

HAZARDOUS WASTES AND STATE OBLIGATIONS UNDER THE GLOBAL AND AFRICAN CONVENTIONS TO REGULATE TRANSBOUNDARY MOVEMENT OF SAME¹

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Introduction

In today's world, there are different wastes being produced by different waste streams. These wastes can be general wastes or hazardous wastes. The hazardous wastes are subject to trans-boundary movement for different reasons. During such movement damage may be inflicted by the transporter, carrier or disposer. International law regulates the cases of trans-boundary movements by imposing some obligations states should discharge and also by imposing liability on them upon failure to discharge same. This paper is an attempt made to identify the wastes that fall under the category hazardous and obligations of states as provided for under the conventions which are prominent on the matter, the Basel and the Bamako conventions. In the first section, hazardous wastes' definition of different states, the definitions provided in the global and African convention, and the properties and classification of such wastes and other concepts will be discussed.

In the second section, I will deal with some important states' obligations imposed by the global and African conventions after giving a highlight about states' obligations in the international environmental law and the move towards the global convention on the matter, and finally, the study of institutions for implementation and supervision of the conventions will windup the article.

Section one: Hazardous Wastes

All human beings share the planet earth on which they have been living for centuries. For life to continue it should live in a clean environment hence we need to protect the environment and keep it suitable for all

¹ Adapted from my thesis on "State Liability for Damage Resulting during Transboundary Movement of Hazardous Wastes" (AAU, Faculty of Law, May 2004))

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forms of life.³

Human beings, through different activities, produce wastes, especially as of the industrial progress came to human life, in different forms and disperse them to the open environment, i.e., to the air, water or land, and these wastes have a direct impact on all forms of life on earth and the environment in general.⁴

In general; the term **waste** refers to an undesirable or excess by-product or emissions from different sources as a whole to be discarded, i.e., materials that are abandoned or materials that are spilled or leaked,⁵ or thrown away, or accumulated for reprocessing or disposal, and it can be in different forms.⁶ This definition is so broad as to incorporate not only hazardous wastes but also other wastes that are to be considered as non-hazardous ones. Because of this fact wastes are classified into two-**General and Hazardous wastes**.⁷ General wastes are defined to be wastes which we are familiar with like house hold wastes, builder's rubble, garden wastes and others which do not create immediate dangers to human health and his/her environment.⁸ But, since general wastes have some amount of hazardous substances in them in the long-run, they may pose a substantial hazard to human health and the environment with decomposition & infiltration producing a leachate with a high pollution potential.⁹

Hazardous wastes are known as any waste that can, even in low concentration, have a significant adverse effect on public health (acute effect which occur when people are exposed to it) and /or the environment due to their inherent chemical and physical characteristics such as toxicity, ignitability, corrosiveness or other properties.¹⁰

The World Health Organization emphasizing on the acuteness and seriousness of the risk presented by hazardous wastes to human beings and their environment defined hazardous wastes as wastes that present either short term hazard, such as acute toxicity by ingestion, inhalation or skin absorption, corrosivity or other skin, or eye contact hazard or the risk of fire or explosion or long-term environmental hazard

³ Sybil P. Parker (ed), Encyclopedia of Environmental Science, (1980), p.1

² Ibid

⁵ Donald W. Steven, Law of Chemical Regulation and Hazardous waste, (1995), pp.5-9

⁶ Basel Convention Secretariat, Hazardous Waste Management Course on General Hazardous Wastes Management, (2002), Section I, p 2

⁷ Ibid

⁸ John D Lesson, Environmental Law, (1995), p.436

⁹ Ibid

¹⁰ Basel Convention Secretariat, Cited above at note 4, section III, p.2

including chronic toxicity upon repeated exposure, carcinogenicity (which in some cases results from acute exposure but with a long latent period), resistant to detoxification process such as biodegradation, the potential to pollute underground or surface waters or aesthetically objectionable properties such as offensive smells.¹¹

In the United States of America the Environmental Protection Agency (EPA) has established three hazardous wastes lists that are hazardous wastes from non-specific sources, hazardous wastes from specific sources and discarded commercial chemical products and all off-specification species containers, and spill residues thereof, which contain chemicals that are deemed to be hazardous if discarded and wastes which are identified 'as acutely hazardous' by EPA and for which more rigorous management requirements apply.¹² The former ones are regulated like the other listed hazardous wastes.¹³ In addition, the USA has another definition of hazardous wastes.¹⁴

In USA's, hazardous wastes law has developed in two dimensions: in the sphere of laws and programs regulating the present and the future generations, transportation, storages and disposal of hazardous wastes and in the sphere of programs 'dealing with hazardous wastes emergencies and cleanup of old, in active' hazardous wastes disposal sites"¹⁵ The hazardous wastes laws have dual objectives to accomplish and these are to 'provide a system for tracking and preserving a record of the movement of hazardous waste from its origin to its ultimate disposal and ensure the disposal' of such wastes is carried on by using means that prevent escape of the wastes in to the environment and to 'provide an enforcement mechanisms to ensure' that the former objective are complied with.¹⁶

Ethiopia defines hazardous waste as "...any unwanted material that is believed to be deleterious to human safety or health or the environment."¹⁷ It is pretty clear that the definition employs subjective opinion. This may make waste categorization unsafe.

¹¹ John D Lesson, cited above at note 6, p.347

¹² United Nations, Manual for Hazardous waste Management, (1994), Vol. I, p.65

¹³ J. Gordon Arbuckle and et'al, Environmental law Hand Book, 9th Ed., (1987), p.62

¹⁴ Ibid

¹⁵ J. Gordon Arbuckle and et'al, cited above at note 11, p.65

¹⁶ Donald, cited above at note 3, pp.5-6

¹⁷ Environmental Pollution Control Proclamation, Federal Negarit Gazeta, 9th year No 12, Proc. No. 300/2002

The Basel convention defines hazardous wastes under article 1 (3) as *wastes that belong to any category contained in Annex I, unless they do not possess any of the characteristics contained in Annex III; and wastes that are not covered under paragraph (a) but are defined as, or are considered to be, hazardous wastes by the domestic legislation of the party of export, import or transit.*

This convention defines hazardous wastes depending on the categories of hazardous waste types to be controlled. It has listed a number of waste types in different categories in Annex I looking in to their sources and constituents and any waste falling in that category safely or having those elements as its constituent will be taken as a hazardous waste.

Secondly, the convention defines hazardous wastes depending on the characteristics which are considered to be properties of hazardous wastes, as such characteristics of wastes among other things will present a substantial risk and hazard to human life and the environment. There are lists of characteristics in Annex III, any waste exhibiting one or more of that properties will be taken as a hazardous waste.

Thirdly, any waste considered hazardous by a state of import transit or export in their domestic legislations even if these wastes fail to fit into the different categories of the convention as provided for in the different annexes and/or they do not exhibit the different characteristics therein.

The definition of the Basel convention is highly 'specific' because it provides 45 waste streams that show one or more of the 13 hazardous waste characteristics,¹⁸ and also such specificity is advantageous because it makes data collection clear and easier; hazardous waste generators can easily do 'self identification' either for the purpose of permit or other formalities; and it is easy to enforce as regulators can identify a hazardous waste easily as they are provided with the waste types and their properties.¹⁹

Moreover, this definition of the convention can be said a 'narrow' definition as it limits coverage of the wastes to be treated as hazardous wastes.²⁰

The Bamako convention defines hazardous wastes in the same manner as defined in the Basle convention and with all advantages and narrowness but with an additional base of definition. It categorizes "banned,

¹⁸ United Nations, cited above at note 10, vol. I, p.68 16. Ibid

¹⁹ Ibid

²⁰ Ibid

cancelled or refused generation” of any waste by regulatory action of states or a waste whose registration is “voluntary withdrawn” to fall in the definition of hazardous wastes ²¹and the provisions of the convention are going to be applicable on such substances. It is some what wider in the waste they are going to cover due to this last situation.

Another important thing as regards the Basel and the Bamako convention on the definitions of hazardous wastes is that they allow states to have definitions of their own in their national laws. ²²This in fact does not mean that both conventions allow a disregard of wastes that are listed as hazardous and/ or that exhibit one or more of the properties of hazardous wastes in the Annexes of the conventions because this would be defeating the very purpose of the conventions themselves. But the idea behind the permission is or seems to allow states to add other wastes to the wastes in the convention where the states found to do so is necessary having regard to their own domestic situations. However, unless states communicate their definition of hazardous wastes with in six months after becoming a party to the convention that wastes may not be taken as a hazardous under the convention per Art 3(1) of both conventions.

Hazardous wastes, therefore, shortly are wastes that are inherently dangerous, i.e., wastes that pose a significant threat to human health and the environment.

All the definitions above, lead us to say that a waste will be hazardous due to its effects on the environment and on human health. And they overall show that there is a difficulty of obtaining concurrence on a uniform definition.

Sources of Hazardous Wastes

There are different types of hazardous wastes from the definitions of at least the conventions. These wastes have necessarily one or more sources that they might be generated from manufacturing industries, agricultural areas, mining industries, hospitals and households ²³ They are mostly generated by large

²¹ Bamako OAU Convention on the Ban of the Import into Africa and the Control of Trans-boundary Movement and Management of Hazardous Wastes Within Africa, Bamako 1991 , Art 1(1); The Bamako Convention is Ratified by Ethiopia Per The Bamako Convention Ratification proclamation 2003 proc no 335/2003 , Federal Negarit Gazeta Year 9th, no 76

²² Basel Convention on the Control of Trans-boundary movement of Hazardous Wastes and Their Disposal, Basel 1989, Ethiopia ratified the Basel convention per Basel Convention on the Control of the Transboundary Movements of Hazardous Wastes and Their Disposal Ratification Proclamation No 192/2000, Federal Negarit Gazeta 6th year No 20 and Bamako Conventions, cited above at note 7. Art 1 (1) (b) and Art. 2 (1) (b), respectively

²³ Basel convention Secretariat, cited above at note 9, Section I, p.8

facilities such as manufactures of chemicals, petroleum, textile industries and even by military operations²⁴

The Basel and the Bamako conventions put different waste streams, i.e., sources of hazardous waste in their Annexes which include hospitals, medical centers and clinics production, formulation and use of biocides and pharmaceuticals, inks, dyes, and manufacturing, formulation and use of wood preserving chemicals.

Properties of hazardous wastes: the characteristics of hazardous wastes can be the properties which can be known through a naked eye assessment, assessment of basic chemical description and characteristics that the waste is organic waste, metallic waste, basic, acidic or neutral waste and whether the waste is highly inflammable, combustible, noncombustible or unknown, or reactive with water or air, any direct evident characteristics such as odors, corrosivity, volatility²⁵

Identification of hazardous wastes: this is a procedure or process of differentiating whether a certain waste from a specific source is a hazardous one or not.²⁶ The general idea behind the concept of identification is that to give an answer to the important question 'is the waste likely to present serious threat to human health or the environment?' and if the answer is in the affirmative depending on the source of the waste and its physical and chemical character then the waste will be hazardous one.²⁷

The Basel and the Bamako conventions have put different waste sources and also provide properties which will make a substance to be viewed as a hazardous waste, which will help us to identify wastes as hazardous wastes. Furthermore, interesting is that the Basel convention unlike the Bamako is very effective prevention mechanism of damage from waste as it provides other waste groups which may not fall in to the different waste streams or do not possess any of the characteristics in the different annexes in significant amount to be given special considerations as their improper management might in the long run pose a hazard to human life or the environment, these wastes are like wastes collected from households and residues arising from the incineration of household wastes²⁸ These wastes in the long run will present unacceptable pollution potential.

²⁴ Marquita K Hill, Understanding Environmental Pollution, (1997), p 191

²⁵ Basel Conventions Secretariat, cited above at note 9, Section I, pp 5-6

¹⁶ Id., p 2

¹⁷ Id., p.3

¹⁸ Basel and Bamako conventions, cited above at note 7 Annexes II

The conventions, in addition to the properties and streams of wastes to be treated as hazardous wastes used the constituents or the components the wastes are made up of to view wastes as hazardous waste as listed in Annex I of the Basel and Annex II of the Bamako conventions, respectively.

Classification of hazardous wastes: this is a procedure of putting wastes into different categories based on their physical and chemical properties as a result needs chemical knowledge and knowledge of the properties of chemicals.²⁹ Classification helps in coming-up with different techniques to be used for the treatment disposal and management of wastes in the different classes as each category may need different ways and methods of control, storage and disposition.

The two aforementioned conventions provide for United Nations classes of wastes into Y and H group in Annex I and III in the Basel and in Annex I and II of Bamako conventions, respectively.

Section Two: - Obligations of States under the Basel (1989) and the Bamako (1991) Conventions, and Institutions for Implementation and Supervision.

2.1 GENERAL REMARKS

Lifted to a level of serious international concern, urgent solutions to environmental problems are necessitated after the United Nations Conference on the Environment at Stockholm in 1972.³⁰ In response to this problem “the international legal and diplomatic community has fostered the development of international obligations”³¹ These binding obligations are to be transacted between states on the international scene by using the device of treaty³², more specifically environmental treaties.

The environmental treaties, priorly, involved a very specific issues, however, during the last few decades there has been a tendency of widening the scope of environmental treaties both in terms of their geographic extent and in their subject matter, to regulate and hence it is said that the latest treaties may

²⁹ Basel Convention Secretariat, cited above at note 9, Section III, p.3

³⁰ Kenneth B. Hoffman, “State Responsibility In International Law And Trans-boundary Pollution Injuries”, The International and Comparative Law Quarterly, Vol.25 (1976), part 3, p.509

³¹ Ibid

³² Malcolm N. Shaw, International Law, 4th ed.; (UK, Cambridge University Press, 1997), p.626

aim at the protection of the global ecosystem at large.³³ The obligations of states imposed by these treaties have also become comprehensive enough than the previous ones.³⁴

What is important about obligations in the protection of the environment or international environmental law is that the “zero sum” concept does not exist, i.e., “the obligation of one state does not match by the right of other states.”³⁵

2.2 The Coming In To Existence of the Basel Convention

In the 1980s certain transboundary movement of notorious cases, i.e., in which “no regulatory control standard or procedures for the export”, or exports “conducted unlawfully outside the scope of those standards and procedures”, have inflamed the global concern.³⁶ For instance, the drums of dioxin incident in 1983³⁷; all other incidents have caused turmoil in the international scene and attracted a wider public condemnation.

Due to mismanagement, different effects such as contamination of soil, pollution of ground water, threat to biodiversity of hazardous wastes become well understood in the world community.³⁸ Due to the growth of understanding of a global nature of environmental impact by activities of states or individuals, and the impact is to be curtailed only through a combined effort of the world community as a whole and states are familiar with resolving of such common issues by agreements upon principles and rules in international arena which have played a grate role in the field,³⁹ the move towards such regulation of hazardous wastes appeared here in after The attendant sever health problems to life and the environmental risks⁴⁰ it poses has heightened worldwide concern about the disposal of hazardous wastes in the late 1970s and early 1980s and this concern led to a new urgency in developing and implementing

³³ M A Fitzmaurice, “International Environmental Law as Special Field”, Netherlands Yearbook of International Law, Vol XXV. (1994), p.193

³⁴ Ibid

³⁵ Id., p 221

³⁶ Sean D Murphy, “Prospective liability Regimes For The Trans-boundary movement Of Hazardous Wastes.” American Journal Of International Law (AJIL), Vol.88, (1994), p.31, part .1

³⁷ Ibid

³⁸ Sean D. Murphy, cited above at note 34. p.32

³⁹ Staurt Bell and Donald Mc Gillivray, Environmental Law, 5th ed., (London, Blackstone Press Limited, 2002), p.5

⁴⁰ Shaw, cited above at note 30, p.626

international controls .⁴¹

There were two dimensions of control to be designed at the disposal of the international community, these were⁴²:- the first and stricter control was an outright ban on the export or import of hazardous wastes but failed for different reasons⁴³, for instance, “the Netherlands must export the waste because of its special hydro-geological condition”

Due to the failure of the first stricter system the second dimension of control which is to allow a hazardous waste trade to continue but upon fulfillment of certain requirements such as notification to the state of import which were practices existing at that time, for instance, the Decision /Recommendation adopted by the Organization or Economic Co-operation and Development (OECD) on 1 February 1984 requests Member States shall control the trans-frontier movement of hazardous Wastes and, for this purpose, shall ensure that the competent authorities of the countries concerned are provided with adequate and timely information concerning such movements⁴⁴,has appeared to be appealing

The United Nations Environmental Program (UNEP) was prompted to pursue a more global approach due to the lack of uniformity in the waste regulation system and the growing global concern to waste regulation system. ⁴⁵It first developed the Cairo Guidelines and Principles for The Environmentally Sound Management of Hazardous Wastes in 1987, which addressed to governments with a view to assisting them in the process of developing policies for the environmentally sound management of hazardous wastes and prepared on the basis of common elements and principles derived from relevant existing bilateral, regional and global agreements and national regulations .⁴⁶

⁴¹ Basel Convention On The Control Of Trans-boundary Movement Of Hazardous Wastes And Their Disposal Background, found at website <[http:// WWW. ec.gc .ca](http://WWW.ec.gc.ca)

⁴² Sean D. Murphy, cited above at note 34, p.32

⁴³ Ibid

⁴⁴ Decision and Recommendation adopted on 1Feb 1984 by OCED Council, Reproduced on Harald Hohmann (ed.), Basic Document Of International Environmental Law , Vol.1 Graham-and Trotman Ltd , London (1992) , pp.473 ff

⁴⁵ Ibid

⁴⁶ Preamble Of The Cairo Guidelines and Principles For The Environmentally Sound Management Of Hazardous Wastes, reprinted in Harald Homann, cited above at note 21, p.148.

Then after, the world community has created a greater movement towards negotiations, between November 1988 –March 1989⁴⁷ and the negotiations culminated in the landmark global convention under the United Nations (UNEP).⁴⁸

The negotiation was probably the first major international negotiation in which developing countries were demanding for much more restrictive environmental regulation than the developed states.⁴⁹ The developed countries, on the other hand, being cognizant of the volume of hazardous wastes produced by their industries and other activities, and the difficulty of finding disposal sites at home due to the political unpopularity and other reasons above of such activities⁵⁰ wanted to stick or adhere to the dimension of control said “appealing” above and demand for an “informed consent regime” and the veto coalition, with the US playing the lead role, gave the waste importing (African Central American and the Caribbean) states, a choice either to “accept an informed consent regime or to get none at all”.⁵¹ As a result of all these the Basel Convention comes in to existence, based on the informed consent principle. Since the signing of this convention, which came into force on May 5, 1992, has begun stronger regime.⁵²

On 23 of May 1989, Organization of African Unity (OAU) has passed a resolution, at the 48th Ordinary Session at Addis Ababa, which declared that the dumping of wastes in African is a crime against Africa and the African people; and called up on Member States to adhere to the guidelines and principles of Cairo, and to participate in the working group charged with the drafting of the Convention on the Control of Movement of Dangerous Waste across Borders.⁵³

On January 30, 1991 at Bamako (Mali) by a conference of Environmental Ministry of 51 Africa states the regional counter part of the Basel Convention, i.e., the Bamako Convention, which is a formulation partly

⁴⁷ Tony Brenton, The Evolution Of International Environmental Politics, (London, Royal Institute of International Affairs. Earth Scan Publication, 1994), p 131

⁴⁸ Basel Convention Background, cited above at note 39

⁴⁹ Tony Brenton, cited above at note 45, p.132

⁵⁰ Gereth Porter and Janet Welsh Brown, Global Environmental Politics, (Boulder, Colorado, West view Press, Inc., 1991), p.86

⁵¹ Id., p.87

⁵² Id., p.86

⁵³ Organization Of African Unity, Council of Ministers Resolution On Dumping Of Nuclear And Industrial Waste In African (23 May 1989)[sic], reproduced in Africa Journal of International and Comparative Law (AJICL), Vol.2, (1990), Part 2, pp. 145 ff

of reflection of a doubt the African states have had as to the scope of protection offered by the Basel convention⁵⁴ and also the expression of the commitments relating to the environment the African state has adopted.⁵⁵

In January 1991, 12 African countries banned the import of hazardous wastes from any country, thus further showing the African determination to end waste shipment and international waste trade, some author said it "waste colonialism."⁵⁶

2.3 Some Obligations of States under the Basel and the Bamako Convention

There are obligations imposed on states via the conventions. The obligations are of different types. And these obligations aim at ensuring that the generation of hazardous wastes is reduced to a minimum, as much as possible, disposal of hazardous wastes within the country of their generation; establishing enhanced controls on exports and imports of hazardous wastes; prohibiting shipments of hazardous wastes to countries lacking the legal administrative and technical capacity to manage and dispose of them in an environmentally sound manner; and co-operating on the exchange of information, technology transfer, and the harmonization of standards, codes and guidelines as objective of the Basel convention

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The obligations are more of procedure because the existing practice of mismanagement of wastes, norms or principles which are of effective nature in inducing behavior responsive to the demands of environmental problems particularly procedural requirements that lay stress on the prevention of trans-boundary movements or risks are required.⁵⁸ The reliance on procedural obligations must be seen in the content of "good neighborliness."⁵⁹

⁵⁴ Fatsah Ougergouz, "The Bamako Convention On Hazardous Waste: A New Step In The Development Of The African International Environmental Law", *African Yearbook Of International Law*, Vol. I-(1993), p.196

⁵⁵ Id., p.200

⁵⁶ Tony Brenton, cited above at note 45, p.131

⁵⁷ At the website, cited above at note 39

⁵⁸ Aida Levin, *Protecting the Human Environment*, (New York, United Nations Institute for Training and Research, 1977), p.1

⁵⁹ Richard G. Tarasofsky, "Legal Protection Of The Environment During International Armed Conflict," *Netherlands Yearbook Of International Law*, Vol XXIV (1993), p.71

Importantly, the continental Convention of Bamako of Africa “ [i]n a more general way, . . . gives a more precise content to the customary principle according to which every state shall ensure that activities taking place within its territory do not cause damage to the environment of another state.”⁶⁰ The obligation of Member States to the Bamako Convention is further strengthened by the Treaty Establishing the African Economic Community, which goes “members states undertake, individually and collectively, to take even appropriate step to ban the importation and dumping of hazardous wastes in their respective territories.” They further undertake to cooperate in the trans-boundary movement management and processing of such wastes produced in Africa.⁶¹

Bearing in mind that the two conventions are similar in many aspects as the problems dealt with are the same and the proposed solution hence can not be fundamentally different.⁶² And also noticing the possible differences that are likely to exist between the Bamako & the Basel conventions, I will see some of the obligations imposed upon states below.

2.3.1. The Duty to Prohibit

Prohibition by any state of an import of hazardous wastes through information to be communicated pursuant to Art 13 and Art 4 (1) (a) will impose a duty to prohibit such exports to that particular state, on the state which received the information.⁶³ The conventions leave it entirely to the discretion of each sovereign state party to decide whether or not to permit the importing of such wastes.⁶⁴

Both the Bamako and the Basel Conventions require the state parties to prohibit the export of hazardous wastes to states which have prohibited such imports or if they have reasons to believe that the wastes in question will not be managed in an environmentally sound manner.⁶⁵ Because that would be against one of the very purposes of the conventions, i.e., management of hazardous wastes in an environmentally sound manner. Even if the state of import has not prohibited such an import, parties are duty bound to prohibit such export unless that importing state consented to the import in writing.⁶⁶ This seems to say that, silence does not amount to consent or on the other hand, any state in need of importing of any

⁶⁰ Fatsha Ougergouz, cited above at note 52, pp 200-201

⁶¹ Organization of African Unity, Treaty Establishing the African Economic Community, reprinted in *AYBIL*, Vol 1- (1993) pp. 227ff, Art 59

⁶² Fatsh Ougergouz, cite above at note 52, p.21

⁶³ Art 4 (1)(b) Basel, Art 4(3) (r) Bamako Conventions

⁶⁴ Costa R. Mahlau, “The OAU Council Of Minister’s Resolution On Dumping Of Nuclear and Industrial Wastes In Africa And The Basel Convention Of 1989”, *AJICL*, Vol.2,(1990) Part 1, p.69

⁶⁵ Fatsah Ougergouz, cited above at note 52, p.204

⁶⁶ Art.4 (1) (c) Basel; Art. 4 (3) (5) Bamako Conventions

hazardous waste is obliged to express its consent in writing for import of the same, may be to effect the observance of the rule or principle of written prior consent to be seen later as one duty. States parties are duty bound to prohibit exports of hazardous wastes for disposal within the area south of 60° South latitude.⁶⁷ This is to harmonize the operation of the conventions with some other international legal instruments such as the Convention on the Conservation of Antarctic Marine Living Resources Canberra 1980 per Art.1 (1) cum. (2) of the Conservation Convention. This can strongly be said as such harmonization is not an odd, for instance looking in to the different resolutions to harmonize state practices with respect to the operation of provisions of different conventions.⁶⁸ The other prohibition set out in the convention is the prohibition of the dumping of hazardous wastes at sea and internal waters⁶⁹ which were the practice at the time of adoption of the convention and no international legal norm developed to regulate the problem.⁷⁰ Of course, the Basel deemed it to be an illegal traffic. While the Bamako strictly prohibits, creating a stronger regime of control of dumping.

The export of hazardous wastes to non-parties is prohibited in the Basel convention per Art. (4) (5) but not in the Bamako convention. The duty to prohibit extends also to the duty of states to prohibit all persons under its national jurisdiction from transporting or disposing of hazardous wastes where they are not authorized to perform such operations.⁷¹

All the prohibitions of import or export under the conventions is based on a philosophy of minimizing the generation of hazardous wastes and promoted disposal at source representing strongest indication of the growing international trend on waste disposal at home and the adoption of a precautionary approach to pollution control.⁷² The duty of prohibiting export to countries which did not consent is basically deriving from their sovereignty.⁷³ This prohibition is a prominent right from the point of view of the import or transit state and the prohibition can be made either by a written refusal of such operation in their territories or through national legislations for instance, the Coted'ivoire's "Law on toxic and Nuclear

⁶⁷ Fatsah Ouguergouz, cited above, at note 52, p 204

⁶⁸ Resolution Number 7 as reprinted in Harald Hohmann (ed.), Basic Documents of International Environmental Law, Vol.3, Graham and Trotman Ltd., London, (1992), pp.1613ff

⁶⁹ Art 9 (1) (c) Basel; 4(2) (c) Bamako Convention

⁷⁰ Costa R Mahalu, cited above at note 62, p 64

⁷¹ Art.4 (7) (a) Basel; Art. 4 (3) (m) (l) Bamako Conventions

⁷² Patricia W Birnie and Alan E Boyel, International Law and The Environment, (Oxford, Clarendon Press, 1992), p.334

⁷³ Costa, cited above at note 62, p.68

Waste” of 7 July 1988, which strictly prohibits the buying, selling importing, transiting and other activities.⁷⁴

The Bamako Convention including the above all policies places additional concept on the use of clean production methods “which avoid or eliminate the generation of hazardous wastes or some time reduce significantly.”⁷⁵ The use of clean production methods has a great benefit and is even taken as the first priority area in the developing of not only regional (African) but also international strategy to prevent and minimize the generation of hazardous wastes. The benefit of such strategy is that “reduction of both health hazardous, acute and chronic, and adverse effects on natural resources, such as arable land, and wild life.”⁷⁶ Hence such an imposition is beneficial.

2.3.2. The Duty to Transmit Information

This researcher is of the opinion that looking in to both conventions seems to show us that the duty to notify and the duty to transmit information are two distinct obligations for two reasons. Firstly, the devotion of two different articles for each duty will logically lead us to say so. Secondly, from the reading of the contents of the articles, one can find that the duty to notify is restricted to cases of trans-boundary movement while the duty to transmit information seems to be of a wider scope to include information of other activities done with a view to implement the conventions or fulfillment of other duties party states assumed, or other activities or incidents, such as information on the amount of hazardous wastes exported, on the measures undertaken for development of technologies for reduction and /or elimination of hazardous waste.⁷⁷

The duty to notify is said by some author to be not limited to cases of “premeditated” activities but also to emergency situations⁷⁸ unlike the Basel and the Bamako conventions which included such emergency situations to the duty to transmit information and restricted the scope of the duty to notify.⁷⁹ Party state upon its knowledge, is duty bound to transmit information to other states of an accident occurring during trans- boundary movement of hazardous wastes or there disposal where this condition is likely to presen

⁷⁴ Ibid

⁷⁵ Patricia and Alan, cited above at note 70, p 334

⁷⁶ United Nations Conference On Environmental and Development (UNCED), The Global Partnership for Environment and Development A Guide to Agenda 21, (Rio de Janeiro, Brazil, 1992), p. 85

⁷⁷ Compare Art 13 and 6 of the Basel; Art 13 and 6 Bamako Convention.

⁷⁸ Richard, cited above at note 57, p 70

⁷⁹ Basel and Bamako, cited above at note 62, the same articles

risks to human health and the environment in another states⁸⁰ The proof of knowledge is of a great difficulty or at least, is not as simple as it appears and poses a practical problem, in case a party fails to fulfill its obligation. Furthermore, the threshold of “likely to present risks” is vague that opens a door to state discretion.

The parties are to inform the Conference of the Parties⁸¹ before the end of each calendar year, a report on the previous year’s measures adopted to implement the conventions and other information required therein the conventions.⁸² Change of the designation of competent authority and /or focal points and change in national definition of hazardous wastes is needed to be transmitted to the Secretariat.⁸³ The duty of information transmission is to be conducted via the secretariat, to the Conference of the parties or to the party states each other in case of accident occurring during trans-boundary movement.⁸⁴ The period for transmission of information is not identical to all information to be transmitted and in general can be said to be of subjective nature, i.e., not exact time is put in both conventions, for instance they say or use the phrases “as soon as possible”, “immediately.”⁸⁵

2.3.3. The Duty to Prevent Illegal Traffic

Any trans-boundary movement of hazardous wastes will be considered as if it is an illegal traffic where it occurs without notification to or securing the consent of the states concerned, or where a consent is secured through falsification, misrepresentation or fraud, or the consent do not comply with the document, or deliberate disposal in contravention of the conventions and of general principle of international law.⁸⁶ And even hazardous wastes movements with in Africa continent, which is of a non-African origin, will fall within the scope of this illegal trafficking as some authorities say.⁸⁷ And the Basel convention as said earlier, will consider dumping as an illegal traffic.

In illegal trafficking case the exporter state whose conduct resulted in that illegal traffic is duty bound to ensure that the wastes in question are taken back or where this is impractical to dispose of them in

⁸⁰ Art 13 (1) of Basel; Art .13 (1) of Bamako Conventions

⁸¹ See Art .15 (1) Basel; Art 15 (1) Bamako Conventions as to Conference Of parties (CoP)

⁸² Art 13 (2) cum. Art.5 (3) Basel; Art.13 (2) cum. Art 5 (3) Bamako Conventions

⁸³ See Art 16 Basel; Art .16 Bamako Conventions as to Secretariat

⁸⁴ Art .13(2) Basel; Art .16 Bamako Conventions, Art.13 (3) Basel; Art 13 (3) Bamako Conventions; Art. 13 (3) Basel; Art 13 (1) Bamako Conventions, respectively

⁸⁵ Art .13 Basel, Art .13 Bamako Conventions

⁸⁶ Art .9 (1) Basel, 9 (1) Bamako Conventions

⁸⁷ Fatsah Ouguergouz, cited above at note 52, p 203

accordance with these conventions.⁸⁸ If the illegal traffic is, however, due to the conduct on the part of the importer or disposer, the state of import is duty bound to ensure that wastes are disposed of in an environmentally sound manner by the importer or disposer, or by itself where necessary.⁸⁹ In cases of doubt as to whose (the exporter state's or importer state's) conduct resulted in the illegal traffic or who is responsible for the illegal traffic the parties concerned and other parties will be duty bound to ensure the wastes are disposed as soon as possible in an environmentally sound manner elsewhere appropriate.⁹⁰

In case of Bamako Convention, any trans-boundary movement of hazardous wastes deemed to be illegal traffic due to either the conduct of the exporter or importer (generator or disposer) the wastes are to be returned back to the state of their origin and no disposition is to take place elsewhere per Art.9(3) (4) of the convention, unlike the Basel.

The two conventions, the Bamako being a bit elaborated, oblige states to introduce national/domestic legislation to prevent and punish illegal traffic per Art 9 (5) of the Basel and Art 9(2) of the Bamako conventions. The second limb of the Bamako convention Art 9(2) emphasizes that the penalty to be imposed should be significantly high so that it will have a deterrent effect. The second limb of article 9(5) of the Basel convention calls for state co-operation in the area of such duty. Through international strategy for waste management in environmentally sound manner to address the problem of illegal traffic is given a four priority area.⁹¹ Because, it is said that such shipments cause serious threat both to human health and to environment and also impose an abnormal burden on countries receiving such shipments.⁹² This duty in itself, as said above, implies that the national capacity of states, i.e., both the laws and the implementation, to detect and halt any illegal attempt to introduce hazardous wastes should be strengthened.⁹³

Illegal trafficking is criminal.⁹⁴ Since it is not rooted with a "specific legal system (that is with in international law or the domestic legal system of the parties)" some author says that, the criminal offence arising out of the illegal traffic in hazardous wastes remains "quite abstract."⁹⁵

⁸⁸ Art 9(2) (a-b) of the Basel; Art 9(3) Bamako Conventions

⁸⁹ Art.9 (3) of Basel, Art 9(4) Bamako Conventions

⁹⁰ Art. 9(4) of Basel; no corresponding duty per Bamako Convention

⁹¹ United Nations Conference On Environmental and Development (UNCED), The Global Partnership for Environment and Development: A Guide to Agenda 21, (Rio de Janeiro, Brazil, 1992), p.87

⁹² Ibid

⁹³ Ibid

⁹⁴ Art.4 (3) of Basel; Art.4 (1) Bamako Conventions

⁹⁵ Costa, cited above at note 62, p.70

Further more, it is even controversial that whether the term “criminal ” is employed to mean a criminal offence, and if this query is solved in the affirmative, it is important for both importers and exporters of such wastes to have provisions in their legal systems rendering the practice criminal⁹⁶ and the practice of some states shows that they to have got a law to make such an act a criminal offense solving the dilemma in the affirmative, even they tend to make each stage of illegal traffic , i.e., “ buying, selling, importing, transporting ” and others a criminal offence being a criminal act in their national laws.⁹⁷

The Basel and the Bamako Conventions demonstrate a wide spread concurrence that movement of hazardous wastes which take place without informed consent of transit and import states, i.e., illegal traffic, be prevented.⁹⁸

2.3.4 The Duty to Notify

Early exchange of information among states about any activity that may have adverse trans-boundary effects is a well-established practice in the field of environmental law as this enables states to assess in advance the probable environmental problem and other consequences of that activity.⁹⁹ This trend is detectable at both the global and regional levels¹⁰⁰ The obligation to notify is based on “elementary consideration of humanity”¹⁰¹, i.e., the moral obligation that you should take in to account the interests of the nearby people where you are to do some operations.

Due to the need of preventive mechanisms of acts that have effect beyond a state’s national territory and also to acquire the permit of a sovereign state whose environment is likely to be affected (in case of trans-boundary movement) to serve as state of transit or import as the sovereignty of a state over the use of its territory¹⁰² is there, the procedure of prior informed consent is desirable and hence imposed as one duty in the two conventions.¹⁰³

⁹⁶ Ibid

⁹⁷ Ibid

⁹⁸ Patricia and Alan, cited above at note 70, p 336

⁹⁹ Aida Luisa Levin, cited above at note 56, p 1

¹⁰⁰ Id., P.6

¹⁰¹ Richard, cited above at note 57, p.304

¹⁰² Patricia and Alan, cited above at note 70, p.304

¹⁰³ Art. 6 (1) of Basel; Art.6 (1) Bamako Conventions

The notification is to be made in writing via the competent authority of the exporting state to the competent authorities of the states concerned¹⁰⁴ even non-parties¹⁰⁵, and should be made in the form of Annex VA (of the Basel Convention) and Annex IVA (of the Bamako Convention) and in language acceptable to the state of import respectively.¹⁰⁶ And only one notification is to be made to states concerned.¹⁰⁷ The notification must include some important information such as reason for waste export, exporter of waste, generator (s) of the waste and site of generation, disposer of the waste and actual site of disposal information as to insurance, estimated quantity of the waste in weight volume and others.¹⁰⁸

The essence of the system of international control established prior –informed – written consent may only be waived in the case of transit states which are parties to the convention in favor of tacit acquiescence,¹⁰⁹ but no such waiver in the case of Bamako Convention¹¹⁰, unless argued that the pertinent provision is not written in mandatory way as it says “shall not.”¹¹¹

The requirement of prior consent is simply an expression of the sovereignty of a state over the use of its territory but such basis in territorial sovereignty of a state does not exist where the transit is to take place through maritime areas as “(i)n the exclusive zone foreign vessels enjoy high seas freedom of navigation” and although subject to coastal state’s sovereignty, in the territorial sea too they have a right of innocent passage.¹¹²

The states of import are duty bound to respond to the notifier, in writing, of their consent to the trans-boundary movement and the conditions laid down, if any, their denial or their request of further information¹¹³ and the state of transit may respond to the notification particularly where they are not willing for the import or transit in certain cases as the exporting state may allow the export of the waste via them for their acquiescence as the Basel convention.¹¹⁴ The information

¹⁰⁴ Art 2 (13) of Basel; Art.1 (15) Bamako Conventions

¹⁰⁵ Art. 6(10) of Basel; Art 9(9) Bamako Conventions

¹⁰⁶ Ibid

¹⁰⁷ Art. 6(1) Basel; Art 6(1) Bamako Conventions

¹⁰⁸ Annex VA of the Basel; Annex IVA of the Bamako Conventions

¹⁰⁹ Patricia and Alan, cited above at note 70, p.336

¹¹⁰ Bamako Convention, Art. 6 (4)

¹¹¹ Ibid

¹¹² Patricia and Alan, cited above at note 70, p.336

¹¹³ Art 6(2) (4) of the Basel; Art 6 (2) (4) Bamako Conventions

¹¹⁴ Patricia and Alan, cited above at note 70, p 336

in the notification should be as adequate as to enable the efficient assessment of the nature and impact on the health and the environment of the proposed movement.¹¹⁵ To serve its purpose notification must be timely.¹¹⁶

Incidentally, the requirement of prior informed consent can be enforced in two ways¹¹⁷ by making the state of export accept the return of illegal waste; or by making states punish illegal traffic as a criminal offence.

2.3.5 The Duty to Re-import

A duty to re-import hazardous wastes is one of the most important duties imposed upon party states per Arts.8 of both the Basel and the Bamako Conventions.

The duty arises where the consent of the states concerned in the trans-boundary movement has, in-fact, already been given in accordance with the provisions of the conventions but the trans-boundary movement of the waste can not be completed in accordance with the terms of the contract.¹¹⁸ In such case, the state of export is duty bound to ensure that particular waste is taken back to the state of export, by the exporter provided alternative arrangements for the disposal of the wastes in an environmentally sound manner can not be made with in a period of time.¹¹⁹ Even if it is optional per Arts.9 (2) Basel and Art 9 (3) of the Bamako conventions such duty can be seen.

2.3.6 The Duty for Environmentally Sound Management of Hazardous Wastes

As pointed out earlier, hazardous wastes have adverse effects to human life and the environment. And hence the need to ensure these types of wastes are managed in an environmentally sound way is to halt this effect.

States in the world have had one, and in some instances, more misadventures and costly experience,

¹¹⁵ Ibid

¹¹⁶ Aida Luisa Levin, cited above at note 56, p.9

¹¹⁷ Id., p. 337

¹¹⁸ Costa, cited above at note 62, p.70

¹¹⁹ The alternative arrangement is to be made with 90 days the importing state informed the state of export and the Secretariat. This is the maximum to be in the Bamako Convention and also the Bamako Convention does not allow other period to be agreed upon by the state concerned unlike the Basel Convention.

because of the inappropriate disposal of hazardous wastes.¹²⁰ Even if many countries do not have the capacity to manage hazardous wastes particularly the developing states, in an environmentally sound manner due to different reasons,¹²¹ societal health and environmental concern called for regulatory programs of these wastes. Hence, many waste regulatory programs have having progressive element been started before a hundred years.¹²²

Different state have provided for an excellent set of policy statements on the management of hazardous wastes.¹²³ In different countries, there are strategies for the implementation those policy statements on the management of hazardous wastes. For instance, the conservation strategy of Ethiopia sets up two strategies necessary for the implementation of the policy statements of control of hazardous material from industrial wastes.¹²⁴ These are establishing a regulatory frame work for pollution control and management of hazardous materials; and capacity building, institutional strengthening, and increasing awareness.

The Basel convention has imposed the duty to manage the trans- boundary movement of hazardous wastes in an environmentally sound manner as a primary obligation.¹²⁵ The Bamako convention also imposes the same obligation.¹²⁶ States must not permit export or import of wastes if they have reason to believe that the wastes in question will not be managed in an environmentally sound manner.¹²⁷ This obligation applies to exporting, transit and importing states per Art. 4 of both conventions and also to movement within the non-parties, which may only be conducted under an agreement provided for management, not less environmentally sound than is required by the conventions.¹²⁸

Developing state do not escape this duty of sound management for the mere reason of infrastructural or economic incapacity as the conventions have given them an option of seeking assistance from othe

¹²⁰ United Nations, Manual for Hazardous Wastes Management, Vol .1, (New York, 1994), P.34

¹²¹ Basel Convention Secretariat Regional Center, Course on Hazardous Wastes Management, (Accra, Ghana, August 2002), Sec.I, pp.13-14

¹²² Sean, cited above at note 34, p. 59

¹²³ Id., p. 62

¹²⁴ Ethiopia's Presentation for Workshop for Local Point and Linkage Institution on Hazardous Wastes, A compilation At The Federal Environmental Protection Authority (EPA).

¹²⁵ Patricia and Alan, cited above at note 70, p.338

¹²⁶ Art. 4(2) (e) (g), 4(8) Basel, Art. 4 (3) (j), (i) Bamako Conventions

¹²⁷ Art. 4 (2) (g) Basel; Art. 4 (3) (j) Bamako Conventions

¹²⁸ Art.4 (5), 7, 11 of Basel, 7, 11 (1) of Bamako Conventions

states or prohibit the imports.¹²⁹ Nor can the exporting states escape this obligation of management by transferring responsibility to the state of import or transit tending to make the exporting state duty bound for ensuring the wastes' proper management at all stages as the management of wastes is not a one point activity but a continues duty on party states from the time of production of the wastes to the disposal of such wastes wherever the site of disposal is and also during trans-boundary movement till disposal.¹³⁰

Requiring states to ensure that the wastes subject to a trans-boundary movement be packaged, labeled and transported in conformity with generally accepted and recognized international rules and relevant practices¹³¹ and this is an important indication that transport failing to comply with such standards can not be regarded as meeting the obligation of environmentally sound management.¹³²

What one has to notice still is that management is being hampered by different technical and operational problems such as the long history of uncontrolled and undocumented dumping, high costs of and limited facilities for complete destruction of hazardous wastes and limited technologies for improved handling, storage, and destruction of such wastes.¹³³

2.3.7 The Duty to International Co-operation

International environmental cooperation is a co-operation among states on environmental issues or concerns.¹³⁴ This is because as said previously, states (the international community as a whole) are becoming aware of the risk the global environment is facing.

Pollution, and danger of nuclear and other extra hazardous substances have threatened life as a whole and this problem has also involved not only a single state but also other states hence it is becoming international in two respects.¹³⁵ Primarily, because some activities in one state often have a serious impact beyond the national jurisdiction of that particular state, and some times it is difficult to identify their source where there is a concentration of population and industry on both sides of an international

¹²⁹ Art. 4(2) (g) to Basel; Art. 4 (3) (q), 10 Bamako Conventions

¹³⁰ Art 4 (2) (d), 8,10, 9 (3) Basel , Art 4(3) (t), 8,9 (3),10 Bamako Conventions

¹³¹ Art 4(7) (b) Basel, Art 4(3)(m) of the Bamako conventions

¹³² Patricia and Alan, cited above at note 70, p 339

¹³³ United Nations, *World Resources 1987*, (1987), p 217

¹³⁴ Jhon E.Carroll, *International Environmental Diplomacy*, (1988), p.15

¹³⁵ Malcolm N. Shaw, cited above at note 30, p 585

boundary.¹³⁶ Secondly, it is obvious that administration of environmental problems fails unless there is a co-operation among states.¹³⁷ Large-scale environmental problems are extremely difficult to be solved by individual states and international environmental co-operation eases the difficulty besides it yields useful dividends at relatively low costs and limited political risks.¹³⁸ Hence we need international cooperation.

The Stockholm Conference, which has the tasks of focusing the attention of states to have appropriate international cooperation on trans-boundary environmental issues (problem)¹³⁹, Passed a declaration which recommends co-operation of states in matters concerning the protection and improvement of the environment.¹⁴⁰ This is because co-operation is necessary to effective control, prevention, reduction and elimination of adverse environmental effects from different operations.¹⁴¹

In cases of trans-boundary environmental problems let alone where coordination is lacking even when the coordination is not held in good-faith resolving of these problems may partially be successful, if it does not fail at all, best regulation of trans-boundary environmental problems be effected through coordination of states.¹⁴² Important points one has to notice in relation to international environmental coordination are that the cooperation is also needed in order to raise resource to support the developing countries in carrying out their responsibilities to achieve environmental protections (goals)¹⁴³ and the cooperation shall go to the extent of developing a realm of international law regarding the liability and compensation to victims of pollution or other environmental damage caused by activities in one state having effects beyond the national jurisdiction of that very state.¹⁴⁴

The United Nations and also states cooperation's outside the United Nations system and regional organizations are important indicators of cooperation to protect the environment

¹³⁶ Fredrick J E Jordan, "Recent Development International Environmental Pollution Control", McGill Law Journal, Vol. 15 (1969), No. 2, p 289

¹³⁷ Jhon, cited above at note 132, p 15

¹³⁸ Richard B Bilder, "Controlling Great Lakes Pollution A Study in United States-Canada Environmental Co-operation". Michigan Law Review, Vol 70, (1972), p.555, no. 3

¹³⁹ Id, p 471

¹⁴⁰ Declaration Of The United Nations Conference On The Human Environment, Stockholm 5 June 1972, Principle 24, pp 20 ff

¹⁴¹ E D Brown "Conventional Law of the Environment," Natural Resource Journal, Vol 13, (1973), Part 3, p,204

¹⁴² John, cited above at note 132, p 15

¹⁴³ Preamble of The Declaration, cited above at note 138

¹⁴⁴ Principle 22 of The Declaration a cited above at note 138

in addition to their other goals. The broad –based cooperation between the governments of all states, international organizations and the peaceful forces of the world, therefore, in all respects will be indispensable to tackle the environmental problem.¹⁴⁵

In the Basel and Bamako conventions international and intra-African co-operations¹⁴⁶ are also important duties so as to avail of the important advantages it offers. This cooperation extends to areas such as¹⁴⁷ to cooperate actively in the transfer of technology and management systems related to the environmentally sound management of hazardous wastes, to cooperate in developing technical capacity among parties, to cooperate in developing appropriate technical guidelines, to cooperate with international organizations to promote, inter alia, public awareness, to cooperate in monitoring the effects of management of hazardous wastes on human health and environment .

In the strategy of international management of hazardous wastes in an environmentally sound manner, international cooperation in the management of trans-boundary movement is as said to have been given a third priority area.¹⁴⁸ And it is said that in general terms states are required of course by the conventions too, to cooperate in the harmonizing criteria for the identification of hazardous wastes, building monitoring capacities, and other actions.

2.4 Implementation and Supervisory Institution

In addition to requiring implementation in the national legislations and administrative structure,¹⁴⁹ the Basel and the Bamako conventions ensure effective compliance to the regime of the conventions through institutional supervision.¹⁵⁰ The first institution for this purpose is the Conference of the Parties. This body has further additional powers such as the power to adopt amendments and protocols upon proposal for amendment to the protocol by party state to the protocol,¹⁵¹ and to undertake any addition action required to further the objectives of the conventions.¹⁵² The obligatory provisions for information from /by parties states regarding trans-boundary movements of hazardous wastes, the effect they have posed

¹⁴⁵ Art .10 Basel; Art 10 and 11 of Bamako Conventions

¹⁴⁶ Ibid

¹⁴⁷ UNCED, cited above at note 89, p.87

¹⁴⁸ Ibid

¹⁴⁹ Art 4(4) Basel; Art 4 (1) Bamako Conventions

¹⁵⁰ Art .15 Basel, Art-15 Bamako Conventions

¹⁵¹ Art. 15 (5) and 17(1) of the Basel; Arts 15 (4) and 17(1) 150 Bamako Conventions

¹⁵² Patricia and Alan, cited above at note.70, p 340

on human health and the environment and any accident occurred during their transport or disposal are of prime importance as they give the Conference the basis on which it is to review the conduct and policies of states, particularly to effectively monitor the compliance by importing states with their obligation to environmentally sound management.¹⁵³ The pattern followed by the conventions and this supervisory method is similar to the typical pattern adopted in many environmental treaties.¹⁵⁴

The same feature of the conference of the parties can be observed per the pertinent provision of the conventions.¹⁵⁵ The other important organ is the Secretariat which among others has the function of verifying alleged breaches communicated by any party, of obligation based on or relying on "all relevant information" to the parties. It also has the functions to ensure necessary coordination with relevant international bodies,¹⁵⁶ to assist parties upon request in their identification of cases of illegal traffic and to circulate immediately to the parties concerned any information it has received regarding illegal traffic and others.¹⁵⁸ Neither of the two bodies are given the power to conduct independent inspection hence limited effectiveness of the conventions' control and supervision regime.¹⁵⁹

Another essential feature of environmental conventions is the provision of their own dispute settlement procedures. The Basel and the Bamako Conventions provide for a dispute settlement mechanism.¹⁶⁰ The first mechanism is to settle the dispute through negotiation or any other peaceful means of the disputants' choice.¹⁶¹ This is because states are unwilling to surrender to third parties the control over the outcome of their dispute.¹⁶² It is only if this first step fails that the next alternative upon agreement of the parties the dispute will be taken that either to submit the case to the International Court of Justice (ICJ) or to arbitration in accordance with Annex VI (of Basel) and Annex V (Bamako) an arbitration.¹⁶³ When ratifying, accepting, approving, and acceding to the conventions parties are allowed to declare compulsory and without special agreement, in relation to any party accepting the same obligatio

¹⁵³ Arts. 13, 15, and 17 of the Bamako Conventions

¹⁵⁴ Ibid

¹⁵⁵ Art. 17 of Basel and Bamako Conventions

¹⁵⁶ Art. 19 Basel, Art. 19 Bamako Conventions

¹⁵⁷ Art. 16 (1) (d) Basel; Art. 16 (1) (d) Bamako Conventions

¹⁵⁸ Art. 16 (1) (i) Basel; Art. 16 (1) (i) Bamako Conventions

¹⁵⁹ Art. 16 (1) Basel; Art. 16 (1) Bamako Conventions

¹⁶⁰ Fitzmaurice, cited above at note 31, p. 193

¹⁶¹ Arts. 20 and Annex VI of Basel; Art. 20 and Annex V Bamako Convention

¹⁶² 136. Art. 20 (1) of Basel; Art. 20 (1) of Bamako Conventions

¹⁶³ Carrol, cited above at note 105, p. 114

submission of the dispute to the ICJ; and /or arbitration in accordance with the procedures in the annex of the Basel convention,¹⁶⁴ in case of the Basel convention.

Important difference one should notice is that in case of the Bamako convention no provisions as to declaration to accept a compulsory adjudication by ICJ or arbitration as in the Basel convention. It is an Ad Hoc committee to be set up by the Conference of the Parties¹⁶⁵ that will take the case in case of arbitration in the Bamako convention but the organ in the case of the Basel is as provided in the Annex VI Art.3, arbitral tribunal that consists three members. And each of the parties to the dispute shall appoint an arbitrator, and the two already appointed shall designate by common agreement the third arbitrator who shall be the chairman of the tribunal within two months of the appointment of the second arbitrator of neither nationality and upon failure, to be appointed by the secretary General of the United Nations.¹⁶⁶

The dispute settlement mechanism is not strong, i.e., it is weak, to put it in general terms and requires the agreement of the parties concerned, but optional acceptance of the compulsory jurisdiction of the ICJ or arbitration is allowed¹⁶⁷

Conclusion

Hazardous wastes are wastes which have posed a great or severe risks to human health and great damage to the environment due to their dangerous characteristics such as corrosivity, ignitability, flammability or toxicity. For the Basel and Bamako Conventions certain characteristics and elements are provided under different annexes so that any waste exhibiting that characteristics or containing that element or in that group be taken

as a hazardous waste. States are also allowed to come up with their own definitions upon observing the rules and principles in the conventions and thereby we get different definitions in different states. States in coming up with definition of hazardous wastes can use the definition in the conventions, can come up with their own new definition, can learn from the experiences of different states and adopt the one that fits to their situation, or can modify the definitions to avoid problem associated with such definitions.

¹⁶⁴ Art. 20 (2) of Basel; Art 20 (2) of Bamako Conventions

¹⁶⁵ Art 20(3) of Basel; No article in the Bamako Convention

¹⁶⁶ Art 20 (3) of Basel Art 20(3) of the Bamako Conventions

¹⁶⁷ Annex VI, Art 4 of the Bamako Convention

Elevated to a most serious level in 1980s there were different illegal Tran boundary movement of hazardous wastes without considering the greater risk they have brought to life and the ecosystem. Within the same decade, hence the world has begun to show its aspiration to regulate the trans- boundary movements and disposal of such wastes. After a longer negotiations the international community came up with the Basel Convention 1989, which latter followed by its Africa counter part (the Bamako 1991) convention.

These conventions have provided for different obligations upon states such as the obligation to reduce the generation of hazardous wastes, to use technologies producing less hazardous waste, disposal of the wastes in state of generation, hazardous wastes management in an environmentally sound manner.

Ethiopia being party to the two conventions in-discussion has to enact laws with a new to discharge these duties and the definition given in the proclamation should be supplemented by the definition in the conventions as the conventions are integral parts of the laws of the land per Art.9 (4) of Federal Democratic Ethiopia's Constitution of 1995.

Not only party states to the conventions on hazardous waste but also every state should manage hazardous wastes in environmentally sound manner since our planet is an indivisible one-system whereby the actions of one state will have an effect on it to the disadvantage of the whole community.