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# Rethinking Plastics in Aotearoa New Zealand: A Call for an International Treaty on Plastic Pollution

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## 1. INTRODUCTION

Aotearoa New Zealand has a poor record on plastic pollution. Despite evidence that microplastics are saturating the oceans at alarming rates and damaging ecosystems, it has done very little to regulate plastic. Historically, New Zealand outsourced its plastic waste to be dealt with by other countries.<sup>1</sup> It was slow to implement a plastic bag ban,<sup>2</sup> and is only now drafting regulations to ban certain single-use plastics.<sup>3</sup> Up until recently New Zealand was also reluctant to support the growing call by environmental groups, NGOs, and now various states, for an international treaty to regulate plastics.<sup>4</sup> At its 2022 meeting,<sup>5</sup> the United Nations Environment Assembly (UNEA) will likely mandate an intergovernmental negotiating committee to begin drafting such a treaty. This

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- 1 Office of the Prime Minister's Chief Science Advisor *Rethinking Plastics in Aotearoa New Zealand* (Auckland, December 2019) at 22.
- 2 Single-use plastic bag bans were prevalent in parts of Africa and Asia from 2002. See Jennifer Clapp and Linda Swanston "Doing away with plastic shopping bags: international patterns of norm emergence and policy implementation" (2009) 18 *Environmental Politics* 315. New Zealand's ban came into force in 2018: see Waste Minimisation (Plastic Shopping Bags) Regulations 2018 (LI 2018/270).
- 3 Ministry for the Environment "Phasing out hard-to-recycle and single-use plastics" (27 June 2021) <[www.environment.govt.nz/what-government-is-doing/areas-of-work/plastic-phase-out](http://www.environment.govt.nz/what-government-is-doing/areas-of-work/plastic-phase-out)>.
- 4 Trisia Farrelly and Laura Green "The Global Plastic Pollution Crisis: how should New Zealand respond?" (2020) 16(2) *Policy Quarterly* 67 at 73.
- 5 The fifth session (resumed) of the UNEA online and in Nairobi between 28 February and 2 March 2022.

article argues that a treaty is not just desirable, but is fundamentally necessary if New Zealand is to meaningfully address the environmental problems posed by plastic. New Zealand should therefore stop sitting on the sidelines:<sup>6</sup> it needs to get on the international stage and actively advocate for a robust international treaty on plastics.

In December 2019 the Office of the Prime Minister's Chief Science Advisor released a report entitled *Rethinking Plastics in Aotearoa New Zealand (Rethinking Plastics)*.<sup>7</sup> That report provided a welcome in-depth analysis of the plastic problem in New Zealand. The report identifies the answer as New Zealand switching from a linear "make to waste" economy to a circular one; "one where we can unmake everything that we make".<sup>8</sup> The Government generally accepted the recommendations in the report,<sup>9</sup> and has started to action them. It has released a *National Plastics Action Plan*.<sup>10</sup> Disappointingly, however, that plan is devoid of measurable targets, focuses on consumers and their recycling and waste habits (worthwhile of course), but it lacks a plan for transformative change by industry, imports and product design — which are the most important levers required for a move to a circular economy. The Government is also drafting legislation to ban certain single-use plastics, looking to establish recycling and container deposit schemes and undertaking a review of the waste management legislative scheme. In short, but with serious shortcomings, the Government is beginning to get its own house in order. However, plastic is pervasive and it is transboundary. It arrives to New Zealand in immeasurable ways; as nurdles for manufacturing, as raw products, in finished products ready for market, as packaging, and as litter and microplastics in the ocean. Plastic leaves New Zealand in as many ways too, and also as used plastic waste ostensibly intended for recycling offshore.<sup>11</sup> New Zealand's plastic problems are transboundary, and for this reason they cannot be solved domestically. The only way for New Zealand to live up to the vision in the *Rethinking Plastics* report is to be part of a *global* circular plastics economy. In turn, the only way to a global circular plastics economy is with international co-operation, through a treaty.

6 In June 2021 the Minister for the Environment announced that New Zealand supported a treaty though the Ministry has not elaborated further and its support to date could be interpreted as lukewarm.

7 *Rethinking Plastics*, above n 1.

8 Ministry for the Environment website <mfe.govt.nz/waste/circular-economy>.

9 Ministry for the Environment *Rethinking Plastics in Aotearoa New Zealand: Government response to the Rethinking Plastics report* (August 2020).

10 Ministry for the Environment *National Plastics Action Plan for Aotearoa New Zealand* (September 2021).

11 Although this has dramatically reduced since China's 2018 ban on mixed-grade plastic waste.

## 2. THE CURRENT CRISIS

Plastic is pouring into the ocean in ever-increasing quantities — currently some 8 million tonnes per year.<sup>12</sup> Some of that plastic is visible, such as the floating “Great Pacific Garbage Patch” — an accumulation of floating plastic covering some 1.6 million square kilometres between Hawaii and California.<sup>13</sup> Most of the plastic in the ocean however is not visible, either in the form of pieces of eroded plastics or microscopic particles from synthetic clothing and tyres that have entered the ocean directly.<sup>14</sup> There is no shortage of alarming facts, such as how plastic is infiltrating the food chain and how humans are regularly ingesting plastic.<sup>15</sup> We know that microplastics permeate human tissue, and are now found in human organs, placentas and newborn babies’ meconium.<sup>16</sup> It is increasingly obvious that it is impossible to separate harm to the environment from harm to human health. In 2020 a new species of deep-sea amphipods was discovered at the bottom of the Mariana Trench — the deepest part of the ocean. It had ingested so much microplastic that it was coined *Eurythenes plasticus*.<sup>17</sup> Plastics are also a significant contributor to climate change. This is because of emissions in the manufacturing process (99 per cent of plastics are currently sourced from fossil fuels) and also because they emit greenhouse gases as they degrade.<sup>18</sup> The extent of the environmental harm caused by plastic is not yet fully understood. However, we know plastic permeates waterways and that microplastics are ingested by the ocean’s smallest creatures, micro-algae, that play a role in binding the sea floor, absorbing CO<sub>2</sub> and producing up to half the oxygen that we breathe.<sup>19</sup> The problem is global, and the solution therefore needs to be global.

12 Luisa Cortat Simonetti Goncalves and Michael Gerbert Faure “International Law Instruments to Address the Plastic Soup” (2019) 43 *Wm & Mary Env’t L & Pol’y Rev* 871 at 873.

13 L Lebreton and others “Evidence that the Great Pacific Garbage Patch is rapidly accumulating plastic” (2018) 8 *Sci Rep* 4666.

14 Julien Boucher and Damien Friot *Primary Microplastics in the Oceans: A Global Evaluation of Sources* (Gland, Switzerland, 2017) at 21.

15 CEIL and others “Plastic & Health: The Hidden Costs of a Plastic Planet” (February 2019) at 51–56.

16 Junjie Zhang and others “Occurrence of Polyethylene Terephthalate and Polycarbonate Microplastics in Infant and Adult Feces” (22 September 2021) *Environmental Science & Technology Letters*.

17 Johanna Weston and others “New species of *Eurythenes* from hadal depths of the Mariana Trench, Pacific Ocean” (2020) 1 *Zootaxa* 4748 (online ed).

18 Maocai Shen and others “(Micro)plastic crisis: Un-ignorable contribution to global greenhouse gas emissions and climate change” (2020) 254 *Journal of Cleaner Production* 120138.

19 At 8.

### 3. THE SOLUTION

The solution to the crisis is at once simple and complex — a circular plastics economy. It is simple because there is consensus among experts that a circular economy is the only way to stop plastic pollution from entering the environment.<sup>20</sup> It is complex because establishing a circular economy requires genuine systemic and behavioural change across society. That change has levers in policy, industry, international trade, economics, education and consumer behaviour. It requires embedding iterations of the zero waste hierarchy (eg Rethink, Refuse, Reduce, Reuse, Recycle, Repair, Rot)<sup>21</sup> so that investment is directed to measures at the top of the hierarchy. Through such systemic change, harmful plastics can be designed out of the environment altogether.<sup>22</sup>

Environmental organisations have long called for a circular waste economy. Continental Europe heeded the call, making policy changes in 2008,<sup>23</sup> followed by the United Kingdom<sup>24</sup> and other states. New Zealand came to the table late. It took a long time for it to meaningfully engage with the issue of plastic pollution. Three factors could help explain why. First, its small population with a green image helped push the reality of the problem away from the spotlight.<sup>25</sup> This is evidenced by the lack of data on plastic waste and pollution.<sup>26</sup> Second, New Zealand has a fragmented waste management system lacking in overall national strategy.<sup>27</sup> Individual territorial authorities determine how they deal with plastic waste created in their jurisdiction. Third, and crucially, for decades New Zealand relied on outsourcing almost all (90 per cent)<sup>28</sup> of its

20 Ellen MacArthur Foundation “The Circular Economy in Detail” (2020) <<https://archive.ellenmacarthurfoundation.org/explore/the-circular-economy-in-detail>>.

21 *Rethinking Plastics*, above n 1, at 34.

22 Feng Wang and others “Addressing Marine Plastics: A Roadmap to a Circular Economy” UN Environment Programme (2019) <[unep.org](https://www.unep.org/)>.

23 Waste Framework Directive (EC 2008).

24 Zero Waste policies were adopted in the four UK countries from 2013 to 2014. See J Hill “Circular Economy and the Policy Landscape in the UK” in R Clift and A Druckman (eds) *Taking Stock of Industrial Ecology* (Springer, 2016) at Table 13.1.

25 PJ Clunies-Ross and others “Synthetic shorelines in New Zealand?” (2016) 50 *NZ Journal of Marine and Freshwater Research* 317.

26 *Rethinking Plastics*, above n 1, at 13, Recommendation 2.

27 The current waste management regime is under review. For its shortcomings see Hannah Blumhardt “Trashing Waste: unlocking the wasted potential of New Zealand’s Waste Minimisation Act” (2018) 14(4) *Policy Quarterly* 13 at 13. For proposed policy changes see Ministry for the Environment *Taking responsibility for our waste: Proposals for a new waste strategy* (October 2021) <[consult.environment.govt.nz/waste/taking-responsibility-for-our-waste](https://www.environment.govt.nz/waste/taking-responsibility-for-our-waste/)>.

28 Ministry for the Environment *New Zealand’s approach to implementing amendments to the Basel Convention* (May 2020) at 5.

plastic waste to other countries. Most of the outsourced waste went to China. However, that dramatically changed in 2018 when China stopped accepting the bulk of New Zealand's plastic waste.<sup>29</sup> Other Asian countries took some of the waste instead, and today only a very small proportion of New Zealand's plastic waste is recycled domestically. The bulk of its plastic waste is sent to landfills. Landfilling plastic poses other problems, including the release of toxic chemicals and climate change gases.<sup>30</sup> Also, landfills may not contain plastics indefinitely. Environmental events such as flooding and earthquakes show that these can breach, releasing tonnes of plastics into waterways and the ocean.<sup>31</sup>

Growing public concern about plastic waste likely helped to bring plastics to the top of the Government's agenda.<sup>32</sup> The 2019 *Rethinking Plastics* report signalled a change of direction for New Zealand.<sup>33</sup> The Ministry for the Environment now states that its "work programme for waste is aimed at accelerating New Zealand's transition towards a circular economy".<sup>34</sup> However, New Zealand cannot move towards a circular economy without aligning its strategy and rules with other countries, particularly those with whom it trades plastic goods, be they resin pellets, raw materials, finished goods or packaging. Take plastic recycling as an example: currently a very small percentage of plastic placed in recycling bins in New Zealand is actually recycled. The reason for this is complex, but essentially there are almost no limits on the myriad of plastic goods imported to and produced in New Zealand, all with compositions, grades, and additives. Only a tiny proportion can be feasibly recycled in the right type of facility. New Zealand has only a handful of recycling plants. For those few, it is only economically and practically feasible to positively select particular products for recycling — a concept known as "positive recycling". The hard fact is that the overwhelming majority of plastic placed in recycling bins goes to landfills. At a minimum first step, standardisation and labelling of plastic types, composition, additives, and degradation is required if the

29 China's 2019 National Sword Programme, described in *Rethinking Plastics*, above n 1, at 22.

30 Shen and others, above n 18, at 7.

31 Holly Henry "'It's a disaster': West Coast locals disgusted as storm pulls landfill rubbish along 100km of pristine coast" *Newshub* (online ed, New Zealand, 1 April 2019); Cathryn Murray, Nikolai Maximenko and Sherry Lippiatt "The influx of marine debris from the Great Japan Tsunami of 2011 to North American shorelines" (2018) 132 *Marine Pollution Bulletin* 26.

32 2018 Colmar Brunton "Better Futures" (February 2019) showed plastic as the number-one concern for New Zealanders when it comes to sustainability, social and environmental issues.

33 Ministry for the Environment "New Zealand joins the Global Alliance on Circular Economy and Resource Efficiency" (press release, 4 March 2021) <wasteminz.org.nz>.

34 Ministry for the Environment "What the Government is doing about waste" <mfe.govt.nz/waste/circular-economy>.

*Rethinking Plastics* vision is to get off the ground. This cannot be done at the domestic level. Plastics travel the world and so global co-operation is required.

#### 4. EXISTING INTERNATIONAL LAW

A body of international law touching on marine plastic pollution exists. Turning first to hard law: New Zealand is party to the London Convention,<sup>35</sup> the London Protocol,<sup>36</sup> and the MARPOL Convention.<sup>37</sup> These instruments all restrict the dumping of waste at sea. They are generally regarded as being effective in their objectives. However, they do not cover plastics from land-based sources — which make up the vast majority of plastic pollution in the ocean.<sup>38</sup>

New Zealand is also party to the Basel Convention<sup>39</sup> which controls the movement of hazardous waste, including plastic waste,<sup>40</sup> between countries. An Amendment known as the Basel Ban entered into force in December 2019. It prohibits New Zealand and other OECD countries from exporting hazardous plastic waste to non-OECD countries. The Basel Ban was initially opposed by New Zealand.<sup>41</sup> The Government's rationale at the time of negotiation was effectively that receiving countries could refuse the waste if they did not want it, and that a ban might disincentivise recycling domestically.<sup>42</sup> That reasoning ran counter to a circular economy, ignored the burden placed on developing countries, and, it has been pointed out,<sup>43</sup> showed disregard for New Zealand's leadership role in the Pacific.<sup>44</sup> While New Zealand is updating its position in light of the coming into force of the Basel Ban, it still stops short of applying the Basel Convention in a way that maximises its potential. For example, New

35 Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matter 1046 UNTS 120 (29 December 1972).

36 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 [London Protocol].

37 Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matter, above n 35, Annex V.

38 Aaron Stubbins and others "Plastics in the Earth system" (2021) 373(6550) *Science* 51.

39 Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal 1673 UNTS 126 (22 March 1989).

40 Amendment to the Basel Convention (May 2019).

41 Communication from David Parker, 2019, cited in Farrelly and Green, above n 4, at 72.

42 Max Bradford, Minister for Enterprise and Commerce "Toxic Pesticides" (press release, 5 March 1999) <beehive.govt.nz/release/toxic-pesticides>.

43 Farrelly and Green, above n 4.

44 Farrelly and Green, above n 4; Sabaa Ahmad Khan "Clearly Hazardous, Obscurely Regulated: Lessons from the Basel Convention on Waste Trade" (2020) 114 *AJIL* 200.

Zealand could have, but has chosen not to, set a contamination rate for its plastic waste exports. This inevitably means its exports are less likely to be high-value, clean, sorted plastics destined to be genuinely and safely recycled overseas. Again, New Zealand needs to step up its implementation of the Basel Ban if it is serious about a circular plastics economy.

To summarise the hard law, the abovementioned international agreements cover discrete issues: pollution from ships, dumping into the ocean, and trading in plastic waste. Notwithstanding that New Zealand could improve the way it deals with the latter, the overall criticism of current international law is that it fails to deal with the main causes of plastic pollution — which are land-based. This gap in the body of international law needs to be remedied.

Turning next to soft law: waste generally has been a concern since the 1972 Stockholm Conference.<sup>45</sup> The focus on the growing plastics problem came in 2015 when the General Assembly (GA) agreed the Sustainable Development Goals (SDGs):<sup>46</sup> in particular SDG 12 on ensuring sustainable consumption and production patterns and SDG 14 on conserving the ocean. In the same year, the Global Programme of Action<sup>47</sup> adopted by the GA was the first international mechanism addressing ocean pollution coming from land-based activities.<sup>48</sup>

The UNEA with its environmental protection mandate has led much work on plastic pollution. At its 2017 session it formed an expert group on marine litter and microplastics which carried out research and reported in that area. At its 2019 session it passed two resolutions. The first was on Marine Litter and Microplastics.<sup>49</sup> States pledged to “prevent and significantly reduce marine pollution of all kinds, in particular from land-based activities including marine debris and nutrient pollution” by 2025. The second was on Addressing Single Use Plastic Products Pollution.<sup>50</sup> It implored states to adopt national or regional actions to address the environmental impact of single-use plastics. The agenda for the UNEA’s 2022 meeting again includes microplastics and, finally, a proposal for a treaty.

Sustainable Development Goals and UNEA resolutions, however well informed and well intentioned, are not sufficient. Being non-binding, they fall

45 For example, the Stockholm Conference, United Nations Conference on the Human Environment (Stockholm, 1972) and the Earth Summit, United Nations Conference on Environment and Development (Rio de Janeiro, 1992).

46 United Nations Sustainable Development Summit (2015).

47 Global Programme of Action for the Protection of the Marine Environment from Land-Based Activities and Related International Instruments 1995.

48 “110 Governments Adopt Ambitious Global Programme to Tackle Marine Degradation” UN Press Release HE/915 (8 November 1995) <un.org/press>.

49 Resolution on Marine Plastic Litter and Microplastics Environment Assembly Res 4/6 UN Doc UNEP/EA.4/Res.6 (28 March 2019) at 1.

50 Resolution on Single Use Plastic Products Pollution Environment Assembly Res 4/9 UN Doc UNEP/EA.4/Res.9 (28 March 2019) at 1–2.

into the trap of only being as effective as states make them.<sup>51</sup> Many years on from the SDGs, and the statistics on marine pollution and single-use plastics are dire. Meanwhile, plastic production is forecast to keep increasing.<sup>52</sup>

It can be seen therefore that existing international law does not deal with the problem. In fact, perhaps because of this gap in international law, non-governmental organisations have taken up the cause and rallied groundswell support to bring about change. A United Kingdom-based charity,<sup>53</sup> in collaboration with the United Nations Environment Programme, drafted the New Plastics Economy Global Commitment.<sup>54</sup> New Zealand, together with other governments and multinationals, has signed up to meet targets aimed at making 100 per cent of plastic packaging reusable, recyclable, or compostable by 2025. Momentum for action on plastics has been mounting. The Covid-19 pandemic temporarily interrupted that momentum. In some ways the pandemic exacerbated the plastics problem through a sharp increase in disposable single-use plastics used in healthcare and in food packaging. In other ways, however, the pandemic showed just how quickly society can adapt to change.<sup>55</sup>

## 5. AN INTERNATIONAL PLASTICS TREATY

It could be argued that there is no time to wait for the international community to come together to agree a treaty, which might take years. In that sense perhaps willing states should act unilaterally, as New Zealand is (slowly) doing, or through multilateral agreements. However, it is difficult to think of another global issue with as much scientific consensus and concern. A suite of global businesses including the Cola-Cola Company, Nestlé, PepsiCo, and Woolworths have called for a treaty.<sup>56</sup> An Amendment extending the Basel Convention to include plastic waste took the parties only one year to agree; which is lightning speed as far as international agreements go.<sup>57</sup> So the time appears to be right for a treaty.

51 Taylor G Keselica “Fish Don’t Litter in Your House: Is International Law the Solution to the Plastic Pollution Problem?” (2020) 33 *Pace Int’l L Rev* 115 at 133.

52 By 33 per cent over the next five years according to estimates. Massey University “Global Treaty underway to rid oceans of plastic” (13 December 2018) <[www.massey.ac.nz/article](http://www.massey.ac.nz/article)>.

53 The Ellen MacArthur Foundation.

54 New Plastics Economy Global Commitment (October 2008) <[newplasticseconomy.org](http://newplasticseconomy.org)>.

55 Tallash Kantai “Confronting the Plastic Pollution Pandemic” (22 December 2020) International Institute for Sustainable Development <[iisd.org](http://iisd.org)>.

56 WWF Australia “NGOs and businesses call for UN treaty on plastic pollution” <[wwf.org.au/news/news](http://wwf.org.au/news/news)>.

57 Kantai, above n 55, at 4.

Another compelling argument for an international treaty now, is so states avoid wasting time and resources on what some authors have termed “false solutions”.<sup>58</sup> These are approaches that may have short-term benefits, but overall they add to the linear plastic waste chain and perpetuate the problem. False solutions include waste to energy plants (burning waste), downcycling plastics (eg into fencing and roading), and most plastic recycling. In the *Rethinking Plastics* report New Zealand concedes that recycling is merely a short-term mechanism and not sustainable long term. This is because: (a) the process is not energy efficient; (b) a product degrades and has a limit on the number of times it can be recycled; and (c) each time virgin plastic must be added to the process.<sup>59</sup> With a global strategy embedded in a treaty, false solutions can be avoided.

Turning then to what such a treaty would look like, work has already been done in this space. An early suggestion centred on phasing out all petroleum-based plastics.<sup>60</sup> However, as identified in *Rethinking Plastics*, the issue is not that simple. Some fossil fuel-based plastics are not biodegradable whereas not all plant-based plastics are. The UNEA came up with some early ideas.<sup>61</sup> Those led the way for a treaty framework in June 2020 drafted by non-profit organisations including the Center for International Environmental Law (the CIEL framework).<sup>62</sup> This framework proposes four overarching “pillars” (and action topics) to be included in a plastics treaty:

1. Monitoring and Reporting (including data collection).
2. Plastic Pollution Prevention (national action plans, microplastics including tyres and textiles, labelling, product design, virgin plastic production and use, remediation and legacy pollution).
3. Coordination (eg regarding sea-based sources, plastic waste trade, chemicals and additives, biodiversity, climate change).
4. Technical and Financial Support (scientific panel, implementation and compliance).

When assessed against the issues raised in the *Rethinking Plastics* report, the CIEL framework is on point and comprehensive. New Zealand should embrace that work and advocate for a treaty built on that framework.

58 Farrelly and Green, above n 4, at 70.

59 At 67.

60 Elizabeth A Kirk and Naporn Popattanachai “Marine plastics: Fragmentation, effectiveness and legitimacy in international lawmaking” (2018) 27 *RECIEL* 222.

61 Keselica, above n 51.

62 Environmental Investigation Agency and Center for International Environmental Law “Convention on Plastic Pollution” (June 2020) <ceil.org>.

The Montreal Protocol and the Paris Agreement have been identified as potential models for such a treaty.<sup>63</sup> Arguments can be made as to why the current plastics problem is better suited for a Montreal- or a Paris-type agreement. In particular, similarities have been identified between ozone-depleting chemicals and plastics in that they are both synthetic and they persist in the environment (or degrade into other toxic products). It takes industrial processes to make them (unlike greenhouse gases), and therefore a phased Montreal-style ban may be appropriate.

Given the extent of the plastics problem, there are reasons to employ the “preventative” and “precautionary” principles of international environmental law. An adaptation of the “common but differentiated responsibilities” principle may also be appropriate. This is because all states need to be responsible for addressing the problem, but, as with the Paris Agreement, the financial and social costs could be distributed more equitably between developed and developing countries.

It is inevitable that contentious issues would arise during treaty negotiations. Notably, the United States has a plastics industry and associated lobby groups that are often opposed in principle to regulating plastics.<sup>64</sup> New Zealand’s industry groups, in contrast, appear to be supportive of a move to a circular economy.<sup>65</sup> For New Zealand, some resistance could be expected — for example, on targets for domestic recycling — given its small population and limited infrastructure for recycling. However, lead times for implementing measures could vary for different states. Whereas New Zealand might have longer to implement some actions, others it could implement immediately. For example, New Zealand has the legislative provision already in place, by way of the Waste Minimisation Act 2008, to ban “the manufacture or sale of certain products”.<sup>66</sup> It is therefore feasible<sup>67</sup> for New Zealand to swiftly ban harmful products as they are identified (such as polystyrene food containers, fruit stickers, and PVC food containers).<sup>68</sup>

Finally, a treaty should provide for a central fund and joint taskforce to clean up existing marine plastic pollution. The method of clean-up might be contentious but it could be deferred to a specialist body. Such a provision

63 Elizabeth A Kirk “The Montreal Protocol or the Paris Agreement as a Model for a Plastics Treaty?” (2020) 114 AJIL 212.

64 Carl Bruch and others “Managing Marine Litter” (2020) 50 Environmental Law Reporter 10093.

65 See, for example, Packaging New Zealand *Annual Report 2020* <packaging.org.nz>.

66 Waste Minimisation Act 2008, s 23.

67 By Order in Council.

68 The Ministry for the Environment has consulted on these products and is expected to implement bans by late 2022, late 2023 and mid-2025 respectively.

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should not be difficult to reach agreement on since visible plastic pollution is of concern to all states.

## 6. CONCLUSION

The *Rethinking Plastics* report marks a turning point in New Zealand's approach to the plastic crisis. It is now acknowledging that the path forward is towards a circular plastics economy. The Government is working on changes to the legislative framework for waste management, phasing out certain single-use and hard-to-recycle plastics and looking into a nationwide bottle return scheme. These efforts are to be applauded. However, working in silo risks wasted time, resources and missed opportunities for a concerted effort for international co-operation. So much of the plastic problem is global. If ever there was an issue that is ready and fit for international environmental law governance, it is the crisis of plastic pollution. Plastic continues to flow into the ocean in ever-increasing amounts, and that amount is forecast to triple by 2040 if current trends continue.<sup>69</sup> New Zealand should leave its poor track record on plastics behind. At the (resumed) fifth conference of the UNEA in 2022 and during any resulting treaty negotiation forum, New Zealand must advocate for a robust treaty to govern plastics. Now is the time for New Zealand to show its true green colours on the international stage.

69 Up to 29 million tonnes a year: see Karen McVeigh "Global treaty to tackle plastic pollution gains steam without US and UK" *The Guardian* (online ed, London, 16 November 2020).