

Running From Basel:

How the Convention is Deliberately Undermined

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

Increasingly however we are witnessing an insidious and deliberate effort on the part of powerful industrial interests and the countries that support them, to turn away and “run” from the the Basel Convention’s principles and obligations. We are witnessing a concerted effort to revise, or escape from, the original intent of the Convention -- to either make it irrelevant or to twist it into an instrument that would facilitate transboundary movements (TBM) of waste to developing countries as long as recycling is claimed as environmentally sound management (ESM). However this *is not* what the Basel Convention envisaged nor is it what is embodied in its legal text.

Running from Human Rights

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

Later the underlying concept inherent in the Convention, of not allowing the disproportionate burden from the world’s pollution placed on any people’s simply due to their economic or racial status was articulated as the principle of **Environmental Justice** and was embraced as policy by the **United States** government.

Ironically while the US claims to uphold the principle within their own borders, to this day the US conveniently ignores it once waste passes their borders and they and other countries fight this principle within the Basel context. Yet, the principle is a sound moral one and no amount of ESM promises can assuage the affront of developing countries receiving the majority of the world’s toxic wastes simply because they are poor.

Running from Legal Obligations

Likewise, of late we have witnessed further revisionism being consciously promoted by key governments, fronting for their powerful industry lobbies (e.g. **the electronics and shipping industries**), that pretend a new Basel Convention– one that in fact seems to have lost some of its fundamental legal obligations. Instead, the notion is advanced that as long as ESM is employed then waste trade and waste generation is acceptable. This *revisionist* Basel Convention:

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

While ESM is certainly *part* of the Basel Convention to be employed *for wastes that cannot be prevented from being generated* it is not merely a function of technical criteria, nor is it meant to be used to justify TBM. Yet the revisionist notion of ESM implies that it is defined only in terms of technical capacity, and does not embody the fundamental Basel policies at its core, such as the fact that waste generation should be minimized and that it is not ESM to externalize the costs of pollution via export to poorer countries rather than deal with them at source through national self-sufficiency.

Instead, we are too often hearing within arenas such as the **Mobile Phone Partnership Initiative (MPPI)** (by the **United States**), or at the **International Maritime Organization** (ie. for ships as waste) by **Norway, Japan, Germany** and the **US**, or at the **G8’s 3R Initiative** (by **Japan** and the **US**), that the Basel Convention’s legal obligations are “impractical”. Seemingly a

"practical" approach is one that allows developing countries to assume their "rightful" place as waste colonies for the rich and justifies this with terminology such as "recycling", "ESM", "capacity building", "partnerships" and "free trade". In exchange for taking waste, developed countries will sell developing countries end-of-pipe pollution controls. This "new ESM" – and it is a far cry from what the Convention's framers sought. Yet this is what is being proposed in the new draft IMO Convention on shipbreaking, within the 3R Initiative and within the MPPI.

Running From Waste Definitions

When things have come to a confrontation and Basel Parties have asserted the clear text of the Convention, that the Basel Convention in fact *is* a legal instrument with legal obligations to which violations are criminal, we have seen attempts at exodus from the scope of the Basel Convention. This is either done by trying hard to re-define waste or hazardous waste so that their waste responsibility is de-listed from the scope of the Convention or, perhaps most effectively, by escaping entirely to another, more favorable institution ("venue shopping").

We saw the definitional attack most blatantly in the **shipping industry's** efforts to avoid the Basel Convention for the management of end-of-life ships. The industry insisted in asserting the legal nonsense that a ship could not be a waste. Despite the opposite being affirmed by the Parties in Decision VII/26, **India** later even went so far as to ignore **Denmark's** own national definition of hazardous waste with respect to ships, in order to keep their corrupt and irresponsible shipbreakers in business -- a clear violation of the Basel Convention's Article 1.1.b and the obligation that all Parties must respect the national definitions of other Parties. **France** briefly tried to state that a military vessel (the *Clemenceau*) could not be a waste until they were rebuffed by the courts.

Likewise we have seen industry efforts within the Mobile Phone Partnership Initiative (MPPI) to de-list certain types of electronic waste from falling under the Basel Convention. While this effort was for the most part rebuffed by the very few Parties involved in the partnership, the mobile phone industry lobby did succeed in promoting a Basel avoiding "voluntary approach" in the MPPI guidelines for cell phones that are destined for export for "repair". This, approach if accepted, will prove a very dangerous precedent in that it allows uncontrolled trade to developing countries of what should clearly be considered a Basel waste, when the repair results in disposing of a hazardous part.

Running from the Convention Itself

Perhaps the most damaging method of undermining the Convention has been the deliberate run to new institutions or programs offering a different context and constituency and thus allowing an environment where the Basel obligations, principles and history are either not well understood or simply not respected. In such venues new laws or precedents can be established that clash with those of the Basel Convention,

thereby muddying the waters of which laws should reign supreme.

Japan has proven to be most intent on this method and masterful at it. First they have led the charge, joined by **Norway** and **Germany**, for ships-as-waste, to the shipping industry friendly **International Maritime Organization (IMO)** where a far weaker treaty than the Basel Convention is being hammered out to suit the shipping industry. **Japan** has also created an entirely new waste program under the auspices of the **G8** known as the **3R Initiative** with its *goal of lifting trade barriers to wastes*, and they have also adroitly moved to press their Asian neighbors such as **Singapore, Malaysia** and the **Philippines** to liberalize trade in hazardous waste in **bilateral and regional free trade agreements**.

Another case of "venue shopping" involves the use of industry dominated "**Partnership Programs**" to undermine legal obligations. United Nations institutions, suffering from resource shortfalls have thus been lured into programs working directly with industry in so-called partnerships. The clear danger of such programs is that they are often not truly multi-stakeholder partnerships but are very heavily weighted toward industry participation. Thus they tend to function to serve the needs of industry's financial bottom line and the tendency of industry to seek to externalize costs via transboundary movement of hazardous wastes or risky operations to developing countries. Thus these UN partnership programs can, ironically launch initiatives or create guidelines in conflict with United Nations' established principles and laws. The makeup of the **MPPI's** working groups for example have been heavily slanted toward industrial majorities, very few NGOs, very few Basel Parties that understand legal implications, and almost no developing country Parties involved. Thus it was not surprising to find that the **MPPI** partnership almost succeeded in fulfilling an industry desire to exempt all mobile phones from the Basel Convention entirely.

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. It is vital that the custodians of the Basel Convention – its Parties, steadfastly refuse to allow the Basel Convention and its original intent, to be undermined, reinvented or sidestepped by special interests that desire to turn back the clock and allow profitable exploitation and cost externalizations to prevail. Hold fast to Basel!

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