

THE INTERNATIONAL EFFORT TO CONTROL THE TRANSBOUNDARY MOVEMENT OF HAZARDOUS WASTE: THE BASEL AND BAMAKO CONVENTIONS

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I. INTRODUCTION

In 1986, a ship named the *Khian Sea* set sail from Philadelphia carrying nearly 14,000 tons of toxic incinerator ash.¹ The ship was unable to dispose of the ash at her first destination, the Bahamian port of Ocean Cay.² The ship then went to Honduras, Panama, and Guinea-Bisseau, only to be rejected.³ Finally, the Haitian Department of Commerce issued an import permit to the *Khian Sea* allowing it to dispose of its cargo.⁴ The Haitian Government, however, rescinded the permit after the ship unloaded between 2000 and 4500 tons of ash.⁵ Apparently, the Haitian Government initially was under the impression the ship was going to be

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1. Teresa A. Wallbaum, *America's Lethal Export: The Growing Trade in Hazardous Waste*, 1991 U. ILL. L. REV. 889, 893 (1991).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.* at 893.

disposing of fertilizer, not toxic ash.⁶

The Khian Sea returned to the United States with the intention of returning the ash to its place of production.⁷ The United States, however, refused the request of the ship and ordered them to remain anchored.⁸ In direct conflict with the Coast Guard order to remain anchored, the Khian Sea set sail in the middle of the night.⁹ The ship sailed to a number of countries including Yugoslavia, Sri Lanka, Senegal, and Indonesia.¹⁰ The ship was unable to persuade any of these nations to accept her toxic cargo.¹¹ Shortly after being turned down by the those nations, the Khian Sea docked in Singapore absent her cargo.¹² The captain of the ship insisted that no ash was dumped at sea.¹³

The Khian Sea incident is just one example of the dangers associated with the exportation of hazardous waste. As industrialized nations continue to produce mass quantities of hazardous waste, the need for proper waste storage and disposal becomes more apparent. Due to the scarcity of waste disposal sites and the increasing cost of disposal, there is an economic incentive for companies to export their waste.¹⁴ For example, due to the increasingly tight regulations, disposal of one ton of waste can cost as much as \$2500 in the United States.¹⁵ The cost of disposal in a less developed nation can cost as little as three dollars per ton.¹⁶ Furthermore, as the environmental rules and regulations concerning hazardous waste in the United States become tougher, the environmental laws in less developed nations remain lax.¹⁷ The different standards of laws also promote the exportation of waste as business and industry seek to increase their economic competitiveness even at the expense of human health.¹⁸

6. Wallbaum, *supra* note 1.

7. *Id.* at 894.

8. *Id.*

9. *Id.*

10. *Id.* at 894.

11. Wallbaum, *supra* note 1.

12. *Id.*

13. *Id.*

14. Michelle M. Vilcheck, *The Controls on the Transfrontier Movement of Hazardous Waste from Developed to Developing Nations: The Goal of a Level Playing Field*, 11 J. INT'L L. BUS. 643, 645 (1991).

15. Wallbaum, *supra* note 1, at 891.

16. *Id.*

17. Stephen Johnson, *The Basel Convention: The Shape of Things to Come for United States Wastes Exports?*, 21 ENVTL. L. 299, 306 (1991).

18. Vilcheck, *supra* note 14, at 645.

The purpose of this note is to analyze the international efforts currently taking place which are designed to minimize the dangers of hazardous waste exportation. Section two of this note provides background information as to why international action is needed in the transboundary movement of hazardous waste. The third section analyzes the Basel Convention. Section four contains a synopsis of the Bamako Convention. Section five points out the faults and weaknesses in the two conventions. Section six suggests recommendations as to what can and should be done concerning hazardous waste exportation. Finally, section seven concludes that in order for the United States and the world to control a growing crisis, the Basel Convention needs to be amended to permit effective implementation and enforcement.

II. THE SCOPE OF THE PROBLEM

The environmental group Greenpeace estimates that industrialized nations produce approximately 300 million tons of hazardous waste per year.¹⁹ Although most waste is managed in the country that produces it, the exporting of hazardous waste continues to increase.²⁰ The Environmental Protection Agency (EPA) estimates that the United States exports approximately 160,000 tons of waste per year, only one percent of the amount of waste generated in the United States.²¹

The United States, along with other industrialized nations, is in a position to take advantage of less developed nations when it comes to disposing of hazardous waste. Companies in industrialized nations are willing to pay generous fees to developing nations in return for an agreement to import their hazardous waste.²² At first glance, this appears to be an ideal market situation. That is, the industrialized nations have capital and need a place to dump their waste while developing nations lack capital and have the room to store the waste.²³

Although this appears to fit the economic supply and demand framework perfectly, the international trading of hazardous waste produces externalities which outweigh any economic benefits. Many developing nations do not have either the technical expertise or the administrative capabilities to manage hazardous waste.²⁴ The attitude of the industrialized

19. Wallbaum, *supra* note 1, at 892.

20. *Id.*

21. *Id.*

22. Vilcheck, *supra* note 14, at 646.

23. *Id.*

24. *Id.* at 647.

nations, which has been characterized as "the path of least resistance and least expense," compounds this problem.²⁵ That is to say, industrialized nations will continue to export hazardous waste to less developed nations with full knowledge that the importing nation cannot adequately manage the waste or maintain sufficient environmental and health standards. Industrialized nations have been known to deliberately mislabel waste and to mix hazardous waste with other harmless material all in an effort to get the waste out of their country and into another.²⁶ Clearly this practice hinders whatever efforts a developing nation might undertake in an attempt to manage the waste in an environmentally safe manner.²⁷

It is apparent that developing nations are sacrificing the health of their people in the long run in return for capital in the short run. Moreover, industrialized nations, who should be thinking about the well-being of the globe, continue to act irresponsibly concerning the exportation of hazardous waste. The fact is this is a global issue, and only an international agreement can begin to solve these problems.

III. THE BASEL CONVENTION

In response to growing international concern over the transboundary movement of hazardous waste, the United Nations Environment Programme (UNEP) organized a group to develop guidelines to aid in the management of hazardous waste.²⁸ The group developed what became known as "the Cairo Guidelines."²⁹ In essence, the guidelines recommended that UNEP arrange an international meeting to develop and implement an international agreement to help resolve the hazardous waste dilemma.³⁰

Despite these guidelines, there was concern among many nations that an agreement could not be reached due to various conflicts.³¹ In fact, there were several instances in which nations gathered to form drafts of some type of agreement; yet, they failed.³² For example, from January 31 to February 4, 1989, delegates from fifty countries gathered to write a

25. Wallbaum, *supra* note 1, at 891.

26. Vilcheck, *supra* note 14, at 645.

27. *Id.*

28. Johnson, *supra* note 17, at 301.

29. *Id.*

30. *Id.*

31. *Delegates of 50 Countries Fail to Agree on Draft Covering Movement of Toxic Wastes*, 12 Int'l Env'tl. Rep. (BNA) No. 2, at 49 (Feb. 8, 1989).

32. *Id.*

draft to be presented to a committee in Basel.³³ However, the delegates disagreed over some issues, namely the question of prior informed consent.³⁴ Third world nations wanted to have the ability to say what could be transferred over their waters before it was transferred. Another example occurred when forty nations gathered in Caracas, Venezuela in an attempt to bridge gaps between nations regarding the agreement.³⁵ Jan Huismans, the head of UNEP's program on potentially toxic chemicals said, "There's no doubt that stumbling blocks still exist."³⁶ One such barrier was the definition of hazardous waste.³⁷ Although there were several questions about the upcoming convention in March of 1989, more than 116 countries sent representatives to Basel, Switzerland to attend the Convention organized by UNEP.³⁸ On March 22, 1989, over 116 nations became signatories to the Basel Convention on the Transboundary Movement of Hazardous Waste (Basel Convention).³⁹ This agreement is the most restrictive international regulation of hazardous waste exportation to date.⁴⁰ The Basel Convention's goal was to establish a global framework for the movement of hazardous waste.⁴¹ The Basel Convention does not call for a complete ban of hazardous waste exportation, rather it attempts to regulate it.⁴²

The Basel Convention applies to "hazardous wastes" and "other wastes."⁴³ Wastes are defined as "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."⁴⁴ Hazardous wastes include waste streams

33. *Id.*

34. *Id.*

35. *Developed, Developing Countries Disagree Over Elements of Waste Shipment Agreement*, 11 Int'l Envtl. Rep. (BNA) No. 7, at 376 (July 13, 1988).

36. *Id.*

37. *Id.*

38. David P. Hackett, *An Assessment of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal*, 5 AM. U. J. INT'L L. & POL'Y 291 (1990).

39. *Id.*

40. Vilcheck, *supra* note 14, at 651.

41. Hackett, *supra* note 38, at 291.

42. *Id.*

43. *Id.*

44. Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal, Mar. 22, 1989, S. Treaty Doc. No. 5, 102d Cong., 1st Sess. (1991), U.N. Doc. UNEP/I.G.80/3, *reprinted in* 28 I.L.M. 649, 659 (entered into force May 5, 1992) [hereinafter Basel Convention].

and specific listed wastes.⁴⁵ Waste streams are not specific wastes, rather they are general waste fields.⁴⁶ Some waste streams are medical waste and pharmaceutical wastes.⁴⁷ A listed waste, which is contained in Annex I of the Basel Convention, is a hazardous waste if and only if it possesses a characteristic provided for in Annex III.⁴⁸ Wastes which do not fit this profile are hazardous, for the purposes of the Basel Convention, if the waste is defined as, or is considered to be, a hazardous waste by the government of either the State of import, export or transit.⁴⁹ Any waste belonging to any category in Annex II, which is subject to cross international borders is classified as "other wastes."⁵⁰

One main problem prior to the Basel Convention was dealing with the definition of hazardous waste.⁵¹ Varying definitions of hazardous wastes could lead to misunderstandings about how to treat a waste after being exported. Specifically, a country exporting a waste it deemed safe may not transfer the waste in the most environmentally safe manner. Further, the importing country may not dispose of the waste in the safest manner if it was told by the exporting country that the waste is not hazardous.

The Basel Convention attempts to remedy this problem by allowing each nation to submit its definition of hazardous waste to the Secretariat.⁵² By doing so, if either the exporting, importing or transit nation defines the waste being transported as hazardous, the Convention defines the waste as hazardous for exporting purposes.⁵³

In order to transport any hazardous or other waste, the Basel Convention requires authorization from the importing nation and any transit nations.⁵⁴ To receive the necessary authorization, the exporting nation must submit written notification to the "competent authority" of the importing nation.⁵⁵ The notification must specify the kind of waste and the amount of waste.⁵⁶ Before the actual exportation can take place, the

45. *Id.* at 678.

46. Hackett, *supra* note 38, at 316.

47. Basel Convention, *supra* note 44, at 678.

48. *Id.* at 659.

49. *Id.*

50. *Id.*

51. Hackett, *supra* note 38, at 313.

52. Basel Convention, *supra* note 44, at 661.

53. *Id.* at 659.

54. *Id.* at 664.

55. *Id.* at 665.

56. *Id.*

importing nation, and any transit nations, must give their respective consents in writing.⁵⁷ These nations do not necessarily have to reply in the affirmative or the negative. Instead, they can seek additional information from any source about the waste, they can agree subject to a condition, or they can deny permission altogether.⁵⁸

After the export occurs, a document detailing the waste is to accompany the waste wherever it goes. The party who takes charge of the waste, called the disposer, must sign the document and notify the export state of receipt of the waste and of its ultimate place of disposal.⁵⁹ The Basel Convention further states that if for any reason the waste cannot be disposed of in an environmentally safe manner in the import state, the state of export must accept the return of the waste.⁶⁰ This provision of the Basel Convention attempts to remedy the mislabeling scenario in which a country unknowingly accepts or admits a hazardous waste.

A common scenario that occurs with the exportation of hazardous waste deals with what happens with the waste after being successfully imported. The Basel Convention recognizes the need to provide long-term care for hazardous waste. In response to that concern, the Basel Convention inserted a record keeping and reporting requirement.⁶¹ This imposes upon the parties the annual duty to report all incidents dealing with hazardous waste during the past year. Although this provision will undoubtedly create a substantial amount of paperwork, it is paramount to the safety of the environment that once the waste is stored in an environmentally safe manner it remain that way.

Besides the long-term concern of record keeping, another common issue which needed to be addressed was that of technology. As previously mentioned, many developing nations lack the technology to deal with certain kinds of hazardous waste.⁶² This technological deficiency sometimes resulted in the mismanagement of the waste. In an attempt to ensure that each signatory of the Basel Convention could successfully manage each hazardous waste encountered, the Convention calls for transfers of technology.⁶³ Parties are asked to make information available on the latest technology and to cooperate with any nations in need of

57. Basel Convention, *supra* note 44, at 664.

58. *Id.*

59. *Id.* at 665.

60. *Id.* at 666.

61. *Id.* at 669.

62. Vilcheck, *supra* note 14, at 646.

63. Basel Convention, *supra* note 44, at 667.

technological assistance.⁶⁴

In addition to these duties, the Basel Convention calls for various general obligations to be performed. These duties include but are not limited to the following: (1) an effort to reduce the amount of hazardous waste being produced; (2) an effort to ensure adequate disposal facilities; (3) an effort not to allow wastes to be exported to a nation that does not have the ability to manage the waste in an environmentally sound manner; and (4) a substantial effort to take appropriate measures to enforce the provisions of the Convention.⁶⁵

Two other important issues discussed in the Basel Convention are those of liability and settlement of disputes. As to liability, the Basel Convention seeks cooperation from the parties to establish a protocol which sets out rules for compensation resulting from damages due to the transboundary movement of the waste.⁶⁶

With respect to the settlement of disputes, the Basel Convention states that the parties shall seek a peaceful method of settlement.⁶⁷ The recommended method is that of straightforward negotiation. If the parties cannot reach an agreement, the parties have the choice of settling the dispute at the International Court of Justice or going to arbitration.⁶⁸

IV. THE BAMAKO CONVENTION

African nations have characterized hazardous waste dumping as "a crime against Africa and the African people."⁶⁹ The African nations lack the technical expertise and the administrative capabilities to monitor, detect, or handle hazardous waste, and thus they are susceptible to illegal dumping.⁷⁰ For example, in 1988, 15,000 tons of toxic ashes were found in Guinea.⁷¹ In addition to their lack of skill and experience, the developing African nations have other problems dealing with waste. Much of Africa is subject to heavy rains due to the tropical climate. Landfills are continually penetrated by rain, making it difficult to dispose of waste in a sound environmental fashion.⁷² Furthermore, the health of many poor

64. *Id.*

65. *Id.* at 662.

66. *Id.* at 668.

67. *Id.* at 675.

68. Basel Convention, *supra* note 44, at 675.

69. C. Russell H. Shearer, *Comparative Analysis of the Basel and Bamako Conventions on Hazardous Waste*, 23 ENVTL. L. 141, 149 (1991).

70. *Id.* at 147.

71. *Id.*

72. *Id.* at 146.

towns is at risk because the poorest neighborhoods are generally located next to hazardous waste disposal sites.⁷³ The close proximity of these sites can result in the water supply of the town being contaminated. Due to these and other related concerns, the Organization of African Unity (OAU) adopted the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes Within Africa (Bamako Convention).⁷⁴

The main focus of the OAU was the Basel Convention's failure to place a total ban on the exportation of waste.⁷⁵ Although the OAU represented themselves at the Basel Convention and signed the document, the OAU felt that the Convention did not go far enough.⁷⁶ The Basel Convention attempted to address OAU concerns by encouraging technological transfers.⁷⁷ Moreover, the Basel Convention allowed for state, bilateral, multilateral, regional, or economic integration unit agreements which ban the import of all wastes defined to be hazardous.⁷⁸ The latter provision gave the OAU the opportunity to remedy their own problems by entering into other more stringent agreements, illustrated by the adoption of the Bamako Convention.

The Bamako Convention applies to all hazardous wastes that are contained in Annex I of the document.⁷⁹ In addition to the items listed, any waste considered to be hazardous by the domestic laws of either the state of import, export, or transit is also considered hazardous under the Bamako Convention.⁸⁰ Also, any waste which has a characteristic contained in Annex II is hazardous for the Bamako Convention's purposes.⁸¹ In an attempt to ensure that all hazardous wastes are covered by the Bamako Convention, all waste which has been banned or refused registration by government regulation action for human health or environmental concern is also hazardous.⁸² Unlike the Basel Convention, the Bamako Convention addressed the problem of radioactive wastes and

73. *Id.*

74. Organization of African Unity: Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes Within Africa, Jan. 29, 1991, 30 I.L.M. 773, 778 [hereinafter Bamako Convention].

75. Shearer, *supra* note 69, at 142.

76. *Id.*

77. *Id.* at 151.

78. *Id.* at 152.

79. Bamako Convention, *supra* note 74, at 778.

80. *Id.* at 779.

81. *Id.*

82. *Id.*

considered that a hazardous waste for Bamako Convention purposes.⁸³

Similar to the Basel Convention, the Bamako Convention imposes various general obligations upon the parties. All parties must take the appropriate measures to ensure that no hazardous waste enters Africa from a non-contracting party.⁸⁴ The Convention places the duty on the parties to monitor their respective waterways to ensure that no dumping occurs in any water, including the seas.⁸⁵ To gain a better idea of the scope of the hazardous waste industry, each party must report to the Secretariat all of the hazardous waste generated for that year.⁸⁶

A unique feature of the Bamako Convention is the unlimited joint and several liability provision.⁸⁷ When a country causes damages due to any violation of the Convention, it can be penalized any monetary sanction that a trier of fact determines.⁸⁸ In that proceeding, it is not necessary to determine who was at fault for the accident that caused the loss, injury, or damage. Instead, the generator of the waste is strictly liable.⁸⁹

Another distinctive aspect of the Bamako Convention is the approach to preventive pollution. The Convention does not allow for any substances to be released into the air which have the potential to cause harm.⁹⁰ This perspective is unique in that many other regulations allow toxic chemicals to be released in low amounts.⁹¹

Although there is a complete ban on imports from non-parties, the African nations can export waste and transfer waste intra-Africa.⁹² However, the African country must keep the waste it generates in their own country if it has the ability to successfully manage the waste.⁹³

The notification procedures and the settlement of disputes specified in the Bamako Convention are similar to the methods used in the Basel Convention.⁹⁴ The rationale for the reproduction of these provisions is presumably that the OAU had nothing significant to add to what the Basel Convention had already accomplished.

83. *Id.*

84. Bamako Convention, *supra* note 79, at 780.

85. *Id.*

86. *Id.* at 781.

87. Shearer, *supra* note 69, at 158.

88. *Id.*

89. *Id.*

90. *Id.* at 160.

91. *Id.*

92. Shearer, *supra* note 69, at 163.

93. *Id.*

94. Bamako Convention, *supra* note 79, at 797.

In effect, the only major difference between the two Conventions is that the Bamako Convention prohibits all wastes from being imported into Africa.⁹⁵ The OAU undoubtedly felt that due to the high danger involved in the hazardous waste industry, banning imports of waste was the only way to keep the African environment safe.

V. THE FLAWS IN THE BASEL AND BAMAKO CONVENTIONS

The Basel and Bamako Conventions are a significant step toward remedying the problems associated with the transboundary movement of hazardous waste. However, both Conventions have various faults which may prevent either of them from being effective.

One of the major problems the Basel Convention attempts to answer is the definition of hazardous waste. Unfortunately, nearly every nation has a different interpretation of what constitutes a hazardous waste.⁹⁶ Without a clear and uniform definition of hazardous waste, there may continue to be a problem implementing the Conventions.

The Basel Convention defines hazardous waste as wastes that fall into one of the listed categories of wastes in Annex I or as defined by the state of import, export, or transit.⁹⁷ There are two lists in Annex I, to-wit: waste streams and specific substances.⁹⁸ The waste streams category only includes general terms such as medical wastes.⁹⁹ The Convention goes into no further detail as to exactly what constitutes medical waste. The general categories listed under waste streams leave countries no choice but to interpret the general terms for themselves. The potential for varying meanings given to these general categories is great. This problem makes implementation of the Convention nearly impossible, at least as far as waste streams are concerned.

As to certain hazardous substances, the Basel Convention manages to list several specific items.¹⁰⁰ However, the Convention fails to indicate how much of a substance needs to exist in order for the waste to be considered hazardous. In other words, is the dumping of one gram of incinerator ash into the ocean enough to bring about a violation of the Convention? If not, how much ash would it take?

In addition to these shortcomings, for a waste to be hazardous it

95. Shearer, *supra* note 69, at 142.

96. Hackett, *supra* note 38, at 314.

97. Basel Convention, *supra* note 44, at 678.

98. *Id.*

99. *Id.*

100. *Id.* at 678-79.

has to meet one of the above mentioned qualities and must also display a characteristic listed in Annex III.¹⁰¹ Some of the characteristics include, but are not limited to, flammability and corrosivity.¹⁰² In this regard, the Basel Convention totally ignores any measurement methodologies and the meaning of flammable is imprecise. These problems lead to only one conclusion—varying definitions of hazardous waste. If a Convention's goal is to regulate the exportation of hazardous waste, and the Convention is not clear on the definition of hazardous waste it will be difficult for the Convention to be successful.

Beyond the varying interpretations of the definition of hazardous waste, the Basel Convention does not adequately deal with the problem of hazardous waste mixed together with recyclable material. In fact, the Basel Convention ignores the matter altogether. A fundamental question then becomes, at what point does waste become a material able to be recycled when it is mixed with a material that can indeed be recycled? For example, a German company was exempt from the relevant German law concerning hazardous waste disposal when it lawfully mixed wood chips with hazardous waste to create a burn material.¹⁰³ Similar types of cases may become more prevalent because of the Convention's failure to provide for a framework to deal with such potentially harmful situations.

The Basel Convention's notification provisions are also questionable. While reference to a particular waste is required before any exportation can take place, whether a country wants the waste is sometimes a guessing game. If an exporting country describes a waste as being a medical waste, which is all that is required, the importing country may unknowingly accept something that it is unable to properly dispose of safely. Furthermore, even if the most hazardous elements of the waste are described to the importing nation, little is known about the toxicity of 38,000 of the 48,000 chemicals listed with the EPA.¹⁰⁴ In effect, an importing country may not realize what waste they are receiving. The potential result of such a scenario is that the importing country may not have the resources to properly dispose of the waste.

A problem that is associated with the dilemma described above occurs when the importing nation has to notify the exporting nation about its ability to handle the waste in an environmentally safe manner. The Basel Convention recognized that many developing nations do not have the

101. *Id.* at 679.

102. Basel Convention, *supra* note 44, at 679.

103. Hackett, *supra* note 38, at 314-15.

104. *Id.* at 317.

necessary expertise to manage such waste, nor to make decisions about waste disposal. Given that fact, the Basel Convention relies on developing nations to assess their own ability to handle hazardous waste imported into their country. How can the importing country accurately measure its ability to handle the waste when, more often than not, it cannot even assess or know what its abilities are?

A significant difficulty that confronts the Basel Convention is that of enforcement. The Convention calls for the Secretariat to monitor compliance.¹⁰⁵ However, the main role of the Secretariat is to facilitate the flow of information.¹⁰⁶ If there is not a party who can monitor compliance, nations will not follow the provisions.

Assuming *arguendo* that an individual or entity does exist which can successfully monitor compliance, there is no enforcement mechanism available to force compliance. The enforcement of parties who do not comply are inadequate. The Basel Convention states that parties are to negotiate disputes amongst themselves.¹⁰⁷ If that fails, the parties can go before the International Court of Justice to settle the matter.¹⁰⁸ However, the International Court of Justice can only have jurisdiction over the parties involved if both parties consent to jurisdiction.¹⁰⁹ Therefore, all disputes are likely to be settled between nations in an informal setting. This type of resolution cannot, however, handle all the problems that may potentially arise. For example, if waste is dumped outside the territorial waters of any nation, it is unclear which nations can pursue sanctions. It appears that the Basel Convention will be enforced only as much as each nation wants it to be enforced.

Because the Basel and Bamako Conventions are very similar, many of the weaknesses in the Basel Convention also apply to the Bamako Convention. For example, although the Bamako Convention does define hazardous waste in a broader fashion than does the Basel Convention, the Bamako Convention still does not explain how much of the toxic chemical has to be present for the waste to be considered hazardous. Other deficiencies include the notification process and enforcement mechanisms which are also inherent in the Basel Convention.

As previously noted, the major difference between the two Conventions is the prohibition of hazardous waste imports into Africa. This prohibition presents a twofold problem. First, if a material can be

105. Bamako Convention, *supra* note 79, at 797.

106. *Id.*

107. Basel Convention, *supra* note 44, at 675.

108. *Id.*

109. *Id.*

better managed somewhere besides the place of generation, sound environmental principles would call for the material to be disposed of elsewhere. However, the Bamako Convention ban could potentially keep hazardous wastes away from places where it could be managed in a better environmental fashion. Second, the sovereignty of the various nations that are parties to the Bamako Convention are being sacrificed. That is, they no longer have the freedom to choose whether they want to import waste from foreign nations. If an African nation was properly equipped to handle a certain waste, the Bamako Convention would prohibit that nation from deriving a substantial financial benefit.

VI. THE AUTHOR'S RECOMMENDATIONS

For any international agreement to be a success, at least two elements must be present. First, all definitions must be clear and understandable and each obligation must be known and able to be accomplished. Second, there has to be compliance with the provisions of the agreement. To ensure compliance, there must be enforcement.

The Basel and Bamako Conventions both are successes in that they have reached international agreements while many other attempts have failed. Although there are many faults, there are also many areas in which the Conventions have adequately addressed substantial concerns.

Given the fact that the only significant difference between the two Conventions is the complete ban on wastes coming into Africa contained in the Bamako Convention, the question of which Convention to recommend is not an important issue. Certainly whether a complete ban is proper or whether the transboundary movement should just be regulated is an important issue. However, such an issue should be left up to the individual nations to decide.

There are two crucial considerations which must be addressed. First, a workable and unambiguous definition of hazardous waste must be achieved. The definition must eliminate the current inevitable confusion that exists. Second, there is a need for a strong provision to ensure enforcement of the various undertakings. The Bamako Convention, with the exception of not giving waste amounts, has a relatively broad definition which does not allow parties to dispute the meaning of hazardous waste. Accordingly, a central issue is how much of a toxic chemical makes a waste hazardous? Whatever the answer is, it must be a uniform one. The only feasible manner to resolve this issue is to make any trace of a toxic chemical a hazardous waste. Otherwise, the question would become how much of a chemical makes it hazardous? The answer to that question would invariably have to change depending on which waste was at issue.

The next issue of compliance is much more difficult to deal with. The ideal solution would be some type of task force assigned to monitor compliance, enforce the provisions and to prosecute violators. Currently, no such organization exists. The reason such a group will probably never come to being is that every nation would have to agree to abide by the task force's rulings. Nations would be reluctant to give one group so much power, especially if they were planning on violating the Convention's provisions. Even if such a monitoring and enforcing body were to be agreed upon, there would inevitably be problems with financing such an organization.

One possible solution to funding the body would be to select a person from each Convention member country to represent them in an enforcement committee. All nations would have to agree to abide by the rulings of the committee. This also might present a problem. A nation may be more willing to give its consent to such a group only if it is a member of the committee. Financial considerations in this proposed solution would not be a major problem in that each nation would only be responsible for one member of the committee. Obviously, even with an agreed upon enforcement committee, until and unless technological advances in detecting violators are made, the committee's impact will be less significant.

VII. CONCLUSION

All attempts to reach an international accord concerning the transboundary movement of hazardous waste will be difficult. The Basel and Bamako Conventions have shown that the task is not impossible. The next step is for UNEP to amend the Basel Convention to deal with its weaknesses which have not become apparent. Although the Basel Convention does succeed in some respects, the environment is too fragile to have an agreement that does not address each and every concern, issue, and problem area in controlling the transboundary movement of hazardous waste.