

COMMUNICATION

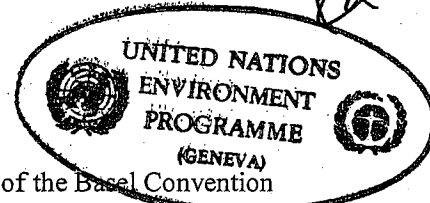
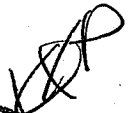
CONSULTANCY ANNOUNCEMENT AND CALL FOR APPLICATIONS BY 10 DECEMBER 2010

The Secretariat of the Basel Convention hereby draws the attention of Parties and Signatories to the Basel Convention as well as that of the Basel Convention Regional and Coordinating Centres to a consultancy announcement with regards to the preparation of a **legal analysis of the application of the Basel Convention to hazardous wastes and other wastes generated on board ships**. This work will be undertaken following a request to the Secretariat from the seventh session of the Open ended Working Group contained in decision OEWG-VII/13. According to this decision, the requested analysis is to be published on the website of the Basel Convention by 31 March 2011, and Parties are to be invited to submit comments on it by 30 June 2011.

The Secretariat invites interested candidates to consult the two sets of attached terms of reference and to submit their candidature by **10 December 2010** to juliette.kohler@unep.org, using the P11 form available on the website of the Basel Convention at: <http://www.basel.int/legalmatters/coop-IMO/index.html>

The Secretariat would welcome the assistance of Parties, Signatories as well as the Centres in making this information available to potential candidates.

Thank you in advance for your kind cooperation and assistance.



Secretariat of the Basel Convention
Geneva, 10 November 2010

To: Focal Points and Competent Authorities of Parties and Signatories to the Basel Convention
Basel Convention Regional and Coordinating Centres
cc: Permanent Missions to the United Nations in Geneva

Terms of reference

Consultant to provide a provide a legal analysis of the application of the Basel Convention to hazardous wastes and other wastes generated on board ships

1. A consultant shall be retained to assist the Secretariat in providing a legal analysis of the application of the Basel Convention to hazardous wastes and other wastes generated on board ships. This work is undertaken following a request to the Secretariat from the seventh session of the Open ended Working Group contained in decision OEWG-VII/13. According to this decision, the requested analysis is to be published on the website of the Basel Convention by 31 March 2011, and Parties are to be invited to submit comments on it by 30 June 2011.

2. The consultant shall undertake the following tasks:

Prepare a report in English of approximately 20 pages (excluding annexes) providing a legal analysis of the application of the Basel Convention to hazardous wastes and other wastes generated on board ships. The goal of the analysis is so clarify, *inter alia*, the scope of paragraph 4 of Article 1 of the Basel Convention that provides that “Wastes which derive from the normal operation of a ship, the discharge of which is covered by another international instrument, are excluded from the scope of this Convention”.

The report will be composed of one executive summary, one brief introduction, three parts and a conclusion. The first part of the analysis will present the various legal provisions of the Basel Convention that apply to hazardous wastes and other wastes generated on board ships and will identify the various legal unclarities (eg. gaps, overlaps) faced by Parties and surrounding the application of the Basel Convention to these wastes. The identification of these legal unclarities will be based on the views of Parties as expressed in the context of the Basel Convention and the International Maritime Organization Marine Environment Protection Committee, but also relevant judicial decisions or academic opinions.

The second part of the analysis will constitute the main part of the report. In this part, the consultant will undertake a legal analysis of the relevant provisions of the Basel Convention applying to hazardous wastes and other wastes generated on board ships. In doing so, the consultant shall apply the Vienna Convention on the Law of Treaties, in particular Articles 31 and 32 on the interpretation of treaties, including, if needed, by having recourse to the travaux préparatoires of these two provisions. The analysis will provide a step by step and thorough examination of the application of Articles 31 and 32 of the Vienna Convention to paragraph 4 of Article 1 of the Basel Convention. Thus, the legal analysis will require taking into account:

- the ordinary meaning of the terms,
- the context of the terms: the overall text of the treaty, its preamble and annexes, any agreement relating to the Basel Convention made between all the parties in connection with the conclusion of the Basel Convention, and any instrument made by one or more parties in connection with the conclusion of the Basel Convention and accepted by the other parties as an instrument related to the Basel Convention,
- any subsequent agreement between the parties regarding the interpretation of paragraph 4 of Article 1 of the Basel Convention or the application of that provision
- any subsequent practice in the application of the Basel Convention that establishes the agreement of parties regarding its interpretation
- the objective and purpose of the treaty
- any relevant rules of international law applicable between the parties
- the possibility that a special meaning was given to the terms in the event the Parties so intended.

The legal analysis will also examine the possible application of Article 32 of the Vienna Convention.

The third part of the report will present recommendations on the way forward. These could, for instance, aim at assisting Parties to reach an agreed understanding of the application of the Basel Convention to hazardous wastes and other wastes generated on board ships.

When analysing legal instruments developed within the framework of the International Maritime Organization, the consultant shall, as appropriate, seek the legal advice of the Secretariat of that organization.

Qualifications and experience

The consultant must be a lawyer with a specialization in international law, preferably treaty law, and have at least 10 years' work experience in the field of MEAs, including 5 years working on the Basel Convention. Specific knowledge of or experience with the MARPOL Convention and other relevant IMO legal instruments is highly desirable. The consultant must have excellent English reading and writing skills.

Time frame

The contract will require 25 days of work, to be executed between 10 January 2011 and 18 March 2011.

The consultant shall transmit the first draft of the legal analysis to the Secretariat of the Basel Convention by 18 February 2011. The consultant will finalize the document, taking into account the comments by the Secretariat by 18 March 2011 and shall provide an electronic version of the document to the Secretariat.