

Report from the First Intergovernmental Negotiating Committee (INC-1)

Following a crescendo of global concern over the negative environmental impacts of the life-cycle of plastic production, consumption and disposal, the United Nations General Assembly passed Resolution 5/14 on March 2, 2022, entitled “End plastic pollution: towards an international legally binding instrument.” The resolution called for an Intergovernmental Negotiating Committee (INC) to start its work toward this goal before the end of 2022 and to end its work by 2024. The first session of the INC process, INC-1, was held from November 28 to December 2, 2022, in Punta del Este, Uruguay. It was attended by more than 2,300 delegates representing countries and other stakeholders. The meeting was preceded by a multi-stakeholders forum, which was attended by about 1,000 participants as required by the resolution. BAN's Jim Puckett was among the multitude in attendance and provides the following reflections on what was revealed and what lies in store. For other excellent summaries and descriptions of INC-1, please see:

[Interview with CIEL's Andres del Castillo on UN Dispatch Earth Negotiations Bulletin Report](#)

Lowest Common Denominator Politics

While there is an enormous expectation that a new treaty will surely provide a global remedy to plastic pollution, as is always the case with negotiations for new international law, including multilateral environmental agreements (MEAs), the cause for rigorous environmental reform is at a serious disadvantage from the outset. The tight limitations of a consensus of nations forge new international law. This means that a handful of countries (or even one) can scuttle all ambition to change the status quo for the improvement the global environment.



INC-1 Begins

Against that legal albatross lies only the political and moral force of global goodwill as a community of nations strive to solve an identified crisis. Often the actionable side of this moral pressure is the force of shame -- a mantle certain nations might wear should they be seen as operating in bad faith to prevent the majority will for real progress. Legality, however, trumps shame, and shamelessness has a new currency in today's geopolitical landscape. For those countries where shame still has some meaning to their public or their international reputation and yet true high ambition remains in disfavor due to powerful economic forces, the political game becomes one of creating the illusion of supporting something meaningful while, in fact, allowing nothing to seriously change.

It is against that backdrop that INC-1 was important. Not so much as a place where countries were able to embark on a strategy to succeed (they did not), but rather as the venue where various actors began to reveal their intentions to diminish substantive change while the rest of the world revealed their best prescriptions to heal an aching planet. Both camps displayed these intentions at INC-1, better defining both the opportunity and the challenge that the global community must embrace for all of us.

United States Promises Low Ambition

On the very first day of the meeting, the United States, despite the Biden Administration's strong actions and statements in support of combatting climate change, advocating for a clean environment, and promoting environmental justice, revealed themselves as being in the camp of very low ambition. In the U.S. Stakeholders meeting held on the morning of the first day, the U.S. representative, Ms. Monica Medina, Assistant Secretary of the Bureau of Oceans and International Environmental and Scientific Affairs (OES) of the U.S. Department of State, made it very clear that what they were seeking was in her own words, "not a treaty," but rather a "legally binding agreement" by nations to proceed in a "bottom up" approach with countries voluntarily committing to a national plan of their choosing, which they would be "bound" to adhere to. This is the model the U.S. projected and was adopted by the Paris Climate Accords – a plan which has proven itself to be unenforceable and subject to the whims of the changing political tides of each country. It is in fact the very opposite of the notion of international law – where countries agree to collectively give up some national sovereignty for the greater global good.



BFFP member group photo.

This dismal vision proffered by the U.S. was met with palpable disappointment, and, at times, anger by the U.S. stakeholders in the room, many of which were front-line environmental justice activists representing those living around and dealing with the pollution and damage from petrochemical plants, fracking wells, incinerators, and landfills proliferating across the U.S. In an effort to defend the U.S. position, Ms. Medina lost her composure, becoming defensive and combative, resorting at the end to simplistic non-arguments, such as "not all plastic is bad" and "you are wearing plastic glasses right now."



BAN's Jim Puckett with Latin American NGOs. INC-1.

As the United States planted its flag of retreat early on, it was feared that so too would others of similarly placed industrialized countries, including those in the so-called JUSCANZ group (a bloc originally made up of Japan, United States, South Korea, Canada, Australia, and New Zealand but now including some others such as Switzerland and Norway). Through countless past global chemicals and waste negotiations, the JUSCANZ group has stood stubbornly as a pro-business, anti-environment bulwark, countered at times by the E.U., China, and developing countries. Though in 2019, at the Basel Convention, Japan joined Norway, the E.U., and China in calling for new controls on plastic waste trade. It was a golden moment when for the first time in memory that JUSCANZ solidity fractured in favor of the environment.

At the INC process, hope remains that several of the JUSCANZ group, including Switzerland, Norway, Canada, and New Zealand, may well demonstrate a willingness to break away from the influential U.S., as many of these are currently listed as being part of the officially known High Ambition Coalition (HAC) of 46 countries strongly supporting a robust treaty. At the meeting, it was perhaps revealing when the JUSCANZ's turn came to make a regional position speech, they took the floor to say nothing about plastic waste and only reserved their remarks to condemn Russia's invasion of Ukraine. Was this a signal that the JUSCANZ could not come to a common position on anything having to do with plastic? The E.U. had no such trouble. It will be important

to keep an eye on the solidity of the JUSCANZ going forward and where the U.S. will find allies should JUSCANZ no longer serve unfortunate pro-business bias.

Rules of Procedure: How are Decisions Made and Who Gets to Make Them?

Apart from the "Coalition of Low Ambition," as some have called the position staked out by the U.S., and perhaps the JUSCANZ group, the most frightening flag-planting was that revealed by the continuing debate regarding the Rules of Procedure.

The matter of Rules of Procedure was meant to have been taken care of at the Open-Ended Working Group meeting earlier in the year in Dakar, Senegal. However, at that meeting, the U.S., with the support of a few others, did not wish to allow the European Union to continue the traditionally supported practice of allowing them to vote as a block of 27 member states. This resulted in the Rules of Procedure's voting rules number 37 remaining bracketed (i.e., unresolved) coming into the meeting in Uruguay. Without Rule 37 being decided, however, Rule 38 on the number of votes needed to make a decision becomes ambiguous. Thus, the voting procedure for the INC process itself and the final treaty/agreement stands as dysfunctional.

This fact would not be so alarming if, in fact, the real debate was simply about how to count the votes of a regional economic integration organization such as the E.U. Instead, it became clear during the meeting that the E.U. and U.S. found agreement on how to go forward on that matter. However, this simmering debate carried over from Dakar allowed certain actors to use the moment of uncertainty to attack the efficacy of the treaty itself by demanding that all decisions be made only by consensus -- meaning that any one country, even after the initial negotiated text is agreed, can block all progress towards a world free of plastic pollution and life-cycle impacts.

Countries including Russia, India, and Saudi Arabia (followed by fossil-fuel exporting country allies Bahrain, Egypt, and Qatar) began to press unabashedly for a treaty based on consensus decision-making, instead of the default procedure of consensus as first choice but followed by 2/3 majority voting if consensus cannot be reached. China also suddenly indicated a preference for consensus. These countries thus revealed themselves as being possibly willing to scuttle the instrument's effectiveness by attacking a majority rule voting procedure. This vital matter was not resolved at INC-1. The chair therefore called for informal consultations to take place in the interim period and the issue has now been placed again on the agenda of INC-2.

Due to the consensus nature of negotiating international law, this tactic demanding consensus now and forever is unfortunately likely to succeed as was the case also with the most recent Multilateral Environmental Agreement, the Minamata Convention on Mercury, where similar bracketed text in the Rules of Procedure remain today long after the adoption of the treaty itself. Unless the ice is broken, the INC process itself and the instrument thereafter will only be able to adopt decisions by consensus, leaving any country able to block progress to improve the global environment.

The Geopolitical Blocs Behind Big Plastic

Even should the voting rules be resolved favorably at the end of the day to allow majority rule, it remains true that our high ambitions to use international law to aggressively turn back the tide of plastic wastes are fatally vulnerable to Big Plastic and the two blocs of countries yoked to the interests, of this, the most powerful industry on earth. The first bloc are those economies driven by

the profits directly derived from the primary state of its production -- fossil-fuel-dominated economies. The second bloc of countries are those heavily lobbied by the industrial profit interests of plastic in its secondary production, characterized by the petrochemical and packaging industries, including the United States, others of the JUSCANZ group, India, China and perhaps others. Unfortunately, these powerful countries hold the key cards to maintain the status quo for the foreseeable future.

Where Does Hope Lie?

But before one succumbs to despair, it is important to realize that the first stages of the formation of international law, however tilted to the disadvantage of the earth, can still be a means to an eventual positive end rather than only becoming the end in itself. The very process of discussing what is needed to solve a crisis is a necessary dialogue, a vital step, even when the formulation of the law to do it may never succeed as being the eventual final solution. Such a discussion focuses full attention on the crisis itself, which is a real problem that is not going to go away, and thus begins to further make the case for creative solutions, more and more pressing. Many of these solutions can be adopted at national and regional levels and can succeed without a global treaty, or they can eventually remake an initial low-ambition treaty to become a high-ambition one later.

In the initial years of the Basel Convention, the "high ambition" was to adopt a full ban in the export of hazardous wastes moving from developed to developing countries. This failed to happen due to the low ambition of the U.S. and the JUSCANZ group that killed the initial adoption of the ban and passed a minimalist Convention. This led to bans being adopted at national and regional levels such as in the Waigani Treaty (South Pacific) and the Bamako Convention (African continent). When these regions adopted real solutions, the countries became locked in, providing greater and greater impetus for the formation of a global consensus for reform. At Basel, the ban eventually prevailed and has now, many years later, entered into force. Further, more and more kinds of wastes are increasingly being subjected to greater waste trade controls (e.g. non-hazardous e-waste, mixed and dirty plastics). It took more time, but the momentum to solve real problems can only grow as long as people care about pressing for real solutions. The crisis of plastic and the people dedicated to solving it are not going away anytime soon. Victory is a matter of time. Our job is to make that time come sooner than later.

The next Intergovernmental Negotiating Committee (INC-2) will take place in Paris, France, from May 22, 2023.

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