

Transcript

00:00:00 Speaker 1

I'm delighted to be here. Very honoured to be invited to speak to your group today, and it's also very nice to see a few faces and a few names amongst the group that I recognise and particularly nice to connect back with you Catherine and from our Nottingham days come quite some quite some years ago now I have a.

00:00:20 Speaker 1

I said a slide which I will endeavour to share with you. So let me know if this doesn't work.

00:00:31 Speaker 1

Uh, let me just get rid of that.

00:00:37 Speaker 1

Oh, there we go. Hopefully that has worked. So the title of my presentation today is a law of the sea in the plasticine, and it's really on an area that I've quite recently got into and I've been working on a book chapter.

00:00:55 Speaker 1

And it is somewhat of a work in progress. I was just saying to Natasha and Catherine that I.

00:01:00 Speaker 1

I hoped to in fact have this completed some weeks ago, but it's been a little bit more recent than I was anticipating, so I really look forward to the discussion and some feedback from you.

00:01:11 Speaker 1

I'd be very interested in your thoughts and so the focus, as I say is is really thinking about how the law of the sea is.

00:01:20 Speaker 1

Able to respond in in the age, which perhaps has been entitled the plasticine really in a nod to the level of plastics in the ocean, and indeed their, their their durability.

00:01:35 Speaker 1

Just see if I can move this on when we go up, so plastics of course are ubiquitous in terms of our society invented a mere 110 years ago.

00:01:45 Speaker 1

One of my favourite facts is that in fact production has grown 1000 fold over the last 100 years, which has grossly outpaced economic.

00:01:54 Speaker 1

Development and indeed growth in human population and that said about half of all plastics in fact has been produced simply since 2049% of plastics is produced in Asia with 28% being produced by China and about half of all plastics are discarded after a single use.

00:02:14 Speaker 1

Which kind of indicates the level of the problem.

00:02:18 Speaker 1

It's estimated that cumulative production of plastic exceeds 8000 million metric tonnes and 79% of that is found in either landfills or from the natural environment, including the ocean. So this really is quite a significant environmental problem that we are facing.

00:02:39 Speaker 1

It's been estimated and really a Semiole study that should read Semiole as opposed to seminar Semiole study.

00:02:47 Speaker 1

Conducted or published in 2015. Estimated in 2010 alone between 4.8 and 12 point.

00:02:53 Speaker 1

7,000,000 metric tonnes of plastic waste entered the oceans, and they're now actually considered to be a geological marker as the Anthropocene, as being something that's actually going to appear in the future fossil record.

00:03:07 Speaker 1

And we tend to think about plastics in the context of the ocean as being macro plastic. So kind of those larger pieces that you can see, such as plastic bags, bottles and so forth, and microplastics, which often come from washing of clothes and other very tiny bits of plastics. And then the nano plastics.

00:03:27 Speaker 1

Which tend to result from the breakdown of oceans, so there's a breakdown of plastics in the oceans. One of the interesting things about plastic in the oceans is that actually there's a lot of uncertainty about not only the amount of plastic in the oceans, but essentially how it comes.

00:03:45 Speaker 1

To enter the oceans and where it enters up, UM, it's often considered that 80% of plastics come comes from the land. With only 20% from sea based activities.

00:03:58 Speaker 1

But actually other studies or some studies dispute this and suggests that 50% of the plastic in the oceans is from fishing vessels.

00:04:05 Speaker 1

There's kind of quite a lot of uncertainty, actually about the sources of the problem, and it is believed that most plastic ends up on the sea floor. One estimate puts it as high as 94%, but others are between 50 and 70%.

00:04:26 Speaker 1

In terms of sort of floating plastics, which actually is a relatively small proportion of the plastics in the oceans, probably the most visible, or at least the area that is most well known is the the great great being and.

00:04:41 Speaker 1

Interesting term there. The Great Pacific garbage patch and that's the largest aggregation of surface ocean plastics ascension.

00:04:52 Speaker 1

In the Pacific there's actually quite significant quantities of plastic waste in the Bay of Bengal and and in the Gulf of Mexico and the South China Sea. And interestingly, it's been relatively recently identified that the North Atlantic thermohaline circulation.

00:05:11 Speaker 1

It's been described as a plastic conveyor belt, essentially transferring plastic from other parts of the ocean into the Greenland, Norwegian, and Baranci. So even kind of quite isolated areas are now being affected by plastic pollution.

00:05:28 Speaker 1

And it's just perhaps worth noting that plastic has been found in the deepest place on Earth in the Marianna trench, and also in some of the most, uh, remotest places.

00:05:37 Speaker 1

So Henderson Island, in the Pitcairn Group has the dubious honour of being the most densely plastic populated island with about, I think 37 million pieces.

00:05:48 Speaker 1

The plastic being located in a in a recent study.

00:05:53 Speaker 1

And of course it's it's difficult really to give any sort of a presentation without kind of mentioning COVID-19 as the pandemic, and it's actually highly relevant to the plastic pollution.

00:06:04 Speaker 1

So in addition to sort of the sources that we're used to, we've added significant quantities of plastic associated with.

00:06:13 Speaker 1

Personal protective equipment.

00:06:14 Speaker 1

Be up into the oceans 1 estimate is around 25,000 tonnes and a uh, 1.56 million face masks were believed to enter the oceans in 2020 alone. So we are essentially adding to and increasing the problem of plastics in the oceans.

00:06:36 Speaker 1

With respect to their potential impacts and they are myriad. Really, it was sort of 60 years ago that we started to worry about the impacts of plastic in the context of entanglement and seabirds.

00:06:49 Speaker 1

That was sort of in the 1960s in the 1970s, concerns were expressed over the toxicity of plastics and the extent to which they enter the food chain, and the implications of both leaching contaminants, and indeed drawing in other contaminants. In the 1980s, a beach.

00:07:09 Speaker 1

Failing was quite a high profile issue and other threats include facilitating the introduction of invasive species.

00:07:18 Speaker 1

She's the 2011 Asian tsunami was quite a revealing event in that it was estimated that about 289 invasive species made it into US waters from Asian waters on the back of the debris caused by the tsunami. So we're now aware that invasive species can essentially.

00:07:38 Speaker 1

Use plastic as a vector.

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To transport themselves and the introduction of disease is another concern, the toxicity and also ghost fishing, which is a consequence of an activity or essentially from arising from discarded fishing gear. So Nets and other fishing gear can essentially continue to fish.

00:08:02 Speaker 1

Potentially for decades as a consequence of discarded gear.

00:08:09 Speaker 1

So in terms of sort of thinking about this from a sort of a legal point of view, and there's no one, or there's no currently at the moment, there's no overarching institution or regime which manages ocean, plastics or indeed plastics more generally, but what we do have.

00:08:29 Speaker 1

Is actually quite a large number of instruments and regimes that are directly and indirectly relevant, and I've included not an exhaustive list, but, uh.

00:08:40 Speaker 1

Number here, which some of which I have looked at in the context of my book chapter. So really, plastics are a sort of a quintessential transboundary and Commons problem, so they essentially are transported. So it requires states to try to cooperate and collaborate. So hence instead of the.

00:09:00 Speaker 1

The realm of international and regional law is really important in conjunction with those are national.

00:09:07 Speaker 1

National legislation on national measures. So a regime complex is something I've explored in sort of other contexts, and it seems to fit particularly well here.

00:09:18 Speaker 1

So the idea of a sort of a regime complex is that we're dealing with functionally overlapping parallel regimes and institutions which are non hierarchical.

00:09:28 Speaker 1

But which nevertheless affect one, another sphere of operations and actually regime complex seems to operate in a number of ocean contexts, so I've explored them in the past in relation to, for example, ocean acidification.

00:09:43 Speaker 1

In relation to our plastics, the regime complex very much comprises both binding and non binding or soft law and voluntary initiatives.

00:09:53 Speaker 1

So there are a large number of instruments which we would describe as soft as operating within the plastics or regime.

00:10:04 Speaker 1

Complex I'm going to be focusing on essentially.

00:10:08 Speaker 1

The law of the.

00:10:08 Speaker 1

Sea in terms of part of.

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That regime complex, and that's partly because the book that I am writing for is a book on plastics, so there are obviously other chapters which are picking up other aspects of it.

00:10:20 Speaker 1

So certainly general environmental law and chemical conventions such as Basel, Stockholm, Rotterdam and biodiversity instruments would all be relevant to that.

00:10:30 Speaker 1

Regime complex, but I'm going to focus and for the purposes of this presentation on the primarily on the law of the sea, broadly defined.

00:10:43 Speaker 1

Of course, you're probably aware a pretty exciting development which occurred earlier this year and a couple of months ago and was the decision or the resolution adopted by the United Nations Environment Assembly and to initiate negotiations towards adopting an internationally.

00:11:03 Speaker 1

Legally binding instrument on plastics. Now this will not simply focus on marine plastic pollution. It is designed to focus on plastics as a whole, so quite an exciting development and obviously something which is going to add to that regime.

00:11:20 Speaker 1

Flex, so one of the things I want to do in this presentation is to explore a little bit as to how this new treaty might add to that regime complex and essentially what contribution it potentially might make with respect to preventing, and indeed mitigating marine plastic.

00:11:43 Speaker 1

So thinking about the law of the sea and marine plastic pollution, as I say, there's no overarching oceans institution which has a mandate to deal with all aspects of marine pollution. But nevertheless marine litter.

00:12:02 Speaker 1

And Plastics has now been considered by a number of global bodies and and there are a number of sort of overarching.

00:12:09 Speaker 1

Uhm, objectives and targets which have broadly been adopted.

00:12:16 Speaker 1

So for example, it's being considered by the United Nations open-ended consultative process on oceans and the law of the sea.

00:12:24 Speaker 1

And for those of you that are not aware, this is a process whereby annual meetings are held really to consider substantive issues in the law of the sea and and that.

00:12:35 Speaker 1

Reflects the fact that the law of the Sea Convention, whilst it has a meeting of the parties and does not generally consider substantive issues.

00:12:44 Speaker 1

It is now a regular item and it has been a regular item since about 2005 on the United Nations General Assembly's annual resolution on oceans and the law of the sea and since 2016 it's been subject to quite significant discussion within that resolution. So a number of paragraphs have been devoted to the issue of marine litter and plastics, including microplastics.

00:13:05 Speaker 1

And that has increased really over the last few years. And plastic pollution of course has been highlighted in some of the key environmental United Nations General Assembly resolution. So Agenda 21.

00:13:18 Speaker 1

And the Rio plus 20 resolution. And, of course, in the Sustainable Development Goals which were adopted in 2015. SDG target.

00:13:28 Speaker 1

14.1 refers specifically to reduce to marine pollution and exhorting states to prevent and significantly reduce marine pollution.

00:13:38 Speaker 1

Come with a specific reference to land based pollution and including marine debris.

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So in terms of a bit of a snapshot of the.

00:13:51 Speaker 1

The regime complex, and I'm not going to talk in a huge amount of detail about any of these instruments.

00:13:57 Speaker 1

I can kind of go into them in questions, but I don't want to do it simply to give you a very detailed overview, but just to give you a bit of.

00:14:03 Speaker 1

A snapshot and we tend to divide.

00:14:06 Speaker 1

A plastic pollution into land based and sea based sources, and that's really because the rules are quite different in terms of how they apply.

00:14:15 Speaker 1

Depending on the source of the plastics and uncross, the United Nations Convention on the Law of the Sea, which of course was adopted in 1982 and entered into force in 1994.

00:14:27 Speaker 1

168 parties, part 12 of which is customary international law. So it basically sets the framework for all marine pollution and marine Environmental Protection activities and so that certainly applies in the general terms to plastic pollution. And I will have a look.

00:14:48 Speaker 1

At some of those provisions.

00:14:50 Speaker 1

Come in just a moment.

00:14:53 Speaker 1

In terms of our global instruments, as we shall see in relation to land based pollution, we're largely talking about soft instruments.

00:15:03 Speaker 1

We do now have an increasing number of initiatives, but what we are lacking is globally legally binding targets.

00:15:11 Speaker 1

Or rules with respect to land based pollution and we do have at the regional level a much more mixed normative picture in terms of both binding and indeed non binding.

00:15:25 Speaker 1

Measures largely through action plans. By contrast, with respect to sea based sources of plastic pollution, we actually have a pretty tight global regime in terms of what the basic rules and requirements are, but I think here is where we run into.

00:15:44 Speaker 1

Problems with respect to implementation and compliance, and I'm just going to pull out a few of those issues as we.

00:15:52 Speaker 1

As we go through, so starting off with UNCLOS, which I think it's probably appropriate to do, also lower the ski see scholars and sort of begin with uncross.

00:16:04 Speaker 1

We have basically a general obligation to prevent and preserve, to protect and preserve the marine environment and a general obligation.

00:16:13 Speaker 1

To take measures to address marine pollution from any source, so no specific reference to plastics there, but a general.

00:16:20 Speaker 1

Nation to address pollution from any source of pollution is defined under Article 1, paragraph four of uncrossed, and I think we can be very confident at that pollution. Would a plastic would essentially meet that definition of pollution?

00:16:37 Speaker 1

And in terms of land based sources of pollution, uncross essentially takes something of a sectoral approach, so it identifies particular sources of pollution and its obligations vary depending on that particular source.

00:16:54 Speaker 1

Article 207 is the provision which applies to UM.

00:17:00 Speaker 1

Which applies to our land based sources of pollution, and actually it's one of the weaker provisions within the Convention.

00:17:09 Speaker 1

So there is an obligation. States do need to adopt laws and regulations to prevent reduce and control pollution. Essentially from land based sources and but they need only take into account.

00:17:20 Speaker 1

Internationally agreed rules, standards and recommended practises, so these are relevant to be considered by states, but they don't provide any form of basic standards and the obligation is a due diligence one, so it's an obligation of conduct as opposed to an obligation of result.

00:17:39 Speaker 1

And due diligence has been defined in a law as a C context. Uhm, as an obligation to deploy adequate needs to exercise essentially best efforts to do the utmost to obtain this result, and and I would also argue that the precautionary approach which whilst is not expressly.

00:18:00 Speaker 1

Uhm referred to within ARM cross would be relevant to obligations with respect to land based sources of pollution as part of a general international law.

00:18:15 Speaker 1

So in terms of sort of those standards, so thinking about what those standards might be, and it's just worth noting, but they don't necessarily have to be legally binding as being relevant to be taken into account because Article 207 does refer to recommended practises and procedures, and I perhaps also should mention that Article 207 also specifically.

00:18:35 Speaker 1

Refers to toxic materials and essentially toxic and persistent waste which has a specific relevance to practise to do plastic.

00:18:48 Speaker 1

Six so in terms of sort of those international standards, as I say, we don't have binding international standards, in contrast to seabed sources of pollution.

00:18:58 Speaker 1

What we do have is essentially a normative but non binding instruments. So the 1995 Washington Declaration.

00:19:11 Speaker 1

Is associated with the global programme for action.

00:19:16 Speaker 1

And so the GPA refers to plastics, and plastics are certainly part of its remit and it provides for a general obligation to reduce significantly the amount of litter reaching the marine environment by prevention or reducing the generation of waste. What it does not do is set.

00:19:36 Speaker 1

Discharge standards or provide very specific guidance as to what states might do, and I quite like a a very recent chapter by Rosemary refuse.

00:19:47 Speaker 1

In a book, looking at informal lawmaking in the law of the sea, she describes the GPA as providing a suggestive and non prescriptive smorgasbord of choices from which parties can choose should they feel so inclined, and I think that sums up the extremely sort of soft.

00:20:07 Speaker 1

And permissive.

00:20:09 Speaker 1

A set of provisions that are provided for within the within the GPO.

00:20:15 Speaker 1

What the GPA has done or essentially what it has provided is is something of a framework or a foundation for the development of subsequent initiatives which do address much more specifically the issue of plastic pollution, but are nevertheless non.

00:20:33 Speaker 1

Binding, and so I've just given a few examples there. I'm not going to say.

00:20:38 Speaker 1

Anything about the details of those, but we've got the sort of the Honolulu strategy adopted in 2011 and implemented essentially through the unit Global Partnership on marine litter and then sort of further supported by the unit Clean Seas Programme adopted in 2017 and quite recently, the.

00:20:58 Speaker 1

Aglow litter partnership. Jack quite like as a as an acronym which is a collaboration between the United Nations Food Macro Culture Organisation and the EYEMO in relation to our fishing discounts.

00:21:12 Speaker 1

I think what we can say in relation to sort of generally about those programmes is that they tend to be collaborative in the sense that they are seeking to engage all sectors, so seeking to connect private, NGO state actors none however.

00:21:31 Speaker 1

Uhm, provide for mandatory standards or mandatory action and and I think we can say that there's a kind of a lack of global oversight and monitoring.

00:21:40 Speaker 1

Although UNEP essentially has stepped in as being the the leading body in relation to land based sources of pollution, at least up to this point.

00:21:52 Speaker 1

In terms of regional initiatives, and this isn't necessarily a complete list, and I'd be interested if I've missed any particular region, but I think it just demonstrates the interest.

00:22:04 Speaker 1

That's a regional seed. Organisations have really taken in this issue, and particularly in the last few years, so from 2018.

00:22:12 Speaker 1

Having quite a number which have been established.

00:22:16 Speaker 1

And so really sort of Northwest Pacific Europe. Mediterranean Mediterranean was the first legally binding marine litter management programme. Caribbean northeast Atlantic Baltic the black black. See now the Pacific and East Asia, Southeast Asia and just very recently in the last.

00:22:36 Speaker 1

In the last few weeks. UM, sorry in the last year or so, the Arctic.

00:22:41 Speaker 1

Interestingly, Africa of course is a region missing there, and it's quite significant in terms of potential contribution to the waste problem.

00:22:50 Speaker 1

But there are some developments afoot, as it were for developing a marine litter plan by the Nairobi Convention for East Africa and the Aborigine Convention.

00:23:01 Speaker 1

For West Africa, so there are other areas which are essentially being developed.

00:23:08 Speaker 1

So that essentially is sort of land based sources of pollution in terms of the current regime, so pretty soft.

00:23:16 Speaker 1

Obviously, legally binding obligations under UNCLOS, but not much in the way of specific detail, and I think the lack of those international standards has certainly allowed states up to perhaps.

00:23:29 Speaker 1

Not focus on their UNCLOS obligations in quite the same way as they have in relation to C based sources of pollution.

00:23:37 Speaker 1

So thinking about sea based sources of pollution, this is where the rules become much, much clearer. Basically we've got two regimes at play, the dumping regime, which of course applies to the deliberate disposal of waste, including plastic waste at sea. And then we have the regime which applies to.

00:23:57 Speaker 1

Vessel source pollution. So essentially an accidental loss or loss associated with the operation of the vessel.

00:24:05 Speaker 1

Says Articles 210 and Articles 211 of Uncross out respectively. Now both of those are different from Article 207 in that both identify UM international rules and standards which are relevant, and they require their states or they require state parties.

00:24:26 Speaker 1

To essentially apply those international rules and standards at has a minimum, and that's essentially set out within both Article 210 and Article 211 for Article 211. It's quite clear what the what the standards are and what those standards are in relation to plastics.

00:24:45 Speaker 1

That would be the nineteen 7378 Marpol convention, the International Marine Pollution, our convention. It's a little bit more complicated in the context of the London Convention, 'cause we actually have two instruments. We have a convention and a protocol certainly applies to the London Convention. Possibly might apply.

00:25:05 Speaker 1

To the protocol, I would argue.

00:25:06 Speaker 1

Does I'm not going to go into that here. I've written a book chapter recently on the London regime and I'm really happy to talk to you about it in questions.

00:25:14 Speaker 1

Actually, from the perspective of plastics, it doesn't really matter because the rules are actually pretty much the same in relation to plastics. Under both instruments, a couple of points that are sort of quite.

00:25:26 Speaker 1

Interesting about uncross.

00:25:29 Speaker 1

Article 218, which for those of you doing law of the sea, may be familiar with and of course provides an opportunity for port states to take action in respect of vessel source pollution on the high seas, so that actually provides potentially a useful enforcement mechanism.

00:25:48 Speaker 1

To supplement flag state enforcement mechanism and of course, in relation to both dumping and vessel discharges, we're largely reliant on the flag state, with all the advantages and disadvantages that that entails. In terms of being able to enforce.

00:26:06 Speaker 1

Marine pollution rules. So just taking a quick look at both of those regimes, I'm starting off essentially with the dumping regime.

00:26:16 Speaker 1

As I say, reasonably straightforward because in essentials the dumping of plastic is prohibited under both the protocol and the.

00:26:25 Speaker 1

Convention and this also includes fishing vessels and that would include the deliberate dumping of fishing gear. And so the London Convention adopts an approach whereby waste listed in Annex 1 cannot be dumped and plastic persistent plastics are listed in Annex 1.

00:26:43 Speaker 1

The Protocol adopts an approach whereby waste that may be dumped is listed in Annex one, with the presumption that no other waste can be dumped and plastically not listed in Annex 1.

00:26:56 Speaker 1

The only kind of exception to this may well be the actual disposal of vessels themselves, which is permitted.

00:27:03 Speaker 1

Under both instruments, and of course, that may include plastic within the holes of those vessel.

00:27:09 Speaker 1

And there's an interesting question.

00:27:12 Speaker 1

Uhm, as to the extent to which the London regime applies to fishing gear, either the deliberate or potentially the accidental loss or fishing gear, including the fish aggregation devices, so fads, and these are devices which are deliberately.

00:27:29 Speaker 1

East into the sea. Sometimes they're anchored to the seabed, other times they are floating, and they're designed essentially to to gather fish and Robin.

00:27:39 Speaker 1

Churchill is has written a really interesting article in the 2021 Ocean Development and International law where he, I think really convincingly argues and.

00:27:50 Speaker 1

That the deliberate abandonment of fishing gear and indeed, fads and his article is primarily on FADS would constitute dumping and therefore would be prohibited by the regime. To the extent that the fishing gear.

00:28:04 Speaker 1

The FADS contain plastic, so he argues that this would not constitute placement for a purpose other than mere disposal, and that it is not incidental to the normal operation of fishing vessels, and I find that argument very convincing, so this is something which perhaps is not fully on the agenda of the parties.

00:28:24 Speaker 1

I think to the London regimes. I think this is something which can be usefully be developed that the London regime does apply where fishing vessels are deliberately and.

00:28:34 Speaker 1

Dumping or releasing their fishing gear. It would not apply where we're talking about accidental loss, but it's possible that Marpol may will apply or does apply in some circumstances.

00:28:46 Speaker 1

There it's worth noting that the London regime has taken quite a strong interest in plastics and marine litter adopted.

00:28:53 Speaker 1

A resolution in 2016, essentially requiring parties to sync more generally about marine litter beyond the dumping context.

00:29:07 Speaker 1

In terms of the discharge of plastics from vessels, which again includes fishing vessels, again, the regime is reasonably clear, so here we're essentially dealing with the nineteen 7378 MARPOL, and in particular the 5th Annex, Annex 5, which applies to.

00:29:27 Speaker 1

The release of all the discharges of garbage. This originally came into force in 1988, but was revised in 2011. Again, it's broadly applicable applies to all vessels, including our fishing vessels, and again, it specifically prohibits the discharge of plastics.

00:29:46 Speaker 1

And that includes ropes, fishing Nets and plastic garbage bags, et cetera, et cetera. Again, in that same article.

00:29:54 Speaker 1

And Robin Churchill argues that this would include a fishing aggregation devices, so again, the loss, including potentially the accidental loss in some circles.

00:30:05 Speaker 1

Answers or fishing aggregation devices would be prohibited or would be a breach of marcol. Now. There are some exceptions to the prohibition on the discharge of plastics at first, when it's necessary to save life or the vessel and in respect of fishing gear.

00:30:25 Speaker 1

Accidental loss is excluded from the annex, where all reasonable precautions have been taken to prevent such loss, and I think that's a really import.

00:30:36 Speaker 1

Qualifier so Annex 5 does apply to accidental loss, but only where reasonable precautions have been taken. And would it not apply now? Michael does not define as to what reasonable and precautions might be, and in my chapter I do go into this.

00:30:54 Speaker 1

A little bit.

00:30:55 Speaker 1

But I'm just cultures of time, so I'll I'll leave it today, but we can perhaps come back in questions.

00:31:00 Speaker 1

And in addition to the basic prohibition on the discharge of plastics market, also provides an obligation on states to provide port reception facilities and so essentially facilities to take the plastics and to take rubbish, and then for certain class of vessels. Uhm, they must carry a garbage plan and a garbage.

00:31:20 Speaker 1

Record book and essentially record any loss of garbage, including plastic.

00:31:27 Speaker 1

And the MO has adopted an action plan to address marine litter, adopted that in 2018 and made quite a number of recommendations, and particularly in relation to a system for declaring container loss at marking, fishing and providing incentives for the collection.

00:31:46 Speaker 1

Uh of waste. So I think in relation to UM.

00:31:51 Speaker 1

And MARPOL and similar with respect to the London dumping regime and the primary rules, the basic obligations are actually pretty robust, but nevertheless the level of plastics, and particularly fishing gear that's located in the ocean indicates about implementation and enforcement is.

00:32:11 Speaker 1

There's more of an issue.

00:32:13 Speaker 1

And I guess just sticking with fishing vessels for a moment. It's perhaps not surprising that this issue has also been taken up by our fishing organisations themselves, and so those of you familiar with the law of the sea will probably come.

00:32:25 Speaker 1

Note that of course Article 5F of the Fish Stocks agreement, the United Nations and straddling and highly migrated fish stocks.

00:32:33 Speaker 1

Agreement has a brief provision I'm calling upon states to minimise and pollution by abandoned and lost gear and similar references in the 1991 Code of Conduct for responsible fisheries, and specifically about gear marking and providing reception. Our facilities.

00:32:52 Speaker 1

The UN Food and Agricultural Organisation has adopted a couple of soft initiatives. The Global Ghost Fishing Initiative in 2015 and voluntary guidelines for the marking of fishing gear in 2018 and an increasing number of regional fisheries management organisations have adopted.

00:33:12 Speaker 1

Resolutions and provisions.

00:33:15 Speaker 1

Which deal with essentially a discarded in last year, and they're actually quite interesting, and again, for a matter of time, I'm not going to go through, but I'm really happy to kind of pick them up in questions, and I've put just a few examples there.

00:33:29 Speaker 1

And of course, once we get into R, FM O's we have an enormous number of acronyms and so the key ones. I think I've sort of Camila.

00:33:36 Speaker 1

The Western Central Pacific Fisheries Commission. The South Pacific RFMO, Indian Ocean Tuna Commissioner, which is quite interesting that's addressed fads and of course, the EU. Again, the issue seems to be around implementation and compliance.

00:33:52 Speaker 1

Some quite practical measures with respect to things like storage and incentives for gear retrieval.

00:34:00 Speaker 1

So moving on and I'm just looking at the time.

00:34:04 Speaker 1

And this is sort of the final section, and I suppose what I want to think about here is, well, we've got this regime complex, which has on the one hand relatively robust obligations with respect to seabed sources of plastic pollution, but potentially quite poor implementation and compliance. And on the other hand, with respect to.

00:34:25 Speaker 1

Land based sources of pollution, quite significant gaps and pretty soft obligation.

00:34:31 Speaker 1

So an inquest question that I'm sort of beginning to think about, and I've been really welcome your sort of thoughts on it.

00:34:37 Speaker 1

I know that you're beginning to sort of some of you are beginning to look at. This issue is, well, what would this new plastic pollution treaty potentially add to the regime in relation to?

00:34:48 Speaker 1

And ocean plastics, and that's of course acknowledging that that the treaty is designed to be much broader than simply marine plastic pollution, and so this is obviously a bit of a speculation on this part, but the United Nations Environment Assembly resolution.

00:35:04 Speaker 1

Jim 514 did set out quite a number of aims and parameters of the new instruments are kind of giving us a bit of a steer as to as to what it may will focus on and sort of the approach it might take up.

00:35:19 Speaker 1

So I think we can accept, or at least the aim is that is designed to be comprehensive, and I'm going to address.

00:35:25 Speaker 1

The full cycle, essentially of plastic.

00:35:28 Speaker 1

And also the promotion of sustainable consumption, production and sort of endorsing this idea of the circular economy.

00:35:36 Speaker 1

There's a specific reference that it can include binding and non binding measures, which I think is quite interesting and suggests that potentially the model of the Paris Agreement might be used. So the idea of overarching targets, but with potentially quite flexible provisions in terms of how states.

00:35:55 Speaker 1

They choose to meet those targets.

00:35:58 Speaker 1

And it's going to provide a national reporting and assessment of implementation and effectiveness. So again, I think potentially taking a Paris type approach.

00:36:06 Speaker 1

And it will cooperate and coordinate with relevant international and regional plans, avoiding duplication. And this, I think, is going to be a really important component in that it'll be very important. But it mustn't undermine existing provisions. And for those of you that are following the BB and J.

00:36:26 Speaker 1

Negotiations, biodiversity beyond national jurisdiction, and that's been a really cool.

00:36:31 Speaker 1

Or kind of part of that negotiation in terms of managing the BB and J in the context of the various other regimes and institutions we have.

00:36:42 Speaker 1

And and then there's a reference there to compliance, but I think very much a facilitative approach, and also capacity building capacity building was actually included in the.

00:36:51 Speaker 1

Second paragraph of that resolutions, I think indicating it's important.

00:36:57 Speaker 1

So in order to make it kind of an effective contribution, what is it? What does it need to do?

00:37:02 Speaker 1

Well, this is something I'm sort of so beginning to.

00:37:04 Speaker 1

Think about, but sort of, UM, I would.

00:37:07 Speaker 1

Suggest that there.

00:37:07 Speaker 1

Are a number of.

00:37:08 Speaker 1

Of of of Things that it perhaps needs to do, and the first thing in my mind is that it really needs to set targets. Binding targets with respect to.

00:37:18 Speaker 1

Land based discharge of plastics, including microplastics. So we have, as I say, that plethora of international and regional initiatives, but we don't have or any sort of binding standards or targets.

00:37:34 Speaker 1

And I think it would also be really useful to agree that those standards are relevant for the application of Article 207 of UNCLOS, because even though there's no requirement under Article 207 to meet any international standards, there is a requirement to take them into account, and I think you could argue quite strongly that applying a due diligence.

00:37:53 Speaker 1

Approach to the obligations under Article 270. Those any standards which were essentially agreed would be part of that due diligence approach, and that would actually be quite an effective way of trying to bring any plastic treaty come into effect practical effect.

00:38:11 Speaker 1

Act bearing in mind that it may well take a.

00:38:13 Speaker 1

Wee while to enter into force.

00:38:15 Speaker 1

In terms of how you kind of set those targets or a couple of ways of doing it, a number of people have thought about this treaty and tend to think about it in the context of either the Paris

Agreement model or the ozone protocol model. So the Paris Agreement model is where you've got that overall target.

00:38:32 Speaker 1

But states have quite significant discretion as to how to meet that target, and the instrument provides sort of the institutional infrastructure for review and essentially moving those targets along. And the alternative is the ozone protocol, where you have progressive substantive and temporal targets which may well.

00:38:52 Speaker 1

Vary depending on the source of pollution, but also provide for flexible application. Depending on the development capacity of the state in question so that I think will be a really significant contribution.

00:39:06 Speaker 1

Uhm, the second point I'd make is that it would be vital that the instrument supports, but not undermines to use, that BBNG terminology.

00:39:16 Speaker 1

UM, existing law of the sea instruments, and I think that's really got to reflect and acknowledge that we actually do have quite a lot of robust law with respect to C based.

00:39:26 Speaker 1

Sources of pollution of pollution of plastic pollution.

00:39:30 Speaker 1

So really, what the new Treaty should be doing is enhancing those rules, so filling gaps where we have them.

00:39:35 Speaker 1

So, for example, perhaps providing global incentives for the retrieval of fishing gear and, and also perhaps focusing on compliance, including the promotion of the use of existing mechanisms because we actually do have quite a lot of existing mechanisms.

00:39:50 Speaker 1

Under Article 218 of UNCROSS on the use of port state powers under customary international law, there's no real evidence that these are being used in the context of plastic pollution. In contrast to, for example, fisheries offences or safety of shipping.

00:40:06 Speaker 1

And then the Third Point is the the contribution that it might make is really providing that global institutional infrastructure for the development of policy rules and processes.

00:40:19 Speaker 1

So we haven't really had or. We don't have that overarching institutional infrastructure which is able to drive global.

00:40:26 Speaker 1

Our policy, as well as providing mechanisms for financial and Technical Support.

00:40:31 Speaker 1

Port and I think it's really important to acknowledge as many other commentators and people working in this field have that.

00:40:38 Speaker 1

Ocean Plastics is a multi level multi sector multi actor issue so really these processes and institutions need to engage with actors across the board which actually is something that all of the sea is not particularly.

00:40:52 Speaker 1

Good act so that all of the sea is traditionally actually quite state based and has struggled to engage with these other actors, and I think 1 interesting precedent.

00:41:01 Speaker 1

Is the voluntary commitments which have been made really across all sectors? Comes as part of the UN Oceans Conference, which was held in 2017 and second one is due to be held in July this year and it was really held as a follow up up in terms of implementation of SDG 14 and it provided.

00:41:20 Speaker 1

For all sectors, states are private organisations, NGOs et cetera and to make voluntary commitments and over 1700 commitments have been made to date. And that's perhaps something which could be used as oppressive.

00:41:33 Speaker 1

And in relation to the new Plastics Treaty and it be worth noting actually that 700 of those commitments do relate to marine pollution with a good proportion to plastic.

00:41:44 Speaker 1

So just I think to conclude I.

00:41:48 Speaker 1

I think one of the interesting things is there's actually been almost what you describe as kind of frenetic, but sorted by international standards, which is obviously tends to be quite slow, and so compared to international standards, I'd say the activity has been quite frenette.

00:42:00 Speaker 1

Stick with respect to plastic pollution's over the last sort of five years, but it's really only loosely coordinated at best, and many would actually suggest that it's it's pretty much uncoordinated, and there are significant gaps, particularly in relation to land based pollution, and there are obvious challenges in relation to implementation and enforcement, so I think the new plastics.

00:42:22 Speaker 1

Provides a really significant opportunity to address some of the shortcomings in the current ocean plastic pollution regime, but it's going to be pretty challenging and particularly as the Treaty intends to address plastics as a global pollutant. So really, the ocean marine is only kind of one one. Part of what?

00:42:42 Speaker 1

The Treaty is going to address.

00:42:45 Speaker 1

And there's been quite a bit of discussion, as I indicated, at kind of a Paris agreement of the ozone protocol is providing models.

00:42:51 Speaker 1

And but I think it's actually also interesting to think about the current negotiations for the BB and J agreement as potentially providing some quite useful lessons, and particularly with respect to managing regime interaction.

00:43:05 Speaker 1

But actually just finishing on a sort of a practical note and and thinking about the BB and J negotiations.

00:43:10 Speaker 1

They are of course ongoing because they've been delayed owing to COVID. The most recent session has just concluded, so it's actually going to be quite challenging to initiate another major set of international negotiations in the second part.

00:43:25 Speaker 1

Of this year, particularly during a pandemic and given sort of the conflation of some of those issues. So it would be interesting to see how much sort of appetite states have for beginning another major set of negotiations.

00:43:39 Speaker 1

So that's really all I kind of had to say in terms of my.

00:43:41 Speaker 1

Sort of our.

00:43:42 Speaker 1

Initial kind of sorts with respect to both the ocean plastics regime and some of the potential opportunities, but risks of a plastic treaty, but I'm really happy to take your questions and comments and to engage in a wee bit of discussion. So and thank you very much.

00:43:58 Speaker 1

For listening.