

Open-ended ad hoc expert group to further examine the barriers to and options for combating marine plastic litter and microplastics from all sources, especially land-based sources

29-30 May 2018

**Contribution of the Division for Ocean Affairs and the Law of the Sea
Office of Legal Affairs, United Nations**

1. The United Nations Environment Programme is seeking input from participants in the Open-ended ad hoc expert group to further examine the barriers to and options for combating marine plastic litter and microplastics from all sources, especially land-based sources, on the following questions:

- Major barriers to combatting marine litter and microplastics
- Potential national, regional and international response options and associated environmental, social and economic costs
- Feasibility and effectiveness of different response options
- Any other inputs

2. The present contribution focuses on major barriers and potential response options, on the basis of information contained in the report of the Secretary-General on oceans and the law of the sea to the seventy-first session of the General Assembly (A/71/74) and the actions called for by the General Assembly in its annual resolutions on oceans and the law of the sea and on sustainable fisheries.

3. In his report addressing the topic of focus of the seventeenth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea,¹ on the theme entitled “Marine debris, plastics and microplastics”² (A/71/74), the Secretary-General provided information on: the sources and pathways of marine debris, including plastics and microplastics; the environmental, economic and social impacts; action undertaken at the global, regional and national levels to prevent and significantly reduce marine debris, including plastics and microplastics; and further action necessary to prevent and significantly reduce marine debris, including plastics and microplastics.

4. In particular, with regard to further action necessary to prevent and significantly reduce marine debris, including plastics and microplastics, the report draws attention to the need to

¹ The Informal Consultative Process was established in order to facilitate the annual review by the General Assembly, in an effective and constructive manner, of developments in ocean affairs and the law of the sea by considering the report of the Secretary-General on oceans and the law of the sea and by suggesting particular issues to be considered by it, with an emphasis on identifying areas where coordination and cooperation at the intergovernmental and inter-agency levels should be enhanced.

² See document A/71/204 for a Co-Chairs’ summary of discussions at the meeting.

address data and knowledge gaps, as well as regulatory, implementation and enforcement gaps, and to develop measures, best practices and best available techniques, such as implementing integrated management, addressing such materials at source through cultural measures and economic or market-based measures, improving waste management practices, cleaning up existing marine debris, and strengthening coordination and cooperation.

5. Noting that not only are marine debris, plastics and microplastics exogenous, ubiquitous and transboundary, but their sources are mostly land-based, the report concludes that urgent action is thus required to address activities and patterns of behaviour on land, including harmful production and consumption patterns. In particular, the report highlights the improvement of product life-cycle management, and the development of cleaner technologies and waste management infrastructures, as requiring attention. The report also stresses a considerable need for greater awareness-raising efforts among populations living near as well as far from the coast, with a view to curbing activities that have the potential to pollute the marine environment through riverine run-offs and the impact of debris-carrying winds. It is noted in the report that the multifaceted nature of the problem also provides an opportunity for increased cross-sectoral cooperation and coordination, and integrated management, as well as the fostering of greater producer and consumer responsibility, including through fiscal and market-based incentives, participative approaches, education and awareness-raising. Innovative reuse and recycling initiatives also offer new economic opportunities.

6. The report further concludes that implementation of the legal and policy instruments at the global, regional and national levels which address various aspects of this issue, in particular the United Nations Convention on the Law of the Sea, needs to be strengthened for effective prevention, reduction and control of marine debris, including plastics and microplastics. This presents numerous challenges for a number of States, owing, inter alia, to inadequate human and institutional capacity, technology and infrastructure. The report also notes that such challenges can be overcome if adequate enabling measures are put in place and the appropriate resources are dedicated to addressing the problem.

7. The United Nations Convention on the Law of the Sea (UNCLOS), which sets out the legal framework within which all activities in the oceans and seas must be carried out, as recognized annually by the General Assembly, provides, in its Part XII on the protection and preservation of the marine environment, for the obligation for States to protect and preserve the marine environment. UNCLOS requires States to take, individually or jointly as appropriate, all measures necessary to prevent, reduce and control pollution³ of the marine environment from any source, including from land-based sources, from vessels and by dumping, using for this purpose the best practicable means at their disposal and in accordance with their capabilities. These measures must include those necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life. States have a duty not to transform one form of pollution into another and not to introduce alien or new species which may cause harm to the marine environment. When they have reasonable grounds for believing that planned activities under their jurisdiction or control may

³ 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”.

cause substantial pollution of or significant and harmful changes to the marine environment, they shall, as far as practicable, assess the potential effects of such activities on the marine environment and communicate reports of the results.

8. Among the measures necessary to prevent, reduce and control pollution of the marine environment from any source, States are required to adopt laws and regulations which, depending on the source of pollution, must either take into account internationally agreed rules, standards and recommended practices and procedures (e.g. laws and regulations relating to land-based pollution), be no less effective than the global rules and standards (e.g. laws and regulations relating to dumping) or have the same effect as that of generally accepted international rules and standards (e.g. laws and regulations relating to pollution from vessels). UNCLOS includes extensive provisions on enforcement in respect of the various sources of pollution, and provides for global and regional cooperation and coordination for the protection and preservation of the marine environment.

9. Further, with regard to pollution from land-based sources, States are to endeavour to harmonize their policies at the appropriate regional level (article 207(3)) and, acting especially through competent international organizations or diplomatic conference, to endeavour to establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control pollution of the marine environment from land-based sources, taking into account characteristic regional features, the economic capacity of developing States and their need for economic development (article 207(4)). The scope of land-based sources under UNCLOS includes rivers, estuaries, pipelines and outfall structures (art. 207(1)). The laws, regulations, measures, rules, standards and recommended practices and procedures to be established 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 (arts. 194(3), 207(5)).

10. UNCLOS further provides for coastal State regulation of fishing gear by providing for licensing of fishing equipment used in waters under national jurisdiction, including in the exclusive economic zone (Article 62), and for the enforcement of such national regulation (Article 73).

11. The United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (United Nations Fish Stocks Agreement) includes an obligation for States to minimize pollution, waste, discards, and catch by lost or abandoned gear and to protect biodiversity in the marine environment. It also provides that measures to be taken by a State in respect of vessels flying its flag shall include requirements for marking of fishing gear for identification in accordance with uniform and internationally recognizable vessel and gear marking systems.

12. The Review Conference on the United Nations Fish Stocks Agreement in 2016 recommended that States and regional fisheries management organizations or arrangements recognize the links between lost, abandoned or otherwise discarded fishing gear and wider problems of pollution of the marine environment and the challenge of marine debris, including plastics and microplastics; enhance efforts to prevent and mitigate the impacts of all kinds of lost, abandoned or otherwise discarded fishing gear (including from so-called ghost fishing and

marine debris from plastics and microplastics); establish mechanisms and incentives for the regular retrieval of derelict gear and adopt mechanisms for monitoring and reducing discards of fishing gear, in support of the commitment under the 2030 Agenda for Sustainable Development to, by 2025, prevent and significantly reduce marine pollution of all kinds, in particular from land-based activities, including marine debris and nutrient pollution; and improve cooperation and utilize a wide range of economic and innovative options to address the problem, including mechanisms for the retrieval of lost, abandoned or otherwise discarded fishing gear, identification of owners of gear and gear registries, observer coverage and information campaigns.

13. The General Assembly of the United Nations has increasingly considered the issue, in particular through its United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea, which addressed the issue of marine debris at its meeting in 2005⁴ and focused on marine debris, plastics and microplastics at its meeting in 2016. At that meeting, the Informal Consultative Process considered the environmental, social and economic dimensions of marine debris, plastics and microplastics and progress made in preventing, reducing and controlling pollution from marine debris, plastics and microplastics; and the challenges, lessons learned, best practices and way forward to prevent, reduce and control pollution from marine debris, plastics and microplastics.⁵

14. The General Assembly, in its annual resolution on oceans and the law of the sea, has, *inter alia*:

- called upon States to implement resolution 2/11 on marine plastic litter and microplastics, adopted by the United Nations Environment Assembly of the United Nations Environment Programme;⁶
- recognized the need for better understanding of the sources, amounts, pathways, distribution, trends, nature and impacts of marine debris, especially plastics and microplastics, and to examine possible measures and best available techniques and environmental practices to prevent its accumulation and minimize its levels in the marine environment;⁷
- encouraged States to further develop partnerships with industry and civil society to raise awareness of the extent of the impact of marine debris on the biological diversity, health and productivity of the marine environment and consequent economic loss, and to cooperate with other States, industry and civil society, as appropriate, on environmentally sound and cost-effective measures to prevent and reduce, as appropriate, marine debris and microplastics in the marine environment, including through strengthened cooperation under the Global Partnership on Marine Litter;⁸
- urged States to integrate the issue of marine debris into national and, as appropriate, regional strategies dealing with waste management, especially in the coastal zone, ports and maritime industries, including recycling, reuse, reduction and disposal, to consider developing an integrated waste management infrastructure and to encourage the

⁴ See A/60/99.

⁵ See A/71/204.

⁶ Resolution 72/73, para. 210.

⁷ See e.g. resolution 72/73, para. 213.

⁸ See e.g. resolution 72/73, para. 214.

development of appropriate economic incentives with the aim of reducing marine debris to address this issue, including the development of cost recovery systems that provide an incentive to use port reception facilities and discourage ships from discharging marine debris at sea, and support for measures to prevent, reduce and control pollution from any source, including land-based sources, such as community-based coastal and waterway clean-up and monitoring activities, and encourages States to cooperate regionally and subregionally to identify potential sources and coastal and oceanic locations where marine debris aggregates and to develop and implement joint prevention and recovery programmes for marine debris as well as to raise awareness of the issue of marine debris and the need to consider environmentally sound options for its removal.⁹

15. In addition, in its annual resolution on sustainable fisheries, the General Assembly has called for various actions by States, intergovernmental organizations and civil society, including the reduction or elimination of catch caused by lost or abandoned gear; data collection; close cooperation and coordination; raising awareness within the fishing sector and RFMO/As of the issue of derelict fishing gear and related marine debris; and identifying options for action.¹⁰ It has reaffirmed the importance of, and urged accelerated progress by States and RFMO/As in, the implementation of those actions.¹¹

⁹ See e.g. resolution 71/257, para. 210.

¹⁰ See e.g. resolution 71/123, para. 121 and resolution 60/31, paras. 77-81.

¹¹ See e.g. resolution 71/123, para. 197.