



The Conundrum of Waste Management: Examining Responsibility towards the Protection of the Environment

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Abstract. Waste consists of a variety of materials ranging from household, plastic, electronic, construction, and medical to hazardous waste. Every country produces waste that falls under more than one of the above-mentioned categories. Collectively more than 2 billion metric tons of municipal solid waste is produced by the world which is predicted to rise by 70% in the next 30 years. When waste goes untreated it becomes a definite threat to the environment as pollutants. Under international law, waste is treated as distinct from pollution. Some conventions and treaties govern the disposal of waste which is hazardous. However, a situation has arisen where economically developed countries have been taking advantage of poorer countries using them as their dumping yard. This paper shall delve into the scope of current international laws and international state liabilities on waste management. The paper shall examine the present scenario of waste trade under international environmental law. The focus shall be laid on the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal 1989 (Basel Convention) and the related principles that govern state responsibility.

Keywords: Waste Management, Waste Trade, State Responsibility, Environmental law.

1 Introduction

Waste is an inherent outcome of human interaction with the environment for the indispensable purposes of human sustenance, growth and development. There is a difference between waste and pollution which provides a window of opportunity to reduce pollution. Every waste that is produced may not be a pollutant but every pollutant is certainly a waste which was not disposed of, treated, recycled or mismanaged. Therefore, if the problem of waste disposal is resolved, it shall have a direct positive impact on the challenges of pollution as well. Waste management constitutes a series of steps beginning from the production of the waste to its final disposal. The UNEP defines waste management as “the total supervision of waste

production, handling, processing, storage, and transport from its point of generation to its final acceptable disposal".[1]

According to the World Bank, the waste-generating capacity of a country is reflected through the level of income and urbanisation. It is not based on population. Developed countries produce more waste compared to developing countries. In the world ranking of the Global Waste Index, the developed countries lead the ranks with a majority of waste production from the Nordic countries alone, followed by the European nations such as the UK, France, Germany, the Netherlands and the rest. The other developed countries producing significantly are Canada, New Zealand, Australia and the USA which held the highest rank with largest per capita waste production. Developed countries have better infrastructure and stricter laws related to waste management whereas developing countries are themselves burdened with the challenges of waste mismanagement culminating from the absence of economic capacity and with either weaker or lacuna of laws related to waste management.

In the 1980s, waste trading turned into a noticeable issue. Industrialized countries were generating significantly more waste. This was coupled with issues such as closure of old disposal facilities, political challenges in setting up new facilities and incurring high costs of waste treatment and disposal. Therefore, these countries resorted to sending off the waste to the poorer countries.[2] Despite their practical inability to treat the waste, the developing countries had the economic incentive to import waste. As for the developed countries, it was a cheaper option to get rid of the waste. Several private companies hopped onto the commercialization of waste trading. However, the situation turned epidemic necessitating laws and regulations on waste trade.

2 Examples of illegal waste trade

2.1 The Canada-Philippines Waste Dispute: –

This dispute stretched for six years, during the entirety of which the waste in question remained indisposed and untreated posing a biohazard to the environment and people of Manila. In the year 2013-14, Canada shipped 103 containers of falsely labelled waste to the Philippines under the category of recyclable plastic waste. However, the waste was found to be mixed botched garbage which required immediate disposal and could not be recycled. It was in direct violation of the national laws of the Philippines which prohibited the country from importing unsorted heterogeneous plastics and plastic with traces of toxic material. Negotiations went on between both countries wherein the Philippines initially agreed and dumped 26 of the containers into their landfills. Thereafter, a court order was passed by the national court of the Philippines demanding Canada to take back the waste. Canada violated the Basel Convention and

being the offending party in this case, was now required to dispose of the waste. However, they used national legal barriers as a reason for failing to meet the obligations under the Convention. A series of further negotiations followed, with the Philippines threatening to resort to the use of force and severing diplomatic ties with Canada. Further, the plenary discussion on compliance with the UN Basel Convention meeting 2019 observed Canada's violations and asked them to resolve the situation. Canada finally shipped out the 69 containers of waste back to its country the same year.

2.2 The Netherlands:-

Another recent example of illegal waste trade is that of the Netherlands. It was the largest exporter of plastic from EU to non-OECD countries in the year 2021. This was in direct contravention of the Basel Convention. The Netherlands has also been involved in facilitating the UK in exporting its waste out to the poorer nations. In the year 2020-21, there was a 60% rise in the UK's waste export to the Netherlands.

This waste gets collected in developing countries where it is openly dumped, incinerated or eventually littered into the living spaces. Factors that play a role in the continuation of this problem are complex and require a thorough examination of multiple factors emanating from the differences in the legal, economic and political conditions of the countries.

3 International law on waste trade:

The Basel Convention was adopted in 1982 and came into force in the year 1992. By far, this has been the most comprehensive international document about the transboundary movement of hazardous waste and practices of illegal dumping by the developed countries on their developing counterparts. With 191 parties to the convention, it is one of the most widely accepted treaties in the world today[3]. The convention categorizes waste into two groups, hazardous waste and other waste. Keeping in harmony with the principles of the Stockholm Declaration of 1972, the convention aims at the global protection of humans and the environment from the harmful effects of waste and inappropriate waste disposal. However, it does not penalize or ban the movement of waste. The convention focuses on regulating the movement and the process associated with the trading of hazardous waste, the adoption of efficient and environment-friendly disposal of waste, and protecting the environmental and health interests of the poorer countries vulnerable to waste mismanagement and illegal dumping.

The convention's understanding of waste is based on an individual country's categorization of a substance or object as waste under its national laws. The general obligations under the convention include member states reducing waste generation, disposal and treatment of the waste in the country of origin, reducing transboundary

trade of waste, using environment-friendly disposal processes and controlling waste trade under the PIC process.

The convention draws an important obligation on its member state known as the Prior informed consent principle⁴ (PIC) which was introduced to bring in/ensure transparency in the waste trade. PIC primarily aims to help countries to make an informed decision about the waste imported into their country. The parties to the PIC shall consist of the export country, the transit country and the import country all being parties to the Convention. Under the PIC principle, the export country has to abide by a set of disclosures such as the reasons to export, the category of the waste along with the method for its disposal. To standardize the process a standard manual with the notice forms has been made available to the parties. On receiving the notice, the importer country can choose to either respond in acceptance, or rejection or seek further information related to the waste. In a situation where the importer country accepts the waste then it shall have the duty thereafter to ensure a contract between the exporter country and the party who shall be finally disposing of the waste in an environment-friendly manner meeting the requirements under the convention. The transit country shall also hold similar rights as the importing country about the acceptance of the waste. Additionally, the member countries have to create national legislation on hazardous waste and a competent authority to manage the PIC procedures. In a case of contravention of the PIC procedure, the country that has failed the duties shall then be solely responsible for disposing of the waste in an environmentally safe manner.

One of the most remarkable achievements of the Basel Convention has been the Basel Ban Amendment. It took 25 years from its adoption in 1994 to come into force in the year 2019. According to the Basel Ban the member countries to the convention from the Organization of Economic Cooperation and Development (OECD), the European Union (EU) and Liechtenstein shall be prohibited from hazardous waste trade with other countries outside of this categorization which shall be the poorer countries and countries in transition economies.

The obligations under the Basel Convention and the ban are reflective of certain principles of state responsibility for environmental protection. These principles have been the base of state practices governing international environmental law in the form of international customs. Every country is governed by a certain code of conduct emanating from responsibilities under international environmental law. With a substantial and definite risk of waste turning into pollution affecting both the environment and human life, these principles are crucial towards upholding/maintaining state responsibility. Some of the principles that apply to the present issue of state responsibility towards waste trade are the principle of permanent sovereignty over natural resources, a duty not to cause transboundary harm, the principle of preventive action, and the principle of cooperation.

The principle of permanent sovereignty over natural resources along with the duty to not cause transboundary harm is an important principle with regards to illegal dumping of waste. Permanent sovereignty over natural resources gives each country the right and freedom over its resources and the use of them in a manner they deem fit. This principle also includes the right of the country to decide not to use a particular resource or take restrictive measures for its protection and judicious use. The facets of this principle are found in Principle 21 of the Stockholm Declaration which also includes the duty to ensure that activities within one's jurisdiction do not cause harm to others beyond their jurisdiction. In the context of waste management, this principle means that countries though hold the right to generate waste, shall not cause any harm to else's jurisdiction. This in effect restricts illegal transboundary dumping of waste and requires countries to dispose of and treat the waste within their jurisdiction in a manner not harming the environment.

The principle of preventive action is based on the assumption that harm caused to the environment is irreversible therefore measures have to be taken to avoid or minimize environmental harm. With regards to the application of this principle in waste management, this principle shall emphasise the aspect of regulating and controlling the generation of waste at the first instance and not primarily focusing on ways of disposal. The current approach to waste management is geared towards having the best possible ways of waste disposal and treatment with very little attention towards its generation in the first place.

Articles 55, 56 and 74 of the UN Charter lay the foundation for cooperation by states on international matters. The principle of cooperation means that a state shall cooperate in good spirit with other states in protecting the environment which also means states shall not have the freedom to perform any activity that shall cause harm to the environment of another state or infringe on others' rights. Regarding environmental protection, this principle is present under the state obligations of both the Stockholm Declaration principle 24 and Rio Declaration principle 27 which mentions states cooperating on environmental issues. Principles 7, 14 and 19 of the Rio Declaration are of particular relevance to waste management and trade. According to Principle 7 states are under the obligation to protect the environment with collective responsibility towards the protection of the environment. Different countries have contributed differently towards the earth's degradation. Based on this history and the present economy of a country, the developed nations are expected to lead and support the developing countries in meeting the development goals through common but differentiated responsibilities. The application of this principle is evident in both the Basel Convention and the Basel Ban in particular which prohibits the OECD countries from waste trade with non-OECD countries. The ban is based on the high waste production capacity of the developed countries followed by their financial ability towards waste management.

Principle 14 obligates the states to cooperate in the prevention of the movement of substances and activities to another state that shall have a harmful impact on the environment and human health. This Principle is one of the core principles of the PIC under the Basel Convention. Further Principle 19 includes the duty of a state towards fulfilment of procedural obligations of exchange of information and notifications made in advance and timely manner related to activities which have a probability of causing serious transboundary harm to the environment. This Principle falls within the core principles of PIC which provides the importing state the scope to make informed decisions about waste trade.

4 Conclusion

The Basel Convention calls for national legislation by member countries and consists of several other bilateral and multi-lateral treaties pertaining to waste trade and the well-being of the environment and humans. The Convention theoretically encompasses the important principles of environmental protection. However, it fails in terms of practical application. The Convention is in the form of a soft law as it is reliant on a state's national legal regime for enforcement. This creates a complex situation for states to handle the responsibility solely by themselves as factors such as international economic relations, and political alliances coupled with the nation's domestic issues such as population, hunger, poverty etc. end up as a priority over protection of the environment. Based on the mechanism created by the Convention and principle of international state responsibility a country can be rightly held liable for the violations. However, the probability of claiming compensation, and reparation for the same becomes highly improbable under the present scheme. Countries that are devoid of resources, production capacity for high-demand goods and avenues for international trade succumb to the import of waste. These countries use burning, dumping and other methods to dispose of the waste which harms the environment. The issue requires an economic consideration of the trade dependencies of the poorer states. Along with the application of common but differentiated responsibilities by the developed nations where the responsibilities of the waste-generating states should include providing support and ensuring disposal and treatment of the waste till the end of the cycle. The obligations under the present Convention do not facilitate that and further create complexities for the importing countries. Under the Convention, an importing country shall have to disclose their capacity and preparedness towards recycling and treatment of the waste. In a situation where the importing country contravenes the obligations, it will then be solely liable for the disposal of the waste. Legally this may solve the issue in theory. Nevertheless, the purpose of the Convention fails in practical application as the country's inability or absence of infrastructure for waste treatment shall only add to increasing environmental degradation. Regulating or prohibiting the movement of waste with soft law measures has opened up avenues to more illegal trade as there continues to be a demand for this market. Participation of private entities in the waste trade also requires legal attention

as they fill the gap of middlemen on behalf of the state and operate the illegal waste trade through the gaps in laws across several jurisdictions.

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