

## Summary of Revised Zero Draft of the International Legally Binding Instrument to Prevent Plastic Pollution (January 2024)

The revised version of the preliminary draft is available at this link: <https://wedocs.unep.org/bitstream/handle/20.500.11822/44526/RevisedZeroDraftText.pdf>

### Summary

Overall, the Revised Zero Draft (RZD), as referred to by the INC Secretariat, is an effort to bring together the many divergent views expressed in the pre-INC-3 submissions and throughout INC-3. Although it is an attempt to provide a full draft with legal text, there are several elements which lack proposals for legal text and have been deferred to future INC discussions. Included in these elements are the potential subsidiary bodies to be established as part of the ILBI governance structure, which had been anticipated to be the topic of intersessional work between INC-3 and INC-4 although ultimately consensus could not be reached on the parameters of any formal intersessional activities.

As discussed below, the majority of potential elements of the RZD features several options and alternatives, with some elements having up to 17 options. It is important to note that some of these options are not proposals for legal text to be included in the negotiating document but instead are statements on what should be included in the ILBI. There is a concern to be raised in that the majority of the proposed elements, especially control measures, include an option for “no text,” which does call into question the good faith efforts of some parties to the negotiations. At the same time, the number of proposed options and bracketed text for issues that were debated at both INC-2 and INC-3 is concerning in that it manifests a continued lack of agreement on aspects of the underlying foundations for the ILBI.

It should be noted that there are several new areas of concern that exist throughout the RZD. First is the question of the relationship of the ILBI, its terms and objectives, to sustainable development. To date, sustainable development has been discussed as a proposed principle and potential element of the ILBI, however some aspects of the RZD suggest that sustainable development is one of the motivating factors. This is not in keeping with UNEA Resolution 5/14 and risks taking the focus off the ILBI as an instrument primarily focused on plastic pollution. It also could create some uncertainties in the post-2030 world since it is unknown whether the Sustainable Development Goals will be extended beyond this point.

Second, and relatedly, is the understanding of what is meant by just transitions in the ILBI context. Many elements of the just transition article refer to achieving a fair and equitable transition, which is critical but does not encapsulate legal or policy definitions of just transition. Third is the issue of regime convergence as textual language in the ILBI. The recognition of these intersections in the RZD is laudable, however the ways in which some of the proposals have articulated them is potentially problematic since it would create the legally difficult position of having the outcomes of another treaty regime's deliberations and decision-making be a governing aspect for portions of the ILBI. At the same time, the failure of other treaty regimes to reach an agreement on regulatory issues could be seen as prohibiting the ILBI from taking up these issues, which is contrary to the idea of regime convergence as leading to coordinated outcomes.

## **Part I**

### **1. Preamble**

Analysis: The entirety of the proposed preamble is bracketed. Some of the proposed elements are similar to those proposed by the States' filings in advance of INC-3. Others are newer proposals that in many cases would limit the parameters of the ILBI or that do not fully explain the points they seek to advance, such as the connections between addressing plastic pollution and advancing the Sustainable Development Goals, and the extent of just transition issues connected to addressing plastic pollution.

### **2. Objective**

Analysis: There are two main options offered, each with a number of bracketed text options. The core difference between the two options relates to the primary focus area of the ILBI. In Option 1, the focus is directly on ending plastic pollution – reflecting the terms of UNEA Resolution 5/14 – with subsequent provisions connecting this is environmental and human health impacts. Conversely, Option 2 places the focus on protecting human health and the environment from the negative impacts associated with plastic pollution. The critical distinction is whether the objective should be addressing plastic pollution or advancing human health and the environment by focusing on plastic pollution. In keeping with UNEA Resolution 5/14 and the work on the ILBI throughout the INC process, it is clear that the intended objective is to address plastic pollution as the primary focus, thus it is suggested that Option 1 be used with the language offered below.

### **3. Definitions**

Analysis: There are two options offered for definitions in the RZD. The first, Option 0, is not including definitions in the main text of the ILBI. It is unclear from the wording of this

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option whether it would mean that the definitions would be included in an annex or simply omitted from the ILBI legal framework altogether.



#### 4. Principles

Analysis: In the written submissions before INC-3 and the verbal statements made during INC-3, there was a clear division between States wishing to include a set of principles for the ILBI as part of the text – which is standard practice in many MEAs and other treaties – and States asserting that a list of principles is not necessary for the ILBI. The two options for the Principles section of the RZD reflect this. Option 0 is the option not to include principles as part of the ILBI text, while Option 1 contains a number of potential principles to be included.

#### 5. Scope

Analysis: The provisions of the RZD on scope are arguably among the most divisive, as demonstrated in the inclusion of 17 options. These options range from not including scope at all in the ILBI text, as set forth in Option 0, to a number of proposals which are not proposals of legal texts but rather are statements of policy and other views (Options 1, 4, 6, 8, 9, 10, 11, 12, 14, 15). It should be highlighted that the use of a Scope provision is standard in many MEAs as well as treaties in other subject areas, and can be useful for treaty implementation, interpretation and oversight, as well as for guidance to future Conferences of the Parties and other governing body activities. Given the necessity of fostering regime convergence and coordination between the ILBI and related treaty bodies, the inclusion of a dedicated Scope provision will be important to establish the parameters of cooperation and jurisdiction for the ILBI.

## Part II

### 1. Primary plastic polymers

Analysis: During INC-3, the issue of including primary plastic polymers in the ILBI's text and terms, as well as how to define primary plastic polymers, was highly contentious and no agreement was reached. This is manifested in the many sub-options to Option 1 in the RZD. In line with this, Option 0 is that there be no text included for this item, meaning that it would be omitted from the final text of the ILBI.

The main chapeau of Option 1 contains a number of bracketed items that range from a more general understanding of primary plastic polymers and their regulation to more specific elements of the science of plastic as it currently stands. Given the intention that the ILBI function as a flexible document for the future, it is suggested that a more open chapeau be used. For paragraph 2 onward, there were 4 Options listed in the RZD.

### 2. Chemicals and polymers of concern

Analysis: The question of including chemicals and polymers of concern in the ILBI was another contested area during INC-3 that resulted in a lack of consensus on terminology

to include in the RZD. The lack of consensus is manifested in the six different options for provisions relating to chemicals and polymers of concern contained in the RZD as well as the sub-options included within some of these options. As with many of the RZD provisions, there is one option, Option 0, proposing not to include any text on the topic in the ILBI.

In terms of the proposed options, Option 0 would be counterproductive to creation of a robust ILBI and would leave many legal gaps. Option 3 represents a far weaker set of provisions in that it is based entirely on national capacities and makes the requirements for international law elements of the ILBI secondary to the existing national systems rather than seeking to advance those systems for improving the national systems. Option 4, which would merge Article 2 and Article 3, is a weaker legal option because the language as proposed is general and does not address the complexities of each regulated product to the same degree that keeping these provisions in separate articles does. Finally, Option 5 is quite weak as written and does not provide the international legally binding control measures that are necessary for a robust ILBI.

### **3. Problematic and avoidable plastic products, including short-lived and single-use plastic products and intentionally added microplastics**

Analysis: There are six options for this article contained in the RZD as well as several sub-options within them. As suggested in the ZD, this article is divided into sub-sections a and b, with sub-section a addressing “problematic [plastic products] and avoidable plastic products [and groups of such products], including short-lived and single-use plastics” and sub-section b addressing “[Products containing] intentionally added microplastics.”

For sub-section a, there are four options, with one being the no text option set out in Option 0. In both Options 1 and 2, there are potentially strong control measures regarding the production, sale and use of problematic and avoidable plastics. However, the bracketed options of either [shall] or [should] creates some uncertainty as to how much of a binding commitment these terms would in fact require of State Parties. Between the two, the strongest and most comprehensive language is in Option 1, which also features the least amount of bracketed text and does not make commitments contained therein dependent on national determinations or laws. Option 3 is extremely vague and non-committal, which would make achieving the ILBI’s terms difficult and potentially uneven, while at the same time causing potential disruptions in evaluating national plans and reports as well as implementing a compliance system.

For sub-section b, there are six options, although one is Option 0 with a proposal of no text and one, Option 5, is to merge the sub-section with Part II.8 on microplastics. Of the remaining substantive options, Option 1 is the most clear and robust set of provisions,

containing mandatory measures to address all aspects of the production, sale, use, import and export of intentionally added microplastics. However, Option 2 OP1 bis requiring the inclusion of measures adopted under the article in the national plan filings should also be considered for inclusion, as should the terms of Option 2 OP2 bis Alt2 requiring that information relating to the measures taken to comply with the article should be included in the proposed information provisions under part IV.6 of the RZD. It should be noted that the efforts to include compliance with the article as a qualifying activity for the purposes of funding under Option 2 OP2 ter Alt2 could be important but should be anchored in more detailed text that then could be mirrored in the later funding provisions. Option 3 contains only voluntary requirements for State Parties, while Option 4 is binding but simply refers to the terms in part IV of Annex B.

Additionally, a placeholder for text was added as 3 bis under the heading of micro- and nanoplastics.

#### **4. Exemptions available to a Party upon request**

Analysis: Two options are contained in the RZD for this provision. Option 0 contains a no text proposal. Option 1 would allow for the exemptions to be requested and granted, although there are four proposals for what the terms of this provision might be. The main text of Option 1 is somewhat uncertainly worded and is heavily dependent on the parameters of other articles in the RZD. Much of Option 1 OP1 bis is still bracketed in its entirety and attempts to set some parameters on the public availability of information on the exemptions once granted as well as the allowed time periods for exemptions and their ability to be extended. Option 1 OP 4 bis 1 would make exemptions available specifically for SIDS and other States that are dependent on the production of plastic polymers with very little oversight information and no concrete timeframe. Option 1 OP 4 bis 2 has proposed an oversight and verification body for exemptions. Should language allowing exemptions be included in the ILBI, this would be a critical feature to ensure that the exemptions are used in good faith and for a very limited time.

Additionally, 4 bis on “dedicated programmes of work” has been added to the RZD in an attempt to create sub-governmental bodies to look at various sectoral aspects of the plastics lifecycle and plastic pollution, namely packaging, fishing and aquaculture, agriculture and textiles. While some aspects of work for each of these proposed work programmes is included in the RZD, the terms also would have much of the parameters of these work programmes decided at the first session of the ILBI governing body. The terms further provide the governing body with the ability to oversee the work and utility of these work programmes and to suggest additional work programmes as deemed appropriate.

## 5. Product design, composition and performance

**Analysis:** There are four proposed sub-articles for part II Article 5: a) [Product [design and] performance]; b) [[Reduce,] [reuse], refill and repair of plastics and] [Circularity approaches for] plastic products; c) Use of recycled plastic contents; and d) Alternative plastics and plastic products.

For sub-article a, there are four options including Option 0, which is a no text provision. Both Options 1, 2, and 3 contain multiple sub-options as well. Option 1 contains bracketed elements that would either make it mandatory or voluntary and that would potentially make the terms depending on national circumstance and capabilities. It focuses on ways to increase producer responsibility for plastic and plastic containing while increasing waste management methods and, potentially, product safety and minimizing plastic emissions and leakages. Option 1, Sub-Option 1 contains mandatory measures for minimum design and performance criteria, as well as for labelling and certification procedures. The latter would be potentially decided by the governing body or the Parties individually since these are both alternatives in bracketed text. Option 1, Sub-Option 2 also relates to product design and performance criteria, with bracketed text that could make the terms wither mandatory or voluntary. This Sub-Option contains specific elements that would be taken into account in these measures and in bracketed text suggests the use of industry and sectoral standards and guidelines as frames for these measures. For the implementation of these terms, Option 1, Sub-Option 2 OP2 Alt proposed an established set of required actions at the governmental level to mainstream product design and performance criteria. Option 1, Sub-Option 2 OP3 Alt contains a proposal for no text in this Sub-Option.

Common provisions for Sub-Options 1 and 2 would provide for either mandatory or voluntary work with international organizations and sectoral entities to use their guidelines and other regulatory measures for developing their own guidelines on product design and performance criteria. Finally, Option 1, Sub-Option 3 is an entirely voluntary proposal for each Party to take steps toward implanting product design and performance criteria that are in line with national priorities. Sub-Option 3 contains some mandatory provisions but makes them contingent on the contents of each Party's national plan and national circumstances and capabilities.

For sub-article b, there are five options. Option 1 is a mandatory control provision which would have the governing body adopt guidance for the measures necessary for each Party to effectively regulate “[the reduction], reuse, [recycling,] refill, repair, repurposing and refurbishment of plastics and plastic containing products either produced domestically or available on the domestic market. The use of harmonized standards is a bracketed option. At the same time, Option 1 requires each Party to establish and implement targets for these activities at the national level to reflect the targets intended for part II Annex C.

Option 2 is in many ways similar to Option 1, although it seeks to establish a deadline of either the first or the second meeting of the governing bodies for measures needed to address the targeted actions at the State Party levels. Option 2 also provides bracketed options for either mandatory or voluntary targets, which could be timebound or nationally determined. Option 3 is a more limited version of Option 3 and would require guidance from the governing body to be issued by its third meeting. It would also make targets entirely voluntary. In the Common Provisions for Options 1 and 3, which is entirely bracketed, there are proposed measures to be used for implementing the terms of the article and the inclusion of these measures in each Party's national plan reporting.

Option 4 is a weaker option in that it is based on national circumstances and capabilities rather than established, global targets and measurements. It relies on each Party's national plans to set their obligations, which is also contrary to the governance functions of these plans since they are intended as benchmarks against which to assess progress in implementing the ILBI rather than as setting national commitment thresholds. Finally, Option 5 focuses on each Party using "effective and environmentally beneficial measures to ensure the reduction in the use of plastics and plastic products" through a variety of waste management practices. It is guided by the targets and measures that are established in part II Annex C. Further, Option 5 would include the coordination of targets and measures with international organizations as appropriate and the inclusion of measures taken under the proposed article in national plans.

For sub-article c, there are four Options in the RZD. Option 1 is a simple provision which would make it mandatory for each Party to require minimum percentages and "environmentally sound post-consumer recycled plastic" for plastics and plastic products made or available nationally. These provisions would be linked to part III of Annex C for the establishment of implementation timeframes.

Option 2 is a heavily bracketed text that would either make mandatory or voluntary provisions regarding the use of minimum percentages and post-consumer plastic. In one version, this would be subject to national plans as well as national circumstances and capabilities, while in others this would be a uniform standard. These provisions may or may not be linked to part III of Annex 3 and/or contained in the elements to be included in national plans. Option 3 is shorter option that would have the governing body establish a timeframe for the transition to ensuring that products on the market be recyclable, as well as minimum percentages and environmentally sound post-consumer plastic materials. Finally, Option 4 is a voluntary provision including in relation to incorporating any measures taken into national plan reporting elements. Additionally, in the Common Provisions for Options 1 to 4, there is a more elaborate set of either



mandatory or voluntary relating to measures for incorporating and mainstreaming the use of minimum percentages and environmentally sound post-consumer plastics.

For sub-article d, there are five options. Option 0 is the no text option, while Option 4 proposed incorporating Article 5(d) into Article 6 on non-plastic substitutes. Option 1 contains mandatory measures for each Party to ensure that alternatives are safe, environmentally sound and sustainable. In OP 1 bis, there is an inclusion of terms requiring each Party to take into consideration the impacts of plastic alternatives on “environmental, economic, social and human health, including food security.” Option 2 is a largely voluntary provision relating to plastic alternatives and contains several sub-option proposals that do not contain legal text proposals. Option 3 includes “bio-based, biodegradable and compostable plastics” and guided by the waste hierarchy and is a combination of voluntary and mandatory terms. OP3 bis seeks to avoid “undesirable substitution and problem-shifting.”

## 6. Non-plastic substitutes

Analysis: There are seven options for non-plastic substitutes in the RZD. Option 0 is a proposal for no text and Option 6 is a proposal that Article 6 be combined with Article 5. Option 1 is a combination of mandatory and voluntary measures relating to innovation and the development of safe, environmentally sound and sustainable non-plastic substitutes. The bracketed text in Option 1 could provide for these measures to be accomplished depending on national circumstances and capabilities. It also references the need to ensure that non-plastic substitutes do not cause harm to the environment, economic, social, cultural and human health impacts that may include bracketed text that would link these to lifecycle impact assessments. It contains either mandatory or voluntary terms for national regulatory measures, and public procurement provisions. In Option 1 OP1 bis, the RZD proposes linking financial provisions in the treaty with technology transfer to foster the development of non-plastic substitutes to developing countries. Option 1 OP1 bis 3 would require the inclusion of measures taken under Article 6 in the national plans. Option 1 OP3 ter would make the article voluntary.

Option 2 contains largely voluntary requirements and refers to seeking to ensure safe, environmentally sound and sustainable non-plastic substitutes rather than more active development. Option 3 would require that the development of non-plastic substitutes be done

“taking into account their potential impact on environmental, economic, and social systems and human health, and considering possible unintended consequences and trade-offs.” It also proposes the creation of voluntary national certification schemes for non-plastic substitutes. Option 4 relates to the fostering of research into the development of non-plastic substitutes. Option 5 is a shorter version of Options 1 and 3, and is quite limited, stating that “Parties shall ensure that non-plastic substitutes are safe, environmentally sound and sustainable, taking

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into account their potential for environmental, economic, social and human health impacts, including food and water security, and land loss.”

## 7. Extended Producer Responsibility

**Analysis:** There are five options for Article 7 in the RZD, with Option 0 containing the no text provision. Option 1 is a heavily bracketed option that would be largely mandatory although the fully regulatory scope is unclear due to the many bracketed options. Similarly, many aspects of the parameter for producer responsibility and liability are bracketed, making it uncertain as to the full extent of potential obligations. Option 1 is also heavily bracketed and unclear as to the development of EPR guidelines and requirements for the purposes of the ILBI and the potential timeframe for the governing body to develop guidelines for EPR. Regardless, Option 1 provides that the measures taken to fulfil Article 7 would be included in national plans.

Option 2 is also heavily bracketed and could be interpreted to either require the development of EPR at the national level, supplement any existing EPR schemes at the national level, and be guided by either global measures or national circumstances and capabilities. Option 2 also provides that the provisions for Article 7 would be included in national plans.

Option 3 is not bracketed and contains provisions for the mandatory use of EPR schemes in each Party's jurisdiction and for multinational corporations placing products on the market in its jurisdiction. However, Option 3 does not extend beyond domestic market participations and multinational corporations, which leaves open a legal/regulatory gap and could present a trade law issue in terms of discrimination against forms of corporations. Additionally, Option 3 does not contain a definition of EPR or attempt to link it with any of the reporting elements of the ILBI. Finally, Option 4 contains entirely voluntary measures and does not provide a definition for EPR or linkages to reporting and oversight elements of the ILBI.

## 8. Emissions and release of plastic throughout its lifecycle

**Analysis:** There are five options for Article 8, although notably none of these were an Option 0 with a no text proposal.

Option 1 is the most complex of the options in that it has multiple sub-options and alternate options throughout. In the (1) main text, it is a mandatory provision for each Party to control emission and release of plastic throughout its life cycle, with a bracketed option that would make these measures contingent on the need to protect the environment and human health. The bracketed options throughout the main text of Option 1 offer a vision of terms that could be either nationally determined and dependent on national circumstances and capabilities or based on a global standard. There are bracketed proposals that would make the terms of the article applicable to various forms of emissions and releases. Additional proposals for this list include spills of chemicals and other hazardous products connected to the plastics production

process (Option 1 OP1b bis), efforts to minimize micro plastic waste and hazardous chemical generation during the plastic production process (Option 1 OP1b ter), and the merger of these two additional elements into one new element (Option 1 OP1b Alt). Other proposals in Option 1 would either make the provision very short while still retaining the mandatory nature (Option 1 OP1 Alt 1), voluntary as an encouragement of State Parties to adopt or expand environmental and other regulations to address emissions and releases (Option 1 OP1 bis), and a more expansive, voluntary provision that would include “shall endeavor” language for the legal requirements (Option 1 OP1 ter).

Option 1 (2) in the main text is heavily bracketed but would be a mandatory provision for the reduction and/or elimination of various forms of plastic product and associated leakages throughout the lifecycle, potentially including into the transportation aspects of the lifecycle. In one bracketed option there is also explicit reference to the use of guidelines from the International Maritime Organization for the transportation aspects. Additional proposals would be for no text in (2) (Option 2 OP2 Alt 1), moving (2) into Annex B (Option 2 OP2 Alt 2), and explicitly including references to MARPOL, the Cartagena Convention, the London Convention and OSPAR (Option 2 OP2 bis).

Option 1 (3) in the main text is heavily bracketed and would either encourage or require State Parties to include measures taken to comply with Article 8 in the national plans. The alternate proposal is for no text in this provision. Option 1 (4) in the main text provides that the governing body either would be required or have the potential to adopt guidance for the implementation of Article 8, including bracketed options for assessing the impacts on various ecosystems. There is also a bracketed option for the measures taken under this section to be coordinated with other bodies. Finally, Option 1 (5) contains voluntary measures for the promotion of scientific and technical innovation geared toward preventing emissions and leakages throughout the lifecycle, including those that impact the marine ecosystem and other ecosystems. Option 5 OP 5 Alt is a condensed version of this that appears to tie these measures to developing countries in some way, although there are textual errors that make the exact nature unclear.

Option 2 contains mandatory elements for the prevention and elimination of releases of plastic polymers, plastics, microplastics and related materials across the plastics lifecycle and into the environment. It provides for three categories of plastics and chemicals that should be covered by the emissions and leakage provisions of the Article. It would further require State Parties to prevent and eliminate pollution and leakages of “plastic pellets, flakes and powder” across the full supply chain, including storage, transportation and handling. Option 2 (3) also contains dedicated provisions relating to abandoned, lost or otherwise discarded fishing gear and aquacultural gear and supplies. Option (4) would make inclusion of the measures taken to comply with Article 8 mandatory elements of each Party’s national plans, with a bracketed option

that would provide for evaluation taking into account the special circumstances of SIDS. Option 2 (5) would require the governing body to establish guidelines for implementing Article 8 at the first meeting, with bracketed text that would include specific reference to marine and other ecosystems. Finally, Option 2 (6) contains voluntary encouragement of each Party to take measures promoting scientific innovation.

Option 3 would make efforts at controlling emissions and leakage voluntary across the lifecycle of plastics and contingent on national circumstances and capabilities. It uses a less comprehensive definition of the lifecycle that does not address storage, transportation and handling, and would require measures taken to comply with Article to be included in national plans. It would also require the governing body to adopt guidelines for implementation of Article 8 at its first meeting. Finally, it would require an assessment of the financial and technology transfer needed for each Party to implement Article 8.

Option 4 contains a shorter version of Option 2 merged with the mandatory elements and assessment provisions of Option 3. Option 5 is a shorter provision which would make Article 8 entirely voluntary and lacks provisions on reporting, assessment and connections with the governing body.

## 9. Waste management

### a. **[[Plastic] Waste management**

**Analysis:** There are four options for Article 9(a) in the RZD. Option 1 contains mandatory measures for each Party to take regarding the environmentally sound management of waste along a heavily bracketed description of the plastics lifecycle. The bracketed text includes measures that include transportation, handling, collection, storage, recycling and final disposal of plastic waste within the scope of Article 9. In Option 1(2), there are many bracketed elements that would potentially include the use of guidance and guidelines from the Basel Convention, the London Convention, MARPOL, the International Maritime Organization (IMO) generally and the Bamako Convention. Option 1(3) contains bracketed options that would make governing body adoption of guidance and guidelines either mandatory or voluntary.

Option 2(1) contains mandatory measures for environmentally sound management of waste, however is heavily bracketed in terms of what the lifecycle of plastics and plastic waste would include, whether the national plan reporting elements for Article 9(a) would be mandatory or voluntary, and whether the national plans would be connected to the terms of part II of Annex F. Option 2 OP1 bis contains provisions that would require each Party to give due consideration or priority to “establishing a basic effective social system at the local level for handling, sorting, collection, transportation, storage,

recycling and treatment of plastic wastes.” Option 2(2) is heavily bracketed and would either make it mandatory or voluntary for the governing bodies to adopt guidance and guidelines, which may include elements from the Basel Convention, other international agreements, and just transition measures that include waste pickers. Option 3 would make Article 9 entirely voluntary for State Parties to the ILBI and is also quite short. It would require the governing body to “where necessary, utilize the technical guidelines on the environmentally sound management of plastic wastes recently updated and adopted by parties at COP16 of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, avoiding duplication of work and efforts.”

The Common Provisions for Options 1 – 3 contains four elements. In [4][3], each Party would have mandatory preventive and regulatory requirements relating to waste management, although the parameters of these requirements are entirely bracketed. In [5][4], there are potential requirements for each Party to prevent certain activities, which are bracketed and range from open dumping, ocean dumping, open burning, and littering of plastic waste. In [6][5], State Parties would either have the option to or be required to take additional measures that advance waste management practices, and contains multiple bracketed options for terms relating to investment, resource mobilization, and incentivization of private and sectoral changes in behaviour. In [7][6], there is a requirement for State Parties to include measures taken under Article 9 in their national plans.

There are also Common Provisions for the Alt options as well. In (3), there would be a voluntary provision for State Parties to use environmentally sound waste management practices, while in (4) State Parties would be required to prevent open dumping, ocean dumping, littering and open burning, and (5) and (6) would contain voluntary measures for investment, behaviour change, and inclusion of Article 9 measures in national plans.

Option 4(1) would make each Party subject to mandatory measures for safe and environmentally sound management of plastic waste as set out in their national plans and subject to national circumstances and capabilities. Option 4(2) would require the governing body to establish guidance and guidelines and update them as appropriate. It also references creating a mechanism to assess infrastructural and financial measures necessary for State Parties to fulfil their obligations. Option 4(3) would make measures relating investment and behavioural change measures voluntary for State Parties, and Option 4(4) would require the inclusion of measures to fulfil Article 9 in national plans.

### **[b. fishing gear]**

Analysis: There are six options for Article 9(b) in the RZD. Option 0 is a proposal for no textual provision, while Option 3 suggests moving fishing gear to Article 4bis and Option 4 suggests moving fishing gear to Article 11.

Option 1 is heavily bracketed. Under Option 1(1) each Party would either be subject to mandatory or voluntary provisions to address abandoned, lost or otherwise discarded fishing gear. Option 1 OP1 bis1 would simply provide “each Party shall take effective measures toward collection and ESM waste management of fishing gear.” OP1 bis2 would make obligations regarding fish gear voluntary, as would OP1 ter. Option 1(2) is entirely bracketed and would potentially require State Parties to promote synergies, cooperation and information sharing relating to fishing gear on either a mandatory or voluntary basis. OP2 bis1 would require State Parties to include measures taken under Article 9(b) in their national plans, and OP2 bis2 would require the assessment of the need for financial mobilization and technology transfer to accomplish Article 9(b).

Option 2 is to move the fishing gear provisions to Article 8 as Article 8bis and contains textual provisions relating to the enhancement of design across fishing and aquaculture gear, marking and loss reporting requirement for gear subject to the article, compliance with regional and MARPOL terms, improved management at the end of the lifecycle for fishing gear, and the promotion of training, education and awareness on fishing gear issues. It would make the inclusion of measures taken under the article a mandatory element of national plans.

Finally, Option 5 is quite short and would have largely voluntary measures relating to fishing gear, subject to national circumstances and capabilities, and well as the requirement to promote synergies and complementarity in fishing gear waste management.

## **10. Trade [in listed chemicals [, polymers] and products, and in plastic waste] [related measures]**

Analysis: As a general matter, Option 0 for Article 10 overall is a no text proposal. There are two textual options for Article 10.

Option 1 would create two sub-articles: a) trade in listed chemicals, polymers and products and b) transboundary movement of [non-hazardous] plastic waste.

### **a. Trade in listed chemicals, polymers and products**

For proposed Article 10(a) there are three potential sub-options. Sub-Option 1(1) would require State Parties not to export chemicals, groups of chemicals and polymers contained in Part II.2, plastic products containing these substances, and microplastics and avoidable plastics unless it is permitted in the ILBI and free, prior informed consent is given by the importing State. Sub-Option 1(2) is an entirely bracketed provision relating to the establishment of export permitting requirements for chemicals and the

obtaining of free, prior and informed consent prior to exportation. An additional bracketed option would connect these provisions to the terms of Annexes A and B. Sub-Option 1(3) sets out extensive requirements for State Party regulation of exporters of covered chemicals, polymers and producers, including approvals from the importing State, marking and labelling, and compliance with international standards. Sub-Option 1(4) recognizes the connections between the Harmonized Commodity Description and Coding System and many substances regulated by the ILBI and would require that these codes be used in marking and labelling where they exist. Sub-Option 1(5) reiterates the prohibitions under Sub-Option 1(1) but applies them to importing States. Sub-Option 1(5) OP5 bis would require “in case of export to, or import from, a non-Party to this instrument, each Party shall apply the provisions of this article, on a non-discriminatory basis.”

Sub-Option 2 is an entirely voluntary provision for cooperation and supportive measures toward a sustainable international economic system in which States are better able to address plastic pollution. It also contains a “should not” rather than “shall not” provision for non-Party non-discrimination. Sub-Option 3 would provide “Each Party shall regulate trade in listed chemicals, polymers and products as per relevant national regulations and in accordance with the principles of the internationally binding multilateral trading system enshrined in WTO law.”

## **b. Transboundary movement of [non-hazardous] plastic waste**

For proposed Article 10(b) there are five sub-options. Sub-Option 0 is a no text proposal and Sub-Option 4 would be a basic provision, “Parties shall cooperate towards the adoption and implementation of effective measures to prevent and eliminate illegal exports and dumping of plastic waste.”

Sub-Option 1(1) would create a mandatory requirement for State Parties to not allow transboundary movement of plastic waste except where there is prior informed consent from the importing State, it is done in safe and environmentally sound management systems, is consistent with the ILBI and with other international agreements including the Basel Convention. Sub-Option 1(2) would require exporting permits for allowed exports of plastic waste. Sub-Option 1(3) would implement extensive requirements for exporting States and exporters to take prior to allowed exportation of plastic waste under Article 10 and the ILBI. Sub-Option 1(4) would require governing body to adopt guidance for transboundary movement of plastic waste and in conformity with the Basel Convention and other MEAs. Sub-Option 1(5) would simply provide “Each Party shall [take effective measures to] prevent and eliminate illegal trade [and dumping of] [in] plastic waste.” Finally, Sub-Option 1(6) would require States to advance synergies and complementarity between the ILBI, international organizations and intergovernmental bodies.



Sub-Option 2 links the regulatory requirements of State Parties to the terms of the Basel Convention in terms of definition. It provides that State Parties to the ILBI that are also State Parties to the Basel Convention shall ensure that the Basel Convention is applied to transportation of plastic waste. Non-Parties to the Basel Convention would be required to apply national laws, rules, standards and guidelines to transportation of plastic waste. Sub-Option 3 directly provides that each Party shall “prevent and eliminate illegal trade, traffic and dumping of plastic waste” in conformity with the Basel Convention and other international agreements.

Option 2 would use the alternative title “Trade-related measures.” Option 2(1) would provide that the ILBI “applies insofar as its provisions do not contradict the provisions of the Marrakesh

Agreement Establishing the World Trade Organization, and its Annexes.” Option 2(2) subsequently would provide that “any measures established by the Parties for the implementation of this instrument\* shall be in full conformity with the Marrakesh Agreement Establishing the World Trade Organization.”

## **11. Existing plastic pollution, including in the marine environment**

Analysis: There is only one option for Article 11 under the RZD, however it contains multiple sub-options. Article 11(1) is almost completely bracketed and would either require or encourage Parties to consult with international organizations, civil society, stakeholders and/or academia in order to identify, prioritize, and/or assess areas/zones/hotspots of plastic pollution. It would also involve the adoption and implementation of remediation efforts to address existing plastic pollution. In some bracketed text this would include special provisions for SIDS.

Article 11(2) is heavily bracketed but overall relates to the provision of publicly available information on existing plastic pollution and efforts that prevent and remediate it. OP2 bis would require Parties exporting chemicals, polymers and products to include tracking the types, volumes and destinations of exported materials as part of their export permitting practices.

Article 11(3) would make reporting on measures taken to fulfil Article 11 either mandatory or voluntary as part of national plans, while OP3 bis provides for no text. Article 11(4) would require the first meeting of the governing body to adopt indicators for hotspots/sectors/accumulation zones and multiple forms of guidance, including potentially Indigenous knowledge inclusion. OP4 Alt 1 would require only that the governing body adopt appropriate guidance for the implementation of Article 11. OP4 Alt2 would require the assessment of legacy plastic waste mitigation and remediation.

# AFRIPAC



## WCEL

WORLD COMMISSION ON ENVIRONMENTAL LAW  
COMMISSION MONDIALE DE DROIT DE L'ENVIRONNEMENT  
COMISION MUNDIAL DE DERECHO AMBIENTAL

OP4 bis would place the onus for addressing legacy plastic beyond national jurisdiction on developed countries.



## 12. Just transition

Analysis: There are three options for Article 12 in the RZD.

Option 1(1) is heavily bracketed and would make addressing “a fair, equitable and inclusive transition for affected communities” a mandatory element of the ILBI. It should be highlighted that this terminology is problematic because it does not fully align with the accepted legal and regulatory definitions of a just transition, potentially leading to uncertainty in application, review and compliance. The exact communities to be included under these terms have not been agreed to and are all bracketed in the RZD. OP1 Alt would provide that “each Party shall promote an equitable and inclusive transition for affected populations, with particular consideration for workers and [persons] [people] in vulnerable situations,” and sets out multiple possible methods for implementing these terms. Included on this list are the designation of a national body for implementing and overseeing their implementation, creating policies and rules to facilitate just transitions as a matter of law, incentivizing the development of new skills by potentially affected workers, promoting environmental standards in the waste management sector, integration of waste pickers and the informal sector into the formalized economy at the national level, and the use of EPR fees to facilitate the activities involved in transitioning affected workers. This list is intensively bracketed. It should be noted that there is an assumption that the informal sector would want to become part of the formal economy and would benefit from this, although this might not always be the case, especially for migrants with uncertain legal statuses and those who could not afford to pay taxes on their incomes.

Finally, Option 1(2) would require mandatory inclusion of Article 12 measures in national plans. OP2bis would make State Party support for the measures in Option 1(1) voluntary. OP2 ter would require the consideration of socio-economic factors for the location and operation of plastic waste management facilities. OP2 quater would provide that State Parties “shall, in accordance with its domestic procedures, provide opportunities for members of the public to provide input on government plastic waste management decisions or measures.”

Options 2 and 3 are essentially the same and provide less definition of specific areas of State Party activities to protect vulnerable communities. Option 3 has an additional provision, 3(3), which would make inclusion of just transition measures highly voluntary for national plans.

### 13. Transparency, tracking, monitoring and labelling

Analysis: There are two options for Article 13 in the RZD as well as the proposal for 13bis. Option 0 for is a proposal for no text in this article.

Option 1 is almost entirely bracketed throughout the entirety of its terms. Option 1(1) would require, either subject to national circumstances and capabilities, national plans, or generally, disclosure on plastics, chemicals and/or products to State Parties by importers and exporters. In one bracketed version, this would expressly subject to WTO regulations and efforts not to conflict with the terms of MEAs. Similar provisions are used for traceability of chemicals, plastics, polymers and/or products, and the establishment of marking and eco-labelling requirements. Option 1(2) contains multiple potential terms that would require State Parties to monitor, track and/or publish information on a variety of information relating to plastics, chemicals and/or products. OP2 bis would provide “Each Party shall take legal, administrative or policy measures to ensure mandatory disclosures from large and transnational businesses, including the financial sector on their activities, risks, opportunities, dependencies and impacts and financial flows from all sources related to plastic pollution, including along their supply, value chain and portfolios.”

Option 1(3) would make the use of a standardized format report on the implementation of Article 13 to the governing body either mandatory or voluntary. OP3 bis 1 would make the implementation of Article 13 dependent on national circumstances and capabilities that would be supported through the designated financial mechanism in the ILBI. OP 3 bis 2 would provide “Each Party shall develop and promote the databases needed to administer and implement the requirements of this article, and cooperate in the development and maintenance of any global database that may be established by the governing body\*.” OP3 bis 3 would require developing country Parties to be provided financial and technical resources to implement Article 13, based on the conduct of an assessment of these needs. OP 3 ter would require “The governing body\* shall conduct, commencing [X] years after entry into force and at least every [X] years thereafter, a review of the guidelines and any annexes developed under this article with a view to assessing the need for revised guidelines, or new or additional annex measures, to protect public health and the environment, or to otherwise improve the effectiveness of this instrument\*.”

In 13bis, there is a proposal that “Parties shall establish an effective mechanism in society to promote plastic circularity and prevent the leakage of plastics into environment through a whole-of-society approach by adopting integrated and holistic national policies.” Parties would be required to take measures to incorporate circularity throughout the plastics lifecycle and to prevent the leakage of plastic throughout its lifecycle. There would be a requirement to link these provisions to unspecified annexes in the ILBI and to reporting under national plans.

## Part III

### **1. Financial [mechanism [and resources]]**

Analysis: There is a main option for the financial mechanism in the RZD as well as three additional options, of which Option 0 is a no text provision.

In Option 1, Parties would be subject to either mandatory or voluntary commitments to provide “necessary resources” for national measures to implement the terms of the ILBI. The parameters of these resources are heavily bracketed and options include public and private financing as well as national, regional and international sources of funding. OP1 Alt would link national financing mechanisms and methods to the Addis Ababa Action Agenda and the polluter pays principle, as well as specific financing entities such as the World Bank, International Monetary Fund and the Global Environment Facility. OP1 Alt 2 is a no text provision.

Option 1 (2) is entirely bracketed. It would either create obligations for developed countries or countries on a position to do so, as well as multilateral organizations, bodies and funds and regional entities to provide funding for the implementation of the ILBI on either a mandatory or voluntary basis. This could also include technology transfer measures, with the option of ensuring that technology transfer is completed on mutually agreed upon terms. OP2 Alt would require developed countries to provide financial resources to developing country Parties for the implementation of the ILBI. It would allow for funding for multilateral organizations and other sources along with technology transfer. The financing terms would be subject to the requirement that they be adequate and predictable for developing countries.

Option 1 (3) would require Parties and other entities subject to (2) to “take into account... the specific needs and special circumstances of recipient Parties, although there are bracketed terms as to whether these would be developing countries, SIDS, or “downstream, underdeveloped Parties.” OP Alt 3 is a no text provision. OP Alt 3 bis would make developing country Parties subject to different standards and requirements when implementing the ILBI as a result of this status and would require that “The fact that sustainable economic and social development and eradication of poverty are the first and overriding priorities of the developing country Parties will be taken fully into account, giving due consideration to the need for the protection of human health and the environment.”

Option 1 (4) would create a specialized mechanism to support the implementation of the ILBI. The bulk of this text is heavily bracketed in terms of the functions and parameters of the Mechanism. OP 4 Alt would create a Mechanism with a more concise scope that would focus on providing assistance to developing countries and SIDS. Under OP4 bis,

all Parties to the ILBI would be expected to contribute to the Mechanism. OP4 ter would establish priorities for funding efforts.

Option 1 (5) would place the Mechanism under the guidance and accountability of the governing body. The exact nature of how this relationship would work is subject to a variety of bracketed options. OP5 Alt would authorize the governing body to create an Executive Committee for the Mechanism and sets out basic parameters for the Committee's operation, although much is lacking for them to be in conformity with the standard practices and elements of rules of procedure for MEA governing bodies. OP5 bis would require the governing body to determine the initial resource mobilization goal for the Mechanism during an undetermined meeting. OP5 ter would require the governing body to issue periodic reports and recommendations on the Mechanism. OP 5 quater would require a periodic review of the adequacy, effectiveness and accessibility of financing under the Mechanism by the governing body. This would include an assessment of technology transfer and technical assistance provided to developing country Parties in conjunction with the Mechanism. OP5 quinquies would require the governing body to make necessary arrangements to operationalize part II.1 at its first meeting.

Option 1(6) would provide that "The mechanism shall consist of newly established dedicated Fund(s)\*." OP6 Alt would create "a dedicated Multilateral Fund is hereby established to provide financial resources to eligible developing countries [and countries with economies in transition] in need to meet their commitments under the instrument." OP6 Alt2 provides that the Mechanism would include a dedicated Fund, with a number of bracketed options for elements, a set of timebound frameworks for the Fund, potential forms and source of funding, to be contributed by non-developing country Parties, and seeking to ensure that the Fund's activities do not duplicate those of other international funding mechanisms. OP6 Alt footnote 71 would require the governing body to decide on elements to be funded. OP bis would provide for a Fund that is linked to an existing financial arrangement for expediency. OP6 ter would require that Party contributions to the Fund be held separately from contributions generated by other sources. OP6 quater would provide for periodic replenishment of the Fund, with assessments based on CBDR.

Option 1(7) would require the governing body to create operational arrangements for the Fund, including lists of enabling activities and incremental funding, during its first meeting. The exact nature of these requirements is subject to several bracketed options. OP7 Alt – OP7 quinquies would provide for many governance, financing and oversight aspects of the Fund that are set out in the OP6 proposals.

Option 2 begins with (6) and would create a dedicated Fund as a standalone entity or as an entity within the GEF depending on the bracketed text elements. OP6 Alt would

create a dedicated Fund as a separate entity. OP2 Alt 2 would provide that the financing mechanism would include an already-existing financing entity, a Plastics Implementation Fund and a Remediation Fund. Option 2 (7) would require the governing body to conclude arrangements for the financial mechanism by its first meeting. OP7 bis would require the financial mechanism to use additionality and complementarity in its funding activities as well as sources of funding ranging from national to regional to international. OP7 ter would create basic transparency requirements for the financial mechanism. OP 7 quater would make private sector contributions as well as public contributions consistent with overall pathways to implement the ILBI. OP7 quinquies would require the financing mechanism to take into account environmental impacts, relative costs and the need to prioritize funding and capacity challenges into account.

Additionally, there are three Common Provisions for Options 1 and 2. In Common Provision (8), a periodic review of the funding mechanism's activities would be required to be conducted by the governing body, followed by guidance and recommendations to be made by the governing bodies for future activities and funding decisions.

Common Provision (9) would create a plastic pollution fee as either a mandatory or voluntary entity. This is envisioned as something that would be created and administered as part of national law. Additional bracketed text would make this a global plastic pollution fee that would be linked to the financing mechanism/Fund created in part III.1. OP9 Alt is a no text provision. OP9 bis would create a global plastic pollution fee and designate a list of activities and measures that could be funded through the fees collected. OP9 ter would provide "Each Party shall compel extended producer responsibility schemes to provide technology for processing and recovery of plastic products."

Common Provision (10) would either require or recommend that State Parties take measures, including financing in bracketed text, toward a pathway to ending plastic pollution and related environmental and human health risks. The ways in which financing would be used to accomplish this are heavily bracketed and could centre on decreasing assistance to problematic industries and sectors and increasing assistance to industries, sectors and activities that would advance the ILBI. OP10 Alt would allow Parties to focus financing mechanisms on the reduction of emissions and releases across the plastics lifecycle. OP10 Alt2 is a no text provision. OP10 bis would provide that the financing mechanism would exist without prejudice to future arrangements in other environmental contexts.

## 2. Capacity-building, technical assistance and technology transfer

**Analysis:** There are no specific options for this article in the RZD, although there are various sub-options throughout. In main text (1), the vast majority of the terms are bracketed, however it is clear that either State Parties or developed country Parties would be required to provide capacity building the plastic pollution and plastic waste context to developing countries, especially SIDS. There are also bracketed proposals for the private sector and others to have the option to do the same. Capacity building activities are the subject of multiple forms of definition, including those to be extended to various forms of vulnerable communities and waste pickers. OP 1 Alt is a no text option.

In main text (2), the governing body would be required to review the implementation of the capacity building elements of the ILBI, together with other capacity building activities in MEAs, potentially by its third meeting. OP2 Alt is a no text option. OP2 bis would specify that capacity building could take place within national parameters, regional parameters and subregional parameters as well as in the international context. It would seek to assist coordination between MEA regimes and the ILBI in terms of capacity building. Main text (3) would provide a comprehensive list of the types of activities subject to capacity building under the ILBI and would specify that either developed country Parties and others or Parties within their respective capabilities would facilitate capacity building. OP3 Alt is a no text option.

### **[3.] Technology [transfer]**

**Analysis:** The technology, or potentially technology transfer, article has no options in the RZD but several sub-options to the main text. Each of the sub-paragraphs is entirely bracketed.

Main text (1) is entirely bracketed and would provide for voluntary cooperation between developed country Parties and developing country Parties for technology transfer that would advance the terms of the ILBI. Main text (2) would require that technology transfer is facilitate on mutually agree terms, potentially including ESM, and would include and seek to foster innovation in the generation of new technologies for plastics, plastic waste, alternatives and substitutes. Main text (3) would require Parties to ensure freedom of trade and technology transfer under the ILBI, including equipment and related means of implementation. Main text (4) would require financial and other assistance be provided to developing country Parties to fully implement and benefit from technology transfer. OP3 bis would provide that “Each Party shall compel extended producer responsibility schemes to provide technology for processing and recovery of plastic products.” OP3 ter would make capacity building in relation to technology transfer voluntary for developed country Parties. OP3 quater would create a cooperation mechanism as part of the ILBI governing bodies and task it with providing a clearinghouse platform for Parties to share activities under the ILBI, to assist State Parties in identifying forms of capacity building and technology transfer that could be



beneficial, facilitating the matching of those with capacity and those requiring capacity, facilitating scientific, technical and technological cooperation, promoting relevant training for developing country Parties, monitoring and facilitating cooperation between regional and multilateral agreements relating to the ILBI, and other relevant functions.

Main text (5) would generally create a cooperation mechanism committee. Main text (6) and (7) contain proposals for some vague aspects of the committee's structure, although it should be noted that these provisions are not sufficient to create a functioning committee as a matter of international law and organizational practice.

## **Part IV**

### **1. National [Action] [Implementation] Plans**

Analysis: There are main text options and sub-options for this article in the RZD along with OP0 Alt, which is a no text provision.

In main text (1), which is almost entirely bracketed, national plans – or national action plans – would be either mandatory or voluntary for State Parties. There are multiple bracketed options for how these plans would be generated, including measures for involving stakeholders in the plan creation process. The main text would link the national plan elements to the terms of Annex G as well as many other potential methodologies and forms of information listed in brackets. As it stands in the main text, there is a non-exhaustive list of 29 topics to potentially be included in the national plans.

In OP1 Chapeau bis, the national plan “should” reflect national circumstances and capabilities and may include bracketed text relating to the inclusion of national legal and regulatory measures. OP1 Chapeau ter would allow State Parties to add elements to national plans in accordance with their national circumstances and capabilities. OP1 Alt would provide that “Each Party shall develop and implement a nationally determined action plan that best fits its national circumstances to meet the objective of this instrument\* while recognizing developed countries take the lead in action and the need to support developing country Parties for the effective implementation of the objective of the instrument.” OP1 Alt2 would require all State Parties to prepare a national action plan that meets the requirements set out in Annex G. OP1 Alt3 would require State Parties to submit national plans taking into account national circumstances and capabilities. It would also require the governing body to provide guidance in the format of national plans. OP1 Alt4 is a no text provision.

In main text (2), there are efforts to create a timeline for the submission of the first national plans, although there is a bracketed option which would make this applicable solely to developed country Parties. The timeframes suggested include 2 years from the

ILBI entry into force date, 5 years from that date, or X years from that date. OP2 Alt would set the deadline for the initial national plans as X years after the date of the ILBI enters into force. OP2 bis would make the national plan requirement voluntary for developing country Parties and does not contain a timeline.

In main text (3), there is a reiteration that the national plans would be guided by the criteria set out in (1) and bracketed text suggesting that targets and medium-term action should be included in national plan terms. OP3 Alt is a no text provision. OP3 bis would expand the scope of national plans to include “actions” such as strategies for mid-and long-term ILBI implementation. OP3 bis Alt would require that national plans be updated either every 5 or X years as relevant.

In main text (4), State Parties would be permitted to update their national plans as appropriate to reflect changes in national policies, practices and circumstances. These updates would be supported by guidance from the governing body. OP4 Alt is a no text provision. Main text (5) would allow for voluntary coordination of national plans between State Parties at the regional level. OP5 Alt is a no text option.

In main text (6), there would be a set cycle for State Parties – or developing country Parties in bracketed text – to review and update their national plans through new filings. The proposed text would require the governing body to issue a specific framework for accomplishing this, including the timelines. There is also a bracketed provision that would set a mandatory timeline of 5 years for developed country Parties and either X, 4, 5 or 10 years for developing country Parties. OP6 Alt would set the timeframe for all State Parties to review and file new national plans at five years. OP6 Alt2 is a no text option.

Main text (7) is a heavily bracketed proposal to link the terms of the national plans with the terms and targets of the national reports required under part IV.3. One bracketed provision would require that State Parties establish a plastic pollution baseline as part of these reporting mechanisms. OP7 Alt is a no text option. OP7 bis would require the Secretariat to create and maintain a public registry of national plans. OP7 bis Alt would require the Secretariat to make national plans publicly available. OP7 ter would require support to be provided to developing country Parties for the preparation of their national plans.

## 2. Implementation and compliance

Analysis: There are three options for this article in the RZD, although Option 2 simply requests that the entire article be bracketed.

Option 1(1) would create a form of review mechanism, and potentially a Committee, as a subsidiary of the governing body that would facilitate the review of ILBI implementation and compliance. OP1 Alt would provide skeletal elements of what the review mechanism might look like, including a requirement that the information it receives be held in confidence. Option 1(2) would provide that the mechanism is either facilitative, non-punitive, non-adversarial or expert based, depending on the bracketed provisions, and include national circumstances and capabilities in its considerations. There are also elements that would give special consideration to developing country Parties and SIDS. OP2 bis would require that the mechanism's work be non-duplicative and "shall neither function as an enforcement or dispute settlement mechanism, nor impose nor advise to impose penalties or sanctions, and shall respect national sovereignty." OP2 ter would require the mechanism to consider and provide flexibility based on the capacities of the State Parties.

Option 1(3) would require the governing body to create the modalities of work for the mechanism either at its first or second session and would also require that the mechanism report back to the governing body. OP3 Alt would allow the governing body to receive reports from the mechanism and issue recommendations provided they are "facilitative, non-intrusive, non-adversarial and non-punitive." OP3 Alt2 is a no text option.

Option 1(4) would provide the parameters of either individual or systematic compliance reviews to be conducted by the review mechanism and empower it to provide recommendations to the governing body. OP4 Alt is a no text option. OP4 bis attempts to provide requirements for review mechanism structure and representation, although it is almost entirely bracketed. Option 1(5) provides for an unspecified length of mechanism member terms and would allow for reelection to one additional consecutive term. It also would have the governing body elect the mechanism members. One of the bracketed text provisions would require there to be nine members of the mechanism. OP5 Alt is a no text option.

Option 1(6), which is entirely bracketed, would establish jurisdiction of the review mechanism as claims brought by Parties regarding their compliance, a written submission from another Party, the governing body, the Secretariat, based on national reports, and/or information available to the mechanism through national reports. It should be noted that these provisions would not alone national plans to be the basis of review mechanism jurisdiction. OP6 Alt would have the review mechanism's jurisdiction established by the governing body. OP6 Alt2 is a no text option.

Option 1(7) would require the review mechanism to adopt its own rules of procedure, which could be supplemented by the governing body. OP7 bis would require voting by

consensus in the review mechanism unless this proved impossible, in which case either a 2/3 or 3/4 majority would be used under bracketed provisions.

Option 3 contains a skeletal framework for the creation of a review mechanism that would only have jurisdiction over matters raised by Parties concerning their own compliance with the ILBI.

### 3. Reporting on progress [of implementation]

Analysis: There are three options for this article in the RZD, with Option 0 being a no text option.

Option 1(1) would require Parties to report to the governing body on implementation of measures under ILBI and their effectiveness according to a timeline that would be set by the governing body. A bracketed version of this would make this a requirement only for developed country Party. OP1 bis would make this a voluntary option for developing countries. Option 1(2) would require these reports to be filed with the Secretariat, which would then have an obligation to make them publicly available in one bracketed version of the text. Option 1(3) would require the inclusion of multiple bracketed options for statistics and data relating to conformity with and progress under the ILBI. OP3 Alt is a no text provision. Option 1(4) and 1(5) would require the governing body to adopt the modalities of national report filings, potentially at its first session, in order to reflect the need for information on implementation and progress across the full lifecycle of plastics. OP4 bis would be significantly weaker a legal commitment, “On an ad hoc basis, the governing body\* of the instrument\* should encourage reports on relevant subjects from chemicals-related conventions, conventions related to climate change, biodiversity, and the law of the sea as well as contributions from multilateral organizations, particularly the World Trade Organization (WTO), World Customs Organization (WCO), World Health Organization (WHO), and the International Labour Organization (ILO).” Option 1(6) would require either State Parties or the governing body to adopt mandatory guidelines for obtaining relevant information from the business and private sector, including financing and financial flow information. OP6 Alt is a no text option. OP6 bis would address Indigenous knowledge and ensure its usage in national reporting subject to free, prior and informed consent.

Option 2(1) is somewhat more confusingly written and implies that there would be general national reporting to the governing body as well as a specific national plan reporting requirement. OP1 Alt is a no text option. Option 2(2) would require that measures taken to comply with unspecified terms of the ILBI be included in the parameters of national reporting. Bracketed text would require the specific inclusion of information on waste pickers and stakeholders. OP2 Alt would require the governing body to decide on the format of national reports at its first meeting and encourage flexibility for developing country Parties. OP2 Alt2 is a no text option. Option 1(3) would require the governing body to set the timeline for reporting submissions, taking into account the reporting timelines of other MEA, during its first meeting. OP3 Alt would provide flexibility for developing country Parties based on their capacities and the desire to avoid creating new burdens. OP3 bis would require the Secretariat to make national reports publicly available. OP3 ter would require the provision of assistance to developing country Parties in implementing national reporting obligations.

#### 4. Periodic assessment and monitoring of the progress of implementation of the instrument\* [and effectiveness evaluation]

##### a. [Assessment and monitoring]

Analysis: There is only one option for this article in the RZD. Main text (1) would provide that Parties shall, within their capabilities, individually and/or in collaboration with other Parties or competent organizations, establish programmes to assess and monitor emissions and releases of plastic into the environment, including in the marine environment. This should include:” multiple forms of scientific and data collection relating to plastic pollution and the plastic lifecycle. Main text (2) would require information generated under the article to be included in the national plan and national reporting filings by State Parties. Finally, main text (3) would require the governing body to establish guidelines for implementation of the article during its first meeting.

##### b.] Effectiveness [Effectiveness evaluation] [Progress assessment]

Analysis: There is only one option for this article in the RZD although it does contain some sub-options.

In main text (1), which is heavily bracketed, either the governing body or a dedicated subsidiary body would be asked with performing effectiveness reviews for the ILBI along a timeline that could be either X, 4, 5, 6 or 8 years after the effective date of the ILBI and would be repeated every X, 4 or 5 years thereafter. Main text (2) would require the governing body to create modalities for information gathering and assessment at its first meeting. OP1 and OP2 Alt would require the governing body to create the Effectiveness Evaluation and Review Committee as a standing body. Main text (3) would require that the evaluation take into account national plans, national reports, and multiple forms of reporting and information gathering under the ILBI as well as from scientific entities, funders, stakeholders and other relevant constituencies. OP3 Alt would have the measures to be used decided by the governing body. Main text (4) would either require or allow the governing body to take into account the effectiveness assessment outcomes and make recommendations based on them.

##### [b][c.] Review of [hazardous] chemicals [and polymers] of concern, microplastics and problematic and avoidable products[, and non-plastic substitutes]

Analysis: There are two options for this article in the RZD, one of which is the no text Option 0. Option 1(1) would have the governing body, either as a time-bound requirement or at the request of Parties, conduct a periodic review of chemicals and polymers of concern used in plastic production, intentionally added microplastics and avoidable plastic products, as well as, potentially, non-plastic substitutes, in order to assess their impacts. Option 1(2) would have the review conducted be based on a report received from either an expert body or panel. Further, Option 1(3) would allow the

governing body to prioritize certain forms of chemicals and polymers, and Option 1(4) would require the governing body to use the information generated to determine whether Annexes A and/or B should be amended. It should be noted that this is an attempt to create an amendment procedure that would need to complement subsequent ILBI provisions on amendments.

## 5. International cooperation

Analysis: There is only one option for this article in the RZD. Overall, the proposed article would, depending on the bracketed language, make international cooperation a mandatory or voluntary element of the ILBI. Cooperation is envisioned as including North-South, South-South and triangular cooperation, including with scientific experts, international and regional organizations, and sectoral bodies. Identified methods of cooperation in main text (3) include development, diffusion, transfer and access to technology and innovation, research and exchange, data sharing, monitoring options, use of existing technologies, and other forms of cooperation deemed appropriate to advance the ILBI. OP3 Alt is a no text provision.

Main text (4) would allow the governing body to invite cooperation with other organizations and entities, such as the potential SPP, IPCC, IPBES and the Intergovernmental Oceanographic Committee to advance achievement of the ILBI. OP4 Alt is a no text option. Main text (5) would authorize either the Secretariat or the governing body to interact with these organizations and entities. OP5 Alt would require the Secretariat to act as the coordinating entity. OP5 Alt2 is a no text provision. OP5 bis would make such cooperation an optional activity of a dedicated coordination mechanism to be created as part of the ILBI.

## 6. Information exchange [Transparency]

Analysis: There is only one option for this article in the RZD. Under main text (1), State Parties would either be subject to mandatory or voluntary provisions relating to information exchanges and transparency, including information relating to best practices, research and technology, knowledge sharing, including Indigenous knowledge and environmental knowledge, studies and experiences relating to circularity and other relevant measures. OP1 bis would require that Indigenous knowledge sharing be done with free, prior and informed consent. Option (2) would create an online registry or clearing-house mechanism for the sharing of information pursuant to (1). Option (3) would require State Parties to designate a national focal point for information sharing under the ILBI, including for information relating to prior informed consent of importing States under part II. OP3 Alt is a no text option. Main text (4) would contain voluntary measures regarding State Parties learning from existing processes and initiatives, which (5) would ensure confidentiality in information sharing, including for Indigenous

knowledge. OP 5 bis would have the Secretariat serve as the clearing-house mechanism for information sharing between Parties as well as with relevant organizations.

### **7. Awareness-raising, education and research [and development]**

Analysis: There are three options for this article in the RZD.

Option 1 overall would either require or encourage State Parties to develop capacity building, educational programming and awareness-raising measures that could include a number of bracketed topics including environmental impacts of plastic pollution.

Option 2 is a more skeletal set of proposed methods of public information sharing on plastic pollution and the ILBI, including impacts on the environment and human health. Finally, Option 3 would merge part IV.6 and .7.

### **8. [Partner and] Stakeholder engagement**

Analysis: There is only one option for this article in the RZD. Under main text (1), a multi-stakeholder agenda would be created within the ILBI system and the governing body would be required to adopt an agenda at its first meeting. Main text (2) would provide the main functions of the agenda as including promoting the active and meaningful participation of all relevant stakeholders, providing a space for information sharing between stakeholders, promoting cooperation at all levels, efforts to promote financing, and knowledge sharing. OP2 Alt would not contain the list and instead would provide that the agenda would focus on sharing “knowledge, opportunities and highlight successes to replicate and scale sustainable solutions.” Main text (3) would require Parties to encourage the participation of stakeholders in the agenda. OP3 bis would provide “The multi-stakeholder action agenda shall include, inter alia, the informal recycling sector and waste pickers, local governments and all sectors of the plastic industry.”

### **8bis. Health aspects**

Analysis: This is an additional, voluntary article in the RZD under which Parties are encouraged to take a number of actions relating to human health and the impacts of plastic pollution. Of note is the fact that these provisions fail to address the role of environmental and biodiversity on human health and the connections with plastic pollution in this context.



## **Part V**

### **1. Governing Body**

Analysis: This article of the RZD would designate a Conference of the Parties as the governing body for the ILBI. It provides basic, standard treaty language regarding the creation and functioning of the governing body. There are no alternatives or options contained in the RZD.

### **2. Subsidiary Bodies – no proposed text**

### **3. Secretariat**

Analysis: This article of the RZD would establish a Secretariat for the ILBI and vest it with basic, standard powers that are used in treaty language. While there are no alternatives or options contained in the RZD, it should be noted that (3) on the Executive Director of UNEP serving as the interim Secretariat until the first Conference of the Parties meeting is bracketed.

## **Part VI – Final provisions, no text provided**