



Book - Unit 4 – Regional instruments on hazardous wastes

Book - Unit 6 – Regional Instruments on Hazardous Wastes

Site: UNITED NATIONS INFORMATION PORTAL ON MULTILATERAL ENVIRONMENTAL AGREEMENTS

Course: Introductory Course to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal and Regional Instruments on Hazardous Wastes

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Main Provisions

1. Bamako Convention on the Ban of Imports into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa

The Basel Convention gave rise to the development of a number of other conventions on hazardous substance at the regional level and to the amendment of existing regional conventions on environmental management to specifically include provisions for hazardous substance. Article 11 of the Basel Convention encourages parties to enter into bilateral, multilateral and regional agreements on hazardous wastes to help achieve the objectives of the Convention. In light of this and other factors, the 1991 Bamako Convention on the Ban of Imports into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa (“Bamako Convention”) was adopted by African states to address certain aspects of hazardous waste problems that the Basel Convention did not cover. The Bamako Convention entered into force in 1998 and, as of March 2014, it has 25 Parties.

The Bamako Convention regulates substances, especially pesticides, fertilizers and other chemicals that have been banned, cancelled, denied registration by a governmental regulatory action or voluntarily withdrawn in the country of manufacture due to health and environmental reasons. These are considered by the Bamako Convention as hazardous wastes. Efforts to include the specified substances was intended to allow African states to deal with problems of exports of such substances to African countries purportedly for use, when in fact, waste traders and other exporters intend to dispose of them that way. Under article 2, the Bamako Convention also expressly includes radioactive wastes in its definition of hazardous wastes, regardless of whether there exist other international instruments for their control, which means that radioactive wastes are regulated under the Bamako regime.

Main Provisions

Another significant provision of the Bamako Convention is that it expressly bans the importation of hazardous wastes into African states from non- parties to the Convention. To make this ban effective, articles 4, 6, 8 and 9 of the Convention obliges its parties to take legal, administrative and other measures within their national jurisdictions to prohibit the import of all hazardous wastes into their territories. Any such imports are deemed illegal and the acts involved, criminal. To be able to determine whether illegal exports of wastes into Africa are about to take place and to prevent them, each party is required to set up a “dump watch”. Should any such illegal activities take place, the Bamako Convention requires that the illegally imported wastes be exported back to the country of origin and parties have an obligation to inform the Bamako Secretariat and other parties to the Convention of such occurrences.

As between parties to the Bamako Convention, article 9 provides that wastes may be moved but only upon receipt from the intended destination country of a written consent, prior to export. Movements of hazardous wastes without such consent amount to illegal traffic. So are movements pursuant to falsified consent, misrepresentation, fraud and those that result in deliberate disposal of wastes in contravention of the Bamako Convention. Under article 8, parties have an added duty to re-import any hazardous wastes exported to another party pursuant to agreements between persons in the countries concerned, if the movement cannot be completed and the portion of hazardous wastes already exported cannot be disposed of in the importing country in an environmentally sound manner.

Article 4(3) of the Bamako Convention obliges each party to impose unlimited liability as well as joint and several liability on hazardous waste generators. This means that countries could impose liability for existence of hazardous wastes and for any danger or damage occasioned in the absence of fault or negligence against other parties and non- parties. Under article 12, parties agreed to hold further consultations on matters concerning liability and compensation and to come up with further joint regulations on it. In addition, article 4(3) of the Bamako Convention creates obligations for environmentally sound management of hazardous wastes that are similar to those created under the Basel Convention.

2. Kuwait Regional Protocol on the Control of Marine Transboundary Movements and Disposal of Hazardous Wastes and other Wastes

Pursuant to the 1978 Kuwait Convention for Cooperation on the Protection of the Marine Environment from Pollution, parties adopted several protocols, among which the Kuwait Regional Protocol on the Control of Marine Transboundary Movements and Disposal of Hazardous Wastes and other Wastes (“ROPME Protocol”) was adopted in 1998. The ROPME Protocol, which entered into force in 2001, was specifically intended to make provisions for the proper management and control of transboundary movement of hazardous and other wastes in the region, which posed dangers to human health and the environment. In the Preamble, the Protocol makes reference to article 11 of the Basel Convention which authorizes parties to enter into bilateral, multilateral and regional agreements.

The ROPME Protocol strengthens provisions of articles IV and V of the Kuwait Convention, which provide for control and prevention of the marine environment in the region from pollution from ships and from dumping of wastes and other matter from ships and aircrafts. The substances controlled by the ROPME Protocol include wastes listed in Annex I to the Protocol, which are considered hazardous wastes, and other wastes, as contained in Annex II. It does not apply to a) radioactive wastes under regulation of another instrument; b) wastes from offshore installations that are regulated by the Kuwait Protocol concerning Marine Pollution resulting from Exploration and Exploitation of the Continental Shelf of 1998; c) transboundary movement of wastes overland or airborne; or d) wastes whose movements and disposal do not intrude upon the marine environment in the ROPME area.

Main Provisions

The ROPME Protocol has various provisions that are similar to those of the Basel Convention. Some provisions provide, for example, for a reduction of the generation of hazardous and other wastes by parties to a minimum (article 9(1)), for prevention of pollution of the marine environment in the area with hazardous and other wastes (article 4(3)), for labelling, packaging and transportation of hazardous wastes in conformity with generally accepted and recognized international standards (article 4(4)), and for all movements of wastes to be accompanied by a movement document as required (article 4(5)).

In addition, the ROPME Protocol contains new provisions which complement those of the Basel Convention and other instruments by providing, for example, that parties shall prohibit all persons under their national jurisdictions from transporting or disposing of hazardous and other wastes unless such persons are authorized or allowed to perform such types of operations. This provision requires that parties put in place a registration system for waste handlers.

Further, article 5(1) of the ROPME Protocol prohibits importation of hazardous and other wastes into or through the region for purposes of final disposal. Article 5(2) authorizes parties to import wastes from non-parties into their territories only for purposes of resource recovery, recycling, reclamation, direct re-use or alternative uses. This is allowed only if the state of import has the facilities and technical capacity to manage the wastes in an environmentally sound manner and in compliance with Regional Technical Guidelines developed under the Protocol.

Article 8(1) prohibits parties from exporting wastes to other parties unless and until regional technical guidelines for the environmentally sound management of hazardous and other wastes are developed under article 14(c) of the ROPME Protocol. Among other things, the guidelines are to contain a register of disposal facilities within party states that have adequate technical capacities to manage hazardous wastes and other wastes in an environmentally sound manner as required by article 13(5). Thereafter, a notification procedure similar to the one established by the Basel Convention must be followed by parties in the movement of wastes between parties as required by article 8(3)-(8).

Article 13 of the Protocol provides that ROPME shall provide institutional framework for the implementation of its provisions. To implement the Protocol, ROPME and its organs are, among other things, required to provide training of national experts, particularly for monitoring and enforcement of the provisions of the Protocol; establish a unified monitoring system for transboundary movement of hazardous and other wastes; and to establish regional reception facilities to receive wastes; and to provide disposal and other services to parties in close cooperation with parties and relevant national and international organizations, such as the Basel Secretariat.

3. Convention to Ban the Importation into the Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes within the South Pacific Region

In accordance with article 1, the Convention to Ban the Importation into the Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes within the South Pacific Region, 1995 (“Waigani Convention”) applies to the South Pacific Region, where many small island states are situated. Two main differences with the Basel Convention are that it covers the vast Exclusive Economic Zones of the South Pacific States, not only the Territorial Seas, and includes hazardous and radioactive wastes as vessels move between major producing and consuming countries. Therefore the area is under serious threat of harm to health and the environment from the management and transboundary movement of hazardous wastes. The Waigani Convention came into force in 2001. As of March 2014 the Convention has twelve parties.

The Waigani Convention specifically recognizes the growing threat to human health and the environment posed by the increasing generation of hazardous wastes and their disposal in environmentally unsound manner.

Main Provisions

Articles 4, 6 and 8 of the Waigani Convention require parties to take appropriate legal, administrative and other measures to ban the importation of radioactive and other wastes from outside the Convention area. Parties are also required to prohibit the dumping of hazardous and radioactive wastes at sea. This could solve problems of illegal dumping at sea as explained in the introductory requirement, but the measure requires very close supervision of waste in each party's jurisdiction.

Further, the Waigani Convention makes waste minimization requirements and requires that parties prepare and adopt appropriate arrangements for liability and compensation for hazardous waste damage that are similar to provisions of the Basel Convention. In addition, the Waigani Convention also incorporates important international environmental law principles to guide parties in taking measures to deal with hazardous wastes. For example, article 1 requires parties to apply the precautionary principle in taking measures to deal with hazardous wastes. Parties are obliged to apply the polluter pays principle in taking measures to deal with hazardous wastes (article 12).