



# Case Study: Basel Convention & the Erosion of State Sovereignty

## What is the Basel Convention?

In 1992, Australia ratified the Basel Convention, an international treaty designed to regulate the transboundary movement of waste material. This case study examines how the Basel Convention demonstrates a broader trend in international treaties that increasingly constrains national sovereignty and limits the role of Australia's democracy.

The Basel Convention's creation was significantly shaped by the influence of non-governmental organisations (NGOs), such as Greenpeace. While these organisations aim to address global challenges, they can sometimes conflict with national economic and social priorities, and can strain international relations.

NGOs, which are neither elected nor directly accountable, can exert considerable influence over policy decisions depending on the political climate, their public profile and the level of international support for their cause. As a result, countries like Australia can find themselves bound by agreements that significantly reduce their ability to govern independently.

Additionally, some also argued that Australia already had established legal frameworks and regulatory bodies that adhere to international standards for environmental protections. Australia's strong track record in this area without the use of treaties suggests that it can effectively manage its environmental responsibilities without the need for restrictive international agreements.

## How was the Basel Convention implemented in Australia?

Given that Australia operates under a dualist system, legislation must be enacted for treaties to be enforced domestically. Using the external affairs head of power in s51(xxix) of the Constitution, the Commonwealth Government enacted the Hazardous Waste (Regulation of Exports and Imports) Act 1989 in anticipation of Australia's membership to the treaty.

Section 4 of the Act defined 'hazardous waste' as waste belonging to any category identified in the Basel Convention. However, Australian lawmakers



underestimated the Convention's definition of hazardous waste. They assumed that scrap and recyclable materials, like old batteries, would not be classified as hazardous. As a result, the Australian Government had inadvertently broadened the scope of the law, making it subject to regulation by the multinational Basel Convention Compliance Committee.

## **The impact of the Basel Convention on Australia and its trading partners**

One of the most direct impacts of the Basel Convention is its restrictions on the movement of scrap and recyclable materials, between OECD (Organisation for Economic Cooperation and Development) and non-OECD countries. For example, Australian exporters of computer scrap could no longer ship these materials to countries in the Asia Pacific, where such materials supported local industries and livelihoods. Critics argued that by disrupting established trade agreements, the Convention not only destabilised the global recycling industry but also harmed the economies of countries reliant on this trade.

Allowing an external multinational committee to control trade regulations has had substantial consequences for workers

and industries both in Australia and its trading partners. Instead of receiving valuable recyclable materials, non-OECD countries are now flooded with low value waste such as plastic bottles, overwhelming recycling facilities in countries like Thailand.

The situation highlights how international agreements, though intended to protect the environment and associated human rights, can force governments to implement policies that disregard the needs of local industries and economies. Not only can this worsen the very issues they aim to address but it also fundamentally usurps the sovereignty and autonomy of states to control their exports and imports.

## **Implications for sovereignty and governance in Australia**

The Basel Convention has raised concerns about a 'democratic deficit'. When Australia implemented the Basel Convention in 1989, key decisions about which materials would be subject to export bans had not yet been determined. These decisions were left to a committee based in Geneva, far removed from the Australian public and its understanding of issues regarding infrastructure and trade relationships relevant to Australia. This transfer of decision-making power from



national governments to international bodies bypasses the democratic process, leaving citizens with limited input into laws and policies that directly affect them.

This growing separation between decision-makers and the people impacted by the decisions poses a challenge to the rule of law. The rule of law emphasises principles such as transparency, accountability and the idea that laws should be created through a democratic process. However, international treaties like the Basel Convention place significant governing power in the hands of international expert bodies who may prioritise global interests over national or local concerns. As a result, accountability to the people is weakened because these international bodies are not subject to direct oversight by the citizens of the countries affected.

In addition, the Basel Convention illustrates how international agreements can undermine national sovereignty. By committing to such treaties, Australia has ceded some control over its trade policies, particularly in areas related to waste management and environmental standards. This loss of autonomy reflects a broader trend in globalisation, where countries increasingly surrender aspects of self-governance to global expert bodies. For Australia, this shift means that certain decisions are no longer made solely by its

elected representatives, but by international committees that may not reflect the specific needs or values of its people.

## Conclusion

The Basel Convention highlights the need for careful consideration of the balance between international cooperation and national sovereignty. While environmental protection is an important goal, treaties should not compromise democracy or the ability of nations to govern themselves. As the number of treaties addressing global challenges such as trade, conflict and environmental issues increases, so will the number of regulatory bodies that oversee them. Governments should thoroughly evaluate the powers granted to these bodies before joining any treaty and consider whether participation would lead to tangible improvements that could not otherwise be achieved through domestic efforts. Protecting the principles of self-government and ensuring that treaties do not widen the democratic deficit is crucial in a rapidly globalising world.

