



A Master's Thesis submitted for the degree of  
"Master of Science"

supervised by

## Affidavit

I, **GEORG GASSAUER**, hereby declare

1. that I am the sole author of the present Master's Thesis, "THE BASEL CONVENTION, A TWENTY YEAR REVIEW", 56 pages, bound, and that I have not used any source or tool other than those referenced or any other illicit aid or tool, and
2. that I have not prior to this date submitted this Master's Thesis as an examination paper in any form in Austria or abroad.

Vienna, 17.06.2009

---

Signature

# The Basel Convention

## A twenty year review

Georg Gassauer

### ABSTRACT

Twenty years ago the international community came together to sign an agreement designed to regulate the transboundary movement of hazardous wastes and their disposal. The objective of this thesis is to analyse what the initial motives behind this are and how the Basel convention has progressed in its first twenty years. In particular the paper looks to analyse key international hazardous waste incidents and the resulting regulation upon which the Basel convention would be based. A chronological evolution of the convention by mapping the conferences of the parties shows how a series of key issues have grown or receded over the last twenty years. In the final chapter successes and failures of the convention are analyzed in light of the changing global political, economic and technological terrain. It was found that the convention is not able to progress as a result of the controversial decisions made during the first five conferences of the parties. The conclusion shows that the Basel convention has not fulfilled its implicit goal of greater international environmental justice the thesis.

## **Glossary**

BCRC	- Basel Convention Regional Centre
COP	- Conference of the Parties
EEC	- European Economic Community
EoL	- End of Life
ESM	- Environmentally Sound Management
IWIC	- International Waste Identification Code
MPPI	- Mobile Phone Partnership Initiative
MPWG	- Mobile Phone Working Group
NIMBY	- Not In My Back Yard Syndrome
NGO	- Non Governmental Organisation
PIC	- Prior Informed Consent
OAU	- Organisation of the African Union
OECD	- Organisation of Economically Developed Countries
RCRA	- Resource Conservation and Recovery Act
SBS	- Secretariat of the Basel Convention
UNEP	- United Nations Environmental Programme.

# Contents

<b>Introduction .....</b>	<b>5</b>
<b>Part One .....</b>	<b>8</b>
<b>Chapter 1 .....</b>	<b>9</b>
Vanished .....	10
Waste Transport in Europe.....	11
Homeless Toxic Ships .....	16
Khian Sea.....	17
The international community steps in .....	19
The road to Basel .....	24
Conclusion .....	27
<b>Part Two .....</b>	<b>29</b>
<b>Chapter Two .....</b>	<b>30</b>
Piriapolis, Uruguay, 1992.....	30
Geneva, Switzerland, 1994 .....	31
Geneva, Switzerland 1995 .....	32
Kuchang, Malaysia, 1998.....	33
Basel, Switzerland, 1999 .....	33
<b>The second decade .....</b>	<b>34</b>
Geneva, Switzerland 2002 .....	34
Geneva, Switzerland, 2004 .....	35
Nairobi, Kenya, 2006.....	36
Bali, Indonesia, 2008.....	37
<b>Chapter 3 - The Basel Convention in an era of economic globalisation, a Model convention? .....</b>	<b>38</b>
A new model convention? .....	39
Haunted by the past?.....	42
Synthesis.....	47
<b>Conclusion .....</b>	<b>50</b>
<b>Bibliography .....</b>	<b>52</b>
<b>Appendix – Text of the Basel Convention.....</b>	<b>56</b>

## List of Tables and Figures

**Diagram 1** the evolution of the distances that wastes would travel for their disposal this is adapted from Martin Fortin.....9

**Figure 1** Risk, Ruin, and Luxury in the Evolution of Early forms of Subsistence(Sieferle & Müller-Herold, 1997).....18

**Graph 1** Ratio between the number of Parties to the Basel Convention and the Number of Parties which transmitted their national reports in the period 1999 - 2006 courtesy of the Basel Secretariat.....44



## Introduction

The Basel convention has a tumultuous history, beginning in the early 1960's. It is the result of intense industrial development and the accompanying negligence of industry to engage in responsible disposal. Furthermore it epitomises the evolution of the regulatory NIMBY (Not In My Backyard) syndrome that developed in the OECD countries between the 1970's to the 1980's that unintentionally pushed the waste beyond its boundaries. Understanding in detail how this happened serves as a prime motivation for choosing this a thesis topic.

Over the last twenty years the political, economic and technological terrain upon which the convention operates has transformed. The world of today is much more interdependent. This is evident on all levels of governance whereby especially where government agencies and international organisations are looking to create intelligent and organic policies by including a large variety of stakeholders into their policy making process. This approach is different from the top-down policy making that dominated governments in 1989 and the early post cold war years. A result of this is that conventions such as Basel are stuck between these two epochs. This thesis will look how the Convention has adapted to this.

Protecting the environment and public health from the potential dangers of hazardous waste is the primary objective of the Basel Convention. This goal is firmly established in the preamble of the convention. Within this preliminary statement the parties also recognise or acknowledged as series of subservient goals. Principally these are a set of benchmarks that ensure the international transport and disposal of hazardous waste is conducted in a responsible manner that does not endanger the environment nor public health.

If for example, due to lack of technological ability, this is not possible parameters should be established to ensure that the necessary exchange of information concerning the waste in question takes place between the two States, and a transit state where applicable. This is to ensure that States are fully aware of dangerous waste products that enter their territories. Implicitly this was designed to empower developing States to exercise the right to prohibit entry 'on the basis that the wastes in question will not be managed in an environmentally sound manner' (Article 4, d).

In the 1980's few states, mainly those in the OECD region, were equipped with a national definition of Hazardous waste. This lack of definition meant that loopholes existed in national and international law that allowed for dangerous waste substances to be transported and disposed of internationally. To ensure these loopholes were closed, or sufficiently tightened, the convention prioritised the implementation and the harmonisation of national definitions.

Within this set of benchmarks the convention calls for the environmentally sound management (ESM) of hazardous waste and its disposal. For the purpose of further analysis in the following chapters it is worth paraphrasing the secretariats definition of ESM; 'ESM means addressing the issue through an "integrated life-cycle approach", which involves strong controls from the generation of a hazardous waste to its storage, transport, treatment, reuse, recycling, recovery and final disposal' (Basel Secretariat , 2008).

The following pages will give a detailed history of the evolution of the convention which will look at the prominent cases in the 1960's, 1970's and 1980's. This will show that contrary to popular belief hazardous waste was and still is traded primarily between OECD states. However resistance to disposal in the immediate domestic vicinity ensured the waste had to travel further afield for disposal (Fortin, 2000). Given the economic turmoil in the 1980's cheaper fuel prices facilitated this movement. Eventually, as will be shown with the Seveso case and the Jelly Wax case, mischievous waste brokers redirected wastes to developing countries which resulted in international outcry and pressure on States to regulate the movements.

Given the scarcity of literature on the conventions progress over the last ten years this thesis uses the opportunity that the conventions twentieth anniversary offers to analyse how effective the convention has been over this period, with particular emphasis on the latter decade. Looking The detailed history of the events that led to the convention will facilitate an evaluation on the efficacy of the convention. To this extent the thesis is broken into three chapters. First, it will provide a history of the convention and the hazardous waste trade that led to this, the second chapter will give a chronological evolution of the convention this is intended to show what the main trends were during the twenty year period. This will facilitate the analysis of the convention's efficacy in the third chapter. The analysis will show that the convention is haunted by its troubled



birth, whereby deep divisions between parties arose. This impedes its progress in its second decade.

## **Part One**

## Chapter 1

In the 1940's it is estimated that 10 millions tonnes of hazardous waste were being produced world wide. The economic miracle of the post-war world saw the growth of economic interdependence and an explosion of industrial and agricultural activity. By 1984 the amount of hazardous waste generated as a result of increased productivity was between 325 and 370 million tonnes p/a. 90% of which was produced in the industrialised world(World Commission on Environment and Development:, 1987).

The Love Canal scandal in late 1978 introduced the wider public to the dangers of hazardous waste for human health. Although there were brief concerns about hazardous waste disposal before this the careless and amateur way in which the city municipality and business dealt with the waste shook the world. It not only revealed how little authorities knew about the effects of hazardous waste but also how little of this information was in the public sphere. Public opposition and calls for accountability from the citizens of Niagara, USA, laid the seeds for from which the environmental justice movement, both national and international, would later germinate.

The repercussions of this were tremendous. On a national level the USA established the Resource Conservation and Recovery Act (RCRA) which provided stricter regulations on how to transport waste. On an international level the OECD established the Waste Management Policy Group in 1980. The group was charged with the task of analysing hazardous waste management and how best to standardise the practice of disposal and transport across the OECD. By 1982 the group established a series of guidelines that, as we shall see below, was to become the blueprint for the international regime that would come to regulate transboundary movement and disposal of hazardous waste(Harjula, 2006).

The mischievous ways in which the Seveso waste was dealt with reaffirmed the need for action on regulating hazardous waste movement. In 1984 the European Council passed directive EEC 84/631/EEC. This, as opposed to the aforementioned OECD guideline, was the first legally binding document that ensured tougher regulation. The directives triumph was the quasi successful implementation of an early Prior Informed Consent (PIC) mechanism. A mechanism that requires waste handlers to inform and gain approval from the importing state before dispatching the hazardous waste.

In 1985, Henri Smets, was correct in viewing the transfrontier movement of hazardous waste as a regional issue. Indeed most of the hazardous waste produced by OECD in the early 1980's saw disposal on incinerator ships or cheaper landfills across Europe (Smets, 1985)<sup>1</sup>. With tighter regulation the corresponding rise in the costs of hazardous waste disposal and an innate desire by business to avoid conflict with local communities, transboundary movement of hazardous waste was going to become a global trend.

The following pages will detail the trend of both practices and regulations in international hazardous waste management from the late 1970's to the Basel convention in 1989. The ultimate aim of this chapter is to lay the basis from which we can later compare the efficacy of the Basel convention from a 2009 view point.

## **Vanished**

### ***Waste disposal before 1980***

Given the publicity of e-waste and ship-breaking it would be easy to think that a form of 'toxic colonialism' has existed throughout the twentieth century. However this is not the case. Most hazardous waste is traded within the OECD region even then this has been a phenomena since the early 1960's. Martin Fortin's seminal piece, *Farbenspiel*, establishes a link between the Chemical Industrial complex in Basel and the continual extension of boundaries that its waste would travel to avoid a social conflict with the domestic population (Forter, 2000).

Fortin adds that such potential conflicts occur due to the increasing level of awareness that local population have concerning the environmental impact of heavily such polluting industry. Eventually this led to the tightening of regulation that would ensure that industry would have to impose stricter controls on its production. To ensure that this stayed out of the public space the industry conceded in the courts and would dispose of the waste further a-field. First in neighbouring towns, then neighbouring cantons and eventually internationally. Diagram one, adapted from Martin Fortin, graphically represents this expansion of the disposal arena.

---

<sup>1</sup> This is not to suggest that international trading in waste to developing countries didn't happen before then. Rather contrary to common belief it more beneficial, if transportation costs are taken into account, to dispose of the waste closer to home.

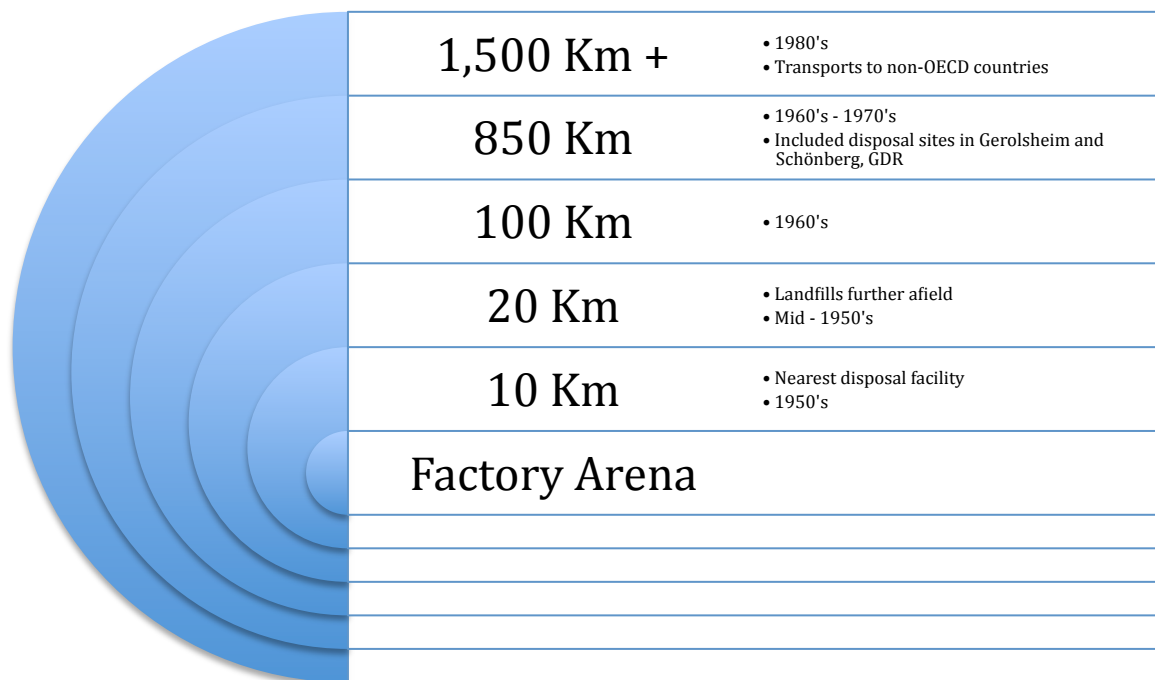


Diagram 2 This shows the evolution of the distances that wastes would travel for their disposal this is adapted from Martin Fortin.

Although Fortin focuses on the Basel industry, there is evidence to suggest that similar thinking influenced other industries around Europe and the USA. The example above is intended to show that international shipment and trade in hazardous waste became a regional phenomena before it became an global phenomena. Its roots lie in an attempt by industry to appease the local population and keep the negative aspects of their industries out of the public eye(Fortin, 2000). If we consider that before tighter regulation was introduced it made economic sense to dispose of the hazardous waste as close to the generator as possible due to cheaper transportation costs.

The following chapter will look closely at the events that led to tighter regulation in the OECD region and how this eventually forced the waste beyond the shores of the region. In particular this section will look at the more severe cases in European toxic trade history to emphasis how a NIMBY mentality evolved eventually allowing entrepreneurs to capitalise on poverty and conflicts to dispose of the waste in countries where the impact of Hazardous wastes was virtually unknown.

### **Waste Transport in Europe**

European and OECD legislation outlining the Prior Informed Consent process was the result of two major incidents whereby clandestine and mischievous entrepreneurs

ensured that hazardous wastes were declassified and as a result could be transported without detection across European frontiers. It was the fate of the Dioxin saturated waste from the Seveso disaster in 1976 that drew public attention towards the illicit movement of hazardous wastes<sup>2</sup>. When the 41 barrels with consignments number 805520 vanished on the evening of the 10<sup>th</sup> of September 1982 nobody would have imagined that they would reappear six months later in a disused abattoir in the tiny French hamlet of Anguilcourt-le-Sart in north-western France (Maur, 2007; Reuters , 1983).

A ethical kernel for those engaged in the illicit hazardous waste trade is the condition of anonymity. Under this veil of secrecy brokers, waste generators and the relevant corrupt government officials can ensure dangerous wastes can be transferred without a trail leading back to them (Wynne, 1989). In the Seveso case the long and distinguished list of those involved (ministers from four countries, police forces, lawyers, highly respectable corporations and customs officials) suggests that the Abattoir in France was not the final destination rather that this was just a half way stop. The underlying moral of 'no questions asked' has ensured that the key broker, Bernard Paringaud , has remained silent regarding the whereabouts of the final disposal site for the Seveso waste (Maur, 2007). It is however speculated that the waste was to meet the same end as that of the 25 tonnes of Trichlorobenzene, from the Chemie Linz, open ocean incineration.

As opposed to the Seveso waste there was no spectacular media campaign surrounding the 25 tonnes of dioxin containing Trichlorobenzene that moved across Europe less than a year later. The Austrian chemicals giant, Chemie Linz, sent its cargo by rail through Germany to Poland. Although the company claimed in court to have indicated the presence of Dioxin in the consignment, when it eventually arrived in Antwerp there was no mention of the Dioxin. As there was no need for concern the logistics company hired to dispose of the waste stored it in unsuitable and unprotected conditions. A sample test by port authorities in Antwerp revealed that dioxin was present in the waste. A result of

---

<sup>2</sup> This was the first time that a large population had been exposed to Tetrachlorodibenzo-p-dioxin (TCDD). The incident raised questions about plant safety and prompted the European Council to pass the Seveso directive in 1982 (82/501/EEC). In 1996 the directive was amended and is now known as Seveso II. This directive deals with the improving the safety parameters at locations containing large quantities of dangerous substances DG Environment . *Chemical Accidents (Seveso II) - Prevention, Preparedness and Response*. Retrieved May 15, 2009 from DG Environment : <http://ec.europa.eu/environment/seveso/index.htm> DG Environment . (2008, September 10). For a detailed account of events during and after the disaster see Mitchell, J. K. (Ed.). (1996). *The Long Road to Recovery: Community Responses to Industrial Disaster* . Tokyo : United Nations University Press.

this was that the scheduled open ocean incineration on board the *Vulcanus II*<sup>3</sup> was accelerated. This case eventually led to a Belgian import and transit ban of all waste containing dioxins (Smets, 1985).

An alternative solution for final disposal in the 1980's was to send the waste to land fills in East Germany thus hazardous waste crisscrossed through Europe on a much more regular scale than from the OECD to the non-OECD world, in many cases without the necessary documentation<sup>4</sup>. Harvey Yakowitz estimates that in 1983 alone almost 700,000 tons of hazardous waste crossed through European frontiers and over 1.5 million tons were incinerated at sea (Yakowitz, 1984). Of these frontier crossings most of the waste went to the German Democratic Republic. From the amount of waste moving to East Germany it is estimated that 300,000 tons came from Germany, 40,000 from the Netherlands and unspecified numbers came from Belgium, Denmark and Switzerland (Smets, 1985).

What these cases highlight is the international nature of the hazardous waste trade. If we inspect the *Chemie Linz* closer we can find that officials from Poland, American holding companies with Dutch subsidiaries that owned ships registered in Liberia were engaged in ensuring that the necessary measures were taken to dispose of the Austrian dioxin at a much lower price (International Environmental Reporter, 1983). Albeit in a much more harmful and callous way. What this should illustrate is the difficulty in engaging and bringing to justice all those involved as they are all subject to different legislative systems. Furthermore these are just two cases of hundreds that happened in that period however they illustrate the regional nature of the movements. It was only after the corresponding legislation governing the movement of trade within Europe and the OECD came into force that the wastes began to move further away. This would be an underlying principle goal of the Basel convention that would try to engage parties 'to ensure that hazardous wastes and other wastes should, as far as is compatible with environmentally sound and efficient management, be disposed of in the State where they were generated'(UNEP, 1989).

---

<sup>3</sup> Ocean incineration was banned globally in 1994 by the London dumping convention of 1989. This was a result of public pressure on environmental ministries and also that it was very difficult to control exactly what waste was being burned on board the ships. Greenpeace. (1996, May ).

<sup>4</sup> East Germany is the ironic example of how OECD countries would send their toxic wastes to be land-filled cheaply. In the 1980's East Germany accepted Roughly 1 million tons of Hazardous wastes a year from western European countries. Charging between \$50 - \$80 per tonne, it was a relatively cheap way to earn hard cash.

### ***Waste Safari in Africa 1988***

Like most other substances hazardous waste flows down the route of least resistance in both financial and regulatory terms. For the reasons mentioned above and facilitated by plummeting international transportation costs in the early 1980's hazardous waste found itself en-route from the OECD region to sites where disposal costs were drastically lower and regulation governing the transport and disposal was close to non-existent<sup>5</sup>.

To understand the complexity of transcontinental hazardous waste movements it is worth paraphrasing Brian Wynne here as he looks at the specificities involved in the trade. *'Waste brokers take different wastes from many sources. It is usual for them to be stored or treated at transfer stations, most often by bulking up but also by being mixed with other waste streams and then repackaged. The first broker may 'sell' some wastes to a second broker, who may be a specialist in dealing with particular types of waste or particular countries. Some wastes may become resources (and thus no longer need to be regulated) merely by dint of changing hands to a company which knows where recycling possibilities exist, or that gambles on a future rise in the market value of extracted materials. Solvents, oils, or filter-cakes containing cadmium, silver or copper are all examples of 'wastes' which can suddenly be transformed into 'goods' by this process. Waste booking is a field requiring high levels of skill, commitment and organisation, yet it is open to anyone to offer their services and undercut the competition'.* (Wynne, 1989)

This amalgamation of waste helped brokers such as Jelly Wax, Ecomar or Intercontract to dilute the information concerning the origins of the waste and helped to underpin the 'no questions asked' doctrine that accompanies these activities. Wynne carries on explaining that through this dilution the Hazardous waste undergoes a transformation in substance that is both physical and human/administrative. This latter aspect explains that hazardous wastes can be declassified and eventually be transported more easily across borders to disposal sites that are not specifically designated for hazardous waste disposal (Wynne, 1989).

### ***Offering money***

Benin and Guinea Bissau are both examples where broker firms offered astronomical sums of money to impoverished governments to 'stockpile wastes'. Although both

---

<sup>5</sup> Although there were cases of questionable disposal in Africa before the mid 1980's. In 1979 the Nedlog Technology group based in Colorado offered the government of Sierra Leone \$25 million to dump waste on their territory. The contract was cancelled after hefty criticism from Nigeria and Ghana and a series of violent student protests; for more information see Ahmed and Scherr 1981.



countries had different political orientations they ran economies with heavy trade imbalances and they were both massively indebted to foreign banks on which they both eventually defaulted.

The Marxist Leninist regime in Benin looking to fund the corresponding social and economic policies soon realised the benefits of opening up the country for waste disposal. The first country to offer support of this new source of income was the Soviet Union who offered some money for disposal of toxic and radioactive waste under a military airbase in Cana. Soon thereafter French government connections ensured that contact was made between the Anglo-French waste disposal firm Sesco Ltd. A contract was agreed whereby Sesco could 'stockpile' 5 – 10 million tons of hazardous waste a year from various European and North-American countries at \$2.50 per ton (Brooke, 1988; Wynne, 1989; Greenpeace, 2000)<sup>6</sup>. The overall sum offered to the Beninoise government was \$125 million for a ten year period. The site allocated for disposal was near the southern village of Agon on the Nigerian and Togolese border.

Guinea Bissau offers a similar but even more spectacular example. In 1988 the broker firms Intercontract and Sesco Ltd offered the country \$120 million a year over a five year period to import and dispose of 15 million tonnes of waste. The offer was tempting, and beneficial to both parties. For Guinea Bissau the proposed payment of \$600 million (\$40 per tonne) was over twice the country's foreign debt and over four times its GDP(Asante-Duah & Navy, 1998). By shifting the waste to Africa Intercontract and Sesco Ltd would save billions as it did not have to engage in costly incinerator operations in Europe (Poropat, Douglas, & Ibrahim, 2000).

In both cases Nigeria, the regional hegemon, protested heavily and exercised diplomatic pressure on Benin and Guinea Bissau to cease the operations. International media coverage also ensured that these deals were annulled. However some NGO's and media sources, the BBC in particular, suggest that this was only to appease the international community and that toxic cargos destined for Benin were still buried as agreed. In the Guinea Bissau case Sesco Ltd tried to take the Guinea-Bissauian government to court claiming that the contract was binding(Poropat, Douglas, & Ibrahim, 2000).

---

<sup>6</sup> Whether the governments knew the waste was toxic or not is a matter still under dispute. As many of the companies would not be truthful in the contracts and consignments where labelled as 'complex organic matter' or 'ordinary industrial wastes'. When data from the wastes was obtained, it was found to include 'herbicides and other organo-chlorine compounds, degreasing and other solvents, a toxic inventory which should be disposed of by controlled high temperature incineration' (Wynn, 1989).

## **Homeless Toxic Ships**

Homeless toxic ships were a common sight in the late 1980's. The most prominent of these was the *Khian Sea* whose two year odyssey around the world would become the rallying point for calls to justify the need for a global regulatory system governing the movement of hazardous wastes, see below. Less well known is the *Radhost*, a Czechoslovak ship that was indicted by the Venezuelan government on the grounds of trying to offload a cargo of suspicious barrels that originated from Italy. As at this point no international code ensured that the cargo be repatriated with the generator the ship spent close to three months at sea before the contracting company, Jelly Wax, was approached by a Lebanese businessman who offered to dispose of the waste for a modest \$500,000 (Ali-Ali, 2000).

Personal connections with the Lebanese Forces, a right wing Christian militia, ensured that the ship unloaded its cargo in Beirut during the height of the civil war. Between June 1987 and September 1988 the container ship owned by the Czechoslovakia Ocean Shipping Company, transported a further 15,800 barrels and 20 containers (2,411 tons) to Beirut from various waste generators in Italy (Ali-Ali, 2000). The militia was eager to assist Jelly Wax on the basis that it was in desperate need for funds to buy supplies for its conflict against the Lebanese government and the Palestinian Liberation Organisation. Unaware of the dangers the waste posed to public health the militia disposed of the waste in large craters or under the permanent ice sheets in the mountains (Fisk, 1995). Again this was for a fraction of the disposal costs in Italy. By the end of the civil war Lebanese civil society lambasted the act and claiming it was equivocal to a war crime.

By the end of the civil war Lebanese prime minister, Samir Hosni, secured a deal with the Italian government that would ensure it would repatriate the waste and cover the costs of the clean up operations. As with the ships returning the hazardous wastes from Nigeria following the *Kokobay* incident, the *Karin B* and the *Deepsea Carrier*, public outcry and homelessness ensued. As a result the Lebanese waste ships mysteriously disappeared in the Mediterranean (Greenpeace, 1995).

The international media attention that focused on the *Karin B* and the *Deepsea Carrier* in 1988 ensured they had a different fate. Upon leaving *Kokobay* Nigeria both ships faced a series of rejections of entry in Spain, France, the UK, Germany and the Netherlands. It was only after the EEC took the Italian government to the European

Court of Justice that the Italian government finally agreed to incinerate the waste domestically (The Economist, 1988). After it was revealed that both ships were contaminating the surrounding water riots and demonstrations swept through the port of Livirno ensuring that unloading was delayed<sup>7</sup> and again became homeless. The hostility in Italy to reclaiming the waste was particularly interesting considering that it was waste from Italian broker firms Jelly Wax and Ecomar. These firms arranged to store 8,000 barrels of waste containing PCB, asbestos fibres and dioxin in the backyard of Nigerian businessman Sunday Nana for the price of \$100 a month. The deal was eventually called off after Koko bay port authorities discovered the suspicious barrels before they could be taken off to disposal site (Poropat, Douglas, & Ibrahim, 2000).

The incident had repercussions regionally and internationally. Nigeria, after years of being the loudest critic of its neighbours for importing hazardous waste was now in the spotlight<sup>8</sup>. Being the regional power house it pushed for a united African stance which resulted in the Lome Convention. President Babajinda invoked a new law that ensured anyone found guilty of importing Hazardous waste would suffer the pain of death. Internationally this incident accelerated the need to translate the guidelines established in Cairo into binding international law. Furthermore this was the first time that the International Labour Organisation (ILO) raised concerns over worker protection rights in dealing with transportation of hazardous wastes.

### **Khian Sea**

As stated above the episode that epitomises the necessity of international norms governing the transboundary movement of hazardous wastes is the two year odyssey of the Khian Sea. The introduction of the Resource Conservation and Recovery Act (RCRA) by the US government saw the prices of land filling skyrocket in the United States. Shipping hazardous material, such as incinerator bottom ash, to other industrialised countries, usually Canada or East Germany, proved to be more expensive than the option extended to the Philadelphia Municipality by Joseph Paolino and Sons in the spring of 1986. The offer extended ensured that the 13,000 -15,000 tonnes of incinerator ash would be disposed of for \$26.75 per ton in the Bahamas.

---

<sup>7</sup> The Karin B was allowed to unload its cargo within two months of reaching Livirno. The Deepsea Carrier, with it crew held onboard was refused permission to unload its cargo until August 1989.

<sup>8</sup> The Koko incident was doubly embarrassing for the Nigerian Government. As the story received high publicity in Italy. However the Nigerian Embassy in Rome did not inform the Foreign Ministry in Lagos of the events. The government in Nigeria only found out about the events after a number of students in Italy translated the stories and sent them to newspapers in Nigeria.

On September 5<sup>th</sup> 1986 the Khian Sea, a ship owned by Coastal Carriers Inc, but flying a Liberian flag, set sail with cargo labelled as 'non-hazardous, non-flammable, non-toxic incinerator ash'. Upon arrival in Oceans Cay, the ship was refused entry by the ministry of health (Lapp, 1990). The Philadelphia municipality refused payment as the ash had not been disposed of. Over the next 27 months the Khian Sea wandered the Atlantic, the Mediterranean and the Indian ocean looking for a friendly harbour. A media frenzy slowly gathered around the voyage of the ship.

In January 1988 the ship finally found a friendly port in Haiti. Using political connections and a series of forgeries the ship offloaded 3,000 tonnes of 'topsoil fertiliser' in Haiti (Environmental Research Foundation, 1987). Before the crew could complete the job Greenpeace warned the Haitian government of the cargo, and the ship was ordered to reload the cargo. The ship made haste under the cover of darkness leaving the unloaded cargo in Haiti<sup>9</sup>.

Returning to Delaware Bay, USA, in May 1988 the ship was boarded and quarantined by the EPA and the U.S. coast guard. Desperate to dump its waste the Khian Sea, became an international 'fugitive' (Scott, 2000) when it fled the US for West Africa. Greenpeace warned the OAU of the potential environmental danger to of the Khian Sea's cargo. After the furore over the cases such as Benin, Guinea Bissau and Nigeria the Khian Sea was refused entry in at every African port it attempted to dock in (Anderson, 1988).

Heading for repairs in Bijela, former Yugoslavia, the Amalgamated Shipping Corp. sold the ship to a shadow company Romo Shipping. Promptly changing the name to Felicia the ship wandered through the Suez canal for South Asia. Eventually the Pellicano, the ship was renamed once more, arrived in Singapore with empty holds. After an intense legal campaign in the USA it was found that the owners of the Amalgamated Shipping Corp ordered the captain to release the waste.

The environmental lobby should be commended here as in the cases above it was organisations such as Greenpeace that were most active in informing governments of the dangers involved in hazardous waste disposal. Take for example the Lebanese case,

---

<sup>9</sup> It was only in 2002, as a gesture of goodwill and growing political pressure, that the city of Philadelphia agreed to take back the stranded waste.

here Greenpeace was active in ensuring that the waste was discovered and eventually disposed of. The same is true for the case of the Khian Sea.

The Voyage of the Khian Sea came to symbolise the callous nature in which municipalities, governments and companies dealt with the waste that could not be incinerated or land-filled. The media and environmental lobbyists were quick to view the shipments of hazardous wastes to developing countries as a subtle and perverse form of 'toxic colonialism' or even worse 'toxic terrorism'. As I have tried to point out with the cases above the trend shifted towards shipping the waste further afield due to tighter regulation in OECD region and the resulting increase in disposal costs. As the case with the Basel Chemicals industry shows companies were eager to save face in their domestic markets. They were thus willing to sell the waste to brokers, such as Jelly Wax, who would dispose of the waste under the conditions of 'no questions asked'.

### **The international community steps in**

International media attention and the activities of environmental lobby groups, such as Greenpeace or Friends of the Earth, ensured that the public spotlight focused more regularly on international hazardous waste shipments. Similar to Spiral of Risk described by Sieferle and Ulrich the international community reacted with innovative legislation that would solve the initial problems posed by hazardous waste transport in the OECD. As with each new innovation designed to solve a problem, new problems arose. In this case regulation designed to standardise the flow of Hazardous waste throughout Europe, resulted in the increased movement to, and disposal of, hazardous waste to developing countries. Eventually this meant that hazardous waste would have to be regulated by an international regime.

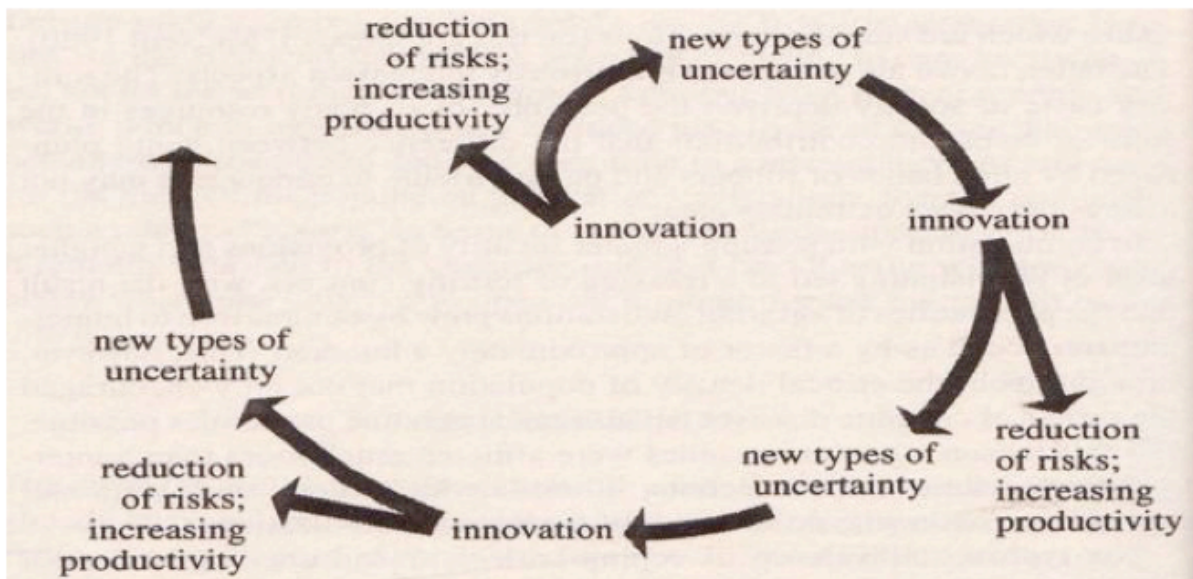


Figure 2 Risk, Ruin, and Luxury in the Evolution of Early forms of Subsistence(Sieferle & Müller-Herold, 1997)

The following section will look at the international communities response to the cases like those mentioned above. It will illustrate how the events mentioned in the previous section were a reaction to a legislative effort to regulate the trade. Eventually this process culminated in the Basel convention.

A UNEP meeting in Montevideo, October 1981, saw the introduction of the 'transport, handling and disposal of toxic and hazardous wastes as a priority matter... at the world level' and called for the 'preparation of guidelines, principles or conventions' (UNEP, 1987). The OECD was the first to act upon these recommendations. Subsequently between 1984 and 1992 the OECD Council passed eight acts that related to the transboundary movements of hazardous waste, five binding Council acts and three council resolutions(Harjula, 2006).

The first of these Council Decision C(83)180(Final), moved along by the Seveso barrel fiasco, was to become the blueprint for future regulations and guidelines on how to monitor transboundary movements of Hazardous waste. More specifically the mechanism of Prior Informed Consent grew out of this decision. This mechanism described in the document as 'International Pre-notification and Co-operation' obliged the member states to monitor and control the movement of wastes within the OECD region, but also to monitor and control the movement of hazardous wastes to other non-members.

Public pressure in Europe after the Seveso incident ensured that the European Economic Community followed the OECD lead. Council directive 84/631/EEC spearheaded the European legislation in this area as it was also much more detailed and more encompassing than its OECD predecessor. EEC called upon Member States to take the “necessary measures for the supervision and control, with a view to the protection of human health and the environment, of the transfrontier shipment of hazardous waste both within the Community and on its entering and/or leaving the Community”(European Council, 1984) by October 1<sup>st</sup> 1985.

Directive 84/631/EEC introduced a general notification procedure for transport of hazardous wastes within the community (article 4). This meant that the process of Prior Informed Consent was implemented into community law. This process of notification increased the difficulty of shifting the waste throughout the EC. At every stage whether origin, transit and final disposal the waste and its content was documented at the respective national authority of that member state. This increased involvement of these authorities meant that objections to the waste could be raised and the waste was refused entry and had to return to the originating state.

The directive increased the level of risk for operators involved with transporting hazardous waste around Europe. Firstly due to the increased level of bureaucracy and the consequential checks that evolved from this a consignment could easily be sent back for disposal at the origin. Secondly, the directive implemented the polluter pays principle which meant “that the cost of implementing the notification and supervision procedure, including the necessary analyses and controls, shall be chargeable to the holder and/or the producer of the waste by the Member State concerned”(European Council, 1984). Which meant that costs could increase considerably for the concerned producer.

The risk was further increased for criminal prosecution as the council established ‘conditions for implementing the civil liability of the producer in the case of damage or that of any other person who may be accountable for the said damage and shall also determine a system of insurance’(European Council, 1984).

The directive also established the system of national rapporteurs that would report on the situation with regard to the transfrontier shipments concerning their respective territories. It is this point, article 13, in the directive that a specific link to the Seveso

disaster is noticeable as: “transfrontier shipments of waste arising from major accidents, in particular within the meaning of Article 1 of Council Directive 82/501/EEC of 24 June 1982 on the major-accident hazards of certain industrial activities (1)[Seveso Directive]” (European Council, 1984).

The directive is a good example how the European Communities established safeguards for transport and disposal within its own territories. The negative externality of this was that the disposal of waste became much more difficult, due to procedures which increased the risk of recall, this meant that the route of least resistance for disposal led waste outside the EU<sup>10</sup>. This is because the directive does, and can not oblige, third states to apply the same rules of the notification system. Furthermore, even if the notification system was applied the Directive does not condemn the improper disposal of hazardous waste in third states. This is because neither Council Directives 75/442/EEC, 76/403/EEC nor 78/319/EEC took disposal facilities in non-member states into account. This only happened with the council directive 91/689/EEC on hazardous waste.

Essentially this meant that although a more efficient notification system was in place, cleaner disposal mechanisms in third states did not enter the equation until Directive 86/279/EEC set forth conditions governing control of exports of hazardous wastes from the EC area. This Directive closely resembled its earlier OECD counter part C(86)64(Final)(Harjula, 2006).

The Cairo guidelines and principles for environmentally sound management signed in December 1985 was as the name suggests the first official international effort to deal with the environmentally sound management (ESM) of hazardous waste. It was here that the notification procedure laid out in the OECD council directive and the more detailed version of the EEC directive of 1984 where complemented with a set of general guidelines and recommendations that focused on the administrative aspects of cleaner waste disposal and recovery. It is made clear in the introduction that these are *general* guidelines and do not take the economic development of the country into consideration.

The guidelines were an initial step towards international standardisation of

---

<sup>10</sup> This is not to say that this is not taken into account in the legislation. The directive ensures that the documentation of the waste leaving the EEC through a transit member state is ok. The Directive only vaguely suggests that producers must take the disposal facilities into account.



environmentally sound management of waste. However it was very watered down. For instance it did not include an international definition of hazardous waste, rather it was left to the signatory states to define the hazardous waste within their national laws. This was problematic as many states definitions varied. This made a standardisation of notification and disposal systems more tricky and left a lot of loopholes. The section corresponding to transport rules however was very normative. It did not place an obligation upon states to implement a notification and consent procedure.

Although the guidelines were watered down tremendously they are an important step towards raising awareness of the problems internationally. Furthermore it laid the foundations for cooperation between OECD and Non-OECD countries on themes such as technology and knowledge transfer, waste management and proposed a list of globally 'approved sites and facilities' for hazardous waste treatment and disposal. Almost as important as these was the proposal to oblige states of export to readmit the exported waste if it did not conform to regulations of the importing or transit states. This increased the pressure upon states, such as Italy and Germany, to repatriate the waste and dispose of it. The guidelines were approved by the UNEP governing council in June 1987.

At the same meeting the governing council of the OECD called for an elaboration of the guidelines towards a binding international document that would control the international movement of hazardous waste, implement a global notification system. It was here that Switzerland obliged itself to host the diplomatic convention for signing the global convention in early 1989. It is interesting to note that in 1987 when calls for this convention were raised there was no talk of an outright ban on movements between countries as the motivations behind the Cairo guidelines and the OECD and EEC directives were to create an 'efficient and coherent system of supervision and control of the transfrontier shipment of hazardous waste should neither create barriers to ... trade nor affect competition'(European Council, 1984).

In between the drafting and the adoption of the Cairo guidelines the OECD began to work on a more encompassing directive that aimed to control the export of waste from the OECD region. C(86)64(Final) looked at ensuring exporting states would assume much more responsibility in ensuring that the consignments were better documented

and that countries would actively prohibit the transport of suspicious shipments and contribute more positively to a cleaner flow of hazardous waste. Working in close cooperation with the OECD the European Council approved a similar directive six months later.

As we shall see this work was important in laying the foundation and even parts of the structure that were to become the Basel convention. First moves towards a global definition of hazardous waste were made in 1988 with the definitions laid out in decision C(88)90 (Final). Here “hazardous wastes”, “waste” and “disposal” were defined in their own right away from the definition laid down national legislations of the member states. Furthermore the decision was important as it laid down a “core list” of hazardous wastes that were deemed as hazardous.

The decision established the International Waste Identification Code (IWIC) this is a classification system for wastes designed to overcome the internationally fragmented system of identifying wastes. The IWIC, allows virtually all wastes deemed to be hazardous by most countries to be described satisfactorily in terms of potential hazard, activity generating the wastes, physical form (liquid, sludge, solid), generic descriptor (contaminated soil, etc.), and constituents (OECD, 1993)<sup>11</sup>.

The OECD began work on a binding convention for the transboundary movement of waste to be agreed with non-member states. However when the UNEP general council announced it would create a global convention under its mandate. To reduce the risk of overlap, especially in the technical issues such as: waste list, hazardous characteristics, disposal operations and the prior informed consent procedures (Myslicki, 2005) the OECD halted the work on its convention and began to cooperate very closely with the UNEP team working on the drafting of the Convention.

### **The road to Basel**

Work on the new international convention started almost immediately after the 14<sup>th</sup> meeting of the UNEP general council. In total there were six negotiation sessions between June 1987 and February 1989. As with most international environmental agreements some themes are persistent throughout the negotiations process (such as a

---

<sup>11</sup> This code was used for some years before it was made obsolete by the OECD council decision C(2001)107/Final.

ban on exports, definition of transit states and the status of municipal wastes) while others were resolved between member countries rather quickly (Myslicki, 2005).

Given the events in Benin, Guinea-Bissau and Nigeria etc. the African countries gathered in Lome, Cameroon where it was decided to push for a common goal in Basel negotiations, a complete ban on exports (Poropat, Douglas, & Ibrahim, 2000). OECD countries, saw this as a restriction to market forces and were set against a ban. (Kellow, 1999). However in the fourth meeting, held in Geneva, 1988, the African countries voiced their concern regarding the watered down nature of the convention regarding a ban on movements of waste<sup>12</sup>.

Some developing countries, notably the Philippines, wanted any ban to exclude the trade in recyclable or reusable material. As negotiations were shadowed by such a tight deadline this issue would become an intrinsic problem to the Basel convention that still plagues the convention today.

There was also a division between coastal states. Some States, especially those in South America, requested that a provision would be placed into the convention that would ensure if a waste shipment were to go through their territorial waters, within 200km's, they too would be considered transit countries and would be notified. Other states were opposed to this on the grounds that it would contradict the right of free passage laid out in the 1982 law of the sea convention (Myslicki, 2005).

These issues persisted into the final negotiations session in March 1989. Further political events made this a very dramatic negotiation which focused attention away from regulating hazardous wastes. Technical, economic and legal expertise and rational were pushed to the side and allowed for political and moral judgements to dominate. Fault lines between the 'global north' and the 'global south' became more pronounced. Whereby a majority of developing countries pushed for the issues they wanted to see implemented into the convention. These were heavily influenced and assisted by Greenpeace (Kellow, 1999).

During the final negotiation session the OAU states placed reservations on almost all the articles. Finally a representative of the OAU explained that these countries would abstain from signing the documents unless the modifications to the convention that they

---

<sup>12</sup> This eventually led to a ban of hazardous waste between the ACP countries and the EC, unless the importing country had the correct disposal facilities, in the 1989 Lomé Convention (Miller, 1985)

sought were met. The OAU demanded that the status of municipal waste be equated with that of hazardous waste in the convention. Pressed by the deadline it was agreed that within annex II (categories of waste requiring special attention) waste collected from households and ash collected from municipal incinerators was included (Myslicki, 2005).

On the issue of the ban the drafting committee included article 15 paragraph 7 in the convention this would ensure that the COP would include “an evaluation of its effectiveness and, if deemed necessary, to consider the adoption of a complete or partial ban of transboundary movements of hazardous wastes and other wastes in light of the latest scientific, environmental, technical and economic information” (UNEP, 1989). The conference of the parties, the Basel conventions executive body, has kept its word, however the Ban has still to enter into effect.

## **Conclusion**

The preceding chapter shows that the evolution of the waste trade is in many ways connected and extenuated by the evolution of the regulation governing the transport and the disposal of the wastes. In a nutshell; the stricter the regulation became the further the hazardous waste was distributed from the point of origin. Fortin adds another layer of analysis to this by accrediting the complacency of industry to contend these regulations in court. He argues, paradoxically, that although it is likely that industries could have won in the courts they would have lost ground in their social positions in their domestic regions. Thus opting to shift the waste further afield in the hope of avoiding negative publicity. However, with the advent of the environmental lobby this was no longer possible as the public became more aware of the problems that hazardous wastes could cause.

The advent of the environmental lobby, such as Greenpeace, had both a negative and a positive effect on the regulation of the trade in hazardous waste. The positive first. Greenpeace played an incremental role in shedding light on illicit movements towards not only the developing world, as the cases of Lebanon and the Khian Sea illustrate. They were important in highlighting movements within Europe as well, for example the movement of hazardous waste from Basel for open ocean dumping or incineration were halted through Greenpeace awareness raising. It is through such ground breaking activity that authorities saw the need to improve current legislation.

The green lobby's influence was very negative in the negotiations and ironically, as the next chapter will show, has slowed down the process of hazardous waste regulation. During the 1987 and 1989 period their activity and assistance heavily influenced the developing countries negotiation strategy. Some analysts, namely Kellow, argue that this actually worked to the detriment of the developing countries. It led to an atmosphere in which the movement of hazardous waste transgressed from an economic and technical issue into a moral and political conundrum. This unfortunately led to a process of self-victimisation that led to a distortion of facts; namely that hazardous waste movement is conducted to almost 90% within the OECD area and not as campaigns would have us believe almost exclusively from the OECD to the non-OECD world.

The solidarity between developing countries was only a momentary and symbolic victory. They would soon realise that they would be negatively effected by they highly restrictive atmosphere which they helped to usher in. The following chapter will

highlight the transformation that the Basel convention moved through in its twenty year history. These transformations, to some extent almost the opposite of what UNEP intended to be the outcome, were set from the rushed and highly explosive history of the convention.

## **Part Two**

The following chapters will look at the evolution of the Basel convention. The first chapter will look at the central issues that the convention has had to contend with in the twenty years since its inception. The chapter following this will look at the Basel convention in light of its position in this new era of global environmental politics and to the extent it fits the role of a modern Multilateral Environmental Agreements.

## **Chapter Two**

Two distinct epochs can be drawn in the life of the Basel convention. The first epoch can be characterised as its formative years. It was here that the conference of the parties drew up the institutional and administrative structures that are required to enforce and implement the convention. This epoch also tried to realise the promises that were given to the parties in the negotiations leading up to the convention; an international control system for the movement of hazardous wastes and a legally binding prohibition of hazardous waste exports from the OECD to the non-OECD region.

The second epoch was more structured in its approach to dealing with a hazardous waste problem that appeared to be growing rather than declining since the convention's inception ten years earlier. This epoch is best described as giving the convention renewed impetus. The Nairobi declaration was the secretariat's answer to protracted progress in the first epoch. The declaration called for the:

- active promotion and use of cleaner technologies and production methods;
- further reduction of the movement of hazardous and other wastes;
- the prevention and monitoring of illegal traffic;
- improvement of institutional and technical capabilities -through technology when appropriate - especially for developing countries and countries with economies in transition;
- further development of regional and sub-regional centres for training and technology transfer.(Basel Secretariat , 2008)

The following pages will look at the specific achievements of the convention. It will do this, rather unimaginatively, by tracing the milestones of the convention in a chronological fashion through a textual analysis of the various conference protocols. This is intended to show the gradual decline of issues such as the Ban amendment and the liability protocol, and the gradual rise of prevalent issues such as e-waste and ship breaking. What this also highlights is the persistency of other issues such as funding and national implementation which gives the convention a sense of consistency.

### **Piriapolis, Uruguay, 1992**

In his closing remarks Dr. Tobla expressed regret concerning the lack of involvement by the international community for the new convention despite the high turn out in Basel



just three years before. Despite the meagre turn out of only 35 parties important decisions were made that would set the tone and the pace of the convention in the following years. Decision I/5, established a group of experts that would address the issue of compensation and liability in case of illegal dumping or an accident. This was a big step for global environmental policy advocates as this was the first MEA to attempt to establish a system which would prosecute environmental crimes and/or human negligence (Basel Secretariat, 2008; Krummer, 1998)

Given that illicit hazardous waste disposal had hardly shrunk since the 1989 conference there was pressure on the organising committee to send a strong message that would appease the outcry of the developing countries. UNEP secretary general, Dr. Tolba, suggested a Ban of hazardous wastes to developing countries and Eastern Europe. Strong resistance from the USA, Germany, Australia, Japan and the UK ensured that a watered down resolution was reached whereby it was 'requested industrialised countries prohibit transboundary movements of hazardous wastes for disposal to developing countries' (Basel Secretariat, 2009). This was not the strong language that some of the parties had hoped for which would lead to an active intercessional period<sup>13</sup>.

Periapolis was an important step towards the ban amendment and following stalemate as it opened the discussion to the parties regarding the environmentally sound management of hazardous wastes destined for recovery and recycling. This the first time that a distinction was made between the hazardous wastes for final disposal and those destined for recovery and would have tremendous impact on the convention in the years to come.

### **Geneva, Switzerland, 1994**

Decision II/12 was passed during the Geneva conference in 1994. With this decision the G-77 made its mark and managed to push the conference towards a full ban of hazardous wastes from the OECD to non-OECD countries. The decision also incorporated a move that would ensure a complete phase out of hazardous wastes destined for recycling or reuse from OECD countries to Non-OECD countries. The negotiations were extremely fierce and dominated by a moral agenda that did not take the practicalities and the consequences of the a ban into account<sup>14</sup>. To prevent a collapse

---

<sup>13</sup> Denmark's controversial move to break ranks with the European Community and join the G-77 would weaken the EC's bargaining position at future conventions but also influence European Environmental Policy.

<sup>14</sup> This was only realised when the delegations returned to their countries where trade and industrial agencies raised alarm over the ban. This explains in part why the Ban amendment has yet to be taken into the convention. Kellow, A. (1999).

of the convention at only its third meeting the governing council and the secretariat worked very hard at an agreement through consensus rather than a vote(Kellow, 1999).

A clear division between the parties was noticed at the convention. Australia spearheaded the anti-ban notion with a clear language of discontent at the meeting. In particular its representatives highlighted that a flexible and specified system regulating the trade and the flow of materials for recovery and reuse would serve the convention better(UNEP, 1994).

The conference also reviewed much of the work done in the field of environmentally sound management, prior informed consent and implementation into national legislation of the parameters established by the Basel convention. However given the charged atmosphere as a result of the intense ban discussions the no decisions were taken on these issues. Rather requests were made and working groups were established. The delicacy of the ban issue also ensured that progress on the liability protocol and the emergency fund was delayed as the president of the negotiations did not want to alienate parties that could potentially contribute to these area's(Krummer, 1998).

### **Geneva, Switzerland 1995**

The following year in Geneva the ban amendment was the first item on the agenda. This time known as Decision III/1 it used different language. It no longer referred to the parties in their regional groupings as OECD or non-OECD. Rather the convention used the terms Annex VII to refer to the countries belonging to the OECD, the EC and Lichtenstein. This also enforced the 1997 deadline to phase out all hazardous wastes destined to non-Annex VII countries for recycling (UNEP, 1995). These issues would become an area of contention in Kuchang Malaysia three years later. What Greenpeace hailed as a 'victory over toxic colonialism' has still not entered into force as three quarters of the parties must ratify the amendment.

Given the intensity of this conference work on other key area's to expand the conferences grip on the matter of hazardous wastes was delayed slightly. One area of success, which was however related to the ban amendment, was the creation of a working group that would fully characterise what hazardous wastes were but they would also draw up a list of hazardous wastes that would eventually be banned. This technical working groups' work would also be an important element in creating definitions that parliaments would later approve into their legislation.

### **Kuchang, Malaysia, 1998**

February 1998 Kuchang, Malaysia hosted the fourth COP. Two issues dominated the discussions. Firstly; the finalisation of the technical working groups reports on the characterisation of hazardous wastes and their completion of the lists of wastes deemed as hazardous or non-hazardous (lists A and B). At this COP the lists were converted, respectively, into annex VIII and annex IX. These lists/annexes meant that Basel ban became more concrete.

The second issue was the expansion of Annex VII to include countries that are considered developed yet do not belong to the OECD namely Monaco, Israel and Slovenia. Israel and Slovenia had economic interests in belonging to this to the Annex VII group as they had profited from receiving and recycling wastes from Annex VII countries (Wirth, 1998). This issue was problematic on the Basis that some parties argued that such an inclusion would undermine the ban on the basis that this would give countries a form of opt out, thus belonging to the OECD was the best possible criteria to define the boundaries of the ban(Krummer, 1998). To avoid a potential stalemate on the issue it was agreed that the this issue would be revisited only after decision III/1 had been fully ratified by all the parties.

The procedures to create a liability and compensation clause in the convention gained real impetus in Kuchang. Most delegations were critical at the lack of progress by the technical working group establishing the liability and compensation protocol. A look at protocol of the conference will reveal that a lot of parties claimed that environmentally sound management of hazardous wastes could not be taken seriously if such a protocol was not in place(UNEP, 1998).

### **Basel, Switzerland, 1999**

In honour of the conventions tenth anniversary the government of Switzerland hosted the fifth conference of the parties in Basel. It was here, after ten intense sessions, that the ad hoc working group of legal and technical experts presented the liability protocol. The protocol was the first of its kind and is seen as a milestone for the progress of MEA's. With Decision V/2 the liability protocol was adopted into the convention. The protocol is designed to curb fears of developing countries who do not have the financial means to cope with consequences of accidental spills or illegal dumping. The protocol ensures that those guilty of such activities are made responsible by providing a comprehensive regime of liability (Basel Secretariat, 2004).

This conference of the parties adopted the agenda for the next decade of the Basel Convention. This is also known as the Basel declaration on environmentally sound management. It is better described as a road map for the convention whereby specific priority activities are highlighted, such as creating an inventory of hazardous wastes and creating an electronic information systems designed to improve all the parties access to information. The aim of establishing these priority activities is to promote:

- The prevention, minimization, recycling, recovery and disposal of hazardous and other wastes subject to the Basel Convention, taking into account social, technological and economic concerns
- Active promotion and use of cleaner technologies with the aim of the prevention and minimization of hazardous and other wastes subject to the Basel Convention
- Further reduction of the transboundary movements of hazardous and other wastes subject to the Basel Convention, taking into account the need for efficient management, the principles of self-sufficiency and proximity and the priority requirements for recovery and recycling
- Prevention and monitoring of illegal traffic (UNEP, 1999)

## **The second decade**

### **Geneva, Switzerland 2002**

COP 6 expanded the conventions reach in technology and knowledge transfer by creating regional centres in every region that would have the core function of developing training courses, technology transfer geared specifically towards waste prevention and improving the ESM of waste, information consulting to parties and non-parties and raise public awareness towards the role of the hazardous waste and the convention.

The trust fund for emergency responses which the secretariat and some parties had been fighting for in the previous COP's became more concrete in Geneva 2002. Here the parties decided to 'enlarge the scope of the technical cooperation trust fund'. This document entailed three parts that were very specific about the scope of the emergency assistance. The first part looks specifically at the emergency assistance offered by the trust fund. It lays out specific guidelines regarding eligibility, the application procedure,

the financial rules regarding the assistance and the specific contingency plans for accidents or illegal dumping (UNEP, 2002).

The second part of this document looks into compensation for damages to/the reinstatement of the environment. How this is best achieved and the eligibility for this regarding the parties and, in some cases non-parties. The third part of the document looks at developing capacity building mechanisms, transferring technologies and looking at accident/illegal dumping prevention, this again follows a similar structure to the first few parts(UNEP, 2002).

In Geneva the dismantling of ships was discussed for the first time with delegations of the International Maritime Organisation (IMO) and the International Labour Organisation (ILO). Here the legal parameters of full and partial ship dismantling was analysed (UNEP, 2004). As we shall see below this is an important aspect in the evolution of the hazardous waste regulation as seven years later from a new international convention on ship dismantling was established.

The sixth conference launched the foundations for the partnership programmes designed to integrated more stakeholders into the convention. This was an important step in reducing the growing tide of end-of-life mobile phones being transferred to the developing world for disposal. This meant more responsibility was taken to achieve better product stewardship and to promote the best possible refurbishing, recycling or disposal options.

#### **Geneva, Switzerland, 2004**

The intercessional period 2002 and 2004 was very busy. The open-ended-working-group looked into improving the institutional arrangements and other hampering issues such as the liability and compensation protocol or the ban amendment.

Building on the priority area for more stakeholder involvement in the convention this conference launched the Mobile Phone Partnership Initiative (MPPI). The initiative looked at integrating mobile phone companies and providers to include cleaner production methods in their products and to raise more awareness on the potential dangers of discarding or reusing mobile phones. The initiative was launched with success as twelve telecommunication giants joined the initiative.

The issue of resource mobilisation gained greater attention at this conference. It was acknowledged that although the convention was reaching its goal of universal membership this however meant that its resources were spread much more thinly between all the issue area's. Adding to this it was highlighted that there was zero growth in funding and personnel. As with most conferences before this there was a plea for alms for the convention.

### **Nairobi, Kenya, 2006**

The eighth conference followed the Abidjan waste dumping incident. Thus the tensions at the conference were very high. Some of the representatives, especially those from developing States, were openly critical on the effectiveness of the convention. There was an almost unanimous call for accelerated action on the ratification of the liability and compensation protocol and increased co-operation and co-ordination efforts between the convention and other relevant institutions and organisations. A call for the assessment of the efficacy of the Basel convention was issued and later adopted by the conference .

The work conducted by the technical and legal working groups on issues such as ship dismantling and electronic waste bore fruit at this conference. Of the 34 decisions adopted at this conference the decisions regarding environmentally sound management of electrical and electronic waste (the Nairobi Declaration), ESM of ship dismantling and the abandonment of ships in land or in ports highlighted the swift action that parties were willing to take on these issues.

The Nairobi declaration calls on parties to promote technology and knowledge transfers that are specific to e-waste furthermore it 'encourages parties to develop a life-cycle approach and promote clean technology and green design for electronic and electrical products, including the phase-out of hazardous substances in production and included in components'(UNEP, 2006). NGO's present at the conference called this a small step in the right direction. They claimed that the language used in the declaration was far too watered down claiming that the goals presented in the plan would not be insight unless more unanimous action was taken by all parties(Basel Action Network, 2006).

The Nairobi declaration has paved the way to creating a 'multi-stakeholder partnership that will provide a forum for governments, industry leaders, non-governmental organisations and academia to tackle the environmentally sound management,

refurbishment, recycling and disposal of used and end-of-life computing equipment' (Basel Convention , 2009). This has manifested itself in partnership programmes such as the MPPI and the PACE programmes.

This conference also improved the collaboration between Basel and two other Multilateral Environmental Agreements, the Stockholm convention on the Persistent Organic Pollutants and the Rotterdam convention governing the procedures of Prior Informed Consent. In Nairobi an ad hoc working group was established to 'prepare joint recommendations on enhancing cooperation and coordination among the three conventions at the administrative and programmatic levels'(UNEP, 2008)

### **Bali, Indonesia, 2008**

The latest conference of the parties was held in Bali in 2008. This conference focused heavily on key area's such as ship-breaking and e-waste. A lot of emphasis was given to the partnership programmes. Given the success of the MPPI this conference dissolved the group after it had completed the technical guidelines required for its implementation. Further still decision IX/9 of the conference established another partnership programme aimed integrating the electronics industry into the convention (Partnership for action on computing equipment).

### **Chapter 3 - The Basel Convention in an era of economic globalisation, a Model convention?**

Closing the first conference of the parties in 1992, Dr. Tolba, UNEP Executive Director at the time, urged parties 'to hold fast to the principles [that] prevention is better than cure, intergenerational equity and interdependence [and] to translate these principles from slogans into reality' (Basel Secretariat, 1992). The last decade has brought the Basel Convention and the global environment closer to these goals. Given The protracted process of the convention in its first ten years the secretariat acknowledged the necessity of urgent action to bring the convention into motion again.

The Nairobi declaration and the ensuing strategic plan designed to enforce it have given the convention new impetus. Using the increased awareness of environmental sustainability in public and corporate culture to its advantage the convention has integrated business into achieving its goals of prevention and minimisation. This has happened to a varying degree of success as in some cases firms have implemented a self imposed export ban on their products while others are implementing the guidelines reluctantly. This has been the achievement of the sustainable partnership initiatives suggested in the strategic plan.

The use of cleaner designs to allow for environmentally sound disposal of products has become a success in a variety of products. The secretariat and a number of BCRC's warn that in the coming years there will be a rise in the amount of hazardous waste that will require disposal. This is due to the fact that these are end -of-life products, mainly in the non-OECD region, that have not been designed with ESM disposal in mind (Basel Secretariat , 2009), dealing with this is the new challenge the convention faces.

The geography of hazardous waste, its disposal and trade, is very different today than twenty years ago. Although it is still true that much of the waste is traded within the OECD region emerging economies are now becoming exporters of waste and are looking for economically efficient ways in which to deal with this. A look at the national reports submitted to the Basel Convention from the Philippines, Indonesia and Pakistan reveals that much of the waste is traded not only between these parties but also to the OECD. This has placed the spotlight onto the ban amendment and the potential expansion of Annex VII. However the secretariat is looking for new solutions towards solving these problems.



The following chapter will focus on the convention's successes in the last ten years. It will look first at the conditions it has established for cooperation with other stakeholders to ensure that its primary objectives are achieved. The second section will outline the structural difficulties of the convention and how these have slowed it down. The final section highlights how the parts of the convention have not adapted to the political and economic terrain of today which is the inherent flaw that prohibits the conventions success.

### **A new model convention?**

The Basel convention can be seen as a model MEA in that it has adopted a 'multi-stakeholder' approach designed to tackle the problem at the root of the issue. This gives it the flexibility required to operate on a new terrain in which the integration of business into international environmental politics is critical to achieve the goals of both global economic development and sustainable development laid forth in Agenda 21. The partnership agreements, the link between the stakeholders and the convention, cover a wide variety of policy area's. Those designed to tackle e-waste and ship dismantling are by far the most accomplished projects of the convention. Providing much needed success for a convention that has been struggling to gain full recognition since birth.

Over the last ten years issues revolving around e-waste disposal and reuse has received increased international attention. This is due to a sharp fall in the average life span of electronic goods which has meant the quantity of obsolete devices has risen (factor attributed to this are technological changes and consumer demand pressures)<sup>15</sup>. For example the number of PC's disposed between 1994 and 2004 has increased from 20 million to 100 million (Widmer, 2005). As a result End-of-Life (EoL) mobile-phones and computers were increasingly sold to African and Asian markets as either scrap metals for reuse or for disposal. The insufficient knowledge regarding final disposal or recovery in these scrap yards has meant a variety of unexpected environmental and human health problems have emerged.

Many of the materials contained within the electronic devices are hazardous in both substance and behaviour if disposed of in an inadequate way. Upon further analysis of the problem the Basel Convention's ad hoc technical working group added e-waste into its Annex I list, thus determining it as a non-tradable item. Realising that a more

---

<sup>15</sup> A study conducted by UNEP has found that mobile phones have a life expectancy of two years before they are replaced this is long before they cease operations. In Japan it is estimated that alone in 2010 610 million handsets will be replaced. Basel Secretariat. (2008).

proactive step must be taken in reducing the risks caused by e-waste, partnership programmes have been established to ensure that stakeholders, in particular with business and industry. Essentially this is designed to emphasis life-cycle thinking into product design and management (Basel Convention, 2008).

Adopted by the Basel secretariat and twelve major mobile phone producers and providers<sup>16</sup> during the sixth conference in Geneva the Mobil Phone Partnership Initiative (MPPI) is perhaps the best example of this new approach. Mobile phones were adopted for this initiative as it is the electrical product whose use has grown exponentially over the last ten years in both the OECD and non-OECD world. Although the overall waste burden is low the Mobile Phone Working Group (MPWG) decided that the high visibility of the product would increase the impact of the initiative and be an effective awareness raising device (Basel Secretariat, 2008).

The MPWG worked extremely close with the companies to establish five technical guidelines and one overall guidance document to ensure that higher product stewardship principles were established (UNEP, 2008). The pilot projects that the MPWG worked on included; mobile phone refurbishment and reuse, collection schemes for EoL mobile phones that would ensure ESM recovery and recycling and improving the designs of mobile phones to ensure easier disposal (Basel Secretariat, 2008). The initiative was successful insofar that the companies involved adopted the technical guidelines proposed. While not being able to stop consumer demand for newer and more functional phones this will ensure that the phones of the future will be adhere to ESM disposal standards.

The partnership programmes highlight that Basel is looking to work beyond a command and control approach to regulation and management of waste. It is looking at developing the convention to transcend traditional state boundaries and looks to integrate all actors into the conventions implementation. Targeting industry and business, in this case e-waste producers, means that the convention is following the motto 'prevention is better than cure' and is therefore tackling the problem at its root. By initiating these programmes into the convention it is setting a precedent among other MEA's as it is embracing a new era of collaboration by merging the gap between public and private sector.

---

<sup>16</sup> These include Alcatel-Lucent, LG, Matsushita (Panasonic), Mitsubishi, Motorola, NEC, Nokia, Philips, Samsung, Sharp, Siemens, Sony Ericsson, Bell Canada, Vodafone, and France Telecom/Orange.

The Partnership for Action on Computing Equipment (PACE) follows a similar principle to that of the MPPI. Its main aims are to persuade computer component producers to adhere to a similar set of goals as laid down in the MPPI. Dell's decision in May 2009 to discontinue any exports of its computer components to developing countries for reuse or final disposal is showing some initial positive responses to the programme.

The ability to conduct operations with a variety of stakeholders is the convention's most developed asset. It is not only the partnership programmes with the private sector that are breaking boundaries. The Secretariat has been successful in initiating cooperation with other MEA secretariats or international organisations. On this point it is worth noting the ad hoc working group established for the cooperation between the Rotterdam convention and the Stockholm convention. The lack of funding for all three conventions has made this an innovative programme that looks to ensure cohesion and coordination on overlapping policy areas and implementation tools therefore saving costs. As a measure of success many of the Basel Convention Regional Centres now serve as a platform to conduct field work for the Rotterdam or the Stockholm conventions (Basel Secretariat, 2008).

The success of the partnership initiatives is a positive sign for the progress on the implementation of the strategic plan established at the fifth conference in 1999 to implement the goals of environmentally sound management of waste. These goals reaffirm the key elements of the Basel convention which are reduction, prevention and the active promotion of cleaner production mechanisms to avoid hazardous waste. But also that 'the Cooperation and partnership at all levels between countries, public authorities, international organizations, the industry sector, non-governmental organizations and academic institutions' is key to the progress of the convention (UNEP, 1999). The recent signing of the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, May 2009, is a reaffirmation of the positive drive within the Secretariat to achieve the convention's manifesto with limited resources.

As chapter two shows ship dismantling was already on the agenda during the fifth conference of the parties. However real work on effective action against dangerous practices in ship dismantling began a Joint Working Group in London 2005 (Basel Secretariat, 2009). Ship dismantling overlaps with in the policy areas and interests of all three partner institutions. The ILO has interests in this for increased protection of

workers, the IMO has interests in ensuring 'safer ships and cleaner seas' while the Basel Secretariat seeks to ensure that the hazardous substances that are found within older ships, such as asbestos, ammonia, chlorofluorocarbons, oily residues and lead are removed in an environmentally sound manner, preferably in the ship's origin State, before they can cause environmental or health damages (Moen, 2008).

With financial and human resources already spread thin, the Hong Kong convention eases the pressure on Basel convention to ensure compliance in ESM ship-dismantling. This particular partnership programme is a beacon of light in international environmental politics whereby organisations are working together to cover as much ground as efficiently as possible, rather than pursuing their own interests that already overlap with the goals of other organisations thereby slowing down active progress on the issue area.

### **Haunted by the past?**

The progress that the convention has made in the last ten years has been commendable. In the space of ten years the convention has been ratified by a further forty parties. Sixty-five countries have now ratified the Ban amendment tripling the number of ratifications from 1999. This is mainly due to the active work conducted by the Secretariat and the Basel Convention Regional Centres who intensively lobby ministries and provide a good basis for awareness raising and technology and knowledge transfer.

However the convention's progress is protracted due to inherent structural flaws that stem from its hastened birth in 1989; the push for an outright ban of Hazardous wastes from OECD to non-OECD countries, the Liability protocol and the loopholes within the Prior Informed Consent process. These are all initiatives that have their roots in an era before the amalgamation of markets into a global economy which has ensured intense developments in the countries that these protocols and processes were meant to protect in the first place (Basel Secretariat, 2009).

Given the scarcity of the resources available for much needed industrial development developing countries that once lambasted the trade in recyclable hazardous wastes as 'toxic colonialism' have quietened down realising the potential raw materials to be gained from recovery operations<sup>17</sup> and trade (Kellow, 1999).

---

<sup>17</sup> A look at the list of countries that have ratified the Ban amendment will reveal this as of 175 parties to be signatories of the convention only 65 have ratified the treaty with half of these countries belonging to the Annex VII list. Website of the Secretariat June 11 2009, <http://www.basel.int/ratif/ban-alpha.htm>

Decision II/12 and Decision III/1 of the conference of the parties, referred to more commonly as the ban amendment, prohibits the trade in hazardous wastes from OECD to non-OECD countries (or in the legal jargon of the latter decision Annex VII and non-Annex VII) for the purpose of final disposal and recovery operations. It is this latter point that has drawn so much attention and has played an incremental part in slowing down the progress of the convention. A visible indicator for this is that fourteen years after the adoption of Decision III/1<sup>18</sup> it has still not become globally binding for all the parties. Rather countries or economic grouping, such as the EU, have individually ratified the treaty and implemented it into national legislation.

Here a distinction should be drawn in the position of the countries concerning the Ban. Outspoken critics of the Ban, such as Australia, do not necessarily disagree with a prohibition for final disposal. Rather they are opposed to the restriction of trade in hazardous waste for recycling and recovery purposes (covered in more detail by Decision III/1). The arguments presented by Australia in the second conference of the parties, 1993, have now become the norm for critics of the amendment. A complete prohibition, it is argued, would accelerate the environmental burden presented by developing country growth. This is because recyclable materials that would decompose in landfills are not be recovered and reused for the industrial process, thus primary raw materials are required to cover the demand (UNEP, 1993).

Some developing countries, notably those with stronger economies, joined this position. They argue that a ban would only serve to inhibit their growth by limiting access to raw materials. India and the Philippines for example have a strong market in recovering hazardous materials from lead car batteries or scrap metals that would otherwise be banned (Kellow, 1999). During the initial negotiations these countries along with Brazil, South Korea and Malaysia argued for clauses that would allow for specific exemptions for recycling. Not surprisingly none of these countries are parties to Ban amendment (Widawsky, 2008). However due to the emotionally charged atmosphere at the first three conferences and the pressure to keep the convention from collapsing the decision to pass the amendment through consensus rather than voting meant that these voices did not have as much impact (Kellow, 1999).

The Ban amendment has ultimately undermined the initial spirit with which the countries came together to sign the convention. As chapter one points out the road to

Basel was meant to lead an international regulatory regime that would ensure environmentally sound management of waste disposal and transport (Krummer, 1998). The Ban amendment has stirred mistrust amongst the more powerful parties who are against any form of ban. As a result it is in their national economic and trade interests to ensure a ratification does not come into force, this is a principle driving force that is slowing down the ban<sup>19</sup> (Basel Secretariat, 2009).

The inclusion of the amendment into the convention has pushed away a key international actor that would automatically weaken any convention from both a financial and political perspective, the USA. The amendment to the RCRA bill by the first Clinton administration illustrates that the USA was serious about taking the necessary steps to ratify the Basel convention. Changes were made to the RCRA bill to ensure a swift entry into force of the Basel convention into US Legislation (Widawsky, 2008). However, after COP II the USA changed its course stating that a ban would be contrary to national interest on the basis that it impedes free trade and limits the freedom of contract but also that the ban amendment would only make the illicit trafficking of hazardous wastes more lucrative (Widawsky, 2008).

On the other side of the Ban divide developing nations became disillusioned with the Basel convention before it was officially adopted in 1992. A testament to this is that no sub-Saharan African state signed the convention at the time of its adoption. Instead they rallied behind the Bamako, Convention in 1992 in which the OAU unilaterally 'prohibits the import of all hazardous wastes, for any reason, into Africa from non-contracting parties' (Wirth, 1998). Although it is a regional agreement that is endorsed by the Basel convention the Bamako convention was a sign of discontent by African nations that their distress and concerns were not taken seriously by the international community regarding unethical hazardous waste disposal in Africa (Kellow, 1999).

The Basel convention was to be the first MEA to implement the Liability and Compensation protocol it was therefore awaited with great anticipation as it would create the necessary funds for developing countries to deal with accidents or illegal dumping. Although in 1999 the parties formally accepted the protocol the ratification process has been more disappointing than that of the ban amendment. Of the 172

---

<sup>19</sup> At the negotiations in 1992 and 1995 the European Communities began with a position that was hostile to a ban, however the internal rifts from Denmark and the European Parliament ensured that this position crumbled. For more information refer to Kellow, A. (1999). *International Toxic Risk Management*. Cambridge : Cambridge University Press .

parties to the convention nine parties have ratified the protocol<sup>20</sup>. The protocol suffered a series of setbacks on the basis that the Ban amendment was at the centre of attention at all the conferences between 1992 and 1995.

Again it is the conflict of interests that is at the root of the protocols failure to draw much support from parties. This is because national interests have led to the protocol being sufficiently watered down to allow for too many loopholes for efficient action. NGOs and developing parties state that the protocol as it is today is contradictory to the nature of the convention and the ban on the basis that it encourages rather than discourages trade (Widawsky, 2008).

One of these loopholes is the clause that exempt parties to other Bi or Multilateral agreements that are sufficient or exceed the liability protocols provision. This was specifically pushed by the OECD countries who argued that the OECD red-amber-green shipment record, which already includes a liability protocol, was sufficiently punishing enough (Widawsky, 2008; Pruzin, 1999). This exemption was unacceptable to developing countries who wanted a global norm that would make everyone liable to damages.

Advocates of the protocol argue that it is 'made especially for developing countries ... [as] in some years the main problems of toxic waste will occur in developing countries, not in the OECD'. It is therefore a pre-emptive act that would ensure public and environmental safety. The protocol sets a financial lower limit for notifiers or exporters of waste in case of a breach of procedure (Pruzin, 1999)<sup>21</sup>.

NGO's and developing countries are not convinced by this argument. Rather they argue that the protocol is paradoxical in nature as it avoids the principle of liability by giving incentives for countries to export waste. For example the protocol ensures that generators or producers are no longer accountable for the waste, and thus liable for damages, after the importer has assumed 'operational control' of the waste. This would open the opportunities of generators to transfer waste to notifiers that could export the waste but would not be able to pay out any damages for lack of funding (Pruzin, 1999).

---

<sup>20</sup> The countries that have ratified the Basel Protocol on Liability and Compensation are Botswana, Colombia, The Republic of Congo, Democratic Republic of Congo, Ethiopia, Ghana, Liberia, Syrian Arab Republic and Togo. Secretariat of the Basel Convention. (n.d.). *Protocol on Liability and Compensation, Ratifications*, Retrieved June 7, 2009 from <http://www.basel.int/ratif/protocol.htm>

<sup>21</sup> This states that 'for any one incident must be no less than 1 million SDR (Special Drawing Rights, an international currency) (US\$1.38 million) for shipments up to 5 tons of hazardous waste, 2 million SDR for shipments up to 25 tons, 4 million SDR for shipments up to 50 tons, 6 million SDR for shipments up to 1,000 tons, and 10 million SDR for shipments up to 10,000 tons... 1,000 SDR will be fixed for each additional ton of waste up to a maximum of 30 million SDR (US\$41.4 million) for any one incident. For disposers of waste, the minimum limit of liability will be fixed at 2 million SDR (US\$2.76 million) for any one incident.' Pruzin, D. (1999, December 10). Hazardous waste agreement on liability protocol reached at Basel conference of Parties. See Pruzin D for more detail.

Widawsky argues that this would eventually reduce the incentive of producers in industrialised countries to ensure that ESM disposal facilities exist in destination countries. This would also move against the principle of convention that would ensure the waste is disposed of as close to home as possible.

Unfortunately this has meant that when incidents such as Abidjan in 2004 occur the Basel convention can seem rather impotent as there is no enforceable liability scheme that would provide financial security and funding to the victims and facilitate the clean up operations.

These structural conflicts are a spill over from a bygone era that serve to undermine the attempts, such as the strategic plan, to ensure better implementation of the Convention in this decade. Nowhere else is this highlighted more than by the deliberate lack of funding that the convention's institutional structures receive (trust-funds, the regional centres or the secretariat). A brief look at the balance sheets will show that the bigger pledges offered by countries such as Australia are often not paid or are severely delayed (Basel Secretariat, 2008).

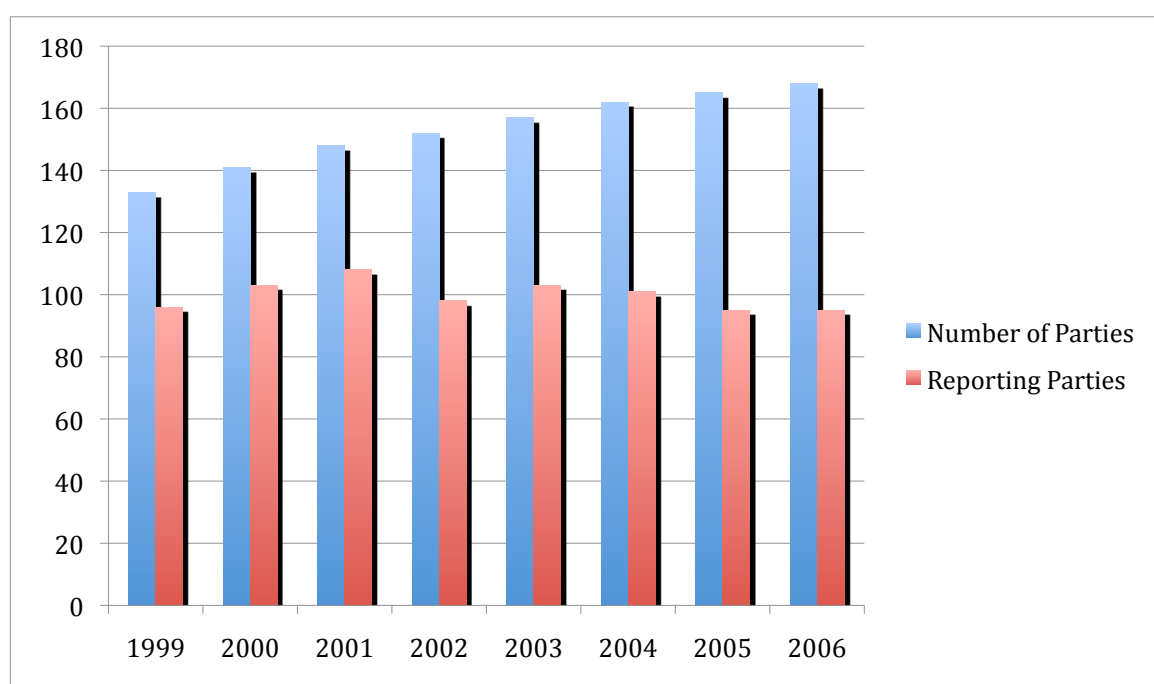
This lack of funding is most felt in the implementation of the strategic plan on both the international and regional level. In some regions the plan is on target however in others the difference in infrastructure, human capacity and funding have a visible effect and the implementation is far behind schedule. This is due to a variety of factors, firstly the voluntary nature of the financing of the BCRCs has meant that the funding is not always consistent or adequate (Basel Secretariat, 2008). This means that projects are cancelled due to the lack of resources or 'good personal'. Secondly, the lack of the variety in funding has meant that single donors have more influence over budget allocation, as a result this has meant that projects are sometimes not conducted to the business plan of the specific BCRC or the overall strategic plan (Basel Secretariat , 2009). Instead it focuses on the interests of the donor thus making it an unattractive platform for co-operation with other parties or stakeholders.

The regional centres suffer an additional setback in that it is not mandatory for parties to share their national reports nor data with them. A result of this is that parties do not hand in the reliable data nor do they fully use the resources that BCRCs offer. This means that it is 'not easy for BCRCs to access and analyze information needed to synthesize actual regional figures and actual regional needs to effectively implement the Convention' (Basel Secretariat , 2009). As a result of this parties see no value added by



cooperating with the BCRCs and in many cases rely on bi-lateral agreements or negotiations to resolve potential problems in the region thereby undermining their role (Basel Secretariat, 2009).

This structural flaw also impacts the national reporting mechanism that is obligatory under article 4 of the convention. Graph one highlights the steady decline in national reports submitted since 2003 even though the number of parties to the convention has seen a steady increase. The lack of reporting means that gathering the necessary statistical information to assess the extent of international hazardous waste transport and disposal has suffered. Ultimately this makes it much more difficult for the secretariat and the BCRCs to promote and design effective programmes for waste minimisation or prevention.



Graph 2 Shows the ratio between the number of Parties to the Basel Convention and the Number of Parties which transmitted their national reports in the period 1999 - 2006 courtesy of the Basel Secretariat

## Synthesis

Although the convention has seen real progress on fragmented issues over the last decade through ship breaking and its partnership agreements, it is structural contradictions that weakens the impetus of countries to fully endorse the convention. As was shown above the Prior Informed Consent process and the Liability and Compensation protocol encourage rather than discourage trade, legally or illegally, between parties (Widawsky, 2008). It is within these procedures that exporters no longer need to ensure that a disposal or reclamation facility is equipped with the right

tools to be fully environmentally sound in its practices. The Abidjan incident highlighted that the Prior Informed Consent process provided a platform for conniving and corrupt businesses and officials to circumvent early detection of the waste flows by ensuring that destination capacities are misrepresented. One analyst states that “in effect [the PIC has] invited industrialized nations to export hazardous waste to less developed nations, because it only required prior informed consent” as there is no external facility to ensure ESM compatibility (Widawsky, 2008).

An apparent trend begins to take shape when looking at the successes of the convention in the latter decade as opposed to its first decade. The convention is clearly haunted by its past. The secretariats ability to adapt effectively to new issue areas after 1999 is aided by the fundamental need to cooperate and coordinate with other stakeholders. Taking into account these stakeholders and incorporating them into the policy making process ensures that it can more effectively to cover specific areas with the limited funding available. This all embracing attitude of the convention is formulated by its Strategic Plan initiated by the fifth conference. It ensures that previous barriers that firmly established the private and public sector as different entities are broken down and ensures that the goals established by the Basel convention can be achieved by addressing the issues with the producers of hazardous waste. This firmly shows it has adapted to the era of interdependence and cooperation that emboldens the economic and political globalisation of today.

These new developments have ensured a degree of success. However they are marginalised by older issues that have ensured there is deep disagreement between parties on issues such as banning the export of hazardous wastes between Annex VII states and non-Annex VII states. Unfortunately such an issue is not tackled from a 2009 perspective in which the non-Annex VII countries have developed their industries to the extent that they are not only becoming waste exporters but that their technological situation has improved so that they can benefit from recovering raw materials from importing waste (Basel Secretariat , 2009). Rather the perspective used by the secretariat and the parties still looks at non-Annex-VII countries as they were in 1989 and 1992. At that time the argument may have been valid for an export ban given the relatively low state of development in much of the non-OECD region and the vulnerability to the former Soviet Union using its relatively cheap land for landfills. Although this is no longer the case the Basel convention must reform and adapt

structurally to achieve its primary goal to protect the environment and human health from hazardous wastes in an environmentally just way.

## Conclusion

The primary goal of the Basel convention is to create an atmosphere of environmental justice in which the disproportionate burden of hazardous waste is balanced more evenly between the international stakeholders. This means that due to the economics of cheap land and disposal opportunities poorer people or regions are not disproportionately exposed to the dangers of hazardous wastes. This is explicitly identified in the preamble and the text of the convention as ensuring that, where possible, wastes should stay as close to point of origin and that the protection of the environment and public health are central factors. The question therefore is how successful has the convention been in ensuring a greater sense of global environmental justice?

As chapter one points out the transcontinental movements of wastes in the 1980's ensured the necessity of a regulatory system to govern the trade. Today the convention has established a system of prior informed consent, liability and compensation and introduced, for the moment, voluntary prohibition exports from the OECD to the non-OECD world. Although these are important potential legal parameters the convention suffers weakness in implementing these primarily because there is no enforcement mechanism to ensure complete compliance. There is also visible resistance from the parties to implementing these mechanisms as they are established against the national interests of the parties.

The ability of the convention to establish a sense of environmental justice has been difficult given the global technological, political and economic changes pointed out in chapter three. These changes have meant that there has been a natural growth in hazardous wastes in quantity and diversity. The latter is best exhibited by ship dismantling and e-waste which are frequently sent to developing countries for recovery or disposal. However given the difficulties of defining these substances or end of life products as hazardous waste the grey area regarding their definition, disposal and transport has expanded. This makes regulation more difficult (Moen, 2008).

In ensuring that future products are designed with regard to the ESM disposal the Basel convention has been very progressive. Engaging industry more actively in their cradle to grave obligations will ensure that future problems of disposal are already prevented. Unfortunately many end-of-life products today have not been designed with this in

mind. This means that such measures, currently compromising only a tiny portion of the overall waste produced, will only really begin to have a noticeable effect in the years to come.

The lack of structural strength and the lack of support from key parties means that the Basel convention has not been able to progress far enough to ensure that an environmentally just atmosphere surrounding hazardous waste disposal is achieved internationally. This means that the convention from a 2009 perspective has failed in its initial goals as, through the increased waste production and subsequent flows to and from the developing world it has not reduced the disproportionate burden suffered by poorer communities.

This trend can however be reversed if adequate measures are taken to improve the structure and the enforcement of the convention. This would mean ensuring the necessary steps are taken to amend the convention in a way which would integrate the regional centres more into the implementation and national reporting process. Furthermore the convention must ensure that an appropriate enforcement mechanism is applied to the Prior Informed Consent procedure and that States enforce the liability protocol to better persecute perpetrators. Tightening these loopholes before trade occurs and after accidents happen, while at the same time maintaining voluntary status of the ban amendment, would lend greater incentive for states to be more active in the convention as a wider variety of national interest would be served (Widawsky, 2008). In the long term perspective this would ensure the Basel convention comes closer to achieving its goal of Environmental Justice.

## Bibliography

Ali-Ali, S. (1. December 2000). *Lebanon Waste Imports from Italy (Jelly Wax Case)*. Accessed on 20. May 2009 von American University: <http://www1.american.edu/TED/jellywax.htm>

Anderson, J. (18. August 1988). The Khian Sea's Curious Voyage. *The Washington Post*.

Asante-Duah, K., & Navy, I. (1998). *International Trade in Hazardous Waste*. E & FN Spon.

Basel Action Network. (2006). *Basel Action Network Report and Press Statements on the Results of the Eighth Conference of the Parties of the Basel Convention*. Nairobi: Basel Action Network.

Basel Convention . (01. March 2009). *Partnership & Resource Mobilisation* . Accessed on 05. June 2009 von Basel Convention : <http://www.basel.int/industry/compartnership/index.html>

Basel Convention. (23. June 2008). *Partnership for Action on Computing Equipment* . Accessed on 05. June 2009 von Basel Convention : <http://www.basel.int/meetings/cop/cop9/docs/13e.pdf>

Basel Secretariat . (29. December 2008). *Basel Convention* . Accessed on 12. June 2009 von Basel Convention : <http://www.basel.int/convention/basics.html>

Basel Secretariat. (2008). *Basel Protocol on Liability and Compensation*. Accessed on 2. June 2009 von Basel Convention: [www.basel.int](http://www.basel.int)

Basel Secretariat. (12. January 2009). *Conference of the Parties*. Accessed on 7. June 2009 von <http://www.basel.int/meetings/cop/cop-0.html>

Basel Secretariat. (2008). *Implementation of the decisions adopted by the Conference of the Parties at its seventh meeting: Strategic Plan for the Implementation of the Basel Convention to 2010: Partnership Programme*. Geneva : UNEP.

Basel Secretariat. (2004). *Instruction Manual for the Implementation of the Basel Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and their Disposal*. Geneva : UNEP .

Basel Secretariat. (03. January 2009). *Joint ILO/IMO/BC Working Group*. Accessed on 11. June 2009 von Basel Secretariat : <http://www.basel.int/ships/jimbwg.html>

Basel Secretariat. (1992). *Report of the First Meeting Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal*. Geneva: UNEP.

Basel Secretariat . (2009). *Report on the Review of the Implementation of the Current Strategic Plan*. Geneva: UNEP .

Brooke, J. (17. July 1988). Waste Dumpsters Turning to West Africa . *New York Times* .

Environmental Research Foundation. (13. December 1987). *Philadelphia dumps on the poor*. Accessed on 23. May 2009 von Rachel's Environment & Health Weekly: <http://ces.iisc.ernet.in/hpg/envis/doc98html/miscrw424.html>

European Council. (6. December 1984). *Council Directive 84/631/EEC of 6 December 1984 on the supervision and control within the European Community of the transfrontier shipment of hazardous waste*. Accessed on 21. May 2009 von Eur Lex: <http://eur-lex.europa.eu>

Fisk, R. (18. June 1995). Militias leave behind 'ecological time-bomb' from Italy . *The Independent* .

Fortin, M. (2000). *Farbenspiel; Ein Jahrhundert Umweltnutzung durch die Basler chemische Industrie*. Zürich: Chronos.

Greenpeace . (11. May 1995). *Toxic waste still in Lebanon* . Accessed on 20. May 2009 von Greenpeace International : <http://archive.greenpeace.org/majordomo/index-oldgopher/9505/msg00019.html>

Greenpeace. (2000). *POP's in Africa Hazardous Waste Trade 1980-2000 Obsolete Pesticide Stockpiles*. Johannesburg: Greenpeace International.

Harjula, H. (2006). Hazardous Waste: Recognition of the Problem and Response . *Annals New York Academy of Sciences* , 462-477.

International Environmental Report. (August 1983). 332-333.

Jurdi, M. (1. January 2002). *Transboundary movement of hazardous wastes into Lebanon: Part 1. The silent trade*. Accessed on 20. May 2009 von The Free Library : [http://www.thefreelibrary.com/\\_/print/PrintArticle.aspx?id=134620004](http://www.thefreelibrary.com/_/print/PrintArticle.aspx?id=134620004)

Kellow, A. (1999). *International Toxic Risk Management* . Cambridge : Cambridge University Press .

Krummer, K. (1998). The Basel Convention ten years on. *Review of European Community and International Environmental Law* , 227-236.

Lapp, D. (1990). Global Dumping ground. *Multinational Monitor* , 11 (10).

Maur, J. A. (23. September 2007). Die Fässer von Seveso . *Neu Züricher Zeitung* .

Moen, A. E. (2008). Breaking Basel: The elements of the Basel Convention and its application to toxic ships. *Marine Policy* , 1053-1062.

Myslicki, J. (19. September 2005). *Basel convention "from Cairo to Basel"*. Accessed on 21. May 2009 von Umwletbundesamt: [http://www.umweltdaten.de/abfallwirtschaft/gav/Myslicki-From\\_Cairo\\_to\\_Basel.pdf](http://www.umweltdaten.de/abfallwirtschaft/gav/Myslicki-From_Cairo_to_Basel.pdf)

New York Times . (11. November 1988). Ship dumps philidelphia ash, but where? . *New York Times* , S. 25.

OECD. (1993). *Monitoring and control of transfrontier movements of hazardous wastes (OCDE/GD(93)151)*. Paris: OECD.

Poropat, A., Douglas, J., & Ibrahim, S. (1. December 2000). *Nigeria waste imports from Italy*. Accessed on 20. May 2009 von The Mandala Project : <http://www1.american.edu/TED/nigeria.htm>

Pruzin, D. (10. December 1999). Hazardous waste agreement on liability protocol reaced at Basel conference of Parties . *International Environmental Reporter* .

Reuters . (20. May 1983). Around the world; Dioxin Waste Found In Northern France . *Reuters* .

Scott, C. (1. December 2000). *Khian Sea Waste Export Episode*. Accessed on 21. May 2009 von The Mandala Project: <http://www1.american.edu/TED/khain.htm>

(1997). Survival and Surplus; Risk, Ruin, and Luxury in the Evolution of Early Forms of Subsistence. In R. P. Sieferle, U. Müller-Herold, & L. Freese (Hrsg.), *Advances in Human Ecology* (Bd. 6, S. 201-220). London: Elsevier.

Smets, H. (1985). Transfrontier Movements of Hazardous Wastes - An examination of the council decision and recommendation . *Environmental Policy and Law* , 16-21.

The Economist . (24. September 1988). Europe, as the Romans do it. (Italy has broken many European Community directives. *The Economist* .

The Economist . (18. February 1989). *Waste - Watching*. Accessed on 21. May 2009 von Ecomomist Newspaper Ltd. : <http://www.highbeam.com>

The Economist. (3. September 1988). One man's poison. (Britain's waste disposal and treatment industries). *The Economist* .

UNEP. (1989). Basel Convention. *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal* . Basel.

UNEP. (1999). *Basel Decleration on Environmentally Sound Management* . Basel : UNEP.

UNEP. (17. June 1987). *Envrionmentally sound management of hazardous waste, Governing Council recommendations*. Accessed on 12 . May 2009 von United Nations Environmental Programme: [www.unep.org](http://www.unep.org)

UNEP. (1. January 2008). *Information note mobile phone partnership initiative*. Accessed on 5. June 2009 von Basel Convention: <http://www.basel.int/industry/mppi.html>.

UNEP. (1995). *Report of the Third Meeting Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal*. Geneva : UNEP.

UNEP. (2006). *Report of the Eighth Meeting Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal*. Nairobi : UNEP.

UNEP. (1998). Report of the Fourth Meeting of the Conference of the Parties of the Basel Convention. *Second Meeting of the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes*. Kuchang : UNEP.

UNEP. (1993). *Report of the Second Meeting Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal*. Nairobi: UNEP.

UNEP. (2004). *Report of the Seventh Meeting of the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal*. Geneva: UNEP.

UNEP. (2002). *Report of the Sixth Meeting of the Conference of the Parties of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal*. . Geneva: UNEP.

UNEP. (2008). *Report on the Ninth Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal*. Bali, UNEP

UNEP. (1994). Second Meeting of the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes . *Report of the Second Meeting of the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes* . Geneva : UNEP.

Widawsky, L. (29. May 2008). In my backyard: How enabling hazardous waste trade to developing nations can improve the Basel convention ability to achieve environmental justice. *Environmental Law* , 577-625.

Widmer, R. (2005). Global perspectives on e-waste. *Environmental Impact Assesment Review* (25), 436-458.

Wirth, D. A. (1998). Trade Implications of the Basel Convention amendment banning North-South trade in hazardous wastes. *RECIEL* , 237-248.



World Commission on Environment and Development:. (1987). *Our Common Future* . Oxford: Oxford University Press.

Wynne, B. (July 1989). The toxic waste trade: international regulatory issues and options . *Third World Quarterly* , 120-146.

Yakowitz, H. (March 1984). Economic Issues and problems of government action linked to the transfrontier shipment of hazardous waste. *OECD Observer* .

## **Appendix – Text of the Basel Convention**

## **Appendix – Text of the Basel Convention**

### **Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal**

## **BASEL CONVENTION ON THE CONTROL OF TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES AND THEIR DISPOSAL<sup>23</sup>**

### **PREAMBLE<sup>24</sup>**

The Parties to this Convention,

Aware of the risk of damage to human health and the environment caused by hazardous wastes and other wastes and the transboundary movement thereof,

Mindful of the growing threat to human health and the environment posed by the increased generation and complexity, and transboundary movement of hazardous wastes and other wastes,

Mindful also that the most effective way of protecting human health and the environment from the dangers posed by such wastes is the reduction of their generation to a minimum in terms of quantity and/or hazard potential,

Convinced that States should take necessary measures to ensure that the management of hazardous wastes and other wastes including their transboundary movement and disposal is consistent with the protection of human health and the environment whatever the place of disposal,

Noting that States should ensure that the generator should carry out duties with regard to the transport and disposal of hazardous wastes and other wastes in a manner that is consistent with the protection of the environment, whatever the place of disposal,

Fully recognizing that any State has the sovereign right to ban the entry or disposal of foreign hazardous wastes and other wastes in its territory,

Recognizing also the increasing desire for the prohibition of transboundary movements of hazardous wastes and their disposal in other States, especially developing countries,

<sup>23</sup> The present text incorporates amendments to the Convention adopted subsequent to its entry into force and that are in force as at 8 October 2005. Only the text of the Convention as kept in the custody of the Secretary-General of the United Nations in his capacity as Depositary constitutes the authentic version of the Convention, as modified by any amendments and/or corrections thereto. This publication is issued for information purposes only.

<sup>24</sup> The Conference of the Parties adopted Decision III/1 at its third meeting to amend the Convention by adding, *inter alia*, a new preambular paragraph 7 bis. The amendment is not yet in force. The relevant part of Decision III/1 provides as follows:

### “The Conference

...

3. Decides to adopt the following amendment to the Convention:

‘Insert new preambular paragraph 7 bis:

Recognizing that transboundary movements of hazardous wastes, especially to developing countries, have a high risk of not constituting an environmentally sound management of hazardous wastes as required by this Convention;

...”

Convinced that hazardous wastes and other wastes should, as far as is compatible with environmentally sound and efficient management, be disposed of in the State where they were generated,

Aware also that transboundary movements of such wastes from the State of their generation to any other State should be permitted only when conducted under conditions which do not endanger human health and the environment, and under conditions in conformity with the provisions of this Convention,

Considering that enhanced control of transboundary movement of hazardous wastes and other wastes will act as an incentive for their environmentally sound management and for the reduction of the volume of such transboundary movement,

Convinced that States should take measures for the proper exchange of information on and control of the transboundary movement of hazardous wastes and other wastes from and to those States,

Noting that a number of international and regional agreements have addressed the issue of protection and preservation of the environment with regard to the transit of dangerous goods,

Taking into account the Declaration of the United Nations Conference on the Human Environment (Stockholm, 1972), the Cairo Guidelines and Principles for the Environmentally Sound Management of Hazardous Wastes adopted by the Governing Council of the United Nations Environment Programme (UNEP) by decision 14/30 of 17 June 1987, the Recommendations of the United Nations Committee of Experts on the Transport of Dangerous Goods (formulated in 1957 and updated biennially), relevant recommendations, declarations, instruments and regulations adopted within the United Nations system and the work and studies done within other international and regional organizations,

Mindful of the spirit, principles, aims and functions of the World Charter for Nature adopted by the General Assembly of the United Nations at its thirty-seventh session (1982) as the rule of ethics in respect of the protection of the human environment and the conservation of natural resources,

Affirming that States are responsible for the fulfilment of their international obligations concerning the protection of human health and protection and preservation of the environment, and are liable in accordance with international law,

Recognizing that in the case of a material breach of the provisions of this Convention or any protocol thereto the relevant international law of treaties shall apply,

Aware of the need to continue the development and implementation of environmentally sound low-waste technologies, recycling options, good house-keeping and management systems with a view to reducing to a minimum the generation of hazardous wastes and other wastes,

Aware also of the growing international concern about the need for stringent control of transboundary movement of hazardous wastes and other wastes, and of the need as far as possible to reduce such movement to a minimum,

Concerned about the problem of illegal transboundary traffic in hazardous wastes and other wastes,

Taking into account also the limited capabilities of the developing countries to manage hazardous wastes and other wastes,

Recognizing the need to promote the transfer of technology for the sound management of hazardous wastes and other wastes produced locally, particularly to the developing countries in accordance with the spirit of the Cairo Guidelines and decision 14/16 of the Governing Council of UNEP on Promotion of the transfer of environmental protection technology,

Recognizing also that hazardous wastes and other wastes should be transported in accordance with relevant international conventions and recommendations,

Convinced also that the transboundary movement of hazardous wastes and other wastes should be permitted only when the transport and the ultimate disposal of such wastes is environmentally sound, and

Determined to protect, by strict control, human health and the environment against the adverse effects which may result from the generation and management of hazardous wastes and other wastes,

HAVE AGREED AS FOLLOWS:

## ARTICLE 1

### Scope of the Convention

1. The following wastes that are subject to transboundary movement shall be “hazardous wastes” for the purposes of this Convention:

(a) Wastes that belong to any category contained in Annex I, unless they do not possess any of the characteristics contained in Annex III; and

(b) Wastes that are not covered under paragraph (a) but are defined as, or are considered to be, hazardous wastes by the domestic legislation of the Party of export, import or transit.

2. Wastes that belong to any category contained in Annex II that are subject to transboundary movement shall be “other wastes” for the purposes of this Convention.

3. Wastes which, as a result of being radioactive, are subject to other international control systems, including international instruments, applying specifically to radioactive materials, are excluded from the scope of this Convention.

4. Wastes which derive from the normal operations of a ship, the discharge of which is covered by another international instrument, are excluded from the scope of this Convention.

## ARTICLE 2

### Definitions

For the purposes of this Convention:

1. “Wastes” are substances or objects which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law;
2. “Management” means the collection, transport and disposal of hazardous wastes or other wastes, including after-care of disposal sites;
3. “Transboundary movement” means any movement of hazardous wastes or other wastes from an area under the national jurisdiction of one State to or through an area under the national jurisdiction of another State or to or through an area not under the national jurisdiction of any State, provided at least two States are involved in the movement;
4. “Disposal” means any operation specified in Annex IV to this Convention;
5. “Approved site or facility” means a site or facility for the disposal of hazardous wastes or other wastes which is authorized or permitted to operate for this purpose by a relevant authority of the State where the site or facility is located;
6. “Competent authority” means one governmental authority designated by a Party to be responsible, within such geographical areas as the Party may think fit, for receiving the notification of a transboundary movement of hazardous wastes or other wastes, and any information related to it, and for responding to such a notification, as provided in Article 6;
7. “Focal point” means the entity of a Party referred to in Article 5 responsible for receiving and submitting information as provided for in Articles 13 and 16;
8. “Environmentally sound management of hazardous wastes or other wastes” means taking all practicable steps to ensure that hazardous wastes or other wastes are managed in a manner which will protect human health and the environment against the adverse effects which may result from such wastes;
9. “Area under the national jurisdiction of a State” means any land, marine area or airspace within which a State exercises administrative and regulatory responsibility in accordance with international law in regard to the protection of human health or the environment;
10. “State of export” means a Party from which a transboundary movement of hazardous wastes or other wastes is planned to be initiated or is initiated;
11. “State of import” means a Party to which a transboundary movement of hazardous wastes or other wastes is planned or takes place for the purpose of disposal therein or for the purpose of loading prior to disposal in an area not under the national jurisdiction of any State;
12. “State of transit” means any State, other than the State of export or import, through which a movement of hazardous wastes or other wastes is planned or takes place;
13. “States concerned” means Parties which are States of export or import, or transit States, whether or not Parties;
14. “Person” means any natural or legal person;
15. “Exporter” means any person under the jurisdiction of the State of export who arranges for hazardous wastes or other wastes to be exported;

16. “Importer” means any person under the jurisdiction of the State of import who arranges for hazardous wastes or other wastes to be imported;
17. “Carrier” means any person who carries out the transport of hazardous wastes or other wastes;
18. “Generator” means any person whose activity produces hazardous wastes or other wastes or, if that person is not known, the person who is in possession and/or control of those wastes;
19. “Disposer” means any person to whom hazardous wastes or other wastes are shipped and who carries out the disposal of such wastes;
20. “Political and/or economic integration organization” means an organization constituted by sovereign States to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve, formally confirm or accede to it;
21. “Illegal traffic” means any transboundary movement of hazardous wastes or other wastes as specified in Article 9.

### **ARTICLE 3**

#### **National Definitions of Hazardous Wastes**

1. Each Party shall, within six months of becoming a Party to this Convention, inform the Secretariat of the Convention of the wastes, other than those listed in Annexes I and II, considered or defined as hazardous under its national legislation and of any requirements concerning transboundary movement procedures applicable to such wastes.
2. Each Party shall subsequently inform the Secretariat of any significant changes to the information it has provided pursuant to paragraph 1.
3. The Secretariat shall forthwith inform all Parties of the information it has received pursuant to paragraphs 1 and 2.
4. Parties shall be responsible for making the information transmitted to them by the Secretariat under paragraph 3 available to their exporters.



## ARTICLE 4<sup>25</sup>

### General Obligations

1. (a) Parties exercising their right to prohibit the import of hazardous wastes or other wastes for disposal shall inform the other Parties of their decision pursuant to Article 13.

(b) Parties shall prohibit or shall not permit the export of hazardous wastes and other wastes to the Parties which have prohibited the import of such wastes, when notified pursuant to subparagraph (a) above.

(c) Parties shall prohibit or shall not permit the export of hazardous wastes and other wastes if the State of import does not consent in writing to the specific import, in the case where that State of import has not prohibited the import of such wastes.

2. Each Party shall take the appropriate measures to:

(a) Ensure that the generation of hazardous wastes and other wastes within it is reduced to a minimum, taking into account social, technological and economic aspects;

(b) Ensure the availability of adequate disposal facilities, for the environmentally sound management of hazardous wastes and other wastes, that shall be located, to the extent possible, within it, whatever the place of their disposal;

(c) Ensure that persons involved in the management of hazardous wastes or other wastes within it take such steps as are necessary to prevent pollution due to hazardous wastes and other wastes arising from such management and, if such pollution occurs, to minimize the consequences thereof for human health and the environment;

(d) Ensure that the transboundary movement of hazardous wastes and other wastes is reduced to the minimum consistent with the environmentally sound and efficient management of such wastes, and is conducted in a manner which will protect human health and the environment against the adverse effects which may result from such movement;

---

<sup>25</sup> The Conference of the Parties adopted Decision III/1 at its third meeting to amend the Convention by adding, *inter alia*, a new Article 4A. The amendment is not yet in force. The relevant part of Decision III/1 provides as follows:

### "The Conference

...  
3. Decides to adopt the following amendment to the Convention:

...  
'Insert new Article 4A:

1. Each Party listed in Annex VII shall prohibit all transboundary movements of hazardous wastes which are destined for operations according to Annex IV A, to States not listed in Annex VII.

2. Each Party listed in Annex VII shall phase out by 31 December 1997, and prohibit as of that date, all transboundary movements of hazardous wastes under Article 1(1)(a) of the Convention which are destined for operations according to Annex IV B to States not listed in Annex VII. Such transboundary movement shall not be prohibited unless the wastes in question are characterised as hazardous under the Convention. ..."

(e) Not allow the export of hazardous wastes or other wastes to a State or group of States belonging to an economic and/or political integration organization that are Parties, particularly developing countries, which have prohibited by their legislation all imports, or if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner, according to criteria to be decided on by the Parties at their first meeting;

(f) Require that information about a proposed transboundary movement of hazardous wastes and other wastes be provided to the States concerned, according to Annex V A, to state clearly the effects of the proposed movement on human health and the environment;

(g) Prevent the import of hazardous wastes and other wastes if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner;

(h) Co-operate in activities with other Parties and interested organizations, directly and through the Secretariat, including the dissemination of information on the transboundary movement of hazardous wastes and other wastes, in order to improve the environmentally sound management of such wastes and to achieve the prevention of illegal traffic.

3. The Parties consider that illegal traffic in hazardous wastes or other wastes is criminal.

4. Each Party shall take appropriate legal, administrative and other measures to implement and enforce the provisions of this Convention, including measures to prevent and punish conduct in contravention of the Convention.

5. A Party shall not permit hazardous wastes or other wastes to be exported to a non-Party or to be imported from a non-Party.

6. The Parties agree not to allow the export of hazardous wastes or other wastes for disposal within the area south of 60° South latitude, whether or not such wastes are subject to transboundary movement.

7. Furthermore, each Party shall:

(a) Prohibit all persons under its national jurisdiction from transporting or disposing of hazardous wastes or other wastes unless such persons are authorized or allowed to perform such types of operations;

(b) Require that hazardous wastes and other wastes that are to be the subject of a transboundary movement be packaged, labelled, and transported in conformity with generally accepted and recognized international rules and standards in the field of packaging, labelling, and transport, and that due account is taken of relevant internationally recognized practices;

(c) Require that hazardous wastes and other wastes be accompanied by a movement document from the point at which a transboundary movement commences to the point of disposal.

8. Each Party shall require that hazardous wastes or other wastes, to be exported, are managed in an environmentally sound manner in the State of import or elsewhere.

Technical guidelines for the environmentally sound management of wastes subject to this Convention shall be decided by the Parties at their first meeting.

9. Parties shall take the appropriate measures to ensure that the transboundary movement of hazardous wastes and other wastes only be allowed if:

(a) The State of export does not have the technical capacity and the necessary facilities, capacity or suitable disposal sites in order to dispose of the wastes in question in an environmentally sound and efficient manner; or

(b) The wastes in question are required as a raw material for recycling or recovery industries in the State of import; or

(c) The transboundary movement in question is in accordance with other criteria to be decided by the Parties, provided those criteria do not differ from the objectives of this Convention.

10. The obligation under this Convention of States in which hazardous wastes and other wastes are generated to require that those wastes are managed in an environmentally sound manner may not under any circumstances be transferred to the States of import or transit.

11. Nothing in this Convention shall prevent a Party from imposing additional requirements that are consistent with the provisions of this Convention, and are in accordance with the rules of international law, in order better to protect human health and the environment.

12. Nothing in this Convention shall affect in any way the sovereignty of States over their territorial sea established in accordance with international law, and the sovereign rights and the jurisdiction which States have in their exclusive economic zones and their continental shelves in accordance with international law, and the exercise by ships and aircraft of all States of navigational rights and freedoms as provided for in international law and as reflected in relevant international instruments.

13. Parties shall undertake to review periodically the possibilities for the reduction of the amount and/or the pollution potential of hazardous wastes and other wastes which are exported to other States, in particular to developing countries.

## **ARTICLE 5**

### **Designation of Competent Authorities and Focal Point**

To facilitate the implementation of this Convention, the Parties shall:

1. Designate or establish one or more competent authorities and one focal point. One competent authority shall be designated to receive the notification in case of a State of transit.

2. Inform the Secretariat, within three months of the date of the entry into force of this Convention for them, which agencies they have designated as their focal point and their competent authorities.

3. Inform the Secretariat, within one month of the date of decision, of any changes regarding the designation made by them under paragraph 2 above.

## ARTICLE 6

### Transboundary Movement between Parties

1. The State of export shall notify, or shall require the generator or exporter to notify, in writing, through the channel of the competent authority of the State of export, the competent authority of the States concerned of any proposed transboundary movement of hazardous wastes or other wastes. Such notification shall contain the declarations and information specified in Annex V A, written in a language acceptable to the State of import. Only one notification needs to be sent to each State concerned.

2. The State of import shall respond to the notifier in writing, consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information. A copy of the final response of the State of import shall be sent to the competent authorities of the States concerned which are Parties.

3. The State of export shall not allow the generator or exporter to commence the transboundary movement until it has received written confirmation that:

(a) The notifier has received the written consent of the State of import; and

(b) The notifier has received from the State of import confirmation of the existence of a contract between the exporter and the disposer specifying environmentally sound management of the wastes in question.

4. Each State of transit which is a Party shall promptly acknowledge to the notifier receipt of the notification. It may subsequently respond to the notifier in writing, within 60 days, consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information. The State of export shall not allow the transboundary movement to commence until it has received the written consent of the State of transit. However, if at any time a Party decides not to require prior written consent, either generally or under specific conditions, for transit transboundary movements of hazardous wastes or other wastes, or modifies its requirements in this respect, it shall forthwith inform the other Parties of its decision pursuant to Article 13. In this latter case, if no response is received by the State of export within 60 days of the receipt of a given notification by the State of transit, the State of export may allow the export to proceed through the State of transit.

5. In the case of a transboundary movement of wastes where the wastes are legally defined as or considered to be hazardous wastes only:

(a) By the State of export, the requirements of paragraph 9 of this Article that apply to the importer or disposer and the State of import shall apply mutatis mutandis to the exporter and State of export, respectively;

(b) By the State of import, or by the States of import and transit which are Parties, the requirements of paragraphs 1, 3, 4 and 6 of this Article that apply to the exporter and State of export shall apply mutatis mutandis to the importer or disposer and State of import, respectively; or

(c) By any State of transit which is a Party, the provisions of paragraph 4 shall apply to such State.

6. The State of export may, subject to the written consent of the States concerned, allow the generator or the exporter to use a general notification where hazardous wastes or other wastes having the same physical and chemical characteristics are

shipped regularly to the same disposer via the same customs office of exit of the State of export via the same customs office of entry of the State of import, and, in the case of transit, via the same customs office of entry and exit of the State or States of transit.

7. The States concerned may make their written consent to the use of the general notification referred to in paragraph 6 subject to the supply of certain information, such as the exact quantities or periodical lists of hazardous wastes or other wastes to be shipped.

8. The general notification and written consent referred to in paragraphs 6 and 7 may cover multiple shipments of hazardous wastes or other wastes during a maximum period of 12 months.

9. The Parties shall require that each person who takes charge of a transboundary movement of hazardous wastes or other wastes sign the movement document either upon delivery or receipt of the wastes in question. They shall also require that the disposer inform both the exporter and the competent authority of the State of export of receipt by the disposer of the wastes in question and, in due course, of the completion of disposal as specified in the notification. If no such information is received within the State of export, the competent authority of the State of export or the exporter shall so notify the State of import.

10. The notification and response required by this Article shall be transmitted to the competent authority of the Parties concerned or to such governmental authority as may be appropriate in the case of non-Parties.

11. Any transboundary movement of hazardous wastes or other wastes shall be covered by insurance, bond or other guarantee as may be required by the State of import or any State of transit which is a Party.

## ARTICLE 7

### Transboundary Movement from a Party through States which are not Parties

Paragraph 1 of Article 6 of the Convention shall apply mutatis mutandis to transboundary movement of hazardous wastes or other wastes from a Party through a State or States which are not Parties.

## ARTICLE 8

### Duty to Re-import

When a transboundary movement of hazardous wastes or other wastes to which the consent of the States concerned has been given, subject to the provisions of this Convention, cannot be completed in accordance with the terms of the contract, the State of export shall ensure that the wastes in question are taken back into the State of export, by the exporter, if alternative arrangements cannot be made for their disposal in an environmentally sound manner, within 90 days from the time that the importing State informed the State of export and the Secretariat, or such other period of time as the States concerned agree. To this end, the State of export and any Party of transit shall not oppose, hinder or prevent the return of those wastes to the State of export.

## ARTICLE 9

### Illegal Traffic

1. For the purpose of this Convention, any transboundary movement of hazardous wastes or other wastes:

(a) without notification pursuant to the provisions of this Convention to all States concerned; or

(b) without the consent pursuant to the provisions of this Convention of a State concerned; or

(c) with consent obtained from States concerned through falsification, misrepresentation or fraud; or

(d) that does not conform in a material way with the documents; or

(e) that results in deliberate disposal (e.g. dumping) of hazardous wastes or other wastes in contravention of this Convention and of general principles of international law,

shall be deemed to be illegal traffic.

2. In case of a transboundary movement of hazardous wastes or other wastes deemed to be illegal traffic as the result of conduct on the part of the exporter or generator, the State of export shall ensure that the wastes in question are:

(a) taken back by the exporter or the generator or, if necessary, by itself into the State of export, or, if impracticable,

(b) are otherwise disposed of in accordance with the provisions of this Convention,

within 30 days from the time the State of export has been informed about the illegal traffic or such other period of time as States concerned may agree. To this end the Parties concerned shall not oppose, hinder or prevent the return of those wastes to the State of export.

3. In the case of a transboundary movement of hazardous wastes or other wastes deemed to be illegal traffic as the result of conduct on the part of the importer or disposer, the State of import shall ensure that the wastes in question are disposed of in an environmentally sound manner by the importer or disposer or, if necessary, by itself within 30 days from the time the illegal traffic has come to the attention of the State of import or such other period of time as the States concerned may agree. To this end, the Parties concerned shall co-operate, as necessary, in the disposal of the wastes in an environmentally sound manner.

4. In cases where the responsibility for the illegal traffic cannot be assigned either to the exporter or generator or to the importer or disposer, the Parties concerned or other Parties, as appropriate, shall ensure, through co-operation, that the wastes in question are disposed of as soon as possible in an environmentally sound manner either in the State of export or the State of import or elsewhere as appropriate.

5. Each Party shall introduce appropriate national/domestic legislation to prevent and punish illegal traffic. The Parties shall co-operate with a view to achieving the objects of this Article.

## ARTICLE 10

### International Co-operation

1. The Parties shall co-operate with each other in order to improve and achieve environmentally sound management of hazardous wastes and other wastes.

2. To this end, the Parties shall:

(a) Upon request, make available information, whether on a bilateral or multilateral basis, with a view to promoting the environmentally sound management of hazardous wastes and other wastes, including harmonization of technical standards and practices for the adequate management of hazardous wastes and other wastes;

(b) Co-operate in monitoring the effects of the management of hazardous wastes on human health and the environment;

(c) Co-operate, subject to their national laws, regulations and policies, in the development and implementation of new environmentally sound low-waste technologies and the improvement of existing technologies with a view to eliminating, as far as practicable, the generation of hazardous wastes and other wastes and achieving more effective and efficient methods of ensuring their management in an environmentally sound manner, including the study of the economic, social and environmental effects of the adoption of such new or improved technologies;

(d) Co-operate actively, subject to their national laws, regulations and policies, in the transfer of technology and management systems related to the environmentally sound management of hazardous wastes and other wastes. They shall also co-operate in developing the technical capacity among Parties, especially those which may need and request technical assistance in this field;

(e) Co-operate in developing appropriate technical guidelines and/or codes of practice.

3. The Parties shall employ appropriate means to co-operate in order to assist developing countries in the implementation of subparagraphs a, b, c and d of paragraph 2 of Article 4.

4. Taking into account the needs of developing countries, co-operation between Parties and the competent international organizations is encouraged to promote, inter alia, public awareness, the development of sound management of hazardous wastes and other wastes and the adoption of new low-waste technologies.

## ARTICLE 11

### Bilateral, Multilateral and Regional Agreements

1. Notwithstanding the provisions of Article 4 paragraph 5, Parties may enter into bilateral, multilateral, or regional agreements or arrangements regarding transboundary movement of hazardous wastes or other wastes with Parties or non-Parties provided that such agreements or arrangements do not derogate from the environmentally sound management of hazardous wastes 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.

2. Parties shall notify the Secretariat of any bilateral, multilateral or regional agreements or arrangements referred to in paragraph 1 and those which they have entered into prior to the entry into force of this Convention for them, for the purpose of controlling transboundary movements of hazardous wastes and other wastes which take place entirely among the Parties to such agreements. The provisions of this Convention shall not affect transboundary movements which take place pursuant to such agreements provided that such agreements are compatible with the environmentally sound management of hazardous wastes and other wastes as required by this Convention.

## ARTICLE 12

### Consultations on Liability

The Parties shall co-operate with a view to adopting, as soon as practicable, a protocol setting out appropriate rules and procedures in the field of liability and compensation for damage resulting from the transboundary movement and disposal of hazardous wastes and other wastes.

## ARTICLE 13

### Transmission of Information

1. The Parties shall, whenever it comes to their knowledge, ensure that, in the case of an accident occurring during the transboundary movement of hazardous wastes or other wastes or their disposal, which are likely to present risks to human health and the environment in other States, those States are immediately informed.

2. The Parties shall inform each other, through the Secretariat, of:

(a) Changes regarding the designation of competent authorities and/or focal points, pursuant to Article 5;

(b) Changes in their national definition of hazardous wastes, pursuant to Article 3;

and, as soon as possible,

(c) Decisions made by them not to consent totally or partially to the import of hazardous wastes or other wastes for disposal within the area under their national jurisdiction;

(d) Decisions taken by them to limit or ban the export of hazardous wastes or other wastes;

(e) Any other information required pursuant to paragraph 4 of this Article.

3. The Parties, consistent with national laws and regulations, shall transmit, through the Secretariat, to the Conference of the Parties established under Article 15, before the end of each calendar year, a report on the previous calendar year, containing the following information:

(a) Competent authorities and focal points that have been designated by them pursuant to Article 5;



(b) Information regarding transboundary movements of hazardous wastes or other wastes in which they have been involved, including:

- (i) The amount of hazardous wastes and other wastes exported, their category, characteristics, destination, any transit country and disposal method as stated on the response to notification;
- (ii) The amount of hazardous wastes and other wastes imported, their category, characteristics, origin, and disposal methods;
- (iii) Disposals which did not proceed as intended;
- (iv) Efforts to achieve a reduction of the amount of hazardous wastes or other wastes subject to transboundary movement;

(c) Information on the measures adopted by them in implementation of this Convention;

(d) Information on available qualified statistics which have been compiled by them on the effects on human health and the environment of the generation, transportation and disposal of hazardous wastes or other wastes;

(e) Information concerning bilateral, multilateral and regional agreements and arrangements entered into pursuant to Article 11 of this Convention;

(f) Information on accidents occurring during the transboundary movement and disposal of hazardous wastes and other wastes and on the measures undertaken to deal with them;

(g) Information on disposal options operated within the area of their national jurisdiction;

(h) Information on measures undertaken for development of technologies for the reduction and/or elimination of production of hazardous wastes and other wastes; and

(i) Such other matters as the Conference of the Parties shall deem relevant.

4. The Parties, consistent with national laws and regulations, shall ensure that copies of each notification concerning any given transboundary movement of hazardous wastes or other wastes, and the response to it, are sent to the Secretariat when a Party considers that its environment may be affected by that transboundary movement has requested that this should be done.

## **ARTICLE 14**

### **Financial Aspects**

1. The Parties agree that, according to the specific needs of different regions and subregions, regional or sub-regional centres for training and technology transfers regarding the management of hazardous wastes and other wastes and the minimization of their generation should be established. The Parties shall decide on the establishment of appropriate funding mechanisms of a voluntary nature.

2. The Parties shall consider the establishment of a revolving fund to assist on an interim basis in case of emergency situations to minimize damage from accidents arising

from transboundary movements of hazardous wastes and other wastes or during the disposal of those wastes.

## ARTICLE 15

### Conference of the Parties

1. A Conference of the Parties is hereby established. The first meeting of the Conference of the Parties shall be convened by the Executive Director of UNEP not later than one year after the entry into force of this Convention. Thereafter, ordinary meetings of the Conference of the Parties shall be held at regular intervals to be determined by the Conference at its first meeting.

2. Extraordinary meetings of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to them by the Secretariat, it is supported by at least one third of the Parties.

3. The Conference of the Parties shall by consensus agree upon and adopt rules of procedure for itself and for any subsidiary body it may establish, as well as financial rules to determine in particular the financial participation of the Parties under this Convention.

4. The Parties at their first meeting shall consider any additional measures needed to assist them in fulfilling their responsibilities with respect to the protection and the preservation of the marine environment in the context of this Convention.

5. The Conference of the Parties shall keep under continuous review and evaluation the effective implementation of this Convention, and, in addition, shall:

(a) Promote the harmonization of appropriate policies, strategies and measures for minimizing harm to human health and the environment by hazardous wastes and other wastes;

(b) Consider and adopt, as required, amendments to this Convention and its annexes, taking into consideration, inter alia, available scientific, technical, economic and environmental information;

(c) Consider and undertake any additional action that may be required for the achievement of the purposes of this Convention in the light of experience gained in its operation and in the operation of the agreements and arrangements envisaged in Article 11;

(d) Consider and adopt protocols as required; and

(e) Establish such subsidiary bodies as are deemed necessary for the implementation of this Convention.

6. The United Nations, its specialized agencies, as well as any State not Party to this Convention, may be represented as observers at meetings of the Conference of the Parties. Any other body or agency, whether national or international, governmental or non-governmental, qualified in fields relating to hazardous wastes or other wastes which has informed the Secretariat of its wish to be represented as an observer at a meeting of the Conference of the Parties, may be admitted unless at least one third of the

Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

7. The Conference of the Parties shall undertake three years after the entry into force of this Convention, and at least every six years thereafter, an evaluation of its effectiveness and, if deemed necessary, to consider the adoption of a complete or partial ban of transboundary movements of hazardous wastes and other wastes in light of the latest scientific, environmental, technical and economic information.

## ARTICLE 16

### Secretariat

1. The functions of the Secretariat shall be:

- (a) To arrange for and service meetings provided for in Articles 15 and 17;
- (b) To prepare and transmit reports based upon information received in accordance with Articles 3, 4, 6, 11 and 13 as well as upon information derived from meetings of subsidiary bodies established under Article 15 as well as upon, as appropriate, information provided by relevant intergovernmental and non-governmental entities;
- (c) To prepare reports on its activities carried out in implementation of its functions under this Convention and present them to the Conference of the Parties;
- (d) To ensure the necessary coordination with relevant international bodies, and in particular to enter into such administrative and contractual arrangements as may be required for the effective discharge of its function;
- (e) To communicate with focal points and competent authorities established by the Parties in accordance with Article 5 of this Convention;
- (f) To compile information concerning authorized national sites and facilities of Parties available for the disposal of their hazardous wastes and other wastes and to circulate this information among Parties;
- (g) To receive and convey information from and to Parties on:
  - sources of technical assistance and training;
  - available technical and scientific know-how;
  - sources of advice and expertise; and
  - availability of resources

with a view to assisting them, upon request, in such areas as:

  - the handling of the notification system of this Convention;
  - the management of hazardous wastes and other wastes;
  - environmentally sound technologies relating to hazardous wastes and other wastes; such as low- and non-waste technology;
  - the assessment of disposal capabilities and sites;
  - the monitoring of hazardous wastes and other wastes; and
  - emergency responses;

(h) To provide Parties, upon request, with information on consultants or consulting firms having the necessary technical competence in the field, which can assist them to examine a notification for a transboundary movement, the concurrence of a shipment of hazardous wastes or other wastes with the relevant notification, and/or the fact that the proposed disposal facilities for hazardous wastes or other wastes are environmentally sound, when they have reason to believe that the wastes in question will not be managed in an environmentally sound manner. Any such examination would not be at the expense of the Secretariat;

(i) To assist Parties upon request in their identification of cases of illegal traffic and to circulate immediately to the Parties concerned any information it has received regarding illegal traffic;

(j) To co-operate with Parties and with relevant and competent international organizations and agencies in the provision of experts and equipment for the purpose of rapid assistance to States in the event of an emergency situation; and

(k) To perform such other functions relevant to the purposes of this Convention as may be determined by the Conference of the Parties.

2. The secretariat functions will be carried out on an interim basis by UNEP until the completion of the first meeting of the Conference of the Parties held pursuant to Article 15.

3. At its first meeting, the Conference of the Parties shall designate the Secretariat from among those existing competent intergovernmental organizations which have signified their willingness to carry out the secretariat functions under this Convention. At this meeting, the Conference of the Parties shall also evaluate the implementation by the interim Secretariat of the functions assigned to it, in particular under paragraph 1 above, and decide upon the structures appropriate for those functions.

## ARTICLE 17

### Amendment of the Convention

1. Any Party may propose amendments to this Convention and any Party to a protocol may propose amendments to that protocol. Such amendments shall take due account, *inter alia*, of relevant scientific and technical considerations.

2. Amendments to this Convention shall be adopted at a meeting of the Conference of the Parties. Amendments to any protocol shall be adopted at a meeting of the Parties to the protocol in question. The text of any proposed amendment to this Convention or to any protocol, except as may otherwise be provided in such protocol, shall be communicated to the Parties by the Secretariat at least six months before the meeting at which it is proposed for adoption. The Secretariat shall also communicate proposed amendments to the Signatories to this Convention for information.

3. The Parties shall make every effort to reach agreement on any proposed amendment to this Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting, and shall be submitted by the Depositary to all Parties for ratification, approval, formal confirmation or acceptance.

4. The procedure mentioned in paragraph 3 above shall apply to amendments to any protocol, except that a two-thirds majority of the Parties to that protocol present and voting at the meeting shall suffice for their adoption.

5. Instruments of ratification, approval, formal confirmation or acceptance of amendments shall be deposited with the Depositary. Amendments adopted in accordance with paragraphs 3 or 4 above shall enter into force between Parties having accepted them on the ninetieth day after the receipt by the Depositary of their instrument of ratification, approval, formal confirmation or acceptance by at least three-fourths of the Parties who accepted them or by at least two thirds of the Parties to the protocol concerned who accepted them, except as may otherwise be provided in such protocol. The amendments shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, approval, formal confirmation or acceptance of the amendments.

6. For the purpose of this Article, "Parties present and voting" means Parties present and casting an affirmative or negative vote.

## ARTICLE 18

### Adoption and Amendment of Annexes

1. The annexes to this Convention or to any protocol shall form an integral part of this Convention or of such protocol, as the case may be and, unless expressly provided otherwise, a reference to this Convention or its protocols constitutes at the same time a reference to any annexes thereto. Such annexes shall be restricted to scientific, technical and administrative matters.

2. Except as may be otherwise provided in any protocol with respect to its annexes, the following procedure shall apply to the proposal, adoption and entry into force of additional annexes to this Convention or of annexes to a protocol:

(a) Annexes to this Convention and its protocols shall be proposed and adopted according to the procedure laid down in Article 17, paragraphs 2, 3 and 4;

(b) Any Party that is unable to accept an additional annex to this Convention or an annex to any protocol to which it is party shall so notify the Depositary, in writing, within six months from the date of the communication of the adoption by the Depositary. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time substitute an acceptance for a previous declaration of objection and the annexes shall thereupon enter into force for that Party;

(c) On the expiry of six months from the date of the circulation of the communication by the Depositary, the annex shall become effective for all Parties to this Convention or to any protocol concerned, which have not submitted a notification in accordance with the provision of subparagraph (b) above.

3. The proposal, adoption and entry into force of amendments to annexes to this Convention or to any protocol shall be subject to the same procedure as for the proposal, adoption and entry into force of annexes to the Convention or annexes to a protocol. Annexes and amendments thereto shall take due account, inter alia, of relevant scientific and technical considerations.

4. If an additional annex or an amendment to an annex involves an amendment to this Convention or to any protocol, the additional annex or amended annex shall not enter into force until such time the amendment to this Convention or to the protocol enters into force.

## ARTICLE 19

### Verification

Any Party which has reason to believe that another Party is acting or has acted in breach of its obligations under this Convention may inform the Secretariat thereof, and in such an event, shall simultaneously and immediately inform, directly or through the Secretariat, the Party against whom the allegations are made. All relevant information should be submitted by the Secretariat to the Parties.

## ARTICLE 20

### Settlement of Disputes

1. In case of a dispute between Parties as to the interpretation or application of, or compliance with, this Convention or any protocol thereto, they shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice.

2. If the Parties concerned cannot settle their dispute through the means mentioned in the preceding paragraph, the dispute, if the Parties to the dispute agree, shall be submitted to the International Court of Justice or to arbitration under the conditions set out in Annex VI on Arbitration. However, failure to reach common agreement on submission of the dispute to the International Court of Justice or to arbitration shall not absolve the Parties from the responsibility of continuing to seek to resolve it by the means referred to in paragraph 1.

3. When ratifying, accepting, approving, formally confirming or acceding to this Convention, or at any time thereafter, a State or political and/or economic integration organization may declare that it recognizes as compulsory *ipso facto* and without special agreement, in relation to any Party accepting the same obligation:

- (a) submission of the dispute to the International Court of Justice; and/or
- (b) arbitration in accordance with the procedures set out in Annex VI.

Such declaration shall be notified in writing to the Secretariat which shall communicate it to the Parties.

## ARTICLE 21

### Signature

This Convention shall be open for signature by States, by Namibia, represented by the United Nations Council for Namibia, and by political and/or economic integration organizations, in Basel on 22 March 1989, at the Federal Department of Foreign Affairs of Switzerland in Berne from 23 March 1989 to 30 June 1989 and at United Nations Headquarters in New York from 1 July 1989 to 22 March 1990.

**ARTICLE 22****Ratification, Acceptance, Formal Confirmation or Approval**

1. This Convention shall be subject to ratification, acceptance or approval by States and by Namibia, represented by the United Nations Council for Namibia, and to formal confirmation or approval by political and/or economic integration organizations. Instruments of ratification, acceptance, formal confirmation, or approval shall be deposited with the Depositary.
2. Any organization referred to in paragraph 1 above which becomes a Party to this Convention without any of its member States being a Party shall be bound by all the obligations under the Convention. In the case of such organizations, one or more of whose member States is a Party to the Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention concurrently.
3. In their instruments of formal confirmation or approval, the organizations referred to in paragraph 1 above shall declare the extent of their competence with respect to the matters governed by the Convention. These organizations shall also inform the Depositary, who will inform the Parties of any substantial modification in the extent of their competence.

**ARTICLE 23****Accession**

1. This Convention shall be open for accession by States, by Namibia, represented by the United Nations Council for Namibia, and by political and/or economic integration organizations from the day after the date on which the Convention is closed for signature. The instruments of accession shall be deposited with the Depositary.
2. In their instruments of accession, the organizations referred to in paragraph 1 above shall declare the extent of their competence with respect to the matters governed by the Convention. These organizations shall also inform the Depositary of any substantial modification in the extent of their competence.
3. The provisions of Article 22, paragraph 2, shall apply to political and/or economic integration organizations which accede to this Convention.

**ARTICLE 24****Right to Vote**

1. Except as provided for in paragraph 2 below, each Contracting Party to this Convention shall have one vote.
2. Political and/or economic integration organizations, in matters within their competence, in accordance with Article 22, paragraph 3, and Article 23, paragraph 2, shall exercise their right to vote with a number of votes equal to the number of their member States which are Parties to the Convention or the relevant protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs, and vice versa.

**ARTICLE 25****Entry into Force**

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the twentieth instrument of ratification, acceptance, formal confirmation, approval or accession.
2. For each State or political and/or economic integration organization which ratifies, accepts, approves or formally confirms this Convention or accedes thereto after the date of the deposit of the twentieth instrument of ratification, acceptance, approval, formal confirmation or accession, it shall enter into force on the ninetieth day after the date of deposit by such State or political and/or economic integration organization of its instrument of ratification, acceptance, approval, formal confirmation or accession.
3. For the purpose of paragraphs 1 and 2 above, any instrument deposited by a political and/or economic integration organization shall not be counted as additional to those deposited by member States of such organization.

**ARTICLE 26****Reservations and Declarations**

1. No reservation or exception may be made to this Convention.
2. Paragraph 1 of this Article does not preclude a State or political and/or economic integration organization, when signing, ratifying, accepting, approving, formally confirming or acceding to this Convention, from making declarations or statements, however phrased or named, with a view, *inter alia*, to the harmonization of its laws and regulations with the provisions of this Convention, provided that such declarations or statements do not purport to exclude or to modify the legal effects of the provisions of the Convention in their application to that State.

**ARTICLE 27****Withdrawal**

1. At any time after three years from the date on which this Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the Depositary.
2. Withdrawal shall be effective one year from receipt of notification by the Depositary, or on such later date as may be specified in the notification.

**ARTICLE 28****Depositary**

The Secretary-General of the United Nations shall be the Depositary of this Convention and of any protocol thereto.



**ARTICLE 29****Authentic texts**

The original Arabic, Chinese, English, French, Russian and Spanish texts of this Convention are equally authentic.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.

Done at Basel on the 22 day of March 1989

## ANNEX I

### CATEGORIES OF WASTES TO BE CONTROLLED

#### Waste Streams

<b>Y1</b>	Clinical wastes from medical care in hospitals, medical centers and clinics
<b>Y2</b>	Wastes from the production and preparation of pharmaceutical products
<b>Y3</b>	Waste pharmaceuticals, drugs and medicines
<b>Y4</b>	Wastes from the production, formulation and use of biocides and phytopharmaceuticals
<b>Y5</b>	Wastes from the manufacture, formulation and use of wood preserving chemicals
<b>Y6</b>	Wastes from the production, formulation and use of organic solvents
<b>Y7</b>	Wastes from heat treatment and tempering operations containing cyanides
<b>Y8</b>	Waste mineral oils unfit for their originally intended use
<b>Y9</b>	Waste oils/water, hydrocarbons/water mixtures, emulsions
<b>Y10</b>	Waste substances and articles containing or contaminated with polychlorinated biphenyls (PCBs) and/or polychlorinated terphenyls (PCTs) and/or polybrominated biphenyls (PBBs)
<b>Y11</b>	Waste tarry residues arising from refining, distillation and any pyrolytic treatment
<b>Y12</b>	Wastes from production, formulation and use of inks, dyes, pigments, paints, lacquers, varnish
<b>Y13</b>	Wastes from production, formulation and use of resins, latex, plasticizers, glues/adhesives
<b>Y14</b>	Waste chemical substances arising from research and development or teaching activities which are not identified and/or are new and whose effects on man and/or the environment are not known
<b>Y15</b>	Wastes of an explosive nature not subject to other legislation
<b>Y16</b>	Wastes from production, formulation and use of photographic chemicals and processing materials

- Y17** Wastes resulting from surface treatment of metals and plastics
- Y18** Residues arising from industrial waste disposal operations

**Wastes having as constituents:**

- Y19** Metal carbonyls
- Y20** Beryllium; beryllium compounds
- Y21** Hexavalent chromium compounds
- Y22** Copper compounds
- Y23** Zinc compounds
- Y24** Arsenic; arsenic compounds
- Y25** Selenium; selenium compounds
- Y26** Cadmium; cadmium compounds
- Y27** Antimony; antimony compounds
- Y28** Tellurium; tellurium compounds
- Y29** Mercury; mercury compounds
- Y30** Thallium; thallium compounds
- Y31** Lead; lead compounds
- Y32** Inorganic fluorine compounds excluding calcium fluoride
- Y33** Inorganic cyanides
- Y34** Acidic solutions or acids in solid form
- Y35** Basic solutions or bases in solid form
- Y36** Asbestos (dust and fibres)
- Y37** Organic phosphorus compounds
- Y38** Organic cyanides
- Y39** Phenols; phenol compounds including chlorophenols
- Y40** Ethers
- Y41** Halogenated organic solvents
- Y42** Organic solvents excluding halogenated solvents

- Y43** Any congener of polychlorinated dibenzo-furan
- Y44** Any congener of polychlorinated dibenzo-p-dioxin
- Y45** Organohalogen compounds other than substances referred to in this Annex (e.g. Y39, Y41, Y42, Y43, Y44)

(a) To facilitate the application of this Convention, and subject to paragraphs (b), (c) and (d), wastes listed in Annex VIII are characterized as hazardous pursuant to Article 1, paragraph 1 (a), of this Convention, and wastes listed in Annex IX are not covered by Article 1, paragraph 1 (a), of this Convention.

(b) Designation of a waste on Annex VIII does not preclude, in a particular case, the use of Annex III to demonstrate that a waste is not hazardous pursuant to Article 1, paragraph 1 (a), of this Convention.

(c) Designation of a waste on Annex IX does not preclude, in a particular case, characterization of such a waste as hazardous pursuant to Article 1, paragraph 1 (a), of this Convention if it contains Annex I material to an extent causing it to exhibit an Annex III characteristic.

(d) Annexes VIII and IX do not affect the application of Article 1, paragraph 1 (a), of this Convention for the purpose of characterization of wastes.<sup>26</sup>

---

<sup>26</sup> The amendment whereby paragraphs (a), (b), (c) and (d) were added to the end of Annex I entered into force on 6 November 1998, six months following the issuance of depositary notification C.N.77.1998 of 6 May 1998 (reflecting Decision IV/9, adopted by the Conference of the Parties at its fourth meeting).

**ANNEX II****CATEGORIES OF WASTES REQUIRING SPECIAL CONSIDERATION**

- Y46**      Wastes collected from households
- Y47**      Residues arising from the incineration of household wastes

**ANNEX III**  
**LIST OF HAZARDOUS CHARACTERISTICS**

<u>UN</u> <u>Class<sup>27</sup></u>	<u>Code</u>	<u>Characteristics</u>
1	H1	<p>Explosive</p> <p>An explosive substance or waste is a solid or liquid substance or waste (or mixture of substances or wastes) which is in itself capable by chemical reaction of producing gas at such a temperature and pressure and at such a speed as to cause damage to the surroundings.</p>
3	H3	<p>Flammable liquids</p> <p>The word “flammable” has the same meaning as “inflammable”. Flammable liquids are liquids, or mixtures of liquids, or liquids containing solids in solution or suspension (for example, paints, varnishes, lacquers, etc., but not including substances or wastes otherwise classified on account of their dangerous characteristics) which give off a flammable vapour at temperatures of not more than 60.5°C, closed-cup test, or not more than 65.6°C, open-cup test. (Since the results of open-cup tests and of closed-cup tests are not strictly comparable and even individual results by the same test are often variable, regulations varying from the above figures to make allowance for such differences would be within the spirit of this definition.)</p>
4.1	H4.1	<p>Flammable solids</p> <p>Solids, or waste solids, other than those classed as explosives, which under conditions encountered in transport are readily combustible, or may cause or contribute to fire through friction.</p>
4.2	H4.2	<p>Substances or wastes liable to spontaneous combustion</p>

---

<sup>27</sup> Corresponds to the hazard classification system included in the United Nations Recommendations on the Transport of Dangerous Goods (ST/SG/AC.10/1Rev.5, United Nations, New York, 1988).

		Substances or wastes which are liable to spontaneous heating under normal conditions encountered in transport, or to heating up on contact with air, and being then liable to catch fire.
4.3	H4.3	<p>Substances or wastes which, in contact with water emit flammable gases</p> <p>Substances or wastes which, by interaction with water, are liable to become spontaneously flammable or to give off flammable gases in dangerous quantities.</p>
5.1	H5.1	<p>Oxidizing</p> <p>Substances or wastes which, while in themselves not necessarily combustible, may, generally by yielding oxygen cause, or contribute to, the combustion of other materials.</p>
5.2	H5.2	<p>Organic Peroxides</p> <p>Organic substances or wastes which contain the bivalent-o-o-structure are thermally unstable substances which may undergo exothermic self-accelerating decomposition.</p>
6.1	H6.1	<p>Poisonous (Acute)</p> <p>Substances or wastes liable either to cause death or serious injury or to harm human health if swallowed or inhaled or by skin contact.</p>
6.2	H6.2	<p>Infectious substances</p> <p>Substances or wastes containing viable micro organisms or their toxins which are known or suspected to cause disease in animals or humans.</p>
8	H8	<p>Corrosives</p> <p>Substances or wastes which, by chemical action, will cause severe damage when in contact with living tissue, or, in the case of leakage, will materially damage, or even destroy, other goods or the means of transport; they may also cause other hazards.</p>

- |   |     |  |
|---|-----|--|
| 9 | H10 | <p>Liberation of toxic gases in contact with air or water</p> <p>Substances or wastes which, by interaction with air or water, are liable to give off toxic gases in dangerous quantities.</p>                     |
| 9 | H11 | <p>Toxic (Delayed or chronic)</p> <p>Substances or wastes which, if they are inhaled or ingested or if they penetrate the skin, may involve delayed or chronic effects, including carcinogenicity.</p>             |
| 9 | H12 | <p>Ecotoxic</p> <p>Substances or wastes which if released present or may present immediate or delayed adverse impacts to the environment by means of bioaccumulation and/or toxic effects upon biotic systems.</p> |
| 9 | H13 | <p>Capable, by any means, after disposal, of yielding another material, e.g., leachate, which possesses any of the characteristics listed above.</p>   |

#### Tests

The potential hazards posed by certain types of wastes are not yet fully documented; tests to define quantitatively these hazards do not exist. Further research is necessary in order to develop means to characterise potential hazards posed to man and/or the environment by these wastes. Standardized tests have been derived with respect to pure substances and materials. Many countries have developed national tests which can be applied to materials listed in Annex I, in order to decide if these materials exhibit any of the characteristics listed in this Annex.



**ANNEX IV**  
**DISPOSAL OPERATIONS**

**A. Operations which do not lead to the possibility of resource recovery, recycling, reclamation, direct re-use or alternative uses**

Section A encompasses all such disposal operations which occur in practice.

- D1      Deposit into or onto land, (e.g., landfill, etc.)
- D2      Land treatment, (e.g., biodegradation of liquid or sludgy discards in soils, etc.)
- D3      Deep injection, (e.g., injection of pumpable discards into wells, salt domes or naturally occurring repositories, etc.)
- D4      Surface impoundment, (e.g., placement of liquid or sludge discards into pits, ponds or lagoons, etc.)
- D5      Specially engineered landfill, (e.g., placement into lined discrete cells which are capped and isolated from one another and the environment, etc.)
- D6      Release into a water body except seas/oceans
- D7      Release into seas/oceans including sea-bed insertion
- D8      Biological treatment not specified elsewhere in this Annex which results in final compounds or mixtures which are discarded by means of any of the operations in Section A
- D9      Physico chemical treatment not specified elsewhere in this Annex which results in final compounds or mixtures which are discarded by means of any of the operations in Section A, (e.g., evaporation, drying, calcination, neutralization, precipitation, etc.)
- D10     Incineration on land
- D11     Incineration at sea
- D12     Permanent storage (e.g., emplacement of containers in a mine, etc.)
- D13     Blending or mixing prior to submission to any of the operations in Section A
- D14     Repackaging prior to submission to any of the operations in Section A
- D15     Storage pending any of the operations in Section A

**B. Operations which may lead to resource recovery, recycling reclamation, direct re-use or alternative uses**

Section B encompasses all such operations with respect to materials legally defined as or considered to be hazardous wastes and which otherwise would have been destined for operations included in Section A

- |     |   |
|-----|---|
| R1  | Use as a fuel (other than in direct incineration) or other means to generate energy |
| R2  | Solvent reclamation/regeneration  |
| R3  | Recycling/reclamation of organic substances which are not used as solvents          |
| R4  | Recycling/reclamation of metals and metal compounds                                 |
| R5  | Recycling/reclamation of other inorganic materials                                  |
| R6  | Regeneration of acids or bases  |
| R7  | Recovery of components used for pollution abatement                                 |
| R8  | Recovery of components from catalysts   |
| R9  | Used oil re-refining or other reuses of previously used oil                         |
| R10 | Land treatment resulting in benefit to agriculture or ecological improvement        |
| R11 | Uses of residual materials obtained from any of the operations numbered R1-R10      |
| R12 | Exchange of wastes for submission to any of the operations numbered R1-R11          |
| R13 | Accumulation of material intended for any operation in Section B                    |

**ANNEX V A****INFORMATION TO BE PROVIDED ON NOTIFICATION**

1. Reason for waste export
2. Exporter of the waste 1/
3. Generator(s) of the waste and site of generation 1/
4. Disposer of the waste and actual site of disposal 1/
5. Intended carrier(s) of the waste or their agents, if known 1/
6. Country of export of the waste  
Competent authority 2/
7. Expected countries of transit  
Competent authority 2/
8. Country of import of the waste  
Competent authority 2/
9. General or single notification
10. Projected date(s) of shipment(s) and period of time over which waste is to be exported and proposed itinerary (including point of entry and exit)3/
11. Means of transport envisaged (road, rail, sea, air, inland waters)
12. Information relating to insurance 4/
13. Designation and physical description of the waste including Y number and UN number and its composition 5/ and information on any special handling requirements including emergency provisions in case of accidents
14. Type of packaging envisaged (e.g. bulk, drummed, tanker)
15. Estimated quantity in weight/volume 6/
16. Process by which the waste is generated 7/
17. For wastes listed in Annex I, classifications from Annex III: hazardous characteristic, H number, and UN class
18. Method of disposal as per Annex IV
19. Declaration by the generator and exporter that the information is correct
20. Information transmitted (including technical description of the plant) to the exporter or generator from the disposer of the waste upon which the latter has based his assessment that there was no reason to believe that the wastes will not be managed in an environmentally sound manner in accordance with the laws and regulations of the country of import
21. Information concerning the contract between the exporter and disposer.

Notes

- 1/ Full name and address, telephone, telex or telefax number and the name, address, telephone, telex or telefax number of the person to be contacted.
- 2/ Full name and address, telephone, telex or telefax number.
- 3/ In the case of a general notification covering several shipments, either the expected dates of each shipment or, if this is not known, the expected frequency of the shipments will be required.
- 4/ Information to be provided on relevant insurance requirements and how they are met by exporter, carrier and disposer.
- 5/ The nature and the concentration of the most hazardous components, in terms of toxicity and other dangers presented by the waste both in handling and in relation to the proposed disposal method.
- 6/ In the case of a general notification covering several shipments, both the estimated total quantity and the estimated quantities for each individual shipment will be required.
- 7/ Insofar as this is necessary to assess the hazard and determine the appropriateness of the proposed disposal operation.

**ANNEX V B****INFORMATION TO BE PROVIDED ON THE MOVEMENT DOCUMENT**

1. Exporter of the waste 1/
2. Generator(s) of the waste and site of generation 1/
3. Disposer of the waste and actual site of disposal 1/
4. Carrier(s) of the waste 1/ or his agent(s)
5. Subject of general or single notification
6. The date the transboundary movement started and date(s) and signature on receipt by each person who takes charge of the waste
7. Means of transport (road, rail, inland waterway, sea, air) including countries of export, transit and import, also point of entry and exit where these have been designated
8. General description of the waste (physical state, proper UN shipping name and class, UN number, Y number and H number as applicable)
9. Information on special handling requirements including emergency provision in case of accidents
10. Type and number of packages
11. Quantity in weight/volume
12. Declaration by the generator or exporter that the information is correct
13. Declaration by the generator or exporter indicating no objection from the competent authorities of all States concerned which are Parties
14. Certification by disposer of receipt at designated disposal facility and indication of method of disposal and of the approximate date of disposal.

Notes

The information required on the movement document shall where possible be integrated in one document with that required under transport rules. Where this is not possible the information should complement rather than duplicate that required under the transport rules. The movement document shall carry instructions as to who is to provide information and fill-out any form.

- 1/ Full name and address, telephone, telex or telefax number and the name, address, telephone, telex or telefax number of the person to be contacted in case of emergency.

## **ANNEX VI**

### **ARBITRATION**

#### **Article 1**

Unless the agreement referred to in Article 20 of the Convention provides otherwise, the arbitration procedure shall be conducted in accordance with Articles 2 to 10 below.

#### **Article 2**

The claimant Party shall notify the Secretariat that the Parties have agreed to submit the dispute to arbitration pursuant to paragraph 2 or paragraph 3 of Article 20 and include, in particular, the Articles of the Convention the interpretation or application of which are at issue. The Secretariat shall forward the information thus received to all Parties to the Convention.

#### **Article 3**

The arbitral tribunal shall consist of three members. Each of the Parties to the dispute shall appoint an arbitrator, and the two arbitrators so appointed shall designate by common agreement the third arbitrator, who shall be the chairman of the tribunal. The latter shall not be a national of one of the Parties to the dispute, nor have his usual place of residence in the territory of one of these Parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

#### **Article 4**

1. If the chairman of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Secretary-General of the United Nations shall, at the request of either Party, designate him within a further two months period.

2. If one of the Parties to the dispute does not appoint an arbitrator within two months of the receipt of the request, the other Party may inform the Secretary-General of the United Nations who shall designate the chairman of the arbitral tribunal within a further two months' period. Upon designation, the chairman of the arbitral tribunal shall request the Party which has not appointed an arbitrator to do so within two months. After such period, he shall inform the Secretary-General of the United Nations, who shall make this appointment within a further two months' period.

#### **Article 5**

1. The arbitral tribunal shall render its decision in accordance with international law and in accordance with the provisions of this Convention.

2. Any arbitral tribunal constituted under the provisions of this Annex shall draw up its own rules of procedure.

#### **Article 6**

1. The decisions of the arbitral tribunal both on procedure and on substance, shall be taken by majority vote of its members.

2. The tribunal may take all appropriate measures in order to establish the facts. It may, at the request of one of the Parties, recommend essential interim measures of protection.

3. The Parties to the dispute shall provide all facilities necessary for the effective conduct of the proceedings.

4. The absence or default of a Party in the dispute shall not constitute an impediment to the proceedings.

Article 7

The tribunal may hear and determine counter-claims arising directly out of the subject-matter of the dispute.

Article 8

Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the Parties to the dispute in equal shares. The tribunal shall keep a record of all its expenses, and shall furnish a final statement thereof to the Parties.

Article 9

Any Party that has an interest of a legal nature in the subject-matter of the dispute which may be affected by the decision in the case, may intervene in the proceedings with the consent of the tribunal.

Article 10

1. The tribunal shall render its award within five months of the date on which it is established unless it finds it necessary to extend the time-limit for a period which should not exceed five months.

2. The award of the arbitral tribunal shall be accompanied by a statement of reasons. It shall be final and binding upon the Parties to the dispute.

3. Any dispute which may arise between the Parties concerning the interpretation or execution of the award may be submitted by either Party to the arbitral tribunal which made the award or, if the latter cannot be seized thereof, to another tribunal constituted for this purpose in the same manner as the first.

**ANNEX VII**

[not yet entered into force]<sup>28</sup>

---

<sup>28</sup> Annex VII is an integral part of the Amendment adopted by the third meeting of the Conference of the Parties in 1995 in its Decision III/1. The amendment is not yet in force. The relevant part of Decision III/1 provides as follows:

“The Conference,

...

3. Decides to adopt the following amendment to the Convention:

‘Annex VII

Parties and other States which are members of OECD, EC, Liechtenstein.”



**ANNEX VIII<sup>29</sup>****LIST A**

Wastes contained in this Annex are characterized as hazardous under Article 1, paragraph 1 (a), of this Convention, and their designation on this Annex does not preclude the use of Annex III to demonstrate that a waste is not hazardous.

**A1 Metal and metal-bearing wastes**

A1010 Metal wastes and waste consisting of alloys of any of the following:

- Antimony
- Arsenic
- Beryllium
- Cadmium
- Lead
- Mercury
- Selenium
- Tellurium
- Thallium

but excluding such wastes specifically listed on list B.

A1020 Waste having as constituents or contaminants, excluding metal waste in massive form, any of the following:

- Antimony; antimony compounds
- Beryllium; beryllium compounds

---

<sup>29</sup> The amendment whereby Annex VIII was added to the Convention entered into force on 6 November 1998, six months following the issuance of depositary notification C.N.77.1998 of 6 May 1998 (reflecting Decision IV/9 adopted by the Conference of the Parties at its fourth meeting). The amendment to Annex VIII whereby new entries were added entered into force on 20 November 2003 (depositary notification C.N.1314.2003), six months following the issuance of depositary notification C.N.399.2003 of 20 May 2003 (reflecting Decision VI/35 adopted by the Conference of the Parties at its sixth meeting). The amendment to Annex VIII whereby one new entry was added entered into force on 8 October 2005 (depositary notification C.N.1044.2005), six months following the issuance of depositary notification C.N.263.2005 of 8 April 2005 (re-issued on 13 June 2005, reflecting Decision VII/19 adopted by the Conference of the Parties at its seventh meeting). The present text includes all amendments.

- Cadmium; cadmium compounds
  - Lead; lead compounds
  - Selenium; selenium compounds
  - Tellurium; tellurium compounds
- A1030 Wastes having as constituents or contaminants any of the following:
- Arsenic; arsenic compounds
  - Mercury; mercury compounds
  - Thallium; thallium compounds
- A1040 Wastes having as constituents any of the following:
- Metal carbonyls
  - Hexavalent chromium compounds
- A1050 Galvanic sludges
- A1060 Waste liquors from the pickling of metals
- A1070 Leaching residues from zinc processing, dust and sludges such as jarosite, hematite, etc.
- A1080 Waste zinc residues not included on list B, containing lead and cadmium in concentrations sufficient to exhibit Annex III characteristics
- A1090 Ashes from the incineration of insulated copper wire
- A1100 Dusts and residues from gas cleaning systems of copper smelters
- A1110 Spent electrolytic solutions from copper electrorefining and electrowinning operations
- A1120 Waste sludges, excluding anode slimes, from electrolyte purification systems in copper electrorefining and electrowinning operations
- A1130 Spent etching solutions containing dissolved copper
- A1140 Waste cupric chloride and copper cyanide catalysts

- A1150 Precious metal ash from incineration of printed circuit boards not included on list B<sup>30</sup>
- A1160 Waste lead-acid batteries, whole or crushed
- A1170 Unsorted waste batteries excluding mixtures of only list B batteries. Waste batteries not specified on list B containing Annex I constituents to an extent to render them hazardous
- A1180 Waste electrical and electronic assemblies or scrap<sup>31</sup> containing components such as accumulators and other batteries included on list A, mercury-switches, glass from cathode-ray tubes and other activated glass and PCB-capacitors, or contaminated with Annex I constituents (e.g., cadmium, mercury, lead, polychlorinated biphenyl) to an extent that they possess any of the characteristics contained in Annex III (note the related entry on list B B1110)<sup>32</sup>
- A1190 Waste metal cables coated or insulated with plastics containing or contaminated with coal tar, PCB<sup>33</sup>, lead, cadmium, other organohalogen compounds or other Annex I constituents to an extent that they exhibit Annex III characteristics.

A2 Wastes containing principally inorganic constituents, which may contain metals and organic materials

- A2010 Glass waste from cathode-ray tubes and other activated glasses
- A2020 Waste inorganic fluorine compounds in the form of liquids or sludges but excluding such wastes specified on list B
- A2030 Waste catalysts but excluding such wastes specified on list B
- A2040 Waste gypsum arising from chemical industry processes, when containing Annex I constituents to the extent that it exhibits an Annex III hazardous characteristic (note the related entry on list B B2080)

---

<sup>30</sup> Note that mirror entry on list B (B1160) does not specify exceptions.

<sup>31</sup> This entry does not include scrap assemblies from electric power generation.

<sup>32</sup> PCBs are at a concentration level of 50 mg/kg or more.

<sup>33</sup> PCBs are at a concentration level of 50 mg/kg or more.

- A2050 Waste asbestos (dusts and fibres)
- A2060 Coal-fired power plant fly-ash containing Annex I substances in concentrations sufficient to exhibit Annex III characteristics (note the related entry on list B B2050)

A3 Wastes containing principally organic constituents, which may contain metals and inorganic materials

- A3010 Waste from the production or processing of petroleum coke and bitumen
- A3020 Waste mineral oils unfit for their originally intended use
- A3030 Wastes that contain, consist of or are contaminated with leaded anti-knock compound sludges
- A3040 Waste thermal (heat transfer) fluids
- A3050 Wastes from production, formulation and use of resins, latex, plasticizers, glues/adhesives excluding such wastes specified on list B (note the related entry on list B B4020)
- A3060 Waste nitrocellulose
- A3070 Waste phenols, phenol compounds including chlorophenol in the form of liquids or sludges
- A3080 Waste ethers not including those specified on list B
- A3090 Waste leather dust, ash, sludges and flours when containing hexavalent chromium compounds or biocides (note the related entry on list B B3100)
- A3100 Waste paring and other waste of leather or of composition leather not suitable for the manufacture of leather articles containing hexavalent chromium compounds or biocides (note the related entry on list B B3090)
- A3110 Fellmongery wastes containing hexavalent chromium compounds or biocides or infectious substances (note the related entry on list B B3110)

A3120	Fluff - light fraction from shredding
A3130	Waste organic phosphorous compounds
A3140	Waste non-halogenated organic solvents but excluding such wastes specified on list B
A3150	Waste halogenated organic solvents
A3160	Waste halogenated or unhalogenated non-aqueous distillation residues arising from organic solvent recovery operations
A3170	Wastes arising from the production of aliphatic halogenated hydrocarbons (such as chloromethane, dichloro-ethane, vinyl chloride, vinylidene chloride, allyl chloride and epichlorhydrin)
A3180	Wastes, substances and articles containing, consisting of or contaminated with polychlorinated biphenyl (PCB), polychlorinated terphenyl (PCT), polychlorinated naphthalene (PCN) or polybrominated biphenyl (PBB), or any other polybrominated analogues of these compounds, at a concentration level of 50 mg/kg or more <sup>34</sup>
A3190	Waste tarry residues (excluding asphalt cements) arising from refining, distillation and any pyrolytic treatment of organic materials
A3200	Bituminous material (asphalt waste) from road construction and maintenance, containing tar (note the related entry on list B, B2130)

#### A4 Wastes which may contain either inorganic or organic constituents

A4010	Wastes from the production, preparation and use of pharmaceutical products but excluding such wastes specified on list B
A4020	Clinical and related wastes; that is wastes arising from medical, nursing, dental, veterinary, or similar practices, and wastes generated in hospitals or other facilities during the investigation or treatment of patients, or

---

<sup>34</sup> The 50 mg/kg level is considered to be an internationally practical level for all wastes. However, many individual countries have established lower regulatory levels (e.g., 20 mg/kg) for specific wastes.

research projects

- |       |  |
|-------|--|
| A4030 | Wastes from the production, formulation and use of biocides and phytopharmaceuticals, including waste pesticides and herbicides which are off-specification, outdated, <sup>35</sup> or unfit for their originally intended use  |
| A4040 | Wastes from the manufacture, formulation and use of wood-preserving chemicals <sup>36</sup>  |
| A4050 | Wastes that contain, consist of or are contaminated with any of the following: <ul style="list-style-type: none"> <li>• Inorganic cyanides, excepting precious-metal-bearing residues in solid form containing traces of inorganic cyanides</li> <li>• Organic cyanides</li> </ul> |
| A4060 | Waste oils/water, hydrocarbons/water mixtures, emulsions   |
| A4070 | Wastes from the production, formulation and use of inks, dyes, pigments, paints, lacquers, varnish excluding any such waste specified on list B (note the related entry on list B B4010)   |
| A4080 | Wastes of an explosive nature (but excluding such wastes specified on list B)  |
| A4090 | Waste acidic or basic solutions, other than those specified in the corresponding entry on list B (note the related entry on list B B2120)  |
| A4100 | Wastes from industrial pollution control devices for cleaning of industrial off-gases but excluding such wastes specified on list B  |
| A4110 | Wastes that contain, consist of or are contaminated with any of the following: <ul style="list-style-type: none"> <li>• Any congener of polychlorinated dibenzofuran</li> <li>• Any congener of polychlorinated dibenzodioxin</li> </ul>   |
| A4120 | Wastes that contain, consist of or are contaminated with peroxides   |
| A4130 | Waste packages and containers containing Annex I substances in concentrations sufficient   |

---

<sup>35</sup> "Outdated" means unused within the period recommended by the manufacturer.

<sup>36</sup> This entry does not include wood treated with wood preserving chemicals.

to exhibit Annex III hazard characteristics

- A4140 Waste consisting of or containing off specification or outdated<sup>37</sup> chemicals corresponding to Annex I categories and exhibiting Annex III hazard characteristics
- A4150 Waste chemical substances arising from research and development or teaching activities which are not identified and/or are new and whose effects on human health and/or the environment are not known
- A4160 Spent activated carbon not included on list B (note the related entry on list B B2060)

---

<sup>37</sup> “Outdated” means unused within the period recommended by the manufacturer.

**ANNEX IX<sup>38</sup>****LIST B**

Wastes contained in the Annex will not be wastes covered by Article 1, paragraph 1 (a), of this Convention unless they contain Annex I material to an extent causing them to exhibit an Annex III characteristic.

**B1 Metal and metal-bearing wastes**

B1010 Metal and metal-alloy wastes in metallic, non-dispersible form:

- Precious metals (gold, silver, the platinum group, but not mercury)
- Iron and steel scrap
- Copper scrap
- Nickel scrap
- Aluminium scrap
- Zinc scrap
- Tin scrap
- Tungsten scrap
- Molybdenum scrap
- Tantalum scrap
- Magnesium scrap
- Cobalt scrap
- Bismuth scrap
- Titanium scrap
- Zirconium scrap

---

<sup>38</sup> The amendment whereby Annex IX was added to the Convention entered into force on 6 November 1998, six months following the issuance of depositary notification C.N.77.1998 (reflecting Decision IV/9 adopted by the Conference of the Parties at its fourth meeting). The amendment to Annex IX whereby new entries were added entered into force on 20 November 2003 (depositary notification C.N.1314.2003), six months following the issuance of depositary notification C.N.399.2003 of 20 May 2003 (reflecting Decision VI/35 adopted by the Conference of the Parties at its sixth meeting). The amendment to Annex IX whereby one entry was added entered into force on 8 October 2005 (depositary notification C.N.1044.2005), six months following the issuance of depositary notification C.N.263.2005 of 8 April 2005 (re-issued on 13 June 2005, reflecting Decision VII/19 adopted by the Conference of the Parties at its seventh meeting). The present text includes all amendments.



- Manganese scrap
  - Germanium scrap
  - Vanadium scrap
  - Scrap of hafnium, indium, niobium, rhenium and gallium
  - Thorium scrap
  - Rare earths scrap
  - Chromium scrap
- B1020 Clean, uncontaminated metal scrap, including alloys, in bulk finished form (sheet, plate, beams, rods, etc), of:
- Antimony scrap
  - Beryllium scrap
  - Cadmium scrap
  - Lead scrap (but excluding lead-acid batteries)
  - Selenium scrap
  - Tellurium scrap
- B1030 Refractory metals containing residues
- B1031 Molybdenum, tungsten, titanium, tantalum, niobium and rhenium metal and metal alloy wastes in metallic dispersible form (metal powder), excluding such wastes as specified in list A under entry A1050, Galvanic sludges
- B1040 Scrap assemblies from electrical power generation not contaminated with lubricating oil, PCB or PCT to an extent to render them hazardous
- B1050 Mixed non-ferrous metal, heavy fraction scrap, not containing Annex I materials in concentrations sufficient to exhibit Annex III characteristics<sup>39</sup>
- B1060 Waste selenium and tellurium in metallic elemental form including powder

---

<sup>39</sup> Note that even where low level contamination with Annex I materials initially exists, subsequent processes, including recycling processes, may result in separated fractions containing significantly enhanced concentrations of those Annex I materials.

- B1070 Waste of copper and copper alloys in dispersible form, unless they contain Annex I constituents to an extent that they exhibit Annex III characteristics
- B1080 Zinc ash and residues including zinc alloys residues in dispersible form unless containing Annex I constituents in concentration such as to exhibit Annex III characteristics or exhibiting hazard characteristic H4.3<sup>40</sup>
- B1090 Waste batteries conforming to a specification, excluding those made with lead, cadmium or mercury
- B1100 Metal-bearing wastes arising from melting, smelting and refining of metals:
- Hard zinc spelter
  - Zinc-containing drosses:
    - Galvanizing slab zinc top dross (>90% Zn)
    - Galvanizing slab zinc bottom dross (>92% Zn)
    - Zinc die casting dross (>85% Zn)
    - Hot dip galvanizers slab zinc dross (batch)(>92% Zn)
    - Zinc skimmings
  - Aluminium skimmings (or skims) excluding salt slag
  - Slags from copper processing for further processing or refining not containing arsenic, lead or cadmium to an extent that they exhibit Annex III hazard characteristics
  - Wastes of refractory linings, including crucibles, originating from copper smelting
  - Slags from precious metals processing for further refining
  - Tantalum-bearing tin slags with less than 0.5% tin
- B1110 Electrical and electronic assemblies:
- Electronic assemblies consisting only of metals or alloys

---

<sup>40</sup> The status of zinc ash is currently under review and there is a recommendation with the United Nations Conference on Trade and Development (UNCTAD) that zinc ashes should not be dangerous goods.

- Waste electrical and electronic assemblies or scrap<sup>41</sup> (including printed circuit boards) not containing components such as accumulators and other batteries included on list A, mercury-switches, glass from cathode-ray tubes and other activated glass and PCB-capacitors, or not contaminated with Annex I constituents (e.g., cadmium, mercury, lead, polychlorinated biphenyl) or from which these have been removed, to an extent that they do not possess any of the characteristics contained in Annex III (note the related entry on list A A1180)
- Electrical and electronic assemblies (including printed circuit boards, electronic components and wires) destined for direct reuse,<sup>42</sup> and not for recycling or final disposal<sup>43</sup>

---

<sup>41</sup> This entry does not include scrap from electrical power generation.

<sup>42</sup> Reuse can include repair, refurbishment or upgrading, but not major reassembly

<sup>43</sup> In some countries these materials destined for direct re-use are not considered wastes.

B1115 Waste metal cables coated or insulated with plastics, not included in list A1190, excluding those destined for Annex IVA operations or any other disposal operations involving, at any stage, uncontrolled thermal processes, such as open-burning.

B1120 Spent catalysts excluding liquids used as catalysts, containing any of:

Transition metals, excluding waste catalysts (spent catalysts, liquid used catalysts or other catalysts) on list A:	Scandium Vanadium Manganese Cobalt Copper Yttrium Niobium Hafnium Tungsten	Titanium Chromium Iron Nickel Zinc Zirconium Molybdenum Tantalum Rhenium
Lanthanides (rare earth metals):	Lanthanum Praseodymium Samarium Gadolinium Dysprosium Erbium Ytterbium	Cerium Neodymium Europium Terbium Holmium Thulium Lutetium

B1130 Cleaned spent precious-metal-bearing catalysts

B1140 Precious-metal-bearing residues in solid form which contain traces of inorganic cyanides

B1150 Precious metals and alloy wastes (gold, silver, the platinum group, but not mercury) in a dispersible, non-liquid form with appropriate packaging and labelling

B1160 Precious-metal ash from the incineration of printed circuit boards (note the related entry on list A A1150)

B1170 Precious-metal ash from the incineration of photographic film

B1180 Waste photographic film containing silver halides and metallic silver

B1190 Waste photographic paper containing silver

	halides and metallic silver
B1200	Granulated slag arising from the manufacture of iron and steel
B1210	Slag arising from the manufacture of iron and steel including slags as a source of TiO <sub>2</sub> and vanadium
B1220	Slag from zinc production, chemically stabilized, having a high iron content (above 20%) and processed according to industrial specifications (e.g., DIN 4301) mainly for construction
B1230	Mill scaling arising from the manufacture of iron and steel
B1240	Copper oxide mill-scale
B1250	Waste end-of-life motor vehicles, containing neither liquids nor other hazardous components

B2 Wastes containing principally inorganic constituents, which may contain metals and organic materials

B2010	Wastes from mining operations in non-dispersible form: <ul style="list-style-type: none"> <li>• Natural graphite waste</li> <li>• Slate waste, whether or not roughly trimmed or merely cut, by sawing or otherwise</li> <li>• Mica waste</li> <li>• Leucite, nepheline and nepheline syenite waste</li> <li>• Feldspar waste</li> <li>• Fluorspar waste</li> <li>• Silica wastes in solid form excluding those used in foundry operations</li> </ul>
B2020	Glass waste in non-dispersible form: <ul style="list-style-type: none"> <li>• Cullet and other waste and scrap of glass except for glass from cathode-ray tubes and other activated glasses</li> </ul>
B2030	Ceramic wastes in non-dispersible form: <ul style="list-style-type: none"> <li>• Cermet wastes and scrap (metal ceramic composites)</li> <li>• Ceramic based fibres not elsewhere</li> </ul>

specified or included

- B2040 Other wastes containing principally inorganic constituents:
- Partially refined calcium sulphate produced from flue-gas desulphurization (FGD)
  - Waste gypsum wallboard or plasterboard arising from the demolition of buildings
  - Slag from copper production, chemically stabilized, having a high iron content (above 20%) and processed according to industrial specifications (e.g., DIN 4301 and DIN 8201) mainly for construction and abrasive applications
  - Sulphur in solid form
  - Limestone from the production of calcium cyanamide (having a pH less than 9)
  - Sodium, potassium, calcium chlorides
  - Carborundum (silicon carbide)
  - Broken concrete
  - Lithium-tantalum and lithium-niobium containing glass scraps
- B2050 Coal-fired power plant fly-ash, not included on list A (note the related entry on list A A2060)
- B2060 Spent activated carbon not containing any Annex I constituents to an extent they exhibit Annex III characteristics, for example, carbon resulting from the treatment of potable water and processes of the food industry and vitamin production (note the related entry on list A, A4160)
- B2070 Calcium fluoride sludge
- B2080 Waste gypsum arising from chemical industry processes not included on list A (note the related entry on list A A2040)
- B2090 Waste anode butts from steel or aluminium production made of petroleum coke or bitumen and cleaned to normal industry specifications (excluding anode butts from chlor alkali electrolyses and from metallurgical industry)
- B2100 Waste hydrates of aluminium and waste alumina

and residues from alumina production excluding such materials used for gas cleaning, flocculation or filtration processes

- B2110 Bauxite residue ("red mud") (pH moderated to less than 11.5)
- B2120 Waste acidic or basic solutions with a pH greater than 2 and less than 11.5, which are not corrosive or otherwise hazardous (note the related entry on list A A4090)
- B2130 Bituminous material (asphalt waste) from road construction and maintenance, not containing tar<sup>44</sup> (note the related entry on list A, A3200)

B3 Wastes containing principally organic constituents, which may contain metals and inorganic materials

- B3010 Solid plastic waste:

The following plastic or mixed plastic materials, provided they are not mixed with other wastes and are prepared to a specification:

- Scrap plastic of non-halogenated polymers and co-polymers, including but not limited to the following<sup>45</sup>

- ethylene
- styrene
- polypropylene
- polyethylene terephthalate
- acrylonitrile
- butadiene
- polyacetals
- polyamides
- polybutylene terephthalate
- polycarbonates
- polyethers
- polyphenylene sulphides
- acrylic polymers
- alkanes C10-C13 (plasticiser)
- polyurethane (not containing CFCs)
- polysiloxanes
- polymethyl methacrylate
- polyvinyl alcohol
- polyvinyl butyral
- polyvinyl acetate

---

<sup>44</sup> The concentration level of Benzol (a) pyrene should not be 50mg/kg or more.

<sup>45</sup> It is understood that such scraps are completely polymerized.

- Cured waste resins or condensation products including the following:

- urea formaldehyde resins
- phenol formaldehyde resins
- melamine formaldehyde resins
- epoxy resins
- alkyd resins
- polyamides

- The following fluorinated polymer wastes<sup>46</sup>

- perfluoroethylene/propylene (FEP)
- perfluoro alkoxyl alkane
  - tetrafluoroethylene/per fluoro vinyl ether (PFA)
  - tetrafluoroethylene/per fluoro methylvinyl ether (MFA)
- polyvinylfluoride (PVF)
- polyvinylidene fluoride (PVDF)

#### B3020 Paper, paperboard and paper product wastes

The following materials, provided they are not mixed with hazardous wastes:

Waste and scrap of paper or paperboard of:

- unbleached paper or paperboard or of corrugated paper or paperboard
- other paper or paperboard, made mainly of bleached chemical pulp, not coloured in the mass
- paper or paperboard made mainly of mechanical pulp (for example, newspapers, journals and similar printed matter)
- other, including but not limited to 1) laminated paperboard 2) unsorted scrap

#### B3030 Textile wastes

The following materials, provided they are not mixed with other wastes and are prepared to a specification:

- Silk waste (including cocoons unsuitable

---

<sup>46</sup> Post-consumer wastes are excluded from this entry:

- Wastes shall not be mixed
- Problems arising from open-burning practices to be considered



for reeling, yarn waste and garnetted stock)

- not carded or combed
- other
- Waste of wool or of fine or coarse animal hair, including yarn waste but excluding garnetted stock
  - noils of wool or of fine animal hair
  - other waste of wool or of fine animal hair
  - waste of coarse animal hair
- Cotton waste (including yarn waste and garnetted stock)
  - yarn waste (including thread waste)
  - garnetted stock
  - other
- Flax tow and waste
- Tow and waste (including yarn waste and garnetted stock) of true hemp (Cannabis sativa L.)
- Tow and waste (including yarn waste and garnetted stock) of jute and other textile bast fibres (excluding flax, true hemp and ramie)
- Tow and waste (including yarn waste and garnetted stock) of sisal and other textile fibres of the genus Agave
- Tow, noils and waste (including yarn waste and garnetted stock) of coconut
- Tow, noils and waste (including yarn waste and garnetted stock) of abaca (Manila hemp or Musa textilis Nee)
- Tow, noils and waste (including yarn waste and garnetted stock) of ramie and other vegetable textile fibres, not elsewhere specified or included
- Waste (including noils, yarn waste and garnetted stock) of man-made fibres
  - of synthetic fibres
  - of artificial fibres
- Worn clothing and other worn textile articles
- Used rags, scrap twine, cordage, rope and cables and worn out articles of twine, cordage, rope or cables of textile materials
  - sorted
  - other

B3035 Waste textile floor coverings, carpets

B3040 Rubber wastes

The following materials, provided they are not mixed with other wastes:

- Waste and scrap of hard rubber (e.g., ebonite)
- Other rubber wastes (excluding such wastes specified elsewhere)

B3050 Untreated cork and wood waste:

- Wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms
- Cork waste: crushed, granulated or ground cork

B3060 Wastes arising from agro-food industries provided it is not infectious:

- Wine lees
- Dried and sterilized vegetable waste, residues and byproducts, whether or not in the form of pellets, of a kind used in animal feeding, not elsewhere specified or included
- Degras: residues resulting from the treatment of fatty substances or animal or vegetable waxes
- Waste of bones and horn-cores, unworked, defatted, simply prepared (but not cut to shape), treated with acid or degelatinised
- Fish waste
- Cocoa shells, husks, skins and other cocoa waste
- Other wastes from the agro-food industry excluding by-products which meet national and international requirements and standards for human or animal consumption

B3065 Waste edible fats and oils of animal or vegetable origin (e.g. frying oils), provided they do not exhibit an Annex III characteristic

B3070 The following wastes:

- Waste of human hair
  - Waste straw
  - Deactivated fungus mycelium from penicillin production to be used as animal feed
- B3080 Waste parings and scrap of rubber
- B3090 Paring and other wastes of leather or of composition leather not suitable for the manufacture of leather articles, excluding leather sludges, not containing hexavalent chromium compounds and biocides (note the related entry on list A A3100)
- B3100 Leather dust, ash, sludges or flours not containing hexavalent chromium compounds or biocides (note the related entry on list A A3090)
- B3110 Fellmongery wastes not containing hexavalent chromium compounds or biocides or infectious substances (note the related entry on list A A3110)
- B3120 Wastes consisting of food dyes
- B3130 Waste polymer ethers and waste non-hazardous monomer ethers incapable of forming peroxides
- B3140 Waste pneumatic tyres, excluding those destined for Annex IVA operations

B4 Wastes which may contain either inorganic or organic constituents

- B4010 Wastes consisting mainly of water-based/latex paints, inks and hardened varnishes not containing organic solvents, heavy metals or biocides to an extent to render them hazardous (note the related entry on list A A4070)
- B4020 Wastes from production, formulation and use of resins, latex, plasticizers, glues/adhesives, not listed on list A, free of solvents and other contaminants to an extent that they do not exhibit Annex III characteristics, e.g., water-based, or glues based on casein starch, dextrin, cellulose ethers, polyvinyl alcohols (note the related entry on list A A3050)
- B4030 Used single-use cameras, with batteries not included on list A