

importing State (Article 4(e)).²⁷ And how is a Party to interpret the critical concept of "environmentally sound manner"? The Convention provides no clear guidance, opening the door to differing interpretations (including those pursued by special interest groups) and disputes.²⁸ Criteria approved provisionally by the Parties in December 1992 are little better. They are impregnated with disputable concepts such as "adequate" standards, "appropriate" monitoring of disposal sites, "appropriate" action when "unacceptable" emissions result from handling wastes, and "capable" and "adequately" trained site operators.²⁹

A Party must also take "such steps as are necessary" to prevent pollution due to hazardous and other waste management, and must reduce the transboundary movement of waste "to the minimum consistent with the environmentally sound and efficient management of such wastes".³⁰ There is no guidance on what is meant by "minimum", "efficient" or "necessary", and, as indicated above, precious little with regard to "environmentally sound management".

Under Article 4(4), each Party must take "appropriate" legal, administrative and other action to implement and enforce the Convention, including punishing misconduct. Again, there is little indication what this obligation might entail.

In contrast, the trade in wastes of a Party with a non-Party is subject to an obligation which appears reasonably definitive on the surface. Pursuant to Article 4(5), wastes covered by Basel shall not be exported to nor imported from a non-Party. A Party normally may not ship wastes as defined in Basel to a non-Party even if the latter has state-of-the-art disposal facilities.³¹ But even here there is disturbing ambiguity. As noted above, the exporting State can extend the scope of "wastes" beyond those listed in the Convention, quite apart from the uncertainty surrounding

²⁷ Moreover, pursuant to Article 4(8): "Each Party shall require that hazardous wastes or other wastes, to be exported, are managed in an environmentally sound manner in the State of import or elsewhere."

²⁸ Article 2(8) tries unsuccessfully to define the phrase through vague references to "all practicable steps" and to protecting human health and the environment "against the adverse effects which may result".

²⁹ See "Framework Document and Technical Guidelines", p. 5, paragraph 9. See also the interesting comments made by several developing countries, the Nordics and the Greenpeace observer pushing for a mandatory ban on all hazardous waste exports to LDCs even for recycling purposes and even if the importing country wanted to engage in this business and possessed the proper disposal facilities (in UNEP/CHW.1/24, Annex IV). Sending this kind of market signal could make it less likely that certain developing countries attract world class disposal facilities.

³⁰ Articles 4(2)(c) and (d).

³¹ Although, pursuant to Article 11, a Party "may" enter into a bilateral or other arrangement with a non-Party that would allow such trade, as long as the arrangement is fully consistent with the environmentally sound management (whatever that is!) required by Basel. However, nothing obliges a Party to enter into such an arrangement.