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## TOWARD A NEW GLOBAL CONVENTION WITH A MULTI-LAYERED GOVERNANCE APPROACH TO ADDRESS PLASTIC POLLUTION

### I. BACKGROUND

At its 1<sup>st</sup> meeting, the Ad Hoc Open-Ended Expert Group on Marine Litter and Microplastics (AHOEEG) identified several gaps in and fragmentation of existing frameworks addressing plastics and plastic pollution.<sup>1</sup> In advance of the 2<sup>nd</sup> meeting, national focal points and experts were invited to help deepen the discussion on, among other things, governance for a new global architecture to address plastics and plastic pollution.<sup>2</sup>

Governance is the most important issue confronting Member States. Following review of 18 international instruments and 36 regional instruments, the United Nations Environment Programme (UN Environment) concluded that “current governance strategies and approaches provide a fragmented approach that does not adequately address marine plastic litter and microplastics.”<sup>3</sup> Given the more than 335 million tonnes of plastic produced every year—more than eight million tonnes of which enters the oceans— and rising production trends,<sup>4</sup> it is clear that in order to prevent marine and other plastic pollution, a new global Convention on Plastic Pollution is required with a mandate to manage the lifecycle of plastics, including production. The new Convention should anchor, build upon and complement existing regional and global voluntary and binding frameworks, allowing them to contribute within their core competencies.<sup>5</sup>

### II. PILLARS OF ACTION

Member States have identified several areas where activities are needed, which can be broadly bundled into four pillars of action to form the work of a Convention on Plastic Pollution:

Convention on Plastic Pollution				
Pillar 1	Pillar 2		Pillar 3	Pillar 4
Coordination	Plastic Pollution Prevention		Financial Support	Technical Support
<p><b>Coordination and Synergies</b></p> <ul style="list-style-type: none"> <li>▪ <b>Basel Convention</b> <ul style="list-style-type: none"> <li>– trade in scrap plastic</li> <li>– Partnership on Plastic Waste (guidelines)</li> </ul> </li> <li>▪ <b>MARPOL</b> <ul style="list-style-type: none"> <li>– port reception facilities</li> <li>– ships and fishing vessels</li> <li>– fishing gear</li> </ul> </li> <li>▪ <b>Stockholm Convention</b> <ul style="list-style-type: none"> <li>– persistent organic pollutants</li> </ul> </li> <li>▪ <b>SAICM</b> <ul style="list-style-type: none"> <li>– plastic as issue of concern</li> <li>– additives restrictions</li> </ul> </li> <li>▪ <b>Regional Seas Programmes</b> <ul style="list-style-type: none"> <li>– regional strategies</li> </ul> </li> <li>▪ <b>Others</b></li> </ul>	<p><b>Harmonization and Inventories</b></p> <ul style="list-style-type: none"> <li>▪ <b>Definitions</b></li> <li>▪ <b>Methodologies</b></li> <li>▪ <b>Baselines</b></li> <li>▪ <b>Monitoring</b></li> <li>▪ <b>Reporting</b></li> <li>▪ <b>Standardization</b> <ul style="list-style-type: none"> <li>– labelling</li> <li>– certification schemes</li> <li>– industry standards</li> </ul> </li> <li>▪ <b>Product Design</b></li> <li>▪ <b>Microplastics (intentionally added)</b></li> <li>▪ <b>Pre-Production Pellets</b></li> <li>▪ <b>Legacy Plastic Pollution</b></li> </ul>	<p><b>Control Measures</b></p> <ul style="list-style-type: none"> <li>▪ <b>Global Reduction Target</b></li> <li>▪ <b>Global Market Restrictions</b> <ul style="list-style-type: none"> <li>– prohibitions</li> <li>– production</li> <li>– consumption</li> </ul> </li> <li>▪ <b>Microplastics (not intentionally added)</b></li> <li>▪ <b>National Reduction Commitments</b> <ul style="list-style-type: none"> <li>– national market restrictions</li> <li>– extended producer responsibility</li> <li>– reuse, collection and recycling</li> <li>– secondary markets</li> <li>– single-use products and packaging</li> <li>– other measures</li> </ul> </li> </ul>	<p><b>Financial Support to Developing Countries</b></p> <ul style="list-style-type: none"> <li>▪ <b>Fast-Action Funding</b></li> <li>▪ <b>Monitoring</b></li> <li>▪ <b>Reporting</b></li> <li>▪ <b>Capacity-Building</b></li> <li>▪ <b>Institutional Strengthening</b></li> <li>▪ <b>Policy Development</b></li> <li>▪ <b>Demonstration Projects</b></li> <li>▪ <b>Incremental Compliance Costs</b></li> </ul>	<p><b>Assessment and Knowledge-Sharing</b></p> <ul style="list-style-type: none"> <li>▪ <b>Technical and Scientific Assessment</b></li> <li>▪ <b>Socio-Economic Assessment</b></li> <li>▪ <b>Knowledge Exchange</b></li> </ul>

## PILLAR 1 – COORDINATION

It is well-recognized that a number of existing conventions and agreements could be or are actively taking steps to address aspects of plastic pollution. However, none of the existing frameworks is specifically designed to prevent increasing flows of plastic pollution into the biosphere, nor to comprehensively manage the plastic pollution already present in the biosphere. Coordination with existing actions in these other fora should therefore be central to the governance of a new Convention on Plastic Pollution, fully recognizing that these are separate bodies with their own mandates and jurisdiction.

Of note are the following conventions and agreements:

- ***Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Basel Convention)***. In *Decision 13/17*, the Parties to the Basel Convention agreed to consider relevant options available to further address marine plastic pollution and develop a proposal for possible further action within the scope to the Basel Convention for its 14<sup>th</sup> Conference of the Parties (COP).<sup>6</sup> Among those were two amendments to reclassify solid plastic waste to remove the presumption that it is non-hazardous (Annex IX) and to list it among the wastes requiring prior informed consent (Annex II), which in turn would provide transparency on transboundary shipments of scrap plastic. In advance of the Open-Ended Working Group (OEWG) in September 2018 (OEWG-11), Norway submitted the first of those amendments and indicated its intention to submit the other for consideration at the 14<sup>th</sup> Conference of the Parties (COP-14) and beyond. Parties are also considering the establishment of a Partnership on Plastic Wastes, which would produce non-binding guidelines on plastic waste management
- ***International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL)***. MARPOL Annex V specifically prohibits the discharge of plastics from ships. At its 72<sup>nd</sup> session, the Marine Environment Protection Committee (MEPC) agreed to include a new output to develop an “action plan to address marine plastic litter from ships,” which was considered and adopted at its 73<sup>rd</sup> session and will be developed in the coming years, implicating fishing gear, passively fished waste, port reception facilities, cost recovery systems and on-board waste management, among others.<sup>7</sup> This important aspect of marine plastic pollution requires robust action by MARPOL.
- ***The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 (London Convention) and its 1996 Protocol (the London Protocol)***. With the aim of preventing marine pollution from the dumping of wastes and other matter, the London Protocol further prohibits the dumping and incineration at seas of wastes, including plastics.<sup>8</sup> The Protocol establishes reporting requirements as well as compliance procedures and mechanisms for its Parties, which can be assisted by a subsidiary body (“compliance group”). Current efforts include investigating permit requirements to close the gap of plastics in sewage waste and dredged material dumped at sea.<sup>9</sup>
- ***Regional Seas Programmes***. The 18 Regional Seas programmes addressing land-based sources of pollution vary in scope, legal structure and effectiveness.<sup>10</sup> Nevertheless, they serve as important regional laboratories with the potential to reinforce regional cooperation to address region-specific issues and should therefore be strengthened, where possible, and knowledge exchanged among them.
- ***Stockholm Convention on Persistent Organic Pollutants***. With the potential to regulate the production, use and disposal of additives used in the manufacture of plastics, to the extent they are persistent organic pollutants (POPs), the Stockholm Convention could play a role, albeit limited to POPs, in greening the lifecycle of a range of plastic polymers, to promote safer design and increase rates of recycling and reuse.<sup>11</sup> In combination with the Basel Convention, it also addresses the re-entry of regulated chemicals onto the market through recycling of legacy products that contain POPs.

- **Strategic Approach to International Chemicals Management (SAICM).** SAICM is a voluntary global policy multi-stakeholder instrument aiming to ensure that, by the year 2020, chemicals are produced and used in ways that minimize significant adverse impacts on the environment and human health. SAICM identifies specific issues of concerns and adopts action plans, strategies and multi-stakeholder alliances to address specific issues related to chemical and waste management. There are ongoing discussions about the future of SAICM beyond 2020, including consideration of plastic as an issue of concern and certain endocrine disruptors, which encompass certain plastic additives.
- **United Nations Convention on the Law of the Sea (UNCLOS).** UNCLOS governs the use of the world's oceans and contains multiple provisions relevant to marine plastic pollution. Fundamentally, Article 194.1 requires states to “prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities”. Article 207 requires States to “adopt laws and regulations to prevent, reduce and control pollution of the marine environment from land-based sources,” and specifies that “States, acting especially through competent international organizations or diplomatic conference, shall endeavour to establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control pollution of the marine environment from land-based sources.”
- **Convention on Biological Diversity (CBD).** In *Decision XIII/10* on addressing impacts of marine debris on marine and coastal biodiversity, Parties are urged “to develop and implement measures, policies and instruments to prevent the discard, disposal, loss or abandonment of any persistent, manufactured or processed solid material in the marine and coastal environment.”<sup>12</sup>

## PILLAR 2 – PLASTIC POLLUTION PREVENTION

The prevention of plastic pollution should be the primary mandate of any new global instrument with the overall goal being to eliminate plastic pollution entering all compartments of the environment (land, sea and air). In order to achieve this, a series of control measures will need to be negotiated, such as the elimination of certain single-use plastic products and packaging, caps in the production of virgin plastic and controls on the use of toxic additives (such as endocrine disrupting chemical and carcinogens), alongside activities to establish baselines and harmonize definitions and methodologies. The activities could therefore be divided into two tracks:

- **Track 1 – Harmonization and Inventories.** The Parties harmonize definitions and methodologies (e.g. for purposes of establishing baselines, inventories and monitoring) as well as standards for labelling, certification schemes and product design (e.g. to promote safer design, recycling and secondary markets for recyclates). The Parties further establish obligations related to monitoring and reporting (e.g. plastic production, consumption, trade, collection, recycling and disposal as well as status of water, air and soil ecosystems, and biomarkers) and outlines measures to reduce intentionally added microplastics and losses of pre-production plastic pellets (flakes and powders included).
- **Track 2 – Control Measures.** In addition to a global target to eliminate plastic pollution, the Parties would set out global market restrictions (e.g. prohibitions on certain polymers and additives, certain types of single-use plastics and packaging as well as controls on virgin plastic production and consumption) and measures to address microplastics. At the national level, countries would determine pollution reduction commitments tailored to national circumstances in binding national action plans. These could include, for example, national market restrictions, collection and recycling targets, measures to promote secondary markets and extended producer responsibility schemes. Relevant commitments made elsewhere, such as under regional Conventions and the Regional Seas Programmes, or in the context of the Sustainable Development Goals (SDGs), would be incorporated into the national action plans.

It is essential that, under its mandate of plastic pollution prevention, the Parties are given the ability to revise and update to respond to science and industry innovation, allowing it to be adaptable to the changing landscape – a start-and-strengthen approach.

### **PILLAR 3 – CAPACITY BUILDING AND FINANCIAL SUPPORT**

To build capacity and support developing countries, financial support should be made available for defined categories of costs. This support and capacity building includes enabling activities, monitoring, reporting, institutional strengthening, policy development as well as to support the development of pilot projects and assist with the incremental compliance costs to meet production and consumption reduction targets. Project proposals could be developed and implemented with the assistance of implementing agencies.

### **PILLAR 4 – TECHNICAL SUPPORT AND KNOWLEDGE EXCHANGE MECHANISM**

Technical support and transparency will be required in order to ensure informed science-based decision making and avoid false solutions. For example, ad-hoc bodies could be required to assess emerging issues, such as the overall food chain contamination with plastics or measures to reduce microplastic contributions from tire dust and textiles. In addition, the Convention on Plastic Pollution would provide a mechanism to exchange knowledge on innovative solutions.

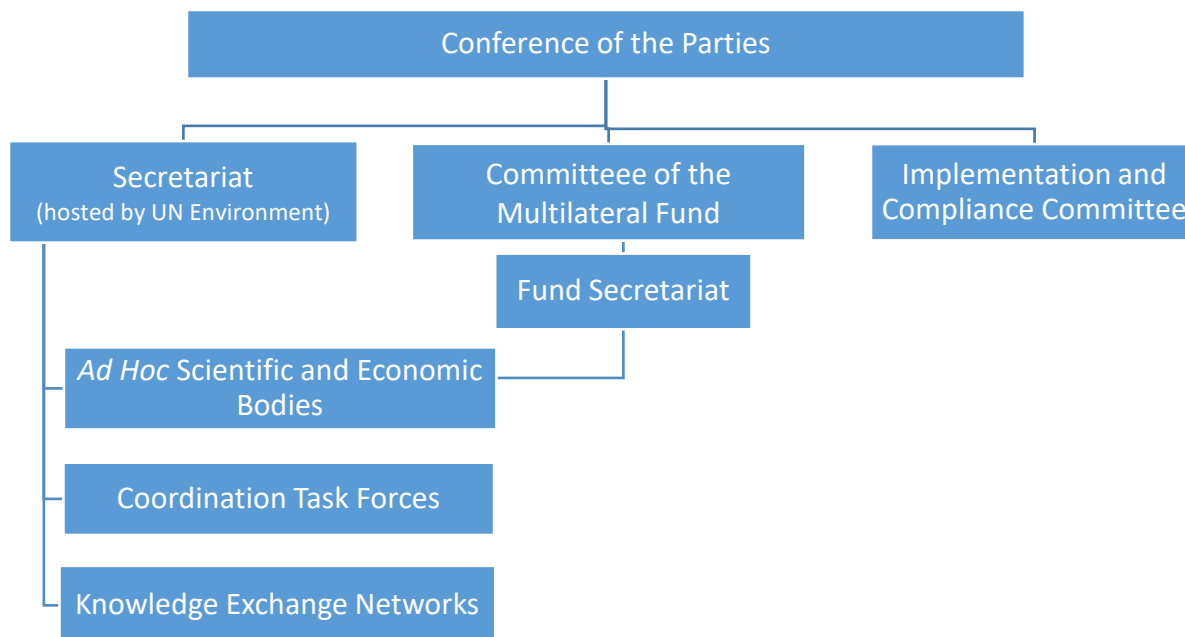
## **III. INSTITUTIONAL ARCHITECTURE**

The new global instrument should be governed by a decision-making body—a Conference of the Parties—to oversee and implement the four pillars of action, supported by a secretariat hosted by UN Environment.

Other institutional arrangements should also be considered and formalized, in particular the following subsidiary bodies, taking into account the possibility of using existing bodies, as appropriate:

- **Multilateral Fund.** Given the critical role of financial support to developing countries for implementation, a funding mechanism should be established and periodically replenished to provide stable, adequate and sustainable financing for the implementation of the Convention on Plastic Pollution. Such a funding mechanism could take the successful approach of the Montreal Protocol’s Multilateral Fund (MLF), which has its own Secretariat and is overseen by an Executive Committee comprised of geographically representative developing and developed countries. Alternatively, it could rely on an existing fund such as the Global Environment Facility (GEF).
- **Technical Bodies.** To assist with decision-making, institutional arrangements could either establish standing scientific and economic committees or *ad hoc* scientific and economic bodies (overseen by UN Environment, for example), both of which would draw upon experts from academia, industry, civil society (provided adequate conflict-of-interest and transparency policies), and established entities, such as the Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection (GESAMP) and the Regional Seas Programmes.
- **Implementation and Compliance Committee.** In order to ensure the implementation of, and review compliance with, all the provisions of the Convention on Plastic Pollution, a dedicated committee should be established. This includes identifying areas where assistance is needed by countries not meeting their obligations.
- **Coordination Task Forces.** In order to ensure coordinated responses and avoid duplication, the COP may wish to establish coordination task forces, which could operate through both formal means (joint task force between two conventions) and informal means (recommendations to Parties on actions to support in other fora), with consideration given to the potential role of the Regional Seas Programmes.
- **Knowledge Exchange Networks.** Knowledge exchange may also be formalized, building and expanding upon similar efforts already being undertaken, such as the Global Partnership on Marine Litter (GPML) and the recently announced Global Plastics Platform (GPP), through a knowledge exchange network.

Below is one example of what the new institutional structure could look like:



A list of organizations endorsing this thought starter can be found at: <https://goo.gl/zekCcW>

**For more information:**

**Tim Grabiell**  
Senior Lawyer  
Environmental Investigation Agency  
timgrabiell@eia-international.org  
+33 6 32 76 77 04

**David Azoulay**  
Senior Attorney  
Center for International Environmental Law  
dazoulay@ciel.org  
+41 78 75 78 756

**Trisia Farrelly**  
Senior Lecturer, School of People, Environment and Planning  
Co-Founder, New Zealand Product Stewardship Council | Co-Director, Political Ecology Research Centre  
T.Farrelly@massey.ac.nz  
+64 21 1713087 | +64 6 9516664

## References

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- <sup>1</sup> UN Environment, Report of the First Meeting of the Ad Hoc Open-Ended Expert Group on Marine Litter and Microplastics (Nairobi, 29-31 May 2018), UNEP/AHEG/2018/1/6, ¶ 60.
- <sup>2</sup> Ad Hoc Open-Ended Group on Marine Litter and Microplastics, Co-Chairs' Summary of the First Meeting (Nairobi, 29-31 May 2018), ¶25, available at [https://papersmart.unon.org/resolution/uploads/aheg\\_co\\_chair\\_summary\\_final\\_0.pdf#overlay-context=adhoc-oeeg](https://papersmart.unon.org/resolution/uploads/aheg_co_chair_summary_final_0.pdf#overlay-context=adhoc-oeeg).
- <sup>3</sup> UN Environment, *Combating Marine Plastic Litter and Microplastics Summary for Policymakers: An Assessment of the Effectiveness of Relevant International, Regional and Subregional Governance Strategies and Approaches* (2017), p. 5.
- <sup>4</sup> Center for International Environmental Law, *Fueling Plastics: Fossils, Plastics, & Petrochemical Feedstocks* (2017), available at <http://www.ciel.org/wp-content/uploads/2017/09/Fueling-Plastics-Fossils-Plastics-Petrochemical-Feedstocks.pdf>; Center for International Environmental Law, *How Fracked Gas, Cheap Oil and Unburnable Coal are Driving the Plastic Boom* (2017), available at <http://www.ciel.org/wp-content/uploads/2017/09/Fueling-Plastics-How-Fracked-Gas-Cheap-Oil-and-Unburnable-Coal-are-Driving-the-Plastics-Boom.pdf>
- <sup>5</sup> See generally UN Environment, *Combating Marine Plastic Litter and Microplastics: An Assessment of the Effectiveness of Relevant International, Regional and Subregional Governance Strategies and Approaches* (15 February 2018), UNEP/EA.3/INF/5.
- <sup>6</sup> See UN Environment, *Possible Options under the Basel Convention to Further Address Marine Plastic Litter and Microplastics* (Nairobi, 29-31 May 2018), UNEP/AHEG/2018/1/INF/5.
- <sup>7</sup> See International Maritime Organization, *Development of an Action Plan to Address Marine Plastic Litter from Ships* (26 July 2018), MEPC 73/8/3.
- <sup>8</sup> Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (adopted 29 December 1972, entered into force 30 August 1975) 1046 UNTS 120; 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (adopted 17 November 1996, entered into force 24 March 2006) 36 ILM 1.
- <sup>9</sup> International Maritime Organization (IMO), *Review of the Current State of Knowledge Regarding Marine Litter in Wastes Dumped at Sea under the London Convention and Protocol - Final Report (LC 38/16)* (2016).
- <sup>10</sup> See UN Environment, *Combating Marine Plastic Litter and Microplastics: An Assessment of the Effectiveness of Relevant International, Regional and Subregional Governance Strategies and Approaches* (15 February 2018), UNEP/EA.3/INF/5, pp. 49-62.
- <sup>11</sup> See UN Environment, *Combating Marine Plastic Litter and Microplastics: An Assessment of the Effectiveness of Relevant International, Regional and Subregional Governance Strategies and Approaches* (15 February 2018), UNEP/EA.3/INF/5, pp. 17, 32-33 and 64-65.
- <sup>12</sup> UN Doc CBD/COP/ DEC/XIII/10 (10 December 2016).