Research Article

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Impediments and Desirability of Complete Ban on International Movement of Toxic Waste

<https://doi.org/10.1515/openps-2018-0010>

received February 18, 2018; accepted November 13, 2018.

Abstract: This essay identifies the obstacles to a complete ban on international movement of hazardous waste and critiques its desirability. The essay argues that the obstacles are difficulties in formulating and implementing multilateral waste management treaties (WMTs), socio-economic factors and trade liberalisation. Also, it argues that the desirability of a complete ban is a function of national priority and socio-economic differentials that underpin the waste trade. Furthermore, since the Basel Convention as amended is not a ‘Holy Grail’, the responsibility of a complete ban will lie on the shoulders of countries that do want to ‘trade poison for cash’. Such countries will have to strengthen their environmental legislation, forge and sustain stronger joint actions to confront the problem.

Keywords: Toxic Wastes; Transboundary Hazardous Wastes; Basel Convention.

From the 1970s there have been cross-border movements of hazardous wastes across the globe (Chasek, Downie & Welsh, 2013). Hazardous wastes are unwanted materials that can harm the environment or human health (Cahsek et al., 2013). Such materials include or contain noxious chemicals, heavy metals, contagious medical wastes, and radioactive, acidic, inflammable or explosive substances (Chasek et al., 2013). The scenario of hazardous waste is such that of the millions of tons produced annually, the developed world generates more than 80% but some of these find their way to developing countries (Clapp, 1994). The movements of toxic wastes are due to the stringent environmental laws and the soaring cost of waste management in the developed world (Krueger, 2001). Since the 1980s there have been demands for a complete

ban on the cross-border movement of toxic-wastes (Chasek et al., 2013). However, there are obstacles to legalising the demand. Besides, actors have argued for a prior-informed consent principle which allows cross-border movement of toxic wastes provided the country of destination has been fully informed of such shipments (Krueger, 2001).

The purpose of this paper is to identify the barriers to a complete ban on international movement of hazardous waste and critiques its desirability or otherwise of the prior-informed consent principle. The essay argues that the obstacles are difficulties in formulating and implementing multilateral waste management treaties (WMTs), socio-economic factors and trade liberalisation. Also, it argues that the desirability of a complete ban is a function of national priority and socio-economic differentials that underpin the waste trade. Furthermore, since the Basel Convention as amended is not a ‘Holy Grail’, the responsibility of a complete ban will lie on the shoulders of countries that do want to ‘trade poison for cash’. Such countries will have to strengthen their environmental legislation, forge and sustain stronger joint actions to confront the problem.

Several studies have pointed out that the major barrier to a complete ban on cross-border movement of hazardous wastes is the dismal state of legislation and implementation of global WMTs (see Montgomery, 1990; Puckett, 1992; Clapp, 1994; Asante-Duah & Nagy, 1998). Even though there are many multilateral hazardous WMTs such as the Bamako Convention, we will focus on the Basel Convention (BC) because it is the first and has a wider geopolitical scope. However, we will refer to other treaties where necessary.

Other studies argue that global socio-economic differentials shaped by trade liberalisation and reinforced by capitalism and globalisation are important factors that influence the cross-border movement of toxic wastes (Beacham, 1992; Asante-Duah & Nagy, 2001; Lambrechts & Hector, 2016). We will discuss these barriers in turn. We will begin by analysing the difficulties of promulgating and implementing global WMTs drawing upon the loopholes in the BC. Next, we will examine the influence

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of global socio-economic differentials, and finally, we will look at the effects of trade liberalisation.

Sanchez (1994) argued that due to the machinations of developed countries, transboundary movement of hazardous waste did not receive similar attention as other global environmental problems because developing countries are at the receiving end of the harms. In line with this, Galli (1989), Wynne (1989) and Montgomery (1990) had earlier argued that the dilemma of choosing between economic goals and environmental protection gave rise to the double-standards and self-serving interests among developed countries during the negotiation of the BC. Most if not all writers after Galli, Wynne, and Montgomery agreed with this position (see, for example, Puckett, 1992; Clapp, 1994; Schneider, 1996; Sanchez, 1999; Asante-Duah & Nagy, 2001; Krueger, 2001).

The BC operates on 'prior informed consent' (PIC) principle which anchors on existing laws in European Economic Community (EEC) and Organisation for Economic Cooperation and Development (OECD), but developing countries prefer a complete ban (Krueger, 2001; Chasek et al., 2013). There were efforts at a complete ban by some developing countries, e.g., Nigeria and through the Bamako Convention (1991) convened by Organisation of African Unity (OAU), now African Union (AU) (Chasek et al., 2013). However, due to poor financial, managerial and technical capacity, these efforts were almost ineffective (Krueger, 2001; Chasek et al., 2013).

In a separate initiative, Article 39 of Lomé IV Convention (LIVC) (1989–1999) banned the trade in toxic wastes between EEC and 69 Africa, Caribbean and Pacific (ACP) countries and also obliges ACP countries not to import waste from non-EEC countries (Puckett, 1992). Its successor–Cotonou Agreement did not include a ban in the agreement (Hurt, 2010).

An amendment was made to the BC in 1994 (Decision III/1 of the COP-2 adopted at COP-3) to ban cross-border movement of toxic-wastes covered by the Convention completely. The ban was for wastes destined for final disposal or recycling from parties listed on Annex VII (OECD countries, EU, and Liechtenstein) to developing countries and of hazardous wastes covered by paragraph 1 (a) of Article 1 of the Convention that are intended for reuse, recycling or recovery (Basel Convention, 2011a). However, the amendment did not indicate if it prohibits waste destined for recycling or final disposal between OECD countries.

Parties argue that the Ban Amendment (BA) is crafted in ambiguous terms thus difficult to interpret (Basel Convention, 2011a). Consequently, a 'Country-led initiative' (CLI) drawing upon the Indonesian-Swiss

model was advocated by the president of the COP-9 (Basel Convention, 2013). The BA has not come into force because it requires the acceptance of 75% of those parties that were parties at the time of the adoption of the amendment which has not been achieved (Basel Convention, 2011a). The major obstacle to BA is the fact that many developed countries and some developing countries are interested in sustaining trade in wastes for recycling because of its economic benefits (Chasek et al., 2013).

Even if the BA were to enter into force, there are other loopholes which actors will exploit. As some authors (e.g. Clapp, 1994; Krueger, 1998) argued, that fact that Article 11 (2) of the BC provides that parties can negotiate bilateral, regional or multilateral pacts to trade waste with non-parties in an environmentally sound manner (ESM), provides waste merchants with a loophole to exploit. In this regard, Chasek et al., (2013, p. 125) argue that the Ban Amendment does not stop developing countries from acceptance of toxic waste from developed countries since they can do so by joining Annex VII.

Thus transboundary movement of toxic-wastes is possible under the guise of ESM to unsuspecting developing countries. The broad definition of ESM (*Article 2*) makes it blurred whether a narrow or broad explanation of the term is appropriate (see Asante-Duah & Nagy, 2001; Albers, 2014). Thus there are chances that the disposal of hazardous wastes might not be in ESM. In this light, there are reported cases where hazardous waste shipped to some countries (e.g. South Africa and Indonesia) were processed not in an ESM (Clapp, 1994).

Furthermore, while the developing countries, e.g. Nigeria and Ghana clamour for a total ban on international movement of hazardous waste, some member of their government engage in the hazardous waste business (White, 2008; Lambrechts & Hector, 2016). For this reason, many developing countries' leaders might not enforce environmental policies because it could mar their aggrandisements (Bryant & Bailey, 1997; Lambrechts & Hector, 2016). Thus while developing countries demand a total ban, they will also have to clean up corruption from their governments.

Nonetheless, there is no gainsaying the fact that the Basel regime has facilitated the control of some of the awful types of hazardous waste dumping and has enhanced the treatment of harmful wastes, developed structures, principles and improved cooperation that could make the regime better in years to come (Chasek et al., 2013). However, it is not a 'Holy Grail'. Overall, however, the withdrawal of major hazardous waste producers, e.g. the US and Australia from the treaty as well as the non-ratification of the Ban Amendment by parties

to the BC demonstrates difficulties in promulgating and implementing effective global WMTs.

Moving on, we will examine how socio-economic factors shaped by the global north-south inequalities impede a complete ban. The first implication of this concerns the cost of managing waste in the developed world. For instance, from 1980 to 1988, the costs for dumping toxic waste in the US landfills rose from US\$15 to US\$250 per ton (Strohm, 1993; Clapp, 1994) whereas in Africa it was as low as US\$2.50 per ton (Wynne, 1989). Thus some developed countries may for the time being be unwilling to stop waste shipment.

Secondly, developed countries reap benefits from wastes exports. According to the U.S Chamber of Commerce, a total ban on recyclable wastes export would cost the country 2.2 billion dollars a year (Asante-Duah & Nagy, 2001). Also, estimates show that Australia exports 121 million dollars worth of hazardous wastes per annum (Asante-Duah & Nagy, 2001). Thus it will be difficult to convince some developed countries' waste traders to close down the 'poison-for-cash' business.

Another barrier concerns trade liberalisation. International trade laws such as the General Agreement on Tariffs and Trade (GATT), the European Economic Community Treaty etc. tend to conflict environmental protection pacts (Puckett, 1992). We will focus on the GATT to drive home this point due to its global coverage. The GATT is a post- Second World War economic recovery agreement between countries to reduce trade barriers such as tariffs and eliminate discrimination (Puckett, 1992). Although only 23 countries agreed in 1947, it now has over 123 member countries (Asante-Duah & Nagy, 2001).

In the context of cross-boundary movement of toxic wastes, the barrier stems from choosing between freer international trade and controlling trade in hazardous waste. Beacham (1992) argues that when countries face this choice dilemma, freer trade often prevails. The prohibition of trade in waste materials either by the importing or exporting country because the importing country lacks the competence to handle the waste in an ESM (Asante-Duah & Nagy, 1998; Stilwell, 2005) runs contrary to Article XI of the GATT (Wold, 1996). Hence a violation of the GATT agreement (Asante-Duah & Nagy, 2001).

The status of hazardous waste under the GATT as a good or services is blurred (Wold, 1996; Asante-Duah & Nagy, 2001). It is argued that since wastes are 'subject to financial transactions, they should be treated as goods (Puckett, 1992, p. 103). Thus a ban on toxic wastes could be seen as a non-tariff obstacle to trade as well as a hindrance to developing countries' access to recoverable

and reusable materials (Asante-Duah & Nagy, 2001). In some instances, this may be true. For example, most people in developing countries cannot afford new cars, electronics, automobile spare parts, etc. but utilise second-hand of such commodities.

Since what constitutes trash in one country may be a treasure in another, I, therefore, agree with Beacham (1992) that this portends opportunities for movement of hazardous wastes in the guise of second-hand goods or recyclables. Based on the preceding analysis, it is evident that renegotiation of trade agreements is imperative if a complete ban on hazardous waste movement is to be successful. However, we must consider the socio-economic dimensions of the trade because globalisation and capitalism have created a global culture of consumerism reinforced by the inter-linkages of economic, cultural, social lives of people around the world (Rourke, 2009). We are now in a situation where an average Nigerian in Africa, for example, wants to have a taste of the commodities in the US or UK, and since s/he cannot afford them, the second-hand or reusable of such goods are desirable.

Therefore, a complete ban might not be desirable in some ways. In principle, we may say it makes economic sense to send second-hand goods to developing countries at a very low price. While developed countries reap trade benefits, developing countries' population would have access to recoverable and reusable materials which they cannot ordinarily afford (O'Neill, 2001). Nevertheless, the production of new goods in developed countries could put more strains on limited resources and further impact the environment (Doyle et al., 2016).

On the contrary, a complete ban could be desirable. In Africa and other parts of the developing world, most of these second-hand goods end up in waste dumps sites without being processed in an ESM. For instance, (Clapp, 1994) indicated that Sierra Leone, Belize, Angola, and Egypt accepted trade deals to import wastes to serve as fuel for power plants. However, only some fractions of the wastes could be recycled and used as fuel. There is also the problem of hazardous electronic wastes that are not processed in an ESM (Herat & Agamuthu, 2012). Besides, health and environmental damages resulted from these processes (Chasek et al., 2013).

Therefore, in line with Clapp (1994, p. 508), we argued that, 'the seemingly "economic" solution to dumping or recycling [hazardous] wastes in poor countries where regulations are [flexible] and costs are lowest, [impedes] economic development prospects in the long run, even if it has brought cash [and some material benefits] to some countries in the short run'.

Thus the future generations of developing countries will suffer from health and environmental problems. Montgomery (1990, p. 313) states that ‘the Stockholm Declaration of the United Nations Conference on the Human Environment of 1972’ establishes the fundamental right of all human beings to the quality environment that permits well-being and dignified life, but we also must care for and improve the environment for future generations. Consequently, the need to completely ban transboundary movement of hazardous waste cannot be overemphasized when they are destined for dumping because it constitutes injustice. However, how to have an effective regime remains a challenge given the socio-economic differentials of the globalised world because what constitutes trash and treasure varies across geographical regions (Lambrechts & Hector, 2016). Thus the desirability of a complete ban is a function of what individual countries consider as waste or good. In this regard, some authors have commented that cross-border movement of toxic waste is often considered within the context of national sovereignty implying that states can choose to accept or reject wastes shipped to them (see Galli, 1987; Krueger, 1998; Albers, 2015).

Strengthening the Basel regime will be imperative but how to get parties ratify the BA is what many authors have not pointed out. Thus we can only hope that it will become effective in a distant future. Nevertheless, developing countries that desire a complete ban can overcome these constraints if they forge a stronger alliance in the form of the ‘south-south cooperation’ paradigm (see, Dauvergne & Neville, 2009; Modi, 2011; Quadir, 2013). Brazil and India have led this type of multilateral initiative in the global south helping some African countries through technology transfer and financing development projects (Vieira & Alden, 2011).

Our thesis is that the responsibility of a complete ban would lie on the shoulders of countries which do not want to trade ‘poison for cash’ to build stronger alliances and strengthen their environmental legislation. Also, they will have to use the strength of the alliance to renegotiate trade treaties to exclude toxic-wastes from what constitutes a ‘good’. Drawing upon the well-known example of ‘undesired’ international businesses—drug peddling, we find that despite the international condemnation of this form of trade, it has persisted. However, the countries that have to a great extent dealt with the problem of hard drugs peddling, e.g. morphine, cocaine and heroin are those that do not rely on international treaties only but also have strong legislation against it.

It is known for the fact that carrying these drugs into some Asian countries (e.g. Saudi Arabia, Oman, Malaysia, etc.) attracts death penalty and this has helped curtail

it (Tagliacozzo, 2009; Luong, 2015) although capital punishment is human rights violation (Hood & Hoyle, 2015). Thus it is not our opinion to promote autocratic regimes or in support of green political theorists that advocate authoritarian regimes in combating environmental problems.

In conclusion, this article has identified the obstacles to a complete ban on the transboundary movement of hazardous waste and critiqued its desirability. It argues that the obstacles to a complete ban are difficulties in formulation and implementation of global WMTs, global socio-economic factors and trade liberalisation reinforced by capitalism and globalisation. The essay argues that the desirability of a complete ban is a function of national preferences and efforts at a complete ban should consider the global socio-economic dimensions of the trade.

It argues that while Basel regime has improved to some extent, it not a ‘Holy Grail’ at present. Thus the responsibility of a complete ban lies on the shoulders of countries that do not want to engage in waste business. Such countries should strengthen their bond and forge a stronger alliance to stop the exportation of toxic-waste into their territory without full reliance on the BC.

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