

features

Filling the Gaps in the Global Governance of Marine Plastic Pollution

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Humankind cannot survive without a healthy ocean, but our collective actions are rapidly destroying the ocean resources that sustain us. Marine pollution is one of the key elements that contributes to the degradation of this shared, interconnected, and largest ecosystem of the Earth. However, marine pollution governance is not homogeneous. Some pollution sources, such as wastewater

ers are involved and that the problems are severe, long-term, global, and in need of an urgent and sustained response.

To achieve transformative changes, multilevel life-cycle analysis is necessary. The origin of marine plastic pollution starts from the choice of raw materials, and subsequently involves the

design of the product (including additives), production, consumption, and end-of-life processes. From the private sector to government, numerous entities and populations contribute to the massive problem. Marine plastic pollution is also transboundary in nature because the materials can travel across national boundaries via the interconnected ocean.

Rationale and the Proposed Scope of a Global Binding Treaty

In terms of governance measures, legal instruments and institutional frameworks at the global, regional, national, and subnational levels play important roles in combating marine pollution. Indeed, numerous agreements and various institutional arrangements exist. However, some subject matters (e.g., governance of marine biodiversity areas beyond national jurisdiction) may benefit from a global, integrated, and coordinated action. Candidate problems are multidimensional and transboundary in nature with existing gaps in legal and institutional arrangements where sectoral and fragmented governance measures are ineffective. Marine plastic pollution arguably falls into such a category.

The 2017 UNEA Assessment identified significant gaps in existing legal and policy frameworks at the international, regional, and subregional levels. It concluded that a fragmented approach to governance is insufficient to tackle the global marine plastic pollution. The assessment focused on a holistic view to improve governance. The following three broad elements were considered: (i) aim to prevent pollution, (ii) protection of biodiversity and species, and (iii) regulation of the manufacture, use, and disposal of chemicals and waste. Based on extensive analysis, the Assessment suggested that a “hybrid approach” that provides “a new global architecture with a multilayered governance approach, combining legally binding and voluntary measures,” can be a platform to facilitate an international body (i.e., an existing or new body) that coordinates and strengthens governance measures under various instruments; an integrated approach to governance by incorporating principles from various Sustainable Development Goals, including goals for sustainable cities and communities, chemicals management, reductions in production of waste and pollution, as well as protection of the marine environment; and a comprehensive global strategy that takes into consideration industry innovation, best available science, and a platform for multi-stakeholder collaboration. 2017 UNEA Assessment at 87–91, 15–16, 105, 124–27.

As for a possible structure of the treaty, UNEA suggested that the architecture could be guided by the six Rs: rethink, refuse, reduce, reuse, repair, and recycle. Prevention would be the primary objective, followed by measures for reuse, recycling, recovery, and disposal, if any. UNEA also pointed out that the proposed global governance approach could be tailored to the life cycle of plastic products: (1) design, production, and consumption; (2) waste management services; and (3) recovery from the environment. In consideration of the unique set of challenges presented by microplastics (e.g., nanoparticles that break down from macro plastic materials), recommendations included a stand-

(High Seas Treaty). The negotiations were to be concluded in April of 2020, but due to the COVID-19 pandemic, the General Assembly has requested that the final session take place August 16–27, 2021 (A/75/L.39).

The existing governance of the areas beyond national jurisdiction is fragmented, representing a sectoral approach (i.e., shipping, fishing, etc.). By contrast, the draft High Seas Treaty aims to foster a healthy ocean by ensuring that the interconnected marine biodiversity is protected in an integrated and

(STB) in Article 49. Although the roles and responsibilities of the STB are still under discussion, it is to play an advisory role to the Conference of the Parties (COP) to ensure that the COP's decision is informed with the best available science. The STB could also contribute to fostering capacity building and transfer of marine technology. Because the High Seas Treaty has various technical elements, the STB will need multidisciplinary expertise, including expertise in traditional knowledge of indigenous peoples and local communities. The current draft text also takes into consideration gender balance and equitable geographic distribution of its members.

As with a robust High Seas Treaty, an effective and efficient marine plastics pollution treaty will need a clear set of requirements and guidelines based on the best available science with the collective goal of ensuring ocean health. With so many varying interests, it will be important that the decision-makers are adequately informed and impartial; this is especially true in the context of marine plastic pollution because it is a life-cycle issue. Indeed, a diverse and inclusive STB could ensure that the COP's decisions are objective, impartial, and not based on the perspectives of only like-minded experts. Diversity and inclusion are particularly crucial when a decision could impact a vast number of populations around the world in significant ways.

Careful consideration of various factors will maximize the STB's potential. First, criteria that ensure the representation of diverse experts and practitioners in the STB's membership are imperative because those who provide input will dictate the outcome of the STB's advice. Second, a transparent decision-making process for choosing the members will ensure that the composition criteria were adequately applied. Third, the scope of the STB's work—its roles and responsibilities—will need to be carefully examined. One of the STB's essential functions could be to provide “checks and balances” in the COP's decision-making process to ensure that political motivation is not overriding the goal to protect ocean health. Therefore, the elements that will be under the purview of the STB will be a critical factor in the COP's ability to be objective and impartial. Fourth, the work allocation process will need to ensure that the work designation is not biased (e.g., preferential treatment for certain disciplines solely based on the perception of superiority). Fifth, the STB will consist of experts and practitioners from various disciplines who will need to work through differences in opinion or approaches.

The more diverse the STB, the more difficult it will be to reach a consensus. Effective processes will be necessary to ensure that the STB members work synergistically while maintaining the integrity of the best available science and honoring traditional knowledge and other stakeholders' perspectives so that they can achieve the best option to foster ocean health. Sixth, an analysis

