started at the GC/GMEF in 2001. The final INC prepared a range of guidance documents and draft texts for adoption at the first COP, including on the financial mechanism, rules of procedure, reporting, procedures for exporting and importing mercury, and financial rules. Although the INC continued to work after the Diplomatic Conference, INC-6 and INC-7 were not actually negotiations on the treaty text, as this had already been finalized and adopted.

## Conclusion

The INC to advance the plastics treaty has a number of options for continuing its negotiations, if needed. The INC could suspend its fifth meeting<sup>23</sup> and reconvene for a meeting of INC 5.2 or close its fifth session and agree on the location and date for INC-6. While UNEA resolution 5/14 did set for the INC “the ambition of completing its work by the end of 2024,” it did not mandate that negotiations had to conclude by the end of 2024, in contrast to the decision by the UNEP GCI for the Minamata Convention, which convened the INC “with the goal of completing” the treaty prior to the UNEP GC meeting in 2013.<sup>24</sup>

Additionally, UNEA resolution 5/14 “decides” a number of issues, such as the provisions of the future international legally binding instrument on plastic pollution, but “recommends” that UNEP convene the INC with the ambition of completing its work by the end of 2024.<sup>25</sup> The provisionally applied Rules of Procedure of the INC state that the INC, in consultation with the Secretariat, may set its meetings at dates and locations of its choosing.<sup>26</sup> Furthermore, UNEA resolution 5/14 “requests the Executive Director to convene a diplomatic conference of plenipotentiaries upon completion of negotiations by the intergovernmental negotiating committee,” without setting a specific deadline for completion of the INC negotiations or date for the diplomatic conference of plenipotentiaries, contrary to practice in previous MEAs (indicating flexibility born out of lessons learned from the challenges created by indicating such dates in the mandate).<sup>27</sup>

International conferences, which include multilateral negotiating committees, are generally considered standalone, independent entities that adopt their own rules of procedure rather than operating under the rules of another body.<sup>28</sup> Although some may suggest that a decision by UNEA to request that UNEP convene any additional meetings of the INC beyond 2024 is needed, in light of the careful wording of UNEA resolution 5/14 and previous experiences from negotiations extending beyond the initial timeline for the Rotterdam Convention without a new mandate from the UNEP Governing Council, a decision by UNEA would not be required.

<sup>1</sup> UNEA, Resolution 5/14, End plastic pollution: towards an international legally binding instrument, UNEP/EA.5/Res.14, 2 March 2022.

<sup>2</sup> The first session of the INC took place from 28 November to 2 December 2022, followed by a second session from 29 May to 2 June 2023, a third session from 13 to 19 November 2023, and a fourth session from 23 to 29 April 2024.

<sup>3</sup> For additional details, see, CIEL, Toward a New Instrument Addressing the Full Life Cycle of Plastics: Overview of the Typology of International Legal Instruments, January 2022, Box 3, p. 8–9, <https://www.ciel.org/wp-content/uploads/2022/01/Toward-a-New-Instrument-Addressing-the-Full-Life-Cycle-of-Plastics.pdf>.

<sup>4</sup> WIPO, Diplomatic Conference to Conclude an International Legal Instrument Relating to Intellectual Property, Genetic Resources and Traditional Knowledge Associated with Genetic Resources, Revised Tentative Timetable for the Diplomatic Conference, GRATK/DC/INF/2 REV., 18 May 2024, [https://www.wipo.int/edocs/mdocs/tk/en/gratk\\_dc/gratk\\_dc\\_inf\\_2\\_rev.pdf](https://www.wipo.int/edocs/mdocs/tk/en/gratk_dc/gratk_dc_inf_2_rev.pdf).

<sup>5</sup> UNEP, Decision GC 18/12.

<sup>6</sup> UNEP, FAO, Report of the Intergovernmental Negotiating Committee for an International Legally Binding Instrument for the application of the Prior Informed Consent Procedure for certain hazardous chemicals and pesticides in international trade on the work of its first session, UNEP/FAO/PIC/INC.1/10, 21 March 1996.

<sup>7</sup> UNEP, Decision GC 18/12.

<sup>8</sup> UNEP, Decision GC 19/13-A.

<sup>9</sup> UNEP, FAO, Report of the Intergovernmental Negotiating Committee for an International Legally Binding Instrument for the application of the Prior Informed Consent Procedure for certain hazardous chemicals and pesticides in international trade on the work of its fifth session, UNEP/FAO/PIC/INC.5/3, 17 March 1998.

<sup>10</sup> UNEP, Decision GC 19/13-A. There was no Governing Council decision between its eighteenth meeting in February 1997, and the diplomatic conference where the Rotterdam Convention was adopted in September 1998. There was a FAO conference in November 1997, which could have served to extend the deadline, but it does not appear that it did so. The involvement of the FAO in the negotiations was generally limited to pesticides.

<sup>11</sup> Rotterdam Convention, Conferences of the Plenipotentiaries, <https://www.pic.int/TheConvention/Overview/History/ConferencesofthePlenipotentiaries/tabid/1226/language/en-US/Default.aspx>.

<sup>12</sup> UNEP, FAO, Report of the Conference of the Parties to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade on the work of its first meeting, UNEP/FAO/RC/COP.1/33, 22 October 2004.

<sup>13</sup> UNEP, FAO, Report of the Intergovernmental Negotiating Committee for an International Legally Binding Instrument for the Application of the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade on the work of its eleventh session, UNEP/FAO/PIC/INC.11/7, 18 September 2004.

<sup>14</sup> UNEP, FAO, Report of the Conference of the Parties to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade on the work of its first meeting, UNEP/FAO/RC/COP.1/33, 22 October 2004.

<sup>15</sup> UNGA, Resolution 72/249 of 24 December 2017, para. 3. “Further decides that, initially with respect to 2018, 2019 and the first half of 2020, the conference shall meet for four sessions of a duration of 10 working days each, with the first session taking place in the second half of 2018, the second and third sessions taking place in 2019, and the fourth session taking place in the first half of 2020.”

<sup>16</sup> UN, Intergovernmental Conference on an international legally binding instrument 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 (General Assembly resolution 72/249), <https://www.un.org/bbnj/>.

<sup>17</sup> UNGA, Intergovernmental conference on an international legally binding instrument 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, Fifth session, Statement by the President of the conference issued after the suspension of the fifth session, A/CONF.232/2022/9, 14 September 2022.

<sup>18</sup> As mandated in UNGA, Resolution 77/248, Agenda item 72 (a), Oceans and the law of the sea, A/RES/77/248, 30 December 2022, para. 275. The UNGA made several decisions for the fourth and fifth sessions of the IGC.

<sup>19</sup> UNGA, Intergovernmental conference on an international legally binding instrument 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, Further resumed fifth session, 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, A/CONF.232/2023/4, 19 June 2023.

<sup>20</sup> UNEP, Decision GC 25/5. “Requests the Executive Director to convene an intergovernmental negotiating committee with the mandate to prepare a global legally binding instrument on mercury, commencing its work in 2010 with the goal of completing it prior to the twenty-seventh regular session of the Governing Council/Global Ministerial Environment Forum, in 2013.”

<sup>21</sup> UNEP, Report of the preparatory meeting for the Conference of Plenipotentiaries on the Minamata Convention on Mercury, UNEP(DTIE)/Hg/CONF/PM/4, 13 October 2013.

<sup>22</sup> UNEP, Report of the intergovernmental negotiating committee to prepare a global legally binding instrument on mercury on the work of its seventh session, UNEP(DTIE)/Hg/INC.7/22/Rev.1, 4 November 2016.

<sup>23</sup> The Chair may propose suspension of a session or a Member may move for the suspension of the session, the latter of which must be put to a vote immediately. UNEP, Draft rules of procedure for the work of the intergovernmental negotiating committee to develop an international legally binding instrument on plastic pollution, including in the marine environment, UNEP/PP/INC.4/2, 25 January 2024, Rule 20, Rule 31.

<sup>24</sup> UNEP, Decision GC 25/5.

<sup>25</sup> UNEA, Resolution 5/14, End plastic pollution: towards an international legally binding instrument, UNEP/EA.5/Res.14, 2 March 2022.

<sup>26</sup> UNEP, Draft rules of procedure for the work of the intergovernmental negotiating committee to develop an international legally binding instrument on plastic pollution, including in the marine environment, UNEP/PP/INC.4/2, 25 January 2024, Rule 2.

<sup>27</sup> UNEA, Resolution 5/14, End plastic pollution: towards an international legally binding instrument, UNEP/EA.5/Res.14, 2 March 2022. Emphasis in original.

<sup>28</sup> Robbie Sabel, Rules of Procedure at the UN and at Inter-Governmental Conferences, Third Edition, Cambridge University Press, 2018, Part 2.2 Independence of an International Conference, p. 19–22.

Negotiation Timelines of International Legal Instruments: Key Considerations for the Future Plastics Treaty by the Center for International Environmental Law is licensed under a Creative Commons Attribution 4.0 International License. This issue brief was authored by Melissa Blue Sky with support from David Azoulay. It was edited by Cate Bonacini, with assistance from Erin Lyons. The research and analysis for the brief benefitted from expertise or review from Andrés del Castillo, Helionor de Anzizu, and Torbjørn Graff Hugo at the Norwegian Academy of International Law.

Errors and omissions are the sole responsibility of CIEL. This issue brief is for general information purposes only. It is intended solely as a discussion piece. It is not and should not be relied upon as legal advice. While efforts were made to ensure the accuracy of the information contained in this brief and the above information is from sources believed reliable, the information is presented “as is” and without warranties, express or implied. If there are material errors within this brief, please advise the authors. Receipt of this brief is not intended to and does not create an attorney-client relationship.

Please send comments or questions to Melissa Blue Sky ([mbluesky@ciel.org](mailto:mbluesky@ciel.org)).

© July 2024

[ciel.org](http://ciel.org)

[@ciel\\_org](https://twitter.com/ciel_org)

[@ciel\\_tweets](https://twitter.com/ciel_tweets)

[facebook.com/ciel.org](https://facebook.com/ciel.org)



CENTER for INTERNATIONAL  
ENVIRONMENTAL LAW