Written submission of statement from The Ocean Cleanup

Response to the call to send written statements for INC-2, issued by the INC secretariat on 8 June 2023

23 June 2023

A. In order to effectively tackle plastic pollution in the ocean, the instrument to be developed must address “legacy plastic pollution”, in furtherance of the provisions identified in United Nations Environmental Assembly Resolution 5/14 of March 2, 2022. The Ocean Cleanup supports the inclusion of explicit legal core obligations that include:

(a) the removal of legacy plastic pollution from the Ocean, including plastic accumulating in areas beyond national jurisdictions; and
(b) reduction of riverine plastic emissions into the ocean, aiming at elimination.

B. There is increasing recognition of the high seas as a collective common good requiring better management. The Ocean Cleanup is currently conducting research to examine whether States have a legal obligation to clean up legacy plastic pollution beyond their national jurisdictions. This research is particularly significant for Small Island Developing States (SIDS), as it can strengthen incentives and provisions to remediate transboundary legacy plastic.

C. According to the preliminary findings of our research, there are several international agreements¹ which provide a framework for addressing legacy plastic pollution. For instance, UNCLOS establishes a general duty to eliminate marine pollution, while MARPOL regulates and minimizes waste discharge from ships, including a ban on plastic disposal. The Basel Convention focuses on monitoring the effects of hazardous waste management, and the Protocol on Liability and Compensation for Damage (not yet in force) addresses the costs of reinstating impaired environments. The London Dumping Convention prohibits the intentional dumping of plastic-containing wastes. The OSPAR Convention emphasises the polluter pays principle, to bare the costs of pollution control and reduction measures to the polluter. However, these obligations do not specifically address legacy plastic pollution in areas beyond national jurisdictions, leading to weak incentives for States to act. These internationally legally binding instruments have divergent levels of ratification and incoherent geographical coverage – and no

---

coordination whatsoever among all of them, nor harmonised monitoring of levels of pollution. Therefore, despite so many agreements, we've fallen short of adequately addressing the issue. The good news is that it serves as a precedent and reference point for the development of provisions in the coming instrument.

D. There are seven **key challenges in addressing floating plastic** in the high seas that the international legally binding instrument needs to tackle:

1. Transnational Impact of Plastic Waste: The transboundary nature of such plastic waste, traversing beyond national jurisdictions, requires international cooperation and shared responsibility.

2. Diffused Accountability: The dispersion of collective responsibility frequently results in an accountability vacuum, undermining individual, corporate or state-level liability.

3. Absence of Global Governance: The global community presently lacks an international authority or agency specifically mandated to oversee and regulate transboundary plastic pollution.

4. Insufficient Political Incentive: The absence of immediate electoral relevance or geopolitical advantage frequently results in insufficient political will to address the issue of legacy plastic pollution in areas beyond national jurisdiction proactively.

5. Precautionary Principle dilemma: With the current understanding of plastic pollution's environmental impact, but also of its potential health risks, the only feasible approach to uphold this principle is through immediate and robust remediation efforts – and not by preventing direct action.

6. Need for Technological Neutrality: The sheer scale of the plastic pollution crisis demands that any international instrument embraces the principle of technological neutrality, guaranteeing freedom of choice by not requiring the use of any specific technology nor favouring or discriminating against any technology.

7. Challenges in Attribution: Despite the 'polluter pays' principle, attributing pollution to specific culprits remains a formidable challenge, particularly in what concerns floating plastic in the ocean. For instance, tracing pollution to an entity, such as a producer of fishing gear, may suffice for the Extended Producer Responsibility (EPR), but falls short of establishing state-level accountability. Furthermore, without remediation, it is virtually impossible to ascertain the origin of legacy pollution.

E. To assist states in addressing such challenges, as well as the Secretariat in developing the draft Zero, we are proposing two **zero draft provisions** to address floating plastic pollution in our oceans, aiming to protect future generations from the blight of plastic pollution:
1. “By 2030, cap and subsequently reduce the global average of riverine plastic emissions to a level significantly below 20% of a baseline. This baseline is to be established by a designated scientific panel within six months following the adoption of this agreement.

2. By 2040, restrain and subsequently decrease the global accumulation of floating plastic in areas beyond national jurisdiction to a level significantly below 20% of a baseline. This baseline is to be determined by a designated scientific panel within three years following the adoption of this agreement.”

For further information on this submission, please contact:
Dr. João Ribeiro-Bidaoui
General Counsel & Director of Global Public Affairs at The Ocean Cleanup
j.ribeiro@theoceancleanup.com

About The Ocean Cleanup
The Ocean Cleanup is a not-for-profit global project undertaking what may be considered as the largest cleanup in history. At time of writing, The Ocean Cleanup has already removed more than 194,000 kilograms of plastic from the Great Pacific Garbage Patch, as part of its mission to remove 90% of floating plastic in the Ocean by 2040; this, while the project is still at the development stage of its technology. Towards that scope, the organization collects data and develops technological solutions as part of a twofold approach: intercepting riverine plastic emissions, and removing legacy plastic pollution.