Running From Basel:
Promoting ESM Technology and Pretending the Original Convention Doesn’t Exist

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

Recently however we have witnessed a frightening “turning away” from the original intent of the Basel Convention by powerful industrial interests and a concerted effort to twist the Convention into becoming a facilitator of transboundary movements (TBM) of waste as long as recycling is claimed as environmentally sound (ESM). However this is not what the Basel Convention envisaged nor is it what is embodied in its legal text.

Running from Human Rights Motivation

One of the most disturbing trends regarding the Basel Convention is a latter day ignorance of its human rights birthright. The Basel 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. The outrage sprang as much from the violation of human rights this dumping represented, as from the global environmental impacts.

Later the concept of not allowing the disproportionate dumping of the burden of the world’s pollution simply due to a people’s economic or racial status was articulated as the principle of Environmental Justice and was embraced as policy by the United States government – a principle the US claims to uphold within their own borders, but which to this day the US conveniently ignores with respect to transboundary movements of toxic waste crossing their borders and their positions within the Basel Convention.

Ignorance of the Basel Convention’s dual role in both human rights and the environmental agendas is unfortunately all too common, enforced at times by the compartmentalized nature of our institutions that artificially separate environment from social matters. This is demonstrated by the fact there has never been a coming together of the work of the Special Rapporteur of the Commission on Human Rights on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, and the Basel Convention. Pretending that the Basel Convention was not designed as a conscious instrument to prevent human rights abuses of developing country communities is dangerous revisionism.

Running from Legal Obligations

Likewise, of late we see a cloak of revisionism being consciously promoted by key governments, particularly the United States, Norway, Canada, Greece, and Japan and powerful industry lobbies (e.g. electronics and shipping industries), that pretend a new Basel Convention– one that in fact seems to have no 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 for wastes that cannot be prevented from being generated it is
Running From Waste Definitions

If a government or NGO has the audacity to remind certain powerful industries that the Basel Convention in fact is a legal instrument with legal obligations to which violations are criminal, we have seen a mass attempt at exodus from the scope of the Basel Convention by trying to escape the definitions of waste and hazardous waste.

Nowhere has this been more obvious and alarming than in the shipping industry’s efforts to avoid the Basel Convention for the management of end-of-life ships that are in fact hazardous waste. Despite clear legal interpretations by a simple reading of the Basel Convention that ships can be a waste and a ship at the same time, the International Chamber of Shipping, and countries all too willing to do their bidding, such as Japan, Norway, India, Greece, and the United States, have maintained against all legal logic that they cannot be. India has even gone so far as to ignore Denmark’s own definition of hazardous waste with respect to ships, which is a clear violation of the Basel Convention’s Article 1.1.b. Even more insidiously, these countries have run to the International Maritime Organization (IMO) for cover asking that organization to prevent the Basel Convention from fulfilling its mandate to manage end-of-life toxic ships by minimizing their transboundary movement.

They are doing this not because of territorialism or to be legally correct, or to make the controls more effective, but because they seek less rigorous controls, they want business-as-usual – a turning back of the clock to the days of global waste exploitation with immense profits made at the expense of the health of developing country communities. Such an approach not only is an affront to global environmental justice but also perpetuates the continued use of toxic materials, by providing disincentives to avoid such hazardous substances.

Likewise we are seeing the electronics industry, and the United States now pushing to exempt hazardous electronic waste such as lead-tin based soldered circuit boards, lead and barium contaminated CRT cullet, lead and beryllium contaminated mobile phones, and other hazardous electronic components from the hazardous waste lists of Basel.

Recent reports reveal that even EU countries have failed to properly prohibit the export of electronic circuit boards or CRT glass cullet to non-OECD countries. This is particularly disturbing coming from the EU, as the recently adopted Waste from Electronic and Electrical Equipment (WEEE) directive is going generate many thousands of more tonnes per year of collected hazardous WEEE in Europe, and thus pressures to export such toxic waste will increase.

Industry Partnerships: A Means to Reinvent and Circumvent the Basel Convention?

Recently BAN has become concerned that industry partnerships by their very nature, create an environment to introduce programs that circumvent or avoid the legal obligations of the Basel Convention. The makeup of the Mobile Phone Partnership Initiative’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. Some industry proponents in this context have been pushing for the Basel Partnership to ignore its own legal mandate (e.g. they seek to exempt mobile phones from being considered as hazardous waste).

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 and pressures to use market forces to exploit weaker communities. It is vital therefore that the custodians of the Basel Convention – its Parties, refuse to allow the Basel Convention and its original intent, to be undermined or reinvented by special interests that desire to turn back the clock and allow exploitation to prevail.

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