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Prepared by the Basel Action Network (BAN)*

Introduction

Despite the existence of the Basel Convention on the Transboundary Movement of Hazardous Waste and its Disposal and despite the enormous influence that the Organization of Economic Cooperation (OECD) has had on the drafting of that instrument, the OECD is currently at work on the drafting of two new Decisions that would purportedly function as legally binding instruments among the 29 states of the OECD, with the clear purpose of creating different obligations with respect to the transboundary movements of hazardous wastes, for the OECD Parties than for the rest of the Basel Parties.

The first of these is claimed to be an amendment to the existent C(92)39/Final, which deals with the transboundary movement of hazardous wastes for recycling within the OECD group of States. Currently the redraft (ENV/EPOC/WMP(99)5/REV3) is claiming a legal basis in Article 11, paragraph 2 of the Basel Convention. BAN finds the newly drafted C(92)39/Final to be an instrument of de-regulation from existing norms and one which is not a legally permissible use of Article 11.

The second decision is known as the Consolidated Act (CA) and is the subject of this paper. The stated intent of this agreement is to consolidated, eliminate redundancy and to better recognise the Basel Convention. However as we shall see, it does not accomplish this simple task but rather attempts to introduce a parallel regime to Basel which is substantially weaker than the Basel Convention. The scope of the CA is intended to cover all OECD exports of hazardous waste with the exception of those that take place pursuant to C(92)39/Final. This agreement goes far beyond the scope...
of C(92)39/Final in that it also covers trade among non-OECD countries. So far the current draft of the CA (ENV/EPOC/WMP(99)4/REV4) remains uncertain as to whether the CA shall be an Article 11 agreement or not. Germany is known to be strongly pushing for the CA to be an Article 11 agreement under paragraph 2 so that they can purportedly utilize the agreement instead of Basel in order to avoid ever having to participate in the Basel liability protocol. *BAN takes strong issue with the contention that the CA can or should ever be an Article 11 agreement and finds the text to be a significant weakening of existent norms with respect to the transboundary movement of hazardous wastes.*

In this paper, we will first review the purpose and permissible use of the Basel Convention Article 11 and then we will in turn present a non-exhaustive critique of the the Consolidated Act, looking both at some of their provisions in comparison with the Basel Convention and present OECD decisions, and then we shall examine whether the CA meets the provisions of Article 11 of the Basel Convention. Finally we will recommend a way forward on the draft text.

**Legal Basis and Intent of Article 11**

Article 11 has two distinct functions, as expressed by its two paragraphs.

**Paragraph 2: Recognizing Prior Agreements**

In Paragraph 2 of Article 11, the Convention clearly provides for the recognition of bilateral, multilateral or regional agreements or arrangements “entered into prior to entry into force” for relevant Parties of the Convention, provided that controlled waste movements “take place entirely among the Parties to such agreements” and provided that the agreements are “compatible with the environmentally sound management of hazardous wastes and other wastes” as required by the Basel Convention.

Paragraph 2 thus can be considered to put in place a “grandfather clause” with a caveat – that the agreements remain “compatible with ESM” as provided for in the Convention. The Convention provides for a somewhat less stringent measure of comparison with the Basel Convention for these prior agreements that were not informed by the existence of the Basel Convention.

Already several such agreements have been reported to the Basel Secretariat as required by Article 11. However, the possibility of the list of Paragraph 2, Article 11 agreements growing larger is getting increasingly unlikely as the possibility is only available to agreements entered into “prior to the entry into force of this Convention for them.” As already, the Convention is in force for 136 countries, and such an Article 11, paragraph 2 agreement could only have been entered into at a time when the Basel Convention was not in force for any of the Parties to the Article 11, paragraph 2 agreement, the likelihood of two (or more) non-Parties concluding such an arrangement grows increasingly slim. Certainly for the OECD group of States, concluding new “prior” agreements is impossible under Article 11, paragraph 2.
Article 11 Paragraph 1: For Trade with non-Parties or for Agreements more Rigorous than the Basel Convention

Thus there can effectively be but two remaining rationales for utilization of Article 11 today and these are found under its paragraph 1. These encompass:

- those Parties that wish to trade in waste with a non-Party according to all of the provisions and obligations of the Basel Convention; and/or
- those Parties that wish to trade in wastes with Parties or non-Parties in a manner that is more rigorous than the Basel Convention.

The very first words of Article 11, “notwithstanding the provisions of Article 4 paragraph 5,” signal the primary rationale for allowing agreements concluded subsequent to the Basel Convention – it allows for exceptions to the general rule of Article 4, paragraph 5. That is, Article 11 is the exception to what is the normal legal position under the Basel Convention that Parties not trade with non-Parties.

However, the framers of the Convention were careful to ensure that such agreements or arrangements with non-Parties stipulate provisions that “do not derogate from the environmentally sound management of hazardous wastes and other wastes as required by this Convention. These agreements or arrangements shall stipulate provisions which are not less environmentally sound than those provided for by this Convention in particular taking into account the interest of developing countries.”

The prevention of derogation (taking away a part so as to impair) and the assurance that the agreements stipulate provisions that are not less environmentally sound, sets a level of prescription which must be no weaker with respect to environmental protections than that of the Basel Convention. This interpretation is mandated by the principle that a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

Thus paragraph 1 of Article 11 allows for Parties that wish to trade in hazardous or other wastes with non-Parties to do so, provided that the agreements or arrangements meet the tests that they “do not derogate from the environmentally sound management of hazardous wastes and other wastes as required by the Convention” and that they “stipulate provisions which are not less environmentally sound than those provided for by the Convention in particular taking into account the interest of developing countries.”

An example of such an agreement would be one in which a non-Party country which lacked the capacity to destroy PCB wastes in an environmentally sound manner needed to send those wastes to a Party for disposal. As long as the agreement did not derogate from the environmentally sound management as required by Basel and stipulated provisions no less environmentally sound than Basel, then such an agreement could be allowed as an exception to the general rule.

The only other permissible use of the first paragraph of Article 11, besides the exception to Article 4, paragraph 5, would be if Parties wished to create an arrangement or agreement that is more environmentally protective or more rigorous than the Basel Convention. Examples of this include the Bamako Convention, Waigani Convention, Izmir Protocol, Central American Agreement, etc.

The Consolidated Act

The alleged intent of the Consolidated Act (CA) was presumably to “streamline” and “consolidate” the OECD decisions on transboundary movements and to “harmonise them better with the Basel Convention (from the OECD’s Environmental Policy Committee (EPOC) recommendations). In other words the intent all along was to both better recognise the Basel Convention and to provide for eliminating redundancy with respect to the series of older OECD decisions that were precursors to the Basel Convention but nevertheless are still in force.

Now, however, the resulting draft text (ENV/EPOC/WMP(99)4/REV4) has moved in a far different direction than from such a goal. Rather than harmonizing standards with Basel, the exercise appears to be an effort to create a more minimalist and weak, Basel-type instrument, ratcheting the legislative requirements of all of the OECD down even below that of the lowest common denominator of OECD states -- the one OECD country that has yet to ratify the Basel Convention (the United States).

In numerous instances in the latest draft CA (ENV/EPOC/WMP(99)4/REV4), the text delineates a retreat from the current norms and signals an OECD effort to weaken international legislation with respect to the transboundary movement of hazardous and other wastes and their disposal. And this is taking place at a time when the waste crisis continues to escalate globally.

Further, as the Consolidated Act is now in direct competition with Basel rather than in harmony, a great deal of ambiguity has been introduced as to which instrument an OECD country must rely.

What follows is first a non-exhaustive look at the attempts at de-regulation and weakening language proposed in the current draft CA beginning with Section II of the text. As the draft for many of the sections has two options, the older one and a new proposal from the Working Group on Waste Management Policy (WGWMP) Bureau, we will examine each of these where relevant. Then, because several countries, most notably Germany, Austria and the United States are pushing to make the CA an Article 11 agreement, we will examine the draft CA in relation to Article 11.

Section II – Re-defining “Disposal” as excluding Recycling

It has long been known that the primary lobby objective of industry with respect to waste was to move to draw a distinction with respect to regulatory requirements between “wastes destined for final disposal” and “wastes destined for recycling
operations.” Indeed the industry lobby has pushed relentlessly for wastes destined for recovery operations to fall completely out of the scope of all environmental legislation. This has been a push that has led industry to file lawsuits, lobby relentlessly at the European Union level and within member states such as UK and Italy and of course they have sought to press their advantage within the OECD. Within the OECD, industry presence is strong and sanctioned as the BIAC (Business and Industry Advisory Committee) while the Environmental NGO presence remains informal within the OECD and thus relatively weak. This de-regulation justified by “recycling” was the incentive for the costly and highly questionable exercise of the WGWMP in recent years to “better” define “wastes” as opposed to “non-wastes”.

Fortunately however, despite this effort, competent authorities and regulators have until now always held to the wisdom that it would be an enormous mistake to remove wastes destined for recovery operations from the scope of environmental regulation or even to handle them significantly differently. Certainly the OECD experts were convinced of this as early as 1988 as seen in OECD decision C(88)90(Final). The C(88)90(Final) definitions were the ones imported into the Basel Convention.

The wisdom in this is readily apparent to anybody working in the field, for the distinctions between final disposal and recycling are in fact very weak with respect to the environmental risks from hazardous wastes, and indeed are often indistinguishable. Recent history and case studies have demonstrated conclusively that virtually any waste stream can be designated as destined for a “recovery operations” no matter how dubious or risky the terms of recovery might be. And once recycled wastes are redefined as being outside of certain regulation, then questions such as the following never need to be asked:

- How much of the recycled hazardous waste ends up as hazardous process residues that will in any case need to go to final disposal?
- Are hazardous wastes destined for recycling any less dangerous than hazardous wastes destined for final disposal?
- How dangerous is the process to workers? To the community?
- What are the hidden economic costs to a country in perpetuating a trade in wastes for recycling?
- How much more dangerous is the recovery operation than simply storing or finally disposing of the waste?
- How much of the waste stream might have been more appropriately avoided upstream in the process?
- How much of this waste could be unexpectedly diverted to final disposal depending on fluctuating market conditions?
- Why shouldn’t principles of waste prevention apply to wastes destined for recycling operations?
Why shouldn’t national self-sufficiency and polluter pays principles apply to wastes destined for recycling operations?

Why shouldn’t principles of environmentally sound management apply to wastes destined for recycling operations?

But ignorance is bliss for those that hope to never have to answer such questions by preventing them from ever being asked. To date such efforts at such non-regulation have been denied. Now however it appears that the OECD is ready to give industry the first major safeguard preventing us from plummeting down the slippery slope of non-regulation or de-regulation of wastes destined for recovery operations. Suddenly the OECD has decided to back-track on its own definitions set more than a decade ago.

In Section II they have taken the step of re-defining disposal to only include roughly half of the former list of disposal destinations – excluding the recycling destinations.

The immediate implications of this move are to, firstly, confuse everyone that will need to deal with the legislation based on the Basel Convention and legislation based on OECD legislation which might include all of the world’s competent authorities. For in the Basel Convention, the term “disposal” includes “final disposal” and “recycling” and the term disposal is fully linked to the definition of what constitutes a waste. The confusion alone created by the OECD move cannot be underestimated.

But worse than that confusion are the implications noted above of moving down the slippery slope toward de-regulation for recycled wastes. The distinction is far from a being a merely rhetorical distinction. Far from consolidating OECD decisions and far from harmonizing with the Basel Convention, the CA uses this re-definition to derogate from both of these normative prescriptions. While the CA as drafted does not yet completely give industry, via this re-definition, the full package of non-regulation of hazardous wastes destined for recovery operations they seek, the CA nevertheless very dangerously has begun to promote serious de-regulation by use of this dramatic change.

This can be witnessed at once in Section IV which makes immediate use of the new distinction between recoverable wastes and wastes destined for final disposal. As this re-definition found in Section II so directly impacts Section IV, we will examine that section next, and then raise the concerns of Section III.

**Section IV: Disposing of Key Basel Obligations for Wastes Destined for Recovery**

The only apparent purpose of Section IV (both the original and WGWMP Bureau Proposed versions) is to attempt to counter the Basel requirement that **all** hazardous and other wastes be subjected to the principle of national self-sufficiency and the principle of minimizing transboundary movements. Rather, by omission of similar provisions for wastes destined for recovery, this Section attempts to declare that wastes bound for recycling and recovery can and should be exported with impunity.
and with total disregard to a primary obligation of the Basel Convention -- that countries must try, to the extent possible, to take national responsibility by dealing with their wastes at source rather than export them.

Far from “consolidation” and far from bringing “harmony”, the CA in the language of Sections II and IV would seriously derogate from the Basel Convention. As the CA will be legally binding on all OECD member states and at the same time all but one of these are Basel Parties, this revision of Basel obligations creates legal conflict for Basel Parties. For those that wish to export wastes with impunity they now may believe they have a new legitimacy to do so under the CA, however legally weak and contradictory this may be. If the CA is presented as an Article 11 agreement, however illegal that interpretation might be (see below), some countries might believe that they can utilize the CA as an alternative Basel – one that is substantially weaker with respect to environmental protection and national responsibility for it.

At the same time, since the CA is not a valid Article 11 agreement (see below), yet is still binding on member states, OECD States will be in breach of the Basel Convention. State will be pitted against State, and OECD against the Basel Convention. This is a recipe for disharmony and discord and for protracted legal dispute as well as for seriously undermining of the Basel Convention.

Because the draft CA still considers the inclusion within its scope of exports and imports of wastes into and out of the OECD, this situation is alarming vis-à-vis the possibility of countries utilising the CA to undermine the Basel Decisions II/12 and III/1. These decisions were pointedly designed to include wastes destined for recycling operations. Yet by the omission of national self-sufficiency requirements for exports for recycling operations, some countries might wrongly believe they no longer have any responsibility to fulfil the Basel principles of self-sufficiency or waste prevention at source, as long as the magic word “recycling” is used. The fear is increased due to the glaring unwillingness of the OECD to place the Basel Ban Decisions within the CA (see below).

In conclusion, the re-definition of disposal and the application of certain principles only to “final disposal” represents a major derogation from the Basel Convention and past OECD principles and thus the CA would place OECD states in breach of the Basel Convention and would not be saved by Article 11.

Solution: If the CA is retained in any form, disposal must be defined in Section II as it is in the Basel Convention, and Section IV should be omitted.

Section III: Attempts to open the Agreement to non-OECD States that are not Part of the Agreement while Intentionally Omitting Key Basel Party Obligations

Trade with Non-OECD Countries

A debate appears to be underway as to whether the CA should include transboundary movements outside of the OECD area. Indeed, while the definitions in Section II
define “transboundary movement” as only between OECD member states, the working version (not in the WGWMP Bureau version) of Section III pointedly includes hazardous wastes that might move “into or out of” the OECD area.

The implications of this are profound, and fatal to the CA. The only way that the Parties of the Basel Convention can legitimately create an agreement that affects Basel obligations and which impacts and involves other Basel Parties is when that agreement satisfies the criteria of paragraph 1 of Article 11 -- the only place for agreements that are not prior agreements under paragraph 2.

Paragraph 1 however includes the criteria that the arrangements or agreements must “stipulate provisions which are not less environmentally sound than those provided for by this Convention in particular taking into account the interests of developing countries.”

It is this concern for developing countries expressed explicitly in Article 11 and elsewhere in the Basel Convention which leads us to the next matter if concern with respect to the CA.

No Reflection of the Basel Ban Decisions

It is glaring that there is no mention in section III or elsewhere, the most important decision of the global community in the last ten years – the decision to ban all exports of hazardous wastes from OECD (and Liechtenstein) to non-OECD countries as embodied by Basel Decisions II/12 and III/1. A majority (18, including – the EU Countries, Norway, Iceland and Czech Republic) of OECD member States has implemented these decisions and yet they are not recognised in the operative text of this agreement meant to harmonise all of the major decisions with respect to OECD countries. While Decision III/1 is not yet in strict legal force, Decision II/12 and Decision III/1 were agreed by Consensus of all OECD member states save one. Moreover, it is expected that all Basel Parties will implement and respect these decisions. Indeed Decision II/12 is the legal basis for the EFTA and EU countries (17 OECD member states). At the most recent conference of the Basel Parties (COP5), 28 OECD member states agreed to ratify the Basel Ban Amendment as soon as possible (Decision V/3). The CA as drafted, without operative recognition of these obligations, would thus represent a breach of the obligation that Parties not act so as to defeat the object and purpose of an amendment as well as the good faith required of the Parties in their performance of Article 17 of the Basel Convention, under which the amendment procedure takes place.

Given the above facts, and given the fact that the CA may include within its scope the possibility of export to non-OECD countries, which could conceivably take place in contravention of the Basel Ban decisions, the absence of operative reference to these two landmark decisions of the Basel Parties is unacceptable as well as unlawful.

Reducing Basel to Minimal Obligations

7 See Vienna Convention on the Law of Treaties Article 18
4 Vienna Convention Article 26
There appear to be two divergent views as to what Basel Parties are obliged to do under the CA with respect to transboundary movements. In the first (non-WGWMP group version) the proposed Section III (b), simply states:

“Member countries that are parties to the Basel Convention shall continue to follow the provisions of the Basel Convention.”

This however is intentionally weak. The words “follow the provisions of the Basel Convention” is sufficiently vague as to be easily construed to exclude the objectives, overarching obligations and principles of the Basel Convention found in Article 4, paragraph 2 of the Convention. And it certainly seems designed to leave out Decisions and Amendments of the Convention that Parties are also obligated to uphold and implement. Such ambiguity could be remedied by stating the desire unambiguously:

**Solution for III (b): Redraft as follows:** “Member countries that are Parties to the Basel Convention shall continue to operate under that Convention and its decisions for the purposes of regulating transboundary movements of hazardous wastes under its jurisdiction.”

The fact that this has not been stated leaves little doubt that there is intent to derogate from the Basel Convention.

Meanwhile the requirement for OECD member states that are NOT a Party to the Basel Convention in the non-WGWMP Bureau version, (currently the USA but in future could be additional countries) is simply to:

"...take all practicable steps to achieve the goals and objectives of the Basel Convention."

Yet “taking all practicable steps to” is far from actually achieving anything. And "goals and objectives" are far from the actual provisions and obligations. The “goals and objectives” of the Basel Convention can be interpreted broadly – as in to achieve "environmentally sound management of hazardous wastes" for example. This loose language in effect purports to gives the United States, and possibly future OECD entry states, the legitimacy to trade in waste with any country as long as it believed this was an environmentally sound thing to do. This would clearly run-afoul of numerous accepted norms, including that of the future Article 4A (the Basel Ban).

This carte-blanche approach for non-Basel Parties is inappropriate. Previous OECD decisions would have required that the United States adhere at a minimum, to many of the same requirements of Basel and now that these earlier OECD decisions would be repealed by the CA, the governance of the OECD with respect to the United States and other non-Basel Parties has taken an unacceptable leap backwards.

The OECD WGWMP version (while it thankfully omits the possibility of export and import outside of the OECD area) is even worse in this respect. That version seems intent on trying to turn back the clock to the days when only “prior informed consent” (PIC) was a concern of the international community (circa 1988).
The WGWMP bureau version for Section III reduces the global requirements posed in the Basel Convention to simply a matter of PIC.

“DECIDES that, for transboundary movements among Member countries of wastes subject to control under the terms of the Basel Convention or of national provisions of the Member country of export, import or transit and destined for disposal, Member countries shall ensure that:

a) prior to the commencement of the movement, the exporter shall directly or through its competent authority, provide written notification to the competent authorities of the countries concerned and receive a written consent from these authorities;

Nowhere do we find in this proposed text the other myriad important obligations and provisions of the Basel Convention nor is there any reference to the extremely important decisions and amendments of the Basel Convention completed since its entry into force. The proposed text conveniently overlooks virtually all of the Basel Convention with the exception of Article 4, paragraph 1, (c). These omissions include vital obligations such as the requirements to:

- Minimise the generation of hazardous and other wastes (Article 4, 2 (a))
- Ensure national self-sufficiency in waste management (Article 4, 2 (b))
- Ensure that transboundary movements of hazardous wastes are reduced to a minimum (Article 4, 2 (d))

Indeed the reductionism to PIC is even lower than the lowest common denominator among OECD states, as even the existing older OECD decisions and indeed the United States legislation regarding the transboundary movements of hazardous wastes requires more safeguards and requirements than simply the PIC principle. This WGWMP bureau proposal for Section III then is clearly not simply a misguided attempt to simply accommodate the United States, while lowering all other countries to their level, it is worse – a frightening effort at turning back the clock to a time even before the OECD began their work on this issue.

The Consolidated Act and Article 11

The Tests of Paragraph 2

Article 11 as described earlier requires a series of tests to determine whether use of that Article is legitimate. The first question to be asked is:

Was the agreement or arrangement entered into prior to the entry into force of the Convention for all Parties concerned? If so, it can take place under the legal basis of Paragraph 2 if it meets its other provisions.

As we have stated earlier the list of prior agreements to date for the 136 countries for
which the Convention has entered into force is finite and known. And future such agreements are becoming increasingly unlikely. Indeed they are now impossible for the OECD which of course includes numerous Parties to the Basel Convention. Thus, the OECD member States can no longer “enter into” an agreement without it being subject to paragraph 1.

The notion that somehow, the Consolidated Act has sprung from earlier agreements and therefore is not a new agreement belies the fact that it must still be “entered into,” and moreover must be “entered into” by countries that include Parties for which the Basel Convention has entered into force. Under the norms of international law, an amendment can only bind parties that have agreed to (entered into) it.5

Further, even if one incorrectly believed that the above rule could be bent or ignored, there is one more insurmountable problem presented by claiming paragraph 2 of Article 11 as a legal basis: There are now additional members of the OECD which were not previously members. For these countries there can be no question but that they must “enter into” a new agreement.

For all of the above reasons it is certain that the CA, if it is to be considered a valid Article 11 agreement must meet the tests of paragraph 1.

The Tests of Paragraph 1

The second question to ask then with respect to Paragraph 1 is:

Does the arrangement “not derogate from the environmentally sound management of hazardous wastes and other wastes as required by the Basel Convention,” and “stipulate provisions which are not less environmentally sound than those provided for by the Basel Convention in particular taking into account the interests of developing countries?”

As noted above, the Consolidated Act in its various forms does indeed derogate from the Basel Convention and/or stipulates less environmentally sound provisions in the following ways:

- It omits virtually all Basel Convention obligations and provisions for both non-Parties and Parties, reducing in some proposals, explicit Basel requirements to that of Prior Informed Consent alone.
- It re-defines “Disposal” and then uses that new definition to exclude key Basel obligations for wastes destined for recycling destinations.
- In doing so and in particularly its failure to incorporate Basel Decision II/12 and III/1, it takes not take into account the interests of developing countries.

Therefore unless the CA is changed significantly, it cannot legally be considered a valid Article 11 agreement under the Basel Convention.

And, if it is not considered to be an Article 11 agreement, and the OECD concludes the CA anyway, it would likely, due to its numerous derogations, place OECD/Basel Parties in breach of the Basel Convention. Any waste movements or other activities that any OECD/Basel Parties undertook in breach of the Basel Convention would constitute a violation of the Basel Convention.

For instance, any movement of waste to or from a non-Party under the CA would constitute a violation of Article 4 paragraph 5 since it would not be saved by Article 11. Additionally, entering into the CA would constitute a breach of the duty not to conclude with third states treaties inconsistent with the obligations of their existing treaties and contrary to Article 11, in which the Parties have laid down specific requirements for subsequent treaties, as well as contrary to the requirements of Article 4 paragraph 4 of the Convention.

**Final Recommendation**

The Consolidated Act must be reformed so that what it indeed accomplishes is do no more or no less than what it set out to accomplish originally -- recognise the Basel Convention, and repeal redundant earlier OECD acts. Therefore, the CA must echo the provisions, and obligations of the Basel Convention, its Decisions and Amendments in their entirety. It cannot reduce the Convention, its Decisions and Amendments in any substantive way via omissions or otherwise. Certainly it must not reduce these via re-definition of the term “disposal” in order to limit many of the Basel Convention provisions and obligations to wastes destined for “final disposal” only. This presents a serious derogation from the Basel Convention and establishes a gaping recycling loophole.

**Solution:** As the Basel Convention is the appropriate instrument to cover the scope of transboundary movements of hazardous wastes and their disposal, we strongly recommend that either the Consolidated Act be rejected or have it exist as a non-Article 11 agreement that simply states:

*For all OECD member states that are Parties to the Basel Convention, the previous OECD Council decisions (list) of the OECD will no longer apply. Rather, such states will operate under all of the provisions, obligations and decisions required by the Basel Convention.*

*For member states that are not Parties to the Basel Convention, these OECD Decisions will continue to remain in force.*

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5 See the Vienna Convention on the Law of Treaties, Article 30.5. Note that the Parties have recognized in the Preamble that in the case of a material breach of the provisions of the Basel Convention or any protocol thereto the relevant international law of treaties shall apply. Article 11 consideration aside, the Vienna Convention on the Law of Treaties provides in Article 30.3 that the Basel Convention, being the earlier treaty, would apply to the extent that its provisions are compatible with those of the latter (OECD) treaty.
In this way the world will know and be assured that this entire effort is truly a laudable one, of consolidation and harmony, and not a thinly disguised attempt to derogate from the obligations of the Basel Convention, its Amendments, and Decisions.

END

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