COP 10 Alert # 1

When a Non-Paper is the Wrong Paper Resource Recovery -- Yes, Exploiting Weaker Economies -- No

Written by the Basel Action Network
in preparation for the Conference of Parties
to the Basel Convention

Our Moment in History

The 10th Conference of the Parties of the Basel Convention may be the most important Basel Convention meeting since 1994. That was the year when the landmark Basel Ban decision was first adopted based on consensus on the historic proposal by China and the G-77. Some see the upcoming COP in Cartagena as the meeting that can finally affirm that historic decision and reaffirm the relevance of the Convention, rather than continue to allow it to slip into obscurity due to neglect.

Neglect would be a form of tragedy for global governance because the Basel Convention together with the Basel Ban Amendment is the only Multilateral Environmental Agreement (MEA) that was initiated by and for developing countries. Its legal regime is designed first and foremost to prevent the export of harm via the externalization of costs – both economic and environmental – to developing countries. From the beginning, the Basel Convention was well ahead of its time in understanding the vital connection between human rights and the environment, a connection at the heart of the globalization debate today.

Further, when we realize also that the Basel Convention is our only international treaty dealing with one of the most fundamental environmental concerns of any generation – waste –, and early on, set out a binding obligation for waste minimization which remains the most important unfulfilled solution to the global waste crisis, any action that would allow the Basel Convention to fall into an historical abyss would represent a serious contractual breach with future generations. It would represent a turning back the clock on progress toward a more just and sustainable world and leave our children with a far uglier and polluted one.
Certainly at a time in history, when we currently face the single largest defined flow of hazardous waste which daily inundates developing countries around the world from the export of toxic electronic waste, the Basel Convention must be seen as not only a landmark but a beacon for vigorous future action.

Non-Paper

It is against this backdrop that many delegates were very surprised, if not shocked, to read the “non-Paper” written by then Executive Secretary of the Basel Convention entitled: “Shifting Paradigms: From Waste to Resources” published in February of this year.

Contrary to any “paradigm shift,” the document presents waste as a resource – an idea which has been understood for decades. But here, in yet another worn-out and long rejected attempt, the paper claims that “recycling” trumps all in a false justification for throwing out the landmark and increasingly vital Basel Convention rules and obligations.

Recycling Old Justifications for Toxic Waste Trade

Those that were there at the Basel COPs in 1989, 1994, 1995, 1997 have all experienced the attempt by a few to cloak cost externalization with the green mantle of “recycling.” And each time the notion was soundly rejected.

That is because it is widely known that toxic waste is not traded to developing countries for recycling to take advantage of better facilities and the availability of stronger national infrastructure to govern such facilities. Tragically, toxic waste moves across borders to do just the opposite: exploit cheaper labor and weaker government safety nets. Cheap labor comes in a context of relatively weaker economies whose governments therefore do not have the resources necessary to ensure that toxic waste recycling facilities are operated at optimal conditions; where adequate laws, monitoring and enforcement can truly protect worker safety and health and the local environment; where there are adequate toxic residual disposal technologies in place (because nothing is 100% recyclable); where there are independent trade unions, tort law, right to know laws, to protect the rights of workers and communities, etc.

All of these are the safety nets that developed countries can afford and take for granted and which developing countries cannot afford and therefore lack. These safety nets are far more important to ensuring environmentally sound management than empty promises that a certain technology operated by a certain corporation can deliver within a given facility.

Consider for a moment these very surprising “recommendations” found in the non-Paper:

- Revise the permissibility of transboundary movements of hazardous waste to include movements carried out to promote resource efficiency through
environmentally sound recycling or recovery operations;

- Encompass waste definitions in the context of the waste-resources linkage and develop guidelines (or an annex to the Convention) to incorporate additional waste classification. Nomenclature should be harmonized (e.g. terms such as commodity, secondary raw material, alternative fuel, waste);

- Provide a “fast track” for transboundary movements of hazardous waste which is destined for recycling in an environmentally sound manner, while keeping a tight control on hazardous waste movements;

- Create a new annex to the Basel Convention which would, in addition to the ESM criteria for transboundary movements, add a “resource recovery” or “waste utilization” criterion to the applicable rules to differentiate end-of-life goods from (processed) secondary raw materials;

It is hard to imagine a more obvious attack against not only the Basel Ban Amendment but indeed the fundamental obligations of the Basel Convention itself found in Article 4, 2 and paraphrased below:

1. Ensure that the generation of hazardous waste is reduced to a minimum. (4.2.a)  
2. Ensure that each country will provide adequate disposal/recycling facilities within its own borders to the extent possible. (4.2.b)  
3. Ensure that the transboundary movement of hazardous waste is reduced to a minimum. (4.2.d)

It is surprising that the Executive Secretary, whose job it is by design to do the bidding of all of the Parties and not just some small interest group, would on her own volition, and without a mandate, quietly convene a small working group of her own choosing, primarily made up of business consultants and United Nations staff, without a single environmental NGO nor a representative from the field of human rights, to serve as a springboard for a document postulating an anti-Basel Convention point of view.

While a “non-paper” by title presumes “non-responsibility,” coming as it does from a meeting paid for by the Parties and organized and authored by the Executive Secretary of a “neutral” secretariat who does indeed hold the responsibility for upholding the Convention and its decisions, this paper crosses a line.

**Why Now?**

One cannot but wonder why this well-worn message that the word “recycling” is a justification to turn the Basel Convention on its head, is now being trotted out yet again just prior to the very meeting where it is expected that the impasse over the Basel Ban Amendment is to be put to rest, and the Convention can finally move on and work towards the all-important goal of waste prevention and minimization?
Is this a strategy to weaken the Ban Amendment and the Convention’s original intent at the same time it is expected to be allowed to finally enter into force? Is it a case of “what the right hand giveth, the left hand taketh away?” We hope not.

The Cartagena meeting should be a new beginning for the Convention, not a renewal of a tiresome blockade by a handful of countries continuing to stand in the way of the original desire of the Convention.

Nobody is against recycling. Recycling will always have a vital role in waste management, and indeed it is already a major growing industry. But recycling, particularly of hazardous waste, is no panacea for our waste crisis and should never be used as a justification for dumping costs and risks on those less able to deal with them.

Waste minimization/prevention has long been recognized as the most preferable activity in the waste management hierarchy (see Basel Preamble, 3rd paragraph), and progress towards waste prevention is seriously impeded by anointing recycling, particularly recycling of toxic waste and that which is linked to seeking out global cost externalities, as the answer to all prayers.

True waste prevention is far preferable and involves substituting less harmful chemical inputs into our processes and products as well as process changes to create less waste volumes. Waste trade justified by recycling which moves for economic reasons to exploit weaker economies works as a direct disincentive to true waste prevention.

That is why the Parties in 1994 and again in 1995 passed by consensus the Basel Ban Amendment that recognized a natural extension of the three Basel obligations noted above and very intentionally covered all exports of hazardous waste including those labeled as exports for recycling.

And that is why at Cartagena we need to finally put the Basel Ban on a pathway to enter into force at the earliest moment possible.

Sure hazardous waste can be a resource (albeit a dangerous one) -- that is hardly a new idea! But it would be folly to ignore that the generation of hazardous waste is generally not a good idea and that it takes a great deal of care and resources to recycle it without causing harmful exposure and pollution. The Basel Convention is clearly designed to ensure that rich, industrialized societies be among the first to take national responsibility for first reducing the generation of toxic wastes, and then ensuring that those that do exist are not simply packed off in container ships and sent to countries lacking the resources to safely manage them. That was the intent in 1989 and that purpose is more relevant than ever today. The Secretariat non-Paper has a far different intent than the Basel Convention and can only be seen as the wrong-Paper for today’s world and for future generations.