

RECONSIDERING APPROACHES TOWARDS FACILITATING NON-STATE ACTORS' PARTICIPATION IN THE GLOBAL PLASTICS REGIME

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The current approach to non-State actors' participation in international environmental law is limited. This article, therefore, argues for a reconsideration of non-State actors' participation to create more opportunities to facilitate easy access to meaningful participation in the drafting, negotiation, and subsequent implementation of the proposed global plastic treaty. The article explains how environmental democracy could be at the heart of the negotiation and implementation of the plastic treaty by creating more avenues for participation among relevant non-State actors thereby contributing to accountability efforts. The article proposes that the proposed plastic treaty could be the first multilateral environmental agreement to operationalise Principle 10 of the Rio Declaration which lays down the pillars of environmental democracy (i.e., access to information; access to participation in decision-making processes on environmental issues; and access to justice in environmental matters). This could contribute to strengthening the plastic treaty, especially when regulating major industry players.

Keywords: participation; non-state actors; Aarhus Convention; Principle 10 Rio Declaration; Plastic Treaty

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TABLE OF CONTENTS

I. INTRODUCTION	122
II. CURRENT APPROACH AS AN OBSTACLE TO THE GLOBAL PLASTIC TREATY.....	124
III. PRINCIPLE 10 OF THE RIO DECLARATION AS A CURATIVE APPROACH IN ESTABLISHING A PARTICIPATORY GLOBAL PLASTIC TREATY.....	128
1. <i>Access to information</i>	129
2. <i>Access to decision-making and advisory bodies</i>	133
3. <i>Access to justice in environmental matters</i>	136
IV. CONCLUSION	139

I. INTRODUCTION

Plastic pollution has become a global issue with dire consequences for the international community including stakeholders at different levels across the entire global plastic value chain. The United Nations Environment Assembly has decided to convene an international negotiation committee to develop an international legally binding instrument on plastic pollution.¹ It was agreed in the resolution that the plastic treaty should consider, among other things, a full-lifecycle solution for plastics, the principles of the Rio Declaration on Environment and Development,² as well as national circumstances and capabilities.³ According to the traditional theory and

¹ UNEP/EA.5/L.23/Rev.1.

² United Nations General Assembly, Rio Declaration on Environment and Development, 21st plenary meeting, Rio de Janeiro, 3-14 June 1992, A/CONF.151/26 (Vol. I), (Rio Declaration) (14 June 1992). The Rio Declaration stems from the United Nations Conference on Environment and Development (UNCED). It is the second global environmental conference held in Rio de Janeiro in June 1992 which inter alia establishes the sovereign right of States to prevent harm to the environment of other States or areas beyond national jurisdiction.

³ UNEP/EA.5/L.23/Rev.1.

practice of international environmental law, the major addressees of the plastic treaty are sovereign States. However, the role of two types of non-State actors, namely, industrial entities (especially multinational corporations) across the plastic value chain, and non-governmental organisations (NGOs) deserve greater attention. This is due to their non-trivial contribution in generating plastic pollution as well as the development of global solutions to halt it (see section II). For this article, non-State actors are understood broadly as all actors which are not States.⁴

Against this background, the article examines: i) the current approach towards non-State actors' participation in international conventions applicable to plastic pollution and its limitations; and ii) how the potential global plastic treaty could offer more avenues for participation by actors beyond States, especially industry players and NGOs. While States are always the main addressees of international treaties, this article argues that the effectiveness of these treaties relies on many other actors as well and therefore advocates for increased participation for non-state actors in the drafting and implementation of the global plastic treaty.

The article begins with a brief discussion of the current approach to non-State actors' participation in the existing international legal framework applicable to plastic pollution and the extent to which the current model can be an obstacle to the uptake of the global plastic treaty by actors (section II). Following an analysis of the obstacles posed by the current model, section III introduces a curative approach to addressing the governance gap. The article then concludes in section IV.

⁴ Noemi Gal-Or, 'Preliminary Issues for the ILA' (2008) Conference in Rio de Janeiro, Non-State Actors, International Law Association, 2.

II. CURRENT APPROACH AS AN OBSTACLE TO THE GLOBAL PLASTIC TREATY

Multinational corporations are the dominating producers, consumers, and shareholders along the global plastic value chain. These corporations hold transboundary resources and influence that States cannot compare with, making them key stakeholders in proposing and more importantly implementing solutions to solving the plastic crisis. Statistics show that in 2019, the top 20 plastic (polymer) producers accounted for 55 percent of plastic waste globally.⁵ Furthermore, a brand-audit in 51 countries around the world revealed the top 10 polluters to be multinational fast-moving consumer goods corporations headquartered in the global north with subsidiaries and affiliates of global retailers around the world.⁶ This global reach is fuelled by the top 20 banks and asset investment firms based in the global north that fund more than 80 percent of the plastics value chain.⁷ Major industry players⁸ across the plastic value chain are promoting their concerted stances on plastic governance individually and collectively by enhancing partnerships.⁹ While recognising the severity of plastic pollution, industry does not point finger at plastics *per se*, especially single-use plastic, but rephrases the narratives by steering attention to plastic waste.¹⁰ In contrast, various NGOs are of the view that excessive plastic production,

⁵ See e.g., See Dominic Charles, Laurent Kimman and Nakul Saran, 'The Plastic Waste Makers Index' (2021) Minderoo Foundation, 31.

⁶ BFFP, 'Branded: Identifying the World's Top Corporate Plastic Polluters' (2019) 50.

⁷ Dominic, Laurent and Nakul (n 5) 33.; Portfolio Earth, 'Bankrolling plastics: The banks that fund plastic packaging pollution' (2020) 10.

⁸ These include the top 20 plastic (polymer) producers; Banks funding the plastic industry; Asset management firms; top fast-moving consumer goods; and the top 20 global retailers.

⁹ Marine Litter Solutions, 'Declaration of the Global Plastic Associations for Solutions on Marine Litter' (2016); Alliance to End Plastic Waste's Official Website <<https://endplasticwaste.org/en/about>> accessed 13 March 2022.

¹⁰ Jennifer Clapp and Linda Swanston, 'Doing away with plastic shopping bags: international patterns of norm emergence and policy implementation' (2009) *Environmental Politics* 18(3) 317.

especially from petroleum-based sources, should be a thing of the past, and many call for an iron-handed approach to end the plastic crisis.¹¹

The current State-centric model has its roots in the Westphalian system that shaped modern international law.¹² Non-state actors participate in multilateral environmental agreements (MEAs) either through informal interaction with sovereign States; or as formal participants (observers).¹³ For example, industry players usually participate via the creation of industry codes of behaviour which are lobbied by their representatives and in some cases by the so-called business-initiated non-governmental organisations (BINGOs).¹⁴ In either capacity, non-State actors normally lack direct decision-making powers. MEAs on plastic pollution cannot function well without sufficient participation by non-State actors. For instance, the Basel Convention provides definitions for 'exporter', 'importer', 'carrier', 'generator', and 'disposer' of hazardous wastes,¹⁵ most of which are industry players engaged in the lifecycle of hazardous wastes including plastics.¹⁶ It mandates States, serving as gatekeepers, to adopt measures to control the transboundary movement and ensure environmentally sound management of hazardous waste. The substantive obligations of prior notification,

¹¹ See e.g., CIEL, 'Plastic & Climate: The Hidden Costs of a Plastic Planet' (2019).

¹² Thilo Marauhn, 'The Changing Role of the State', in Daniel Bodansky, Jutta Brunnée and Ellen Hey (eds) *The Oxford Handbook of International Environmental Law* (2007) (Oxford University Press) 729-730.

¹³ Peter J. Spiro, 'Non-Governmental Organizations and Civil Society', in Daniel Bodansky, Jutta Brunnée and Ellen Hey (eds) *The Oxford Handbook of International Environmental Law* (2007) (Oxford University Press) 781.

¹⁴ *Ibid* 808.

¹⁵ Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (adopted 22 March 1989; entered into force 5 May 1992) 1673 UNTS 57, art 2.

¹⁶ In 2019, COP14 of the Basel Convention adopted amendments to Annexes II, VIII and IX with the objectives of enhancing the control of the transboundary movements of plastic waste, which has entered into force in 1 January 2021.

disposal, and re-import are ultimately implemented by non-State actors through the translation into domestic law by Contracting Parties.¹⁷

This scenario applies *mutatis mutandis* to other conventions such as the International Convention for the Prevention of Pollution from Ships (MARPOL)¹⁸ and the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Convention) and its 1996 Protocol (London Protocol).¹⁹ Under these treaties, the Contracting Parties bear the obligations to prevent, reduce, and control plastic wastes entering the marine environment whether due to normal operation, accidental loss, or deliberate disposal. Nevertheless, the ultimate implementation of the provisions in these treaties depends on the non-State actors that own or operate the vessels instead of the flag State itself. It is noteworthy that the existing treaties only address the downstream disposal of plastic wastes, and none of them mention the upstream production of plastics.

Despite the intrinsic relevance to the non-State actors in terms of their substantive treaty obligations, the texts of the abovementioned treaties do not provide any guarantee of their right to participation. For example, only few rules of procedure for the Conference of Parties (COP) prescribe that NGOs with internationally recognized expertise may participate as observers in the COP.²⁰ On the other hand, the participation of relevant industry players cannot be found in either the treaty text or the rules of procedures. In addition, literature indicates that there are various limitations

¹⁷ Basel Convention (n 15) arts 4, 6, 9.

¹⁸ Protocol of 1978 relating to the international Convention for the Prevention of Pollution from Ships of 2 November 1973, as amended, opened for signature 17 February 1978, (entered into force 2 October 1983) ('MARPOL 73/78') 1340 UNTS 184.

¹⁹ Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (adopted 29 December 1972; into force 30 August 1975) 1046 UNTS 138.

²⁰ See e.g., Rules of Procedure for the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, Rule 7. Rules and guidelines for consultative status of non-governmental international organizations with the International Maritime Organization, Rule 8.

to the participation of non-State actors in the international law-making process. For example, inadequate mechanisms for identifying critical issues and legislative priorities; inadequate participation of all relevant actors in the international law-making process from negotiation, implementation, review, and governance of MEAs especially in developing countries; and weak coordination between international organisations mandated to supervise environmental issues.²¹ The complexity of global plastic governance is also related to the aforementioned limitations; hence for a global plastic treaty to be efficacious, these and other limitations need to be addressed (see section III).

Moreover, the seemingly disparate interests and significance of major industry players and NGOs in global plastic governance thus demand their meaningful participation in the international legal architecture. However, the current model of participation neither sufficiently serves the dialogue and cooperation between them, nor does it appropriately reflect their relationship with State actors in the context of plastic governance. As a result, several interrelated problems may arise that might substantively undermine the coverage and uptake of the proposed global plastic treaty. Section III discusses how these hurdles can be surmounted for a global plastic treaty to be realised within the ambitious target of 2024²² and implemented with the full engagement of NGOs and industry.

²¹ Philippe Sands, Jacqueline Peel, Adriana Fabra and Ruth MacKenzie 'Principles of International Environmental Law' (2018) (Cambridge University Press) Fourth Edition, New York, USA, 103.

²² UNEP/EA.5/L.23/Rev.1., 2.

III. PRINCIPLE 10 OF THE RIO DECLARATION AS A CURATIVE APPROACH IN ESTABLISHING A PARTICIPATORY GLOBAL PLASTIC TREATY

To close the governance gap for non-State actors, the proposed global plastic treaty must seek to catalyse and accelerate the implementation of Principle 10 of the Rio Declaration which states that:

Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

This should be done because Principle 10 lays down the “*pillars of environmental democracy*”, consisting of three different elements (i. access to environmental information, ii. participation in decision-making processes on environmental issues, and iii. access to administrative and judicial proceedings).²³ Furthermore, as Principle 10 has not been fully developed in any global multilateral environmental agreement,²⁴ the global plastic treaty could provide the perfect opportunity to implement Principle 10 to solve a truly complex environmental governance issue like plastic pollution. Currently, the strongest representation of Principle 10 is the 1998 Aarhus

²³ United Nations Conference on Environment and Development, Agenda 21, Rio Declaration, Forest Principles. (1992) Principle 10.

²⁴ Ellen Hey, ‘Advanced Introduction to International Environmental Law’ (2016) (Edward Elgar Publishing Limited) 83.

Convention on Access to Information, Public Participation in Decision making, and Access to Justice in Environmental Matters and its Protocol.²⁵

Considering that plastic pollution is transboundary, affecting different environmental mediums across local, national, regional, and international levels,²⁶ Principle 10 provides an avenue to combine both bottom-up and top-down approaches to inform the international law-making process toward the mitigation of plastic pollution. The ensuing subsections explain how adopting the key tenets of Principle 10 (i.e., access to information, participation in the decision-making process, and access to justice) will look like in practice.

1. *Access to information*

Environmental information is defined to mean ‘any information relating to the physical elements of the environment such as biodiversity, water, land, and air in addition to information regarding activities be it administrative measures, agreements, policies, legislation, plans, and programmes with the probability of affecting the environment, human health, safety, or conditions of life.’²⁷ Guaranteeing the rights of Parties to such information is critical to the uptake of any multilateral environmental agreement, and even more so for a global plastic treaty due to the multifarious interactions that occur across the global plastic value chain (see sections I and II). The Aarhus Convention partly operationalises Principle 10 and states in Article 4 that anyone (the public)²⁸ ‘irrespective of their interest in the issue or jurisdiction (Art. 3(9)) is entitled to environmental information *per national law*’.²⁹ This

²⁵ 1998 Aarhus Convention on Access to Information, Public Participation in Decision making and Access to Justice in Environmental Matters (adopted in 25 June 1998, entered into force in 30 October 2001) 447 UNTS 2161.; Protocol on Pollutant Release and Transfer Registers (entered into force 8 October 2009) 2629 UNTS 119.; For other forms of implementation of Principle 10 see Ellen Hey (n 24).

²⁶ Nancy L. Ross, ‘The “Plasticene” Epoch?’ (2018) 14 (5) *Elements* 291.

²⁷ Aarhus Convention (n 25) art 2(3).

²⁸ *Ibid* arts 2(5); 6(6).

²⁹ *Ibid* art 3(9).

is particularly instructive to the regulation of a transboundary pollutant such as plastic. Though Article 4 only applies to public authorities, the related Protocol on Pollutant Release and Transfer Registers requires industry to make information available to the public and therefore a plastic treaty can seek to require this of major industry players.

A global plastic treaty might benefit from the establishment of a specialised body that will provide expert opinion across the plastic value chain considering the fast-moving world of technological advancement, to inform the negotiation and drafting process. Such a body can be modelled after the Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection (GESAMP)³⁰ which assesses the science for sustainable oceans and/or the Intergovernmental Panel on Climate Change (IPCC) which does same for climate change.³¹ Considering that plastics pose harm not just to the marine environment but also contribute to climate change,³² it might be prudent to set up an expert body, for example, a joint Group of Experts on Plastic Pollution Prevention (GEPPE). Such a body hosted by a secretariat established by the plastic treaty may seek to assess not just the scientific but economic, social, environmental, and political information regarding plastics to inform decision-making (more on decision-making in the next section). To enhance the participation of diverse groups of non-State actors, several working groups with established procedures for effective access to relevant information can be created under the body, for example, a working group that focuses on:

- i. the scientific and engineering aspects of plastics – charged with assessing the scientific connotations of plastics across the entire lifecycle; research into plastic engineering towards alternatives, etc;

³⁰ GESAMP, 'Home' <<http://www.gesamp.org/>> accessed 2 April 2022.

³¹ IPCC — Intergovernmental Panel on Climate Change <<https://www.ipcc.ch/?msclkid=26de3250bfeb11ec87580c10a463fcb5>> accessed 2 April 2022.

³² CIEL (n 11).

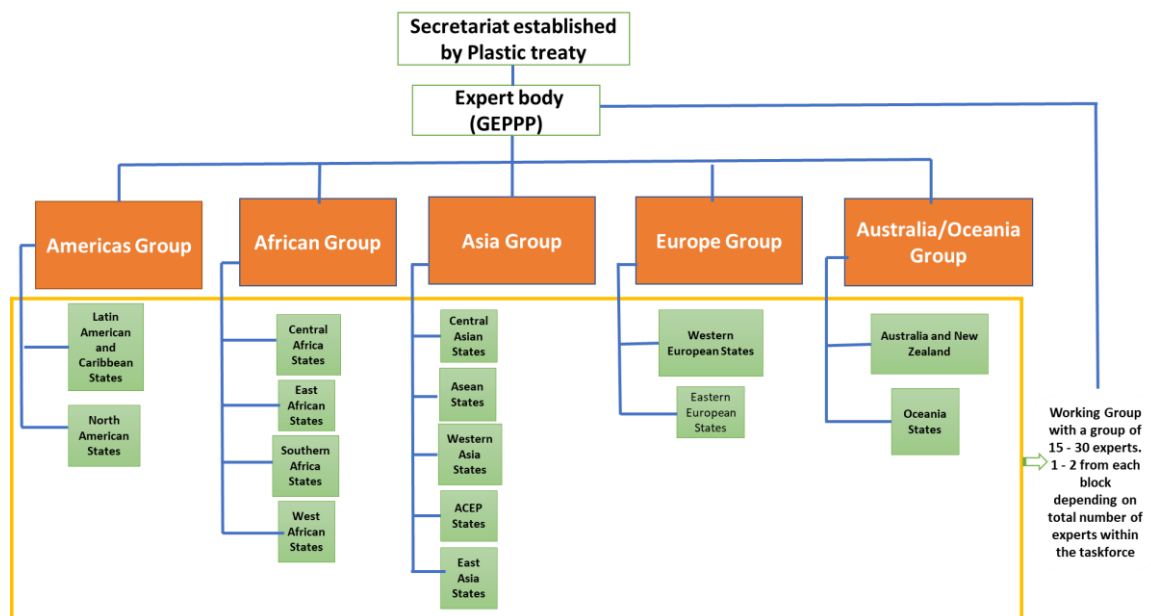
- ii. the economic (trade, transport, and investment) dimensions of plastics – charged with monitoring trade (export and import) data for national plastic inventories, assessing data on financial flow and investment in the plastic sectors, etc;
- iii. the impact, vulnerabilities, and adaptation towards plastics – to assess information on emissions or discharges of plastics, the environmental impact, health risks on vulnerable groups and coping strategies, etc;
- iv. the socio-ecological aspects of plastics – assess environmental information from governmental and non-governmental sources (e.g. wastewater quality from plastic industries), etc;
- v. the legal and management aspects of plastics – assess policies and strategies for the control of agreed plastic pollutants, breaches by multinational corporations, inspection and enforcement schemes at ports, etc; and
- vi. the governance dimensions of plastics – assess institutional arrangements of organisations regulating plastics at all levels, etc.

Representation of members within each working group would take into consideration the current regional groupings under the UN system.³³ This would be to ensure adequate representation and could be drawn from a pool of sub-regional experts from which leading experts within the field may be nominated to be part of the working group (see figure 1 below). This may provide an avenue for the complexity of plastics to be properly diffused as each working group focuses on specific aspects of the plastic pollution problem.

Apart from the network of working groups, an overarching Task-force can also be set up tasked with the coordination and harmonising of information from the working groups to create a plastic data bank relevant for decision-

³³ Philippe Sands et al., (n 21) 54.

making on plastics including (but not limited to) the establishment of a ‘National Plastic Inventory’ for all 193 member States of the UN and the other two that participate as observers. Mechanisms for collecting and disseminating environmental information can be patterned after Article 5,³⁴ which ensures mandatory systems are put in place for a seamless flow of information to the public. The coordination of the various working groups by the Task-force, whose members may be nominated from the working groups or separately following a similar format in figure 1, ensures a true representation of information on ground thereby eliminating biases. The information gathered might help the monitoring efforts of the secretariat to check for accuracy and proactively identify problems and proffer countermeasures. The expert body would therefore operate as the world’s first and only one-stop-shop for plastic pollution advice and guidance which could influence decision-making. We explore the significance of this level of detailed information and the participation of non-State actors in the global plastic regime in the next section.



³⁴ Aarhus Convention (n 25) art 5.

Figure 1: Schematic representation of the composition of the proposed expert working groups

2. Access to decision-making and advisory bodies of the Plastic treaty

The independent and transparent participation of non-State actors as discussed in the preceding section would ensure that environmental democracy is at the heart of the negotiation and implementation of the plastic treaty which might contribute to the accountability efforts of actors. Furthermore, the adoption of such a transdisciplinary approach (through a range of fields – science, engineering, waste management, economics, law, etc) ensures the creation of reliable and expert information needed to tackle a transboundary problem like plastic pollution. The plastic treaty may therefore require different actors to take different actions based on the specific issue being addressed. This may also help address the limitations of a lack of adequate mechanisms for identifying critical issues and legislative priorities; ineffective participation by relevant actors in the international law-making process; and weak coordination. In so doing, sub-national administrations, scientific and other experts, industries, and civil society as a whole will have an identifiable presence throughout the agenda-setting, negotiation, drafting, and implementation of the treaty.³⁵

Following Article 3(6-9) of the Aarhus Convention, a plastic treaty might seek to fundamentally ensure that the membership of associated institutions/bodies is established under the Convention. This may include a global plastic fund or advisory and implementing bodies such as the World Bank or the Global Environmental Facility to the Convention be it international, regional or national, representing all relevant actors. In the spirit of transparency, a plastic treaty could encourage the adoption of an accountability mechanism among multinational corporations and their

³⁵ Beatriz Garcia, Mandy Meng Fang and Jolene Lin, 'All Hands on Deck: Addressing the Global Marine Plastics Pollution Crisis in Asia' (2019) 3(1) *Chinese Journal of Environmental Law* 11-46.

subsidiaries to the general public (i.e., consumers) especially when indigenous and other vulnerable groups are concerned, particularly within the various areas of operation to prevent multinational corporations from operating in a legal vacuum under international environmental law.³⁶ This might be the first time such an approach is adopted in a multilateral environmental agreement; hence we anticipate resistance particularly from States with state-owned corporations operating across the plastic value chain as well as those with associated interests.

Several benefits accrue from this approach as adequate representation ensures that for example, ESG (thus environmental, social, and governance) is prioritised by industry thus operating with openness and engaging in transparent reporting and compliance to agreed environmental standards under the plastic treaty.³⁷ This is to ensure decisions made by industry are beneficial to inhabitants and that their environmental rights are upheld including but not limited to responding to plastic pollution be it industrial or during transportation.³⁸ This will aim at enhancing regulatory decision-making and fostering shared responsibility among actors. Even though shared responsibility among States may be ideal, States (particularly developing States) may still not be sure if they have the resources to protect themselves from potential harm and if assistance from developed States may be readily available. Hence, the concept of informed public scrutiny may help Contracting Parties protect themselves from potential harm posed by plastics.³⁹ Unfortunately, the foundation needed for informed public scrutiny to thrive - of transparency and public access to decision-making - is

³⁶ See e.g., OECD, 'Innovative Citizen Participation and New Democratic Institutions: Catching the Deliberative Wave' (2020) (OECD Publishing, Paris).

³⁷ See e.g., Peter Muchlinski, 'Multinational Enterprises and the Law' (2021) Third Edition (Oxford University Press).

³⁸ It is worth noting that unlike shipping source pollution, pollution from industrial accidents are not developed fully in international environmental law save the regional 1992 UNECE Industrial Accidents Convention - See art 2(1).

³⁹ Patricia Birnie, Alan Boyle and Catherine Redgwell, 'International Law & the Environment' (2009) (Oxford University Press) 485.

currently absent in for example the Basel Convention. Since the plastic pollution problem is also partly a chemical and trade problem, the legal framework of a plastic treaty could ensure that a level of transparency is achieved in monitoring the transboundary movement of plastic-related chemicals and waste. As Birnie and colleagues rightly observe, 'in general, effective treaty institutions are those which combine political direction and inclusive, transparent, informed decision-making processes...with significant NGO participation'.⁴⁰

While plastic-using and producing industries are key to include in decision-making and implementation of a global plastic treaty due to their direct role in enforcement, banks are important actors because their investment decisions determine where and how many plastic-producing plants are built. Additionally, bankrollers of the plastic industry operate in a legal vacuum as their investment decisions are not regulated under international environmental law. Therefore, another approach for the plastic treaty to promote environmental accountability by industry and ensure public access to decision-making is to encourage financiers of the plastic industry to be bound to Social and Environmental Sustainability policies; for example, the performance standards on Social and Environmental Sustainability adopted by the International Finance Corporation (IFC) of the World Bank Group to regulate the risk associated with each project before financing it.⁴¹ Such an approach can be tailored towards operationalising environmental standards required to finance the plastic industry. Conversely, environmental management systems such as ISO 14001 which covers pollution prevention and compliance could be adopted by the plastic treaty.⁴² This may close another governance gap – thus making the plastic treaty the first multilateral environmental agreement to regulate plastic industry

⁴⁰ Ibid 86–88.

⁴¹ International Finance Corporation [IFC], *Performance Standards on Social and Environmental Sustainability* (2012).

⁴² ISO, 'ISO 14001:2015 Environmental management systems — Requirements with guidance for use' < <https://www.iso.org/standard/60857.html> > accessed 4 April 2022.

financiers. One has to acknowledge that such a bold move could be met with opposition, however, till the financiers of these large plastic industries are regulated, plastic pollution will continue unabated as increased investment will lead to more plastic production. In jurisdictions where the environmental standards of the IFC failed to materialise, some scholars attribute it largely to weak regulatory, judicial, and enforcement systems, corruption, and the conclusion of weak bilateral investment treaties which allows foreign investors to adopt binding arbitration in settling breaches.⁴³ Currently, national laws that empower enforcement agencies may be the best option available to States in regulating multinational corporations within their jurisdiction despite possible emerging constraints, for example, the *forum non conveniens* which shields US-based multinational corporations from being prosecuted in US courts for their overseas activities.⁴⁴ The next subsection focuses on ensuring access to justice.

3. Access to justice in environmental matters

In line with Principle 10 of the RD which states that: ‘...[e]ffective access to judicial and administrative proceedings, including redress and remedy, shall be provided’; Article 9 of the Aarhus Convention mandates Contracting Parties to ‘ensure that members of the public having a ‘sufficient interest’ or who claim an ‘impairment of a right where the administrative procedural law of a Party requires this as a precondition’ have access to ‘a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to Article 6 of the Convention and, where so provided for under national law.’⁴⁵ The Convention also makes provisions for ‘members of the public to be able to challenge acts and omissions by private persons and public authorities which contravene national law relating to the environment...and that all the procedures

⁴³ Patricia Birnie, Alan Boyle and Catherine Redgwell, (n 39) 326.

⁴⁴ Ibid 327.

⁴⁵ Aarhus Convention (n 25) art 9(2).

available should provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive.⁴⁶ Article 9 limits the provision to the public and does not include State-owned multinational corporations which the plastic treaty could include to subject State-owned multinational corporations to the law. In addition, the non-discriminatory article of the Convention – Article 3(9) ensures that the public can bring lawsuits in environmental matters to national courts ‘without discrimination as to citizenship, nationality, or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities.’⁴⁷ This addresses the rights of non-nationals or transboundary claimants in transboundary cases which is particularly instructive as plastics are transboundary pollutants.

The adoption of this approach under a plastic treaty would ensure plastic justice by encouraging inter alia affected persons to bring lawsuits to national courts against multinational corporations whose activities may be causing detrimental effects on the environment. As one commentator rightly puts it ‘the real test of Principle 10’s significance lies less in international treaties, however than in national law. It is here that most of the important applications of the principle have taken place.’⁴⁸ The outcome of court proceedings may go a long way in shaping national environmental laws and policies and ensuring that the activities of the plastic industry (both private and State-owned) are made to be accountable under international law. The role national courts have to play in implementing international environmental law might also be enhanced although an in-depth discussion of this role is beyond the scope of this article.

Furthermore, in cases where a party is not compliant, Article 15 of the Aarhus Convention encourages as an option the adoption of a ‘non-

⁴⁶ Ibid art 9(3–4).

⁴⁷ Ibid art 3(9).

⁴⁸ Patricia Birnie, Alan Boyle and Catherine Redgwell (n 39) 268–334.

confrontational, non-judicial and consultative approach' to review compliance where public involvement is allowed. The non-compliance mechanism established under the Aarhus Convention has members independent of Contracting Parties who are selected by consensus and sit on the Aarhus Convention's compliance committee with NGOs being able to also nominate candidates for election thus widening the participatory rights of members of the public.⁴⁹ For industry and their financiers, the plastic treaty could adopt the approach modelled after the inspection panel of the World Bank - an arm of the World Bank's Accountability Mechanism. The Panel conducts independent investigations into Bank-financed projects to determine their level of compliance with the Bank's operational policies and procedures upon complaint by aggrieved persons.⁵⁰

Both approaches (i.e., the non-compliance mechanism of the Aarhus Convention and the Inspection Panel of the World Bank) can be adopted by the proposed plastic treaty which may provide formal mechanisms to enhance the participatory rights of non-State actors. For example, in cases where affected non-State actors have concerns about the establishment of plastic-related industries. In this regard, the plastic treaty may also encourage the financiers of multinational corporations to be subjected to independent investigations modelled after the inspection panel of the World Bank to mitigate the level of harm caused by non-environmentally friendly plastic investments. This will ensure that plastic industry financiers such as banks become accountable to the public for the harm caused to communities by their investment decisions; and that their decisions are guided by agreed operational policies and environmental standards under the plastic treaty. These avenues ensure all relevant actors participate fully and their activities

⁴⁹ Aarhus Convention, Decision 1/7: Review of Compliance, Report of 1st Mtg of Parties, UN Doc ECE/ MP PP/2/Add 8 (2004).

⁵⁰ World Bank Group, 'About the Inspection Panel' <<https://www.inspectionpanel.org/about-us/about-inspection-panel>> accessed 15 April 2022.

particularly industry and their financiers are regulated effectively under the legal framework of the plastic treaty.

IV. CONCLUSION

In rethinking how a globally complex problem like plastic pollution can be mitigated, the world cannot afford to leave anyone behind especially those with resources needed for action to be taken. In this case, using influential non-State actors like NGOs, individual citizens through environmental litigation and representation on corporate boards, as well as industry, and their financiers as a showcase, which could shed light on how other non-State actors could participate in the global plastic treaty regime. This article has shown that adopting the key tenets of Principle 10 of the RD in the global plastic treaty could help extend the procedural rights of non-State actors and may contribute to strengthening the global plastic treaty, especially when regulating industry. The article has also demonstrated how incorporating the Aarhus-style of rights stemming from the foremost international convention on environmental rights (Aarhus Convention) could enhance environmental democracy through increased avenues for participation, empowerment, and regulation of non-State actors towards effective global plastic governance. As shown above, this approach might meet some resistance especially when there is no political will, however, if the global COVID-19 pandemic has taught us anything, it is how adjustable to change we as the people of the world can be *if* we want to.