**The International Environmental Impact of Marine Incidents**

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Key to Abbreviation

APS - Amsterdam Port Services

BCRCs - Basel Convention Regional and Coordinating Centers

COP - Conference of the Parties

CTE - Committee on Trade and Environment

DOALOS - Division for Ocean Affairs and the Law of the Sea

ESM - Environmentally Sound Management

EU - European Union

ExCOPs - Extraordinary meeting of the Conference of the Parties

IMO - International Marine Organization

MEA - Multilateral Environmental Agreements

MS - Member States

MS - Mutual Supportiveness

NCP - National Contingency Plan

NGO - Non-Governmental Organizations

OAU - Organization of African Unity

PIC - Prior Informed Consent Procedure

UK - United Kingdom

UN - United Nations

UNEP - United Nations Environmental Program

US - United States

WHO - World Health Organization

WTO - World Trade Organization

Abstract

*Throughout the years the problem of marine incidents is rapidly growing despite the various legal and non-legal institutions involved. Transboundary Movement of Waste and their Disposal is a fast growing problem especially for the developing countries due to corrupted governments and the absence of legal regimes. This paper reviews the limitations of the relevant law and suggests ways in which it can be strengthened. It argues that the legal framework has failed into meeting its objective of protecting the human health and the environment. It also suggests a number of reforms to the Basel Convention as well as the adaptation of a mutual supportiveness background between the legal and non-legal institutions aiming in optimizing the health promotion.*

Chapter I: Introduction

*“We do not inherit the earth from our ancestors; we borrow it from our children,[[1]](#footnote-1)”* by Chief Seattle

 Marine accidents happened and will continue to happen since transportation of goods by sea is the fundamental mean of world trade, as the Earth is mostly covered by sea. Every single type of accident has a different impact on the environment and on humanity. In order to minimize that impact and protect life and the earth on which we, humans, live there have been developed international and regional instruments which aim in preventing accidents and protecting the environment. However, many marine incidents raise fundamental questions on the effectiveness of these instruments in minimizing the damage. This essay is going to assess the effectiveness of these instruments and regulations through case law and the relevant law.

 This paper is divided into four chapters. The first chapter highlights the issues created from the applicable law through the *Probo Koala* disaster. The second chapter discusses the relevant law and the international organizations relating to the issue of the transboundary movement of hazardous wastes and their disposal/recycling. The third chapter discusses the effectiveness of the legal regimes and the impact to minimize marine incidents. The fourth chapter concludes with proposals to strengthen the international environmental law’s impact on human health and the environment.

 Hereby, three key definitions are quoted which closely relate to marine incidents and their impact on the public health and the environment:

Under Article 2 of the MARPOL Convention the definition of a harmful substance is: *“any substance which, if introduced into the sea, is liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea, and includes any substance subject to control by the present Convention.[[2]](#footnote-2)”*

Under Article 2 of the MARPOL Convention the definition an incident is: *“an event involving the actual or probable discharge into the sea of a harmful substance, or effluents containing such a substance.[[3]](#footnote-3)”*

The term environment is difficult to define but working definitions are often adopted in a particular context.[[4]](#footnote-4) The definition of the environment is often nuanced and must be gathered from the plethora of environmental treaties.[[5]](#footnote-5) According to Sands, the definition of environment continues to evolve with inputs from religion, science, economics and philosophy.[[6]](#footnote-6) The European Commission defines the environment as,”the combination of elements whose complex inter-relationships make up the settings, the surrounding and the conditions of life of the individual and society, as they are or as they are felt”.[[7]](#footnote-7)The environment is a description of physical matter that encompasses the air, the sea, land, natural resources, flora, fauna and cultural heritage. It also includes the non-physical surroundings and perceptions. Protection of the environment includes the control, reduction and elimination of existing causes of damage to the environment, the prevention and prohibition of additional kinds of damage and the preservation and rational use of the environment.

Chapter II: Marine Incidents

 The *Probo Koala* incident, known as the Trafigura case was a great disaster for the Ivory Coast. The problem started in August 2006 when Trafigura assigned to a small Ivorian company its waste for disposal. Trafigura claimed that it needed to discharge a small amount of residual waste, referred to as ‘slots’ and presented the procedure of discharging and treating waste materials as an everyday occurrence around the world.[[8]](#footnote-8) In fact, the slots were more than five hundred tons of toxic sludge, previously denied disposal in the port of Amsterdam by the Amsterdam Port Services BV (APS), due to the amount and the hazardous nature of the waste, which the firm also tried to hide[[9]](#footnote-9). On the contrary, according to Rudolph Walder, a UN hazardous waste expert, the product dumped in Cote d’Ivoire was ‘very clearly a hazardous waste[[10]](#footnote-10),’ which was mishandled by the Ivorian company, Compagnie Tommy, leading to the deaths of 10 people and 100,000 more having serious health problems.[[11]](#footnote-11) In specific, the Ivorian company pumped the waste into trucks and dumped it in several sites in the city of Abidjan.[[12]](#footnote-12) Hence, Trafigura claimed that they were unaware of the mishandling of the waste by Compagnie Tommy and these actions were unforeseeable and they could nothing to prevent it.[[13]](#footnote-13) Further, it commented:

 *“Abijan is not a remote, third world backwater as implied by some media reports: it is a major African port and industrial city, the country is a major crude oil producer and exporter, it has a refinery adjacent to the port and other modern industrial facilities. In addition to the handling of wastes from refining oil, slops have been discharged there without incident many times before by international companies, including oil majors. The Ivory Coast was also a MARPOL signatory and Abidjan was explicitly registered to handle slops disposal. Trafigura had absolutely no reason to believe that the operation in Abidjan would be mishandled.[[14]](#footnote-14)”*

Moreover, the Ivory Coast did not triggered the Basel Convention, but it requested assistance from the Convention’s Technical Cooperation Trust Fund, which took all the necessary steps in order for the damage in human health and in the environment to be assessed[[15]](#footnote-15). However, the commission argued that it was *“unable, at this stage, to establish whether or not the discharging of waste from the Probo Koala constituted illegal transboundary movement of hazardous wastes as defined by the Basel Convention”* and it continued by stating:

 *“[w]ithout prejudging which international body is competent to rule on the case, serious lapses ha[d] occurred in the application of the relevant regulations, whether under the Basel Convention, the MARPOL Convention or the Bamako Convention on the ban on the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa.[[16]](#footnote-16)”*

In continuation, during the eighth meeting of the Basel Convention’s COP was held that Ivory Coast did not refer to the Compliance Committee for help while commission was there, but it preferred to seek financial and technical assistance from other countries and stakeholders in order to implement its emergency plan for the clean-up and assessment of the damage on the ecosystems, its follow-up, and the investigation to establish responsibilities.*[[17]](#footnote-17)*

 In the meantime, a group of 31,000 Ivorian people brought an action in the the High Court of Justice in London against Trafigura which was heard in November 2006.[[18]](#footnote-18) The litigation for this case took place in the Ivory Coast, the Netherlands and the UK. Later, in September 2009, the parties to the UK lawsuit reached a settlement agreement in which Trafigura agreed to pay to the 31,000 claimants a certain amount of money.[[19]](#footnote-19) In the end, Trafigura agreed to pay US$198 million in an out-of-court settlement with the government of Cote d’Ivoire in 2007, like in the UK case of *Motto and Others v Trafigura Ltd and Trafigura Beheer BV*[[20]](#footnote-20).[[21]](#footnote-21) Also, the court accepted an expert report which confirmed that there were no major health impacts from the dumping of the waste.[[22]](#footnote-22) Furthermore, an Amsterdam district court fined Trafigura up to €1 million for offenses concerning the illegal export of hazardous waste from the Netherlands, on 23 July 2010.[[23]](#footnote-23) However, in August 2010, the Dutch Public Prosecutor’s Service announced that it would appeal the ruling against Trafigura on the basis that the fine was too low.[[24]](#footnote-24) Also, the Dutch National Fraud Prosecutor proceeded with an action against Trafigura on the basis of fraud.[[25]](#footnote-25) Even though the Dutch courts gave greater compensation to the victims of the disaster, this cannot mitigate the disastrous impact on the environment. It is not surprising that there are new calls for investigation on Trafigura and there are claims for further compensation against the company for the victims of the disaster.*[[26]](#footnote-26)*

The incident between Brazil and the UK also points out the inefficiency of the Basel Convention. [[27]](#footnote-27)This case concerns the illegal shipment of hazardous wastes.[[28]](#footnote-28) In July 2009 the Brazilian port authorities found several containers coming from the UK with hazardous wastes, which were mislabeled as recyclable plastic.[[29]](#footnote-29) Initially, the Brazil authorities informed the Secretariats and the UK under Article 19 of the Basel Convention and requested formal consultations.[[30]](#footnote-30) Later, though, in August Brazil announced its intention to request consultations with the UK at the WTO’s Dispute Settlement Body.[[31]](#footnote-31)

 Furthermore, Antonio Cardesa - Salzmann in the Journal of Environmental Law, *Constitutionalising Secondary Rules in Global Environmental Regimes: Non-Compliance Procedures and the Enforcement of Multilateral Environmental Agreements,* using the case of Trafigura and the above example suggests that in periods of crisis the parties do not prefer to follow the protocol and seek assistance in the Basel Convention NCP, but they are looking for alternative political or quasi-judicial mechanisms.[[32]](#footnote-32) This presents the Basel Convention as an ineffective mechanism. In addition, according to a former chairperson of Cartagena Protocol’s Compliance Committee parties prefer to resort to the WTO dispute settlement system, rather than to the Protocol’s NCP: *“...in cases of serious non-compliance implicating real economic interests.[[33]](#footnote-33)”*

Chapter III: Relevant Law

The legal institutions along with the non-legal organizations have tried to promote public health and a sound environment through various legal regimes, protocols and resolutions which are analyzed in this chapter. The most fundamental organization dealing with marine incidents is the International Marine Organization, which owns its existence to scientists and climatologists who felt the threat of the global warming due to the increase of carbon dioxide in the atmosphere (CO2) and pushed the international community into taking action.[[34]](#footnote-34) Also, the prosperity of international trade highlighted the need for a permanent international maritime body which will be able to adopt and implement conventions dealing with international marine incidents. After the *Torrey Canyon* disaster in 1967, IMO established an ad hoc Legal Committee to deal with legal issues concerning pollution in sea.[[35]](#footnote-35) In a parallel line with the establishment of the IMO, the International Convention for the Safety of Life at Sea 1948 had already being enforced along with the International Convention for the Prevention of Pollution of the Sea by Oil 1954.[[36]](#footnote-36) Even though the IMO came into force later than those Conventions, it was liable for their implementation and enforcement.[[37]](#footnote-37) The Organization’s responsibility was to ensure that all the Conventions, the old and the new ones, were kept up to date with changes in shipping technology and also focus on the creation of new Conventions when the circumstances demanded it.[[38]](#footnote-38)

The upsurge of the international commerce was the beginning of the adoption of a number of international treaties related to shipping.Almost every marine incident boosts the international community to create a new regulation. The most important IMO Conventions are the International Convention for the Safety of Life at Sea (SOLAS) 1974 and the International Convention for the Prevention of Pollution from Ships (MARPOL) 1973.[[39]](#footnote-39) The SOLAS Convention owns its existence to the *Titanic* disaster and the *Torrey Canyon* accident established the MARPOL Convention. The first is considered to be the most important of all treaties regarding the safety of merchant ships. [[40]](#footnote-40)The Convention is responsible for ensuring that the ships comply with their flag and class requirements and they are eligible of having the necessary certificates.[[41]](#footnote-41) The MARPOL Convention is the main international convention on the prevention of pollution of the marine environment by ships from operational or accidental causes.[[42]](#footnote-42) The latest includes four different annexes aiming in preventing and minimizing pollution from ships; Annex I *Prevention of pollution by oil*, Annex II *Control of pollution by noxious liquid substances*, Annex IV *Prevention of pollution by sewage from ships* and Annex V *Prevention of pollution by garbage from ships.*[[43]](#footnote-43) The Organization also adopted another Convention in the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972, which became known as the ‘London Convention.[[44]](#footnote-44)’ The objective of the London Convention is to protect the marine environment from human activities through ‘*promoting the effective control of all sources of marine pollution and to take all practicable steps to prevent pollution of the sea by dumping of wastes.[[45]](#footnote-45)*’ The Convention prohibits all the dumping with a few exclusions subject to certain conditions.[[46]](#footnote-46) Moreover, the United Nations Convention on the Law of the Sea 1982 illustrates rules regarding the uses of the oceans and their resources along with new legal concepts and regimes introducing new concerns.[[47]](#footnote-47) The Division for Ocean Affairs and the Law of the Sea (DOALOS) of the Office of Legal Affairs of the United Nations serves as the Secretariat of the Convention and it is responsible for monitoring matters relating to the Convention and the international marine world and it has to report annually to the General Assembly of the United Nations about them.[[48]](#footnote-48)

 The Basel Convention has its roots in the United Nations Conference on Human Environment 1972 or the Stockholm Conference, which established the United Nations Environmental Program (UNEP) by the UN General Assembly in 1972. The cooperation of national, international and regional bodies lead to the Conference of the Plenipotentiaries on the Global Convention on the Control of Transboundary Movements of Hazardous Wastes, which enacted the Basel Convention on Transboundary Movement of Hazardous Wastes and their Disposal[[49]](#footnote-49). The convention is one of several international environmental patterns with the purpose to protect human health. The dumping of toxic waste in the African countries imported from the developed world was the initiative for the UN to adopt the Convention.[[50]](#footnote-50) Its aim is to protect the human health and the environment from the dumping of hazardous waste.[[51]](#footnote-51) The provisions of the Convention center around the following principal aims: (i) the reduction of hazardous waste generation and the promotion of environmentally sound management of hazardous wastes, wherever the place of disposal; (ii) the restriction of transboundary movements of hazardous wastes except where it is perceived to be in accordance with the principles of environmentally sound management; and (iii) a regulatory system applying to cases where transboundary movements are permissible.**[[52]](#footnote-52)**

The Basel Convention is reinforced by the Rotterdam Convention[[53]](#footnote-53) on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade along with the Stockholm Convention[[54]](#footnote-54) on Persistent Organic Pollutants.[[55]](#footnote-55) These three Conventions share the same objective of protecting the public health and the environment from hazardous chemicals and wastes.[[56]](#footnote-56) They adopted the “synergies decisions,” which was the grounds for co-operation and co-ordination among these legal regimes.[[57]](#footnote-57) The first simultaneous extraordinary meeting of the Conferences of the Parties to the Basel, Rotterdam and Stockholm Conventions (ExCOPs) took place in Bali along with the eleventh session of the Governing Council/ Global Ministerial Environmental Forum of UNEP in order to assist the progression of the synergies.[[58]](#footnote-58) In this conference the ExCOP adopted an Omnibus Decision of taking action for meeting their objectives as well as increase their cooperation with the World Health Organization (WHO).[[59]](#footnote-59)

 Furthermore, the COP to the Basel Convention along with other states adopted the Bali Declaration on Waste Management for Human Health and Livelihood 2008. The Preamble supported the principals of sustainability and the protection of human health and the environment.[[60]](#footnote-60) In specific, the declaration:

 *“. . . reaffirms Parties’ commitment to the principles and purposes of the Basel Convention, including the protection of human health and the environment against the adverse effects from generation and transboundary movement and management of hazardous and other wastes and resolved to achieve the Convention’s objectives”.[[61]](#footnote-61)*

Bali Declaration is an example of a soft law instrument and it is a result of the *Probo Koala* disaster.After the adoption of the Declaration, the Basel Convention has affirmed the view that if waste is not managed in a safe and environmentally meaningful manner it might cause several negative effects for the environment, health and sustainable livelihood. On these grounds the COP supported the view that effective waste management would improve the health and the economic standards through sustainability and consistent cooperation among the legal mechanisms.[[62]](#footnote-62) The Declaration encourages the international and the domestic bodies to support the Basel Convention by assisting in the provision of sufficient resources for the ESM of hazardous waste. Furthermore, the Declaration tries to raise awareness of public and private organizations for the global health and the environment and encourages their cooperation for preventing the hazardous causes from the transboundary movement of waste.[[63]](#footnote-63) Finally, the Declaration highlights the cooperation between national authorities in waste, chemicals and health sectors, such as the WHO in order to develop an effective waste management system. UNEP has also declared its participation and support to the Declaration and adopted a Decision on Waste Management. UNEP is an international institution under the umbrella of the United Nations, providing support to developing countries in implementing environmental regulations and practices.[[64]](#footnote-64) The UNEP’s participation to the Bali Declaration aimed into encouraging international organizations, governments industry and business sectors to invest in waste management procedures by providing resources and technical assistance to the developing countries. Also, WHO showed its support to the Declaration by adopting a Resolution on improvement of health through safe waste management.[[65]](#footnote-65) It highlighted the lack of facilities and equipment for disposal of wastes can cause serious consequences to the public health and livelihood and for that reason it encouraged member states to take measurements in order for the waste management procedures to be improved.

 The World Trade Organization (WTO) is another non-legal instrument which deals with the global rules of trade between nations and it aims in the sustainable development and protection and preservation of the environment.[[66]](#footnote-66) The establishment of the WTO was the result of the Marrakesh Agreement. Even though it is not a legal instrument it is often used for the resolution of disputes at an international level concerning environmental issues.[[67]](#footnote-67) The WTO Dispute Settlement Body has dealt with many cases in the past concerning environmental issues.[[68]](#footnote-68) Such a case is the incident between Brazil and the UK where the countries seek the WTO’s consultation due to the inefficiency of the actual law. WTO has adopted a different approach to the courts regarding environmental matters, which is that WTO rules do not use precedence.[[69]](#footnote-69) Moreover, WTO promotes the cooperation between international institutions in addressing global environmental challenges, since such matters cross the national borders and action should be taken at a global level.[[70]](#footnote-70) The current negotiations on the WTO-MEA relationship provide a unique opportunity for creating positive synergies between the trade and environment agendas at an international level.[[71]](#footnote-71) In addition, the WTO’s Secretariat is in regular contact with the secretariats of multilateral environmental agreements.[[72]](#footnote-72)

Chapter IV: Discussion of Effectiveness of the Legal Regimes and the Impact to Minimize These Incidents

Even though the legal regimes that have been adopted in cooperation with the activities of the soft law institutions appear to be comprehensive there are criticisms about their ability to achieve their objectives of minimizing the environmental impact of marine incidents.

The Basel Convention fails to create an environmentally sound hazardous waste management and disposal plan and it fails to address the legal and political deficiencies in the developing countries.**[[73]](#footnote-73)** Its first limitation is that it supposes that the member states have an organized and well functioning legal and political system, which is not the case for most developing countries, such as Abidjan.[[74]](#footnote-74) This problem gave rise to the Ban Amendment. The idea of this amendment was introduced at the second conference of the Parties (COP) in March 1994. Andrews suggests that at the instigation of coalition of environmental NGOs and developing countries, the Parties adopted a decision to immediately ban trade in hazardous waste destined for final disposal between developed and developing countries and to phase out trade in hazardous waste destined for reuse or recovery between these two groups by 31 December 2007[[75]](#footnote-75).[[76]](#footnote-76) This decision forms ‘the Ban.’

 The limitations of the Basel Convention are also highlighted by other regional instruments which were adopted in order for the gaps of the Convention to be covered and for the peculiar requirements of different regions to be considered. Such instruments are the Waigani Convention 1995, which prohibits the exporting and importing of hazardous and/or radioactive waste to and/or from the Pacific Island Forum countries.[[77]](#footnote-77) Moreover, the peculiar requirements of the Mediterranean Region’s countries triggered the Barcelona Convention Waste Trade Protocol (Izmir Protocol) 1996.*[[78]](#footnote-78)*

 According to Chukwuka Eze, the case of Trafigura provides a disturbing but profound *“litmus test for the existing instruments, revealing their strengths and weaknesses.[[79]](#footnote-79)”* Widawsky in his journal argues that the Basel Convention *“has not fulfilled its promise of shielding developing nations from environmental catastrophes.[[80]](#footnote-80)”* The problem with the case of Trafigura is that there are too many instruments entangled, which creates confusion in the application of the relevant law. This is mostly obvious in the official UN Evaluation Report Assessment of the Port of Abidjan which was published at the end of 2009. The problem in this situation is that even though it discusses the application of the MARPOL Convention in relation to waste generated by ships and cargo residues and the lack of reception facilities at the Port of Abidjan for Annex I and Annex IV wastes[[81]](#footnote-81), these slops did not constitute the ‘normal operations of a ship’ and MARPOL does not cover dumping.**[[82]](#footnote-82)** There is still the debate that the relevant law to the Trafigura case was the application of the MARPOL Convention instead of the Basel Convention. It was argued that the crime was convicted in high seas where MARPOL is important, because the flag and the class certificated of the vessels along with her licensing play a significant role in the performance of the ship.

 Moreover, it appears that Trafigura did not follow the procedures required according to the provisions of the MARPOL Convention which would have triggered the Basel Convention. The PIC procedures were not followed either for the initial shipment to Amsterdam nor for the discharge at Adidjan. The slops in this case were processed on board, which could limit the application of the Basel Convention since they were taken on board in the US which is not a party to the Convention. However, there were other opportunities where the Convention could have intervene. Firstly, the first point for intervention was when the Dutch Code of Criminal Procedure brought into light that the original notification documentation was falsified and misleading under Article 12, which was highlighted by Stichting Greenpeace Nederland’s members, L. Zegveld and M. Pestman. Yet, Trafigura managed to present its slops as routine washings under Annex I or II of MARPOL. [[83]](#footnote-83)Nonetheless, APS collected samples of these slops in order to perform some tests which showed that the original notification documentation was falsified. Ideally, this, would have triggered the Basel Convention under Article 9 with regards to the illegal traffic of the slops, since the waste did “*not conform in a material way with the documents*.[[84]](#footnote-84)”**[[85]](#footnote-85)** Another problem which could have triggered Article 9 (4) of the Convention is the fact that APS allowed the vessel, *Probo Koala* to leave the port of Amsterdam with no assurances as to how the waste would be disposed of or treated. The impotence and the irresponsibility of the Convention is even more frustrating when it failed to intervene before it reached Abidjan, at Paldinski, Estonia and Lagos, Nigeria.[[86]](#footnote-86)

 This disaster gave rise to the Bali Declaration which aimed into promoting the importance of health and a sound environment with regards to hazardous waste under the umbrella of the Basel Convention. [[87]](#footnote-87)However, the Declaration depends on the political will of prioritizing health in the Convention. [[88]](#footnote-88)Thus, it is more of a political rather than a legal instrument. International organizations, such as the WHO and the UNEP have supported the Declaration through the adaptation of the WHO Resolution and the UNEP Decision.[[89]](#footnote-89) However, this does not necessarily mean that member states will adopt and reinforce those measurements, since the organizations are soft law instruments and their rules are not binding for the MS.[[90]](#footnote-90) Their budgets also seem to be an issue for the effective implementation of their activities.[[91]](#footnote-91)

 In continuation, the limitations of the Basel Convention are also highlighted by the African countries which considered the implications of the Convention limited, claiming that it lacked in considering their peculiar circumstances and it did not offer them protection. In fact, the Council of Ministers of the Organization of African Unity (OAU) even before the enforcement of the Basel Convention they had condemned it as they already knew that it would not fit into their requirements, which were the complete ban or prohibition of the transboundary movement of hazardous wastes.[[92]](#footnote-92) The Council highlighted the limitations of the Basel Convention on the basis that its aim is limited on regulating or controlling the transboundary movement of hazardous wastes, which was against the spirit of the OAU which determined that *‘the dumping of hazardous wastes is a crime against Africa and the African people.[[93]](#footnote-93)’* The Resolution continued the criticisms of the Basel Convention by stating that it lacks in providing technical and financial support for the safe and environmentally sound disposal of the hazardous wastes in the importing states.[[94]](#footnote-94) For this reason, the African countries under the auspices of the OAU adopted the Bamako Convention in January 1991, which aimed in the prohibition of the import of hazardous wastes into the continent and the establishment of a regime for the management of hazardous wastes generated within Africa.[[95]](#footnote-95) Chukwuka N. Eze, in his journal, claims that the Bamako Convention, which was adopted in compliance with Article 11 of the Basel Convention made *“radical improvements on the global instrument[[96]](#footnote-96)”* and it could be described as *“a milestone achievement in environmental protection.[[97]](#footnote-97)”*

 Moreover, the Bamako Convention has taken groundbreaking measurements on the transboundary movement on hazardous waste and their disposal in order to protect the public health and the environment. The OAU highlighted the complete prohibition of hazardous waste into Africa, which would be redemptive for the continent and its people.[[98]](#footnote-98) However, this regime has failed to eliminate the trade in illegal hazardous waste, which triggered some commentators in describing it as *‘a symbolic treaty, rather than one with any legal force.[[99]](#footnote-99)’* The fact that the member states of the Convention are mainly developing countries with endemic corruption and weak government lack in equipment and technology lead into failure of minimizing the problem of illegal traffic.[[100]](#footnote-100) Alan Andrews stated that even though there is no quantitative assessment of the Bamako Convention due to the lack of sufficient data to prove its failure, the Abidjan disaster which occurred in a member state of the Convention is the proof of its lack of success.**[[101]](#footnote-101)** Even though there is space for improvement of the applications and the implementations of the Convention the ratifying process has been delayed. The reason might be, as Alan Andrews suggests that these nations have been forced to direct their limited law-making resources to issues of higher priority, even though the importance of recycling as source of raw material and revenue has been highlighted.[[102]](#footnote-102)

 The Bamako Convention appears to provide protection to human health and to the environment. However, in practice there is still place for improvement. The Convention is like a horse with blinkers. In other words, there needs to be a cooperation with the international community in order for the transboundary movement of hazardous waste to be ‘environmentally sound.[[103]](#footnote-103)’ Also, another important weakness is that even though the OAU claims that the most important aim of the Convention is the protection of the environment and health, this seems to contradict its provisions which focus on the well being of African countries and the African people against the global health and the environment*.* In one sentence, as it was stated back in the 1997, *‘Africa's contribution to international law on the environment can be said to be pioneering at the start, faltering in the middle and uncertain at present.[[104]](#footnote-104)’*

In addition,World Trade Organization (WTO) as a soft law instrument cannot do much about the environment and the public health without the support of the law. As Ricardo Pavoni suggested the key solution is the ‘mutual supportiveness’ and the coordination of the competing regimes in order to achieve their aim of protecting the environment and the right to health.[[105]](#footnote-105) In his article he discusses the emergence of ‘mutual supportiveness’ (MS) between competing regimes as a key conceptual tool generating significant consequences in terms of the interpretation and creation of international law norms.[[106]](#footnote-106) Nowadays, MS has become a recurrent expression in international agreements, political declarations, and judicial/arbitral practice.[[107]](#footnote-107) Pavoni claims that in order for conflicting relationships to be balanced and harmonized, all the international law rules need to work as one sharing the same legal system.[[108]](#footnote-108) In other words, the ideal situation would be the law (Conventions) along with the soft law (non-legal instruments) to work as a united body and adopt a unanimous legal system in order to achieve their common goals of protecting the environment and the public health. All these are included in the concept of the MS, which was established in the 1992 UN Conference on Environment and Development.[[109]](#footnote-109) Thus, this concept was also adopted by the WTO Decision on Trade and Environment, which pursued the WTO Committee on Trade and Environment (CTE) to perform its activities *‘with the aim of making international trade and environmental policies mutually supportive.[[110]](#footnote-110)’* The Doha Ministerial Declaration underlines the WTO Members’ conviction *‘that the aims of upholding and safeguarding an open and non-discriminatory multilateral trading system, and acting for the protection of the environment and the promotion of sustainable development can and must be mutually supportive.[[111]](#footnote-111)’* The “synergies decisions” involving the Basel, Rotterdam and Stockholm Convention chartered the way towards mutual supportiveness and cooperation and it is the first concrete result of international efforts to promote and enhance international environmental governance.[[112]](#footnote-112) This groundbreaking development could be the example for other international bodies to cooperate and support themselves in order to achieve their common goals.[[113]](#footnote-113)

Chapter V: Suggestions for Reform of the Law

Throughout the essay there have been identified several structural weaknesses in the performance of legal mechanisms. This section is going to suggest possible ways to overcome difficulties encountered in the operation of the legal bodies, in order to enhance their effectiveness and legitimacy in international environmental law.[[114]](#footnote-114) The following reforms might not be the complete and absolute solution to the problem of the transboundary movement of hazardous wastes and their disposal, but they are based on mutual supportiveness and cooperation between legal regimes, government, private and public organizations. If the global world shares the common aim of protecting the human health and the environment, then they can achieve it by reinforcing international bodies and organizations to take action and join their forces to save the world in which they live in.

 The most important legal instrument that needs to be reformed is the Basel Convention on the Transboundary Movement of Hazardous Waste and their Disposal. One suggestion is to reform the Prior Informed Consent Procedure (PIC), since it has been criticized of being inadequate in the context of north-south trade in hazardous waste.[[115]](#footnote-115) Widasky suggests that the solution would be the establishment of an independent body, responsible for inspecting disposal or recovery facilities prior to any transboundary movement and to have the power of granting or denying permits for international trade based on the adequacy of these facilities to comply with ESM requirements.[[116]](#footnote-116) In that way fraud will be avoided, since the authorities in developing countries will not be able to misrepresent the capacity of their facilities to provide ESM.[[117]](#footnote-117) Also, the consent of the importing country will be necessary in order for the waste to enter the country.[[118]](#footnote-118) By the establishment of an independent and objective body the process of the transboundary movement of waste will not be in danger of incompetent, corrupt or desperate operators either from the exporting or the importing country; every shipment will need to get the approval of that body after inspection of both the proposed shipment of waste and the proposed disposal or recycling facilities.[[119]](#footnote-119) This proposal alone even though it protects the interests of the poor, it does not provide a solution to the problem of exporters misleading importers about the nature of the waste.[[120]](#footnote-120) For example, the export of e-waste to developing countries with ineffective or absent regulatory mechanisms has increased significantly, leading to the mishandling of its disposal.[[121]](#footnote-121) The common problem with the disposal of e-waste is that exporters falsely designate it as being for reuse or recovery when in fact most of it beholds a little economic value and it is aimed for disposal. However, if there was a process of inspection and certification of e-waste before its export as advocated by the Basel Action Network and implemented in Australian law[[122]](#footnote-122), then such problems would be resolved.[[123]](#footnote-123)

 Moreover, another suggestion to strengthen the Convention would be to strengthen the Compliance Committee in order to perform its role of safeguarding the developing countries in international trade in hazardous waste.[[124]](#footnote-124) Firstly, it needs financial assistance in order for it to carry out its facilitative and consultative approach.[[125]](#footnote-125) It has been proven that the current financial model of voluntary contributions is not working, since the funds are always inadequate.[[126]](#footnote-126) There has to be a new model designed where the Parties to the Convention will give a fixed amount of money annually based on different factors, such as their ability to pay and the proportion of the international trade in hazardous waste attributable to them.[[127]](#footnote-127) Also, Widawsky proposes that the Committee could be divided into two branches, the facilitative and the enforcement branch.[[128]](#footnote-128) In that way, the Compliance Committee could enforce compliance with the Convention with more success. Also, as Andrews has highlighted declarations of non-compliance would be useful for ‘naming and shaming’ non-compliant Parties.[[129]](#footnote-129) Moreover, there could be imposed fines to the states which fail to comply with their obligations under the Convention. Those fines would also assist the Committee into raising its funds in order for it to expand its responsibilities. Another suggestion would be the suspension of a non-compliant Party from trading in international waste for a certain period of time. This idea has been taken from the Kyoto regime and it is analogous with the power that the Kyoto Compliance Committee has to suspend Parties from utilizing the flexibility mechanisms under the Kyoto Protocol such as emissions trading. This will yield great results since the non-compliant Parties will not be able to access revenues from international trade and the fact that they will not be able to export their waste will cause them serious problems. Nevertheless, Louka pointed out that any compliance procedure under Basel *‘will be ineffective on the long-run because it will become politically or financially unaffordable.[[130]](#footnote-130)’* What the author actually means is that the financial costs necessary for the improvement of PIC procedure and the Compliance Committee are not to be underestimated.[[131]](#footnote-131) Due to the global recession and the limited financial resources there are little hopes for improvement at least in the next five years.

 Moreover, the developing countries would certainly be benefited by financial assistance since in that way they could build the technological capacity needed to gain the economic benefits of disposing and/or recycling hazardous waste as well as minimizing the risks to human health and the environment. Andrews believes that the ratification of the Liability Protocol[[132]](#footnote-132) could materialize this proposal as well as it would be a great improvement in the effectiveness of the Convention. Unfortunately, though, it seems a distant plan, since its current form is unacceptable by both the developed and the developing countries.[[133]](#footnote-133)

 Another step to be taken regarding the Basel Convention is to ratify the Ban Amendment (the ‘Ban’). The problem is that it has not come into force yet and still needs to be ratified by the requisite three quarters of the Parties to the Convention.[[134]](#footnote-134) The reason that countries have not signed is because they want to protect their economic and political interests. Such countries are the US and Japan, which are major producers of hazardous waste as well as developing countries such as India and Pakistan who are major importers of hazardous waste.[[135]](#footnote-135) However, such a reform can face many obstacles, as it has been proven by the EU’s export of hazardous waste to developing countries which is still happening even though EU has implemented the Ban.[[136]](#footnote-136) As a result, a complete prohibition might not be the ideal solution but it is admitted that the amount of hazardous waste entering the developing countries should be drastically decreased. Hence, it is very optimistic that the Parties have decided to overcome the barriers of the Ban and seek other practical and pragmatic solutions in order for the Convention to successfully achieve its objectives.

 By strengthening the BCRCs the capacity of the developing nations would be boosted. However, it would be difficult to persuade the Parties to provide financial assistance and even more difficult to decide the amount of money each Party should contribute. Thus, the developing countries need to strengthen their domestic legal and institutional mechanisms along with waste governance. In the meantime, it would be a positive step if the Convention reformed its procedural and institutional mechanisms in order to prioritize health and the environment.[[137]](#footnote-137) This could be achieved by the establishment of a health unit in the Secretariat dealing only with health issues.[[138]](#footnote-138)

 The proposals made above need to be carefully considered and action should be taken in order for the Basel Convention to stop failing into achieving its objectives of protecting the environment and the public health. If the Convention fails to accomplish those reforms, then it will be in danger of remaining *‘a compromise treaty that is long on rhetoric and short on substance and effectiveness.[[139]](#footnote-139)*’ Hence, it will continue to fail to prevent *‘the world’s poor paying the price for the disposal of the world’s hazardous waste with their environment, health and lives.[[140]](#footnote-140)’*

 Another important reform is the co-operation and mutual supportiveness of the legal instruments and the legal regimes, the law and the soft law. This argument is very well summarized in the words of the IMO Secretary-General’s, Efthimios E. Mitropoulos, who stated: *“the time for apportioning blame as to who is responsible for the state of the planet has passed. Now it is time for action. Developed and developing countries, industrialized and emerging economies alike are left with no option other than to get together and, together, work out solutions that will serve well the good cause of reversing the route to planet destruction.[[141]](#footnote-141)"* A first step has been taken by the Secretariats of the Basel Convention, the Stockholm Convention and the Rotterdam Convention, which have agreed to connect their Secretariats and work together in order to achieve their common goal of the protection of the environment and the public health.

Chapter VI: Conclusion

Marine incidents were, are and will be a growing problem despite the various applicable law. Transboundary Movement of Waste and their Disposal often follows the path of least resistance, where laws are weak, absent or contravened in the receiving state. It appears that the existing legal regime is problematic and drastic measures need to be taken, aiming in the prevention of such incidents and the protection of the right to health and the environment. The Basel Convention systematically fails into preventing the developing countries from being used as a *“dumping ground for the industrialized nation’s hazardous waste.[[142]](#footnote-142)”* For this reason, the legal instruments along with the non-legal ones need to promote mutual supportiveness of interpretation of the law and law-making in order to achieve their common goals of sustainable development and protection of the environment. As WTO Director-General Pascal Lamy has most recently stated *‘human rights and trade are mutually supportive[[143]](#footnote-143)’*, insofar as *‘[h]uman rights are essential to the good functioning of the multilateral trading system, and trade and WTO rules contribute to the realization of human rights[[144]](#footnote-144)’*. In order for an environmentally sound world to be created and maintained and sustainable development to be achieved, mutual supportiveness amongst the legal bodies and legal instruments along with the non-legal instruments needs to exist. As the Tribunal in the *Iron Rhine* dispute put it, *‘Environmental law and the law on development stand not as alternatives but as mutually reinforcing, integral concepts [[145]](#footnote-145)*’. International bodies, such the UN need to consider their options for reform and proceed into performing them, without wait for the financial assistance and the support of the governments since it seems that they put a great effort into the economic global crisis and such situations do not attract their interests. Also, they need to promote coordination among the existing treaty regimes. This paper contributes to the debate about alternative options to improve legal regimes dealing with marine incidents, because the current situation jeopardizes the integrity of international law which would gradually lead into its failure.

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