UNIVERSITY OF LANCASTER LAW DEPARTMENT

REGULATIONS ON TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTE: A STUDY ON THE BASEL CONVENTION AND ITS IMPACTS ON THE REGIONAL TREATIES IN DEVELOPING COUNTRIES PARTICULARLY IN AFRICAN AND ASEAN REGIONS

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CHAPTER 1

INTRODUCTION AND THE BACKGROUND

1.1 SCOPE OF THE PROBLEM OF TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTE.

The transboundary movements of hazardous waste especially from developed to developing countries has become a controversial issue over the past two decades. The developed countries, due to the rapid development of their industries, produce a large amount of wastes many of which are hazardous in nature. World production of chemicals has increased tremendously. For example the total amount of organic chemicals produced globally rose from approximately 7 million metric tonnes in 1950 to over 250 million metric tonnes in 1985.' It is believed the amount of hazardous waste have also increased proportionately. Some estimates have shown that between 300-500 million tonnes of hazardous waste are produced world wide every year. 98% of these wastes were produced by industrialised countries. According to stastics issued by the OECD and other organizations, in the late 1980s alone OECD member states generated around 300 tonnes

¹ Kummer, Katharina, <u>International Management of Hazardous Wastes: The Basel Convention and Related Legal Rules</u>, Clarendon Press, Oxford, 1995, p.4

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BIBLIOGRAPHY

- ., (?) Defining and Implementing Clean Production, Netscape, Greenpeace International Homepage, gopher://gopher.greenpeace.org:700/00/campaign/toxics/110
- (1994) Base1 Convention Meeting, Review of European Community and International Environmental Law, Vol.3, No.2/3, p. 174
- . . ., (1996)The Basel Convention's Amendment to Ban the Shipping of Hazardous Waste, Review of European Community and International Environmental Law, Vol.5, No.5, p.69
- ., <u>ASEAN Cooperation Plan on Transboundary Pollution</u>, ASEAN Secretariat, Jakarta, (1995)

Environmental Treaties and Resource Indicators (ENTRI), Netscape, http://sedac.ciesin: org/sedac-entri/charlotte

- . . ., <u>From Strength to Strength</u>; <u>ASEAN Functional Cooperation</u>: <u>Restrospect and Prospect</u>, <u>ASEAN Secretariat</u>, <u>Jakarta</u>, (1993)
- Policies, Kuala Lumpur, Malaysia (23-26 June 1992)
- the Basel Convention and the Environmentally Sound Recovery of Hazardous Wastes within the Framework of the Basel Convention, Review of European Community and International Environmental law, Vol. 4, No.2, p.207
- . . ., (1996) The Basel Convention's Amendment to Ban the Shipping of Hazardous Waste, Review of European Community and International Environmental Law, Vol.5, No. 11, p.69
- 1987 Montreal Protocol, Netscape, Greenpeace International Homepage, http://www.greenpeace.org/intlaw/mont-htm.html#

ASEAN Homepage, Netscape, http://www.or.asean.id

C. Russell H. Shearer, (1993) Comparative Analysis of the Basel and Bamako Conventions on Hazardous Waste, Environmental Law Journal, Vol.23, p. 141 (Available in LEXIS, Nexis Library)

*

Cassels, Jamie, <u>The Uncertain Promise of Law: Lessons from Bhoual</u>, University of Toronto Press, Toronto, (1993)

Chapman, Duane, Agras, Jean and Suri, Vivek, *International Law, Industrial Location, and Pollution*, Netscape, Greenpeace International Homepage, **gopher://gopher.igc.apc.org:70/00/phbs/gptox/ttu.gopher/zz**

Cheyne, Ilona, (1994) *Africa and the International Trade in Hazardous Wastes, African* Journal of International Law and Comparative Law, **Vol.6**, **No.3**, p.493

Clapp, Jennifer, (1994) The Toxic Waste Trade with Less-Industrialised Countries: Economic Linkages and Political Alliances, Third World Quarterly, Vol. 15, No.3, p.505

Clapp, Jennifer, <u>Dumping on the Poor: The Toxic Waste Trade to **Developing** Countries</u>, Global Security Programme, Faculty of Social and Political Science, Occasional Paper **No.5**, (August 1994).

Department of Environment, Malaysia Homepage, Netscape, http://www.jas.sains.my/doe/egr94/welcome.html

Doherty, Patrick, (1995) *The Transfer of Environmentally Sustainable Technologies to Asia*, Review of European Community and International Environmental Law, Vol.4, No.1, p.33

Fowley, Robert, (1995) Corporations International Environmental Standards for Transnutional Corporations, Environmental Law, Vol.25, No. 1, p. 1

Global Environmental Fund, Netscape, http://www.worldbank.org.html/gef/intro/tgrefintr.htm

Handl, G and Lutz, Robert E. (eds), <u>Transferring Hazardous Technologies and Substances</u>: The International Legal Challenge, Graham & Trotman, London, (1989).

Handl, Gunther and Lutz, Robert E., (1989) An International Policy Perpective on Trade of Hazardous Materials and Technologies, Harvard International Law, Vol.30, No.2, p.351

Hardlock, Charles R.,(1994) Multinational Corporations and the Transfer of Environmental Technologies to Developing Countries, International Environmental Affairs, Vol.6, No. 1, p. 149

Hiltz, Christoph and Ehrenfeld, John R., (1991) Transboundary Movements of Hazardous Wastes - A Comparative Analysis of Policy Options to Control the International Waste Trade, International Environmental Affairs, Vol.3, No. 1, p.26

Ichihara, Mika and Harding, *Andrew*, Human Rights, (1995) *The Environment and Radioactive Waste: A Study of the Asian Rare Earth Case in Malaysia*, Review of European Community and International Environmental law, Vol.4, No. 1, p. 1

Ives, Jane H., (ed) <u>Transnational Corporations and Environmental Control Issues: The Export of Hazard</u>, Routledge & Keegan Paul, Boston, (1985)

Kirby, Rabecca A., (?) The Basel Convention and the Need for United States Implementation, Georgia Journal of International and Comparative Law, Vol. 24 (Available in LEXIS, Nexis Library)

Kiss, Elexandre, (1991) The International Control of Transboundary Movement of Hazardous Waste, Texas International Law, Vol.26, p.521 (Available in LEXIS, Nexis Library)

Kitt, Jennifer R., (1995) *Waste Exports to the Developing World: A Global Response*, The Georgetown International Environmental Law Review, Vol. 7, p.485

Kummer, Katharina, <u>International Management of Hazardous Wastes: The Basel Convention and Related Legal Rules</u>, Clarendon Press, Oxford, (1995).

Maltezou, Sonia P., Biswas, Asit K. and Sutter, Hans (eds) <u>Hazardous Waste</u> <u>Management</u>, Tycooly Publishing, England, (1989)

Murphy, SD., (1994) Prospective Liability Regimes for the Transboundary Movement of Hazardous Waste, American Journal of International Law, Vol.88, No. 1,p.24

0' Connell, Marry Ellen, Enforcement and the Success of International Environmental Law, Netscape, Greenpeace Homepage, gopher://gopher.igc.apc.org: 70/00/ phbs/ gptox/ttu7 1. gopher/zz

Pinzon, Lillian M., (1994) *Criminalization of the Transboundary Movement of Hazardous Waste and the Effect on Corporations*, De Paul Bussiness Law Journal, Vol.7, p. 173 (Available in LEXIS, Nexis Library)

Puckett, Jim, *The Base1 Convention Decision Explained*, Netscape, Greenpeace International Homepage, gopher://gopher.apc.org:700/00/phbs/gptox/ttu71 .gopher/zz

Rose, Gregory, (1995) Regional Environmental Law in South East Asia, Review of European Community and International Environmental law, Vol.4, No. 1, p.40

Tookey, DL, (1996)The ASEAN Co-Operation Plan on Transboundary Pollution: A Step Towards Pollution Control, Environmental Liability, Vol.4, No.2, p.36

Vaughan, *Scott, Trade and Environment : Some North-South Considerations*, Cornell International Law Journal, **Vol.27**, p.459 (Available in LEXIS, Nexis Library)

Vicheck, Michelle M., (1991) The Controls on the Transfrontier Movement of hazardous waste from Developed to Developing Nations: The Goal of a "Level Playing Field", Journal of International Law and Business, Vol. 11, p. 643

Vint, Peter D.P., (1990) *The International Export of Hazardous Waste: European Economic Community, United States, and International Law,* Military Law Review, Vol.129 ,p. 107

Wallabum, Teresa A., (199 1) America 's Lethal Export for growing Trade in Hazardous Waste, University of Illonois Review, (Available in LEXIS, Nexis Library)

Walsh, Maureen T., (1992) The Global Trade in Hazardous Wastes: Domestic and International Attempts to Cope with a Growing Crisis in Waste Management, The Chatolic University Law Review, Vol.42, p. 103

Weiss, Edith Brown (1993) International Environmental Law: Contemporary Issues and the Emergence of a New World Order, Georgetown Law Journal, Vol.81, p.675

White, Ellen L., Brown, Halina **Szeljnwald** and Himmerlberger, Jeffery J., (1992) *Corporate Environmentalism in Developing Countries: A Tale of Three Multinationals*, International Environmental Affairs, Vol.4, No.1, p.338

Wynne, Brian, (1989) *The Toxic Waste Trade: International Regulatory Issues and Options*, Third World Quarterly, Vol. 11, No.3. p.120

Yoshida, Osamu, (1995) The Analysis of the Montreal Protocol on Substances that Deplete the Ozone Layer in the UNEP, LL.M Dissertation, Lancaster University, U.K.