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**DIALOGUE ON PLASTICS POLLUTION
AND ENVIRONMENTALLY SUSTAINABLE PLASTICS TRADE**

PRESENTATION BY CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW (CIEL)

Workshop 6 December 2022

DOCUMENT DE SÉANCE NON OFFICIEL¹

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* In Original language only/En langue originale seulement/En el idioma original solamente.

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Alternatives and substitutes: Definitions & other principles found in Public International Law

Hélionor de Anzizu
Staff Attorney - International Investment and Trade Law

6 December 2022

What does Public International Law tell us about a definition on substitutes and alternatives to plastics?

- No internationally agreed definition of what constitutes an alternative or a substitute in the context of plastics ⇒ important to make it right from the start.
- More coming also from the INC: Many delegations during the INC 1 mentioned that the scope of the Plastics Treaty should include alternatives and substitutes to plastics
- Public International Law has already addressed alternatives and substitutes to other forms of pollutants or substances of concern.
 - ◆ Public International Law does not make a clear differentiation between substitutes and alternatives. But such differentiation would be useful in the context of plastics to differentiate between (i) non polymer /natural material substitutes and (ii) polymer based alternatives (better plastics)

Alternatives

- An alternative **reduces or efficiently eliminates** [pollution]

Art. 1 (4) Convention for the Protection of the Ozone Layer
 "Alternative substances" means substances which **reduce, eliminate or avoid** adverse effects on the ozone layer"

- International agreements emphasize that **human health risks and environmental implications** of alternatives need to be **promoted** when identifying alternatives (could also be applied to substitutes), as well as their **economic and social costs**

Convention on Persistent Organic Pollutants (The POP Stockholm Convention)

- Art. 7 Information exchange: "Each Party shall facilitate or undertake the exchange of information relevant to [...] Alternatives to persistent organic pollutants, including **information relating to their risks as well as to their economic and social costs**."
- Annex II Part D for DDT "D. Each Party that produces and/or uses DDT shall restrict such production and/or use for disease vector control in accordance with the World Health Organization recommendations and guidelines; or the use of DDT and when locally safe, effective and affordable alternatives are not available to the Party in question [...] 5. In [...] Factors to be considered when considering alternatives or combinations of alternatives shall include the **human health risks and environmental implications of such alternatives**. **While alternatives to DDT that pose less risk to human health and the environment, be suitable for disease control based on conditions in the Parties in question and be supported with monitoring data** [...]
- Annex F (a) Information on socio-economic considerations: "Alternative (products and processes); (b) Technical feasibility; (c) Costs, including environmental and health costs; (d) Efficacy; (e) Risk; (f) Availability; and (g) Accessibility."

Protocol to the Convention on long-range Transboundary air pollution on Persistent Organic Pollutants (POPs)

- Art. 5 Exchange of information and technology T. 1 (b) **The exchange of and access to information on the development and use of alternatives to persistent organic pollutants, as well as on the evaluation of the risks that such alternatives pose to human health and the environment, and information on the economic and social costs of such alternatives.**
- Art. 6 Public awareness: The Parties shall, consistent with their laws, regulations and practices, promote the provision of information to the general public, including individuals who are direct users of persistent organic pollutants. This information may include, inter alia: (i) **Information on alternatives to persistent organic pollutants, as well as an evaluation of the risks that such alternatives pose to human health and the environment**, and information on the economic and social impacts of such alternatives.

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Substitutes

- Regarding substitute materials, other international legal instruments also mention that when looking at substitute materials or activities a **particular consideration needs to be given to the potential environmental benefits or penalties of substitute materials or activities** (i.e. negative externalities).

Convention on the Protection and Use of Transboundary Watercourses and International Lakes (The UN/ECE Water Convention)

- ANNEX II GUIDELINES FOR DEVELOPING BEST ENVIRONMENTAL PRACTICES" 2. In determining what combination of measures constitute best environmental practices, in general or in individual cases, particular consideration should be given to: (a) The environmental hazard of: (i) The product; (ii) The product's production; (iii) The product's use; (iv) The product's ultimate disposal; (b) **Substitution by less polluting processes or substances; (c) Scale of use; (d) Potential environmental benefit or penalty of substitute materials or activities;** (e) Advances and changes in scientific knowledge and understanding; (f) Time limits for implementation; (g) Social and economic implications. 3. It therefore follows that best environmental practices for a particular source will change with time in the light of technological advances, economic and social factors, as well as in the light of changes in scientific knowledge and understanding."

Similar wording under Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention)

Public International Law Principles

- From a public international law perspective, there are also some principles of international environmental law that need to be taken into consideration when identifying or liberalising trade in alternatives and substitutes to plastics:
- ◆ **Principles of the Rio Declaration** (mentioned Resolution that establishes the negotiation of the Plastics Treaty (UNEP/EA.5/Res.14), for e.g.:
 - **The precautionary principle (Principle 15)**: dictates the adoption of a cautious approach in matters relating to the environment when there is scientific uncertainty about the possible negative impacts of [substitutes or alternatives to plastics]
 - "Knowledge about pollution and toxic substances will never be complete, necessitating recourse to the precautionary principle, which holds that where there are threats of harm to human health or the environment, lack of full scientific certainty must not be used as a reason for postponing preventive action" (SR on Human Rights and the Environment, David Boyd (A/HRC/49/53).
 - **The polluter-pays principle (Principle 16)**: the polluter should bear the costs of preventing and implementing control measures for pollution

Public International Law Principles

- From a public international law perspective, there are also some principles of international environmental law that need to be taken into consideration when identifying or liberalising trade in alternatives and substitutes to plastics:
- ◆ **Principles established by other international legally binding treaties**
 - **The principle of self-sufficiency** (e.g. Basel Convention, also under EU Waste Framework Directive (2008/98/EC) and EU Landfill of waste Directive (1999/31/EC)): requires that most waste should be treated or disposed of within the region in which it is produced.
 - **Principle of prevention (also linked to precautionary principle)**:
 - "States should enact measures to achieve zero pollution and zero waste. States should eliminate the production, use and release of toxic substances, except for essential uses. States must prevent exposure, by regulating industries, emissions, chemicals and waste, and promote innovation of safe substitutes" (SR on Human Rights and the Environment, David Boyd (A/HRC/49/53).
 - Mentioned in multiple treaties but also under Stockholm Declaration Principle 6: "The discharge of toxic substances or of other substances and the release of heat, in such quantities or concentrations as to exceed the capacity of the environment to render them harmless, must be halted in order to ensure that serious or irreversible damage is not inflicted upon ecosystems. The just struggle of the peoples of ill countries against pollution should be supported".
 - ◆ **Principles of customary international law**:
 - **The no harm principle (also linked to Principle 2 of the Rio Declaration)**: Under this principle, States should aim to create a solution by which no transboundary harm can occur.

→ While the environmental and human health assessments vis-à-vis potential substitutes and alternatives to plastic are still ongoing, a particular **caution seem to be appropriate in the context of bioplastics, compostable and biodegradable plastics** as possible **alternative to plastics**:

I. Assessment of potential impacts of solutions

93. Apparent solutions to the plastics crisis bring problems of their own. Thus, there is a need to assess their potential impacts on human rights to prevent unintended consequences and the shifting from one form of toxic exposure to another.

94. Bioplastics have been presented as an alternative to the plastics impacts of fossil fuel extraction and waste.¹²² Instead of utilizing fossil fuel feedstock, they are made primarily of plants. Where food crops such as corn and sugarcane are used, bioplastics enter into competition with food staples for the population. Just like plastics, bioplastics may also contain toxic additives. Accordingly, while bioplastics may biodegrade where composting practices are available, they aggravate the deforestation of the planet.

95. Plastic-to-fuel technologies have been presented as another alternative to plastic waste.¹²³ Instead of dumping or landfilling, these technologies transform plastics into fuel through incineration. Nonetheless, the incineration of plastic waste results in the creation of persistent organic pollutants, such as dioxins and furans, brominated dioxins and polychlorinated biphenyls. Plastic-to-fuel technologies therefore release new hazardous substances into the air. Moreover, incineration generates toxic ash, weighing about 10 per cent of the burned waste, which contains harmful persistent organic pollutants.¹²⁴

Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Marcos Cevallos, Report on the stages of the plastics cycle and their impacts on human rights (A/76/207). It also emphasises the **need to assess the human rights implications of substitutes and alternatives to plastic**.

The definition of the term "bioplastics" varies greatly around the world, but is most commonly used to describe bio-based, biodegradable, and/or compostable plastics. The use of the term "bioplastic" brings confusion about the difference between bio-based, biodegradable, and compostable materials.

Additional resources on alternatives to plastics



Alternative plastic: Is it the answer to ending marine plastic pollution?

Plastic Solutions Review

Plastic Solutions Review provides clear information and analysis of solutions regarding bio-based plastics, biodegradable and compostable plastics, chemical recycling, incineration, non-degradable plastics, plastic credit, plastic-to-fuel, and bioplastics, each page reviewed by an expert panel of scientists



Bioplastics remains plastic: Bio-based, biodegradable and compostable plastics. False solutions to the plastic crisis in the ocean



UNEP Biodegradable Plastics & Marine Litter



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For any questions
hdeanzizu@ciel.org
