

Structure and Elements of International Legal Instruments

Key Considerations for the Future Plastics Treaty

Treaty Structures

Substantive Convention

Specific and unambiguous in obligations and can often produce substantial impact shortly upon entering into force.

Hybrid Convention

Either a framework convention with specific provisions or a substantive convention with general provisions, supported and complemented by protocols and annexes.

Framework Convention

Typically general and broad: sets goals, principles, and a framework for Parties to make decisions, leaving regulatory measures and specific obligations to future subsidiary agreements, i.e., protocols.

Key Qualities

- Core obligations and regulatory measures to meet the convention's goals are contained in the original instrument and its annexes.
- Often include substantive and technical annexes

- Often contain at least some substantive provisions that can be specifically open-ended to allow for future instruments that fill in gaps or allow for flexible implementation

- Contains primarily high-level goals
- Parties indicate their intent to create a larger regulatory regime by following a two-step procedure
- Often have high participation due to lack of meaningful obligations

Benefits

- + Obligations are clear and implementation begins upon entry into force
- + Annexes are frequently amended, expanding the application of treaty obligations to additional items

- + A hybrid instrument establishing meaningful and broadly agreed on principles and obligations may promote cooperation

- + Protocols can include their own procedures for modifications and adjustments

Challenges

- May not have as many States ratify initially, potentially taking longer to enter into force

- Can result in slower creation of additional, necessary obligations and implementation than substantive conventions

- Success is largely dependent on the inclusion of national targets and enforcement mechanisms
- Can take much longer for concrete obligations enter into force

Examples

- **Stockholm Convention**
- **Rotterdam Convention**
- **Minimata Convention**

- **Barcelona Convention**
- **Basel Convention**

- **UNFCCC Paris Agreement**
- **UNFCCC Kyoto Protocol**
- **Vienna Convention Montreal Protocol**

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Recommendations



Substantive Treaty with National Obligations

Parties should take the time necessary to develop a substantive treaty (or a hybrid treaty with substantive obligations) with clear national obligations.



Avoid Framework Convention

A framework convention would significantly delay urgent action and should be avoided.



Annexes Are Key

Amending annexes is usually* the easiest way to strengthen a treaty over time, but the treaty must first contain concrete and specific obligations with corresponding annexes.



Aim High

INC Members should not weaken the treaty to the least ambitious position in an attempt to reach universal ratification.

*As long as treaty specifies annex amendments can be voted on

Considerations

The goal of some States is to create an agreement with no binding obligations or no agreement at all.

Parties are not expected to be in full compliance with all provisions from the moment the treaty enters into force.

A number of previous treaty negotiations have continued beyond the timeline initially set.

Examples of International Legal Instruments

Key Considerations for the Future Plastics Treaty

Rotterdam Convention

Adopted in 1998 by 86 States, and took more than five years to enter into force, has 166 Parties as of October 2024.

Includes technical annexes that list specific items to which binding obligations apply. One annex (iii) requires consensus for the addition of substances, which has severely hindered effectiveness.

Stockholm Convention

Adopted in May 2001 by 127 States but took nearly three years to be ratified by 50 States, as of October 2024 it has 186 Parties.

Includes technical annexes that list specific items to which binding obligations apply.

Minimata Convention

Adopted in 2013 and entered into force nearly four years later, as of October 2024 has 151 Parties.

Includes technical annexes that detail product lists and phaseout schedules.

Basel Convention

Adopted in 1989 by 96 states and reached 20 ratifications for entry into force three years later.

Primarily structured as a substantive agreement.

Called for the development of a protocol on liability and compensation, which was adopted in 1999, but has yet to reach 20 ratifications required for entry into force.

The second COP decided to ban hazardous waste from OECD countries, but there were concerns the decision was not legally binding. Political pressure led to the Ban Amendment, which was adopted in the third COP in 1995 but not ratified until 2019—more than 30 years after the adoption of the Basel Convention itself and 24 years after the adoption of the Amendment.

UNFCCC Paris Agreement

Adopted in 2015 and entered into force in 2016.

Sets a global target for all Parties but allows Parties to determine their own nationally determined contributions (NDCs) **towards the Agreement's objective. Pledged NDCs have fallen far short of what is needed.**

(Not technically a protocol but acts as one.)

Vienna Convention Montreal Protocol

Entered into force in 1989, in 2009 became the first-ever treaty to reach universal ratification.

Technically a framework convention, but includes legally binding schedules that each Party must implement at the national level, making it more similar to a substantive convention.

The Vienna Convention is **largely regarded as one of the most successful multilateral environmental agreements**, primarily because the Montreal Protocol includes binding obligations with enforcement and financial mechanisms. A series of Montreal Protocol amendments and adjustments helped Parties add substances and phase-out more rapidly than initially contemplated.

UNFCCC Kyoto Protocol

Negotiated under the UNFCCC and adopted in 1997 but didn't enter into force until 2005.

Technically met its emissions reduction goals by the Parties, but major emitting Parties didn't join or were not required to reduce emissions, and global emissions continued to increase.

● Substantive Conventions ● Hybrid Convention ● Framework Convention