

Basel Action Network Report and Press Statements on the Results of the Eighth Conference of the Parties of the Basel Convention

2 December 2006, Nairobi



Below BAN reports on the issues most important to its mission that were on the agenda of the Eighth Conference of Parties to the Basel Convention. Photos provided courtesy of Environmental News Bulletin.

General Ban Statement: “All in all the meeting was a tremendous success as it seemed that in the wake of the Cote d’Ivoire tragedy countries were more resolved than ever to reinvigorate the Convention and the Basel Ban Amendment and ensure that they are ratified and implemented rigorously,” said Jim Puckett of the Basel Action Network (BAN). “At the same time, those countries that were seeking to unravel the Basel Ban took a beating. Finally, the Convention fully recognized what NGOs had been saying for a long time about the seriousness of the e-Waste crisis and vowed to take actions for green design of electronics and for closing off global e-waste trafficking.”

Entry into Force of the Basel Ban Amendment: It became very clear at this meeting that the tragedy in the Ivory Coast reawakened the world to the need for the Basel Ban prohibiting exports of hazardous wastes from developed to developing countries. The group of countries known to be adamantly opposed to the ban was revealed to be shrinking with only India, USA, Japan, Canada, Australia and New Zealand opposed. Interestingly, former opponent South Korea dropped its opposition to the ban thus breaking ranks for the first time in memory with the JUSCANZ group. For this Korea must be congratulated.



Kevin Stairs of Greenpeace.

Japan isolated themselves as being the most strident nation demanding that exports of toxic waste to developing countries be made legal. Japan claimed that because their island nation lacked resources they need to exist in a "recycling society" and therefore need to export hazardous wastes to their neighbors. They stated to the floor of the meeting that they "totally opposed the ban."

Likewise, the non-Party USA's Mr. David Brown stated that the Ban conflicts with WTO obligations, and may pre-empt Article 11 (ability to join in bilateral and multilateral waste trade agreements). He publicly denounced BAN's arguments for early interpretation of Article 17 (see below).

Meanwhile the proponents of the ban at the meeting began amassing a large majority including the European Union, the African group, Arab Group, Group of Latin and American countries, Norway, Switzerland and numerous Eastern European and China and other Asian countries. It became clear that were the issue to come to a vote, the ban would pass overwhelmingly. Indeed for the first time since passage of the Ban Amendment, the four letter word "vote" was mentioned as a viable option.

BAN Statement: *"After 11 years since adoption, and in the context of the most brazen and deadly dumping incident in Abidjan, and the tsunami of electronic waste flooding the developing world, the Basel Ban is seen as being more vital and than ever before,"* said Jim Puckett, coordinator of the Basel Action Network.

Resolving the Ambiguity of Paragraph 5 of Article 17:

The issue of the Ban Amendment was inextricably linked to the question of the ambiguous text of Article 11



Mr. David Brown of USA

regarding the number of countries and which country's ratifications will count toward entry into force. There are really two interpretations. One which would say that any

62 ratifications are enough and one which claims that the ratifications can only be drawn from those countries that we actually there in 1995 at the time of adoption.

Currently the ban has garnered 63 ratifications.



Jim Puckett, Coordinator of Basel Action Network

The overwhelming majority of countries pressed for an interpretation for the most immediate entry into force. Japan, Canada, New Zealand and Australia on the other hand, first tried to argue that the default position of the Office of Legal Affairs of the United Nations which would require 3/4th of the number of Parties currently (168) equaling a need for 126 ratifications was the only legal option – an option that is likely to take another 20 years. Then later they were forced to admit that the Parties are allowed to decide and then they changed tactics to argue for a discussion that would not pre-suppose any outcome. The two factions were asked by the Chair of the Committee of the Whole to go off and hammer out a compromise.

After many hours, a compromise agreement was reached with much preambulatory language pressing for early entry into force but the operative paragraphs calling for an early interpretation but remaining neutral on which interpretation was to be preferred, with a consideration at the next Conference of Parties. Following the adoption of the agreement the European Union took the floor on behalf of the ban coalition to state that the issue in their view must be resolved by COP9.

In the view of BAN, the opposition will no doubt try to stall the entry into force as long as possible and in the meantime, countries like Japan will begin trying to buy off developing countries, much as they succeeded in doing for the last several years to prevent a ban on international whaling. Vigilance to prevent this type of geo-political bribery will be necessary.

BAN Statement: *“We needed the ban yesterday and years ago,” said Basel Action Network coordinator Jim Puckett. It is irrelevant which 62 countries ratify and I think the majority of Parties recognized that the ban is long overdue. Every day it remains out of force, legal hazardous waste traffic continues to take its toll with long-term risk of death and disease.”*

Electronic Waste: The Expanded Bureau chose the theme of “innovative solutions to electronic waste” and held a High-Level Global Forum on E-waste for a full day of the meeting. The forum was presided over by UNEP Executive Director Achim Steiner who had praised and cited the work of Basel Action Network in his opening speech on the meeting’s first day. Likewise Nobel Laureate Ms. Wangari Maathai of the Greenbelt Movement in Kenya cited and praised the work of Greenpeace, Basel Action Network and the Silicon Valley Toxics Coalition and other NGOs for bringing the issue to the fore globally.



The goal and emphasis of the high-level forum was to raise awareness on e-waste not to mention the profile and relevance of the Basel Convention, which would lead to a Convention declaration (The Nairobi Declaration) and decision for action. Many were surprised that the Secretariat excluded the NGO that had brought the issue to the forefront of the global and Basel agendas. The only NGO participating in the panel was the non-advocacy International Institute for Sustainable Development (IISD). Meanwhile the forum included numerous industry representatives including Nokia, Hewlett

Packard and the Dowa smelter in Japan. Among the highlights of the Nairobi Declaration the countries recognized:

- *"The importance of minimizing the generation of e-waste and reducing transboundary movements of such wastes."*
- *"The importance of encouraging green design and extended producer responsibility in the life cycle of electronic and electrical products."*
- *"The urgent need to strengthen enforcement and take further actions to prevent and combat illegal traffic in e-waste."*

And the countries declared:

- *"We shall promote clean technology and green design for e-products, including the phase-out of hazardous substances used in production and included in components and shall promote product stewardship and extended producer responsibilities in the life-cycle management of electronic and electrical products."*
- *"That illegal traffic in e-waste is a serious concern that requires urgent action in the context of the implementation of the Basel Convention."*
- *"That we shall prevent and combat illegal traffic of e-wastes,"*



UNEP Executive Secretary Mr. Achim Steiner

The E-waste Decision was lacking in ambition but nevertheless provides a starting point. Among its highlights:

- Mandates the Open-Ended Working Group (OEWG) *"to develop a work plan on the environmentally sound management (ESM) of e-waste focusing on the needs of developing countries..."* which would include: development of technical guidelines for ESM of e-waste
- *"Collaboration in the prevention and combating of illegal traffic of e-waste...."*
- *"Encourages Parties to develop a life-cycle approach and promote clean technology and green design for electronic and electrical products, including the phase-out of hazardous substances in production and included in components,"*

In a surprising negative statement after adoption, Mr. David Brown took the floor on behalf of the United States to say that they regretted that the declaration *"does not build confidence in global markets,"* and the *call for a phase-out as opposed to a reduction of toxic substances was unrealistic.* They further asserted that the Basel Convention is not the appropriate place for design issues and objected to this activity in the Basel Convention *"in the strongest terms"*. This is rather a bizarre assertion for a Convention with an obligation to minimize the generation of hazardous waste.

Other countries voiced concern that the final operative paragraphs in the declaration and decision had lost some of their forcefulness but were in general happy with the outcome.

BAN Statement: *"It was gratifying to see that despite the complaints of the United States and Japan, the vast majority of the world understood the fundamental need to reduce toxics use in electronics to zero through producer responsibility. At the same time there was a strong call to prevent the export of toxic e-waste which not only victimizes the poor but works against the goals of upstream responsibility to deliver us from the evil of toxic inputs and green design,"* said Jim Puckett, coordinator of the Basel Action Network.

Ship Dismantling and Abandoned Ships: On somewhat a disappointing note, the working group charged with developing the decision on ship dismantling once again suffered from the "infection" of shipping industry interests fronted by the governments of the United States, Japan, Malta, Greece, Norway, and Argentina. The Greek delegate was actually a ship owner! This group as they have done for the last three years served as agents of the IMO's toothless approach with a strong will to deny the Basel Convention any ability to conduct its own essential work on this subject. This may prove disastrous due to the fact that the IMO Convention in any case will not likely be in force until 2012 -2015 and the pending forced phase-out of over 2000 single hulled tankers is now underway with an expected peak in 2010. The IMO contingent succeeded in gutting most of the pro-active work of the Basel Convention.



Ms. Ingvild Jenssen, Coordinator of the NGO Platform on Shipbreaking

The faction of shipbreaking states were revealed as not being so happy with the IMO Convention, and tended to support the idea of more producer responsibility while at the same time calling for minimal obligations being placed on them. Indeed, one of the most shocking revelations of the entire conference was the statement by India in the plenary saying that they did not support the development of an IMO Convention. The IMO representative expressed dismay over this saying "Either I don't take

seriously what he is saying, or, if I do take it seriously then I am wasting my time. Indeed if India is not part of that Convention then it is rather a meaningless endeavor.



Mr. Vaish of India, who claimed that India was not supportive of the IMO Convention.

The position of India which sometimes appeared irrational, hostile and disruptive, particularly to the chair Roy Watkinson, nevertheless had the effect of slowing the process of adoption of the decision, of blocking the EU position, and generally weakening the proposal. The European Union group itself was badly conflicted due to the shipping states interests within their ranks, such as Malta and Greece. They introduced their own draft decision which was fairly strong and called for the possibility



Muhammed Ali of Bangladesh's YPSA and NGO Platform on Shipbreaking

of intercessional work particularly on short and medium term to deal with the pending crisis of the single-hull tanker phase-out. However the combined work of the IMO Convention advocates and the work of India reduced the final decision to something far less than what the EU Council Common position had called for and indeed what the global situation warrants. It is clear that the EU took a beating on this one.

Nevertheless efforts to reverse any of the achievements of the last COP (Decision VII/26) were thwarted and in particular the decision retained the principle that the IMO Convention must provide for an "equivalent level of control."

Additionally, it was very interesting to see the skepticism against the IMO Draft Convention became more apparent than ever in the halls in the working group and in plenary, despite this sentiment being difficult to locate in the text of

the decisions. However it was clear that there was a reawakening among the African states as to the inappropriateness of Basel not having competency over ships in future. Further the outspoken criticism of the IMO Convention by the shipbreaking states for it not providing a fund and not taking more upstream responsibility such as for pre-cleaning of ships prior to export proved refreshing.

Among the highlights of the decision:

- *"Recalling Decision VII/26."*
- *"Invites the IMO to further consider incorporating clear responsibilities of all stakeholders in ship recycling, including ship owners, ship recycling facilities, flag states and ship recycling states, also taking into account their current capacity and the common but differentiated responsibilities and sovereign rights of Parties."*
- *"Invites the IMO to ensure that the draft ship recycling convention to be adopted by it establishes an equivalent level of control as that established under the Basel Convention."*
- *"Encourages the IMO to promote the substitution of harmful materials in the construction and maintenance of ships by less harmful or, preferably, harmless materials, without compromising the ships' safety and operational efficiency."*
- *Stresses that appropriate standards for the safe and environmentally sound management of ship dismantling should be applied at the earliest possible opportunity,*
- *Invites Parties to provide comments to the Secretariat on issues such as: roles and responsibilities in the draft ship recycling convention, and those relevant to the Basel Convention, including:*
 - *an assessment of the level of control and enforcement established by the Basel Convention,*
 - *expected level of control and enforcement to be provided by the draft ship recycling convention in its entirety and its comparison with the Basel Convention,*
 - *Exploring and discussing the possibilities for effective short and medium term measures and requests the Open-ended Working Group to address those issues,*
- *Requests Parties and other stakeholders to transmit to the Secretariat relevant information that may be of assistance to stakeholders in developing measures to address in the short and*

medium term...harmful consequences of ship dismantling ...including ...information on pre-cleaning and decontamination...

On the decision on ship abandonment, BAN succeeded in introducing and retaining the idea that the work on ship abandonment should not be abandoned but that a need was noted for guidance to parties on how best to deal with ships that are abandoned in land or in ports on the basis of information provided by the Parties. Such information would be presented to the OEWG for further action.

Finally, another decision was passed on the Joint ILO/IMO/Basel working group that another (third) meeting should be held.



Mr. Saikou B.M. Njai of Gambia pressing for OEWG to work on shipbreaking.

BAN Statement: *“Shipping interests continue to invade the Basel Convention and block all possible ability to act despite the fact that even the toothless Draft IMO Convention will not be in force for many years – the very same years we expect to see over 2000 single-hull oil tankers being dumped from the global fleet,”* said Jim Puckett, spokesperson for the NGO Platform on Shipbreaking and the Basel Action Network. *“This will no doubt prove tragically irresponsible in the coming years.”*

Low POPs (Persistent Organic Pollutants) Content: The goal of keeping the inappropriately high “low-POPs” levels as provisional and conducting more work on these levels prior to 2008 won the day thanks to revisions requested by the African Group. This was a major goal of the International POPs Elimination Network (IPEN) who for the first time were found in force at a Basel meeting and were very welcome. Concerns that the low levels would equate to a flood of dioxin and POPs waste trade toward Africa and other developed countries prompted the concerns and call for review.

BAN Statement: *The provisionally agreed so called low-levels of POPs such as dioxin, are currently set far too high. If retained this would send a signal to unscrupulous waste traders that as long as dioxin waste is diluted toor found at these levels, then it can be freely exported,”* said Jim Puckett, of the Basel Action Network. *“We can not allow that the Stockholm Convention be hijacked by the chlorine industry or by countries that are unwilling to clean-up dioxin contaminated wastes and soils,”* he said.

Guidance Document on the Transboundary Movement of Mobile Phones: From within the Mobile Phone Partnership Initiative (MPPI)’s Mobile Phone Working Group, BAN together with the Parties, had to fight hard against the Cellular Telecommunications & Internet Association (CTIA) and the United States who used the opportunity of the Partnership to propose exempting mobile phones from the transboundary movement rules of the Convention.

While they failed to succeed for exports for recycling and disposal, they nevertheless were relentless on proposing a non-legal approach for exports destined for re-use following repair. As a compromise the working group agreed to forward two options to the Parties – one called the Decision Tree approach which is a correct application of the Basel Convention’s rules and the other known as the voluntary approach. BAN had at the time warned the industry participants that once the Parties saw this non-

legal scheme to get around the Convention they were not likely to be happy. In its pre-meeting newspaper and again on the floor BAN informed the Parties of the fact that no developing countries were part of the partnership and that as a result, a dangerous precedent came out of the Partnership known as the Voluntary Approach. For that reason we called for the Guidance document to only be provisionally adopted.

As we had warned the industry participants, the Parties with a few exceptions such as Australia and Canada were not at all happy once they became aware of the voluntary approach. The European Union wanted only to “take note” of the guidance document that had been worked on for one year and a half. Brazil even went so far as to say that they believed they had the right to ban all imports of used mobile phones, but most wanted to only adopt it provisionally giving themselves time to discuss the matter within the OEWG, and furthermore there was a call for future partnerships to include developing countries. The final decision called for:

- Provisionally adopting, without prejudice to national legislation the guidance document as a voluntary document and takes note of the recommendations therein.
- The OEWG at its next session to review the guidance document further, and present it to COP9 for final approval.
- That the Mobile Phone Working Group shall continue to work under the guidance of the OEWG and ensure participation by developing countries.
- Asks for donors to provide funds for the participation of developing countries and to facilitate the implementation of pilot projects on collection and treatment schemes.

BAN Statement: *“Partnerships should be multi-stakeholder dialogues working to develop innovative solutions within the existing rules of international law. They should not be used as a means to undermine that law,”* said Jim Puckett of the Basel Action Network. *“It was rewarding to see the shameless efforts on the part of the mobile phone industry rightly rebuffed by the country delegates.”*

The Probo Koala / Cote d'Ivoire Tragedy -- The subtext of the entire Conference of the Parties, taking place for the first time in Africa and following by some few short months, was the Probo Koala case -- perhaps the worst waste export and dumping tragedy in history. The tragedy served to reinvigorate efforts to demand rigor in the Basel Convention's rules as well as move for rapid entry into force of the Basel Ban. The presentation by the Cote d'Ivoire delegation to the Parties on the morning of Wednesday was devastating in its clinical explanation of the appalling crime and crime scene.

The government statement was described also an insult to the most horrendous injury in that the country has already spent more than 30 million dollars from its own budget and has received no international funding except 2 million from Japan – a country wealthy enough to make a show of being sympathetic to illegal traffic events while pressing hard to open the doors to waste trade on other fronts.



Ms. Safiatou Ba-n'daw, Côte d'Ivoire, described the health, environmental, and social effects of the waste including.

A presidential statement on Cote D'Ivoire came out of the meeting and among other things stated:

- *"Noting the limited international response so far to the call for urgent assistance and support made by the Government of Cote d'Ivoire and the enormous financial burden placed on Cote d'Ivoire, calls for robust support from the international community to provide appropriate funding for remediation activities"... etc.*
- *"Many Parties stressed the need for ratification of the Basel Convention's Ban Amendment and the Protocol on Liability and Compensation. Furthermore, the Parties underscored the need to strengthen regional instruments, such as the Bamako Convention, and calls on those States that have not yet ratified the Basel Convention to do so as soon as possible."*
- *Called on the international community "to support the clean up activities being undertaken by Cote d'Ivoire, as well as the follow-up activities aimed at monitoring and addressing the long-term effects to the toxic wastes."*

Ban Statement: *"This was a tragedy inflicted by an incredibly wealthy industry, unwittingly aided by EU governments," said Jim Puckett, coordinator of the Basel Action Network. "It would be a most shameful adding of insult to tragic injury, should the international community fail to provide funding for Cote d'Ivoire to assist in the monumentally daunting and expensive clean-up."*

Japanese Side Event on E-Waste in Asia -- In the Japanese sponsored side event BAN finally managed to get Japan to admit that they were in favor of exporting hazardous waste to developing countries in their region as part of their Asian "Recycling Society". Japan's use of terms like 3Rs, capacity building, environmentally sound management, recycling society, etc. are all part of a very well orchestrated subversive attack on the Basel Convention and the Basel Ban Amendment. BAN next drew the attention of those attending the Japanese side event to the recent attempt by Japan to pressure the Philippines into lowering its tariffs for such waste as pharmaceutical and medical wastes to zero – the subject of BAN report entitled, "JPEPA as a Step in Japan's Greater Plan to Liberalize Hazardous Waste Trade in Asia" available from the BAN website.

When confronted, Japan denied that there was an attempt to pre-empt Philippines national laws forbidding the import of hazardous wastes, declaring it was just an attempt to eliminate tariffs in general. It has become crystal clear that Japan is isolated in a war against the Basel Convention and its key obligations such as "minimizing transboundary movements in particular to developing countries."

Japan wields much power and influence and are very clever in their marketing of the subversion of Basel. We must bear in mind that they are the single largest contributor to the Convention and they have plenty of money and influence outside of the trust fund. Among the frightening examples of expenditure of their funds was a video produced for the opening of the meeting in which the Japanese mantra of regional waste agreements done with transparency, and high standards was echoed. Ms. Sachiko Kuwabara Yamamoto, the Coordinator of the Basel Convention, even stated in her speech that regional waste trade agreements were fine as long as there was transparency etc. thus contradicting the obligation of the Convention. Further examples of Japan's learning the public relations game, are demonstrated by their use of Ms. Wangari Maathai to promote the 3Rs initiative which is a mask for a very concerted effort to liberalize trade in waste. She appears all over the Japanese brochures for their 3R program. To make themselves look good, Japan also puts a lot of effort into what they call tackling illegal traffic, however much of what they are promoting at the same time would be illegal under the Basel Ban were it properly implemented.

Ban Statement: *“Japan has now isolated themselves in the global community as a powerful renegade force, promoting a self-serving international trade in hazardous wastes that flies in the face of the Basel Convention and the principle of international environmental justice,”* said Jim Puckett of the Basel Action Network. *“Much as was done in the attack on the international whaling ban, countries can expect to be bribed to block the Basel Ban coming into force and bribed to accept wastes and waste trade liberalization. We hope developing countries maintain their integrity and resist this blatant waste colonialism.”*

For the ENB report on the meeting see: <http://www.iisd.ca/basel/cop8/27nov.html>

For BAN’s papers and articles submitted to the meeting see BAN’s website at www.ban.org



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