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Marine Plastic Governance through International Law in China: International Commitment and State Practice

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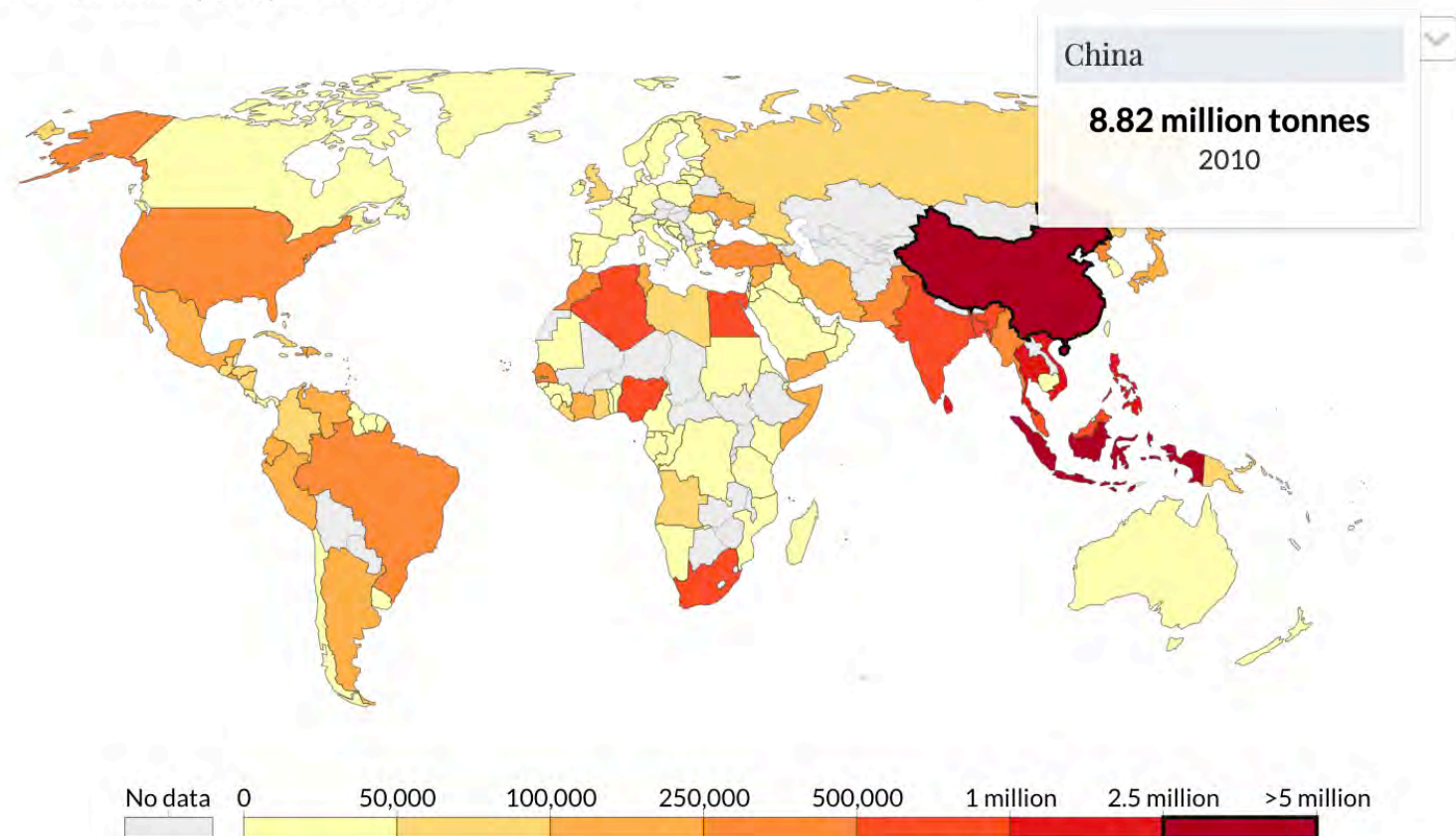


I. Marine Plastic Pollution in China

- Global Pressure and Domestic Demand
 - In 2010, 27.7% of global mismanaged plastic wastes from China.
 - In 2019, plastic items accounted for 84.1%, 81.7%, and 92.6% respectively of the total amount of the litter in surface waters, the beach litter and the seabed litter.

Mismanaged plastic waste, 2010

Mismanaged plastic waste is defined as "plastic that is either littered or inadequately disposed. Inadequately disposed waste is not formally managed and includes disposal in dumps or open, uncontrolled landfills, where it is not fully contained. Mismanaged waste could eventually enter the ocean via inland waterways, wastewater outflows, and transport by wind or tides."



Source: Jambeck et al. (2015)

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I. Marine Plastic Pollution in China

- Major Challenges for the world top polluter:
 - Increasing domestic consumption
 - Large coastal population and rapid economic growth
 - Volume of imported plastic wastes
 - - Largest plastic waste importer for decades
 - Mismanaged plastic waste





II. China's Participation in the Existing International Legal Architecture

Pollution-Oriented Treaties

	UNCLOS	MARPOL Annex V	London Convention and 1996 Protocol
Year of Ratification	1996	1989	1985,2006
Relevant Content	protection and preservation of marine environment from pollution of any source... in line with international rules and standard	the disposal of garbage from ships into the sea is banned (incl. all forms of plastics)	prevent pollution of the sea by dumping (reverse list, permit-based)

Chemicals and Waste Oriented Treaties

	Basel Convention	Stockholm Convention
Year of Ratification	1991	2004
Relevant Content	prevent, reduce, manage, and restrict the transboundary movement of hazardous (Plastic Amendment)	Prohibit/ eliminate/ restrict the production and use, import and export, of the POPs according the Annexes (mirex, PCBs etc. are listed)

Biodiversity-Oriented Treaties

	Convention on Biological Diversity	United Nations Fish Stock Agreement
Year of Ratification	1993	1996 (signed)
Relevant Content	Conservation of biological diversity; Aichi Target 8; COP 16 Decision and Voluntary Guidance	Minimise pollution, wastes, ALDFG generated from fishing activities



II. China's Participation in the Existing International Legal Architecture

- Soft Law Instruments
 - UN 2030 Agenda
 - Unanimously adopted by UNGA
 - Global Programme of Action for the Protection of the Marine Environment from Land-based Activities (GPA)
 - Second Intergovernmental Review Meeting held in Beijing, 2006
 - Honolulu Strategy and Commitment
 - China attended the Fifth International Marine Debris Conference

In general, China does not fall behind others to engage in the international legal architectures consists of hard law and soft law.





III. China's Implementation of Its International Commitments

1) Domestic Laws and Regulations

- Marine Environment Protection Law
 - Adopted in 1982 → 2017 Amendment
 - land-based pollutants, coastal construction projects, marine construction projects, dumping of wastes (**reverse list**) and by vessels (**capacity requirement**)
 - Five regulations
 - Primacy of international treaties (inserted since 1999)
- Solid Waste Law
 - Adopted in 1995 → 2020 Amendment
 - Plastic Ban, waste-sorting, capacity of monitoring, public outreach, increased penalties, incentives for scientific research, innovation and whistle-blowers...
 - Extraterritorial application ?
 - internationally recognized principles
 - Zero Import target





III. China's Implementation of Its International Commitments

2) Progressive Import Ban

2008

- Joint Announce by 5 State Departments: used plastic bags, films and nets, as well as waste parings and scrap of plastics are forbidden to import in China

2013

- Green Fence Operation: to enhance the implementation of its domestic laws and regulations

2017

- Joint Announce by 5 State Departments: all non-industrial plastic wastes are banned for import

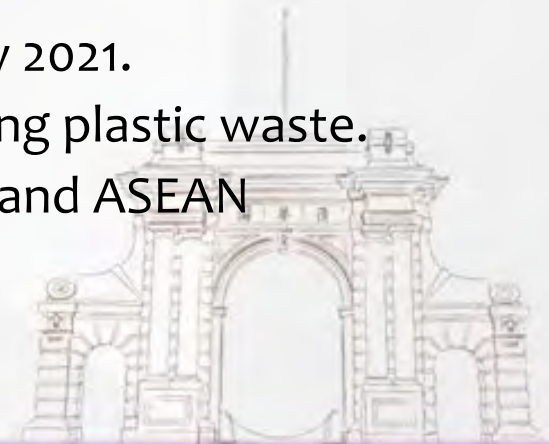
2020

- New Solid Waste Law: zero import target



III. China's Implementation of Its International Commitments

- The geographical landscape of the global plastic trade is Changing
 - ASEAN region saw plastic waste imports grow by a staggering 171%, from 836,529 tons to 2,265,962 tons, between 2016 and 2018 (Greenpeace)
 - Catalyst for ASEAN countries to declare war against MPP
 - Thailand has announced its intention to ban plastic waste imports by 2021.
 - Malaysia and Vietnam have stopped issuing new permits for importing plastic waste.
 - Bangkok Declaration on Combating Marine Debris in ASEAN Region and ASEAN Framework of Action on Marine Debris.





III. China's Implementation of Its International Commitments

2) Multilateral Cooperation

UN Framework

UNEA

COBSEA :Action
Plan 2019

NOWPAP: Action
Plan 2008

Other International Cooperation Mechanism

G20: Action Plan
2017 &
Implementation
Framework 2019

APEC: Roadmap
on Marine Debris
2019

Regional Institutions

TEMM: priority
areas for 2020-
2024 (2019)

ASEAN+: East Asia
Summit Leaders'
Statement on
Combating Marine
Plastic Debris 2018

Bilateral Cooperation

Joint Statement
between Canada
and China on
Marine Litter and
Plastics 2018





IV. China's Engagement in International Law-making

1) International Law is not Silent on MPP

- Applicable law and evolutionary interpretation
- MPP is not a new phenomenon and is covered by the definition of “pollution of the marine environment”

(4) "pollution of the marine environment" means the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities;

But, is the existing international legal architecture sufficient to respond to the urgent need for a solution?





IV. China's Engagement in International Law-making

2) Three Options proposed by the AHEG

- Option 1: Maintaining the *status quo* and strengthen the implementation;
 - Not recommended
- Option 2: Revising and strengthening the existing framework;
 - expanding the mandate of an existing international body
 - coordination of existing institutions
 - strengthening the measures specific to MPP
 - improving implementation at national level, and adopting a voluntary agreement on marine litter
- Option 3: Developing a new international legally binding architecture.
 - Preferred by the Nordic countries

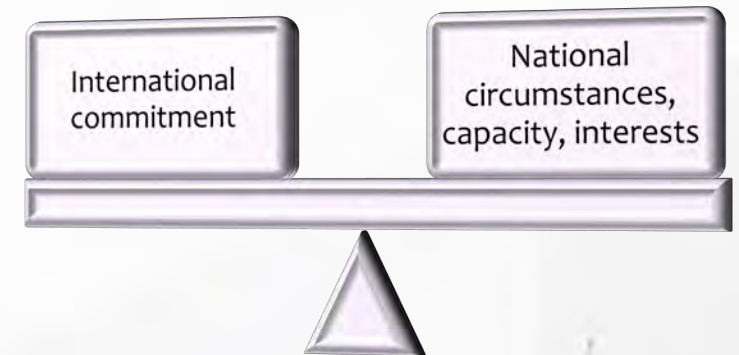




IV. China's Engagement in International Law-making

3) China as a 'Prudent Revisionist'

- Option 2 is preferred by China
 - No ambitious stance on international fora
 - Upholding and complementing the existing legal instruments
 - Enhanced international and regional
 - Voluntary measures
- Making Contributions at Its Own Pace
(two different approaches to Option 2 steps)
 - Certain Stockholm Convention Amendments not accepted by China
 - Adding SCCPs, BDEs to Annex A
 - Industrial interests and lack of capacity
 - Plastic Amendment to the Basel Convention not accepted by China
 - Primacy of domestic law upheld in the new Solid Waste Law
 - Domestic prohibition is stricter than the Plastic Amendment (esp. PET, PE)



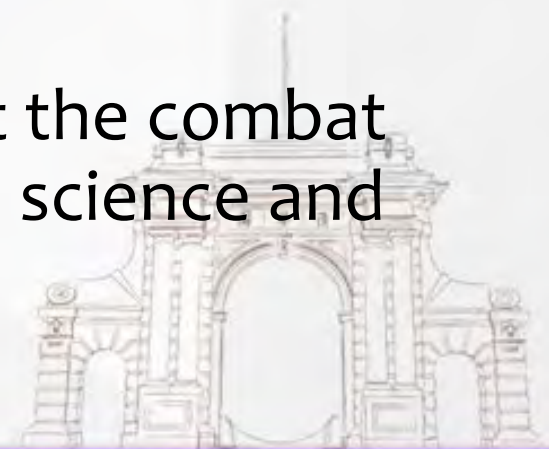
China can be more conservative or bolder than the international law-making process, in a case-by case manner.





V. Reflections

- States are the authors, addressees and guardians of the international law concerning marine plastic governance.
- State practice is both meaningful for *lex lata* and *lex ferenda*, and the two pathways are not mutually exclusive but interactive.
e.g. international cooperation
- As for international law-making, China is keeping with others in developing the existing rules, but not blindly.
- International law provides a regulatory framework, but the combat against MPP needs enhanced interaction between law, science and technology as well as the society at all levels.





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Thank you for listening!

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