



International Legally Binding Instrument on Plastic Pollution, Including in the Marine Environment: Proposed Draft Clauses

Plastics: Suggestions for a Legally Binding Instrument (Draft)

Equanimator Ltd.
dominic@dominichogg.com

August 2023

Report for:



Reloop is an international non-profit organisation that works at the centre of policy-making with governments, industry stakeholders, and NGOs. Our vision and mission are ambitious and focused on building a world free of waste, where our natural resources remain resources. Reloop's policy positions and recommendations are always based on data-driven research, real-world case studies and experience, best-in-class principles, and the collective expertise of our team.

Prepared by:

Dr Dominic Hogg

Disclaimer

Equanimator Ltd. has taken due care in the preparation of this report to ensure that all facts and analysis presented are as accurate as possible within the scope of the project. However, no guarantee is provided in respect of the information presented, and Equanimator is not responsible for decisions or actions taken on the basis of the content of this report.

Executive Summary

This brief document initially accompanied the submission made to the INC-3 by Reloop Platform. It sought to propose forms of wording that could be considered for inclusion in a Zero Draft Treaty and is intended to help the process of drafting what has the potential to be a transformative International Legally Binding Instrument (ILBI).

It should be considered a 'Living Draft' report, and the intention is for the suggested text for inclusion in the ILBI to evolve as negotiations progress. A revised version will be issued shortly which includes reflections on the Zero Draft issued by the INC secretariat, dated 4th September 2023. This version contains some minor corrections and amendments of the version of 15th August 2023, based on comments already received from others.

Comments on the content of this Draft, and future iterations, are welcome. Please send any comments to the following e-mail address:

dominic@dominichogg.com

Similarly, if Parties are interested to engage in discussions as to the reasoning behind the suggested measures and approach, please use the above email address.

The document is intended to act as a set of proposals to which negotiators and stakeholders can 'respond to' in a constructive manner, hopefully assisting all groups as they seek to formulate, develop or hone their respective views and opinions.

I am grateful to Reloop Platform for the opportunity to work on this and hope it proves useful to various stakeholders.

Contents

Executive Summary	i
1.0 Background.....	1
1.1 Resolution adopted by the United Nations Environment Assembly on 2 March 2022: 5/14. End plastic pollution: towards an international legally binding instrument	1
1.2 Draft rules of procedure for the work of the intergovernmental negotiating committee to develop an international legally binding instrument on plastic pollution, including in the marine environment	4
1.3 Summary.....	6
2.0 Objectives and Possible Control Measures	9
2.1 Objectives	9
2.1.1 <i>Treaty / Convention Formulation.....</i>	<i>10</i>
2.1.2 <i>Convention / Protocol Formulation</i>	<i>11</i>
2.2 Control Measures	13
2.2.1 <i>CM1 – Bans and Phase-outs</i>	<i>15</i>
2.2.2 <i>CM2 – Design for Recycling</i>	<i>17</i>
2.2.3 <i>CM3 - Collection</i>	<i>19</i>
2.2.4 <i>CM4 – Producer Funding of Waste Collection and Management</i>	<i>20</i>
2.2.5 <i>CM5 - Recycling of Plastics</i>	<i>23</i>
2.2.6 <i>CM6 - Deposit Refunds, and Other Incentivised Return Schemes</i>	<i>26</i>
2.2.7 <i>CM7 – Just Transition 1</i>	<i>27</i>
2.2.8 <i>CM8 – Just Transition 2</i>	<i>29</i>
2.2.9 <i>CM9 – Preventing Escape of Plastics (nurdles etc.) from Facilities for Manufacturing, Recycling and Otherwise Handling / Managing Plastics</i>	<i>30</i>
2.2.10 <i>CM10 - Removal of Explicit and Implicit Subsidies for Certain Waste Management Activities</i>	<i>31</i>
2.2.11 <i>CM11 – Recycling [and Recycled Content].....</i>	<i>32</i>
2.2.12 <i>CM12 - Levy on Primary Polymer Production</i>	<i>32</i>

1.0 Background

The following sections provide some key extracts from:

1. the March 2022 resolution which established the Intergovernmental Negotiating Committee (INC) for the purposes of developing ‘*an international legally binding instrument on plastic pollution, including in the marine environment*’, henceforth referred to as “the instrument”, and
2. the Draft rules of procedure intended to govern the work of the INC, agreement on these having been deferred from INC-1 in Puta del Este meeting in Uruguay to INC-2.

The rules of procedure were discussed at INC-2, but no conclusive agreement was reached.

1.1 Resolution adopted by the United Nations Environment Assembly on 2 March 2022: 5/14. End plastic pollution: towards an international legally binding instrument

The text includes the following:

1. *Requests the Executive Director to convene an intergovernmental negotiating committee, to begin its work during the second half of 2022, with the ambition of completing its work by the end of 2024;*
2. *Acknowledges that some legal obligations arising out of a new international legally binding instrument will require capacity-building and technical and financial assistance in order to be effectively implemented by developing countries and countries with economies in transition;*
3. *Decides that the intergovernmental negotiating committee is to develop an international legally binding instrument on plastic pollution, including in the marine environment, henceforth referred to as “the instrument”, which could include both binding and voluntary approaches, based on a comprehensive approach that addresses the full life cycle of plastic, taking into account, among other things, the principles of the Rio Declaration on Environment and Development, as well as national circumstances and capabilities, and including provisions:*
 - (a) *To specify the objectives of the instrument;*

- (b) To promote sustainable production and consumption of plastics through, among other things, product design and environmentally sound waste management, including through resource efficiency and circular economy approaches;*
- (c) To promote national and international cooperative measures to reduce plastic pollution in the marine environment, including existing plastic pollution;*
- (d) To develop, implement and update national action plans reflecting country-driven approaches to contribute to the objectives of the instrument*
- (e) To promote national action plans to work towards the prevention, reduction and elimination of plastic pollution, and to support regional and international cooperation;*
- (f) To specify national reporting, as appropriate;*
- (g) To periodically assess the progress of implementation of the instrument;*
- (h) To periodically assess the effectiveness of the instrument in achieving its objectives;*
- (i) To provide scientific and socioeconomic assessments related to plastic pollution;*
- (j) To increase knowledge through awareness-raising, education and the exchange of information;*
- (k) To promote cooperation and coordination with relevant regional and international conventions, instruments and organizations, while recognizing their respective mandates, avoiding duplication and promoting complementarity of action;*
- (l) To encourage action by all stakeholders, including the private sector, and to promote cooperation at the local, national, regional and global levels;*
- (m) To initiate a multi-stakeholder action agenda;*
- (n) To specify arrangements for capacity-building and technical assistance, technology transfer on mutually agreed terms, and financial assistance, recognizing that the effective implementation of some legal obligations under the instrument will depend on the availability of capacity-building and adequate financial and technical assistance;*

(o) To promote research into and development of sustainable, affordable, innovative and cost-efficient approaches;

(p) To address compliance;

4. Also decides that the intergovernmental negotiating committee, in its deliberations on the instrument, is to consider the following:

(a) Obligations, measures and voluntary approaches in supporting the achievement of the objectives of the instrument;

(b) The need for a financial mechanism to support the implementation of the instrument, including the option of a dedicated multilateral fund;

(c) Flexibility that some provisions could allow countries discretion in the implementation of their commitments, taking into account their national circumstances;

(d) The best available science, traditional knowledge, knowledge of indigenous peoples and local knowledge systems;

(e) Lessons learned and best practices, including those from informal and cooperative settings;

(f) The possibility of a mechanism to provide policy-relevant scientific and socioeconomic information and assessment related to plastic pollution;

(g) Efficient organization and streamlined secretariat arrangements;

(h) Any other aspects that the intergovernmental negotiating committee may consider relevant;

5. Requests the Executive Director of the United Nations Environment Programme to convene an ad hoc open-ended working group to hold one meeting during the first half of 2022 to prepare for the work of the intergovernmental negotiating committee and to discuss in particular the timetable and organization of the work of the committee, taking into account the provisions and elements identified in paragraphs 3 and 4 of the present resolution; [...]

[...] 15. Calls upon all Member States to continue and step up activities, and adopt voluntary measures, to combat plastic pollution, including measures related to sustainable consumption and production, which may include circular economy approaches, and to develop and implement national action plans, while fostering international action and initiatives under national regulatory frameworks, and, on a voluntary basis, to provide statistical information on the environmentally sound management

of plastic waste, as appropriate, taking into account national circumstances;

These are the main extracts indicating what the INC is expected to do.

1.2 Draft rules of procedure for the work of the intergovernmental negotiating committee to develop an international legally binding instrument on plastic pollution, including in the marine environment

The text included the following:

3. [...] The draft rules of procedure were developed, and then forwarded to the intergovernmental negotiating committee at its first session, held in Punta del Este, Uruguay, from 28 November to 2 December 2022, for its consideration. At that session, the committee agreed to defer the adoption of the draft rules of procedure until its second session to allow for further consultations on the matter, on the understanding that, pending their adoption, the draft rules would apply to its work on a provisional basis.

4. The annex to the present note sets out the draft rules of procedure as agreed on by the working group and forwarded to the intergovernmental negotiating committee for consideration and possible adoption. The annex is presented without formal editing.

[...] Rule 19

1. The Chair may declare a session open and permit the debate to proceed when at least one third of the Members participating in the session are present. The presence of a majority of Members so participating shall be required for any decision to be taken.

[...] Rule 33

Proposals and amendments shall normally be introduced in writing and submitted to the secretariat, which shall circulate copies to all representatives of Members. As a general rule, no proposal shall be discussed or put to the vote at any session of the Committee unless copies of that proposal have been circulated in the official languages of the session to all representatives of Members not later than the day preceding the session. Subject to the Committee's consent, the Chair may, however, permit the discussion and consideration of proposals or amendments that have not been circulated or have only been circulated the same day.

[...] Adoption of decisions

Rule 38

- 1. The Committee shall make every effort to reach agreement on all matters of substance by consensus. If all efforts to reach consensus have been exhausted and no agreement has been reached, the decision shall, as a last resort, be taken by a two-thirds majority of the representatives of Members who are present and voting.*
- 2. Decisions of the Committee on procedural matters shall be taken by a majority of the representatives of Members who are present and voting.*
- 3. Where there is disagreement as to whether a matter to be voted on is a substantive or procedural matter, that issue shall be decided by a two-thirds majority of the representatives of Members who are present and voting.*

[...] Rule 43

- 1. When an amendment to a proposal is moved, the amendment shall be voted on first. When two or more amendments to a proposal are moved, the Committee shall vote first on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom and so on, until all the amendments have been put to the vote. Where, however, the adoption of one amendment necessarily implies the rejection of another amendment, the latter amendment shall not be put to the vote. If one or more amendments are adopted, the amended proposal shall then be voted upon. If no amendments are adopted, the proposal shall be put to the vote in its original form.*
- 2. A motion is considered an amendment to a proposal if it adds to, deletes from, or revises part of that proposal.*

[...]

Rule 49

- 1. The Committee may establish such subsidiary organs as may be necessary for the effective discharge of its functions.*
- 2. Each subsidiary organ shall elect its own officers, having due regard for the principle of equitable geographical representation and for gender balance. The number of such officers shall be no more than five.*
- 3. The rules of procedure of the subsidiary organs shall be those of the Committee, as appropriate, subject to such modifications as the*

Committee may decide upon in the light of proposals made by the subsidiary organ concerned.

This is a selective citation, but is designed to highlight key issues for decision making regarding the ILBI.

1.3 Summary

The scope of work that falls under the purview of the INC is extremely broad. However, one possible interpretation of the language above (assuming that the standards for terms like ‘promote’ and ‘encourage’ are more directive within the UN compared to, for instance, EU law) could imply that the INC has limited formal obligations regarding the inclusions within any ILBI. In other words, the minimum content the ILBI might include could be quite restricted based on this interpretation. The minimalist outcome of the INC’s work would appear to be:

1. It comes forward with ‘an international legally binding instrument’ but this ‘could include’ both binding and voluntary approaches. It would seem contradictory if such a ‘legally binding’ instrument were to consist solely of ‘voluntary approaches’: how would meaning be given to the instrument’s ‘legally binding’ nature? Nonetheless, when taken at face value, an ILBI could theoretically have limitations on the commitments it imposes on Parties to undertake;
2. The INC has to specify the ILBI’s objectives.
3. The ILBI should include provisions for the development of national action plans (NAPs) that can ‘*reflect country-driven approaches to contribute to the objectives of the instrument.*’ An important consideration in this context revolves around the effectiveness of NAPs. Drawing from my substantial experience with ‘waste management plans’ (part, or all, of which might be considered to be a necessary component of NAPs), it is evident that such plans often suffer from a significant implementation gap (like NDCs under the Paris Agreement): that is, the intended actions often fall short of the substantive measures needing to be taken, resulting in observed and likely future outcomes that deviate from what is outlined in a NAP. It is also essential to recognize that, much like carbon dioxide (CO₂) in the atmosphere, plastics in rivers and oceans do not simply ‘disappear’. Hence, like CO₂, the accumulation of plastics in water bodies over time – barring limited exceptions, contingent on how ‘plastics’ are defined—is a cumulative process, and so the pace of change - and the trajectory followed - matters. Unless the ILBI contains measures of a legally binding (non-voluntaristic) nature,

NAPs may be of limited value. Softer benefits, often suggested in the context of voluntary / negotiated agreements, hold little significance if the problem is not substantially mitigated or eliminated;

4. The ILBI will include provisions outlining arrangements for crucial elements such as capacity-building, technical assistance, technology transfer on mutually agreed terms, *“and financial assistance, recognizing that the effective implementation of some legal obligations under the instrument will depend on the availability of capacity-building and adequate financial and technical assistance.”* While this is undoubtedly important, it’s worth exploring why such a clause is included, especially considering the relatively limited requirements for the ILBI’s content. After all, if the ILBI encompasses few binding commitments, one might question the necessity for funding. An alternative view might be that certain classes of countries might receive exceptionally generous funding offers, incentivizing them to make extensive voluntary commitments to access promised financial support. That, however, would seem an unlikely (not to mention, potentially inefficient) outcome. Many multilateral bodies have a vested interest in managing funds allocated under agreements like the anticipated ILBI, much as they have collaborated on the Multilateral Fund under the Montreal Protocol. Therefore, the inclusion of such a fund is expected, especially if the ILBI does indeed include *‘legal obligations,’* as discussed above.

The INC is required to consider a multitude of factors, yet many of the provisions it is tasked with incorporating involve commitments to ‘promote’, or ‘encourage’ various actions, without explicitly stipulating that it *must* do these things. This doesn’t necessarily preclude the possibility of establishing binding instruments around these actions; it simply underscores that the minimum requirement might not be an especially onerous one as regards what it binds Parties to do.

For example, an ILBI could bind signatories to develop NAPs while also allowing for a range of voluntary initiatives that Parties could choose to implement. If arrangements for technical assistance and sharing of know-how were also agreed, coupled with the allocation of financial resources to support the development of a NAP, then the instrument could potentially be deemed compliant with its prescribed requirements, especially if the voluntary measures identified influenced various stages in the life-cycle, and affected fishing gear and both macro- and micro-plastics. However, if this were the outcome, it would be of limited utility and might even dissuade countries from signing the ILBI, particularly depending on the specific requirements for what NAPs must include. Should the ILBI end up in such

a precarious state, the Objectives included in the ILBI ought, logically, to reflect its own weakness.

At the other end of the scale, we might consider a far more ambitious ILBI, including a range of measures that carry binding obligations for Parties. Draft Rule 38 expresses the aspiration to achieve consensus, but also allows for a two-thirds majority to decide matters of substance. This introduces the prospect of the voting procedure potentially discouraging some countries from becoming signatories.

This scenario increases the likelihood that the best outcome achievable would be an ILBI where the main instrument (a Convention, perhaps) is somewhat more limited in ambition. This could then be supplemented by Protocols that countries can choose to either sign or abstain from, with these Protocols being anticipated within the Convention's framework.

The draw of each Protocol is likely to be influenced by the extent to which signatories to each Protocol are entitled - in law - to restrict aspects like imports and exports involving non-signatory Members, especially when these do not adhere to the commitments outlined in the Protocol. This dynamic could potentially introduce a nexus with existing trade laws. The World Trade Organization (WTO) allows for measures that affect trade as long as they are deemed environmentally justified and are non-discriminatory in nature (ensuring equal treatment of domestic and overseas producers so that measures are not protectionist in nature).

It might be useful for the INC Secretariat to clarify - in intersessional work - what principles would need to be respected in order for trade-related measures to be considered acceptable, and how this might vary with conditions that may or may not prevail under a given Protocol.

2.0 Objectives and Possible Control Measures

In preparing the following, we reviewed the content of the September 2022 Document, ‘*Description of standard articles on final provisions that are typically included in multilateral environmental agreements*’, which was prepared by the INC Secretariat. Note that the Secretariat’s starting point is Treaties which are, mainly, Conventions. Hence, there is no mention of the Montreal Protocol, although it does reference the Vienna Convention (the precursor to the Montreal Protocol).

The document notes:

6. Additionally, agreements/protocols have been negotiated by parties to multilateral environmental agreements to supplement, further clarify or provide more details on a specific aspect of those multilateral environmental agreements, such as the Kyoto Protocol and the Paris Agreement to the United Nations Framework Convention on Climate Change or the Cartagena and the Nagoya Protocols under the Convention on Biological Diversity.

It might also have mentioned the Vienna Convention, which itself includes no specific control measures (instead, it includes general ones). However, alongside the Vienna Convention, the Montreal Protocol stands as one of the most, if not the most, successful multilateral agreements ever concluded. Both the Convention and the Protocol achieved universal participation on 16 September 2009, marking a historic achievement as the first treaties within the United Nations system to garner such extensive global support.

This ‘model’ - of a Convention containing ‘general obligations’ with cross-references to one or more ‘Protocols’ - could serve as an interesting framework for this Instrument, recognising that such a model might allow for participation by all nations at the general level, with individual nations having the discretion to opt-in to specific Protocols (whose provisions they would be obliged to implement).

2.1 Objectives

Considering that the Instrument has to specify Objectives, it is imperative that these be consistent with the remit of the INC. Our suggestions draw on other related UN Conventions and the formulations therein. We propose two different formulations—one that pertains to a scenario where the ILBI

functions as a ‘standalone’ Convention, and the other where the Main Instrument anticipates the inclusion of a number of supporting Protocols.

In both scenarios, we operated under the assumption that the ILBI is not of the minimalist nature that was previously discussed in Section 1.3 and which, upon reflection, we considered to be of limited utility. The Objectives ought to reflect the nature and urgency of addressing the problem, as this is what led the INC being tasked with undertaking its important work in the first place.

2.1.1 Treaty / Convention Formulation

Given the origins for the INC work and its specific mandate to develop ‘an international legally binding instrument on plastic pollution, including in the marine environment,’ it would appear incongruous if the Objective(s) did not reference this explicitly. So, for example, the Objective could be as follows:

‘The objectives of [the Instrument / Convention] are: a) to eliminate, as soon as practicable, the flow of plastics into the environment and hence, stop the flow of plastics into rivers and oceans, b) to ensure that the only plastics that are produced and consumed meet minimum safety and environmental standards; c) to ensure financing is available for [low- and lower-middle income] countries to support their activities under this [Instrument / Convention], and d) to generate and manage funds to clean-up legacy flows of plastics so as to continuously reduce the presence of plastics in rivers and seas.’

The standards for safety and environmental ‘acceptability’ reflect the review undertaken for the Basel, Rotterdam and Stockholm Conventions.¹ The review made a compelling case for the inadequacy of existing Multilateral Environmental Agreements (MEAs) to deal with many problems associated with plastics. It made reference to international sustainability criteria for plastics: our formulation has in mind a minimum threshold standard, as opposed to some scaling measure, so that some plastics would be prohibited from being produced / used / sold. The same review called for a global approach for identifying, addressing and providing transparency for

¹ BRS (2023). Global governance of plastics and associated chemicals. Secretariat of the Basel, Rotterdam and Stockholm Conventions, United Nations Environment Programme, Geneva. Karen Raubenheimer, Niko Urho.

chemicals of concern in plastics: we believe that makes perfect sense, and would consider that to be consistent with the above Objectives.

There is a danger that once the Objectives stray into a discussion about environmental issues in relation to ‘plastics’ beyond those mentioned above, all sorts of questions will be raised regarding why the same is not being done for other materials (and this might extend to ‘substances of concern’, which may be used in non-plastic materials also). For example, *if* the term ‘plastic pollution’ was defined - in this instrument - to cover (for example) GHGs from plastic manufacture, that might be problematic, not least in relation to the existing UN Framework Convention on Climate Change (UNFCCC) (shouldn’t the UNFCCC be dealing with those? If it isn’t, why isn’t it?), but also, the implied bias vis a vis ‘non-plastic materials’.

That does not imply that (control) measures which affect processes ‘upstream’ in the life-cycle should be ruled out from the ILBI: rather, it makes sense for those to flow logically from the main Objective, reflecting on their necessity for meeting the Objective.

2.1.2 Convention / Protocol Formulation

An alternative formulation - if the format were such that a Convention was anticipated to be complemented by one or more Protocols - would be to either:

1. specify General Obligations for the Parties to the Convention (the ILBI), with the detail - the (control) measures - being fleshed out in linked Protocols. A possible advantage of this approach is that everyone can sign up to the Convention, and then, signatories can choose whether to be signatories of what could be a number of Protocols. The obvious drawback of the approach is that, as an approach to addressing climate change, the empirical evidence increasingly points to the approach having failed to deliver the Convention’s objectives: too little has happened too late.
2. specify General Obligations for the Parties to the Convention (the ILBI), as well as a set of agreed measures deemed essential to meet the Objectives of the Convention. Additional (control) measures would then be included in the linked Protocols. Relative to the approach above, this would aim to give certainty that substantial progress towards the Objective would be made, with the Protocols allowing other signatory Parties to make further progress towards the Objectives, encouraging an increasing number of Parties to the Convention to become signatories of attached Protocols.

Our preferred formulation is the second, since the first would lead to high risk of failure to make progress towards the Convention's Objectives (however formulated) that is commensurate with the problem.

A suggested formulation is as follows:

1. *The Parties shall take appropriate measures in accordance with the provisions and stipulations of this Convention, and of those protocols in force to which Parties are signatories, to:*
 - a. *eliminate, as soon as practicable, the flow of plastics into the environment and hence, stop the flow of plastics into rivers and oceans.*
 - b. *to ensure that the only plastics that are produced and consumed meet minimum safety and environmental standards;*
 - c. *to ensure financing is available for [low- and lower-middle income] countries to support their activities under this [Instrument / Convention], and*
 - d. *to generate and manage funds to clean-up legacy flows of plastics so as to continuously reduce the presence of plastics in rivers and seas).*
2. *To this end the Parties shall, in accordance with the means at their disposal and their capabilities:*
 - a. *Co-operate by means of systematic observations, research and information exchange in order to better understand and assess the effects of their use of plastics, and their management thereof, on the quantity of plastics that are mismanaged. [this could reference National Action Plans envisaged in the INC work. There would also need to be a set of definitions and associated methodologies that would ensure transparency of reporting, and on a readily comparable basis];*
 - b. *Co-operate in the implementation of the [control] measures, procedures and [design] standards within this Convention;*
 - c. *Adopt appropriate legislative or administrative measures [and co-operate in harmonizing appropriate standards] to:*
 - i. *Eliminate the use of substances of concern in,*
 - ii. *Eliminate production and consumption that gives rise to safety concerns in*
 - iii. *Eliminate production and consumption that gives rise to*
 - iv. *influence the design of,*
 - v. *control, limit, reduce or prevent the consumption and use of, and*
 - vi. *ensure the responsible end-of-life management of*

plastics, and all packaging and products which contain plastics [including both macro-and micro-plastics - inclusion of this depends on how 'plastics' is defined], consistent with sub-paragraph 1;

- d. Co-operate in the formulation of agreed [control] measures, procedures and [design] standards for the implementation of this Convention, with a view to the adoption of protocols and annexes to support delivery of sub-paragraph 1;*
 - e. Co-operate with competent international bodies to implement effectively this Convention and protocols to which they are party.*
- 3. The provisions of this Convention shall in no way affect the right of Parties to adopt, in accordance with international law, domestic measures additional to those referred to in paragraphs 1 and 2 above, nor shall they affect additional domestic measures already taken by a Party, provided that these measures are not incompatible with their obligations under this Convention.*
- 4. The application of this article shall be based on relevant scientific and technical considerations.*

This approach may have much to recommend it.

It may also be attractive to the INC in that it offers a prospect for a meaningful ILBI to be in place in the desired timeframe, whilst also allowing further ambition to be reflected in the development of linked Protocols, which could attract a growing number of signatories over time.

2.2 Control Measures

Several commentators are advocating for a hierarchical approach, grounded in the premise that the issue of whether plastics pose a problem or not hinges on their design (and whether or not they contain substances of concern). Consequently, there is a significant push for the elimination of problematic plastics and the promotion of circularity for those that remain.

It's essential to recognize, however, that all plastics are problematic where there is no waste collection. Regardless of how 'circular' their design might be (however one chooses to define this), the absence of a reliable mechanism to 'intercept' plastics before they enter the environment renders virtually all plastic usage problematic.

Only if this critical issue - the absence of waste collection - is addressed can we sensibly focus on the elimination of those plastic packages and products that pose problems even in regions with effective waste collection

systems. Considerations regarding the design of plastics for longer increased longevity, reusability, or recyclability also become relevant. Solely addressing design elements, without completely eliminating the use of plastics, cannot resolve the issue of plastic pollution in areas where there is no meaningful waste collection.

This fact is underscored by UNEP's 'Turning off the Tap' report (and before it, the Pew / Systemiq 'Breaking the Plastic Wave' report, which the UNEP report relies heavily upon), which effectively highlights that, despite the implementation of a comprehensive set of upstream measures, an estimated 41 million tonnes of plastic will still be mismanaged in 2040.²

In order to meet the overarching goal of reducing plastic pollution, it is essential to pursue two complementary objectives:³

1. Reducing the harm that plastic does: This involves implementing a range of upstream measures, such as bans, restrictions, and commitments to reduce the production and consumption of plastics that are not targeted for banning or phase-out; and
2. Closing off the potential points of leakage for whatever plastic continues to be used: This entails the establishment of quality waste management systems, with a clear route to financing these, technical assistance, etc. At a minimum, this needs to include collection and robust chains of custody to ensure responsible management practices (no dumping, open burning, etc.).

Unless the intention is the complete elimination of all plastic usage, the importance of the second objective remains paramount. This is particularly crucial in locations where there is no formal waste collection service, because in such areas, any plastic packaging introduced into the market is likely to give rise to plastic pollution, unless:

- a) it is part of a re-use or refill system that meets criteria to be defined;

² United Nations Environment Programme (2023) Turning off the Tap. How the World can End Plastic Pollution and Create a Circular Economy, Nairobi; The Pew Charitable Trusts and Systemiq (2020) Breaking the Plastic Wave - A comprehensive assessment of pathways toward stopping ocean plastic pollution - Full Report.

³ It's possible that the main Treaty might include 1., with Protocols being the basis for much of 2. (though some bans on e.g., microplastics in personal care products could generate consensus).

- b) it can be demonstrated that 90% or more of what is placed on the market in such locations is recaptured through take-back schemes or other initiatives.

Some have argued that an ILBI focussed on waste management would be ‘lacking ambition’. First of all, there is no reason why an ILBI aimed at improving waste management practices in much of the world shouldn’t also include measures designed to eliminate some substances, packaging formats, applications of plastic, and products made from plastics. These objectives are not mutually exclusive; in fact, both are essential unless the intent is to completely phase-out all use of plastics.⁴ Secondly, it’s worth considering that there are many compelling reasons to establish high-quality waste collection and management systems beyond those related specifically to plastics, not least of these being to reduce greenhouse gas emissions.⁵

Throughout the rest of the document, we use the terms ‘ban’ and ‘phase-out’ somewhat interchangeably. A ‘ban’ signifies the complete elimination of a substance, product, packaging format, or activity, subject to some exemptions. ‘Phasing-out’ entails achieving the same outcome, but it typically acknowledges a defined time period over which the phase-out occurs. In practice, very few bans are ever implemented instantaneously; instead, a ‘deadline’ is usually specified, so the two terms effectively amount to the same thing.

We suggest the following as ‘Essential Control measures’ for inclusion in a Convention. In the case of linked Protocols, they should either extend to address additional substances, packages and products, imply the implementation of additional measures, or surpass the scope and pace of actions outlined in the Convention.

2.2.1 CM1 - Bans and Phase-outs

This measure is adapted from that included in the document prepared by the Norwegian Academy of International Law (NAIL) in the run-up to INC-2.⁶

⁴ Arguably, they would still both be needed in the case of phase-out if the period over which complete phase-out was to occur was longer than five years or so.

⁵ See, for example, Eunomia (2021) [Waste in the Net-Zero Century: How Better Waste Management Practices Can Contribute to Reducing Global Carbon Emissions](#), July 2021.

⁶ Norwegian Academy of International (NAIL) *Core Provisions: Outline of Possible Control Measures*, Submission for INC 2, 13 January 2023.

2.2.1.1 Scope

This measure would target plastic products (including various packaging formats), polymers, and substances (including those substances used in manufacturing plastics which may be retained in plastics) that fall into one or more of the following categories:

- Deemed harmful to human health;
- Deemed unnecessary or needlessly wasteful (given available alternatives, and / or the non-essential nature of the substance / product);
- Highly likely to be discarded into the environment, considering their intended use;
- Capable of causing (other) significant environmental hazards during use;
- Likely to contribute to plastic pollution during use.

The second bullet point may be considered to include items that cannot be effectively recycled, particularly when their useful lifetime is less than several years (this links to CM2).

2.2.1.2 Possible Formulation

A possible formulation of the measure is as follows:

1. *Each party shall phase out the production, sale, export or import of those products (including packaging formats), polymers and substances listed in [Schedule 1 of Appendix 1].*
2. *The timetable for phase out shall be in accordance with [Schedule 2 of Appendix 1].*
3. *Each party shall implement taxes on the aforementioned products (including packaging formats), polymers and substances which increase during the period leading to their elimination so as to support the objectives of Paragraph 1 by sending suitable signals to industry.*
4. *For those products (including packaging formats) which are typically used only once, and not reused or refilled before being discarded [note: this could be replaced with 'single-use' - this might be a starting point for definition], the Parties shall consider implementation of economic instruments, such as taxes, on items made from other materials, but intended for the same use, and which are also typically used only once, and not reused or refilled before being discarded.*
5. *Industry may apply to the Technical Committee for time-limited exemptions from the phase-out for specific applications: these will*

need to make the case for the critical nature of the application, and the absence of alternatives in that application, in line with the requirements of Appendix 2.

6. *[Within one year of the entry into force of this Convention] / [No later than three years before the phase-out dates given in [Schedule 2 of Appendix 1]], each Party shall ban the import of the products (including packaging formats), polymers and substances listed in Schedule 1 of Appendix 1 from any State not party to this Convention.*

This would be supported by:

Appendix 1

- Lists the relevant products (including packaging formats), polymers and substances to be phased-out (Schedule 1)
- Indicates, for each, the time period over which phase-out would occur (Schedule 2).
- Indicates which were considered typically used only once, and not reused or refilled before being discarded (single-use) (a sub-set of Schedule 1);

Appendix 2

General rules and procedures for applying for exemptions from key aspects of the Convention. These rules and procedures should indicate exceptional nature of any exemptions, and set the bar high through requiring an applicant to demonstrate how their product meets the criteria (to be established) to be exempted. The EU's procedure for Restriction of Hazardous Substances in Electrical and Electronic Equipment (RoHS) exemptions is an interesting template, though arguably, too lenient on the applicant side.

A technical committee would likely be required.

The approach would be designed to ensure that genuinely essential applications of (for example) otherwise non-essential products could be given time-limited exemptions from phase-out requirements.

2.2.2 CM2 - Design for Recycling

2.2.2.1 Scope

This measure applies to products and/or packages that are not subject to bans or phase-outs (as outlined in CM1). All remaining products and/or packages should meet design for recycling (DfR) criteria, or preferably, they

should be designed to be part of reuse / refill systems, as well as being designed to be recycled.

Evidently, the impact of this measure will be reduced:

- a) if the list of products/packages to be phased out under CM1 is extensive, and
- b) if the recycling targets established under CM5 (see below) are particularly stringent.

It's worth acknowledging that DfR criteria that have been developed in high-income countries may need to be adapted to accommodate more artisanal approaches to material usage, which are common in (typically) lower-income countries. DfR criteria should include the potential inclusion of items like plastic bricks in the Philippines or other forms of 'craft recycling' such as repurposing bottles into bags in Africa. Failing to do so could risk undermining income-generating activities in lower-income countries. Therefore, a review should take place with this perspective in mind.

2.2.2.2 Possible Formulation

A possible formulation of the measure is as follows:

1. *Each Party shall ensure that all plastic products and packaging formats listed in [Schedule 3 of Appendix 1] are designed in a manner consistent with the requirements contained in [Appendix 2].*
2. *The phasing of this requirement shall be as per Schedule 4 of Appendix 1.*
3. *[Within one year of the entry into force of this Convention] / [No later than three years before the phase-out dates given in [Schedule 4 of Appendix 1]], each Party shall ban the import of any plastic products and packaging formats listed in Schedule 3 of Appendix 1 which do not meet the requirements of Appendix 2 from any State not party to this Convention.*

Appendix 1 (additional to the above)

Would have added to it the products and packaging formats which are subject to DfR requirements (as Schedule 3).

Would need to indicate phasing for the DfR requirements (as Schedule 4)

Appendix 3

Would need to have DfR requirements for those products / packages which are identified within Schedule 3 of Appendix 1.

2.2.3 CM3 - Collection

2.2.3.1 Scope

This measure encompasses all countries' waste management services, with a primary focus on the system of waste collection. The emphasis would be on those regions where no formal waste collection and management infrastructure currently exists, and on the types of waste that typically require local government action to ensure proper collection (i.e., waste from households, and depending on the responsibilities of local government, similar wastes from other sources). On waste collection, there needs to be a rapid roll out of convenient, quality waste collection and management services across the globe. It's important to note that CM3 is closely linked to CM4 and CM5, and there's potential for them to be combined.

2.2.3.2 Possible Formulation

A possible formulation of the measure is as follows:

- 1) *All Parties will work to ensure [through National Action Plans] that no macro-plastics are discarded into the environment at the end of their life.*
- 2) *All plastics placed on the market must be collected, at end of life, using systems which meet the standards for convenience for users outlined in Appendix [4], and which do not negatively affect the health of the operatives.*
- 3) *All plastics collected in line with Paragraph 2 must, following their collection, be managed responsibly, so that none of the waste collected is either burned in the open, or sent to open dumps. Management of plastics shall be in line with CM2 [see below];*
- 4) *Wherever systems which meet the standard identified at Paragraph 2 are still not in place at the end of the calendar Year [2028 or other year], plastic packaging and products may need to be withdrawn. Appendix [5] sets out the relevant circumstances.*
- 5) *Parties shall ensure that their systems of policy and law require the progressive coverage of their territory by systems which meet the conditions under Paragraph 2. They shall also ensure the stable funding of waste management on an ongoing basis, covering both ongoing operational costs as well as investment in equipment and processing facilities;*

Supporting parts needed:

Appendix 4

Defines Convenient Collection Systems (and by extension, Population Coverage).

Appendix 5

Stratification of Parties in which Parties are differentiated according to the current extent of coverage of their territory by convenient collection systems. The Parties would be classified (A, B, C or D), and where they did not achieve the required increases in coverage of their population (with quality collection systems), then (a specified range of) plastics (other than those planned for phase-out) would need to be removed from the market.

An exception would be made for situations where products / packaging are included in 'incentivised return systems' (see CM6) which achieve a collection rate of more than 90% [or where the plastics are part of a refill system / network], and where more than 90% of the collected items are recycled. In such cases, the businesses concerned must demonstrate that they cover all costs as outlined in CM4 and Appendix 6, insofar as they relate to their items.

2.2.4 CM4 - Producer Funding of Waste Collection and Management

2.2.4.1 Scope

Producers of plastic, as well as producers of other materials, associated with a defined set of waste streams (which is expected to include, at a minimum, packaging and WEEE, but potentially encompassing all plastics found in waste originating from households and similar wastes from other sources, such as commercial businesses) would be subject to this provision. The recipients of these funds would be expected to be either central or local government entities.

Whilst there have been discussions around extended producer responsibility (EPR), the key focus for the ILBI should be on facilitating the financial support required to improved waste collection and management systems, especially in places where such systems are currently absent. The specific form that 'EPR' takes is, therefore, less urgent in this context compared to the fundamental principle that producers should be required (and would have an incentive) to fund waste collection and management services that might otherwise not be provided. The phrasing below is intended to leave the institutional form relatively open to Parties, as some may have valid reservations about 'EPR' where this revolves around 'producer responsibility organizations'. However, it is intended to ensure that the scope of cost

recovery is broad, leading to a substantial contribution toward funding these services and thereby reducing the difficulty of finding counterpart funding.

2.2.4.2 Possible Formulation

A possible formulation of the measure is as follows:

- 1) *As part of their arrangements envisaged in CM3 Paragraph 5, Parties shall implement measures that ensure that the costs of waste collection and management, as outlined in Appendix 6 are recovered in full from companies who sell plastic to the end consumer [and other entities involved in the supply of plastics to end-consumers, as deemed appropriate in national policy and legislation].*
- 2) *The basis for establishing the costs to be recovered from companies will be the sum of the 'relevant shares' of those costs identified in Appendix 6. The 'relevant share' of costs are defined as the costs which are attributable to producers of specific products or packages, and shall be recovered from them in line with Paragraph 3. Where plastics are not the only wastes being collected or otherwise managed in a given component of the system, relevant shares should be determined, as necessary, in line with the relevant component costs, and through reference to characteristics of the products or packages concerned, such as weight, volume, count, or surface area as considered most appropriate for apportioning costs.*
- 3) *Parties will recover costs by means of one or more of ear-marked levies / advanced disposal fees, fees implemented under extended producer responsibility schemes, deposit refund systems (which may be included within producer responsibility), or other measures which Parties deem appropriate.*
- 4) *Parties should, as appropriate, extend the scope for cost recovery of waste collection and management activities to the producers of products and packages made from other materials which compete with plastic in the relevant markets, and which are discarded to be managed as waste;*
- 5) *Where producers are required to make payments to the Parties under arrangements in line with subparagraphs 1-4 above, the Parties will ensure that arrangements are in place to ensure that:*
 - a. *The role of producers, if any, in operations, or arranging for operations, is clearly set out and does not conflict with the roles of other actors involved in management of waste, such as municipalities;*
 - b. *The funds so generated are directed exclusively for the purposes outlined in Appendix 6 (though allowing for*

reasonable management and administrative overheads, consistent with efficient scheme management); and

- c. That where the provision of those services is not by / arranged for by the producers, the services being funded are provided efficiently as demonstrated through, for example, competitive procurement or other market testing exercise.*

Appendix 6

- 1) The following costs of the system shall be covered by producers (and other entities involved in the supply of plastics to end-consumers, as deemed appropriate in national policy and legislation) of plastic packaging and products:*
 - a. The plastics-relevant share of the costs of collection of plastics in systems which meet the standards for convenience referred to in CM1 (and Appendix 1), and that reflect the objectives of CM3 [Recycling]. The collection costs shall cover all labour, equipment, containers (designed to collect / receive plastics), vehicles, fuel (as necessary), yards / depots and management overheads.*
 - b. The plastics-relevant share of depots / transfer stations used for further bulking and onward transfer of the collected waste;*
 - c. The plastics-relevant share of capital and operating costs of all sorting systems used to sort plastics post collection;*
 - d. The plastics-relevant share of all costs of recycling plastics, net of revenue gained from sales of plastics made available for subsequent recycling;*
 - e. The plastics-relevant share of all costs of public education and communication campaigns designed to promote awareness of the problem of mismanaged plastic and to promote behaviours aligned with the Objective of this Instrument. In particular, consistent with CM3 [Recycling], such education campaigns should include intensive communication campaigns to promote appropriate discarding behaviour, especially the use of recycling services;*
 - f. The plastics-relevant share of costs of acquiring the necessary data and information required to inform National Action Plans, and to inform the performance;*
 - g. The plastics-relevant share of all costs of public waste collection / litter bins as are still deemed necessary;*
 - h. The plastics-relevant share of all costs of clean up of those waste materials, including, discarded plastics which continue to be discarded into the environment [it may be useful to have a form of words that differentiates 'litter flows' from legacy wastes in the environment - legacy should be dealt with separately]*

- i. The plastics-relevant share of all costs of enforcement of measures designed to reinforce public information campaigns, and motivate behavioural alignment with the Objectives of the Instrument;*
- j. The plastics-relevant share of all costs of managing the unrecycled portion of what is collected. This includes the costs of appropriate treatment and / or disposal systems*
- k. The plastics-relevant share all associated costs of management of the above functions;*
- l. The plastics-relevant share all applicable taxes (VAT, etc.) in relation to the above.*

2.2.5 CM5 - Recycling of Plastics

2.2.5.1 Scope

This measure pertains to the same waste streams included under CM4.

It would be counterintuitive, not to mention wasteful and environmentally inefficient, to develop waste collection and ‘management’ infrastructure for plastics (and other materials) without optimizing their recycling potential. The objective here is to maximize the recycling rates of plastics (and other materials) while minimizing any mismanagement practices that might contribute to additional pollution. This would be all the more strange if part of the Convention is expected to focus on improved design for recyclability (or for reuse, and then, recycling).

2.2.5.2 Possible Formulation

Linked to CM1 and CM2, the following formulation is proposed:

- 1) In the context of developing their systems under CM3, Parties commit to designing their systems so as to:

 - a. maximize the potential for reuse of the plastics collected;*
 - b. consistent with CM2, maximize the potential for recycling of the remainder, with particular emphasis on ensuring that materials are recycled in such a way that they could be used in the same, or similar, applications to those from which they were derived;**
- 2) With respect to Paragraph 1) a), Parties will facilitate infrastructure such that discarding products and materials suitable for reuse can occur in a convenient manner, and in a way that maintains the quality of products and materials;*

- 3) *With respect to Paragraph 1) b), Parties will ensure that the producer-funded waste services indicated at [CM4 and Appendix 6] are designed in such a way as to maximize the opportunity for all waste plastics to be recycled. This shall be achieved through ensuring appropriate collection systems are developed, alongside appropriate communications activity, and by installation (and periodic upgrading / refreshing of) of sorting facilities. Parties must arrange for collection, sorting, and management of wastes such that:*
 - a. *where necessary to secure recycling, packaging and other materials containing plastics are collected in such a way that they are segregated from other packaging / products that would hinder their subsequent recycling, either direct from dwellings, or via bring-in systems where there is supervision;*
 - b. *Sorting facilities used to separate plastic packaging and products from other packaging and products, and to classify packaging and products, must be designed and operated so that they ensure accurate separation of products and packaging so as to enable high-quality recycling;*
 - c. *Recycling facilities must adhere to the standards set out in CM9 [control on microplastic release]*
- 4) *No later than [7 years after entry into force], material collected as a mixed waste fraction, and which is leftover to be collected as a result of the segregated collection referred to in Paragraph 3a, should not be sent direct either to a landfill or to an incineration facility unless the plastics content of the leftover material is measured to be below 5%, as assessed in accordance with Appendix 7.*
- 5) *No later than [7 years after entry into force], all leftover wastes covered by Paragraph 4 should be sorted, with the aim being to extract plastics, at a minimum level of 70% efficiency, for recycling. The remaining residual waste should be either stabilized prior to landfilling, incinerated or co-incinerated, or landfilled without stabilization;*
- 6) *Parties must implement regulations and law which facilitate recycling and reuse. Inter alia, they must implement law which allows the use of recycled content in food contact applications in line with the principles set out in Appendix 8;*
- 7) *Parties which, by 202X, have achieved the outcomes identified in Schedule 1 of Appendix 5 [linked to collection above] must achieve the recycling rates under Schedule 1 of Appendix 9;*
- 8) *Parties which, by 202X, have not achieved the outcomes identified in Schedule 1 of Appendix 5, but which have achieved the outcomes*

identified in Schedule 2, [linked to collection above] must achieve the recycling rates under Schedule 2 of Appendix 9;

9) Parties which, by 202X, have not achieved the outcomes identified in either Schedule 1 or 2 of Appendix 5 [linked to collection above] must achieve the recycling rates under Schedule 3 of Appendix 9.

10) For the purposes of Paras 7) to 9), the measurement of recycling shall be performed in line with the methodology set out in Appendix 10.

11) All Parties should ensure that the producer funding referenced under CM4 is sufficient to fund services which will exceed the recycling outcomes as per Appendix 9.

Appendix 7

Sets out the methodology for periodic sampling of leftover mixed waste (and where the method must be applied) so as to ensure that mixed wastes with a plastics content >5% is sent for subsequent sorting.

Appendix 8

Sets out rules under which Parties may legislate for the use of recycled content in food contact applications. Many countries do not currently allow this. In those that do, the methods are not harmonized.

Appendix 9

Sets out recycling targets for Parties linked to the stratification of Parties by their collection infrastructure as per Appendix 5.

Note that an alternative formulation would be to consider an upper limit (potentially expressed as kilograms per inhabitant) for 'waste plastics not recycled'. This might actually allow for a uniform level across countries if (and I doubt the data are good enough to demonstrate this with confidence) the amount consumed per capita varies considerably across countries by income status.

Appendix 10

Sets out the measurement method which indicates what counts as 'recycling'.

2.2.6 CM6 - Deposit Refunds, and Other Incentivized Return Schemes

2.2.6.1 Scope

This measure applies to products / packages deemed suitable for the implementation of deposit refund schemes.

In countries with limited waste collection / management services, products / packages (or groupings thereof) included in high performance incentivized return schemes would also be included (as indicated above, items which were included in schemes meeting specified performance criteria would be exempt from any requirements to be removed from the market in areas with inadequate waste collection and management).

2.2.6.2 Possible Formulation

The following formulation is proposed:

- 1. Parties shall ensure implementation of deposit refund schemes for the product categories listed in Appendix 11.*
- 2. These systems should achieve a return rate of at least 90% of each product category and deposit rates should be set accordingly.*
- 3. Producers and / or other stakeholders may operate their own systems for product categories not listed in Appendix 11. They are encouraged to do so in situations where waste collection services of the quality referred to in Appendix 4 are not yet present (as per CM3 Paragraph 4). Such schemes may include deposits or may simply incentivize product return (incentivized return).*
- 4. Parties shall co-operate with neighbouring Parties and other countries to ensure inter-operability of systems to enable refunds to be obtained where products move across immediate borders.*

Appendix 11

Lists products to be subject of deposit refund / incentivized return schemes.

Rationale: Deposit schemes can serve an important role in preventing plastic leakage by providing consumers with incentives to return covered items to designated locations where they receive their refunded deposit.

2.2.7 CM7 - Just Transition 1

2.2.7.1 Scope

This particular CM seeks to ensure that adequate financial support is in place for the development of waste management systems in lower-middle and lower-income countries (or a group of countries / regions to be defined subsequently).

CM4 aims to maximize the extent to which the costs of waste management are recovered from producers, which, in principle, should result in a reduced portion of these costs being by fees and levies. This, in turn, helps alleviate one of the political barriers to improving waste management infrastructure in many situations.

CM7 operates on the premise that the most effective and cost-efficient approach to delivering a high-quality and convenient waste collection service for plastics is by integrating it into a broader service that encompasses materials beyond plastics. Funding from producers of other (non-plastic) packages and products can be leveraged by expanding the remit of CM4 to cover 'competing materials / products'. However, even with this expansion, there remains a funding gap to address. This gap arises primarily from the collection of materials / products not covered by EPR systems (typically, food waste or garden / parks waste). Additionally, it encompasses the funding necessary for infrastructure such as composting / anaerobic digestion systems, sorting and recycling facilities (which deal with materials other than plastics), and facilities for receiving those waste plastics (and other wastes) which are not recycled. Without these facilities, there is a risk of open burning or dumping of plastic waste and poor management of other waste streams.

2.2.7.2 Possible Formulation

Recognizing the rationale - in respect of the efficiency of service provision and the environmental impacts of waste management - of supporting the financing of a functional system of adequate quality (rather than a partial system of inadequate quality), the following formulation is proposed:

- 1. Parties should consider extending, and are encouraged to extend, the principle of producer financing beyond plastics, so that the proportion of waste management costs recovered from producers is maximized;*
- 2. Parties are also encouraged, in line with CM1 Paragraph 3, to implement taxes on single-use items, whether plastic, or made from other materials, so as to encourage reuse and refill. Revenue generated from such taxes should be ear-marked for supporting*

waste management activity, recognizing that the magnitude of such revenue streams may decline over time.

3. A fund will be established to support the following costs in lower-middle and low-income countries who are Parties to this Convention. The fund will focus on supporting the following:
 - a. The share of costs associated with collection which relates to products and packages not covered by measures under CM4, as extended to other (non-plastic) materials;
 - b. The costs of implementing systems for treating separately collected biowastes, including composting and anaerobic digestion systems;
 - c. The share of costs associated with sorting leftover mixed wastes which relate to products and packages not covered by measures under CM4, as extended to other (non-plastic) materials;
 - d. The costs of systems designed to stabilize waste prior to landfilling (or, where possible, to produce a compost or compost like output that meets relevant standards that make it suitable for applications outside landfill).
4. Consistent with CM10, the fund referred to at Paragraph 3 will not support the costs of facilities for final disposal / thermal treatment of unrecyclable wastes. Parties will be expected to cover these costs themselves, typically by using fees and / or taxes to provide the required revenue stream. [Consider case for investment guarantees to be made available?]
5. The fund will be made available to those jurisdictions (e.g. municipalities) who can indicate a clear plan [links to approach to NAP - NAPs should, where waste management is concerned, be 'bottom up', not 'top down'⁷] to develop their waste collection and

⁷ Where waste management and associated infrastructure is concerned, one of the most often observed phenomena is that where funding is made available to countries, either the form in which funding is made available, or the approach of the recipient country, or both, leads to implementation of strategies and plans in a top-down manner. That frequently has unfortunate results in respect of tails wagging dogs (too much funding devoted to regional infrastructure for unrecycled waste), a mismatch between collection systems and capital investments made, and more generally, a tendency to focus on the wrong things (smaller amounts of capital are spent at the upper tiers of the waste hierarchy: funders, focusing too much on capital, are instinctively - I would say, myopically - focused towards the base of the hierarchy where they can see that large tranches of capital can be disbursed). Whatever is funded, and by whatever means, this madness needs to stop.

management infrastructure in line with the principles of this Convention, including CM8.

6. *Sources of revenue for the fund referred to under Paragraph 3 will include:*
 - a. *A share of the revenue from the levy indicated at CM12*
 - b. *Collection of producer fees from households and businesses to support waste management;*
 - c. *Revenue from taxes on those items being phased out, and from taxes / levies on non-plastic single-use items where the single-use plastic version is phased out;*
 - d. *[Commitments from high-income countries as identified];*
 - e. *[Existing sources of climate finance].*

2.2.8 CM8 - Just Transition 2

2.2.8.1 Scope

This CM seeks to ensure that, in line with the principles of a Just Transition, waste-pickers are both a) included within the framework, and b) not implicitly excluded from the above (recognizing that this is a different matter), and that they are treated as key partners in pursuing the Objectives of the Convention.

2.2.8.2 Possible Formulation

The following formulation is proposed:

- 1) *In designing, procuring and operating the collection and management services envisaged in CM3 and CM5, Parties shall take measures to ensure that waste-pickers [the term would need defining] currently collecting plastic (and other) wastes are:*
 - a. *Integrated, with the intention of maintaining and enhancing status and livelihoods as far as reasonably possible, within the development of the service;*
 - b. *Not excluded from involvement in the collection and management services, especially as regards the way in which services are procured;*
- 2) *Where private companies engage directly with waste pickers, the fees which they pay waste pickers shall respect the requirements of cost recovery indicated in [CM4 and Appendix 6], taking into account an imputed value of labour in accordance with one of the methods set out at Appendix 12;*

- 3) *Public authorities and businesses working with waste pickers shall ensure that working conditions, including employment rights, and social security provision, are aligned with good practice as considered appropriate under the policy and law prevailing in the Party, and as applied by the relevant company in the territory of the Party.*

Appendix 12

Would include a small number of acceptable methodologies through which to assess a viable 'wage' (or equivalent livelihood) for waste pickers, taking into account their responsibilities (equipment which they may be responsible for providing). This might include various forms of benchmarking against other forms of employment, these being chosen to ensure work is decently rewarded.

2.2.9 CM9 - Preventing Escape of Plastics (nurdles etc.) from Facilities for Manufacturing, Recycling and Otherwise Handling / Managing Plastics

2.2.9.1 Scope

This CM encompasses facilities which manufacture plastics, or products or packaging made from plastics, whether from primary or secondary sources.

The plastics industry has implemented Operation Clean Sweep, an initiative to reduce plastic pellet, powder, and flake spills, while improving cleanup processes in the event of such incidents. While much attention has been directed at primary plastic producers in this regard, the same rigorous standards should be applied to secondary plastics producers and, indeed, to all waste management facilities.

One significant aspect among many, contributing to our incomplete understanding of the quantity of plastic flowing into rivers and oceans, is the amount of plastic inadvertently released into the environment as a result of the way in which wastes are collected and transported (unintentional littering), temporarily stored, sorted, and then dumped, or landfilled, or recycled, or incinerated, or managed through other means. Even in supposedly advanced countries, the potential for waste, particularly plastic due to its lightweight nature, to be carried away by the wind is often overlooked. This is understandable in situations where the fate of waste is unregulated dumps, but less so where the end of life treatment is anything other than an unregulated dump. It would be useful to have good operational practices clearly codified, not least in countries where waste management services are still in the early stages of development.

2.2.9.2 Possible Formulation

The following formulation is proposed:

- 1) *The Parties will ensure that all facilities which produce plastic, or products or packaging made from plastics, whether from primary or secondary sources, are required, by law (preferably through licensing / permitting processes, where these exist and are adequately enforced), to ensure that they apply best practice to prevent the escape of plastic particles from their facility. Attention should be given to the potential for escape of particles of all sizes, and via all media (to land, water or air).*
- 2) *All facilities must ensure that as far as possible, all such plastic particles are re-integrated into production processes, or otherwise, sent for recycling. Failing that, they should be sent to facilities which manage waste, and which are regulated in accordance with Paragraph 3.*
- 3) *The Parties will ensure that wherever waste materials are managed at end of life, including at recycling facilities, that they are required, by law, to ensure that they apply best practice to prevent the escape of plastic particles from their facility. Attention should be given to the potential for escape of particles of all sizes, and via all media (to land, water or air).*
- 4) *The best practice measures indicated in Paragraphs 2) and 3) are outlined in Appendix 13. These measures will be subject to periodic review at four yearly intervals.*
- 5) *All purchases of recycled content should be made from facilities demonstrating compliance with Paragraphs 1 and the best practice outlined in Paragraph 4.*

Appendix 13

This would identify best practice measures. These should cover operational and management activities designed to minimize any plastic pollution resulting from blow-off, or escape of plastic items, or plastic flakes or dust / particles.

2.2.10 CM10 - Removal of Explicit and Implicit Subsidies for Certain Waste Management Activities

Too many countries in the EU have, historically, provided subsidies for waste management operations, most notably incineration. The rationale behind this has often been the idea that some waste can be considered a potential source of renewable energy. This has always been a flawed line of reasoning. Even if it is true that waste includes non-fossil materials

with calorific content (e.g., waste wood, waste paper and card, and to a lesser extent, waste food), it remains essential to recognize that 'waste' in itself cannot be considered a renewable resource. In fact, waste is something we seek to reduce rather than maintain indefinitely as a source of energy through combustion.

- 1) Parties shall not offer subsidies for incineration or co-incineration of waste (plastics). The term incineration covers facilities sometimes referred to as 'energy from waste', or 'waste-to-energy', or 'energy recovery': it covers all facilities whose principal purpose, whether or not they generate energy, is the thermal destruction of waste, including pyrolysis and gasification [note: possibly needs some nuancing for chemical recycling]. The term 'co-incineration' is defined as the use of waste as a source of energy in facilities whose principal purpose is not the destruction of waste, such as cement kilns, and suitably equipped power stations;*
- 2) For the purpose of this measure, subsidies may be either explicit or implicit. The former are payments in support of (for example) energy prices for the energy generated by incineration. The latter arise through the non-application of policies, such as taxes, which might reasonably be expected to have otherwise applied to incineration or co-incineration facilities. For the avoidance of doubt, they do not include the non-application of measures that might be considered necessary to internalize the externalities of incineration if there are no such measures affecting other facilities;*
- 3) For the avoidance of doubt, the requirements of Subparagraph 2 apply also to financing provided on concessional terms for the purpose of funding incineration or co-incineration. Such funding may be considered appropriate for sorting facilities which aim to (for example) extract plastics for recycling from waste which might otherwise be sent to incineration or co-incineration facilities.*

Other CMs related to microplastics, intentionally added and others, as well as fishing gear are in development, and will follow. An approach to financing will also be developed.