

1. THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA (UNCLOS)

Summary of role: Often referred to as the constitution for the oceans, UNCLOS is a comprehensive and near universal treaty. It is not the only treaty that applies to pollution of the sea and the protection of the marine environment, but it is the only one which is intended to regulate all activities at sea. UNCLOS includes both provisions that are directly implementable by states and framework provisions that require agreement and formulation of further regulations, measures, standards and procedures at international, regional and/or national levels. With 168 state parties, UNCLOS is near universal.

Scope and work: UNCLOS covers land-based pollution as well as all activities at sea. In the absence of a COP for UNCLOS, implementation work on pollution from plastic is handled by relevant competent organisations such as UNEA, IMO, FAO, COP to the London Convention and Protocol, etc.

Keywords/research field: UNCLOS; land-based pollution; sea-based pollution; pollution from shipping; pollution from dumping; pollution from mining; general provisions; obligation of cooperation

1.1 Overview and state parties

UNCLOS was signed on 10 December 1982 in Montego Bay, Jamaica and entered into force in 1994. Considered the “constitution for the oceans”, the Convention aims to provide the legal framework for all human activities in the sea. From a marine environmental perspective, UNCLOS is also the most comprehensive international legal framework for the protection of the marine environment thus far. As of 31 January 2020, UNCLOS has 168 state parties including all ASEAN member states, China, Japan and Korea.

The status of UNCLOS is available online: https://www.un.org/depts/los/convention_agreements/convention_overview_convention.htm.

1.2 Relevant provisions

1.2.1 General obligations

UNCLOS has a number of general provisions that apply to pollution from marine plastics. Some apply to all activities at sea and in all maritime zones, while others apply to specific sources of pollution and to cooperation in controlling pollution of the marine environment.

First, the definition of ‘pollution’ in Article 1(4) of UNCLOS includes pollution from plastic debris provided that marine plastic debris have an adverse impact on the marine environment, human health and other uses of the sea, which plastic debris do.

Article 1(4) of UNCLOS defines 'pollution' as:

*The introduction by man, directly or indirectly, of **substances** or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities [emphasis added]*

Second, the general obligation in Article 192 of UNCLOS provides that states have an obligation to protect and preserve the marine environment.

Furthermore, according to Article 194 of UNCLOS:

*States shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary 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, and they shall endeavour to harmonize their policies in this connection*

(...)

These measures shall include, inter alia, those designed to minimize to the fullest possible extent:

*(a) **the release of toxic, harmful or noxious substances**, especially those which are **persistent**, from land-based sources, from or through the atmosphere or by dumping;*

*(b) **pollution from vessels**, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, **preventing intentional and unintentional discharges** (...)*

[Emphasis added]

In the context of marine plastic debris, the regulation of pollution generally distinguishes pollution from plastic debris that are generated from land-based activities (e.g. rivers, run-offs, etc) and end up in the marine environment (referred to as land-based sources of pollution), as opposed to plastic debris that are generated from sea-based activities and therefore are directly released in the marine environment (referred to as sea-based activities).

1.2.2 Specific provisions on pollution from land-based sources

The following provisions of UNCLOS are particularly relevant:

Article 207 Pollution from land-based sources

1- *States shall adopt laws and regulations to **prevent, reduce and control 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 practices and procedures.

5- [These] *laws, regulations and measures rules, standards and recommended practices and procedures (...) shall include those designed to minimize, to the fullest extent possible, the release of toxic, harmful or noxious substances, especially those which are persistent, into the marine environment.*

[Emphasis added]

There is therefore no doubt that the release of polymers and plastic-associated contaminants which are toxic, harmful or noxious and/or persistent must be regulated. States failing to do so would be in breach of their obligations under UNCLOS. Arguably they would also be in breach of general international law as these provisions are now generally considered as obligations under customary international law. They therefore apply also to non-signatories.

1.2.3 Specific provisions on pollution from sea-based sources: dumping, mining and shipping

UNCLOS requires states to adopt regulations and measures against pollution from specific activities that include the discharge of macro- and microplastic debris. States must also ensure compliance with the domestic measures that they have adopted accordingly.

These specific provisions cover pollution from:

- Mining with respect to the discharge of polymer drilling mud used in mining activities (Articles 208 and 214);
- The discharge of plastic waste at sea under the provisions on pollution from dumping (Articles 210 and 216); and
- Vessels, including the release of plastic garbage regulated under MARPOL and the purview of the IMO (Articles 211, 217, 218 and 220). Further details of the work of the IMO are provided in [Part 1, Section 3.5](#) below.

These specific provisions require measures adopted by states to be as effective as the applicable international rules, standards and procedures adopted by competent international and regional organisations or diplomatic conferences. This highlights the critical importance of the work done by such bodies and of states' engagement with them. It also puts in a different light the obligation to cooperate.

1.2.4 Regional approach and obligation of cooperation at regional level

The obligation to cooperate for the protection and preservation of the marine environment is provided in a number of articles in UNCLOS, including the general provisions on the protection of the marine environment, and the specific provisions on particular sources of pollution.

The general provisions include in particular Articles 197 and 123.

Article 197 provides that:

States shall cooperate on a global basis and, as appropriate, on a regional basis, directly or through competent international organisations, in formulating and elaborating international rules, standards and recommended practices and procedures consistent with this Convention, for the protection and preservation of the marine environment, taking into account characteristic regional features.

Article 123 provides that:

States bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end they shall endeavour, directly or through an appropriate regional organisation

(...)

(b) to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment;

The specific provisions on land-based sources of pollution (Article 207), pollution from seabed activities (Article 208), pollution by dumping (Article 210), and pollution from vessels also include an obligation for international and regional cooperation.

1.3 Implementation of UNCLOS' provisions

With its provisions on states' obligations to prevent and control pollution of the marine environment from plastic debris, UNCLOS provides high-level guidance to the way in which these obligations should be implemented and fulfilled, particularly through cooperation with other states and with competent international and regional organisations.

As UNCLOS does not have a Conference of Parties (COP), the implementation of its provisions appears to be more robust and effective for activities that fall within the scope of an international or regional organisation with a suitable mandate. Such organisations include the IMO with regards shipping or the Barcelona Convention and regional institutions for the Mediterranean Sea, one of a number of Regional Seas programmes. The work of regional institutions in Southeast and East Asia to combat pollution from marine plastic is examined and discussed in the next section of this report. The Global Programme of Action for the Protection of the Marine Environment from Land-based Activity (GPA), which was intended as a platform for the implementation of Article 207, is effectively under review through a holistic assessment undertaken under the auspices of UNEA and UNEP. These numerous institutional mechanisms are discussed below.

Of note, the Meeting of State Parties to the 1982 United Nations Convention on the Law of the Sea (SPLOS) is not a COP as it is convened by the Secretary-General of the United Nations once or twice a year in accordance with Article 319(2)(e) to elect the Members of the International Tribunal for the Law

of the Sea (ITLOS) and to discuss budgetary and administrative issues related to UNCLOS. It is however a meeting where state parties can agree to discuss current issues (e.g. SPLOS/29/9, 8 July 2019, <https://undocs.org/en/splos/29/9>).