

of a Party's enforcement of the Convention's obligations. Such a report, if published or otherwise made available, could increase the public pressure on a government to mend its ways.

However, if a Party believes that another country is acting in breach of its obligations, and that the public spotlight provided by a Secretariat report is insufficient, it can also attempt to settle the matter through negotiation.⁴⁸ If this fails and if all the parties to the dispute agree, then the matter can be submitted to the International Court of Justice or to arbitration. Note that the Party complained against must agree to pursue either of these options and thus retains a veto, in practice, over the process. But even if all those concerned agree to submit the dispute to arbitration, the process remains the hostage of the country complained against. The finding or award of an ad hoc arbitral tribunal is supposed to be "final and binding" under Basel. Nonetheless, there is no mechanism for ensuring that the award will, in fact, be implemented. There is no sanction to discipline a Party that fails to act on the award. Any dispute on the award's interpretation or execution may merely be referred back to the original ad hoc arbitral tribunal or to another tribunal constituted for such purpose.⁴⁹ The Party complained against can simply dig in and frustrate further action, while the complaining Party is not authorized under the Convention (much less under the GATT) to impose a sanction.

Thus, we could face the anomalous situation in which a highly responsible non-Party functioning on a best practice basis is faced with a trade ban on certain materials justified under Basel by a Party than unilaterally expands the scope of the Convention to cover waste or scrap material about which there is no consensus internationally as to its hazardous nature. On the other hand, this same Party may be challenged by another signatory about the former's failure to manage the same material in an environmentally sound manner and that Party could, with impunity, refuse arbitration or refuse to implement properly an adverse arbitral ruling. For its part, the 1992 OECD Council Decision on the transfrontier movement of wastes destined for recovery operations contains no dispute settlement provisions.⁵⁰

⁴⁸ See Articles 19 and 20(1).

⁴⁹ See Articles 20(2) and (3), and Annex VI of the Basel Convention. Note that Article 20(3) also allows a Party to declare in advance that it accepts the arbitration and/or ICJ alternatives in relation to any other Party accepting the same obligations. The ultimate problem remains on how to ensure the implementation of any award.

⁵⁰ Apart from a shadowy reference to cooperation found in Annex 1, Section VI(4).