

No. S 94

CONSTITUTION OF BRUNEI DARUSSALAM
(Order made under Article 83(3))

HAZARDOUS WASTE (CONTROL OF EXPORT, IMPORT AND TRANSIT)
ORDER, 2013

ARRANGEMENT OF SECTIONS

Section

PART I

PRELIMINARY

1. Citation, commencement and long title.
2. Interpretation.
3. Treatment of colonies etc.
4. Meaning of hazardous and other wastes.
5. Exports and transits to foreign countries — extended meaning of hazardous and other wastes.
6. Transit proposals.
7. Article 11 arrangements.
8. Environmentally sound management of hazardous or other waste.
9. Article 11 arrangements — substances taken to be hazardous or other waste.
10. Article 11 arrangements — substances not classified as hazardous or other waste.
11. Time limit for compliance with permit condition.
12. Exemption of naval vessels, military aircraft etc.
13. Order to bind Government.

PART II

ADMINISTRATION

14. Director of Environment, Parks and Recreation.
15. Appointment of authorised officers.

PART III

IMPORT, EXPORT AND TRANSIT PERMITS

16. Regulations to give effect to Basel Convention.
17. Contents of regulations made to give effect to Basel Convention.
18. Regulations to give effect to Article 11 arrangements.
19. Contents of set of Article 11 regulations.
20. Special permit may be granted under set of Article 11 regulations only if corresponding requirements of other sets of Article 11 regulations have been met.
21. Basel permit to be granted only if corresponding requirements of Article 11 regulations have been met.
22. Prohibition of bringing waste into Antarctica.
23. Applications and notices to be accompanied by fees.

PART IV

**REGULATION OF IMPORT, EXPORT AND TRANSIT OF HAZARDOUS AND
OTHER WASTES**

24. Prohibition of import.
25. Prohibition of export.
26. Prohibition of bringing waste into Brunei Darussalam in course of carrying out transit proposal.

PART V

ENFORCEMENT

27. Injunctions.
28. Power to obtain information.

- 29. Power to control movement of vessels and aircraft etc.
- 30. Powers of entry and search.
- 31. General powers of Director on entering or boarding searchable places.
- 32. Production of Basel permits or special permits and orders.
- 33. Production of transit permits.
- 34. Assistance to Director.
- 35. Obstruction of Director etc.
- 36. False statements.
- 37. Part does not limit power to impose permit conditions.

PART VI

GENERAL

- 38. Evidentiary certificate — classification of hazardous or other waste.
- 39. Evidentiary certificate — environmentally sound management of hazardous or other waste.
- 40. Evidence of analyst.
- 41. Offences by body corporate.
- 42. Jurisdiction of Court.
- 43. Protection from personal liability.
- 44. Public servants for purposes of Chapter 22.
- 45. Appeal to Minister.
- 46. Service of notice etc.
- 47. Convention countries.
- 48. Regulations.

SCHEDULE

CONSTITUTION OF BRUNEI DARUSSALAM
(Order made under Article 83(3))

HAZARDOUS WASTE (CONTROL OF EXPORT, IMPORT AND TRANSIT)
ORDER, 2013

In exercise of the power conferred by Article 83(3) of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order —

PART I

PRELIMINARY

Citation, commencement and long title.

1. (1) This Order may be cited as the Hazardous Waste (Control of Export, Import and Transit) Order, 2013 and shall commence on a date to be appointed by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification in the *Gazette*.

(2) The long title of this Order is “An Order to provide for the regulation of the export, import and transit of hazardous and other waste, and for other purposes connected therewith”.

Interpretation.

2. (1) In this Order, unless the context otherwise requires —

“Antarctica” means the area south of 60° South Latitude, including all ice shelves in that area;

“Article 11 arrangement” has the meaning given to it by section 7;

“authorised officer” means a person appointed under section 15 as an authorised officer;

“Basel Convention” means the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal and any amendment or protocol thereto which has come into force and has been accepted by the Government, a copy of the English text of which is set out in the Schedule;

“Basel export permit” means a permit given in accordance with the Basel Convention permitting the export of hazardous or other waste;

“Basel import permit” means a permit given in accordance with the Basel Convention permitting the import of hazardous or other waste;

“Basel permit” means a Basel export permit, a Basel import permit or a Basel transit permit;

“Basel transit permit” means a permit given in accordance with the Basel Convention permitting the carrying out of one or more transit proposals relating to hazardous or other waste;

“Brunei Darussalam aircraft” means an aircraft that is registered in Brunei Darussalam;

“Brunei Darussalam platform” means a platform —

(a) that is fixed to the seabed or subsoil beneath Brunei Darussalam waters; or

(b) that is otherwise operating in Brunei Darussalam waters;

“Brunei Darussalam vessel” means a vessel that is registered in Brunei Darussalam;

“Brunei Darussalam waters” means all waters, whether navigable or not, within Brunei Darussalam, and shall be deemed to include territorial waters, and also fishery limits and exclusive economic zone;

“competent authority”, in relation to a foreign country, means —

(a) if the country is a party to the Basel Convention — the competent authority of the country within the meaning of the Basel Convention; and

(b) otherwise — a person or an organisation that officially represents the country;

“deal with”, in relation to hazardous or other waste, includes dispose of;

“Director” means the Director of Environment, Parks and Recreation referred to in section 14 and includes the Deputy Director and Assistant Directors;

“disposal” means an operation specified in Annex IV to the Basel Convention;

“environmentally sound management”, in relation to hazardous or other waste, has the meaning given to it by section 8;

“export permit” means a Basel export permit or a special export permit;

“export proposal” means a proposal to export hazardous or other waste and to deal with it outside Brunei Darussalam;

“foreign country” includes —

(a) a colony, overseas territory, overseas province or protectorate of a foreign country;

(b) a territory outside Brunei Darussalam, where a foreign country is to any extent responsible for the international relations of the territory; and

(c) a territory outside Brunei Darussalam that is to some extent self-governing, but that is not recognised as an independent sovereign state by Brunei Darussalam;

“holder”, in relation to a Basel permit or a special permit, means the person to whom the permit was granted;

“household waste” means waste collected from households, but does not include such waste as may be specified in any regulations made under this Order;

“import permit” means a Basel import permit or a special import permit;

“import proposal” means a proposal to import hazardous or other waste and to deal with it in Brunei Darussalam;

“Minister” means the Minister responsible for hazardous waste;

“permit application” means an application for a Basel or special permit;

“permit condition” means a condition specified in a —

(a) Basel permit;

(b) notice specified in any regulations made under section 17 varying a Basel permit;

(c) special permit; or

(d) notice under a set of Article 11 regulations varying a special permit;

“platform” includes any structure at sea, whether fixed or not fixed, but does not include a vessel;

“premises” includes any place, whether or not enclosed or built on;

“relevant person”, in relation to a searchable place, means —

(a) in the case of premises in Brunei Darussalam, the occupier of the premises; and

(b) in any other case, the person in command or control, or who appears to be in command or control, of the place;

“searchable place” means —

(a) any premises in Brunei Darussalam;

(b) an aircraft, a vehicle or a vessel within the jurisdiction of Brunei Darussalam;

(c) a Brunei Darussalam aircraft;

(d) a Brunei Darussalam platform; or

(e) a Brunei Darussalam vessel;

“set of Article 11 regulations” has the meaning given to it by section 18;

“special export permit” means a permit under a set of Article 11 regulations permitting the export of hazardous or other waste;

“special import permit” means a permit under a set of Article 11 regulations permitting the import of hazardous or other waste;

“special permit” means a special export permit, special import permit or special transit permit;

“special transit permit” means a permit under a set of Article 11 regulations permitting the carrying out of one or more transit proposals relating to hazardous or other waste;

“transit permit” means a Basel transit permit or special transit permit;

“transit proposal” has the meaning given to it by section 6;

“vessel” means anything capable of carrying persons or goods through or on water, and includes an air-cushion vehicle or similar craft;

“waste” means a substance or object that is —

- (a) proposed to be disposed of;
- (b) disposed of; or
- (c) required by any written law to be disposed of.

(2) In this Order —

(a) a reference to this Order includes a reference to regulations made under this Order;

(b) a reference to an offence under this Order includes a reference to an attempt or conspiracy to commit an offence under this Order or an abetment of an offence under this Order;

(c) “within the jurisdiction of Brunei Darussalam” means within or over Brunei Darussalam or Brunei Darussalam waters.

Treatment of colonies etc.

3. (1) For the purposes of this Order, if —

- (a) a territory is covered by either of the following —
 - (i) a colony, overseas territory, overseas province or protectorate of a foreign country;
 - (ii) a territory outside Brunei Darussalam, where a foreign country is to any extent responsible for the international relations of the territory;
- (b) the foreign country is a party to the Basel Convention; and
- (c) the territory is not specified in any regulations made under this Order,

the territory is taken to be a party to the Basel Convention.

(2) For the purposes of this Order, if a territory is covered by any of the following paragraphs —

- (a) a colony, overseas territory, overseas province or protectorate of a foreign country;

(b) a territory outside Brunei Darussalam, where a foreign country is to any extent responsible for the international relations of the territory; or

(c) a territory outside Brunei Darussalam that is to some extent self-governing, but that is not recognised as an independent sovereign state by Brunei Darussalam,

a person or an organisation that officially represents the territory is taken to be a competent authority of the territory.

(3) Subsection (2) has effect despite anything in the definition of “competent authority” in section 2(1).

Meaning of hazardous and other wastes.

4. Subject to section 5, for the purposes of this Order —

(a) “hazardous waste” means —

- (i) waste prescribed by any regulations made under this Order, where the waste has any of the characteristics mentioned in Annex III to the Basel Convention; or
- (ii) waste that belongs to any category contained in Annex I to the Basel Convention, unless it does not possess any of the characteristics contained in Annex III to that Convention;

(b) “other waste” means —

- (i) household waste; or
- (ii) residues arising from the incineration of household waste,

but hazardous and other wastes do not include wastes which derive from the normal operations of a ship and radioactive wastes.

Exports and transits to foreign countries — extended meaning of hazardous and other wastes.

5. (1) This section has effect for the purposes of the application of this Order —

(a) to the export or proposed export of a substance or object to a particular foreign country; or

(b) to, or to the carrying out of, a transit proposal that involves the taking out of Brunei Darussalam of a substance or object to a particular foreign country.

(2) If —

(a) the foreign country is a party to the Basel Convention;

(b) the Minister is satisfied that, under a law of that country that gives effect to the Basel Convention, the particular substance or object is, in particular circumstances, classified as hazardous or other waste; and

(c) apart from this section, the particular substance or object is not hazardous or other waste,

the Minister shall, by notification in the *Gazette*, declare that that substance or object is, in those circumstances, hazardous or other waste for those purposes.

(3) If —

(a) the Minister is satisfied that the foreign country classifies particular waste collected from the households as hazardous or other waste; and

(b) apart from this section, the waste is not hazardous waste,

the Minister shall, by notification in the *Gazette*, declare that that waste is hazardous or other waste for those purposes.

(4) A declaration under this section shall have effect accordingly.

(5) The Minister shall revoke a declaration made under this section if he ceases to be satisfied of the matter referred to in subsection (2)(b) or (3)(a), as the case may be.

(6) The revocation of a declaration shall be published in the *Gazette*.

Transit proposals.

6. (1) This section sets out the proposals that are transit proposals for the purposes of this Order.

(2) A proposal —

(a) to bring hazardous or other waste into Brunei Darussalam for the purpose of being carried to a foreign country either by the same or another conveyance; and

(b) if the waste is brought into Brunei Darussalam by sea or air, the carriage is on a through bill of lading or through airway bill,

is a transit proposal so long as it is not proposed to dispose of the waste in Brunei Darussalam.

(3) In this section, “through bill of lading” or “through airway bill” means a bill of lading or airway bill, as the case may be, for the consignment of goods from a place outside Brunei Darussalam to a final destination outside Brunei Darussalam without a consignee in Brunei Darussalam.

Article 11 arrangements.

7. (1) If —

(a) Brunei Darussalam has entered into an agreement or arrangement;
and

(b) the Minister is satisfied that the agreement or arrangement is of a kind mentioned in Article 11 of the Basel Convention,

the Minister shall, by notice published in the *Gazette*, declare that the agreement or arrangement is an Article 11 arrangement for the purposes of this Order.

(2) A declaration under this section shall have effect accordingly.

(3) The Minister shall revoke a declaration made under this section if he ceases to be satisfied of the matter referred to in subsection (1)(b).

(4) A revocation made under subsection (3) shall be published in the *Gazette*.

Environmentally sound management of hazardous or other waste.

8. A reference in this Order to the environmentally sound management of hazardous or other waste is a reference to taking all practicable steps to ensure that the waste is managed in a manner that will protect human health and the environment against the adverse effects that may result from the waste.

Article 11 arrangements — substances taken to be hazardous or other waste.

9. (1) This section has effect for the purposes of the application of this Order to —

(a) the import or proposed import of a substance or object from a particular foreign country;

(b) the export or proposed export of a substance or object to a particular foreign country; or

(c) to the carrying out of, a transit proposal that involves the taking out of Brunei Darussalam of a substance or object to a particular foreign country.

(2) If —

(a) the country is a party to an Article 11 arrangement;

(b) the substance or object is subject to notification or control under the arrangement; and

(c) apart from this section, the substance or object is not hazardous or other waste,

the substance or object is taken to be hazardous or other waste for those purposes.

Article 11 arrangements — substances not classified as hazardous or other waste.

10. (1) This section has effect for the purposes of the application of this Order to —

(a) the import or proposed import of a substance or object from a particular foreign country;

(b) the export or proposed export of a substance or object to a particular foreign country; or

(c) or to the carrying out of, a transit proposal that involves the taking out of Brunei Darussalam of a substance or object to a particular foreign country.

(2) If —

(a) the country is a party to an Article 11 arrangement; and

(b) the arrangement expressly provides that the substance or object is not subject to notification or control under the arrangement,

the substance or object is taken not to be hazardous or other waste for those purposes.

Time limit for compliance with permit condition.

11. (1) For the purposes of this Order, if —

(a) the Director specifies the day on or before which a permit condition relating to a Basel or special permit is to be complied with; and

(b) the condition is not complied with on or before that day,

the holder of the permit is to be taken to have breached the condition at the end of that day.

(2) For the purposes of this Order, if —

(a) under a set of Article 11 regulations, the Minister specifies the day on or before which a permit condition relating to a special permit is to be complied with; and

(b) the condition is not complied with on or before that day,

the holder of the permit is taken to have breached that condition at the end of that day.

Exemption of naval vessels, military aircraft etc.

12. This Order shall not apply to or in relation to any vessel or aircraft belonging to the naval, military or air forces of Brunei Darussalam or any other country.

Order to bind Government.

13. This Order shall bind the Government.

PART II

ADMINISTRATION

Director of Environment, Parks and Recreation.

14. The Director of Environment, Parks and Recreation shall have the superintendence of all matters relating to this Order, subject to the direction and control of the Minister.

Appointment of authorised officers.

15. The Director may, by writing —

(a) appoint an eligible person to be an authorised officer; or

(b) appoint a class of eligible persons to be authorised officers,

for the purposes of this Order.

PART III

IMPORT, EXPORT AND TRANSIT PERMITS

Regulations to give effect to Basel Convention.

16. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan make regulations to provide for and in relation to giving effect to —

(a) the Basel Convention; and

(b) any amendment or protocol to the Basel Convention which has come into force and has been accepted by the Government.

Contents of regulations made to give effect to Basel Convention.

17. (1) Any regulations made under section 16 to give effect to the Basel Convention may —

(a) specify the kinds of import proposals, export proposals and transit proposals that are within the scope of the Basel Convention;

(b) provide for the application to the Director for import permits and the granting of import permits by the Director authorising the import of hazardous and other waste, where the permit relates to an import proposal within the scope of the Basel Convention;

(c) provide for the application to the Director for export permits and the granting of export permits by the Director authorising the export of hazardous or other waste, where the permit relates to an export proposal within the scope of the Basel Convention; and

(d) provide for the application to the Director for transit permits and the granting of transit permits by the Director authorising the carrying out of transit proposals within the scope of the Basel Convention.

(2) Such regulations may provide for —

(a) conditions of the Basel permits, including the giving of guarantees and security deposits, and for securing compliance with such conditions; and

(b) the revocation, surrender and variation of Basel permits.

(3) This section does not, by implication, limit sections 16 and 47.

Regulations to give effect to Article 11 arrangements.

18. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations to provide for and in relation to giving effect to —

- (a) an Article 11 arrangement; and
- (b) an amendment of an Article 11 arrangement.

(2) Regulations made for the purposes of this section shall not come into operation before —

- (a) the arrangement enters into force, or comes into effect, for Brunei Darussalam; or
- (b) the amendment enters into force, or comes into effect, for Brunei Darussalam,

as the case requires.

(3) Regulations made for the purposes of this section that give effect to a particular Article 11 arrangement, including regulations that give effect to an amendment of the Article 11 arrangement, are known as a set of Article 11 regulations.

Contents of set of Article 11 regulations.

19. (1) Each set of Article 11 regulations may —

- (a) specify the kinds of import proposals, export proposals and transit proposals that are within the scope of that set of regulations;
- (b) provide for the application to the Director for import permits and the granting of import permits by the Director authorising the import of hazardous or other waste, where the permit relates to an import proposal within the scope of that set of regulations;
- (c) provide for the application to the Director for export permits and the granting of export permits by the Director authorising the export of hazardous or other waste, where the permit relates to an export proposal within the scope of that set of regulations; and
- (d) provide for the application to the Director for transit permits and the granting of transit permits by the Director authorising the carrying out of transit proposals within the scope of that set of regulations.

(2) A set of Article 11 regulations may provide for —

(a) conditions of special permits, including the giving of guarantees and security deposits, and for securing compliance with such conditions; and

(b) the revocation, surrender and variation of special permits.

(3) This section does not, by implication, limit sections 18 and 47.

Special permit may be granted under set of Article 11 regulations only if corresponding requirements of other sets of Article 11 regulations have been met.

20. (1) If —

(a) a person applies for a special import permit in relation to an import proposal that is within the scope of a particular set of Article 11 regulations; and

(b) the proposal is within the scope of another set of Article 11 regulations,

the Director shall not grant the permit unless he is satisfied that the corresponding requirements of the other set of regulations have been met in relation to the proposal.

(2) For the purposes of subsection (1), a corresponding requirement of a particular set of Article 11 regulations is a requirement under that set of regulations that —

(a) shall be met before granting a special import permit under that set of regulations; and

(b) is declared by the regulations to be a corresponding requirement for the purposes of this subsection.

(3) Subsection (1) shall not prevent the set of Article 11 regulations mentioned in subsection (1)(a) from setting out other requirements that shall be met before granting a special import permit under that set of regulations.

(4) If —

(a) a person applies for a special export permit in relation to an export proposal that is within the scope of a particular set of Article 11 regulations; and

(b) the proposal is within the scope of another set of Article 11 regulations,

the Director shall not grant the permit unless he is satisfied that the corresponding requirements of the other set of regulations have been met in relation to the proposal.

{5} For the purposes of subsection {4}, a corresponding requirement of a particular set of Article 11 regulations is —

(a) a requirement under that set of regulations to obtain the consent (whether actual or constructive) of an authority of a foreign country before granting a special export permit under that set of regulations authorising the export of hazardous or other waste to that country; or

(b) another requirement under that set of regulations that —

(i) shall be met before granting a special export permit under that set of regulations; and

(ii) is declared by the regulations to be a corresponding requirement for the purposes of this subsection.

{6} Subsection {4} shall not prevent the set of Article 11 regulations mentioned in subsection {5}(a) from setting out other requirements that shall be met before granting a special export permit under that set of regulations.

{7} If —

(a) a person applies for a special transit permit in relation to a transit proposal that is within the scope of a particular set of Article 11 regulations; and

(b) the proposal is within the scope of another set of Article 11 regulations,

the Director shall not grant the permit unless he is satisfied that the corresponding requirements of the other set of regulations have been met in relation to the proposal.

{8} For the purposes of subsection {7}, a corresponding requirement of a particular set of Article 11 regulations is —

(a) a requirement under that set of regulations to obtain the consent (whether actual or constructive) of an authority of a foreign country before granting a special transit permit under that set of regulations authorising the carrying out of a transit proposal that involves the taking out of Brunei Darussalam of hazardous or other waste to that country; or

(b) another requirement under that set of regulations that —

- (i) shall be met before granting a special transit permit under that set of regulations; and
- (ii) is declared by the regulations to be a corresponding requirement for the purposes of this subsection.

(9) Subsection (7) shall not prevent the set of Article 11 regulations mentioned in subsection (8)(a) from setting out other requirements that shall be met before granting a special transit permit under that set of regulations.

Basel permit to be granted only if corresponding requirements of Article 11 regulations have been met.

21. (1) If —

(a) a person applies for a Basel import permit in relation to an import proposal; and

(b) the proposal is within the scope of a particular set of Article 11 regulations,

the Director shall not grant the permit unless he is satisfied that the corresponding requirements of that set of regulations have been met in relation to the proposal.

(2) For the purposes of subsection (1), a corresponding requirement of a particular set of Article 11 regulations is a requirement under that set of regulations that —

(a) shall be met before granting a special import permit under that set of regulations; and

(b) is declared by the regulations to be a corresponding requirement for the purposes of this subsection.

(3) If —

(a) a person applies for a Basel export permit in relation to an export proposal; and

(b) the proposal is within the scope of a particular set of Article 11 regulations,

the Director shall not grant the permit unless he is satisfied that the corresponding requirements of that set of regulations have been met in relation to the proposal.

(4) For the purposes of subsection (3), a corresponding requirement of a particular set of Article 11 regulations is —

(a) a requirement under that set of regulations to obtain the consent (whether actual or constructive) of an authority of a foreign country before granting a special export permit under that set of regulations authorising the export of hazardous or other waste to that country; or

(b) another requirement under that set of regulations that —

(i) shall be met before granting a special export permit under that set of regulations; and

(ii) is declared by the regulations to be a corresponding requirement for the purposes of this subsection.

(5) If —

(a) a person applies for a Basel transit permit in relation to a transit proposal; and

(b) the proposal is within the scope of a particular set of Article 11 regulations,

the Director shall not grant the permit unless he is satisfied that the corresponding requirements of that set of regulations have been met in relation to the proposal.

(6) For the purposes of subsection (5), a corresponding requirement of a particular set of Article 11 regulations is —

(a) a requirement under that set of regulations to obtain the consent (whether actual or constructive) of an authority of a foreign country before granting a special transit permit under that set of regulations authorising the carrying out of a transit proposal that involves the taking out of Brunei Darussalam of hazardous or other waste to that country; or

(b) another requirement under that set of regulations that —

(i) shall be met before granting a special transit permit under that set of regulations; and

(ii) is declared by the regulations to be a corresponding requirement for the purposes of this subsection.

Prohibition of bringing waste into Antarctica.

22. The Director shall not grant a Basel permit or special permit if he is satisfied that the grant could result in hazardous or other waste being brought into Antarctica.

Applications and notices to be accompanied by fees.

23. (1) Any regulations made under this Order may prescribe fees to be paid in relation to applications and notices given to the Director under this Order.

(2) An application or a notice given to the Director under this Order shall be accompanied by the prescribed fee (if any).

(3) If an application or a notice given to the Director under this Order is not accompanied by the prescribed fee (if any), the application or notice is to be taken not to have been received by the Director until the fee has been paid.

(4) The Director may determine in writing that the prescribed fee payable in relation to a specified application or a specified notice is reduced by a specified amount.

(5) The determination has effect accordingly.

PART IV

**REGULATION OF IMPORT, EXPORT AND TRANSIT OF HAZARDOUS
AND OTHER WASTES**

Prohibition of import.

24. (1) A person shall not import hazardous or other waste unless —

(a) the person is the holder of an import permit authorising the person to import the waste;

(b) the import is authorised by an order made under any regulation made under Part III; or

(c) the import has been ordered under any regulation made under Part III.

(2) The holder of an import permit shall not —

(a) import the hazardous or other waste to which the permit relates except in accordance with the permit; or

(b) whether before or after importing the hazardous or other waste to which the permit relates, breach any of the permit conditions.

(3) A person authorised by an order made under any regulation made under Part III to import hazardous or other waste shall not import or deal with the waste except in accordance with the order.

(4) Any person who contravenes subsection (1), (2) or (3) is guilty of an offence and liable on conviction —

(a) in the case of a body corporate, to a fine not exceeding \$300,000; or

(b) in the case of an individual, to a fine not exceeding \$100,000, imprisonment for a term not exceeding 2 years or both.

Prohibition of export.

25. (1) A person shall not export hazardous or other waste unless —

(a) the person is the holder of an export permit authorising the person to export the waste; or

(b) the export has been ordered under any regulation made under Part III.

(2) The holder of an export permit shall not —

(a) export the hazardous or other waste to which the permit relates except in accordance with the permit; or

(b) whether before or after exporting the hazardous or other waste to which the permit relates, breach any of the permit conditions.

(3) Any person who contravenes subsection (1) or (2) is guilty of an offence and liable on conviction —

(a) in the case of a body corporate, to a fine not exceeding \$300,000; or

(b) in the case of an individual, to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or both.

Prohibition of bringing waste into Brunei Darussalam in course of carrying out transit proposal.

26. (1) A person shall not bring hazardous or other waste into Brunei Darussalam in the course of carrying out a transit proposal unless the person is

the holder of a transit permit authorising the person to bring the waste into Brunei Darussalam.

(2) The holder of a transit permit shall not —

(a) bring into Brunei Darussalam the hazardous or other waste to which the permit relates except in accordance with the permit;

(b) take out of Brunei Darussalam the hazardous or other waste to which the permit relates except in accordance with the permit; or

(c) whether before or after bringing into Brunei Darussalam the hazardous or other waste to which the permit relates, breach any of the permit conditions.

(3) Any person who contravenes subsection (1) or (2) is guilty of an offence and liable on conviction —

(a) in the case of a body corporate, to a fine not exceeding \$300,000; or

(b) in the case of an individual, to a fine not exceeding \$100,000, imprisonment for a term not exceeding 2 years or both.

PART V

ENFORCEMENT

Injunctions.

27. (1) Where a person has engaged, is engaging, or is proposing to engage, in any conduct that constituted, constitutes or would constitute an offence under this Order, the court may, on the application of the Director or any other person, grant an injunction restraining the person from engaging in the conduct and, if in the opinion of the court it is desirable to do so, requiring the person to do anything.

(2) Where —

(a) a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do anything; and

(b) the refusal or failure was, is, or would be, an offence under this Order,

the court may, on the application of the Director or any other person, grant an injunction requiring the person to do the thing.

(3) If, in the opinion of the court, it is desirable to do so, the court may grant an interim injunction pending determination of an application under subsection (1).

(4) The court may discharge or vary an injunction granted under this section.

(5) The power of the court to grant an injunction under this section restraining a person from engaging in any conduct may be exercised —

(a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind;

(b) whether or not the person has previously engaged in conduct of that kind; and

(c) whether or not there is a significant risk of injury or damage to human beings or the environment if the person engages, or continues to engage, in conduct of that kind.

(6) The power of the court to grant an injunction under this section requiring a person to do a thing may be exercised —

(a) whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do the thing;

(b) whether or not the person has previously refused or failed to do the thing; and

(c) whether or not there is a significant risk of injury or damage to human beings or the environment if the person refuses or fails, or continues to refuse or fail, to do the thing.

(7) Where the Director or any other person makes an application to the court for the grant of an injunction under this section, the court shall not require the Director or that other person, as a condition of the granting of an interim injunction, to give any undertakings as to damages.

(8) The powers conferred on the court under this section are in addition to, and not in derogation of, any other powers of the court.

Power to obtain information.

28. (1) The Director may, by notice in writing served on any person, require that person to furnish him, within such time and in such form as is specified in the notice, any information specified in the notice which he may reasonably

require for the purpose of exercising and performing his functions, duties or powers under this Order.

(2) A person who —

(a) fails without reasonable excuse to comply with any of the requirements of a notice served on him under subsection (1); or

(b) in purported compliance with such a notice, makes any statement to the Director which he knows to be incorrect in a material respect or recklessly makes any statement to the Director which is incorrect in a material respect or knowingly omits any material particular,

is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 12 months or both.

Power to control movement of vessels and aircraft etc.

29. (1) This section shall apply if the Director or an authorised officer has reasonable grounds for suspecting that there is in or on —

(a) a Brunei Darussalam vessel or Brunei Darussalam aircraft; or

(b) a vessel or an aircraft that is within the jurisdiction of Brunei Darussalam,

hazardous or other waste that is to be, or that has been, imported, exported or the subject of a transit proposal.

(2) If this section applies in relation to a vessel, the Director or an authorised officer may require the master or the person in command or charge, or who appears to be in command or charge, of the vessel to do one or more of the following —

(a) ensure that the vessel does not remain within, or does not come within, as the case requires, the jurisdiction of Brunei Darussalam;

(b) ensure that the vessel is brought to a specified place to which it is safe and practicable to bring the vessel;

(c) ensure that the vessel remains at a specified place until the Director or the authorised officer permits the vessel to leave;

(d) arrange for goods being carried on the vessel to be unloaded;

(e) ensure that goods being carried on the vessel are not unloaded until the Director or the authorised officer permits their unloading.

(3) If this section applies in relation to an aircraft, the Director or an authorised officer may require the person in command or control, or who appears to be in command or control, of the aircraft to do one or more of the following —

(a) ensure that the aircraft does not remain within, or does not come within, as the case requires, the jurisdiction of Brunei Darussalam;

(b) ensure that the aircraft is landed at a specified airport at which it is safe and practicable to land the aircraft;

(c) ensure that the aircraft remains at a specified airport until the Director or the authorised officer permits the aircraft to leave;

(d) arrange for goods being carried on the aircraft to be unloaded;

(e) ensure that goods being carried on the aircraft are not unloaded until the Director or the authorised officer permits their unloading.

(4) The Director or an authorised officer may communicate a requirement under this section by means of —

(a) an international signal code;

(b) if the requirement relates to a vessel, any other internationally recognised means of communication with a vessel; or

(c) if the requirement relates to an aircraft, any other internationally recognised means of communication with an aircraft.

(5) Any person who refuses or fails, without reasonable excuse, to comply with a requirement made under this section is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 12 months or both.

(6) It is a reasonable excuse for the person to refuse or fail to comply with the requirement if complying with the requirement would have endangered the person or any other person.

Powers of entry and search.

30. (1) The Director or an authorised officer may, for the purposes of this Order —

(a) enter or board a searchable place; and

(b) exercise the powers set out in section 31(1) and (2),

without being liable to any legal proceedings or molestation on account of such entry or of anything done in part of that searchable place in pursuance of this Order.

(2) The Director or an authorised officer shall not, pursuant to this section, enter into any dwelling-house in actual occupation, unless with the consent of the occupier thereof or with 6 hours' previous notice to the occupier.

(3) If it is shown to the satisfaction of the court that admission to any searchable place has been refused or that the searchable place is unoccupied or the owner or occupier is absent (whether temporarily or permanent) and that the case is one of urgency, the court may by warrant authorise the Director or an authorised officer to enter the premises, if need be by force.

(4) The Director or an authorised officer who is permitted by this section to enter or board a vessel, an aircraft or a vehicle may, for the purpose of effecting the entry or boarding and for the purpose of exercising any powers that the Director or the authorised officer is permitted to exercise, stop and detain the vessel, aircraft or vehicle.

General powers of Director on entering or boarding searchable places.

31. (1) The Director or an authorised officer may, on entering or boarding a searchable place, exercise the following powers under section 30(1)/b/ —

(a) to search any part of the place;

(b) to inspect, examine, take measurements of, or conduct tests (including by the taking of samples) concerning, any structure, plant, substance or other thing in or on the place;

(c) to seal the samples and require the owner of the materials to send the samples to an analyst and to bear any cost and expenses arising from the analysis;

(d) to require the owner or analyst to submit the results of the analysis to the Director or the authorised officer;

(e) to take extracts from, and make copies of, any document relating to any hazardous or other waste in or on the place;

(f) to take such photographs as he thinks necessary for the purposes of this Order;

(g) to require any person in or on the place or the relevant person to —

- (i) answer any question put by the Director or the authorised officer; and
- (ii) produce any books, records or documents requested by the Director or the authorised officer;

(h) to take into or onto the place such equipment and materials as the Director or the authorised officer requires for the purpose of exercising any power in relation to the place.

(2) If the Director or an authorised officer enters or boards the searchable place and finds anything (referred to in this section as the evidence) that may afford evidence of the commission of an offence under this Order, the following shall have effect —

(a) the Director or the authorised officer may seize the evidence;

(b) the Director or the authorised officer may keep the evidence pending an order of court in regard to the disposal thereof made under this Order, or, if a prosecution for an offence under this Order in the commission of which the evidence may have been used or otherwise involved is instituted within that period, until the completion of the proceedings for the offence and of any appeal from the decision in relation to the proceedings;

(c) if the evidence is a book, record or document, while the Director or the authorised officer has possession of the book, record or document, the Director or the authorised officer shall allow the book, record or document to be inspected at any reasonable time by a person who would be entitled to inspect it if it were not in the possession of the Director or the authorised officer.

(3) A person who refuses or fails, without reasonable excuse, to comply with a requirement made under subsection (1)(d) or (g) is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 12 months or both.

(4) It is a reasonable excuse for a person to refuse or fail to answer a question or produce a document if answering the question, or producing the document, might tend to incriminate the person.

Production of Basel permits or special permits and orders.

32. (1) This section shall apply if the Director or an authorised officer has reasonable grounds for suspecting that a person (referred to in this section as the suspected person) —

(a) intends to import or export hazardous or other waste;

(b) is importing or exporting hazardous or other waste; or

(c) has imported or exported hazardous or other waste.

(2) The Director or an authorised officer may require the suspected person to produce, or to produce evidence of the existence and contents of —

(a) a Basel permit or special permit authorising the import or export; or

(b) an order made under this Order authorising or requiring the import or export.

(3) Any suspected person who refuses or fails, without reasonable excuse, to comply with the requirement is guilty of an offence and liable on conviction to a fine not exceeding \$3,000.

Production of transit permits.

33. (1) This section shall apply if the Director or an authorised officer has reasonable grounds for suspecting that a person (the suspected person) —

(a) intends to carry out a transit proposal;

(b) is carrying out a transit proposal; or

(c) has carried out a transit proposal.

(2) The Director or an authorised officer may require the suspected person to produce, or to produce evidence of the existence and contents of, a transit permit authorising the carrying out of the transit proposal.

(3) Any suspected person who refuses or fails, without reasonable excuse, to comply with the requirement is guilty of an offence and liable on conviction to a fine not exceeding \$3,000.

Assistance to Director.

34. (1) The Director or an authorised officer who proposes to exercise powers under this Part in relation to a searchable place may require the relevant person in relation to the place to provide reasonable assistance to the Director or the authorised officer in relation to the exercise of those powers.

(2) Any relevant person who refuses or fails, without reasonable excuse, to comply with subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 12 months or both.

Obstruction of Director etc.

35. Any person who —

(a) hinders, obstructs or molests the Director or an authorised officer, in the performance and execution of his duty or of anything which he is empowered or required to do under this Order;

(b) interferes with any work authorised to be executed under this Order; or

(c) fails to facilitate by all reasonable means the entry and inspection of any searchable place by the Director or an authorised officer or the making of any test which the Director or an authorised officer is empowered under this Order,

is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 12 months or both.

False statements.

36. (1) No person shall, in or in relation to an application or a notice under this Order, knowingly or recklessly —

(a) make a statement that is false or misleading in a material particular;
or

(b) give to the Director or an authorised officer a document containing information that is false or misleading in a material particular without —

(i) indicating to the Director or the authorised officer that the document is false or misleading and the respect in which the document is false or misleading; and

(ii) providing correct information to the Director or the authorised officer if the person has, or can reasonably obtain, the correct information.

(2) No person shall, otherwise than in or in relation to an application or a notice under this Order, knowingly or recklessly —

(a) make to the Director or an authorised officer doing duty in relation to this Order a statement that is false or misleading in a material particular;
or

(b) give to the Director or an authorised officer doing duty in relation to this Order a document containing information that is false or misleading in a material particular without —

- (i) indicating to the Director or the authorised officer that the document is false or misleading and the respect in which the document is false or misleading; and
- (ii) providing correct information to the Director or the authorised officer if the person is in possession of, or can reasonably obtain, the correct information.

(3) Any person who contravenes this section is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 12 months or both.

Part does not limit power to impose permit conditions.

37. This Part is not to be taken to limit the power of the Director to impose permit conditions on a Basel permit or a special permit.

PART VI

GENERAL

Evidentiary certificate — classification of hazardous or other waste.

38. (1) The Director may issue a written certificate stating that a specified substance or object is, or is not, in specified circumstances, hazardous or other waste —

(a) for the purposes of this Order; or

(b) for the purposes of the application of this Order to a specified matter.

(2) In any proceedings relating to this Order, a certificate issued under subsection (1) is *prima facie* evidence of the matters stated in the certificate.

(3) A copy of a certificate under subsection (1) shall be published in the *Gazette*.

Evidentiary certificate — environmentally sound management of hazardous or other waste.

39. (1) The Director may issue a written certificate stating that engaging, or failing to engage, in specified conduct in relation to specified hazardous or other

waste is, or is not, environmentally sound management of that waste for the purposes of this Order.

(2) In any proceedings relating to this Order, a certificate issued under subsection (1) is *prima facie* evidence of the matters stated in the certificate.

(3) A copy of a certificate under subsection (1) shall be published in the *Gazette*.

Evidence of analyst.

40. (1) The Director may, by instrument in writing under his hand, appoint persons who in his opinion are qualified to be analysts for the purposes of this Order.

(2) Subject to subsection (4), a certificate of an analyst appointed under subsection (1) stating that he has analysed or examined a substance and stating the result of his analysis or examination is admissible in evidence in any proceedings for an offence under this Order as *prima facie* evidence of the facts stated in the certificate and of the correctness of the result of the analysis or examination.

(3) In this section, a document purporting to be a certificate referred to in subsection (2) on its production by the prosecution shall, unless the contrary is proved, be deemed to be such a certificate.

(4) A certificate referred to in subsection (2) shall not be received in evidence in pursuance of that subsection unless the person charged has been given a copy of the certificate together with reasonable notice of the intention of the prosecution to produce the certificate as evidence in the proceedings.

(5) Where a certificate of an analyst appointed under subsection (1) is admitted in evidence under subsection (2), the person charged may require the analyst to be called as a witness for the prosecution and the analyst may be cross-examined as if he had given evidence of the matters stated in the certificate.

Offences by body corporate.

41. (1) Where an offence under this Order has been committed by a body corporate, any person who, at the time of the commission of the offence, was a director, manager, secretary or other similar officer thereof, or who was purporting to act in any such capacity, shall also be guilty of that offence and shall be liable to be proceeded against and punished accordingly unless he proves that —

(a) the offence was committed without his knowledge, consent or connivance; and

(b) he had exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

(2) Notwithstanding subsection (1), in determining whether a person has exercised all such diligence to prevent the commission of the offence under subsection (1), a court shall have regard to whether the person took any action directed towards ensuring the following (to the extent that the action is relevant to the contravention) that —

(a) the body arranges regular professional assessments of the body's compliance with this Order;

(b) the body implements any appropriate recommendations arising from such an assessment;

(c) the body implements an effective system of hazardous or other waste management, where the system is consistent with the environmentally sound management of the waste;

(d) the body has contingency procedures for dealing with an emergency involving hazardous or other waste, where the procedures are directed towards —

(i) reducing the risk of injury or damage to human beings or the environment; and

(ii) mitigating any such injury or damage;

(e) the body's employees, agents and contractors have a reasonable knowledge and understanding of the requirements of this Order, in so far as those requirements affect the employees, agents or contractors concerned.

Jurisdiction of Court.

42. Notwithstanding any provision to the contrary in the Criminal Procedure Code (Chapter 7), a Court of the Intermediate Judge shall have jurisdiction to try any offence under this Order and shall have power to impose the full penalty or punishment in respect of the offence.

Protection from personal liability.

43. No suit or other legal proceedings shall lie personally against the Director or an authorised officer or any person acting under the direction of the Director for anything which is in good faith done or intended to be done in the execution or purported execution of this Order.

Public servants for purposes of Chapter 22.

44. The Director and all authorised officers shall be deemed to be public servants for the purposes of the Penal Code (Chapter 22).

Appeal to Minister.

45. Any applicant who is aggrieved by the refusal of the Director to grant a permit under this Order may, within 30 days of the decision of the Director, appeal in writing to the Minister whose decision shall be final.

Service of notice etc.

46. (1) Any notice, order or document required or authorised by this Order to be given or served on any person, and any summons issued by a court in connection with any offence under this Order may be served on the person concerned —

(a) by delivering it to the person or to some adult member or employee of his family at his nominated address for service or last known place of residence;

(b) by leaving it at his nominated address for service or usual or last known place of residence or business in a cover addressed to him;

(c) by affixing it to some conspicuous part of his nominated address for service or last known place of residence;

(d) by sending it by registered post addressed to the person at his nominated address for service or usual or last known place of residence or business;

(e) where the person is a body corporate —

(i) by delivering it to the secretary or other like officer of the body corporate at its nominated address for service or registered or principal office; or

(ii) by sending it by registered post addressed to the body corporate at its nominated address for service or registered or principal office; or

(f) where the person is a body corporate incorporated outside Brunei Darussalam and does not have a registered or principal office in Brunei Darussalam but has an agent in Brunei Darussalam, by delivering it to that agent.

(2) Any notice, order, document or summons sent by registered post to any person in accordance with subsection (1) shall be deemed to be duly served on the person to whom the letter is addressed at the time when the letter would, in the ordinary course of post, be delivered and in proving service of the same it shall be sufficient to prove that the envelope containing the notice, order, document or summons was properly addressed, stamped and posted by registered post.

(3) In this section, “nominated address for service” means the address nominated for service by the person for the purposes of this Order.

Convention countries.

47. (1) Where the Minister, by an order published in the *Gazette*, declares that any country specified in the order is a party to the Basel Convention, the order, while in force, shall be evidence of that fact.

(2) For the purposes of this Order, a certificate signed by the Minister stating that a country specified in the certificate but not specified in any order made under subsection (1) which is in force is, or was at a time specified in the certificate, a Convention country shall, upon mere production, be *prima facie* evidence of that fact.

Regulations.

48. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations prescribing matters —

(a) required or permitted by this Order to be prescribed; or

(b) necessary to be prescribed for carrying out or giving effect to this Order.

(2) Notwithstanding subsection (1), the regulations may also —

(a) empower the Director to determine the type of permit, whether a Basel permit or special permit, to be granted regardless of the type applied for;

(b) prescribe the procedure to be followed by the Director and authorised officers in the exercise of their functions under this Order;

(c) require the furnishing of information in relation to the import, export or transit of such waste by the holder of a Basel permit or special permit to any authority as may be specified in the regulations;

(d) make provision for the Director to give orders or to take action in relation to the dealing of such waste where there is a contravention of the

provisions of this Order or any regulations made thereunder or of an order made by him and for the recovery of the costs of any such action taken by the Director; and

(e) provide that any person who contravenes the regulations is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 12 months or both and, in the case of a continuing offence, to a further fine not exceeding \$1,000 for every day or part thereof during which the offence continues after conviction.

(3) The regulations may amend or add to the Schedule for the purpose of ensuring that the Schedule correctly sets out the English text of the Basel Convention as in force from time to time.

SCHEDULE

(sections 2 and 48(3))

BASEL CONVENTION ON THE CONTROL OF TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES AND THEIR DISPOSAL

Note: The following text incorporates corrections made by the Rectifications of 4 November 1992, and 16 May 1994.

PREAMBLE

The Parties to this Convention,

Aware of the risk of damage to human health and the environment caused by hazardous wastes and other wastes and the transboundary movement thereof,

Mindful of the growing threat to human health and the environment posed by the increased generation and complexity, and transboundary movement of hazardous wastes and other wastes,

Mindful also that the most effective way of protecting human health and the environment from the dangers posed by such wastes is the reduction of their generation to a minimum in terms of quantity and/or hazard potential,

Convinced that States should take necessary measures to ensure that the management of hazardous wastes and other wastes including their transboundary movement and disposal is consistent with the protection of human health and the environment whatever the place of their disposal,

Noting that States should ensure that the generator should carry out duties with regard to the transport and disposal of hazardous wastes and other wastes in a manner that is consistent with the protection of the environment, whatever the place of disposal,

Fully recognizing that any State has the sovereign right to ban the entry or disposal of foreign hazardous wastes and other wastes in its territory,

Recognizing also the increasing desire for the prohibition of transboundary movements of hazardous wastes and their disposal in other States, especially developing countries,

Convinced that hazardous wastes and other wastes should, as far as is compatible with environmentally sound and efficient management, be disposed of in the State where they were generated,

Aware also that transboundary movements of such wastes from the State of their generation to any other State should be permitted only when conducted under conditions which do not endanger human health and the environment, and under conditions in conformity with the provisions of this Convention,

Considering that enhanced control of transboundary movement of hazardous wastes and other wastes will act as an incentive for their environmentally sound management and for the reduction of the volume of such transboundary movement,

Convinced that States should take measures for the proper exchange of information on and control of the transboundary movement of hazardous wastes and other wastes from and to those States,

Noting that a number of international and regional agreements have addressed the issue of protection and preservation of the environment with regard to the transit of dangerous goods,

Taking into account the Declaration of the United Nations Conference on the Human Environment (Stockholm, 1972), the Cairo Guidelines and Principles for the Environmentally Sound Management of Hazardous Wastes adopted by the Governing Council of the United Nations Environment Programme (UNEP) by decision 14/30 of 17 June 1987, the Recommendations of the United Nations Committee of Experts on the Transport of Dangerous Goods (formulated in 1957 and updated biennially), relevant recommendations, declarations, instruments and regulations adopted within the United Nations system and the work and studies done within other international and regional organisations,

Mindful of the spirit, principles, aims and functions of the World Charter for Nature adopted by the General Assembly of the United Nations at its thirty-seventh session (1982) as the rule of ethics in respect of the protection of the human environment and the conservation of natural resources,

Affirming that States are responsible for the fulfilment of their international obligations concerning the protection of human health and protection and

preservation of the environment, and are liable in accordance with international law,

Recognizing that in the case of a material breach of the provisions of this Convention or any protocol thereto the relevant international law of treaties shall apply,

Aware of the need to continue the development and implementation of environmentally sound low-waste technologies, recycling options, good house-keeping and management systems with a view to reducing to a minimum the generation of hazardous wastes and other wastes,

Aware also of the growing international concern about the need for stringent control of transboundary movement of hazardous wastes and other wastes, and of the need as far as possible to reduce such movement to a minimum,

Concerned about the problem of illegal transboundary traffic in hazardous wastes and other wastes,

Taking into account also the limited capabilities of the developing countries to manage hazardous wastes and other wastes,

Recognizing the need to promote the transfer of technology for the sound management of hazardous wastes and other wastes produced locally, particularly to the developing countries in accordance with the spirit of the Cairo Guidelines and decision 14/16 of the Governing Council of UNEP on Promotion of the transfer of environmental protection technology,

Recognizing also that hazardous wastes and other wastes should be transported in accordance with relevant international conventions and recommendations,

Convinced also that the transboundary movement of hazardous wastes and other wastes should be permitted only when the transport and the ultimate disposal of such wastes is environmentally sound, and

Determined 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,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

SCOPE OF THE CONVENTION

1. The following wastes that are subject to transboundary movement shall be “hazardous wastes” for the purposes of this Convention —

(a) Wastes that belong to any category contained in Annex I, unless they do not possess any of the characteristics contained in Annex III; and

(b) Wastes that are not covered under paragraph (a) but are defined as, or are considered to be, hazardous wastes by the domestic legislation of the Party of export, import or transit.

2. Wastes that belong to any category contained in Annex II that are subject to transboundary movement shall be “other wastes” for the purposes of this Convention.

3. Wastes which, as a result of being radioactive, are subject to other international control systems, including international instruments, applying specifically to radioactive materials, are excluded from the scope of this Convention.

4. Wastes which derive from the normal operations of a ship, the discharge of which is covered by another international instrument, are excluded from the scope of this Convention.

ARTICLE 2

DEFINITIONS

For the purposes of this Convention —

1. “Wastes” are substances or objects which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law;

2. “Management” means the collection, transport and disposal of hazardous wastes or other wastes, including after-care of disposal sites;

3. “Transboundary movement” means any movement of hazardous wastes or other wastes from an area under the national jurisdiction of one State to or through an area under the national jurisdiction of another State or to or through an area not under the national jurisdiction of any State, provided at least two States are involved in the movement;

4. “Disposal” means any operation specified in Annex IV to this Convention;

5. “Approved site or facility” means a site or facility for the disposal of hazardous wastes or other wastes which is authorised or permitted to operate for this purpose by a relevant authority of the State where the site or facility is located;

6. “Competent authority” means one governmental authority designated by a Party to be responsible, within such geographical areas as the Party may think fit,

for receiving the notification of a transboundary movement of hazardous wastes or other wastes, and any information related to it, and for responding to such a notification, as provided in Article 6;

7. "Focal point" means the entity of a Party referred to in Article 5 responsible for receiving and submitting information as provided for in Articles 13 and 16;

8. "Environmentally sound management of hazardous wastes or other wastes" means taking all practicable steps to ensure that hazardous wastes or other wastes are managed in a manner which will protect human health and the environment against the adverse effects which may result from such wastes;

9. "Area under the national jurisdiction of a State" means any land, marine area or airspace within which a State exercises administrative and regulatory responsibility in accordance with international law in regard to the protection of human health or the environment;

10. "State of export" means a Party from which a transboundary movement of hazardous wastes or other wastes is planned to be initiated or is initiated;

11. "State of import" means a Party to which a transboundary movement of hazardous wastes or other wastes is planned or takes place for the purpose of disposal therein or for the purpose of loading prior to disposal in an area not under the national jurisdiction of any State;

12. "State of transit" means any State, other than the State of export or import, through which a movement of hazardous wastes or other wastes is planned or takes place;

13. "States concerned" means Parties which are States of export or import, or transit States, whether or not Parties;

14. "Person" means any natural or legal person;

15. "Exporter" means any person under the jurisdiction of the State of export who arranges for hazardous wastes or other wastes to be exported;

16. "Importer" means any person under the jurisdiction of the State of import who arranges for hazardous wastes or other wastes to be imported;

17. "Carrier" means any person who carries out the transport of hazardous wastes or other wastes;

18. "Generator" means any person whose activity produces hazardous wastes or other wastes or, if that person is not known, the person who is in possession and/or control of those wastes;

19. “Disposer” means any person to whom hazardous wastes or other wastes are shipped and who carries out the disposal of such wastes;

20. “Political and/or economic integration organisation” means an organisation constituted by sovereign States to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorised, in accordance with its internal procedures, to sign, ratify, accept, approve, formally confirm or accede to it;

21. “Illegal traffic” means any transboundary movement of hazardous wastes or other wastes as specified in Article 9.

ARTICLE 3

NATIONAL DEFINITIONS OF HAZARDOUS WASTES

1. Each Party shall, within six months of becoming a Party to this Convention, inform the Secretariat of the Convention of the wastes, other than those listed in Annexes I and II, considered or defined as hazardous under its national legislation and of any requirements concerning transboundary movement procedures applicable to such wastes.

2. Each Party shall subsequently inform the Secretariat of any significant changes to the information it has provided pursuant to paragraph 1.

3. The Secretariat shall forthwith inform all Parties of the information it has received pursuant to paragraphs 1 and 2.

4. Parties shall be responsible for making the information transmitted to them by the Secretariat under paragraph 3 available to their exporters.

ARTICLE 4

GENERAL OBLIGATIONS

1. *(a)* Parties exercising their right to prohibit the import of hazardous wastes or other wastes for disposal shall inform the other Parties of their decision pursuant to Article 13.

(b) Parties shall prohibit or shall not permit the export of hazardous wastes and other wastes to the Parties which have prohibited the import of such wastes, when notified pursuant to sub-paragraph *(a)* above.

(c) Parties shall prohibit or shall not permit the export of hazardous wastes and other wastes if the State of import does not consent in writing to the specific import, in the case where that State of import has not prohibited the import of such wastes.

2. Each Party shall take the appropriate measures to —

(a) Ensure that the generation of hazardous wastes and other wastes within it is reduced to a minimum, taking into account social, technological and economic aspects;

(b) Ensure the availability of adequate disposal facilities, for the environmentally sound management of hazardous wastes and other wastes, that shall be located, to the extent possible, within it, whatever the place of their disposal;

(c) Ensure that persons involved in the management of hazardous wastes or other wastes within it take such steps as are necessary to prevent pollution due to hazardous wastes and other wastes arising from such management and, if such pollution occurs, to minimize the consequences thereof for human health and the environment;

(d) Ensure that the transboundary movement of hazardous wastes and other wastes is reduced to the minimum consistent with the environmentally sound and efficient management of such wastes, and is conducted in a manner which will protect human health and the environment against the adverse effects which may result from such movement;

(e) Not allow the export of hazardous wastes or other wastes to a State or group of States belonging to an economic and/or political integration organisation that are Parties, particularly developing countries, which have prohibited by their legislation all imports, or if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner, according to criteria to be decided on by the Parties at their first meeting;

(f) Require that information about a proposed transboundary movement of hazardous wastes and other wastes be provided to the States concerned, according to Annex V A, to state clearly the effects of the proposed movement on human health and the environment;

(g) Prevent the import of hazardous wastes and other wastes if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner;

(h) Co-operate in activities with other Parties and interested organisations, directly and through the Secretariat, including the dissemination of information on the transboundary movement of hazardous wastes and other wastes, in order to improve the environmentally sound management of such wastes and to achieve the prevention of illegal traffic.

3. The Parties consider that illegal traffic in hazardous wastes or other wastes is criminal.

4. Each Party shall take appropriate legal, administrative and other measures to implement and enforce the provisions of this Convention, including measures to prevent and punish conduct in contravention of the Convention.

5. A Party shall not permit hazardous wastes or other wastes to be exported to a non-Party or to be imported from a non-Party.

6. The Parties agree not to allow the export of hazardous wastes or other wastes for disposal within the area south of 60° South latitude, whether or not such wastes are subject to transboundary movement.

7. Furthermore, each Party shall —

(a) Prohibit all persons under its national jurisdiction from transporting or disposing of hazardous wastes or other wastes unless such persons are authorised or allowed to perform such types of operations;

(b) Require that hazardous wastes and other wastes that are to be the subject of a transboundary movement be packaged, labelled, and transported in conformity with generally accepted and recognized international rules and standards in the field of packaging, labelling, and transport, and that due account is taken of relevant internationally recognized practices;

(c) Require that hazardous wastes and other wastes be accompanied by a movement document from the point at which a transboundary movement commences to the point of disposal.

8. Each Party shall require that hazardous wastes or other wastes, to be exported, are managed in an environmentally sound manner in the State of import or elsewhere. Technical guidelines for the environmentally sound management of wastes subject to this Convention shall be decided by the Parties at their first meeting.

9. Parties shall take the appropriate measures to ensure that the transboundary movement of hazardous wastes and other wastes only be allowed if —

(a) The State of export does not have the technical capacity and the necessary facilities, capacity or suitable disposal sites in order to dispose of the wastes in question in an environmentally sound and efficient manner; or

(b) The wastes in question are required as a raw material for recycling or recovery industries in the State of import; or

(c) The transboundary movement in question is in accordance with other criteria to be decided by the Parties, provided those criteria do not differ from the objectives of this Convention.

10. The obligation under this Convention of States in which hazardous wastes and other wastes are generated to require that those wastes are managed in an environmentally sound manner may not under any circumstances be transferred to the States of import or transit.

11. Nothing in this Convention shall prevent a Party from imposing additional requirements that are consistent with the provisions of this Convention, and are in accordance with the rules of international law, in order better to protect human health and the environment.

12. Nothing in this Convention shall affect in any way the sovereignty of States over their territorial sea established in accordance with international law, and the sovereign rights and the jurisdiction which States have in their exclusive economic zones and their continental shelves in accordance with international law, and the exercise by ships and aircraft of all States of navigational rights and freedoms as provided for in international law and as reflected in relevant international instruments.

13. Parties shall undertake to review periodically the possibilities for the reduction of the amount and/or the pollution potential of hazardous wastes and other wastes which are exported to other States, in particular to developing countries.

ARTICLE 5

DESIGNATION OF COMPETENT AUTHORITIES AND FOCAL POINT

To facilitate the implementation of this Convention, the Parties shall —

1. Designate or establish one or more competent authorities and one focal point. One competent authority shall be designated to receive the notification in case of a State of transit.

2. Inform the Secretariat, within three months of the date of the entry into force of this Convention for them, which agencies they have designated as their focal point and their competent authorities.

3. Inform the Secretariat, within one month of the date of decision, of any changes regarding the designation made by them under paragraph 2 above.

ARTICLE 6

TRANSBOUNDARY MOVEMENT BETWEEN PARTIES

1. The State of export shall notify, or shall require the generator or exporter to notify, in writing, through the channel of the competent authority of the State of export, the competent authority of the States concerned of any proposed

transboundary movement of hazardous wastes or other wastes. Such notification shall contain the declarations and information specified in Annex V A, written in a language acceptable to the State of import. Only one notification needs to be sent to each State concerned.

2. The State of import shall respond to the notifier in writing, consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information. A copy of the final response of the State of import shall be sent to the competent authorities of the States concerned which are Parties.

3. The State of export shall not allow the generator or exporter to commence the transboundary movement until it has received written confirmation that —

(a) The notifier has received the written consent of State of import; and

(b) The notifier has received from the State of import confirmation of the existence of a contract between the exporter and the disposer specifying environmentally sound management of the wastes in question.

4. Each State of transit which is a Party shall promptly acknowledge to the notifier receipt of the notification. It may subsequently respond to the notifier in writing, within 60 days, consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information. The State of export shall not allow the transboundary movement to commence until it has received the written consent of the State of transit. However, if at any time a Party decides not to require prior written consent, either generally or under specific conditions, for transit transboundary movements of hazardous wastes or other wastes, or modifies its requirements in this respect, it shall forthwith inform the other Parties of its decision pursuant to Article 13. In this latter case, if no response is received by the State of export within 60 days of the receipt of a given notification by the State of transit, the State of export may allow the export to proceed through the State of transit.

5. In the case of a transboundary movement of wastes where the wastes are legally defined as or considered to be hazardous wastes only —

(a) By the State of export, the requirements of paragraph 9 of this Article that apply to the importer or disposer and the State of import shall apply *mutatis mutandis* to the exporter and State of export, respectively;

(b) By the State of import, or by the States of import and transit which are Parties, the requirements of paragraphs 1, 3, 4 and 6 of this Article that apply to the exporter and State of export shall apply *mutatis mutandis* to the importer or disposer and State of import, respectively; or

(c) By any State of transit which is a Party, the provisions of paragraph 4 shall apply to such State.

6. The State of export may, subject to the written consent of the States concerned, allow the generator or the exporter to use a general notification where hazardous wastes or other wastes having the same physical and chemical characteristics are shipped regularly to the same disposer via the same customs office of exit of the State of export via the same customs office of entry of the State of import, and, in the case of transit, via the same customs office of entry and exit of the State or States of transit.

7. The States concerned may make their written consent to the use of the general notification referred to in paragraph 6 subject to the supply of certain information, such as the exact quantities or periodical lists of hazardous wastes or other wastes to be shipped.

8. The general notification and written consent referred to in paragraphs 6 and 7 may cover multiple shipments of hazardous wastes or other wastes during a maximum period of 12 months.

9. The Parties shall require that each person who takes charge of a transboundary movement of hazardous wastes or other wastes sign the movement document either upon delivery or receipt of the wastes in question. They shall also require that the disposer inform both the exporter and the competent authority of the State of export of receipt by the disposer of the wastes in question and, in due course, of the completion of disposal as specified in the notification. If no such information is received within the State of export, the competent authority of the State of export or the exporter shall so notify the State of import.

10. The notification and response required by this Article shall be transmitted to the competent authority of the Parties concerned or to such governmental authority as may be appropriate in the case of non-Parties.

11. Any transboundary movement of hazardous wastes or other wastes shall be covered by insurance, bond or other guarantee as may be required by the State of import or any State of transit which is a Party.

ARTICLE 7

TRANSBOUNDARY MOVEMENT FROM A PARTY THROUGH STATES WHICH ARE NOT PARTIES

Paragraph 2 of Article 6 of the Convention shall apply *mutatis mutandis* to transboundary movement of hazardous wastes or other wastes from a Party through a State or States which are not Parties.

ARTICLE 8

DUTY TO RE-IMPORT

When a transboundary movement of hazardous wastes or other wastes to which the consent of the States concerned has been given, subject to the provisions of this Convention, cannot be completed in accordance with the terms of the contract, the State of export shall ensure that the wastes in question are taken back into the State of export, by the exporter, if alternative arrangements cannot be made for their disposal in an environmentally sound manner, within 90 days from the time that the importing State informed the State of export and the Secretariat, or such other period of time as the States concerned agree. To this end, the State of export and any Party of transit shall not oppose, hinder or prevent the return of those wastes to the State of export.

ARTICLE 9

ILLEGAL TRAFFIC

1. For the purpose of this Convention, any transboundary movement of hazardous wastes or other wastes —

(a) without notification pursuant to the provisions of this Convention to all States concerned; or

(b) without the consent pursuant to the provisions of this Convention of a State concerned; or

(c) with consent obtained from States concerned through falsification, misrepresentation or fraud; or

(d) that does not conform in a material way with the documents; or

(e) that results in deliberate disposal (e.g. dumping) of hazardous wastes or other wastes in contravention of this Convention and of general principles of international law,

shall be deemed to be illegal traffic.

2. In the case of a transboundary movement of hazardous wastes or other wastes deemed to be illegal traffic as the result of conduct on the part of the exporter or generator, the State of export shall ensure that the wastes in question are —

(a) taken back by the exporter or the generator or, if necessary, by itself into the State of export, or, if impracticable,

(b) otherwise disposed of in accordance with the provisions of this Convention,

within 30 days from the time the State of export has been informed about the illegal traffic or such other period of time as States concerned may agree. To this end the Parties concerned shall not oppose, hinder or prevent the return of those wastes to the State of export.

3. In the case of a transboundary movement of hazardous wastes or other wastes deemed to be illegal traffic as the result of conduct on the part of the importer or disposer, the State of import shall ensure that the wastes in question are disposed of in an environmentally sound manner by the importer or disposer or, if necessary, by itself within 30 days from the time the illegal traffic has come to the attention of the State of import or such other period of time as the States concerned may agree. To this end, the Parties concerned shall co-operate, as necessary, in the disposal of the wastes in an environmentally sound manner.

4. In cases where the responsibility for the illegal traffic cannot be assigned either to the exporter or generator or to the importer or disposer, the Parties concerned or other Parties, as appropriate, shall ensure, through co-operation, that the wastes in question are disposed of as soon as possible in an environmentally sound manner either in the State of export or the State of import or elsewhere as appropriate.

5. Each Party shall introduce appropriate national/domestic legislation to prevent and punish illegal traffic. The Parties shall co-operate with a view to achieving the objects of this Article.

ARTICLE 10

INTERNATIONAL CO-OPERATION

1. The Parties shall co-operate with each other in order to improve and achieve environmentally sound management of hazardous wastes and other wastes.

2. To this end, the Parties shall —

(a) Upon request, make available information, whether on a bilateral or multilateral basis, with a view to promoting the environmentally sound management of hazardous wastes and other wastes, including harmonization of technical standards and practices for the adequate management of hazardous wastes and other wastes;

(b) Co-operate in monitoring the effects of the management of hazardous wastes on human health and the environment;

(c) Co-operate, subject to their national laws, regulations and policies, in the development and implementation of new environmentally sound low-waste technologies and the improvement of existing technologies with a view to eliminating, as far as practicable, the generation of hazardous wastes and other wastes and achieving more effective and efficient methods of ensuring their management in an environmentally sound manner, including the study of the economic, social and environmental effects of the adoption of such new or improved technologies;

(d) Co-operate actively, subject to their national laws, regulations and policies, in the transfer of technology and management systems related to the environmentally sound management of hazardous wastes and other wastes. They shall also co-operate in developing the technical capacity among Parties, especially those which may need and request technical assistance in this field;

(e) Co-operate in developing appropriate technical guidelines and/or codes of practice.

3. The Parties shall employ appropriate means to co-operate in order to assist developing countries in the implementation of subparagraphs (a), (b), (c) and (d) of paragraph 2 of Article 4.

4. Taking into account the needs of developing countries, co-operation between Parties and the competent international organisations is encouraged to promote, *inter alia*, public awareness, the development of sound management of hazardous wastes and other wastes and the adoption of new low-waste technologies.

ARTICLE 11

BILATERAL, MULTILATERAL AND REGIONAL AGREEMENTS

1. Notwithstanding the provisions of Article 4 paragraph 5, Parties may enter into bilateral, multilateral or regional agreements or arrangements regarding transboundary movement of hazardous wastes or other wastes with Parties or non-Parties provided that such agreements or arrangements do not derogate from the environmentally sound management of hazardous wastes and other wastes as required by this Convention. These agreements or arrangements shall stipulate provisions which are not less environmentally sound than those provided for by this Convention in particular taking into account the interests of developing countries.

2. Parties shall notify the Secretariat of any bilateral, multilateral or regional agreements or arrangements referred to in paragraph 1 and those which they have entered into prior to the entry into force of this Convention for them, for the purpose of controlling transboundary movements of hazardous wastes and other wastes which take place entirely among the Parties to such agreements. The provisions of this Convention shall not affect transboundary movements which

take place pursuant to such agreements provided that such agreements are compatible with the environmentally sound management of hazardous wastes and other wastes as required by this Convention.

ARTICLE 12

CONSULTATIONS ON LIABILITY

The Parties shall co-operate with a view to adopting, as soon as practicable, a protocol setting out appropriate rules and procedures in the field of liability and compensation for damage resulting from the transboundary movement and disposal of hazardous wastes and other wastes.

ARTICLE 13

TRANSMISSION OF INFORMATION

1. The Parties shall, whenever it comes to their knowledge, ensure that, in the case of an accident occurring during the transboundary movement of hazardous wastes or other wastes or their disposal, which are likely to present risks to human health and the environment in other States, those States are immediately informed.

2. The Parties shall inform each other, through the Secretariat, of —

(a) Changes regarding the designation of competent authorities and/or focal points, pursuant to Article 5;

(b) Changes in their national definition of hazardous wastes, pursuant to Article 3;

and, as soon as possible,

(c) Decisions made by them not to consent totally or partially to the import of hazardous wastes or other wastes for disposal within the area under their national jurisdiction;

(d) Decisions taken by them to limit or ban the export of hazardous wastes or other wastes;

(e) Any other information required pursuant to paragraph 4 of this Article.

3. The Parties, consistent with national laws and regulations, shall transmit, through the Secretariat, to the Conference of the Parties established under Article 15, before the end of each calendar year, a report on the previous calendar year, containing the following information —

(a) Competent authorities and focal points that have been designated by them pursuant to Article 5;

(b) Information regarding transboundary movements of hazardous wastes or other wastes in which they have been involved, including —

- (i) The amount of hazardous wastes and other wastes exported, their category, characteristics, destination, any transit country and disposal method as stated on the response to notification;
- (ii) The amount of hazardous wastes and other wastes imported, their category, characteristics, origin, and disposal methods;
- (iii) Disposals which did not proceed as intended;
- (iv) Efforts to achieve a reduction of the amount of hazardous wastes or other wastes subject to transboundary movement;

(c) Information on the measures adopted by them in implementation of this Convention;

(d) Information on available qualified statistics which have been compiled by them on the effects of human health and the environment of the generation, transportation and disposal of hazardous wastes or other wastes;

(e) Information concerning bilateral, multilateral and regional agreements and arrangements entered into pursuant to Article 11 of this Convention;

(f) Information on accidents occurring during the transboundary movement and disposal of hazardous wastes and other wastes and on the measures undertaken to deal with them;

(g) Information on disposal options operated within the area of their national jurisdiction;

(h) Information on measures undertaken for development of technologies for the reduction and/or elimination of production of hazardous wastes and other wastes; and

(i) Such other matters as the Conference of the Parties shall deem relevant.

4. The Parties, consistent with national laws and regulations, shall ensure that copies of each notification concerning any given transboundary movement of hazardous wastes or other wastes, and the response to it, are sent to the Secretariat when a Party considers that its environment may be affected by that transboundary movement has requested that this should be done.

ARTICLE 14

FINANCIAL ASPECTS

1. The Parties agree that, according to the specific needs of different regions and subregions, regional or sub-regional centres for training and technology transfers regarding the management of hazardous wastes and other wastes and the minimization of their generation should be established. The Parties shall decide on the establishment of appropriate funding mechanisms of a voluntary nature.

2. The Parties shall consider the establishment of a revolving fund to assist on an interim basis in case of emergency situations to minimize damage from accidents arising from transboundary movements of hazardous wastes and other wastes or during the disposal of those wastes.

ARTICLE 15

CONFERENCE OF THE PARTIES

1. A Conference of the Parties is hereby established. The first meeting of the Conference of the Parties shall be convened by the Executive Director of UNEP not later than one year after the entry into force of this Convention. Thereafter, ordinary meetings of the Conference of the Parties shall be held at regular intervals to be determined by the Conference at its first meeting.

2. Extraordinary meetings of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to them by the Secretariat, it is supported by at least one third of the Parties.

3. The Conference of the Parties shall by consensus agree upon and adopt rules of procedure for itself and for any subsidiary body it may establish, as well as financial rules to determine in particular the financial participation of the Parties under this Convention.

4. The Parties at their first meeting shall consider any additional measures needed to assist them in fulfilling their responsibilities with respect to the protection and the preservation of the marine environment in the context of this Convention.

5. The Conference of the Parties shall keep under continuous review and evaluation the effective implementation of this Convention, and, in addition, shall —

(a) Promote the harmonization of appropriate policies, strategies and measures for minimizing harm to human health and the environment by hazardous wastes and other wastes;

(b) Consider and adopt, as required, amendments to this Convention and its annexes, taking into consideration, *inter alia*, available scientific, technical, economic and environmental information;

(c) Consider and undertake any additional action that may be required for the achievement of the purposes of this Convention in the light of experience gained in its operation and in the operation of the agreements and arrangements envisaged in Article 11;

(d) Consider and adopt protocols as required; and

(e) Establish such subsidiary bodies as are deemed necessary for the implementation of this Convention.

6. The United Nations, its specialized agencies, as well as any State not party to this Convention, may be represented as observers at meetings of the Conference of the Parties. Any other body or agency, whether national or international, governmental or non-governmental, qualified in fields relating to hazardous wastes or other wastes which has informed the Secretariat of its wish to be represented as an observer at a meeting of the Conference of the Parties, may be admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

7. The Conference of the Parties shall undertake three years after the entry into force of this Convention, and at least every six years thereafter, an evaluation of its effectiveness and, if deemed necessary, to consider the adoption of a complete or partial ban of transboundary movements of hazardous wastes and other wastes in light of the latest scientific, environmental, technical and economic information.

ARTICLE 16

SECRETARIAT

1. The functions of the Secretariat shall be —

(a) To arrange for and service meetings provided for in Articles 15 and 17;

(b) To prepare and transmit reports based upon information received in accordance with Articles 3, 4, 6, 11 and 13 as well as upon information derived from meetings of subsidiary bodies established under Article 15 as well as upon,

as appropriate, information provided by relevant intergovernmental and non-governmental entities;

(c) To prepare reports on its activities carried out in implementation of its functions under this Convention and present them to the Conference of the Parties;

(d) To ensure the necessary coordination with relevant international bodies, and in particular to enter into such administrative and contractual arrangements as may be required for the effective discharge of its functions;

(e) To communicate with focal points and competent authorities established by the Parties in accordance with Article 5 of this Convention;

(f) To compile information concerning authorised national sites and facilities of Parties available for the disposal of their hazardous wastes and other wastes and to circulate this information among Parties;

(g) To receive and convey information from and to Parties on;

- sources of technical assistance and training;
- available technical and scientific know-how;
- sources of advice and expertise; and
- availability of resources

with a view to assisting them, upon request, in such areas as —

- the handling of the notification system of this Convention;
- the management of hazardous wastes and other wastes;
- environmentally sound technologies relating to hazardous wastes and other wastes, such as low - and non-waste technology;
- the assessment of disposal capabilities and sites;
- the monitoring of hazardous wastes and other wastes; and
- emergency responses;

(h) To provide Parties, upon request, with information on consultants or consulting firms having the necessary technical competence in the field, which can assist them to examine a notification for a transboundary movement, the concurrence of a shipment of hazardous wastes or other wastes with the relevant

notification, and/or the fact that the proposed disposal facilities for hazardous wastes or other wastes are environmentally sound, when they have reason to believe that the wastes in question will not be managed in an environmentally sound manner. Any such examination would not be at the expense of the Secretariat;

(i) To assist Parties upon request in their identification of cases of illegal traffic and to circulate immediately to the Parties concerned any information it has received regarding illegal traffic;

(j) To co-operate with Parties and with relevant and competent international organisations and agencies in the provision of experts and equipment for the purpose of rapid assistance to States in the event of an emergency situation; and

(k) To perform such other functions relevant to the purposes of this Convention as may be determined by the Conference of the Parties.

2. The secretariat functions will be carried out on an interim basis by UNEP until the completion of the first meeting of the Conference of the Parties held pursuant to Article 15.

3. At its first meeting, the Conference of the Parties shall designate the Secretariat from among those existing competent intergovernmental organisations which have signified their willingness to carry out the secretariat functions under this Convention. At this meeting, the Conference of the Parties shall also evaluate the implementation by the interim Secretariat of the functions assigned to it, in particular under paragraph 1 above, and decide upon the structures appropriate for those functions.

ARTICLE 17

AMENDMENT OF THE CONVENTION

1. Any Party may propose amendments to this Convention and any Party to a protocol may propose amendments to that protocol. Such amendments shall take due account, *inter alia*, of relevant scientific and technical considerations.

2. Amendments to this Convention shall be adopted at a meeting of the Conference of the Parties. Amendments to any protocol shall be adopted at a meeting of the Parties to the protocol in question. The text of any proposed amendment to this Convention or to any protocol, except as may otherwise be provided in such protocol, shall be communicated to the Parties by the Secretariat at least six months before the meeting at which it is proposed for adoption. The Secretariat shall also communicate proposed amendments to the Signatories to this Convention for information.

3. The Parties shall make every effort to reach agreement on any proposed amendment to this Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting, and shall be submitted by the Depositary to all Parties for ratification, approval, formal confirmation or acceptance.

4. The procedure mentioned in paragraph 3 above shall apply to amendments to any protocol, except that a two-thirds majority of the Parties to that protocol present and voting at the meeting shall suffice for their adoption.

5. Instruments of ratification, approval, formal confirmation or acceptance of amendments shall be deposited with the Depositary. Amendments adopted in accordance with paragraph 3 or 4 above shall enter into force between Parties having accepted them on the ninetieth day after the receipt by the Depositary of their instrument of ratification, approval, formal confirmation or acceptance by at least three-fourths of the Parties who accepted them or by at least two-thirds of the Parties to the protocol concerned who accepted them, except as may otherwise be provided in such protocol. The amendments shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, approval, formal confirmation or acceptance of the amendments.

6. For the purpose of this Article, "Parties present and voting" means Parties present and casting an affirmative or negative vote.

ARTICLE 18

ADOPTION AND AMENDMENT OF ANNEXES

1. The annexes to this Convention or to any protocol shall form an integral part of this Convention or of such protocol, as the case may be and, unless expressly provided otherwise, a reference to this Convention or its protocols constitutes at the same time a reference to any annexes thereto. Such annexes shall be restricted to scientific, technical and administrative matters.

2. Except as may be otherwise provided in any protocol with respect to its annexes, the following procedure shall apply to the proposal, adoption and entry into force of additional annexes to this Convention or of annexes to a protocol —

(a) Annexes to this Convention and its protocols shall be proposed and adopted according to the procedure laid down in Article 17, paragraphs 2, 3 and 4;

(b) Any Party that is unable to accept an additional annex to this Convention or an annex to any protocol to which it is party shall so notify the Depositary, in writing, within six months from the date of the communication of the adoption by the Depositary. The Depositary shall without delay notify all

Parties of any such notification received. A Party may at any time substitute an acceptance for a previous declaration of objection and the annexes shall thereupon enter into force for that Party;

(c) On the expiry of six months from the date of the circulation of the communication by the Depositary, the annex shall become effective for all Parties to this Convention or to any protocol concerned, which have not submitted a notification in accordance with the provision of subparagraph (b) above.

3. The proposal, adoption and entry into force of amendments to annexes to this Convention or to any protocol shall be subject to the same procedure as for the proposal, adoption and entry into force of annexes to the Convention or annexes to a protocol. Annexes and amendments thereto shall take due account, *inter alia*, of relevant scientific and technical considerations.

4. If an additional annex or an amendment to an annex involves an amendment to this Convention or to any protocol, the additional annex or amended annex shall not enter into force until such time as the amendment to this Convention or to the protocol enters into force.

ARTICLE 19

VERIFICATION

Any Party which has reason to believe that another Party is acting or has acted in breach of its obligations under this Convention may inform the Secretariat thereof, and in such an event, shall simultaneously and immediately inform, directly or through the Secretariat, the Party against whom the allegations are made. All relevant information should be submitted by the Secretariat to the Parties.

ARTICLE 20

SETTLEMENT OF DISPUTES

1. In case of a dispute between Parties as to the interpretation or application of, or compliance with, this Convention or any protocol thereto, they shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice.

2. If the Parties concerned cannot settle their dispute through the means mentioned in the preceding paragraph, the dispute, if the parties to the dispute agree, shall be submitted to the International Court of Justice or to arbitration under the conditions set out in Annex VI on Arbitration. However, failure to reach common agreement on submission of the dispute to the International Court of Justice or to arbitration shall not absolve the Parties from the responsibility of continuing to seek to resolve it by the means referred to in paragraph 1.

3. When ratifying, accepting, approving, formally confirming or acceding to this Convention, or at any time thereafter, a State or political and/or economic integration organisation may declare that it recognizes as compulsory *ipso facto* and without special agreement, in relation to any Party accepting the same obligation —

- (a) submission of the dispute to the International Court of Justice; and/or
- (b) arbitration in accordance with the procedures set out in Annex VI.

Such declaration shall be notified in writing to the Secretariat which shall communicate it to the Parties.

ARTICLE 21

SIGNATURE

This Convention shall be open for signature by States, by Namibia, represented by the United Nations Council for Namibia, and by political and/or economic integration organisations, in Basel on 22 March 1989, at the Federal Department of Foreign Affairs of Switzerland in Berne from 23 March 1989 to 30 June 1989, and at United Nations Headquarters in New York from 1 July 1989 to 22 March 1990.

ARTICLE 22

RATIFICATION, ACCEPTANCE, FORMAL CONFIRMATION OR APPROVAL

1. This Convention shall be subject to ratification, acceptance or approval by States and by Namibia, represented by the United Nations Council for Namibia, and to formal confirmation or approval by political and/or economic integration organisations. Instruments of ratification, acceptance, formal confirmation, or approval shall be deposited with the Depositary.

2. Any organisation referred to in paragraph 1 above which becomes a Party to this Convention without any of its member States being a Party shall be bound by all the obligations under the Convention. In the case of such organisations, one or more of whose member States is a Party to the Convention, the organisation and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organisation and the member States shall not be entitled to exercise rights under the Convention concurrently.

3. In their instruments of formal confirmation or approval, the organisations referred to in paragraph 1 above shall declare the extent of their competence with respect to the matters governed by the Convention. These organisations shall also

inform the Depositary, who will inform the Parties of any substantial modification in the extent of their competence.

ARTICLE 23

ACCESSION

1. This Convention shall be open for accession by States, by Namibia, represented by the United Nations Council for Namibia, and by political and/or economic integration organisations from the day after the date on which the Convention is closed for signature. The instruments of accession shall be deposited with the Depositary.

2. In their instruments of accession, the organisations referred to in paragraph 1 above shall declare the extent of their competence with respect to the matters governed by the Convention. These organisations shall also inform the Depositary of any substantial modification in the extent of their competence.

3. The provisions of Article 22 paragraph 2, shall apply to political and/or economic integration organisations which accede to this Convention.

ARTICLE 24

RIGHT TO VOTE

1. Except as provided for in paragraph 2 below, each Contracting Party to this Convention shall have one vote.

2. Political and/or economic integration organisations, in matters within their competence, in accordance with Article 22, paragraph 3, and Article 23, paragraph 2, shall exercise their right to vote with a number of votes equal to the number of their member States which are Parties to the Convention or the relevant protocol. Such organisations shall not exercise their right to vote if their member States exercise theirs, and vice versa.

ARTICLE 25

ENTRY INTO FORCE

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the twentieth instrument of ratification, acceptance, formal confirmation, approval or accession.

2. For each State or political and/or economic integration organisation which ratifies, accepts, approves or formally confirms this Convention or accedes thereto after the date of the deposit of the twentieth instrument of ratification, acceptance, approval, formal confirmation or accession, it shall enter into force on

the ninetieth day after the date of deposit by such State or political and/or economic integration organisation of its instrument of ratification, acceptance, approval, formal confirmation or accession.

3. For the purposes of paragraphs 1 and 2 above, any instrument deposited by a political and/or economic integration organisation shall not be counted as additional to those deposited by member States of such organisation.

ARTICLE 26

RESERVATIONS AND DECLARATIONS

1. No reservation or exception may be made to this Convention.

2. Paragraph 1 of this Article does not preclude a State or political and/or economic integration organisation, when signing, ratifying, accepting, approving, formally confirming or acceding to this Convention, from making declarations or statements, however phrased or named, with a view, *inter alia*, to the harmonization of its laws and regulations with the provisions of this Convention, provided that such declarations or statements do not purport to exclude or to modify the legal effects of the provisions of the Convention in their application to that State.

ARTICLE 27

WITHDRAWAL

1. At any time after three years from the date on which this Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the Depositary.

2. Withdrawal shall be effective one year from receipt of notification by the Depositary, or on such later date as may be specified in the notification.

ARTICLE 28

DEPOSITORY

The Secretary-General of the United Nations shall be the Depositary of this Convention and of any protocol thereto.

ARTICLE 29

AUTHENTIC TEXTS

The original Arabic, Chinese, English, French, Russian and Spanish texts of this Convention are equally authentic.

IN WITNESS WHEREOF the undersigned, being duly authorised to that effect, have signed this Convention.

DONE at Basel on the 22nd day of March 1989.

ANNEX I

CATEGORIES OF WASTES TO BE CONTROLLED

Waste Streams

Y1	Clinical Wastes from medical care in hospitals, medical centres and clinics
Y2	Wastes from the production and preparation of pharmaceutical products
Y3	Waste pharmaceuticals, drugs and medicines
Y4	Wastes from the production, formulation and use of biocides and phytopharmaceuticals
Y5	Wastes from the manufacture, formulation and use of wood preserving chemicals
Y6	Wastes from the production, formulation and use of organic solvents
Y7	Wastes from heat treatment and tempering operations containing cyanides
Y8	Waste mineral oils unfit for their originally intended use
Y9	Waste oils/water, hydrocarbons/water mixtures, emulsions
Y10	Waste substances and articles containing or contaminated with polychlorinated biphenyls (PCBs) and/or polychlorinated terphenyls (PCTs) and/or polybrominated biphenyls (PBBs)
Y11	Waste tarry residues arising from refining, distillation and any pyrolytic treatment
Y12	Wastes from production, formulation and use of inks, dyes, pigments, paints, lacquers, varnish

Y13	Wastes from production, formulation and use of resins, latex, plasticizers, glues/adhesives
Y14	Waste chemical substances arising from research and development or teaching activities which are not identified and/or are new and whose effects on man and/or the environment are not known
Y15	Wastes of an explosive nature not subject to other legislation
Y16	Wastes from production, formulation and use of photographic chemicals and processing materials
Y17	Wastes resulting from surface treatment of metals and plastics
Y18	Residues arising from industrial waste disposal operations

Wastes Having as Constituents:

Y19	Metal carbonyls
Y20	Beryllium; beryllium compounds
Y21	Hexavalent chromium compounds
Y22	Copper compounds
Y23	Zinc compounds
Y24	Arsenic; arsenic compounds
Y25	Selenium; selenium compounds
Y26	Cadmium; cadmium compounds
Y27	Antimony; antimony compounds
Y28	Tellurium; tellurium compounds
Y29	Mercury; mercury compounds
Y30	Thallium; thallium compounds
Y31	Lead; lead compounds
Y32	Inorganic fluorine compounds excluding calcium fluoride
Y33	Inorganic cyanides

BRUNEI DARUSSALAM GOVERNMENT GAZETTE

Y34	Acidic solutions or acids in solid form
Y35	Basic solutions or bases in solid form
Y36	Asbestos (dust and fibres)
Y37	Organic phosphorus compounds
Y38	Organic cyanides
Y39	Phenols; phenol compounds including chlorophenols
Y40	Ethers
Y41	Halogenated organic solvents
Y42	Organic solvents excluding halogenated solvents
Y43	Any congener of polychlorinated dibenzo-furan
Y44	Any congener of polychlorinated dibenzo-p-dioxin
Y45	Organohalogen compounds other than substances referred to in this Annex (eg. Y39, Y41, Y42, Y43, Y44).

ANNEX II

CATEGORIES OF WASTES REQUIRING SPECIAL CONSIDERATION

Y46	Wastes collected from households
Y47	Residues arising from the incineration of household wastes

ANNEX III

LIST OF HAZARDOUS CHARACTERISTICS

<i>UN Class*</i>	<i>Code</i>	<i>Characteristics</i>
1	H 1	<i>Explosive</i>

An explosive substance or waste is a solid or liquid substance or waste (or mixture of substances or wastes) which is in itself capable by chemical reaction of producing gas at such a temperature and pressure and at such a speed as to cause damage to the surroundings.

3

H 3

Flammable liquids

The word “flammable” has the same meaning as “inflammable”. Flammable liquids are liquids, or mixtures of liquids, or liquids containing solids in solution or suspension (for example, paints, varnishes, lacquers, etc, but not including substances or wastes otherwise classified on account of their dangerous characteristics) which give off a flammable vapour at temperatures of not more than 60.5°C, closed-cup, test, or not more than 65.6°C, open-cup test. (Since the results of open-cup tests and of closed-cup tests are not strictly comparable and even individual results by the same test are often variable, regulations varying from the above figures to make allowance for such differences would be within the spirit of this definition.)

4.1

H4.1

Flammable solids

Solids, or waste solids, other than those classed as explosives, which under conditions encountered in transport are readily combustible, or may cause or contribute to fire through friction.

4.2

H4.2

Substances or wastes liable to spontaneous combustion

Substances or wastes which are liable to spontaneous heating under normal conditions encountered in transport, or to heating up on contact with air, and being then liable to catch fire.

4.3	H4.3	<i>Substances or wastes which, in contact with water emit flammable gases</i> Substances or wastes which, by interaction with water, are liable to become spontaneously flammable or to give off flammable gases in dangerous quantities.
5.1	H5.1	<i>Oxidizing</i> Substances or wastes which, while in themselves not necessarily combustible, may, generally by yielding oxygen cause, or contribute to, the combustion of other materials.
5.2	H5.2	<i>Organic Peroxides</i> Organic substances or wastes which contain the bivalent-O-O-structure are thermally unstable substances which may undergo exothermic self-accelerating decomposition.
6.1	H6.1	<i>Poisonous (Acute)</i> Substances or wastes liable either to cause death or serious injury or to harm human health if swallowed or inhaled or by skin contact.
6.2	H6.2	<i>Infectious substances</i> Substances or wastes containing viable micro organisms or their toxins which are known or suspected to cause disease in animals or humans.
8	H8	<i>Corrosives</i> Substances or wastes which, by chemical action, will cause severe damage when in contact with living tissue, or, in the case of leakage, will materially damage, or even destroy, other goods or the means of transport; they may also cause other hazards.
9	H10	<i>Liberation of toxic gases in contact with air or water</i>

		Substances or wastes which, by interaction with air or water, are liable to give off toxic gases in dangerous quantities.
9	H11	<i>Toxic (Delayed or chronic)</i> Substances or wastes which, if they are inhaled or ingested or if they penetrate the skin, may involve delayed or chronic effects, including carcinogenicity.
9	H12	<i>Ecotoxic</i> Substances or wastes which if released present or may present immediate or delayed adverse impacts to the environment by means of bioaccumulation and/or toxic effects upon biotic systems.
9	H13	Capable, by any means, after disposal, of yielding another material, e.g., leachate, which possesses any of the characteristics listed above.

* Corresponds to the hazard classification system included in the United Nations Recommendations on the Transport of Dangerous Goods (ST/SG/AC.10/1/Rev.5, United Nations, New York, 1988).

TESTS

The potential hazards posed by certain types of wastes are not yet fully documented; tests to define quantitatively these hazards do not exist. Further research is necessary in order to develop means to characterise potential hazards posed to man and/or the environment by these wastes. Standardized tests have been derived with respect to pure substances and materials. Many countries have developed national tests which can be applied to materials listed in Annex I, in order to decide if these materials exhibit any of the characteristics listed in this Annex.

ANNEX IV

DISPOSAL OPERATIONS

- A. OPERATIONS WHICH DO NOT LEAD TO THE POSSIBILITY OF RESOURCE RECOVERY, RECYCLING, RECLAMATION, DIRECT RE-USE OR ALTERNATIVE USES

Section A encompasses all such disposal operations which occur in practice.

- D1 Deposit into or onto land, (e.g. landfill, etc.)
- D2 Land treatment (e.g. biodegradation of liquid or sludgy discards in soils, etc.)
- D3 Deep injection, (e.g. injection of pumpable discards into wells, salt domes or naturally occurring repositories, etc.)
- D4 Surface impoundment, (e.g. placement of liquid or sludge discards into pits, ponds or lagoons, etc.)
- D5 Specially engineered landfill, (e.g. placement into lined discrete cells which are capped and isolated from one another and the environment, etc.)
- D6 Release into a water body except seas/oceans
- D7 Release into seas/oceans including sea-bed insertion
- D8 Biological treatment not specified elsewhere in this Annex which results in final compounds or mixtures which are discarded by means of any of the operations in Section A
- D9 Physico chemical treatment not specified elsewhere in this Annex which results in final compounds or mixtures which are discarded by means of any of the operations in Section A, (e.g. evaporation, drying, calcination, neutralisation, precipitation, etc.)
- D10 Incineration on land
- D11 Incineration at sea
- D12 Permanent storage (e.g. emplacement of containers in a mine, etc.)
- D13 Blending or mixing prior to submission to any of the operations in Section A
- D14 Repackaging prior to submission to any of the operations in Section A

- D15 Storage pending any of the operations in Section A
- B. OPERATIONS WHICH MAY LEAD TO RESOURCE RECOVERY, RECYCLING, RECLAMATION, DIRECT RE-USE OR ALTERNATIVE USES
- Section B encompasses all such operations with respect to materials legally defined as or considered to be hazardous wastes and which otherwise would have been destined for operations included in Section A*
- R1 Use as a fuel (other than in direct incineration) or other means to generate energy
- R2 Solvent reclamation/regeneration
- R3 Recycling/reclamation of organic substances which are not used as solvents
- R4 Recycling/reclamation of metals and metal compounds
- R5 Recycling/reclamation of other inorganic materials
- R6 Regeneration of acids or bases
- R7 Recovery of components used for pollution abatement
- R8 Recovery of components from catalysts
- R9 Used oil re-refining or other reuses of previously used oil
- R10 Land treatment resulting in benefit to agriculture or ecological improvement
- R11 Uses of residual materials obtained from any of the operations numbered R1
- R12 Exchange of wastes for submission to any of the operations numbered R1 - R11
- R13 Accumulation of material intended for any operation in Section B.

ANNEX VA

INFORMATION TO BE PROVIDED ON NOTIFICATION

1. Reason for waste export
2. Exporter of the waste¹
3. Generator(s) of the waste and site of generation¹

4. Disposer of the waste and actual site of disposal¹
5. Intended carrier(s) of the waste or their agents, if known¹
6. Country of export of the waste Competent authority²
7. Expected countries of transit Competent authority²
8. Country of import of the waste Competent authority²
9. General or single notification
10. Projected date(s) of shipment(s) and period of time over which waste is to be exported and proposed itinerary (including point of entry and exit)³
11. Means of transport envisaged (road, rail, sea, air, inland waters)
12. Information relating to insurance⁴
13. Designation and physical description of the waste including Y number and UN number and its composition⁵ and information on any special handling requirements including emergency provisions in case of accidents
14. Type of packaging envisaged (e.g. bulk, drummed, tanker)
15. Estimated quantity in weight/volume⁶
16. Process by which the waste is generated⁷
17. For wastes listed in Annex I, classifications from Annex III: hazardous characteristic, H number, and UN class
18. Method of disposal as per Annex IV
19. Declaration by the generator and exporter that the information is correct
20. Information transmitted (including technical description of the plant) to the exporter or generator from the disposer of the waste upon which the latter has based his assessment that there was no reason to believe that the wastes will not be managed in an environmentally sound manner in accordance with the laws and regulations of the country of import
21. Information concerning the contract between the exporter and disposer.

NOTES

1. Full name and address, telephone, telex or telefax number and the name, address, telephone, telex or telefax number of the person to be contacted.
2. Full name and address, telephone, telex or telefax number.
3. In the case of a general notification covering several shipments, either the expected dates of each shipment or, if this is not known, the expected frequency of the shipments will be required.
4. Information to be provided on relevant insurance requirements and how they are met by exporter, carrier and disposer.
5. The nature and the concentration of the most hazardous components, in terms of toxicity and other dangers presented by the waste both in handling and in relation to the proposed disposal method.
6. In the case of a general notification covering several shipments, both the estimated total quantity and the estimated quantities for each individual shipment will be required.
7. Insofar as this is necessary to assess the hazard and determine the appropriateness of the proposed disposal operation.

ANNEX VB

INFORMATION TO BE PROVIDED ON THE MOVEMENT DOCUMENT

1. Exporter of the waste¹
2. Generator(s) of the waste and site of generation¹
3. Disposer of the waste and actual site of disposal¹
4. Carrier(s) of the waste¹ or his agent(s)
5. Subject of general or single notification
6. The date the transboundary movement started and date(s) and signature on receipt by each person who takes charge of the waste
7. Means of transport (road, rail, inland waterway, sea, air) including countries of export, transit and import, also point of entry and exit where these have been designated

8. General description of the waste (physical state, proper UN shipping name and class, UN number, Y number and H number as applicable)
9. Information on special handling requirements including emergency provision in case of accidents
10. Type and number of packages
11. Quantity in weight/volume
12. Declaration by the generator or exporter that the information is correct
13. Declaration by the generator or exporter indicating no objection from the competent authorities of all States concerned which are Parties
14. Certification by disposer of receipt at designated disposal facility and indication of method of disposal and of the approximate date of disposal.

NOTES

The information required on the movement document shall where possible be integrated in one document with that required under transport rules. Where this is not possible the information should complement rather than duplicate that required under the transport rules. The movement document shall carry instructions as to who is to provide information and fill-out any form.

1. Full name and address, telephone, telex or telefax number and the name, address, telephone, telex or telefax number of the person to be contacted in case of emergency.

ANNEX VI

ARBITRATION

ARTICLE 1

Unless the agreement referred to in Article 20 of the Convention provides otherwise, the arbitration procedure shall be conducted in accordance with Articles 2 to 10 below.

ARTICLE 2

The claimant party shall notify the Secretariat that the parties have agreed to submit the dispute to arbitration pursuant to paragraph 2 or 3 of Article 20 and include, in particular, the Articles of the Convention the interpretation or

application of which are at issue. The Secretariat shall forward the information thus received to all Parties to the Convention.

ARTICLE 3

The arbitral tribunal shall consist of three members. Each of the Parties to the dispute shall appoint an arbitrator, and the two arbitrators so appointed shall designate by common agreement the third arbitrator, who shall be the chairman of the tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

ARTICLE 4

1. If the chairman of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Secretary-General of the United Nations shall, at the request of either party, designate him within a further two months period.

2. If one of the parties to the dispute does not appoint an arbitrator within two months of the receipt of the request, the other party may inform the Secretary-General of the United Nations who shall designate the chairman of the arbitral tribunal within a further two months' period. Upon designation, the chairman of the arbitral tribunal shall request the party which has not appointed an arbitrator to do so within two months. After such period, he shall inform the Secretary-General of the United Nations, who shall make this appointment within a further two months' period.

ARTICLE 5

1. The arbitral tribunal shall render its decision in accordance with international law and in accordance with the provisions of this Convention.

2. Any arbitral tribunal constituted under the provisions of this Annex shall draw up its own rules of procedure.

ARTICLE 6

1. The decisions of the arbitral tribunal both on procedure and on substance, shall be taken by majority vote of its members.

2. The tribunal may take all appropriate measures in order to establish the facts. It may, at the request of one of the parties, recommend essential interim measures of protection.

3. The parties to the dispute shall provide all facilities necessary for the effective conduct of the proceedings.

4. The absence or default of a party in the dispute shall not constitute an impediment to the proceedings.

ARTICLE 7

The tribunal may hear and determine counter-claims arising directly out of the subject-matter of the dispute.

ARTICLE 8

Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its expenses, and shall furnish a final statement thereof to the parties.

ARTICLE 9

Any Party that has an interest of a legal nature in the subject-matter of the dispute which may be affected by the decision in the case, may intervene in the proceedings with the consent of the tribunal.

ARTICLE 10

1. The tribunal shall render its award within five months of the date on which it is established unless it finds it necessary to extend the time-limit for a period which should not exceed five months.

2. The award of the arbitral tribunal shall be accompanied by a statement of reasons. It shall be final and binding upon the parties to the dispute.

3. Any dispute which may arise between the parties concerning the interpretation or execution of the award may be submitted by either party to the arbitral tribunal which made the award or, if the latter cannot be seized thereof, to another tribunal constituted for this purpose in the same manner as the first.

Made this 6th. day of Safar, 1435 Hijriah corresponding to the 9th. day of December, 2013 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM