

INTERNATIONAL LEGAL RESPONSES TO OCEAN PLASTICS

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There are multiple international legal responses to ocean plastics, but there is no universal legally binding instrument on the full life cycle of ocean plastics and the impact on human health and the environment. As highlighted in 2021 by the UN Special Rapporteur on Human Rights and Toxics, “While the cycle is global, existing international instruments cover only certain marine regions or aspects of the plastic cycle.” These instruments “do not address the challenges of reducing the volumes of plastic production and waste, controlling all hazardous additives added to plastics, promoting a chemically safe circular economy for protecting human rights.” This info-sheet illustrates existing international legal responses and the international regulatory gaps identified.

THIS INFORMATION-SHEET INTRODUCES:

- Existing international legal responses to ocean plastics
- The search for new legal solutions internationally

EXISTING INTERNATIONAL LEGAL RESPONSES

International Convention for the Prevention of Pollution from Ships (MARPOL) Annex V:

- bans the disposal of plastics into the sea (1/5 of global ocean plastics)
- mandates States to provide official records of disposals and incinerations for ships with capacities of 400 gross tonnages and over as well as every ship certified to carry fifteen or more persons onboard



Photo Georgina Yaa Oduro

- requires States to ensure provision of facilities at ports for the reception of garbage, but there is lack of adequate reception facilities¹
- financial burden of operating the Convention’ reception facilities is mainly on developing countries
- International Maritime Organization adopted 2018 action plan to address marine litter from ships, including measures to strengthen port reception facilities and other plastic issues by 2025.²

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal:

- In 2019, parties agreed to designate as hazardous, certain types of plastic waste by amending the Convention’s Annex VIII to include plastic and plastic mixtures to subject their transboundary movement to the Prior Informed Consent (PIC) procedure.
 - As a result, potential importing countries must prove that they can deal with plastic waste in an environmentally sound manner, thus ensuring it stays out of the ocean.

¹ Ibid, para 69.

² MEPC 73/19/Add.1; A/76/207, para 69.

- Significantly, countries now also have the right to turn down shipments of plastic, if they do not have the means to deal with it.
- With only 9% of the world’s plastic ever having been recycled, and the vast majority going into landfills around the world,³ this amendment may push for more recycled material in the plastics supply chain, thereby reducing the overall production of virgin plastic. However, this is in no way guaranteed and without further regulatory intervention, will depend upon the cost of both recycling and of recycled products being lower than fossil-fuel based virgin plastic. In a related regard, the UN Special Rapporteur on Human Rights and Toxics has recommended that states phase out fossil fuel subsidies, export credits and guarantees for the extraction of fossil fuels and plastic production facilities.
- In amending also **Annex IX** of the Basel Convention, states set out the type of plastic waste considered non-hazardous, and thus not subject to the PIC procedure, including plastic waste destined for recycling in an environmentally sound manner (including polyethylene (PE), polypropylene (PP), polystyrene (PS), and polyethylene terephthalate (PET)).
 - The UN Special Rapporteur on Human Rights and Toxics noted that this amendment does not exclude the possibility of trade in certain plastic waste for recycling in an environmentally sound manner and “almost free from contamination” but there is as yet no international threshold for this.⁴
- States also agreed to amend **Annex II** (which addresses those wastes for which special consideration should be paid) to

include plastic waste and plastic waste mixtures, excluding those defined as non-hazardous and/or destined for recycling under Annex IX.

- There is potential for abuse of this permission, however, which would have detrimental effects to the marine environment as the ultimate dumpsite of plastic waste exported to territories without the capacity for environmentally sound management of such waste.
- The pre-existing **Ban Amendment** under the Convention (entered into force in December 2019) prohibits exports of all hazardous wastes covered by the Convention, including those plastic wastes identified as hazardous under Annex VIII, that are intended for final disposal, reuse, recycling and recovery from countries listed in Annex VII to the Convention (Parties and other States which are members of the OECD and EU) to all other countries.

Stockholm Convention on Persistent Organic Pollutants

Although the Stockholm Convention does not overtly address marine plastics yet, its work on the control of persistent organic pollutants (POPs) is relevant for ocean plastics because several POPs are used as additives in plastics and are listed for elimination (PCBs, dioxins and furans from plastic disintegration). In effect, the UN Special Rapporteur on Human Rights and Toxics noted: “existing plastic practices pose health threats from volatile organic compounds and they concentrate toxic additives in plastics, generating new hazardous products.”⁵

- More work is required to assess the fate of POPs in ocean plastics, and the impacts of POPs sorbed by microplastics on the marine ecosystem, and human health.
- The UN Special Rapporteur on Human Rights and Toxics recommended phasing out hazardous additives in plastics under the Stockholm Convention.⁶



Photos above : Kira Erwin

³ Geyer, R., Jambeck, J. R., & Law, K. L. (2017). Production, use, and fate of all plastics ever made. *Science Advances*, 3(7), e1700782.

⁴ A/76/207, para . See ongoing process to update 2002 technical guidelines for the identification and environmentally sound management of plastic wastes and their disposals BC-14/13, see A/76/207, para 60

⁵ UN A/76/207, para 21-22.

⁶ *Ibid*, para



Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides

It indirectly addresses marine pollution, by regulating pesticides and industrial chemicals that have been banned or which have been severely restricted for health or environmental reasons by parties. Many of these substances that are also controlled under the Stockholm Convention, are added to plastics and contain additives which pose risks for endocrine disruption.

- Applying the PIC procedure for plastic products containing listed chemicals could be investigated as a means to ensure global equity, so that low-income countries have more of a choice about what they import, and have the right to refuse products for which they have no environmentally safe management solutions.

Convention on Biological Diversity (CBD)

In the context of the CBD obligation to assess and minimize adverse impacts on biodiversity (Art. 14), in 2016 CBD Parties adopted voluntary practical guidance on preventing and mitigating the impacts of marine debris on marine biodiversity (decision XIII/10), calling for:

- preventing the discard, disposal, loss or abandonment of any persistent, manufactured or processed solid material in the upstream and marine environment;
- adopting economic incentives, market-based instruments and public-private partnerships to prevent and mitigate the impacts of marine debris;
- considering **extended producer responsibility** for providing response measures where there is damage or sufficient likelihood of damage to marine and coastal biodiversity and habitats from marine debris.

The guidance also identified priority actions for land-based marine pollution:

- would reduce the production and consumption of plastics, increase recycling

infrastructure and encourage/incentivize reuse. Focus should be on production and not consumption, as addressing production addresses consumption from a less burdensome perspective;

- research aimed at developing, and encouraging the transfer of, technology to better understand and reduce the environmental impacts of plastics on the marine environment, and to assess cost-effective production on a commercial scale;
- promotion of best practices along the whole plastics manufacturing and value chain from production to transport, such as aiming for zero loss;
- assessment of whether different sources of microplastics and different products/processes that include both primary and secondary microplastics are covered by legislation
- strengthening existing legal frameworks, including through regulatory and/or incentive measures to eliminate the production of microplastics that have adverse impacts on marine biodiversity
- improvement of waste management systems through the sharing of best practices and addressing loopholes that contribute to the generation of marine debris, such as introduction into coastal areas from upstream sources.

In a more recent decision (Decision XIV/10), CBD Parties were also urged to carry out:

- further research on the impacts of marine debris on marine biodiversity;
- clean-up and removal of marine debris.



All Photos on page: Screenshots, The Menace of Ocean Plastics film

International Watercourses Law

The Convention on the Law of Non-Navigational Uses of International Watercourses (the UN Watercourses Convention) and the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (the UNECE Water Convention), as well as international customary law applicable to transboundary waters include several procedural obligations (to notify, to exchange information, to undertake an environmental impact assessment) that may also have practical implications on plastics ending up in the river and flowing downstream.

In addition, the UN Watercourses Convention has two key provisions that speak directly to preventing or minimising marine litter:

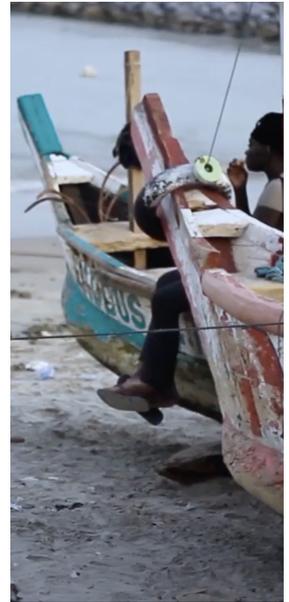
- article 21 titled "Prevention, Reduction and Control of Pollution" and
- article 23 titled "Protection and Preservation of the Marine Environment", which links up to UNCLOS, Article 207, requiring states to 'adopt laws and regulations to prevent, control and reduce pollution of the marine environment from land-based sources, including rivers, estuaries, pipelines and outfall structures, taking into account internationally agreed rules, standards and recommended practice and procedures.'

MOVING FORWARD

With regard to ocean plastics, the UN Special Rapporteur on Human Rights and Toxics notes that:

- "There is currently no commercially available waste management method capable of solving the global plastic pollution crisis. Toxics additives and micro-plastics contained in...oceans...cannot be eliminated by recycling, landfilling or incineration";
- There is a prevalence of open burning of plastics in many countries in the Global South, with impacts to air quality and human and ecosystem health. This is also a practice in coastal communities trying to address plastic pollution on beaches.
- "Only about 9% of all plastic waste ever produced has been recycled"
- "Recycling practices implemented to date are ...an optical illusion that perpetuates the severe human rights impacts of plastics"
- "Only legally binding limits on global plastic production for essential uses can make a difference."⁷

⁷ UN Doc A/76/207, para 21-22.



Photos above: Screenshots, The Menace of Ocean Plastics film



A Plastics 'Treaty'

Mounting concern regarding marine plastic pollution, as well as plastic pollution more generally, resulted in a resolution being taken at the second part of the [5th United Nations Environment Assembly \(UNEA 5.2\) held in early March 2022 to begin negotiations on a legally binding international instrument on plastic pollution](#).⁸ The Resolution notes that the instrument will be, 'based on a comprehensive approach that addresses the full lifecycle of plastic' including marine plastics.

Negotiations are set to take two years, with an International Negotiating Committee to be established by the Executive Director of UNEP to conduct discussions. The Committee is tasked to consider, among other things;

- sustainable production and consumption of plastics, including through resource efficiency and approaches grounded in the circular economy
- measures to reduce plastic pollution in the marine environment, including existing pollution;
- development of national actions plans;
- cooperation and coordination between relevant legal instruments and bodies;
- Increased knowledge and scientific and socio-economic assessments on plastic pollution;
- capacity building, technical assistance, and research and development;

⁸ UNEP/EA.5/Res.14



Image: Margherita Brunori

Compliance;

- The best scientific evidence available, traditional knowledge, knowledge of indigenous peoples and local knowledge systems;
- the possibility of a mechanism to provide policy relevant scientific and socio-economic information and assessment related to plastic pollution.

Taking into account the findings of the UN Special Rapporteur on Human Rights and Toxics, the negotiations on the international instrument should, among other things;

- continue to focus on the full life cycle of plastics, and avoid any excessive focus on recycling;
- establish legally binding limits on virgin plastic production;
- integrate human rights principles such as prevention, precaution and polluter-pays as well mechanisms for accountability and access to remedy; and
- ensure broad public participation, based on the good practice of the negotiations of the Escazú Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean).⁹



Photo: Nessim Stevenson

⁹ UM Doc A/76/207, para 76.

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