

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 – the externalization of harm and costs along the pathways of globalization. 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 was intended as a legally binding instrument; it is an international law, with a clear aim to promote the minimization of transboundary movement of hazardous wastes (particularly to developing countries) and to minimize their generation.

Increasingly, however, we are witnessing an unfortunate and deliberate effort on the part of powerful industrial interests and the countries that support them, to “run” from and even reverse the Basel Convention’s principles and obligations. We are witnessing a concerted effort to chip away at the bulwark that was erected in 1989 and again in 1995 with the landmark adoption of the Basel Ban Amendment. We are seeing new efforts 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 actually facilitate transboundary movements (TBM) of waste to developing countries using the convenient and green term “recycling” and using that word to justify all manner of waste generation and TBM. 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 and lives were 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 the dumping represented, as from its environmental

impacts. The Human Rights Council installed a Special Rapporteur on the subject in 1995, and has just last year renewed the mandate under the new title: Special Rapporteur on the impact on human rights of mismanagement of toxic substances and waste.

The underlying human rights concept inherent in the Convention of not allowing a disproportionate burden of the world’s pollution placed on any peoples simply due to their economic status has been articulated as the principle of **Environmental Justice**. Ironically while the US government embraced this principle and claims to uphold it within their own borders, to this day the US conveniently ignores the principle once waste passes their borders. The US, Japan, Canada and a handful of others have fought against Environmental Justice within the Basel context and have variously opposed the Human Rights Council Special Rapporteur mandate. Yet, the principle is a sound moral one and no amount of technical guidelines for environmentally sound management can assuage the affront of developing countries receiving a 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 exists or should exist – 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.