



**Preventing, reducing and
controlling marine plastic
pollution:
an enforceable legal
obligation**

Policy Brief

Preventing, reducing and controlling marine plastic pollution: an enforceable legal obligation

As States prepare for the next session of the Intergovernmental Negotiating Committee (INC-5.2) on plastic pollution, this policy brief aims to clarify the binding legal obligations that already govern State conduct under UNCLOS and Human Rights law. These existing obligations do not replace the need for a treaty, but rather strengthen the case for its adoption. They establish that States are already required to engage in good faith and with serious intent in the negotiation and conclusion of a legally binding international instrument on plastic pollution.

I. Background

In May 2024, the International Tribunal for the Law of the Sea (ITLOS), delivered an advisory opinion delineating the legally enforceable and binding obligations of States concerning pollution of the marine environment (in the following: COSIS advisory opinion).¹ This includes the legal obligation to adopt and enforce national legislations and to endeavour to establish global and regional rules, to prevent, reduce and control such pollution by participating meaningfully in competent international organizations or diplomatic conferences.² Additionally, in March 2025, the UN Human Rights Council adopted a resolution,

“Emphasizing the importance of States taking decisive action to address plastic pollution throughout the full life cycle of plastic, including in the marine environment, and highlighting the specific and severe impacts of plastic pollution, climate change and biodiversity loss on the ocean, which jeopardize the realization of human rights, including the human right to a clean, healthy and sustainable environment, while underscoring the transboundary nature of plastic pollution and the need for enhanced global cooperation to effectively address this crisis, [...]”³

II. Applicability to plastic pollution

The COSIS Advisory Opinion focused on greenhouse gas (GHG) emissions, but its findings directly apply to marine plastic pollution, as marine plastic pollution meets the definition of

¹ ITLOS, Request for an Advisory Opinion submitted by the Commission of Small Island States on climate change and international law, Advisory Opinion 21 May 2024, Case 31 (in the following COSIS advisory opinion).

² Art. 207, 213, 210, 216, 211 and 217 ff. of the 1982 UN Convention for the law of the Sea (UNCLOS).

³ UN General Assembly A/HRC/58/L.26, The human right to a clean, healthy and sustainable environment: the ocean and human rights, 26. March 2025.

marine pollution under Article 1 (1) (4) UNCLOS:

*Art. 1 (1) (4) UNCLOS: "pollution of the marine environment" means 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; [...];*

ITLOS clarified that “substance” and “energy” have a broad meaning, referring to any kind of matter with uniform properties or a definite chemical composition.⁴ Plastic is a form of matter with a definite chemical composition and consistent physical properties, particularly standard forms such as polyethylene or polystyrene. Furthermore, scientific evidence strongly indicates the harmful effects of marine plastic and associated chemical pollution on marine ecosystems and human health. In line with the precautionary approach embedded in Article 1 (1) (4) UNCLOS, the mere likelihood of such harm is sufficient to trigger the application of UNCLOS obligations.⁵ These impacts are further affirmed by the Human Rights Council resolution, which expressly recognises that marine plastic pollution threatens the enjoyment of the Human Right to a clean, healthy, and sustainable environment. In conclusion, plastic waste is at least likely to have hazardous effects on the marine environment and on human health, thus meeting the threshold under UNCLOS for constituting marine pollution.

III. Consequences

The main provision ITLOS based its findings on, is Art. 194 (1) UNCLOS, which reads:

*“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 [...].”*

1. Preventing marine plastic pollution

The primary focus of UNCLOS is the establishment of general and comprehensive obligations to prevent marine pollution. In this regard, UNCLOS embodies a **paradigm shift in international law – from a traditional view grounded in the freedom to pollute to an**

⁴ ITLOS, COSIS Advisory Opinion, para. 163.

⁵ Tanaka in: Proelss, UNCLOS Commentary (2017), Art. 1 mn. 13.

obligation to prevent marine pollution.⁶ According to ITLOS, a key element in preventing pollution is the obligation of States to adopt mitigation measures (Art. 194 (3) UNCLOS), whereby central to such measures is the reduction of anthropogenic GHG emissions into the atmosphere. Applied to plastics, this means a central measure is the reduction of its production.⁷ **This is further reiterated by the general obligations of States under Art. 192 UNCLOS** to protect and preserve the marine environment, whereby protecting refers to future damage, while preserving it also means restoring it.⁸ Protecting from future damages, thereby refers to mitigation measures and thus the reduction in production, while restoration may refer to an obligation to clean up the already existing marine plastic pollution.

2. Specific actions States are obliged to take (Necessary measures)

ITLOS affirms that States must adopt specific measures to prevent, reduce, and control marine [plastic] pollution, and underscores that a **failure to do so may give rise to international responsibility.**⁹ The identification of the specific measures States must adopt shall be guided by the standard of *due diligence*, informed by the *best available science*, and in line with the *precautionary principle*.¹⁰

a) *Best available science*

States must take into account the best scientific evidence available, when determining suitable measures to prevent, reduce and control plastic pollution. ITLOS thereby heavily relies on resolutions and reports of international bodies, such as the United Nations General Assembly (UNGA), as they reflect broad consensus among States and thus carry authoritative weight.¹¹

The UNGA has repeatedly recognised the gravity of the marine plastic crisis. For instance, its resolutions have noted that

“‘[m]arine debris, plastics and microplastics’ [...] had increased exponentially since [...] 2005” and that “**marine debris in general, and plastics in particular, were some of the greatest environmental concerns of our time, along with climate change, ocean acidification and loss of biodiversity, [...].**”¹²

⁶ Tanaka in: Proelss, UNCLOS Commentary (2017), Art. 1 mn. 15.

⁷ ITLOS, COSIS Advisory Opinion, para. 205.

⁸ ITLOS, COSIS Advisory Opinion, para. 386.

⁹ ITLOS, COSIS Advisory Opinion, para. 223.

¹⁰ ITLOS, COSIS Advisory Opinion, para. 242.

¹¹ ITLOS, COSIS Advisory Opinion, para. 214, 280.

¹² A/RES/72/73 (2017), para 188.

The UNGA further welcomes¹³ the UNEP report on marine plastic debris and microplastics¹⁴ that points out specific action items needed to prevent, reduce and control marine plastic pollution, including, amongst others, **prevention of marine plastic pollution as a key element** (para. 8 (a) (ii)), long-term solutions that include improved governance, such as a more **circular economy** (para. 8 (a) (iii)), a drastic reduction or **ban of single-use plastic products** (Par. 8 (m) (i)), and a **phase-out of non-recoverable plastic materials** that potentially accumulate in marine environments (e.g., microplastics in personal care products) (para. 8 (m) (iv)). Additionally, the latest Human Rights Council resolution, marine plastic pollution jeopardizes the realization of human rights, **underscoring the need for enhanced global cooperation to effectively address this crisis, [...]**.¹⁵

b) Due diligence

Although already implicit in the definition of marine pollution (see above), ITLOS highlights the **precautionary principle** as a central component of the due diligence required of States when determining the specific measures they must adopt to prevent, reduce, and control marine plastic pollution. This means that States are obliged to address potential risks even in the absence of full scientific certainty.¹⁶ The compelling scientific evidence on the risks that plastic pollution poses to the marine environment and to human health is therefore sufficient to trigger this binding international obligation. States must take active preventive and control measures in accordance with UNCLOS.

The standard of this **due diligence becomes more stringent** the higher the risk of the pollution, particularly in cases of transboundary pollution.¹⁷ Plastic pollution is transboundary in nature, as it is spread around the Ocean by winds and currents, with a potentially high risk of causing severe and irreversible harm to the marine environment and to humans. For this reason, the standard of due diligence must be stringent.

c) Capacity and Availability

Necessary measures that States have to adopt may vary according to the availability and capability of the States. However, this may not justify either postponement or exemption from taking all measures necessary, and States with capacity must provide technical assistance to

¹³ UNGA A/RES/72/73 (2017), para. 209.

¹⁴ UNEP(EA.2/5).

¹⁵ UNGA A/HRC/58/L.26.

¹⁶ ITLOS, COSIS Advisory Opinion, para. 242.

¹⁷ ITLOS, COSIS Advisory Opinion, para. 239, 256, 257, 441 (d).

other states with fewer resources and capabilities.¹⁸

d) *Adoption of national legislation and global rules*

States are under a legal obligation to **adopt and enforce national legislation** to prevent, reduce, and control pollution, including from land-based sources - dumping and vessels, particularly where the private sector is involved (Art. 207 (1) and 213, 210 (1) and 216-219, 211 (2, 4, 5) and 219 UNCLOS).¹⁹ This means that states are obliged to adopt national legislation to control private companies in reducing plastic production and controlling the pollution that is already out there, such as through the implementation of a circular economy.²⁰

Furthermore, acting especially **through competent international organizations or diplomatic conferences such as INC, States must (endeavour to) establish global and regional rules**, standards and recommended practices and procedures to prevent, reduce and control pollution of the marine environment (Art. 207 (4) and 213, 210 (4) and 216-219, 211 (1) and 219 UNCLOS).²¹ States are required to participate in the process of establishing an international framework with a view to strengthening the global response to the threat of marine plastic pollution. While this obligation does not impose the duty to succeed in these negotiations, States are obliged to make every effort in good faith to establish such rules, standards and practices and procedures on a continuing basis. Combined with the general obligation to cooperate under Art. 197 UNCLOS this particularly means that States are obliged to participate meaningfully in the formulation and elaboration of rules, standards and recommended practices and procedures, such as on INC, for the protection and preservation of the marine environment.²²

Lastly, as reaffirmed in the latest General Assembly resolution,²³ marine plastic pollution jeopardises the realisation of human rights, including the **human right to a clean, healthy, and sustainable environment that underscores “the need for enhanced global cooperation to effectively address this crisis, [...]”**²⁴ States that fail to effectively address this crisis may, additionally to domestic and international litigation under the Law of the Sea, also be exposed to litigation before human rights bodies.

¹⁸ ITLOS, COSIS Advisory Opinion, para. 207, 219 ff., 225 f. 243, 322-339, 441.

¹⁹ ITLOS, COSIS Advisory Opinion, para. 202, 286, 294-321.

²⁰ ITLOS, COSIS Advisory Opinion, para. 396.

²¹ ITLOS, COSIS Advisory Opinion, para. 273.

²² ITLOS, COSIS Advisory Opinion, para. 307.

²³ UNGA A/HRC/58/L.26.

²⁴ UN General Assembly A/HRC/58/L.26, The human right to a clean, healthy and sustainable environment: the ocean and human rights, 26. March 2025.

IV. Summary of consequences

The obligation to prevent, reduce, and control plastic pollution of the marine environment is not optional — it is a binding requirement under international law. Authoritative reports, such as those from UNEP or resolutions such as from the UNGA and HRC, constitute the best available science that courts rely on to determine the concrete measures States must take. Measures that States are obliged to take include but are not limited to reducing plastic pollution at source by curbing production; adopting long-term governance frameworks such as circular economy models; drastically reducing or banning single-use plastic products; and phasing out non-recoverable plastic materials. A key obligation highlighted by ITLOS is that States must engage meaningfully in international negotiations with a genuine interest in concluding an international legal instrument to address marine pollution.

Non-compliance may expose States to international responsibility,²⁵ including proceedings before international courts and domestic courts where individuals and civil society can hold governments accountable. As legal scrutiny increases, active and meaningful participation in international processes — including the adoption of a robust plastic treaty — becomes not just politically prudent, but legally essential.

²⁵ ITLOS, COSIS Advisory Opinion, para. 223.

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