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Transitional measures to combine two global ocean dumping treaties into a single treaty

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ABSTRACT

The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 (the London Convention, or LC) established a global regime for the protection of the marine environment from pollution caused by ocean dumping and incineration at sea. In 1996, at the Special Meeting of the LC, the Contracting Parties to the LC adopted the 1996 Protocol to the London Convention on the Prevention of Marine Pollution by Dumping of Waste and Other Matter 1972 (the London Protocol, or LP), which updates and improves the LC and should eventually supersede it. On March 24, 2006, 10 years after its adoption, the LP entered into force. Not all of the LC Parties have ratified the LP; many countries are still working towards accession, and some countries not Party to either regime are still ratifying the Convention instead of the Protocol. The LP Parties have striven to develop a well-functioning compliance mechanism and at the same time address newly emerging issues threatening the marine environment. Conversely, the LC Parties have agreed not to amend the LC further. This tension makes it increasingly uncomfortable to continue to hold the meetings of the two governing bodies concurrently, as is now done to maximize organizational efficiency. This paper attempts to remove some of the confusion caused by the existence of these two seemingly identical but in fact distinct global marine environment treaties. It further proposes some transitional measures to merge the LC into the LP to form a single global dumping treaty to protect the marine environment in the 21st century.

1. Introduction

There are two treaties for the international global framework concerning prevention and control of pollution by ocean dumping. They are the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 (the "London Convention" or "LC" hereafter) and the 1996 Protocol to the London Convention on the Prevention of Marine Pollution by Dumping of Waste and Other Matter 1972 (the "London Protocol" or "LP" hereafter). Although the latter was intended to accommodate new environmental principles, further modernize the former treaty, and eventually replace it, the LC Parties agreed to retain the LC as an active agreement in hopes that both its membership and new countries would join the LP, allowing the momentum to shift to the LP within a few years. This decision, however, did not lead to the intended outcome, creating the current confusion around the two treaties and the joint meeting for the LC and LP.

As of July 2014, 87 states have joined the LC and 45 states have joined the LP. Among the 45 Parties to the LP, 33 states are also Parties to the LC, and an additional 54 states are Parties to the LC only. Since the adoption of the LP, 10 new non-LC states have joined the LP, while 13 new states have joined the LC. Of the 13 states, two joined the LC and the LP simultaneously; one in 2006 and the other in 2008. Given the small membership of the LP, some scholars doubt whether it represents a new global standard replacing the LC [1], whereas others simply note that the LC and the LP are the two separate agreements dealing with ocean dumping issues in addition to the 1982 UN Law of the Sea Convention (UNCLOS) [2]. Often, these views seem not only to disregard the problem that the current joint meetings pose but also to add confusion to the understanding of the two similar treaties.

The purpose of this paper is, therefore, to address the problem arising from the "two treaties in one family" approach instituted through the joint meetings of the governing bodies and the Scientific Groups for the two treaties and to put forward some suggestions to integrate the LC into the LP as a single global dumping regime. First, the paper will examine the relationship between the LC and the LP. Then, it will examine the issue of the LP membership and argue that the LP has become increasingly important so as to replace the LC. Finally, it will make some proposals to remove the current confusion

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between the two seemingly similar but in fact distinct global marine environmental treaties and, most importantly, to accomplish the eventual transition from the LC to the LP.

2. The relationship between the LC and the LP

2.1. History of the two ocean dumping treaties

In June 1972, Principle 7 of the Stockholm Declaration urged states to "take all possible steps to prevent pollution of the seas by substances that are liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea" [3]. Following **Stockholm**, global awareness of environmental issues increased dramatically and a global convention on dumping was concluded, that is, the London Dumping Convention (LC)[2]. Then, twenty years later on June 3–14, 1992, the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro, which has been called the "modern era" of international environmental law, was adopted, marking a major milestone in the evolution of international environmental law [4]. In the aftermath of the 1992 UNCED, parties to the existing environmental treaties reacted in various ways, contributing to huge progress in international environmental law.

As for the LC, the Parties agreed in 1993 to convene LC Amendment Group meetings in 1994, 1995 and 1996. In 1995, two-thirds of the Parties to the LC requested that, in accordance with Article XIV(3)(a) and 4(f) of the LC, IMO convene a special meeting in 1996 with a view to amending the LC through a single instrument [5]. It was decided that the special meeting would take the form of a diplomatic conference to consider and adopt integrated instruments setting forth the altered provisions of the LC resulting from a thorough review of the agreement and repeating the unaltered provisions of the LC with modifications that were necessary for flow and consistency. The Parties further decided that this integrated instrument would be called the "1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972" [6]. Most parties favored a new treaty that would address the rather slow bureaucratic and legislative processes necessary for ratification in a few years. The form of a Protocol was chosen because the procedures for its adoption and entry into force were simpler than those of the LC and also to avoid a patchwork of obligations among the Parties. The content of the LP reflects the progress made in environmental management during the 1972–1996 period and the outcome of the 1992 UN Conference on Environment and Development held in Rio de Janeiro.

2.2. Main differences

The two treaties differ significantly on a number of issues. First, they differ on several definitions and on the scope of their geographical application. The definition of dumping in the LC, which was later adopted as the definition of dumping in Article 1(5) of UNCLOS, includes any deliberate disposal of platforms or other man-made structures at sea but excludes the placement of matter for a purpose other than mere disposal, provided that such placement is not contrary to the aims of the Convention. The definition of dumping in the LP is almost the same as the one contained in the LC and UNCLOS, but the former also embraces "any storage of wastes or other matter in the seabed and the subsoil thereof from vessels, aircraft, platforms or other man-made structures at sea" and "any abandonment or toppling at site of platforms or other man-made structures at sea, for the sole purpose of deliberate disposal." Then, the definition of "sea" in the LP is defined as all marine waters other than the internal waters of States, as in the LC, but the LP also contains a separate provision on internal waters in Article 7(1). In addition, the LP includes a new definition of "pollution" that is based on Article 1 of UNCLOS.[3]

Second, the two treaties differ in the materials that can be considered for dumping. Under both instruments, any disposal at sea requires a permit prior to the actual dumping, and it is required that the permit be issued only after careful consideration of all of the factors specified in the respective instrument, except in the case of emergencies. Yet, there was a major change in the approach to dumping from the LC to the LP. The LC included a list of materials that are prohibited from being disposed of in the sea as LC Annex I (the so-called "black" list) and a list of materials that require special care but may be considered for dumping as LC Annex II (the so-called "gray" list).[4] This negative listing approach does not allow the listed substances to be dumped at sea but allows other substances, subject to a government permit, to be dumped under the LC. There was, however, a significant debate over the exact character of the so-called black-listed and gray-listed materials from the beginning of the first LC Meeting of Parties in 1975. Over the years, LC Parties have made efforts to remove the ambiguities surrounding the black- and gray-listed materials and to draw a clear line between what is prohibited and what may be allowed under the LC. In 1993, they adopted three resolutions amending the list in Annex I of substances and materials whose dumping is prohibited.[5] From January 1, 1996 onward, they made a further decision that the dumping of all industrial waste would be prohibited with the exceptions of dredged material, sewage sludge, fish waste, vessels and platforms or other man-made structures at sea, uncontaminated inert inorganic geological material, and uncontaminated organic materials of natural origin (LC Annex I paragraph 11) [7].

The LP took a much more restrictive approach than the LC concerning the types of wastes that may be dumped. The positive listing approach of the LP allows only the wastes listed in the instrument to be dumped, subject, of course, to obtaining a

[2] The Convention was called for by the United Nations Conference on the Human Environment (June 1972, Stockholm), the treaty was drafted at the Intergovernmental Conference on the Convention on the Dumping of Wastes at Sea (November 13, 1972) and it was opened for signature on December 29, 1972. It entered into force on August 30, 1975 when 15 nations ratified.

[3] (1) LC Article I Contracting Parties shall individually and collectively promote the effective control of all sources of pollution of the marine environment, and pledge themselves especially to take all practicable steps to prevent the pollution of the sea by the dumping of waste and other matter that is liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea. (2) LP Article 1.10 "Pollution" means the introduction, directly or indirectly, by human activity, of wastes or other matter into the sea which results or is likely to result in such deleterious effects as harm to living resources and marine ecosystems, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities. (3) UNCLOS Article 1.4 4) "pollution of the marine environment" means the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities;

[4] It was noted, however, that there is some ambiguity in the categories of "bulky items," "inert, inorganic geological material," and "organic material of natural origin." In 1999, Japan viewed the bauxite ore residue (red mud) remaining after aluminum extraction as "inert, inorganic geological material"; however, most Contracting Parties considered it industrial waste. This disagreement led to the development of "eligibility criteria for inert, inorganic geological material" in addition to the existing 2000 Specific Guidelines for Assessment of Inert, Geological Material adopted in 2006 (LC 28/15 paragraph 141). The Parties made this agreement because Japan had decided to cease the disposal of red mud at sea at the end of 2015 and Japan wished to suspend further debate in 2005 (LC/SG/28/14).

[5] These resolutions phase out or prohibit the disposal at sea of industrial waste (Resolution LC. 49. 16), the incineration at sea of industrial waste and sewage sludge (Resolution LC. 50. 16), and the dumping of radioactive wastes and other radioactive matter, apart from *de minimis* concentrations in other materials, as defined by the International Atomic Energy Agency (Resolution LC. 50.16).

government permit. In the positive listing approach, the only way to add a substance to be considered for dumping to the instrument is by amending the instrument. Therefore, the positive listing approach removes ambiguities of the LC surrounding the scope of the materials that may be considered for dumping, and it is much more stringent than the negative listing approach.

Third, the LP incorporates more recently developed environmental approaches such as the precautionary principle and "polluter pays" principle. Those principles were not included in the LC, although the LC Parties agreed on a definition for and the application of a precautionary approach for environmental protection within the framework of the LC and also agreed on the steps for the Contracting Parties to take to ensure the effective implementation of the precautionary approach in 1992 [8].

Furthermore, dispute settlement is different. The LC Parties adopted the procedures for the settlement of disputes in 1978, and two-thirds acceptance was required for the amendment to enter into force [9]. As of 1992, only 20 Contracting Parties had accepted them, which is far short of the two-thirds acceptance required [9]. The Consultative Meeting halted the LC Parties' acceptance of the 1978 amendments concerning the procedures for the settlement of disputes in anticipation of the LP entering into force in the very near future. Unlike the LC, the LP has provisions for settlement of disputes (Article 16) and a detailed arbitral procedure (Annex 3). As for a compliance mechanism, there is no mechanism in the LC to determine whether or how parties are implementing the LC apart from the obligation to report on permits issued. The LP enhanced the reporting requirements and at the same time required the establishment of a compliance procedure to assess and promote compliance (Article 11) with its provisions. The Meeting of Contracting Parties to the LP has adopted those procedures and established a Compliance Group to promote compliance with the LP.

The LC and LP also differ in their depositaries. The LC designates four depositaries: the Government of Mexico, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America (LC Article XVIII). In contrast, the LP designates the Secretary General of IMO as its sole depositary (LP Article 28).Therefore, the LP Secretariat may lend assistance to prospective Parties with their accession to the LP as well as provide advice on the implementation of the LP (LP Article 19.2.2) [10].

2.3. Legally separate instruments

The preamble of the LP recognizes the importance of the LC in protecting the marine environment and promoting the sustainable use and conservation of marine resources [11]. Article 25 of the LP provides that the LP shall enter into force on the 30th day following the date on which 26 states have deposited their instruments of ratification or accession, among which must be at least 15 Contracting Parties to the LC.[6] It is true that the LP resembles a continuation of the LC in terms of their history and purpose. Despite a number of similarities, however, the LC and the LP are legally separate treaties. They are different treaties with the same subject matter, with the LP as an updated and modernized treaty intended to eventually replace the LC.

It is important to look at the legal relationship between the LC and LP to determine the rights and obligations of states. According to Article 30(4) of the 1969 **Vienna Convention** on the Law of Treaties (VCLT), the legal relationship between the LC and the LP is as follows. (1) The LP applies to 45 countries, specifically between two states that are Party to both the LC and the LP (total 33 states, Annex 1) or to the LP only (total 12 states, Annex 1). (2) The LC applies to 87 countries, but Article 23 of the LP provides that the Protocol will supersede the Convention between Contracting Parties to the Protocol that are also Parties to the Convention. So the LC applies between states that are parties to LC but not the LP (total 54 states, Appendix A). In other words, the replacement of the Protocol with the Convention applies only to countries that are members of both the LC and the LP.

3. Problems of the current "two treaties in one family" system

3.1. The concept of two treaties in one family

The concept of "two treaties in one family" was developed even before the LP entered into force in 2006. In preparation for the first Meeting of Contracting Parties to the Protocol, from 1999 to 2001 the LC Parties developed Rules of Procedure for running the meetings of the LC and LP governing bodies concurrently under the two treaties. The LC Parties decided that to ensure efficiency, there would be merit in convening meetings under the Convention in conjunction with meetings under the Protocol; however, formal decision-making would have to remain separate, as some issues can only be decided by the respective LC and LP parties, including the election of Chairmen and Vice-Chairmen and decisions to amend either treaty.

In 2001, the Parties to the LC approved the text of draft Rules of Procedure for meetings under the LP, which became a draft submission to the first Meeting of Contracting Parties (MCP) [12]. Participants adopted, at the first MCP, the Rules of Procedure and agreed to produce one meeting report for both the LC and the LP [13]. According to the Rules of Procedure, if an issue were put to a vote, parties to each respective treaty would carry out the voting while the other treaty's members only acted as observers. The Rules of Procedure made it clear that combining the meetings under the two instruments would be optional rather than mandatory; therefore, it could be decided at each meeting whether the next meeting would be combined. Since then, the LC Parties and LP Parties have been regarded as "one family" for the purpose of organizing meetings under both treaties.

3.2. Problems

One might easily say that having a joint meeting for two legally separate treaties with the same subject has the advantage of avoiding duplication of work. However, among the 99 total Parties of LC and/or LP, only 33 parties share the common issues, while 66 states (12 LP-only parties and 54 LC-only Parties) do not have any common treaty provision to comply with but are present in the same room. Thus, the notion of "two treaties in one family" appears to create a false sense that LC and LP Parties are one family, and this needs to be scrutinized. LP parties have continued working on LP amendments dealing with new ocean threats. However, LC Parties agreed in 2005 to no longer amend the LC with regard to newly emerging issues, including the sequestration of CO_2 streams [14]. By contrast, the Contracting Parties to the LP, at their first meeting in 2006, adopted amendments to the LP that regulate the sequestration of CO_2 streams from CO_2 capture processes in sub-seabed geological

[6] This provision could suggest that the LC and LP take the so-called Convention-Protocol approach, similar to other international environmental agreements. According to this approach, the participating states first negotiate a framework convention, and once a framework convention is in place, more stringent obligations can be introduced through protocols; therefore, a set of treaties are adopted to achieve the objectives of the framework convention in a systemic way. This is how the United Nations Framework Convention on Climate Change (UNFCCC) and Convention on Biological Diversity (CBD) work with their Protocols. This, however, is not the case for the LP. A close examination of the text of the LP reveals that the LP is in fact an entirely new treaty that modifies and adds to virtually every aspect of the LC. Furthermore, the LC is not a framework convention in that it is highly regulatory in nature.

formations. At its twenty-ninth session in 2007, the Meeting of Contracting Parties adopted "Specific Guidelines for Assessment of Carbon Dioxide Streams for Disposal into Sub-seabed Geological Formations", which complements the 2006 amendments on CO_2 sequestration in sub-seabed geological formations under resolution LP.1(1). Then, in 2013, Australia, Nigeria, and South Korea jointly proposed amendments to the LP that would formally extend the instrument's remit beyond ocean fertilization to include other possible forms of marine geo-engineering. The LP Parties adopted the amendments, adding a new Article 6bis that states that "Contracting Parties shall not allow the placement of matter into the sea from vessels, aircraft, platforms or other man-made structures at sea for marine geo-engineering activities listed in Annex 4, unless the listing provides that the activity or the sub-category of an activity may be authorized under a permit." Because the proposal took the form of amendments to the LP, the new rules covering ocean fertilization and other technologies would legally bind LP Parties when they are ratified and enter into force for those Parties. Most of the time at the joint meeting is spent on these discussions concerning the amendment of the LP, and LC Parties are officially left just as observers.

Yet more problematic is that LC Parties are not mere observers but are, in practice, allowed to intervene freely in the Working Group established to address new issues and to influence the texts of the LP that consequently bind the LP Parties.[7] In other words, they tend to shape the LP by attending the joint meeting without being subject to the Protocol and its compliance mechanism. In addition, the Working Group spends a considerable amount of time discussing how the same issue should be addressed under the LC [15]. For example, in a document prepared for the MCP in October 2013 (and still ongoing) on a multi-stakeholder process that would be used to consider amendment proposals to the new Annex 4 listing marine-geo-engineering activities, there has been substantial discussion over whether the Scientific Group of the LC as well as the Scientific Group of the LP should examine such proposals [16]. Confusion always remains.

4. LP as a single global dumping treaty under UNCLOS

UNCLOS is acknowledged to be an "umbrella convention" because most of its provisions can be implemented through specific operative regulations in other international agreements, regulations or standards.[8] As for dumping, Article 210 requires states to adopt laws and regulations to prevent and control pollution of the marine environment by dumping and provides that national laws, regulations and measures shall be no less effective in preventing, reducing and controlling such pollution than the global rules and standards [17]. While not specified, these global rules and standards were noted to be the LC upon the entry into force of the UNCLOS in 1994 [18]. The definition of "**dumping**" under **UNCLOS** is copied from the LC, which was adopted years before. At the Seventeenth Consultative Meeting held in 1994, the Contracting Parties expressed their opinion that States Party to UNCLOS would be legally bound to adopt laws and regulations regarding dumping and they must be no less than effective than the global rules and standards contained in the LC.

This, however, was before the new treaty designed to eventually replace the LC came into force. Since the entry into force of the LP, the literature has provided different views about the global standards with regard to dumping. IMO cites the global standards as both the LC and the LP, as two treaties in one family. According to Beckman, the global rules and standards are arguable, and it is not clear how many States need to ratify the LP before it will be accepted as setting out the "global rules and standards" referred to in Article 210(6) of UNCLOS [19]. Louise de La Fayette says that the adoption of the LP could be considered a fulfillment of states' obligation, meaning that the LP can be considered the new global standards required under UNCLOS. With confusion and argument surrounding the issue of the global standard for dumping, the authors argue that the LP should be the global standard for now and the future based on the reasons below.

International law evolves over time, and environmental protection law in particular has evolved more quickly than any other field of international law. UNCLOS could evolve through a dynamic or living interpretation of treaty words reflecting the precautionary principle, the incorporation by reference of global standards mostly derived from IMO regulatory conventions, and amendment [20]. Judge Yankow has observed, "It is hard to conceive of the development of modern law of the sea and the emerging international law of the environment in ocean-related matters outside the close association and interplay between UNCLOS and Agenda 21." Alan Boyle has also pointed out that the definition of pollution in Article 1 has been modified to incorporate the precautionary principle, as have other articles, for example the obligation to carry out an environmental impact assessment in Article 206 and the general obligation to take measures to prevent, reduce, and control pollution under Article 194. *The Southern Bluefin Tuna* case suggested that the fisheries conservation articles of UNCLOS have been "modified" by the precautionary approach, and one of the most important principles approved by consensus is principle 15 of the 1992 Rio Declaration on Environment and Development.[9]

According to Article 210 (4) of UNCLOS providing that "such rules, standards and recommended practices and procedures shall be re-examined from time to time as necessary," it is now time to re-examine and accept that the global standard for dumping is no longer the LC, but the LP, which not only embraces the precautionary principle through the positive listing approach but also continues to develop amendments to address newly emerging ocean threats. At the Nineteenth Consultative Meeting, the first after the adoption of the 1996 Protocol, the Greenpeace observer delegation urged states to ratify the Protocol as soon as possible. According to Greenpeace, the LP is "a guiding example of effective action" being taken pursuant to the provisions in Chapter 17 of Agenda 21 calling upon states to take further measures to protection the marine environment [21]. In addition, the LP is a more effective treaty than the LC in addressing emerging threats to the oceans and achieving the purpose of protecting and preserving the marine environment from all sources of pollution due to its stricter restrictions, amendment efforts, and compliance mechanism.

Despite its growing importance, the number of LP parties is far from sufficient, and its global acceptance still seems a distant goal. Although the LC and the LP have been treated like two treaties in one family, the LP should instead be regarded as a single global dumping treaty under UNCLOS, and we need to make a "decisive" effort to strengthen the membership of the LP, which was originally intended to replace the LC.[7] It is an urgent task for the global community to ensure that as many countries in the world as possible—and certainly

[7] Even though the Rules of Procedure only allow Parties to make textual proposals, this rule tends to be observed loosely. In practice, observers' comments are taken into consideration in Working Groups or Intersessional Correspondence Groups, as the Groups tend to consider all written input in their work. In face-to-face meetings, when there is an observer comment, chairs ask the room if participants agree with the comment. If there is no objection, observer comments are retained; if there is an objection, the Party view is retained.

[8] These include the rules and standards contained in IMO treaties, the recommendations adopted by the IMO Assembly, the IMO Maritime Safety Committee (MSC) and the IMO Marine Environment Protection Committee (MEPC).

[9] What is the tipping point at which the Protocol more clearly becomes those "global rules and standards"– 50 percent or 60 percent? If all LC Parties moved over to the LP, this question would no longer arise.

all of the current LC Parties—become Parties to the newest, most stringent global rules and standards for ocean dumping.

In this context, by what means can this task of driving the LC parties to join the LP most effectively be accomplished? This is an important question that should be posed by anyone who cares about making a difference in protecting the marine environment, and the next section attempts to put forward a number of realistic means to be considered for Contracting Parties of the LC and the LP. This part of the paper attempts to suggest feasible ways to replace the LC with the LP to enhance the broadest possible application of these global rules and standards.

5. Steps leading to the eventual replacement of the LC

5.1. The importance of political will

Encouraging LC Parties to accede to the LP has proven very difficult in the 17 years since its adoption in 1996, as evidenced by the small number of LC Parties who have joined the LP. Although annual Meetings of the Contracting Parties provide a venue for discussing ways to help developing countries with technical and financial assistance with the aim of broader ratification of the LP,[10] many LC Parties do not appear ready to become bound by the Protocol [22]. The most important thing would be the political will of countries to shift the momentum from the temporary and undesirable status quo.

5.2. Enforcing the rules of procedure strictly for the meetings

Many commentators have attributed the slow pace of ratification of the LP to the lack of technical capability of most developing countries and a few industrialized countries and concluded that enhancing capacity in developing countries would facilitate their accession to the LP, which has more stringent rules. Based on the meeting reports, there also appear to be other perceived barriers that would prevent accession or ratification of the LP by LC-only parties. The false sense of belonging to the LP at the meeting without officially being contracting parties to the LP, which is based on the current "two treaties in one family" notion, is thought to be one of the reasons hampering progress towards ratification of the LP. To avoid this, LP parties could consider enforcing the Rules of Procedure strictly, i.e., not allowing LC Parties to participate in the LP issues to the extent that they currently do.

5.3. Moving away from the "two treaties in one family" arrangement

(1) LC parties: closing the depositaries of the LC
To move away from the current "two treaties in one family" arrangement, the first thing for the LC parties to consider is amending Article XVIII[11] of the LC so as not to accept any new member, which implies closing of the depositaries of the LC. According to Article XV (1) (a)[12] of the LC, two-thirds of the LC Parties present in the Meeting should adopt the amendment. The participants who are parties to both the LC and the LP are highly likely to support this suggestion, and it would be useful to ask the opinions of LC-only parties on the closing of the depositaries in preparation for the shift towards the LP. Also, the LC Parties may adopt a resolution that the LC depositaries are required to advise any states wishing to become party that the only instrument available is the LP.

(2) LP parties: adopting a resolution to strengthen the LP
Countries need to share a common understanding that the LP has become the sole working global dumping treaty representing the "global standards and rules" under UNCLOS and join efforts to turn a new page towards an efficient global dumping regime. To this end, the LP parties could consider adopting a resolution that the LP constitutes the single global dumping standard in the contemporary law of the sea. This would help to transform the current "two treaties in one family" system into recognition of the LP as the single global dumping treaty under UNCLOS.

5.4. Termination of the LC and its integration into the LP

The LP member countries who are also Parties to the LC could notify an LC depositary of their intention of withdrawing from the LC. According to Article XXI[13] of the LC, this notification can take effect after six months. This would also send a clear message that shifting momentum from the LC toward the LP is an inevitable trend. Alternatively, the 45 LP Parties have other options, including amending Article 23[14] of the LP to provide that once a state becomes a Contracting Party to the LP, it automatically withdraws from the LC. If all LC members become Parties to the LP, such an amendment would imply the termination of the LC according to the VCLT Article 59 (1).[15]

Considering that not all LC parties are fully ready to become parties to the LP, LP parties could establish an institutional method for carrying the member states of an earlier treaty into a later treaty. LC parties could decide that the LC be terminated within a few years, while LP parties could decide to observe a transitional period for the co-existence of the LC and the LP. Ending the LC and merging it into the LP on a date agreed upon in advance would provide predictability for policy-makers and also facilitate an orderly termination of the LC.

It is worth noting how the WTO handled the similar problem of its integration with the GATT. In the legal sense, the WTO Agreement is the successor of GATT 1947. On December 8, 1994, the Preparatory Committee for the WTO invited the Contracting Parties to GATT 1947 to adopt a Decision on "Transitional Co-existence of the GATT 1947 and the WTO Agreement." Considering that not all contracting parties to the GATT 1947 were able to accept the WTO Agreement as of the date of its entry into force, they decided that the GATT 1947 and the WTO Agreement were to coexist for a limited period of time.

[10] The LP has been criticized as not having a sufficient number of member states, especially among developing countries, due to the number of barriers to ratification, including the diffusion of authority among government agencies and a lack of experience with the development of the environmentally sound waste disposal programs required by the LP.

[11] Article XVIII: After 31 December 1973, this Convention shall be open for accession by any State. The instruments of accession shall be deposited with the Governments of Mexico, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland, and the United States of America.

[12] Article XV (1) (a): At meetings of the Contracting Parties called in accordance with article XIV amendments to this Convention may be adopted by a two-thirds majority of those present. An amendment shall enter into force for the Parties which have accepted it on the sixtieth day after two thirds of the Parties shall have deposited an instrument of acceptance of the amendment with the Organization.

(*footnote continued*)
Thereafter the amendment shall enter into force for any other Party 30 days after that Party deposits its instrument of acceptance of the amendment.

[13] Article XXI: Any Contracting Party may withdraw from this Convention by giving six months' notice in writing to a depositary, which shall promptly inform all Parties of such notice.

[14] Article 23: This protocol will supersede the Convention as between Contracting Parties to this Protocol which are also Parties to the Convention.

[15] Article 59. TERMINATION OR SUSPENSION OF THE OPERATION OF A TREATY IMPLIED BY CONCLUSION OF A LATER TREATY 1. A treaty shall be considered as terminated if all the parties to it conclude alter treaty relating to the same subject-matter and: (a) It appears from the later treaty or is otherwise established that the parties intended that the matter should be governed by that treaty; or (b) The provisions of the later treaty are so far incompatible with those of the earlier one that the two treaties are not capable of being applied at the sametime. 2. The earlier treaty shall be considered as only suspended in operation if it appears from the later treaty or is otherwise established that such was the intention of the parties.

Article IX (original membership) provides that the contracting parties of GATT 1947 automatically became members of the WTO, while Article X (accession) states that the agreement was to be open to accession by other countries.

LP Parties could adopt a new provision similar to Article 26,[16] now expired, which allowed any State that was not a contracting party to the LC before 31 December 1996 to notify the Secretary-General of its inability to meet Protocol obligations, other than prohibiting incineration at sea or dumping of radioactive wastes, for a period of up to five years. Such a transition period could be set for three or five years, which may be sufficient to relieve some of the burden on potential LP member countries and to improve the process to ratify the LP. LC Parties and LP Parties at their joint meeting could decide upon a limit for the period of co-existence. This would be a more ambitious approach than mere termination of the LC but would force the issue.

6. Conclusions

The two global treaties that specifically regulate ocean dumping have had joint meetings based on the "two treaties in one family" concept and according to the Rules of Procedure since the entry into force of the LP in 2006. The gap between the two global ocean dumping treaties has widened as the LP Parties have striven to develop a well-functioning compliance mechanism and at the same time address newly emerging issues threatening the marine environment. Conversely, the LC Parties have agreed to not amend the LC further. This potentially makes it uncomfortable to continue to hold the meeting of the two bodies concurrently. This paper attempted to remove some of the confusion caused by the existence of the two seemingly identical but in fact distinct global marine environment treaties. It further proposed some transitional measures to have the LC eventually replaced with the LP as the single global dumping treaty.

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Appendix A

See Table A1.

[16] Article 26 (1): Any State that was not a Contracting Party to the Convention before 31 December 1996 and that express its consent to be bound by this Protocol prior to its entry into force or within five years after its entry into force may, at the time it expresses its consent, notify the Secretary-General that, for reasons described in the notification, it will not be able to comply with specific provisions of this Protocol other than those provided in paragraph 2, for a transitional period that shall not exceed that described in paragraph 4; (4): Any transitional period specified in a notification made under paragraph 1 shall not extend beyond five years after such notification is submitted.

Table A1
Statistics of the UN member states in relation to various dumping regimes. A total of 165 of the 193 UN member states are party to UNCLOS.

UN member states[a]	State	London Convention (date of deposit of instrument, as of 19 July 2012)[b]	London protocol (Date of deposit, as of 19 July 2012)[c]	Regional treaties including dumping instruments[d]	UNCLOS (as of 6 November 2012)[e]
1	Afghanistan*	30 August 1975	X	X	"X"
2	Albania	X	X	Barcelona	23 June 2003
3	Algeria	X	X	Barcelona	11 June 1996
4	Andorra*	X	X	X	X
5	Angola	X	4 October 2001	Abidjan	5 December 1990
6	Antigua and Barbuda	5 February 1989	X	Cartagena	2 February 1989
7	Argentina	11 October 1979	X	X	1 December 1995
8	Armenia*	X	X	X	9 December 2002
9	Australia	20 September 1985	4 December 2000	SPREP	5 October 1994
10	Austria*	X	X	X	14 July 1995
11	Azerbaijan	31 July 1997	X	Teheran	X
12	Bahamas	X	X	Cartagena	29 July 1983
13	Bahrain	X	X	Kuwait	30 May 1985
14	Bangladesh	X	X	X	27 July 2001
15	Barbados	3 June 1994	24 July 2006	Cartagena	12 October 1993
16	Belarus*	28 February 1976	X	X	30 August 2006
17	Belgium	12 July 1985	13 February 2006	OSPAR	13 November 1998
18	Belize	X	X	Cartagena	13 August 1983
19	Benin	28 May 2011	X	Abidjan	16 October 1997
20	Bhutan*	X	X	X	X
21	Bolivia (Plurinational State of)*	10 July 1999	X	X	28 April 1995

22	Bosnia and Herzegovina*	X	X	Barcelona	12 January 1994
23	Botswana*	X	X	X	2 May 1990
24	Brazil	25 August 1982	X	X	22 December 1988
25	Brunei Darussalam	X	X	X	5 November 1996
26	Bulgaria	24 February 2006	25 January 2006	Bucharest	15 May 1996
27	Burkina Faso*	X	X	X	25 January 2005
28	Burundi*	X	X	X	X
29	Cambodia	X	X	X	X
30	Cameroon	X	X	Abidjan	19 November 1985
31	Canada	3 September 1977	15 May 2000	X	7 November 2003
32	Cape Verde	25 June 1977	X	Abidjan	10 August 1987
33	Central African Republic*	X	X	X	X
34	Chad*	X	X	X	14 August 2009
35	Chile	3 September 1977	26 October 2011	Lima	25 August 1997
36	China	14 December 1985	29 September 2006	X	7 June 1996
37	Colombia	X	X	Cartagena, Lima	X
38	Comoros	X	X	Nairobi	21 June 1994
39	Congo	16 September 1975	X	Abidjan	9 July 2008
	(Cook Islands)	X	X	SPREP	15 February 1995
40	Costa Rica	16 July 1986	X	Cartagena	21 September 1992
41	Côte D'Ivoire	8 November 1987	X	Abidjan	26 March 1984
42	Croatia	8 October 1991	X	Barcelona	5 April 1995
43	Cuba	1 January 1976	X	Cartagena	15 August 1984
44	Cyprus	7 July 1990	X	Barcelona	12 December 1988
45	Czech Republic*	X	X	X	21 June 1996
46	Democratic People's Republic of Korea	X	X	X	X
47	Democratic Republic of the Congo	16 October 1975	X	Abidjan	17 February 1989
48	Denmark	30 August 1975	17 April 1997	HELCOM, OSPAR	16 November 2004
49	Djibouti	X	X	Jeddah	8 October 1991
50	Dominica	X	X	Cartagena	24 October 1991
51	Dominican Republic	30 August 1975	X	Cartagena	10 July 2009
52	Ecuador	X	X	Lima	24 September 2012
53	Egypt	30 July 1992	26 May 2004	Barcelona, Jeddah	26 August 1983
54	El Salvador	X	X	X	X
55	Equatorial Guinea	20 February 2004	X	Abidjan	21 July 1997
56	Eritrea	X	X	X	X
57	Estonia	X	10 July 2013	HELCOM	26 August 2005
58	Ethiopia*	X	X	X	X
	(European Union)	X	X	Barcelona, HELCOM, OSPAR Cartagena	European Union (1 April 1998)
59	Fiji	X	X	SPREP	10 December 1982
60	Finland	2 June 1979	X	HELCOM, OSPAR	21 June 1996
61	France	5 March 1977	7 February 2004	SPREP, Barcelona, OSPAR, Cartagena, Nairobi	11 April 1996
	(French Polynesia)	X	X	SPREP	
62	Gabon	7 March 1982	X	Abidjan	11 March 1998
63	Gambia	X	X	Abidjan	22 May 1984
64	Georgia	X	18 April 2000	Bucharest	21 March 1996
65	Germany	8 December 1977	16 October 1998	HELCOM, OSPAR	14 October 1994
66	Ghana	X	2 June 2010	Abidjan	7 June 1983
67	Greece	9 September 1981	X	Barcelona	21 July 1995
68	Grenada	X	X	Cartagena	25 April 1991
	(Guam)	X	X	SPREP	X
69	Guatemala	30 August 1975	X	Cartagena	11 February 1997
70	Guinea	X	X	Abidjan	6 September 1985
71	Guinea- Bissau	X	X	Abidjan	25 August 1986
72	Guyana	X	X	Cartagena	6 November 1993
73	Haiti	27 September 1975	X	Cartagena	31 July 1996
74	Honduras	1 June 1980	X	Cartagena	5 October 1993
75	Hungary*	6 March 1976	X	X	5 February 2002
76	Iceland	30 August 1975	21 May 2003	OSPAR	21 June 1985
77	India	X	X	X	29 June 1995

Table A1 (*continued*)

UN member states[a]	State	London Convention (date of deposit of instrument, as of 19 July 2012)[b]	London protocol (Date of deposit, as of 19 July 2012)[c]	Regional treaties including dumping instruments[d]	UNCLOS (as of 6 November 2012)[e]
78	Indonesia	X	X	X	3 February 1986
79	Iran (Islamic Republic of)	12 February 1997	X	Kuwait, Teheran	X
80	Iraq	X	X	Kuwait	30 July 1985
81	Ireland	19 March 1982	26 April 2001	OSPAR	21 June 1996
82	Israel	X	X	Barcelona	X
83	Italy	30 May 1984	13 October 2006	Barcelona	3 January 1995
84	Jamaica	21 April 1991	X	Cartagena	21 March 1983
85	Japan	14 November 1980	2 October 2007	X	20 June 1996
86	Jordan	30 August 1975	X	Jeddah	27 November 1995
87	Kazakhstan	X	X	Teheran	X
88	Kenya	6 February 1976	14 January 2008	Nairobi	2 March 1989
89	Kiribati	11 June 1982	X	SPREP	24 February 2003
90	Kuwait	X	X	Kuwait	2 May 1986
91	Kyrgyzstan*	X	X		X
92	Lao People's Democratic Republic*	X	X	X	5 June 1998
	(La Reunion)	X	X	Nairobi	X
93	Latvia	X	X	HELCOM	23 December 2004
94	Lebanon	x	x	Barcelona	5 January 1995
95	Lesotho*	X	X	X	31 May 2007
96	Liberia	X	X	Abidjan	25 September 2008
97	Libya	22 November 1976	X	Barcelona	X
98	Liechtenstein*	X	X	X	X
99	Lithuania	X	X	HELCOM	12 November 2003
100	Luxembourg*	23 March 1981	21 November 2005	HELCOM, OSPAR	5 October 2000
101	Madagascar	X	X	Nairobi	22 August 2001
102	Malawi*	X	X	X	28 September 2010
103	Malaysia	X	X	X	14 October 1996
104	Maldives	X	X	X	7 September 2000
105	Mali*	X	X	X	16 July 1985
106	Malta	27 January 1990	x	Barcelona	20 May 1993
107	Marshall Islands	X	9 May 2008	SPREP	9 August 1991
108	Mauritania	X	X	Abidjan	17 July 1996
109	Mauritius	X	X	Nairobi	4 November 1994
110	Mexico	30 August 1975	22 February 2006	Cartagena	18 March 1983
111	Micronesia (Federated States of)	X	X	SPREP	29 April 1991
112	Monaco	15 June 1977	X	Barcelona	20 March 1996
113	Mongolia*	X	X	X	13 August 1996
114	Montenegro	3 June 2006	X	Barcelona	23 October 2006
115	Morocco	20 March 1977	X	Barcelona	31 May 2007
116	Mozambique	X	X	Nairobi	13 March 1997
117	Myanmar	X	X	X	21 May 1996
118	Namibia	X	X	Abidjan	18 April 1983
119	Nauru	25 August 1982	X	SPREP	23 January 1996
120	Nepal*	X	X	X	2 November 1998
121	Netherlands	2 January 1978	24 September 2008	OSPAR, Cartagena	28 June 1996
	(New Caledonia)	X	X	SPREP	X
122	New Zealand	30 August 1975	30 July 2001	SPREP	19 July 1996
123	Nicaragua	X	X	Cartagena	3 May 2000
124	Niger*	X	X	X	X
125	Nigeria	18 April 1976	1 October 2001	Abidjan	14 August 1986
	(Niue)	X	X	SPREP	11 October 2006
126	Norway	30 August 1975	16 December 1999	OSPAR	24 June 1996
	(Northern Mariana Islands)	X	X	SPREP	X
127	Oman	12 April 1984	X	Kuwait	17 August 1989

128	Pakistan	8 April 1995	X	X	26 February 1997
129	Palau	X	X	SPREP	30 September 1996
130	Panama	30 August 1975	X	Cartagena, Lima	1 July 1996
131	Papua New Guinea	9 April 1980	X	SPREP	14 January 1997
132	Paraguay*	X	X	X	26 September 1986
133	Peru	6 June 2003	X	Lima	X
134	Philippines	30 August 1975	8 June 2012	X	8 May 1984
135	Poland	22 February 1979	X	HELCOM	13 November 1998
136	Portugal	14 May 1978	X	OSPAR	3 November 1997
137	Qatar	X	X	Kuwait	9 December 2002
138	Republic of Korea	20 January 1994	22 January 2009	X	29 January 1996
139	Republic of Moldova*	X	X	X	6 February 2007
140	Romania	X	X	Bucharest	17 December 1996
141	Russian Federation	29 January 1976	X	HELCOM, Bucharest Teheran	12 March 1997
142	Rwanda*	X	X	X	X
143	Saint Kitts and Nevis	X	7 October 2004	Cartagena	7 January 1993
144	Saint Lucia	22 September 1985		Cartagena	27 March 1985
145	Saint Vincent and the Grenadines	23 November 2001	X	Cartagena	1 October 1993
146	Samoa	X	X	SPREP	14 August 1995
	(American Samoa)	X	X	SPREP	X
147	San Marino*	X	X	X	X
148	Sao Tome and Principe	X	X	Abidjan	3 November 1987
149	Saudi Arabia	X	2 February 2006	Jeddah, Kuwait	24 April 1996
150	Senegal	X	X	Abidjan	25 October 1984
151	Serbia*	3 June 2006	X	X	12 March 2001
152	Seychelles	28 November 1984	X	Nairobi	16 September 1991
153	Sierra Leone	11 April 2008	10 March 2008	Abidjan	12 December 1994
154	Singapore	X	X	X	17 November 1994
155	Slovakia*	X	X	X	8 May 1996
156	Slovenia	X	3 March 2006	Barcelona	16 June 1995
157	Solomon Islands	5 April 1984	X	SPREP	23 June 1997
158	Somalia	X	X	Jeddah, Nairobi	24 July 1989
159	South Africa	6 September 1978	23 December 1998	Abidjan, Nairobi	23 December 1997
160	South Sudan*	X	X	X	X
161	Spain	30 August 1975	24 March 1999	Barcelona, OSPAR	15 January 1997
162	Sri Lanka	X	X	X	19 July 1994
163	Sudan	X	X	Jeddah	23 January 1985
164	Suriname	20 November 1980	11 February 2007	Cartagena	9 July 1998
165	Swaziland*	X	X	X	24 September 2012
166	Sweden	30 August 1975	16 October 2000	OSPAR, HELCOM	25 June 1996
167	Switzerland*	30 August 1979	8 September 2000	OSPAR	1 May 2009
168	Syrian Arab Republic	6 May 2009	X	Barcelona	X
169	Tajikistan	X	X	X	X
170	Thailand	X	X	X	15 May 2011
171	The former Yugoslav Republic of Macedonia*	X	X	X	19 August 1994
172	Timor-Leste	X	X	X	8 January 2013
173	Togo	X	X	Abidjan	16 April 1985
	(Tokelau)	X	X	SPREP	X
174	Tonga	9 December 1995	18 October 2003	SPREP	2 August 1995
175	Trinidad and Tobago	X	6 March 2000	Cartagena	25 April 1986
176	Tunisia	13 May 1976	X	Barcelona	24 April 1985
177	Turkey	X	X	Barcelona, Bucharest	X
178	Turkmenistan	X	X	Teheran	X
179	Tuvalu	X	X	SPREP	9 December 2002
180	Uganda	X	X	X	9 November 1990
181	Ukraine	6 March 1976	X	Bucharest	26 July 1999
182	United Arab Emirates	X	X	Kuwait	X
183	United Kingdom of Great Britain and Northern Ireland	17 December 1975	15 December 1998	OSPAR, Cartagena	25 July 1997
184	United Republic of Tanzania	30 August 2008	X	Nairobi	30 September 1985
185	United States of America	30 August 1975	X	SPREP, Cartagena	X

Table A1 (*continued*)

UN member states[a]	State	London Convention (date of deposit of instrument, as of 19 July 2012)[b]	London protocol (Date of deposit, as of 19 July 2012)[c]	Regional treaties including dumping instruments[d]	UNCLOS (as of 6 November 2012)[e]
186	Uruguay	X	16 January 2014	X	10 December 1992
187	Uzbekistan*	X	X	X	X
188	Vanuatu	22 October 1992	18 February 1999	SPREP	10 August 1999
189	Venezuela (Bolivarian Republic of)	X	X	Cartagena	X
190	Viet Nam	X	X	X	25 July 1994
191	Yemen*	X	24 January 2011	Jeddah	21 July 1987
192	Zambia*	X	X	X	7 March 1983
193	Zimbabwe*	X	X	X	24 February 1993
	(Wallis and Futuna)	X	X	SPREP	X

* Land-locked state.

[a] UN member state, numerically sequenced in alphabetical order, http://www.unep.org/regionalseas/default.asp (visited in January 2013).

[b] LC/34/2 (2012).

[c] LC/34/2/1 (2012).

[d] http://www.unep.org/regionalseas/default.asp (visited in January 2013).

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