

TEMPLATE FOR SUBMISSIONS (part a)

Name of country (for Members of the committee)	
Name of organization (for observers to the committee)	Reloop Platform
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Additional documentation (27 pages)	<i>International Legally Binding Instrument on Plastic Pollution, Including in the Marine Environment: Proposed Draft Clauses</i>

We have also included as attached: *International Legally Binding Instrument on Plastic Pollution, including in the Marine Environment: Proposed Draft Clauses.*

Elements not discussed at INC-2

1. Scope

What is the proposed scope for the future instrument?

Which types of substances, materials, products and behaviors should be covered by the future instrument?

Proposed scope:

The question regarding scope is an important one. Superficially, this is a fairly straightforward question: the scope is 'plastics'. Defining plastics, though, is not entirely straightforward as the EU discovered in legislating for 'single-use plastics' ('single-use' is also a surprisingly tricky term to define). Furthermore, there are obvious issues which the LBI will logically seek to address where a focus solely on plastics is unlikely to deliver the best outcomes. Whilst appreciating that a focus on 'plastics' might appear simpler and more straightforward, in our view, there are likely to be areas where such a focus is likely to be contentious, not least where the delineation of what is, or what is not a plastic, is obviously problematic.

Generally, it makes sense (in the lengthy experience of our team and its advisors) to avoid seeking to define words and terms which do not need to be defined in law (we doubt, for example, that the term 'circularity' needs to be defined as we doubt that legally defined measures related to 'circularity' are incapable of being defined through reference to e.g., recycling, reuse, refill, repair, etc.).

The matter of 'scope' might be worth considering in an iterative manner, taking into account the key objectives, and the links to 'not-just-plastic' issues (see below). It is, perhaps, worth considering the scope of the objectives. We appreciate that the LBI has been encouraged to take a whole life-cycle perspective, but if that whole life-cycle perspective essentially brings into focus 'all forms of pollution / impact associated with plastics across the life-cycle', then inevitably, the issue of the comparative

pros and cons vis a vis other materials comes into focus. We view that as unfortunate, and believe the focus should remain on the escape of plastic into the environment. Solutions to this problem might indeed require consideration of interventions throughout the life-cycle (necessarily so), but making all forms of pollution associated with production and consumption of plastics the subject of the LBI leads one to ask, 'why only plastics?' (and not all forms of production and consumption).

A key lesson from the focus on 'plastics' in other instruments of policy and law is that focusing on plastics alone is unlikely to resolve some of the problems of (for example) mismanagement of waste. The 'boundaries' around the instrument might, in a range of areas, be extended beyond 'plastics', (however broadly plastics may be defined).

It follows from the previous point that the LBI would do well to consider the potential for linking to forms of financing that might support the activities which the objectives of the LBI would appear to require.

To illustrate some of the areas where a narrow focus on plastics will lead to sub-optimal outcomes, we offer the following examples:

1. It is widely accepted that (unless all plastics are to be phased out) in order to stem the flow of plastics into rivers and oceans, it is necessary to implement quality and convenient systems for collecting plastic waste. It will, though, be inefficient to collect *only* plastic waste. Related to the plastic pollution problem is the problem of mismanaged waste (methane emissions, pollutants from open burning of waste, opportunity cost of not recycling, poor amenity, etc.). The LBI needs to consider the extent to which it makes sense to focus solely on plastics if part of the solution is to ensure that the 2 billion or so people on the planet who have no decent waste collection are to be provided one. Does it really make sense to provide a collection system only for plastics?
2. Similarly, there has been a good deal of discussion about 'extended producer responsibility'. The principles being considered are that producers should pay for collection and recycling of plastic wastes. Does that mean that producers of all other non-plastic packages and products will not be subject to the same cost recovery requirement? Or is it implicit that producers of the same products, but using other materials, would be included within such schemes?
3. The cost recovery element of EPR (or other measures) may have relatively narrow, or broad, scope. To the extent that the costs of managing wastes which are not recycled are to be recovered from producers (and we believe they should be), is it fair to expect producers of plastics to effectively fund – alone – decent infrastructure for managing unrecycled plastics?
4. If cost recovery from producers includes – as it should – the costs of clean-up of those items that continue to be littered, will only plastics be picked up? Or should other littered items be cleaned up also (and hence, should producers of those items not fund litter clean up also)? If not, how easy will it be for clean-up to differentiate between items made from 'plastics' (however defined) and items not made from plastics?
5. If some (single-use) plastic items are to be phased out / banned (a ban is not usually instantaneous so that most bans amount to 'phasing out' – what typically varies is the time period given between the policy announcement and the point where the item is banned), then it is worth considering what can be done to avoid replacement by single-use items of other non-plastic material (and to encourage reusables / refillables). Logically, where single-use plastic items are to be phased out, it makes sense to apply levies on single-use non-plastic items of the same type. Is this being considered?

6. If deposit refund schemes are to be established, then the rationale for focusing only on plastic items is likely to be questionable. Deposit refund schemes which included plastic beverage bottles, but not metal beverage cans, and glass bottles also, would likely distort competition unless other 'compensating measures' were in place.

In summary, there are a range of areas where either a) a focus on plastics only is likely to limit the effectiveness of the solutions being sought under the auspices of the LBI, or b) the costs of implementation are likely to be far higher than if these costs are shared across other non-plastic items. These issues, and the questions they raise – notably, as regards waste collection and management, and its associated funding – indicate that plastics may be a gateway to providing solutions to wider problems that have, arguably, received inadequate attention (and financing) in the past.

It follows that the scope of the LBI, and in particular, the required level, and sources of, funding might need to be kept under review as Parties consider the case for extending the focus in respect of issues such as those above beyond 'only' plastics.

2. Principles

What principles could be set out in the future instrument to guide its implementation?

Proposed principles:

We believe the following principles should guide design and implementation of an ILBI:

- Principles Related to Measures
- Principles Related to the Nature of Commitment Required from Parties to the ILBI;
- Principles Related to the Structure of the ILBI
- Principles Related to Trade-related Issues
- Principles Related to Financing (and Just Transition)
- Principles Related to Other Materials

Explanatory Text:

Principles Underlying Action

Much discussion has focused on the level of ambition of the ILBI. Some of those seeking to influence the ILBI are clearly of the view that an ILBI that focuses on waste management will be a failure. Such positions are widely held by those seeking stronger action to phase out the use of plastics altogether, or at least, to a significant extent. Equally, however strong the case for a complete phase out of plastics can be made, it seems unlikely to find its way into the ILBI. Ceasing use of plastics is likely to lead to substitution by other materials, so it needs to be considered that whatever the negative impacts of plastics, substituting materials and products will not be without (different) problems. That is not to say that there should not be a reduction in use of plastics, not least through taking action on the most wasteful products and packaging formats, rather that it seems unlikely that an ILBI will be agreed where all countries agreed to eliminate all new consumption of all plastics.

To the extent that an ILBI is unlikely to lead to a complete ban on consumption of all plastics, then plastics will continue to be used, in whatever amounts the ILBI (and linked Protocols) leads to. Wherever plastics are used, therefore, then if there is no quality and convenient collection and management system for end-of-life plastics – and it would be efficient to extend this requirement beyond ‘plastics’ (see above) – then there will be problems of pollution. It is essential, therefore, that the ILBI lays the foundations for a global roll-out of quality and convenient waste collection systems – which need to be defined – and the management of such materials once collected.

This is not an aim that lacks ambition. The most oft-cited research on collection coverage is the World Bank’s work, which suggests something like 2 billion people on the planet lack access to waste collection services. We doubt that these figures fully capture the extent to which services of adequate quality and convenience are present. Unless access to convenient and quality services – of varying levels of labour intensity and technical sophistication (it is the ‘customer experience’ that matters) – are present, then plastic pollution will continue as long as plastics continue to be used. It follows that unless the intention is to ban plastics, such universal (more-or-less) provision should be made a priority for the ILBI. To capture the need for quality and convenient collection, coupled to sustainable management of wastes at end of life, we use the acronym SHAWS (**sustainable, holistic, appropriate waste services**).

Ensuring that SHAWS are in place is effectively a minimum requirement for producers of plastics (and other materials) to continue to sell their products. It follows that SHAWS should be funded, as far as possible, by producers. The most widespread alternative – where services are funded through a combination of taxes, levies and charges – constitutes a barrier to implementing SHAWS. Producer funding should extend to the clean-up of littered items to an agreed standard (which avoids the accumulation of litter).

Implementing SHAWS does not mean that no other measures are necessary. Uses of plastics that are unnecessary (including intentionally added microplastics); those which effectively compete with widely available refillable / reusable alternatives; those for which – even where SHAWS are in place – the nature of their consumption makes it likely that they will be littered; and plastics which contain problematic chemicals, are all prime candidates for phase-out (i.e., a ban after a specified time period).

Other measures should focus on:

- the matter of ‘fishing gear’, as well as the way in which wastes generated in vessels that use rivers and oceans are managed (there should be consideration of larger and smaller vessels, and the needs of each); and
- addressing microplastic pollution from those sources which are not to be banned (for example, from tyre abrasion, or from textiles).

The principles underlying action, therefore, should be:

1. To phase out of various products, packaging formats, and constituent chemicals is a focus of the ILBI;
2. Measures to reduce the use of plastics not being phased out;
3. To ensure the global roll-out of sustainable, holistic, appropriate waste services (SHAWS) (unless the intent is to phase-out use of all plastics in, at the latest, the medium-term);

4. To implement measures to ensure all facilities manufacturing plastics, both primary and secondary, and all facilities converting plastics into packaging / products, are managed to ensure no release of nurdles and microplastics;
5. To ensure producers fund the above, including cleanup of remaining littered items, and fund all activities to which costs can be attributed to producers' products and packaging in proportion to the shares attributable to those products and packages;
6. To implement measures to address fishing gear currently being left in rivers and oceans;
7. To implement measures to address wastes generated by ocean-going and river-borne vessels (including at port reception facilities, and through implementing SHAWS);
8. To implement measures to reduce or eliminate microplastic pollution from those (potential) sources which are not to be banned.

Principles in Respect of the Nature of the Content

There has been discussion regarding the nature of the commitment required of Parties under an ILBI.

The reason we are in a situation where an ILBI has come to be seen as necessary and desirable is because voluntaristic measures are inadequate, and have demonstrably failed to address the problem which the ILBI seeks to solve: they don't work. It makes no sense at all, therefore, to propose an ILBI where no actions are made binding upon the Parties.

Those who propose that the problem which we are seeking to resolve can be addressed solely through National Action Plans (NAPs) should consider what needs to be in place in order for those NAPs to be effective. The conditions are, in our view, demanding, and likely to necessitate a strongly non-voluntaristic element. We have considerable experience of reviewing waste management plans (WMPs) in EU Member States which are binding upon those Member States. It has become common to speak of 'an implementation gap', this being the gap – sometimes a gaping chasm – between the intent expressed within WMPs, and the outcomes observed on the ground. The gap arises as a result of a range of factors, and the gap will not be closed by 'holding countries to their NAPs' since that will likely dilute the content of those NAPs.

In summary, whilst the INC remit includes consideration of both mandatory and voluntary approaches, it is the former that will generate outcomes.

Principles Associated with Structure of the ILBI

The INC-2 session was coloured somewhat by the negotiating positions of different parties. There appear to be differences in perspective regarding what might be termed 'the extent of ambition' which should be reflected in the Legally Binding Instrument (ILBI).

To the extent that such variation in perspective exists, then it seems that an appropriate configuration of the ILBI would be to have a 'Main Instrument' (a Plastics Convention) which makes what might be considered 'the essentials' legally binding in the Main instrument itself.

The Plastics Convention would make reference to a number of areas of action which are a) not made legally binding within the Plastics Convention, but which are considered to contribute positively to meeting the objectives of the ILBI. The Plastics Convention would anticipate a range of Protocols either in development, or which might be developed in future. These would then be developed as

separate Protocols which Parties who felt able to become signatories to those Protocols would support.

A Plastics Convention might:

1. Set out the objectives of the Convention;
2. Define key terms (e.g., plastics, macro- / micro-plastics, items / packages made from plastic, substances of concern, plastic pollution, reuse system, refill system), and where relevant, how they will be measured (recycling, recycled content, reuse rate, refill rate, etc.).
3. Impose legally binding requirements in respect of a 'core' set of objectives that are the subject of wide agreement. We would expect this to include, as a minimum:
4. Set out the basis for the phasing out of a clearly defined list of specific items / packaging formats from the market where these are consumed in ways that are likely to give rise to littering, unless take-back systems which achieve a defined minimum rate (e.g., 90%) of return are in place;
5. Set out the basis for the phasing out of the use of a defined range of 'substances of concern' in all but a specified range of exempt applications, for which exemptions would have to be applied.¹
6. Set out the basis for a requirement for a defined range (e.g., all plastic packaging) of items to be designed in such a way that they can be readily recycled. Given the global nature of the ILBI, this could be made 'locally contingent' on available collection and recycling infrastructure, though we doubt this can be achieved in a way that avoids problematic items from undermining the objectives of the ILBI;
7. Set out the basis for a requirement for convenient and high-quality waste collection systems to be in place for macroplastics everywhere. Although particular attention tends to be given to municipal type wastes (and especially, waste from households) in this regard, the matter of waste collection from businesses, industry, and from construction activity should be considered;
8. Set out the basis for the extent of funding of those systems, as well as clean-up of remaining litter and provision of relevant communications campaigns, by those who place the relevant plastic products and packages on the market (whether through extended producer responsibility, or charges earmarked for the support of waste collection services). In the case of tobacco products and nicotine related products (such as e-cigarettes), particular regard should be had to the WHO Framework Convention on Tobacco Control (relating to the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry). The tobacco industry should be prevented from seeking to present their activities as 'corporately responsible';
9. Set out the basis for restrictions on the placing on the market of plastic products and packages wherever such collection systems are not in place after a specified time period (e.g., five years) has elapsed;
10. Include a list of products, and respective dates, by which intentionally added microplastics will be banned;
11. List measures that will be taken, and the applicable deadline dates, by government / . industry to reduce the quantity of microplastics associated with product use (e.g., tyres, shoes, textiles);

¹ Such an approach is used to determine the validity of applications for exemptions under the EU RoHS Directive (Directive 2002/95/EC on the Restriction of the Use of certain Hazardous Substances in Electrical and Electronic Equipment (RoHS)). Details on the exemptions procedure can be found [here](#).

12. Propose measures to address abandoned fishing gear (and replacement of other plastics often used in marine environments);
13. A fund to support clean-up of legacy plastics from rivers and oceans, likely to be derived from a levy on petrochemical production;
14. A financial mechanism (possibly drawing from points 8 and 13 above) to support capacity building in ministries / departments in lower-middle income and low-income countries. This should focus on ensuring that sufficient permanent staff are in post to achieve the necessary outcomes;
15. A further mechanism to offer technical assistance from suitably qualified personnel to support formulation of policy and law, and the design and procurement of collection services in particular.

Protocols would be developed focused on (for example):

- Additional products and applications to be phased out (problematic or unnecessary)
- Reduction of (or reducing growth of, according to country classification) national consumption of plastics (of different types), for example, through a cap-and-trade system of tradable allowances (allowing for the generation of revenue to support other objectives)
- Increasing market share of reusable packages / products
- Extending product lifetimes for products containing plastics
- Additional measures to reduce microplastic pollution
- Mechanisms and targets to increase recycled content of plastic products and packaging
- Additional measures to address ghost gear and incentivize net retrieval

Principles Related to Trade Related Issues

As per the Montreal Protocol, it would be useful for the ILBI and the linked Protocols to acknowledge that trade-related measures could be implemented, so that those implementing measures would not see the intent of their ambition diluted (and domestic producers would not be placed at a disadvantage) by virtue of implementation that affected only domestic producers.

To that end, it would be useful for the INC to explore this matter in inter-sessional work.

Principles related to Financing

At the very least, the ILBI must indicate how systems for collection and management of plastics will be funded. The question of funding needs to be examined closely with a view to understanding what funding is best suited for what purposes.

In this respect, whilst many multilateral bodies may put forward their own case for managing some 'fund' to support the objectives of the ILBI, the need for that, and the required sources of funds to match that need, need to be carefully considered.

In principle, funding support should be provided to enable:

- Clean-up of existing pollution (the 'legacy' issue). In this respect, a levy on future production of primary plastic polymers seems eminently suitable.
- Provision of SHAWS, especially in places where there is currently no formal waste management service. Here, the aim should be to ensure that as far as possible, funds are derived from producers in proportion to the share of costs for which they are responsible. These funds should also be sought from producers of the equivalent range of non-plastic products and packaging.

The funding of such services does not necessarily imply that the ‘funder’ is the one with access to capital for investment: service providers can have their investment repaid via a payment mechanism based on a stream of revenue payments. It follows that the investment capital might come from the private sector itself, but that where such investments are reliant upon revenue streams linked to the public sector, what might help is a form of investment guarantee to reduce risk in the case of countries whose credit rating is at the weaker end of the spectrum.

- Provision of financial support for permanent staff (not temporary ‘technical assistance’) in Ministries of lower-middle and lower-income countries (not dissimilar to the situation in respect of ozone depleting substances). This is, in our experience, vital: the oft-observed implementation gap – between a plan, and the situation observed on the ground – arises largely from a failure to understand the measures needed to translate what is written on paper into change in service delivery in the real world. This needs adequate staffing of relevant Ministries and regulatory bodies by appropriately qualified / experienced (and trained) personnel. Suitable sources of funds may be producers (in part) and funds from high-income (and possibly upper-middle-income) countries.
- Provision of technical assistance (in country)
- Provision of technical assistance (Secretariat)

Principles related to Other Materials

As indicated at the start of this submission, there are a range of issues which bring into play ‘other materials’. We believe that where it is necessary to expedite the efficient meeting of the objectives of the ILBI, the ILBI should at least recognize the desirability of such linkages being made, and better still, recommend explicitly that they be included within the scope of measures being proposed. The world of materials, products and wastes, let alone the matter of pollution, does not begin and end with plastics. That is not to deny the particular problems – now requiring urgent attention - to which plastics give rise, but rather to recognize that if, in solving the problems associated with plastics, we can efficiently address issues related to other materials at the same time, we would be foolish to overlook those possibilities.

3. Additional considerations

Provide any other relevant inputs, proposals or priorities here that have not been discussed at INC-2 (e.g. preamble; institutional arrangements, including governing body, subsidiary bodies, scientific and technical cooperation and coordination, and secretariat; final provisions including dispute settlements; and if appropriate annexes).

Proposed inputs:

Targets

There is a need to consider what targets might be required to be achieved by producer-funded waste management services.

Performance Measurement

There will be a need to establish methodologies for measuring, amongst other things, recycling rates, and the (post-consumer) recycled content of products and packaging.

Trade-related Measures

The ILBI should enable Parties to implement trade-related measures to ensure they are not placed at a competitive disadvantage relative to those countries which choose not to sign up to the ILBI, or to linked Protocols.

Tradable Allowances

We believe the INC should consider the potential for the use of a globally applied tradable allowance system to support a global reduction in the use of plastics. Producers of plastics would be required to obtain an allowance for each unit of plastic which they manufacture. A cap-and-trade system would be implemented with the cap being reduced over time. This would likely increase the marginal cost of producing plastics, and tend to channel them towards uses where they deliver greatest added value to users.

Explanatory Text:

Targets

Although there has been discussion of, for example, extended producer responsibility (EPR) in the context of the Treaty, virtually no attention has been given as to what EPR would 'have to achieve'. Whatever aspects of SHAWS (see above) producers are required to cover costs for, the quantum of funding required will be affected by the outcomes the scheme is required to deliver. For example, in most circumstances, the costs of achieving a high rate of recycling and a high level of cleanliness will mean that producers pay more than for a system where there are no targets for recycling and no standards of cleanliness which are required to be met.

These discussions need to happen both to give substance to the requirements of EPR, and also, to secure the environmental benefits of SHAWS over and above more basic systems for end-of-life collection and management.

Performance Measurement

To the extent that targets are included in the ILBI / Protocols, there will be a need to consider how performance against those targets will be measured. EU-level experience indicates that comparable performance data will be dependent on sound methodologies and suitable requirements for reporting of relevant performance-related data.

Trade-related measures

As indicated above, it would be useful for the ILBI and the linked Protocols to acknowledge that trade-related measures could be implemented, so that those implementing measures would not see the intent of their ambition diluted (and domestic producers would not be placed at a disadvantage) by virtue of implementation that affected only domestic producers.

Tradable Allowances

There has been much discussion around reducing plastic consumption. However, apart from items that it is proposed should be phased out, there has been limited discussion of the appropriate measures to achieve a reduction in consumption: the proposal of 'sustainable alternatives' seems cumbersome and bureaucratic, and unlikely to be implementable in a manner which is not regularly contested. A tradable allowance scheme would likely best be designed so that either producers of plastic, or converters, were required to purchase auctioned allowances for each tonne of plastic they manufactured.