

Running From Basel: Post-Treaty Revisionism Threatens Landmark Treaty

The Basel Convention was originally intended as a beacon of preventative policy and legal restraint against transboundary movements of hazardous waste. It was born out of a notion that economically motivated waste exports, particularly from developed to developing countries, are both an affront to human rights and the environment. Above all, the Convention is a *legal* instrument, a part of international law, with a clear aim to promote the minimization of transboundary movement of hazardous wastes and to minimize hazardous waste generation.

Recently, however, we have witnessed a frightening “turning away” from the original intent of the Basel Convention by powerful industrial interests and an effort to twist the Convention into becoming a facilitator of transboundary movements (TBM) of waste as long as recycling is claimed as environmentally sound (ESM). However this *is not* what the Basel Convention envisaged, nor is it embodied in the Convention’s text.

Running from Human Rights Motivation

One of the most disturbing trends among some delegates to the Convention is the latter-day ignorance of its human rights birthright. The Basel Convention was born out of an outrage by developing countries that their soil was being used as a dumping ground for hazardous wastes generated far from their shores, in rich, developed countries – the toxic effluent of the affluent. The outrage sprang as much from the violation of human rights this dumping represented, as from its environmental impacts.

Later, the human rights concept of preventing the disproportionate dumping of the world’s pollution on peoples simply because of their economic or racial status, was articulated as the principle of *Environmental Justice*, and was embraced as policy by the United States government. The US claims to uphold this principle within their own borders, but to this day they conveniently ignore the principle with respect to transboundary movements of hazardous wastes that exits their borders. They likewise ignore this principle with respect to positions taken within the Basel Convention.

Indeed ignorance of the Basel Convention’s dual role in both human rights and the environmental agendas is all too often enforced by the compartmentalized nature of our institutions that artificially separate environment from social concerns. This is demonstrated by the fact there has never been a coming together of the work of the “*Special Rapporteur of the Commission on Human Rights on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights*” and the Basel Convention. The fact that two UN efforts to stem the tide of toxic waste trafficking have never really worked together is unfortunate. Likewise, pretending that the Basel Convention was not designed as a conscious instrument to prevent human rights abuses of developing country communities is dangerous revisionism.

Running from Legal Obligations

Likewise, of late we see a cloak of revisionism being consciously promoted by key governments, including the **United States, Australia, Canada, Japan, and Switzerland**, and powerful industry lobbies (e.g. **electronics and shipping industries**), that pretend a new Basel Convention is what exists– one that in fact seems to have *no* legal obligations. This *revisionist* Basel Convention:

- ***Ignores the obligation on all countries to minimize the generation of hazardous waste (Article 4,2,a)***
- ***Ignores the obligation on all countries to minimize transboundary movements of hazardous wastes, (Article 4,2,d)***
- ***Ignores the obligation on all countries for national self-sufficiency in waste management (Article 4,2,b)***

Instead, the notion that as long as ESM is employed then waste trade is acceptable is advanced. While ESM is certainly *part* of the Basel Convention *for wastes that cannot be prevented from being generated, or exported*, it is not merely a concept for technical capacity alone, nor is it a concept to be used to justify TBM. Yet the revisionist notion of ESM implies that ESM only concerns technical capacity, and does not embody the fundamental Basel policies at its core. The basic Basel legal obligations that waste generation be minimized, and that countries deal with their wastes at source through national self-sufficiency instead of externalizing the costs of

pollution via export to poorer countries are conveniently being set aside.

Instead, we are hearing on the floor of Basel meetings, in the Basel work programme, in the new industry partnerships, that the Basel Convention's legal obligations are too contentious and "impractical". Seemingly a "practical" approach is one that ignores the international law that we as a Convention have created. Apparently "practical solutions" simply means turning back the clock to pre-Basel notions of providing end-of-pipe pollution controls for developing countries while continuing exports of wastes to them. This appears to be the hidden definition of the new revisionist ESM – and a far cry from what the Convention's framers sought.

Running From Waste Definitions

When a government or NGO has the audacity to remind certain powerful industries that the Basel Convention in fact *is* a legal instrument with legal obligations to which violations are criminal, we have seen a mass attempt at exodus from the *scope* of the Basel Convention by trying to escape the definitions of waste and hazardous waste.

Nowhere has this been more obvious and alarming than in the **shipping industry's** efforts to avoid the Basel Convention for the management of end-of-life ships. Despite clear legal interpretations by a simple reading of the Basel Convention that ships can be a waste and a ship at the same time, the **International Chamber of Shipping**, and countries all too willing to do their bidding, such as **Japan**, and the **United States**, have maintained against all legal certainty that they cannot be. Even more insidiously, they have run to the **International Maritime Organization (IMO)** for cover asking that organization to undermine another UN's competence to prevent the Basel Convention from fulfilling its mandate to manage end-of-life toxic ships.

They are doing this *not* because of territorialism or to be legally correct, but because ultimately they want business-as-usual to prevail. They want to maintain the immense profits attained by ignoring the Basel mandate to minimize the transboundary movement of waste ships. They want to be able to continue to process them in impoverished countries leaving the toxic residues in the lungs and on the soil of developing country communities. Such an approach not only is an affront to global environmental justice but also allows the continued use of toxic materials on board ships, with little incentive to avoid the future use of such hazardous substances.

Likewise, we are seeing the **electronics industry** and some of the more unscrupulous of *its* disposal chain industries pushing hard to exempt hazardous electronic waste such as lead-tin based soldered circuit boards, lead and barium contaminated CRT cullet, lead and beryllium contaminated mobile phones, and other hazardous electronic components that from the hazardous waste lists of Basel.

We have recently discovered that the **United Kingdom** for example is failing to properly prohibit the export of electronic circuit boards from its territory to **Singapore** and perhaps other non-OECD countries due to dubious definitional interpretations they have adopted. This is particularly disturbing coming from the EU, as the recently adopted "Waste from Electronic and Electrical Equipment" (WEEE) directive is going to generate many thousands of more tonnes per year of collected hazardous WEEE in Europe. Thus, pressures to export such toxic WEEE will increase.

Industry Partnerships: A Means to Reinvent and Circumvent the Basel Convention?

Recently BAN has become concerned that the industry partnerships launched by the Basel Convention since COP6, by their very nature, create an environment to exercise programs that circumvent or avoid the legal obligations of the Basel Convention. This concern has been heightened when BAN's efforts to add legal implications of mobile phones as hazardous waste to the agenda of the working group on transboundary movement and collection of mobile phones was initially strongly and pointedly rebuffed by partnership leadership as being irrelevant issues for the partnership! This head-in-sand approach to implications of the Basel Convention's legal obligations by the Basel Convention itself is frightening.

Even more recently we have noted that due to the overwhelming participation by industry in the partnership programs, as opposed to Parties or NGOs that might understand the Basel Convention as a legal instrument, the emphasis has been on inappropriate deregulation – for example pretending that mobile phones are not a hazardous waste.

The Basel Convention is a landmark of international law that addresses both human rights and environment in a manner that remains intensely relevant in an age of increased globalization and pressures to use market forces to exploit weaker communities. It is vital therefore that the custodians of the Basel Convention – its Parties, refuse to allow the Basel Convention and its original intent to be undermined or reinvented by special interests that desire to turn back the clock but rather continue to more and more vigorously prevent wastes from being created at source instead of being dumped in global hiding places.

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