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**An Overview of the Transboundary  
Movement of Hazardous Waste**

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**ABSTRACT**

The importance of safe management of hazardous waste has become widely recognized in the past few years. The management of hazardous wastes is of relatively recent concern occasioned by the increase in the indiscriminate use of new chemical substances and industrial expansion without adequate safeguard in recent years. This article introduces the subject-matter, gives brief background to the development of transboundary movement of hazardous wastes, discusses the transboundary dumping of hazardous waste, examines the international instruments on transboundary movement of wastes such as UNEP and Base Convention and arrives at a conclusion.

**Introduction**

The generation and transboundary movement of hazardous waste and its disposal has become a major issue of environmental concern. The issue is a global and not just a national one. By 1990, it was estimated that 400 million metric tonnes of hazardous waste was generated world-wide. As disposal facilities for hazardous wastes become scarcer and costlier in industrialized

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countries, less developed countries are being increasingly<sup>1</sup> targeted as dumping ground. The practice of exporting hazardous waste for disposal in developing countries has been described as environmental injustice or environmental racism on a global scale<sup>2</sup>.

Hazardous wastes are those wastes that are toxic, reactive, explosive and ignitive. Transboundary dumping of hazardous waste is the export, often surreptitiously, of hazardous waste by developed and industrialized countries to developing nations. These wastes may result in substantial adverse human health and environmental effects. The hazardous wastes can be defined as those wastes which due to their nature or quantity are potentially hazardous to human health and or the environment and which require special disposal techniques<sup>3</sup>. As hazardous wastes are being generated in increasingly large quantities, and as environmental law becomes more stringent, waste – generating industries tend to frantically search for a “path of least resistance” for the disposal of the waste. The World in Basel has appreciated the need to have uniform law to regulate the transboundary movement of hazardous wastes<sup>4</sup> to control the abuse of transboundary movement of waste. The Base Convention was one vital step taken by the World toward the International regulation of the hazardous waste.<sup>5</sup>

### **The Background to Development of the Global Management of Transboundary of Hazardous Waste**

A time came when it became very expedient for transboundary movements of hazardous waste management to become a priority in the national and global policies. Attempts were globally made and these spanned for about 30 years. The industrialized and developed countries began to use developing countries as dumping ground. Poor countries, for income, opened their territories for developed countries to use as dumping ground for hazardous wastes. The reason being that it generates income. Countries began to domestically make

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<sup>1</sup> A United Nations Environmental Programme (UNEP) report in Greenpeace, Heavy Burden – A Case Study on Head Waste Imports into India, Greenpeace International Toxic Campaign, March 1997, p. 4.

<sup>2</sup> H.R. Marbury, “Global Environmental Racism” (1995) 28 Vanderbilt Journal of Transnational, 251 at 293.

<sup>3</sup> Transboundary Movement Division of Environment, Canada, [http://www.ec.gc.ca/tmd/fact\\_C.htm](http://www.ec.gc.ca/tmd/fact_C.htm). Accessed 6 March, 2012. 13.30pm

<sup>4</sup> Basel is in Switzerland.

<sup>5</sup> Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, Reproduced in (1989) 28, 3 KM 652.

laws that could regulate the movement of hazardous wastes. This attempt became common in the 1970s. However, this attempt made by countries domestically did not yield the desired good result though it created awareness. The reason being the fact that the laws were not universally uniform.

The effect of the various and varying, non uniform laws regulating the management of transboundary movement of hazardous wastes led to the Basel Convention in 1989<sup>7</sup>. This Convention came into force in 1992 and it is considered the primary international agreement regulating the transboundary movement of hazardous wastes<sup>8</sup>. The Convention enumerated some of the ills of hazardous wastes problem and provides a foundation for future solution<sup>9</sup>. As at 1992, 32 countries were signatory membership of the Basel Conference. These countries are<sup>10</sup>; Antigua and Barbuda, Armenia, Azerbaijan, Bahamas, Brazil, Canada, Chile, China, Cyprus, El Salvador, Estonia, Finland, France, Hungary, India, Jordan, Latvia, Jordan, Liechtenstein, Maldives, Mauritius, Mexico, Monaco, Nigeria, Poland, Palau, Romania, Saudi Arabia, Spain, Syrian Arab Republic, United Arab Emirates, United States of America. Currently, signatories of the Basel convention are 182 countries<sup>11</sup>. However, Afghanistan, Haiti and United States of America are signatories to the convention but have not deposited instruments of ratification<sup>12</sup>.

The varying laws operated sectionally for about fifteen years before the conference. The United States was the first country to begin to regulate domestic movements of hazardous wastes in 1976. USA being the highest producer of wastes then realized that certain municipal laws had to be made or enacted within her territory to regulate the movement of wastes for healthy living. This it started with the passage of the Resource Conservation and Recovery Act (RCRA). The law was designed specifically to regulate the transport, separation, recovery and disposal practice and system of hazardous wastes<sup>13</sup>. The RCRA, however, exempted certain wastes from regulation.

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<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

<sup>10</sup> Parties & Signatories – Basel Convention [www.basel.int/Countries/...Parties, Signatories/Habid/...Default...\\_cached](http://www.basel.int/Countries/...Parties,Signatories/Habid/...Default..._cached), accessed on 24/7/2012, 14.21pm.

<sup>11</sup> Parties & Signatories – Basel Convention *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> Resource Conservation and Recovery Act of 1976 (RCRA), 42 US. C. SS 6902 (a) (8) (2006).

These wastes are scrap metals or household wastes<sup>14</sup>. The main object of the US bringing out such regulation was to minimize the present and future threat to human health and the environment through its standard<sup>15</sup>.

In 1984, the export provisions in RCRA were strengthened, requiring prior informed consent and waste tracking system<sup>16</sup>. The United States is the forerunner and serves as a model for International consideration<sup>17</sup>. However, Europe had early legislation that dealt on waste trade. The European Commission issued Directives in 1976 and 1978 as RCRA, to avoid or prevent harm to human health or the environment<sup>18</sup>. Other countries began to develop laws to regulate the transboundary movement of hazardous wastes. The effect of this was that there was no uniform law to globally regulate the movement of wastes. This gave rise to an international reaction to the problem associated with the transboundary movements of hazardous wastes. The Basel Convention alleviated the improper disposal of hazardous wastes in developing countries. The consequence of this is the public recognition and appreciation of the need for international control of the transboundary movement of hazardous wastes<sup>19</sup>. The Organization of Economic Cooperation and Development (OECD) responded by severally regarding the movement of hazardous wastes.

In 1987, the United Nations Environment Programme (UNEP) gathered together a group of experts to develop a non-binding agreement for environmentally sound management of hazardous wastes<sup>20</sup>. The UNEP was also designed to assist developing appropriate disposal system for the treatment of hazardous wastes.

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<sup>14</sup> Hunter, *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> Council Directive 75/442, 1975 O.J. (L.194) 39 (EC), available at <http://eur-lev-europa.Eu/L.exun:serv/Lex.Un:serv.do?uri=CELEX:319;75 LO442: EN>; Accessed 6 March 2012.

<sup>19</sup> D. L. Godwin, Comment: the Basel Convention on Transboundary Movement of Hazardous Waste! An Opportunity for Industrialized Nations to Clean up their Act? 22

DENVJ INTL L. & POLY 193 (1993).

<sup>20</sup> United Nations Environment Programme, Rep. of the Governing Council, 14<sup>th</sup> Session, June 8-9, 1987.

### **Transboundary Dumping of Hazardous Wastes**

The word “toxic” and “hazardous” are two words used interchangeably when it comes to matters of environmental pollution. One is merely an extension of the other<sup>21</sup>. “Toxic” means “poisonous”. Toxic is a poison and as such whatever that is toxic is poisonous. A poison is an agent that chemically destroys life or health upon contact with, or absorption by an organism<sup>22</sup>. By implication, poisons are harmful to life and health. In view of this, anything that is harmful is very hazardous. Waste, on the other hand means something which originally served a purpose but is no longer useful. An instance of this are refuse-things not in use any more but are discarded. They could be the household property, vehicles, machines etc. They are by-products not required for use in work at hand.

Waste can be classified according to their sources and they come in different forms. Wastes may be classified into the organic and non-organic wastes. The organic wastes are those unfinished food. The non-organic wastes are those empty food cans, solid or liquid such as bottles and sewage effluents, respectively. It should be noted that what constitutes waste to one may serve as raw material to another. This is the reason some men are usually at the refuse dump ground excavating some items that may have been discarded by other users. This is as a result of unemployment giving rise to abject poverty. See, for instance, *Obiter Berrioge incinerators Ltd V. Nottinghamshne County Council*<sup>23</sup>.

Many countries as Canada provide Environment the authority to set conditions for the purposes of disposal and recycling and to require that notice be given to Canadian authority before hazardous waste are exported from or imported into Canada.<sup>24</sup> Environmental Laws become more stringent in industrialized countries, wastes generating industries tend to frantically search for a “path of least resistance” for the disposal of these wastes. This search has led to focus on exporting these wastes to developing countries.

There are four basic reasons for this and they are:

The developing countries or less developed countries serve as prime targets for at least for reasons of:

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<sup>21</sup> One is used to bring about the state of the other.

<sup>22</sup> New Webster’s Dictionary of the English Language, Encyclopedia Edition.

<sup>23</sup> Cited in Malcolm, Id, 194.

<sup>24</sup> CEPA.

- (a) high levels of poverty;
- (b) low Gross National product; and
- (c) high foreign debt.

The effect of this is that the prospect for these countries to import hazardous wastes as a source of foreign exchange can be highly tempting. Due to acute poverty rate or level, these developing countries rely more on the use of products that had become by-products which are imported into their countries. The reason could be that the price of these used products are very cheap in comparison to the product; in the end, the importing countries of these by-product or used product become a dumping ground. The effect is that all used products which should serve as wastes and should be disposed are exported by the developed countries to the developing countries.

Lack of stringency of environmental regulations such as requirement for high performance and health-based standard for the design, siting and closure of toxic waste disposal facilities and low level of implementation of existing policies are the norms in most of these countries.

It should be noted that toxic waste treatment and disposal facilities can therefore be built cheaply and without consideration for adverse human health and environmental effects. For instance, the Niger Delta Region of Nigeria is an environment where the inhabitants suffer a lot of hazardous health occasioned by the environmental pollution emanating from oil exploration in the region. The people cannot have access to good water or fish from the internal waters in that region.

High level of corruption is prevalent particularly in sub-Saharan African countries. The effect of this is that government officials both elected and appointed are easily bribed to surreptitiously import toxic waste into the countries. This act is done without taking into cognizance the environmental implication and the human health. Corruption has adversely affected the economic growth of so many African countries.

Most sub-Saharan African countries lack the technical expertise necessary for the proper identification of both the elements of the imported hazardous waste and its human health and environmental impacts.

It is essential to stress that the dumping of hazardous wastes in these developing countries is usually exporters-and-destination countries. One of the earliest cases of illegal dumping occurred in Nigeria. An Italian national,

working in Nigeria had obtained a product import license, and then substituted shipments of several thousand tonnes of polychlorinated biphenyls which are both carcinogenic and toxic<sup>26</sup>.

### **Sources of Hazardous Waste**

The sources of hazardous waste can be grouped into:

1. By-products of industrial manufacturing process.
2. Consumer products which have been useless or contaminated.
3. Residues of hazardous materials which accidentally enter the environment through spills related to storage or transportation.
4. Products and residues from laboratories and institutions.

### **International Instruments:**

#### **The UNEP and the Basel Convention**

It was found that no code guide or convention on International transboundary movement of radio-active wastes existed. Considerable International efforts had been under-way to establish norms and procedures for the International and other hazardous wastes. In 1983, in response to a chemical industrial accident with serious environmental consequences, the Organization of Economic Cooperation and Development (OECD) and the Commission for European committee (CEC) prepared the text to establish what became an international effective control of hazardous wastes.

UNEP's initiative 1987 for a Global Convention on the control of Transboundary movement of hazardous wastes was given priority. After one year and 6 months, of intensive negotiations, the Basel Convention<sup>27</sup> became acceptable on March 22, 1989. Then leaders from 105 countries unanimously adopted the treaty restricting shipments and dumping of hazardous wastes across national borders. The Basel Convention on the control of Transboundary movements of hazardous wastes and their disposal, conducted under the auspices of the United Nations Environment Programme (UNEP). This is the first International Convention to control the export of hazardous Industrial wastes<sup>28</sup>.

Aims of the Basel Convention

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<sup>26</sup> A vir "Toxic Trade with Africa" (1982) 23 (1) Environment Science and Technology, Journal 24 at 25.

<sup>27</sup> *Ibid.*

<sup>28</sup> J. Ruloff, "New Accord would Control Waste Exports", *Science* (April 1989).

1. The reduction of Transboundary Movement of hazardous waste and the minimization of their question.
2. To promote the disposal of such wastes as close as possible to their places of origin.
3. To prohibit the shipment of hazardous wastes to countries lacking the legal, administrative, and technical capacity to manage them in an environmentally sound manner.

### **Conclusion**

Environmental justice requires that a country should be exposed to the necessary quarters if its environment performs less than standard every country is expected to manage its territorial or municipal jurisdiction. The export of hazardous wastes for disposal in developing countries represents a failure of developing countries environmental justice on global scale. This problem places a disproportionate burden on poor countries and threatens human health and the environment. The Basel Convention is an important step first taken to achieve environmental justice for developing countries. The developing countries that enter into contract of importing these wastes from the developed countries should stop it. The legal instruments on the transboundary movements of hazardous wastes should prosecute the violators of this Law and punish the offending country. If this is done, it will serve as deterrent to other states. A major challenge for the future will be to see that the ban is enforced and implemented so as to put an end to this form of environmental injustice.