

Haiti's Toxic Waste Dilemma: A Case Study of Environmental Policy Shortcomings in Global Context

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Transshipment of global waste and its environmental implications is a recognized area of concern for policymakers and scholars alike. The case selected for this research pertains to an environmental dispute which resulted from the dumping of incinerator ash near Gonaïves, Haiti. The dispute raises significant environmental justice concerns and illustrates how an asymmetric relationship between powerful and weak states (i.e., United States and Haiti), as well as political instability of the weaker state can delay resolution of an environmental conflict.

This case study examines an environmental dispute arising out of the dumping of incinerator ash near Gonaïves, Haiti and raises significant environmental justice concerns as well as the tenuous relationship between local and global waste disposal actors. Haiti, a small and politically unstable developing country, fell victim not only to an unscrupulous ship captain who dumped the ash, but also to an asymmetrical power relationship in which Haiti was pitted against the United States in the negotiation to return the ash to its country of origin. Negotiation for resolution of the problem took sixteen years to achieve. The case illustrates how poverty and weak political institutions make Haiti vulnerable to the behavior of external actors. In light of the devastating January 2010 earthquake in Haiti, the reader will notice that many forces in this case are still evident today as Haiti rebuilds Port-au-Prince and other parts of the country. Haiti suffers from an asymmetrical power relationship with state and nonstate actors whether the issue is incinerator ash or disaster management. It still struggles to be the master of its own destiny.

In 1988, the incinerator ash from Philadelphia, Pennsylvania was dumped next to a limestone wharf located next to a mangrove swamp. Much of the ash was then moved to an upland location about 5 kilometers from the wharf site. A 1995 on-site evaluation and analy-

sis of the ash by Environmental Protection Agency (EPA) specialist, Harry Compton noted that “the residual ash material in the wharf is currently completely exposed to wind and water and unstable in its location” (Compton and Sprenger 1996, 1-2). The EPA study, which was commissioned by the United Nations Development Program, concluded that the ash did not exceed permissible levels for heavy metals. EPA recommendations for solving the problem were twofold and included: (1) removing ash from the wharf to the upland site; and, (2) containing all of the ash with a cap constructed of crushed limestone. The Haitian government never accepted this solution and, instead, negotiated for the ash's complete removal from the country.

Theoretical Framework and Literature Review

This article takes a twofold approach to management of an incident involving the dumping incinerator ash in Haiti. First, I use a case study approach to focus on the broader environmental justice issue resulting from the transshipment of global waste. I bring attention to how the developed/developing country power relationship between Haiti and the United States became heavily asymmetrical and aggravated the environmental justice component of this incident. Connected to this asymmetrical relationship is the role of subnational actors—especially waste management companies and a shipping company—and how they delayed resolution of the problem. Second, I explore whether the Haitian government, in partnership with nongovernmental organizations (NGOs), employed any of the following three commonly accepted theoretical principles regarding environmental controversy: (1) the polluter pays concept; (2) the precautionary principle; and, (3) the principle of good neighborliness.

Sands and Peel (2005) argue that the polluter pays and precautionary principles as well as good neighborliness are general conceptual elements within a larger body of international environmental law affecting all actors within the international arena. Sands (1999) explains that polluter pays has become generally accepted as a means to settle civil and state liability for environmental damage. The precautionary principle provides the framework when confronted with scientific uncertainty. In this case, EPA standards precluded labeling the ash as hazardous waste, but based on the precautionary principle a call to action was imminent—and NGOs and the Haitian government shared that view. Good neighborliness, according to Sands (1999) also implies cooperative emergency assistance. However, defining what constitutes an emergency often becomes a judgment call by involved actors. Mitchell (2010) expands this approach by emphasizing the importance of *framing the issue*. While some environmental problems are framed by a symmetric Tragedy of the Commons approach in which both parties are victims, NGOs and governments frame other problems as asymmetric externalities complete with victim and perpetrator (Mitchell 2010, 97). This incinerator ash case fits into Mitchell's framing model. An obvious consequence of the asymmetrical power relationship results in what environmental policy analysts call an environmental justice dilemma. That is, “no group should be asked to bear a disproportionate share of environmental burdens” (Axelrod, Downie, and Vig 2005, 6) In this case, Haiti became the unwitting recipient of potentially harmful incinerator waste from the United States. Lipschutz (2004) refers to “waste chains” as a byproduct of developed world economic

growth that contribute to environmental justice imbalances when that waste is shipped to countries unable or “less willing to impose strict regulations” (Lipschutz, 2004, 122-123). To remedy this imbalance Keck and Sikkink (1998) explore the effectiveness of transnational advocacy networks to influence public issue outcomes and to shame violators (Carpenter 2007, 101). The relationship between U.S. NGOs like Greenpeace and the smaller Haiti Communications Project, and their local Haitian counterpart, the Haitian Group for the Protection of the Environment, and Alternative Development (COHPEDA) illustrates such an advocacy network.

Background to Haiti's Ash Affair

Haiti has the reputation for being the poorest country in Latin America and the Caribbean and also ranks among the world's poorest countries. It has a per capita Gross National Product of \$300 per year, a 70 percent illiteracy rate, and extremely deficient infrastructure. Haitian history is also replete with foreign domination from the French colonial period, which ended in 1804 to the U.S. marine occupation from 1915 to 1934. Sensitivity to foreign domination remains today and Haitians are acutely aware of past injustices to their people and land. Thus the dumping of incinerator ash near Gonaïves reminds many Haitians of a past incident that occurred in June 1872 in which “two German frigates in an exercise of gunboat diplomacy had seized two Haitian warships. Upon leaving after their demands had been satisfied, the Germans had defecated on the Haitian flag on both ships before abandoning them” (Bellegarde-Smith 1990, 177-178). Sensitivity to foreign activity remains a sore-point to this day and the dumping of Philadelphia waste represents yet another perceived “insult to injury” in many Haitians’ minds.

Following the overthrow of Jean-Claude “Baby Doc” Duvalier on February 7, 1986, Haiti was thrust into a sequence of tumultuous political crises where authoritarian military leaders and civilians alike jockeyed for power. While all eyes were focused on Haiti's political turmoil, little energy was directed toward environmental concerns. It was in this atmosphere that Haiti became the recipient of 3,000 to 4,000 tons of Philadelphia's incinerator ash.

Haiti's Incinerator Ash and the Philly Connection

The City of Philadelphia, Pennsylvania is similar to other United States' cities in that it faces a mounting garbage problem coupled with a scarcity of landfills in which to dump such garbage, and tightened enforcement and regulation of domestic waste disposal. In fact, Ohio residents had gone so far as to block trucks loaded with Philadelphia ash from discharging their cargo at an Ohio site. Lack of landfill options coupled with the high costs of dumping the city's waste in the United States, led the Philadelphia municipal government to pursue the option of exporting its incinerator ash. By 1986, Philadelphia felt a viable solution to its mounting waste problem was to have the ash exported by a private contractor. The ash came from Philadelphia's two incinerators—one on Spring Garden Street and the other in the city's northwest area called Roxborough.

In 1986 a private waste removal company, Joseph Paolino and Sons, Inc., entered a contractual agreement with the City of Philadelphia to export the ash. By June 23, 1986, Joseph Paolino and Sons, Inc. subcontracted Amalgamated Shipping Corporation to trans-

port approximately 13,000 to 14,000 tons of ash to the Bahamas. Amalgamated Shipping was a Bahamian corporation. According to Bruce Gledhill, Philadelphia's Deputy Streets Commissioner, Bahamian environmental officials were briefed on the proposal, understood its intent, and gave no indication of potential problems with dumping the ash in their country (Gilmore 1989). In August 1986, the *Khian Sea*, a ship under Liberian registry, was loaded with ash and left Philadelphia's Girard Point pier destined for Ocean Key in the Bahamas. The ship's cargo was declared "non-hazardous, non-toxic, non-flammable incinerator ash" and required no special license. The August 30, 1986 Cargo Declaration and Bill of Lading was signed by the ship's Captain, Konstantinos Samonas (Gilmore 1989). The cargo was correctly identified as incinerator ash to Bahamian officials although its level of toxicity was questionable. An unforeseen turn of events followed which led the ash on a long voyage well beyond the Bahamas. Before arrival in the Bahamas, Bahamian officials refused permission for the *Khian Sea* to unload its cargo (*US v. William P. Reilly* 1994). The *Khian Sea* set sail once again in search of a new location in which to dump its cargo.

By March 1987, the *Khian Sea* was docked in Fort Lauderdale, Florida when it set sail in search of another dumpsite. This time its Cargo Declaration labeled the ash as *general cargo*. Attempts to unload its cargo in Bermuda, the Dominican Republic, Honduras, Panama and even Guinea-Bissau were unsuccessful. Since Amalgamated had yet to find a country that would take its increasingly problematic cargo, the *Khian Sea* was directed to anchor in Puerto Cortes, Honduras where Captain Samonas left the ship and was replaced by Honduran Captain Arturo Fuentes. During this entire affair, Coastal Carriers Corporation of Annapolis, Maryland acted as an agent for Amalgamated Shipping. By November 1987, William P. Reilly, Vice-President of Coastal Carriers Corporation told Captain Fuentes to sail the ship to Haiti with instructions to unload the ash (*US v. William P. Reilly* 1994).

Actors in the Haitian Ash Deal

The principal Haitian actors involved in accepting the Philadelphia incinerator ash consisted of the Minister of Commerce, Mario Celestin, and the two brothers of suspected drug dealer and powerful military commander, Colonel Jean-Claude Paul. At the time, U. S. Department of State sources revealed that Colonel Paul was under investigation in Miami for drug smuggling. Colonel Paul was also associated with former Haitian President, François Duvalier's, feared paramilitary organization called the Tontons Macoutes. The Paul brothers, Antonio and Felix, operated a company called Cultivators of the West and arranged a deal with Amalgamated Shipping to have the ash dumped in Gonaïves, Haiti. It is not known whether Colonel Paul was to receive a cut from this incinerator ash deal. It was evident that the Paul family clearly had influence in Haitian political circles and could easily exert influence in obtaining an import permit.

After months of wandering, the Caribbean and Central American waters to no avail, it appeared that the *Khian Sea* would finally be able to dump its cargo. Government permission was imminent and an import permit was issued for the ash on October 23, 1987. The permit was signed by Commerce Minister Mario Celestin who happened to also be the former brother-in-law of yet another powerful military figure, General Henri Namphy. The plot thickened as Amalgamated Shipping sought to unload the ash. This time the ship's con-

tents were labeled as fertilizer (*engrais pour du sol*) and written as such on the Haitian import permit (*Haiti en Marche* 1988).

By December 31, 1987, the *Khian Sea* had docked at Port Sedhen near the City of Gonaïves. Gonaïves is a city of 100,000 inhabitants and is located approximately one hundred miles from Haiti's capital, Port-au-Prince. The arrival of the *Khian Sea* normally would not have aroused anyone's suspicions if it were not for a rather auspicious contingent of military personnel who were sent to the dock to "manage and secure" the unloading effort. Curious onlookers and local vendors who normally hawk their wares to incoming ships were forbidden from approaching the dock. It quickly became clear that this was fast becoming a rather high security Haitian operation.

By January 21, 1988, approximately one hundred Haitian workers began the task of unloading the ash from the ship. Another garrison of troops was also sent to Bonaire and La Pierre, two rural areas close by, and where the trucks began unloading their hauls. Despite the tight security, observers noticed a steady stream of large trucks similar to the kind used in hauling construction materials. At first glance, one might suspect drug trafficking was taking place. However, the number of trips made by these trucks, as well as the ship's longer than usual in-port stay, seemed incongruent with a clandestine drug smuggling operation. A truck driver involved in the operation revealed to a Haitian journalist that he was paid the very high salary of \$30 a day for hauling the suspicious loads while Greenpeace stated in a later press conference that the laborers were paid \$7 a day for their loading efforts. Whichever figure is correct, both would have been high wages in Haiti at the time. Obviously, this was considered by the interested parties, namely, the Paul brothers, Captain Fuentes, and Amalgamated Shipping to be an important operation that needed to be done with precision and speed.

More suspicions were aroused and three respected figures even boarded the *Khian Sea* to talk with Captain Fuentes. Monsignor Emmanuel Constant of Gonaïves, Dr. Jose Préval Pierre, Regional Director for the Ministry of Public Health, and Dr. Robert Fischer, World Health Organization representative in Haiti appeared noncommittal about the strange cargo. The Monsignor detected nothing strange about the cargo and Dr. Fischer refused to take a position on the whole affair (*Haiti en Marche* 1988). Of course, the potential dangers lurking in the chemical content of the ash would not necessarily be evident to an untrained eye, especially that of Monsignor Constant.

Was the ash toxic? Or, better yet, was it hazardous waste? According to an analysis of Philadelphia incinerator ash tested over a four-year period prior to 1988, Greenpeace concluded that "few natural environments can be worse disposal sites for Philadelphia's ash than the marine waters of Haiti" (Greenpeace 1987, 7). In 1988, Greenpeace referred to high levels of dioxins, mercury, lead, copper and other metals. They also used the word *toxics* when referring to Philadelphia ash, but did not specifically refer to the ash as *hazardous* (Greenpeace 1987, 1988). A 1995 chemical analysis commissioned by Greenpeace and conducted at the University of Exeter, United Kingdom, concluded that:

The findings from this brief investigation do not concur with the City (Philadelphia), EPA and the Pennsylvania Department of Environmental Re-

sources, which found this ash to be ‘non-hazardous.’ With respect to Cd, Pb, Cu and Zn, anomalously high levels are found to be leaching into surrounding soil (Stephenson 1995, 7) .

One of the problems, which would later complicate Haiti's quest to return the ash, lies in the variable definitions and terms attached worldwide to *waste*. Murphy points this very important definitional dilemma when he states:

Some countries bring a variety of wastes within their regulatory regime, while others are more selective. Even countries with similar approaches may use terms other than ‘hazardous,’ such as ‘toxic’ and ‘dangerous,’ which makes it difficult to compare coverage. Most countries carve out some exceptions based on their domestic concerns and industries.

In the United States... if a substance contains excessive levels of arsenic, barium, mercury, or silver, it may run afoul of EPA's toxicity level, while substances such as dust from pollution control equipment and spent cleaning solvents are automatically listed as hazardous (Murphy 1994, 27).

In the United States, the definition of hazardous waste is contained in the Resource Conservation and Recovery Act of 1976. Incinerator ash, however, is not classified automatically as hazardous material and is generally thought to be nonhazardous. While hazardous material for export is subject to *prior written consent* by the receiving country, no such regulation exists for nonhazardous waste. Thus, Haiti did not need to return an “acknowledgement of consent” cable via the U.S. Embassy to the Environmental Protection Agency (EPA) for receiving Philadelphia's ash (U.S. Code of Federal Regulations, 261.20-24). Yet, one problematic concern is the fact that EPA uses its own U.S. standards when defining hazardous waste. The “treatment dilemma” or the process by which the waste is dealt can make a difference. Gilmore explains that, “large quantities of nonhazardous waste become hazardous when technology does not permit treatment and disposal that meets United States’ standards” (Gilmore 1989, 889). As Haiti was about to receive Philadelphia's garbage ship, the problem of whether a poor country like Haiti could properly store the ash loomed over the horizon. Compton's EPA study also reiterated that, “by U.S. standards, the raw ash material may be disposed of in a non-hazardous landfill” (Compton and Sprenger 1996, 1-2). U.S. standards are, however, not present in Haiti.

The Ash Operation Is Exposed: Proposed Solutions

Disposal of the Philadelphia ash might have been accomplished in Haiti—all fourteen thousand tons of it— had it not been for (a) the effective “tracking” and information campaign carried out by Greenpeace; and, (b) rising suspicions among Haitians and local nongovernmental organizations (NGOs). In fact, during the first few days as the cargo was in the process of being unloaded, but not yet completely unloaded, members of Greenpeace visited Gonaïves. Greenpeace's *toxic waste trackers* had been tracing the whereabouts of the

Khian Sea ever since it first left Philadelphia to dump the ash in the Bahamas. Montague (1991) notes that Greenpeace was the only environmental group at the time, which conducted systematic tracking of the global toxic waste trade:

The Greenpeace waste trade campaign keeps its ears open for rumors of 'recycling' scams, plans to ship toxic incinerator ash abroad, or other schemes to ship wastes across borders. By alerting government officials, news reporters, and environmental groups in the receiving countries, Greenpeace has derailed hundreds of international waste trade schemes (Montague 1991, 1)

Following the *Khian Sea's* route from port to port eventually led Greenpeace to Gonaïves and the NGO did precisely what Montague predicted in his *Rachel's Hazardous Waste News* article. It should be recalled at this point, that—apart from the Paul brothers—Greenpeace representatives on the scene in Gonaïves were perhaps the only individuals who really knew the true contents of the material, which was in the process of being unloaded.

Greenpeace was about to blow the cover of the previously well-guarded operation undertaken by the Paul brothers to unload incinerator ash under false pretenses. While Greenpeace was busy documenting details of the ash piles and their locations, on January 29, 1988 Haitian President Leslie Manigat put an immediate halt to the unloading scheme. By February 15, 1988 Greenpeace had completed documenting the locations of the ash piles which were in a remote area outside of Gonaïves and concluded that some ash “likely has entered the saltwater bay” (Greenpeace 1988, 4).

President Manigat's Minister of Justice ordered the ash to be reloaded onto the *Khian Sea* and removed from Haiti. Article 258 of the 1987 Haitian constitution was cited in this instance, since it prohibits the importation of foreign wastes into the country. As the affair broke, Minister of Commerce Célestin, whose signature was on the original import permit, quickly clarified that “All means will be taken so that all quantities dumped will be reloaded and the boat will be dealt with according to the law” (Greenpeace 1988, 4). However, instead of reloading the ash, Captain Fuentes weighed anchor and departed Haitian waters in the middle of the night in early February 1988. What remained onshore were three to four thousand tons of potentially toxic ash. That ash remained in Haiti and its removal became the object of an international negotiation for sixteen years. By November 1988, the *Khian Sea*, now renamed the *Pelicano*, turned up in Singapore, but with no ash onboard. Captain Fuentes admitted that he dumped the remaining ash into the Atlantic and Indian Oceans. Philadelphia's incinerator ash was fast becoming a truly global odyssey that now spanned the entire world. This unfortunate incident began to acquire a life of its own as the ash came to represent all the ills involved in export of waste from a developed to a developing country.

By February 19, 1988, Greenpeace representatives met with Haitian Prime Minister Martial Célestin. That meeting resulted in a Haitian government decree, which reiterated the constitutional prohibition and went into further detail by declaring it illegal for ships carrying foreign waste to venture into Haitian waters (Greenpeace 1988). At first glance, it would appear that Haiti's ash incident would be quickly resolved. Publicity was quick to fol-

low when Greenpeace called a press conference in Philadelphia where, on February 29, representatives of the NGO gave several jars of Philadelphia's own ash collected from Gonaïves to Deputy Mayor for Operations, Marjorie Adler. At the Philadelphia press conference, Greenpeace's Research Director from the Washington office, Pat Costner, revealed that Haitian tests on ash samples revealed a dioxin level of 515 parts per trillion. Costner noted that this level exceeded the Environmental Protection Agency's (EPA) maximum safe standard which was 75 parts per trillion (Cox 1988, 18).

Back in Haiti, the incident sparked public anger and allegations of government corruption in an already volatile political atmosphere. The Haitian Federation of Friends of Nature (FAN) mounted a public relations campaign to bring attention to the incident. FAN protested against what it argued was Haiti becoming the "City of Philadelphia's garbage can" (Jean-François 1988, 3). The Gonaïves chapter of yet another grassroots NGO, Young Christian Workers (JOC), also joined FAN and Greenpeace in voicing concern about the possible toxicity of the waste. JOC requested the Haitian government to declare the area a "no-entry zone" and set up a commission of inquiry into the entire affair. The group also called for the arrest of Haitians involved in making false declarations (Henry 1989). No arrests were ever made. Meanwhile, the Haitian press was beginning to pay more attention to this story and sought to interview sources at the highest levels of government. However, media efforts were thwarted when most ministers refused interviews. At the Ministry of Public Works, Transportation and Communication, reporters were told that Colonel Jacques Joachim, Minister of Public Works was too busy to grant interviews. Likewise Minister of Commerce Célestin also refused an interview and even the Ministry of Information failed to publish anything on the Gonaïves ash issue. Perhaps the Haitian government wanted to keep a lid on what Haitian journalist, Roosevelt Jean-François, called "Paul-gate" in reference to the Paul brothers. This should not be surprising in a country with a poor track record on press freedom and an established system of government that worked for the privileged few rather than the people.

Minister of Commerce Mario Célestin maintained that the ash was merely fertilizer. Indeed, for a short while it did look like a rapid resolution for removal of the remaining ash would occur. As one government official stated, President Manigat "was able to negotiate with the Philadelphia company responsible for the waste. American contractors came to Haiti and began packing the exposed waste into drums, supposedly for another destination" (Henry 1989). The negotiations were stopped, however, on June 20, 1988 when Manigat was ousted in a coup by General Henri Namphy. Continuity in the negotiations then became a real problem. In fact, steady pressure on the part of the Haitian government ceased almost completely and the ash issue was relegated to a lesser priority amidst rising political chaos. Haiti was clearly in search of a post-Duvalier political identity and it was unclear who would provide that identity: authoritarian and often corrupt military leaders or civilian democrats with varying reputations and levels of competency. In short, timing and circumstances were not right for the Haitian government to award the ash issue top priority. Up to this point, the Haitian incinerator ash issue looked like it might follow a more toned down, less confrontational, version of actions taken by other countries with similar waste dumping problems. However, this would not prove to be the case.

By September 17, 1988, Namphy himself was overthrown by yet another military general, Prosper Avril, who was bent on becoming Haiti's ruler. A short while later, Colonel Paul met with an untimely death by poisoning (Bellegarde-Smith 1990, 178). Haiti's internal politics served to create a rupture in the negotiations as the country refocused its energies away from environmental issues toward more immediate political concerns such as who will run the country. This was a turning point in which the Haitian bargaining position gradually eroded. It soon became obvious to Amalgamated Shipping, Paolino and Sons as well as any other person involved that high level Haitian officials had, in their view, more pressing issues to address. It seemed that the pressure was lifted from the foreign parties responsible for the ash, that is, the shipping company (Amalgamated Shipping) and the waste handlers (Paulino and Sons).

One Gonaïves resident noted that "Greenpeace confirmed that the waste was not fertilizer, and that it was composed of substances injurious to people, animals, fish, and the environment itself" (Henry 1989). During the same visit to Gonaïves, Greenpeace also warned residents that the ash could enter the body via wind propelled dust particles, which could lodge in people's lungs. Additional chemical analysis revealed that the Gulf of La Gonave, which was nearby, had already been affected and that certain ash related chemical substances were detected in the stomachs of fish.

Investigative reporting by a Chicago newspaper revealed yet another worrisome phenomenon: peasants from surrounding areas had already begun to carry off the ash and apply it to their fields as "fertilizer." At this point, one might assume that the ash situation would regain its importance because of such health concerns and expand from a mere ash removal negotiation to that of international political incident. After all, the Philadelphia ash might be harming unsuspecting Haitians. Yet, the health-ash linkage was not heavily exploited by Haitian authorities. As we will see in the next section, no Haitian official took bold moves akin to those taken in Koko, Nigeria or even Conakry, Guinea.

How Similar Dumping Incidents Were Resolved in other Developing Countries

The Koko, Nigeria toxic waste incident is one case that merits mention here because of the effective strategies and tactics used to resolve the waste conflict. The developing country of Nigeria became heavily involved, and took a hard line vis-à-vis Italy, the developed country from which the waste originated. The Nigerian government actively pursued negotiations with the well-defined purpose of having Italy remove the waste as quickly as possible.

Admittedly, Nigerian authorities were dealing with a serious problem of having to handle an incident in which tons of polychlorobiphenyl (PCBs) laced waste was dumped in Nigeria. No PCBs were detected in Haiti's ash. Action was swift by the developing country and the waste was returned to Italy after the Nigerian government undertook the following strong measures:

- immediately led an investigation and sealed off the dump;
- demanded that the Italian government remove the waste;
- recalled their ambassador to Italy;
- seized two ships;

- threatened to take Italy to the International Court of Justice; and,
- arrested two senior federal health officials who certified the waste as nonpoisonous as well as the owner of the dump site (Olsen and Princen 1994, 1-3).

The Conakry, Guinea, incident is more similar to Haiti's situation. Once again, in February 1988, Philadelphia incinerator ash was loaded onto a ship, the *Bark*, and destined for unloading in the African country of Guinea. As with Haiti's ash, an import license had been obtained by Guinean authorities. The ash was to be used in the construction of concrete style bricks—at least that was what the private contractual parties said. When other Guinean authorities learned of the deal, they swiftly invoked their domestic law prohibiting importation of foreign waste. The Norwegian owner of the *Bark* agreed to remove the ash only after Guinean authorities arrested a Norwegian agent of the shipping company, A.S. Bulkhandling, Inc., who also happened to be an honorary consul-general in Conakry (Montgomery 1996,7). Escalation of events to this level—including the arrest of a Norwegian citizen—forced the Norwegian government to become involved. Following Norwegian government intervention, a diplomatic clash was avoided and the ash was removed (Gilmore 1989, 879-907).

No such actions could be employed in Haiti because the *Khian Sea* had already left Haitian waters and no foreign representatives from Amalgamated Shipping resided in Haiti.

The leverage obtained by arresting a foreign national for breaking local law as the Guineans did was, therefore, not possible. Likewise, no ships could be seized as the Nigeria government did. In short, any Haitian officials who may have felt compelled to resolve this matter lacked “collateral” with which to bargain. The foreign actors in this case, namely, Amalgamated Shipping, Paulino and Sons, and the City of Philadelphia had nothing of theirs—except the ash—in Haiti. Ironically, the only foreign material remaining in Haiti was ash, which no party wanted back.

Negotiation Without Leverage

Haiti continued to endure political turmoil until December 1990 when Jean-Bertrand Aristide became the first presidential candidate to win in Haiti's first free election. Aristide campaigned on a platform of popular rights and improvements for the masses of impoverished Haitians. Removal of the incinerator ash, which remained outside of Gonaïves in a mangrove swamp area, started receiving attention by Aristide's government. Evans Paul (unrelated to the Paul brothers) was one of Aristide's closest advisors and was also the mayor of Port-au-Prince. In April 1991, Evans Paul went to Washington, D.C. to seek congressional and public support for having the ash removed. The incinerator ash issue and what to do with it were touted as an immediate health risk despite the fact that it had been stored in an unregulated manner near Gonaïves since 1988. Paul also used the resolution of this issue as an opportunity to begin improved relations between the United States and Haiti. It should be noted that President Bush and Republican members of Congress were not the greatest fans of Aristide who was regarded as a radical priest bent on creating economic havoc in Haiti.

Evans Paul was firm in his position and stated that “basically, we believe that the people who put it there should remove it” (Sawyer 1991, 1A). Paul admitted that the Haitian government had not yet filed a formal request with the U.S. Department of State or the Environmental Protection Agency, but said simply that the Aristide government was pursuing all avenues. Perhaps the Haitian government was hopeful that legislation sponsored by President Bush, known as the Export Waste and Control Act, would be approved. That legislation would give the executive branch authority to negotiate waste disposal restrictions on a country by country basis. However, it was never passed into law. Other legislation was proposed by Democratic Congressmen from Michigan and Oklahoma which would require that exported wastes must be disposed off under conditions similar to those which would be applied if the waste were disposed off in the United States. Some Congressional aides such as Representative Edolphus Towns' (D-NY) staffer, Allen Hill, went further and preferred to see a ban on all export of waste to developing countries. This approach would parallel international efforts to ban Organization of Economic Cooperation and Development (OECD) countries from exporting to non-OECD countries. Representative Towns, chairman of the Congressional Black Caucus, lent a sympathetic ear to Paul's concerns and even met with him during his stay in Washington. However, this attempt to lobby Congress for a solution proved as ineffective as any other previously tried tactic.

Around the same time Haitian NGOs were still exerting various efforts to draw attention to the continuing ash dilemma. This time a Haitian-American, Cambridge Massachusetts based organization, the Haiti Communications Project, led by Earl LaFontant kept the issue alive by staging public relations events. In one such event, LaFontant led a trip to Gonaïves in December 1990 and March 1991 where he collected ash for stuffing into 250 envelopes destined for Mayor Wilson Goode of Philadelphia. Another 250 envelopes with ash samples were sent to the EPA. Each ash sample contained the message: “Contains Philadelphia waste. Return to sender. Delivered three years ago. Mislabeled as fertilizer” (Sawyer 1991, 1A).

What happened next is not surprising given Haiti's unstable political history: President Aristide was ousted in a military coup in September of 1991. Continuity in seeking a solution was, once again, disrupted as Haitians now had a new worry—that of a military regime led by General Raoul Cédras. In an effort to oust Cédras' illegal government, the United States government, exiled President Aristide, and the Organization of American States devoted most of their energy to this political crisis rather than to an environmental issue that was perceived to be of limited concern to Haitians and Americans alike.

From October 1991 until October 1994, little was accomplished especially since the United States was trying to broker a solution for Haiti's political woes. By 1994, four years had now passed since the *Khian Sea* unloaded its fateful cargo, and President Aristide again returned to the presidency, this time with the help of U.S. troops.

As the years went by, several other solutions besides removal of the ash were offered. Since 1988, the Haitian government consistently pursued a policy of removing the ash from their country. In a new twist, the United States Agency for International Development offered the possibility of constructing a landfill in which to bury the waste. This approach to resolving the problem of what to do with the ash was rejected by Haitian Minister of the

Environment, Yves-Marie Wainwright. Haiti clearly insisted that the ash must be removed. NGOs also favored Wainwright's stance. In fact, the Haitian Group for the Protection of the Environment and Alternative Development (COHPEDA) even voiced concern that such a landfill would only attract more waste shipments, thereby worsening rather than solving the problem.

In March 1994, forty Haitian NGOs published an advertisement in *Le Nouvelliste* intended to coincide with President Clinton's visit to Haiti. The ad read:

We remember your statements and those of Vice-President Albert Gore expressing your commitment to protect the environment... thus we are asking you to issue an Executive Order directing U.S. military personnel currently present in Haiti... to clean up the dump site and return the ash to its place of .. origin... We have no doubt that Philadelphia possesses more resources than the Haitian people to manage that city's wastes (*Haiti Update* 1995, 7).

As luck would have it, by 1994 there were now 15,000 U.S. Army troops in Haiti (Clinton 1994, 741). Why not have them use their technology and equipment to remove the ash? This novel solution might just have worked were it not for the U.S. Army's preoccupation with its primary mission, that of stabilizing a country in political shambles. As a result, the U.S. Army declined the offer, and its manpower and equipment were not used for this ash removal task. By 1996, this solution became less viable as most U.S. troops were removed from Haiti.

Over the years, two main channels of negotiation were pursued—the first was diplomatic (i.e., government to government) while the second was between the NGO, Greenpeace, and the various actors in this ash issue including the Haitian government, U.S. government, and the City of Philadelphia. According to Greenpeace spokesperson, Jim Vallette, the City of Philadelphia agreed to take the ash back, but would not pay for its transportation.

The main issue was then reduced to a single negotiating point: Who will pay for transporting the ash back to Philadelphia? Minister Wainwright's policy remained consistent and supported a total removal of the ash. One solution was proposed in 1995 by Pierre Camilfort, U.S. Agency for International Development (USAID) representative in Haiti, to relocate the twenty families living near the waste sites. A second solution was proposed by the U.S. Army, which would involve installing a layer of concrete over the ash (Camilfort 1997). It was unclear who would complete the task and who would pay for it. Would the U.S. Army be responsible for overseeing and financing the operation? If so, then why would they refuse to consider reloading the ash and transporting it back to the United States?

Camilfort readily admitted what had been obvious since the *Khian Sea* departed Gonaïves in the dark of night: “There is not much continuity in these actions” (Camilfort 1997). Bruno also pointed out that Paolino and Sons owned Pier 2 in Philadelphia which burned down shortly before the *Khian Sea* was due to return from Haiti with its ten thousand tons of ash (Bruno 1998, 8). Not only did Haitian officials not keep consistent pressure on those ultimately responsible for dumping the waste in the first place, but the pier fire may have

influenced the *Khian Sea's* captain to dump most of the ash and weigh anchor in the middle of the night. While the Philadelphia ash affair was still on the agenda in the Haitian Ministry of the Environment, most energy was channeled toward the completion of Haiti's First Environmental Action Plan funded, in large part, by the World Bank. Once completed, such a plan would provide greater structure for combating similar waste issues in the future. In the meantime, the plan offered little guidance in bringing closure to the Gonaïves incinerator ash problem.

Project 'Return to Sender'

In February 1995 Greenpeace aligned itself with several Haitian environmental groups to present a unified effort for the return of the ash to the United States. This unified effort used lobbying techniques and public relations coverage through what was called "Project Return to Sender." After so many false starts and delays, it looked as if this effort would provide the momentum for successful closure to this case. Greenpeace coordinator for Return to Sender, Kenny Bruno, was instrumental in brokering a solution that would be acceptable to the various actors including the Haitian government, members of the United States Congress, and various state governments from Florida to New York. He did so by keeping the Gonaïves ash issue alive in the minds of decision makers along the eastern seaboard of the United States.

The Greenpeace strategy appeared to be working and thus strengthened the role of NGOs in resolving illicit waste disposal disputes (Clapp 1994). Greenpeace and their Haitian counterparts acquired substantial leverage upon learning about a proposed waste related business venture between Eastern Environmental Services, a waste management company from Mt. Laurel, New Jersey, and the New York City Trade Waste Commission. After Eastern Environmental Services applied for a license to haul commercial trash from New York City in August 1996, the New York City Trade Waste Commission learned that one of Eastern's officers, Louis Paulino, was also a principal in Paolino and Sons. Paolino and Sons was the company that originally subcontracted for the disposal of the incinerator ash in the first place (Bruno 1998).

The New York City Trade Waste Commission was aware of the Haitian ash controversy and took the position that the ash should be returned to the United States. The Commission thus made granting a license to Eastern Environmental Services contingent upon its agreement to provide \$250,000 worth of landfill space for four thousand tons ash, one thousand tons of contaminated soil, and \$100,000 to defray costs of shipping the ash to the United States. In order to acquire this license, the company readily agreed to the Commission's proposal. Unfortunately, the contingency agreement had an expiration date of May 1998 and the costs of returning the ash were much greater than \$100,000. It looked like Eastern would not only get its lucrative license, but also manage to distance itself from the costly return of the ash. A call for financial help then went out to Philadelphia Mayor Ed Rendell who initially responded with little sympathy and no money. While the United States' Department of State voiced more sympathy to Greenpeace's request, it too would not contribute any funds for the ash's return. At the point of desperation, the cash strapped Haitian government agreed to contribute \$50,000 (Greenpeace 1998).

Return to Sender increased its activity level as it desperately tried to raise the remainder of money needed to return the ash to the United States. Letter writing and petition campaigns were created to target both Philadelphia Mayor Rendell and Brian Attwood, director of the US Agency for International Development. This time they were successful (Bruno 1999). Members of Congress also got involved and wrote a letter dated April 7, 1998 to Secretary of State Madeline Albright urging her to support the return of the ash to the United States (U.S. Congress 1998). The letter emphasized that the democratically elected Haitian government under President Préval gave the issue its “highest priority” (Bruno 1999). In the end, Eastern Environmental contributed \$225,000, and Mayor Rendell offered \$50,000. The remaining \$75,000 to \$150,000 was contributed by the Haitian government (Bruno 1999).

With the finances raised, the ash appeared to be ready for shipment, but an unexpected turn of events occurred when, in 1999, Eastern Environmental Services was bought by Waste Management. According to its website, Waste Management claims it has “the largest network of landfills in North America” (*Disposal Services* n.d.). Out of concern for interstate trash issues, Waste Management became “wary of importing this into Pennsylvania” and simply refused to accept the ash, despite the fact that it was originally an *in-state trash* that acquired global trappings in this bizarre twist of events (Bruno 1999). In a Return to Sender letter to supporters dated April 1999, Kenny Bruno reflected his disappointment with the lack of progress in resolving this issue. Bruno urged members of Project Return to Sender to lobby the Governor of Pennsylvania to assist in bringing closure to this problem. By 1999, Bruno wrote that “The U.S. State Department, the NYC Trade Waste Commission and the [sic] even the City of Philadelphia have claimed that they support the return of the ash but have not been able to get Waste Management—or anyone else to accept it” (Bruno 1999, n.p.).

By 1999, return of the ash encountered two major setbacks: (1) overcoming Waste Management’s resistance; and (2) finding a port of entry for the ash. While Mayor Rendell offered \$50,000 to resolve this issue, he did not grant approval for the ash to arrive at the Port of Philadelphia. The intense Greenpeace lobbying effort was showing signs of paying off and, by 2000, the Pennsylvania Department of Environmental Protection (PA-DEP) agreed that the ash should be returned to Pennsylvania. It appeared that PA-DEP, in turn, successfully pressured Waste Management to resolve the problem. In turn, Mayor Rendell also pressured Waste Management so that this entire affair would end. Indeed, most government officials involved wanted closure to this drawn out problem.

Such behind the scenes wrangling appeared to be working, but of even greater significance was the fact that, in April 2000, the ash actually arrived in Stuart, Florida aboard a barge called the *Santa Lucia*. Now within its jurisdiction, the State of Florida was responsible for the ash, which remained twenty-five miles north of Palm Beach (Athans 2002, 1A). Clearly, Florida did not want the ash and, it too, became a stakeholder in this drawn-out affair. Greenpeace was no longer needed as the State of Florida took up the banner to get the ash returned to Pennsylvania.

Florida negotiated with the State of Pennsylvania and Waste Management, and arranged for a compromise that cost the Sunshine State \$615,000 in transportation just to

send the ash via rail to Hagerstown, Maryland. The ash was then trucked to the Waste Management's Mountain View Reclamation Landfill in rural Franklin County, fifty miles southwest of Harrisburg. By June 2002, the ash finally arrived back in Pennsylvania, an astonishing sixteen years after its initial voyage from Philadelphia (Athans 2002).

Lessons Learned

Ultimately, this case illustrates the importance of partnering by developing nations like Haiti, with NGOs in order to keep "the pressure on" and increase leverage when negotiating with more powerful countries and their subregional units. Greenpeace's efforts to keep the ash agenda alive reinforced the notion of "issue importance" in the United States. While Greenpeace may not have diminished the perception of Haiti as a powerless state among U.S. actors, its persistence and thorn-in-the side approach successfully led to a resolution of the problem. In short, NGOs can level the playing field especially if they develop an effective transnational advocacy strategy.

Both the Haitian government and environmental NGOs regarded any solution that proposed to keep the ash in Haiti as circumventing the real problem. That problem focused on developed countries seeking to dump waste in developing countries. Yet, Haiti's internal political problems prevented a settlement from being reached because attention and efforts were continually being channeled to more immediate crises. Until April 2000, the ash remained in Haiti and Greenpeace successfully found parties who were willing to pay for transporting the ash back to the United States (Bruno 1997). Once the ash reached a U.S. port, a solution had to be found that incorporated the interests of Florida and Pennsylvania alike. An important part of the solution ultimately rested with Waste Management, the company that purchased Eastern Environmental Services. Under pressure from the states of Pennsylvania and Florida, Waste Management had no little choice but to agree to take the ill-fated ash. After all, good relations with these governmental entities are needed in the waste disposal business and would be at stake if it did not cooperate. What can be learned from this affair? When comparing the leverage exerted by Nigeria and Guinea in their waste dumping cases, swift action in the first few days of the dumping was critical and, ultimately, proved effective in removal of the waste (Olsen and Princen 1994). If the import permits were signed under false pretenses, immediate suspicions should have been aroused about the reputation of the ship responsible for the cargo. Captain Fuentes' decision to have the *Khian Sea* "escape" in the middle of the night should not have come as a total surprise. As fate would have it, the remaining ash in the ship's hold was later dumped in the Atlantic and Indian Oceans, but only after the *Khian Sea* underwent two additional name changes from the *Felicia* to the *Pelicano* in an effort to presumably mislead authorities. Two principals involved in the ocean dumping of the remainder of this now infamous ash have already been tried and convicted of lying to a grand jury about the oceanic dumping.

Since Haiti is not party to many environmental treaties such as the Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, also known as the Basel Convention, all parties, both NGOs and Haitian government officials alike, agree that involvement in international treaties would afford Haiti greater leverage in future environmental disputes. Haiti is still not a party to the Basel Convention and neither is the

United States. Consequently, the precautionary principle had little legal basis upon which to build an argument for returning the ash.

Since neither party to the dispute has ratified the Basel Convention, the role of NGOs and their transnational advocacy network became the *de facto* route for resolution of the ash dispute. The precautionary principle was strategically dismissed since the ash was already dumped. That left the “polluter pays” and “good neighborliness” principles as conceptual bases for returning the ash. Haiti had little clout to force U.S. actors to pay, but Return to Sender was a campaign designed to make the polluter pay. The third principle, that of good neighborliness, was a strategy of last resort. However, portraying U.S. actors as responsible good neighbors was not the strategy which actually worked, nor is there evidence that it was used. Instead, successful resolution of this case came only after years of activist campaigns by global and Haitian NGOs who wore down relevant subnational actors such as Mayor Rendell and Eastern Environmental Services into a series of small capitulations that culminated in a workable solution. In short, the polluter pays principle became the successful linchpin of Return to Sender.

As this case illustrates, there is no foolproof solution to ensure that environmental justice will prevail in the international arena given the existing North-South power relationship. While there is little likelihood that treaties would eliminate fly-by-night dumping by unscrupulous individuals, a developing country, with as little bargaining clout as Haiti, would only stand to benefit from participation in environmental treaties.

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