

ARCHITECTURE OF A GLOBAL PLASTICS TREATY: DECONSTRUCTING THE ZERO DRAFT



GOVERNANCE & SUSTAINABILITY

Part of the Horizon Scanning series

The Global Plastics Treaty negotiations aim to confront escalating challenges caused by transboundary plastic pollution. While existing international legal instruments target specific elements of the problem, the proposed treaty offers a unique opportunity to regulate the entire plastics lifecycle (which encompasses raw material extraction, design and production, in addition to use, disposal, and waste management). With the aim of concluding negotiations by the end of 2024, some commentators consider the Global Plastics Treaty as the most important multilateral environmental agreement since the Paris Climate Agreement.

In this article, our team analyses the draft Global Plastics Treaty's emerging legal architecture. We identify prominent substantive themes—relevant to plastics manufacturers, hydrocarbon producers, natural resources and waste disposal companies, retailers, institutional investors, financial institutions, and regulators—incipient within the draft treaty. We observe the following key takeaways for businesses, ahead of the next round of negotiations in November 2023: divergence of views on countries' desired levels of supply-side regulatory autonomy, convergence on preserving national discretion to determine appropriate demand-side measures, and the growing influence of public-private coalitions aimed at shaping common rules on global plastic pollution.

1. Introduction

The Great Pacific Garbage Patch is the world's largest collection of floating waste. It was discovered by yachtsmen in the late-1990s between Hawaii and California. Ocean currents have collected debris in what is now a million square mile floating archipelago. That debris comprises over 79,000 metric tonnes—or 1.8 trillion pieces—of plastic. The patch, however, represents a fraction of the 400 million tonnes of plastic waste produced annually. Over 14 million tonnes escape into the world's oceans every year. Made up of synthetic polymers, their architects designed these molecules with durability and longevity in mind. They have since become cheap, adaptable, and ubiquitous conveniences. These synthetic polymers also became known as plastics, in reflection of their physical capacities to be infinitely shaped and moulded.

Evidently, plastic pollution has transboundary effects. End products containing plastics are pervasive in modern society, and widely traded across jurisdictional borders. Raw materials for manufacturing plastics—including hydrocarbons—are sourced from many different jurisdictions. Used plastics are also commonly exported for recycling or disposal purposes. Yet, regulatory obligations relating to plastics are typically confined to individual countries or jurisdictions. Within this existing

regulatory patchwork, public and private actors acknowledge that more consistent regulation of plastics could prevent leakage—where entities attempt to relocate their operations to jurisdictions with less stringent regulatory regimes. Similarly, a Global Plastics Treaty could produce common transboundary standards for the purposes of reducing compliance, transaction, and operational costs. Some private actors are also building new markets for sustainable products and services, both independently and in coalition with others. A global definition of sustainability applicable to plastics could also provide assurance for consumers and support the business case for investing in the circular economy.

On 4 September 2023, the chair of the UN Intergovernmental Negotiating Committee on Plastic Pollution (“INC”) published a “Zero Draft” version of a treaty to address global plastic pollution. UN delegates will use the 31-page text as a basis for concluding negotiations on a Global Plastics Treaty. Governments intend to agree the final text by next year's end. This development follows a March 2022 UN resolution—supported by 175 countries—to conclude the world's

first plastic pollution treaty.¹ With this, the negotiating parties aim to ensure that the treaty retains coherence, and complementarity, with existing treaties regulating plastic pollution. The parties also intend to promote cooperation and coordination with those conventions—including by sharing best practices—and to avoid duplicating existing actions or obligations.

2. Existing treaties governing plastic pollution

Several existing international legal instruments regulate transboundary plastic pollution, albeit through fragmented means. Firstly, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal² (“**Basel Convention**”) contains provisions regulating the movement, trading, and disposal of hazardous wastes. Following its 2019 amendments, the treaty’s obligations now cover most types of plastic-based pollution.³ The Basel Convention requires that the exporting country must seek the written consent of the prospective importing or transiting country before the intended transboundary transport of covered waste products. Under this treaty, some countries—such as China, Malaysia, and Thailand—are already *refusing* to receive plastic waste imported from foreign sources. Nonetheless, the United States—a major plastics producer—has not yet ratified the Basel Convention.

Secondly, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous

Chemicals and Pesticides⁴ (“**Rotterdam Convention**”) subjects certain *listed* plastic additives to a similar “prior informed consent” procedure, as a precondition to the transboundary trade of those additives. Additives covered by the Rotterdam Convention include octabromodiphenyl ether (“**octaBDE**”), hexabromocyclododecane (“**HBCD**”), and perfluorooctanoic acids (“**PFOAs**”), which are used in some plastic supply chains. The Stockholm Convention on Persistent Organic Pollutants⁵ (“**Stockholm Convention**”) also requires its parties to reduce or eliminate release of certain toxic and long-lived chemicals into the environment. Its regulatory scope includes specific chemicals associated with plastic production and disposal: including hexabromobiphenyl (“**HBB**”), bromodiphenyl ethers (“**BDEs**”), perfluorooctane sulfonate (“**PFOS**”), HBCD, PFOAs, perfluorohexanesulfonic acids (“**PFHxSs**”), and chlorinated substances.

Thirdly, the UN Convention on the Law of the Sea (“**UNCLOS**”) mandates the “prevention, reduction and control” of marine pollution.⁶ Comparably, the Convention on Long-Range Transboundary Air Pollution covers certain atmospheric microplastics. Nevertheless, neither treaty refers specifically to, nor establishes minimum standards for, plastic pollution. While the London Convention and London Protocol regulate the dumping of marine pollution at sea,⁷ 80-90% of marine pollution originates from land-based sources. The UN Resolution on Marine Litter and Microplastics⁸ similarly omits binding targets. It instead promotes voluntary compliance at a domestic level. While the *Ocean*

¹ *End plastic pollution: towards an internationally legally binding instrument*, UNEA Res 5/14, UN Doc UNEA/EA.5/Res.14 (7 March 2022), para. 3.

² *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal*, opened for signature on 22 March 1989 (entered into force on 5 May 1992).

³ For a list of plastic-related amendments to the Basel Convention, see Decision BC-14/12, available at: <<http://www.basel.int/Implementation/Plasticwaste/Decisions/tabid/6069/ctl/Download/mid/17953/Default.aspx?id=17&ObjID=22064>>.

⁴ *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides*, opened for signature on 10 September 1998 (entered into force on 24 February 2004).

⁵ *Stockholm Convention on Persistent Organic Pollutants*, opened for signature on 22 May 2001 (entered into force on 17 May 2004).

⁶ See, for example, Article 145(a), *United Nations Convention on the Law of the Sea*, opened for signature on 10 December 1982 (entered into force on 16 November 1994).

⁷ *Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972* (opened for signature on 29 November 1972, entered into force on 30 August 1975) 36 ILM 7; *1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972* (opened for signature on 7 November 1996, entered into force 24 March 2006) 36 ILM 7.

⁸ *Marine litter and microplastics*, UNEA Res 3/7, UN Doc UNEP/EA.5/Res.14 (30 January 2018).

Plastics Charter—signed by 26 countries and several multinational companies—mandates that all plastic goods contain at least 50% of recycled content by 2030, many major plastic manufacturing countries—including the United States and Japan—have resisted pressure to align with the Charter.

3. Key legal elements and architecture of the Zero Draft

Clearly, then, no existing treaty covers the entire plastics lifecycle (including raw material extraction, design and production, packaging and distribution, use and maintenance, collection and transport, recycling, and waste disposal). Some major plastic-producing countries have also not yet endorsed existing international instruments pertaining to the plastic lifecycle. However, there is now a widespread consensus that such regulation—through a new international legal instrument—is desirable. Most countries also now resolve that such a legal instrument should facilitate scientific collaboration, technology transfers, and capacity building.⁹ With this, the Global Plastics Treaty—including proposals to implement “nationally determined targets” through a compliance committee procedure—draws comparisons with the Paris Climate Agreement.

The Zero Draft will support the INC’s next negotiating round at Nairobi in November 2023. Its text reflects a convergence in countries’ views on policy options, although it notes that negotiators may wish to select individual options or combine them. For example, Part II.2—which aims to mitigate the adverse impacts of primary plastic polymers—proposes three potential options. Option 1 prescribes common reduction targets, compared to global baselines. It obligates each country to “not allow” levels of production and supply of primary plastic polymers to exceed internationally agreed targets. By contrast, Option 2 provides more individual discretion. Under this option, the draft text requires each country to develop nationally determined targets aligned with achieving global targets. They must also monitor and periodically report measures implemented, and progress achieved, in relation to the global targets. Finally, Option 3 offers the most

flexibility. It requires countries to individually regulate plastic polymers, and communicate progress toward this outcome through their national action plans (“NAPs”).

An informal group of 60 countries, called the “High Ambition Coalition to End Plastic Pollution”—which includes many small island states, Chile, Rwanda, the UAE, Azerbaijan, Japan, the UK, and the EU—favour Option 1’s approach to global targets and restrictions on certain hazardous chemicals. However, several countries—including the United States and Saudi Arabia—express preferences toward the more flexible approaches in Options 2 and 3. For example, a United States representative—speaking at a plastics industry conference in June 2023—opined that a flexible, nationally-determined approach could attract greater participation and domestic innovation than prescriptive, “one-size-fits-all” obligations. Nevertheless, some commentators raise concerns about the potential efficacy of following the Paris Climate Agreement’s approach to relying on NAPs. These commentators claim that such approaches lack adequate enforcement and consistent monitoring methodologies for plastics. Despite this, many industry and environmental stakeholder groups praise the scope of proposed obligations, which include substantive sections on:

- Chemicals and polymers of concern;
- Problematic and avoidable plastic products (including short-lived and single-use plastic products and intentionally added microplastics);
- Product design, composition, and performance;
- Innovation and promotion of non-plastic substitutes;
- Extended producer responsibility;¹⁰
- Emissions and releases of plastic polymers throughout their lifecycles;
- Waste management;
- Trade in listed chemicals, polymers and products, and in plastic waste;
- Existing plastic pollution (including in the marine environment);
- Just transition measures for affected populations;
- Transparency, tracking, monitoring and labelling; and
- Financing, capacity building, technical assistance, and technology transfer.

⁹ See UNEA Res 5/14, Preamble.

¹⁰ Extended product responsibility is commonly defined as: “an environmental protection to reach an environmental objective of a decreased total environmental impact of a product, by making the manufacturer of the product responsible for the entire life cycle of the product and especially for the take-back, recycling and final disposal”. See Thomas Lindqvist and K Lidgren, *Towards an [EPR] - analysis of experiences and proposals* (Stockholm: Swedish Ministry of the Environment and Natural Resources, 1992).

The draft text is replete with potential supply-side measures. Nevertheless, its references to demand-side interventions remain limited. In particular, the Zero Draft provides that each country “should take appropriate measures” aligned with those countries’ national circumstances. The draft text further notes that such measures may include “market- and price-based mechanisms”, removing subsidies and fiscal incentives for producing primary plastic polymers, or other regulatory interventions. Implicit within the text is each national government’s discretion to determine the appropriateness of any such measures, in view of factors such as development priorities, economic circumstances, and national security considerations.

The draft text’s implementation and compliance provisions offer additional relevance to businesses and investors. Countries must periodically submit—to a governing body—NAPs and reports evaluating the effectiveness of their measures to implement the treaty. The Zero Draft establishes a mechanism—which includes a committee—to consider written submissions by countries regarding compliance with the treaty’s obligations. The mechanism remains facilitative in nature. With this, the Zero Draft empowers the committee to examine “individual and systemic implementation and compliance issues” prior to making appropriate recommendations to the governing body. These provisions, and the committee’s powers, replicate key elements of the Minamata Convention on Mercury’s¹¹ and Paris Climate Agreement’s implementation and compliance mechanisms.

Notwithstanding the Zero Draft’s specific content, an emerging coalition of plastic manufacturers and suppliers now advocate for common, mandatory, and specific global rules. They claim that consistent rules—on reducing use, waste, and enabling a circular economy for plastic—could cultivate a global level-playing field, which could reduce high transaction costs for private and public actors associated with fragmented measures. Over 500 organisations—including companies representing 20% of global plastic packaging production—now commit to reducing plastic use by 20% between 2018 and 2025. Inevitably, mobilising the private sector

is crucial to addressing the plastic pollution problem. Therefore, the Global Plastic Treaty’s ultimate effectiveness will be in driving private actions toward this objective.

4. Conclusion

Plastic polymers might appear indispensable to contemporary societies. Lightweight, durable, cheap, and malleable, plastics are deployed in nearly every industry: including within the healthcare, building and construction, consumer goods, and transport sectors. With this, plastic pollution is omnipresent, even in the world’s deepest ocean trenches and on top of the highest mountains. The mass of plastics on Earth is now over twice that of living flora and fauna. The United Nations projects this will treble by 2060, while only 9% of plastic waste is successfully recycled.

In many ways, the Zero Draft itself exhibits similar properties to plastic polymers. The draft text replicates many legal patterns, structures, and techniques common to other environmental treaties, such as the Paris Climate Agreement’s flexible approach to NAPs, and targets, as well as the Minamata Convention’s approach to implementation and compliance. Yet, the treaty’s content remains open and malleable: its architecture means that actors will continue to mould and shape its substantive obligations. Ultimately, however, the treaty’s durability will depend on the INC’s ability to balance several key factors: attracting widespread participation by major stakeholders, maximising environmental ambition, and ensuring a just transition toward a more circular economy. We eagerly await to observe how public and private actors will endeavour to balance such considerations ahead of the INC-3 meeting in November 2023.

¹¹ *Minamata Convention on Mercury*, opened for signature on 10 October 2013 (entered into force on 16 August 2017).

CONTACTS



Hywel Davies

Partner

T +44 (0)20 7090 3102

E hywel.davies@slaughterandmay.com



Moira Thompson Oliver

Head of Business and Human Rights

T +44 (0)20 7090 3115

E moira.thompsonoliver@slaughterandmay.com



Aaron Wu

Senior Professional Support Lawyer

T +44 (0)20 7090 3328

E aaron.wu@slaughterandmay.com

This briefing is part of the Slaughter and May Horizon Scanning series

Click [here](#) for more details. Themes include Across Borders, Governance & Sustainability, Digital, Risk & Resilience and Hybrid World. Governance & Sustainability explores how the climate crisis is no longer in the future. Businesses are faced now with increasing pressure from investors and new regulations to make a change. This brings even more focus on running a business in a way that responds to the crisis. This series will examine the changes.