DEFENDING THE INTEGRITY OF THE PLASTICS TREATY NEGOTIATIONS: UNEA AND THE NEED TO PROTECT THE INC AS A STATE-LED PROCESS

IPEN
for a toxics-free future

November 2025

Context

As UNEA-7 is approaching, there may be some discussion about the Plastics Treaty at the meeting, through dedicated resolutions or related resolutions (e.g., on chemicals, circular economy etc.). IPEN is concerned that there may be efforts to undermine the integrity of the Plastics Treaty INC through action by UNEA and warns that the original Plastics Treaty mandate must not be reopened.

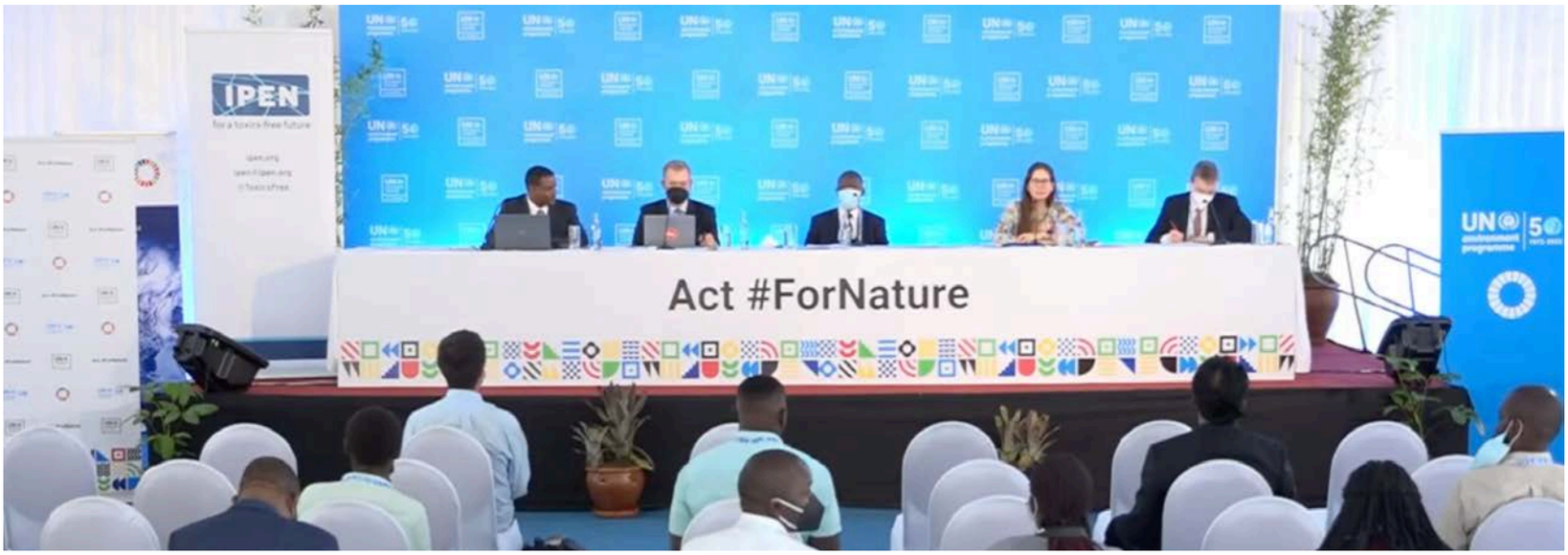
At UNEA-5, States agreed on and adopted Resolution 5/14, which established the Intergovernmental Negotiating Committee (INC) to develop a legally binding instrument on plastic pollution, including in the marine environment. As negotiations have not yet fulfilled the mandate, some Member States and observers have suggested that UNEA may have the competence to revise, suspend, or withdraw the INC's mandate.

Such claims are **legally unfounded** and risk undermining a process created by States and sustained by unprecedented global participation.

Legal Review Summary: INCs and UNEA

- Legally, the INC is its own Member State led legal body.
- The INC is not a subsidiary body under UNEA.
- The INCs take direction from the Member States in the INC body, thus the UNEA-7, hosted by the UN Environment Program, cannot undermine the INC procedures.

The Plastics Treaty INC is a Member State-led, independent negotiation process convened under UNEA 5/14. It is not a subsidiary organ of UNEA and, therefore, cannot be altered, suspended, or dissolved by UNEA or UNEP. The INC process remains active because INC-5 was not closed but was adjourned in Busan at INC-5 and then again in Geneva at INC-5.2 and will reconvene for INC5.3, preserving its legal continuity under UN procedural law.



Legal Basis

- **UNEP** is not a subject of international law as it is a subsidiary organ of the UN General Assembly and cannot have precedence over a body constituted by States.
- UNEP's role, in line with its mandate that was created by UNGA in 1972, is primarily to promote international cooperation in the field of the environment and to recommend policies to this end.[1]
- **UNEA's authority** (Rule 63 of its Rules of Procedure) applies only to *subsidiary organs* that UNEA creates and supervises. As an example relevant to plastics: when UNEA created the Ad Hoc Open-Ended Expert Group on Marine Litter and Microplastics (UNEA 3/7, 4/6), they used the phrases "Decides to convene" or "Decides to establish" to convey that the Group would be a subsidiary organ directly under UNEA authority.
- **UNEA Resolution 5/14** uses distinct language as it "Requests the Executive Director to convene an intergovernmental negotiating committee"[2] and "Decides that the intergovernmental negotiating committee is to develop an international legally binding instrument on plastic pollution, including in the marine environment".
- The Resolution instructs the **UNEP Executive Director**, without conferring any authority to UNEA, to convene the **diplomatic conference** to adopt the treaty once negotiations conclude (para. 12).

Implications for UNEA-7

The Plastics Treaty INCs have been hindered by the inability to make decisions and a reliance on consensus as the only decision-making option. Members of the INC and observers have stated that the major barrier to an agreement is the intractable reliance on consensus, leading to very slow progress. The INC must elevate decision-making norms and use voting as needed to achieve the UNEA 5/14 mandate. As countries have not been able to fulfill the mandate from Resolution 5/14, UNEA-7 could be a crucial moment to regain political momentum for the Plastics Treaty negotiations.

[1] See G.A. Res. 2997 (XXVII), Institutional and Financial Arrangements for International Environmental Cooperation, U.N. Doc. A/RES/2997 (Dec. 15, 1972) which provides a full list of UNEP responsibilities.

[2] This language mirrors the language from paragraph 8 of UNEP Governing Council, Decision 19/13 C of 1997 which mandated the Stockholm Convention INC which "***Requests*** the Executive Director to prepare for and convene [...] an intergovernmental negotiating committee" Stockholm Convention mandate" and the language from paragraph 26 of UNEP Governing Council, Decision 25/5 of 2009 which mandated the Minamata Convention INC which "Requests the Executive Director to convene an intergovernmental negotiating committee with the mandate to prepare a global legally binding instrument on mercury."

IPEN urges Member States at UNEA-7 to:

- **Respect the existing mandate.** UNEA can reaffirm, not reinterpret, Resolution 5/14. Any attempt to reopen or redefine the INC's terms would be outside of UNEA's mandate and would diverge from established practice.
- **Support completion of negotiations.** Member States should focus on enabling a meaningful treaty text addressing the full plastics life cycle, with clear obligations, funding, and transparency mechanisms.
- **Protect multilateral integrity.** Politicizing or re-mandating the process would set a dangerous precedent for all future multilateral environmental negotiations.
- **Reaffirm the independence and continuity** of the INC as mandated by UNEA 5/14 and recommit to fulfilling the mandate.
- **Reject any resolution** that seeks to modify, suspend, undermine or terminate the INC mandate before the diplomatic conference.
- **Commit political and financial support** to finalize a strong, legally binding treaty that ends plastic pollution and protects human health and the environment.
- **Work during the intersessional period** to ensure a successful outcome of the negotiation, including the establishment of a new chair and fixing a process that has not been effective.
- **Reconvene at a resumed INC meeting** with a determination to clarify the issue of rules of procedure and allow the committee to vote when consensus cannot be reached.
- **Improve transparency and participation** to build trust and ensure open, inclusive and fair participation of Observers and all Member States**.** The INC process has been plagued with participation problems, noting that there have been several submissions to the INC Secretariat and Chair raising concerns about decisions they made that impeded transparency and participation.

For a more detailed legal analysis, see Annex I, "Legal Briefing: UNEA Resolution 5/14 and the Authority Over the Intergovernmental Negotiating Committee (INC)."

www.ipen.org

ipen@ipen.org

IPEN
for a toxics-free future

Annex I

Legal Briefing:

UNEA Resolution 5/14 and the Authority Over the Intergovernmental Negotiating Committee (INC)

Summary

This briefing clarifies the legal relationship between the United Nations Environment Assembly (UNEA) and the Intergovernmental Negotiating Committee (INC) on plastic pollution, established by UNEA Resolution 5/14 (2022). It addresses the misconception that UNEA can modify or withdraw the INC's mandate and demonstrates, based on legal instruments, precedent, and UN procedural law, that such interpretations are incorrect.

UNEA was created by the UN General Assembly in Resolution 67/251 (2012) as the universal governing body of the United Nations Environment Program (UNEP), succeeding the former UNEP Governing Council.

Under Rule 63 of its Rules of Procedure, UNEA may establish subsidiary organs, but only those explicitly designated as such are subject to UNEA's ongoing control.

Resolution 5/14 did not create a subsidiary organ. Instead, it "decides to convene an intergovernmental negotiating committee…." This formulation is consistent with previous UNEP precedents (for example, the Stockholm Convention and Minamata Convention INCs). These are time-limited, State-led diplomatic processes serviced by UNEP but not subordinate to UNEA.

Unlike the Stockholm mandate, Resolution 5/14 explicitly provides that "the Executive Director shall convene a diplomatic conference of plenipotentiaries upon completion of negotiations." This clause defines a clear procedural endpoint lying outside UNEA's authority.

Further, the INC remains active because the fifth session (INC-5.2, Geneva, 2025) was adjourned rather than closed, thereby preserving its mandate. Under UN procedural practice, adjournment suspends a meeting temporarily, whereas closure terminates it. Therefore, the Plastics Treaty INC continues legally in session until the States themselves close it or a treaty is adopted.

The Plastics Treaty INC is an independent, State-led negotiating process convened under UNEA Resolution 5/14. Its mandate cannot be altered or withdrawn by UNEA. The process will end only upon adoption of a treaty by a diplomatic conference, closure by States, or replacement through a new intergovernmental decision.

1. Introduction

This briefing examines whether the United Nations Environment Assembly (UNEA) has the legal authority to change or revoke the mandate of the Intergovernmental Negotiating Committee (INC) on plastic pollution, which was established under Resolution 5/14. As negotiations have made little progress and countries have yet to fulfill the ambitious mandate, some stakeholders have suggested that UNEA could revise, suspend, or withdraw the INC's mandate. This briefing concludes that the Plastics Treaty INC is not a subsidiary organ of UNEA, but a negotiating process led by Member States and supported by UNEP. Consequently, UNEA does not have the authority to modify or terminate its mandate unilaterally.

2. How the mandate was created

UNEA Resolution 5/14 States that UNEA:

"Decides to convene an intergovernmental negotiating committee to develop an international legally binding instrument on plastic pollution, including in the marine environment."

The Resolution further makes several requests to the UNEP Executive Director to facilitate the process, including:

- "to convene an intergovernmental negotiating committee, to begin its work during the second half of 2022, with the ambition of completing its work by the end of 2024";
- "to convene an ad hoc open-ended working group to hold one meeting during the first half of 2022 to prepare for the work of the intergovernmental negotiating committee and to discuss in particular the timetable and organization of the work of the committee, taking into account the provisions and elements identified in paragraphs 3 and 4 of the present resolution";
- "to convene a diplomatic conference of plenipotentiaries upon completion of negotiations by the intergovernmental negotiating committee, for the purpose of adopting the instrument and opening it for signature;"
- "to ensure the necessary support by the secretariat of the United Nations Environment Programme to the ad hoc open-ended working group and the intergovernmental negotiating committee"; and
- "to report on progress on the work of the intergovernmental negotiating committee to the Environmental Assembly at its sixth session."

This formulation follows UNEP's most recent precedents (POPs, Mercury[3]), where UNEP served but did not control intergovernmental negotiations. During the Minamata negotiations, the Governing Council Decision 26/03, which reaffirmed the initial mandate, provided logistical and financial support and welcomed Japan's offer to host the diplomatic conference. However, GC 26/03 did not reopen, narrow, or reinterpret the INC's mandate, it simply confirmed and facilitated progress. The negotiations then continued independently until the Minamata Convention was adopted at the diplomatic conference in 2013.

[3] However, the Minamata mandate from the UNEP governing council recognizes that the mandate of the intergovernmental negotiating committee may be supplemented by further decisions of the Governing Council.

As it happened for the Minamata Convention negotiations, for the Plastics Treaty UNEA can reaffirm the mandate from resolution 5/14 and encourage the INC to complete its work, but this would have political rather than legal effects. The Executive Director of UNEP has a convening and facilitative role, not a directive one.

3. Why UNEA Cannot Modify or Terminate the INC Mandate

UNEP Lacks an Independent Legal Personality: UNEP was created by UNGA Resolution 2997 (XXVII) (1972) as a subsidiary organ of the General Assembly.[4] The United Nations Environment Assembly (UNEA), the main governing body of the UNEP, was created through UN General Assembly Resolution 67/251 (2012)[5] and UNEA's role is mainly policy and program-oriented, not treaty-making. UNEA can adopt resolutions, establish subsidiary organs under Rule 63 of its rules of procedure, and ask the UNEP Executive Director to carry out activities or hold meetings.

As UNEP is not a treaty-based organization and thus not a subject of international law, it cannot make binding decisions on States or override treaty bodies. This means that UNEP's governing body, UNEA, cannot exercise hierarchical authority over independent State-led negotiations.

The INC is Not a UNEA Subsidiary Organ: Under Rule 63 of the UNEA Rules of Procedure, UNEA may establish subsidiary organs and expert groups "as may be necessary for the effective discharge of its functions." Additionally, "the rules of procedure of subsidiary organs shall be those of the United Nations Environment Assembly, as appropriate, subject to such modifications as the United Nations Environment Assembly may decide upon in the light of proposals by the subsidiary organs concerned." Finally, Rule 63 states that "each subsidiary organ, taking into consideration the date of the regular session of the United Nations Environment Assembly and bearing in mind the items referred to it by the United Nations Environment Assembly, may adopt its own priorities within the framework of the work programme established by the United Nations Environment Assembly."

This shows quite evidently that the work of the INC is not at all linked to the UNEA program of work, rather the INC has its own rules of procedure and carries out its work completely independently from the work of UNEA. In contrast to the INC, an example of an expert body that was created by UNEA resolution 3/7 is the ad hoc open-ended expert group on marine litter and microplastics,6 which was then extended by UNEA-4/6. From its establishment, it was clear that this expert group was an intersessional body under Rule 63, and that UNEA could control the duration of its work, its program of work, and extend its mandate.

UNEA's role in the INC process is very different and clearly the INC is not a subsidiary organ: it follows that UNEA cannot independently modify or dissolve the Plastics Treaty INC. UNEP can only carry out its role as secretariat. UNEA cannot make legally binding decisions on other international institutions because it lacks standing as a subject of international law.[7]

[4] United Nations General Assembly, Resolution 2997 (XXVII) of 15 December 1972, Institutional and Financial Arrangements for International Environmental Cooperation, UN Doc. A/RES/2997(XXVII).

[5] UNGA resolution A/RES/67/251 elevated the former UNEP Governing Council into a universal membership organization open to all UN Member States. This change allowed all 193 UN members to participate equally in global environmental decisions. United Nations General Assembly, Resolution 67/251 of 13 March 2013, Change of the Designation of the Governing Council of the United Nations Environment Programme, UN Doc. A/RES/67/251.

[6] United Nations Environment Assembly, Resolution 3/7 of 6 December 2017, Environment and Health, UN Doc. UNEP/EA.3/Res.7.https://www.unep.org/environmentassembly/expert-group-on-marine-litter

[7] *Elvira Pushkareva*, "UNEP" *Max Planck Encyclopedia of Public International Law*, Oxford University Press, updated 2021, available at: https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e554?prd=EPIL (accessed 10/14/25)

Therefore, to summarize:

- **UNEP** is not a subject of international law as it is a subsidiary organ of the UN General Assembly and cannot have precedence over a body constituted by States.
- UNEP's role, in line with its mandate created by UNGA in 1972, is primarily to promote international cooperation in the field of the environment and to recommend policies to this end.[8]
- **UNEA's authority** (Rule 63 of its Rules of Procedure) applies only to *subsidiary organs* that UNEA creates and supervises. As an example relevant for plastics is when UNEA created the Ad Hoc Open-Ended Expert Group on Marine Litter and Microplastics (UNEA 3/7, 4/6), they used the phrases "Decides to convene" or "Decides to establish" to convey that the group would be a subsidiary organ directly under UNEA authority.
- **UNEA Resolution 5/14** uses distinct language as it "Requests the Executive Director to convene an intergovernmental negotiating committee"[9] and "Decides that the intergovernmental negotiating committee is to develop an international legally binding instrument on plastic pollution, including in the marine environment".
- The Resolution instructs the **UNEP Executive Director**, without any authority upon UNEA, to convene the **diplomatic conference** to adopt the treaty once negotiations conclude (para. 12).

4. How the Work of an INC Formally Concludes

INC-5.2 (Geneva, 2025) did not complete the work of INC 5, which began in Busan in 2024. The Chair simply adjourned the session, which will stay open until it is reconvened. In UN practice, an adjournment is a temporary pause, while closure indicates that the body's work has ended. Since INC-5.2 was adjourned and not closed, the INC's mandate remains in effect. Indeed, INC-5.3 is already being planned. Therefore, UNEA has no legal grounds to declare the process terminated. The Plastics Treaty INC remains in session and legally active until it concludes its work or self-closes. UNEA cannot terminate or withdraw the mandate, as the session has not been closed and remains under the authority of the participating States.

An Intergovernmental Negotiating Committee (INC) concludes its work through several formal mechanisms grounded in UN practice. Its closure depends on the decisions of the participating States, not on UNEA or UNEP. Mechanisms for concluding the work of an INC include:

- **Adoption of a Negotiated Instrument and Diplomatic Conference**: Resolution 5/14 explicitly foresees this endpoint in paragraph 12: "requests the Executive Director to convene a diplomatic conference of plenipotentiaries upon completion of negotiations by the intergovernmental negotiating committee, for the purpose of adopting the instrument and opening it for signature." This clause clearly defines how the Plastics Treaty INC's work will formally conclude: upon completion of negotiations, when the Executive Director of UNEP, not UNEA, will convene a diplomatic conference.

[8] See G.A. Res. 2997 (XXVII), Institutional and Financial Arrangements for International Environmental Cooperation, U.N. Doc. A/RES/2997 (Dec. 15, 1972) which provides a full list of UNEP's responsibilities.

[9] This language mirrors the language from paragraph 8 of UNEP Governing Council, Decision 19/13 C of 1997 which mandated the Stockholm Convention INC which "Requests the Executive Director to prepare for and convene [...] an intergovernmental negotiating committee" and the language from paragraph 26 of UNEP Governing Council, Decision 25/5 of 2009 which mandated the Minamata Convention INC which "Requests the Executive Director to convene an intergovernmental negotiating committee with the mandate to prepare a global legally binding instrument on mercury."

- **Self-Termination or Closure by a Decision of the INC:** The INC can formally close its session by a decision of the plenary, thereby ending its legal existence, even without adopting a treaty. This can occur if States consider that negotiations have reached a permanent impasse or if States determine that continuation is unnecessary.

5. Conclusion

The Plastics Treaty INC is a state-led, independent negotiation process convened under UNEA Resolution 5/14. UNEA's powers under Rule 63 apply only to subsidiary organs, not to independent INCs. The explicit diplomatic conference clause in Resolution 5/14, combined with the ongoing suspension of INC-5.2, ensures the continuity of the process and limits UNEA's role to political facilitation. UNEA may guide politically through a ministerial declaration or a resolution that encourages the INC to take a specific direction, but such resolutions would not have any legal consequences on the independence of the INC's work and would not modify, suspend, or revoke the INC's mandate.

Annex II

Scenario Analysis:

Potential Pathways if the Plastics INC Fails to Conclude a Treaty

What happens if there are no new negotiations or if Member States agree to stop negotiating?

The most coherent path is for Member States to continue negotiations under the current mandate through a reconvened INC session. However, countries should be prepared to resolve the remaining deadlock on decision-making procedures, reaffirming the option for the INC to vote on matters of substance if consensus cannot be reached (which is clearly the case), to ensure the committee's ability to move forward toward agreement on substantive articles. Such a clarification would preserve the legitimacy of the process, maintain participation of all regions, and respect the mandate conferred by UNEA Resolution 5/14, which envisaged a single, legally binding instrument to address the full life cycle of plastics.

If an agreement remains unattainable, other pathways are possible, including:.

1. Incremental or Phased Agreement

States may opt for a phased approach, also referred to as an incremental or build-and-strengthen approach, which allows for further global actions over time. This could, for example, mean for products and chemicals, that the initial text only includes a reference to an annex of problematic plastics, which would then be further developed with the support of appropriate subsidiary bodies (e.g., review committees) and a review process.

2. Plurilateral "Coalition of the Willing" (Ottawa process model)

If global negotiations remain stalled, a group of high-ambition countries could establish a plurilateral plastics agreement outside the INC framework, open for later accession by other States. This would mirror the Ottawa Process that led to the 1997 Mine Ban Treaty after a stalemate in the Conference on Disarmament. A "coalition of the willing" could quickly adopt strong life cycle provisions, transparency requirements, and strong financial mechanisms to encourage countries to join. Achieving this would require strong political will and ambitious goals for a treaty, which currently appear absent.

3. Integration within Existing Multilateral Environmental Agreements (MEAs)

States may also seek to strengthen plastics-related regulation through the existing BRS Conventions, even though these instruments cannot fully address the plastics life cycle. Targeted measures could include:

- Basel Convention: Developing a new protocol or technical annex on plastic to close regulatory gaps and include, to the extent possible, measures negotiated under the INC, such as product design, chemicals in products, transparency measures, and strengthening measures on the transboundary movements of plastic waste.

- Rotterdam Convention: Listing plastic additives and polymers that meet risk criteria under the PIC procedure, ensuring prior informed consent before trade.
- Stockholm Convention: Adding plastic chemicals that are persistent organic pollutants (POPs) to the Convention's annexes for global phase-out.

While these steps would improve chemical and waste management, they cannot control upstream production, design, or consumption, and therefore would not achieve the full life cycle vision of Resolution 5/14.

4. Adjournment or Suspension of the INC

As a procedural alternative, States might adjourn the INC indefinitely rather than closing it. Under UN procedural practice, adjournment temporarily suspends a meeting while preserving the body's legal continuity. This would keep the mandate alive, allowing negotiations to resume later.

Summary

Scenario	Decision-Maker	Legal Status	Benefits	Limitations / Risks
Return to a resumed INC and resolve rules of procedure	INC plenary → future protocols	Within current mandate	Realistic, stepwise progress	Delays full life cycle coverage
Incremental / phased approach	INC plenary → future protocols	Within current mandate	Realistic, stepwise progress	Delays full life cycle coverage
Plurilateral ("Ottawa model")	Like-minded States	Outside INC	Enables high ambition among early movers	Fragmentation, limited membership
Integration in MEAs (BRS)	COPs of Basel, Rotterdam, Stockholm	Existing frameworks	Strengthens chemical/waste control; legally feasible	Limited authority over production and design, product bans
Adjournment / suspension	INC plenary	Within current mandate	Keeps process open for future	Loss of momentum, uncertainty

Conclusion

The preferred, politically balanced option remains for Member States to reconvene INC-5.3 under the current UNEA 5/14 mandate, to clarify the decision-making process and reaffirm the possibility of voting on substance, and move forward to finalize the text of the Plastics Treaty. If this approach proves impossible, alternative options—such as incremental negotiations, plurilateral agreements, or strengthening existing MEAs—offer partial but significant progress. Each scenario confirms that the mandate lies with the negotiating States, not UNEA, and any future decision on whether to continue or end the process must be made collectively within the intergovernmental framework.

REFERENCES

UNGA Resolution 2997 (XXVII) (1972). **https://docs.un.org/en/a/res/2997(XXVII)**

UNGA Resolution 67/251 (2013) **https://docs.un.org/en/a/res/67/251**

UNEA Rules of Procedure, Rule 63. **https://docs.un.org/en/UNEP/EA.3/3** (pg. 15)

UNEP Governing Council Decision (1997), *Persistent Organic Pollutants (POPs).* **http://chm.pops.int/portals/0/docs/from_old_website/documents/background/gcdecision/19_13c/gcpops_e.html**

UNEP Governing Council Decision 25/5 (2009), *Development of a legally binding instrument on mercury.* **https://wedocs.unep.org/handle/20.500.11822/10623**

UNEA Resolution 5/14 (2022), *End plastic pollution: Towards an international legally binding instrument.* **https://digitallibrary.un.org/record/3999257?ln=en**

UNGA Resolution 3067 (XXVIII) (1973), *Law of the Sea.* **https://treaties.un.org/doc/source/docs/A_RES_28_3067-E.pdf**

UNGA Resolution 50/46 (1995), *Preparatory Committee on the Establishment of an International Criminal Court.* **https://docs.un.org/en/A/RES/50/46**

Stockholm Convention INC Decision 5/7 (2000), *Adoption of the Final Act of the Conference of Plenipotentiaries.* **http://chm.pops.int/portals/0/docs/from_old_website/documents/meetings/inc5/En/finalreport/en/inc5efinrep.PDF**

Repertory of Practice of United Nations Organs, Supplement to Article 22 of the UN Charter (1956, subsidiary organs). **https://legal.un.org/repertory/art22/english/rep_supp1_vol1_art22.pdf**

Perrez, F. The Role of the United Nations Environment Assembly in Emerging Issues of International Environmental Law. (MDPI Sustainability, 2020). **MDPI**

Bodansky, Daniel. "The Most Important Negotiation You've Probably Never Heard Of." EJIL:Talk!, 8 October 2025. **EJIL: Talk!**

Pushkareva, Elvira. "United Nations Environment Programme (UNEP)." *Max Planck Encyclopedia of Public International Law*, Oxford University Press, updated 2021. Available at: **https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e554**

Multilateral Environmental Agreements Negotiator's Handbook: Third Edition (2024). **https://www.unep.org/resources/toolkits-manuals-and-guides/multilateral-environmental-agreements-negotiators-handbook**