The International Law Association acknowledges that the Indigenous peoples are the original occupiers, traditional stewards and inherent protectors of the sacred lands and waters called Canada today, and congratulates the government of Canada, First Nations, Inuit, and Métis peoples for hosting a productive UNEP Intergovernmental Negotiating Committee on Plastic Pollution (INC-4) in Ottawa.

The International Law Association of Canada (ILA-Canada) is the Canadian branch of the International Law Association based in London, England and founded in Brussels, Belgium in 1873. With over 4500 members world-wide our motto is ‘Peace and Justice through Law’ and our collective objective is to promote "the study, clarification and development of international law, both public and private, and the furtherance of international understanding and respect for international law." Comprised of legal scholars, legal practitioners, students, and policy makers, the ILA global network and its regional and national branches contribute to the work of ILA research Committees and Study groups on important topics of international law. They also hold biennial conferences, the next one being in Athens, Greece, this June, and organize panels and workshops on a wide range of international law topics.

International law tends to lag behind social, economic, and environmental needs and aspirations, allowing environmental degradation and social injustices to fester until the international community decides to take collective action through new norm setting. Charlesworth and Larking suggest that to understand how international law works, it is useful to look at it from a perverse perspective. Instead of focusing on what environmental and human rights protections international law provides, they write, “We could begin from the opposite end and examine what international law has to offer to the person who wants to pollute the environment or violate human rights.”

Try gathering plastic debris on a beach or roadside. The winds and the waves keep bringing more garbage to your feet. Collection is a Sisyphean task. Once collected you still must wonder, where does this garbage go, will it end up back in the sea or drifting across the landscape? Wherever you live on this planet you are surrounded by plastic garbage. Entangled with plastic waste, living in the Plastico-Anthropocene, we see that international law currently offers full protection to those who produce plastic regardless of environmental and human rights impacts.

International law has allowed plastic producers to flourish without paying for the environmental and human rights costs of their products, treating these as externalities born by all of us. Collectively we have become a consume and discard global society of garbage makers where burdens are inequitably spread especially to those least responsible and most vulnerable. This is what this treaty making process aims to address.

The research, discussion, and negotiation at the UNEP INC-4, demonstrates the complexity of the problem of plastic pollution as well as the goodwill of many rights holders, stakeholders and nations to establish new norms to govern the full lifecycle of plastics better to protect human health, biodiversity and the environment from the harms of plastic pollution.

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A webinar on Plastic Pollution and International Law was hosted by ILA Canada in the margins of INC-4 to disseminate information about the important issues at stake. The panel of experts on international environmental, economic and human rights law discussed the need to develop a global treaty to combat plastic pollution.

The panel began with a reflection about how the issue of plastic pollution affected each of the speakers, in terms of their personal and professional lives, including:

- work with clients in the petroleum and gas extraction and refining and packaged consumer product sectors,
- work supporting technology solutions for remediation of oceanic plastic pollution,
- work with Indigenous peoples or other vulnerable, racialized communities living in environmental sacrifice zones blighted by plastic and chemical pollution,
- work in support of waste pickers and workers in the plastics value chain, and
- work as artists, academics and for environmental nongovernmental organizations.

It is clear all humanity finds itself implicated and entangled with plastic pollution. We are all part of the problem and the solution.

Panellists reviewed existing gaps at both the national and international level in plastic pollution and precursor chemical and plastic polymer regulation and underlined the need for a treaty to set common standards. They considered lessons from other multilateral environmental treaties and international business and human rights processes.

Panellists discussed the wide range of scientific, academic, corporate, consumer, and industrial stakeholders and civil society, Indigenous peoples, and local community rights holders in relation to plastic pollution and the treaty making process. They considered the importance of an inclusive negotiation process that provides ample opportunities for representation by Indigenous peoples and other rights holders, such a youth and women’s group, waste pickers and workers in the plastic value chain, and takes full cognizance of available science and traditional knowledge relevant to addressing plastic pollution.

Panellists discussed the long list of core principles under consideration for the treaty. They particularly focused on the importance of prevention and remediation of plastic pollution; common but differentiated responsibilities and respective capabilities; environmental equity and justice; due diligence; circular economy; precaution; polluter pay; extended producer responsibility (EPR); the human right to a healthy environment; just transition; sustainable development; and ending subsidies for the petrochemical and plastic industry. They underlined the importance of collective action to clean up and prevent marine plastic pollution beyond national jurisdictions.

There was a discussion about the business and human rights dimensions involved in drafting a binding plastic pollution treaty. This focused on regulating hazardous plastic polymers according to global standards, substantially reducing production of nonrecyclable plastics, incentivizing positive change by creating a level playing field for actors in the plastics industry, finding the right balance between public disclosure and protecting proprietary information, preventing greenwashing by private and public sector actors.

The panellists discussed possible implementation mechanisms to address the complex challenge of ending global plastic pollution. They considered the value of having mechanisms to facilitate remediation, funding, technology transfer, scientific and technical
research, oversight, stocktaking and raising ambition, just transition, and individual complaints.

Negotiating a legally binding international treaty with so many complex issues and interested parties is challenging. The panel debated whether it is better to settle for a weaker consensus agreement which may more readily achieve widespread adherence or seek a high ambition treaty which sets rigorous standards but may lack the support of important states Parties. As the week progresses, the International Law Association is encouraged to see negotiators working tirelessly to achieve a meaningful, inclusive agreement that leaves no one behind. The International Law Association will continue to follow this matter with interest and draw on its global network of international law experts to contribute to development and implementation of an effective treaty to end plastic pollution.

A recording of this panel is available here.
Panellists: Irina Buga (De Brauw Blackstone Westbroek); Oonagh Fitzgerald (HRREC); Melissa Gorrie (Ecojustice); Alexandra Harrington (CISDL), Sabaa Khann (DSF); Sara Seck (Dalhousie U); Jon Solorzano (Vinson & Elkins).

Submitted April 29 2024 by Dr. Oonagh E. Fitzgerald, President of the International Law Association of Canada, as delegate for the International Law Association
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