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## The International Exportation of Waste: The Battle Against the Path of Least Resistance

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# The International Exportation of Waste: The Battle Against the Path of Least Resistance

## I. Introduction

Faced with the high cost of compliance with domestic environmental regulations, industrialized nations are exporting their waste to countries where disposal requirements are less stringent.<sup>1</sup> The developing nations in the Caribbean, Latin America, and Africa are the targeted dumping grounds for much of this exported waste.<sup>2</sup> These developing countries impose less domestic control over their importation of waste because of their low standards of living and the presence of corruption in their governmental systems.<sup>3</sup> When offered millions of dollars to receive garbage, many impoverished countries, seeing no alternative, succumb to the temptation.<sup>4</sup> However, these countries lack the technical knowledge and experience required to dispose of the waste without causing adverse effects to the environment and to the health of their citizens.<sup>5</sup>

Each year, the United States produces more than 250 million tons of hazardous waste of this an estimated 160,000 tons of hazardous waste is exported.<sup>6</sup> This amount is increasing as the total number of waste disposal sites in the United States decreases.<sup>7</sup> The number of American disposal sites has diminished due to stricter environmental regulations imposed through the 1984 Amendments of the Resource Conservation and Recovery Act (RCRA) and the American public's opposition to disposal sites located near residential ar-

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1. Handy, *Hazardous Waste Exports: A Leak in the System of International Legal Controls*, 19 ENVTL. L. REP. 10171 (1989).

2. French, *A Most Deadly Trade*, WORLD WATCH, July/Aug. 1990, at 12. Between 1986 and 1988, Greenpeace estimated that 3.5 million tons of toxic waste were disposed in developing countries. During 1988, companies from western developed countries dumped at least 24 million tons of toxic waste in West Africa. *Id.*

3. Comment, *The Export of Non-hazardous Waste*, 19 ENVTL. L. REP. 879, 900 (1989)(authored by Lori Gilmore).

4. *EPA Selects \$21 Million Cleanup Plan For Lake In Worst Hazardous Waste Site*, Daily Report for Executives (BNA) No. 134, at (July 13, 1988). Lindaco Incorporated, an American corporation, contracted with Guinea-Bissau to dispose of waste for \$300 million over a five year period. This amount of money is twice the county's gross national product. *Id.*

5. *Waste Export Control: Hearing on H.R. 2525 Before the Subcomm. on Transportation and Hazardous Materials*, 101st Cong., 1st Sess. 23 (1989) (Statement of Rep. John Conyers, Jr.) [hereinafter *Hearings*].

6. *Id.*

7. *Id.*

eas.<sup>8</sup> As a result of the enactment of these RCRA Amendments, waste generators pay from \$250 to \$350 per ton for waste disposal.<sup>9</sup> Conversely, developing nations will dispose of the waste for \$40 per ton.<sup>10</sup> Lower disposal fees make the developing nations an attractive alternative for disposal sites for United States' waste.

Government intervention by the developed nations is necessary to ensure that exported waste is disposed of without causing harm to the environment. Nevertheless, the action of one or more of the developing nations would not be sufficient to remedy the situation. What is needed is a global agreement which specifies requirements for the exportation of waste. The United Nations has created such an agreement, embodied in the Basel Convention on the Control of Transboundary Movement of Hazardous Waste.<sup>11</sup> However, the United States has not yet adopted the Basel Convention into its domestic laws. This Comment will focus on the United States' current regulations governing the exportation of waste, their strengths and weaknesses, and the changes needed to incorporate the Basel Convention into United States domestic law.

## II. United States Regulation for Waste Exportation

Prior to the enactment of section 3017 of the Resource Conservation and Recovery Act (RCRA) in 1984, there were no restraints on the export of United States' waste.<sup>12</sup> In general, a waste is considered hazardous by RCRA if the waste will cause or significantly contribute to a serious, irreversible illness or if the waste poses a "substantial present or potential" threat to the environment or human health when it is improperly managed.<sup>13</sup> A waste is classified as hazardous according to the following characteristics: ignitability,<sup>14</sup> corrosivity,<sup>15</sup> reactivity,<sup>16</sup> and EP toxicity.<sup>17</sup> Any waste not possessing these characteristics is a non-hazardous waste. To determine whether a waste contains the requisite EP toxicity, a representative sample of the waste is tested.<sup>18</sup> If the waste contains one of the con-

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8. *West Shipping Waste Woes to Third World*, Chicago Trib., July 11, 1988, at 1, col. 1.

9. *Id.* RCRA's 1984 amendments imposed stringent regulations on insurance requirements and groundwater monitoring requirements in order to phase out those landfills which could potentially contaminate the environment. *Id.*

10. *Id.*

11. French, *supra* note 2, at 13.

12. Resource Conservation and Recovery Act § 3017, 42 U.S.C. § 6938 (1984).

13. Characteristics of Hazardous Waste, 40 C.F.R. § 261.10 (1986).

14. Characteristics of Hazardous Waste, 40 C.F.R. § 261.21 (1981).

15. Characteristics of Hazardous Waste, 40 C.F.R. § 261.22 (1981).

16. Characteristics of Hazardous Waste, 40 C.F.R. § 261.23 (1981).

17. Characteristics of Hazardous Waste, 40 C.F.R. § 261.24 (1981). The EP toxicity test refers to an extraction procedure on a representative sample of waste to determine if the waste contains contaminants at a concentration which is determined to be hazardous. *Id.*

18. *Id.*

taminants listed at a concentration greater than or equal to the maximum concentration value provided in the regulations promulgated by the Environmental Protection Agency (EPA), the waste is considered to be a hazardous waste.<sup>19</sup>

All wastes classified as hazardous are required to be exported in accordance with section 3017 of RCRA, which establishes a "prior informed consent" system of notification.<sup>20</sup> Therefore, hazardous waste may not be shipped to a foreign country unless the EPA has been notified and the receiving country has agreed to accept the hazardous waste.<sup>21</sup> The notification must include a description of the manner in which the hazardous waste will be transported and disposed of in the receiving country, as well as an identification of the ultimate disposal facility.<sup>22</sup> The EPA must, in turn, notify the government of the receiving country and request that such government provide either a written consent or an objection to the exportation proposal.<sup>23</sup> In addition, the EPA is required to forward a description of the federal regulations that would apply if the hazardous waste were to be disposed of in the United States.<sup>24</sup> Once the importing country's consent is received, the waste may be exported with or without the EPA's approval.

The "prior informed consent" system is not a prerequisite to exportation when the waste is classified as non-hazardous<sup>25</sup> or when an international agreement exists between the United States and the receiving country that specifies procedures for the notification, transportation, treatment, storage and disposal of the hazardous waste.<sup>26</sup> If there is an international agreement, the hazardous waste must be exported in conformity with the agreement's terms.<sup>27</sup> Furthermore, whether or not there is an international agreement, the hazardous waste exporter must provide the EPA administrator with an annual report detailing the "type, quantity, frequency and ultimate destination" of the hazardous waste exported.<sup>28</sup>

RCRA limits the means by which exporters of hazardous waste are held accountable for hazardous substance releases. The federal

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19. *Id.* Table 1 of 40 C.F.R. § 261.24 contains the maximum concentration values.

20. F. BERNTHAL, U.S. VIEWS ON WASTE EXPORTS (United States Department of State Current Policy No. 1095, 1988).

21. Resource Conservation and Recovery Act § 3008, 42 U.S.C. § 6938(a).

22. Resource Conservation and Recovery Act § 3008, 42 U.S.C. § 6938(c). The number of notifications to export waste increased from 12 in 1980 to over 600 in 1988. *Hearings, supra* note 5, at 28.

23. Resource Conservation and Recovery Act § 3008, 42 U.S.C. § 6938(d). The EPA must act under Section 6938(d) within 30 days of receipt of a complete notification. *Id.*

24. *Id.*

25. Resource Conservation and Recovery Act § 3008, 42 U.S.C. § 6938(a). The EPA does not impose any requirements on the exportation of non-hazardous waste.

26. Resource Conservation and Recovery Act § 3008, 42 U.S.C. § 6938(f).

27. *Id.*

28. Resource Conservation and Recovery Act § 3008, 42 U.S.C. § 6938(f), (g).

government is the only party that may initiate a suit against a hazardous waste exporter who violates the requirements of RCRA by pursuing criminal prosecution under section 3008<sup>29</sup> or by pursuing a civil action under section 7003.<sup>30</sup> Under section 3008, the federal government is authorized to issue compliance orders based on any information indicating that the hazardous waste exporter has violated the notification requirements.<sup>31</sup> The compliance order requires the waste exporter to ship the waste according to the guidelines established by section 3017.<sup>32</sup> Where an imminent hazard results from any waste exporter's improper treatment, transportation or disposal of hazardous waste, RCRA empowers the EPA administrator to bring suit on behalf of the United States against that person.<sup>33</sup> Finally, under section 3017, the exporter may also be assessed criminal penalties if he knowingly fails to file the requisite documentation or if the waste is knowingly exported without the consent of the receiving country.<sup>34</sup>

### III. The Problems with United States' Regulations

#### A. Enforcement

Once the hazardous waste leaves the United States, the exporter of the waste is immune to civil actions initiated by the American public.<sup>35</sup> Section 7003 of RCRA provides any member of the American public residing in an area that has been environmentally affected by a violation of RCRA provisions the opportunity to bring suit when the administrator chooses not to act.<sup>36</sup> However, when the waste is exported to a foreign country, the members of the "public"

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29. Resource Conservation and Recovery Act § 7003, 42 U.S.C. § 6973 (1980).

30. Resource Conservation and Recovery Act § 3008, 42 U.S.C. § 6928 (1980).

31. Resource Conservation and Recovery Act § 3008, 42 U.S.C. § 6928(c) (1984). The administrator may assess a civil penalty for non-compliance in the order not exceeding \$25,000 per day. *Id.* § 3008(c).

32. *Id.*

33. Resource Conservation and Recovery Act § 7003, 42 U.S.C. § 6973(a) (1984). Anyone who has committed a past or present act which created or maintained an imminent and substantial endangerment is subject to Section 7003 of RCRA. 1984 U.S. CODE CONG. & ADM. NEWS 5576, 5607. Whether the violation was intentional or unintentional is not a factor when determining liability under this provision. *Id.* The administrator may seek to restrain the violator from the environmentally harmful activity and/or order the person to take other actions as may be necessary to rectify the violation. Resource Conservation and Recovery Act § 7003(a). A penalty of not more than \$5,000 for each day in which the person fails to comply will be imposed upon any person who willfully violates any order of the administrator. *Id.* § 7003(b). To invoke such a penalty, the action must be pursued in the appropriate federal district court. *Id.*

34. Resource Conservation and Recovery Act § 3008(d)(3), (6). Upon conviction of a "knowing endangerment," the exporter would be subject to a fine not to exceed \$250,000 and/or imprisonment not exceeding 15 years. *Id.* § 3008(e). If the violator is an organization, the fine could be up to \$1,000,000. *Id.*

35. Handy, *supra* note 1, at 10174.

36. Resource Conservation and Recovery Act § 7003(d).

affected by the RCRA violation are not United States citizens. Congressional legislation is presumed to apply only within the United States territorial jurisdiction, unless a clear legislative intent indicates otherwise.<sup>37</sup> Therefore, because neither the express language nor the legislative history of section 7003 reveal a clear showing of Congressional intent to extend the definition of "public" to include citizens of foreign nations, exporters of hazardous waste are not liable to foreign citizens under this provision.<sup>38</sup>

Seldom, the federal government has initiated suit against a waste exporter for a violation of the RCRA's notice provision. In fact, many exporters do not bother with the notification requirements contained in section 3017 because of ineffective government policing actions.<sup>39</sup> Auditors for the EPA's waste exportation program have found that the amount of waste shipped abroad in violation of the EPA's regulations was eight times as much as was shipped abroad with the proper notification.<sup>40</sup> It appears that hazardous waste exporters are able to disregard section 3017's notification requirements with little risk of detection.<sup>41</sup> Section 3017, therefore, provides little deterrence. To improve enforcement, an increase in the number of inspectors is needed.<sup>42</sup>

### B. Ineffective Notification Scheme

Section 3017's notification and consent system does not address the serious problems caused by the waste exportation boom. The prior informed consent doctrine does not afford developing countries enough protection from hazardous waste exports.<sup>43</sup> The notifications that are sent to the receiving countries frequently reach the wrong government official and are written in English rather than the language of the receiving country.<sup>44</sup> In addition, many of these countries lack the scientific knowledge necessary to fully comprehend the detrimental effects to the environment and to the health of their citizens that may result from improper management of hazardous

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37. *Foley Brothers v. Filardo*, 336 U.S. 281, 285 (1949).

38. *Handly*, *supra* note 1, at 10174.

39. *Porterfield & Weir*, *The Export of U.S. Toxic Wastes*, THE NATION, Oct. 3 1987 at, 325, 328.

40. *Id.* This approximation does not include the smugglers who have managed to elude custom officials altogether. *Id.*

41. *Barnes, Leaf, & Lulueta*, *Dirty Job, Sweet Profits*, U.S. NEWS AND WORLD REPORT, Nov. 21, 1988, at 54.

42. *International Trade in Hazardous Waste Increases in 1988: University Professors Say*, 12 Int'l Env't Rep. (BNA) No. 2, at 74 (February 8, 1989). The EPA requests for funding increases for enforcement of the provisions regulating hazardous waste exports have been repeatedly denied. *Porterfield & Weir*, *supra* note 39, at 328.

43. *See supra* notes 17-21 and accompanying text.

44. *French*, *supra* note 2, at 15.

waste.<sup>45</sup> In view of these facts, the United States government cannot claim that consent invoked from the receiving countries by the United States is truly informed.

Advocates of prior informed consent assert that legislation restricting waste exportation would violate the principle of national sovereignty by denying the receiving country the opportunity to reach its own decision after weighing the risks against the benefits of the importation.<sup>46</sup> However, the individual exporters of hazardous waste undermine the importing country's decision making process. An EPA audit has revealed numerous notifications that were either incomplete or never delivered.<sup>47</sup> Furthermore, many of the notifications grossly mislead the developing country by misrepresenting toxic waste as brick making material, roadfill, fertilizer or other innocuous substances.<sup>48</sup> Waste exporters are also guilty of disposing of hazardous waste in countries not intended as the ultimate destination.<sup>49</sup>

### C. *The Government's Passive Role*

The United States government assumes a passive role in the regulation of waste exportation. Section 3017 of RCRA denies the EPA the authority to assess the effects of United States' waste on the environment of the receiving country.<sup>50</sup> Moreover, the EPA will neither provide the receiving country with an evaluation of the adequacy of the notification nor set forth a recommendation on whether the export proposal should be accepted by the importing country.<sup>51</sup> Furthermore, once the receiving country has consented to receive the hazardous waste export, the EPA is powerless to prohibit the exportation.<sup>52</sup>

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45. Handly, *supra* note 1, at 12.

46. French, *supra* note 2, at 15. The majority of developing countries want an international ban on waste exportation because their institutional framework is ill-equipped to handle a notification scheme. *Id.*

47. *Id.*

48. *Hearings, supra* note 5, at 23 (statement of Rep. John Conyer, Jr.). Haiti issued an importation permit to the *Khian Sea* for Philadelphia incinerator ash represented as fertilizer. *Id.* at 163. Guinea imported toxic incinerator ash from the *Bank* as raw materials for bricks. *Id.* at 177. Toxic incinerator ash was to be sent to Guatemala by the International Energy Resources, Inc. for the construction of approximately 100 kilometers of roads. *Halt to Transboundary Waste Shipment Sought by Caribbean Environmentalists*, 13 Int'l Env't Rep. (BNA) No. 2, at 45 (February 14, 1990). Abbott Laboratories shipped waste containing antibiotics and fish oil to the Dominican Republic passing it off as cattle feed and fertilizer. Porterfield & Weir, *supra* note 39, at 330.

49. Comment, *supra* note 3, at 883.

50. *Hearings, supra* note 5, at 4.

51. *Id.* at 29 (statement of Rep. Mike Synar). Even if the proposal appears to be unsatisfactory, the EPA will not issue a warning to the receiving country. *Id.*

52. *Id.* See Resource Conservation and Recovery Act 3017(a), 42 U.S.C. § 6938(a) (1984).

#### D. Exclusion of Non-Hazardous Waste From Regulation

Recently, the United States has received unwanted notoriety for its attempts to export non-hazardous waste. The two most prominent incidents involve the exportation of toxic incinerator ash from Philadelphia, Pennsylvania. The first incident was in January of 1988 when the ship called *Khian Sea* managed to unload one fifth of its cargo, 2,500 to 4,500 tons of ash, in Haiti before the local government discovered the ash's toxic characteristics.<sup>53</sup> After leaving Haiti, the *Khian Sea's* cargo was rejected by countries on five continents.<sup>54</sup> In November of 1988, the *Khian Sea* was discovered in the Indian Ocean with an empty cargo hull.<sup>55</sup> Greenpeace believes that the incinerator ash was dumped in the Indian Ocean.<sup>56</sup> The second incident involved the *Bark*, a Norwegian ship owned by Bulkhandling Incorporated. The *Bark* transported 15,000 tons of ash from Philadelphia's municipal waste incinerators burners to Guinea, misrepresenting the waste as raw materials for bricks.<sup>57</sup>

Section 3017 of RCRA limits the EPA's authority over the exportation of waste to those wastes classified as hazardous waste. No governmental regulations exist that monitor the transboundary movement of equally pernicious non-hazardous waste such as incinerator ash or sewage sludge.<sup>58</sup> As a result, the EPA has no way of knowing the quantity of municipal or residual waste that is exported at any given time from the United States, not to mention in which country the waste is ultimately disposed.<sup>59</sup> Even if a situation arose where the EPA had information on a proposal to export dangerous non-hazardous waste, the government would be powerless to stop the shipment.<sup>60</sup>

Consequently, RCRA has been criticized for its restrictive application of the term "hazardous" in the regulation of waste exportation.<sup>61</sup> Congress has failed to realize that most non-hazardous waste is mixed with hazardous waste constituents which cannot be econom-

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53. *Hearings, supra* note 5, at 163.

54. *Id.* at 165.

55. *Id.*

56. *Id.*

57. *Id.* at 177. Both Haiti and Guinea insisted on the removal of the waste. *Id.* at 164, 177.

58. Porterfield & Weir, *supra* note 39, at 325.

59. *Hearings, supra* note 5, at 24 (statement of Rep. John Conyers, Jr.). The term residual waste is used to refer to waste resulting from industrial, mining or agricultural operations.

60. *Id.* at 24. In mid-1989, there was a proposal to dump 35 billion pounds of domestic municipal waste into the ocean to form a land mass in the Marshall Islands. Contamination of the ocean and food sources would result from this dumping. However, the U.S. government has no legislative authority to stop the exportation. *Id.*

61. Comment, *supra* note 3, at 889.



ically extracted from the waste.<sup>62</sup> The levels of these toxic components contained in non-hazardous waste, however, do not reach the minimum levels required by United States' regulations in order to be classified as hazardous waste.<sup>63</sup> Unfortunately, the climate of most developing countries makes their environment particularly vulnerable to toxic components at any level.<sup>64</sup> Furthermore, most developing countries lack the technology necessary to ensure that the treatment and disposal of waste containing small traces of these hazardous compounds is handled in an environmentally safe manner.<sup>65</sup>

The United States' image has been tarnished by the irreparable harm caused to the environment and to the residents of countries importing waste from the United States. Developing nations fail to make the distinction between the company exporting the waste and the United States' government.<sup>66</sup> Therefore, most of these countries will hold the United States government accountable for the environmental harm caused by any waste generated by private American companies.<sup>67</sup> As a result, the prior informed consent of the importing country will not shield the United States from receiving partial blame for this type of situation.<sup>68</sup> Moreover, resentment toward the United States will grow if America continues to use developing countries as its dumping grounds.<sup>69</sup>

### E. Frustration of Waste Minimization

The lack of governmental control over the exportation of waste undermines RCRA's waste minimization objectives.<sup>70</sup> RCRA recognizes that source reduction and recycling are essential in the management of solid waste.<sup>71</sup> However, due to the low cost of waste disposal in developing countries, an increasing number of American companies are shipping their waste to foreign countries rather than taking the time and money to develop and implement waste minimi-

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62. *Id.* at 880.

63. *Id.* at 889. Hazardous waste is defined through the use of quantitative tests to determine the level of risk. Comment, *supra* note 3, at 890. Regulations have been imposed concerning the minimum concentrations of metal compounds, dioxins, and other listed toxins. *Id.* These minimum concentrations are determined by analyzing the degree of toxicity, flammability, degradability, and corrosiveness of the hazardous constituent. Resource Conservation and Recovery Act § 3001, 42 U.S.C. § 6921(a)(1979).

64. *Report of the World Commission on Environment and Development: Report of the Secretary General*, at 226, U.N. Doc. A/42/427 (1987). Many of the developing countries are located in the tropics. Frequent and heavy rains increases the rate in which wastes leach into the soil. As a result, water supplies will be contaminated, and residences located within the dumping grounds will be directly exposed to the waste. *Id.*

65. Comment, *supra* note 3, at 889.

66. See F. BERNTHAL, *supra* note 20.

67. *Hearings, supra* note 5, at 27 (statement of Rep. Mike Synar).

68. *Id.*

69. *Hearings, supra* note 5, at 23 (statement of Rep. John Conyers, Jr.).

70. *Id.* at 24.

71. *Id.* at 4 (bill proposed by Rep. Synar).

zation plans.<sup>72</sup> Thus in practice, section 3017 allows the United States to pass the cost of generating hazardous waste onto developing countries.<sup>73</sup> American companies must accept the responsibilities that accompany the generation of waste.<sup>74</sup> RCRA needs to be amended so that it will prohibit a company from exporting waste unless it has exercised reasonable efforts to minimize the amount of waste it generates.<sup>75</sup>

#### IV. The Basel Convention

In March 1989, the United Nations Environmental Program (UNEP) finalized the Basel Convention on the Control of Transboundary Movements of Hazardous Waste and Their Disposal.<sup>76</sup> The purpose of the Basel Convention is to prevent industrialized nations from dumping their toxic waste in developing countries.<sup>77</sup> These goals ensure that the waste will be managed in an environmentally sound manner and that the quantity of the waste generated has been reduced where it is technologically and economically feasible.<sup>78</sup> Waste is subject to the Basel Convention if the waste is derived from one of the specified waste streams and is composed of one of the listed constituents.<sup>79</sup> Thus, the waste contained within the scope of the Basel Convention includes wastes other than purely hazardous waste. UNEP's objective is to regulate all wastes.<sup>80</sup>

Similar to section 3017 of RCRA, the Basel Convention establishes a prior informed consent doctrine to regulate the transboundary exportation of waste.<sup>81</sup> A controlled waste shall not be ex-

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72. *Id.* at 23 (statement of Rep. John Conyers, Jr.).

73. Handy, *supra* note 1, at 10182.

74. *Hearings, supra* note 5, at 23.

75. *Id.* at 4 (bill proposed by Rep. Synar).

76. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, UNEP/IG.80/3 (1989) *reprinted in* 19 ENV'TL POL'Y & L. 68 (1989) [hereinafter Basel Convention]. The Basel Convention has been signed by the 116 nations participating in its formation. Tuohy, *116 Nations Adopt Treaty on Toxic Waste*, Los Angeles Times, Mar. 23, 1989, at 6, col. 1. However, in order for the convention to have the authority of a treaty, it must be ratified by at least 20 nations. *Legislature Agrees to Push for Action on Toxic Wastes, Forests, Dumping at Sea*, 13 Int'l Env't Rep. (BNA) No. 6, at 234 (June 13, 1990). Ratification involves the adoption of the requirements contained within the Convention into the domestic law of the individual nations. Thus far, three nations have ratified the Convention: Jordan, Saudi Arabia, and Switzerland. *Id.*

77. Tuohy, *supra* note 76.

78. See Basel Convention, *supra* note 76. "Environmentally Sound Management" has been defined as the management of wastes in a manner which will protect human health and the environment against adverse effects. *Id.* art. 2(8). Therefore, the exporter must ensure that the receiving country took the precautions necessary to prevent pollution caused by the waste. *Id.* at art. 4(2)(c).

79. *Id.* Annex I. The quantity of the constituent which is present in the waste is irrelevant. Therefore, incinerator ash will fall within the category of a controlled waste because it is composed of toxic metal compounds and dioxins, both of which are listed constituents.

80. Comment, *supra* note 3, at 903.

81. *Five more Countries Sign Basel Convention Just Before Deadline, Bringing Total to 54*, 13 Int'l Env't Rep. (BNA) No. 4, at 147 (April 11, 1990).

ported unless the exporting country has notified the receiving country<sup>82</sup> and the receiving country has consented in writing to the importation proposal.<sup>83</sup> However, the requirements imposed by the Basel Convention extend beyond the United States' regulations. The exporting country must show a reduction in the waste generated within its boundaries if it is technologically and economically feasible.<sup>84</sup> In addition, both the importing and exporting country has the authority to deny export proposals.<sup>85</sup> The exporting country is obligated to deny the export proposal if it has reason to believe that the waste would not be managed in an environmentally sound manner in the country of import.<sup>86</sup> Likewise, the government of the importing country must deny the proposal if the disposal facility identified is inadequate.<sup>87</sup> Neither state is able to transfer its duty to ensure the availability of adequate disposal facilities.<sup>88</sup>

The Basel Convention also provides for the formation of international agreements concerning the transboundary movement of waste.<sup>89</sup> The purpose of the agreements must not digress from the environmentally sound management of the waste.<sup>90</sup> Therefore, these agreements must contain provisions that are at least as environmentally sound as the requirements of the Basel Convention.<sup>91</sup> In addition, the agreements should not compromise the interests of the developing countries.<sup>92</sup>

## V. Criticisms of the Basel Convention

Both Greenpeace and the developing nations view the Basel Convention as a less-than-adequate solution to international waste trade. Greenpeace and the leaders of the developing nations wanted a total ban on waste exportation.<sup>93</sup> Greenpeace has denounced the Basel Convention, saying that the industrialized countries opted to institutionalize the flow of illegal waste as international waste trade when they had the power to ban it.<sup>94</sup> Thus, the Basel Convention

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82. Basel Convention, *supra* note 76, art. 6(1). The notification should be written in a language acceptable to the receiving country. *Id.*

83. *Id.* art. 4(1)(c). The exporting country must also receive the consent of any states of transit. *Id.* art. 6(4).

84. *Id.* art. 4(2)(c).

85. *Id.* art. 4(1).

86. *Id.* art. 4(2)(b), (2)(c).

87. *Id.* art. 4(2)(g).

88. *Id.* art. 4(10).

89. *Id.* art. 11(1).

90. *Id.*

91. *Id.*

92. *Id.*

93. *Hearings, supra* note 5, at 292 (Greenpeace Analysis of the Convention).

94. *Id.* In response to the Convention, Greenpeace draped a banner on the building across from the conference center sporting the message "Danger Basel Convention Legalizes Toxic Terror." Tuohy, *supra* note 76.

creates the illusion that the transboundary movement of waste is presently under control.<sup>95</sup> In reality, it is not. An Italian waste broker views the Convention as a mere inconvenience.<sup>96</sup> Waste brokers have had no problems obtaining a signature of some governmental official to meet the requirements of the Basel Convention.<sup>97</sup> Corrupt or unethical officials are easily swayed to disregard the Convention by the large fees received in exchange for their acceptance of the toxic materials.<sup>98</sup> Furthermore, the effectiveness of the enforcement of the Basel Convention is uncertain. UNEP admits that the program is "underfunded and toothless."<sup>99</sup>

## VI. Additional International Agreements

Other international organizations have developed global standards of conduct for the transfrontier movement of toxic waste. Both the Organization for Economic Cooperation and Development (OECD)<sup>100</sup> and the European Community (EC)<sup>101</sup> have agreements containing provisions similar to those contained in the Basel Convention. Moreover, the developing nations' organizations are attempting to halt the use of their territories as waste dump sites. The Economic Community of West African States, the States of the Zone of Peace and Cooperation of South Atlantic, and the Organization of African Unity have developed resolutions condemning the transfrontier movement of waste.<sup>102</sup>

The OECD adopted a final *Decision and Recommendation of the Council on Transfrontier Movements of Hazardous Waste* (the '83 Decision) in 1983.<sup>103</sup> The primary objective of the '83 Decision is to assure that any waste subject to transboundary movement is managed in a manner that will protect the environment.<sup>104</sup> The '83 Decision establishes a pre-notification system which directs the exporting country to provide "adequate and timely information" to the import-

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95. *Id.*

96. *Id.* Gianfranco Ambrosini, an Italian waste broker, ships waste from Italy to the African country of Djibouti. *Id.*

97. F. BERNTHAL, *supra* note 20.

98. Tuohy, *supra* note 76.

99. Ozanne, *Ecological Commitment to be Tested*, FINANCIAL TIMES, May 15, 1989, at 3.

100. The Organization for Economic Cooperation and Development (OECD) is comprised of the European Community Countries, the United States, Australia, Austria, Canada, Finland, Iceland, Japan, New Zealand, Norway, Sweden, Switzerland, and Turkey. Handley, *supra* note 1, at 10178 n.131.

101. The European Community (EC) is comprised of Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, The Netherlands, Portugal, Spain, and the United Kingdoms. *Id.* at 10175 n.71.

102. *Hearings*, *supra* note 5, at 166-67.

103. Handley, *supra* note 1, at 10178.

104. *Decision and Recommendation on Transfrontier Movements of Hazardous Waste*, OECD Document (83) 180 (final) reproduced at 12 ENVTL. POL'Y & L. 55 (1984) [hereinafter '83 Decision].

ing country and the countries of transit.<sup>105</sup> In return, either the importing or the transit countries may prevent the disposal or transport of the hazardous waste into their countries if the information provided is not sufficient or the proposed management of the hazardous waste conflicts with their legislation.<sup>106</sup> However, a country may only prohibit the entrance of hazardous waste if it adopts domestic legislation to authorize an objection to the importation and transportation of the hazardous waste into its territory.<sup>107</sup> In addition, the '83 *Decision* requires the OECD countries to apply their legislation controlling the management of domestic hazardous waste equally to that waste which is intended for export.<sup>108</sup> OECD countries should have uniform obligations to the disposal of hazardous waste regardless of the waste's final destination. Moreover, the generator of the hazardous waste is responsible for the re-importation of the waste if the waste cannot be disposed of safely in the country of export.<sup>109</sup>

In 1984, the EC Council adopted the *Directive on the Supervision and Control within the European Community of the Transfrontier Shipment of Hazardous Waste* (the '84 *Directive*).<sup>110</sup> The '84 *Directive* was amended by the EC Council in 1986.<sup>111</sup> The '84 *Directive* establishes a prior informed consent system to track the movements of waste within EC countries.<sup>112</sup> Thus, waste may not be exported unless the consent of the receiving country is obtained first. Securing the prior informed consent from the receiving country, however, does not release the waste generator from liability.<sup>113</sup> The waste generator is responsible for ensuring that the receiving country has an adequate disposal facility which will dispose of the waste in

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105. *Id.* at 56. The information provided to the importing and transit countries should include; the origin, composition, and quantities of the waste to be exported, and environmental risk assessment, the method of disposal, and the identification of the importing country and all the countries of transit involved in the transfrontier movement of the waste. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.* In June of 1988, the OECD released a decision defining those hazardous wastes to be controlled by the '83 *Decision*. *Decision of the Council on Transfrontier Movements of Hazardous Waste*, OECD Document (88)90 (final) reprinted in 28 I.L.M. 257 (1989). These wastes include any waste contained in the corelist which exhibits any of the hazardous waste characteristics listed. A waste will also be subject to the control of the '83 *Decision* if the waste is legally defined as a hazardous waste or is legally defined as a hazardous waste in the exporting, importing or transit countries. *Id.* at 261.

110. *Directive on the Supervision and Control within the European Community of the Transfrontier Shipment of Hazardous Waste*, 27 O.J. EUR. COMM. (No. L 326) 31 (1984) [hereinafter '84 *Directive*].

111. *Amending Directive 84/631 EEC on the Supervision and Control within European Community of the Transfrontier Shipment of Hazardous Waste*, 29 O.J. EUR. COMM. (No. L 181) 13 (1986) [hereinafter '86 Amendment].

112. '84 *Directive*, *supra* note 110, art. 3, at 33. Section 3017 of Resource Conservation and Recovery Act and the Basel Convention contain similar provisions. See *infra* notes 21-25, 83-90 and accompanying text.

113. '86 Amendment, *supra* note 111, art. 4.

an environmentally sound manner.<sup>114</sup> Therefore, waste should only be exported to authorized disposal facilities.<sup>115</sup> The importing country may object to the exportation proposal if the proposal would frustrate the implementation of its legislation regulating the management of waste or if the proposal conflicts with its international obligations.<sup>116</sup>

The developing countries have made an effort to retain some level of control over the transfrontier movement of toxic wastes. The Economic Community of West African States approved a resolution denouncing toxic waste exports.<sup>117</sup> The participating countries agreed to enact domestic legislation against the disposal of imported wastes.<sup>118</sup> The States of the Zone of Peace and Cooperation of the South Atlantic announced a resolution which condemns the importation of foreign waste for disposal in their territories.<sup>119</sup> The resolution proposed the establishment of a "Dumpwatch" to monitor the transboundary movement of toxic wastes and a blacklist to identify those nations that dump wastes improperly in developing countries.<sup>120</sup>

In May of 1988, the Organization of African Unity (OAU) enacted a resolution which called for the establishment of a system to monitor and control the transfrontier movement of nuclear and toxic waste. The resolution called for an end of the formulation of agreements with industrialized countries to dump toxic waste in African territories.<sup>121</sup> In July of 1988, the OAU adopted an additional resolution detailing which activities were to be discouraged and the penalties accompanying the practice of such activities.<sup>122</sup> The July resolution pertains to any agreement made to buy, sell, import, transport, dispose or store toxic and nuclear waste.<sup>123</sup> Every "natural" person who has responsibility for the management of the waste regardless of their degree of control will be subject to criminal liability.<sup>124</sup> The penalties imposed upon anyone caught performing these acts of non-compliance include fifteen to twenty years imprisonment and a fine

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114. *ECC to Revise Notification Scheme for Transboundary Shipments of Wastes*, 12 Int'l Env't Rep. (BNA) No. 11, at 531 (November 8, 1989).

115. *Id.*

116. '86 Amendment, *supra* note 111, art. 4.

117. *Hearings*, *supra* note 5, at 167.

118. *Id.*

119. *Id.*

120. *Id.*

121. *Organization of African Unity: Council of Ministers Resolution on Dumping of Nuclear and Industrial Waste in Africa*, 28 I.L.M. 567, 568 (1989) (promulgated on May 23, 1988).

122. *Cote D' Ivoire: Law on Toxic and Nuclear Waste*, 28 I.L.M. 391 (1989) (promulgated on July 7, 1988).

123. *Id.*

124. *Id.* at 391-92.

of 100 million to 500 million francs.<sup>125</sup> Furthermore, all parties guilty of committing the aforementioned acts will be responsible for the removal of the waste as well as the restoration and reclamation of the affected areas.<sup>126</sup>

### VII. Domestic Adoption of the Convention

The United States government must incorporate the requirements of the Basel Convention into its own body of laws in order to ratify the Convention. Congress must amend the prior informed consent doctrine contained in section 3017 of RCRA in order to expand governmental authority to control the exportation of toxic waste. To comply with the Convention, the EPA must be empowered with the legal authority to ban exports.<sup>127</sup> Specifically, the EPA must be able to prohibit the exportation of waste when the agency has reason to believe that the waste will not be handled in an environmentally sound manner by the receiving facility regardless of whether the government of the importing country has consented.<sup>128</sup>

Some proponents might argue that section 2405 of the Export Administration Act provides the government with the authority to halt waste exports.<sup>129</sup> Under section 2405, the President may halt a shipment to further foreign interests or to fulfill an international obligation.<sup>130</sup> However, the Export Administration Act has never been used in conjunction with the exportation of wastes.<sup>131</sup> Since waste exportation is not considered to be commerce by the EPA or the Department of Commerce, the application of the Export Administration Act is inappropriate in this situation.<sup>132</sup> Even if these agencies recognized the Export Administration Act as a valid mechanism to halt the shipment of waste, this Act is too cumbersome because it requires the President to consult with Congress before imposing controls on exports.<sup>133</sup> More specific authority is necessary in order to comply with the UNEP treaty.<sup>134</sup>

### VIII. Proposed Legislation

With the increasing international awareness of the use of devel-

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125. *Id.*

126. *Id.* at 392. The guilty parties are responsible for the cost of the removal of the waste and the restoration and reclamation of the affected site. *Id.*

127. See F. BERNTHAL, *supra* note 21.

128. *Id.*

129. Handly, *supra* note 1, at 10181.

130. Export Administration Act, 50 U.S.C. § 2405 (1985).

131. Telephone interview with Wendy Grieder, International Affairs Specialist with the EPA (Oct. 25, 1990) [hereinafter Grieder].

132. *Id.*

133. Handley, *supra* note 1, at 10181.

134. *Id.*

oping countries as dumping grounds for toxic waste several bills have been introduced in Congress to replace section 3017 of RCRA. During the United Nations negotiations which lead to the development of the Basel Convention, Representatives John Conyers, Robert Kasten and John Porter each introduced bill for Congressional consideration.<sup>135</sup> However, none of the bills were able to rally enough support to be enacted.<sup>136</sup> After the signing of the Basel Convention, Representative Robert Synab introduced a bill in Congress which incorporated the requirements of the Basel Convention.<sup>137</sup> In fact, the Synab bill goes beyond the Basel Convention's requirements. Finally, President Bush intends to introduce his own bill which will execute the Basel Convention's requirements.<sup>138</sup>

Conyers, Kasten, and Porter each introduced bills which languished in Congress.<sup>139</sup> Conyers' bill called for a ban of all waste exports absent an existing bilateral agreement between the United States and the importing country.<sup>140</sup> The ban would have included "non-hazardous wastes," such as municipal waste, sewage sludge, waste oil, and incinerator ash, which is now unregulated. Exempting exports subject to a bilateral agreement from the proposed statute's control would allow the continuation of the agreements that the United States has with Canada and Mexico.<sup>141</sup> However, the formulation of agreements with other countries would have been prohibited.<sup>142</sup> In contrast, Kasten's bill would have authorized the exportation of waste, but the waste exporter would have been required to have a permit.<sup>143</sup> Under the Kasten bill, the waste exporter would have had to guarantee that the disposal facility receiving the waste met the minimum EPA guidelines for waste disposal as set forth in RCRA.<sup>144</sup>

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135. Millman, *Exporting Hazardous Waste From Developed to Third World Nations*, 92 TECHNOLOGY REV. 6, 7 (1989). John Conyers is a state representative of Michigan. Robert Kasten is a state representative of Wisconsin. John Porter is a state representative of Illinois. *Id.*

136. *Id.*

137. *Hearings, supra* note 5, at 3.

138. Grieder, *supra* note 131:

139. *Hearings, supra* note 5, at 3.

140. Millman, *supra* note 135, at 7. Violation of the Conyers bill would have resulted in a fine up to \$50,000 and two years in prison. In the case of a second offense, the penalty would be doubled. *Hazardous Waste, Representative Conyers submits Bill To Block Export of Toxic, Municipal Waste, Incinerator Ash*, Daily Report for Executives (BNA) No. 134, at (July 13, 1988) [hereinafter Daily Report for Executives (BNA)].

141. Millman, *supra* note 135, at 7.

142. *Id.*

143. *Id.* A waste exporter will be required submit a permit application to the EPA showing that the waste will be exported in a manner consistent with the minimum guidelines established by statute or regulation. This application will be subject to EPA approval. *Id.*

144. *Id.* Hazardous waste is required to be managed in accordance with Section 3004 of RCRA. Resource Conservation and Recovery Act 3004, 42 U.S.C. § 6924 (1984). Hazardous waste must be pretreated before it is disposed of in a landfill, unless it has been determined with reasonable certainty that the contaminants will not migrate. Resource Conservation and



The Porter bill incorporated features from the bills proposed by both Conyers and Kasten.<sup>145</sup> The Porter bill would have applied to both hazardous and non-hazardous waste.<sup>146</sup> Like the Kasten bill, the Porter bill would have required the waste exporter to obtain a permit before waste could be transported to the receiving country for treatment, storage or disposal.<sup>147</sup> In addition, the exporter would have had the obligation to ensure that the exported waste would not be managed in a less strict manner than that required by RCRA.<sup>148</sup> The Porter bill would also have required the exporter to ensure that steps were taken to reduce the generation of waste in order to have obtained an exporting permit.<sup>149</sup> However, as mandated by section 3017 of RCRA, the Porter bill would have required the negotiation of an agreement with the receiving country.<sup>150</sup>

Since the signing of the Basel Convention in March of 1989, Representative Robert Synab has introduced legislation in Congress that would incorporate the guidelines contained in the Basel Convention into domestic law.<sup>151</sup> The Synab bill's objective is to ensure that all the solid waste exported from the United States is treated, stored or disposed of in a manner protective of human health and the environment.<sup>152</sup> Under the Synab bill, the waste exporter must obtain a

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Recovery Act § 3004(d)(1). Moreover, untreated liquid hazardous waste may not be disposed of in the land unless properly contained. Resource Conservation and Recovery Act § 3004(c)(1). Hazardous waste disposal facilities must at a minimum: maintain a manifest system including records of all the hazardous waste which is treated, stored or disposed of at the facility; fulfill location, design and construction criteria; establish contingency plans in case of unanticipated damages; and install a monitoring system to ensure that contaminants do not rise above concentration limits. Resource Conservation and Recovery Act § 3004(a). The facility must also conduct a waste analysis, inspections and personnel training. 40 C.F.R. § 264.13-.16 (1987).

For non-hazardous wastes, RCRA requires the waste to be disposed of in a sanitary landfill and outlaws the use of open dumps for waste disposal. Resource Conservation and Recovery Act § 4004, 42 U.S.C. § 6944 (1984). The federal government establishes general guidelines on the location of the landfills in relation to floodplains. 40 C.F.R. § 257.3-1 (1979). In addition, the federal government requires that the quantity of contaminants found in surrounding surface water and groundwater fall below the maximum concentration levels for contaminants provided in 40 C.F.R. § 257.3-4 (1981).

145. Daily Report for Executives (BNA), *supra* note 140.

146. *House Bill Would Subject Foreign Nation to United States Standards if They Take United States Waste*, 12 Int'l Env't Rep. (BNA) No.6, at 315 (June 14 1989).

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.* The agreement required by the Porter bill is the prior consent of the importing country. Unlike Section 3017 of RCRA, the information exchanged between the United States and the importing county involves more than providing the receiving county with current United States regulations. Information will also have to be exchanged concerning how the waste will be managed in the receiving country. *Id.*

151. The bill was introduced by Synab, Conyers, Porter, and Wolfe and was referred to the committee of Energy and Commerce and Foreign Affairs. *Hearings, supra* note 5, at 3. The bill was introduced on May 31, 1989 and is still under congressional consideration. Grieder, *supra* note 131.

152. *Hearings, supra* note 5, at 5.

permit before the waste may be exported.<sup>153</sup> The permit process requires that prior to shipping the waste abroad, the exporter demonstrate that reasonable efforts were made to minimize the waste generated and that the receiving facility has the capability to manage the waste in a manner which will provide protection to the environment.<sup>154</sup> In addition, the waste must be exported in accordance with an international agreement.<sup>155</sup> If Congress adopted the Synab bill into RCRA, the United States would effectively ratify the Basel Convention.<sup>156</sup>

The Synab bill goes beyond the requirements of the Basel Convention by expanding the scope of the exported waste controlled by the government to include all solid waste.<sup>157</sup> The Basel Convention limits the categories of controlled waste to that waste which contains one of the constituents listed and which originated in a specified waste stream.<sup>158</sup> The Synab bill would also authorize the government of the receiving country to bring a superfund liability action against the United States under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1986 when the environment of the receiving country is polluted by United States waste.<sup>159</sup> The Basel Convention emphasizes that both the exporting country and importing country should work together to minimize the consequences to the environment if pollution occurs.<sup>160</sup> Thus, under the Synab bill, the exporting country would not be encumbered with full responsibility for the cleanup.<sup>161</sup>

Besides imposing superfund liability, the Synab bill imposes criminal sanctions if the solid waste is knowingly exported in absence of an international agreement or if the waste is knowingly exported in violation of an existing agreement.<sup>162</sup> Under these same circumstances, the Basel Convention merely requires that the parties concerned cooperate as necessary to ensure that the waste will be dis-

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153. *Id.* at 9.

154. *Id.* at 17.

155. *Id.* at 5. This agreement must include the notification and consent of the receiving government and the manner in which the waste will be treated, stored, and disposed. *Id.* at 7.

156. In order to ratify a convention, the United States must adopt it into domestic law. The Synab bill incorporates the minimum requirements for the exportation of waste as established in the Basel Convention.

157. *Hearings, supra* note 5, at 6.

158. Basel Convention, *supra* note 76, art. 1.

159. *Hearings, supra* note 5, at 21. Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1986 is codified at 42 U.S.C. § 9601 (186). A superfund action imposes liability on those individuals responsible for the disposal of the waste for the payment of the reclamation of disposal sites that are determined to be of high risk to the environment and health of the people.

160. Basel Convention, *supra* note 76, art. 4(2)(c).

161. *Id.*

162. *Hearings, supra* note 5, at 22.

posed of in an environmentally safe manner.<sup>163</sup> However, the exporting country is under a duty to re-import the waste if the importing country so desires.<sup>164</sup> The Basel Convention imposes no criminal penalties.<sup>165</sup>

United States law may extend beyond the requirements mandated by the Basel Convention, as long as its additional requirements do not contradict another provision contained in the Convention. The Synab bill requires the importing country to manage the exported waste in a manner no less strict than if the waste were treated, stored or disposed of in the United States.<sup>166</sup> Thus, the Synab bill mandates the imposition of the RCRA standards on the receiving country.<sup>167</sup> The Synab bill would, therefore, require that the United States inspectors have access to foreign disposal facilities to ensure that the facilities are properly managing United States' waste.<sup>168</sup> Inspections conducted by the United States government would frustrate the receiving countries national sovereignty by not allowing the receiving country to formulate its own decisions on waste management.<sup>169</sup> As a result, the imposition of the RCRA standards on the importing country is in direct conflict with the provision of the Basel Convention which states that under no circumstances may a nation's sovereignty be compromised.<sup>170</sup> The EPA, therefore, expects the Synab bill to die in Congress.<sup>171</sup>

President Bush also intends to propose a bill which would implement the Basel Convention.<sup>172</sup> The President's bill would halt the exportation of all waste, including non-hazardous wastes, except where the United States government has a bilateral agreement with the importing country providing for the management of United States' waste in an environmentally sound manner.<sup>173</sup> Therefore, the United States waste traders and generators could continue to export waste under current bilateral agreements between the United States government, Canada and Mexico. However, unlike the bill proposed

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163. Basel Convention, *supra* note 76, art. 9(3). Illegal traffic is defined as any transboundary movement of a controlled waste made without the proper notification or consent of the receiving country or when the consent of the receiving country was obtained through falsification, fraud or misrepresentation. *Id.* art. 9(1).

164. *Id.* art. 9(2).

165. *Id.* art. 9.

166. *Hearings, supra* note 5, at 5.

167. Grieder, *supra* note 131.

168. *Id.*

169. *Id.*

170. Basel Convention, *supra* note 76, art. 4(12).

171. Grieder, *supra* note 131.

172. *Id.*

173. *Thirty-Four Countries Sign Convention on Transport, Disposal of Hazardous Waste*, 12 Int'l Env't Rep. (BNA) No. 4, at 159 (April 12, 1989). As stated under section III of this Comment, the Basel Convention contains a provision that exempts bilateral agreements from the Basel Convention's requirements.

by Representative Conyers in 1988, waste exporters would not be forever limited to these two agreements.<sup>174</sup> The President's bill would provide the United States government with the authority to form agreements with other countries.<sup>175</sup> This bill would ratify the Basel Convention as long as its provisions are at least as protective as the requirements of the Basel Convention.<sup>176</sup>

## IX. Conclusion

An international agreement is necessary in order to protect the environment of the developing countries from the improper management of imported waste. The OECD and EC agreements contain provisions which achieve the same objectives as the Basel Convention. However, these agreements would be binding only to those countries who are members of each respective organization.<sup>177</sup> Furthermore, neither organization has underdeveloped countries as members. In order for the agreement to work, a united front is needed. The countries of the OECD, the EC and the underdeveloped countries should participate in the formation of the agreement. The Basel Convention provides for such participation.

Although the Basel Convention does not totally ban the exportation of waste, it does afford greater protection to the developing countries than the "prior informed consent" systems which are presently used. In fact, the Basel Convention corrects most of the problems arising from section 3017 of RCRA. By authorizing the exporting country to ban the exportation of waste, the Basel Convention requires that the government of the exporting country take an active role in the regulation of waste exportation.<sup>178</sup> Also, the Basel Convention expands the scope of the waste subject to regulation to include some non-hazardous waste such as incinerator ash.<sup>179</sup> Finally, the Basel Convention requires that the waste exporter ensure that prior to the exportation of waste, the waste generated was minimized where it is technologically and economically feasible.<sup>180</sup>

The success of the Basel Convention will depend upon the number of countries which adopt the requirements of the Convention into their domestic laws and the steps taken by the developing nations to enforce the Convention's guidelines. In the past, the United States

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174. Grieder, *supra* note 131.

175. *Id.*

176. *See supra* notes 89-92 and accompanying text.

177. The general trend has been for the President to adopt an anti-environmental stance. However, the United States has imposed more environmental regulations than most other nations.

178. *See supra* notes 50-52, 85-89 and accompanying text.

179. *See supra* notes 58-60, 79-80 and accompanying text.

180. *See supra* notes 70-75, 84 and accompanying text.

has been a prominent leader in protecting the environment. The United States should, therefore, take the initiative and ratify the Convention. As a leader among the world's industrial nations, the United State may encourage other nations to follow our example. All that we can do now is wait and hope that the Basel Convention will be taken seriously.

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