



From Waste to Resources?

Interrogating ‘Race to the Bottom’ in the Global Environmental Governance of the Hazardous Waste Trade

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Abstract

The rise of global environmental governance regimes allegedly contradicts the process of an environmental “race to the bottom” (RTB) that results from capitalist globalization. We examine new developments in this area through a qualitative case study of the Basel Convention. Here, we find that new regulations in toxic wastes governance are in fact being co-created with industry actors and aim to accelerate the flow of toxic “resources” to less-developed countries. Further, these shifts are legitimized by a shift in discourse— from thinking of toxics materials as “wastes” to thinking of them as “resources”— that re-frames the toxic wastes trade as essential for sustainable economic development rather than as a manifestation of global environmental injustice, thereby undermining environmentalist claims. Our findings suggest that, despite an expansion of hazardous waste regulations, the RTB concept is still relevant in the context of global environmental governance. We conclude that a fruitful avenue for applying the RTB concept in this context is to go beyond a strict materialist interpretation of global politics to also consider the role of discourses and contesting ideologies in shaping global environmental policy debates.

Keywords: Basel Convention; Global Environmental Governance; Globalization; Hazardous wastes;



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The Basel Convention on the Control of the Transboundary Movement of Hazardous Wastes (hereinafter the Basel Convention), the regime that regulates the global waste trade, was established in 1989 in order to *prevent* the movement of hazardous wastes to countries with weaker environmental and worker safety standards. Recent developments in the Basel Convention suggest an effort to raise environmental and worker safety standards in what is now an informal waste recycling economy in less-developed countries (LDCs). While on its face the Basel Convention has been geared toward preventing a global ‘race to the bottom’ in hazardous wastes, we find that the current development of new regulatory standards is in fact unfolding alongside an intensified effort of international capital to *expand* this highly dangerous industry in LDCs. This seemingly contradictory trend is illustrated in the case of electronic waste, or e-waste, the fastest growing stream of hazardous waste globally.¹ The growth of this highly toxic waste stream was identified by the United Nations Environment Programme (UNEP) as one of the 21 most pressing global environmental issues of the 21st Century (2012). In the report, UNEP argues that the solution to e-waste “lies in a shift in thinking—handling the situation as a resource management challenge rather than a waste disposal problem... [and that] stringent government regulations and policies [will] play a key role in spreading this new thinking and *stimulating the e-waste recycling market*” (emphasis added, UNEP 2012:42).

The UNEP report highlights two points that our research addresses. First, we situate our findings in the context of a renewed debate over one of the central sociological concepts underlying early analyses of corporate globalization, that of a “race to the bottom” (RTB). While RTB predicts that competition for corporate investment will lead to a decline in regulations for competing countries (Daly and Cobb 1994), our case suggests that the global *expansion* of regulations will accompany transnational corporate (TNC) investment. However, the content and aims of this regulatory framework are fundamentally different from the kinds of regulations that RTB predicts would be dismantled, and in the end they leave unchanged or even accelerate the status-quo with regard to the toxic waste trade. This is because LDCs will still receive a disproportionate burden of toxic wastes, and global waste TNCs will expand their opportunities to profit from new facilities. Thus, our findings suggest that, rather than being abated by the expansion of global environmental governance, the RTB in the hazardous waste trade has become more complex as certain industries still successfully advocate for the dismantling of some global regulations—particularly the Basel Convention’s North/South hazardous waste export ban— while also promoting an overall increase in other regulations that help expand the importation of hazardous wastes into less developed countries.

¹ E-waste has been variously described as one of the fastest growing waste streams (UNEP 2009) and *the* fastest growing waste stream (e.g., [UNIDO](http://dx.doi.org/10.5195/jwsr.2011) 2011)

Second, we find that these political developments are legitimized through the discourse promoted by the Basel Convention and UN establishment that conceives of toxic materials not as “wastes,” but instead as economic “resources.” Similar to how the term “sustainable development” helped give a more environmentally sound image to continued capitalist development in LDCs, we find that the reimagining of toxic wastes as a potential “resource” for promoting technological and economic development is enabling a shift in global environmental policy that will increase the North to South trade in these hazardous materials. More than this, the “waste as resource” discourse not only favors market logics, it also undermines environmentalist claims by suggesting that the new regulations encourage material re-use/recycling and the creation of “green” jobs in LDCs.

The following section begins with an overview of the RTB literature, highlighting the debates and critiques surrounding the concept, particularly the more recent scholarship on new forms of regulation in global governance. Although our focus is on global environmental governance and environmental regulations, the case also points to concerns about labor regulations, because the proposed new forms of hazardous waste regulations will seek to formalize the presently informal waste processing sectors in LDCs.

Global Political Economy and the Race to the Bottom

Scholars have documented links between the penetration of TNCs into LDCs, an essential aspect of capitalist globalization, and detrimental environmental outcomes (e.g., Jorgenson 2006, 2007; Shandra et al. 2004; Gould, Lewis, and Roberts 2004; Ross 2008). One reason for this relationship is encapsulated in the ‘race to the bottom’ (RTB) argument. This argument posits that competition for capital investment will lead communities, states or countries that need or desire such investment to create a regulatory climate that is most attractive to industry. As Chan and Ross (2003) demonstrate, with economic globalization the axis of competition for investment has shifted from being between the old manufacturing centers in the global North and the newly opened market in the “developing” global South to being primarily among Southern countries. This shift is also reflected in Porter’s (1999) description of industrializing countries as being “stuck at the bottom” due to their weak or nonexistent regulatory systems. Empirically based on both case studies (e.g., Gibbs and Leech 2009; Frey 2003; Chan and Ross 2003) and cross-national quantitative analysis (Mosley and Uno 2007), RTB has emerged as a predominant outcome of the liberalization of global trade. However, due to differences in measurement, methodology, and choice of case studies these results have yielded somewhat inconsistent results, especially across disciplines (Cf. Massey 1999; Tanguay 2001; Wheeler 2001; Elkins et

al. 2006; Dobbin et al. 2007). For example, scholars who study different subsets of countries, or focus on changes in different kinds of regulations (e.g., corporate tax breaks, or labor and environmental regulations) have found varying degrees of evidence in support of the idea that states intentionally manipulate these regulations in order to compete for capital investment (Dobbin et al. 2007).

Similar contestation surrounds the related concept of “pollution havens,” which predicts the migration of highly polluting industries to vulnerable countries that are least able to resist and most open to foreign direct investment and other forms of TNC penetration (Clapp 2002; McMichael 2000). Again, inconsistent findings on the effects of the flight of capital and dirty industry to LDCs may be related to differences in methodology, such as the failure to include hazardous waste exports or even hazardous waste management facilities in the data (Clapp 2002). In some ways, the approach of studying global environmental governance institutions rather than the policies of particular countries is beneficial in this regard, as it provides an overall sense of the global regulatory climate with regard to toxic wastes. However, this approach is indeed more limited when it comes to understanding how these global policy proscriptions are translated into practice at the national level.

Further evidence (both qualitative and quantitative) exists in support of another closely related concept, unequal ecological exchange (Bunker 1984; Jorgenson and Clark 2009; Clark and Foster 2009; Bonds and Downey 2012). In this literature, scholars have consistently established the ways in which economic prosperity and environmental quality in wealthy, core countries is predicated upon the “undervaluing” of natural resources in the peripheral, poorer countries. Unequal ecological exchange research not only provides further evidence of global environmental and economic inequities, it also clearly conceptualizes wealthy nations’ motivations for preserving the political economic status quo (Frey 2015).²

Here we focus on RTB at a global scale, where much of the relevant literature is grounded in a world-systems perspective. World-systemic forces lead to political and economic marginalization for the peripheral, or less-developed, countries (Wallerstein 1976). Entanglement with global financial organizations such as the International Monetary Fund or the World Bank, often in the form of conditions associated with structural adjustment loans, has led to pressure to pursue neoliberal policies such as those that increase the amount of export-oriented production taking place within the country (Frey 2003; Jorgenson and Kick 2006; Wallerstein 2005; McMichael 2010). These policies essentially subordinate the country’s policies and economic

² While unequal ecological exchange is a concept that deserves further application to the study of the global hazardous waste trade (Frey 2015), in this study we are focusing primarily on the development and dismantling of global environmental regulations, and not on environmental outcomes for particular countries.

practices to the imperatives of global markets. In order to be most appealing to capital investment, nation-states are under intense competitive pressure to weaken, fail to enforce, or refrain from strengthening their environmental and labor regulations (Clapp 1998, 2002; Frey 2003; Redclift and Sage 1998; Ross 2004). The predicted outcome of these competitive pressures has been graphically described as a “downward spiraling competition in laxity,” “a black hole of ruthless competition,” or as a race to the bottom resulting in the proliferation of Third World “pollution havens” (Schneiberg and Bartley 2008:37, Chan and Ross 2003:1014; Clapp 2002; Buttel and Gould 2004). Both labor and environmental activists have viewed globalization as enabling an outpouring of both jobs and indeed entire industries as firms have attempted to avoid regulations that took decades of struggle to achieve in the industrialized countries (Gould, Lewis, and Roberts 2004).

Global Environmental Governance and Non-traditional Regulations

Some scholars, however, are critical of the RTB thesis, mainly due to the emergence of global environmental governance as an alleged countermeasure to RTB tendencies. For instance, scholars from the ecological modernization tradition lament how the “writing on the impact of globalization on environmental quality has been dominated by those who equate economic integration with a deterioration in environmental conditions,” which underplays or ignores the salutary role of private industry in disseminating ecologically and socially beneficial technology, norms, standards and expertise in the process of exploiting developing countries’ “comparative advantages” (Vogel 2002: 691). Others have argued that the migration of certain industrial processes of capital from the core to periphery has resulted in improved performance, both in the environmental (e.g., Mol 2002; Garcia-Johnson 2001) and labor spheres (e.g., Mosley and Uno 2007). These arguments, positing that TNC movement to the periphery spurs a “climb to the top,” is presented in great detail in Mosley and Uno (2007).

In addition to the theoretical and methodological critiques of the RTB thesis outlined above, the proliferation of global governance regimes and the practice of market creation has influenced the expansion of regulatory activity globally (Gilardi 2005; Henisz et al. 2005; Jordana and Levi-Faur 2005; Lazer 2005; Levi-Faur 2005; Meseuger 2005). This work calls into question the applicability of the RTB argument as a predictor of the outcomes of neoliberal globalization. As Schneiberg and Bartley (2008) argue, “globalization, privatization, and neoliberalism may go hand in hand with the *expansion* of regulation, both within nations and at the transnational level” (emphasis added; 32).

These new regulations—which can take forms such as “regulation-for-competition, cap-and-trade, regulation by information, and soft law or experimental governance”—imply a broader normative shift from conceiving of the role of the state as a suppressor of competition to

its facilitator (Schneiberg and Bartley 2008:42). In the regulatory process, states create the conditions for assigning authority to non-state actors. For example, regulated industries are increasingly the creators of the standards that they must meet, and thus they are typically given discretion as to the means for achieving these guidelines. This has produced a proliferation of non-specific guidelines, such as the use of best-available technology (BAT) as an alternative to setting maximum thresholds for a given pollutant. Further, instead of state penalties, sanctions are exercised through another non-state actor: the consumer. The logic here is that by increasing the availability of information to consumers, the market will dictate whether these corporate environmental practices will continue (i.e., if the company will remain profitable). These “non-coercive” alternatives to regulation are consistent with other policy innovations such as public-private partnerships and even voluntary approaches to regulation and are sold to the state as more “efficient” approaches to solving environmental problems than traditional command-and-control regulations (Blair 2008:697). As mentioned above, ecological modernization sees industrialization as leading to a rise in environmental standards, so these new regulations could be interpreted as achieving a “climb to the top,” rather than a RTB (Mol 1997; Garcia-Johnson 2001, Simmons 2003, Vogel 1995, Vogel and Kagan 2004). At a global level, the so-called “California effect” suggests that higher standards in one area (i.e., in core nations) will diffuse or be passed through economic interconnectedness to other areas (i.e., peripheral countries or countries with economies in transition).³

A Critical Qualitative Examination of Hazardous Waste Regulations

Despite the upsurge in research on these new forms of regulation, we find that the “new regulations” approach fails to adequately capture the power dynamics and pursuits of further capital accumulation that characterize the regulation of the global hazardous waste trade. As we illustrate, these power dynamics are put into practice in conjunction with shifts in discourse that in turn are shaping shifts in policy. Focusing on the process by which new regulations are being created, we find the need for extending the RTB concept to include insights on the importance of material interests as well as ideology and discourse at the site of global environmental governance (Robinson 2001; Bernstein 2001; Goldman 2001, 2005; Okereke 2008; Sending and Neumann 2012; Gareau 2012a; 2012b). Other researchers adopting a qualitative, case study approach to the study of global environmental governance have already elaborated the importance of “green neoliberalism” in the World Bank (Goldman 2005), and “liberal

³ Some have argued that the California effect is more applicable for product standards than for production processes (Swire 1996).

environmentalism” in the UN Environment Program (Bernstein 2001) and in the Montreal Protocol on Substances that Deplete the Ozone Layer (Gareau 2013). In these instances, it is clear that regulations are no longer simply hollowed out or dismantled in the service of “economic growth.” Rather, regulations are being recreated in ways that appear to serve environmental interests but actually enable the expansion of transnational capital into new arenas. The discursive/ideological factors (i.e., a shift from “waste to resources”) helps to explain how an increase in regulations will accelerate rather than limit the RTB-esque movement of hazardous wastes and processing facilities to LDCs.

In short, our research, which relies on a qualitative case study approach of new regulations *as they are being created*, will demonstrate the persistence of some of the exploitative processes that underlie the RTB argument while also pointing out that evidence for these phenomena is not as obvious as looking for an absolute weakening or lack of implementation of regulations. In the Basel Convention case, new regulations are not only being co-created by private industry actors and legitimated through the market-friendly discourse of “waste as resource.” More importantly, they also serve to advance the material interests of these actors. In the case study that follows, we uncover the ways in which a “market epistemology” (Da Costa and McMichael 2007) is becoming embedded in the Basel regime, enabling the creation of formalized hazardous waste recycling industries in LDCs.. Significantly, the discursive shift of wastes as resources reinforces the central role of industry actors in the drafting of subsequent regulations, thereby ensuring that corporate interests will be protected at the expense of vulnerable populations in LDCs. This not only perpetuates but may also exacerbate the exploitative power relations and waste trade patterns predicted by the RTB argument.

Methods

Our data come from three sources. First, we reviewed the archives from nine meetings of the Basel Convention’s Open-Ended Working Group (OEWG), spanning the years 2003-2014. These meeting archives contain third-person summaries of all of the proceedings of each meeting where Decisions are created and revised, before they are eventually sent to the main Conference of the Parties (COP) meetings for approval. Further, the archives include all documents, statements or speeches submitted by Parties (i.e., participating countries), NGOs, and other international organizations relating to specific matters. Second, the first author attended the Convention’s 10th Conference of the Parties meeting in Cartagena, Colombia from October 17-21 as an Observer. Here, the first author was able to observe meeting proceedings and gather publications and pamphlets distributed by a range of interest groups—from environmentalists, to environment agencies to industry groups—for later review. However, these data were limited because multiple sub-meetings were usually held concurrently (an important limitation suffered

by countries that cannot afford to send large international delegations as well), so it was not possible to observe the proceedings for all relevant subjects first-hand. Third, 25 semi-structured interviews were conducted either in person, electronically, or by phone with various national delegates to the Basel Convention, as well as representatives from the Secretariat, NGOs, and industry.

The Basel Convention Becomes the World's Hazardous Waste Trade Regime

As has been described elsewhere (Pellow 2007; Clapp 2001), the hazardous waste trade grew exponentially in the 1980s. The legacy of the environmental activism in the 1970s (particularly in the United States) was a regulatory framework and a public consciousness unfavorable to the local disposal and treatment of hazardous wastes (Dunlap and Mertig 1992). These currents increased the cost of hazardous waste disposal within industrialized countries. These “push” factors combined with the “pull” of decreased transportation costs and weak environmental and labor regulations in LDCs as a result of neoliberal economic globalization, resulting in an increased flow of hazardous wastes from core to periphery. However, the work of international environmental groups—most notably Greenpeace—quickly exposed the exploitative nature of this trade. The most often cited example of hazardous waste transfer gone awry is that of the *Khian Sea*, a ship that was carrying toxic fly ash from an incinerator in Philadelphia. After the waste was refused in a Haitian port, part of the waste was mislabeled as fertilizer and dumped on a Haitian beach under the cover of night. In other cases in Africa, the unwitting “importers” of such wastes were even less fortunate (Clapp 2001; Pellow 2007). In the late 1980's, for example, workers in Koko, Nigeria, were ordered to remove hazardous wastes that were dumped on some farmland by an Italian company. Not knowing how toxic the PCB and dioxin-laced waste really was, many of the workers suffered chemical burns and even paralysis in the course of the clean up ([Brooke 7/17/1988](#)).

Instances such as these led activists and leaders in LDCs to label these practices as “toxic colonialism,” “garbage imperialism,” “environmental racism” and “toxic empire,” indicating the practice as a painfully visible manifestation of the continuing exploitation and inequality in world-system dynamics. Note also that these accounts are highly consistent with predictions associated with the RTB argument: with an increase in regulations in the global North, hazardous waste is transferred to the global South where there is little or no regulation. The result is a continuation of economic benefits of industrial (toxic) activity for core nations at the expense of human health and ecological viability in the periphery—an outcome as well as an accelerator of the present world-system dynamics.

These developments unfolded concurrently with a line of institutional mandates within the UN to develop a global convention regulating transboundary movement of toxic wastes (Krueger

1999). In 1989, the first Basel Convention summit was held. Due to heavy pressure from wealthy waste exporting countries and industry (Clapp 2001), the Convention was originally established based on the principle of Prior Informed Consent. In other words, wastes could be exported as long as the importing country consented to receiving the wastes. Critics argued that this version of the Convention did little more than legitimate the waste trade, since the institutional and political realities on the ground in waste importing countries combined with the power and incentives offered by waste exporters to create few barriers to the provision of “consent” ([Basel Action Network](#)). Further, the exclusion of wastes destined for recycling from the informed consent requirement led to the increase in mislabeling wastes for disposal as being destined for “environmentally sound” recycling (Krueger 1999). As a result of these limitations, LDCs succeeded in 1994 in bringing a consensus vote to amend the Basel Convention to include a “North/South” hazardous waste export ban. Decision III/1, the so-called “ban amendment,” officially prohibits the transfer of any hazardous waste destined for final disposal *or recycling* from OECD (called “Annex VII countries”) to non-OECD countries.

As will be seen in the Findings section, the proposed ban amendment has proved very controversial and antithetical to corporate interests. Even 20 years later, the ban amendment has still not been ratified by a sufficient number of countries to become legally binding. As a result of the stagnation over the ban amendment, today a significant portion of toxic wastes still wind up in LDCs, where they are disposed of or recycled under conditions that pose great danger to humans and the environment. Although the majority of hazardous wastes continue to be traded within the OECD, given the low production of these wastes within LDCs, vulnerable communities in the global South are being disproportionately burdened with toxic wastes not of their making, thus supporting the charges of global environmental injustice.

A pathway for the implementation (and deconstruction) of the Basel Ban

It has been 20 years since the adoption of the ban amendment. Although 80 of the 178 Parties to the Basel Convention have ratified the ban amendment, it has yet to enter into force, or become legally binding. Until the fall of 2011, it was unclear whether the amendment would ever enter into force. This uncertainty was due to a controversy surrounding the minimum number of country ratifications that would be required in order for the amendment to enter into force.⁴ In the early 2000s, the drawing out of the ban amendment controversy, along with issues of inadequate funding and other conflicts among Parties, led to increased tensions within the Convention. In April of 2003, for example, a delegate representing the Netherlands delivered a

⁴ For a detailed description of this controversy, see Lucier and Gareau (2014) and [UNEP/CHW.10/INF/13/Rev.1](#)

speech to the attendees of the Open Ended Working Group, questioning the desirability of continuing to finance the participation of “developing countries” to travel to meetings and “fight amongst themselves and with the donor countries.” The delegate recounted “trench warfare discussions, where delegates insulted each other” and reflected that “the sixth meeting of the Conference of the Parties caused severe damage to the belief in the Basel process and the possibility of cooperating with developing countries.” Additionally, the environmental NGO, Basel Action Network, repeatedly referred to the ban amendment as being “held hostage” by a “small minority” of countries—namely, the major waste exporting countries, including the United States, Japan, Canada, Australia and New Zealand.⁵

By the 9th Conference of the Parties (COP) in 2009, the President of the COP called on the Parties to find a way out of the stagnation. The Indonesian and Swiss delegations responded by organizing a Country Led Initiative which would meet several times before the 10th COP in October 2011 in order to address “those issues related to the transboundary movements of hazardous wastes...contrary to the overarching objective of the Ban Amendment.”⁶

The outcome of the three meetings of the Country Led Initiative was a Decision in support of facilitating the adoption of the ban amendment in the shortest time possible. The breakthrough on this issue was a focal point for the October 2011 COP 10 meeting. As the activists stated in one of their pamphlets, “[COP 10] may be the most important Basel Convention meeting since 1994... Some see the upcoming COP...as the meeting that can finally affirm the historic [ban amendment]... and reaffirm the relevance of the Convention”⁷

The final debate over this Decision took place during working group meetings at the beginning of COP 10. Here, although some reservations were reiterated by the Japanese, American, and Australian delegations, when the paragraph in support of the legal approach favorable to the ban amendment’s entry into force was presented to the group, the room fell silent for a minute or so until it was established that there were no objections. Following this, further work on the Decision stopped as delegates jumped up and congratulated each other with hugs and pats on the back, many of them rushing out of the cramped conference room, cell phones in hand (author’s observation). Had powerful waste-exporting countries (such as the United States and Japan) really just given up their opposition to the ban? Confidentially, interviews with the delegates from some of these opposing nations as well as with delegates from EU countries explained that there was more to the Country Led Initiative than finding a way for

⁵ BAN ‘[Briefing Paper 3](#)’ (2011)

⁶ [Basel.int](#)

⁷ [Basel.int](#)

the ban to enter into force. Simply put, once the ban amendment is in force it is possible to amend it, and this was the new objective.⁸

Opponents of the ban (most notably from the EU and North America) had come to believe that the goals of the Basel Convention would be better accomplished with a revised version of the original export ban. The new version of the ban would replace the distinction between wealthy (OECD, EU and Lichtenstein) and poor nations with a distinction between those who had the capacity to manage wastes in an Environmentally Sound Manner (ESM) and those who don't. The implications of this shift are significant. The Basel Convention, despite its many limitations, is still considered the only global convention with an explicit environmental justice component because of the inclusion of the North/South distinction as the basis of the ban amendment (Pellow 2007, Okreke 2008). This environmental justice component explicitly aims to address the RTB process that was unfolding with the early globalization of the waste trade. The new direction for the convention would replace this economic basis with one that is focused on different technological capacities of countries to manage wastes. While this may initially appear to encourage more regulatory infrastructure in low-income waste-receiving countries, in reality the shift may only serve to accelerate toxic imports to these countries and allow a pathway for TNCs to further involve themselves in the process. Further, this shift parallels and is made plausible by the discursive recasting of wastes as “resources,” as we illustrate below.

“Changing Realities”: The Shift in Language from Waste to Resources

In the Basel regime, the notion of considering hazardous wastes as a potential “resource” first emerged in the early 2000s during debates about which countries would comprise Annex VII under the Basel Convention (i.e., those countries that would be permitted to receive hazardous waste imports under the Basel Convention). As a 2003 report from the Basel Secretariat states:

Since the mid-1990s, there has been a gradual and significant policy shift in many countries, both Annex VII and non-Annex VII, away from a strong focus on regulations towards market-driven opportunities where waste becomes a potential resource... Rapidly industrializing countries have a growing demand for secondary raw materials to sustain the pace of their social and economic development. ... There is a critical need to

⁸ A 1998 Decision (IV/8) stipulated that membership in Annex VII (those countries forbidden from exporting hazardous waste into non-Annex VII under the Ban Amendment) could not be altered until entry into force of the Ban Amendment.

build a capacity for the recovery or recycling of certain hazardous and other wastes.⁹ (emphasis added)

Presently, the “waste to resources” discourse is used explicitly in conjunction with arguments in favor of an ESM-based export ban, rather than an export ban aimed at preventing the flow of toxic wastes from North to South. In the “COP 10 Bulletin,” Achim Steiner of the UNEP wrote:

The Basel Convention was adopted over 20 years ago in response to uncontrolled dumping of hazardous wastes from the industrialized world in developing countries. Accordingly, its main focus has been seen as protecting developing countries from unwanted waste imports.... [However],if the Convention is to retain its relevance in the 21st century it is necessary to identify a practical approach that [also supports]... the realization of economic incentives and benefits of environmentally sound recycling and resource recovery operations in those countries that are in a position to do so.... Twenty years ago, there was a clear differentiation between North and South in terms of hazardous waste generation and [waste management] capacity.... The reality today is different... *The entry into force of the Ban Amendment will allow Parties to address changes to the existing legal regime to accommodate such new developments and realities.*¹⁰

Two notions are highlighted in this lengthy excerpt. First, we have the theme that the global waste situation is in the midst of a significant shift, where there is a risk for failure of regulations to adapt to changing circumstances within LDCs, including the growth of internally generated hazardous wastes, as well as increasing technological capacities in terms of waste management. While LDCs previously needed protection from “wastes,”—a framing of the situation that is consistent with EJ and RTB concerns, and that corresponds with the command-and-control style ban amendment—“the reality today is different,” in Secretary Steiner’s words. Second, the implication is that the current regulatory regime, based in the ban amendment, is largely ineffective in promoting the goals of sound management of hazardous wastes, since this

⁹ UNEP/CHW/OEWG/2/9:11

¹⁰ Emphasis added. Available at: basel.int

would be best accomplished in the current climate through the development of formalized waste management industries in LDCs. Ostensibly, this would prevent a classic RTB scenario. However, the story is more complex than this because, as we will show below, industry groups also play a central role in the creation and implementation of the regulations and accompanying certification and formalization processes designed to enable the objective of treating hazardous waste as resources.

In 2011, Basel's Executive Secretary, Katharina Kummer-Piery, convened a "think tank" of "senior experts" on waste management to discuss policy strategies going into COP 10. Although representatives from universities and institutes (primarily in EU countries), Basel Convention Regional Centers (in China and Africa), international trade bodies (Japan) and the recycling industry were in attendance, no environmental NGOs were invited. The resulting "non-Paper" (UN-speak for an unofficial report) was titled "Shifting Paradigms: From Waste to Resources." Foreshadowing Secretary Steiner's more official remarks, the non-paper discusses the relationship between thinking of wastes as resources and Basel policy:

[today, their] economic potential is more widely recognized and ground-breaking technologies and business opportunities have emerged to promote the use of waste as a valuable resource. Therefore, the Basel Convention needs to modernize to keep pace with this paradigm shift.
(Executive Secretary 2011:3)

Putting this excerpt into the context of the entire non-paper, it becomes clear what is meant when these delegates and industry experts refer to the need to "modernize" the Basel Convention. For example, later on in the non-paper there are a number of "overarching policy recommendations" including a call to "[r]evise the permissibility of transboundary movements of hazardous waste to include movements carried out to promote resource efficiency through environmentally sound recycling or recovery operations" (Executive Secretary 2011:3).

Such regulatory revisions are largely justified on the grounds of being adaptive and responsive to changing economic, technological, and geopolitical realities. For instance, in a recent interview for *USA Today*, now former Secretary Kummer Piery responds to environmental justice activist Jim Puckett's characterization of the export of non-working discarded electronics from the United States to Africa as "terrible and illegal" by stating:

My perception is this issue was a significant issue 10 years ago but the situation is now changed in that the material price has gone up... New technologies not available at that time make this material quite valuable.

It doesn't make sense to dump it... There's a strong perception in the United States that the Basel Convention prohibits exports. That's not the case. (D'Ambrosio 2013).

The notion of the need for a "paradigm shift" was echoed in our interviews with a member of the U.S. delegation and with an e-waste industry representative. The e-waste recycler, who was interviewed at COP 10 in 2011 and later by phone in 2013, described the Convention as "old," explained that the current (ban-based) regulations act as an "impediment" to his industry because LDCs would refuse shipments of refurbishable electronics under the Ban-created perception that they are hazardous wastes. As he explained, "looking through the lens of waste, you see waste everywhere," where you should instead see resources. While the industry recycler framed the outdated-ness of the Convention in technological terms, the U.S. delegate framed the Convention as being out of step with emerging geopolitical dynamics. When asked for thoughts on the waste to resources language, in a 2012 phone interview, this delegate explained that

...the idea really is to get rid of the ban amendment and then do this other thing, develop the Environmentally Sound Management framework to really be realist people and say, what can we do to promote sound management of waste and uphold the whole, promote the global, like global trade, which is the real reality now since the whole ban, the whole "Basel Action thing," was drafted like how many years ago? Like 25 [sic] or so...

Another industry representative and legal advisor who has been involved with the Convention from the beginning expressed a similar sentiment in a September 2013 phone interview, explaining that the Basel Ban was

...problematic from the beginning, because it didn't take into account the need for management, [and the] huge potential for non-annex 7 to non-annex 7 trade in hazardous waste, [due to] increased industrialization in developing countries... and the Basel Ban really had nothing to do with that. It is a regulation of the 1980s, and people seem to be moving beyond it. ... It is a political distraction, [but] people hate the thought of giving it up because of how angry proponents would get... [However,] the ban just didn't meet the true need of developing countries for help in their own internal waste management. ... Basing it on geopolitical

factors was not a smart move, I don't think, ever.... They wanted it to be a political alignment rather than an effective distinction.

The logic expressed by these delegates, then sees global technological and geopolitical shifts in the trade and management of hazardous wastes as making the treatment of hazardous wastes as potential resources increasingly practical, thereby justifying the efforts to implement the ban amendment as a first step to replacing it with guidelines of ESM. And while a number of concrete steps have been taken to legally enable the treatment of hazardous wastes as resources, such as the adoption of a framework of definitions for ESM at the 11th COP in April of 2014, it is unlikely that all of the requisite regulatory changes will be institutionalized in the near future since several more countries will need to ratify the ban before it can enter into force, and can therefore be legally amended along the lines of ESM (Personal communication with EU delegate). However, the work that has already been done in the development of guidelines for ESM and public- private partnerships provides a good hint into what such a regime would mean for the actors involved, as we will explore in the next section.

What would an ESM regime look like?

Formalization and certification; financing and partnerships

The data presented above focuses on those actors who view the waste to resources paradigm shift as being a more “practical” approach to designing a global regime that regulates the transboundary movement of hazardous wastes. In this sense, the term “practical” can be seen as meaning being compatible with emerging global technological and economic realities. However, there are also those who are critical of this discursive shift, seeing it as nothing more than a legitimization strategy for continuing and accelerating the status quo. Basel Action Network argues that the waste to resources non-paper “crosses a line,” claiming:

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” is a far cry from what the Convention’s framers sought.¹¹

It is easy to see where the activists are coming from. The Executive Secretary’s non-paper (discussed above) is littered with language that undermines the goal of minimizing the transboundary movements of hazardous wastes. For example, it is suggested that, “The principles of ESM should be applied in a balanced manner and recognize *that increased transboundary movements of hazardous waste may be preferable* to ensure ESM (specifically, to support a regional approach... whereby countries in the same region share specialized facilities)” (Executive Secretary 2011:9). In order to make further sense of the activists’ objections, then, it is important to explain what the new ESM regime might look like. Based on our data, there are two central pillars of how a new regime based on ESM would operate. Firstly, in order to achieve the status of “environmentally sound management,” a waste processing area would have to formalize its waste management system and then be subjected to certification standards. Second, due to the unstable financial position of the Convention and its regional centers (who will be the likely implementers of such policies), much of this work will be carried out in the form of public-private partnerships.

Central to the proposed actions of the Country Led Initiative (including both the explicit actions of strengthening capacity for those waste transactions that do not occur between Annex VII and non-Annex VII, as well as the less explicit agenda of elevating ESM capacity to the new basis of the ban amendment) is the concept of Environmentally Sound Management (ESM). Broadly, a system that manages hazardous wastes in an ESM is one that takes all “practicable” steps to protect human health and the environment from the impacts of hazardous wastes. The initial proposed elements of this framework are spelled out in Annex I of the omnibus decision adopted at COP 10 in 2011.¹² According to those who worked to develop a more official framework for ESM at COP 11 in 2014, facilities could be considered capable of soundly managing wastes through the development of recycling standards or a certification system to be conducted by a third party. Such systems would be enabled by national and global regulations aimed at limiting the illegal and/or “informal” trade in hazardous wastes. Such “enabling legislation” is seen as crucial for the management of wastes in an environmentally and fiscally sound manner as it ensures an adequate stream of waste inputs for ESM facilities to process. In a comment submitted to the draft version of the omnibus decision, the Bureau of International

¹¹ Basel Action Network COP 10 “[Alert #1](#)”

¹² [UNEP/CHW.10/5](#)

Recycling, an industry lobby representing more than 700 global recycling corporations and other recycling entities, expressed its “support” and wished to “flag its particular interest for this [proposed] certification scheme”. The note elaborates on a possible framework that could be used for the global ESM “certification scheme”:

[A] fee based certification scheme might provide ...for some of the funding needed to execute the programs...to promote ESM.... Any concern about extra burdens on the Secretariat we believe can be relieved by nominated accredited verifiers in a similar manner as some existing certification systems...¹³

In addition to illustrating the favorable view that industry interests have of the recent Basel developments, this excerpt also introduces the related issue of financing that could also shape the direction taken by a new ESM regime towards a strong emphasis on public private partnerships (see below). Before this can be explained, however, it is important to consider the potential implications of using a “global certification scheme” instead of the economically-based ban amendment.

The “waste to resource” proponents see the formalization of the waste industry in LDCs as central to the success of establishing facilities that are certified to manage hazardous wastes in an ESM. While this corporate support for environmental regulation may appear to be somewhat surprising, especially to U.S. readers, we must consider the fact that these guidelines actually provide a competitive advantage to larger and more formal corporations such as these, a process referred to as “regulatory capture” in analyses of the role of regulation in earlier economic eras (Stigler 1971; Law and Libecap 2006). For example, in the case of electronic wastes, the present regulatory environment enables informal “backyard” recyclers to pay the highest prices for consumer e-waste, as they can ignore worker safety and environmental controls. This serves to severely undercut the e-waste input flow to formalized facilities. While this is a point on which the environmental NGOs and industry can explicitly agree, they do so with different sets of interests in mind. Most electronics manufacturers are already legally mandated through various forms of “take-back” (Extended Producer Responsibility) legislation (such as the EU’s WEEE Directive or many state-based laws within the United States) to pay the costs for recycling the products that consumers return, and they are required to use formalized, environmentally

¹³ Basel.int

responsible facilities to do so.¹⁴ When these facilities are not able to achieve the most efficient economies of scale, it not only hurts profits for these facilities, it also increases the disposal costs for the manufacturers that are bound by take-back legislation. Thus, ESM regulations are frequently praised by manufacturers as an attempt to “level the playing field” by reducing “leakage” of consumer electronics to the informal sector, thus supporting the profitability of formalized recycling facilities and decreasing recycling costs for manufacturers. (Secretariat 2011).

Thus, the requirement of more cost-effective economies of scale in the recycling of many hazardous wastes means that a constant supply of inputs must be guaranteed. In the case of e-wastes, the vibrant illegal waste trade means that strong regulations are needed in order to divert potential inputs from the informal economy and into the formal economy. While these most recent efforts indicate an intention to raise recycling standards in certain LDCs, the success of such efforts is also dependent upon the establishment of a regulatory framework that furthers the flow of toxic “resources” to LDCs. This suggests the need for nuance in considering the apparent dichotomy between new forms of regulation associated with global governance and the RTB thesis.

Although the excerpts presented above highlight the growing importance of certification and formalization in the regulation of the hazardous waste trade, issues of financing and public-private partnerships were also introduced. The lack of funding for the Basel Convention is linked to three factors: (a) that the Convention lacks an independent financing mechanism, (b) that many of its projects cannot be funded through the Global Environment Facility, and that (c) many donor countries fail to make their pledged payments. It is beyond the scope of this paper to critically assess these financial issues; it suffices to say that many delegates have suggested an increased reliance on public-private partnerships as one of a multiplicity of strategies to address this issue.

Of course, this is not the only cited benefit for establishing such partnerships. In the framework documents for the first two Convention partnerships, known as the Mobile Phone Partnership and the Partnership for Action on Computing Equipment (PACE), members cite the access to expertise and the promotion of flexible, non-politicized, “practical” solutions to problems with the management of particular waste streams as other benefits. However, these same documents also make repeated reference to the fact that these partnerships are not solely, or

¹⁴ In addition, it is clear that most manufacturers would prefer to send their wastes abroad to less developed countries for recycling, as evidenced by the recent establishment of ESM facilities in countries such as Kenya by companies such as HP, and by the heated debates that took place at COP 11 surrounding whether waste exports being done through take-back programs should be exempt from Basel regulation. The activists and LDCs finally consented to allow for such an exemption almost a year after the meeting.

sometimes even primarily, for the benefit of vulnerable populations and environments in LDCs. In fact, these documents decidedly underplay these aspects of Basel Convention work and strongly emphasize the development of economically-minded solutions geared to the benefit of industry “partners.” As the chair of the now-defunct Mobile Phone Initiative observed in a meeting concerning the establishment of framework documents for public private partnerships,

one of the clear difficulties of engaging the private sector is the reluctance of many companies to be associated with a Convention that includes the phrase “hazardous” in its title. While this will always be...important, it is proving a challenge to the marketing of the Convention to prospective partners.¹⁵

This point is carried further in comments made by the International Precious Metals Institute,

responsible businesses do not perceive themselves as *threatened* by any actions the Basel Convention might take, including the trade ban,... such businesses then have no further interests that the Convention appears to restrict or promote...The Basel Convention should promote an understanding that businesses want to *invest*, and should *invest*, in developing countries.... The [waste management infrastructure] improvement can be directly related to the *business and investment interests of the private industry partner* (provided, of course, that it is also of some broader societal benefit).¹⁶ (emphasis added)

This same partner elaborated on the dynamic of the international trade in hazardous wastes, as he and his organization view it: “[t]he Basel Convention should assist countries in managing this type of trade, and these kinds of businesses... and some of these businesses should be interested in participation in growing markets in developing countries.” The above quotes clearly illustrate the understanding that businesses and delegates involved in such partnerships have about the future role of global regulations: they are to enable further capital investment and profit in underdeveloped markets. In the case of hazardous waste recycling firms, this indicates the desire to increase the flow of toxic exports to such markets.

¹⁵ [UNEP/CHW/OEWG/2/12:41](#)

¹⁶ [UNEP/CHW/OEWG/2/INF/7](#)

Ironically, an interview in October 2013 with a lobbyist representing similar corporations reveals an ambivalent attitude about the potential for ESM of e-wastes within LDCs:

the obstacle is that it is always cheaper to not follow some of these [ESM] practices... developing countries are so unregulated. In 2001 I attended a workshop in China, in Tianjin, and met the chief regulator at the Chinese EPA, the chief regulator for electronic scrap, and he said that it was only him and one other person dealing with the management of electronic scrap in all of China.... This is one of the things I became aware of... developing countries have little if any ability to regulate their societies.

Similar sentiments have been expressed through PACE, the partnership developed to work on e-waste issues. For instance, the notion that movements of toxic wastes to LDCs should be *increased* (presented in the section above) is evident throughout a promotional film called *Accelerate the PACE*, which closes with the sentence: “Don’t slow down goods, keep up the PACE, yes, even accelerate it.” In an interview, a U.S. computer recycler that co-chaired one of the PACE working groups explained the partnership’s efforts as “industry coming in and saying to government [back-off].” This recycler explained that in a place like the United States, “e-waste is a profit center,” and the “nice thing” about it is that it’s not a “regulatory mandate, it’s a sustainable economic project.” Although the central role for public-private partnerships is not made explicitly central in the documents for the Country Led Initiative or the omnibus Decision that was adopted, we find that the majority (if not the only) pilot projects to develop any ESM infrastructures or to test and develop technical guidelines in LDCs to date have been carried out through these partnerships.¹⁷ These efforts have been lauded by the Convention establishment, particularly by the former Executive Secretary herself (she describes PACE as “one of the highlights” of the Convention), and the future centrality of the role of partnerships was confirmed in interviews (2011-2013) with representatives of the Secretariat. Further, the remarkably low capacity of the Basel Convention Regional Centres (some of which were described as “just a room in a university,” and may only have 1 “full-time” employee) make the increase in reliance on these partnerships probable.

¹⁷ For example, in the case of e-waste there is not only the PACE partnership, but also the StEP initiative which is heavily funded and influenced by European metals refining corporation Umicore. This initiative has been responsible for the development of pilot ESM facilities in China and India (Wang et al 2012).

Conclusion

Our case takes an in-depth look at the dismantling of existing “command and control” regulations and the creation of new global environmental regulations aimed to accelerate the flow of toxic “resources” to LDCs. We document this process in a relatively new and dynamic industrial sphere, global recycling of hazardous materials. Thus, we can say that the underlying processes of production can be extended to these novel processes of re-production as the groundwork for a formalized hazardous waste recycling industry is being envisioned and put into practice. This is presently taking place through the medium of the formalization of the informal recycling industry, which is facilitated in the regulatory sphere through the development of “guidelines” and “certification schemes” and carried out through public-private partnerships.

These findings contrast much of the new regulations literature, as our findings suggest that an absolute increase in regulations does not necessarily represent a reining-in of global capital. These private actors can work within global regimes to at least as great an extent as they do at the level of nation-state. Thus, the insights underlying the RTB perspective provide a more comprehensive lens through which we can analyze recent developments in the Basel Convention. Lamenting the narrow focus of much of the Basel literature, Okereke (2008) notes that, “[g]enerally, authors tell detailed stories of specific instances of waste scandals and condemn the dumping of hazardous wastes... but they do not go further to contextualize these events in terms of historical domination and the existing global economic infrastructure” (Okereke 82). Grounded in the world-systems framework, the RTB perspective provides such a context, as we find that the exploitative and expansionary nature of the “existing global economic infrastructure,” is preserved despite the proliferation of global regulations, particularly in the environment sphere. Our findings add depth to this critical approach by qualitatively exploring the process by which these regulations are *being created*.¹⁸

Where the Basel regime has historically been marked by a global ban on waste exports from wealthy countries to poorer countries (an acknowledgement of the need to prevent an RTB and an explicit nod to EJ concerns), the present moment is characterized by two “paradigm shifts.” First and most explicitly, there is the shift from waste to resources on a discursive level, which is consistent with the expansion of a “market epistemology” throughout global development institutions (Da Costa and McMichael 2007). Second, there is the proposed shift from the ban amendment to ESM on a policy level. Following the process by which these shifts are

¹⁸ Although the ESM-based Basel Convention has not been officially put into practice yet, we argue that it is precisely our ability to study the Basel Regulations *as they are being created* that distinguishes our study and allows us to add nuance to the literature on global political economy and global environmental governance.

interactively unfolding in the Basel regime has unearthed practices where the development of “new” regulations preserve and even accelerate the “old” interests of global capital. Further work in other evolving sites of global (environmental) governance that delves into the process where regulations are created, paying attention to both the role of ideology and discourse as well as the importance of political-economic power and the pursuit of material interest would do much to inform understanding of the relationship between ideology and material interests that has become a central problematic in political social science and environmental sociology research in global environmental governance (Cf. Sending and Neuman 2006; Gareau 2012).

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