

Critical Report n° 4

Issue: Right to a Healthy Environment

Part of a series of the Human Rights Programme



Europe - Third World Centre
Rue J.-C. Amat 6
CH - 1202 Geneva
Tel.: +41 (0)22 731 59 63 - Fax: +41 (0)22 731 91 52
Email: cetim@bluewin.ch - Website: www.cetim.ch

May 2009
URL: http://cetim.ch/en/publications_cahiers.php

TRANSBOUNDARY TRANSFERS OF TOXIC WASTES AND THEIR EFFECT ON HUMAN RIGHTS

by Melik Özden

*Director of the CETIM Human Rights Programme and
Permanent representative to the U.N.*

INTRODUCTION

Following the 1986-1987 scandals triggered by the dumping of toxic waste in African countries and the dramatic effects of this dumping on both the environment and the health of the local populations, the African governments, under the aegis of the Organization of African Unity (OAU),¹ unilaterally condemned it, characterizing it as “a crime against Africa and the African populations”.² A year later, the international community followed their example by adopting, on 22 March 1989, the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal*. Affirming the necessity of protecting human health and the environment from the risks caused by dangerous wastes, this convention constitutes an international declaration of awareness of the problems linked to transboundary movements of hazardous wastes. In the 1990s, there followed the adoption of numerous international, regional and national instruments, attempting to regulate these movements (v. Chapter I). Faced with the difficulties encountered by poor countries in trying to control and manage waste, the international community, at the initiative of the Conference of the Parties to the Basel Convention, mobilized to provide technical assistance to these countries.

¹ In 2002, the Organization of African Unity (OAU) was replaced by the African Union.

² Resolution 1153 of the OAU, 25 May 1988.

In spite of these efforts, movements of hazardous wastes between rich and poor countries continue into and within countries with little economic power, all under new and varied manifestations: fraudulent “recycling” programs on their territory, relocation to them of polluting industries, the “eco-mafia” etc. These movements are the cause of violations of human rights such as the right to life and the right to health (to cite only two), even though human rights are not mentioned explicitly in any of the ratified conventions dealing with the matter. Given the seriousness and magnitude of the phenomenon, the former Commission on Human Rights³ addressed the problem and adopted, on 8 March 1995, Resolution 1995/81 creating a mandate for a special rapporteur on the “adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights” (v. Chapter II).⁴

The purpose of this critical report is to analyze the current state of transboundary movement and dumping of toxic products and wastes as well as its evolution, and to present the principal measures taken in this area at the international and regional (notably African) levels. The report also presents the mandate and the activities of the special rapporteur. We would like to thank the two first mandate holders whose reports have contributed greatly to this report.

I. HISTORY OF THE QUESTION OF TRANSBOUNDARY MOVEMENTS OF HAZARDOUS PRODUCTS AND WASTES: A LONG ROAD FULL OF OBSTACLES

A. Toward an international regulation of the movements and dumping of toxic products and waste

1. The beginnings of North/South trade in toxic waste in 1986

The development of the consumer society has been accompanied by a steady rise in the production of waste posing serious storage and treatment problems. In 1989, the production of dangerous waste was estimated to be 320 million tons per year, of which 99% was produced in the OECD member countries.⁵ Faced with such quantities and with the growing awareness of Westerners of the dire health effects of the dumping of these toxic wastes as well as of their grave consequences for the environment, the industrialized countries adopted ever stricter legislation to control the management of these substances. This normative framework resulted in an increase in the cost of toxic waste treatment. There ensued a competition in the search for low-cost disposal, which was achieved at the expense of environmental and worker protection. This business, mainly located in the OECD member countries until 1986 (the areas importing this waste were, as if by chance, those most affected by unemployment – England, Scotland, northern France...)⁶ – soon relocated elsewhere, most notably to Africa.

³ The Commission was replaced by the Human Rights Council in 2006. V. Critical Report n°1 of the CETIM: http://www.cetim.ch/en/publications_cahiers.php

⁴ http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-1995-81.doc.

⁵ V. “L’Afrique a faim: V’là nos poubelles”, CETIM, 1989 (available only in French or German).

⁶ Ibid.

With vast areas available and unbeatably low prices, the African countries represented a wind-fall for the Northern countries, which saw in this business – or wished to see – an opportunity for poor countries to earn foreign currency, hence a boon to their development!⁷ Of course, this meant ignoring the lack of technical means at the disposal of poor countries for treating such waste. Nonetheless, between 1986 and 1988, some 50 million tons of waste were dumped on the African continent out of 100 to 300 million tons produced annually by the rich countries, according to the estimates of Greenpeace.⁸

Very quickly, the harmful consequences of these new international movements of waste became apparent to the rest of the world.⁹ Western public opinion was scandalized, and the African governments, under the aegis of the Organization for African Unity (now the African Union), mobilized to end these criminal practices. The Council of Ministers of the OAU, in Article 1 of Resolution 1153 (XLVIII), adopted 23 May 1988, declared “that the dumping of nuclear and industrial wastes in Africa is a crime against Africa and the African people”.¹⁰ Simultaneously with this initiative, a United Nations Development Program working group drawn from the main countries concerned was set up to draft international regulations on the control of toxic waste. After tumultuous negotiations between the countries of the South and the North, the *Basel Convention* was adopted on 22 March 1989 by 116 countries participating in the Conference on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal. The *Basel Convention*, which entered into force on 5 May 1992, has now been ratified by 172 countries.¹¹

2. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal

Based on the principle of “rational ecological management” of toxic waste,¹² the *Basel Convention*’s primary purpose is to “to protect, by strict control, human health and the environment against the adverse effects which may result from the generation and management of hazardous wastes and other wastes”.¹³ To this purpose, the *Convention* created two mechanisms:

First, for regulating transboundary movements of dangerous waste, it created a procedure called “prior informed consent”. By the terms of this clause, the exporting country must fully inform in writing the importing country of any proposed transboundary movement of dangerous waste to its territory and may grant permission to export only when the consent of the importing country has been received in

⁷ Ibid.

⁸ V. the preliminary report of the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights (henceforth, the Special Rapporteur on Toxic Waste) to the 52^d session of the Commission on Human Rights, E/CN.4/1996/17, 22 February 1996: <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/1dfc3322f4041f09802566a3004c5e90?Opendocument>

⁹ For some of these movements, in particular those of the Swiss company Intercontract and the freighter *Zanoobia*, v. “*L’Afrique a fain: V’là nos poubelles*”, CETIM, 1989, pp. 41-93.

¹⁰ The full text of the resolution is in Annex 5.

¹¹ Status as of 6 April 2009. For the status of ratifications: <http://www.basel.int/ratif/convention.htm>.

¹² In conformity with the *Declaration of the United Nations Conference on the Human Environment* (Stockholm 1972) and the *Cairo Guidelines and Principles for the Environmentally Sound Management of Hazardous Wastes* (adopted by the Governing Council of the United Nations Environment Program by Decision 14/30 of 17 June, 1987). V. the thirteenth preambular paragraph of the *Basel Convention*, the full text of which is in Annex 1 and <http://www.basel.int/text/documents.html>.

¹³ Ibid., last preambular paragraph.

writing (Article 6).¹⁴ Without such permission, transboundary movement is considered illicit (Article 9, §1). Accordingly, the states parties must take the necessary legislative measures to avoid and sanction illicit traffic, a criminal offense under the *Convention* (Article 4, §3 and 5). As well, states parties are held responsible when an exporter or importer is found to be in violation of the treaty (Article 9, §1) and are obliged either to assure the return of the hazardous waste, when the violation is the result of conduct on the part of the exporter or the generator (Article 9, §2) or, when the violation is the result of conduct on the part of the importer or disposer, to assure the management or elimination of the waste in an environmentally sound manner on the territory of the country of import (Article 9, §3).

Second, according to the *Convention*: “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” (Article 4, §8). In line with this, three goals are specified: 1. the reduction to a minimum of the generation of hazardous wastes (Article 4, §2a); waste treatment carried out as close as possible to the place where it is produced (Article 4, §2b); the reduction to a minimum of international movements of hazardous wastes (Article 4, §2d).

The implementation of the *Basel Convention* is assured by the periodic Conference of the Parties (CoP) and the Secretariat of the Basel Convention (SBC). The Conference of the Parties, comprising all states parties, is the decision-making body. It meets once every two years minimum. The last meeting of the COP, its ninth, was held in Bali (Indonesia) 23 to 27 June 2008. The Basel Convention Secretariat, for its part, assures technical and logistical services to the states parties.¹⁵

Although the *Basel Convention* represents an advance in dealing with problems arising from transboundary movements of hazardous waste, it has proven unsatisfactory for the states parties. It is the result of a troublesome compromise between proponents of a total ban on transboundary movements of hazardous waste and those in favor of strict regulation of such movements. For the former, in particular the African countries, this convention can have meaning only if there is a complete prohibition, since the transfer of hazardous waste moves only in a North-South direction and these movements are, always, harmful to the countries of the South. As this is obvious for the African countries, the members of the African Union have already prohibited the importing of hazardous waste to their territory. Thus, why would they ratify a convention which serves no purpose for them, indeed, which would comprise less strict measures than the regional measures already taken?¹⁶

On the other hand, the proponents of international regulation of transboundary movements of hazardous waste, primarily the countries of the North, argue that a total prohibition is already provided for by the *Convention* since the *Convention* recognizes the prohibition of exporting hazardous waste to countries that have announced their refusal to accept such waste (Article 4, §§1 and 2e). Further, if it is important to allow governments the “free choice” of accepting or refusing the transfer of hazardous waste, it is also the duty of the *Convention* to allow for the econom-

¹⁴ It is noteworthy that movement of hazardous wastes between states parties and states non-parties to the *Convention* is prohibited (Article 4, §5) barring some sort of special agreement (Article 11 §5).

¹⁵ For further information on the Basel Convention: <http://www.basel.int/convention/about.html>.

¹⁶ V. Annexes 5 and 6.

ic development of the countries of the Third World, which will need – and need already – North-South cooperation in order to manage hazardous waste. Finally, for certain countries, such as New Zealand, this still does not settle the fundamental question since illicit movements take place, by definition, outside any regulatory framework.¹⁷

The *Convention* finally settled this matter by instituting a strict framework for the movements of hazardous waste and by recognizing for a state party “the sovereign right to ban the entry or disposal of foreign hazardous wastes and other wastes in its territory” (sixth preambular paragraph and Article 4, §1). But the countries of the South find this far from satisfactory – especially the African countries the majority of which have refrained from ratifying the *Convention* since its adoption and have instead drafted a regional convention prohibiting, outright, hazardous waste in Africa.

3. The Bamako Convention on the Ban on the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa

Faced with the legal lacunae of the *Basel Convention*, on 30 January 1991, the member states of the OAU adopted, the **Bamako Convention**¹⁸ banning the importing of hazardous wastes from African countries and from member states of the OECD. It entered into force 22 April 1998. This convention, which is intended to be a regional complement to the *Basel Convention*, is based on three fundamental principles:

1. a total ban on “the import of all hazardous wastes, for any reason, into Africa from non-Contracting Parties” (Article 4, §1);
2. a “ban on dumping of hazardous wastes at sea and internal waters” (Article 4, §2), in conformity with existing international provisions;
3. rigorous monitoring of the generation of hazardous wastes and their transboundary movements on the African continent (Article 4, §3).

This African initiative demonstrates great perspicacity for it bans the importing of ALL waste, thus anticipating the development of the movements of hazardous waste under cover of recycling and other such projects (v. Chapter I.B). It was with a view to taking up the discussion of this question within the framework of the *Basel Convention*, that the Conference of the Parties tackled it once more in September 1995.

4. The Basel Convention Ban Amendment

“Recognizing that transboundary movements of hazardous wastes, especially to developing countries, have a high risk of not constituting an environmentally sound management of hazardous wastes”, the third Conference of the Parties of the *Basel Convention*, held in Geneva 18 to 22 September 1995, decided to adopt The Basel Convention **Ban Amendment**.¹⁹ This amendment prohibits “all transboundary

¹⁷ V. the report of the Special Rapporteur on Toxic Waste to the 55th Commission of Human Rights, E/CN.4/1999/46, 20 January 1999: <http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/50b343de843b83f28025672e004288ba?Opendocument>.

¹⁸ The full text of the Bamko Convention is to be found in Annex 3. It is also available at: <http://www.africa-union.org/root/au/Documents/Treaties/Text/hazardouswastes.pdf>

¹⁹ V. Decision III/1, “Amendment to the Basel Convention”: http://www.basel.int/meetings/cop/cop1-4/cop3decisions_e.pdf.

movements of hazardous wastes intended for operations according to Annex IV”²⁰ from the territory of states parties listed in Annex VII (OECD members, the European Community and Liechtenstein) to states not on this list (Article 4a §1, of the *Ban Amendment*).²¹

However, according to Article 17, §5, of the *Basel Convention*, the *Ban Amendment* will enter into force only when it has been ratified by three-quarters of the states parties to the *Convention*. Currently (as of 6 April 2009²²), out of the 172 states parties to the *Convention*, only 65 have ratified the amendment. In spite of this obstacle (of a formal order), which the Conference of the Parties did discuss, this amendment has prompted a renewed interest in the *Basel Convention*, as shown by subsequent ratification by many African countries. Further, although the *Ban Amendment* still has not entered into force, one may nonetheless note a *de facto* ban on hazardous waste movements from industrialized countries to poor countries, with this ban figuring ever more frequently in national legislation as the controversy over movements of hazardous waste evolves.

In spite of the legislative measures taken at the international level, transboundary movement of hazardous waste to countries of the South continues, demonstrating an extraordinary capacity for adaptation in contravening new international standards. Accordingly, in the 1990s, so-called recycling operations between the OECD member countries and non-members proliferated. There has thus been no decrease in such transboundary movements of hazardous waste, only adaptation as this waste finds new avenues to travel, a subject discussed in the following chapter.

B. The Adaptation of the Various Forms of Transboundary Movements of Hazardous Waste Following Efforts at International Regulation and the Necessity of Adopting New, Stricter Standards

1. Trade in toxic wastes in the form of "recycling" programs

According to the estimates of the United Nations Environment Program (UNEP)²³, in 1995, “recycling” programs represented 95% of the movements of hazardous waste between industrialized countries and poor countries. These programs included two sorts of operations: “fictitious recycling” and “dangerous recycling operations”. The first consists of “reutilization” of hazardous waste for energy production, road construction, fertilizers etc., such operations being in reality non-existent. The second are recycling operations that are real enough, but they include activities that rich countries wish to divest themselves of because they are dangerous for the environment and for workers’ health. This is the case, for example, in the exporting to poor countries of rich countries’ waste incineration plants, which are foisted on the poor countries in the name of “free” conversion of waste into energy. This “charitable” contribution of the rich ignores the problem of considerable quantities of mercury and other heavy metals produced as a by-product of the incineration and the stock-

²⁰ Annex IV of the *Basel Convention*, “A. Operations which do not lead to the possibility of resource recovery, recycling, reclamation, direct re-use or alternative uses”. V. Annex 1 of this report.

²¹ The full text of the *Basel Convention Ban Amendment* is in Annex 2.

²² For the current state of ratifications: <http://www.basel.int/ratif/ban-alpha.htm>.

²³ These estimates were published by the UNEP in the “Guidance document on transboundary movements of hazardous wastes destined for recovery operations”, annexed to UNEP/CHW.3/17, May 1995, §40.

ing the highly contaminated ashes.²⁴ It is the same for the exporting of plastic waste products, especially to Asia, where workers are exposed to dangerous fumes from the burning of vinyl polyvinylidene chloride (PVC). Recycling plants for lead, whose activity is strictly controlled by industrialized country legislation, are also transferred to poor countries, which see in such transfers the opportunity to compensate for the significant increase in the price of lead on the international markets.

Another example of these dangerous recycling operations is the exporting of old ships, contaminated by toxic substances.²⁵ The transfer of ships to be dismantled in countries of the South, in particular in Asia, was extensively discussed in 2004 at the seventh Conference of the Parties of the *Basel Convention*.²⁶ In its Decision VII/26 regarding an “environmentally sound management of dismantling ships”,²⁷ the Conference recognized that “that many ships and other floating structures are known to contain hazardous materials and that such hazardous materials may become hazardous wastes as listed in the annexes to the Basel Convention,” (Article 2 of the Preamble²⁸). In this regard, it reminded states parties that the Basel Convention covered ships containing hazardous substances subject to transboundary movements in order to be dismantled (Decision VII/26, Article 1). However, this provision suffers from serious lacunae imposed as much by transnational corporations as by the states parties themselves.

Thus it was regarding the exporting of the French aircraft carrier *Clemenceau* to India, for removal of asbestos and dismantlement of the hull of the ship.²⁹ Following earlier refusals by Turkey (2003) and Greece (2004) to accept the boat, the French government committed itself to removing most of the asbestos (90%) from the ship in the port of Toulon, it being impossible to remove the remaining 10% as that would have “damaged the structure of the ship”. Moreover, the asbestos removal was to be accompanied by asbestos removal training of the Indian personnel by the Technopure Company, the sub-contractor of Ship Decommissioning Industries and a transfer of materials. Yet, according to the revelations of the Technopure Company³⁰, these conditions were not observed, with the company taking on no Indian trainees. Further, out of the 220 tons of asbestos in the aircraft carrier according to

²⁴ The World Bank and the Société fiduciaire internationale are implicated in these programs of transfers through projects of incineration of medical waste in some 20 countries, according to the United States NGO Multinational Resources Center. For further information, v. the report of the Special Rapporteur on Toxic Waste, presented to the 57th session of the Commission on Human Rights, E/CN.4/2001/55, 19 January 2001, §64: <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/dd8f5b8876ef5101c1256a240058e30b?Opendocument>.

²⁵ V. the working document of Greenpeace and of the Basel Action Network: “Shipbreaking and the Basel Convention: An Analysis” (April 1999): http://www.ban.org/subsidiary/shipbreaking_and.html.

²⁶ V. also the report by Greenpeace, the International Federation for Human Rights (FIDH) and Young Power in Social Action, *End of Life Ships: The Human Cost of Breaking Ships*, 2004: <http://www.fidh.org/IMG/pdf/shipbreaking2005a.pdf>.

²⁷ *Report of the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal*, “VII/26. Environmentally sound management of ship dismantling”, UNEP/CHW.7/33, 25 January 2005, p. 63: <http://www.basel.int/meetings/cop/cop7/docs/33eRep.doc>.

²⁸ V. also §6 of the preamble of Decision VII/26 (v. note 26), stipulating that “that a ship may become waste as defined in article 2 of the Basel Convention and that at the same time it may be defined as a ship under other international rules”.

²⁹ For further information on this case, there is the brief filed by the Association Ban Asbestos France and Greenpeace France with the Paris administrative tribunal (in French only; no date): <http://www.greenpeace.org/raw/content/france/presse/dossiers-documents/refere-association.pdf>.

³⁰ Declarations published by the French newspaper *Libération*, 15 March 2005 and confirmed by the company during its hearings before the Paris tribunal.

the estimates of the Ministry of Defense (1 February 2005) then reevaluated at 270 tons³¹ or even more (from 500 to 1,000 tons, according to Greenpeace), the Technopure company claims that it has removed only 69.9 tons of asbestos. The spokesman of the Defense Ministry acknowledged that only 115 tons of asbestos had been removed from the *Clemenceau* (AFP, 22 December 2005). In any case, we are far from the 22 tons of asbestos remaining to be treated in India, in contradiction to what the Defense Ministry claimed in its letter of 1 February 2005. However, this has not prevented the French government from maintaining its decision to export the aircraft carrier – or the “asbestos carrier” [sic] – to Alang in the state of Gujarat in India, in total disregard of European and international regulations. It was only under pressure from the French State Council and the Indian supreme court that the then president of France, Jacques Chirac, decided, on 15 February 2006, to bring the *Clemenceau* home to France. It will be dismantled in England, in the northeast port of Hartlepool, after having spent two years in the military port of Brest while waiting for a solution.

While this affair represented an open violation of the Basel Convention by the French government, many other attempts to transfer obsolete boats to countries of the South have taken routes much more difficult to detect. The prohibition on exporting boats containing hazardous substances to poor countries so that they can be dismantled (v. infra “Decision VII/6 of the COP7) is often flouted: either by selling the boat to an individual who, once he owns it, is free to have it dismantled on the spot; or by claiming that the boat will be reused in other capacities, as shown by the affair of the *SS Blue Lady* (alias, *SS Norway*, *SS France*). This boat from Germany, containing numerous toxic substances, including and especially a significant quantity of PCBs (polychlorinated biphenyls) and asbestos, received an 11 September 2007 authorization from the Indian supreme court to be demolished on the beach at Alang. This authorization was given in spite of an earlier judgment by the same court on the dismantling of boats, stipulating that they had to be emptied of all toxic substances before being brought into India (judgment of 11 September 2007); also in spite of an earlier refusal by the government of Bangladesh to accept the boat owing to the great quantities of toxic substances on board (February 2006).³²

Beyond the aberration of the Indian judicial system in this matter, there are also the governments of Germany (the exporter of the boat) and Malaysia (transit country), which bear some responsibility for having authorized the transfer of the boat in violation of the *Basel Convention*. But both parties have denied this accusation, claiming that they did not know the real reason for the transfer of the boat when it left their territory. As far as the German government was concerned, the boat was leaving to go to Klang in Malaysia to be converted into a floating hotel or to be used as a training boat for sailors, according to the allegation of the captain of the *SS Blue Lady* verified by the appropriate German authorities. As for the Malaysian government, it was informed by the agent of the boat’s owner, the Liberian company Bridgend Shipping Limited, that the ship was to be used for naval repair work and

³¹ Data from *Le Monde* newspaper, 6 April 2005 and in an AFP dispatch, 24 March 2005.

³² V. “Décision de la cour suprême indienne / Blue Lady: Les droits des travailleurs indiens les plus pauvres et les lois sur le démantèlement des navires sont bafoués (“Decision of the Indian Supreme Court/Blue Lady: The rights of the poorest workers and the and laws on the dismantling of ships are violated”, French only) 12 September 2007, International Federation for Human Rights (FIDH): http://www.fidh.org/IMG/article_PDF/article_4716.pdf.

that it was then to go to Dubai (United Arab Emirates). Given these truncated pieces of information, the German and Malaysian governments were apparently unable to implement the provisions of the *Basel Convention*, for the *SS Blue Lady* was not considered “hazardous waste” upon departure from the ports in question.³³

Given these legislative insufficiencies regarding the transfer of ships, the International Labor Organization, the International Maritime Organization and the Conference of the Parties of the *Basel Convention* worked together to draft a “Global Program for Sustainable Ship Recycling”.³⁴ This program has opened negotiations on adopting an “International Convention for the Safe and Environmentally Sound Recycling of Ships”.³⁵ The outcome will be decided at the Hong Kong Conference planned for 11 to 15 May 2009.³⁶

2. The Relocation of Polluting Industries as a New Strategy of Transnational

In order to avoid transboundary movements of hazardous waste, transnational corporations have adopted a preventive strategy: not by diminishing the quantity and the danger of the waste produced but by locating the dangerous and polluting industrial activities directly in the countries of the South. Thus, on the one hand, they circumvent binding legislation in Western countries that deals with protection of the health of workers and the environment (practices called ecological dumping); on the other hand, they circumvent the provisions of the *Basel Convention*, for these concern only transboundary – not domestic – movements of hazardous waste.³⁷ Among the industrial activities transferred to poor countries³⁸, there is notably the exporting of chlorine treatment plants whose organo-chloride products are very harmful to workers’ health (causing infertility, congenital malformations, cancer etc).³⁹ Another, well known to international public opinion following the Bhopal accident (v. infra), is that of the setting up of large-scale pesticide industries in the countries of the South since the 1990s. These transfers of polluting industries transfer the problem of the management of toxic waste to the countries of the South, whereas these countries often do not have the means of treating such waste in an environmentally responsible way on their territory. Worse, these countries, with their weak economic and political power, where security standards are lax, are more exposed to the risks of an industrial catastrophe with its consequences such as what happened at Bhopal in India.

Following the leak of toxic gases from the Union Carbide pesticide plant during the night of 2-3 December 1984, thousands of persons died (almost 20,000, according

³³ For further information: Report of the Special Rapporteur on toxic waste, presented to the 7th session of the Human Rights Council, 5 March 2008, A/HCR/7/21/Add.1, §§25-38: <http://www2.ohchr.org/english/bodies/hrcouncil/7session/reports.htm>.

³⁴ *IMO Guidelines on Ship Recycling*, Resolution A.962(23), 5 December 2003 http://www.imo.org/includes/blastDataOnly.asp/data_id%3D11404/ResShiprecycling962.pdf.

³⁵ *Ibid.* This convention provides for: an inventory of toxic products contained in the ship during its entire life (a “Green Passport”); a certification procedure for dismantling facilities that respect social and environmental standards; a control certification procedure for ships at the end of their operating life. For further information.

³⁶ This report went to press at the beginning of May 2009. For information on the Hong Kong Conference: <http://www.imoconf2009.hk/index.html>.

³⁷ V. in this regard the position of the Report of the Special Rapporteur on toxic waste, Chapter II.A.6.

³⁸ For the list of the main hazardous industrial activities transferred to the countries of the South, see the reports of the Special Rapporteur on toxic waste to the 52^d CHR (E/CN.4/1996/17, 22 February 1996, §93) and to the 55th session (E/CN.4/2001/55, 19 January 2001, §33): <http://www2.ohchr.org/english/issues/environment/waste/annual.htm>.

³⁹ V. *Toxic Trade Update*, Greenpeace, N° 6-3, 1993, p. 27.

to Greenpeace⁴⁰), and thousands of others continue, every day, to be contaminated, for the site has still not been cleaned up.⁴¹ Although Union Carbide paid US\$ 470 million for total damages following an out of court agreement with the Indian government, the United States NGO Greenpeace filed a complaint against the company in 1999, accusing it of polluting the underground water sources of the region. While the company (since bought out by Dow Chemical) managed to have the case dismissed in 2006, the Manhattan court of appeals annulled the dismissal in November 2008 for faulty procedure. (The plaintiffs had not been allowed enough time to respond to the request for a dismissal.) This has opened the possibility of further legal action for the victims.⁴²

These pesticide industry relocation programs are all the more pernicious that they are often carried out within the framework of regional and national agricultural development programs. They are thus not only legal but entirely legitimate. Beyond the risks such programs represent, they are also sometimes used by transnational corporations to export chemical and pharmaceutical products whose production has been prohibited, or strictly regulated, in developed countries – indeed, products that have been withdrawn from the market because of their high toxicity.

3. The Exporting of Chemical and Pharmaceutical Products Whose Production or Sale is Banned in Their Country of Origin

The production and marketing of chemical products has continually increased over the past twenty years, bringing the share of the chemical products sector to 9% of international trade in 2001.⁴³ However, given the toxicity and the risks for both human health and the environment, the production and sale of chemical products, especially pesticides, have been more and more strictly controlled in wealthy countries, in some instances being totally prohibited. To circumvent such prohibitions in OECD countries, some transnational corporations have built production plants in poor countries or have exported their stock of unsold products to these countries in the absence of binding legislation.

These export operations are all the more serious violations of human rights if one considers that the countries of the South are those exposed to the highest levels of poisoning from the use of pesticides and other chemical products.⁴⁴ The case of dibromochloropropane (DCBP), which affected thousands of Latin American workers on the banana plantations of the United States corporations United Fruit Company and Standard Fruit Company is instructive in this regard.⁴⁵

⁴⁰ V. <http://www.greenpeace.org/international/footer/search?q=Bhopal>.

⁴¹ V. *Transnational Corporations and Human Rights*, CETIM, November 2005 p. 12: <http://www.cetim.ch/en/documents/bro2-stn-A4-an.pdf>.

⁴² “U.S. court reinstates Bhopal water pollution case”, 4 November 2008: <http://www.nowpublic.com/environment/u-s-court-reinstates-bhopal-water-pollution-case>.

⁴³ OECD Environmental Outlook for the Chemicals Industry : <http://www.oecd.org/dataoecd/7/45/2375538.pdf>.

⁴⁴ According to the WHO and the FAO, some 99% of pesticide poisoning occurs in poor countries. Public Health Impact of Pesticides Used in Agriculture,(1990): <http://whqlibdoc.who.int/publications/1990/9241561394.pdf>.

⁴⁵ Although the production of DCBP had been prohibited by the United States government since 1975, owing to the alarming results of toxicological studies, these companies have continued to use this product on the banana plantations of Costa Rica, Nicaragua and other Latin American countries, causing the sterility of thousands of workers as well as other illnesses. V. Report of the Special Rapporteur on toxic waste to the 55th session of the CHR, E/CN.4/1999/46/Add.1, 11 January 1999, §§50-63: <http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/9650501ea153f6178025673700375a43?Opendocument>; *Transnational Corporations and Human Rights*, Editions du CETIM, Geneva, November 2005, pp. 16-18; articles published by the Information Network for Solidarity with Latin America (RISAL): <http://risal.collectifs.net/spip.php?mot332>.

Various international instances, especially the UNEP, the FAO, the WHO, the Conference of the Parties to the Basel Convention and the Special Rapporteur on toxic waste have devoted much attention to the question of trade in pesticides and other hazardous chemical products. Since 1989, there has been a “prior informed consent procedure”, reinforced by the adoption of the *Rotterdam Convention on the Prior Informed Consent Procedure for certain hazardous chemicals and pesticides in international trade* (FAO and UNEP, 1998).⁴⁶ This convention establishes norms allowing governments to better control the trade in hazardous chemical substances by: 1. according governments the possibility to refuse the importing of hazardous chemical products if they cannot be used in optimal safely conditions; 2. imposing obligations relative to labeling and the diffusion of information on health and environmental risks; and 3. favoring the exchange of information between states parties on potentially hazardous products.⁴⁷

Nonetheless, the problem of pesticides and other dangerous chemical products is not limited to trade in these toxic substances; there is also the problem of the elimination of stocks of products that are obsolete, prohibited or withdrawn from the market. According to an alarming FAO report published in 2001,⁴⁸ 500,000 tons of pesticides have thus been stockpiled in unsuitable conditions, in particular in poor countries. African countries, profoundly affected by this problem, in January 2001, adopted an action program in order to prevent the future accumulation of pesticide stocks and to eliminate those already in existence, following the first continental conference for Africa on the prevention and the ecologically rational management of dangerous waste (8-12 January 2001). This regional initiative was followed by the adoption of the *Stockholm Convention on Persistent Organic Pollutants* (POPs)⁴⁹ on 22 May 2001.⁵⁰ This convention, based on the practical application of the precautionary principle, provides a strategic framework that, in optimal security conditions, aims to eliminate these substances that are extremely harmful to health and the environment, as well as to reduce the production and use of some of them. When this convention was adopted, 12 POPs were identified. There were nine of them that were designated for a total prohibition (v. Annex A of the *Convention*), one whose production and use were to be limited (v. Annex B of the *Convention*), and the last two were to be the object of particular attention in order to limit involuntary production (the creation of a by-product not sought for its own sake or the result of a breakdown of the original compound). This list is not exhaustive, for the final objective in the long run is to extend it to other substances.⁵¹

⁴⁶ The full text of the convention is in Annex. V. also: http://treaties.un.org/doc/Treaties/1998/09/19980910%2007-22%20PM/Ch_XXVII_14p.pdf.

⁴⁷ V. Report of the Special Rapporteur on toxic waste to the 56th CHR, §§35-48, E/CN.4/2000/50, 20 March 2000: [http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/2f8345d1bd8ff1b3c12569150042143a/\\$FILE/G0011732.doc](http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/2f8345d1bd8ff1b3c12569150042143a/$FILE/G0011732.doc).

⁴⁸ V. Report of the Special Rapporteur on toxic waste to the 58th CHR, §16, E/CN.4/2002/61, 21 January 2002: [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.2002.61.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.2002.61.En?Opendocument).

⁴⁹ “Persistent organic pollutants are chemical substances that possess certain toxic properties and, unlike other pollutants, resist degradation, which makes them particularly harmful for human health and the environment. POPs accumulate in living organisms, are transported by air, water and migratory species and accumulate in terrestrial and aquatic ecosystems. They are therefore a cross-border problem...” European Union definition: http://europa.eu/legislation_summaries/environment/air_pollution/l21279_en.htm

⁵⁰ For the full text of the Stockholm Convention, v. Annex 8 or the Stockholm Convention website : <http://chm.pops.int/>.

⁵¹ V. Greenpeace-Canada, 23 May 2001: <http://www.greenpeace.org/canada/fr/presse/communiqués/la-convention-de-stockholm-sur> (available only in French).

The adoption of these international texts⁵² and regional instruments⁵³ marks an important advance in the struggle against the dangerous effects of chemical products (pesticides and others) on human health and the environment. That said, there remain points insufficiently treated by the texts in force, lacunae that impede the effectiveness of the control mechanisms. In fact, the purview of the *Stockholm Convention* is limited to chemical products with the characteristics of POPs (i.e. toxicity, persistence, bioaccumulation, capacity to move over large distances...), and it does not take into account numerous other dangerous chemical products,⁵⁴ in spite of the human rights violations that they can cause.⁵⁵ Moreover, whether within the framework of the *Stockholm Convention* or the *Rotterdam Convention*, the rights of the victims (access to information, right to redress etc.) is never taken into account, as emphasized by the Special Rapporteur on toxic waste in her 2002 report.⁵⁶ This problem of victims' rights unfortunately recurs in matters appertaining to human rights violations caused by transboundary transfers of dangerous waste. It is a thorny subject to which two successive special rapporteurs have accorded the importance that it deserves.

While the development of industrial activity has been accompanied by an ever greater production of ever more toxic waste, the information revolution has also created its own lot of toxic waste transferred to the countries of the South – perfectly legally, since there is no legislation dealing with this sort of transfer.

4. The Exporting of Electronic and Electric Waste

The widespread proliferation of electronic goods – computers, mobile telephones, flat television screens etc. – has increased considerably over the years in industrialized countries (as well as in poor countries), reinforced by the limited life-span of these products. This development has gone hand-in-hand with a proportional increase of electric and electronic waste – also known as waste electronic and electrical equipment or (WEEE) or, simply, e-waste – comprising highly toxic elements. “A mobile phone, for example, contains 500 to 1000 components. Many of these contain toxic heavy metals such as lead, mercury, cadmium and beryllium and hazardous chemicals, such as brominated flame retardants. Polluting polyvinyl chloride (PVC) plastic is also frequently used.”⁵⁷ According to a study by the United Nations Environment Program, each year 20 to 50 million tons of e-waste are generated throughout the world,⁵⁸ and that does not include the increase in such waste in developing countries, which is predicted to triple by 2010. This exponential

⁵² V. also *Strategic Approach to International Chemicals Management*: <http://www.saicm.org/index.php?ql=h&content=home> and the Report of the Special Rapporteur on toxic waste to the 62^d session of the CHR, E/CN.4/2006/42, 20 February 2006: §§52-66: http://ap.ohchr.org/documents/sdpage_e.aspx?b=1&se=61&t=9.

⁵³ In this regard, v. the *African Stockpiles Program*, the new EU system of chemical substance regulation, and the Pollutant Release and Transfer Register (PRTR) of the OECD set up in 2002. V. also the Report of the Special Rapporteur on toxic waste to the 62^d session of the Commission on Human Rights, E/CN.4/2006/42, 20 February 2006: §§20-21, *Ibid*.

⁵⁴ The 4th Conference of the Parties for the *Stockholm Convention*, held in Geneva in May 2009, decided to include nine POPs in the Convention; v. <http://chm.pops.int/Convention/COPs/hrMeetings/COP4/tabid/404/mctl/ViewDetails/EventModID/870/EventID/23/xmid/1673/language/en-US/Default.aspx>

⁵⁵ V. the *Greenpeace Guide to the Stockholm Convention on Persistent Organic Pollutants (POPs)*, published in May 2005: <http://www.greenpeace.org/raw/content/international/press/reports/stockholm-convention-on-persis.pdf> and Greenpeace's “Stop Toxic Pollution” campaign file: <http://www.greenpeace.org/canada/en/campaigns/other-campaigns/stop-toxic-pollution>.

⁵⁶ Report to the 58th Commission on Human Rights, E/CN.4/2002/61, 21 January 2002: [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.2002.61.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.2002.61.En?Opendocument)

⁵⁷ V. Greenpeace, *Toxic Tech: Not in Our Backyard – Uncovering the Hidden Flows of e-Waste*, May 2008: <http://www.greenpeace.org/raw/content/international/press/reports/not-in-our-backyard.pdf>.

growth cannot be absorbed the plants currently available to treat this sort of waste, whose capacities are very limited. These obsolete products are thus stocked in people's homes or in rubbish dumps causing serious dangers for human health and the environment. Otherwise, they are sent to poor countries in the name of "charity". In short, these products pose serious waste management problems once they have become unusable. In many cases, they can be sent directly and illegally to Western Africa or Asia – especially to India or China, where "informal" treatment and recycling of e-waste flourishes.

With such considerations in mind, the Conference of the Parties of the Basel Convention decided to take up the matter at its eighth meeting, devoted to "creating innovative solutions through the Basel Convention for the environmentally sound management of electronic wastes".⁵⁹ This initiative resulted in the adoption of the *Nairobi Declaration* in which the parties to the *Convention* committed themselves to encouraging and supporting "strategic partnerships initiated within the context of the Basel Convention targeting e-waste with a view to improving the environmentally sound management of e-products worldwide".⁶⁰ To this purpose, the states parties agreed to set up a working group instructed "to develop a work plan for consideration by the Conference of the Parties at its ninth meeting on the environmentally sound management of e-waste focusing on the needs of developing countries and countries with economies in transition"⁶¹ and adopted a work plan to implement a worldwide partnership on used IT equipment at the end of its lifespan.⁶²

These measures reinforce initiatives already taken on the regional level, in particular those taken by the European Union. In fact, since 2002, the European Parliament has been adopting directives on e-waste and the Restriction of the use of certain Hazardous Substances (RoHS), which aim, respectively, to encourage a selective collection and the recovery of e-waste and to limit the use of certain dangerous substances in electrical and electronic equipment.⁶³ The European Union has gone yet further with the e-waste directive by enshrining in law the principle of the individual responsibility of the producer.⁶⁴ This clause recognizes the responsibility of the manufacturer throughout the entire life-cycle of the product, and businesses must thus assume the expense of recovering and recycling obsolete electric and electronic equipment.

Although these are major advances for rational environmental management of e-waste, these initiatives concern only the visible flow of e-waste. In fact, according to

⁵⁸ V. "E-waste, the hidden side of IT equipment's manufacturing and use", UNEP, Environment Alert Bulletin, No 5, January 2005: http://www.grid.unep.ch/product/publication/download/ew_ewaste.en.pdf.

⁵⁹ Report of the 8th Conference of the Parties to the Basel Convention, 5 January 2007, UNEP/CHW.8/16, 11 November 2005, consideration of agenda item 7, §§47-96, <http://www.basel.int/meetings/cop/cop8/docs/16e.pdf>.

⁶⁰ *Ibid.*, Annex IV, §10, pp. 101-102.

⁶¹ *Ibid.*, Annex I, Decision VIII/2, §3, p. 24.

⁶² *Ibid.*, pp. 27-33.

⁶³ E.g. "Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (WEEE)": <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002L0096:EN:HTML> and "Directive 2002/95/EC of the European Parliament and of the Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment": <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002L0095:EN:HTML>.

⁶⁴ E.g. "Directive 2002/95/EC of the European Parliament and of the Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment": <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:037:0019:0023:EN:PDF>

a study conducted by Greenpeace,⁶⁵ only about 20% of the e-waste currently on the market is collected in order to be recovered. The other 80% (the “invisible flow”) is thus beyond any control and feeds the illegal circuits of toxic waste transfers to poor countries. This problem cannot be underestimated given the boom in illegal toxic waste transfers.

5. Fraudulent Practices

Every form of regulation is accompanied by fraudulent practices that aim at contravening the regulations in force. In a large number of cases, these operations consist in falsifying the information and/or camouflaging the toxic waste by mixing it deliberately with other waste. Such practices represent a major obstacle for the control of dangerous waste, especially for the countries of the South that do not have the technical and financial means to carry out the necessary monitoring. In order to detect this sort of fraud and to reinforce the technical capacities of the South, 14 regional training and technology transfer centers (BCRCs)⁶⁶ have been set up in various countries⁶⁷ in accordance with Decision III/19⁶⁸ of the third Conference of the Parties to the Basel Convention (1995).

However, these measures remain without effect given the corruption and the stranglehold of criminal organizations on illegal movements of toxic waste. Currently, environmental criminality represents one of the most dynamic and most profitable sectors of international organized crime. For example, the illicit dumping of dangerous waste is said to represent a profit of US\$ 10-12 billion each year for these criminal organizations, according to a United States government report.⁶⁹ Given such a situation, the United Nations Interregional Crime and Justice Research Institute (UNICRI) has undertaken a research project on crimes against the environment.

This said, the increase in environmental crime cannot be reined in unless legislation dealing with environment is accompanied by strong measures at both the national and the international level. On the one hand, the international regulations in this area must be stated clearly and precisely to avoid “surf-riding”. On the other hand, such intentions must be credibly reproduced at the national and/or the regional level, to wit by providing for the technical and financial means necessary for their implementation as well as deterrent sanctions, such as criminal prosecution.

⁶⁵ Greenpeace, *Toxic Tech: Not in Our Backyard – Uncovering the Hidden Flows of e-Waste*, May 2008: <http://www.greenpeace.org/raw/content/international/press/reports/not-in-our-backyard.pdf>

⁶⁶ For further information concerning the regional and sub-regional center, v. *The Basel Convention Regional and Coordinating Centres At A Glance* (no date): <http://www.basel.int/centers/description/BCRCataGlance.pdf>.

⁶⁷ These centers are in Egypt, Nigeria, Senegal and South Africa for the Africa and Western Asia region; in China, Indonesia, Iran and Polynesia (Samoa) for the Asia and Pacific region; in Russia and Slovakia for the Eastern and Central Europe region; in Argentina, El Salvador, Trinity and Tobago and Uruguay for the South America and Caribbean region. For further information: : <http://www.basel.int/pub/broch-bcrc-270508.pdf>.

⁶⁸ V. <http://www.basel.int/meetings/cop/cop1-4/cop3dece.pdf#Decision19>. This decision was an extension of Article 14 of the *Basel Convention* (v. Annex) and was in accordance with Decisions I/13 and II/19 of the earlier Conferences of the Parties, and was to be completed by Decisions IV/4, V/5, VI/3, VI/4, VII/9, VIII/4 and IX/4 of later Conferences of the Parties. The decisions are available under “Legal Establishment” and “Relevant COP Decisions” on the website of the Basel Convention secretariat: <http://www.basel.int/centers/centers.html>.

⁶⁹ *The International Crime Threat Assessment*, United States Department of Justice, Environment and Natural Resources Division, 2000. Not available on internet but the figures quoted are included in the UNEP report, *New initiative to combat growing global menace of environmental crime*, 2 June 2003: <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=321&ArticleID=4017>.

Without these, international environmental and health regulations, and especially those relative to the transfer of toxic waste, will remain dead letters, indeed, they will offer new areas of action for organized crime.

Thus, it is essential that governments and international organizations agree on the root causes of the illicit transfer of dangerous waste, with each assuming its responsibility. How, in this regard, can the governments of the industrialized countries claim that they regulate ever more strictly the management of toxic waste as long as they are not jointly legislating the processes and technologies producing these residues (and without prohibiting the exporting of such substances)? In acting this way, they have not reduced the risks but have “limited themselves to redistributing it geographically”.⁷⁰ As well, the governments of the countries of both the North and the South must act together to harmonize their legislation in order to avoid, or at least to reduce, opportunities for “environmental dumping”. In so far as the cost of eliminating dangerous waste is disproportionate between the countries of the South and the OECD (the elimination of a ton of toxic waste in Africa costs US\$ 2.50 as opposed to US\$ 250 in Europe⁷¹) the transnational corporations will try by any and all means to export their toxic waste to Africa or elsewhere. And these movements are – and will be – always less controllable as the processes of liberalization and deregulation of international markets progresses (propelled by the IMF, the World Bank and the WTO).⁷²

Consequently, firm measures must be taken, at the international and the regional levels, to monitor closely the activities of unscrupulous corporations and governments that recur to this sort of criminal practice. It is not only a matter of relegating the problem to a question of the environment, but of assessing the human rights violations that these corporations and governments commit. In this regard, the former Commission on Human Rights demonstrated responsibility in creating a mandate for a special rapporteur on “the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights”. This mandate filled a void by integrating a human rights perspective into this matter, a perspective much neglected until then (see below).

II. HUMAN RIGHTS: NEGLECTED ASPECTS IN THE INTERNATIONAL INSTRUMENTS REGULATING TRANSBOUNDARY MOVEMENTS OF TOXIC AND DANGEROUS WASTE

When a boat containing highly toxic substances is dismantled in India, it is not only the Alang site which is contaminated but also the workers, who pay the price in terms of the effects on their health and life. When a government exports its incineration plants to a country where the security norms are minimal, it is the workers and the entire population nearby who suffer from the polluting fallout and from the unregulated stocking of the cinders that contaminate their natural resources for both present and future generations. When a transnational corporation relo-

⁷⁰ J.C. Bongaerts, *Transfrontier Movements of Hazardous Wastes*, Wissenschaftszentrum, Berlin, 1988.

⁷¹ V. *After the Tsunami: Rapid Environmental Assessment* (UNEP), p. 135: http://www.unep.org/tsunami/reports/Tsunami_SOMALIA_LAYOUT.pdf.

⁷² V. Report of the Special Rapporteur on toxic waste to the 54th Commission on Human Rights, E/CN.4/1998/10, 20 January 1998, §§66-71.

cates its production of phytosanitary products that have been declared dangerous by the health authorities of the country of origin, it is, once again, the right to health of the workers that is seriously violated. This does not take into account that very often this transfer of dangerous activities is carried out without the knowledge of the concerned populations. And when these populations make known their disagreement, force is often used to deny them their right to freedom of assembly, of association, of expression and of information.⁷³ Yet these serious human rights violations committed by transnational corporations, often with government complicity, enjoy a climate of impunity owing to the weakness of the procedures of redress and to the power relations in play.⁷⁴ It is moreover not by accident that the first victims of these transboundary movements of toxic waste are the most vulnerable people (smallholder farmers, indigenous peoples, seasonal agricultural workers, workers whose economic situation is precarious and others).

Although these serious violations of human rights are acknowledged, there remains all the same the problem that the documents regulating transboundary movements of toxic waste do not mention human rights. As already mentioned, this is what encouraged the former Commission on Human Rights,⁷⁵ under pressure from the African Group, to create a mandate for a special rapporteur “on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights”. In fact, the treatment of the human rights dimension of this matter has allowed, on the one hand, the taking into account of the perspective of the victims and, on the other hand, analysis within this perspective of the international mechanisms for the regulation of transboundary movements of dangerous waste.

The Human Rights Council

A. The Mandate of the Special Rapporteur

With resolution 1995/81,⁷⁶ the former Commission on Human Rights decided to name, for a three years, a special rapporteur⁷⁷ on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, whose mandate would cover:

⁷³ E.g. the affair of the Formosa Plastic Corporation, a Taiwanese petrochemical company that exported 3,000 tons of toxic waste to the village of Sihanoukville in Cambodia and demonstrations against which were violently repressed. (V. annual report of the Special Rapporteur on toxic waste to the 56th CHR, E/CN.4/2000/50, 20 March 2000, §§61-71.

⁷⁴ In 1997-1998, at least 88 Haitian children died after having been given a paracetamol syrup containing impure glycerin. This medicated substance, exported by the Dutch company Vos BV, an affiliate of the German company Helm AG, contained automobile anti-freeze (diethylene glycol), a product that, in high doses, is mortal for children. After several years of going nowhere, the case was finally settled out of court. The company paid 500,000 florins (€226,890) to the Kingdom of the Netherlands, while refusing to admit any fault. V. the annual report of the Special Rapporteur on toxic waste to the 59th CHR, E/CN.4/2003/56, 16 January 2003, §§81-87.

⁷⁵ V. note 3.

⁷⁶ Adopted 8 March 1995 by 31 votes in favor (Algeria, Angola, Bangladesh, Benin, Bhutan, Brazil, Cameroon, Chili, China, Colombia, Cuba, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, Gabon, India, Indonesia, Ivory Coast, Malawi, Mauritania, Mauritius, Nepal, Nicaragua, Pakistan, Sri Lanka, Sudan, Togo, Venezuela, Zimbabwe) and 15 against (Australia, Austria, Canada, Finland, France, Germany, Hungary, Italy, Japan, Netherlands, Poland, Romania, Russia, United Kingdom, United States) and six abstentions (Bulgaria, Malaysia, Mexico, Peru, Philippines, South Korea).

⁷⁷ From 1995 to 2004, the Special Rapporteur was Fatma Zohra Ouhachi-Vessely (Algeria), who was replaced by Okechukwu Ibeanu (Nigeria), who still holds the mandate.

1. researching and examining the consequences of the dumping of toxic and dangerous products and wastes in African and other developing countries for the enjoyment of human rights, in particular the right to life and to health;
2. monitoring, surveillance, examining and receiving communications and collecting information on the movements and dumping of illicit toxic and dangerous products and wastes in African and other developing countries;
3. formulating recommendations and proposals on appropriate measures to control, reduce and eliminate the illicit movement, the transfer and the dumping of toxic and dangerous products and wastes in African and other developing countries;
4. compiling a list each year of the countries and transnational corporations that carry on illicit dumping of toxic and dangerous products and wastes in African and other developing countries, calculating the number of humans killed, mutilated or injured in poor countries because of these heinous practices.

Since then, this mandate, with various changes, has been regularly extended.⁷⁸ In fact, through resolution 1996/14,⁷⁹ the Commission on Human Rights requested that the Special Rapporteur "...undertake, within her mandate, a global, multidisciplinary and comprehensive study of existing problems and solutions to illicit traffic in, transfer to and dumping of toxic and dangerous products and wastes in African and other developing countries, with a view to making recommendations and proposals, in her next report, on adequate measures to control, reduce and eradicate these phenomena".

In 1998, at the time of the first extension of the mandate, the Commission added three further tasks to the mandate of the Special Rapporteur, requesting that her reports contain: 1. information on the persons killed, mutilated or injured in the developing countries owing to the illicit movements and dumping of toxic and dangerous products and wastes in African and other developing countries; 2. progress made by other U.N. instances (in particular the UNEP, the FAO, and the Basel Convention secretariat); and 3. government responses to the allegations of the Special Rapporteur.⁸⁰

In 2000, the Commission on Human Rights requested that the Special Rapporteur include in her reports: 1. the question of the impunity the perpetrators of these heinous crimes, including racially motivated discriminatory practices, asking that she to recommend measures for ending them; 2. the question of rehabilitation of and assistance to victims; 3. the question of the scope of national legislation in re-

⁷⁸ First by the Commission on Human Rights, then by its successor, the Human Rights Council.

⁷⁹ V. Resolution 1996/14 (§14), adopted 11 April 1996 by 32 votes in favor (Algeria, Angola, Bangladesh, Benin, Bhutan, Brazil, Cameroon, Chili, China, Colombia, Cuba, Ecuador, Egypt, El Salvador, Ethiopia, Gabon, Guinea, India, Indonesia, Ivory Coast, Madagascar, Mali, Mauritania, Mexico, Nepal, Nicaragua, Pakistan, Peru, Sri Lanka, Uganda, Venezuela, Zimbabwe), 16 against (Australia, Austria, Belarus, Bulgaria, Canada, Denmark, France, Germany, Hungary, Italy, Japan, Netherlands, Russia, Ukraine, United Kingdom, United States) and 3 abstentions (Malaysia, Philippines, South Korea).

⁸⁰ V. resolution 1998/12, adopted 9 April 1998 by 33 votes in favor (Argentina, Bangladesh, Bhutan, Botswana, Brazil, Cape Verde, Chili, China, Congo, Cuba, Democratic Republic of Congo, El Salvador, Ecuador, Guinea, India, Indonesia, Madagascar, Mali, Mexico, Morocco, Mozambique, Nepal, Pakistan, Peru, Rwanda, Senegal, South Africa, Sudan, Sri Lanka, Tunisia, Uganda, Uruguay, Venezuela), 14 against (Belarus, Canada, Czech Republic, Denmark, France, Germany, Italy, Japan, Luxembourg, Poland, Russia, Ukraine, United Kingdom, United States) and 6 abstentions (Austria, Guatemala, Ireland, Malaysia, Philippines, South Korea).

lation to transboundary movements and dumping of toxic and dangerous products and wastes.⁸¹

In 2001, the Commission requested that the Special Rapporteur also include in her reports “the question of fraudulent waste-recycling programs, the transfer of polluting industries, industrial activities and technologies from the developed to developing countries, ambiguities in international instruments that allow illegal movement and dumping of toxic and dangerous products and wastes, and any gaps in the effectiveness of the international regulatory mechanisms”.⁸²

In 2008, extending the mandate another three years, the Human Rights Council requested the Special Rapporteur to also supply information on “human rights responsibilities of transnational corporations and other business enterprises that dump toxic and dangerous products and wastes”.⁸³

B. The Means at the Disposal of the Special Rapporteur

Like most of the Human Rights Council mandate holders, the Special Rapporteur has at his disposal the following means to carry out his duties: 1. an annual report⁸⁴; 2. country missions⁸⁵; 3. follow up to individual and collective communications⁸⁶; and 4. thematic studies.

C. Contributions of the Special Rapporteur

Although the Special Rapporteur has been hindered in his work (lack of means and lack of cooperation from transnational corporations, from some governments and interstate organizations), he has been able to shed light on numerous violations of human rights due to transboundary movements of toxic and dangerous products and wastes. Thus, he has demonstrated the interdependence of development, environment and human rights. He has also demonstrated, to the extent it might have

⁸¹ V. Resolution 2000/72 (§12), adopted 26 April 2000 by 37 votes in favor (Argentina, Bangladesh, Bhutan, Botswana, Brazil, Burundi, Chili, China, Colombia, Congo, Cuba, El Salvador, Ecuador, Guatemala, India, Indonesia, Liberia, Madagascar, Mauritius, Mexico, Morocco, Nepal, Niger, Nigeria, Pakistan, Peru, Philippines, Qatar, Rwanda, Senegal, Sudan, Sri Lanka, South Korea, Swaziland, Tunisia, Venezuela, Zambia) and 16 against (Canada, Czech Republic, France, Germany, Italy, Japan, Latvia, Luxembourg, Norway, Poland, Portugal, Romania, Russia, Spain, United Kingdom, United States).

⁸² V. Resolution 2001/35 (§13e), adopted 23 April 2001 by 38 votes in favor (Algeria, Argentina, Brazil, Burundi, Cameroon, China, Colombia, Costa Rica, Cuba, Democratic Republic of Congo, Ecuador, Guatemala, India, Indonesia, Liberia, Libya, Madagascar, Malaysia, Mauritius, Mexico, Niger, Nigeria, Pakistan, Peru, Qatar, Russia, Rwanda, Saudi Arabia, Senegal, South Africa, Swaziland, Syria, Thailand, Uruguay, Venezuela, Vietnam, Zambia) and 15 against (Belgium, Canada, Czech Republic, France, Germany, Italy, Japan, Latvia, Norway, Poland, Portugal, Romania, Spain, United Kingdom, United States).

⁸³ Resolution 9/1 (§5 b) adopted without a vote 24 September 2008. V Annex 9.

⁸⁴ All the annual reports of the Special Rapporteurs and their addenda (government responses to cases submitted) are available at: <http://www2.ohchr.org/english/issues/environment/waste/annual.htm>.

⁸⁵ To date, the two Special Rapporteurs have visited 17 countries: South Africa, Kenya and Ethiopia (August 1997; v. E/CN.4/1998/10/Add.2); Paraguay and Brazil (June 1998; v. E/CN.4/1999/46/Add.1); Costa Rica and Mexico (November 1998; v. E/CN.4/2000/50/Add.1); Germany and The Netherlands (October 1999; v. E/CN.4/2000/50/Add.1); the United States (December 2001, v. E/CN.4/2003/56/Add.1); Canada (October 2002; v. E/CN.4/2003/5/Add.2); the United Kingdom (May-June 2003; v. E/CN.4/2004/46/Add.2); Turkey (March 2004; v. E/CN.4/2005/45/Add.2); Ukraine (January 2007, v. A/HRC/7/21/Add.2); Tanzania (February 2008; v. A/HRC/9/22/Add.2); Ivory Coast (August 2008, report yet to be published); India (September 2008, report yet to be published); The Netherlands (November 2008, report yet to be published) and Kyrgyzstan (March 2009, report yet to be published). The aforementioned reports are available at: <http://www2.ohchr.org/english/issues/environment/waste/visits.htm>.

⁸⁶ V. note 82.

been necessary, the interdependence of all human rights, given that the phenomenon in question can involve violations of many human rights (right to life, to food, to information, to participation in civic life and in decision making...). Moreover, the Special Rapporteur has evaluated the existing international conventions and recommendations with a view to filling gaps in them, all while keeping abreast of new tendencies in this area.⁸⁷ He has also dealt with the rights of the victims and the means of legal redress. Thus, the mandate of the Special Rapporteur has been transformed, in a sense, into an observatory of transboundary movements of toxic and dangerous products and wastes. This mandate also plays a preventive role, since it draws attention to new tendencies⁸⁸ and to violations – actual and potential – of these rights of which the Special Rapporteur has been notified.

Included in the annual reports of the Special Rapporteur, the thematic studies have dealt with: the responsibilities of transnational corporations in the transboundary movements of toxic wastes⁸⁹; the effect on human rights of generalized exposure of individuals and communities to chemical substances present in household products and the food chain⁹⁰; the effect of armed conflict on exposure to toxic and dangerous products and wastes⁹¹; the right to information and to participate in the decision making process relating to transboundary movements of toxic products and wastes.⁹²

Among the abovementioned studies, of special note is the responsibility of transnational corporations in transboundary movements of toxic wastes and access to redress for its victims.

D. Responsibilities of Transnational Corporations

Although the Basel Convention and other national and international legal instruments consider the traffic of toxic waste a criminal act liable to civil, administrative and criminal proceedings, “in practice, the wrongful acts go unpunished, even when a formal complaint has been filed, because of the difficulty of identifying all the links in networks, detecting the origin of the waste or products and attributing responsibility”⁹³.

In fact, with the transnationalization of corporations, reinforced by the process of liberalization and deregulation, it is more and more difficult to monitor their activities. On the one hand, the complex ramification of transnational corporations (holding company, affiliates, conglomerates etc.)⁹⁴ obscures the transfer of activities. On the other hand, the creation of affiliates in countries where legislation is less strict and less well enforced allows corporations to divest themselves of the responsibility of the dramatic repercussion of their activities onto the local populations and enviro-

⁸⁷ It is worth noting that the outline of the first chapter of this report owes much to the work of the Special Rapporteur.

⁸⁸ For example, the Special Rapporteur mentions in his 2005 report the predictable increase in the movements of mercury following the decision by the European Union to phase out Chlor-alkali plants within its borders. V. E/CN.4/2005/45, 14 December 2004, §40.

⁸⁹ V. E/CN.4/2001/55, 19 January 2001.

⁹⁰ V. E/CN.4/2006/42, 20 February 2006.

⁹¹ V. A/HRC/5/5, 5 May 2007.

⁹² V. A/HRC/7/21, 18 February 2008.

⁹³ Annual report of the Special Rapporteur on toxic waste, E/CN.4/2001/55, 19 January 2001, §77.

⁹⁴ See the definition of transnational corporations given in the CETIM brochure *Transnational Corporations and Human Rights*, 2005, pp. 8-9: <http://www.cetim.ch/en/documents/bro2-stn-A4-an.pdf>.

onment. This is all the more disturbing that these companies, which, by definition operate within a transnational framework, are subject to no binding jurisdiction at the international level. Responsible only to the jurisdiction of the host country, they are at leisure to take advantage of legal disparities between countries and to thus shirk their responsibilities. Of course, under pressure from social movements and NGOs, some transnational corporations have committed themselves to adopting voluntary internal guidelines. But, in the absence of a binding mechanism and international monitoring, the ineffectiveness of these initiatives, where judge and accused become one, is patent.⁹⁵ Further, such guidelines are paramount to undermining the universal and indivisible character of human rights, as each corporation can choose what it wishes to emphasize and what to ignore. This is why the Special Rapporteur has supported the “norms” (adopted by the former Sub-Commission for the Protection and Promotion of Human Rights) dealing with “the human rights responsibility of transnational corporations and other business enterprises”.⁹⁶ In spite of its importance, this document is still awaiting examination and consideration by the Human Rights Council.

In addition to the obstacles to the recognition of the responsibilities of transnational corporations, there is the difficulty of establishing a cause and effect relation in matters of transfer of toxic products. It is still an arduous task to prove the relation that exists between the activities of transnational corporations and the damage caused to unidentified victims, sometimes even unidentifiable. This is the case, for example, with seasonal workers or migrants, who disperse once their contract has expired without yet knowing the consequences of the exposures to which they have been subjected. It is then difficult, for them, to make the link between contracting an illness and carrying out a specific activity, and even more difficult to bring proof of this relation before a court of law. Worse, these people often have no knowledge whatever of their rights and, even when informed of their rights, are without the resources necessary to assert them.

Access to justice is thus effectively limited for the victims of the countries of the South, where legal aid is weak, often non-existent. On the other hand, those responsible for criminal acts enjoy substantial technical, scientific and financial means that allow them to mount an impregnable defense. This alone is enough to prevent a fair trial. Moreover, the victims are often pressured to accept out-of-court settlements with negligible compensation relative to the injury incurred, thus putting those responsible out of reach of civil or criminal proceedings.⁹⁷

E. Persistent Preoccupations and Recommendations of the Special Rapporteur

In his most recent report,⁹⁸ the Special Rapporteur emphasized the following points:

1. the long-term effects of fertilizers, pesticides and herbicides on health and the environment;
2. the problem of stocks of obsolete pesticides; shipped within the framework of aid to development to the agricultural sector of the countries of the South, they seriously endanger the life and health of the local populations, and

⁹⁵ Ibid, v. “The Inconsistency of Voluntary Codes of Conduct” in the CETIM brochure, pp. 21-22.

⁹⁶ V. E/CN.4/Sub.2/2003/12/Rev.2, adopted 13 August 2003 by the Sub-Commission (v. Annex 12).

⁹⁷ V. note 74 regarding the Haitian children and contaminated syrup.

⁹⁸ V. A/HCR/9/22 (13 August 2008), to the 9th session of the Human Rights Council.

their unsupervised elimination causes contamination of agricultural land and water sources;

3. poverty; it pushes the countries of the South to adopt desperate measures and practices and, especially, to accept without reservation dangerous products and wastes and the uncontrolled use of dangerous chemical products in all sorts of activities, with negative repercussions on agriculture and food production;
4. the non-observance of the Basel Convention;
5. the lack of resources available to carry out the tasks assigned to him;
6. the lack of interest, indeed the hostility, that his mandate has raised with certain governments.

The main recommendations⁹⁹ of the Special Rapporteur can be divided into four categories: 1. legislative, judicial and administrative measures; 2. international co-operation; 3. victims' right to information and to redress; 4. legal framework for transnational corporations.

1. Legislative, Judicial and Administrative Measures

7. National and international regulations should include binding control and implementation mechanisms. Legislatures should continue to draft strict laws for the control of transboundary movements.
8. Governments should take more forceful measures to reduce the production of wastes, to fight against new currents of illicit traffic and to resolve the challenges posed by chemical products.
9. Chemical substances that are prohibited or withdrawn from the market in developed countries should not be produced for export. Such a practice is illicit as regards human rights norms.
10. National capacities of poor countries should be reinforced by financial aid, the transfer of appropriate technology and multiform assistance. The regional centers that have been set up should be adequately financed.
11. Governments should take preventive and deterrent measures, including administrative, civil and criminal sanction, against individuals, business enterprises and transnational corporations involved in illicit traffic. Particular efforts should be made to put an end to impunity.
12. Governments should adopt measures to qualify as crimes those acts that are obviously criminal, including those perpetrated by legal persons (corporations).
13. National compensation funds should be set up to deal with the obligation to return to the country of origin wastes and products exported in violation of regulations. Governments should provide these funds that assure the financing of the restoration of the environment and compensation for the victims in those cases where the perpetrators of the crimes are not known, have disappeared or in bankruptcy.
14. Independent national investigative commissions, with legal or quasi-legal power, should be set up to deal with alleged cases of or attempts at illicit dumping.

⁹⁹ V. E/CN.4/2004/46, 15 December 2003, §§102-119, wherein is to be found a summary of the points raised by the Special Rapporteur upon completion of three consecutive mandates as well as A/HRC/9/22, §16, 13 August 2008 (advance edited version): <http://www2.ohchr.org/english/bodies/hrcouncil/docs/9session/A-HRC-9-22AEV.doc>.

2. International Cooperation

15. The lack of resources available to carry out the tasks assigned to him should be remedied.
16. Judicial assistance and information exchanges should be facilitated with a view to fighting fraud, corruption and organized networks of illicit traffic.
17. The cooperation between the High Commissioner for Human Rights, the United Nations Environment Program and the secretariats of the multilateral conventions on the environment should be reinforced in order to empower the ecological perspective of human rights and the human rights dimension of environmental standards.
18. Governments should ratify the international conventions, cooperate fully with a view to implementing their provisions and reinforce the means of action of the secretariats of the conventions.

3. Victims' Right to Information and to Redress

19. The Special Rapporteur stressed that Governments should stop considering themselves as controllers of information, but as custodians for the public rather than for the State. He urged that information on environmental issues should be held in trust for the public interest, instead of the interest of those who control the State, for it is indispensable for the prevention of human rights violations and the protection of the environment.
20. Victims should have access to administrative and legal procedures of the exporting country. Non-resident victims should have available the same avenues of redress and should receive the same treatment as residents.
21. Governments should reinforce the role of national environmental protection agencies as well as that of non-governmental organizations, communities and local associations, trade unions, workers and victims and should provide them with the legal and financial means to take action. The right to information and to participate in the decision making processes, freedom of expression and of association and the avenues of redress should all be consolidated.
22. Seminars should be organized for judges in order to sensitize them to environmental crime.

4. Legal Framework for Transnational Corporations

23. Transnational corporations should be forced to observe the laws of their host country and, if necessary, be held accountable for the acts according to the law of the country of origin, which would have stricter standards. The countries of origin of transnational corporations should help the victim countries and should punish, including through criminal proceedings, those responsible for the crimes.
24. The Human Rights Council should examine the means of implementation of the Norms for Transnational Corporations adopted by the Sub-Commission and pursue the work of codification with a view to adopting a binding legal instrument.¹⁰⁰
25. The human rights bodies should more systematically deal with violations of human rights related to the activities of transnational corporations, to toxic waste and to environmental problems.

¹⁰⁰ These recommendations, still valid, were addressed to the 60th Commission on Human Rights (March 2004).

F. The Position of the Various Governments

The mandate of the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights is one of the most divisive among the member states. Although this particular human rights mandate was created at the initiative of the African Group and supported by the majority of Asian and Latin American countries, the European Union, the United States and Japan have been strongly and consistently opposed to it (notes 76, 79, 81, 82). For these countries, matters relative to the management of toxic dumping should be examined within the framework of specialized instances devoted to environmental questions and not by the Human Rights Council, even though the serious repercussions of transboundary movements of toxic and dangerous products and wastes on the enjoyment of human rights have been demonstrated beyond any doubt.¹⁰¹

While Russia both opposed and abstained in the voting at the beginning of this mandate, it finally supported it starting in 2001. Other countries of Eastern Europe have generally abstained (Armenia and Ukraine took this position when they were members of the Commission).

As for the countries of Central Europe, although Poland and the Czech Republic abstained at the beginning, they have progressively moved toward a negative vote, following the lead of other countries of the region that have always voted against it (Bulgaria, Romania, Hungary, Croatia etc.).

However, it is worth noting that a consensus was found regarding the mandate during the 9th session of the Council, but this was accomplished at the price of the scope of the mandate, which was diminished (v. Annex 9). For example, the Special Rapporteur may not longer investigate – unlike in the past – “impunity of those who commit these heinous crimes”. It should also be emphasized that the Special Rapporteur was not heard by the Council on the matter of his two important recommendations, to wit the extension of his mandate to 1. both licit and illicit transfers of toxic products and wastes (the effect on the enjoyment of human rights being the same) and 2. movements of these substances within a country as opposed to only transboundary movements.

That said, it is to be hoped that this consensus will contribute to an effective co-operation among all members states to eradicate this heinous phenomenon and to prevent human rights violations.

CONCLUSION

Faced with the production and transfer of toxic and dangerous waste, the response of the “international community” (Western, in particular) has not been to prohibit

¹⁰¹ In 2006, 580 tons of toxic waste, stocked in the hold of the ship Probo Koala of the Trafigua company, had been released in several dumps of the Abidjan district of Ivory Coast causing the death of 16 persons and the poisoning of more than 100,000 Ivoirians according to Ivory Coast government estimates. V. the report of the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights to the 9th Human Rights Council, A/HRC/9/22, 13 August 2008 (advance edited version): <http://www2.ohchr.org/english/bodies/hrcouncil/docs/9session/A-HRC-9-22AEV.doc>.

but the “manage” (for the better?) this situation. Yet, given the development model currently in vogue, where consumption and profit have been elevated to the status of dogma, there is not only a proliferation of the products in question, but we also find ourselves constantly confronted with the creation of new products whose consequences, in the mid- and long-term on health and the environment we do not know, not to mention the unbridled exploitation of non-renewable resources. In fact, how can the governments of the industrialized countries be satisfied with “regulating” the management of toxic waste without passing legislation on the production processes and technology that are creating these residues? And this without prohibiting their export? In this context, it is not surprising to note that the illegal movement of these products and wastes, far from diminishing, merely “adapt” (change of destination, fraud, mafia network etc.).

At the least, and for lack of anything better, if one can admit that the “management” of the problem involves an entire series of international conventions with respect to the environment (while still admitting their shortcomings), one must note that these very conventions are not observed in practice. However, it is clear that environmental crime can be halted only if legislation in this area is accompanied by effective measures and means at both the national and the international level. Even more, such measures and means must be clear and precise and accompanied by deterrent sanctions such as criminal prosecution – and they must take into account the “human rights” dimension!

Treating this matter under the angle of human rights changes the whole thing. Within this framework, the mandate of the special rapporteur of the Human Rights Council plays an important role, both in the area of sensitizing the public and providing information and in the area of research and proposals.

This is why the support of this mandate by the governments is essential. Let us hope that the recently found consensus between governments signals a new awareness, especially for those who were, up until then, hostile to the importance of the human rights dimension in the dealing with this problem. This awareness should logically lead governments to widen the special rapporteur’s mandate, as he has requested, to encompass all movements of toxic and dangerous products and waste be they licit or illicit and be they transboundary or domestic. The governments should also reinforce access by victims to justice and support their efforts.

That said, this mandate should not become an excuse, and the governments should implement the recommendation of the special rapporteur, for without a binding legal framework for the activities of the transnational corporations and without technical and economic assistance to the poor countries – to cite only two of the important recommendations – all efforts will have only an extremely limited effect.

ANNEXES

1. *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal*
2. *Status of Ratification of Basel Convention*
3. *Basel Convention Ban Amendment*
4. *Status of Ratification of Basel Convention Ban Amendment*
5. *OUA Resolution 1153*
6. *Bamako Convention on the Ban on the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa*
7. *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (revised version 2005)*
8. *Stockholm Convention on Persistent Organic Pollutants (POPs)*
9. *All Resolutions of the Commission on Human Rights and the Human Rights Council on "the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights" and General Assembly Resolutions on the same subject*
10. *Annual Reports and addenda of the Special Rapporteur*
11. *Mission Reports of the Special Rapporteur*
12. *Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights and its Commentary (adopted by the Sub-Commission on the Promotion and Protection of Human Rights in 2003)*
13. *Main Reference Websites*

Acknowledgement

This report received support from the state (canton) of Geneva, Meyrin, Loterie romande and Emmaüs International. It is part of the CETIM's Human Rights Program, itself supported by (May 2009) the Swiss Agency for Development and Cooperation (DDC), the cities of Geneva, Plan-les-Ouates, Lancy and Onex and Caritas Switzerland.

Copyright

*The brochure is available in French, English and Spanish.
Its reproduction and/or translation into other languages is authorized and encouraged, provided the original edition is mentioned and the CETIM is informed.*

N.B. The Annexes allocated in separate files.