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THE BASEL CONVENTION ON THE CONTROL OF TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES AND THEIR DISPOSAL

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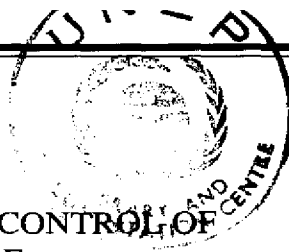
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**THE BASEL CONVENTION ON THE CONTROL OF
TRANSBOUNDARY MOVEMENTS OF
HAZARDOUS WASTES AND THEIR DISPOSAL**

Since its creation in 1972, UNEP has been very active in the development of international environmental law. UNEP can point to the fact that under its auspices three major global binding agreements - the Vienna Convention for the Protection of the Ozone Layer, 1985, the Montreal Protocol on Substances that Deplete the Ozone Layer 1987 and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989 were developed.

Development of these conventions and several international guidelines and principles has been in large measure through the work of UNEP's Environmental Law and Institutions Unit. The Law Unit in co-operation with other UNEP sections and international organizations has not only developed and helped administer these various conventions, it has also assisted numerous developing countries seeking to enact and administer national environmental legislation.



As environmental problems have grown, so has the responsibilities and activities of UNEP's Environmental Law and Institutions Unit. As chief of the Unit, I hope this publication will provide a helpful introduction to the work of Environmental Law and Institutions Unit and to international environmental law development efforts of UNEP.

Dr. Iwona Rummel-Bulska (Mrs)
Chief
Environmental Law and Institutions Unit

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Foreword

Concern for the global environment continues to accelerate, as the groundswell of international public support for forceful, decisive action towards environmental protection becomes translated into remedial and protective measures to safeguard the global environment.



The need for action is urgent. Chronic environmental deterioration, the result of human activities, has assumed planetary dimensions. Accordingly, the world community is acknowledging a neighbour's ecological problems inevitably also become their own. Collective pluralism, based on the concept of shared responsibility, is the only avenue open towards global environmental protection

Evidence of this growing global collectivism includes the Basel Convention on the Transboundary Movements of Hazardous Wastes and their Disposal adopted in March 1989 by 116 countries and the European Community. The Basel Convention is the third global binding legal instrument elaborated under the auspices of UNEP, following the 1985 Vienna Convention for the Protection of the Ozone Layer and the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer.

Governments recognized co-operation was needed to address the growing amount of hazardous waste generation and transboundary movements. Precise estimates of world-wide hazardous wastes volumes are difficult to determine, but range from 300 to 400 million tonnes or more of hazardous wastes generated each year. With increased volumes come increased problems related to environmentally sound disposal practices: stockpiles of corrosive acids, organic chemicals, toxic metals

and other wastes pose serious long-term health and ecological threats, because of groundwater contamination, leeching and other means of contamination. The cost of safe disposal are mounting, while the bills for cleaning up existing landfills will run into the tens of billions of dollars

In response to a growing “not in my backyard” rejection of hazardous wastes, the international movement of hazardous wastes has become a boom industry. Cross-frontier traffic in wastes in Europe alone exceed 20,000 West-East border crossing a year. North-South shipments, representing about 10 percent of total transboundary movements pose a particularly serious threat. Shipments from industrialized to developing countries largely entail disposal or attempted disposal, of wastes to developing countries that do not possess, and are unlikely to possess in the near future, environmentally-sound hazardous wastes disposal facilities. A growing army of immoral, unscrupulous “waste brokers” are benefitting from a global commerce in poison.

In short, transboundary movements of hazardous wastes have become a global problem, demanding global solutions.

The Basel Convention represents a first step in defining the global means to reduce and strictly control the movement of hazardous wastes, to ensure that such wastes are disposed of in an environmentally sound manner. Let me state UNEP’s overriding goal leading into, during and following the negotiations for the Basel Convention, is a global reduction in the volumes of hazardous wastes. UNEP works with industry, agricultural-

ists and governments to lower waste generation, by promoting increased production efficiency, as well as recycling and re-use of wastes. UNEP's goal is to minimize wastes, and to work towards disposal facilities situated as close as possible to the generation site.

Of equal urgency is the need to clarify and enforce measures to control the international traffic of hazardous wastes. This publication by UNEP's Environmental Law and Institutions Unit (ELIU) outlines in detail the complexity of negotiations leading to Basel, the general principles of the Convention, the special concerns of developing countries, and other major points relevant to the Convention.

In the international arena of international environmental law and protection, nothing stands still. We face quickly changing, dynamic developments in the defining of the global environmental agenda. The Basel Convention is designed to keep pace with change, to ensure a flexibility that allows for future amendments and strengthening of the provisions. The Convention is not a panacea. Yet it represents a viable first step in building international co-operation to address the issue of hazardous wastes. co-operative action remains our only option in protecting our shared global environment.

Dr. Mostafa K. Tolba
Executive Director

Introduction

In recent years, the amount of hazardous wastes shipped across national borders has increased substantially. As the generation of wastes in industrialized countries has increased dramatically in the past decades and disposal facilities, especially landfill space, have become more scarce and therefore more expensive, there is a growing tendency to export hazardous wastes, especially to less industrialized countries. Disposal costs in a developing country are often only a fraction of the equivalent costs in the industrialized world, and most developing countries do not have the necessary legal and institutional framework to effectively control and prevent the dumping of hazardous wastes in their territories. They also lack the technical capacity to dispose of such wastes in a way that does not harm the environment and human health. As a result, hazardous wastes are often deposited illegally and without technical precautions.

The problem of international traffic in hazardous wastes gained new prominence in 1988, when media coverage alerted the public to the uncontrolled dumping of millions of tons of hazardous wastes across national borders, notably in Africa and Eastern Europe, and prompted world-wide public awareness. The international press termed the dumping of toxic wastes from the industrialized world in Third World countries as “toxic terrorism” and “garbage imperialism”. UNEP has received numerous reports from governments on dumping of toxic wastes. The following are only two examples:

According to a report from the Government of Guinea, a vessel based in the United States of America, operated by the subsidiary of a Norwegian transportation firm, deposited its load of 15,000 tons of municipal incinerator ash from Philadelphia (USA) on Kassa Island (Guinea). The dumping

was carried out in contravention of national law. The incinerator ash was purportedly to be used for making bricks. It was deposited on permeable soil. An analysis of the material showed high levels of dioxins, toxic chemicals and heavy metals.

Nigeria reported an incident in which an Italian national working in Nigeria obtained a product import licence, then substituted shipments of several thousand tons of highly toxic and radioactive wastes, including 150 tons of PCB contaminated waste. These wastes were imported aboard five vessels over a period of several months. Later, the "Karin B.", a German registered ship, was found to have illegally dumped 2,100 tons of toxic wastes in Nigeria.

(Source - Illegal Traffic in Toxic and Dangerous Products and Wastes, Report of the Secretary-General to the General Assembly of the United Nations at its 44th Session, 18 July 1989).

Spectacular cases such as these gained world-wide publicity and alerted governments and organizations as well as the general public to the problem. On a world-wide scale, thousands of transboundary movements of hazardous wastes take place every year, some in accordance with national legislation or relevant international legal instruments, others illegally.

The United Nations Environment Programme (UNEP) has concerned itself with the problems of transboundary movements of hazardous wastes in general and illegal traffic in particular since the beginning of the 1980s. UNEP activities in this field have taken place mainly on two scales.

In response to a resolution adopted by the United Nations General Assembly in 1987, the Executive Director of UNEP on behalf of the Secretary-General of the United Nations prepared a report on illegal traffic in toxic and dangerous products and wastes based on information provided to him by governments and organizations. This report was submitted to the General Assembly at its 44th Session in 1989. Besides summarizing and analysing the information received, it also provides recommendations on mechanism to be devised for monitoring and controlling illegal traffic in hazardous wastes.

UNEP has played a key role in the elaboration of a global legal instrument governing the reduction of generation and the minimization of transboundary movement of hazardous wastes and providing for strict control of such movements as are environmentally acceptable. UNEP's work on this issue began in 1981 and led to the adoption of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal in March 1989. It is hoped that the Basel Convention will enter into force during the year 1991 and become an effective instrument to control hazardous waste movement and disposal worldwide.

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal

THE NEGOTIATION PROCESS

The plan to elaborate, under the auspices of UNEP, a global legal instrument to restrict and control transboundary movements of hazardous wastes goes back to the early 1980s. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, which was adopted by 116 states participating in a Conference of Plenipotentiaries in March 1989, is the result of a long process of negotiations within various gremiums. The following paragraphs outline the major steps in this process.

1. The Montevideo Programme

The Governing Council of UNEP, at its ninth session in May 1981, established an Ad Hoc Meeting of Senior Gov-

ernment Officials Expert in Environmental Law. The mandate of the experts was, inter alia, to identify major subject areas suitable for increased global and regional co-operation in the elaboration of environmental law. The main subject areas to be considered included the disposal of hazardous wastes. Among other things, the experts were expected to promote the elaboration of guidelines and/or principles in the identified subject areas (F. Governing Council Decision No. 9/19 A of 26 May 1981 (UNEP/GC 9/19 A), recalling Decision No. 8/15 of the previous year (UNEP/GC/ 8/15)).

From 28 October to 6 November 1981, the Ad Hoc Meeting of Senior Government Officials Expert in Environmental Law was held

in Montevideo (Uruguay). A report on the work of the Meeting to the Governing Council was submitted on 7 December 1981 (F. UNEP/GC. 10/S/Add. 2). The conclusions and recommendations of the experts are known as the Montevideo Programme for the Development and Periodic Review of Environmental Law. It established the environmental policy to be adopted by UNEP, outlining several issues considered to be of particular importance, one of which is the transport, handling and disposal of toxic and dangerous wastes.

The Montevideo Programme included the preparation of guidelines and principles which could lead to a global convention on hazardous wastes, within the framework of UNEP and in cooperation with other competent organizations.

2. The Cairo Guidelines

At its tenth session in May 1982, the Governing Council of UNEP, based on the recommendations contained in the Montevideo Programme, convened a working group of experts to develop guidelines or principles on the environmentally sound transport, management and disposal of hazardous wastes [F. Governing Council Decision No. 10/24 of 31 May 1982 (UNEP/GC. 10/24)].

Pursuant to that decision, the Ad Hoc Working Group of Experts on the Environmentally Sound Management of Hazardous Wastes was established. Three sessions of this Working Group were held [F. Munich, Federal Republic of Germany, 28 February to 5 March 1984 (Report. UNEP/WG. 95/5), Geneva, Switzerland, 3 to 7 December 1984 (Report. UNEP/WG. 111/3), Cairo, Egypt, 4 to 9 December 1985

(Final Report of the Working Group, with Report of the Third Session as Annex II. UNEP/WG. 122/3)]. The Working Group submitted its final report, with the Cairo Guidelines and Principles for the Environmentally Sound Management of Hazardous Wastes as Annex, on 9 December 1985 (F. UNEP/WG. 122/3, UNEP/GC. 14/17, Annex II).

At its fourteenth session in June 1987, the Governing Council of UNEP approved the Cairo Guidelines and Principles and authorized the Executive Director of UNEP to convene a working group of legal and technical experts with a mandate to prepare a global convention on the control of transboundary movements of hazardous wastes, drawing on the Cairo Guidelines and the relevant work of national, regional and international bodies. The Council also requested the Executive Director to convene, in early 1989, a diplo-

matic conference to adopt and sign the global convention (F. UNEP/GC. 14/30, 17 June 1987).

3. The Elaboration of the Basel Convention

The organizational meeting of the Ad Hoc Working Group of Legal and Technical Experts with a Mandate to Prepare a Global Convention on the Control of Transboundary Movements of Hazardous Wastes was held in Budapest (Hungary) from 27 to 29 October 1987 (F. Report, UNEP/WG. 180/3). The group discussed the general principles to be incorporated into the convention and considered a first draft of the convention prepared by the UNEP secretariat (F. UNEP/WG. 180/2), which was based mainly on the Cairo Guidelines but also took into consideration the work of the European Economic Community (EEC) [F. Council of European Com-

munities Directive on Transfrontier Shipment of Hazardous Wastes of 6 December 1984 (84/631/EEC/OJ No. 1 326, as amended by Directive 85/469/EEC, Directive 86/279/EEC, and Directive 87/112/EEC)] and the OECD [F. draft OECD Agreement on Control of Transfrontier Movement of Hazardous Wastes (OECD Env. (87) 9] in the field of hazardous wastes management.

Subsequently, five sessions of the Working Group were held (F. Geneva, Switzerland, 1 to 5 February 1988 (Report. UNEP/WG. 182/3), Caracas, Venezuela, 6 to 10 June 1988 (Report. UNEP/WG.186/3), Geneva, Switzerland, 7 to 16 November 1988 (Report. UNEP/WG. 189/3), Luxembourg, 30 January to 3 February 1989 (Report. UNEP/WG. 190/4), Basel, Switzerland, 13 to 17 March 1989 (Final Report of the Working Group with Report of the Fifth Session

as Annex I. UNEP/IG. 80/4)). Experts from 96 states participated in one or more of the sessions, and representatives of over 50 organizations attended as observers (F. Final Report of the Working Group, UNEP/IG. 80/4). The draft convention was considered and revised at each session. At an early stage in the negotiation process the experts agreed that the convention should not provide only a framework but should have direct implications for the control of transboundary movements of hazardous wastes by specifying clearly the responsibilities of states involved in a given movement. In the course of the negotiations, the provisions of the draft convention were progressively strengthened, resulting in a treaty which provides strict control measures for transboundary movements of hazardous wastes and spells out the rights and responsibilities of the states involved in such

movements.

In addition to the sessions of the Working Group, the Executive Director of UNEP held a number of informal consultations with governments and industry, which contributed substantively to elaboration of the convention. The Executive Director also submitted a number of notes to the Working Group, discussing important provisions and contentious issues.

The Conference of Plenipotentiaries on the Global Convention on the Control of Transboundary Movements of Hazardous Wastes, convened in Basel (Switzerland) from 20 to 22 March 1989, considered the final draft of the convention submitted to it by the Working Group. The Basel Convention on the Control of Transboundary Movements and their Disposal was adopted unanimously by the Conference on

22 March 1989, only 18 months after the beginning of the negotiations of the Working Group. 105 states and the European Economic Community (EEC) signed the Final Act of the Conference, and 35 states and the EEC signed the Convention immediately after its adoption (F. The following states signed the Basel Convention on 22 March 1989 - Afghanistan, Bahrain, Belgium, Bolivia, Canada, Colombia, Cyprus, Denmark, Ecuador, Finland, France, Greece, Guatemala, Haiti, Hungary, Israel, Italy, Jordan, Kuwait, Lebanon, Liechtenstein, Luxembourg, Mexico, Netherlands, Norway, Panama, Philippines, Saudi Arabia, Spain, Sweden, Switzerland, Turkey, United Arab Emirates, Uruguay, Venezuela). To date, eight more states have signed the Basel Convention (F. Argentina, 28.6.1989, Chile, 31.1.1990, Federal Republic of Germany, 23.10.1989, Ireland, 19.1.1990, New Zealand,

18.12.1989, Portugal, 26.6.1989, Syrian Arab Republic, 11.10.1989, United Kingdom, 6.10.1989). It enters into force upon ratification by 20 states. To date, five states have ratified the Convention (F. Jordan, 1.6.1989, Switzerland, 31.1.1990, Saudi Arabia, 7.3.1990, Hungary, 21.5.1990, Norway, 2.7.1990 and a number of states are preparing to ratify the convention.

The Conference also adopted eight resolutions related to the further development and the implementation of the Convention.

THE PROVISIONS OF THE BASEL CONVENTION

Every country has the sovereign right to ban the import of hazardous wastes. The control system provided by the Basel Convention ensures that no hazardous wastes are

shipped to a country which has banned their import.

Exports of hazardous wastes to non-parties and imports from non-parties are prohibited, unless subject to a bilateral, multilateral or regional agreement, the provisions of which are no less stringent than those of the Basel Convention.

Every country has the obligation to reduce the generation of hazardous wastes to a minimum, and to dispose of them as close as possible to the source of generation. Transboundary movements of hazardous wastes may take place only as an exception, if they present the most environmentally sound solution, and if they are carried out in accordance with the strict control system provided by the Convention.

Transboundary movements of hazardous wastes carried out in contravention of the provisions of the Convention are considered illegal traffic. The Convention states that illegal traffic is a criminal act, and obligates states to introduce national legislation to prevent and punish illegal traffic. A state responsible for an illegal movement has to ensure the environmentally sound disposal of the wastes in question.

Industrialized countries have an obligation to assist developing countries in technical matters related to the management of hazardous wastes. The Convention also calls for exchange of information and international co-operation. The Convention Secretariat monitors and co-ordinates these activities.

The resolutions adopted by the Basel Conference request further action in connection with enforcing and strengthening the provisions of the Convention, including co-operation with other organizations to harmonize the Basel Convention with other international legal instruments, development of elements for inclusion in a protocol on liability, and development of draft technical guidelines for the environmentally sound management of hazardous wastes.

The following paragraph presents the provisions of the Basel Convention in an issue-by-issue summary, outlining its principles and focusing on the issues which are of particular importance.

The Provisions of the Basel Convention Highlights

THE MAIN PROVISIONS OF THE BASEL CONVENTION

1. The Basel Convention is based on the following principles regarding the generation, management and disposal of hazardous wastes and other wastes,

2. The generation of hazardous wastes and other wastes must be reduced to a minimum in terms of quantity as well as hazard potential (Preamble, para. 3,17, Article 4, para 2(a)).

3. Where the generation of hazardous wastes or other wastes is unavoidable, they must be disposed of as close as possible to their source of generation. [Preamble, para. 8, Article 4, para. 2(b) and (d)]. Moreover, the environmentally sound management of the wastes must be guaranteed, whatever the place of their disposal (Preamble, para. 4, 5, Article 4, para. 8).

Hazardous wastes shall be exported only if the state of export does not have the technical capacity and facilities to dispose of them in an environmentally sound manner [Article 4, para. 9(a)].

The export of hazardous wastes and other wastes is prohibited if the exporting state has reason to believe that their environmentally sound management and disposal would not be guaranteed in the prospective state of import [Preamble, para. 23, Article 4, para. 2(e)]. Likewise, a state shall prohibit the import of hazardous or other wastes into its territory if it has reason to believe that they would not be managed in an environmentally sound manner [Article 4, para. 2(g)].

4. In other words, the ultimate aim of the provisions of

the Basel Convention is to provide an incentive for the reduction of the generation and transboundary movements of hazardous wastes and other wastes to a minimum, and for the environmentally sound management and disposal of such wastes [Preamble, para. 9, 10, 17, 19 Article 4, para. 2(d)].

5. Every state has the sovereign right to ban the import of hazardous wastes or other wastes (Preamble, para. 6.) A state exercising this right shall inform the other states, through the secretariat of the convention, of its decision. No state shall allow any transboundary movement of hazardous wastes or other wastes to a state which has prohibited their import [Article 4, para. 1 (a), (b), Article 13]. The parties shall also prohibit the export of hazardous or other wastes to a group of states belonging to an economic and/or political integration organization if the national legislation of

these states prohibits such imports [Article 4, para. 2(e)].

6. The export of hazardous wastes to a state which is not a party to the Basel Convention, as well as the import of hazardous wastes from a non-party state, is prohibited (Article 4, para. 5). Parties have the right, however, to enter into multilateral, bilateral or regional agreements with other parties or with non-parties, provided that such agreements establish requirements no less environmentally sound than the Basel Convention and their provisions are no less stringent. The secretariat of the convention must be informed of any such agreement entered into by a party (Article 11).

7. Any transboundary movement of hazardous wastes or other wastes which is permissible under the provisions of the Basel Convention

must be carried out in accordance with the control measures stipulated by the convention, A summary of these control measures is given in paragraph 3 below.

8. Hazardous wastes or other wastes subject to transboundary movement must be packaged, labelled and transported in conformity with generally recognized international rules and standards and due account must be taken of relevant internationally recommended practices [Article 4, para. 7(c)].

2. Definition of hazardous wastes and other wastes covered by the Basel Convention

9. The Basel Convention defines wastes as “substances which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law” (Arti-

cle 2 para. 1). Disposal is defined in Annex IV. Besides operations leading to final disposal of the wastes, such as landfill, incineration or release into a waterbody, the definition includes operations leading to resource recovery, recycling, reclamation, direct re-use or alternate use. Thus, wastes subject to the recycling operations contained in Annex IV are also subject to the provisions of the convention.

10. The scope of the Basel Convention includes two categories of wastes:

(a) Hazardous Wastes: this category is defined in two of the technical annexes of the convention. A waste is considered hazardous for the purposes of the convention if it belongs to any category contained in Annex I, unless it does not possess any of the characteristics listed in Annex III [Article 1, para. I(a)]. A waste which is not covered

by the annexes is also considered hazardous for the purposes of the convention if it is defined as, or considered to be, hazardous by the national legislation of one or more of the parties involved in a movement of the waste in question [Article I, para.1(b)].

(b) "*Other wastes*", Annex II lists two types of wastes: household wastes and incinerator ash - which are not defined as hazardous wastes but are also included in the scope of the convention (Article I, para. 2).

11. Radioactive wastes and wastes covered by the International Convention for the Prevention of Pollution from Ships (MARPOL) are excluded from the scope of the Basel Convention (Article I, para. 3 and 4).

3. Harmonization of the Basel Convention with other international legal instruments.

12. It is generally recognized that transboundary movements of nuclear wastes must be subject to controls that are no less strict than those of the Basel Convention. The International Atomic Energy Agency (IAEA) has recently developed a Code of Practice for International Transactions involving Nuclear Wastes. The Basel Conference, on 22 March 1989, adopted a resolution requesting the Executive Director of UNEP to co-operate with IAEA in order to ensure that the provisions of the Basel Convention are taken into full account in the preparation of this legal instrument (Resolution 5). Co-operation between UNEP and IAEA in this field has been going on.

13. Likewise, the Basel Conference adopted two resolutions requesting the Executive Director to cooperate with the International Maritime Organization (IMO) in harmonizing the provisions of the Basel Convention and those of already existing international legal instruments in the field of marine transport of hazardous wastes, in particular the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Dumping Convention, 1972) and the International Convention for the Prevention of Pollution from Ships (MARPOL Convention, 1973) (Resolutions 2 and 7). Co-operation between IMO and UNEP in this field has begun.

4. Control Measures

14. As noted above, transboundary movements of hazardous wastes and other wastes are permissible only if there does not exist a more environmentally sound alternative, and if they take place between parties to the Convention, none of which has prohibited the import of such wastes. Where transboundary movements are generally permissible, the Convention provides for an elaborate control system which is based on the principle of prior informed consent (PIC). The following is a summary of the rights and obligations of the states of export, import and transit in this context.

15. The state of export has the duty to inform the competent authority of the state of import of any intended transboundary movement of hazardous wastes or other wastes. The state of export

can provide this information itself or require the generator or exporter to do so. The information provided must be sufficiently detailed to enable the authorities of the state of import to assess the nature and the risks of the intended movement. Among other things, it must specify the reason for the export, the exporter, the generator, the site of generation and the process by which the wastes are generated, the nature of the wastes and their packaging as well as the intended itinerary, the site of disposal, the disposer and the method of disposal as per Annex IV (Article 6, para. I, Annex V A).

16. The state of import must respond to the notifier in writing, consenting to the movement with or without conditions, denying permission for the movement or requesting further information. The state of export may not allow the movement to

commence until written consent has been given and confirmation of the existence of a contract between the exporter and the disposer, specifying the environmentally sound management of the wastes in question, has been received [Article 4, para. 1 (c), Article 6, para. 2 and 3].

17. A transboundary movement of hazardous wastes or other wastes can take place through one or more states other than the state where the wastes are finally disposed. Unlike the states of export and import, a transit state can be a state which is not a party to the Convention. Regarding the rights and duties of transit states, the Convention provides for the following:

18. The state or states of transit, whether or not parties to the Convention, must be given prior notification containing the same informa-

tion as is given to the state of import (Article 6, para. 1 and 4 Article 7).

19. If the state of transit is not a party to the Convention, the subsequent procedure is the same as for the state of import, namely that the movement of hazardous wastes may not be allowed to commence unless the transit state has given prior written consent (Article 7, Article 6, para. 2).

20. In the case of a transit state which is a party to the convention, the transit state must also be given prior notification of any intended movement. After receiving the notification, the transit state which is a party must first provide the notifier with an acknowledgement on receipt of notification. It shall then respond to the notifier within 60 days, granting or denying permission for the movement to take place (Article 6 para.4).

However, a state which is a party to the convention can also decide to waive the requirement of prior written consent for transit transboundary movements of hazardous wastes, either generally or under specific conditions. Notice of such a decision must be given to the other parties through the Secretariat. If a party state has waived the requirement of prior written consent, the state of export may allow the transit movement to proceed through that state if it has received no response within 60 days after receipt of a given notification by the state of transit (Article 6, para. 4, Article 13).

21. In other words, every transit state has to be given prior notification of an intended hazardous waste movement. A transit state which is a party can waive the requirement of prior written consent, whereas a non-party transit state has to reply to the notification,

otherwise the transit cannot proceed.

22. The convention specifies modifications of the procedure of prior informed consent in a case where the wastes in question are not considered to be hazardous by all the states involved in the movement [Article I para. I(b)]. The principle is that every state which considers the wastes to be hazardous is accorded the rights pertaining to its position in the transaction, even if other states concerned do not define the wastes as hazardous [Article 6, para. 5(a) to (c)].

23. Every person who takes charge of a transboundary movement of hazardous wastes or other wastes must be required to sign a movement document. The disposer must inform the exporter and the state of export of the receipt of the wastes and the completion of

their disposal. Insurance coverage must be provided for every transboundary movement of hazardous wastes or other wastes (Article 6, para. 9 and 11, Annex V B).

5. Illegal Traffic

24. Any transboundary movement of hazardous wastes or other wastes which does not conform to the provisions of the convention is deemed illegal traffic. Specifically, any movement carried out in contravention of the control system as outlined above is illegal under the convention [Article 8, para. I(a) to (d)].

25. The convention states that illegal traffic in hazardous wastes or other wastes is criminal (Article 4 para. 3). Every party has an obligation to introduce national legislation to prevent and punish illegal traffic in hazardous wastes and other wastes

(Article, 4 para. 4, Article 9, para. 5).

26. In the context of illegal traffic, the state of export is responsible for the actions of the exporter and the generator, and the state of import is responsible for the actions of the importer and the disposer. The state responsible for the action leading to an illegal movement has the obligation to ensure the environmentally sound disposal of the wastes in question, by re-importation into the state of export or otherwise, within 30 days of receiving information about the illegal movement. If the responsibility cannot be assigned to any state, the states involved in the movement must co-operate in ensuring the environmentally sound disposal of the wastes (Article 9, para. 2 to 4).

27. The parties may request the secretariat of the convention to assist them in identifying cases of illegal traffic. The secretariat shall immediately circulate any information on such cases to the parties concerned [Article 16, para. 1. (i)].

6. Duty to re-import

28. If a transboundary movement of hazardous wastes or other wastes which is otherwise carried out in accordance with the provisions of the convention cannot be completed according to the contractual agreement, the state of export has a duty to ensure the re-importation of the wastes if alternative arrangements for their environmentally sound disposal cannot be made within 90 days from the time the exporting state and the secretariat have been informed (Article 8).

7. International co-operation, technical assistance and transmission of information

29. In accordance with the aim to reduce the generation as well as the transboundary movements of hazardous wastes and other wastes to a minimum, the convention calls for international cooperation between parties in areas related to environmentally sound waste management, such as development of low-waste technologies and environmentally sound waste management systems, transfer of technology and know-how, training of technicians, harmonization of technical standards and guidelines, and monitoring of the effects of waste management on human health and the environment. Special consideration is to be given to assisting developing countries which are parties in these areas (Preamble, para. 20, 21, Article 10). Every

developing country which is a party is entitled to receive technical assistance from developed countries which are parties, without differentiation between developing countries consenting to import hazardous wastes from the industrialized world and countries banning such imports. In accordance with Articles 4 para. 8 and 15 para. 5(e), the Conference of Plenipotentiaries adopted resolution 8, which calls for the establishment of a working group to develop technical guidelines for the environmentally sound management of hazardous wastes, taking into account the situation of developing countries in particular. UNEP is currently working on the preparation of a first draft.

30. The effectiveness of the control measures provided by the Convention depends largely on the accessibility of relevant information. The

Convention therefore calls for transmission of information related to the control system, such as national definitions of hazardous wastes, authorities responsible for giving and receiving notifications of transboundary movements, decisions made by parties to ban the import and/or export of hazardous wastes and other wastes, decisions by transit states not to require prior written consent, and bilateral, multilateral or regional agreements entered into by parties. The Parties shall also inform each other on particulars of transboundary movements in which they have been involved, accidents occurring during transboundary movements, and measures adopted by them in implementation of the Convention [Preamble, para. 11, Article 4 para. 2 (h), Article 13].

8. Protocol on Liability

31. The Basel Convention obligates the contracting parties to co-operate with a view to adopting, as soon as practicable, a protocol setting out 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 12). The Basel Conference also adopted a resolution requesting the Executive Director to establish a working group of legal and technical experts to develop elements for inclusion in a protocol on liability (Resolution 3). UNEP Secretariat requested Governments to reply to a questionnaire on liability. Up to date, 33 countries have replied. After the elements were considered at an informal consultation of experts in April/May 1990, they were submitted to the first

session of the ad hoc working group of experts held in Geneva in July 1990. Experts from 42 countries and representatives from 10 inter-governmental and non-governmental organizations discussed these elements. The second session of the ad hoc working group to be held in early 1991 will further discuss them.

On the basis of an informal consultation held in April 1990, the draft elements which might possibly be included in a protocol on liability were prepared. These elements were presented to a group of legal and technical experts for their consideration at the Geneva meeting held from 2-6 July 1990. UNEP is also following the activities of other international organizations in the field of liability.

9. Convention Secretariat

32. The Convention provides for the establishment of a secretariat, the main functions of which shall be to ensure the cooperation between parties and the transmission of information required under the provisions of the convention. It shall also assist parties in the implementation of the convention, mainly by identifying sources of technical assistance, training and know-how related to the environmentally sound waste management and the handling of the notification system, as well as consultants or consulting firms qualified to assist them in the assessment of notifications, hazardous waste shipments and disposal facilities. The secretariat shall also assist parties, on request, in identifying cases of illegal traffic and co-operate with parties and organizations in the provision of experts and

equipment to assist parties in emergency situations (Article 16, para. 1). Thus, the convention secretariat has an important monitoring function in the implementation of the provisions of the convention.

33. In accordance with article 16, para. 2, UNEP carries out the duties of the secretariat on an interim basis. The interim secretariat is located in Geneva (Switzerland). The conference of the parties, at its first meeting after entry into force of the convention, will designate the secretariat from among the competent inter-governmental organizations which have indicated their willingness to assume its functions (Article 16, para. 3). It will also adopt financial rules to determine the financial participation of the parties (Article 15, para .3). During the interim period of operation, the costs of the

secretariat shall be met by voluntary contributions from signatory states and parties. To this end, resolution 6, adopted by the Basel Conference, calls upon all states to consider voluntary contributions towards the costs of the interim secretariat.

Development of the Main Principles and Provisions of the Basel Convention

The Basel Convention in its present form is the result of intensive negotiations in which representatives of states with different economic, technical and geographical situations participated. Accordingly, it was not always easy to reach consensus, though the work was carried out in view of the common aim to reduce and control the international traffic in dangerous wastes.

The first draft of the convention, which was prepared by the UNEP secretariat and submitted to the working group of experts as a basis for discussions, incorporated the aim to reduce the generation of hazardous wastes and their transboundary movements to a minimum in accordance with the Cairo guidelines. This principle was further elaborated during the negotiation process. At the

organizational meeting of the working group, the experts discussed a number of issues which were considered to be of particular importance, including the definition of hazardous wastes, the prior written consent of the importing state to the import of hazardous wastes, the rights of transit states with respect to transboundary movements through their territories, and the provision of assistance to developing countries to increase their capabilities to monitor the movement and disposal of hazardous wastes (F: Ad Hoc Working Group of Legal and Technical Experts with a Mandate to prepare a Global Convention on the Control of Transboundary Movements of Hazardous Wastes, Report of the Organizational Meeting, Budapest, 27 - 29 October 1987, UNEP/WG. 180.3, p.4-8).

Throughout the negotiation process, these issues were among the most important and contentious. At its first meeting, the working group agreed to define the wastes covered by the convention by a core list of wastes commonly recognized as hazardous, which would be annexed to the convention. It was also agreed to prohibit waste exports if the exporting state has reason to believe that the environmentally sound management would not be guaranteed in the prospective state of import (F: Second Revised Draft Convention on the Control of Transboundary Movements of Hazardous Wastes, UNEP/WG. 182/3, Annex I).

At the second meeting, the annexes defining hazardous wastes as well as disposal operations and information to be provided on a movement were elaborated. The scope of the convention was

extended to include wastes not contained in the core list but defined as hazardous under the national legislation of one or more of the states involved in a given movement. The system of prior notification of transboundary movements and prior written consent by the states of import and transit, which was outlined in the previous drafts and constitutes one of the cornerstones of the convention, was elaborated and strengthened at the second meeting (F: Third Revised Draft Convention on the Control of Transboundary Movements of Hazardous Wastes, UNEP/WG. 186/3, Annex A).

The functions of the secretariat of the convention and the areas of international co-operation were extended and broadened at the second and third meetings of the working group. At the third and fourth meetings, the

scope of general obligations was broadened. Several important provisions were introduced, including the obligation to ensure the environmentally sound management of hazardous wastes whatever the place of disposal, the right of every state to ban the import of hazardous wastes and the obligation to all parties to prohibit exports to such states, the obligation to dispose of hazardous wastes as close as possible to their source of generation, the provision permitting exports of wastes only if the generating state does not have the capabilities to dispose of them, and the obligation to states to prohibit the import of wastes if they have reason to believe that the wastes will not be managed in an environmentally sound manner (F: Fifth Revised Draft Convention on the Control of Transboundary Movements of Hazardous Wastes, UNEP/WG. 182/3, Annex I,

Luxembourg Revision of the Preamble and Articles I-XII of the Fifth Revised Draft Convention (on the Control of Transboundary Movements of Hazardous Wastes), UNEP/WG. 190/4, Annex I). These provisions were further discussed and elaborated during the subsequent meetings.

A major step was the introduction of the concept of "limited ban", which permits transboundary movements of hazardous wastes between contracting parties only. This concept was agreed by the experts at the fourth session of the Working Group. Consequently, the notification system was further elaborated and adjusted to the new concept (F: Luxembourg Revision of the Preamble and Articles I-XII of the Fifth Revised Draft Convention (on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, UNEP/ WG. 190/4, Annex I).

The issue of illegal traffic gained importance after the spectacular reports on illicit waste dumpings in third world countries. The working group, at its fourth and fifth sessions, elaborated the definition of illegal traffic, the responsibility of the states involved, the provision declaring illegal traffic to be criminal, and the obligation to contracting parties to introduce national legislation to prevent and punish it.

At the fifth session, the experts extended the functions of the secretariat and the scope of international cooperation, strengthening the obligation of contracting parties to provide assistance to developing countries in the field of waste management and in the handling of the notification system. The scope of the convention was broadened to include household wastes and incinerator ash. The article on illegal

traffic was finalized and the rights of transit states determined. The provision regarding bilateral, multilateral or regional agreements between parties and non-parties was tightened, permitting such agreements only if their provisions were no less environmentally sound than those of the Basel Convention. The provisions related to the responsibility of the generating state were strengthened. An article regulating verification of compliance with the provisions of the convention was incorporated (F: Final Report of the Working Group of Legal and Technical Experts with a Mandate to Prepare a Global Convention on the Control of Transboundary Movements of Hazardous Wastes, with Report on the fifth session as Annex I, UNEP/IG. 80/4).

At the conference of plenipotentiaries, the

provisions of the convention were finalized. Several important issues were addressed by the resolutions adopted by the conference. These include the development of a protocol on liability and of technical guidelines designed to assist parties in the environmentally sound management of hazardous wastes, institutional and financial arrangements for the interim secretariat, and co-operation with other relevant international organizations to ensure harmonization of the provisions of other international legal instruments with those of the Basel Convention.

Concerns and Criticism

- The Position of Developing Countries

Developing countries, in particular the OAU on behalf of the African states, as well as non-governmental organizations, have repeatedly expressed their concern about the fact that the Basel Convention does not, in principle, ban transboundary movements of hazardous wastes and other wastes. Concern has also been expressed regarding the adequacy of the control system provided by the convention. It is feared that many countries, especially developing countries, do not possess the necessary technical capacity and know-how to make appropriate use of the control system, and that illegal practices will therefore continue.

The convention emphasizes the sovereign right of every state to ban the import of hazardous wastes into its territory. This right is en-

forced by the notification of such decisions to the other parties, who then have a legal obligation to prohibit any exports of hazardous wastes and other wastes to such a state. The monitoring function of the secretariat is important in this context.

The Basel Convention, as a global legal instrument, must meet the needs and requirements of all the regions of the earth. A total ban of all transboundary movements of hazardous wastes and other wastes would be inappropriate in cases where it is more environmentally sound to dispose of a certain type of wastes in another country where the necessary disposal facilities are available. A general prohibition of such movements would be contrary to the principle of environmentally sound waste management. It would, for example, prevent the transfer

of hazardous wastes from one developed country to another which has special disposal facilities for that particular type of wastes. It would also prevent the establishment of joint disposal facilities by a group of neighbouring countries, and would force every country to provide its own disposal facility for every type of wastes. This would lead to inappropriate situations, for example if a factory was located near a border and the wastes generated by it could best be disposed in a facility on the other side of the border, or if the amount of a certain type of waste generated within one country was so small that the establishment of a special disposal facility for that country alone would not be justified. In this context, it should be noted that the vast majority of the transboundary movements of wastes generated in developed countries take place between one developed country and another, in

accordance with bilateral agreements.

However, the specific needs of groups of states or regions with similar conditions and aims can be met under the provisions of article II of the convention. These provisions allow parties to enter into bilateral, multilateral or regional agreements with other parties or non-parties, provided such agreements establish requirements no less environmentally sound than those of the Basel Convention.

Any groups of states could, for example, adopt an agreement providing for a total ban of imports of hazardous wastes and other wastes into their territories. Such an agreement would then be notified, through the secretariat, to all parties to the Basel Convention, who would have the obligation to prohibit exports to or through any of the states party to the agreement. Arti-

cle 4, para. 2(e), based on a proposal made by the OAU, specifically prohibits exports of hazardous wastes or other wastes to a group of states belonging to an economic and/or political integration organization - particularly developing countries - which have banned the import of such wastes. Thus, the provisions of the Basel Convention would ensure that such a collective ban would be respected by all its parties.

The control system, which is one of the cornerstones of the Basel Convention, ensures the enforcement of import bans and provides for strict control of such movements as are permissible under environmental aspects. The monitoring function of the secretariat is essential in this context. Without such a system, transboundary movements of hazardous wastes would continue uncontrolled.

The justified concerns of developing countries regard-

ing the lack of technical capacity and know-how which would enable them to handle the control system are taken into account by the strong emphasis on international co-operation between parties in technical matters related to environmentally sound waste management. Special consideration is given to assisting developing countries in such matters. Therefore, the convention facilitates the improvement of developing countries' capacities regarding the management of wastes, including wastes generated within those countries. This is of particular importance, given the growing industrialization of developing countries.

The Basel Convention is the only existing global legal instrument regulating transboundary movements of hazardous wastes. As noted above, its provisions ensure protection of countries against uncontrolled dumping of toxic wastes and promote

environmentally sound waste disposal and minimization of waste generation. The control system ensures that the convention does not remain a mere declaration of intentions, but that the rights of countries are respected. It is therefore important that as many countries as possible become parties to the Basel Convention to achieve effective control of transboundary movement and disposal of hazardous wastes worldwide.

Outlook - Future Development

After the adoption of the Basel Convention, the Governing Council of UNEP, at its 15th Session in May 1989, adopted Decision 15/33, which calls upon all governments to sign and ratify the Basel Convention so as to ensure its entry into force as soon as possible. It also calls upon governments to consider voluntary contributions towards the costs of the interim secretariat, and requests the Executive Director of UNEP to develop programmes, within the framework of the interim secretariat, to assist developing countries in the fields enumerated in the convention.

A number of states are preparing the ratification of the Basel Convention. The Organization of African Unity (OAU), in accordance with resolution CM/Res. 1225 (L) adopted by its Council of

Ministers at its Fiftieth Ordinary Session in Addis Ababa from 17 to 22 July 1989, is considering its position on the convention. Based on the same resolution, the OAU has established a working group of legal and technical experts to elaborate a draft African convention on the control of transboundary movements of hazardous wastes.

The interim secretariat of the convention has been established in Geneva (Switzerland) in November 1989. Its main functions include the following:

- Promotion of entry into force of the convention,

- Duties in connection with the implementation of the resolutions adopted by the Basel Conference, in particular the establishment of working groups, the holding

of inter-agency meetings between UNEP and other relevant international organizations and the preparation of the necessary documents for submission to experts' working groups,

Elaboration of draft model legislation in the field of hazardous waste management for developing countries,

Provision of assistance to developing countries in technical and legal matters related to the environmentally sound management of hazardous wastes,

Preparation of the first meeting of the contracting parties which will be held after the entry into force of the convention.

Illegal Traffic in Toxic and Dangerous Products and Wastes

1. The Illegal Traffic Report

Awareness and concern regarding international transport of toxic and dangerous products and wastes were reflected in the discussions of the General Assembly of the United Nations at its 42nd Session in 1987. This issue was the subject of a resolution on Traffic in Toxic and Dangerous Products and Wastes adopted by the General Assembly on 11 December 1987 (F: GA Resolution 42/183, 11 December 1987). The assembly, convinced that this problem required the attention and cooperation of the international community, requested the Secretary-General to prepare a comprehensive report on the subject. A preliminary report was to be submitted to the economic and Social Council of the United Nations at its second regular

session in 1988.

Accordingly, the Executive Director of UNEP, on behalf of the Secretary-General, requested all governments and international organizations as well as a number of non-governmental organizations to provide him with the relevant information. After considering the preliminary report, which was submitted to it in July 1988, the Economic and Social Council in a resolution outlined a number of points the final report should consider in particular (F: ECOSOC Resolution 1988/70, 28 July 1988).

The report on illegal traffic in toxic and dangerous products and wastes, based on information provided to the Executive Director of UNEP by 62 governments and 24 organisations, was submitted to the general assembly at its

44th Session in July 1989 (F: UN General Assembly, 44th Session; Development and International Economic Co-operation, Environment, Illegal Traffic in Toxic and Dangerous Products and Wastes; Report of the Secretary-General, Document A/44/362, 18 July 1989).

2. Characteristics of illegal traffic

The report deals with illegal traffic in toxic and dangerous products and wastes, that is, transports which are carried out in contravention of national legislation and relevant international legal treaties, guidelines and principles. Transports carried out in compliance with national and international law are not covered. Due to the fact that illegal traffic, by its very nature, is mostly furtive, it is difficult to give a full account of the situation. However, the report states clearly that illegal traffic presents a

serious danger to the environment and to human health, especially in developing countries where appropriate treatment and disposal facilities do not exist. The report shows a number of characteristics of this dangerous trade:

Illegal transport of toxic and dangerous products and wastes take place mainly from the industrialized to the developing world.

A clear increase in the volume of illegal traffic cannot be readily established. However, it is clear that the production of chemicals and the generation of wastes have increased enormously world-wide. World production of organic chemicals, for example, has gone up from 7 million metric tons in 1950 to 250 million metric tons in 1985. The rapid disap-

pearance of landfill space, the escalation in disposal facilities in developed countries lead to the conclusion that the number of illegal exports of hazardous substances must also have grown at alarming rates.

In addition to illegal exports, there is a clear growth in the number of proposals from industrialized countries to construct so-called "waste-to-energy" plants in developing countries or to provide supposedly non-hazardous waste landfill or incineration facilities.

The table on page 43 shows the types of wastes exported, their characteristics as well as the origin and destination of the shipments, according to the information received by UNEP.

Classification of types of toxic and dangerous products and wastes being illegally traded and dumped

TYPES OF WASTES AND PRODUCTS	COMPONENTS	CHARAC- TERISTICS	TRANSBOUNDARY ORIGIN	MOVEMENTS a/ DESTINATION	QUANTITY IMPORTED	REFERENCE
i. Radioactive waste			USA, Canada, Italy	Ecuador, Nigeria		Most imported wastes have been returned or requested to be returned to the State of origin
ii. Household waste					15,000 tons	Not all fly ash is hazardous under US law.
Municipal incinerator	Dioxins, heavy metal fly ash	Potentially toxic and other chemicals	USA and eco-toxic	Guinea		
iii Industrial waste and products						
1. Chemical wastes	Heavy metals	Explosive, toxic and corrosive	Italy	Venezuela	11,000 barrels	Returned later to the State of origin, Italy
2. Pesticides	Arsenic, cyanide, asbestos, solvents		Italy	Nigeria	5 shipments	Nigeria requested the recovery by Italy of the waste dumped and clean-up of the site
3. Waste oils			USA	Mexico	90 tons	Several shipments
4. PCBs			Unknown	Guyana	2 tons	
5. Hydrochloric acid			FRG	Hungary		
6. Chlorinated organic compounds			FRG	Lebanon		
7. Silicium			FRG	Turkey		
8. Cupric chloride			Unknown	Singapore		
9. Maintenance cleaner			Unknown	Lebanon		
10.			Singapore	Thailand		
11. Miscellaneous products and wastes	Ammonium chloride		Singapore	Thailand		
	Activated carbon, spent mercury chloride, alcohols, mercaptans		W. Europe	Turkey		
			USA	Mexico	4,000 tons	
			Australia	New Zealand	30 instances	
			FRG	Turkey		

a/ All transboundary movements were reported by the country of destination except in the case of industrial waste oils, where Norway, the state of origin, provided information on oil illegal traff (Source: *Illegal traffic in Toxic and Dangerous Products and Wastes: Report of the Secretary-General Assembly of the United Nations at its 44th Session, 18 July 1989*)

3. Conclusions and Recommendations

Based on an analysis of the information received, the report comes to a number of conclusions and puts forward recommendations for actions to be taken to prevent this dangerous trade.

Conclusion The volume of illegal traffic in toxic and dangerous products and wastes will continue to grow as the world economy expands and disposal facilities become more scarce and more expensive.

Recommendation To avert the dangers connected with this threat, every effort should be made to ensure that the **Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal** enters into force as soon as possible. States should become parties to this treaty, and its provisions should be implemented as soon as possible.

All states should participate in the system established by the amended **London Guidelines for the Exchange of Information on Chemicals in International Trade**.

Conclusion

Developing countries lack funds as well as technical capacity and expertise to carry out the environmentally sound management of wastes. In this light, it must be considered that owing to developing countries' growing economies, they will produce an increasing amount of hazardous wastes themselves, for which disposal options will not be guaranteed. There appears to be, in some cases, a correlation between the threat of illegal traffic and the debtor status of the receiving country. Poor countries are more likely to accept proposals for importing hazardous wastes.

Recommendation

Technical and financial assistance should be provided to developing countries to enable them to achieve environmentally sound management of hazardous wastes and to introduce low and non-waste technologies. The Basel Convention imposes an obligation on developed countries that are parties to provide such assistance to developing countries parties to the Convention. In accordance with Resolution 8 of the Basel Conference, technical guidelines for environmentally sound waste management should be established. In addition, every country should continue to make efforts to

increase its own technical capacity. It was suggested by some countries that technical assistance should focus especially on debtor countries, as they may be most susceptible to the financial lure presented by illegal traffic.

Conclusion

National laws controlling transport and disposal of hazardous wastes are often incomplete, especially in developing countries. There is a lack of harmony between laws of different countries. However, it is encouraging that a number of developing countries have prepared or are preparing legislation to prevent them from becoming dumping sites for foreign wastes.

Recommendation

Assistance should be provided to developing countries to prepare appropriate legislation or to continue the work already initiated.

Conclusion

Control of hazardous waste transports is hindered by the fact that shipments often seem to be composed of mixed wastes, consisting of different types of wastes and defined differently in each country by the use of sham recycling schemes.

Recommendation Every effort should be made to have a clear definition of the wastes. This should be achieved by strictly applying the relevant rules of the Basel Convention. To ensure that the goals of the convention are met, national laws should include specification of different categories of wastes and their hazardous characteristics.

The analysis of the problem of illegal traffic in toxic and dangerous products and wastes as well as the conclusions and recommendations put forward by the report show clearly that the approach to many of the issues identified would be the early entry into force of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and the strict application of its provisions which directly address the issues in question.



