



9 May, 2015

Center for International Environmental Law (CIEL) / IPEN intervention on legal and procedural points related to the Canadian shipment of waste to the Philippines

Given by David Azoulay, CIEL Switzerland

Thank you mister president. Following on the intervention from my distinguished colleague from the Basel Action Network, I would like to bring a number of related legal and procedural points to the attention of the Parties.

First, Annex II wastes known as “Other Wastes” such as “Wastes collected from households” is as much a part of the Convention as hazardous waste, and is subject to the prior informed consent procedure and rules on illegal traffic.

Canada appears to be breaching its obligations under Article 8 of the Convention by refusing to take back 50 containers of household Annex II waste illegally exported to the Philippines almost 2 years ago.

Further, by failing to prosecute the exporter for this illegal traffic, Canada similarly seems to violate its obligations under Article 4.4 of the Convention.

After repeated attempts inviting Canada to comply with its treaty obligations, Environment Canada finally responded stating that Canada does not have any domestic law to enforce its Treaty obligation, in particular its obligation to take back the illegally exported waste.

If the statement by the Canadian government is accurate, then it appears Canada has not properly transposed the Convention into its national laws. This is a basic requirement under international law. In addition, Canada cannot use this as an excuse to evade its obligations under the Treaty. This is clearly established by the International Law of Treaties codified in article 27 of the Vienna Convention on the laws of treaty.

In the past 5 days, we have spent a lot of time discussing the adoption of a compliance mechanism under both the Rotterdam and Stockholm Convention. This has rightly been presented as a very important mechanism to support countries found to be in non-compliance with their Treaty obligations. In the course of these discussions the Basel Convention compliance mechanism has often been presented as a good example that must inspire our discussions under Rotterdam and Stockholm.

We think this is a good opportunity to demonstrate the usefulness of the Basel Convention compliance mechanism, particularly to help countries that are not in compliance to fully implement and comply with their obligations under the Convention.



a toxics-free future

Canada might consider demonstrating the value and usefulness of the Basel compliance mechanism by voluntarily submitting this case to the Committee. We hope that this example can inspire a successful outcome of the discussions under the Stockholm and Rotterdam Conventions.