



CLI/2010/3/2

Basel Convention

Indonesian-Swiss Country-Led Initiative (CLI) **to improve the effectiveness of the Basel Convention**

Possible elements for a way forward to address the objective of the CLI

1. Introduction

This discussion paper sets out a list of elements for a way forward to address the objective of the Indonesian-Swiss CLI. The CLI was launched by Indonesia and Switzerland based on the Decision IX/26 on the President's Statement on the possible way forward on the ban amendment at COP 9 which has reaffirmed the objectives of the ban amendment and called countries to explore means by which these objectives could be achieved. The objective of the CLI is to develop recommendations for consideration by Parties at the tenth meeting of the Conference of the Parties (COP 10) for a way forward.

At the first CLI meeting the members identified and analysed the reasons for the transboundary movement of hazardous wastes where environmentally sound management cannot be ensured (document CLI/2009/8).

The second meeting considered evidence of the serious health impacts of inadequate waste management and made a first start in collecting elements and measures for a way forward (document CLI/2010/R2 Annex 1). The current paper brings together and elaborates upon those elements, and is meant to prepare ground for a proposal to be prepared during the third CLI meeting in September.

The elements

The list of elements that follows outlines the option of developing and promulgating standards for the environmentally sound management (ESM) of hazardous wastes while allowing transboundary movement of waste only if is destined for a facility that is able to fulfil these standards, and it recommends measures for ensuring that vulnerable countries do not receive wastes that

they do not want.

It also includes proposals for measures to clarify the Convention in areas where lack of legal clarity has proved to be an obstacle to effective regulatory control; ways of improving the use of existing measures in the Convention; ways of dealing better with illegal traffic in hazardous wastes; and measures for building capacity where needed.

The following elements were identified:

- Standards of Environmentally Sound Management (ESM) including its link to Transboundary Movement (TBM);
- Supporting vulnerable countries not to allow import of hazardous wastes;
- Providing further legal clarity;
- Support for and better involvement of the Basel Convention Regional Centres;
- Dealing with illegal traffic;
- Promotion of better application of existing measures and instruments of the Basel Convention and possible extension or enhancement of the Convention;
- Building Capacity.

Relationship to the Ban Amendment

As called for by the President's Statement, these elements were formulated in the context of the Ban Amendment. The Amendment has already been integrated into the legislation of many Annex VII countries and many of those Annex VII countries that have not adopted the ban as such have, in general, strong waste management legislation that delivers a roughly analogous outcome. The evidence considered by the CLI at the first two meetings, although tentative, suggests that:

1. this legislation (implementing the Ban and analogous measures) is on the whole effective; hazardous waste movements from Annex VII to non-Annex VII countries now appear to be but a small proportion of total movements; and
2. the serious problems now lie elsewhere; the main health and environment problems from waste now seem to be associated with waste flows not affected by the Ban.

There is more that might be done to extend the Ban, for example to encourage more countries to incorporate it into their legislation, and the list of elements below includes measure to that effect. But in order to move forward it is

important at this stage to look beyond the Ban and to address the problems that are not specifically addressed by the Ban.

Resources

The proposals that follow will require resources, in particular financial resources, to carry forward. At present the global economic situation is not conducive to rapid progress towards expensive and ambitious goals. However, we cannot predict the economic situation over the next 10 years and we certainly cannot assume that all of these measures will remain out of reach during the coming decade, or even two decades.

They are presented, therefore, in the context of the current development of a new strategic framework of the Basel Convention for the next 10 years. A table showing how the elements in this paper might be mapped onto the current draft strategic framework is appended¹.

¹ The table was kindly provided by the EU in commenting on an earlier draft of this paper

2 Draft list of elements

A. Standards of Environmentally Sound Management

This element proposes a renewed initiative to produce guidance on the environmental sound management of waste and to develop standards for ESM, and suggests a mechanism for linking such standards with the regulation of transboundary movements.

Standards and guidance

The Convention places obligations on Parties to provide facilities for the environmentally sound disposal of waste (Art 4(2(b))). It follows that there is a need for guidance on the meaning of ESM for important waste streams, and some work in preparing such guidance has been carried out: currently technical guidance relating to some 18 waste streams and 4 hazard characteristics is available.

Extensive harm to human health and the environment is still being caused throughout the world by inadequate waste management procedures. Accordingly, the CLI proposes that a more systematic effort is needed, not only to provide more guidance on ESM but also to promulgate that guidance more widely and to identify standards of sound waste management.

Resources would need to be identified and allocated to this effort, and the effort should be carefully managed, including by setting a timetable and providing regular progress reports to the Parties. Developing ESM standards and guidance is likely to be a long process and should become a part of a development programme supported through the Convention's work program.

ESM relates to waste streams and to facilities, waste management systems and national legislation requirements. To establish standards the waste management operations that constitute ESM for specific waste streams should be specified, and guidance provided on how to achieve those standards. Facilities handling such waste streams with technologies identified as potentially constituting ESM should work according to a valid permit and should operate and be managed respecting the standards for emission control and management as specified. Residues resulting from its operations should also be managed in an environmentally sound manner regardless whether they are treated within the facility itself or outside the facility. The national legislation in place should allow the permitting, supervision and enforcement of the provisions of ESM.

ESM standards should be coherent with the requirements of other high-profile environmental initiatives such as sound chemicals management and minimising climate change. Where appropriate, guidance should refer

to tools such as lifecycle analysis and environmental impact assessment.

The following elements have been identified by the CLI as possible components of this new drive towards the development and promulgation of ESM standards:

- Defining standards and criteria:
 - At national level;
 - At international level;
- Applying the standards;
- Making available and disseminating information about such standards;
- Making available and disseminating information about the capacity of countries and facilities to meet these standards;
- Ensuring accountability and compliance. Standards alone are insufficient to guarantee ESM. It is also necessary to establish a culture of compliance with those standards through:
 - internal measures by the facility, including environmental management systems, measurement and control, record keeping, clear lines of responsibility;
 - measures by external actors, such as inspections by enforcement officers and independent auditing;
- Developing an international independent certification scheme. This would permit ESM standards to be linked to the control of transboundary movements as discussed below.

Consequently ESM standards should be set and accepted internationally. The CLI also considered the possibility of a differentiated scheme allowing for dynamic application in order to reach these standards, e.g. countries should develop national implementation plans to meet ESM standards.

Developing international standards for ESM will take some years – some options are elaborated below. Once the standards and associated certification scheme are in place it might then be possible to introduce a requirement such that no country permits an export of hazardous waste to a facility with a standard lower than those available in its own country.

Linking standards to transboundary movements

The Convention also requires Parties to ensure that transboundary movement of wastes is consistent with the environmentally sound and efficient management of such wastes and to prevent the import and exports of wastes if they have reason to believe that the wastes in question

will not be managed in an environmentally sound manner (Art 4(2)(d) and Art. 4 (2)(g)). By linking ESM standards (as described above) explicitly to the requirements for transboundary movements, the Convention might be strengthened and clarified, ensuring that waste movements take place only under high standards of management. This could help decision-making under current procedures.

Most transboundary movements take place towards Annex VII countries, and transboundary movements towards non-Annex VII countries mainly originate in other non-Annex VII countries. These movements would not be covered by the Ban Amendment, even were it to enter into force or even be ratified by all Parties. This explicit linking of ESM to the requirements for all transboundary movements, including those from non-Annex VII countries to other non-Annex VII countries would therefore serve to augment the Ban Amendment.

The approval of transboundary movements could be linked to ESM by prohibiting any movement unless it is ensured that wastes will be treated in a facility that is fulfilling the ESM standards developed by the Basel Convention. Such an approach could be either strict (i.e. TBM is only permitted if the standards are fully fulfilled) or flexible (e.g. the standard of the target facility has to be higher than the standards ensured by facilities in the export or transit country). Development of methods to compare standards and independent certification of facilities would facilitate such an approach.

B. Assisting vulnerable countries to prohibit the import of hazardous wastes

The Convention already places an obligation on Parties to prohibit the export of hazardous wastes and other wastes to the Parties which have prohibited the import of such wastes (Art 4(1)). This provision is not always being used to full advantage. Some of the reasons for this are internal matters for the relevant parties, but there are some structural obstacles that could be addressed at the level of the Convention.

In particular, the elements might include:

- Highlighting the right of countries to prohibit the import of hazardous wastes and to prevent illegal traffic;
- Assisting Parties to utilize the provisions of the Convention under Article 4 (2) and to integrate these provisions into their national legislation;
- Improving and facilitating the mechanism through which such prohibitions are notified;
- Encouraging countries which prohibit the import of hazardous waste to provide the SBC with full list of the hazardous wastes

covered by the prohibition.

C. Providing further legal clarity

Regulators have pointed out that there remain a number of areas of the Convention that are difficult to interpret or to implement in practice without further guidance. In particular, the following might need to be addressed in more detail:

- The Convention applies to wastes and not to goods. However it is not always possible for waste regulators or border control officials to distinguish easily between wastes and used goods. Used or near end-of-life electronic equipment was identified as one example where this lack of clarity was being abused;
- The distinction between hazardous waste and non-hazardous waste is not always clear and requires further guidance. The development of specific guidance on this subject or inclusion of this element in ESM guidelines will help in this respect;
- There remains a lack of harmonisation between national and international reporting codes that makes the collection of reliable data on transboundary movements of wastes difficult. A rapid move towards a fully harmonised system would resolve this and also permit better control of transboundary movements;
- Terms such as re-use, repair and refurbish are used widely but without any uniform or agreed definition, although initiatives related to specific waste streams (e.g. the Partnership for Action on Computing Equipment) are moving towards such definitions.

D. Support for the Basel Convention Regional Centres and enhancement of their role:

The Regional Centres play an important role in promoting the effective implementation and application of the Convention. Any measures to make the Convention more effective might usefully build upon the work of the Regional Centres, by inviting them to promulgate ESM standards and guidance within their regions, and to adapt standards and guidance to the particular needs of their region.

To improve and optimise the functioning of the regional centres the following should be considered:

- More options for capacity building;
- Options for the environmentally sound management of the region's priority waste streams;
- Information systems related to hazardous wastes;
- Tools for information dissemination and awareness programs.

The provision of adequate financial and other resources for any additional tasks would be an essential prerequisite: any initiative to develop further the roles of the Regional Centres should identify sources of funding at an early stage. This should include exploring possibilities for collaborative action and shared funding with other international bodies. Ensuring that the centres' staff receive proper training would also be essential.

E. Dealing with illegal traffic

Illegal traffic in hazardous wastes is a serious problem which results in harm to human health and the environment in many parts of the world. Any initiative to improve the effectiveness of the Convention would need to include measures for addressing criminal activity.

Establishing networks of enforcement agencies and maintaining cooperation between actors at all levels is important to address illegal traffic:

- At national level, between environmental inspectorates, customs and police is important because each has specific competences and roles within the administrative system;
- At regional level via BCRCs, IMPEL TFS, Asian Network etc.;
- At international level via INECE, World Customs Organisation.

The Secretariat of the Basel Convention has already established memoranda of understanding with a number of organisations, including the World Customs Organisation and IMPEL-TFS (the Transfrontier Shipments of Waste cluster of the European Union Network for the Implementation and Enforcement of Environmental Law). Others could be developed.

The networks could also:

- Facilitate dissemination of knowledge about unacceptable practices as well as take-back practices and good practice in enforcement and control;
- Assist businesses to understand the notification procedure and good practice relating to transboundary movements of waste;
- Explore ways of improving enforcement: utilise the experience gained under other conventions, such as CITES;
- Explore ways of developing tools for enforcers, for example advising on how to reduce times taken to respond to notifications; and assisting with linguistic obstacles.

F. Promotion of better application of existing measures and instruments of the Basel Convention and possible extension or enhancement of the Convention

The CLI considers that some of the existing measures, tools and instruments within the Convention could be improved or better applied. Also some possible extensions or enhancements of the Convention could be envisaged in the context of a COP Decision.

- Promoting the better use of the Basel Convention technical guidelines as key tools for ESM of hazardous wastes;
- Facilitating take-back obligations (Art 8 & 9): there have been difficulties where a Party has not been able to secure the repatriation of imported wastes, for example where Parties differ on whether or not a shipment is illegal;
- Improving the use made of documentation to confirm ESM: use could be made of the documents received on completion of disposal (Article 6(9)) to confirm that the disposal has been made in accordance with ESM standards, for example to determine whether or not financial guarantees might be released;
- Continuing the ratification and implementation of the Ban Amendment;
- Noting that some parties have prohibited the import of hazardous wastes, e.g. pursuant to Article 4(1) of the Convention, but have not yet ratified the Ban Amendment, encouraging them to do so without further delay;
- Inviting those parties that have ratified the Ban Amendment or have prohibited imports, e.g. pursuant to Article 4(1), to report on the success of those measures and their impact
- Calling on those parties that ratified the Ban Amendment but did not yet implement it to do so immediately;
- Extending the provisions of the Convention: Problems are often caused by second-hand goods and charitable donations. Although such imports are not covered by the current scope of the Convention they do become waste, sometimes in a very short time after importation. There may therefore be good reasons for extending the Convention to make provision for requiring the repatriation of such goods when they become waste;
- Improving statistics on transboundary movements. It is difficult to produce an unequivocal picture of the quantities and types of waste being transported across boundaries because of the unevenness of reporting standards. More could be done to streamline reporting mechanisms. This might include increasing the capacity of countries

to meet the reporting obligation, improving the feedback of results to those providing the information, and encouraging accurate and timely reporting by demonstrating its usefulness. Harmonising the reporting codes (element C above) would also help;

- Similarly the arguments for a strengthened and more effective Convention would be well served by the availability of thoroughly documented environmental and health impact assessments. Strengthening the mechanisms to exchange information on environmental and health impacts could help in this context, but a systematic study of such impacts would provide the most compelling evidence;
- Parties have a right to their own definitions of hazardous waste but there needs to be better dissemination of information about such definitions. This could be achieved by strengthening the implementation of the notification procedure for national definitions of hazardous waste (Art 3);
- These changes will require resources, and public and political support will be essential if these resources are to be forthcoming. To this end, it will be important to promote the Convention and to engage the public and politicians by demonstrating the adverse impact of inadequate waste management practices on human health and the environment globally. The contribution that ESM can make to other high-profile issues, such as the management of climate change and the regulation of chemicals, should also be included in this message about the importance of the Convention's work.

G. Building Capacity

In many parts of the world there would be severe difficulties in finding the resources necessary to support a drive towards better waste management as envisaged in these elements. Thus, capacity building will need to be a priority in any such initiative. The CLI has identified a number of elements that might contribute to capacity building.

- A first step would be to specify and quantify the needs for capacity building for different Parties. This is perhaps done best on a region by region basis, and so the Regional Centres might be best placed to take the lead;
- The networks mentioned under section E above could also play a role in capacity building, particularly where there is a need to enhance the regulatory systems for border control and environmental protection;
- Securing resources will be challenging. The CLI identified a number of steps that might help raise support and funds:
 - securing political engagement with the process, as described in

- the final bullet of element F above;
- charging fees for ESM certification;
 - using a revolving fund based on fees for notifications of shipments;
 - forging links with high-profile initiatives, such as climate change, human health and SAICM;
 - capitalising on and linking with the Basel- Stockholm-Rotterdam synergy process.
- Technology and expertise transfer will be an important component of any such capacity building. This could be achieved internationally, for example through the promulgation of guidelines; regionally, through for example regional seminars; and bilaterally for example by exchange of personnel;
 - Collaboration with other agencies would be an important component of any capacity building initiative. The development agencies and global aid charities in particular have extensive on-the-ground expertise. They should be invited to provide advice on the most effective ways to secure the objectives of the Convention;
 - Efforts should be made to build closer alliances between the Convention and other international and UN development agencies and initiatives. In particular efforts should be made to ensure that the management of waste is considered in the preparation and implementation of development strategies and that waste management is recognized as part of meeting the Millennium Development Goals regarding environmental sustainability.

3 How to move forward

This paper has been modified to accommodate suggestions from recent rounds of consultation. At CLI3 the paper will be discussed and further refined as necessary, with the objective of incorporating it into recommendations for consideration and adoption by the Conference of the Parties at its tenth meeting.

In particular, this should include suggestions as to how the recommendation for the COP should be drafted, e.g. by indicating

- which elements could be taken up immediately;
- which elements might need preliminary work and would therefore become part of a development programme;
- which existing processes within the Basel Convention could be used to move certain elements forward, e.g. by including them into the work on the Strategic Framework or which type of process should be developed to deliver on the different elements;
- How to build the elements into future work programmes.

The attached table² identifies elements that could be taken up immediately and elements requiring preliminary work. Proposals are also made regarding existing processes that could be used to move forward the elements concerned.

² Provided by the EU

Comparison between the 7 main elements identified and the draft strategic framework annexed to decision OEWG VII/1 and identification of processes to move them forward

Element number	Goal in the draft strategic framework	Objective in the draft strategic framework	Existing processes within Basel Convention to be used or other processes to be developed	Can the element be taken up immediately or would preliminary work be needed?
A: Standards of Environmentally Sound Management (ESM) including its link to Transboundary Movement (TBM)	Goal 2: Strengthening the environmentally sound management of hazardous wastes and other wastes	Objective 2.1: to pursue the development of ESM of hazardous wastes and other wastes, especially through the preparation of technical guidelines, and to promote its implementation in national legislation	<ul style="list-style-type: none"> • Draft Strategic framework for 2012–2021 • Development of technical guidelines on the transboundary movements of e-waste 	<ul style="list-style-type: none"> • Preliminary work needed
B: Supporting vulnerable countries not to allow import of hazardous wastes;	Goal 1: Effective implementation of Parties' obligations on transboundary movements of hazardous wastes and other wastes	Objective 1.3: to improve performance on the notification on national definitions of hazardous wastes and other wastes and associated requirements, prohibitions and other control requirements.	<ul style="list-style-type: none"> • Draft Strategic framework for 2012–2021 • Transmission to the Implementation and Compliance Committee 	<ul style="list-style-type: none"> • Could be taken up immediately
C: Providing further legal clarity;	Goal 1: Effective implementation of Parties' obligations on transboundary movements of hazardous wastes and other wastes	Objective 1.1: to reach a common understanding amongst Parties of the definition, interpretation and terminologies of wastes covered by the Basel Convention, including the distinction between wastes and non-wastes	<ul style="list-style-type: none"> • Development of technical guidelines on the transboundary movements of e-waste 	<ul style="list-style-type: none"> • Could be taken up immediately
D: Support for and better involvement of the Basel Convention Regional Centres;	Goal 3: Promoting the implementation of ESM of hazardous wastes and other wastes as an essential contribution to the achievement of sustainable	Objective 3.1: Develop national and regional capacity, particularly through the BCRCs, by integrating waste management issues in national sustainable development strategies and plans for sustainable livelihood	<ul style="list-style-type: none"> • Review of the operations of BCRC (decision IX/4) 	<ul style="list-style-type: none"> • Preliminary work needed

	livelihood, the Millennium Development Goals and the protection of human health and the environment.	Objective 3.2: Promote cooperation with national, regional and international bodies, in particular cooperation and coordination among Basel, Rotterdam and Stockholm Conventions, to improve environmental and working conditions through the ESM of hazardous wastes and other wastes		
E: Dealing with illegal traffic;	Goal 1: Effective implementation of Parties' obligations on transboundary movements of hazardous wastes and other wastes	Objective 1.2: to prevent and combat illegal traffic in hazardous wastes and other wastes	<ul style="list-style-type: none"> • Draft Strategic framework for 2012–2021 	<ul style="list-style-type: none"> • Could be taken up immediately
F: Promotion of better application of existing measures and instruments of the Basel Convention and possible extension or enhancement of the Convention	Goal 1: Effective implementation of Parties' obligations on transboundary movements of hazardous wastes and other wastes	<p>Objective 1.3: to improve performance on the notification on national definitions of hazardous wastes and other wastes and associated requirements, prohibitions and other control requirements.</p> <p>Objective 1.4: to generate, provide, collect, transmit and use reliable, qualitative and quantitative information and data regarding export, import and generation as required by Article 13 of the Basel Convention</p>	<ul style="list-style-type: none"> • Draft Strategic framework for 2012–2021 • Transmission to the Implementation and Compliance Committee 	<ul style="list-style-type: none"> • Elements related to promotion and enhancement of the Basel Convention could be taken up immediately
G: Building Capacity	Goal 2: Strengthening the environmentally sound management of hazardous wastes and other wastes	Objective 2.2: to support and promote capacity-building for Parties, including technological capability, technology needs assessment and technology transfer, to reduce the generation and hazard potential of hazardous wastes and other wastes	<ul style="list-style-type: none"> • Draft Strategic framework for 2012–2021 	<ul style="list-style-type: none"> • Preliminary work needed