

## **CHAPTER-II**

# **INTERNATIONAL DOCUMENTS ON HAZARDOUS WASTES MANAGEMENT**

The year 1989, was the beginning point of international document on Hazardous Wastes Management<sup>1</sup> at Basel Convention<sup>2</sup>. Transboundary movement of hazardous wastes has become a global economic issue as well as big challenge before future of global environment. Now a day it has become a mainstream issue and serious threats to the existence of both man and animal even earth also due to its toxic contamination. Public seriousness for sound management of hazardous wastes is major driving force to call for the development of national and international polices to regulate improper handling and movements of hazardous wastes disposals around the world. Our standards of living are rising especially in the developed countries. If this growth and development is destroying natural resources then the concept of living standard and economic development must be considered. In simple sense environment is basic need immediately after birth of a human being. Hence, International regulatory frameworks relating to hazardous wastes management are framed by the united nation in its various conventions. International treaties oblige their states parties to license potentially harmful activities and transboundary movement of hazardous wastes that might have adverse impact on environment.

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<sup>1</sup> It means scientific management of hazardous waste specified in clause 3(17) of 2016 Rules.

<sup>2</sup> The convention was adopted to reduce transboundary movement, promote treatment and minimization of hazardous waste. It establishes a system of prior consent of the importing country before exporting hazardous waste.

There had no clear beginning or starting point of global movement in environmental history for the protection of environment. There were no landmark events which sparked mass outrage, no specific leaders who inspired a mass movement and no sudden changes in human thinking.<sup>3</sup> But it was in the mid of 19th century individuals became conscious for preservation of nature and natural resources and they came forward to local groups responding to different issues, in different places at different times. Such local groups slowly became national movements and after Second World War<sup>4</sup> it became a large complex, disparate global movement. The global movement grew out of the technological, economic and social changes brought by the industrial revolution in Europe and North America.

At the end of 19th century more priority was given to promote international co-operation for wildlife protection. Therefore in 1909 the European environmentalist meet was held in Paris at international congress for multinational awareness to establish international body or organization for the protection and preservation nature and natural resources. As a result of which various conservationist groups, society for the preservation of the wild fauna of the empire, international office for the protection of nature and international committee for bird protection, Africa convention 1900, western hemisphere convention 1933 represented the seeds of an interest in international co-operation.

## **2.1 Background**

Environmental concerns and conflicts have surfaced throughout human history from the earliest settlements to the latest developments. From the Indian perspective,

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<sup>3</sup> S.C. Santra, *Environmental Science* 59 (Central Book Agency, New Delhi, 1st edn.,2001)

<sup>4</sup> A global war involving more than 100 million people from 30 countries that was lasted from 1939 to 1945.

Vedic people desired to live a life of hundred years and this wish can be fulfilled only when environment will be unpolluted, clean and peaceful.<sup>5</sup> Second World War<sup>6</sup> gave birth of the United Nations Organization<sup>7</sup> (UNO) and the conservation movement received the proper focus of movement through the creation of International Union for Conservation of Nature, the World Wildlife Fund and the International Union for the Protection of Nature. The environmental movement gained new momentum in 1962 with the publication of “The Silent Spring”<sup>8</sup>, which warned about the agricultural use of synthetic chemical pesticides. The book is able to create public awareness regarding the use of pesticides and its impact on environment. It took ban of the pesticide for agricultural use in U.S. which prompted the American president for creation of an advisory panel on pesticides and in 1970, more than three lakhs Americans took part in Earth day celebration that was the largest environmental demonstration in history. It was in the early 1970, a Norwegian, Arne Næss has claimed for deep ecology movement. He argues that it is the natural diversity that has its own intrinsic value. Nature does not belong to human and human have no right to destroy natural features of the planet. Animals have their own intrinsic value and have a right to live, even if they should be of no use to human. This movement was successful for the development of environmental protection all over the world.

International effort for protection of environment has seen aftermath of the Second World War basically after the establishment of United Nations Organization (UNO). The whole universe had joined their arms with arms at the 1972 United Nations

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<sup>5</sup> Bijetachetry, “An overview of Environmental History in Ancient India” 3(1) RJ-MDKG 96 (2014)

<sup>6</sup> *Supra* note 3

<sup>7</sup> It was founded on 24 October 1945 at San Francisco to maintain international peace and security.

<sup>8</sup> The book had been written by Rachel Carson who was an American marine biologist and conservationist.

(UN) conference on human environment at Stockholm to meet new kind of pollution from nuclear radiation. The UN general Assembly in 1987 achieved a landmark in global planning by agreeing to hold summit. The declaration does not refer to the environment directly. However, Article 25 acknowledges and indicates the essential elements for an adequate standard of living. Therefore, it can be argued that the Declaration necessitates the environment being of sufficient quality to maintain human health and well-being. The UNO's various organs have started to recognize the global warming, ozone depletion and other environmental pollution during 1960-70.

In the 1970s, tight environmental regulations had lead to public awareness in industrialized world. Therefore they seek to cheap disposal of hazardous wastes in Eastern Europe and other developing country, where enforcement mechanisms were lacking. Management of hazardous wastes is a global environmental agenda since 1980s due to light environmental regulation, which result in Montevideo Programme on Environmental Law in 1981. Therefore the study endeavored to bring importance and necessary of international conventions to combat the toxic trade in response to the public outcry in Africa and other parts of the world about disposal of hazardous wastes imported from abroad.

Therefore the world had decided to adopt such a negotiation process to assist governments in developments and implementation of their national hazardous wastes policies, as a result of which the governing council of UNEP approved Cairo guidelines, a non-binding legal instrument. The executive director convened a working group as mandated by governing council to elaborate and draft a negotiation of convention. After that the working group with technical experts mandates to organize

meeting to prepare a global convention on control of transboundary movement of hazardous wastes. At the initiatives of the Swiss Government the conference of Plenipotentiaries was convened from 20 to 22 March 1989 in Basel, where final draft of Basel Convention was considered and submitted with representation of 116 States. The Basel Convention was adopted on 22 March 1989 in Basel, where eight resolutions adopted for development and implementation of convention.

## **2.2 The challenges before Hazardous Wastes Management**

The challenges faced by the hazardous wastes are with the current frameworks that are achieved only on regulation rather than a ban of such imports and exports. The industrialized and developing countries define the issues in different pathways in dealing with the challenges. The first one has constant accelerating technology changes and while the second one focuses on management, forestation and adaptation to the effect of environmental hazards. In the present era involvement of high costs on domestic disposal of hazardous wastes in an environmentally sound manner is a big challenge. The cost of production could not take into account the cost of wastes disposal, therefore the industrial sector shipped such wastes to third countries at lower costs. The third countries like India neither have the infrastructure nor stringent regulations to deal with such imports due to lack of enforcement of hazardous wastes management rules. Unfortunately most developing country still lack proper treatment and disposal facility while at the same time they face the challenges of increasing amount of hazardous waste either due to import or through generation. Furthermore, it is difficult to separate hazardous waste from non hazardous waste.

The neoliberal thinker supports and urges to promote free trade agreement and transactions at international platform. It supports privatization of public services, selling off of state functions, deregulation of finance and labor, elimination of welfare state and union<sup>9</sup>. It means establishment of deregulated trade in hazardous waste which has great harm both to the environment and human health. Such policy difficult to accept because of absence of social responsibility and economic expansion affects the developing countries. The world had evident of horrified incidents due to non regulations of hazardous and chemical wastes. Therefore the world communities need to think for regulated and safe forum to give special attention for treatment of hazardous waste. Legislation on it can be applied on municipal, national and international level. The law on municipal and national level made by their country, is either weak or absent with poor enforcement mechanisms and low institutional capacity is consider a big challenge facing hazardous waste management.

In last few decades back the international community shows their great concern by adopting multilateral agreement on hazardous and chemical wastes management and conferences of parties (COPs) to the convention has discussed on co operational activities and agrees to revise roadmap of priority in preventing illegal trade in hazardous waste. These initiatives would able to face challenges in management of hazardous wastes. The COPs have to submit information under the strategic framework for implementation of the convention for the year 2012-2021. Only eleven per cent of the COPs for the year 2015 and four per cent for the year 2011-15 have

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<sup>9</sup> Henry Girous gives this statement on neoliberal economic policy in a interview with C.J. Polychronion. Available at <https://truthout.org> (Visited on January 1, 2019)

submitted information that affects the final evaluation by low responses as well as lack of financial contribution from the COPs that causes delayed in preparing report for implementation of convention for the year 2012-2021<sup>10</sup>. Overlapping of the Basel, Rotterdam and Stockholm convention may increase the possibility of illegal trade in hazardous waste.<sup>11</sup> The directorate of pilot project on application of implementation of special programme reveals the negligent mind of private and public sectors pertaining to the information of hazardous and chemical wastes generated in their premises.

UNEP estimates that countries worldwide generate over 400 million tons of hazardous waste each year, with OECD countries producing the largest amount of waste at around 300 million tons. Moreover, the cost of waste disposal has risen in many countries due to tighter regulatory controls. In some cases, depending on the proximity of treatment or disposal facilities that are equipped to manage a particularly waste, exporting a waste to a nearby facility may be both more economical and environmentally sound than disposing of it in a domestic facility. However, transboundary movement of waste has also increased due to the economic advantages of exporting it to poorer countries with less stringent controls and lower public awareness of the issues. It is submitted that the challenges of HWM is daunting.

The challenges experienced with reporting by the COPs are difficulties to determine which wastes, hazardous wastes and other wastes are control by the Basel

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<sup>10</sup> UNEP-CHW-COP.13-BC-1.English.pdf. *Available at:* [www.basel.int/TheConvention/Conferenceoftheparties/ReportsandDecisions/tabid/7832/ctl/Download/mid/-/](http://www.basel.int/TheConvention/Conferenceoftheparties/ReportsandDecisions/tabid/7832/ctl/Download/mid/-/) (Visited on 22/04/2019)

<sup>11</sup> UNEP/CHE.14/INF/42 on “information collected from parties and stakeholders on synergies in preventing and combating illegal traffic and trade in hazardous chemicals and waste.” available at: <http://www.brsmeas.org/2019cops/MeetingDocuments/tabid/7832/ctl/Download/mid/-/> (Visited on March 24, 2019)

convention. The term 'transboundary movement' is not determining clearly to consider how and when it can be initiated. Due to the poor internet connectivity the parties could not using electronic reporting system to complete the reporting questionnaire. Lack of awareness among the entities i.e., whether the government or private sector plays pivotal role in contributing data or information required to complete national report. Lack of skilled human and financial resources for monitoring, collecting, storing data or information on generation of hazardous wastes and its movement at national level may also obstruct the parties to fulfill their obligations to national reporting. India as a developing country, has always been taking all possible step for proper management of HW. There has been regular development of the rules and regulation regarding HWM in India. However, the Law and environment is not static. Therefore to meet the new challenges it has to be amended frequently. It is the duty of the State under our Constitution to devise and implement a coherent and co-ordinate action plan to meet its obligation of HWM. Some of the major issues and challenges are identified. But the real task which lies ahead is that of implementation.

### **2.3 International Efforts**

Human activities introducing hazardous or toxic substances and waste into the environment may cause irremediable harm to natural, cyclical phenomena such as the life cycle, the water cycle or the carbon cycle. Since the end of the 1970s rules increasingly have regulated the substances that produce or can produce harmful environmental consequences. Nearly every human activity generates some kind of waste. Households create common garbage or municipal waste. Municipal waste

consists of everyday items such as paper, yard trimmings, food, clothing, and product packaging. Industrial and manufacturing sites produce solid and hazardous waste. Industrial waste comes from a broad range of activities and in many shapes and sizes, including process waste, animal waste, radioactive waste, and medical waste. The state of the economy strongly impacts consumption patterns and waste generation. In other words, as countries become wealthier, they produce more waste.

Now a day trade in hazardous waste is growing potentially. Due to its reuse and recycling nature it is in demand of production and manufacturing. The developed country easily exports their waste to the developing country. Therefore the developing countries cannot manage hazardous waste due to economic weakness. The countries governments have grave concern in this subject matter. The United Nation Environmental Programme (UNEP) has decided to adopt international document for special treatment of hazardous wastes. It has adopted four multilateral agreements considering all aspect of different chemicals and hazardous wastes.

These conventions are: ---

1. Basel convention, 1989
2. Rotterdam convention, 1998
3. Stockholm convention, 2001
4. Minamata convention, 2013

Now many provision of the Universal Declaration of Human Rights 1948 are considered to be customary international law and reasserted in many international legal documents. UNO's various organs recognize global warming, ozone depletion and other environmental pollution during 1960-70. The UN Charter recognizes the

right to development to every nation and the citizen of such country. At the same time, the UNO recognized the establishment of industries and during the process of development the environmental pollution was increasing. Thus UNO recognized Environment without pollution as human rights. To reconcile both the object and right, the UNO has been conducting several conventions, and has been searching the way and means for the preservation, conservation, and protection of environment, and at the same time, the development should go side-by-side. Thus they want to adopt new policy i.e., sustainable development. Some of the important conventions are as follows: ---

### **2.3.1 The Stockholm Declaration<sup>12</sup> 1972**

The United Nations Charter of 1945 marked the beginning of modern international human rights law, whereas the Stockholm Declaration of 1972 is generally seen as the starting point of a rights based approach to environmental protection. The year 1968 was a landmark event in the history of environment management. The economic and social council of the United Nation passed a resolution no.1346 on 30th July, 1968 for convening an international conference on the problems of human environment. This was followed by a resolution no.2398 (xxiii) passed on 3rd December 1968 by the United Nation General Assembly. In pursuance of the resolution, the United Nations Conference on Human Environment for the first time was held at Stockholm from 5th to 16th June, 1972<sup>13</sup>. The

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<sup>12</sup> The Stockholm Declaration, on human environment is the first document in international environmental law, was adopted June 16, 1972

<sup>13</sup> Rega Surya Rao, *Lectures on Human Rights and International Law* 162 (Asia Law House, Hyderabad, New edn., 2005)

Declaration consisting of three non-binding instruments: a resolution on institutional and financial arrangements; a declaration containing 26 principles; and an action plan containing 109 recommendations.

International document relating to the HWM may be categorized into two periods; one is before Stockholm conference and after Stockholm conference. Before Stockholm conference, the Convention for the prevention of Pollution of the Sea by Oil, 1958; the Convention on Civil Liability for Oil Pollution by Dumping of Waste and other Materials, 1972; the Convention on Prevention of Marine Pollution by Dumping from ship and Aircraft, 1972; the Dumping of Waste and Other Materials Convention, 1972 were held to identified hazards of marine pollution and nuclear test.<sup>14</sup> After Stockholm conference, full attention was given to the use of toxic and other substances which caused serious and irreversible damage, therefore it was resolved that their discharge must be halted.<sup>15</sup>

Principle 1 of the Declaration proclaims its concern about; growing evidence of man-made harm in many regions of the earth; dangerous levels of pollution in water, air, earth and living beings; major and undesirable disturbances to the ecological balance of the biosphere; destruction and depletion of irreplaceable resources; and gross deficiencies harmful to the physical, mental and social health of man, in the man-made environment, particularly in the living and working environment. Principle 2 of the declaration provides for the representative sample of

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<sup>14</sup> C.M. Jariwala, "Hazardous Substances and Waste Law: Lesson for India" in Special Issue on Climate Change and Environmental Law- journal of the Indian Law Institute, Vol. 52 Nos. 3&4 July-Dec 2010. P. 415

<sup>15</sup> Stockholm Declaration, 1972, Principle 6.

the ecosystem and natural resources must be safeguarded through careful planning and proper management. Principle 6 prohibits the discharge of toxic substances into the environment that exceed the absorbed capacity of environment. Stockholm Principle 7 calls on States “to take all possible steps to prevent pollution of the seas by substances that are liable to create hazards to human health.” Principle 18 provides for the avoidance and control of environmental risk.

Its final declaration contains 19 principles that represent an environmental manifesto for environmental protection. In addressing the need to inspire and guide the peoples of the world in the preservation and enhancement of the human environment right, it laid the groundwork for the new environmental agenda of the United Nations system. In this conference 113 states including India represented by then Prime Minister Indira Gandhi participated. The magna carta of our environment was passed in this conference. It contains 26 principles providing for an international policy for the protection and improvement of our environment. The Convention has been able to create global awareness through fuller knowledge and wiser action for more prudent care to the environmental consequences. It has greatly concerned for the improved human environment for our present and future generation.

### **2.3.2 UN Environmental Programme (UNEP)<sup>16</sup>**

The Stockholm Declaration called for an international policy for the protection and improvement of the environment, UN Environmental Programme was set in Geneva in June 1973. It was not an international organization but just like a

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<sup>16</sup> UNEP is a United Nations agency established by the general assembly resolution 2997 (XXVII) of 15 December 1972.

programme, a subsidiary organ of General Assembly. The Governing Council held its first session in Geneva in 1973. Since then it has met on many occasion and reported different subject relating to environment. The main object of UNEP is to implement the recommendations of the Stockholm Declaration. The UNEP plays important role for the protection of environmental rights and has contributed directly or indirectly to the development of several environmental Treats. When UNEP reported on its activities in the field of human rights and the environment in 1999, it explicitly referred to the individual's right to a clean and healthy environment. Notable achievements of the UNEP in the period 1984-1992 are as follows: ---

- a. Vienna Convention for protection of Ozone Layer, 1985
- b. The Convention on Assistance in the event of Nuclear Accident of Radiological Emergency, 1986
- c. The Basel Convention on the Control of Transboundary Movements of Hazardous and other Disposal, 1989
- d. The Biodiversity Convention, 1992

To achieve the goal<sup>17</sup> of the World Summit on Sustainable Development<sup>18</sup> (WSSD), the UNEP and its partner joins their hands to work towards best solution for sound management of chemicals and hazardous waste. Though it contributes a major portion to the world economy, on the same footing it also creates risk to sustainability of environment and human health. Wastes cannot be stopped or avoided. It is an integral to our everyday lifestyle. The important subject of our awareness is that it

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<sup>17</sup> Goal 12( target 12.4) of Sustainable Development Goal by the year 2020

<sup>18</sup> World Summit on Sustainable Development is adopted by the general assembly resolution A/CONF. 199/20, the meeting was held from 28 August to 4 September 2002 at Johannesburg.

should be committed to conducting business in a manner that is compatible with the environmental and economic needs of human. The UNEP stands along with world organizations to minimize the generation and use of chemicals and hazardous waste. The partners of UNEP plays leading role to adopt regulatory frameworks and other policy instrument relating to the scientific disposal of chemical and hazardous waste. Reduce of waste generation through prevention, reduction recycling and reuse.<sup>19</sup> It urges the countries to promote progressive development of international environmental law and create a peace and secured atmosphere. The people must discharge their responsibility collectively or individually so that our planet passed over to future generation. The UNEP and Conferences of Parties (COPs) to the three conventions have equal decision making authority in their respective mandates. The COPs request to the secretariat of conventions to prepare draft of memorandum of understanding between the COPs to the conventions and executive director of UNEP.

### **2.3.2(i) Report of the UNEP to the meeting of COPs to Conventions**

The COPs to the conventions invited UNEP to report on progress in implementation of strategic goals of their respective conventions which will be taken as information document. It includes assessment of the national and international regulatory capacity building, development of action plan. Accordingly the UNEP launched integrated project i.e., “Toolkit” in October 2018, which helps to access and used data contained in the plans and reports. The Executive Director of UNEP submitted its report highlighting the decisions taken at the thirteen meeting of the COPs to the Basel Convention, eighth meeting of the COPs to Rotterdam Convention

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<sup>19</sup> Goal 12 ( target 12.5) of Sustainable Development Goal by 2030

and Stockholm Convention to the fourteen meeting of the COPs to the Basel Convention. The report is consists of two sections. First section is consists of programmatic collaboration i.e., resolutions taken by the UNEP relevant to the BRS Convention. Second section consists of administrative action taken by the UNEP for the implementation of multilaterals environmental agreement.

The United Nation Environmental Assembly adopted many resolutions that contribute to the implementation of various provision of the conventions and decisions of COPs. Such as implementation of Sustainable Development goal, managing soil pollution, preventing and reducing air pollution, promoting environmentally sound management of wastes, relationship between the UNEP and Multilateral Environmental Agreement etc. On the programmatic cooperation between UNEP and Secretariats of the Conventions in its Medium Term Strategy for 2018-2021 and in the programmes of the programme of work for 2018-2019, adopted a number of strategic and sub- programmes for the sound management chemicals and wastes. Their decisions results in reduction of pollution and toxicity through improved wastes management under the theme of COPs. “Clean Planet, Healthy People: Sound Management of Chemicals and Wastes” 2019. The UNEP is an implementing agency to continue to lead implementation of road map to the COPs towards achieving its goal.

The UNEP, in support of the implementation of Article 16 of the Stockholm Convention on POP, continues to implements four Global Environment Facility

funded project from 2016-2020 in 42 countries for sustainable monitoring of POP<sup>20</sup>. The UNEP's project entitled "Chemical and Wastes in the 2030 Agenda Building Capacity in Sustainable Development Goals follow-up and review in developing countries to minimize chemicals and waste risks across sector" aims to collect data and reporting under international chemical and wastes agreement regarding the current status of such agreements. It aims to understanding and capacity building through monitoring trends and identifying needs based on the national decisions in implementation of agreements. It focuses on chemicals in products, strategic planning and knowledge to identify weakness in the strategic approaches to international management of chemicals and hazardous wastes. A project was launched by the UNEP in collaboration with Secretariats of Basel, Rotterdam, Stockholm and Minamata Convention, for strengthen and capacity building of stakeholders in Asia for effective management of chemicals and hazardous wastes regulated under the conventions.

The UNEP's International Technology Centre has implemented a number of projects on Mercury management in collaboration with the Secretariat of Basel, Rotterdam, Stockholm and Minamata Convention through providing economic support to the developing countries. The regional sub-programme co-coordinators were created and funded by UN regular budget to delivery of technical assistance and other activities to implementation of these conventions. Such fund has been reducing since last few years due to continuous requests from donors to waive or reduce the programme support cost. In 2018 the Centre has launched Wastes Management

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<sup>20</sup> UNEP-CHE.14-INF-37.English.available at: <http://www.brsmeas.org/2019COPs/Meeting Documents/ tabid/7832/ctl/Download/...> (Visited on June 23rd, 2019).

Outlook for Latin America and Caribbean in collaboration with Stockholm Convention Regional Centre America and Caribbean, Basel Convention Coordination Centre and UNEP's Regional Office. In Latin America and Caribbean, the "Action Plan for Regional Cooperation on Chemical and Wastes Management 2019-2020" was developed to prioritize capacity building activities for implementation of conventions. The Secretariat of Basel, Rotterdam, Stockholm Conventions plays a role of strong contributor to the other Multilateral Environment Agreements Knowledge Management Initiatives that enables to bring 53 legally binding instruments on environment.

The "Multilateral Environmental Agreements Regional Enforcement Network (MEAREN)" was initiated by Swedish International Development Cooperation Agency and implemented by UNEP in 25 countries to cover harmful substances and hazardous wastes that are controlled by multilateral agreement including BRSC. It addresses all harmful substances and goods listed under the conventions. It provides technical assistance and capacity building at the regional level to support the implementation of the convention. It also joined forces with the Africa, Pacific, Caribbean and European Commission, Latin America to support and comply with the agreement. In 2018, a discussion on important inputs was held to discuss the future of Regional Enforce Network for project and proposals. The purpose of the joint convention is to provide information, training, discuss focal points to prevent incident caused by the transboundary and chemical emergencies.

The UNEP has also launched "Green Custom Initiatives" to enhance the capacity of custom and other enforcement personnel to monitor and facilitate legal

trade and to prevent illegal trade. The UNEP in its administrative action prepared new and standardized guidelines in order to improve internal processes for smooth implementation of multilateral agreements. The UNEP aims to implement the “Organizations Enterprise Resource Planning system that provides to resolve technical issues through knowledge sharing. It also provides agreed portion of income to the Conventions from the multilateral agreement and from fund of programme support resources. The fund balance of programme support resources has decreased due to waive or reduce of donor’s contribution in last few years.

### **2.3.3 Rio Declaration on Environment and Development<sup>21</sup> 1992**

The recommendations made by the Brundtland Commission led directly to the holding of the United Nations Conference on Environment and Development. The most revolutionary step in the history of environmental right was the Rio-summit, 1992. It is known as the “Earth Summit”. Meeting in Rio de Janeiro, in 1992, adopted its “Agenda 21”, a blueprint for the protection of our planet and its sustainable development. Chapter 6 of Agenda 21, adopted at the 1992 Rio Conference on Environment and Development, is entirely devoted to "protecting and promoting human health condition", where Principle 1 proclaims that human beings are entitled to a healthy and productive life in harmony with nature and Principle 14 provides that states should effectively cooperate to discourage or prevent the relocation and transfer to other states of any activities and substances that are found to be harmful to human

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<sup>21</sup> It is a short document on human environment and also known as Earth Summit was produced at United Nation in 1992.

health. By this summit the link between environment and development, and the imperative need for sustainable development was seen and recognized worldwide.

But Agenda 21 went beyond these purely environmental issues to address patterns of development which cause stress to the environment. These included poverty and external debt in developing countries, unsustainable patterns of production and consumption, demographic stress and the structure of the international economy. The action programme also recommended ways to strengthen the part played by major groups of women trade unions, farmers, children and young people, indigenous peoples, the scientific community, local authorities, business, industry and NGOs in achieving sustainable development. Rio-Declaration emphasis on safe and environmentally sound management of hazardous and radioactive wastes.<sup>22</sup> The international and national legal instrument and mechanisms must be implemented. But in Agenda 21 there is hardly any guidance on how its recommendations should actually be implemented. Agenda 21 is criticised for its failure to address the international economic system which is a barrier to improvement in environmental conservation in developing countries. In spite of its shortcoming, Agenda 21 is considered as start point of linkage between development and environment.

To ensure full support for the goals of Agenda 21, the General Assembly in 1992 established the Commission on Sustainable Development, as a functional commission of the Economic and Social Council. The Earth Summit also led to the adoption of the UN Convention on Biological Diversity (1992). The Rio-Declaration ensures that where a substance or activity as a result of human intervention posing

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<sup>22</sup> Section II of Agenda 21, the Rio- Declaration on Environment and Development.

threat or damage to the environment must be prevented. The State government and local authorities must anticipate, prevent and attack the causes of environmental degradation. The onus of proof is on the actor or industrialist to show that his action is environmentally benign.<sup>23</sup> The polluter is liable to pay cost to the individual sufferers as well as the cost of reversing the damaged ecology.<sup>24</sup>

The SDGs are also connected with hazardous and chemical waste mentioned in the targets as bellow:

1. Target 3.9 states that the number of death and illness from hazardous and chemical wastes; and contamination of such substances with soil and water will be reduced by 2030.
2. Target 6.3 provides that recycle and reuse of untreated wastes water, minimization of wastes generation, reducing pollution by eliminating dumping site by 2030.
3. Target 12.4 states that by 2020 environmentally sound management of hazardous and chemical wastes will achieve through their life cycle in accordance with agreed international frameworks.
4. Target 12.5 states for reduction of wastes through prevention, reduction and reuse.
5. Target 14.1 reduction of marine pollution, in particular from land based activities, including marine debris and nutrient pollution.

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<sup>23</sup> The Precautionary Principle incorporated in Principle 15 of The Rio- Declaration on Environment and Development.

<sup>24</sup> The Polluter Pays Principal incorporated in Principle 16 of The Rio- Declaration on Environment and Development.

### 2.3.4 The Basel Convention<sup>25</sup> 1989

The Basel Convention was adopted in the year 1989 at Switzerland for regulating the problem of transboundary movement of hazardous waste at the International level. The working group of UNEP has prepared the Cairo guidelines and principle for environmentally sound management of hazardous wastes in the year 1985. It was adopted by the UNEP Governing Council in 1987 to address the problem at global level. The convention is the result of six sessions of the Ad-Hoc working Group: Buda Pest, 27-29 October 1987 (organizational meeting); Geneva 1-5 February 1988; Caracas, 6-10 June 1988; Geneva, 7-16 November 1988; Luxembourg, 30 January – 3 February 1989; and Basel, 13-17 March 1989<sup>26</sup>. The Basel Convention for the Control of Transboundary Movement of Hazardous Waste establishes a global framework for controlling transboundary trade in hazardous waste and ensuring sound management of wastes that are exported and imported. The convention was adopted to reduce transboundary movement, promote treatment and minimization of hazardous waste.

The main objective of this multilateral convention is to develop a global framework to control transboundary movement and sound management of hazardous wastes. It deals with monitoring and preventing of illegal traffic and ensuring necessary steps for protection of human health and environment. The convention provides for the minimization of generation of hazardous wastes at its sources. It

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<sup>25</sup> The convention was adopted to reduce transboundary movement, promote treatment and minimization of hazardous waste. It establishes a system of prior consent of the importing country before exporting hazardous waste.

<sup>26</sup> Anita Bhatt, *Hazardous Wastes Diplomacy of Brazil India and South Africa (2005)* (Unpublished Ph.D Thesis, Jawaharlal Nehru University).

promotes for the treatment of hazardous wastes as nearest as possible place. The convention also provides for the availability of sufficient treatment and disposal facility at the place of disposal. It establishes a system of prior consent of the importing country before exporting hazardous waste. In its focus on transboundary shipments, the Basel Convention and national-level implement legislation can be complementary to national laws regulating domestic hazardous wastes management of hazardous waste.

The Convention also creates obligations between contracting parties, most notably that each party may prohibit the importation of hazardous wastes, and that other parties must ensure that hazardous wastes are not exported to contracting parties who have prohibited their importation. The Convention therefore sets up a system requiring prior informed consent by the importing country before hazardous waste may be exported. In addition, it requires importing countries to assure the 'environmentally sound management' of hazardous wastes it imports. Further, an exporting State may not export to an importing State, even if the importing State has consented, if the first State has reason to believe that the wastes will not be managed in an environmentally sound manner. Additionally, contracting parties are not permitted to export hazardous wastes to, or import hazardous wastes from, any non-party to the Convention, unless there is an appropriate arrangement in place.

The convention is ratified by 187 countries. India is a Party to the Basel Convention on transboundary movement of hazardous wastes. The Basel Convention is a tool for controlling and reduction of transboundary movements of hazardous and other wastes subject to the Convention, prevention and minimization of their

generation, environmentally sound management of such wastes and for active promotion of the transfer and use of cleaner technologies. As a party to the Convention, India is obliged to regulate and minimize the import of hazardous waste or other wastes for disposal or re-cycling and also to prohibit export of waste to parties, which have prohibited the import of such wastes. India is also required to minimize generation of hazardous waste in the country taking into account social, technological and economic aspects. Many African states considered the Basel Convention insufficient, and in 1998, the Organization for African Unity adopted the Bamako Convention on the Ban of Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa to address specific regional concerns regarding hazardous waste.

#### **2.2.4(i) The Ban Amendment of Basel Convention**

An amendment to the Convention, the “Basel Ban”, was added in 1995, prohibiting the European Union (EU), Organization for Economic Co-operation and Development (OECD) member states, and Liechtenstein from exporting hazardous wastes for final disposal or recycling to all States. At present, non-OECD countries continued to receive waste.<sup>27</sup> The Ban Amendment is the effort of developing and African group of countries, developed countries like USA, Australia, Japan, UK, Canada, Russia, South Korea, Brazil are yet to ratify. The developed countries did not give up their desire to achieve a ban with the signing of convention, instead willing to maintain hazardous wastes trade and disposed it in cheaper manner. In 2017, the

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<sup>27</sup> International conventions regional training in Hazardous Waste September 30- October 2, 2014 San Jos, Costa Rica. *available at:* <http://www.ccbasilea-crestocolmo.org.uy/es> (Visited on January 18, 2019)

conference of the parties discussed on waste those ending up in the ocean such as marine litter; micro plastic etc. although they had not adopted bold action plan. General issues of implementation and compliance, and its draft 2020-2021 work programme adopted<sup>28</sup>. India has not ratified ban amendment though it had adopted 'swacchabharatabhiyan' a cleanliness project.

The ban amendment provides for the prohibition of transboundary movement of hazardous waste not included in the convention list by the parties. But the convention allowed for transboundary movement of such wastes for reuse, recycle and recovery. The second meeting of the COPs decides to adopt ban amendment in March 1994 to address restriction and controlling in import and export in transit of hazardous wastes. Particularly the poorer country unable to manage hazardous waste but continued to receive it. But at present the non-OECD continued to receive wastes. The parties listed in Annexure VII of the convention have agreed in 31 December 1997 prohibiting all transboundary movement of hazardous wastes for reuse, recycle and final disposal.

Due to the ambiguous view and different interpretation of various provision of convention among the parties regarding the ban amendment, the president of COPs ninth meeting issued a statement to organised Country Led Initiatives (CLI) for implementation of ban amendment. Indonesia and Switzerland has declared for organization of CLI to create enabling conditions for effectiveness of convention's objectives and goal. Section A of the decision BC 10/3 of COPs at its tenth meeting

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<sup>28</sup> Thirteenth meeting of the Basel Convention Implementation and Compliance Committee. Geneva, Switzerland from 07 to 10 September 2018. *Available at:* [www.basel.int](http://www.basel.int) (Visited on March 13, 2019).

interprets article 17(5) of the convention regarding amendments and addresses the entry into force of ban amendment. The secretariat provides information and other assistance for exchanging experiences between the parties that are legal and practical advices. It also includes face to face activities facilitating for development of ban amendment. It has not come into force despite 95 parties have ratified it. It is because the secretariat fails to compel the hazardous wastes trader to follow the provision of the convention. It is stuck due to technical issues raised by Japan. Trade agreement between the developed countries depolarized the treaty convention as because it calls for the ban on hazardous wastes to be stopped by the World Trade Organization. U.S. produces most wastes but has failed to ratify the ban. Though an Indian Mr. P.S. Rao was the chairman of the drafting committee, India had failed to ratify the ban amendment.

#### **2.3.4(ii) The environmental network to optimizing Regulatory Compliance on illegal traffic**

An Environmental Network for Optimizing Regulatory Compliance on Illegal Traffic (ENFORCE) was consisted of one representative from each of the five UN regions that are parties to the convention and four each representative from Basel Convention and from its Regional Coordinating Centre. The aim of ENFORCE is in compliance with the provisions of the Basel convention through implementation of national law for enhancing co-operation and coordination between the relevant entities with the support of a network of relevant expert. The ENFORCE has 18 members on 15 January 2019. COPs to the convention encouraged the members and secretariat to report on the network activities. At the third meeting of the ENFORCE on 15 and 16

May 2018, the members the organizational matter and latest trend on hazardous wastes management. They also agreed to adopt a road map to observe priority and supportive activities for proper management of hazardous wastes. The activities of ENFORCE includes priority activity to improve the understanding of challenges; sharing activity to support and facilitating tools and techniques

The convention was entered into force in May 1992. The convention requires the parties to submit their report annually pertaining to the information related to the implementation of the convention through the secretariat of the COPs<sup>29</sup>. Such report assists the conventional bodies to identify relevant issues to monitor implementation of the convention. But it is very regret to say that the report targets have never been met since 2009. It has been found that slight improvement occurs in 2010, but as of 2013 only 47 per cent of convention parties submitted their national report<sup>30</sup>. Nearly 60 per cent could not submit due to difficulties with reporting<sup>31</sup>. Therefore a revised guidance document on improving national reporting by the parties has been prepared under the mandate provided<sup>32</sup>. The document was adopted at the twelve meeting of the COPs. and expected to complement existing convention guidance document. The document is guidance for the national officials to collect information for preparing national report, despite it the rate of reporting is 50 per cent under the convention<sup>33</sup>. Lack of close link between the obligation of the convention and obligation to submit

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<sup>29</sup> According to Article 13 para 3 of the Basel Convention 1989.

<sup>30</sup> The classification is set out in document UNEP/CHW.13/INF/26

<sup>31</sup> UNEP-CHW.13-INF-59.English.pdf. *available at*:<http://www.basel.int/portals/4/download.aspx?d=UNEP-CHW.13-INF-59.English.pdf>.(Visited on June 6, 2019)

<sup>32</sup> Decision BC-12/7. *available at*: <http://www.basel.int/convention/ConferenceoftheParties/ReportsandDecisions/tabid/3303/Default.aspx>.(Visited on August 20, 2019)

<sup>33</sup> UNEP/CHW.13-INF-26.pdf. *available at*:[www.basel.int](http://www.basel.int)(Visited on August 20, 2019)



parties to contribute the Basel Convention Trust Fund to assist developing countries and others in need of technical assistance. The COPs requests the Secretariats of the conventions to ensure full utilization of the funds for administrative action. The ministers of foreign affairs of the COPs are required to take initiatives in respective areas. The working committee provides for the electronic approaches for the movement of documents and exchange of information on existing resources, activities and approaches that addressed the wastes containing materials covered under the convention.

### **2.3.5 The Rotterdam Convention<sup>35</sup> 1998**

United Nation treaty the ‘Rotterdam Convention’ on the prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade was signed on 10 September 1998 at Rotterdam, the Netherlands. It was entered into force on February 24, 2004. It is originated from a voluntary information exchange programme in the year 1980. Due to emerge growth in chemical production and trade that poses potential risk to human health and environment during past three decades, the UNEP and Food and Agriculture Organization (FAO) developed voluntary code of conduct and information exchange system that culminated with the prior inform consent procedure in 1989. The objective of the convention is to share responsibility and information on the characteristic of chemicals and its proper management among the exporting and importing parties. The Convention is a multilateral treaty to promote shared responsibilities in relation to import of hazardous

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<sup>35</sup> The United Nation treaty i.e., Rotterdam Convention on the prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade was signed on 10 September 1998 at Rotterdam, the Netherlands.

chemical and promote open exchange of information to use proper labeling, safe handling to the purchaser of such hazards.

As of October 2018, the Convention has 161 parties, which includes 158 UN member States. The signatory nations can decide whether to allow or ban the import of chemicals listed in the treaty, and exporting Countries are obliged to make sure that procedures within their jurisdiction comply. Article 5 of the convention provides for the parties for notification of final regulatory action taken in respect of ban and restricted chemical for the information of the other parties. It also requires the parties for possible elimination of production and use of restricted chemicals. It restricts the import and export without taking into account international standard and rules. The Secretariats of the Stockholm convention, the UNEP part of the Rotterdam Convention Secretariat as well as the Secretariats of Basel Convention merged to a single Secretariat with a matrix structure. The mandates of the Secretariats are laid out in Article 16 of the Basel Convention, Article 20 of the Rotterdam Convention and Article 19 of the Stockholm. The main principles of the Secretariats are as follows:-

1. Preparation for service meeting of the COPs. and its subsidiary bodies;
2. Received and convey information to the parties;
3. Assist or facilitate assistance to parties;
4. Coordination with other international bodies.

The thirteen meeting of the Conferences of the parties to the Basel, eight meeting of the conferences of Rotterdam and Stockholm Convention was held back to back from 29 April to 5 May 2017, in Geneva. The meeting was attended by 1,400 participants, 80 Ministers from 170 countries, adopted more than 60 separate decisions

on International cooperation and coordination, enhancing cooperation and coordination among the three Conventions, clearing house mechanisms for information exchange , mainstreaming gender, synergies in preventing and combating illegal traffic and trade in hazardous chemical and wastes, and “from science to action”.<sup>36</sup> The parties adopted decisions BC-13/21, RC-8/24, SC-8/24 on the synergies in preventing and combating illegal traffic and trade in hazardous chemicals and wastes. The Basel, Rotterdam and Stockholm (BRS) Conferences provides for a range of measures to achieve their goal, including setting of conditions and procedures to be followed for the import and export of the covered hazardous chemicals and wastes. These conditions and procedures are expected to ensure that importing State are not comforted with hazardous chemicals and wastes that they do not wish to receive because they are unable to manage them in a environmentally sound manner.

The regional preparatory meeting of the COPs to the BRS convention for the Latin America and Caribbean region was held from 27 to 29 March 2019. It gives thanks for providing financial support by the Norway and Switzerland. The aim of the meeting is to consider the documents of meeting, identify the regional matter of challenges, and discuss substantive matters for development of regional position. At this meeting following priority areas are consulted among the secretariat, parties and observer. These are: ---

- Compliance, including the proposal to add a new annex to the Convention submitted by a group of parties;

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<sup>36</sup> Available at: [www.brsmeas.org/2017COPs/overview](http://www.brsmeas.org/2017COPs/overview) (visited on October 23, 2018)

- Enhancing the effectiveness of the Convention, including the proposal to amend Article 16 and 22 of the Convention submitted by the African parties to COP-8;
- Listing of Chemicals in Annex iii to the Convention, including recommendations from the Chemical Research Committee (CRC) to list acetochlor, hexabromocyclododecane, phorate, carbosulfan, chrysotile asbestos, fenthion formulation;
- Status of implementation of convention.

#### **2.3.5(i) Report of the working group on enhancing the effectiveness of Rotterdam Convention**

As per mandate of the seventh meeting of COPs an intercessional working group was constituted to process the listing of chemicals in Annex iii and improving the effectiveness of convention. The working group was constituted to enhance effectiveness of Rotterdam Convention hosted by Food and Agriculture Organization of the United Nations in 2018 from 4 to 6 June. It was originated from a concern of some parties over the failure to list chemicals in annexure III of the convention. The Secretariat of Basel, Rotterdam and Stockholm Convention welcomed the participants and highlight the intention of the convention that was to promote exchange of information which helps to its implementation. In 2018, from 4 to 6 June a meeting was held to prioritize recommendations and further steps for consideration at its next meeting. The COPs to the conventions originated the working group concerning about the failure of the parties to list chemicals in Annex III of the convention and mandated to look at the effectiveness of the convention.

The working group comprised 46 members from 28 parties and one observer from a non-party<sup>37</sup>. It is open to participation by non-party states. The working group has discussed the matter of prior informed consent procedure, provision for financial and technical assistance at the eight meeting of COPs. The Secretariat has prepared a report on legal and operational implication of the priority action through online survey and the parties may give their comments or opinion on it. The working group has to provide recommendations based on report of the secretariat and comments of the parties. It also has to prepare a report for further steps to be considered by the Cops at its ninth meeting. The first meeting of the working group on enhancing the effectiveness of the Rotterdam convention was held from 4-6 June 2018, at ministry of environmental protection and regional development, Riga, Latvia. The state secretary from Latvia Mr. Rinald Mucin reminds the objective of the convention that was to promote the information exchange for facilitating the implementation of convention. On behalf of the Executive Secretariat of the basel, rotterdam and Stockholm convention Mr. Martine Novella asked the members of the working group to fulfill the mandate of COPs for facilitating information exchange and share responsibility in international trade.

At this meeting the government of Germany, Norway, Australia, and European Commission provides financial support and interest towards the intersessional work of the convention. There is need for capacity building and support from the parties to

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<sup>37</sup> Members and observers of the intercessional working group on enhancing the effectiveness of the Rotterdam Convention (as of 29 May 2019). Available at: [www.Pic.int/portals/5/download.aspx?d=UNEP-FAO-RC-Effectiveness-IWG-Members-Observers2018.English.pdf](http://www.Pic.int/portals/5/download.aspx?d=UNEP-FAO-RC-Effectiveness-IWG-Members-Observers2018.English.pdf) (Visited on May 28, 2019)

tailor assistance. The Secretariat of the Convention makes efforts for capacity building and requests the parties for providing support in this regard. The Secretariat has provided technical assistance more than 100 parties between 2016-2017. The FAO also provides Regular Programme Fund of USD 1.5 million per biennium for Secretariat staff and technical assistance for parties. The budget of the Secretariats and their staffing are determined by the Conference of the parties and are funded by contributions from parties based on the United Nations scale of assessment.

India as a member of the working group was unable to attend the meeting. Non-party state United State of America represents as an observer. An online survey was conducted to gather suggestion from the parties on key information on priority action that can provide possible approach to enhance effectiveness of the convention. 51 parties that represented the convention has submitted their responses in answer and 53 parties and 4 observer gives their comments on legal and operational implications of the priority action. The priority action activity has four sections. These are: ---

1. The priority action related to the process of listing chemicals in Annex III;
2. Information exchange;
3. Development of guideline, capacity building, technical assistance;
4. And other processes.

Under the first section, the Secretariat provides for the procedural steps for listing chemicals and prior informed consent procedure. The parties can obtain information of the Chemical Review Committee (CRC) from the report of the meeting of working group. Some members discussed the idea of establishing separate expert group to assist the parties to submit regulatory action at national level. Some other opposed them by stating that it is a very simple process need not require expert group.

The Secretariat can identify the needy country through organizing workshop and other evaluation processes. Several members of the working group discussed on the operational procedure of the CRC. The CRC can provide more feedback to the COPs. Many members highlighted that the guidelines for selection of members should be improved. The members of the CRC should received training on the convention. Under the second section of the priority action, the member of the working group invites the parties to share existing information on chemical and hazardous wastes. Several members suggested for online availability of export notification between the parties through software. Exchange of information for final regulatory must be voluntary but not place an additional burden on country, the member added. The third section highlighted on enhancing coordination at national and international level through collecting and accessing information on chemicals and hazardous wastes. Such a bilateral and interregional collaboration would benefit for the parties.

The working group recommended constituting an expert team to assist parties for submission of final regulatory action. Several others argue for unimportance of extensive support for the process of identifying regulatory action and mandate of such expert group. The Secretariat introduces the procedural steps of prior inform consent procedure and listing of chemical. The member of the working group expressed their view that the chemical review committee could provide more feedback by organizing regional preparatory meeting prior to the meeting of COPs. They suggested that the guideline for selection of the member of chemical review committee should be improved. The Secretariat should review the qualification of members required to carry out the work. Proper training should be provided on the convention.



Rotterdam and Stockholm convention in terms of regulated substances. Therefore there are possible chances of increase in illegal traffic. The 75 per cent of the parties stated for the further development of their legal and institutional mechanisms.<sup>39</sup> The secretariat received 16 number of submissions from organizations, regional and global enforcement network to provide information on their activity and lesson learned on preventing and combating illegal trade.<sup>40</sup> Such activities are

1. Green custom activities which aims to detect and prevents illegal trade.
2. E-learning course on detection and prevention of environmental crime at the broader of Organization for Security and Cooperation in Europe (OSCE) which is available in Russia.
3. The UNEP Regional Network Enforcement for Chemicals and Wastes
4. Under the three conventions a number of widespread activities focused on illegal traffic, sound management of mercury, waste oils, and other waste substances listed under the conventions.
5. For the Rotterdam convention, both Food and Agriculture Organization of UN and OECD have taken initiative for control of illegal trade in pesticide. Such as establishment of Rapid Alert System, special programme under UNEP, Strategic Approach to International Chemical Management (SAICM) to support institutional strengthen and capacity building project at national level

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<sup>39</sup> A summary of the responses received in annexure I to document UNEP-CHW.14-INF-42- available at: <http://www.brsmeas.org/2019COPs/MeetingDocuments/tabid/7832/ctl/Download...> (Visited on June 23, 2019)

<sup>40</sup> *Ibid.*

for the implementation of the three conventions. But none of SAICM's project has focused on illegal trade<sup>41</sup>.

The control of the international trade of chemicals is covered by the Rotterdam and Stockholm Conventions, while trade of wastes is regulated by the Basel Convention. International trade in hazardous wastes is considered illegal under the Basel Convention, when a party is not allowed to import hazardous wastes from a non-party, unless a specific agreement is concluded. In a similar way, imports and exports of Persistent Organic Pollutants (POPs) including in the Stockholm convention are allowed only for the purpose of environmentally sound disposal or for the use which is permitted by the importing State. Other requirement are for trade to be considered "legal" may be imposed by other international treaties as well as by the national legal framework of a country: therefore it is doubtful to consider whether a shipment is legal or not according to the context of all the provisions of convention. The aim of the Rotterdam Convention is to make available the present information regarding the hazardous wastes and provides mechanisms to exchange information on export and imports amongst all parties. The failure part of the convention is that the effectiveness of the convention is not evaluated since its enforcement.

### **2.3.6 Stockholm convention<sup>42</sup> 2001**

The production and use of hazardous chemicals is covered by the Stockholm Convention on Persistent Organic Pollutants (POPs). The convention is a global treaty adopted in 2001 at Stockholm and effective from May 2001. India has signed it in

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<sup>41</sup> *Id.*

<sup>42</sup> Article 13 & 14 of the convention provides for the financial mechanisms for enabling activities of nations.

May 2002. The main objective of the convention is to eliminate or restrict the production of persistent organic pollutants<sup>43</sup>. The POPs are the group of substances of characteristics of toxicities, bio-accumulation, and bio-magnification persistence covered under the convention that is transported through air, water and with migratory species. The convention provides the strictest order to the parties to develop the strategies to identify stockpile of products and wastes by taking appropriate measures. Such as disposal of wastes when POPs content is low, follow the international regulation while export etc. The Convention provides that each party should prohibit and eliminate the production and use of hazardous chemicals, and regulate the import and export of such.

National Implementation Plan (NIPs) was developed by the countries under the convention to carried out developmental mechanisms for strengthen inter-disciplinary, inter-institutional, inter-sectored approach in terms of management and control of chemical substances and products. Now NIPs has been developed in more than 37 countries since 2013 with the assistance of UNEP. A Convention on Safety and Health in Agriculture adopted by the International Labor Organization on June 21, 2001 provides for the elimination, minimization and controlling of hazardous wastes in the agricultural working environment. Each State should adopt appropriate measure for importation, classification, packaging, labeling and handling of hazardous chemicals and wastes. The convention signatories agree with the list of 12 worst offenders prepared by International Program on Chemical Safety. Therefore the

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<sup>43</sup> POPs are organic compounds that are resistant to environmental degradation through chemical, biological and photolytic processes.

convention prohibits such offenders including 28 POPs, dioxin, furans that are detected in marine plastic litters in 2018. The UNEP launched integrated project to implement four global environment facility funded POPs from 2016 to 2020 in 42 countries for sustainable monitoring of POPs.<sup>44</sup> It also launched project “Chemical and Wastes in 2030 agenda building capacity in sustainable development goal follow-up in developing countries to minimize chemical and wastes risk sectors across” to implement the provision of international wastes agreements.

### **2.3.6(i) Evaluation report of the regional centers under the Basel and Stockholm Convention**

The Regional and Sub regional Centers are constituted under the Basel and Stockholm conventions to provide technical assistance and promote transfer of technology to developing country parties. These are the bodies mandated under their respective convention for implementation of their obligation under the Basel, Rotterdam and Stockholm Convention. These are the principal regional delivery mechanism having independent legal entity under the national laws and the authority of the conference of the parties. The Secretariat has developed the plan of technical assistance on a wide range of programmatic co-operation activities such as development of tools, pilot projects, training and workshop etc. Asia and the Pacific Region have the Basel and Stockholm Convention Regional Centre located in China. It has operated since 1997. India, Sri Lanka, Nepal, Maldives, Thailand, Viet Nam, Philippines etc. are coverage parties of the centre. The Basel Convention Regional

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<sup>44</sup> Report of the executive director of UNEP to the meeting of the conferences of the parties to the Basel, Rotterdam, Stockholm convention, Geneva 29<sup>th</sup> April -10<sup>th</sup> May 2019 of 20<sup>th</sup> March 2019.

Centre of China demonstrates the identification of documents, implementation of project activities and conducted investigation in formal and informal sectors for more advance technologies for environmentally sound management of hazardous wastes. The centre has received financial support of US\$2, 200,000 during last four year. The government of China shall provide contribution as mentioned in the frame work convention towards the operation of the centre.<sup>45</sup>

The Stockholm Convention Regional Centre of China have implemented more than sixteen number of capacity building activities during the last four year and more than five parties are benefited from the technology transfer activities.<sup>46</sup> The Stockholm Convention Regional Centre in India established as a Nominated Stockholm Convention Centre in 2010. It was hosted by National Environmental Engineering Research Institution, Nagpur. It has no mandate to frame work agreement under the convention. The Centre able to establish ENVIS centre in India in collaboration with the MoEF&CC to share the databases and technologies developed to address hazardous wastes management. It has reported regularly to the COPs regarding the implementation of obligation under the convention and more than eight capacity building activities are implemented during the last four year.

### **2.3.6(ii) Implementation of integrated approach for the sound management of chemical wastes**

The COPs to the three convention joined hand with the UNEP to address financial sound management of hazardous wastes. It also agreed to establish Special

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<sup>45</sup> UNEP-CHW.14-INF-28-REV.1.English.pdf. page at 67 Available at: [http://www.brsmeas.org/2019cops/MeetingDocuments/tabid/7832/ctl/Download/...\(Visited on June 23, 2019\)](http://www.brsmeas.org/2019cops/MeetingDocuments/tabid/7832/ctl/Download/...(Visited on June 23, 2019))

<sup>46</sup> *Ibid.*

Programme to support national institution for implementation of the conventions<sup>47</sup>. The Executive Board of the Special Programme approved seventeen projects in Afghanistan, Belarus, Brazil, China Ecuador, Gambia, India etc. amounting to US\$ 5.1 million in 2017. The COPs requests the Secretariat to assist the parties to the conventions to recognize the importance of the joint programme in that subject. It also requested the Executive Secretary to ensure activities of the Secretariat as referred in the programme of integrated approach. The main components of the integrated approach are mainstreaming, industry involvement and dedicated external finance. The mainstreaming activity includes technical assistance, international cooperation and increasing synergies between the three conventions at regional and national level that assists the parties to implement their obligation.

The Secretariat planed for the implementation of technical assistance plan for the period 2018-2021 in the biennium 2018-2019 through reporting, monitoring, developing national plans and exchange of information relating to the chemical and hazardous wastes. Asthe status of implementation and lesson learned of Special Programme funded project, India has initiate a project ‘Institutional Capacity Building for Sustainable Management of Chemical and Wastes with Special focus on Persistent Organic Pollutants (POPs) under the second round of application at the thirteen meeting of the Executive Board. An international conference to address the issues of industrial hazardous was hosted by the Industrial Toxicology Research Centre (ITRC)

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<sup>47</sup> UNEP/CHW.14/INF/34-UNEP/FAO/RC/COP.9/INF/27/-UNEP/POPS/COP.9/INF/33 of 27 February 2019  
Available at:<http://www.brsmeas.org/2019cops/meetingdocuments/tabid/7832/ctl/Download/mid...>  
(visited on March 23, 2019)

29 October-2 November 2000 in Lucknow, India. It was convened by the National Institute of Environmental Health Sciences (NIEHS); the U.S. Environmental Protection Agency; the U.S. Agency for International Development; the Institute for Global Health, University of California; the Center for Occupational and Environmental Health, University of California; the World Health Organization (WHO); the Centers for Disease Control and Prevention; the World Bank; the Council of Scientific and Industrial Research; and ITRC. About 175 participants from 27 countries attended. The purpose of the conference was to bring together experts in the field of environmental and occupational respiratory diseases to focus attention on major health problems that affect millions of people around the globe and to stimulate research and development of appropriate public health responses in a fresh perspective.

The fourteen meeting of the Conferences of the parties to the Basel, ninth meeting of the conferences of Rotterdam and Stockholm Convention will be held back to back from 29 April to 10 May 2019, in Geneva. The meeting will include joint sessions covering matters of relevance to at least two conventions and separate sessions of the meetings of the each of the three Conferences of the Parties. The meeting will not feature a high level segment. Provisions of the Rotterdam Convention on the prior informed consent procedure for certain hazardous chemicals and pesticides in international trade encourage parties to ensure that such information is available to the public<sup>48</sup>. India should oblige to regulate and minimize the import of such wastes as a party to the convention.

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<sup>48</sup> Article 15, annexure iii to the Convention of the Convention.

### 2.3.7 Minamata Convention<sup>49</sup> 2013

Minamata is a severe mercury poisoning disease that causes damages to the central nervous system. It was in the year 1956, when highly toxic methylmercury had released in the wastewater from a chemical factory. The wastewater was discharged into the Minamata Bay as a result which many people of Minamata city of Japan were died due to eating fishes of the Bay. Horrified by this incident the whole universe united together and seeks to protection human health and environment from mercury compounds. The minamata convention on mercury came into force on 16<sup>th</sup> August 2017 following 112 parties and 128 signatories<sup>50</sup>. The convention is an international treaty to draw the attention of whole universe to control the release of mercury to the environment. Due to its large used in everyday objects there might have chances of release of mercury from various sources. Therefore imposing the obligations among the nations are major factors under the convention. There are 101 parties to the convention. The first meeting was held from 24 to 29 September at Geneva. The convention provides specific measure for each steps of mercury lifecycle. The parties update various strategies to tackle this neurotoxin which is one of the most dangerous pollutants.

Global Mercury Assessment 2018 prepared by UN environment was presented and it has found top 10 chemical threats to human health. It reveals that mercury emission should be response proactively so that it can be reduced. On 18 November, 2018 the Kumamoto and Minamata City of Japan organised a mercury free fair to celebrate 5<sup>th</sup> anniversary of adoption of the convention. The day long fair attracted

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<sup>49</sup> The convention was adopted on 10<sup>th</sup> October 2013 at Kumamoto, Japan

<sup>50</sup> Available at: [www.mercuryconvention.org/en-US](http://www.mercuryconvention.org/en-US) (Visited on August 20, 2019)

more than 4,000 visitors. The second meeting of the conference of the parties to the convention was organised from 19 to 23 November 2018 at Geneva. Amongst 150 countries, 94 of them are strength their effort to reduce mercury emission and reaffirm the people's commitment to the awareness of mercury compounds. A new study reveals that global mercury emission into the environment arose by around 20% between 2010 to 2015.<sup>51</sup> The convention implemented it provisions which includes banning of new mercury mine, reduce the use of mercury in artisanal and small scale gold mine, industrial production such as lamps and batteries, coal burning etc. It also imposed conditions of interim storage and disposal if it becomes waste. It also imposed total ban on import and export of mercury added product by the year 2020. The countries like South Africa, Brazil and Philippine promoted the use of mercury free medical devices.

The chemical industries have also used mercury to produce chlorine and caustic soda. Therefore the convention requires for the eventual phase out of mercury use. South America, east south Asia, Sub Saharan Africa creates great amount of mercury emission. The convention is equipped with financial assistant from Global Environmental Facility (GEF) that supported 110 countries to develop their Minamata Initial Assessment. The GEF supported 32 countries to design National Action Plan for small scale gold mining. It also provides specific international programme that approves five projects. The United States of America claims that it provides measures for implementation of minamata convention<sup>52</sup>. These are: ---

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<sup>51</sup> UNEP Annual Report 2018

<sup>52</sup> In pursuant to the article 30 Para 4 of the convention.

1. Since the early 1990s there have been no primary as well as active mercury mines in US.
2. To ensure proper disposal of excess mercury Resource Conservation and Recovery Act and the Mercury Export Ban Act of 2008 was enacted.

The COPs to the basel, rotterdam and stockholm convention has joined United Nation Environmental Assembly (UNEA) and had adopted various co operational activities at national level to share their experiences in cases of illegal trade in hazardous wastes. The secretariat has able to receive 45 responses among questionnaire sent to the 187 member parties in 2018. Many member states such as Honduras, Serbia, and Belgium replied with reported cases of illegal trade in Rotterdam convention. It also entered into an agreement to implement integrated approach and special programme for financing sound management and to support national institution.<sup>53</sup> Special programme such as ‘multilateral environment agreements regional enforcement network’ has able to give training of 1476 frontline enforcement officer and seizer of 865,000 tons of hazardous chemicals and wastes through improve intelligence exchange are the example of achievement of such programme<sup>54</sup>. The decisions that have taken by the COPs of the conventions on implementation of the integrated approach to financing sound management is a piece of paper work containing words like ‘emphasize’, ‘discuss’, ‘provide’ etc. rather than

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<sup>53</sup> UNEP/CHW.14/INF/34-UNEP/FAO/RC/COP.9/INF/27/-UNEP/POPS/COP.9/INF/33 of 27 February 2019

Available at: <http://www.brsmeas.org/2019cops/meetingdocuments/tabid/7832/ctl/Download/mid...> (Visited on March 23, 2019)

<sup>54</sup> Available at :[http://ps://wedocs.unep.org/bitstream/handle/20.500.11822/27506/ RENFinalPR.pdf?sequence=1&isAllowd=y](http://ps://wedocs.unep.org/bitstream/handle/20.500.11822/27506/RENFinalPR.pdf?sequence=1&isAllowd=y) (Visited on April 8, 2019)

‘adoption of specific activity for implementing obligations of the convention. The report on implementation of integrated approach includes many components amongst which involvement of industries is one. But the report is silent regarding the control or regulation and principle that must have fulfilled by the industries.

## **2.4 Discussion**

Hazardous Wastes Management is a global issue and it is not an isolated problem of any area or nation. Different dimensions of the problem of Hazardous Wastes Management have taken a serious turn in the present era. Industrialization, hazardous wastes generation and improper management of hazardous wastes are some of the major factor that contributed environmental degradation. At this venture the international documents relating to hazardous wastes management should have take bold initiative approaches. It could not be impossible if the COPs prepares and promote documents for supporting the implementation and compliance of the conventions. The parties to the conventions have failed for some to submit their comments on the issues and activities that are relating to wastes material and management within the purview of the convention. The parties must avoid duplication of work and provide voluntary contribution to fund. Many parties does not provide their financial contribution, in such circumstances full stress has been given to the realistic budget presentation with agreed priorities of all parties so as to encourage voluntary contribution.

Initiatives must be taken to enhance efficiency in the utilization of fund and human resources in the future plan. The Executive Secretariat must take initiatives to discuss and analysis the budge base issues in the upcoming budget for the biennium

2020-2021. The Executive Secretary must provide cost estimates for actions that have budgetary implication that are not foreseen in the draft programme of work but are included in proposed draft decisions. The COPs has failed to submit the draft memorandum of understanding that containing the Secretariats functions for the conventions in 2017. Such instances are more hindrance than cooperation to achieve the purposes of international documents. Therefore the international documents need to be implemented by the parties and non-parties countries must become a party instead of showing their gravity of consciousness against the environment conservation and protection.

The urgent need of hour is Sustainable Development. Sustainable Development is that development which meets the need of the present without compromising the ability of future generation to meet their own needs.<sup>55</sup> India is obliged to regulate and minimize the import of hazardous waste or other wastes for disposal or re-cycling and also to prohibit export of waste to parties, which have prohibited the import of such wastes. India is also required to minimize generation of hazardous waste in the country taking into account social, technological and economic aspects. That India prohibits the importation of hazardous wastes, and also ensures that hazardous wastes are not exported to contracting parties who have prohibited their importation. Environment and development both are for the people, therefore development must possess sustainability. Developmental planning must be measured the need of the present with future conservation of environment. Most of the developing countries has

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<sup>55</sup> Our Common Future- The World Commission on Environment and Development, 43 (1987)

environmental problem caused by the developmental activities. Therefore developmental activities must have environmental imperatives.

The UN information project on multilateral environmental agreements benefitted from the conventions as a strong contribution of works towards the information portal. All the activity of the project is conducted by the partners in consultation with UNEP both on quality and effectiveness of the results. There must be cross collaboration strategy among the partners to engage other stakeholder. International environmental technology centre took initiatives in the area of mercury management by implementing various projects such as global mercury wastes assessment and enter into a number of partnership with the secretariats of Basel Rotterdam, Stockholm convention. Before providing an investigation of the prevailing legal system to manage the hazardous waste, it is necessary to check out the practical scenario of problematic area.

Under the conventions very few organization have implemented relevant activities such as green customs initiatives, MEAREN, organization for security and co-operation in Europe to detect, prevent, control and combat illegal traffic. Only 36% of the respondents have established national co-operation mechanisms. Awareness should have to take action to identify gender, human rights and anti-corruption issues; highlighting impact of illegal trafficking of hazardous wastes and chemicals. The MEAREN empowers to establish interregional communication and engagement to minimize wastes generation and illegal movement. China has made significant changes in policy to control wastes trafficking. The parties to the convention should give attention to take training of the customs and enforcement authorities,

development of standard operating procedures, enhancing scientific workshop to identify regulated wastes containing hazardous substances as well as need to strengthen controls in export countries.