

# KEY PRINCIPLES



## PLASTICS TREATY LEGAL ADVISORY SERVICE NOTE



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# Summary

1. This note identifies definitions and applications of the key principles set out in the UNEP [Options Paper UNEP/PP/INC.2/4](#), that ‘the Committee [INC] may wish to consider’ in developing an internationally legally binding instrument (ILBI) on plastic pollution (Plastics Treaty).
2. The note highlights different ways of operationalising key principles, including considerations relevant to determining their role, content and impact in a Plastics Treaty. In this respect, it must be noted that all provisions within a treaty – including the preamble, objectives, governing principles, substantive provisions, and institutional framework – can be based on, include, reflect or operationalise specific principles and/or a human rights-based approach. However, the legal effects of a treaty provision will depend upon how it is phrased, including the category of provision to which it belongs. While a treaty’s preamble, for example, can inform the interpretation of the treaty as a whole it typically will not produce obligations in itself on the States party to the treaty. Therefore, if States desire to give a particular principle the fullest possible effect in a treaty, they should reflect the relevant principle in the substantive provisions of the treaty itself and phrase those provisions in such a way as to oblige parties to take concrete measures or actions aimed at realising to the fullest extent possible the specific principle.
3. The following paragraphs briefly outline the key principles and their application:
  - a. The **‘precautionary principle’** (Rio Principle 15) means that where it is possible that an action or policy will cause harm to the public or the environment – even in the absence of definitive proof or consensus as to the certainty of such harm occurring – the burden of proof for taking the measure falls on those advocating for it. This means that a lack of scientific certainty as to the harmful effects of a given action should not be used as a reason to postpone measures to prevent such harm. The principle is reflected in many international environmental agreements and domestic laws, and has also informed the application of international trade law. It is often invoked when making decisions regarding the approval of potentially harmful activities or products until their safety is confirmed beyond reasonable doubt. For the Plastics Treaty, this principle could assist in shaping control measures relating to transparency, product design and use, production/consumption, and environmentally sound waste management.
  - b. The concept of **‘common but differentiated responsibilities’** (‘CBDR’, Rio Principle 7) (see also equity below) recognises that the historical contribution of developed countries to environmental degradation has been higher and, moreover, that different countries have varying capacities to respond to environmental harm. Thus, while all countries share the responsibility to address global environmental challenges, the CBDR principle allocates that responsibility equitably by reference to the different circumstances and resources of relevant States. For example, developed States might be expected to provide financial and technological assistance to developing States to help them mitigate and adapt to the impacts of climate change. The principle of CBDR is integral to various international environmental agreements and has been developed over time by subsequent legal instruments and commentary. CBDR has nevertheless been a point of contention in international negotiations, as it requires balancing the need for equity with the practical challenges faced by both developed and developing countries.

- c. Typically, the **'polluter pays principle'** (Rio Principle 16) is defined to require that the costs of pollution be borne by those causing pollution rather than by those suffering its impacts (including the wider community). In practice, the application of such a principle may mean that the cost of goods and services causing pollution in production and/or consumption is adjusted to reflect the costs of the measures needed to address the pollution thereby produced. The principle is commonly referred to in international treaties, guidelines, and domestic environmental laws, though few such instruments provide a legal definition of the principle. Factors for consideration in relation to the Plastics Treaty include whether the definition of polluter pays should include a related 'duty' on polluters to take steps to limit escape of plastic into the environment (e.g., a duty to eliminate/control escape), or to undertake clean up or monitoring efforts. Other relevant proposals that could operationalise the polluter pays principle include the establishment of a proposed Global Plastic Pollution Fee (GPPF) as mentioned in the [INC-2 Final Report UNEP/PP/INC.2/5](#), or extended producer responsibility schemes (EPRS) that impose obligations on producers of plastic to take responsibility for the management of plastic waste, e.g. to meet collection or recycling targets. Plastic fees/taxes/duties or EPRS could be considered at a global level but are likely to be more feasible measures at national or regional levels. At the very least, it would be beneficial to reference the 'polluter pays principle' in the preamble to the Plastics Treaty.
  - d. A **human rights-based approach** would (i) apply human rights and related principles to the negotiation and development of the provisions of the Plastics Treaty (eg as a basis for supporting the participation of civil society or particular stakeholders in the negotiation of the Treaty) and/or (ii) entail the adoption of specific human rights-focussed rules and/or human rights-based interpretive provisions in the Treaty itself. As the Options Paper notes, the right to a clean, healthy and sustainable environment (which has recently been recognised by the UN General Assembly) may be particularly relevant to a Plastics Treaty, as may 'the rights of Indigenous Peoples', 'social rights, particularly of the informal sector workers', and principles of 'gender equality and diversified perspectives, recognizing that marginalized and vulnerable communities are disproportionately affected by plastic pollution'.
  - e. **'Equity'** (including the principles of intra- and inter- generational equity and/or responsibility) is integrated into a number of international environmental instruments (including the Rio Declaration on Environment and Development 1992) and is defined in various domestic instruments. 'Equity' may refer broadly to 'fair' or 'equitable' sharing of certain benefits (eg, of a healthy or sustainable environment, of natural resources, or of benefits accruing under a treaty) as amongst treaty parties or other stakeholders. Equity may entail the application of CDDR amongst treaty parties (see above). Equity may also be defined by reference to 'intra-generational equity' (the present generation having equal rights or benefits), 'inter-generational equity' (the present and future generations having equal rights or benefits) and/or equity among individuals (just transition).
  - f. **'Proximity'** in waste management refers to the principle of handling waste as close to its source of generation as possible. This principle aims to minimise transportation costs, reduce environmental impact, and improve overall efficiency in waste management. The principle guides decisions about waste disposal and treatment. For example, it might be used to discourage the transport of hazardous waste over long distances and encourage local waste management solutions. The proximity principle is closely related to the 'polluter pays principle' and aims to reduce the environmental footprint associated with waste management. However, practical implementation can be complex. Finding suitable locations for waste management facilities, for example, can be challenging and might raise local opposition.
4. This note is accompanied by a table providing further definitions and illustrative examples of how these principles have been used in international, regional and national instruments. In operationalising these principles in a Plastics Treaty, further detailed questions will emerge (e.g., the level of harm or scientific certainty needed before a precautionary approach should be adopted; the identification of types of "pollution" to which a polluter pays principle will apply, etc). The table below highlights several of these considerations, with particularly relevant examples highlighted in yellow for ease of reference.





TABLE OF DEFINITIONS AND ILLUSTRATIVE USES

The below table sets out a summary of our findings, which have focused on identifying definitions in international, national and EU environmental treaties and laws. The table also includes a selection of non-binding instruments, case law and references in secondary materials to provide further detail about how the terms have been used in other contexts. We have highlighted in yellow definitions identified as likely to be more relevant for the purposes of negotiating a Plastics Treaty.

	No.	Legal instrument / source	Definition of the term	Use of the term in the instrument	Comments
Precautionary Principle					
International / EU instruments	1.	<a href="#">Rio Declaration on Environment and Development</a> 1992 (the “ <b>Rio Declaration</b> ”)	“Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.” (Principle 15)	“In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.” (Principle 15)	The Rio Declaration is not a legally binding instrument. Principle 15 codified for the first time the precautionary principle at the global level. Central to Principle 15 is the systematic application of risk assessment and risk management. When there is reasonable suspicion of harm, decision-makers need to apply precaution and consider the degree of uncertainty that appears from scientific evaluation. <sup>1</sup>
	2.	<a href="#">Convention on Biological Diversity</a> 1992 (the “ <b>CBD</b> ”)	“Noting also that where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat.” (Ninth paragraph of the preamble)	“1. Each Contracting Party, as far as possible and as appropriate, shall:  (a) Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures;  (b) Introduce appropriate arrangements to ensure that the environmental consequences of its programmes and policies that are likely to have significant adverse impacts on biological diversity are duly taken into account;  (c) Promote, on the basis of reciprocity, notification, exchange of information and consultation on activities under their jurisdiction or control which are likely to significantly affect adversely the biological diversity of other States or areas beyond the limits of national jurisdiction, by encouraging the conclusion of bilateral, regional or multilateral arrangements, as appropriate;  (d) In the case of imminent or grave danger or damage, originating under its jurisdiction or control, to biological diversity within the area under jurisdiction of other States or in areas beyond the limits of national jurisdiction, notify immediately the potentially affected States of such danger or damage, as well as initiate action to prevent or minimize such danger or damage; and  (e) Promote national arrangements for emergency responses to activities or events, whether caused naturally or otherwise, which present a grave and imminent danger to biological diversity and encourage international cooperation to supplement such national efforts and, where appropriate and agreed by the States or regional economic Integration organizations concerned, to establish joint contingency plans.  2. The Conference of the Parties shall examine, on the basis of studies to be carried out, the issue of liability and redress, including restoration and compensation, for damage to biological diversity, except where such liability is a purely internal matter.” (Article 14 Impact assessment and minimizing adverse impact)	The CBD is a legally binding instrument which commits Contracting Parties to safeguard biodiversity.  Through the CBD, the precautionary principle is enshrined in international law with each Contracting Party being required to apply the precautionary principle when taking actions which affect biodiversity.  However, the CBD does not specify an effective mechanism for assessing the possible negative impacts on biodiversity. The wording in article 14 remains vague, referring to “ <i>appropriate</i> ” procedures and arrangements with each contracting party engaging “ <i>as far as possible and as appropriate</i> ”. This would allow contracting parties to dismiss protective measures as unwarranted attempts at protectionism (see below in relation to the WTO). <sup>2</sup>  In the context of preventing environmental damage caused to small island States, the CBD does recognise (i) the importance of information sharing and transparency when it comes to scientific data and (ii) the responsibility polluting States have towards other States where the actions of the polluting State cause significant damage to such other States.

<sup>1</sup> The Global Development Research Centre [The Rio Declaration: Principle 15 - the precautionary approach](#)  
<sup>2</sup> Biotechnology and development monitor [The Precautionary Principle: dealing with controversy](#), Ad van Dommelen, No. 43, December 1997.



	No.	Legal instrument / source	Definition of the term	Use of the term in the instrument	Comments
	3.	<a href="#">1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of wastes and Other Matter, 1972</a> (as amended in 2006) (the “ <b>London Convention</b> ”)	There is no express definition of the precautionary principle in the London Convention.	“Contracting Parties shall apply a precautionary approach to environmental protection from dumping of wastes or other matter whereby appropriate preventative measures are taken when there is reason to believe that wastes or other matter introduced into the marine environment are likely to cause harm even where there is no conclusive evidence to prove a causal relation between inputs and their effects.” (Article 3)	The London Convention is a legally binding instrument which requires its signatories to protect the marine environment.
	4.	<a href="#">Treaty on the Functioning of the European Union</a> (the “ <b>TFEU</b> ”) <i>OJ C 202, 7.6.2016</i>	The precautionary principle is left undefined in the Treaty.	<p>“Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.</p> <p>In this context, harmonisation measures answering environmental protection requirements shall include, where appropriate, a safeguard clause allowing Member States to take provisional measures, for non-economic environmental reasons, subject to a procedure of inspection by the Union.” (Article 191)</p>	<p>The TFEU is a legally binding instrument which is directly applicable in all European Union Member States.</p> <p>By including the Precautionary Principle in the TFEU, Member States are encouraged to apply preventative decision-making in order to ensure a higher level of environmental protection.</p> <p>However, the European Commission has acknowledged that Article 191 of the TFEU is to be used as a guiding principle and that the precautionary principle has been left purposefully undefined so that each Member State can determine the relevant scope of the precautionary principle.<sup>3</sup> Certain Member States have enshrined the precautionary principle into their national legislation (see, eg, France: 2005 Constitution; Sweden: 1999 Environment Code).</p>
	5.	<a href="#">The WTO Agreement on the Application of Sanitary and Phytosanitary Measures</a> (the “ <b>SPS Agreement</b> ”)	The Precautionary Principle is not referred to or defined explicitly in the WTO Agreements. However, the WTO Appellate Body, which handles disputes between the WTO Member States, has several times reached decisions relevant to understanding the possible impacts of the precautionary principle within this regime of international law. The Appellate Body has, in particular, found that the precautionary principle is reflected in Article 5(7) of the SPS Agreement, which allows Member States to establish their own level of sanitary protection even in the face of scientific uncertainty.	<p>“In cases where relevant scientific evidence is insufficient, a Member may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information [...]. In such circumstances, Members shall seek to obtain the additional information necessary for a more objective assessment of risk and review the sanitary or phytosanitary measure accordingly within a reasonable period of time.” (Article 5(7) of the SPS Agreement).</p> <p>In a case concerning European measures prohibiting the import of meat treated with growth hormones, the Appellate Body applied the SPS Agreement and found that Members had the right to “to establish their own appropriate level of sanitary protection, which may be higher (i.e., more cautious) than that implied in existing international standards, guidelines and recommendations” (Appellate Body Report, 16 January 1998 on Dispute DS26, paragraph 124.)</p>	The SPS Agreement is a legally binding agreement. The application of the precautionary principle in this context seeks to balance between a State’s right to set its own level of protection with the desire to avoid protectionist barriers to trade. <sup>4</sup>
Secondary sources	6.	<a href="#">The Precautionary Principle, World Commission on the Ethics of Scientific Knowledge and Technology</a> , UNESCO, 2005	“When human activities may lead to morally unacceptable harm that is scientifically plausible but uncertain, actions shall be taken to avoid or diminish that harm.” (working definition provided by UNESCO)	<p>The report defines morally unacceptable harm as harm that is “threatening to human life or health, or serious and effectively irreversible, or inequitable to present or future generations, or imposed without adequate consideration of the human rights of those affected”.</p> <p>The plausibility of harm should be based on scientific analysis subject to review. Measures taken as a result of a participatory process must be “proportional to the seriousness of the potential harm” and take into consideration their “positive and negative consequences, and with an assessment of the moral implications of both action and inaction. The choice of action should be the result of a participatory process.”</p>	This is a non-binding instrument, however the definition and commentary may be useful in assessing the level of harm and scientific certainty required before, for instance, a ban on certain products or chemicals should be implemented.

<sup>3</sup> [Communication from the Commission on the Precautionary Principle](#), January 2000

<sup>4</sup> European Parliamentary Research Service [The Precautionary Principle: definitions, application and governance](#), December 2015.



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	7.	<a href="#">Communication from the Commission on the Precautionary Principle</a> , January 2000 (the “ <b>Communication</b> ”)	“Whether or not to invoke the precautionary principle is a decision exercised where scientific information is insufficient, inconclusive, or uncertain and where there are indications that the possible effects on the environment, or human, animal or plant health may be potentially dangerous and inconsistent with the chosen level of protection.”	<p>The Communication sets out the key principles for applying the Precautionary Principle:</p> <ul style="list-style-type: none"> <li>• Analysis of risk: The Precautionary Principle should be considered within a structured approach to the analysis of risk which comprises (i) risk assessment; (ii) risk management; and (iii) risk communication. The tools for analysis which are to be used by decision-makers in their management of risk should not be confused with the element of caution that scientists apply in their assessment of scientific data.</li> <li>• Political responsibility: Decision-makers need to be aware of the degree of uncertainty attached to the results of the evaluation of the available scientific information. Judging what is an “appropriate” level of risk for society is a political responsibility.</li> <li>• Cost-benefit analysis: This entails comparing the overall cost to the community (whether for action or non-action) in both the short and long term. This is not simply an economic analysis; the scope needs to be much broader and should include non-economic considerations.</li> </ul>	<p>The Communication is non-binding but it makes clear that the precautionary principle should be used as a basis for action where science is unable to give a clear answer.</p> <p>The Communication also makes it clear that determining what is an acceptable level of risk for the European Union is a political responsibility. It provides a reasoned and structured framework for action in the face of scientific uncertainty and shows that the precautionary principle is not a justification for ignoring scientific evidence and taking protectionist decisions.<sup>5</sup></p>
	8.	European Environment Agency, 2013 <a href="#">Late lessons from early warnings: science, precaution, innovation</a> .	“The precautionary principle provides justification for public policy and other actions in situations of scientific complexity, uncertainty and ignorance, where there may be a need to act in order to avoid, or reduce, potentially serious or irreversible threats to health and/or the environment, using an appropriate strength of scientific evidence, and taking into account the pros and cons of action and inaction and their distribution.” (p.649)		<p>This is not a binding instrument, but provides guidance on the interpretation of the precautionary principle for Member States.</p> <p>This definition underlines the complexity of biological and ecological systems characterised by multi-causality or scientific uncertainty or ignorance. It expands narrow conventional cost-benefit analysis into a broader analysis of the pros and cons, arguing that some costs (eg, loss of public trust in science in case of serious harm) are unquantifiable.<sup>6</sup></p>

<sup>5</sup> European Parliamentary Research Service [The Precautionary Principle: definitions, application and governance](#), December 2015.

<sup>6</sup> European Parliamentary Research Service [The Precautionary Principle: definitions, application and governance](#), December 2015.



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<b>Equity and the specific needs and special circumstances of developing and least developed countries, including small island developing States (common but differentiated responsibilities)</b>					
International / EU instruments	1.	<a href="#">Report of the United Nations Conference on the Human Environment</a> 1972 (the “ <b>Stockholm Declaration</b> ”)	These terms are not explicitly defined in the Stockholm Declaration, as they did not exist as formally recognised concepts at the time of the Declaration.	“To achieve this environmental goal will demand the acceptance of responsibility by citizens and communities and by enterprises and institutions at every level, all sharing equitably in common efforts. [...]” (Chapter I, paragraph 7)	The Stockholm Declaration is not a legally binding instrument, however it requires its signatories to strive to apply its key principles.  The Stockholm Declaration is acknowledged as laying the foundation for the concept of CBDR <sup>7</sup> – i.e., a joint acceptance of responsibility, while recognising that parties must share equitably in common efforts to protect the environment.
	2.	<a href="#">Rio Declaration on Environment and Development</a> 1992 (the “ <b>Rio Declaration</b> ”)	See the next column for how the term is used and defined in the Rio Declaration. This is the key definition for the concept of CBDR.	<i>“States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.”</i> (Principle 7)	The Rio Declaration is not a legally binding instrument however it requires participating states to strive to apply its key principles. Principle 7 of the Rio Declaration is the original authority which sets out and defines the concept of CBDR. Later instruments often refer to “the principle of common but differentiated responsibilities as set out in principle 7 of the Rio Declaration”. Principle 7 is recalled and reaffirmed in the Rio+20 Outcome Document. <sup>8</sup>
	3.	<a href="#">United Nations Framework Convention on Climate Change</a> , 1992 (the “ <b>UNFCCC</b> ”)	These terms are not explicitly defined in the UNFCCC.	“The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.” (Article 3.1)  Article 4.1 of the UNFCCC goes on to state that Parties should take into account CBDR and their specific national and regional development priorities, objectives and circumstances when making the commitments set out under Article 4.1.	The UNFCCC is a legally binding international treaty.
	4.	<a href="#">Kyoto Protocol to the United Nations Framework Convention on Climate Change</a> (the “ <b>Kyoto Protocol</b> ”)	These terms are not explicitly defined in the Kyoto Protocol.	“Each party included in Annex I, in achieving its quantified emission limitation and reduction commitments under Article 3, in order to promote sustainable development, shall:  (a) Implement and/or further elaborate policies and measures in accordance with its national circumstances, such as:  (i) Enhancement of energy efficiency in relevant sectors of the national economy;  (ii) Protection and enhancement of sinks and reservoirs of greenhouse gases not controlled by the Montreal Protocol, taking into account its commitments under relevant international environmental agreements; promotion of sustainable forest management practices, afforestation and reforestation;  (iii) Promotion of sustainable forms of agriculture in light of climate change considerations;	The Kyoto Protocol is a legally binding instrument which is the world’s only international treaty requiring its signatories to reduce greenhouse gas emissions.  The Kyoto Protocol only binds developed States and places a heavier burden on them under the principle of CBDR because it recognises that they are largely responsible for the current high levels of GHG emissions in the atmosphere. <sup>9</sup>  The Kyoto Protocol also emphasises that Parties should take into account CBDR when reaffirming their commitments under the UNFCCC.

<sup>7</sup> Nina E. Bafundo, [Compliance with the Ozone Treaty: Weak States and the Principle of Common but Differentiated Responsibility](#), 2006.

<sup>8</sup> Rio+20, [The future we want](#), 19 June 2012.

<sup>9</sup> UNFCCC secretariat, [What is the Kyoto Protocol?](#)



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				<p>(iv) Research on, and promotion, development and increased use of, new and renewable forms of energy, of carbon dioxide sequestration technologies and of advanced and innovative environmentally sound technologies;</p> <p>(v) Progressive reduction or phasing out of market imperfections, fiscal incentives, tax and duty exemptions and subsidies in all greenhouse gas emitting sectors that run counter to the objective of the Convention and application of market instruments;</p> <p>(vi) Encouragement of appropriate reforms in relevant sectors aimed at promoting policies and measures which limit or reduce emissions of greenhouse gases not controlled by the Montreal Protocol;</p> <p>(vii) Measures to limit and/or reduce emissions of greenhouse gases not controlled by the Montreal Protocol in the transport sector;</p> <p>(viii) Limitation and/or reduction of methane emissions through recovery and use in waste management, as well as in the production, transport and distribution of energy;</p> <p>(b) Cooperate with other such Parties to enhance the individual and combined effectiveness of their policies and measures adopted under this Article, pursuant to Article 4, paragraph 2 (e) (i), of the Convention. To this end, these Parties shall take steps to share their experience and exchange information on such policies and measures, including developing ways of improving their comparability, transparency and effectiveness. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session or as soon as practicable thereafter, consider ways to facilitate such cooperation, taking into account all relevant information.”</p> <p>“All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances [...]” (Article 10)</p>	
	5.	<a href="#">2001 Stockholm Convention on Persistent Organic Pollutants</a> (the “ <b>Stockholm Convention</b> ”) and <a href="#">2013 Minamata Convention on Mercury</a> (the “ <b>Minamata Convention</b> ”)	These terms are not explicitly defined in the Stockholm Convention or the Minamata Convention.	<p>“Noting the respective capabilities of developed and developing countries, as well as the common but differentiated responsibilities of States as set forth in Principle 7 of the Rio Declaration on Environment and Development, [...]” (Stockholm Convention, recitals)</p> <p>“Recalling the United Nations Conference on Sustainable Development’s reaffirmation of the principles of the Rio Declaration on Environment and Development, including, inter alia, common but differentiated responsibilities, and acknowledging States’ respective circumstances and capabilities and the need for global action [...]” (Minamata Convention, recitals)</p>	<p>Both Conventions are legally binding international treaties.</p> <p>Both Conventions note/recall the principle of CBDR as set out in the Rio Declaration.</p> <p>These are two further examples of the principle of CBDR being used as a foundational concept which underpins and is incorporated into international agreements on the protection of the environment.</p>
	6.	<a href="#">2009 OECD Declaration on Green Growth</a> (the “ <b>OECD Declaration</b> ”)	These terms are not explicitly defined in the OECD Declaration.	“We are resolved to make every effort to reach an ambitious, effective, efficient, comprehensive and fair international post-2012 climate agreement at COP15 in Copenhagen in December 2009, by which all countries will take measurable, reportable and verifiable nationally appropriate mitigation commitments or actions as well as adaptation actions, reflecting the principle of common but differentiated responsibilities and respective capabilities” (p.2 of the OECD Declaration)	This is a non-binding instrument however it reflects the intentions of the OECD members to strive toward green growth. When setting targets for climate adaptation, the OECD Declaration states that members should adopt “nationally appropriate mitigation commitments” which reflect “common but differentiated responsibilities”. The OECD Declaration does not provide further guidance on the levels of responsibilities required to be taken by the relevant member states.
	7.	<a href="#">2012 Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru,</a>	These terms are not explicitly defined in the Agreement.	“The Parties are resolved to enhance their efforts regarding climate change, which are led by developed countries, including through the promotion of domestic policies and suitable international initiatives to mitigate and to adapt to climate change, on the basis of equity and in accordance with their common but differentiated responsibilities	This treaty includes a helpful statement for Small Island States in that it specifically makes reference to “taking into account the needs, circumstances, and high vulnerability to the





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		<a href="#">of the other part</a> (OJ L 354, 21.12.2012) (the “ <b>2012 Trade Agreement</b> ”)		and respective capabilities and their social and economic conditions, and taking particularly into account the needs, circumstances, and high vulnerability to the adverse effects of climate change of those Parties which are developing countries.” (Article 275.2)	adverse effects of climate change of those Parties which are developing countries”.
	8.	<a href="#">The Paris Agreement</a> , 2015 (the “ <b>Paris Agreement</b> ”)	These terms are not explicitly defined in the Paris Agreement.	“This Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.” (Article 2.2)	The Paris Agreement is an international treaty which is legally binding on its signatories.  The concepts of equity and CBDR underpin the Paris Agreement, which re-emphasises the need to take into account “different national circumstances” when implementing international environmental agreements and pledges (e.g. Nationally Determined Contributions (NDCs).
	9.	<a href="#">US-China Joint Glasgow Declaration on Enhancing Climate Action in the 2020s</a> , November 2021 (the “ <b>US-China Declaration</b> ”)	These terms are not explicitly defined in the Declaration.	“[The United States and China] declare their intention to work individually, jointly, and with other countries during this decisive decade, in accordance with different national circumstances, to strengthen and accelerate climate action and cooperation aimed at closing the gap, including accelerating the green and low-carbon transition and climate technology innovation.” (Paragraph 4)	During COP26 in Glasgow, the US and China released a (non-legally binding) joint declaration in which both States said they would work together on a number of climate-related actions.
Secondary sources	10.	Written Statement of the US, in <a href="#">2002 Report of the World Summit on Sustainable Development</a> (the “ <b>Johannesburg Report</b> ”)	These terms are not explicitly defined in the Johannesburg Report.	“As the United States of America stated for the record at the 1992 United Nations Conference on Environment and Development, the United States understands and accepts that principle 7 of the Rio Declaration on Environment and Development highlights the special leadership role of developed countries, based on their industrial development, experience with environmental protection policies and actions, and wealth, technical expertise and capabilities. The United States does not accept any interpretation of principle 7 that would imply a recognition or acceptance by the United States of any international obligations or liabilities, or any diminution of the responsibilities of developing countries under international law.” (Chapter IX, Paragraph 20 (written statement of the representative of the United States of America))	The written statement of the representative of the United States of America set out at paragraph 20 of Chapter IX of the Johannesburg Report acknowledges that Principle 7 of the Rio Declaration “highlights the special leadership role of developed countries”. This written statement is interesting as it sets out how one country has chosen to interpret the principle of CBDR in the Rio Declaration. However, this is just one State’s (non-binding) interpretation of the concept.



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Polluter Pays Principle					
International / EU instruments	1	<i>Rio Declaration on Environment and Development 1992</i>	The polluter pays principle is left undefined in the Declaration.	“National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.” (Principle 16)	This articulation of the polluter pays principle demonstrates an example of balancing the use of this principle against public interest and trade / investment considerations.
	2	<i>Declaration of Principles on Air Pollution Control 1968</i> (Committee of Ministers of the Council of Europe)	“Legislation should provide that whoever causes or adds to air pollution must, even where there is no proof of damage, keep such pollution to a minimum and ensure that impurities emitted are properly dispersed.” (Clause 1)	“The cost incurred in preventing or abating pollution should be borne by whoever causes the pollution. This does not preclude aid from Public Authorities.” (Clause 1)	This definition is focused on the air pollution context. The Declaration places the onus on states to enact domestic laws reflecting the polluter pays principle.
	3	<a href="#">1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of wastes and Other Matter, 1972</a> (as amended in 2006) (the “ <b>London Convention</b> ”)	The polluter pays principle is left undefined in the Treaty.	The London Convention emphasises that “the polluter should, in principle, bear the cost of pollution” and provides that the contracting parties “shall act so as not to transfer, directly or indirectly, damage or likelihood of damage from one part of the environment to another or transform one type of pollution into another”.	
	4	<i>Recommendation on Guiding Principles concerning International Economic Aspects of Environmental Policies 1972</i> (OECD)	“The principle to be used for allocating costs of pollution prevention and control measures to encourage rational use of scarce environmental resources and to avoid distortions in international trade and investment is the so-called ‘Polluter-Pays Principle’. This principle means that the polluter should bear the expenses of carrying out the abovementioned measures decided by public authorities to ensure that the environment is in an acceptable state. In other words, the costs of these measures should be reflected in the costs of goods and services which cause pollution in production and/or consumption.” (Clause 4)	“This principle should be an objective of Member Countries; however, there may be exceptions or special arrangements, particularly for the transitional periods, provided that they do not lead to significant distortions in international trade and investment.” (Article 5)	This is a non-binding instrument, however the definition is broadly applicable and may be helpful given the focus of the ILBI on addressing the full lifecycle of plastics including production and consumption.
	5	<i>Single European Act 1987</i> (EU)	The polluter pays principle is left undefined in the Treaty.	“Action by the Community relating to the environment shall be based on the principles that preventative action should be taken, that environmental damage should as a priority be rectified at source, and that the polluter should pay. Environmental protection requirements shall be a component of the Community’s other policies.” (Article 130r (2))	
	6	<a href="#">Treaty on the Functioning of the European Union</a> (the “ <b>TFEU</b> ”) <i>OJ C 202, 7.6.2016</i>	The polluter pays principle is left undefined in the Treaty.	“Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.” (Article 191)	The TFEU is a legally binding instrument which is directly applicable in all European Union Member States.
	7	<i>Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage</i> (EU)	According to the “polluter-pays” principle, an operator causing environmental damage or creating an imminent threat of such damage should, in principle, bear the cost of the necessary preventive or remedial measures. In cases where a competent authority acts, itself or through a third party, in the place of an operator, that authority should ensure that the cost incurred by it is recovered from the operator. It is also appropriate that the operators should ultimately bear the cost of assessing environmental damage and, as the case may be, assessing an	“The prevention and remedying of environmental damage should be implemented through the furtherance of the polluter pays principle, as indicated in the Treaty and in line with the principle of sustainable development. The fundamental principle of this Directive should therefore be that an operator whose activity has caused the environmental damage or imminent threat of such damage is to be held financially liable, in order to induce operators to adopt measures and develop practices to minimise the risk of environmental damage so that their exposure to financial liabilities is reduced.” (Preamble, paragraph 2)	The definition of polluter pays in this context is liability-focused (i.e. directed at financial liability of polluters) and may not be appropriate for an international instrument.  However, aspects of the definition in paragraph 18 are helpful, in particular:



	No.	Legal instrument	Definition of the term	Use of the term in the instrument	Comments
			imminent threat of such damage occurring. (Preamble, paragraph 18)	<p>“This Directive aims at preventing and remedying environmental damage and does not affect rights of compensation for traditional damage granted under any relevant international agreement regulating civil liability.” (paragraph 11)</p> <p>“Not all forms of environmental damage can be remedied by means of the liability mechanism. For the latter to be effective, there needs to be one or more identifiable polluters, the damage should be concrete and quantifiable and a causal link should be established between the damage and the identifiable polluter(s). Liability is therefore not a suitable instrument for dealing with pollution of a widespread, diffuse character, where it is impossible to link the negative environmental effects with acts or failure to act of certain individual characters.” (paragraph 13)</p>	<ul style="list-style-type: none"> <li>The concept of polluter as an operator who causes or creates an ‘imminent threat’ of damage</li> <li>Requirements to bear costs of preventive or remedial measures</li> <li>Requirements for competent authorities who undertake remediation or preventive measures to then recover costs (including of assessment) from the operator.</li> </ul>
	8	<i>Draft Global Pact for the Environment 2017</i> (International Group of Experts for the Pact) <sup>10</sup>	“Parties shall ensure that prevention, mitigation and remediation costs for pollution, and other environmental disruptions and degradation are, to the greatest possible extent, borne by their originator” (Article 8)		Please note that this is a draft document only.
Domestic instruments	9	<p><a href="#">Draft Environmental Principles Policy Statement</a> (UK)</p> <p>The Environmental Principles Policy is required under section 17 of the Environment Act 2021 (UK)</p>	“The polluter pays principle means that, where possible, the costs of pollution should be borne by those causing it, rather than the person who suffers the effects of the resulting environmental damage, or the wider community.”	<p>Description: The polluter pays principle serves several functions and may be used through different phases of policymaking. It can be used in the design of a policy (before the damage has occurred) to prevent or deter environmental damage. In cases where pollution cannot be avoided or is caused by accident, the polluter pays principle can be used to restore or redistribute the costs of environmental damage. Applying this principle helps to incentivise individuals or groups to avoid causing environmental damage and encourage sustainable practices.</p> <p>When to use the polluter pays principle: The polluter pays principle is applicable where there is evidence of, or potential for, environmental harm or a negative environmental effect; and prevention of that harm is not possible or proportionate.</p> <p>Application of the polluter pays principle: policymakers should consider:</p> <ol style="list-style-type: none"> <li>Who the polluter is: the polluter could be an individual, group or sector. Considerations for making this assessment include: <ul style="list-style-type: none"> <li>What is the driver for the pollution being caused and who is responsible for this? It may be difficult to identify or define the polluter, the source of pollution and the associated cost over time. Policymakers must use judgement to identify who the polluter is and the extent to which the polluter ought to and is able to pay.</li> <li>How does the allocation of responsibility for the pollution cause the most environmental benefit? For example, in order to bring about a change in behaviour, it may be more effective to charge the consumer of a product associated with environmental harm rather than the producer. For example, the introduction of the plastic bag charge successfully incentivised changes in consumer behaviour and a reduction in consumption. It also allowed retailers to take further actions (such as reducing the availability of plastic bags at tills or for home delivery) as a result of consumer charges, to further decrease the use of plastic bags.</li> </ul> </li> </ol>	<p>This policy statement was published in draft on 12 May 2022.</p> <p>Given that this is a policy document, the language may not be appropriate for an international instrument. However, it provides insights into the policy decisions that are relevant to implementing the polluter pays principle in domestic legislation.</p>

<sup>10</sup> It is available at: <https://globalpactenvironment.org/en/documents-en/the-pact-text/>



	No.	Legal instrument	Definition of the term	Use of the term in the instrument	Comments
				<ul style="list-style-type: none"> <li>Who is it fair to expect to pay for the pollution? It may be more effective to distribute the cost across a particular sector responsible for the pollution, rather than place it on an individual or group.</li> </ul> <p>2. How much the polluter should pay:</p> <ul style="list-style-type: none"> <li>the polluter pays principle should be applied proportionately. This means that the amount the polluter pays should be proportionate to the environmental damage and the wider costs and benefits to society of the activity in question. When deciding how much polluters should pay, policymakers must consider the value of the environmental damage caused by the polluter or the potential polluter, along with the costs and benefits associated with the polluter paying (fully or partially) for this damage. In some cases, full cost recovery may not be possible or proportionate and in these cases it may be reasonable that the cost is covered through other means.</li> </ul> <p>3. How the polluter should pay:</p> <ul style="list-style-type: none"> <li>the polluter can pay in a variety of different ways depending on what is appropriate, and how this can act as an incentive or disincentive for action. It may be most appropriate for the polluter to pay directly through fees or charges, or indirectly through regulatory or contractual requirements (which in turn require additional investment to fulfil) to ensure the outcome minimises the environmental damage. In the latter instance, fines or penalties for breaching these obligations may also be appropriate.</li> </ul> <p>However, the duty to have due regard to the policy statement does not create an obligation on ministers to create a tax in response to the polluter pays principle. If it is decided it would be appropriate for the consumer to pay, the costs of environmental damage (such as pollution control and remediation) would be reflected in the cost of goods and services. Each policy area should consider how the costs of environmental damage could be recovered as well as how polluters could be disincentivised from causing further environmental damage.</p>	
	10	<i>Offshore Petroleum and Greenhouse Gas Storage Act 2006</i> (Cth)  (Australia)	<p>Part 6.1A of the Act is titled 'polluter pays'. The simplified outline of this Part of the Act at section 572A provides that:</p> <p>If there is an escape of petroleum in relation to a petroleum activity, the titleholder is required to do the following in any offshore area:</p> <ul style="list-style-type: none"> <li>(a) eliminate or control the escape</li> <li>(b) clean up the escaped petroleum and remediate any resulting damage to the environment</li> <li>(c) carry out environmental monitoring of the impact of the escape on the environment.</li> </ul> <p>If any of the escaped petroleum has migrated to land or waters of a State, the Northern Territory or a designated external Territory, the titleholder is required to do the following on that land or in those waters:</p>	<p>Section 572C(2) provides that a registered title holder must:</p> <ul style="list-style-type: none"> <li>(a) in an offshore area, in accordance with the environmental plan for the petroleum activity:             <ul style="list-style-type: none"> <li>(i) as soon as possible after becoming aware of the escape of petroleum, take all reasonably practicable steps to eliminate or control it; and</li> <li>(ii) clean up the escaped petroleum and remediate any resulting damage to the environment; and</li> <li>(iii) carry out environmental monitoring of the impact of the escape on the environment; and</li> </ul> </li> <li>(b) if any of the escaped petroleum has migrated to land or waters of a State or the Northern Territory--on that land or in those waters, as the case may be, in accordance with the environment plan for the petroleum activity:</li> </ul>	<p>This definition is limited in application to escape of petroleum, however, we consider that there are useful parallels between petroleum and plastic pollution which may be useful to consider for the purposes of an ILBI, for example:</p> <ul style="list-style-type: none"> <li>Whether the definition of polluter pays should include a concept of 'duty' to take steps to limit escape of plastic into the environment through certain steps (e.g. eliminate/control escape, clean up, carry out monitoring);</li> <li>The inclusion of the concepts of clean up and environmental monitoring in the conceptualisation of 'payment' by a polluter.</li> </ul>





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			<p>(a) clean up the escaped petroleum and remediate any resulting damage to the environment;</p> <p>(b) carry out environmental monitoring of the impact of the escape on the environment.</p> <p>If the titleholder fails to do any of these things, NOPSEMA or the responsible Commonwealth Minister may do them instead. The titleholder must reimburse NOPSEMA or the Commonwealth for the costs and expenses of any such action.</p> <p>The titleholder must also reimburse a State or the Northern Territory for any reasonable costs or expenses incurred in doing any of the following in land or waters of the State or the Northern Territory:</p> <p>(c) cleaning up the escaped petroleum;</p> <p>(d) remediating any resulting damage to the environment;</p> <p>(e) carrying out environmental monitoring of the impact of the escape on the environment.</p>	<p>(i) clean up the escaped petroleum and remediate any resulting damage to the environment; and</p> <p>(ii) carry out environmental monitoring of the impact of the escape on the environment; and</p> <p>(c) if any of the escaped petroleum has migrated to land or waters of a designated external Territory - on that land or in those waters, as the case may be, in accordance with the environment plan for the petroleum activity:</p> <p>(i) clean up the escaped petroleum and remediate any resulting damage to the environment; and</p> <p>(ii) carry out environmental monitoring of the impact of the escape on the environment.”</p> <p>• Section 572C</p> <p>Other sections in Part 6.1A deal with reimbursing relevant authorities who take actions to remediate damage where the titleholder has not fulfilled their duties under section 572C.</p>	
	11	<i>Environment Protection Act 1997</i> (ACT)  (Australia)	“Polluter pays principle means that polluters should bear the appropriate share of the costs that arise from their activities.” (Section 3D(2))	<p>Section 3D(1) of the Act provides that a person administering this Act must have regard to the following principles where relevant:</p> <p>(a) the principle of a shared responsibility for the environment, including through—</p> <p>(i) acknowledging environmental needs in economic and social decision-making; and</p> <p>(ii) public education about and public involvement in decisions about protection, restoration and enhancement of the environment;</p> <p>(b) the precautionary principle;</p> <p>(c) the inter-generational equity principle;</p> <p>(d) the waste minimisation principle;</p> <p>(e) the polluter pays principle.</p>	The definition of polluter pays in this Act is broadly applicable, however we note that the requirement to bear an ‘appropriate share’ of costs is not instructive.
	12	<i>Environment Protection Act 2017</i> (Vic)  (Australia)	“Principle of polluter pays: Persons who generate pollution and waste should bear the cost of containment, avoidance and abatement.” (Section 17)	<p>The Act sets out a number of ‘principles of environment protection’ including the polluter pays principle. Under section 11, it is the intention of Parliament that in the administration of the Act and the regulations regard should be given to these principles.</p> <p>Other sections of the Act require decision-makers to have regard to these principles when making particular decision (for example, when making decisions about licences, or environment reference standards).</p>	<p>We note that two aspects of this definition are instructive:</p> <ul style="list-style-type: none"> <li>Both persons who generate pollution and waste are considered to fall under the principle; and</li> <li>The relevant costs are those relating to ‘containment, avoidance and abatement’.</li> </ul>



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	13	<i>Environment Planning and Assessment Regulation 2021</i> (NSW)  (Australia)	<p>Section 193(6) provides that the principle of improved valuation, pricing and incentive mechanisms is that environmental factors should be included in the valuation of assets and services, such as –</p> <ul style="list-style-type: none"> <li>(a) polluter pays, that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement, and</li> <li>(b) the users of goods and services should pay prices based on the full life cycle of the costs or providing the goods and services, including the use of natural resources and assets and the ultimate disposal or waste, and</li> <li>(c) established environmental goals should be pursued in the most cost-effective way by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.”</li> </ul>	<p>Principles of ecologically sustainable development set out at section 193 of the Act</p> <ul style="list-style-type: none"> <li>(a) the precautionary principle,</li> <li>(b) inter-generational equity,</li> <li>(c) conservation of biological diversity and ecological integrity,</li> <li>(d) improved valuation, pricing and incentive mechanisms.</li> </ul> <p>Under section 192, environmental impact assessments prepared under the Act must contain (among other things) the reasons justifying the carrying out of the development, activity or infrastructure, considering biophysical, economic and social factors, including the principles of ecologically sustainable development set out in section 193.</p>	Please see the below section of the table on inter-generational equity for a consideration of the definition of this principle in the Act.
	14	<i>Natural and Built Environment Bill 2022</i> (NZ)	“Polluter pays principle: In this subpart, the polluter pays principle means the principle that those who produce pollution should bear the costs of managing it to prevent damage to human health and the environment.” (Section 417)	<p>In relation to the part of the Act concerning contaminated land, section 416 provides that the “purpose of this subpart is to provide a framework, based on the polluter pays principle, for the management of contaminated land so that—</p> <ul style="list-style-type: none"> <li>(a) those who cause or allow contamination to occur bear the costs of managing the contamination in order to prevent or remedy harm to human health and the environment; and</li> <li>(b) the owner of the land is responsible for managing the contamination in accordance with this subpart; and</li> <li>(c) the land is managed <ul style="list-style-type: none"> <li>(i) to prevent harm to human health and the environment; and</li> <li>(ii) to minimise any further harm to human health and the environment.”</li> </ul> </li> </ul>	Note that this Bill has not yet been enacted.
	15	<i>Federal Sustainable Development Act S.C. 2008</i> (Canada)	This Act does not define the polluter pays principle.	<p>Section 5(a.) of the Act provides that a number of principles shall be considered in the development of sustainable development strategies. Relevantly these include “the principle that sustainable development</p> <ul style="list-style-type: none"> <li>(i) is a continually evolving concept,</li> <li>(ii) may be achieved by, among other things, the protection of ecosystems, prevention of pollution, protection of human health, promotion of equity, conservation of cultural heritage, respect for domestic and international obligations relating to sustainable development and recognition of the present generation’s responsibility to provide future generations with a healthy and ecologically sound environment, and</li> <li>(iii) may be advanced by, among other things, taking into account the precautionary principle, the “polluter pays” principle, the principle of internalization of costs and the principle of continuous improvement”</li> </ul>	



	No.	Legal instrument	Definition of the term	Use of the term in the instrument	Comments
	16	<i>Environmental Rights Act, SNWT 2019, c 19</i> (Canada)	“the polluter pays principle that a person who causes an adverse effect on the environment is responsible for taking remedial action, and is to bear the costs of that action” Section 17(1.1)	Under section 17(1.1), the polluter pays principle is one of a number of principles which the Executive Council may consider in preparing a statement of environmental values.	This definition has broad application, applying to persons who have an ‘adverse effect on the environment’. It may be appropriate for the ILBI to be more specific about the nature of the ‘polluter’.
	17	<i>The Contaminated Sites Remediation Act, CCSM c C205</i> (Canada)	“the primary responsibility for the remediation of a contaminated site lies with the person or persons who contaminated it and that they should bear the responsibility for the remediation in proportion to their contributions to the contamination” (Section 21(a))	Under section 1(1), the principal purpose of the Act is to provide for the remediation of contaminated sites and impacted sites, in accordance with the principles of sustainable development. Among other things, the Act aims to provide a fair and efficient process for apportioning responsibility for the remediation of contaminated sites that applies the polluter pays principle.	Note that the principle is referenced (but not defined) in a number of other Canadian Acts and policy documents including: <ul style="list-style-type: none"><li>• Québec residual materials management policy</li><li>• Pipeline Safety Act, SC 201</li><li>• Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador (Amendment) Act, SNL 2015</li><li>• Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act (amended), SNS 2014</li><li>• Energy Safety and Security Act, SC 2015</li><li>• Environment Act, SNS 1994-95</li><li>• Canadian Energy Regulator Act, SC 2019</li><li>• Canada Oil and Gas Operations Act, RSC 1985</li><li>• Canadian Environmental Protection Act, 1999</li></ul>
	18	<i>National Green Tribunal Act 2010</i> (India)		Under section 20 of this Act, the National Green Tribunal is required to, while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle.	This Act does not define the polluter pays principle.
	19	<i>Environment Act 2015</i> (Niue)		Under section 51 of this Act, Cabinet may prescribe levies based on the polluter pays principle in respect of any specified items imported into Niue or any operation that produces any product -  (a) that will or may have a significant environmental impact when they become waste; or  (b) in relation to which there are significant benefits to Niue from reduction, reuse, recycling, or recovery of the items.”	Although this Act does not define ‘polluter pays’, we have included this clause as an interesting application of the principle in relation to prescribing levies for producing products that will impact the environment as waste.



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	20	<i>Solomon Islands Maritime Authority Act 2018</i> (Solomon Islands)	"The general principles of maritime administration are as follows: (a) the polluter pays principle, which is that the costs of preventing, controlling, reducing and eliminating environmental harm should be borne by the persons who cause or knowingly permit it; ..." (Section 5)		<p>We note the following two aspects of this definition:</p> <ul style="list-style-type: none"> <li>it applies the principle both to those who cause and also those who 'knowingly permit' environmental harm. This is a broad conception of who a 'polluter' is.</li> <li>it contains the notion that polluters should bear costs of 'costs of preventing, controlling, reducing and eliminating' harms.</li> </ul>
	21	<i>Environmental Protection Act 2008</i> (Tuvalu)		"(t) the imposition of "user fees" and the "polluter pays" principles" (Section 23)	This Act does not define the principle.
	22	<i>Climate Change Act 2021</i> (Fiji)		"(e) improved valuation, pricing and incentive mechanisms including the polluter pays principle should be promoted;" (Section 2)	This Act does not define the principle.
	23	<i>National Water Act 1998</i> (South Africa)		"In terms of Part 1 the Minister may from time to time, after public consultation, establish a pricing strategy which may differentiate among geographical areas, categories of water users or individual water users. The achievement of social equity is one of the considerations in setting differentiated charges. Water use charges are to be used to fund the direct and related costs of water resource management, development and use, and may also be used to achieve an equitable and efficient allocation of water. In addition, they may also be used to ensure compliance with prescribed standards and water management practices according to the user pays and polluter pays principles. Water use charges will be used as a means of encouraging reduction in waste, and provision is made for incentives for effective and efficient water use. Non-payment of water use charges will attract penalties, including the possible restriction or suspension of water supply from a waterwork or of an authorisation to use water." (Introduction to Chapter 5, Part 1)	This Act does not define the principle, but illustrates use of the principle in the context of water management.
Secondary sources		CJ Brian Preston – Sustainable Development Law in the Courts: <i>The Polluter Pays Principle</i> (2009) 26 EPLJ 257	"The principle holds that those who generate pollution and waste should bear the costs of containment, avoidance, and abatement. It requires the polluter to take responsibility for the external costs arising from its pollution."	<p>This article makes the following instructive comments about the polluter pays principle:</p> <ul style="list-style-type: none"> <li>the principle can be understood as an economic rule of cost allocation. The polluter must internalise these costs as a cost of doing business.</li> <li>the principle can be achieved by the polluter cleaning up the pollution and restoring the environment to the condition it was in pre-pollution.</li> <li>the polluter should make reparation for any irreparable harm by the pollution.</li> <li>the principle encompasses prevention and remediation efforts.</li> </ul>	We note that the concept of 'containment, avoidance, and abatement' is contained in the definition in the <i>Environment Protection Act 2017</i> (Vic) described above.





	No.	Legal instrument	Definition of the term	Use of the term in the instrument	Comments
Equity (including intra- and inter-generational equity)					
International instruments	1.	<i>Rio Declaration on Environment and Development 1992</i>	This instrument defines equity by reference to the “needs of present and future generations”.	“The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.” (Principle 3)	The Rio Declaration encompasses both <b>inter- and intra-generational equity</b> .
	2.	<i>United Nations Framework Convention on Climate Change 1992 (UNFCCC)</i>	The UNFCCC does not expressly define ‘equity’, however, equity has been considered to be a core guiding principle for implementation of the convention. <sup>11</sup>	“The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.” (Article 3(1))	The UNFCCC refers to both <b>inter- and intra-generational equity</b> , and <b>links equity to CBDR</b> .
	3.	<i>Paris Agreement 2015</i>	The Paris Agreement references but does not define the principle of equity, but the concept of equity is integrated throughout the Agreement.	<p>The preamble to the Paris Agreement includes the following relevant references to equity:</p> <ul style="list-style-type: none"> <li>In pursuit of the objective of the [UNFCCC], and being guided by its principles, including the principle of equity and common but differentiated responsibilities and respective capabilities, in the light of different national circumstances, ...</li> <li>Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity ...</li> </ul> <p>Article 2(2) provides that the Agreement ‘will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.’</p> <p>Other Articles in the Agreement provide for steps to be taken having regard to equity.</p>	This instrument <b>links equity to CBDR</b> .
	4.	<i>United Nations Convention on the Law of the Sea (UNCLOS)</i>		“Recognizing the desirability of establishing through this Convention, with due regard for the sovereignty of all States, a legal order for the seas and oceans which will facilitate international communication, and will promote the peaceful uses of the seas and oceans, the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment ...” (Preamble)	This instrument does not define ‘equity’ however, the term ‘equity’ is used multiple times throughout the instrument, particularly with respect to access to resources.
	5.	<i>Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction (“BBNJ Agreement”)</i>		<p>“... <i>Recognizing</i> the importance of contributing to the realization of a just and equitable international economic order which takes into account the interests and needs of humankind as a whole and, in particular, the special interests and needs of developing countries, whether coastal or landlocked ...” (Preamble)</p> <p>“General Principles and Approaches: In order to achieve the objectives of this Agreement, Parties shall be guided by the following principles and approaches: ... (d) The principle of equity and the fair and equitable sharing of benefits. ...” (Article 7)</p>	

<sup>11</sup> See, for example, the comments in this article by Jeffrey Qi (IISD), ‘Putting Equity at the Heart of the Global Stocktake’ (3 November 2022) available at: <https://www.iisd.org/articles/insight/equity-global-stocktake>



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	6.	<a href="#">Draft Global Pact for the Environment 2017</a> (International Group of Experts for the Pact)	"Intergenerational equity shall guide decisions that may have an impact on the environment. Present generations shall ensure that their decisions and actions do not compromise the ability of future generations to meet their own needs." (Article 4)		The Pact addresses <b>intergenerational equity</b> . Please note that this is a draft document only.
Domestic instruments	7.	<i>Water Management Act 2000 (NSW)</i>  (Australia)		<p>"The objects of this Act are to provide for the sustainable and integrated management of the water sources of the State for the benefit of both present and future generations and, in particular—</p> <p>(a) to apply the principles of ecologically sustainable development, and</p> <p>(b) to protect, enhance and restore water sources, their associated ecosystems, ecological processes and biological diversity and their water quality..."</p> <p>• Section 3</p>	This Act does not define equity, but its objects encompass the notion of both <b>inter- and intra-generational equity</b> .
	8.	<i>Intergovernmental Agreement on the Environment 1992</i>  (Australia)	"Intergenerational equity – the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations." (Section 3.5.2)	This Agreement is between the Commonwealth of Australia and Australian states and territories. Under the Agreement, the development and implementation of environmental policy and programs by all levels of Government should be guided by these principles (among other things). The principle of intergenerational equity is one of a number of 'principles of environmental policy'.	<p>The Act refers to <b>intergenerational equity</b>. This definition is widely applicable to different environmental contexts, and has been adopted in a number of domestic Acts, including the following Australian Acts:</p> <ul style="list-style-type: none"> <li>• Environment Protection and Biodiversity Conservation Act 1999 (Cth) (section 3A)</li> <li>• Great Barrier Reef Marine Park Act 1975 (Cth) (at section 3AB)</li> <li>• Renewable Energy (Electricity) Act 2000 (Cth) (at section 5)</li> <li>• Environment Protection Act 1997 (ACT) (section 3D)</li> <li>• Climate Change and Greenhouse Gas Reduction Act 2010 (ACT) (section 14)</li> </ul> <p>This definition is also adopted in the Biodiversity Bill, 2000 (Report No. 171) [2000] INLC 1 (India) (Section 1).</p>
	9.	<i>Environment Protection Act 2017 (Vic)</i>  (Australia)	<p>"Principle of equity</p> <p>(1) All people are entitled to live in a safe and healthy environment irrespective of their personal attributes or location.</p> <p>(2) People should not be disproportionately affected by harm or risks of harm to human health and the environment.</p>	<p>The Act sets out a number of 'principles of environment protection' including the principle of equity. Under section 11, it is the intention of Parliament that in the administration of the Act and the regulations regard should be given to these principles.</p> <p>Other sections of the Act require decision-makers to have regard to these principles when making particular decision (for example, when making decisions about licences, or environment reference standards).</p>	This Act adopts a broad definition of equity, which <b>encompasses inter-generational equity</b> . It could be used in an array of different environmental contexts.



	No.	Legal instrument	Definition of the term	Use of the term in the instrument	Comments
			(3) The present generation should ensure the state of the environment is maintained or enhanced for the benefit of future generations.” (Section 21)		
	10.	<i>Circular Economy (Waste Reduction and Recycling) Act 2021</i> (Vic)  (Australia)	<p>“The principle of equity in this Act means:</p> <p>(1) All people are entitled to equitable access to waste, recycling or resource recovery services and the benefits of a circular economy irrespective of their personal attributes, socio-economic status or location.</p> <p>(2) People should not be disproportionately affected by disruption, or risks of disruption, to waste, recycling or resource recovery services and any associated harm to human health and the environment.</p> <p>(3) The present generation should ensure that the state of the environment is maintained or enhanced so as to not compromise the ability of future generations to meet their needs.” (Section 9)</p>		This Act adopts a broad definition that <b>encompasses inter-generational equity</b> . The articulation of this principle in the context of waste and recycling legislation is instructive.
	11.	<i>Environment Planning and Assessment Regulation 2021</i> (NSW)  (Australia)	“The principle of inter-generational equity is that the present generation should ensure the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations.” (Section 193(4))	<p>The principle of inter-generational equity is one of the principles of ecologically sustainable development listed at section 193(1) of the Act.</p> <p>Under section 192, environmental impact assessments prepared under the Act must contain (among other things) the reasons justifying the carrying out of the development, activity or infrastructure, considering biophysical, economic and social factors, including the principles of ecologically sustainable development set out in section 193.</p>	<p>This definition of <b>intergenerational equity</b> is used in other domestic Australian Acts, including the <i>Protection of the Environment Administration Act 1991</i> (NSW) (at section 6(2)(b)).</p> <p>We note that this definition of ‘intergenerational equity’ is also set out in the <i>Principles of Ecologically Sustainable Development</i> (by Hon. Justice Brian J Preston).<sup>12</sup></p>
	12.	<i>Game Management Authority Act 2014</i> (Vic)  <i>Victorian Fisheries Authority Act 2016</i> (Vic)  (Australia)	<p>The principle of equity in these Acts means:</p> <p>(i) equity between persons irrespective of their</p> <p>(A) personal attributes including age, physical ability, ethnicity, culture, gender and financial situation; and</p> <p>(B) location, including whether in a growth, urban, regional, rural or remote area; and</p> <p>(ii) equity between generations by not compromising the ability of future generations to meet their needs.</p> <p>• Section 8A(c)(ii) of the Game Management Authority Act 2014 (Vic)</p> <p>Section 14(b) Victorian Fisheries Authority Act 2016 (Vic)</p>	The principle of equity is one of the ‘guiding principles’ which the relevant authority must have regard to when exercising its powers or performing its functions under these Acts.	This definition encompasses <b>both inter- and intra-generational equity</b> .

<sup>12</sup> Available at: [https://lec.nsw.gov.au/documents/speeches-and-papers/preston\\_principles%20of%20ecologically%20sustainable%20development.pdf](https://lec.nsw.gov.au/documents/speeches-and-papers/preston_principles%20of%20ecologically%20sustainable%20development.pdf)



	No.	Legal instrument	Definition of the term	Use of the term in the instrument	Comments
	13.	<i>Coastal Fisheries and Aquaculture Act 2020</i> (Nauru)	“the present generation should ensure that the health, diversity and productivity of coastal living resources and the coastal fisheries waters are maintained or enhanced for the benefit of future generations” (Section 6)	This principle is one of a number of ‘general principles’ which under section 6 of the Act, the Chief Executive Officer is required to apply in the performance of a function or exercise of a power under this Act as far as is reasonably practicable.	<p>This Act refers to <b>intergenerational equity</b>. Note that similar definitions are contained in:</p> <ul style="list-style-type: none"> <li>• Motu Koita Assembly Act 2007 (PNG)</li> <li>• Protected Areas Act 2010 - Protected Areas Regulations 2012 (Solomon Islands)</li> </ul> <p>Given that the ILBI is relevant to plastic pollution in the marine environment, the articulation of intergenerational equity in the context of coastal resources and waters is instructive.</p>
	14.	<i>Federal Sustainable Development Act S.C. 2008</i> (Canada)	“the principle of intergenerational equity, which is the principle that it is important to meet the needs of the present generation without compromising the ability of future generations to meet their own needs” (Section 5(b))	Section 5 provides that this principle (among others) shall be considered in the development of sustainable development strategies.	The Act refers to <b>intergenerational equity</b> . This definition is broadly applicable, and in this case, is applied in an Act that is focused on requiring the development and implementation of a Federal Sustainable Development Strategy and the development of goals and targets with respect to sustainable development in Canada.
	15.	<i>Climate Change Act 2017</i> (Vic) (Australia)	<p>“It is a guiding principle of this Act that a decision, policy, program or process should have regard to the following—</p> <ul style="list-style-type: none"> <li>(a) opportunities should be created by the present generation to increase the capacities within that generation and future generations to adapt to climate change;</li> <li>(b) in particular, the present generation should consider the opportunities to increase the capacities to adapt to climate change of those people most vulnerable to the potential impacts of climate change;</li> <li>(c) the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations and that any adverse impacts of climate change are minimised for future generations;</li> <li>(d) the present generation should consider the long-term, medium-term and short-term consequences of decisions, policies, programs and processes that may impact on climate change.”</li> </ul> <p>Section 26</p>	The principle of equity is one of a set of ‘guiding principles’ set out in Part 4 of the Act. These principles are to be taken into account by the Minister when preparing the ‘climate change strategy’ and ‘adaptation action plan’ (among other things).	This Act refers to both <b>inter- and intra-generational equity</b> . This is a broad conception of equity that, while used in the context of climate change, is instructive in the way that it encompasses inter-generational equity and intra-generational equity, and asks that the present generation ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations. These aspects are applicable to other contexts outside of climate change and may be relevant for the ILBI.





	No.	Legal instrument	Definition of the term	Use of the term in the instrument	Comments
	16.	<i>Bulga Milbrodale Progress Association Inc v Minister for Planning and Infrastructure</i> (2013) 8 ARLR 127  (Australia)	“The principle of intra-generational equity involves people within the present generation having equal rights to benefit from the exploitation of resources as well as from the enjoyment of a clean and healthy environment.” <sup>13</sup>		The case refers to <b>intragenerational equity</b> .
Secondary materials	17.	Brian J Preston, ‘What’s Equity got to do with the Environment?’ (2018) 92(4) <i>Australian Law Journal</i> 257, 259.	<p>“The distribution of the benefits and burdens of developing the environment raises issues of equity. The notion of equity concerns evenness, fairness and justice. The members of the community of justice comprise people of the present generation, people of future generations and non-human nature, present and future (pg. 257).”</p> <p>“Intra-generational equity involves people within the present generation having equal rights to benefit from the use of natural resources and from the enjoyment of a clean and healthy environment.” (pg. 259)</p>		This scholarship refers to <b>inter- and intra-generational equity and inter-species equity</b> . A similar conception of intragenerational equity is contained in <i>Telstra Corporation Ltd v Hornsby Shire Council</i> (2006) 67 NSWLR 256 [117] (Australian domestic court decision).
	18.	Brian J Preston, <i>Principles of Ecologically Sustainable Development</i>	These principles set out the following definition of ‘intra-generational equity’: Intra-generational equity involves considerations of equity within the present generation. The use of natural resources by one country (or sector or class within a country) needs to take account of the needs of other countries (or sectors or classes within other countries).		

<sup>13</sup> Citing *Telstra Corporation Ltd v Hornsby Shire Council* (2006) 67 NSWLR 256 at [117]



	No.	Legal instrument / source	Definition of the term	Use of the term in the instrument	Comments
Human Rights Principles					
International instruments / EU	1.	UNGA, ‘Resolution 76/300–The Human Right to a Clean, Healthy and Sustainable Environment’ (28 July 2022)		“1. Recognizes the right to a clean, healthy and sustainable environment as a human right; 2. Notes that the right to a clean, healthy and sustainable environment is related to other rights and existing international law; 3. Affirms that the promotion of the human right to a clean, healthy and sustainable environment requires the full implementation of the multilateral environmental agreements under the principles of international environmental law; 4. Calls upon States, international organizations, business enterprises and other relevant stakeholders to adopt policies, to enhance international cooperation, strengthen capacity-building and continue to share good practices in order to scale up efforts to ensure a clean, healthy and sustainable environment for all.”	This UN General Assembly resolution, though non-binding, is an important recognition by States of the right to a clean, healthy and sustainable environment.
	2.	<a href="#">Rio Declaration on Environment and Development</a> 1992 (the “ <b>Rio Declaration</b> ”)		“Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.” (Principle 1)  “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.” (Principle 10)  “Women have a vital role in environmental management and development. Their full participation is therefore essential to achieve sustainable development.” (Principle 20)  “Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.” (Principle 22)	The Rio Declaration provides an example of how specific human rights and related principles might inform environmental law and policy, focussing in particular on the rights to a healthy and productive life and rights to participate in decision-making (including for particular groups of people, such as women and indigenous people).
	3.	<a href="#">The Paris Agreement</a> , 2015 (the “ <b>Paris Agreement</b> ”)		“Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.” (Preamble, Recital 11)	This provides an example of an objectives/preambular statement related to the role of a human rights-based approach to interpreting and applying an international treaty. The preamble recognizes the need for the parties to consider their human rights obligations when taking action to tackle climate change and it refers to vulnerable segments of the population likely to suffer from climate change. It can thus inform the interpretation of other provisions of the Paris Agreement, notably its substantive obligations. For example, Article 4(2) of the Paris Agreement can be interpreted in a way that ensures the inclusion of vulnerable segments of the population in the formulation of nationally determined contributions and mitigation measures.



	No.	Legal instrument / source	Definition of the term	Use of the term in the instrument	Comments
	4.	Aarhus Convention		<p>“Recognizing that adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself.” (Preamble, recital 6)</p> <p>“Objective: In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.” (Article 1)</p> <p>“General provisions: Each Party shall take the necessary legislative, regulatory and other measures, including: measures to achieve compatibility between the provisions implementing the information, public participation and access-to-justice provisions in this Convention, as well as proper enforcement measures, to establish and maintain a clear, transparent and consistent framework to implement the provisions of this Convention.” (Article 3(1))</p>	
	5.	Escazú Agreement		<p>“Objective: The objective of the present Agreement is to guarantee the full and effective implementation in Latin America and the Caribbean of the rights of access to environmental information, public participation in the environmental decision-making process and access to justice in environmental matters, and the creation and strengthening of capacities and cooperation, contributing to the protection of the right of every person of present and future generations to live in a healthy environment and to sustainable development.” (Article 1)</p> <p>“Principles: Each Party shall be guided by the following principles in implementing the present Agreement: (a) Principle of equality and principle of non-discrimination; (b) Principle of transparency and principle of accountability; (...) (k) Principle of pro persona.” (Article 3)</p> <p>“General provisions: 1. Each Party shall guarantee the right of every person to live in a healthy environment and any other universally-recognized human right related to the present Agreement. 2. Each Party shall ensure that the rights recognized in the present Agreement are freely exercised. 3. Each Party shall adopt the necessary measures, of a legislative, regulatory, administrative or any other nature, in the framework of its domestic provisions, to guarantee the implementation of the provisions of the present Agreement.” (Article 4)</p>	This Agreement provides an example of using human rights and related principles in both objectives/preambular provisions (eg Article 1, 3) and more concretely as substantive obligations (eg Article 4).
	6.	Protocol on Water and Health		<p>“Principles and Approaches: In taking measures to implement this Protocol, the Parties shall be guided in particular by the following principles and approaches: (...) (i) Access to information and public participation in decision-making concerning water and health are needed; (...) (k) Special consideration should be given to the protection of people who are particularly vulnerable to water-related disease.” (Article 5(i)(k))</p>	
	7.	<a href="#">2013 Minamata Convention on Mercury</a> (the “Minamata Convention”)		<p>“Artisanal and Small-Scale Gold Mining: Each Party that has artisanal and small-scale gold mining and processing subject to this Article within its territory shall take steps to reduce, and where feasible eliminate, the use of mercury and mercury compounds in, and the emissions and releases to the environment of mercury from, such mining and processing.” (Article 7(2))</p>	
	8.	<i>Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction</i> (“BBNJ Agreement”)		<p>“General principles and approaches: In order to achieve the objectives of this Agreement, Parties shall be guided by the following principles and approaches: (...) (k) The respect, promotion and consideration of their respective obligations, as applicable, relating to the rights of Indigenous Peoples or of, as appropriate, local communities when taking action to address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.” (Article 7(k))</p>	



	No.	Legal instrument / source	Definition of the term	Use of the term in the instrument	Comments
				“Traditional Knowledge of Indigenous Peoples and Local Communities Associated with Marine Genetic Resources in Areas Beyond National Jurisdiction: Parties shall take legislative, administrative or policy measures, where relevant and as appropriate, with the aim of ensuring that traditional knowledge associated with marine genetic resources in areas beyond national jurisdiction that is held by Indigenous Peoples and local communities shall only be accessed with the free, prior and informed consent or approval and involvement of these Indigenous Peoples and local communities. Access to such traditional knowledge may be facilitated by the Clearing-House Mechanism. Access to and use of such traditional knowledge shall be on mutually agreed terms.” (Article 13)	
	9.	Draft Convention on the Right to Development		“As development is a human right that is indivisible from and interrelated and interdependent with all other human rights, the laws, policies and practices of development, including development cooperation, must be normatively anchored in a system of rights and corresponding obligations established by international law.” (Article 3(c))	
	10.	Draft WHO Instrument on Pandemic Prevention, Preparedness and Response		“Respect for human rights – The implementation of the WHO CA+ shall be with full respect for the dignity, human rights and fundamental freedoms of persons, including the right to the enjoyment of the highest attainable standard of health, and each Party shall protect and promote such rights and freedoms, with due regard to the need for specific measures to ensure non-discrimination, the respect for diversity, the promotion of gender equality and the protection of persons in vulnerable situations.” (Article 3(1))	





	No.	Legal instrument / source	Definition of the term	Use of the term in the instrument	Comments
	Proximity Principle (in relation to waste)				
International / EU instruments	1.	<a href="#">Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal</a> 1989 (the “ <b>Basel Convention</b> ”)	The proximity principle is not explicitly defined in the Basel Convention. However, the proximity principle, in the context of the Basel Convention, refers to the concept that waste management solutions should be chosen and implemented in a manner that prioritizes the location of waste disposal sites as close as possible to the point of waste generation. This aims to minimize the risks associated with the transboundary movement of hazardous wastes, reduce transportation-related environmental impacts, and ensure more effective and controlled waste management.	<p>"The best practicable environmental option for waste management may vary according to regional and local conditions and should take into account socio-economic factors. Waste should be disposed of as close as possible to the source of generation." (Article 4)</p> <p>Key elements of the Basel Convention that indirectly relate to the proximity principle include:</p> <ul style="list-style-type: none"><li>• Reduction of Waste Generation: The convention calls for the reduction of hazardous waste generation to a minimum. This aligns with the idea of preventing waste generation in the first place, a core principle of the proximity principle.</li><li>• Establishment of Appropriate Facilities: Parties are required to establish facilities for the management of hazardous waste. This points to the establishment of local or nearby facilities for the treatment and disposal of waste, adhering to the concept of managing waste closer to its source.</li><li>• Availability of Disposal Facilities: The convention emphasizes the need for the availability of disposal facilities, implying that waste should be managed and disposed of in proximity to where it is generated.</li></ul>	<p>The Basel Convention is a legally binding international treaty. Parties to the convention are required to adhere to its provisions, which include regulations for the transboundary movement of hazardous wastes.</p> <p>While the proximity principle is not defined, the principle is implied through the encouragement of disposing of waste as close as possible to its source of generation for environmental and economic reasons.</p>
	2.	<a href="#">The EU Landfill Directive</a> (1999/31/EC) (the “ <b>Landfill Directive</b> ”)	The proximity principle is not explicitly defined in the Landfill Directive. However, the proximity principle, as outlined in the Landfill Directive, signifies that waste should be managed and disposed of in a manner that prioritizes the geographical proximity of waste disposal sites to the sources of waste generation. This principle ensures that waste management practices are designed to minimize environmental harm, including risks to human health, the natural environment, and local communities.	<p>"Member States shall take the necessary measures to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, and in particular: without risk to water, air, soil, plants or animals; without causing a nuisance through noise or odours; and without adversely affecting the countryside or places of special interest." (Article 4)</p> <p>Key elements of the Landfill Directive that indirectly relate to the proximity principle include:</p> <ul style="list-style-type: none"><li>• Waste Prevention and Reduction: The directive emphasizes the reduction of waste being sent to landfills, which can be achieved by encouraging waste prevention, recycling, and recovery. This aligns with the proximity principle's goal of managing waste as close to its source as possible.</li><li>• Distance Consideration: The directive encourages member states to consider the distances that waste must be transported for disposal. It aims to minimize the environmental impact of waste transportation by promoting the establishment of waste management facilities that are in proximity to waste sources.</li><li>• Landfill Restrictions: The directive sets strict criteria for the operation of landfills, including requirements for site selection, design, and monitoring. These regulations indirectly encourage waste management practices that prioritize proximity to waste sources, as they discourage the establishment of distant landfills that require extensive transportation of waste.</li><li>• Integrated Waste Management: The directive promotes the development of integrated waste management systems that incorporate waste prevention, recycling, recovery, and safe disposal. Such systems often involve localized facilities that align with the proximity principle's idea of managing waste closer to its point of generation.</li><li>• </li></ul>	<p>This is a directive of the European Union, which means it is binding on EU member states. Member states are required to transpose the directive's provisions into their national laws. The Landfill Directive does not provide a specific definition for the proximity principle. However, it encourages member states to minimize the distance that waste travels to disposal sites, thereby adhering to the proximity principle. The directive also promotes the development of integrated waste management systems that include waste prevention, recycling, and recovery. By implementing this directive, member states work towards reducing the environmental impact of waste disposal through the principle of proximity.</p>



	No.	Legal instrument / source	Definition of the term	Use of the term in the instrument	Comments
	3.	<a href="#">The EU Waste Framework Directive</a> (2008/98/EC) (the “ <b>Waste Framework Directive</b> ”)	The proximity principle is not explicitly defined in the Waste Framework Directive. However, the Waste Framework Directive emphasizes waste prevention, management hierarchy, and sustainable practices that align with the concept of managing waste as close to its source as possible. The principles outlined in the directive support the underlying ideas of the proximity principle.	<p>"Member States shall take measures to encourage the proximity principle, in accordance with Annex IV." (Article 4).</p> <p>Annex IV provides guidelines for determining the proximity principle's application and sets out factors to be considered.</p> <p>The Waste Framework Directive establishes a waste hierarchy that prioritizes waste management actions based on their environmental impact. The hierarchy, as outlined in Article 4 of the directive, is as follows:</p> <ul style="list-style-type: none"><li>• Prevention: Measures to prevent the generation of waste.</li><li>• Preparation for Reuse: Allowing products and materials to be used again without undergoing significant processing.</li><li>• Recycling: Recovery of materials from waste.</li><li>• Other Recovery: Including energy recovery.</li><li>• Disposal: Safe and environmentally sound disposal of waste.</li></ul> <p>This hierarchy encourages waste management that aligns with the proximity principle, as it promotes actions that minimize waste transportation, energy consumption, and environmental impacts.<sup>14</sup> Additionally, Article 15 of the directive emphasizes the importance of waste management plans that consider proximity to waste sources and encourage the establishment of facilities for waste treatment, recovery, and disposal. These plans should aim to minimize the environmental impact of waste management and promote the efficient use of resources, again reflecting the ideas of the proximity principle.</p>	This is a directive of the European Union, which means it is binding on EU member states. Member states are required to transpose the directive's provisions into their national laws. The Waste Framework Directive promotes the proximity principle without explicitly defining it. The Waste Framework Directive outlines a waste hierarchy that prioritizes waste management actions based on their environmental impact. This hierarchy encourages waste management practices that consider the distance between waste generation and management facilities. The proximity principle is indirectly integrated into this hierarchy, as it encourages waste prevention and treatment as close to the source as possible before considering disposal methods that may require long-distance transport.
	4.	<a href="#">The Stockholm Convention on Persistent Organic Pollutants</a> 2001 (the “ <b>Stockholm Convention</b> ”)	The proximity principle is not explicitly defined in the Stockholm Convention. However, the Stockholm Convention applies the proximity principle by underscoring the significance of minimizing the release of persistent organic pollutants, including from wastes, in proximity to their generation.	<p>"Parties shall promote and, where appropriate, require the adoption of measures to minimize the release of persistent organic pollutants from articles and wastes, taking into account the proximity principle." (Article 6)</p>	This is a legally binding international treaty. Parties to the convention are obligated to implement its provisions, which aim to control and reduce the release of persistent organic pollutants into the environment. The Stockholm Convention references the proximity principle without providing a specific definition. The principle, in this context, involves minimizing the release of pollutants, including from waste, in proximity to their sources.

<sup>14</sup> <https://www.gov.wales/sites/default/files/publications/2019-05/towards-zero-waste-our-waste-strategy.pdf>, June 2010.





A resilient Pacific environment sustaining our livelihoods  
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