



## *delegate alert*

April 23, 2025

### **Some Key Considerations for Basel COP17**

#### **Agenda Item: 4 (b) i -- Technical Guidelines**

#### **>> Ensure that Black Mass and Lithium-Ion Batteries are Considered to be Hazardous Waste**

It is vital, now that the massive amount of Li-Ion Batteries (LIBs) from electric vehicles and power banks are reaching end-of-life, that we ensure we are not inundated with a tsunami of transboundary movements of such wastes or with black mass (BM) -- a residual mixture of such LIBs. The Guidance Document in its current version does not do an adequate job in paragraph 74 of spelling out constituent ingredients of LIBs, which qualify it as hazardous waste by Annex I and Annex III. These constituents include fluorinated hydrocarbons (Y45) as well as organic solvents (Y42), which possess flammability (H4.1), toxic (H11), and ecotoxic (H13) properties and thus qualify as hazardous waste. The Guidance Document must be very clear about LIBs being hazardous waste. Even those with some remaining charge, which is almost always the case, cannot be considered non-waste. Clearly, we need a cut-off threshold, and for that, we should look to the past discussions on this topic by the PACE partnership. Further, it must be certain that the Annex IX listing B1090, which refers to "batteries conforming to a specification," cannot trump Annexes I and III, as the Annex IX chapeau makes clear. Thus, unless an end-of-life battery still possesses a strong charging capacity, it must be considered a hazardous waste.

Likewise, BM must also be considered as either Y49 or A1181. Certainly, if there remains present in the BM fluorinated compounds as has been shown in the literature, then the BM should be considered as A1181 -- hazardous electronic waste. And if not, it should still qualify as Y49. This must be clearly stated in the Guidance Document. Currently, it is unclear.

**Proposed Action:** Parties are encouraged to ensure that the Guidance Document on batteries including "Other Batteries" makes it clear that both LIBs and BM are controlled wastes under the Basel Convention. We appreciate the recent decision of the EU to consider BM as hazardous. If we do not do this we will very likely see mass migration of these wastes

ending up being burnt, dumped or subject to informal sector operations in developing countries.

## **Agenda Item: 4 (b) v -- Further Consideration of Plastic Waste**

### **>> Ensure a Comprehensive Review of Plastics Amendments Implementation**

As per document 17/INF/18, BAN supports a robust review of the Plastics Amendments as delineated. In our opinion, the implementation of the Amendments as they stand is spotty at best. There are still Parties that are being used as global dumping grounds for plastic waste, such as Malaysia, Indonesia, Mexico, and Turkey. The problem of massive exports from the United States to Basel Parties, including Malaysia and Mexico, must be addressed even though the US is a non-Party. Too many Parties still lack a proper understanding of the Amendments within customs and other on-the-ground enforcement agencies.

However, it is important that we not only improve enforcement of the current text, but also improve the three listings. In this regard, we highlight the following issues and remind all of the BAN side even on the issue of implementing the amendments.

**Side Event:** [Preventing Plastic and e-Waste Trafficking: Lessons from the Frontlines](#): 4 May 18:15 -- 19:45, Room 2

### **>> Extend Basel Controls to B3011, Including Consideration of a Total Ban to Developing Countries**

Parties should press for a progression of greater controls on all types of plastic waste, including B3011 (so-called non-hazardous plastic wastes) globally. This would be consistent with the European Union's latest version of the Waste Shipment Regulation and in line with the INC-5 chair's latest draft text following the INC 5.1 negotiations in Busan, Korea to develop a treaty on the life cycle of plastic, which stated "*... developed country Parties shall take measures to prohibit the export of plastic [waste] to developing country Parties.*" The first step should be to follow what Parties did concerning electronic waste and ensure that the listing B3011 is removed and that all plastics that are not A3210 (hazardous) are considered as Y48.

Increasingly it is clear that much of the plastic being traded globally allegedly for recycling, including those plastics listed currently as B3011, is not fully recycled with the residual waste often being dumped in the importing country or openly burned. Further, the washing processes of such operations often consume precious drinking water supplies while emitting microplastics into ground and surface waters. In short, there is a strong propensity for plastic wastes, including non-hazardous plastic wastes, to create significant pollution and not be recycled with ESM methods. Recall that China called for all plastic wastes to be subject to Basel control procedures at COP14. Given the growing global concerns about the trade in plastic wastes for recycling since 2019, this should now be politically feasible.

The second logical step, which may be more difficult politically at this time, is to adopt the position that all plastics should be subject to the Ban Amendment, as Europe has done. This is less than a call for a full prohibition from Annex VII to non-Annex VII countries, but is a critical step towards that goal.

**Proposed Action:** The Basel Parties are encouraged to consider removing the category B3011 and add it to the existing Y48 category. This will ensure that all plastics are at least subject to the PIC procedure as Y48 or A3210, as was done with electronic waste. This should be seen as one of the most important aspects of agenda item 4 (b) v, to ensure that

broadened export controls over all plastic are added to the ambition and work of the Convention.

### **>> Forgotten Plastics / Basel Must Control All Plastic Wastes, Including Textiles, Rubber, RDF, and Plastic Mixed with Paper**

As BAN and others have raised for some time now, the promise of the 2019 Plastics Amendments has not yet been realized. That promise was that all plastic wastes would be covered by B3011 (non-hazardous), Y48 (special consideration), or A3120 hazardous plastics listings. However, in reality, we believe that almost half of the plastic waste that is traded is not covered by these Basel listings. This category of forgotten plastics includes:

- Synthetic textile mixtures of synthetic and natural fibers
- "Rubber" tires and products that are not truly rubber but are made of polymers
- Plastic wastes mixed with bales of paper
- Packaging, including plastics in laminates
- Refuse Derived Fuel (RDF) made from plastic
- Automobile fluff and plastics from cars

We note that the wastes above, found in legacy Annex IX listings should have been reviewed for elimination, amendment, or interpretation at the time the Plastics Amendments were adopted, but were not. As a result, many plastic wastes that technically *should* be either A3120 or Y48 are not covered by Basel Controls as they should be. This issue must be raised by Parties and placed on the further work agenda so that we can close these loopholes.

#### The Example of Synthetic and Mixed Textiles

Currently there is new concern about covering textiles and used clothing under the Basel Convention's control procedures. We will therefore discuss the textile solution here, but the principle can apply to other materials in the same way.

We believe that creating a new amendment to accomplish controls on problematic textiles may not be necessary, as much of the work has already been done in the creation of listing Y48 as it applies to textiles. Guidance in this matter could be developed, and then only a minor amendment to the legacy Annex IX listings might be all that is needed.

Almost all shipments of textiles will include plastic waste, due to the nature of clothing production and their subsequent collection, which therefore ensures that the waste will either be "mixed polymers", or "contaminated polymers". In practice, these include:

- a. Shipments of textiles containing synthetic textile blends (such as polyester/cotton blends are plastics contaminated with cotton threads) or shipments of with synthetic textiles together in the same shipment with natural textiles (contamination with cotton or wool garments). Both blends or co-shipments signify a form of contamination, thus triggering Y48.
- b. Shipments of synthetic textiles, but in a mixed load containing more than one polymer. Mixed polymer loads are, by definition, Y48, due to being mixed with but one exception, (PP, PE and PET) which will not be a combination found in the world of synthetic textiles.
- c. Shipments containing a halogenated polymer such as PVC. Even one PVC shoe in a load of mixed clothing would qualify the shipment as Y48.

Finally, those textile shipments which will, all, or in part, be disposed of on land or by waste to energy operations or not recycled or not managed in an environmentally sound manner are also all Y48.

In sum, almost all textile waste or used clothing shipments traded today will be considered as contaminated since they will include plastics which are mixed in some way with natural fibers. It is very rare for used clothing or shipments of used textiles to be pre-separated (synthetic and natural fibers segregated) before export, and therefore it is safe to assume that virtually all shipments of mixed used clothing will be contaminated.

Further, with but one exception, shipments of mixed polymers must be covered under Y48 classification. That exception is mixtures of PP, PE, and PET, and if they are not all recycled separately at the end of the transboundary movement in the recipient country, the mixture will not qualify. Again, as most shipments of plastic and even some garments or textile products include blends of various synthetic fibers (e.g. nylon mixed with polyester or acrylic), most shipments of mixed textiles, clothing, or rugs will be classified as Y48 by virtue of being shipments of mixed polymers.

Finally, all B3011 plastics must be recycled to the full extent. If substantial amounts are not recycled and are dumped as residues then this too qualifies the textile plastics as Y48.

Therefore, control of almost all of problematic exports of used clothing and textiles can be accomplished by:

1. Creating guidance on the subject of ESM of textile waste, detailing the need to invoke Y48, and at times A3210, for textile wastes; and
2. Amending the existing B listings of Annex IX: B3030 textile waste and B3035 Waste textile floor coverings, carpets. We propose altering these two listings to limit them to natural fibers only.

**Proposed Action:** The Parties are encouraged to begin work within the Basel Convention to close the "forgotten plastics" loopholes found in plastics still listed in Annex IX of the Convention. We should begin this work with used textile waste that almost invariably contains plastic, which should be considered Y48 as described above. This should be seen as one of the most important aspects of agenda item 4 (b) v, to ensure this body of work is added to the ambition and workplan of the Convention.

#### **Agenda Item: 4 (c) ii -- Providing Further Legal Clarity**

##### **>> Closing the Basel Repair Loophole with Proposed R14alt Annex IV Additions**

Today, as BAN has witnessed on the ground in countries like Malaysia, unscrupulous traders continue to exploit developing countries as convenient dumping grounds by taking advantage of a major loophole/ambiguity in the Basel Convention. They claim that broken or non-working equipment is not waste, but rather intended for repair or refurbishment, and therefore argue that their shipments fall outside the scope of the Convention. This means that by simply claiming the waste to be repairable, it can be exported from or to your country with no controls, in any amount, even if it is completely non-functional, or hazardous. Often the claims of the waste being repairable are simply false, as the material is not economically repairable. In other examples, the repairs might take place, but hazardous parts are replaced leaving hazardous waste parts dumped in the receiving territory. Many of these dumps are outside of the local markets where the repairs take place. Developing countries have raised

these concerns in the past. In fact, the Parties to the Bamako Convention at its 3rd Conference of Parties called all Bamako Parties as follows:

*To call upon parties and other African States that have not yet done so to legally consider all non-functional or untested, used electronic equipment as hazardous waste and to prevent the import into Africa of such equipment, and to consider the addition to annex I of all non-functional electronic equipment, bearing in mind the procedures to be followed under article 18, to ensure that traders do not make the African continent a target for foreign plastic waste;*<sup>1</sup>

Currently, some Parties maintain that a simple claim of export for repair does allow traders to be exempt from Basel Convention controls. The current Technical Guideline on e-Waste adopted on a provisional basis only, provides for utilizing this loophole with some caveats,<sup>2</sup> despite this being very controversial. The fact is that export for repair does involve exports of waste, and the Basel Convention should make this very clear by covering exports of non-functional equipment for repair as a waste destination in Annex IV.

Under the Basel Convention, waste is primarily defined by whether the material moves to an Annex IV destination. Unfortunately, there is currently no listing for repair in Annex IV even though the chapeau of that annex originally mentioned "direct reuse or alternative uses". The EU and quite a few other Parties and stakeholders have proposed that an Annex IV listing for repair and preparations for repair is warranted. At COP17, the Parties are poised to adopt a new Annex IV, and the new proposal now includes a new listing R14 for activities done in preparation for reusing the equipment, including repair. The need for this listing is obvious. Indeed the glossary of terms of the Convention states that "repair is an operation that can be applied to both waste and non-waste." However leaving it out of the Annex signifies that exports for repair are exports of non-waste, and more often than not they should be considered as such.

**Proposed Action:** Annex IV only gets changed every 30 years or so. There is thus an urgent need to ensure that **R14** is part of the Annex IV Amendment package. Currently, there are two options. Option **R14alt** is preferred as its meaning is clearer.<sup>3</sup> R14alt needs the support of all Parties so that once and for all, we can consider without ambiguity, that exports of broken equipment are exports of waste and will remain waste until they are made into working equipment. As such, exports of broken equipment cannot skate under the radar of controls in a way that prevents developing countries from monitoring their transboundary movement. Rather they will appropriately have to be notified and consented to.

### **Agenda Item: 5 (b) Cooperation and coordination with other organizations**

#### **>> Bamako Convention Resource Mobilization**

It is our understanding that many in the African Group may present a CRP for a decision at COP17, which is designed to help the implementation and resource mobilization for the Bamako Convention. The Bamako Convention is a regional multilateral environmental agreement (MEA) and Basel Article 11 agreement that has allowed for stronger regional protections and initiatives in Africa. The Convention is currently in force but has lacked the resources and secretariat function to ensure that the Convention is truly a living and breathing agreement able to deliver on its promise. If it were to receive just a small amount of resources and share resources with UNEP bodies, it would provide an excellent platform for African coordination on chemicals and wastes to complement and augment the Basel, Rotterdam, and Stockholm Conventions. The proposed decision might call on the Executive Secretary to seek avenues to foster resource mobilization and partnership to see that this happens.

**Proposed Action:** We encourage Parties to strongly support any decision that will enable the Executive Secretary of the BRS to seek better means to mobilize resources and find synergies for the betterment of implementation of Africa's Bamako Convention.

**Side Event:** [The Potential of the Bamako Convention in Furthering Implementation of the Basel Convention in Africa](#). 6 May 18:15 - 19:45, Room 14.

## >> IMO and Shipping Industry Must Not Subvert Basel Convention Competency

**Note:** While we have created a separate and detailed Delegate Alert on this vital subject which will be coming to all delegates soon, below we summarize the concern over the IMO seeking to persuade Parties to not fulfill their legal obligations under the Basel Convention as it relates to obsolete ships.

The Hong Kong Convention, created by the International Maritime Organization (IMO), is coming into force in June of this year with 24 Parties. The shipping industry and IMO's MEPC (Marine Environmental Protection Committee) in a Circular communication advised Parties to both Conventions to consider declaring making use of Article 11 in an attempt to only apply Hong Kong obligations and not those of the Basel Convention for ships.<sup>4</sup>

Of course, it is highly inappropriate for one UN Convention to assume primacy over another UN Convention. or for such a determination to be taken unilaterally on a national basis. The only legal way Hong Kong can replace the Basel Convention is only if the Hong Kong Convention was able to provide an "equivalent level of control"<sup>5</sup> to the Basel Convention, in particular with respect to the concerns of developing countries, and the Basel Convention collectively asserts this to be the case. But this has not happened.

The Hong Kong Convention fails on so many levels to serve as the legal equivalent to the Basel Convention. It fails to provide the sovereignty rights of consent and refusal. Its technical guidelines fail to recognize, as the Basel Convention does, that 'beaching' is not environmentally sound. Additionally, it completely neglects to prohibit the export of hazardous wastes from Annex VII countries to non-Annex VII countries, as agreed in the Basel Ban Amendment (now Article 4a).

Because of this, the Hong Kong Convention cannot be considered a valid Article 11 agreement and thus should not be allowed to take over Basel's role in safeguarding the environment and human rights from ships as waste and ship-born wastes. Legal experts have stated that while the two Conventions diverge in their approach, it is unlikely that they are ever going to be in intractable conflict and that much can be gained by applying both simultaneously. Thus, when there are different ways of managing different aspects of ship recycling, Parties to both Conventions must adhere to the most restrictive regime in such instances.

This issue is on the agenda at the COP17 meeting in that Parties will be able to take the floor and express their opinion on the MEPC Guidance and the issue of the relationship between the two Conventions and can ask to amend the decision language so that Basel is not merely in a reactionary role to an inappropriate IMO text as we propose below. Basel Parties should be able to propose their own ideas for a way forward that is balanced and respects the continued co-existence of both Conventions.

**Proposed Action:**

**1. Revise Draft Decision:** In the Draft Decision for this subject, the Secretariat has proposed text that only asks that Parties give their comments on the IMO's opinion that Basel Parties can simply agree to ignore their Basel treaty obligations. While we need opinions voiced as to how that IMO text is inappropriate and biased, we need to ensure that the Draft Decision ensures that Basel Parties to do more than simply be reactive to an issue that is very much a Basel matter.

The IMO does not have the exclusive privilege of dictating the terms of the obligations of Basel Parties, and certainly not the right to tell one Convention to stand down when doing so will likely violate the terms of Article 11 as well as Article 26, which disallows Parties from reserving or taking exception to any part of the Convention. We therefore strongly assert that the Parties call for amending paragraphs 21 and 22 to make things more balanced as follows:

**>> Revised Paragraph 21:** Invites Parties and Observers to submit to the Secretariat, by 31 July 2025, comments on the IMO's provisional guidance to Basel Parties referred to in paragraph 20. Further, invites Parties and Observers to also submit any alternative guidance to that of the Hong Kong Convention from the perspective of Basel Parties, especially in light of Articles 11 and 26, and other considerations as may be relevant to the discussion;

**>> Revised Paragraph 22:** *Requests* the Secretariat, subject to the availability of resources, to reflect the comments referred to in paragraph 21 above and to submit these comments for consideration by the Open-ended Working Group of the Basel Convention at its fifteenth meeting;

**2. Speak out in plenary:** on this important matter it would be very useful for all Parties concerned about the effort to erode the competence of the Basel Convention, to make their views known loud and clear during the plenary.

**3. Speak out at the two side events:** likewise come to both the IMO and the NGO side events on this topic and make your views known there as well.

Side Event: IMO on Shipbreaking: 1 May, 13:15 - 14:45, Room B.

Side Event: [Ending the Illicit Trade of End-of-Life Ships: What Role for the Basel and Hong Kong Conventions?](#) 2 May, 18:15 - 19:45, Room 2.

**END**

## **Endnotes**

1. See decision 3/9

at <https://wedocs.unep.org/bitstream/handle/20.500.11822/32131/BamakoCOP3Report.pdf>

2. <https://www.basel.int/Implementation/Ewaste/TechnicalGuidelines/DevelopmentofTGs/tabid/2377/Default.aspx>

3. See document 17/13/add1

at <https://www.basel.int/TheConvention/ConferenceoftheParties/Meetings/COP17/tabid/9743/Default.aspx>

4. The actual text from the circular HKSRC.2/Circ.1, of 1 November 2024 is as follows: States that are Parties to both the Hong Kong Convention and the Basel Convention, including Parties that have expressed their consent to be bound by the Ban Amendment, with an understanding that the provisions of the Basel Convention should not affect the transboundary movements that take place pursuant to the Hong Kong Convention, should consider notifying the Secretariat of the Basel Convention as follows:

"In accordance with Article 11 of the Basel Convention, the Basel Convention Secretariat is hereby notified that [name of the State that is a Party to both the Hong Kong Convention and the Basel Convention] is a Party to the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 (Hong Kong Convention) and will apply the Hong Kong Convention's requirements in respect of transboundary movements of ships\* intended to be recycled at a ship recycling facility that has been authorized in accordance with the Hong Kong Convention and is situated under the jurisdiction of a Party to the Hong Kong Convention.

Relevant arrangements have been made to ensure environmentally sound management of hazardous wastes and other wastes (arising from ship recycling) as required by the Basel Convention. Consequently, the provisions of the Basel Convention shall not affect transboundary movements which take place pursuant to the Hong Kong Convention."

5. "[E]quivalent level of control" has become in earlier Basel decisions the short-hand way of saying what Article 11 actually says which is: "...provided that such agreements or arrangements do not derogate from the environmentally sound management of hazardous 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 interests of developing countries."