Intervention of BAN on Legal Clarity / Basel Convention / OEWG9 / Opening Plenary

September 16, 2014

Thank you Mr. Co-chair.  BAN wishes to thank the Intercessional Group on Legal Clarity that worked hard in the last months to produce a common glossary of terms in order to provide better legal clarity.  It is not an easy task and overall an excellent job has been done.  However BAN has discovered some problems that remain within the text.  And the African group has raised one of these, China has raised another.  Some of these concerns are quite serious.  We also realize that very few Parties have worked on this document, carefully read it or submitted comments on it.

The definition of “goods” created and presented in the document we find very problematic in the Basel context.  We cannot have a situation where we are accepting that household wastes, dioxin laden waste, PCB waste, mercury waste, indeed even illegal traffic are all considered as “goods”.  One unwanted effect of this mistaken definition would be the situation where unscrupulous traders will label their illegal shipments as “Basel Goods”.  And customs officials will be misled to believe the import is desirable when it can be illegal hazardous waste traffic.

We also cannot have “commercial value” suddenly become an element of Basel definitions.  Our Convention is not a commercial trade convention.  It is an environmental convention using and must remain such.

The language used in another new definition for “end-of-waste status” also concerns us.  This new definition creates new and assumed rights and obligations on Parties that do not exist in the Convention.  This new definition states that countries can decide by themselves unilaterally when a waste ceases to be a waste following some form of recovery.  The definition of recovery though is so broad that even the example of extracting copper from an old television and leaving the rest of the TV or monitor unmanaged, could qualify as being a recovery process, and render the remaining wastes, including the lead glass tube and circuit boards as non-wastes.  As it currently stands the standard of recovery is far too weak and a determination of when something can be declared as non-waste cannot be left to unilateral decisions of Parties.  Such sweeping de-listing from the waste category and thus Basel controls must be a decision of the Parties -- not done unilaterally with every country coming up with their own definitions of waste – but only collectively with an amendment of the Annexes.

We also find several examples in the text where the use of terms given in the Explanations, contradicts the definitions in the Glossary and thus -- there is still -- a lack of clarity.  We are by no means condemning this document, as on the whole it is well done.
Rather we find that it needs further work to remedy some few, but fundamental, flaws in the text. BAN has provided an Action Alert on this subject which is available on our table in the lobby. We look forward this week and perhaps later to assist in making the necessary adjustments to make this important document ready to send to the COP next year. Thank you very much.