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**Open-ended Working Group of the Basel Convention  
on the Control of Transboundary Movements of  
Hazardous Wastes and Their Disposal**

Third session  
Geneva, 26–30 April 2004

**Report of the Open-ended Working Group of the Basel  
Convention on the Control of Transboundary Movements of  
Hazardous Wastes and their Disposal**

**I. Opening of the meeting (agenda item 1)**

1. Ms. Krystyna Panek-Gondek, Co-Chair (technical) of the Open-ended Working Group of the Basel Convention for the Control of the Transboundary Movements of Hazardous Wastes and their Disposal, opened the third session of the Open-ended Working Group at 10.20 a.m. on Monday, 26 April 2004.
2. The Executive Secretary, Ms. Sachiko Kuwabara-Yamamoto, welcomed participants to the session and congratulated the two new Parties that had ratified the Convention since the beginning of 2004, bringing the number of Parties to 160. She noted, in addition, that four more Parties had ratified the amendment contained in decision III/1 (the Ban Amendment) since the Working Group's second session.
3. Highlighting achievements since the previous session, she drew attention to the legal establishment of two regional centres and the progress with projects already approved for funding, thanks to the provision of voluntary contributions by many countries, industry and non-governmental organizations. In addition, she noted that the inter-sessional working group on legal aspects of the full and partial dismantling of ships set up by the Working Group at its previous session would be reporting back at the current session. On the key issue of financial matters, she urged Parties to give careful consideration to the guidance material for a strategy for resource mobilization for the implementation of the Strategic Plan, which had been prepared by the firm of COWI Consulting and funded by the Government of Denmark. With the help of a consultant, the Secretariat had also prepared a complementary draft resource mobilization strategy.
4. She noted that the importance of the Basel Convention for the environmentally sound management of hazardous and other wastes was attested to by the steady rise in the number of its Parties and gained due recognition in a number of decisions by international environmental forums, such as the World Summit on Sustainable Development. At the same time, the increase in the number of Parties from developing countries or countries with economies in transition and their need for assistance at a time when waste was growing in complexity and volume worldwide posed a tremendous challenge, as the Convention did not have an adequate and sustainable financial mechanism of its own and had to rely on the dwindling resources available under the Trust Funds. Accordingly, she hoped that the Working Group would launch a constructive dialogue on broadening the technical and financial resource base available for implementation of the Convention and its Strategic Plan, a subject that was critical to the future of the Convention.

## II. Adoption of the agenda (agenda item 2)

5. At its first plenary meeting, on 26 April 2004, the Working Group adopted the provisional agenda of the session as contained in document UNEP/CHW/OEWG/3/1 and as set out below:

1. Opening of the meeting.
2. Adoption of the agenda.
3. Organization of the session.
4. Strategic Plan for the Implementation of the Basel Convention to 2010:
  - (a) Report on progress;
  - (b) Resource mobilization;
  - (c) Capacity-building.
5. Basel Convention regional centres:
  - (a) Report on progress;
  - (b) Implementation of the Environment Initiative of the New Partnership for Africa's Development as it relates to hazardous wastes and other wastes.
6. Basel Convention partnership work programme.
7. Dismantling of ships.
8. Analysis of issues related to Annex VII.
9. Basel Protocol on Liability and Compensation.
10. Mechanism for promoting implementation and compliance.
11. Technical guidelines:
  - (a) Preparation of technical guidelines on:
    - (i) The environmentally sound management of wastes consisting of, containing or contaminated with persistent organic pollutants;
    - (ii) The environmentally sound recycling/reclamation of metals and metal compounds (R4);
    - (iii) The environmentally sound management of wastes resulting from surface treatment of metals and plastics (Y17);
  - (b) Implementation of the technical guidelines adopted by the Conference of the Parties.
12. Work on hazardous characteristics.
13. Annexes to the Basel Convention and related procedures:
  - (a) Review or adjustment of lists of wastes contained in Annexes VIII and IX to the Basel Convention;
  - (b) National classification and control procedures for the import of wastes contained in Annex IX;

- (c) Harmonization of lists of wastes and related procedures.
- 14. Work programme of the Open-ended Working Group for 2005–2006.
- 15. Financial matters.
- 16. Preparation of draft decisions for consideration by the Conference of the Parties at its seventh meeting:
  - (a) Bilateral, multilateral or regional agreements or arrangements:
    - (i) Compilation of list of agreements;
    - (ii) Draft guidance elements;
  - (b) Transmission of information, including implementation of decision II/12;
  - (c) Implementation of decision III/1 on amendment of the Basel Convention;
  - (d) International cooperation, including cooperation with the World Trade Organization and the Global Environment Facility;
  - (e) Competent authorities and focal points;
  - (f) Follow-up to the World Summit on Sustainable Development;
  - (g) National definitions of hazardous wastes;
  - (h) Amendment to rule 29 of the rules of procedure;
  - (i) Interim guidelines for the implementation of decision V/32 on enlargement of the scope of the Trust Fund to Assist Developing and Other Countries in Need of Technical Assistance in the Implementation of the Basel Convention;
  - (j) Illegal traffic.
- 17. Organization of the seventh meeting of the Conference of the Parties.
- 18. Other matters.
- 19. Adoption of the decisions and the report.
- 20. Closure of the meeting.

### **III. Organization of the session (agenda item 3)**

#### **A. Attendance**

6. The session was attended by representatives of the following Parties to the Convention: Albania, Algeria, Antigua and Barbuda, Argentina, Armenia, Australia, Azerbaijan, Bahrain, Bangladesh, Belgium, Bhutan, Bolivia, Botswana, Brazil, Bulgaria, Burkina Faso, Cambodia, Cameroon, Canada, Chad, Chile, China, Colombia, Comoros, Costa Rica, Cuba, Czech Republic, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, European Commission, Finland, France, Georgia, Germany, Ghana, Greece, Guatemala, Guinea, Hungary, India, Indonesia, Iran (Islamic Republic of), Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Kuwait, Kyrgyzstan, Luxembourg, Madagascar, Malaysia, Maldives, Mali, Mauritius, Mexico, Monaco, Morocco, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Panama, Paraguay, Peru, Philippines, Poland, Qatar, Republic of Korea, Romania, Russian Federation, Saint Lucia, Saudi Arabia, Senegal, Serbia and Montenegro, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland,

Syrian Arab Republic, Thailand, Trinidad and Tobago, Turkey, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, Uruguay, Viet Nam, Yemen, Zambia.

7. The following States not party to the Convention were represented: Angola, Central African Republic, Gabon, Iraq, Myanmar, Sudan, United States of America.

8. Observers from the following United Nations bodies, specialized agencies and intergovernmental organizations were also present: International Labour Organization, International Maritime Organization, Organisation for the Prohibition of Chemical Weapons, United Nations Conference on Trade and Development, United Nations Economic Commission for Europe, United Nations Environment Programme, United Nations Industrial Development Organization.

9. The following intergovernmental organizations were represented: Organisation for Economic Cooperation and Development, Permanent Delegation of the League of Arab States.

10. The following non-governmental organizations and private sector organizations were represented: American Chemistry Council, Association of Plastics Manufacturers in Europe (APME), Baltic and International Maritime Council (BIMCO), Basel Action Network, Bureau of International Recycling, Confederation of European Waste-to-Energy Plants, CTCI Foundation, European Federation of Waste Management and Environmental Services (FEAD), Greenpeace International, Institute of Environment and Resources, International Chamber of Shipping, International Council on Mining and Metals, International Lead and Zinc Study Group, International Precious Metals Institute, National Association of Waste and Environmental Industries (FNADE), Sony Ericsson Mobile Communications, World Chlorine Council.

11. Representatives of the following Basel Convention regional centres also attended: Argentina, China, Egypt, El Salvador, Indonesia, Nigeria, Russian Federation, Senegal, Slovakia, South Africa, South Pacific Regional Environment Programme (SPREP), Trinidad and Tobago and Uruguay.

12. The following individuals attended the session as observers: Ms. Chin-Lan Chiang, Mr. Thomas Conway, Mr. Michael Mueller, Mr. John Myslicki.

## **B. Organization of work**

13. The Working Group conducted the session in plenary meetings on the understanding that informal contact groups would be set up as required, and decided to organize the work of the session along the lines laid out in a provisional timetable prepared and presented to the Working Group by the Secretariat.

14. The Bureau, as appointed at the first session of the Working Group, was constituted as follows:

Co-Chairs:	Mr. Dessalegne Mesfin (Ethiopia) (legal)
	Ms. Krystyna Panek-Gondek (Poland) (technical)
Vice-Chairs:	Mr. Geoff Thompson (Australia) (technical)
	Mr. Mauricio García Velasco (Mexico) (legal)
Rapporteur:	Mr. Peiman Seadat (Islamic Republic of Iran)

## **IV. Strategic Plan for the Implementation of the Basel Convention to 2010 (agenda item 4)**

### **A. Report on progress (agenda item 4(a))**

15. The Working Group took up the sub-item at its 1st plenary meeting, on the morning of Monday, 26 April. In considering the sub-item, it had before it a note by the Secretariat on the Strategic Plan for the Implementation of the Basel Convention (UNEP/CHW/OEWG/3/2) and a status report prepared by the Secretariat on the implementation of the projects under the Strategic Plan (UNEP/CHW/OEWG/3/INF/4).

16. In the ensuing discussion, representatives reported on implementation measures that had been or were to be carried out in their countries or regions, and a number of representatives made a strong call for increased resources for implementation. In addition, it was suggested that an improved mechanism should be identified for the evaluation of projects. In response to those suggestions, the Chair proposed

that a small contact group should be set up to consider a mechanism for monitoring and evaluating projects and the criteria for such evaluation.

17. The Working Group took up the sub-item again at its 4th plenary session, on the afternoon of Tuesday, 27 April.

18. The representative of the Secretariat reported on a meeting held on Sunday, 25 April, immediately prior to the current session of the Working Group, at which representatives of the regional centres and of host Governments had discussed lessons learned from the preparation and implementation of the projects under the Strategic Plan. He also reported that the participants had drawn attention to the lack of sustainable funding and the need for a financial mechanism for the centres.

19. The Working Group resumed consideration of the sub-item at its 8th meeting, on the afternoon of 29 April. In considering the sub-item, the Group heard a report from the chair of the small contact group on the contact group's deliberations. The report listed principles that the contact group suggested could govern the selection of project proposals under the Strategic Plan for the Implementation of the Basel Convention, as well as suggested language for possible decisions by the Conference of the Parties to give effect to those principles. As presented to the Working Group, the report listed seven principles. As one of the principles proved controversial, however (as discussed below), it was deleted from the report. The text of the report, as modified in light of the Working Group's deliberations, is set out in annex III to the present report.

20. In the discussion that followed presentation of the contact group report, a number of representatives raised questions with respect to principle VI (now principle V in the annexed report of the contact group) and the roles of regional groups and Basel Convention regional centres in the prioritization of project proposals for possible funding. A number of representatives suggested that the regional centres should be responsible for prioritizing the proposed projects, while others, stressing the sovereign status of Parties and arguing that the regional centres were meant to serve the Parties, argued strongly that that task should be carried out by the Parties.

21. A number of representatives objected to former principle III, which would have added co-financing as a group 2 criterion. It was suggested that, since it provided for co-financing only "wherever possible", it would not preclude projects that could not raise such financing. Others, however, said that it might introduce conditionality into the project selection process and would work to the prejudice of some Parties. The Working Group accordingly agreed that it should be deleted from the contact group report.

22. In the light of the various proposals put forward during its debate, the Working Group agreed that the small contact group should convene again, chaired by the representative of Australia, to produce a draft decision for consideration by the Working Group the following day incorporating the principles and suggested decision language contained in the contact group's report and taking into account the Working Group's deliberations.

23. The Working Group continued its debate on the item at its 10th meeting, on the afternoon of Friday, 30 April, at which time it adopted a decision on the item on the basis of the draft contained in the relevant conference room paper, as orally amended. The decision as adopted is set out as decision OEWG-III/1 in annex I to the present report.

24. At the same meeting, the Working Group approved the text of a draft decision on the item for possible adoption by the Conference of the Parties at its seventh meeting on the basis of the draft decision contained in document UNEP/CHW/OEWG/3/2. The draft decision as approved by the Working Group is contained in annex II to the present report.

## **B. Resource mobilization (agenda item 4(b))**

25. The Working Group deferred its consideration of the sub-item on the understanding that the financial aspects of the Strategic Plan would be covered in the general discussion under agenda item 15 (Financial matters).

## **C. Capacity-building (agenda item 4(c))**

26. The Working Group took up the sub-item at its 2nd plenary meeting, on the afternoon of Monday, 26 April. In considering the sub-item, it had before it a note by the Secretariat on capacity-building for the Strategic Plan (UNEP/CHW/OEWG/3/4), which presented the wide range of activities, namely, workshops, seminars, projects, and the preparation of training manuals and other

publications, carried out by the Secretariat, including in conjunction with the regional centres, Parties, other United Nations bodies and private sector and non-governmental organizations. Introducing the note, the representative of the Secretariat reviewed the diverse measures undertaken, noting in addition that the web site of the Basel Convention had been further developed and much improved, and stressed the need for resources to continue its conduct of those important activities under the Convention.

27. The representative of the UNEP Division of Technology, Industry and Economics gave a presentation on a capacity-building programme which the division had developed aimed at promoting an integrated and holistic approach to customs enforcement by training customs and border police officials for the prevention and control of illicit traffic with implications for the environment, including hazardous wastes, POPs, ozone-depleting substances and endangered species. The excellent collaboration that existed between UNEP and the Secretariat was exemplified by the preparation, still under way, of a green customs manual. In closing, he invited the support of those countries interested in promoting the sort of collaboration and holistic approaches that he had described.

28. In the ensuing discussion, representatives underlined the importance of capacity-building in ensuring the environmentally sound management of waste.

29. At the same meeting, the Working Group approved the text of a draft decision on capacity-building for implementation of the Strategic Plan for possible adoption by the Conference of the Parties at its seventh meeting, based on the draft decision contained in document UNEP/CHW/OEWG/3/4. The draft decision as approved by the Working Group is contained in annex II to the present report.

## **V. Basel Convention regional centres (agenda item 5)**

### **A. Report on progress (agenda item 5(a))**

30. The Working Group took up the sub-item at its 2nd plenary meeting, on the afternoon of Monday, 26 April. In considering the sub-item, it had before it a note by the Secretariat on progress made with respect to Basel Convention regional centres (UNEP/CHW/OEWG/3/5) and a tabular information paper prepared by the Secretariat on implementation of the business plans and capacity of the Basel Convention regional centres for training and technology transfer (UNEP/CHW/OEWG/3/INF/22).

31. Introducing the item, the representative of the Secretariat recalled that, at its sixth meeting, the Conference of the Parties had adopted a core set of elements to be included in the framework agreements to be concluded between the Secretariat and the representatives of host countries of Basel Convention regional centres. She reported that two such framework agreements had been signed, one with the Government of Uruguay and one with the South Pacific Regional Environmental Programme, while a group of 10 countries had signed an agreement for the establishment in South Africa of the African Institute for Environmentally Sound Management of Hazardous Wastes and other Wastes, which entity was to conclude an agreement to serve as the regional centre for English-speaking African countries.

32. In his report under agenda item 4 (a) on the meeting of representatives of the regional centres and of host Governments held on Sunday, 25 April 2004, the representative of the Secretariat noted that participants had also discussed matters relating to the centres' business plans and that they had requested further assistance from the Secretariat in order, among other matters, to draw up detailed guidelines for preparing and for implementing the business plans.

33. In the discussion under the sub-item, the representative of the group of Latin American and Caribbean countries appealed to the Secretariat to strengthen the work of the regional centres with donor countries, to provide support in all phases of the elaboration and implementation of project proposals and to disseminate the results of projects. In addition, noting the fundamental role of the centres in the implementation of the Convention, a number of representatives stressed the need to strengthen the centres' capacities and to ensure that they had the necessary resources for their work, ideally provided through a financial mechanism. It was also suggested that contributions could be provided by the centres' host countries and, where possible, the countries which they served, on a voluntary basis. There were also calls for a mechanism to evaluate their activities and several representatives noted the need to speed up the signature of the relevant framework agreements. One representative of a host Government requested that his Government be provided with the Spanish language text of the framework agreement for his country.

34. The Working Group took up the item again at its 10th plenary meeting, on the afternoon of Friday, 30 April, at which time it approved the text of a draft decision on progress with respect to the Basel Convention regional centres for possible adoption by the Conference of the Parties at its seventh meeting, based on the draft decision contained in the relevant conference room paper, as orally amended. The Working Group did not reach consensus on the terms of paragraph 4 of the draft decision, dealing with funding provided by regional centre host countries. Accordingly, the Working Group approved the draft decision with paragraph 4 enclosed in square brackets. The text of the draft decision as approved is contained in annex II to the present report.

## **B. Implementation of the Environment Initiative of the New Partnership for Africa's Development as it relates to hazardous wastes and other wastes (agenda item 5(b))**

35. The Working Group took up the item at its 4th plenary meeting, on the afternoon of Tuesday, 27 April. In considering the item, it had before it a note by the Secretariat on the role of Basel Convention regional centres in the implementation of the Environment Initiative of the New Partnership for Africa's Development (NEPAD) as it related to hazardous wastes and other wastes (UNEP/CHW/OEWG/3/6).

36. The Executive Secretary said that the Basel Convention had pursued cooperation with respect to NEPAD activities that were relevant to the Convention and that the NEPAD Environment Initiative demonstrated the critical role to be played by the regional centres in Africa.

37. In that context, attention was drawn to the leverage that NEPAD could provide, given its prominent role in high-level forums such as the African Union, in promoting the development of projects and securing funding. One representative, speaking on behalf of African countries, stressed the importance of the regional centres to capacity-building in Arabic, English and French-speaking countries in Africa. Parties were also urged to assist the Secretariat in securing support in that area from GEF. On behalf of African French-speaking countries, appreciation was also expressed for the assistance by the United States of America to the regional centre in Dakar.

38. At the same meeting, the Working Group approved the text of a draft decision on the role of the regional centres in the implementation of the Environment Initiative for possible adoption by the Conference of the Parties at its seventh meeting, based on the draft decision contained in document UNEP/CHW/OEWG/3/6. The draft decision as approved by the Working Group is contained in annex II to the present report.

## **VI. Basel Convention partnership work programme (agenda item 6)**

39. The Working Group took up the item at its first plenary meeting, on the morning of Monday, 26 April. In considering the item, it had before it a note by the Secretariat on the issue (UNEP/CHW/OEWG/3/7).

40. Introducing the item, the Executive Secretary recalled that the Working Group had provisionally approved the work programme for the Basel Convention Partnership Programme at its second session on the understanding that it would be posted on the Convention web site for comment and that the Working Group would take it up again at the current session. Noting that as yet no comments had been submitted, she stressed the need for progress on the item at the current session. As further background to the item, a representative of the Secretariat gave a brief presentation on progress made to date with respect to projects that had been started or were being developed under the Partnership Programme, including the mobile phone partnership initiative and a partnership on computers and the environment. The Working Group also heard a brief presentation from the Chair of the mobile phone working group, who was to make more extended remarks at a side event the following evening, on that group's activities to date.

41. Opening the floor to debate on the item, the Co-Chair (technical) urged the representatives to focus on the funding of the programme.

42. Before turning to the substance of the issue, a number of representatives expressed their disappointment that not all of the documents pertaining to the item were available in all working languages. The representative of the Secretariat explained that the difficulty in providing translations of all documents had been principally due to the very heavy volume of documentation prepared for the current session and the late finalization of some documents.

43. The representative of the group of Latin American and Caribbean countries noted with concern the lack of the resources necessary to carry out partnership work after the seventh meeting of the Conference of the Parties and stressed the need to make such resources available through additional voluntary contributions. A large number of representatives expressed support for the partnership programme, while a number made suggestions for improvement of the work programme and the draft decision on the item. The Secretariat undertook to produce a revised version of the work programme and draft decision for the Working Group's consideration.

44. The Working Group took up the item again at its 8th meeting, on the afternoon of 29 April, at which time the representative of the secretariat reviewed the changes that had been made to the draft decision and work programme to take into account the Working Group's earlier discussion of the item and the Working Group further debated the draft decision.

45. The Working Group continued its debate on the item at its 10th meeting, on the afternoon of Friday, 30 April, at which time it adopted a decision on the item on the basis of the draft contained in the relevant conference room paper, as orally amended. The decision as adopted is set out as decision OEWG-III/2 in annex I to the present report.

46. Also under the item, the representative of South Africa read a declaration on behalf of the group of African countries on a number of issues pertaining to the Convention, including the need for a sustainable financial mechanism, reducing the generation of hazardous waste and increasing corporate producer responsibility. A copy of that declaration is set out in annex IV to the present report.

## **VII. Dismantling of ships (agenda item 7)**

47. The Working Group took up the item at its 2nd plenary meeting, on the afternoon of Monday, 26 April. In considering the item, it had before it notes by the Secretariat on the work of the inter-sessional working group on the legal aspects of the full and partial dismantling of ships (UNEP/CHW/OEWG/3/8) and on the joint working group of the International Labour Organization (ILO), International Maritime Organization (IMO) and the Basel Convention; as well as comments provided by Parties and others (UNEP/CHW/OEWG/3/INF/5, Corr. 1 and Add. 1).

48. The representative of IMO recalled that its Marine Environment Protection Committee had approved, subject to some minor editorial changes, the proposed terms of reference of the joint working group of IMO, ILO and the Basel Convention.

49. The Co-Chair (legal) recalled that the inter-sessional working group had been set the task of reviewing and synthesizing submissions received in response to a series of questions set forth in decision OEWG-II/4. Representatives of the Secretariat said that a number of comments had been received from interested Parties and other entities, and had been discussed at an informal pre-session meeting of the group held on Sunday, 25 April.

50. The Open-ended Working Group agreed that an informal contact group would be set up to work during the current session, co-chaired by Mr. Mesfin (Ethiopia) and Mr. Moin Ahmed (Bangladesh).

51. The Working Group resumed consideration of the item at its 8th plenary meeting, on the afternoon of 29 April, at which time the representative of the Secretariat presented a report on the informal working group's deliberations during the current session. The text of the report is contained in annex V to the present report. Several representatives welcomed the progress made in inter-organization cooperation on this important topic. Following the presentation, there was considerable debate regarding the provisions for the size and composition of the joint working group of ILO, IMO and the Basel Convention and on the process of nomination of Parties to the joint working group. In that regard, the Group noted that the regional groupings would consult to nominate one representative per region. There was consensus that the joint working group should commence its work as soon as possible and, to that end, the Working Group agreed that parties would submit nominations for members of the joint working group by 30 June 2004.

52. The Working Group continued its debate on the item at its 9th meeting, at which time it adopted a decision on the scope of the work of the inter-sessional working group on legal aspects of the full and partial dismantling of ships and its work programme, on the basis of the draft decision contained in the relevant conference room paper, as orally amended. The Working Group did not reach consensus on certain terms of paragraph 3 of the draft decision, relating to the possible obligations of flag States, States of export, States of import and other States under the Basel Convention. Accordingly, the Working Group approved the draft decision with some text in paragraph 3 enclosed in square brackets, and agreed that participants would provide the Secretariat with written expressions of their concerns



regarding the issue treated in the bracketed text. The decision as adopted is set out as decision OEWG-III/3 in annex I to the present report.

53. The Working Group also agreed to entrust the Secretariat with the preparation of a draft decision for consideration and possible adoption by the Conference of the Parties at its seventh meeting. One representative suggested that the draft decision should include a reference to the role of flag States, as indicated in paragraph 9.2 of the IMO guidelines on ship recycling.

54. At the same meeting, the Working Group adopted a decision on the joint working group of ILO, IMO and the Basel Convention on the basis of the draft contained in the relevant conference room paper. Prior to adopting the decision, the Working Group discussed whether, in the interest of reducing the volume of documentation for the current session, the report of a meeting between ILO, IMO and the Convention Secretariat on 13 and 14 January 2004 should be included as an annex to the decision. In the interest of ready access to relevant information, the Working Group decided to maintain the report as an annex to the decision, and in response to the concerns expressed regarding the volume of documentation, the Secretariat undertook to strive to limit it in connection with the seventh meeting of the Conference of the Parties. The decision as adopted is set out as decision OEWG-III/4 in annex I to the present report.

55. One representative, speaking on behalf of a regional economic integration organization, said that the European Union had produced a declaration on the environmentally sound management of ships, which would be distributed as a conference room paper. He suggested that the conference room paper could serve as a starting point for a declaration to be considered and possibly adopted by the Conference of the Parties at its seventh meeting. The text of the declaration is contained in annex VI to the present report. Another representative stressed the importance of regional approaches and, in that context, reported that the member States of MERCOSUR were discussing within the framework of their customs union the possibility of harmonizing regional legislation regarding ship dismantling.

56. A number of representatives expressed disappointment that little progress had been made on this agenda item and many stressed the need for further in-depth discussions in view of the importance of the issues involved. The representative from Canada requested that the Canadian delegation's statement on the item be included in the report of the session. That statement is contained in annex VII to the present report.

## **VIII. Analysis of issues related to Annex VII (agenda item 8)**

57. The Working Group took up the item at its 6th meeting, on the afternoon of 28 April. In its consideration of the item, it had before it an analysis prepared by the Secretariat for the Group's second session on issues related to Annex VII (UNEP/CHW/OEWG/2/7), a consolidation of comments received on the study during the period between the Group's second and third sessions (UNEP/CHW/OEWG/3/INF/6) and a note by the Secretariat prepared for the current session on analysis of issues related to Annex VII (UNEP/CHW/OEWG/3/10).

58. The representative of the Secretariat introduced the documentation under the item and reviewed the work done to date. Noting that five Parties and one environmental non-governmental organization had provided comments on document UNEP/CHW/OEWG/2/7 during the inter-sessional period, she asked for further comments and guidance from the Parties so that the analysis could be finalized in time for the seventh meeting of the Conference of the Parties, as contemplated in decision VI/34 of the Conference of the Parties and decision OEWG-II/6.

59. There was considerable debate under the item. A number of representatives, one speaking on behalf of a regional grouping, said that the analysis contained in document UNEP/CHW/OEWG/2/7 should be finalized during the Working Group's current session, in accordance with decision VI/34 of the Conference of the Parties. Those representatives repeatedly stressed that the point of the analysis, as stated in the preamble to decision VI/34, was to assist Parties to ratify the Ban Amendment contained in decision III/1, which they characterized as vital to the environmentally sound management of hazardous wastes in developing countries. The importance of the Basel Convention regional centres in regard to facilitating ratification and implementation of the Ban Amendment was highlighted.

60. A number of representatives drew attention to the enormous problems posed for developing countries by the massive new wave of exports of end-of-life equipment and pointed out the consequent importance of the Ban Amendment.

61. The representatives of two environmental non-governmental organizations criticized the draft analysis for presenting what they called an unrealistic picture of the costs and benefits to a country of

ratifying the Ban Amendment. That, they said, would discourage developing countries from ratifying the amendment, which was arguably the most significant environmental achievement since the 1992 United Nations Conference on Environment and Development, and reflected an apparent effort on the part of some Parties to undermine the amendment. They argued that the analysis was unbalanced and did not serve its intended purpose.

62. Many representatives outlined proposed changes to the analysis and the draft decision contained in the note by the Secretariat, in the light of which the Working Group agreed to establish a contact group, chaired by Mr. Pavel Suian (Romania), with the task of reviewing how to deal with the comments submitted and preparing a draft decision on the item for the Working Group and elements for a decision by the Conference of the Parties. A number of representatives, noting the history of difficult negotiations under the item, argued that it was essential for the contact group to limit itself to those tasks and to avoid revisiting issues on which agreement had previously been reached or raising new issues.

63. The Working Group took up the item again at its 9th meeting, on the morning of Friday, 30 April, at which time it adopted a decision on the item on the basis of the draft contained in the relevant conference room paper. The decision as adopted is set out as decision OEWG-III/5 in annex I to the present report.

64. At the same meeting, the Working Group approved the text of a draft decision on the item for possible adoption by the Conference of the Parties at its seventh meeting on the basis of the draft decision contained in the relevant conference room paper. The draft decision as approved by the Working Group is contained in annex II to the present report.

## **IX. Basel Protocol on Liability and Compensation (agenda item 9)**

65. The Working Group took up the item at its 4th plenary meeting, on the afternoon of Tuesday, 27 April. In considering the item, it had before it notes by the Secretariat on the Basel Protocol (UNEP/CHW/OEWG/3/11 and Corr. 1) and on the revised draft instruction manual for the implementation of the Protocol (UNEP/CHW/OEWG/3/12).

66. The Co-Chair (legal) introduced the documentation on the item, and the representative of the Secretariat reported on progress in promoting ratification of and accession to the Protocol, noting that only Switzerland had responded to the call for contributions for the conduct of workshops and other measures to that end. Several representatives stressed the importance of workshops, commending Switzerland on its contribution, which had made it possible to hold two workshops, and called for similar workshops in other regions where there had been little progress in ratification of the Protocol since the sixth meeting of the Conference of the Parties.

67. One representative noted that countries in eastern Europe faced difficulties in ratifying the Protocol and called for a workshop on the issue to be convened for the region in 2005.

68. A number of representatives commended the Secretariat on the revised draft instruction manual, which was felt to be much improved in both structure and approach, and gratitude was expressed to Switzerland for its continuing support for the process of preparing the manual. Some representatives undertook to provide suggestions in writing to the Secretariat on further improvements to the manual by the deadline of 31 July 2004 and it was also suggested that the decisions in the two documents under the item could be merged into single decisions, given the large overlap between them.

69. One speaker proposed that a mechanism be created, possibly as an addendum to the manual, specifying obligations of producers or suppliers of goods sold internationally to recover such items for disposal at the end of their useful lives. The representative of the Secretariat explained that the instruction manual was based on the actual provisions of the Protocol, which, as currently formulated, did not cover the liability of producers or suppliers. If the Protocol were amended to include such liability, the instruction manual would be amended accordingly. It was also pointed out, however, that the Protocol did identify the liability of generators of waste, a category which could be deemed to include producers and suppliers.

70. The Working Group took up the item again at its 9th plenary meeting, on the morning of Friday 30 April, at which time it adopted a decision on the item on the basis of the draft contained in the relevant conference room paper, as orally amended. The decision as adopted is set out as decision OEWG-III/6 in annex I to the present report.

71. At that same meeting, the Working Group approved the text of a draft decision on the Basel Protocol on Liability and Compensation, as orally amended, for possible adoption by the Conference of the Parties at its seventh meeting. The draft decision as approved by the Working Group is contained in annex II to the present report.

## **X. Mechanism for promoting implementation and compliance (agenda item 10)**

72. The Working Group took up the item at its 3rd plenary meeting, on the morning of Tuesday, 27 April. In considering the item, it had before it the note on the issue by the Secretariat (document UNEP/CHW/OEWG/3/13).

73. Introducing the item, the Co-Chair (technical) recalled that the terms of office of five members of the committee to administer the mechanism would expire at the end of the seventh meeting of the Conference of the Parties; nominations for their replacement, on the basis of one candidate per region, were due by 31 August 2004, in time for distribution to the Conference.

74. The Working Group took up the item again at its 10th meeting, on the afternoon of Friday, 30 April, at which time it adopted a decision on the item on the basis of the draft contained in document UNEP/CHW/OEWG/3/13, as orally amended. The decision as adopted is set out as decision OEWG-III/7 in annex I to the present report.

## **XI. Technical guidelines (agenda item 11)**

### **A. Preparation of technical guidelines on the environmentally sound management of wastes consisting of, containing or contaminated with persistent organic pollutants (agenda item 11(a) (i))**

75. The Working Group took up the sub-item at its first plenary meeting, on the morning of Monday, 26 April. In considering the sub-item, it had before it a note by the Secretariat on the preparation of technical guidelines on the environmentally sound management of wastes consisting of, containing or contaminated with persistent organic pollutants (POPs) (UNEP/CHW/OEWG/3/14 and Corr.1), general technical guidelines on the environmentally sound management of wastes consisting of, containing or contaminated with POPs (UNEP/CHW/OEWG/3/INF/7), technical guidelines on the environmentally sound management of wastes consisting of, containing or contaminated with polychlorinated biphenyls (PCBs), polychlorinated terphenyls (PCTs) and polybrominated biphenyls (PBBs) (UNEP/CHW/OEWG/3/INF/7/Add.1) and draft technical guidelines for the environmentally sound management of wastes consisting of, containing or contaminated with polychlorinated dibenzo-p-dioxins (PCDDs) and polychlorinated dibenzofurans (PCDFs) (UNEP/CHW/OEWG/3/INF/9).

76. The Co-Chair (technical) introduced the sub-item and the related documentation. The Executive Secretary then reviewed the work carried out thus far, adding that the Secretariat had recently engaged a consultant to initiate the preparation of the other specific technical guidelines on POPs, the table of contents and some text of which were expected to be ready in June 2004. She also expressed appreciation to the lead countries – Australia, Canada and Mexico – and to members of the inter-sessional working group for their valuable contribution. She stressed that further work was required on the technical guidelines and that the task was becoming increasingly urgent since the Stockholm Convention had entered into force and the first meeting of its Conference of the Parties was to be held in the spring of 2005. In addition, she informed the Group that Mexico had undertaken to prepare draft technical guidelines on DDT. Following a brief outline by the representative of the Secretariat of the process used to draft the technical regulations, Mr. Michael Ernst (Germany), who had chaired the pre-session consultation on the issue held on 25 April, reported on the consultation and suggested that the work on the guidelines other than the general guidelines and the PCB guidelines should follow the same approach as for these two guidelines, thereby ensuring that drafts on the four outstanding guidelines were ready for consideration at the eighth session of the Conference of the Parties.

77. Following the suggestion made by the Co-Chair (technical), it was decided that an informal contact group to undertake work relating to this specific sub-item should be established under the chairmanship of the representative of Germany.

78. The Working Group continued its consideration of the sub-item at its 10th plenary meeting, on the afternoon of Friday, 30 April, at which time it heard a report from the chair of the contact group on the group's deliberations. The contact group's report is contained in annex VIII to the present report. At the same meeting, the Working Group adopted a decision on the sub-item on the basis of the draft contained in the relevant conference room paper, as orally amended. The decision as adopted is set out as decision OEWG-III/8 in annex I to the present report.

79. At the same meeting, the Working Group approved the text of a draft decision on the sub-item for possible adoption by the Conference of the Parties at its seventh meeting, based on the draft decision contained in the relevant conference room paper, as orally amended. The Working Group did not reach consensus on the terms of paragraphs 5 and 6 of the draft decision, dealing with the possible updating of the technical guidelines on persistent organic pollutants and possible work on the definition of low POPs content, levels of destruction and irreversible transformation. Accordingly, the Working Group approved the draft decision with those paragraphs enclosed in square brackets. The draft decision as adopted by the Working Group is contained in annex II to the present report.

#### **B. Preparation of the technical guidelines on the environmentally sound recycling of metals and metal compounds (R4) (agenda item 11 (a) (ii))**

80. The Working Group took up the sub-item at its 5th plenary meeting, on the morning of Wednesday, 28 April. It had before it the note by the Secretariat on the preparation of the technical guidelines on the environmentally sound recycling of metals and metal compounds (R4) (UNEP/CHW/OEWG/3/15 and Add.1).

81. Thanks were expressed to Australia for its work in preparing the guidelines. The representative of Australia, recalling that few comments had been received to date, called for detailed drafting proposals to be specifically worded and submitted by 30 June 2004, so that they could be incorporated directly in the guidelines in time for their consideration by the Conference of the Parties at its seventh meeting. The Co-Chair (technical) confirmed that comments on the guidelines and on the relevant decision, made during the current meeting, would be noted by the Secretariat and incorporated in the texts.

82. The Working Group took up the item again at its 9th plenary meeting, on the morning of Friday, 30 April, at which time it approved the text of a draft decision on the guidelines for possible adoption by the Conference of the Parties at its seventh meeting on the basis of the draft decision contained in the relevant conference room paper, as orally amended. The draft decision as approved by the Working Group is contained in annex II to the present report.

#### **C. Preparation of the technical guidelines on the environmentally sound recycling of metals and plastics (Y17) (agenda item 11 (a) (iii))**

83. The Working Group took up the item at its 5th plenary meeting, on the morning of Wednesday, 28 April.

84. In considering the item, the Working Group had before it a note by the Secretariat on the preparation of technical guidelines on the environmentally sound management of wastes resulting from surface treatment of metals and plastics (Y17) (UNEP/CHW/OEWG/3/16) and the draft technical guidelines on the environmentally sound management of wastes resulting from surface treatment of metals and plastics (Y17) (UNEP/CHW/OEWG/3/INF/8).

85. Introducing the item, the representative of the Secretariat reviewed the work that had already been carried out on the guidelines, noting that no comments had been received on the draft prepared by Australia.

86. The representative of Australia reported that, although work had been initiated on the guidelines in question, it had been agreed that work on the draft technical guidelines on the environmentally sound recycling or reclamation of metals and metal compounds (R4) should be completed first. It was agreed that any further comments on the guidelines should be transmitted to the Secretariat by 31 January 2005, in time for consideration by the Open-ended Working Group at its next session.

87. One representative commented that it would be easier to provide comments on the guidelines if they were available in all the official United Nations languages. The representative of the Secretariat explained that, regrettably, there had not been sufficient funds to provide for the translation of the draft

guidelines for the current session and assured the Group that they would be translated in time for the seventh meeting of the Conference of the Parties.

88. At the same meeting, the Working Group approved the text of a draft decision on the draft guidelines for possible adoption by the Conference of the Parties at its seventh meeting on the basis of the draft decision contained in document UNEP/CHW/OEWG/3/16. The draft decision as approved by the Working Group is contained in annex II to the present report.

#### **D. Implementation of the technical guidelines adopted by the Conference of the Parties (agenda item 11 (b))**

89. The Working Group took up the sub-item at its 5th meeting, on the morning of 28 April. In considering the item, it had before it a conference room paper prepared by the representative of Germany.

90. Introducing the sub-item, the representative of the Secretariat recalled that, in a number of decisions (VI/37, VI/20, VI/21 and VI/22), the Conference of the Parties had requested Parties to report on their experiences in implementing technical guidelines adopted by the Conference of the Parties and noted that few had done so.

91. One representative called for the adoption of a decision by the Working Group inviting Parties to report on their experience in implementing the technical guidelines and requesting the Secretariat to compile those reports for the attention of the Conference of the Parties.

92. The Working Group took up the item again at its 9th meeting, on the morning of Friday, 30 April, at which time it adopted a decision on the item on the basis of the draft contained in the relevant conference room paper, as orally amended. The decision as adopted is set out as decision OEWG-III/9 in annex I to the present report.

### **XII. Work on hazard characteristics (agenda item 12)**

93. The Working Group took up the item at its 5th meeting, on the morning of 28 April. In considering the item, the Working Group had before it a note by the Secretariat on work on hazard characteristics H6.2, H10, H11 and H13 (UNEP/CHW/OEWG/3/17), a draft guidance paper on each of the three hazard characteristics (UNEP/CHW/OEWG/3/INF/11, INF/12 and INF/13, respectively) and an information paper containing the provisional agenda for the seventh session of the Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals, to be held in Geneva from 14 to 16 July 2004 (UNEP/CHW/OEWG/3/INF/20).

94. Following a brief introduction of the item by the representative of the Secretariat, the representatives of the United Kingdom, the Netherlands and the United States of America reported on the status of the draft guidance paper on each of the three hazard characteristics.

95. The representative of the United Kingdom summarized a conference room paper that he had presented on hazard characteristic H6.2, describing a change in the current version of the draft guidance paper to reflect proposals made by the United Nations Subcommittee of Experts on the Transport of Dangerous Goods. The representative of the subcommittee then elaborated on the approach taken by the subcommittee and discussed possible tensions between the guidance paper and the approaches taken in the health and transport sectors, while one representative noted the potential for conflict between the guidelines and national definitions.

96. In the light of those comments, a small contact group was set up during the session in order to consider possible changes to the H6.2 guidance paper.

97. The representative of the Netherlands reported that work on the H10 hazard characteristic guidance paper was currently under way and that he expected to be able to report to the Secretariat on progress within two weeks. The Working Group agreed that Parties wishing to comment on the guidance paper should do so by 31 January 2005.

98. The representative of the United States reviewed revisions that had been made to the draft guidance paper on hazard characteristic H11 since the previous draft, and asked for further comments from Parties.

99. In response to a query from the Co-Chair (technical), a number of representatives, citing possible conflicts with European Union and other legislation, said that they required more time to review the current draft and were therefore not prepared to adopt it on a provisional basis at the current

session. In the light of those comments, the Working Group agreed that Parties wishing to provide comments should do so by 30 June 2004 so that they could be incorporated into the current version of the guidance paper in time for the seventh meeting of the Conference of the Parties.

100. The representative of the Secretariat noted that hazard characteristic H13 had been under consideration for a considerable time and described the work undertaken to date by Egypt, the European Union and the Secretariat, working in conjunction with consultants. Noting that few comments had been received from Parties on the current draft guidance paper prepared by the Secretariat, he said that it was now up to the Working Group at its current session to decide whether to adopt it in its current form.

101. A number of representatives expressed their general approval of the draft guidance paper, and in particular its focus on leachate as the principal substance exhibiting the characteristic. One representative welcomed the fact that the draft guidelines left open the possibility of reopening analysis of the characteristic in the future, and argued that such a possibility should be explicitly stated. Another stated her view that, of the two options described in the guidelines for developing a harmonized approach for leachate testing, developing an approach specific to the Convention would likely be superior to using an existing national approach.

102. Also under the item, the Working Group heard a report from the representative of the United Nations Economic Commission for Europe (UNECE), speaking on behalf of the Subcommittee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals, who expressed the subcommittee's interest in pursuing cooperation with the Convention in areas of mutual interest. He noted that the subcommittee's 2005–2007 work programme was on the agenda of its next meeting and that cooperation with the Convention would be considered. A number of representatives expressed support for the subcommittee's work and for the idea of coordination with the Convention. It was agreed that countries wishing to pursue such coordination would contact the Secretariat with a view to establishing a contact group to cooperate further in that area with the subcommittee.

103. The Working Group took up the item again at its 10th plenary meeting, on the afternoon of Friday 30 April, at which time the Co-Chair (technical) drew attention to a conference room paper which had been submitted for information purposes and invited representatives to submit comments to the Secretariat at a later date.

104. At the same meeting, the Working Group adopted a decision on the item on the basis of the draft contained in the relevant conference room paper, as orally amended. The decision as adopted is set out as decision OEWG-III/10 in annex I to the present report. The Working Group also approved the text of a draft decision on the item for possible adoption by the Conference of the Parties at its seventh meeting on the basis of the draft decision contained in the relevant conference room paper, as orally amended. The draft decision as approved by the Working Group is contained in annex II to the present report.

### **XIII. Annexes to the Basel Convention and related procedures (agenda item 13)**

#### **A. Review or adjustment of lists of wastes contained in Annexes VIII and IX to the Basel Convention (agenda item 13 (a))**

105. The Working Group took up the sub-item at its 5th plenary meeting, on the morning of Wednesday, 28 April. In considering the item, it had before it a note by the Secretariat on an application from India relating to plastic-coated cable scrap (UNEP/CHW/OEWG/3/18).

106. The representative of the Secretariat noted that the application from India concerned the placement of new entries regarding plastic-coated cable scrap in Annex VIII and Annex IX.

107. The representative of India recalled that the proposal, circulated at the Working Group's second session, concerned a possible decision as to whether plastic-coated cables containing coal tar, oil and other hazardous substances should be entered under Annex VIII, while the remainder came under Annex IX. The application should be considered as a proposal to amend the Convention in line with articles 17 and 18. He suggested that the proposal should be transmitted to the Conference of the Parties for consideration at its seventh meeting.

108. A number of representatives stressed that that the issue was important and required further study. Attention was also drawn to the existing procedure under the Convention for the proposal of amendments, which should be followed in the current case by India.

109. It was agreed that a small contact group should be set up to determine how to proceed and to clarify the issues involved.

110. The Co-Chair (technical) confirmed that account would be taken of the suggestions made by some representatives relating to the text of the decision on the matter.

111. The Working Group took up the item again at its 10th meeting, on the afternoon of Friday, 30 April, at which time it adopted a decision on the item on the basis of the draft contained in document UNEP/CHW/OEWG/3/13, as orally amended. The decision as adopted is set out as decision OEWG-III/11 in annex I to the present report.

## **B. National classification and control procedures for the import of wastes contained in Annex IX (agenda item 13 (b))**

112. The Working Group took up the sub-item at its 5th plenary meeting, on the morning of Wednesday, 28 April. In considering the sub-item, it had before it a note by the Secretariat on national classification and control procedures for the import of wastes contained in Annex IX to the Convention (UNEP/CHW/OEWG/3/19) and a compilation of responses by Parties to a questionnaire on the same issue (UNEP/CHW/OEWG/3/INF/14).

113. One representative noted that there were still many inconsistencies in the existing responses to the questionnaire. The Secretariat representative suggested, as a possible way forward, that the Secretariat could prepare a consolidated report for consideration by the Conference of the Parties at its seventh meeting.

114. The Working Group continued its debate on the item at its 10th meeting, on the afternoon of Friday, 30 April, at which time it adopted a decision on the item on the basis of the draft contained in the relevant conference room paper. The decision as adopted is set out as decision OEWG-III/12 in annex I to the present report.

## **C. Harmonization of lists of wastes and related procedures (agenda item 13 (c))**

115. The Working Group took up the item at its 5th plenary meeting, on the morning of Wednesday, 28 April. In considering the sub-item, it had before it a note by the Secretariat on harmonization of lists of wastes and related procedures (UNEP/CHW/OEWG/3/20), an information document on OECD notification and movement documents (UNEP/CHW/OEWG/3/INF/21) and a conference room paper.

116. The representative of the Secretariat briefly introduced the agenda item and the relevant documentation. The representative of Germany, which had been the only Party to provide the Secretariat with comments on the issue, then reviewed his Party's comments contained in the annex to document UNEP/CHW/OEWG/3/20 and the relevant conference room paper.

117. Following a discussion, the Working Group agreed, in view of the complexity of the issues involved, that no decisions would be taken at the current session, and that the matter would be taken up at the next session of the Open-ended Working Group, for which the Secretariat would prepare a legal analysis of the implications of those issues.

## **D. French-language version of the lists of wastes (agenda item 13)**

118. The Working Group took up the sub-item at its 5th plenary meeting, on the morning of Wednesday, 28 April. In considering the sub-item, it had before it a note by the Secretariat on the French language version of the lists of wastes (UNEP/CHW/OEWG/3/21/Rev.1).

119. The representative of France introduced the changes, pointing out that some were purely linguistic, conveying improved translations, while others – placed in square brackets – suggested improvements to the drafting of the text itself. In the ensuing discussion, attention was drawn to the importance of improving the French-language version of the lists of wastes, to ensure their consistency with those in other languages and produced for such bodies as the Organization for Economic Cooperation and Development (OECD). While it was agreed that the version submitted by the French Government (UNEP/CHW/OEWG/3/21/Rev.1) was a substantial improvement, further refinements were suggested by other representatives and it was also noted that improvements could be made to the other language versions as well.

120. The Working Group took up the sub-item again at its 9th plenary meeting, on the morning of 30 April, at which time it approved a draft decision on the French language version of the lists of wastes for possible adoption by the Governing Council at its seventh meeting on the basis of the draft contained in the relevant conference room paper. The draft decision as approved by the Working Group

is contained in annex II to the present report. The Working Group agreed that parties wishing to submit comments on the draft would do so by 30 June 2004.

#### **XIV. Work programme of the Open-ended Working Group for 2005–2006 (agenda item 14)**

121. The Working Group took up the item at its 10th meeting, on the afternoon of 30 April. In considering the item, the Working Group had before it a note by the Secretariat on the draft work programme for the Working Group for 2005-2006 (UNEP/CHW/OEWG/3/22).

122. The Working Group agreed that, as it had not had time to consider the item at the current session, it would not consider whether to approve the draft Conference of the Parties decision contained in the note by the Secretariat, but would forward it to the Conference of the Parties for consideration at its seventh meeting.

#### **XV. Financial matters (agenda item 15)**

123. The Working Group took up the item at its 7th plenary meeting, on the morning of Thursday, 29 April. As explained by the representative of the Secretariat during the discussion under agenda item 4 (Strategic Plan for the Implementation of the Basel Convention to 2010), sub-item 4 (b) (resource mobilization) was considered together with the present agenda item. Accordingly, the Group had before it a note by the Secretariat on financial matters (UNEP/CHW/OEWG/3/23 and Corr.1), a paper commissioned by the Government of Denmark on a resource mobilization strategy for implementing the Strategic Plan for the Implementation of the Basel Convention (UNEP/CHW/OEWG/3/INF/3), a paper on a strategy for mobilizing resources in overall implementation of the Basel Convention prepared for the Secretariat by the Basel Convention consultant (UNEP/CHW/OEWG/3/INF/3/Add. 1), and a compilation of documents providing additional financial information (UNEP/CHW/OEWG/3/INF/15).

124. The Executive Secretary introduced the documentation, which laid out a strategic framework for broadening and diversifying the financial base of the Convention so as to secure resources for full implementation of the Strategic Plan and the Convention. She outlined the four components constituting the strategic framework: first, the paper commissioned by Denmark from the consultancy firm COWI A/S; second, the draft strategy prepared by the Secretariat with the assistance of a consultant; and, third and fourth, the draft budgets for the Basel Convention Trust Fund and for the Technical Cooperation Trust Fund, respectively. She explained that the COWI document consisted of a compilation of existing institutions that Parties and other stakeholders could resort to in resource mobilization for project activities. Its success would depend on how well the available information was utilised and how Parties incorporated their national waste management priorities into the programmes and funding priorities of funding agencies.

125. Regarding the draft strategy, she said that the presentation would show the importance of raising awareness of Convention objectives among funding institutions, indicate how to strengthen links with the international environmental and health agendas and put forward a plan of action for mobilizing cooperation and resources. The third and fourth components of the strategy concerned the proposed budgets, which had a self-explanatory role in the strategic framework. It was pointed out that the draft budget was being increased for the first time in six years. She noted also that the level of funding of the Strategic Plan for the Implementation of the Basel Convention from the Basel Convention Trust Fund was to be decided by Parties. The Secretariat invited additional comments from the Parties on paragraph 24 of decision VI/41 before the agreed deadline, 31 May 2004.

126. The representative of Denmark suggested that the usefulness of the COWI paper would be greatly enhanced if it were placed on the Basel Convention web page, translated into the United Nations official languages and issued in book form.

127. The Secretariat consultant, Mr. Thomas Conway, gave a presentation on the proposed strategy for mobilizing resources, an account of which had been circulated to participants in background document UNEP/CHW/OEWG/3/INF/3/Add.1. A number of representatives strongly endorsed the proposed strategy. Following that presentation, one representative requested that the exploration of synergies should be widened to include interlinkages with poverty reduction.

128. The Working Group resumed its discussion of the item at its 8th plenary meeting, on the afternoon of Thursday, 29 April.



129. Several representatives asserted that the existing Basel Convention Trust Funds should be supported by a more sustainable funding mechanism. A robust financial base was essential to the implementation of the Basel Convention and its Strategic Plan and it was essential that it be properly supported by the international community. As matters stood, the increase in the number of Parties was accompanied by a stagnation in the funding situation. Many delegations stressed the importance of fostering synergies with relevant multilateral environmental agreements such as the Rotterdam and Stockholm Conventions and called for the Secretariat to assist Parties, in particular the least developed among them, in leveraging funds from GEF for the initiation of activities, such as POPs-related projects, under relevant GEF windows. One representative stressed the importance of the Partnership Programme to her region. The representative of the group of Latin American and Caribbean countries stressed that the Partnership Programme should be supported from voluntary contributions.

130. A number of representatives urged that a text of the consultant's presentation should be made available and, if possible, translated into all official languages before being submitted to the Conference of the Parties at its seventh meeting. At the very least, an executive summary should be provided in all the official languages of the United Nations.

131. Some delegations suggested that the budget presentation should be broken down by activity or changed in other ways to make it more dynamic, and that accounting jargon should be avoided. A number of representatives requested the Secretariat to prepare the budget in a programmatic format, in addition to that traditionally used, for consideration by the Parties.

132. One representative also suggested that exchange rate gains and losses should be separately stated in the budget and that certain aspects of personnel costs affected by recent changes adopted by the United Nations should be clearly stated.

133. Reiterating the need for a reliable financial mechanism for the Convention, a number of representatives suggested that GEF should serve as that mechanism, and one urged that the Conference of the Parties be requested to assign the Secretariat the task of approaching GEF with that end in mind. The representative of the Secretariat pointed out that, while the Working Group and the Conference of the Parties could take decisions aimed at having GEF serve as the Convention's financial mechanism, the decision whether GEF would do so was up to the GEF Council and only the member States – not the Secretariat – could influence the Council. Accordingly, she urged the Parties, if they wished to have such an outcome, to work toward it through their representation in the GEF Council.

134. One representative expressed concern over the amount of the increase in the budget planned for the biennium 2005–2006, which, in his view, possibly revealed a need to prioritize.

135. Some representatives proposed amendments to the draft Conference of the Parties decision on resource mobilization contained in the note by the Secretariat (UNEP/CHW/OEWG/3/23). Because there was insufficient time to debate the various proposals made during the current session, the Working Group agreed that Parties would submit their proposals to the Secretariat by 30 June 2004 and that they could be incorporated in the draft decision. The Working Group also agreed to enclose the language in paragraph 3(c) of the draft decision in square brackets. With that understanding, the draft decision, including the bracketed language, would be forwarded to the Conference of the Parties for consideration at its seventh meeting. As there was insufficient time to consider it fully, the Working Group decided to transmit the draft Conference of the Parties decision on financial matters contained in the note by the Secretariat (UNEP/CHW/OEWG/3/23 and Corr.1) to the Conference of the Parties for consideration at its seventh meeting, with the entire text in brackets. Both draft decisions are contained in annex II to the present report.

## **XVI. Preparation of draft decisions for consideration by the Conference of the Parties at its seventh meeting (agenda item 16)**

136. The Working Group took up the item at its 3rd plenary meeting, on the morning of Tuesday, 27 April. In considering the item, the Working Group had before it notes by the Secretariat on: guidance elements for bilateral, multilateral or regional agreements or arrangements (UNEP/CHW/OEWG/3/24); transmission of information, including implementation of decision II/12 (UNEP/CHW/OEWG/3/25); a report on a study on developing indicators on hazardous wastes (UNEP/CHW/OEWG/3/INF/16); implementation of decision III/1 on amendment of the Basel Convention (UNEP/CHW/OEWG/3/26); international cooperation, including cooperation with the World Trade Organization and the Global Environment Facility (UNEP/CHW/OEWG/3/27); designation of competent authorities and focal points (UNEP/CHW/OEWG/3/28); the list of competent authorities and focal points

(UNEP/CHW/OEWG/3/INF/17); follow-up to the World Summit on Sustainable Development (UNEP/CHW/OEWG/3/29); national definitions of hazardous wastes (UNEP/CHW/OEWG/3/30); national definitions of hazardous wastes: comments provided by Parties received after 22 February 2004 (UNEP/CHW/OEWG/3/30/Add.1); amendment to rule 29 of the rules of procedure (UNEP/CHW/OEWG/3/31); interim guidelines for the implementation of decision V/32 on enlargement of the scope of the Trust Fund to Assist Developing and Other Countries in Need of Technical Assistance in the Implementation of the Basel Convention (UNEP/CHW/OEWG/3/32); illegal traffic (UNEP/CHW/OEWG/3/33), and the training manual for the enforcement of laws implementing the Basel Convention: Guidance for safe and effective detection, investigation, and prosecution of illegal traffic in hazardous wastes and other wastes (UNEP/CHW/OEWG/3/INF/19). The Working Group also had before it a conference room paper containing a compilation of the draft decisions under the agenda item.

137. The Working Group considered the draft decisions for possible adoption by the Conference of the Parties at its seventh meeting. The Co-Chair (technical) and the representative of Secretariat briefly introduced each draft decision, which was then debated by the members of the Working Group.

138. At the same meeting, of the ten draft decisions considered under the item, the Working Group approved the following four for possible adoption by the Conference of the Parties at its seventh meeting:

(a) On sub-item 16 (c) (Implementation of decision III/1 on amendment of the Basel Convention), on the basis of the draft contained in document UNEP/CHW/OEWG/3/26;

(b) On sub-item 16 (d) (International cooperation, including cooperation with the World Trade Organization and the Global Environment Facility), on the basis of the draft contained in document UNEP/CHW/OEWG/3/27, as orally amended;

(c) On sub-item 16 (e) (Designation of competent authorities and focal points), on the basis of the draft contained in document UNEP/CHW/OEWG/3/28;

(d) On sub-item 16 (f) (Follow-up to the World Summit on Sustainable Development), on the basis of the draft contained in document UNEP/CHW/OEWG/3/29.

139. The Working Group established small informal drafting groups to further the work on the remaining six draft decisions.

140. During the Working Group's consideration of the draft decision under sub-item 16 (c) (Implementation of decision III/1 on amendment of the Basel Convention), the representatives of Botswana and Nigeria announced that their Governments had ratified the Ban Amendment and deposited their instruments of ratification with the United Nations in New York.

141. During the discussion on sub-item 16 (d) (International cooperation, including cooperation with the World Trade Organization and the Global Environmental Facility), a number of representatives made suggestions for specific activities that the Secretariat might undertake in the area of international cooperation, in particular with the World Trade Organization (WTO). In response to those suggestions, the representative of the Secretariat highlighted some of its activities in the area, such as a possible side event to be held jointly with WTO at the seventh meeting of the Conference of the Parties to brief Parties on recent developments stemming from the Doha round of trade talks. She reminded the Group, however, of the constraints that limited the Secretariat in the area of cooperation, which included lack of funding for such activities, its continuing lack of observer status with WTO and the decision by the Conference of the Parties at its sixth meeting (VI/30) requiring the Secretariat to consult with the Parties to the Basel Convention before providing information on the Convention to WTO.

142. During discussions relating to sub-item 16 (e) (Competent authorities and focal points), one representative suggested that the Secretariat should prepare a list of Parties that had not designated competent authorities and focal points. The representative of the Secretariat agreed with the suggestion, stressing that it was very important to receive information on competent authorities and focal points.

143. The Working Group took up the item again at its 10th meeting, on the afternoon of Friday, 30 April, at which time it approved the following six draft decisions for possible adoption by the Conference of the Parties on the basis of the drafts contained in the relevant conference room papers:

(a) On sub-item 16(a) (Guidance elements for bilateral, multilateral or regional agreements or arrangements), as orally amended;

- (b) On sub-item 16(b) (Transmission of information, including implementation of decision II/12), as orally amended;
- (c) On sub-item 16(g) (National definitions of hazardous wastes);
- (d) On sub-item 16(h) (Amendment to rule 29 of the rules of procedure), as orally amended;
- (e) On sub-item 16(i) (Interim guidelines for the implementation of decision V/32 on enlargement of the scope of the Trust Fund to Assist Developing and Other Countries in Need of Technical Assistance in the Implementation of the Basel Convention);
- (f) On sub-item 16(j) (Illegal traffic), (with a technical correction by the Secretariat).<sup>1</sup>

144. The draft decisions approved by the Working Group under the item are set out in annex II to the present report.

## **XVII. Organization of the seventh meeting of the Conference of the Parties (agenda item 17)**

145. The Working Group took up the item at its tenth meeting, on the afternoon of Friday, 30 April. The Working Group had before it a note by the Secretariat setting forth a proposed theme for the seventh meeting of the Conference of the Parties (UNEP/CHW/OEWG/3/3): “partnership for meeting the global waste challenge”. In her introduction of the item, the Executive Secretary reported that the Expanded Bureau had proposed that there be no distinct segment for high-level statements.

146. At the same meeting, the Working Group adopted a decision on the proposed theme for the seventh meeting of the Conference of the Parties on the basis of the draft contained in document UNEP/CHW/OEWG/3/3. The decision as adopted is set out as decision OEWG-III/14 in annex I to the present report.

## **XVIII. Other matters (agenda item 18)**

147. The Working Group took up the item at its tenth meeting, on the afternoon of Friday, 30 April. Under the item, the Executive Secretary announced that the Secretariat had sought a legal opinion from the Treaty Section of the United Nations Office of Legal Affairs regarding entry into force of the Ban Amendment and would circulate it to the Parties once it was received.

148. It was also announced that the Government of Australia had pledged 30,000 Australian dollars to fund developing country participation in Basel Convention meetings in the year 2004.

149. Also under the item, the representative of Nigeria, speaking on behalf of Basel Convention regional centres and their directors, reported on a successful meeting that had been held with the Rotterdam Convention interim secretariat on the subject of cooperation between the regional centres and other multilateral environmental agreements. Citing this as an example of the high regard in which other institutions held the regional centres and their potential for delivering technical assistance to developing countries, he praised the Secretariat for its vision in promoting the establishment of the centres.

150. A question was raised about the timing of the seventh meeting of the Conference of the Parties (25 – 29 October 2004), out of concern for the fact that it would take place during the period of Ramadan. The Secretariat explained that, due to the fact that conference facilities at United Nations headquarters in Geneva were not available at any other suitable time, it would not be possible to change the dates of the meeting.

## **XIX. Adoption of the decisions and the report (agenda item 19)**

151. The Working Group’s adoption of decisions during its third session is described in the preceding chapters of the present report; each decision is discussed in the chapter or sub-chapter relating to the agenda item to which the decision pertains.

152. The Working Group adopted the present report at its tenth meeting, on the afternoon of 30 April, on the basis of the drafts contained in documents UNEP/CHW/OEWG/3/L.1, Add.1 and Add.2, as orally amended.

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<sup>1</sup> The Working Group also adopted its own decision on this item.

## **XX. Closure of the meeting (agenda item 20)**

153. After the customary exchange of courtesies, the third session of the Open-ended Working Group of the Basel Convention for the Control of Transboundary Movement of Hazardous Wastes and their Disposal was declared closed at 7.40 p.m. on 30 April 2004.

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## Annex I

### **Decisions adopted by the Open-ended Working Group at its third session**

#### **OEWG-III/1: Selection of project proposals under the Strategic Plan for the Implementation of the Basel Convention**

*The Open-ended Working Group,*

*Recalling* that in annex II to the report of its first session it considered that the attention of the Parties should be drawn to the need for a better process to evaluate the merits of project proposals,

*Concerned* that significantly increased funding would be required to ensure adequate funding for the project proposals identified under the Strategic Plan,

1. *Requests* the Secretariat to organize and compile the project proposals, submitted by Parties or Basel Convention regional centres on or before 30 November 2004, for submission to the Open-ended Working Group for its consideration;
2. *Recommends* that each project should require not more than 10 per cent of the total funds allocated by the Conference of the Parties for this purpose;
3. *Requests* the Secretariat to distribute to the Parties, in accordance with Rule 10 of the Rules of Procedure, a list of all project proposals that meet all group 1 relevant criteria contained in the appendix to decision VI/2;
4. *Requests* the Secretariat to distribute to the Parties, in accordance with rule 10 of the rules of procedure, an evaluation for information and guidance of all project proposals that meet all group 1 relevant criteria, on the basis of the group 2 value criteria contained in the appendix to decision VI/2;
5. *Encourages* Parties, according to regional groups and in consultation with regional centres as appropriate, to make every effort to place all project proposals from their region in clear order of priority, with no equal rankings, on the basis of the group 2 value criteria contained in the appendix to decision VI/2, using the evaluation prepared by the Secretariat;
6. *Agrees* to consider the proposals submitted that meet all group 1 relevant criteria in the order of priority determined for each regional group and to choose those that qualify for funding, taking into account regional and national diversities and specificities as appropriate;
7. *Encourages* the co-funding of projects wherever possible.

#### **OEWG-III/2: Work programme for the Basel Convention Partnership Programme**

*The Open-ended Working Group,*

*Recalling* Conference of the Parties decision VI/32 and its own decisions OEWG-I/6 and OEWG-II/9 on cooperation with environmental non-governmental organizations and industry,

1. *Adopts* the work plan of the Basel Convention Partnership Programme for 2004 as contained in the annex to the present decision;
2. *Requests* the Secretariat to commence implementation of this work plan of the Basel Convention Partnership Programme in cooperation with all relevant and interested partners and to keep the Open-ended Working Group and the Conference of the Parties regularly informed on progress, as well as on initiatives to include new projects in order to adopt a decision on this matter;

3. *Encourages* Parties and signatories to follow the lead of Australia, Japan and Switzerland in providing funding to the Basel Convention Partnership Programme and becoming actively involved in the programme;

4. *Encourages* broader civil society, including environmental non-governmental organizations and the private sector, in particular industry, to provide technical and financial support for the Basel Convention Partnership Programme and to become involved in specific activities at the regional, national and international levels.

5. *Also requests* the Secretariat to prepare a decision for consideration by the seventh meeting of the Conference of the Parties based on the following elements:

*The Conference of the Parties,*

*Recalling* its decision VI/32,

1. *Adopts* the work plan of the Basel Convention Partnership Programme for 2005-2006 as contained in the annex to decision OEWG-III/2;

2. *Requests* the Secretariat to continue implementation of this work plan in cooperation with all relevant and interested partners and to keep the Open-ended Working Group and the Conference of the Parties regularly informed on progress as well as initiatives to include new projects in order to adopt a decision on this matter;

*Encourages* Parties and signatories to follow the lead of Australia, Japan and Switzerland in providing funding to the Basel Convention Partnership Programme and becoming actively involved in the programme;

4. *Encourages* broader civil society, including environmental non-governmental organizations and the private sector, in particular industry, to provide technical and financial support for the Basel Convention Partnership Programme and to become involved in specific activities at the regional, national and international levels.

## Annex to decision OEWG-III/2

### Basel Convention Partnership Programme: 2004–2006 work plan

#### A. Background

1. At its sixth meeting, in Geneva in December 2002, the Conference of the Parties to the Basel Convention agreed to develop a work programme for cooperation with industry and business sectors and environmental non-governmental organizations with the aim of developing strategic partnerships relevant to the implementation of the Convention, its amendments and protocols (decision VI/32).
2. This document outlines a work programme that responds to those decisions. In particular, it:
  - (a) Takes into account activities for 2003-2004 under the Strategic Plan for the Implementation of the Basel Convention;
  - (b) Takes into account the Basel Convention regional centres as potential delivery mechanisms for the promotion and nurturing of public-private partnerships that take into consideration regional or subregional specificities;
  - (c) Supports the aims of the Basel Declaration on Environmentally Sound Management;
  - (d) Recognizes and complements existing initiatives and projects.

#### B. Introduction

3. The worldwide environmentally sound management of hazardous and other wastes as called for in the Basel Declaration on Environmentally Sound Management requires action at all levels of society. Training, information, communication, methodological tools, capacity-building with financial support, transfer of know-how, knowledge and sound and proven cleaner technologies and processes are driving factors to assist in the concrete implementation of the Basel Declaration.
4. The effective involvement and coordination by all concerned stakeholders is seen as essential for achieving the aims of the Basel Declaration.
5. The challenge is to find and develop practical, sustainable solutions to de-link economic development and the waste it traditionally generates. Alternative development models do exist. Industry and Governments have begun to embrace cleaner production technologies and extend producer liability, which provides built-in incentives for greener, less wasteful production and products.
6. Growth in partnerships is hindered by a broad perception that the Basel Convention deals only with hazardous wastes and/or only with the transboundary movement of such wastes. This is particularly acute when the Convention seeks to engage industry in the end-of-life implications of products, which during their life are not hazardous, or wastes. Conversely, considerable potential exists for a broader interpretation of the role of the Basel Convention as an instrument contributing to effective life cycle management of materials and products – e.g., in areas of waste minimization, design for environment, cleaner production and changing consumption patterns, as well as management of wastes, including municipal wastes.

#### C. General principles

##### 1. Rights and responsibilities

7. Partnerships cannot create or abrogate rights or responsibilities of Parties under the Basel Convention.
8. The Partnership Programme is under the authority of the Conference of the Parties to the Basel Convention.

##### 2. United Nations guidelines for cooperation with the business community

9. Irrespective of any situation-specific nature, the Partnership Programme supports and is consistent with the United Nations Environment Programme and the United Nations Global Compact.



United Nations guidelines<sup>1</sup> stipulate that cooperative arrangements should be guided by the following general principles:

- (a) Advance United Nations goals: The objectives need to be articulated clearly and must advance United Nations goals as laid out in the Charter of the United Nations;
- (b) Clear delineation of responsibilities and roles: The arrangements must be based on a clear understanding of respective roles and expectations, with accountability and a clear division of responsibilities;
- (c) Maintain integrity and independence: Arrangements should not diminish the United Nations' integrity, independence and impartiality;
- (d) No unfair advantage: Every member of the business community should have the opportunity to propose cooperative arrangements, within the parameters of these guidelines. Cooperation should not imply endorsement or preference of a particular business entity or its products or services;
- (e) Transparency: Cooperation with the business sector must be transparent. Information on the nature and scope of cooperative arrangements should be available within the organization and to the public at large.

#### **D. Programme objectives**

10. Given the size and nature of the waste challenge, and the call on both expertise and resources (internal and external), the Basel Convention Partnership Programme is focused on the following objectives:

- (a) To initiate and oversee practical project activity in priority areas, with particular regard to the generation, movement and environmentally sound management of waste and active promotion of the transfer and use of cleaner technologies;
- (b) To broaden the resource and support base of the Convention, particularly through:
  - (i) Improved local and regional participation;
  - (ii) Improved analysis, understanding and political support for the broadest programme perspective of the role of the Basel Convention in the waste challenge;
  - (iii) Enhanced access to external expertise and resources (for example, from industry, environmental non-governmental organizations, philanthropic organizations and other United Nations agencies and regional and national authorities);
- (c) To improve stakeholder participation and communication.

#### **E. Priority areas**

11. The Strategic Plan for the Implementation of the Basel Convention to 2010, adopted at the sixth meeting of the Conference of the Parties (December 2002), identifies priority waste streams as including electronic wastes, used lead-acid batteries, used oils, obsolete stocks of pesticides, PCBs, dioxins/furans, by-products from the dismantling of ships, biomedical wastes and healthcare wastes. At the first meeting of the Open-ended Working Group (April–May 2003) it was agreed to fund a new partnership with municipalities for the environmentally sound management of hazardous waste in urban areas<sup>2</sup>. These priorities are included in the Basel Convention Partnership Programme.

12. Other partnership opportunities will arise periodically that require a timely response from the Secretariat of the Basel Convention. The Secretariat will assess and initiate responses to these opportunities as required.

13. Existing and planned programme activity encompassed within the above programme objectives is represented in table 1.

<sup>1</sup> *Building Partnerships: Cooperation between the United Nations and the Business Community* (United Nations publication, Sales No. E.02.I.12)

<sup>2</sup> Decision OEWG-I/1

## F. Stakeholders

14. The engagement of civil society is a priority for the Partnership Programme. Partnership initiatives should fully involve environmental and other non-governmental organizations, along with industry leaders.
15. The Basel Convention Partnership Programme recognizes old friends but acknowledges that sustained interest in the waste challenge and the broadening programme perspective needed of the Convention will require additional partners.
16. There is also a need to look beyond the traditional environmental non-governmental organizations if the Basel Convention is to succeed in developing strategic alliances with organizations with potentially related agendas (e.g., non-governmental organizations involved in poverty reduction, economic or social development, health promotion or occupational health and safety issues) and foundations involved in broader philanthropic work.
17. Basel Convention regional centres have a key role to play both in promoting the Convention amongst potential partners and in providing capacity-building, training and other services at the regional level.
18. Stakeholders will vary according to the particular project or initiative. The criteria for selection of partners will include:
  - (a) Demonstrated commitment to the principles, practice and promulgation of the concept of environmentally sound management;
  - (b) Demonstrated commitment to engage in meaningful dialogue and cooperation with other partners, the Parties and signatories to the Basel Convention, Basel Convention regional centres, and the Secretariat of the Basel Convention;
  - (c) Demonstrated expertise or standing in the subject of the particular project or initiative;
  - (d) Demonstrated networking capacity.
19. The involvement of partners will at all times be voluntary.

**Table 1**

**Basel Convention Partnership Programme  
Work plan 2004–2006**

	<b>Objective</b>	<b>Programme elements</b>	<b>Key activities</b>	<b>Performance indicators</b>
1	Initiate and oversee practical project activity in priority areas, with particular regard to the generation, movement and environmentally sound management of waste and active promotion of the transfer and use of cleaner technologies	Cooperative project development and implementation  Awareness-raising  Stakeholder participation	Mobile Phone Partnership Initiative Used Oils Partnership for Africa Electrical and electronic waste Obsolete stocks of pesticides in Africa Greenhouse gases from landfill (climate change and the environmentally sound management of waste)  Biological and medical waste Used lead-acid batteries Partnerships with municipalities for the environmentally sound management of hazardous wastes in urban areas Dismantling of ships  PCBs; dioxins/furans  Ongoing promotion of ratification and implementation of the Basel Convention, its protocols, amendments and decisions	Effective partnerships established with relevant stakeholders to support environmentally sound management activities for priority waste streams identified in the strategic plan Ratifications and implementation of the Basel Convention, its protocols, amendments and decisions
2	Broaden the resource and support base of the Convention	Awareness-raising  Fund-raising  Stakeholder participation	Development of a project: 1. To encourage the development and use of data on waste trends at the national level; 2. To identify, collate and disseminate data on global waste trends (Tentatively called "WasteWatch"; the project would assist the mobilization of political support and benchmark progress in the waste challenge)  Development of a fund-raising programme  Development of a recognition programme for donors	Improved local and regional participation  Improved analysis, understanding and political support  Enhanced access to external expertise and resources (for example, from industry, environmental non-governmental organizations, philanthropic organizations and other United Nations agencies and regional and national authorities)
3	Improve stakeholder participation and communication	Stakeholder participation  Communications and public affairs activities	Establishment of a Basel Convention partners forum  (Aimed at formalizing regular discussion between non-governmental organization partners of the Convention)	Improved support from key industry and non-governmental organization leaders for the aims of the Basel Convention  Improved support for Basel Convention Regional Centres  Improved Convention newsletter

**OEWG-III/3: Legal aspects of the full and partial dismantling of ships**

*The Open-ended Working Group,*

*Recalling* Conference of the Parties decision VI/24, in which the Conference of the Parties requests the Open-ended Working Group to present its recommendations on the legal aspects of the full and partial dismantling of ships to the Conference of the Parties at its seventh meeting,

*Also recalling* its own decision OEWG-II/4 establishing a small inter-sessional working group to prepare a report analysing and synthesizing the comments received from Parties and others on the set of questions and issues set out in decision OEWG-II/4 for the consideration of the Open-ended Working Group at its third meeting,

*Considering* the comments received from Parties and others on the set of questions and issues set out in decision OEWG-II/4, as contained in document UNEP/CHW/OEWG/3/INF/5 and Add.1 and as analysed and synthesized in the conference room paper considered by the Open-ended Working Group at its third session,

1. *Decides* to extend the mandate of the small intersessional working group until the seventh meeting of the Conference of the Parties to commence work, with the assistance of the Secretariat, in accordance with the work programme contained in the annex to the present decision with a view to indicating possible solutions to the questions and issues set out in decision OEWG-II/4;
2. *Notes* that a ship may become waste as defined in article 2 of the Basel Convention and that at the same time it may be defined as a ship under other international rules;
3. *Decides* to submit for consideration by the Conference of the Parties at its seventh meeting the following paragraphs:
  - (a) [*Urges* [Parties that are flag States, States of export or States of import]][States concerned] to implement the provisions of the Basel Convention, in particular with respect to the application of the obligations of prior informed consent and principles of environmentally sound management;]
  - (b) [*Urges* flag States, owner States and [other] States of export as well as States of import that are Parties to [implement] [apply] the [provisions] [aims] of the Basel Convention, in particular with respect to the application of the obligations of prior informed consent and principles of environmentally sound management];
4. *Requests* the small inter-sessional working group on legal aspects of the full and partial dismantling of ships to undertake, with the assistance of the Secretariat, the work set out in the work programme contained in the annex to the present decision and to report on the progress made with respect to that work to the Conference of the Parties at its seventh meeting;
5. *Requests* Parties and others to continue to submit to the Secretariat any comments or information relating to the questions and issues set out in paragraph 1 of decision OEWG-II/4.

## **Annex to decision OEWG-III/3**

### **Work programme for future action**

Each study envisaged under the proposed Basel Convention Work Programme, as set forth below, should take into consideration reports, recommendations and any other information on pertinent matters of the joint International Labour Organization/International Maritime Organization/Basel Convention working group, as appropriate, and if the joint working group is working on a similar issue. However, noting that the consideration of the same topics by the two groups may not coincide, the finalization of the texts prepared under the Basel Convention Work Programme may take cognisance of recommendations of the joint ILO/IMO/BC working group.

## **I. Notification procedure**

### **Action**

- (i) Analysis of the application of the notification procedure under the Basel Convention to ships which have become waste for control under the Basel Convention and that are subject to transboundary movements.
- (ii) Review of reporting/notification procedures under other international institutions that may assist in reaching a conclusion on this issue.
- (iii) Review of reporting/notification procedures under domestic legal regimes that may assist in reaching a conclusion on this issue.

Specific reference should be made to the comments provided by Parties and others pursuant to decision OEWG-II/4 in connection with the questions set out in paragraphs 1(a), (b), (c) and (d) of that decision.

### **Who should conduct this task**

The Secretariat should prepare an analysis for submission to the IWG for comment. Upon incorporation of such comments, it will be circulated to the IWG with a view to making recommendations to the OEWG.

### **Deadline for completion**

To be determined by the IWG.

### **Relevant documents**

Extracts from the Basel Convention: article 6

UNEP/CHW/OEWG/3/INF/5

Compilation and summary of comments and observations to facilitate the work of the intersessional working group prepared by the Secretariat

UNEP/CHW/LWG/4/4

Relevant case law

## **II. Duty to re-import**

### **Action**

Analysis of the application of the duty to re-import under the Basel Convention to ships that have become waste for control under the Basel Convention and that are subject to transboundary movements.

Specific reference should be made to the comments provided by Parties and others pursuant to decision OEWG-II/4 in connection with the question set out in paragraph 1 (c) of that decision. Reference should also be made to comments provided by Parties and others in connection with the questions set out in paragraph 1(a) and (b) of decision OEWG-II/4.

### **Who should conduct this task**

The Secretariat could prepare an analysis for submission to the entire IWG for comment and, thereafter, to OEWG.

### **Deadline for completion**

To be determined by the IWG.

### **Relevant documents**

Extracts from the Basel Convention: article 8

UNEP/CHW/OEWG/3/INF/5

Compilation and summary of comments and observations to facilitate the work of the IWG prepared by the Secretariat

UNEP/CHW/LWG/4/4

Relevant case law

## **III. Role of States**

### **Action**

A study analysing the options for recommendations as to which States, if any, should assume the obligations under the Basel Convention with respect to ships that have become waste for control under the Basel Convention and that are subject to transboundary movements, by reference to the Basel Convention provisions defining the obligations borne by various concerned States (e.g., State of export, state of disposal, etc.), taking into consideration the submissions received pursuant to decision OEWG-II/4 and such other information as may be relevant. Particular regard should be had to existing international maritime rules and procedures, for example, those relating to flag States.

Specific reference should be made to the comments provided by Parties and others pursuant to decision OEWG-II/4 in connection with the questions set out in paragraphs 1 (c) and (d) of that decision.

### **Who should conduct this task**

The Secretariat could prepare an analysis for submission to the entire IWG for comment and, thereafter, to the OEWG.

### **Deadline for completion**

To be determined by the IWG.

**Relevant documents**

Extracts from the Basel Convention: Article 2

UNEP/CHW/OEWG/3/INF/5

Compilation and summary of comments and observations to facilitate the work of the intersessional working group prepared by the Secretariat

UNEP/CHW/LWG/4/4

Relevant case law

**IV. Basel Convention annexes****Action**

Analysis, in close consultation with IMO and ILO, from the legal perspective, of the application of the Basel Convention annexes to ships that have become waste for control under the Basel Convention and that are subject to transboundary movements. Reference could also be made to IMO guidelines.

Specific reference should be made to the comments provided by Parties and others pursuant to decision OEWG-II/4 in connection with the question set out in paragraph 1 (e) of that decision. Reference should also be made to comments provided by Parties and others in connection with the question set out in paragraph 1 (b) of decision OEWG-II/4.

**Who should conduct this task**

The Secretariat should prepare an analysis in close consultation with IMO and other relevant international organizations for submission to the entire IWG for comment and, thereafter, to the OEWG.

**Deadline for completion**

To be determined by the IWG.

**Relevant documents**

Basel Convention annexes

UNEP/CHW/OEWG/3/INF/5

IMO guidelines

Relevant case law

**V. “Intent to dispose”****Action**

Analysis of the means and mechanisms for determining “intent to dispose” of ships that may become waste for control under the Basel Convention and that are subject to transboundary movements.

Specific reference should be made to the comments provided by Parties and others pursuant to decision OEWG-II/4 in connection with the questions set out in paragraphs 1 (b) and (e) of that decision. Reference may also be made to paragraphs 1 (a), (c) and (d) of decision OEWG-II/4.

### **Who should conduct this task**

The Secretariat should prepare an analysis in close consultation with IMO and other relevant international organizations for submission to the IWG for comment and, thereafter, to the OEWG.

### **Deadline for completion**

To be determined by the IWG.

### **Relevant documents**

Extracts from the Basel Convention: articles 2, (para. 1), 6, 9, Annex IV

UNEP/CHW/OEWG/3/INF/5

Compilation and summary of comments and observations to facilitate the work of the intersessional working group prepared by the Secretariat

UNEP/CHW/LWG/4/4

Relevant case law

## **VI. Recommendations for action in the context of the Basel Convention on the legal aspects of the full and partial dismantling of ships**

### **Action**

Analysis of the conclusions contained in the studies of the five above-mentioned topics, with a view to formulating recommendations for future action to be undertaken in the context of the Basel Convention on this subject.

Specific reference should be made to the comments provided by Parties and others pursuant to decision OEWG-II/4 in connection with the question set out in paragraph 1 (f) of that decision.

### **Who should conduct this task**

The Secretariat should prepare an analysis for submission to the IWG for comment and, thereafter, to OEWG, with a view to facilitating the formulation of recommendations by the OEWG for the eighth session of the Conference of the Parties.

### **Deadline for completion**

To be determined by the IWG.

### **Relevant documents**

Studies resulting from the completion of items I–V above

UNEP/CHW/OEWG/3/INF/5

UNEP/CHW/LWG/4/4

Relevant case law



**OEWG-III/4: Proposed decision on the Joint Working Group of the International Labour Organization, the International Maritime Organization and the Basel Convention**

*The Open-ended Working Group,*

*Considering* the report of the joint meeting between the International Labour Office, the Secretariat of the International Maritime Organization and the Secretariat of the Basel Convention, held at Geneva on 13 and 14 January 2004 and reproduced in annex I to the present decision;

*Taking into account* the terms of reference proposed by the joint secretariat meeting for the Joint Working Group of the International Labour Organization, the International Maritime Organization and the Basel Convention;

*Noting* that the report of the joint secretariat meeting has been submitted to the Marine Environment Protection Committee of the International Maritime Organization for consideration at its fifty-first session, held from 29 March to 2 April 2004, and to the Sectoral and Technical Meetings Committee of the Governing Body of the International Labour Office, at its session in February and March 2004;

*Also noting* that the Governing Body of the International Labour Office took note of the report of the joint secretariat meeting;

*Further noting* that the terms of reference for the Joint Working Group of the International Labour Organization, the International Maritime Organization and the Basel Convention, as proposed by the joint secretariat meeting, have been approved, with minor editorial amendments, by the Marine Environment Protection Committee of the International Maritime Organization at its fifty-first session;

1. *Agrees* to the terms of reference of the Joint Working Group of the International Labour Organization, the International Maritime Organization and the Basel Convention, as amended by the meeting to reflect the minor changes agreed upon by the International Maritime Organization, contained in annex II to the present decision.

2. *Also agrees:*

(a) That the Joint Working Group will meet on a regular basis, rotating between the headquarters of the International Labour Organization, the International Maritime Organization and the Secretariat of the Basel Convention, or any other venue agreed upon and that the host organization would assume the role of the secretariat;

(b) That participation in the Joint Working Group should ensure representation of all geographical regions;

(c) That five Parties to the Basel Convention shall be nominated to participate in the Joint Working Group on the understanding that representatives of other Parties, signatories, intergovernmental or non-governmental organizations may participate as observers and that such nominations should be sent to the Secretariat by 30 June 2004;

3. *Invites* the Joint Working Group to propose practical solutions that provide guidance to be considered by the three organizations to promote environmentally sound management for the dismantling of ships;

4. *Considers* that the Joint Working Group shall not be considered as taking precedence over or superseding the work of the Open-ended Working Group or other activities of the Basel Convention regarding the dismantling of ships;

5. *Requests* the Secretariat to report to the Conference of the Parties at its seventh meeting on progress, *including* the possibility of a first meeting of the Joint Working Group of the International Labour Organization, the International Maritime Organization and the Basel Convention.

## **Annex I to decision OEWG-III/4\***

### **Report of the meeting between the International Labour Office (ILO), the secretariat of the International Maritime Organization (IMO), and the secretariat of the Basel Convention (SBC) held at ILO Headquarters, Geneva, 13-14 January 2004**

#### **Background**

1. The sixth meeting of the Conference of the Parties to the Basel Convention (COP 6) requested SBC to explore the possibility of the development of an inter-agency technical assistance project on ship dismantling together with IMO and ILO, and to consider the establishment of a joint working group with IMO and ILO as a means of achieving a common understanding of the problem and character of the required solutions.

2. The ILO responded positively to these initiatives and the IMO Marine Environment Protection Committee (MEPC), at its forty-ninth session, was, in principle, supportive of these proposals and requested the IMO Secretariat to liaise with ILO and SBC in order to prepare draft project objectives for the inter-agency technical assistance project and draft terms of reference for the joint working group, for consideration by the fifty-first session of MEPC.

3. In order to advance the issue of the inter-agency co-operation the Secretariats of IMO, ILO and SBC held a joint meeting at ILO Headquarters in Geneva from 13 to 14 January 2004. The list of participants is attached in appendix I.

#### **Adoption of the agenda**

4. The provisional agenda as set out in appendix II was adopted.

#### **Report of the outcome of the ILO Meeting on Safety and Health in Shipbreaking, Bangkok, 7-14 October 2003**

5. The representative of ILO informed the meeting that at the Interregional Tripartite Meeting of Experts on Safety and Health in Shipbreaking for Selected Asian Countries and Turkey, held at Bangkok in October 2003, the "Guidelines" were adopted and will be published as "Safety and health in shipbreaking: Guidelines for Asian countries and Turkey". The Guidelines as adopted by the meeting, together with a Report on the Meeting, were in the process of being transmitted to the February-March 2004 session of the ILO Governing Body for endorsement. This would include versions in Spanish and French. A priority was, however, to translate the Guidelines into the languages of the countries where shipbreaking was done: Bengali, Chinese, Hindi, Urdu and Turkish.

#### **Report of the outcome of the 2nd session of the Open-ended Working Group of the Basel Convention**

6. The representative of SBC informed the meeting that the second session of the Open-ended Working Group (OEWG2) that met in Geneva in October 2003 considered the legal aspects of the dismantling of ships as well as co-operation with IMO and ILO on this issue. The meeting agreed on the establishment of an intersessional working group that would deliberate on the legal aspects. On the formation of the Joint Working Group, there was an indication that some Basel Convention constituencies may want to be involved in this work once the Terms of Reference have been finalised and agreed upon. On technical assistance projects for States involved in ship dismantling, there is a need for a concerted effort in resource mobilization. Finally, he said that there are great expectations from all stakeholders in having the Joint Working Group playing an active role in ship dismantling.

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\* The report is reproduced as submitted, without formal editing.

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### **Report of the outcome of the 23rd session of the IMO Assembly**

7. The representative of the IMO Secretariat informed the meeting about the discussions that took place during the twenty-third session of the Assembly on the issue of ship recycling and that the IMO Guidelines on Ship Recycling were finally adopted by resolution A.962(23). The meeting was also informed of the amendments to Annex I of MARPOL 73/78, adopted by MEPC 50, regarding the accelerated phase-out scheme for single-hull tankers and that the Committee, having realized that these new requirements would increase the number of the vessels to be recycled within a specific period of time, adopted resolution MEPC.113(50) on ship recycling for the smooth implementation of the amendments to Annex I of MARPOL 73/78.

### **Role of the joint ILO/IMO/Basel Convention Working Group**

8. The role of the joint ILO/IMO/Basel Convention Working Group (hereafter referred to as the Joint WG) was discussed and it was agreed that this Group should act as a platform for consultation, co-ordination and co-operation in relation to the work programme and activities of ILO, IMO and the Conference of Parties to the Basel Convention with regard to issues related to ship scrapping<sup>1</sup>. The Joint WG should pursue a co-ordinated approach to the relevant aspects of ship scrapping with the aim of avoiding duplication of work and overlapping of responsibilities and competencies between the three Organizations.

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<sup>1</sup> In view of the fact that the three agencies used breaking/dismantling/recycling in their respective documents, it was agreed for the purposes of this report to use the term “ship scrapping”.

## Annex II to decision OEWG-III/4\*

### Terms of reference for the joint working group

1. The Terms of Reference as proposed by the three Secretariats are as follows:

The Joint WG should:

1. consider the respective work programmes of ILO, IMO and the Conference of Parties to the Basel Convention on the issue of ship scrapping in order to avoid duplication of work and overlapping of responsibilities and competencies between the three Organizations, and identify further needs;
2. facilitate the exchange of views between the three Organizations in order to ensure a co-ordinated approach to all the relevant aspects of ship scrapping;
3. undertake a comprehensive initial examination of the:
  - *Technical Guidelines for the Environmentally Sound Management of the Full and Partial Dismantling of Ships*, adopted by the Sixth Meeting of the Conference of Parties to the Basel Convention;
  - *IMO Guidelines on Ship Recycling*, adopted by resolution A.962(23); and
  - *Safety and Health in Shipbreaking: Guidelines for Asian countries and Turkey*, developed by ILO, with a view to identifying any possible gap, overlap, or ambiguities;
  - consider mechanisms to jointly promote the implementation of the relevant Guidelines on Ship Scrapping;
  - monitor progress of any jointly organized technical cooperation activities; and
  - submit recommendations and any other relevant information on the above or other pertinent matters to bodies of IMO, ILO and the Basel Convention, as appropriate.

### Working arrangements

2. The meeting considered the working arrangements of the proposed Joint WG and it was agreed that the Joint WG should meet on a regular basis, rotating between the Headquarters of ILO, IMO and SBC, or any other venue agreed upon. The host Organization would assume the role of Secretariat.

3. The composition of the Joint WG should consist of representatives appointed by each Organization, the number to be appointed by each being decided by agreement between the three Organizations.<sup>1</sup> The Joint WG should ensure, as appropriate, representation of all geographical regions of the world with an interest in the subject matter. Other interested parties, who express a wish, may be allowed to participate in the discussions of the Joint WG.

4. The Joint WG shall determine its own procedures.

### Technical cooperation activities on ship scrapping

5. The representatives of each Organization introduced those activities already launched or planned by each Organization.

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\* The terms of reference are reproduced as submitted, without formal editing.

<sup>1</sup> Language drawn from the existing Agreement between ILO and IMO (1959)

6. The representative of ILO stated that ILO has secured a new US\$1.3 million UNDP-funded project in Bangladesh on safe and environmental friendly shipbreaking. The project will seek, through a comprehensive approach based on policy dialogue, safety training and public awareness, to align current work practices in the shipbreaking industry with international and national rules and regulations. He also stated that ILO has prepared similar project proposals for India, China, Pakistan and Turkey.

7. The representative of the IMO Secretariat stated that IMO has established an Integrated Technical Co-operation Programme (ITCP), the purpose of which is to assist countries in building up their human and institutional capacities for uniform and effective compliance with the Organization's regulatory framework. Ship Recycling has been included in the revised ITCP thematic priorities for 2004-2005 and a strategy has been developed to achieve the set objectives. The meeting was also informed that two technical co-operation activities, one national workshop in Bangladesh and one regional workshop in Asia, have already been planned for the biennium 2004-5.

8. The representative of the SBC informed the meeting that the OEWG2 has invited the IMO, ILO and Basel Convention to organize a workshop with a view to exchanging of views on the issues included in the Terms of Reference of the proposed Joint WG. He also suggested that such workshop could be held at the regional level and the Basel Convention Regional Centre could be involved in its organization.

9. It was agreed that each Organization would invite the other two Organizations to participate in workshops or seminars.

#### **Interagency technical assistance**

##### **National/regional workshop/seminars**

10. It was suggested that regional or national workshops and seminars on ship recycling may be organized jointly, or individually by IMO, ILO and SBC. These workshops/seminars should aim at raising awareness on the safety, health and environmental issues associated with ship scrapping and providing guidance on the implementation of the provisions of the respective Guidelines.

##### **Global programme**

11. It was acknowledged that for some developing countries the implementation of the relevant guidelines on ship scrapping would necessitate massive investment, e.g. adequate waste reception facilities at the recycling yards, environmentally sound waste management systems and appropriate infrastructure. For this reason, there may be a need for the development of a global programme aiming at resource mobilization (e.g. World Bank, ADB, GEF, UNDP, bilateral donors), in which the three Organizations would participate. The ILO volunteered to prepare a draft background project document for consideration by IMO and SBC.

##### **Work of other bodies on ship scrapping**

12. An exchange of information took place with regard to initiatives on ship scrapping taken by intergovernmental or non-governmental organizations. The European Commission had recently written to all three Organizations and the SBC had met with the EU Commissioner for the Environment on this topic.

##### **Any other business**

13. There was an exchange of data on the volume of ship scrapping and market characteristics.

##### **Further action**

14. This report will be submitted for consideration to the 51st session of the Marine Environment Protection Committee (29 March to 2 April 2004), the Sectoral and Technical Meetings

Committee of the ILO's Governing Body (February-March 2004) and the third session of the Open-ended Working Group of the Basel Convention (26-30 April 2004).

15. If the establishment of the Joint Working Group is approved then the first meeting could be held before the end of 2004.

**OEWG-III/5: Analysis of issues related to Annex VII**

*The Open-ended Working Group,*

*Recalling* its decision OEWG-II/6,

*Taking note* of the first draft of the analysis prepared by the Secretariat of issues related to Annex VII,

*Recalling* that the purpose of the analysis of issues related to Annex VII is to explore, in a transparent, objective and comprehensive manner, health, environmental, social, economic and other issues that are considered important to the Conference of the Parties and to assist Parties to ratify the amendment contained in decision III/1 on amendment to the Basel Convention,

*Reaffirming* the decision of the Conference of the Parties to leave Annex VII unchanged until the amendment contained in decision III/1 enters into force,

*Mindful* of the determination of the Conference of the Parties at its sixth meeting to finalize the analysis by, at the latest, the seventh meeting of the Conference of the Parties,

*Mindful* also that the Conference of the Parties has entrusted the Open-ended Working Group to continue overseeing the development of work and to provide guidance to the Secretariat to ensure the timely finalization of the analysis,

*Taking into account* the comments submitted by Parties and others before and during the third session of the Open-ended Working Group,

1. *Agrees* that the paper contained in the annex to document UNEP/CHW/OEWG/2/7 as well as the compilation of the comments submitted to the Open-ended Working Group at its third session and made during that session constitute its final report on the analysis of issues related to Annex VII for consideration by the Conference of the Parties at its seventh meeting as provided in Conference of the Parties decision VI/34;

2. *Requests* the Secretariat to submit the final report of the Open-ended Working Group on the analysis of the issues related to Annex VII to the Conference of the Parties at its seventh meeting for its decision.

**OEWG-III/6: Basel Protocol on Liability and Compensation**

*The Open-ended Working Group,*

*Recalling* Conference of the Parties decision VI/15 on the Basel Protocol on Liability and Compensation,

*Also recalling* its own decision OEWG-II/2 on the Basel Protocol on Liability and Compensation,

*Noting* with appreciation the kind financial support provided by the Government of Switzerland toward the organization of two workshops,

*Also noting* the work undertaken to date by the Secretariat,

1. *Requests* the Secretariat to continue its efforts to organize five workshops for addressing various aspects of and obstacles to the process of ratification of or accession to the Basel Protocol;

2. *Calls* upon all Parties and organizations in a position to do so to make financial or in-kind contributions toward the organization of the workshops;

3. *Requests* the Secretariat to investigate possible means of overcoming obstacles to ratification of or accession to the Basel Protocol identified by the Parties to the Basel Convention during

the session of the Open-ended Working Group, in previous submissions and during regional workshops by, for example, holding consultations with relevant institutions to address the issues of insurance, bonds or other financial guarantees and the financial limits established under the Protocol;

4. *Invites* Parties and others to submit in writing to the Secretariat, by 31 July 2004, comments on the revised draft of the instruction manual;

5. *Requests* the Secretariat to finalize the preparation of the instruction manual for presentation to the Conference of the Parties at its seventh meeting, taking into account suggestions made during the third session of the Open-ended Working Group, written submissions received by 31 July 2004 and recommendations by participants in the regional workshops.

#### **OEWG-III/7: Mechanism for implementation and compliance**

*The Open-ended Working Group,*

*Recalling* decisions VI/12 and VI/13 on the establishment of a mechanism for promoting implementation and compliance and an interim procedure for electing the members of the committee for administering the mechanism,

*Recalling* also paragraph 6 of the appendix to decision VI/12 and its own decision OEWG-I/2 concerning the election of members of the committee established to administer the mechanism for promoting implementation and compliance,

1. *Calls upon* the Parties to nominate candidates meeting the requirements of paragraph 5 of the appendix to decision VI/12 for membership of the committee;

2. *Requests* the Parties to submit their nominations to the Secretariat for five positions on the Committee two months before the seventh meeting of the Conference of the Parties;

3. *Further requests* the Secretariat to distribute the nominations together with the provisional agenda and supporting documents for that meeting.

#### **OEWG-III/8: Preparation of technical guidelines on persistent organic pollutants**

*The Open-ended Working Group,*

*Recalling* Conference of the Parties decision VI/23 and its own decisions OEWG-I/4 and OEWG-II/10,

*Recalling* also that the Conference of the Parties in decision VI/23, among other things, requested the Open-ended Working Group to consider any measures necessary to finalize the preparation of the technical guidelines on persistent organic pollutants,

*Noting* that disposing of wastes with a high persistent organic pollutant content, including waste stockpiles, in an environmentally sound manner, is a priority,

1. *Agrees* that the following provisional definitions for low persistent organic pollutant content should be further considered by the small inter-sessional working group:

- (a) PCB: [50 mg/kg];
- (b) PCDD/PCDF: [0.1] [1] [10] [50] µg TEQ/kg;
- (c) Other POPs: [5] [50] mg/kg;

2. *Agrees* that the following approach with regard to levels of destruction or irreversible transformation should be further considered by the small inter-sessional working group:

(a) The technologies applied should be capable of achieving a destruction efficiency of 99.9999 per cent when they are operating with waste consisting of or containing persistent organic



pollutants with a persistent organic pollutant content above 1 per cent; this does not, however, apply for technologies disposing of waste arising from remediation of contaminated sites;

- (b) The technologies should meet the following requirements:
  - (i) The following concentrations in solid wastes:
    - a. For PCBs: [1-10 mg/kg];
    - b. For HCB and the eight pesticides: [5] mg/kg;
  - (ii) Regarding emissions to air and water: pertinent national legislation and international rules and standards;
- (c) The technologies should be operated in accordance with best available techniques established in guidance to be developed under the Stockholm Convention, in pertinent national legislation and international rules and standards;

3. *Notes* that, regarding PCDD/PCDF, a different approach from the one described in paragraphs 2 (a) and (b) might be necessary;

4. *Agrees* that, with regard to destruction or irreversible transformation methods, the following should be further considered by the small inter-sessional working group:

- (a) Expanding the chapeau of the relevant chapter of the guidelines taking into account any pertinent national legislation or other relevant information;

- (b) That the following technologies are classified as environmentally sound and commercially available:

- (i) Hazardous waste incineration;
- (ii) Cement kiln co-incineration;
- (iii) Gas phase chemical reduction;
- (iv) Base catalyzed decomposition;
- (v) Sodium reduction;
- (vi) Mediated electrochemical oxidation;
- (vii) [Molten salt oxidation];
- (viii) Super critical water oxidation;
- (ix) Plasma arc decomposition;

5. *Agrees* with regard to other disposal methods when destruction or irreversible transformation does not represent the environmentally sound preferable option to revise the relevant chapter of the guidelines taking into account any pertinent national legislation or other relevant information;

6. *Agrees* that, with regard to other disposal methods when the persistent organic pollutants content is low, the following should be further considered by the small inter-sessional working group:

- (a) To include, in the relevant chapter of the guidelines, guidance on priority issues such as soil and water protection (e.g., sewage sludge, waste soil, sediment, sludge from wastewater treatment), waste wood, waste oil and craft sludge;

- (b) To include a selection of information on pertinent national legislation in an appendix of the guidelines;

7. *Invites* Parties and others to submit comments, taking into account the report of the contact group in annex VI to the report of the third session of the Open-ended Working Group, to the Secretariat and Canada preferably by 15 June 2004 with respect to the general guidelines and the PCB/PCT/PBB guidelines in particular on:

- (a) Issues referred to in paragraphs 1–6 above;
- (b) Other issues in the draft text of these guidelines;

The basis for these comments would be draft texts available on the Basel Convention web site by 15 May 2004 in which the changes discussed by the Open-ended Working Group at its third session would be shown;

8. *Requests* Canada, in consultation with the small inter-sessional working group, to prepare revised *draft* general guidelines and PCB/PCT/PBB guidelines for consideration by the small inter-sessional working group, taking into account the comments made before, during and after the third session of the Open-ended Working Group.
9. *Mandates* the small inter-sessional working group to finalize the preparation of these technical *guidelines* at a meeting immediately before the seventh meeting of the Conference of the Parties;
10. *Requests* the Secretariat to present the outcome of the work of the small inter-sessional working group to the Conference of the Parties at its seventh meeting for its consideration and adoption;
11. *Invites* Parties and others to nominate further participants for the small inter-sessional working group;
12. *Invites* Parties to serve as lead countries for the two technical guidelines with regard to HCB and for the eight pesticides aldrin, chlordane, dieldrin, endrin, HCB, heptachlor, mirex and toxaphene, and to inform the Secretariat accordingly.

#### **OEWG-III/9: Implementation of existing technical guidelines**

*The Open-ended Working Group,*

*Recalling* Conference of the Parties decision VI/37 on the work programme of the Open-ended Working Group and in particular Conference of the Parties decisions VI/20, VI/21, VI/22 and VI/24 on the preparation of technical guidelines,

*Also recalling* its own decision OEWG-I/13, paragraph 7,

1. *Invites* Parties and others to provide comments to the Secretariat on their experiences and assessment of the implementation of the existing technical guidelines on the environmentally sound management of hazardous wastes and the identified practical difficulties and obstacles in their implementation by 31 July 2004;
2. *Requests* the Secretariat to prepare a compilation of the comments received for consideration by the Conference of the Parties at its seventh meeting.

#### **OEWG-III/10: Work on hazard characteristics**

*The Open-ended Working Group,*

*Recalling* decision VI/37 in so far as it refers to the work on hazard characteristics H6.2, H10, H11 and H13,

*Noting* that, by the same decision, the Conference of the Parties requested the Open-ended Working Group to continue its work on hazard characteristics H6.2, H10, H11 and H13,

*Noting also* with appreciation the contribution made by the Netherlands, the United Kingdom of Great Britain and Northern Ireland and the United States of America as lead countries in the preparation of the guidance papers on hazard characteristics H10, H6.2 and H11,

1. *Invites* Parties and others to submit comments on the guidance papers on hazard characteristics H6.2, H11, and H13 to the United Kingdom of Great Britain and Northern Ireland, the United States of America and the Secretariat, respectively, with copies to the Secretariat, by 30 June 2004;

2. *Requests* the Secretariat to submit the revised versions of the guidance papers on H6.2, H11 and H13 to the Conference of the Parties at its seventh meeting for its adoption on an interim basis.

### **OEWG-III/11: Application for plastic-coated cable scrap from India**

*The Open-ended Working Group,*

*Considering* the application submitted by India concerning the placement of new entries regarding plastic-coated cable scrap on Annex VIII and Annex IX,

*Noting* that the review of available and forthcoming scientific information concerning the evaluation of the potential environmental health effects of the disposal of PVC wastes and PVC-coated cables is included in the 2003–2004 work programme of the Open-ended Working Group but that to date no progress has been made on that issue,

1. *Invites* Parties and others to provide comments to the Secretariat on the application of India and on the following draft waste listings by 30 June 2004:

(a) A1190: [Waste copper cables or scrap] [Insulated cables and wire scrap] [Waste cables or scrap] coated with plastics containing or contaminated with coal tar, PCB<sup>1</sup> or other Annex I constituents to an extent that they exhibit Annex III characteristics;

(b) B1115: [Waste copper cables or scrap] [Insulated cables and wire scrap] [Waste cables or scrap] coated with plastics not included on list A1190;

2. *Requests* the Secretariat to transmit the application together with any comments in time for consideration by the Conference of the Parties at its seventh meeting.

### **OEWG-III/12: National classification and control procedures for the import of wastes contained in Annex IX**

*The Open-ended Working Group,*

*Recalling* Conference of the Parties decision VI/19 and its own decisions OEWG-I/3 and OEWG-II/8,

*Welcoming* the replies provided by Parties to the questionnaire circulated by the Secretariat concerning national classification and control procedures for the import of wastes contained in Annex IX,

*Noting* the information submitted by Parties in their replies to the questionnaire,

1. *Encourages* those Parties and Signatories that have not replied to the questionnaire to complete and return it to the Secretariat, if possible by 30 June 2004;

2. *Requests* the Secretariat to compile the replies received and to post them on the web site of the Basel Convention ([www.basel.int](http://www.basel.int)) and update them on a continuous basis;

3. *Also requests* the Secretariat to prepare a consolidated report and analysis for consideration by the Conference of the Parties at its seventh meeting, with a view to the Conference taking a decision on next steps.

<sup>1</sup> PCBs are at a concentration level of 50 mg/kg or more.

### **OEWG-III/13: Illegal traffic**

*The Open-ended Working Group,*

*Recalling* decision V/23 of the Conference on the Parties on the prevention and monitoring of illegal traffic in hazardous wastes,

*Recalling also* decision VI/16 on guidance elements for the detection, prevention and control of such illegal traffic, in which the Conference of the Parties requested the Secretariat to prepare with the International Criminal Police Organization and the World Customs Organization an annex to the guidance elements in the form of a basic training manual for personnel involved in preventing, identifying and managing such illegal traffic,

*Noting* with appreciation the work undertaken to date in response to decision VI/16, which has resulted in the preparation of a revised draft training manual, as contained in document UNEP/CHW/OEWG/3/INF/19, entitled Training Manual for the Enforcement of Laws Implementing the Basel Convention: Guidance for Safe and Effective Detection, Investigation and Prosecution of Illegal Traffic in Hazardous and Other Wastes,

1. *Invites* Parties and others to submit to the Secretariat, by 30 June 2004, comments on the revised draft training manual,
2. *Requests* the Secretariat to take into account any comments received and to prepare a further revised draft of the training manual for consideration by the Conference of the Parties at its seventh meeting;
3. *Requests* the Secretariat to continue its efforts to organize further training seminars to assist Parties, particularly developing countries, in implementing the guidance elements;
4. *Calls upon* all Parties, signatories and organizations in a position to do so to make financial or in-kind contributions for the organization of such training seminars.

### **OEWG-III/14: Proposed theme for the seventh meeting of the Conference of the Parties**

*The Open-ended Working Group,*

*Considering* the focus of Parties on the concrete implementation of activities, through the Strategic Plan, in support of the aims of the Basel Declaration on Environmentally Sound Management,

*Recognizing* the interlinkages between sound waste management and safe water as well as the adverse effects of poorly managed wastes on the health of people and the environment,

*Recommends* that the theme for the seventh meeting of the Conference of the Parties be “partnership for meeting the global waste challenge”.

## Annex II

### Draft decisions forwarded by the Open-ended Working Group to the Conference of the Parties for its consideration and possible adoption

#### VII/[ ]: Strategic Plan for the Implementation of the Basel Convention

*The Conference of the Parties,*

*Recalling* its decisions VI/1 and VI/2, by which it adopted the Strategic Plan for the implementation of the Basel Convention to 2010 as the major instrument to give further effect to the Basel Declaration on Environmentally Sound Management,

*Noting* with appreciation the report by the Secretariat on progress in the implementation of the Strategic Plan,

*Welcoming* the progress made in the implementation of the projects proposals approved under the Strategic Plan,

*Recalling* that the Open-ended Working Group should review, and amend as necessary, the action table in the light of experience gained in the implementation of the activities in 2003–2004,

*Noting* that a sustainable and adequate financial basis is essential for the implementation of priority actions of the strategic plan up to 2010,

1. *Agrees* that Parties and the Basel Convention regional centres, in partnership with other stakeholders, should continue to promote the implementation of the Strategic Plan;
2. *Requests* the Secretariat to assist the Parties and the Basel Convention regional centres in the preparation of projects for consideration and approval by the Open-ended Working Group for implementation in 2005–2006;
3. *Requests* the Secretariat to continue to assist the Parties, the Basel Convention regional centres and other stakeholders in the development and implementation of priority activities contained in the Strategic Plan under the guidance of the Open-ended Working Group and in the preparation of partnership programmes to support the Strategic Plan;
4. *Strongly encourages* the recipient Parties to consider including in their development assistance priorities projects that implement the Strategic Plan for the implementation of the Basel Convention and to request Parties, the Basel Convention regional centres and the Secretariat to help those Parties to approach donors for assistance in mobilizing available financial resources to this end;
5. *Requests* the Open-ended Working Group to develop an appropriate resource mobilization strategy to strengthen the financial basis for implementing the Strategic Plan, including gaining access to multilateral financial institutions, such as the Global Environmental Facility and the World Bank, and regional funding institutions;
6. *Requests* the Secretariat to report to the Conference of the Parties at its eighth meeting on progress in the implementation of the Strategic Plan and, as appropriate, to the Open-ended Working Group on experience gained and obstacles encountered.

**VII/[...]: Capacity-building for implementation of the Strategic Plan**

*The Conference of the Parties,*

*Recalling* its decision VI/11 on capacity-building and its decision V/5 on the regional centres for training and technology transfer,

*Welcoming* the specific activities carried out by the Basel Convention regional centres and Parties in close cooperation with the Secretariat of the Basel Convention to implement the Strategic Plan,

*Emphasizing* the importance of aiming at the mutually supportive implementation of related multilateral environmental agreements in the context of the life-cycle management approach of chemicals and wastes,

*Recognizing* in particular the need for close collaboration with the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and the Stockholm Convention on Persistent Organic Pollutants with regard to the life-cycle management of persistent organic and inorganic pollutants and hazardous chemicals,

*Bearing in mind* that capacity-building, information exchange, awareness-raising and education in all sectors of society are of paramount importance for achieving the aims of the Basel Convention,

1. *Requests* the Secretariat to continue to cooperate with the Basel Convention regional centres, Parties, non-Parties, international organizations, the industry sector and non-governmental organizations, to enhance the worldwide knowledge and the practical implementation of the Basel Convention through awareness-raising and capacity-building activities, subject to the availability of funds;
2. *Further requests the* Secretariat to continue to collaborate closely with UNEP Chemicals, the secretariats of the Rotterdam Convention and the Stockholm Convention and other partners, including the Basel Convention regional centres, with regard to the organization of joint training and capacity-building activities;
3. *Encourages* the Secretariat, in cooperation with the Basel Convention regional centres, to continue to develop capacity-building activities such as workshops, project activities, training materials and decision supportive tools, in close consultation and partnership with key partners from Governments, specialized agencies, the industry sector, universities and non-governmental organizations, with a view to addressing the needs of Parties for the environmentally sound management of priority waste streams, including, but not limited to, electronic wastes, lead and used lead-acid batteries, used oils, obsolete stocks of pesticides, PCBs, dioxins and furans, asbestos and materials resulting from the dismantling of ships, biomedical and healthcare wastes;
4. *Invites* Parties, non-Parties, intergovernmental organizations, members of the industry and business sectors, and non-governmental organizations to provide financial resources or assistance in kind, to assist countries in need of such assistance in the development of specific capacity-building projects, training, information and awareness-raising activities;
5. *Also invites* Parties to inform the Secretariat of their capacity-building activities and awareness and educational materials related to the implementation of the Basel Convention, to enable it to disseminate such information to other Parties and stakeholders;
6. *Also requests* the Secretariat to submit a report on the activities related to capacity-building to the Conference of the Parties at its eighth meeting.

**VII/[...]: Basel Convention regional centres: report on progress**

*The Conference of the Parties,*

*Recalling* its decision VI/3 on the establishment and functioning of the Basel Convention regional centres for training and technology transfer,

*Recalling* also its decision VI/4 on the business plans of the Basel Convention regional centres,

*Recalling in addition* its decisions VI/1 and VI/2 and Open-ended Working Group decisions OEWG-I/1 and OEWG-II/1,

*Welcoming* progress in the conclusion of the framework agreements, implementation of the business plans and projects proposals under the Strategic Plan,

*Recognizing* the need for funding for the programme of activities of the Basel Convention regional centres,

1. *Requests* the Basel Convention regional centres and the Secretariat to ensure effective implementation of the project proposals contained in their business plans;
2. *Requests* the Secretariat and the Basel Convention regional centres and the Parties served by them to develop a strategy for funding of the centres and the activities that they undertake;
3. *Urges* all Parties and signatories in a position to do so, as well as international organizations, including development banks, non-governmental organizations, the private sector and individuals, to make financial contributions to the Technical Cooperation Trust Fund of the Basel Convention or contributions directly to the Basel Convention regional centres on a bilateral basis, to allow the centres to continue to implement the Strategic Plan;
4. [*Urges* host Governments of the Basel Convention regional centres and countries served by the centres as appropriate to provide adequate funding, on a voluntary basis, to enable each centre to meet its core operational costs;]
5. *Requests* the Basel Convention regional centres to revise and update the new business plans for 2005–2006;
6. *Invites* the Basel Convention regional centres to continue to carry out the capacity-building activities and technology transfer and projects on a regional basis for all the countries which they serve.

**VII/[...]: Implementation of the Environment Initiative of the New Partnership for Africa's Development as it relates to hazardous wastes and other wastes**

*The Conference of the Parties,*

*Recalling* the mandate of the Conference of the Parties in its decision VI/10 that the Secretariat of the Basel Convention and the Basel Convention regional centres in Africa cooperate with the secretariats of the African Ministerial Conference on the Environment and the New Partnership for Africa's Development,

*Also recalling* the endorsement by the African Ministerial Conference on the Environment of the utilization of the Basel Convention regional centres in Africa for the implementation of the Environment Initiative of the New Partnership for Africa's Development with respect to the management of hazardous wastes and other wastes,

*Noting* the recommendation of the New Partnership for Africa's Development to enhance capacity-building of regional centres in Africa, including the Basel Convention regional centres in Egypt, Nigeria, Senegal and South Africa, for the management of hazardous wastes in the context of building synergies with the Stockholm Convention on Persistent Organic Pollutants and the Rotterdam

Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade,

*Noting also* that several programme activities proposed by a wide range of stakeholders that support the further implementation in Africa of the Basel Declaration on Environmentally Sound Management and the Strategic Plan for the Implementation of the Basel Convention have been selected as priority activities in the context of the Action Plan of the Environment Initiative of the New Partnership for Africa's Development,

1. *Requests* the Secretariat to continue its collaboration with the secretariat of the African Ministerial Conference on the Environment and the secretariat of the New Partnership for Africa's Development with a view to strengthening the development of concerted approaches for the further implementation in Africa of the Basel Declaration on Environmentally Sound Management and the Strategic Plan for the implementation of the Basel Convention;

2. *Encourages* Parties and other stakeholders to contribute financially and with other means to activities concerning the implementation of the Basel Convention in Africa as prioritized in the Action Plan of the Environment Initiative of the New Partnership for Africa's Development;

3. *Also requests* the Secretariat to continue its efforts to obtain financial support for the projects submitted to and endorsed by the African Ministerial Conference on the Environment;

4. *Further requests* the Secretariat to report on progress in the implementation of decision VI/10 to the Conference of the Parties at its eighth meeting.

#### **VII/[...]: Analysis of issues related to Annex VII**

*The Conference of the Parties,*

*Recalling* its decision VI/34, in which it, among other things, entrusted the Open-ended Working Group with overseeing the development of work and requested it to present its final report on the analysis of issues related to Annex VII to the Conference of the Parties for a final decision at its seventh meeting,

*Reaffirming* its decision to leave Annex VII unchanged until the amendment contained in its decision III/1 enters into force,

1. *Takes note* of the final report of the Open-ended Working Group on the analysis of issues related to Annex VII, as contained in document UNEP/CHW.7[...];

2. *Invites* Parties to the Convention that have not yet ratified or acceded to the amendment contained in decision III/1 to consider doing so to facilitate its entry into force at the earliest opportunity;

3. *Also invites* States that have not become party to the Basel Convention to consider doing so.

#### **VII/[...]: Basel Protocol on Liability and Compensation**

*The Conference of the Parties,*

*Recalling* its decision VI/15 on the Basel Protocol on Liability and Compensation,

*Also recalling* Open-ended Working Group decision OEWG-II/2 on the Basel Protocol on Liability and Compensation,

*Noting* the importance of the workshops called for in that decision as a means of promoting the exchange of information on the difficulties faced by Parties with respect to ratification of and accession to the Basel Protocol on Liability and Compensation, with a view to enhancing such ratification and accession,



*Also noting* with appreciation the kind financial support provided by the Government of Switzerland towards the organization of two workshops,

*Welcoming* with appreciation the efforts made by the Secretariat, the Basel Convention regional centres and the host countries in organizing workshops,

*Taking note* of the work undertaken to date by the Secretariat,

*Welcoming* with appreciation the assistance offered by the Government of Switzerland in the preparation of the instruction manual,

1. *Calls upon* all Parties and organizations that are in a position to do so to make financial or in-kind contributions for the organization of workshops for addressing various aspects of and obstacles to the process of ratification of or accession to the Basel Protocol as called for in decision VI/15;
2. *Requests* the Secretariat to continue its work on organizing workshops to address aspects of and obstacles to the process of ratification of or accession to the Basel Protocol;
3. *Also requests* the Secretariat to continue consultations with relevant institutions and to report thereon to the Open-ended Working Group regarding the options that may be available with respect to the requirement of insurance, bonds or other financial guarantees and the financial limits established under the Protocol;
4. *Further requests* the Secretariat to provide legal and technical assistance to Parties who require such assistance for the implementation of the Protocol;
5. *Approves* the instruction manual contained in the annex to the present decision;
6. *Also requests* the Secretariat to publish the instruction manual in all official United Nations languages and to disseminate it widely;
7. *Invites* Parties to use the instruction manual, to report to the Secretariat on their experience in the use of the instruction manual and to submit to the Secretariat, on an on-going basis, copies of domestic laws and regulations implementing the Basel Protocol as well as case studies on the application of the Protocol;
8. *Further requests* the Secretariat to update the instruction manual on a regular basis by the addition, as annexes to the instruction manual, of copies of domestic laws and regulations and case studies relating to the implementation of the Basel Protocol submitted by Parties.

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## **1. Introduction**

### **1.1 History of the Protocol**

The Basel Protocol on Liability and Compensation for Damage resulting from Transboundary Movements of Hazardous Wastes and their Disposal was adopted at the Fifth Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, on 10 December 1999. The Protocol negotiations began in 1993 in response to the concerns of developing countries about the lack of funds and technologies for coping with illegal dumping or accidental spills.

The Protocol addresses who is financially responsible in the event of an incident. Each phase of a transboundary movement, from the point at which the wastes are loaded on the means of transport for their export, international transit, import, and final disposal, is considered.

### **1.2 Goals of the Protocol**

The main objective of the Protocol is to provide for a comprehensive regime for liability as well as adequate and prompt compensation for damage resulting from the transboundary movement of hazardous wastes and other wastes, including incidents occurring because of illegal traffic in those wastes.

This comprehensive regime contains two subsidiary objectives:

#### **1.2.1 The preventive objective**

According to article 14 of the Protocol the person liable under article 4 shall establish and maintain during the period of liability, insurance, bonds or other financial guarantees covering their liability for amounts not less than the minimum limits specified in paragraph 2 of Annex B.

Financial guarantees to cover the liability for transboundary movements of hazardous wastes are only available, if certain safety standards for the operation are in place. No insurance company would be ready to insure hazardous activities where no safety measures have been undertaken to minimise the risk. That demonstrates the preventive effect of the Protocol.

#### **1.2.2 The compensation objective**

The second subsidiary objective is the compensation objective. That means that if, despite all required safety measures being taken, damage occurs, the Protocol will provide for appropriate compensation.

### 1.3 Key elements of the Protocol

The Protocol shall apply to damage due to an incident occurring during a transboundary movement of hazardous wastes and other wastes and their disposal, including illegal traffic, from the point where the wastes are loaded on the means of transport in an area under the national jurisdiction of a State of export until the time at which the notification of the completion of disposal of the wastes has occurred.

The exporter of waste shall be strictly liable for damage until the disposer has taken possession of the waste. Thereafter the disposer shall be strictly liable for damage. The strict liability is limited according Annex B of the Protocol.

“Damage” under the Protocol means:

- Loss of life or personal injury;
- Loss of or damage to property other than property held by the person liable in accordance with the present Protocol;
- Loss of income directly deriving from an economic interest in any use of the environment, incurred as a result of impairment of the environment, taking in account savings and costs.
- The cost of measures of reinstatement, including any loss or damage caused by such measures.

A claim must be brought within ten years from the date of the incident, or within five years from the date the claimant knew or ought reasonably to have known of the damage provided that this is no more than ten years from the date of the incident.

Exporters and disposers have to establish insurance, bonds or other financial guarantees covering their liability.

The Protocol will be enforced in domestic courts. Worthy of note is the fact that the Protocol, an international legal instrument, establishes specific rules for operation within the domestic legal arena, thus fettering the discretion of the domestic courts in respect of certain matters. Thus, it is essential that States fulfil their obligation, which is expressly provided in the Protocol, to make provision in their domestic regulatory and legislative regimes to implement the Protocol.

## 2. The Provisions of the Protocol in detail

This chapter explains the provisions of the operative part of the Protocol. The chapter does not include any commentary on the final clauses.

For each provision where the Protocol requires implementation in the domestic legal arena, this is identified below. It will, however, be for each Party to determine whether there is need for specific action to be taken to give effect to the provision, whether there already exists adequate provision in the relevant domestic law or whether, in accordance with its domestic legal tradition, the Protocol is self-executing and can be applied directly by the judiciary.

### Article 1: Objective

#### (a) Text of article

The objective of the Protocol is to provide for a comprehensive regime for liability and for adequate and prompt compensation for damage resulting from the transboundary movement of hazardous wastes and other wastes and their disposal including illegal traffic in those wastes.

#### (b) Does the article require domestic implementation?

No.

#### (c) Implementation (practical aspects)

N/A.

## Article 2: Definitions

### (a) Text of article

1. The definitions of terms contained in the Convention apply to the Protocol, unless expressly provided otherwise in the Protocol.
2. For the purposes of the Protocol:
  - (a) "The Convention" means the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal;
  - (b) "Hazardous wastes and other wastes" means hazardous wastes and other wastes within the meaning of Article 1 of the Convention;
  - (c) "Damage" means:
    - (i) Loss of life or personal injury;
    - (ii) Loss of or damage to property other than property held by the person liable in accordance with the present Protocol;
    - (iii) Loss of income directly deriving from an economic interest in any use of the environment, incurred as a result of impairment of the environment, taking into account savings and costs;
    - (iv) The costs of measures of reinstatement of the impaired environment, limited to the costs of measures actually taken or to be undertaken; and
    - (v) The costs of preventive measures, including any loss or damage caused by such measures, to the extent that the damage arises out of or results from hazardous properties of the wastes involved in the transboundary movement and disposal of hazardous wastes and other wastes subject to the Convention;
  - (d) "Measures of reinstatement" means any reasonable measures aiming to assess, reinstate or restore damaged or destroyed components of the environment. Domestic law may indicate who will be entitled to take such measures;
  - (e) "Preventive measures" means any reasonable measures taken by any person in response to an incident, to prevent, minimize, or mitigate loss or damage, or to effect environmental clean-up;
  - (f) "Contracting Party" means a Party to the Protocol;
  - (g) "Protocol" means the present Protocol;
  - (h) "Incident" means any occurrence, or series of occurrences having the same origin that causes damage or creates a grave and imminent threat of causing damage;
  - (i) "Regional economic integration organization" means an organization constituted by sovereign States to which its member States have transferred competence in respect of matters governed by the Protocol and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve, formally confirm or accede to it;
  - (j) "Unit of account" means the Special Drawing Right as defined by the International Monetary Fund.

### (b) Does the article require domestic implementation?

No, except to ensure that the definitions are considered by the Courts when interpreting the provisions of the Protocol.

(c) Implementation (practical aspects)

N/A.

(d) Other information

The Protocol defines “incident” as any occurrence, or series of occurrences having the same origin that causes damage or creates a grave and imminent threat of causing damage (h). To be covered by the Protocol, the damage does not have to result from an accident; damage caused by normal operations are incidents in terms of the Protocol.

Current rates for the Special Drawing Right may be found at [website].

(e) Example:

*Example: A restaurant specialised for weekend-visitors in a Tourist region is affected by a bad smell of a disposal site. No guests will dine at the restaurant. The restaurant itself had not been damaged by the incident. The remaining guests have not fallen ill by the incident. But the owner or operator of the restaurant had suffered a loss of income, which must be compensated.*

*Example: Wild growing plants or flowers are destroyed. The costs of growing new plants or flowers in the affected area have to be compensated. A spill of waste causes the killing of fishes in rivers. The costs of the abandoning of new fish of the same species have to be compensated.*

*Example: When hazardous wastes were dumped in a river and become a threat to the fresh water supply of a village. The measure to remove the waste out of the river is a preventive measure in terms of the Protocol, because it prevents or minimises further damage.*

*Example: A neighbouring cornfield of a disposal site for waste resulting from a transboundary movement had been polluted or contaminated by hazardous substances (ii). The property is directly affected.*

*Example: The unloading of a ship causes an accidental pollution of a river because a part of the shipment fell in the river (accidental pollution)*

*A disposal site is leaking for several years and causes a gradual pollution of a neighbouring property. Both scenarios are incidents in terms of the Protocol.*

### **Article 3: Scope of application**

(a) Text of article

1. The Protocol shall apply to damage due to an incident occurring during a transboundary movement of hazardous wastes and other wastes and their disposal, including illegal traffic, from the point where the wastes are loaded on the means of transport in an area under the national jurisdiction of a State of export. Any Contracting Party may by way of notification to the Depositary exclude the application of the Protocol, in respect of all transboundary movements for which it is the State of export, for such incidents which occur in an area under its national jurisdiction, as regards damage in its area of national jurisdiction. The Secretariat shall inform all Contracting Parties of notifications received in accordance with this Article.

2. The Protocol shall apply:

(a) In relation to movements destined for one of the operations specified in Annex IV to the Convention other than D13, D14, D15, R12 or R13, until the time at which the notification of completion of disposal pursuant to Article 6, paragraph 9, of the Convention has occurred, or, where such notification has not been made, completion of disposal has occurred; and

(b) In relation to movements destined for the operations specified in D13, D14, D15, R12 or R13 of Annex IV to the Convention, until completion of the subsequent disposal operation specified in D1 to D12 and R1 to R11 of Annex IV to the Convention.

3. (a) The Protocol shall apply only to damage suffered in an area under the national jurisdiction of a Contracting Party arising from an incident as referred to in paragraph 1;

(b) When the State of import, but not the State of export, is a Contracting Party, the Protocol shall apply only with respect to damage arising from an incident as referred to in paragraph 1 which takes place after the moment at which the disposer has taken possession of the hazardous wastes and other wastes. When the State of export, but not the State of import, is a Contracting Party, the Protocol shall apply only with respect to damage arising from an incident as referred to in paragraph 1 which takes place prior to the moment at which the disposer takes possession of the hazardous wastes and other wastes. When neither the State of export nor the State of import is a Contracting Party, the Protocol shall not apply;

(c) Notwithstanding subparagraph (a), the Protocol shall also apply to the damages specified in Article 2, subparagraphs 2 (c) (i), (ii) and (v), of the Protocol occurring in areas beyond any national jurisdiction;

(d) Notwithstanding subparagraph (a), the Protocol shall, in relation to rights under the Protocol, also apply to damages suffered in an area under the national jurisdiction of a State of transit which is not a Contracting Party provided that such State appears in Annex A and has acceded to a multilateral or regional agreement concerning transboundary movements of hazardous waste which is in force. Subparagraph (b) will apply *mutatis mutandis*.

4. Notwithstanding paragraph 1, in case of re-importation under Article 8 or Article 9, subparagraph 2 (a), and Article 9, paragraph 4, of the Convention, the provisions of the Protocol shall apply until the hazardous wastes and other wastes reach the original State of export.

5. Nothing in the Protocol shall affect in any way the sovereignty of States over their territorial seas and their jurisdiction and the right in their respective exclusive economic zones and continental shelves in accordance with international law.

6. Notwithstanding paragraph 1 and subject to paragraph 2 of this Article:

(a) The Protocol shall not apply to damage that has arisen from a transboundary movement of hazardous wastes and other wastes that has commenced before the entry into force of the Protocol for the Contracting Party concerned;

(b) The Protocol shall apply to damage resulting from an incident occurring during a transboundary movement of wastes falling under Article 1, subparagraph 1 (b), of the Convention only if those wastes have been notified in accordance with Article 3 of the Convention by the State of export or import, or both, and the damage arises in an area under the national jurisdiction of a State, including a State of transit, that has defined or considers those wastes as hazardous provided that the requirements of Article 3 of the Convention have been met. In this case strict liability shall be channelled in accordance with Article 4 of the Protocol.

7. (a) The Protocol shall not apply to damage due to an incident occurring during a transboundary movement of hazardous wastes and other wastes and their disposal pursuant to a bilateral, multilateral or regional agreement or arrangement concluded and notified in accordance with Article 11 of the Convention if:

(i) The damage occurred in an area under the national jurisdiction of any of the Parties to the agreement or arrangement;

(ii) There exists a liability and compensation regime, which is in force and is applicable to the damage resulting from such a transboundary movement or disposal provided it fully meets, or exceeds the objective of the Protocol by providing a high level of protection to persons who have suffered damage;

(iii) The Party to the Article 11 agreement or arrangement in which the damage has occurred has previously notified the Depositary of the non-application of the Protocol to any damage occurring in an area under its national jurisdiction due to an incident resulting from movements or disposals referred to in this subparagraph; and

(iv) The Parties to the Article 11 agreement or arrangement have not declared that the Protocol shall be applicable;

(b) In order to promote transparency, a Contracting Party that has notified the Depositary of the non-application of the Protocol shall notify the Secretariat of the applicable liability and compensation regime referred to in subparagraph (a) (ii) and include a description of the regime. The Secretariat shall submit to the Meeting of the Parties, on a regular basis, summary reports on the notifications received;

(c) After a notification pursuant to subparagraph (a) (iii) is made, actions for compensation for damage to which subparagraph (a) (i) applies may not be made under the Protocol.

8. The exclusion set out in paragraph 7 of this Article shall neither affect any of the rights or obligations under the Protocol of a Contracting Party which is not party to the agreement or arrangement mentioned above, nor shall it affect rights of States of transit which are not Contracting Parties.

9. Article 3, paragraph 2, shall not affect the application of Article 16 to all Contracting Parties.

(b) Does the article require domestic implementation?

No.

(c) Implementation (practical aspects)

Article 3(6)(b): The Protocol will only apply to wastes that are not listed in Annex I to the Convention, but which are defined as, or are considered to be, hazardous wastes by the domestic legislation of the Party of export, import or transit, if that Party has transmitted a notification of its national definition pursuant to Article 3 of the Convention. Information transmitted pursuant to the annual reporting obligations under Article 13(3) does not fulfil the reporting obligation under Article 3 of the Convention.

Article 3(7): Where there is an Article 11 agreement, the Party must notify the Depositary and the Secretariat. The notification to the Secretariat must include a description of the applicable liability and compensation regime, which may not necessarily be a part of the Article 11 agreement or arrangement. Thus, for example, the applicable liability regime may be a domestic legal mechanism that meets the requirements of Article 7a(ii).

(d) Other information

The Protocol applies in principle to all disposal operations (Annex IV Convention), except:

D13 Blending or mixing prior to submission to any of the operations in Section A,

D14 Repackaging prior to submission to any of the operations in Section A;

D15 Storage pending any of the operations in Section A;

R12 Exchange of wastes for submission to any of the operations numbered R1-R11;

R13 Accumulation of material intended for any operation in Section B.

For those operations (typical recycling operations) the Protocol applies until the completion of the subsequent disposal operation specified in D1 to D12 and R1 to R11 of Annex IV of the Convention.



Agreements according to Article 11 of the Convention are agreements or arrangements regarding transboundary movements of hazardous wastes or other wastes provided that such agreements or arrangements do not derogate from the environmentally sound management of hazardous wastes and other wastes as required by the Convention. These agreements address the transboundary movement of wastes but not the liability for damages arising from an incident occurring during a transboundary movement of wastes.

#### Article 4: Strict liability

##### (a) Text of article

1. The person who notifies in accordance with Article 6 of the Convention, shall be liable for damage until the disposer has taken possession of the hazardous wastes and other wastes. Thereafter the disposer shall be liable for damage. If the State of export is the notifier or if no notification has taken place, the exporter shall be liable for damage until the disposer has taken possession of the hazardous wastes and other wastes. With respect to Article 3, subparagraph 6 (b), of the Protocol, Article 6, paragraph 5, of the Convention shall apply mutatis mutandis. Thereafter the disposer shall be liable for damage.

2. Without prejudice to paragraph 1, with respect to wastes under Article 1, subparagraph 1 (b), of the Convention that have been notified as hazardous by the State of import in accordance with Article 3 of the Convention but not by the State of export, the importer shall be liable until the disposer has taken possession of the wastes, if the State of import is the notifier or if no notification has taken place. Thereafter the disposer shall be liable for damage.

3. Should the hazardous wastes and other wastes be re-imported in accordance with Article 8 of the Convention, the person who notified shall be liable for damage from the time the hazardous wastes leave the disposal site, until the wastes are taken into possession by the exporter, if applicable, or by the alternate disposer.

4. Should the hazardous wastes and other wastes be re-imported under Article 9, subparagraph 2 (a), or Article 9, paragraph 4, of the Convention, subject to Article 3 of the Protocol, the person who re-imports shall be held liable for damage until the wastes are taken into possession by the exporter if applicable, or by the alternate disposer.

5. No liability in accordance with this Article shall attach to the person referred to in paragraphs 1 and 2 of this Article, if that person proves that the damage was:

(a) The result of an act of armed conflict, hostilities, civil war or insurrection;

(b) The result of a natural phenomenon of exceptional, inevitable, unforeseeable and irresistible character;

(c) Wholly the result of compliance with a compulsory measure of a public authority of the State where the damage occurred; or

(d) Wholly the result of the wrongful intentional conduct of a third party, including the person who suffered the damage.

6. If two or more persons are liable according to this Article, the claimant shall have the right to seek full compensation for the damage from any or all of the persons liable.

(b) Does the article require domestic implementation?

No.

(c) Implementation (practical aspects)

N/A.

**Article 5: Fault based liability**

## (a) Text of article

Without prejudice to Article 4, any person shall be liable for damage caused or contributed to by his lack of compliance with the provisions implementing the Convention or by his wrongful intentional, reckless or negligent acts or omissions. This Article shall not affect the domestic law of the Contracting Parties governing liability of servants and agents.

## (b) Does the article require domestic implementation?

To the extent not already provided under domestic law, for example, under criminal or tort law, Contracting Parties must ensure that there is provision in the domestic legal system for the liability of a person in the circumstances provided.

Parties may also wish to review their domestic provisions regarding liability of servants and agents to ascertain how these will operate in parallel to this provision of the Protocol.

## (c) Implementation (practical aspects)

To implement this provision, Contracting Parties must ensure that this provision can be applied by the competent domestic courts. All matters of procedure such as, for example, standards of proof, burden of proof, etc. shall be governed by the law of the competent domestic court (see Article 19)

## (d) Other information

It should be noted that liability under article 5 is, unlike the strict liability under Article 4, unlimited.

*(d) Example:*

*A lorry, which is transporting hazardous waste imported from the territory of one Contracting Party to that of another Contracting Party, overturns as a result of a driving error caused by the negligent act of the driver. The accident damages the crops in a farmer's field. The farmer who suffered the damage has two options with respect to whom to claim against. He can claim against the notifier who is strictly liable for the damage under Article 4 (option 1). He can also claim against the driver of the lorry who is liable under Article 5 (option 2). Option 1 has the advantage that the liability will be covered by insurance (Article 14), but the liability is limited. Option 2 has the advantage that the liability is unlimited, but there is no financial guarantee available.*

**Article 6: Preventive measures**

## (a) Text of article

1. Subject to any requirement of domestic law any person in operational control of hazardous wastes and other wastes at the time of an incident shall take all reasonable measures to mitigate damage arising therefrom.

2. Notwithstanding any other provision in the Protocol, any person in possession and/or control of hazardous wastes and other wastes for the sole purpose of taking preventive measures, provided that this person acted reasonably and in accordance with any domestic law regarding preventive measures, is not thereby subject to liability under the Protocol.

## (b) Does the article require domestic implementation?

This will be a matter for interpretation by the courts or relevant domestic enforcement body.

## (c) Implementation (practical aspects)

Parties may wish to review their domestic laws regarding preventive measures to confirm which actions are excluded from liability under article 6(2) of the Protocol.

**Article 7: Combined cause of the damage**

## (a) Text of article

1. Where damage is caused by wastes covered by the Protocol and wastes not covered by the Protocol, a person otherwise liable shall only be liable according to the Protocol in proportion to the contribution made by the wastes covered by the Protocol to the damage.
2. The proportion of the contribution to the damage of the wastes referred to in paragraph 1 shall be determined with regard to the volume and properties of the wastes involved, and the type of damage occurring.
3. In respect of damage where it is not possible to distinguish between the contribution made by wastes covered by the Protocol and wastes not covered by the Protocol, all damage shall be considered to be covered by the Protocol.

## (b) Does the article require domestic implementation?

No.

## (c) Implementation (practical aspects)

Parties will have to provide that the domestic courts will have or will have to organise the technical capacity to analyse and determine the proportions of damage caused by wastes covered by the Protocol to address circumstances where there is a combined cause of damage.

**Article 8: Right of recourse**

## (a) Text of article

1. Any person liable under the Protocol shall be entitled to a right of recourse in accordance with the rules of procedure of the competent court:
  - (a) Against any other person also liable under the Protocol; and
  - (b) As expressly provided for in contractual arrangements.
2. Nothing in the Protocol shall prejudice any rights of recourse to which the person liable might be entitled pursuant to the law of the competent court.

## (b) Does the article require domestic implementation?

This procedure leaves it to the domestic law to provide for the extent and scope of the right of recourse. Accordingly, no additional action needs to be taken by a Party beyond ensuring that there is a court competent to hear a suit brought by a person liable under the Protocol. The normal domestic rules of procedure apply.

## (c) Implementation (practical aspects)

N/A.

## (d) Other information

This right of recourse is mainly relevant for two scenarios:

Scenario 1. When two or more persons are liable according to Article 4 of the Protocol, the claimant has the right to seek full compensation for the damage from any or all of the persons liable (Art. 4(6)). Here it is evident that if the claimant had received full compensation from one of several liable persons, the person who had paid first for the damage will use the right of recourse against the other remaining persons liable under article 4 of the Protocol in order to recover a part of the compensation paid.

Scenario 2: For the same damage one person is strictly liable according to Article 4 of the Protocol and one person is liable on the basis of fault according to Article 5 of the Protocol. The claimant seeks and gets full compensation from the strictly liable person. Afterwards the strictly liable person is entitled to use his right of recourse against the fault-based liable person.

**Article 9: Contributory fault**

(a) Text of article

Compensation may be reduced or disallowed if the person who suffered the damage, or a person for whom he is responsible under the domestic law, by his own fault, has caused or contributed to the damage having regard to all circumstances.

(b) Does the article require domestic implementation?

No. This will be a matter for determination by the courts or relevant domestic enforcement body.

(c) Implementation (practical aspects)

N/A.

**Article 10: Implementation**

(a) Text of article

1. The Contracting Parties shall adopt the legislative, regulatory and administrative measures necessary to implement the Protocol.
2. In order to promote transparency, Contracting Parties shall inform the Secretariat of measures to implement the Protocol, including any limits of liability established pursuant to paragraph 1 of Annex B.
3. The provisions of the Protocol shall be applied without discrimination based on nationality, domicile or residence.

(b) Does the article require domestic implementation?

Measures requiring domestic implementation are identified in the context of each article.

(c) Implementation (practical aspects)

Parties must inform the Secretariat of the legislative, regulatory and administrative measure that they have taken to implement the Protocol.

(d) Other information

**Article 11: Conflicts with other liability and compensation agreements**

(a) Text of article

Whenever the provisions of the Protocol and the provisions of a bilateral, multilateral or regional agreement apply to liability and compensation for damage caused by an incident arising during the same portion of a transboundary movement, the Protocol shall not apply provided the other agreement is in force for the Party or Parties concerned and had been opened for signature when the Protocol was opened for signature, even if the agreement was amended afterwards.

(b) Does the article require domestic implementation?

No.

## (c) Implementation (practical aspects)

N/A.

## (d) Other information

The present Article must be clearly distinguished from Article 3(7)(a)(ii). Article 3(7)(a)(ii) addresses agreements and arrangements under Article 11 of the Convention regarding transboundary movements of hazardous wastes or other wastes in general, while Article 11 of the Protocol is focused on agreements regarding liability and compensation.

**Article 12: Financial limits**

## (a) Text of article

1. Financial limits for the liability under Article 4 of the Protocol are specified in Annex B to the Protocol. Such limits shall not include any interest or costs awarded by the competent court.
2. There shall be no financial limit on liability under Article 5.

## (b) Does the article require domestic implementation?

Yes. See discussion of Annex B below.

## (c) Implementation (practical aspects)

See discussion of Annex B below.

## (d) Other information

It is significant that fault based liability under Article 5 is unlimited.

The financial limits that are listed in Annex B of the Protocol are based on the weight of the shipments, rather than the hazardous qualities of the waste. This approach had been criticised by several Parties to the Convention. Article 23 of the Protocol would have allowed amendment of these limits at the sixth meeting of the Conference of the Parties to the Convention ("COP 6"). However, after long discussions before and during the COP 6, Parties could not agree on an alternative system and, accordingly, COP 6 decided to maintain Annex B as it stands and to leave the limits unchanged.

**Article 13: Time limit of liability**

## (a) Text of article

1. Claims for compensation under the Protocol shall not be admissible unless they are brought within ten years from the date of the incident.
2. Claims for compensation under the Protocol shall not be admissible unless they are brought within five years from the date the claimant knew or ought reasonably to have known of the damage provided that the time limits established pursuant to paragraph 1 of this Article are not exceeded.
3. Where the incident consists of a series of occurrences having the same origin, time limits established pursuant to this Article shall run from the date of the last of such occurrences. Where the incident consists of a continuous occurrence, such time limits shall run from the end of that continuous occurrence.

## (b) Does the article require domestic implementation?

No.

## (c) Implementation (practical aspects)

Parties may wish to review and clarify their domestic provisions regarding limitation periods, to ensure that there is a clear distinction between the time limits under the Protocol and those established under domestic law. The Protocol doesn't foresee a harmonisation between domestic and international law. Different time limits under different regimes (international and domestic) are possible).

#### **Article 14: Insurance and other financial guarantees**

##### (a) Text of article

1. The persons liable under Article 4 shall establish and maintain during the period of the time limit of liability, insurance, bonds or other financial guarantees covering their liability under Article 4 of the Protocol for amounts not less than the minimum limits specified in paragraph 2 of Annex B. States may fulfil their obligation under this paragraph by a declaration of self-insurance. Nothing in this paragraph shall prevent the use of deductibles or co-payments as between the insurer and the insured, but the failure of the insured to pay any deductible or co-payment shall not be a defence against the person who has suffered the damage.
2. With regard to the liability of the notifier, or exporter under Article 4, paragraph 1, or of the importer under Article 4, paragraph 2, insurance, bonds or other financial guarantees referred to in paragraph 1 of this Article shall only be drawn upon in order to provide compensation for damage covered by Article 2 of the Protocol.
3. A document reflecting the coverage of the liability of the notifier or exporter under Article 4, paragraph 1, or of the importer under Article 4, paragraph 2, of the Protocol shall accompany the notification referred to in Article 6 of the Convention. Proof of coverage of the liability of the disposer shall be delivered to the competent authorities of the State of import.
4. Any claim under the Protocol may be asserted directly against any person providing insurance, bonds or other financial guarantees. The insurer or the person providing the financial guarantee shall have the right to require the person liable under Article 4 to be joined in the proceedings. Insurers and persons providing financial guarantees may invoke the defences which the person liable under Article 4 would be entitled to invoke.
5. Notwithstanding paragraph 4, a Contracting Party shall, by notification to the Depositary at the time of signature, ratification, or approval of, or accession to the Protocol, indicate if it does not provide for a right to bring a direct action pursuant to paragraph 4. The Secretariat shall maintain a record of the Contracting Parties who have given notification pursuant to this paragraph.

##### (b) Does the article require domestic implementation?

Article 14(3): This provision requires the establishment of a regulatory mechanism to verify that a document reflecting the coverage of the liability will accompany the notification referred to in Article 6 of the Convention.

##### (c) Implementation (practical aspects)

Article 14(4) and (5): If a Party chooses to exclude the right to claim directly against the person providing the insurance or financial guarantee, it must decide this at the time of signature, ratification, approval, or accession to the Protocol. This decision must be indicated in the notification to the Depositary. While there is no specific requirement to notify the Secretariat of this decision, as the Secretariat will maintain the record of such notifications, it would be useful if this information were also transmitted to the Secretariat.

#### **Article 15: Financial mechanism**

##### (a) Text of article

1. Where compensation under the Protocol does not cover the costs of damage, additional and supplementary measures aimed at ensuring adequate and prompt compensation may be taken using existing mechanisms.

2. The Meeting of the Parties shall keep under review the need for and possibility of improving existing mechanisms or establishing a new mechanism.

(b) Does the article require domestic implementation?

No.

(c) Implementation (practical aspects)

N/A.

(d) Other information

Article 15 refers to mechanisms under the Basel Convention and its Protocols, not domestic mechanisms.

By decision V/32 (Enlargement of the scope of the technical co-operation trust fund), the Conference of the Parties to the Convention at its fifth meeting, decided to enlarge the scope of the Technical Co-operation Trust Fund of the Basel Convention to assist the Contracting Parties which are developing countries or countries with economies in transition in cases of emergency and to provide compensation for damage resulting from incidents arising from transboundary movements of hazardous wastes and other wastes and their disposal.

By December 2002, US\$ 305,321 had been received for the Trust Fund for this purpose. The sixth Conference of the Parties to the Convention adopted the interim Guidelines (UNEP/CHWW 6/10, annex) for the implementation of Decision V/32.

Part 2 of the Guidelines (Compensation for damage to and reinstatement of the environment) is relevant in the context of article 15 of the Protocol. These Guidelines establish rules and procedures for the management of the Enlarged Technical Co-operation Trust Fund.

According to these Guidelines, compensation can be provided upon request of a Contracting Party to the Protocol, which is a developing country or a country with economy in transition. The means by which a request should be made, and the matters that should be addressed in a request, are addressed in detail in the Guidelines. Part 2 of the Guidelines will become operational on the date that the Protocol enters into force.

Compensation under the Fund may be paid for damage to and reinstatement of the environment up to the limits provided for in the Protocol where such compensation and reinstatement is not adequate under the Protocol.

#### **Article 16: State responsibility**

(a) Text of article

The Protocol shall not affect the rights and obligations of the Contracting Parties under the rules of general international law with respect to State responsibility.

(b) Does the article require domestic implementation?

No.

(c) Implementation (practical aspects)

N/A.

(d) Other information

During the negotiations of the expert group, a number of States wished to introduce rules on State responsibility into the Protocol. In view of the difficulties to establish such rules, the experts agreed to

the current text. It means that the rules of general international law with respect to State responsibility will not be affected by the Protocol.

#### **Article 17: Competent courts**

(a) Text of article

1. Claims for compensation under the Protocol may be brought in the courts of a Contracting Party only where either:

- (a) The damage was suffered; or
- (b) The incident occurred; or
- (c) The defendant has his habitual residence, or has his principal place of business.

2. Each Contracting Party shall ensure that its courts possess the necessary competence to entertain such claims for compensation.

(b) Does the article require domestic implementation?

Parties must ensure the existence of necessary (procedural) legal framework in the domestic law, so that the courts possess the necessary competence to entertain claims brought under the Protocol for compensation.

(c) Implementation (practical aspects)

Parties may wish to organise training programs for the judiciary, members of the legal profession, and those who would be charged with investigating an incident, to ensure they are prepared to apply the Protocol. Such entities must also be aware that the claims brought under the Protocol may only be based upon the jurisdictional grounds stated in Article 17(1); claims asserting jurisdiction on other grounds may not be based upon the Protocol.

#### **Article 18: Related actions**

(a) Text of article

1. Where related actions are brought in the courts of different Parties, any court other than the court first seized may, while the actions are pending at first instance, stay its proceedings.

2. A court may, on the application of one of the Parties, decline jurisdiction if the law of that court permits the consolidation of related actions and another court has jurisdiction over both actions.

3. For the purpose of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgements resulting from separate proceedings.

(b) Does the article require domestic implementation?

No. It will be for the domestic Courts to interpret and implement this provision.

(c) Implementation (practical aspects)

N/A.

#### **Article 19: Applicable Law**

(a) Text of article



All matters of substance or procedure regarding claims before the competent court which are not specifically regulated in the Protocol shall be governed by the law of that court including any rules of such law relating to conflict of laws.

(b) Does the article require domestic implementation?

No.

(c) Implementation (practical aspects)

N/A.

#### **Article 20: Relation between the Protocol and the law of the competent court**

(a) Text of article

1. Subject to paragraph 2, nothing in the Protocol shall be construed as limiting or derogating from any rights of persons who have suffered damage, or as limiting the protection or reinstatement of the environment which may be provided under domestic law.

2. No claims for compensation for damage based on the strict liability of the notifier or the exporter liable under Article 4, paragraph 1, or the importer liable under Article 4, paragraph 2, of the Protocol, shall be made otherwise than in accordance with the Protocol.

(b) Does the article require domestic implementation?

No.

(c) Implementation (practical aspects)

N/A.

(d) Other information

Article 20 makes it clear that within the jurisdiction of a Contracting Party, claims may be brought under the provisions of the Protocol as well as under the provisions of domestic law. The claimant has the free choice (Paragraph 1). However once the claimant decides to bring a claim based on the strict liability under Article 4 of the Protocol, then the claim can only be made in accordance with the Protocol (Paragraph 2).

#### **Article 21: Mutual recognition and enforcement of judgements**

(a) Text of article

1. Any judgement of a court having jurisdiction in accordance with Article 17 of the Protocol, which is enforceable in the State of origin and is no longer subject to ordinary forms of review, shall be recognized in any Contracting Party as soon as the formalities required in that Party have been completed, except:

(a) Where the judgement was obtained by fraud;

(b) Where the defendant was not given reasonable notice and a fair opportunity to present his case;

(c) Where the judgement is irreconcilable with an earlier judgement validly pronounced in another Contracting Party with regard to the same cause of action and the same parties; or

(d) Where the judgement is contrary to the public policy of the Contracting Party in which its recognition is sought.

2. A judgement recognized under paragraph 1 of this Article shall be enforceable in each Contracting Party as soon as the formalities required in that Party have been completed. The formalities shall not permit the merits of the case to be re-opened.

(b) Does the article require domestic implementation?

It will be for the domestic Courts to interpret and to apply this provision directly.

(c) Implementation (practical aspects)

N/A.

#### **Article 22: Relationship of the Protocol with the Basel Convention**

(a) Text of article

Except as otherwise provided in the Protocol, the provisions of the Convention relating to its Protocols shall apply to the Protocol.

(b) Does the article require domestic implementation?

No.

(c) Implementation (practical aspects)

N/A.

(d) Other information

Article 15(5)(d) of the Convention permits the Conference of the Parties to consider and adopt protocols as required. Article 17(4) of the Convention stipulates that the procedure of the amendment of the Convention shall apply to amendments to any protocol, except that a two-thirds majority of the Parties to that protocol present and voting at the meeting shall suffice for their adoption. At the fifth Conference of the Parties to the Convention, all the Parties of the Convention unanimously adopted the Protocol.

#### **Article 23: Amendment of Annex B**

(a) Text of article

1. At its sixth meeting, the Conference of the Parties to the Basel Convention may amend paragraph 2 of Annex B following the procedure set out in Article 18 of the Basel Convention.

2. Such an amendment may be made before the Protocol enters into force.

(b) Does the article require domestic implementation?

No.

(c) Implementation (practical aspects)

N/A.

(d) Other information

At its sixth meeting the Conference of the Parties to the Basel Convention decided to leave paragraph 2 of Annex B unchanged. The reasoning behind this decision is explained in the remarks under Article 12.

#### **Annex B: Financial Limits**

(a) Text of Annex

1. Financial limits for the liability under Article 4 of the Protocol shall be determined by domestic law.
  2. The limits of liability shall:
    - (a) For the notifier, exporter or importer, for any one incident, be not less than:
      - (i) 1 million units of account for shipments up to and including 5 tonnes;
      - (ii) 2 million units of account for shipments exceeding 5 tonnes, up to and including 25 tonnes;
      - (iii) 4 million units of account for shipments exceeding 25 tonnes, up to and including 50 tonnes;
      - (iv) 6 million units of account for shipments exceeding 50 tonnes, up to and including to 1,000 tonnes;
      - (v) 10 million units of account for shipments exceeding 1,000 tonnes, up to and including 10,000 tonnes;
      - (vi) Plus an additional 1,000 units of account for each additional tonne up to a maximum of 30 million units of account;
    - (b) For the disposer, for any one incident, be not less than 2 million units of account for any one incident.
    - (b) Does the article require domestic implementation?
 

Yes.
    - (c) Implementation (practical aspects)
    - (d) Other information
- The current rate of one unit account to US\$ may be found at [website].

### 3. Roles and responsibilities under the Protocol

#### 3.1. Parties

Decisions to be taken:

Parties to the Convention intending to become Parties to the Protocol have to take the following decisions:

The decision to become Party to the Protocol. (Art. 28). This decision will be based mainly on political considerations.

The decision to accept the limits of liability listed in Annex B or to increase these limits based on the domestic law (see more under paragraph 4 hereafter).

The decision whether to exclude the application of the Protocol in respect of all transboundary movements for which the Party is the state of export, for such incidents which occur in an area under its national jurisdiction, as regards damage in an area of national jurisdiction (Art. 3 paragraph 1). *The exclusion could make sense, where a sufficient liability regime for the same categories of damages in domestic law is already in place.*

1. The decision whether not to apply the Protocol to damage due to an incident occurring during a transboundary movement of hazardous wastes and other wastes and their disposal pursuant to a

bilateral, multilateral or regional arrangement concluded and notified in accordance with Article 11 of the Convention (Art. 3 paragraph 7a).

*The application of the Protocol can be excluded, when there exists a article 11 of the Convention-arrangement and the Parties to this arrangement provide (e.g. in their domestic law) for a liability and compensation regime, which fully meets or exceeds the objective of the Protocol (Art. 3 paragraph 7 (iii)).*

2. Parties have to decide at the time of signature, ratification, or approval of, or accession to the Protocol if they wish to indicate that the Party does not provide for a right to bring a direct action against any person providing insurance pursuant to article 14 paragraph 4 (Art. 14 paragraph 5). *This decision should take into account the domestic legal system. If the domestic legal regime already provides for such a right, then the exclusion of (opting out from) the direct claim against the insurer would not make sense.*

#### **Actions to be undertaken:**

According to Article 10, paragraph 1, of the Protocol the Contracting Parties shall adopt the legislative, regulatory and administrative measures necessary to implement the Protocol. These measures shall be:

1. Establishment of a legal instrument to provide that a document reflecting the coverage of the liability of the notifier or exporter under article 4, paragraph 1, or of the importer under article 4 paragraph 2, of the Protocol will accompany the notification referred to in Article 6 of the Convention.
2. Establishment of a mechanism to verify that a document reflecting the coverage of the liability will accompany the notification referred to in Article 6 of the Convention (Art. 14, paragraph 3).
3. Inform the Secretariat of measures taken to implement the Protocol, including any limits of liability established pursuant to paragraph 1 of Annex B.
4. If needed, establishment of the necessary legal framework in the domestic law that the courts possess the necessary competence to entertain claims for compensation (Article 17, paragraph 2).
5. If desired, notification to the Depository about the exclusion of the application of the Protocol, in respect of all transboundary movements for which the Contracting Party is the State of export, for such incidents which occur in an area under its national jurisdiction, as regards damage in its area of national jurisdiction (Article 3, paragraph 1 Prot.).
6. If desired, notification to the Depository of the Article 11 agreement or arrangement and the non-application of the Protocol to any damage occurring in an area under its national jurisdiction due to an incident resulting from movements or disposals.
7. Where appropriate, establishment of a legal instrument (regulation, directive, decision) to fix the limits of liability pursuant to paragraph 1 of Annex B to the Protocol).
8. Where appropriate, putting judges and courts in a position to apply the Protocol: E.g. organise the necessary training programs for the judiciary.

### **3.2 Obligation of generators, exporters or importers**

Pursuant to Article 14(1) the person who notifies in accordance with Article 6 of the Convention (generator, exporter or importer) shall establish and maintain during the period of the time limit of liability, insurance, bonds or other financial guarantees covering their liability under article 4 of the Protocol for amounts not less than the minimum limits specified in paragraph 2 of Annex B. That means that the financial guarantees have to be maintained at least for 10 years after the disposer has taken possession of the hazardous wastes and other wastes (Article 4(1)).

### **3.3 Obligation of disposers**

The disposer shall establish and maintain during the period of the time limit of liability, insurance, bonds or other financial guarantees covering their liability under article 4 of the Protocol for 2 million units of account (Article 4(1); Annex B paragraph 2 (b)).

The disposer has to deliver the proof of coverage of the liability to the competent authorities of the State of import (Article 14(3)).

## **4. The setting of the financial limits determined by domestic law**

Pursuant to Annex B paragraph one of the Protocol the financial limits for the liability under article 4 of the Protocol shall be determined by domestic law. They shall not be less than the levels listed in paragraph 2a of Annex B.

It is upon the Parties to decide whether they adopt the limits listed in the annex or whether they fix the limits at a higher level. Therefore, Parties have to assess the possible amount of damage which could be caused by the transboundary movement of hazardous waste. When they conclude that the limits of Annex B are sufficient to cover possible damage, no further action is needed. When they believe that the proposed limits will not allow covering the damage, Parties should then set higher limits of liability in their domestic law. Otherwise they risk that damages that occur can not fully get compensated.

However, it is important to highlight that the setting of higher limits in the domestic law is independent of the question of coverage of the limits of liability by insurance and other financial guarantees (Article 14). The provision on the compulsory coverage of the limits of liability (Article 14) requires always only the coverage of the amounts listed in Annex B (Article 14(1)).

## **5. Recommendations for Parties how to provide the coverage of the liability for generators, exporters, importers and disposers**

Parties to the Convention who wish to become Party to the Protocol should start a dialogue with the national insurance industry and with the financial sector to clarify which insurance and other financial guarantees to cover the liability are available and which are the relevant conditions for the industry concerned. Based on this information, Parties can give information and advice to the exporters and to the disposers how to cover their liability. This dialogue with the relevant insurance industry and with the financial sector is extremely important. The Protocol can only then be successfully implemented when the industry has concrete solutions available to cover the liability under the Protocol.

Recent surveys in Switzerland about the insurability of environmental risk of industrial activities have shown that the liability for loss of life or personal injury can be covered by traditional insurance products. Such insurance contracts are available and the insurance premiums are affordable.

The second category of damages, the liability for damage to the environment, is a lot more difficult to cover. For the time being the insurance companies in Switzerland are not ready to offer insurance to cover the liability for damages to the environment. They claim that the criterion to value such damages are still lacking.

If this is the case, alternative solutions like bonds, bank guarantees or other financial guarantees to cover such types of damages have to be offered to the industry. Although such solutions can be very costly, the provisions of the Protocol require that the liability for all types of damages mentioned in Article 2 has to be covered.

However, the provisions of the Protocol do not give a precise answer to the question as to whether the liability for all kinds of damages have to be covered for the full amount of the limits of the liability, listed in Annex B, paragraph 2.

Would it be sufficient, if the liability for damage to persons and to property would be covered to the full amount of the financial limits, while the liability for damages to the environment would have to be covered a percentage of the amount?

*Example: An incident with a transboundary movement of hazardous waste (4 tonnes) causes a damage to property of 800'000 units of account and a damage to the environment of 100000 units of account. The liability of the notifier is covered for damage to persons and property by insurance of 1 million of account and by a bank guarantee of 200000 units of account. To compensate the damage the insurance pays 800'000 million and the bank pays 100000 units of account for the damage to the environment.*

In principle, a solution whereby a coverage of the liability for damage to persons and to property is provided to the full amount of the financial limits and to a reasonable percentage of this amount for damage to the environment should be acceptable.

To conclude, it is important to state that solutions to cover the liability of the industry concerned by insurance products and other financial instruments have to be available and affordable for the relevant industry. Otherwise, Parties will not be ready to ratify the Protocol.

Question of duration of cover also – 10 years ? Implications for costs ?

## **6. Recommendations for Parties to provide for a sufficient system of the judiciary to entertain claims for compensation**

As mentioned above the Protocol will be applied directly by the courts and the judges. It is therefore important that the judiciary of a Party to the Protocol is in a position to entertain claims for compensation. Additional training for the judiciary may be necessary. Training organised by the Regional Training Centres of the Basel Convention could be a way to enable the judiciary to master the complex issue of liability within a transboundary context.

## **7. Relationship between the Protocol and the Basel Convention**

According to the Convention, the State of export shall notify or shall require the generator or exporter to notify in writing through the channel of the competent authority of the States concerned of any proposed transboundary movement of hazardous wastes and other wastes (Article 6, paragraph 1, Convention).

The Protocol requires that a document reflecting the coverage of the liability of the notifier or exporter shall accompany the notification referred to in Article 6 of the Convention. This is one of the most important links between the two instruments because it combines an obligation under the Convention with an obligation under the Protocol.

However it is also important to recall that the definitions of the terms contained in the Convention will also apply to the Protocol, unless expressly provided otherwise in the Protocol (Article 2 paragraph 1 Protocol).

## **8. Similarities and differences between the Basel Protocol and other Protocols on Liability for activities dangerous to the environment**

### **8.1 The UN/ECE-Protocol on Civil Liability and compensation for Damage caused by the transboundary effects of Industrial Accidents on transboundary waters:**

This new international instrument, which was adopted in May 2003 in Kiev (Ukraine), shares many similarities with the Basel Protocol:

The Kiev-Protocol negotiations were based on the structure of the Basel Protocol.

Accordingly, many provisions of both treaties are similar. Both instruments establish a regime of strict liability for certain categories of persons (operators, notifiers, exporters, disposers) and they require the coverage of such liability with financial guarantees.

However, the instruments are quite different under other aspects:

The UN/ECE Protocol is focused on hazardous activities in fixed installations that could, in the case of an accident, have an impact on transboundary watercourses; on the other hand, the Basel Protocol is focused on the transboundary movement of hazardous wastes and other wastes and establishes a liability regime for ongoing transboundary operations.

## **8.2 The Cartagena Protocol on Biosafety to the Convention on Biological Diversity**

Article 27 of the Cartagena Protocol on Biosafety to the Convention on Biological Diversity stipulates in article 27 that the Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first meeting, adopt a process with respect to the appropriate elaboration of international rules and procedures in the field of liability and redress for damage resulting from transboundary movements of living modified organisms, analysing and taking due account of the ongoing processes in international law on these matters, and shall endeavour to complete this process within four years.

The Cartagena Protocol will enter into force the 11 September 2003. The first meeting of the Parties will be held in February 2004. The elaboration of rules and procedures in the field of liability and redress will have certain parallels with the Basel Protocol because the Cartagena Protocol is, like the Basel Protocol, focusing on the transboundary movement of potentially hazardous material, which will be deliberately transported across the border. However, the specific character of living modified organism with the specific potential threat biodiversity will probably lead to a rather different liability regulation.

## **9. Advantages of being a Party to the Protocol**

The main aims of the Protocol is preventing the damage or providing full compensation for environmental damage, personal injury and damage to goods and property which result from the transboundary movements of hazardous wastes and their disposal.

The advantage of being a Party to the Protocol will be that all transboundary movements of hazardous wastes from the point where the wastes are loaded on the means of transport in an area of the national jurisdiction of a State of export until the disposal in the State of import will be covered by liability provisions in case of an accident.

This new prerequisite for a transboundary movement of hazardous wastes will create a strong incentive to manage the whole movement in an environmentally sound manner in order to avoid damages (preventive effect).

The Protocol will provide for prompt compensation for victims if despite all safety measures an accident had occurred.

Particularly for countries that are not used to practise a liability regime in a transboundary context, the implementation of this new instrument could be a good start towards applying legal instruments to the benefit of the environment and of the sustainable development.

It is also a good occasion to apply the polluter-pays-principle at an international level.

## **10. Closing remarks**

The prospective Parties to the Protocol are at different levels in terms of their capacity to implement the Protocol. Donors and international organisations have a role to play in supporting the implementation of the Protocol.

Ultimately, the effective implementation of the Protocol depends on the prospective Parties themselves and their will to implement and to apply the terms of the Protocol. The path towards full implementation is not an easy one but, in the end, it will be full of rewards and advantages.

When the Protocol will be in force, it will be an international legal instrument for a more responsible management of transboundary movements of hazardous wastes and other wastes and their disposal and for the restoration or compensation of the damage which might be caused in unforeseen accidents.

This manual is intended to provide greater understanding of the Protocol and greater uniformity in its application, to assist prospective Parties in its effective implementation and to contribute to the Protocol's entry into force.



**VII/[...]: Preparation of technical guidelines on persistent organic pollutants**

*The Conference of the Parties,*

*Recalling* its decision VI/23,

*Noting* that, at its first meeting, the Conference of the Parties of the Stockholm Convention on Persistent Organic Pollutants will consider the general guidelines and the guidelines on PCB/PCT/PBB in accordance with article 6.2 of the Stockholm Convention,

*Noting also* with appreciation the roles played by Parties and others, especially Canada as lead country, in the preparation of the general guidelines and the PCB/PCT/PBB guidelines,

1. *Adopts* the general guidelines (UNEP/CHW.7/...) and the PCB/PCT/PBB guidelines (UNEP/CHW.7/...);
2. *Requests* the Secretariat to disseminate the technical guidelines to Parties, Signatories, intergovernmental organizations, environmental non-governmental organizations and industry in all languages of the United Nations;
3. *Further requests* the Secretariat to submit these guidelines to the Conference of the Parties of the Stockholm Convention at its first meeting through the Secretariat of the Stockholm Convention;
4. *Invites* Parties and others to use these technical guidelines, taking into account article 6.2 of the Stockholm Convention, and, two months before the eighth meeting of the Conference of the Parties, to submit a report to the Conference of the Parties, through the Secretariat on their experience and any difficulties or obstacles encountered in the application of the guidelines, with a view to improving them as necessary;
5. [*Requests* the Open-ended Working Group to review and, if appropriate, update those technical guidelines;
6. *Agrees* that the methodology for further definitions of low persistent organic pollutant content and the levels of destruction and irreversible transformation should be included in the work programme of the Open-ended Working Group for 2005–2006;]
7. *Invites* Parties and others to submit documents to the Secretariat and Australia by 31 January 2005 on the technical guidelines regarding PCDD/PCDF;
8. *Requests* Australia, in consultation with the small inter-sessional working group, to prepare revised draft technical guidelines regarding PCDD/PCDF for consideration by the Open-ended Working Group at its fourth session;
9. *Requests* Mexico, in consultation with the small inter-sessional working group, to prepare a first draft of the technical guidelines regarding DDT for consideration by the Open-ended Working Group at its fourth session;
10. *Requests* [the Secretariat] in consultation with the small inter-sessional working group to prepare first drafts of the two technical guidelines regarding HCB and the eight pesticides (aldrin, chlordane, dieldrin, endrin, HCB, heptachlor, mirex, toxaphene);
11. *Invites* the Food and Agriculture Organization of the United Nations to contribute to the preparation of the technical guidelines regarding the eight pesticides, their obsolete stockpiles and wastes;
12. *Decides* to extend the mandate of the small inter-sessional working group established by the Open-ended Working Group at its first session to continue to monitor and assist in the preparation,

review and updating, as appropriate, of technical guidelines regarding persistent organic pollutants, working in particular by electronic means.

**VII/[...]: Preparation of technical guidelines on the environmentally sound recycling/reclamation of metals and metal compounds (R4)**

*The Conference of the Parties,*

*Recalling* decision VI/37 on the work programme of the Open-ended Working Group and in particular that part of it that refers to the preparation of technical guidelines,

*Noting* with appreciation the roles played by Parties and others, especially Australia as lead country, in the preparation of the technical guidelines on the recycling/reclamation of metals and metal compounds (R4),

*Adopts* the technical guidelines on the environmentally sound recycling/reclamation of metals and metal compounds (R4) as contained in the note by the secretariat on [subject of note to be inserted]<sup>1</sup>;

*Requests* the Secretariat to disseminate the technical guidelines to Parties, signatories, intergovernmental organizations, environmental non-governmental organizations and industry, in all official languages of the United Nations;

*Invites* Parties and others to use the technical guidelines and to report at least two months before the eighth meeting of the Conference of the Parties, through the Secretariat, on their experiences, including any difficulties in their application of the technical guidelines, with a view to improving the technical guidelines as necessary.

**VII/[...]: Preparation of technical guidelines on the environmentally sound management of wastes resulting from surface treatment of metals and plastics (Y17)**

*The Conference of the Parties,*

*Recalling* decision VI/37 on the work programme of the Open-ended Working Group and in particular that part of it that refers to the preparation of technical guidelines,

*Noting* with appreciation the roles played by Parties and others, especially Australia as lead country, in the preparation of draft technical guidelines on the environmentally sound management of wastes resulting from surface treatment of metals and plastics (Y17),

*Requests* the Open-ended Working Group to finalize the technical guidelines on the environmentally sound management of wastes resulting from surface treatment of metals and plastics (Y17) with a view to their interim adoption by the Open-ended Working Group at its fourth session;

*Invites* Parties and other stakeholders to provide comments to Australia by 31 January 2005 and to transmit copies of those comments to the Secretariat.

**VII/[...]: Work on hazard characteristics**

*The Conference of the Parties,*

*Recalling* decisions VI/25 on hazard characteristic H6.2 (infectious substances) and VI/37 on the work programme of the Open-ended Working Group and VI/29 on international cooperation,

*Mindful* of the usefulness of developing practical guidance on the hazard characteristics listed in Annex III to the Basel Convention to assist Parties and others to implement the Convention effectively,

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<sup>1</sup> UNEP/CHW/[ ]

*Grateful* to those Parties and signatories that took the lead in the preparation of guidance papers on hazard characteristics,

*Noting* the importance of the work of the United Nations Committee of Experts on the Transport of Dangerous Goods and on the Globally Harmonized System of Classification and Labelling of Chemicals in regard to the work being pursued on the hazard characteristics of Annex III to the Basel Convention,

*Considering* the interest of the United Nations Subcommittee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals in working with the appropriate body of the Basel Convention on hazard characteristics,

*Bearing in mind* the need to cooperate closely with the Committee of Experts on the Transport of Dangerous Goods and on the Globally Harmonized System of Classification and Labelling of Chemicals,

## I.

### Finalization of the work on hazard characteristics

1. *Decides* to adopt, on an interim basis, the three guidance papers on the hazard characteristics H6.2 (infectious substances), H11 (toxic (delayed or chronic)) and H13 (capable after disposal of yielding another hazardous material);<sup>1</sup>
2. *Invites* Parties and others to use these guidance papers and to submit to the Conference of the Parties, through the Secretariat, reports on their experience and any difficulties or obstacles encountered in the application of the guidelines, with a view to improving them as necessary;
3. *Requests* the Parties to contribute actively to the guidance paper on hazard characteristic H10 (liberation of toxic gases in contact with air or water) prepared by the Netherlands with a view to finalizing it in time for a session of the Open-ended Working Group in 2005;
4. *Invites* Parties and others to submit comments to the Netherlands with copies to the Secretariat on the H10 guidance paper, preferably by 31 January 2005;
5. *Invites* Parties and others to contribute technically and financially to the initiation of work on the other hazard characteristics of Annex III to the Basel Convention other than H6.2, H10, H11, H12 and H13;

## II.

### Cooperation

6. *Requests* the Open-ended Working Group to establish a working relationship with the United Nations Subcommittee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals with a view to exploring possible links between the work undertaken in the context of the Basel Convention on hazard characteristics and the elements of the Globally Harmonized System of Classification and Labelling of Chemicals, and including consideration of the respective work programmes to identify inconsistencies, discrepancies or shortcomings with a view to proposing appropriate action;
7. *Also requests* the Secretariat to present to the Open-ended Working Group at its first session in 2005 possible options for establishing a working relationship with the United Nations Subcommittee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals.

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<sup>1</sup> See document UNEP/CHW.7/...

**VII/[...]: French language version of the lists of wastes**

*The Conference of the Parties,*

*Noting with appreciation* the work undertaken by the Government of France to improve the translation into French of the lists of wastes contained in Annexes VIII and IX,

*Considering* the need to revise the existing official translation into French of Annexes VIII and IX,

1. *Decides* to incorporate the modifications proposed by the Government of France into the French language version of the lists of wastes contained in Annexes VIII and IX;
2. *Requests* the Secretariat to communicate the changes adopted by the Open-ended Working Group to the French language version of the lists of wastes contained in Annexes VIII and IX to the Depositary.

**VII/[...]: Resource mobilization**

*The Conference of the Parties,*

*Noting with gratitude* the valuable work on preparation of the guidance note on resource mobilization generously funded by the Government of Denmark,

*Noting* the information paper prepared by the Secretariat in consultation with the Expanded Bureau on a possible strategy for resource mobilization,

*Recognizing* that effective implementation of the Strategic Plan and improved capacity for developing countries and countries with economies in transition requires an effective resource mobilization strategy, strong links to other international agenda, and a successful partnership programme,

1. *Commends* the guidance note and associated fact sheets on possible funding sources for waste management funded by the Government of Denmark for active use by Parties with a view to strengthening their capacity for the implementation of the Convention;
2. *Welcomes* the report of the Secretariat on resource mobilization;
3. *Requests* the Secretariat to implement a resource mobilization approach based upon this work, with a particular focus on:
  - (a) Strengthening programme links to other key international agendas such as chemicals, climate change, poverty reduction, water, sanitation human settlements and human health;
  - (b) Strengthening links to key international funding institutions such as the World Bank and the Global Environment Facility;
  - (c) [Continuing the implementation of the Basel Convention Partnership Programme with a view to strengthening and sustaining the Programme based on voluntary contributions].

**[VII/ ]: Financial matters**

*The Conference of the Parties,*

*Recalling* decision VI/41 on financial matters,

*Noting* the financial report on the trust funds for 2003 contained in document CHW.7/[ ],

*Noting* the increase in the number of Parties to the Convention, the need for greater technical and financial resources to assist the Parties to achieve more effective implementation, and the necessity to implement the various decisions of the Convention, including the Strategic Plan for the Implementation of the Basel Convention,

*Recognizing* that voluntary contributions are an essential complement for the effective implementation of the Basel Convention,

*Noting* the need to manage financial arrangements supporting the Basel Convention in a way that is fully transparent and effective;

1. *Approves* the budget of the Trust Fund for the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention Trust Fund) in the amount of [ ] United States dollars for 2005 and [ ] United States dollars for 2006, as contained in annex I to the present decision;
2. *Authorizes* the Executive Secretary to utilize an amount not exceeding [ ] United States dollars in the year 2005 and [ ] United States dollars in the year 2006 from the reserve and fund balance of the Basel Convention Trust Fund to meet expenditure in the approved budget;
3. *Notes* that, as a result of the utilization authorized in paragraph 2, above, the reserve and fund balance will be drawn down by an amount not exceeding 15 per cent, reduced by the income from interest and contributions from others than Parties;
4. *Decides* that the total amount of the contributions to be paid by the Parties is [ ] United States dollars for 2005 and [ ] United States dollars for 2006, as set out in annex [ ] to the present decision;
5. *Also decides* that the contributions of individual Parties shall be as listed in annex [ ] to the present decision;
6. *Authorizes* the Executive Secretary, in addition to the approved budget, on an exceptional basis, to use an amount not exceeding [ ] United States dollars in the period 2005–2006 from the reserve and fund balance of the Basel Convention Trust Fund for the purpose of putting into effect activities to implement core activities of the Strategic Plan in 2005–2006;
7. *Agrees* to review at its eight meeting, on the basis of a document to be prepared by the Secretariat, a plan for working towards a reduction in the reserve and fund balance and identify the optimal means of balancing the Convention's operating funds and expenditures;
8. *Expresses* its concern over the delays in payment of the agreed contributions by Parties, contrary to the provisions of the terms of reference for the administration of the Trust Fund for the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, as contained in paragraph 8 of the terms of reference;
9. *Urges* all Parties to pay their contributions promptly and in full and further urges Parties that have not done so to pay their contributions for prior years as soon as possible;
10. *Takes note* of the budget for the Trust Fund to Assist Developing Countries and Other Countries in Need of Technical Assistance in the Implementation of the Basel Convention (Technical Cooperation Trust Fund) in the amount of [ ] United States dollars for 2005 and [ ] United States dollars for 2006, as contained in annex [ ] to the present decision;
11. *Invites* voluntary contributions to the Technical Cooperation Trust Fund and to the Basel Convention Trust Fund from Parties and non-Parties, as well as from other sources;
12. *Invites* Parties to notify the Secretariat of the Basel Convention of all contributions made to the Basel Convention Trust Funds at the time such payments are made;
13. *Decides* that the trust funds for the Basel Convention shall be further continued until 31

December 2008 and requests the Executive Director of the United Nations Environment Programme to extend the two trust funds to the Basel Convention for 2007–2008, subject to the approval of the Governing Council of the United Nations Environment Programme;

14. *Requests* the Secretariat of the Basel Convention to ensure the implementation of the decisions adopted by the Conference of the Parties as approved, within the budgets and the availability of financial resources in the Trust Funds;

15. *Also requests* the Secretariat to report annually to the Open-ended Working Group and to the Expanded Bureau on all sources of income received, including the reserve and fund balance and interest, as well as actual provisional and projected expenditure and commitments, and further requests the Executive Secretary to report on all expenditures against the agreed budget lines;

16. *Requests* the Executive Secretary to report to the Open-ended Working Group and the Expanded Bureau on the use of the funds referred to in paragraph 7 above on an annual basis;

17. *Also requests* the Open-ended Working Group and the Expanded Bureau to keep under review the financial information provided by the Secretariat, including the timeliness and transparency of that information.]

## Annex I to decision VII/[ ] on financial matters

## Draft budget

Basel Convention Trust Fund  
Years 2005 -2006

## 10 PERSONNEL COMPONENT

## 1100 Professional Staff (Title &amp; Grade)

	COP 6 budget	COP 7 budget		
	2004	2005	2006	Total
1101 Executive Secretary (D2)	157,500	181,125	181,125	362,250
1102 Senior Programme Officer - Regional Centres/Technology (D1)	146,800	168,820	168,820	337,640
1103 Senior Programme Officer - Technical Cluster Matters (P5)	146,800	168,820	168,820	337,640
1104 Senior Programme Officer - Institutional/Sec. Legal WG (P5)	146,800	168,820	168,820	337,640
1105 First Programme Officer -Scientific Sec. TWG (P4)	130,000	149,500	149,500	299,000
1106 Programme Officer - National Reporting (P3)	108,000	124,200	124,200	248,400
1107 Programme Officer - Tech. Cooperation and Training (P4)	130,000	149,500	149,500	299,000
1108 Programme Officer - Public Awareness (P3)	108,000	124,200	124,200	248,400
1109 Administrative / Fund Management Officer (UNEP) **	-	-	-	-
1110 Associate Programme Officer - Computer Systems (P2)	87,600	100,740	100,740	201,480
1111 Senior Programme Officer - Partnerships (P5)	-	168,820	168,820	337,640
1112 Programme Officer / Project Development and Fundraising (P-4)	-	149,500	149,500	299,000
1113 Programme Officer / Compliance and Support (P-3). - New post, should the Parties plan for activities on the mechanism on compliance and monitoring.	-	124,200	124,200	248,400
1120 Temporary Posts for Conference Servicing (relates to COP8 together with line 1321)	50,000	50,000	50,000	100,000
<b>1199 Sub-total, Professional Staff</b>	<b>1,211,500</b>	<b>1,828,245</b>	<b>1,828,245</b>	<b>3,656,490</b>
1200 Consultants				
1201 Legal Advice, Support, Capacity-building / Technical Guidelines	135,000	135,000	135,000	270,000
1202 Capacity-building / Technical Guidelines	135,000	135,000	135,000	270,000
<b>1299 Sub-total, Consultants</b>	<b>270,000</b>	<b>270,000</b>	<b>270,000</b>	<b>540,000</b>

	COP 6 budget	COP 7 budget		
	2004	2005	2006	Total
<i>1300 Administrative Support (Title &amp; Grade)</i>				
1301 Administrative Assistant (G6) **	-	-	-	-
1302 Personal Assistant to the Executive Secretary (G6)	85,200	97,980	97,980	195,960
1303 Meetings / Documents Assistant (G6)	85,200	97,980	97,980	195,960
1304 Personnel Assistant (G5)	85,200	97,980	97,980	195,960
1305 Programme Assistant (G5)	85,200	97,980	97,980	195,960
1306 Secretary (G5)	85,200	97,980	97,980	195,960
1307 Secretary (G5)	85,200	97,980	97,980	195,960
1308 Reproduction & Registry Clerk (G4)*	85,200	97,980	97,980	195,960
1309 Legal Assistant (G5)*	85,200	97,980	97,980	195,960
1310 Finance and Budget Assistant (G-6) **	-	0	0	0
1320 Temporary assistance posts (short term)	10,300	10,300	10,300	20,600
<i>132X Sub-total</i>	<i>691,900</i>	<i>794,140</i>	<i>794,140</i>	<i>1,588,280</i>
<i>Conference Servicing Costs</i>				
1321 Conference of the Parties (1 meeting per biennium in six languages, USD 50,000 pa charged against B/L 1120, hence total cost for biennium USD 700,000). Costed at 400 pages for translation. Carry over of COP funds to COP year).	500,000	100,000	500,000	600,000
1322 Open-ended Working Group 4 (translation of 300 pages and interpretation in 6 UN languages)	0	400,000	0	400,000
1323 Open-ended Working Group 5 (translation of 300 pages and interpretation in 6 UN languages)	0	0	400,000	400,000
1324 Open-ended Working Group (translation of 300 pages and interpretation in 6 UN languages)	400,000	0	0	0
1325 Expanded Bureau (in English only - 3 meetings per biennium)	7,000	7,000	7,000	14,000
1326 Expert Group on end of life cycle mobile phones	3,000	3,000	3,000	6,000
1327 Mechanism for Implementation and Compliance (English only)	3,000	3,000	3,000	6,000
<b>1399 Sub-total Administrative Support and Conference Servicing Costs</b>	<b>1,604,900</b>	<b>1,307,140</b>	<b>1,707,140</b>	<b>3,014,280</b>



		COP 6 budget	COP 7 budget		
		2004	2005	2006	Total
1600	Travel on Official Business				
1601	Official Travel	200,000	200,000	200,000	400,000
1699	<b>Total, Travel On Official Business</b>	<b>200,000</b>	<b>200,000</b>	<b>200,000</b>	<b>400,000</b>
1999	<b>TOTAL STAFF COMPONENT</b>	<b>3,286,400</b>	<b>3,605,385</b>	<b>4,005,385</b>	<b>7,610,770</b>
20	<b>SUB-CONTRACT COMPONENT</b>				
2100	Sub-contracts Component				
2101	Information System	50,000	50,000	50,000	100,000
2199	<b>Sub-total sub-contracts, non-commercial</b>	<b>50,000</b>	<b>50,000</b>	<b>50,000</b>	<b>100,000</b>
2999	<b>TOTAL SUB-CONTRACT COMPONENT</b>	<b>50,000</b>	<b>50,000</b>	<b>50,000</b>	<b>100,000</b>
30	<b>MEETINGS AND CONFERENCES</b>				
3300	Travel and DSA Costs of Participants				
3301	Conference of the Parties	-	0	0	0
3302	Open-ended Working Group 4 (25 travels)	-	87,500	0	87,500
3303	Open-ended Working Group 5 (25 travels)	-	0	87,500	87,500
3304	Open-ended Working Group (50 travels)	175,000	0	0	0
3305	Expanded Bureau (some 14 travels)	51,555	51,555	51,555	103,110
3306	Mechanism for Implementation and Compliance (English only) - Two meetings over the biennium (10 travels/meeting)	0	35,000	35,000	70,000
3399	<b>Sub-total Meetings and Conferences</b>	<b>226,555</b>	<b>174,055</b>	<b>174,055</b>	<b>348,110</b>
3999	<b>TOTAL MEETINGS AND CONFERENCES</b>	<b>226,555</b>	<b>174,055</b>	<b>174,055</b>	<b>348,110</b>
40	<b>EQUIPMENT AND PREMISES COMPONENT</b>				
4100	Expendable Equipment				
4101	Office Supplies, library acquisitions and computer software	24,500	24,500	24,500	49,000
4199	<b>Sub-total, Expendable Equipment</b>	<b>24,500</b>	<b>24,500</b>	<b>24,500</b>	<b>49,000</b>

		COP 6 budget	COP 7 budget		
		2004	2005	2006	Total
4200	Non-expandable equipment				
4201	Computer Equipment, printers, furniture, multimedia and others	28,000	28,000	28,000	56,000
		<b>28,000</b>	<b>28,000</b>	<b>28,000</b>	<b>56,000</b>
4300	Premises				
4301	Office space fees, building maintenance, security, utilities and insurance	60,000	60,000	60,000	120,000
4399	<b>Total, Premises</b>	<b>60,000</b>	<b>60,000</b>	<b>60,000</b>	<b>120,000</b>
4999	<b>TOTAL, EQUIPMENT AND PREMISES COMPONENT</b>	<b>112,500</b>	<b>112,500</b>	<b>112,500</b>	<b>225,000</b>
<b>50 MISCELLANEOUS COMPONENT</b>					
5100	Operation and Maintenance of Equipment				
5101	Computers, Printers, photocopiers and other	51,300	51,300	51,300	102,600
5199	<b>Sub-total, Maintenance of Equipment</b>	<b>51,300</b>	<b>51,300</b>	<b>51,300</b>	<b>102,600</b>
5200	Reporting costs				
5201	Newsletters, publications and other media	55,000	55,000	55,000	110,000
5299	<b>Sub-total, Reporting costs</b>	<b>55,000</b>	<b>55,000</b>	<b>55,000</b>	<b>110,000</b>
5300	Sundry				
5301	Communications, freight and other (with carry over to COP year)	67,500	67,500	67,500	135,000
5399	<b>Sub-total Sundry</b>	<b>67,500</b>	<b>67,500</b>	<b>67,500</b>	<b>135,000</b>
5400	Hospitality				
5401	Hospitality	9,500	9,500	9,500	19,000
5499	<b>Sub-total Hospitality</b>	<b>9,500</b>	<b>9,500</b>	<b>9,500</b>	<b>19,000</b>
5999	<b>TOTAL, MISCELLANEOUS COMPONENT</b>	<b>183,300</b>	<b>183,300</b>	<b>183,300</b>	<b>366,600</b>

	COP 6 budget	COP 7 budget		
	2004	2005	2006	Total
<b>99 TOTAL OPERATIONAL COSTS</b>	3,858,755	4,125,240	4,525,240	8,650,480
Less UNEP Contribution	-137,300			
13% Programme Support Costs	480,399	536,281	588,281	1,124,562
<b>TOTAL BUDGET OF THE TRUST FUND</b>	<b>4,201,854</b>	<b>4,661,521</b>	<b>5,113,521</b>	<b>9,775,042</b>
<b>[Deduction from the Reserve and Fund Balance]</b>	<b>1,200,000</b>	<b>1,200,000</b>	<b>1,200,000</b>	<b>2,400,000</b>
<b>TO BE COVERED BY PARTIES</b>	<b>3,001,854</b>	<b>3,461,521</b>	<b>3,913,521</b>	<b>7,375,042</b>

\* Post proposed for reclassification due to changes in functions.

\*\* Post funded from 13 per cent Programme Support Costs

**VII/[...]: Implementation of decision III/1 on amendment of the Basel Convention**

*The Conference of the Parties,*

*Recalling* its decision VI/33 on the implementation of decision III/1, “Amendment to the Basel Convention”,

*Taking note* of the progress made by Parties in implementing decision III/1,

1. *Welcomes* the ratification, acceptance, formal confirmation or approval by several Parties of the amendment contained in decision III/1;
2. *Strongly appeals* to Parties to the Convention to expedite the process of ratification, acceptance, formal confirmation, approval of, or accession to, the amendment to facilitate its entry into force at the earliest opportunity;
3. *Also strongly appeals* to States that are not Party to the Basel Convention to expedite the process of ratification, acceptance or approval of, or accession to, the Basel Convention and its amendments;
4. *Requests* the Secretariat to respond to any requests from States or political and/or economic integration organizations for advice relating to the process of ratification, acceptance, formal confirmation or approval of, or accession to, the Basel Convention and its amendments.

**VII/[...]: International cooperation, including cooperation with the World Trade Organization and the Global Environmental Facility**

*The Conference of the Parties,*

*Recalling* its decisions VI/29 and VI/30 on international cooperation and cooperation with the World Trade Organization, respectively,

*Mindful* of the increased level of cooperation with United Nations bodies, other international and regional intergovernmental organizations and multilateral environmental agreements,

*Conscious* of the importance of developing cooperative links in domains of relevance to the implementation of the Basel Convention,

*Also conscious* of the limited resources available to the Secretariat to discharge its functions,

*Noting* the tasks contained in the work programme of the Open-ended Working Group for 2005-2006 of relevance to international cooperation,

*Considering* the report on international cooperation prepared by the Secretariat as contained in document UNEP/CHW.7/[...];

1. *Requests* the Secretariat to further strengthen its cooperation in the areas and with the organizations listed below:

**Persistent organic pollutants**

(a) The Secretariat of the Stockholm Convention on Persistent Organic Pollutants, the United Nations Environment Programme (UNEP) and the Food and Agriculture Organization of the United Nations on the issue of the environmentally sound management of wastes consisting of, containing or contaminated with persistent organic pollutants;

**Toxic chemicals**

(b) The Secretariat of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade regarding joint efforts in training and capacity-building, involving the Basel Convention regional centres, with a view to enhancing implementation;

**Strategic approach to international chemicals management**

(c) UNEP and other intergovernmental organizations or bodies such as the Inter-Organization Programme for the Sound Management of Chemicals, the Intergovernmental Forum on Chemical Safety and the OSPAR Commission of the Convention for the Protection of the Marine Environment of the North-East Atlantic, with a view to enhancing synergies and complementarities between chemicals and waste issues;

**Enforcement**

(d) UNEP, the World Customs Organization, the International Criminal Police Organization (Interpol), relevant multilateral environmental agreements like the chemicals-related conventions, the Montreal Protocol on Substances that Deplete the Ozone Layer to the Vienna Convention for the Protection of the Ozone Layer, the Convention on International Trade in Endangered Species of Wild Flora and Fauna and biosafety-related conventions or protocols;

**Transport and classification**

(e) The United Nations Committee of Experts on the Transport of Dangerous Goods, that committee's Subcommittee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals and the World Health Organization regarding the development of criteria for the hazardous characteristics of Annex III to the Convention generally and the transport of infectious substances;

**Identification of wastes in the World Customs Organization's Harmonized Commodity Description and coding System**

(f) The secretariat, the Harmonized System Committee and Subcommittee and the Scientific Sub-Committee of the World Customs Organization;

**Dismantling of ships**

(g) The secretariats of the International Maritime Organization, the International Labour Organization, the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter (London Convention 1972), the United Nations Convention on the Law of the Sea and UNEP;

2. *Also requests* the Secretariat to continue its cooperation on critical areas for the effective implementation of the Basel Convention, its protocol and amendments with relevant organizations, including the following:

- (a) The World Bank;
- (b) The Global Environment Facility;
- (c) The United Nations Commission on Sustainable Development;
- (d) The United Nations Conference on Trade and Development;
- (e) The United Nations Office for the Coordination of Humanitarian Affairs;
- (f) The Office of the United Nations High Commissioner for Human Rights;

- (g) United Nations regional economic commissions;
  - (h) The United Nations Office of Legal Affairs, Division for Ocean Affairs and the Law of the Sea;
  - (i) The World Trade Organization;
  - (j) The regional seas conventions and action plans;
  - (k) The Organisation for the Prohibition of Chemical Weapons;
  - (l) The African Union, as secretariat of the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes Within Africa;
  - (m) The African Ministerial Conference on the Environment;
  - (n) The South Pacific Regional Environment Programme, as secretariat of the Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes Within the South Pacific Region (Waigani Convention);
  - (o) The Organisation for Economic Cooperation and Development;
  - (p) The International Energy Agency;
3. *Further requests* the Secretariat to report on cooperation to the Conference of the Parties at its eighth meeting;
4. *Encourages* Parties and others to support the cooperative efforts of the Secretariat.

#### **VII/[...]: Designation of competent authorities and focal points**

*The Conference of the Parties,*

*Recalling decision VI/38 on competent authorities and focal points,*

1. *Calls on Parties* to designate competent authorities and focal points for the Convention, if they have not done so, and to submit such designations to the Secretariat, including any modifications or additions as they occur;
2. *Urges* Parties to provide up-to-date contact details of competent authorities and focal points to the Secretariat to ensure the efficient transmission of information;
3. *Requests* Parties that have designated multiple competent authorities to make sufficient information available regarding the functions and geographical area covered by each of its competent authorities;
4. *Invites* non-Parties and interested organizations to identify contact persons for the Convention, if they have not done so, and to submit the relevant information to the Secretariat, including any modifications or additions as they occur;
5. *Requests* the Secretariat to continue to maintain the list of competent authorities and focal points and *to* post it on the Secretariat's web site to facilitate communications concerning matters related to the Convention.

**VII/[...]: Follow-up to the World Summit on Sustainable Development**

*The Conference of the Parties,*

*Recalling* its decision VI/40 on follow-up to the World Summit on Sustainable Development,

*Welcoming* the concrete activities carried out by the Secretariat, Basel Convention regional centres, Parties and others to contribute to the Plan of Implementation adopted at the World Summit<sup>1</sup>,

*Welcoming* the support expressed at the World Summit for the concept of type II partnerships between Governments, business and civil society,

*Mindful* of the call in the Plan of Implementation for coherence and cooperation between international regimes for wastes, hazardous wastes and chemicals,

1. *Requests* the Secretariat to pursue cooperation with interested stakeholders in support of the Plan of Implementation and type II partnerships between Governments, business and civil society;
2. *Also requests* the Secretariat to report to the Conference of the Parties at its eighth meeting on progress and deliverables.

**VII/[...]: Guidance elements for bilateral, multilateral or regional agreements or arrangements**

*The Conference of the Parties,*

*Recalling* decisions VI/12 and VI/18,

*Noting* decision OEWG-II/3 of the Open-ended Working Group on guidance elements for bilateral, multilateral and regional agreements or arrangements,

1. *Agrees* to cease work on the guidance elements for bilateral, multilateral and regional agreements;
2. *Requests* the Secretariat to assist Parties that require assistance in addressing any specific problems that they have related to bilateral, multilateral and regional agreements or arrangements, within the means available to the Secretariat;
3. *Requests* Parties to supply any texts of such agreements or arrangements to the Secretariat pursuant to article 11;
4. *Requests* the Secretariat to place texts of such agreements or arrangements on the Basel Convention web site.

**VII/[...]: Transmission of information, including implementation of decision II/12**

*The Conference of the Parties,*

*Recalling* its decisions VI/27 and VI/28,

*Noting* the compilation documents and country fact sheets prepared by the Secretariat based on the information reported by Parties for the years 2000 and 2001 in accordance with articles 13 and 16 of the Convention,

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<sup>1</sup> *Report of the World Summit on Sustainable Development*, Johannesburg, South Africa, 26 August-4 September 2002 (United Nations publication, Sales No. E.03.II.A.1 and corrigendum), chap. I, resolution 2, annex.

*Further noting* the consolidated report prepared by the Secretariat on the implementation of decisions II/12 and III/1 as contained in the country fact sheets published in 2004,

*Acknowledging* the efforts made by Parties to report for the years 2000 and 2001,

*Also noting* with appreciation the progress made by the Finnish Environment Institute in the development of the reporting database,

*Stressing* the importance of reporting to the Secretariat correct, complete and comparable data on the generation and transboundary movement of hazardous wastes and other wastes,

*Recognizing* the importance of developing indicators on hazardous wastes and other wastes taking into account the different social and economic condition of Parties,

1. *Urges* Parties that have not yet done so to report on articles 13 and 16 for the calendar year 2002 and for the previous years, as soon as possible, using the revised questionnaire that was adopted by the Conference of the Parties at its sixth meeting, bearing in mind that, in accordance with the provisions of article 13, paragraph 3, Parties are requested to transmit, before the end of each calendar year, a report on the previous calendar year;
2. *Requests* that such information be provided by Parties to the Secretariat for the calendar year 2003 before the end of the calendar year 2004;
3. *Encourages* Parties to continue to report on their implementation of decision II/12 in their report under article 13 of the Convention;
4. *Requests* the Secretariat to prepare compilation documents and country fact sheets for the years 2002 and 2003 and to make such information available on a regular basis to the Parties and non-Parties;
5. *Also requests* the Secretariat to prepare a further consolidated report of the implementation of decision II/12 and to report thereon to the Conference of the Parties at its eighth meeting;
6. *Further requests* the Secretariat to continue to provide training to developing countries and other countries that are in need of assistance to meet their reporting obligation by organizing workshops through the Basel Convention regional centres or by other appropriate means;
7. *Requests* the Secretariat to initiate the preparatory work that will be necessary to make the reporting database available on its web site;
8. *Requests* the Parties to fill in the data gaps which may exist in their previously reported datasets on generation and transboundary movement of hazardous wastes and other wastes for the year 1999 and onwards, to facilitate the development of indicators;
9. *Requests* the Secretariat to submit a progress report on the initiation of the work of developing a set of indicators to the Open-ended Working Group in 2005;
10. *Invites* Parties and others to assist the Secretariat in developing such indicators.

#### **VII/[...]: National definitions of hazardous wastes**

*The Conference of the Parties,*

*Noting* the standardized draft format for reporting under article 3 of the Basel Convention,

*Welcoming* the efforts made by Germany, in consultation with Parties, to assist the Secretariat in developing the standardized draft reporting format,



*Mindful* of the importance of transmitting the notification of national definitions of hazardous wastes pursuant to article 3 of the Convention by Parties to the Secretariat,

1. *Adopts* the standardized reporting format for reporting under article 3 of the Convention as contained in the annex to the present decision;
2. *Requests* the Parties that have not provided the Secretariat with any of the information required under article 3 of the Convention to provide such information not later than six months after the adoption of the standardized reporting format and to report any subsequent significant change of this information using the standardized format;
3. *Further requests* the Parties, when providing such information to the Secretariat, to make reference to the relevant Convention provision to avoid ambiguity;
4. *Further requests* the Secretariat to assist Parties in ensuring that information notified is up-to-date and as clear as possible to facilitate each Party's understanding of other Parties' national definitions of hazardous wastes;
5. *Requests* the Secretariat to make available on its web site the information received from Parties pursuant to article 3 of the Convention in the six official languages of the United Nations.



<b>National Definition of Hazardous Wastes</b>							
<b>1</b>	<b>Is there a definition of hazardous waste in your national legislation?</b>						
	<table border="1" style="width: 100%;"> <tr> <td style="width: 30%;">Yes: <input type="checkbox"/></td> <td>No: <input type="checkbox"/> (If no, do not fill in the rest of the form)</td> </tr> </table>	Yes: <input type="checkbox"/>	No: <input type="checkbox"/> (If no, do not fill in the rest of the form)				
Yes: <input type="checkbox"/>	No: <input type="checkbox"/> (If no, do not fill in the rest of the form)						
	If yes, please provide the text of the national definition of hazardous waste (Please attach the full text of the relevant legislation):						
<b>1a</b>	<b>Is this a significant change to the national definition that has been previously notified to the Secretariat of the Basel Convention pursuant to article 3(2)?</b> (NB: Information transmitted annually under article 13 (3) does not represent a notification in compliance with article 3)						
	<table border="1" style="width: 100%;"> <tr> <td style="width: 30%;">Yes <input type="checkbox"/></td> <td>No <input type="checkbox"/></td> </tr> </table>	Yes <input type="checkbox"/>	No <input type="checkbox"/>				
Yes <input type="checkbox"/>	No <input type="checkbox"/>						
<b>1b</b>	<b>What is the source/ basis of this definition?</b>						
	<table border="1" style="width: 100%;"> <tr> <td style="width: 33%;">Basel Convention <input type="checkbox"/></td> <td style="width: 33%;">OECD-Council Acts <input type="checkbox"/></td> <td style="width: 33%;">EU Waste Law <input type="checkbox"/></td> </tr> <tr> <td>National <input type="checkbox"/></td> <td colspan="2">Other <input type="checkbox"/> (specify under remarks)</td> </tr> </table>	Basel Convention <input type="checkbox"/>	OECD-Council Acts <input type="checkbox"/>	EU Waste Law <input type="checkbox"/>	National <input type="checkbox"/>	Other <input type="checkbox"/> (specify under remarks)	
Basel Convention <input type="checkbox"/>	OECD-Council Acts <input type="checkbox"/>	EU Waste Law <input type="checkbox"/>					
National <input type="checkbox"/>	Other <input type="checkbox"/> (specify under remarks)						
	<b><u>Remarks, if necessary:</u></b>						

<b>2</b>	<b>Does the national definition of hazardous waste cover wastes other than those listed in Annexes I, II and VIII of the Basel Convention?</b>		
Yes: <input type="checkbox"/>		No: <input type="checkbox"/>	
If yes, please tick the box(es) below indicating the list(s) containing such wastes and, in the table below or as an attachment, list the wastes.			
WCO-HS <input type="checkbox"/>		OECD <input type="checkbox"/>	EU-Waste List <input type="checkbox"/>
National <input type="checkbox"/> (specify under remarks)		Other <input type="checkbox"/> (specify under remarks)	
<u><b>General remarks, if any</b></u>			

Waste code*	Waste description	Remarks, if any

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\* Please ensure that your listing is as precise and clear as possible.



**VII/[ ]: Amendment to rule 29 of the rules of procedure**

*The Conference of the Parties,*

*Bearing in mind* the importance of transparency and promoting awareness and understanding of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal,

*Recognizing* the importance of the participation of non-governmental institutions and persons towards the achievement of the aims of the Basel Convention,

*Decides* to amend rule 29 of the rules of procedure for meetings of the Conference of the Parties to read as follows:

“1. Meetings of the Conference of the Parties shall be held in public, unless the Conference of the Parties decides otherwise;

2. Meetings of working groups established by the Conference of the Parties, other than drafting and informal working groups, shall be held in public unless the body concerned decides otherwise.”

**VII/[ ]: Interim guidelines for the implementation of decision V/32 on enlargement of the scope of the Trust Fund to Assist Developing and Other Countries in Need of Technical Assistance in the Implementation of the Basel Convention**

*The Conference of the Parties,*

*Recalling* decision V/32 concerning the enlargement, on an interim basis, of the scope of the Technical Cooperation Trust Fund,

*Recalling also* decision VI/14 concerning the interim guidelines for the implementation of decision V/32 on enlargement of the scope of the Trust Fund to Assist Developing and Other Countries in Need of Technical Assistance in the Implementation of the Basel Convention,

*Referring* to decision V/29 on the adoption of the Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and their Disposal and, in particular, article 15, paragraph 1, of the Protocol on Liability and Compensation,

*Referring* to decision VI/41 on financial matters,

*Taking note* of article 15, paragraph 2, of the Protocol on Liability and Compensation,

*Observing* that requests for emergency assistance under paragraph 2 of decision V/32 and part 1 of the interim guidelines for the implementation of decision V/32 have not been submitted by Parties,

1. *Invites* developing countries and countries with economies in transition that are Parties to the Basel Convention to submit project proposals pursuant to part 3 of the interim guidelines for the implementation of decision V/32, for the development of capacity-building, transfer of technology and putting in place of measures to prevent accidents and damage to the environment caused by transboundary movements of hazardous wastes and other wastes and their disposal, including for the development of emergency response and contingency plans;

2. *Urges* Parties to provide contributions to the Technical Cooperation Trust Fund to support the activities referred to in Parts 1, 2 and 3 of the interim guidelines and agrees that a contributor may specify that its contributions be used for purposes specified in parts 1, 2 or 3 of the interim guidelines;

3. *Requests* the Secretariat to continue collating information related to incidents, as defined under article 2, paragraph 2 (h), of the Protocol on Liability and Compensation, specifically:

(a) The number of incidents arising from transboundary movements of hazardous wastes and their disposal;

(b) With regard to each incident, the extent to which damage was not compensated by the existing mechanism for providing assistance in cases of emergency and compensation for damage resulting from incidents arising from transboundary movements of hazardous wastes and other wastes and their disposal;

4. *Encourages* Parties and the Secretariat to keep under review the possibilities for improving the existing mechanism or, if necessary, on the establishment of a new mechanism for providing assistance in cases of emergency and compensation for damage resulting from incidents arising from transboundary movements of hazardous wastes and other wastes and their disposal as provided in paragraph 4 of decision VI/14.

**VII/[ ]: Illegal traffic**

*The Conference of the Parties,*

*Recalling* its decision V/23 on the prevention and monitoring of illegal traffic in hazardous wastes and other wastes,

*Also recalling* its decision VI/16, in which it adopted in the appendix to the decision guidance elements for the detection, prevention and control of illegal traffic in hazardous wastes and called for the preparation of an appendix to the guidance elements in the form of a training manual for personnel involved in preventing, identifying and managing such illegal traffic,

*Welcoming* the Training Manual for the Enforcement of Laws Implementing the Basel Convention: Guidance for Safe and Effective Detection, Investigation and Prosecution of Illegal Traffic in Hazardous and Other Wastes, as contained in document UNEP/CHW.7/[ ];

1. *Agrees* to include the text of the training manual as contained in document [UNEP/CHW.7/...] as appendix 5 to the Guidance Elements for Detection, Prevention and Control of Illegal Traffic in Hazardous Wastes;
2. *Requests* the Secretariat to make the guidance elements, including their appendices, available on the Convention web site in all official United Nations languages;
3. *Requests* the Open-ended Working Group to continue to review and update, as appropriate, the Guidance Elements for Detection, Prevention and Control of Illegal Traffic in Hazardous Wastes;
4. *Requests* the Secretariat, in collaboration with the Basel Convention regional centres, to continue to assist Parties, particularly developing countries, in implementing the guidance elements at the national level, including the development of national contingency plans;
5. *Requests* the Secretariat to continue its efforts to organize further training seminars to assist Parties, particularly developing countries, in implementing the guidance elements;
6. *Calls upon* all Parties and organizations in a position to do so to make financial or in-kind contributions for the organization of such training seminars.



## Annex III

### **Report of the small contact group on the selection of project proposals under the Strategic Plan for the Implementation of the Basel Convention on its meeting on the afternoon of 27 April 2004**

1. The small contact group agreed on six principles to be applied to the selection of project proposals under the Strategic Plan for the Implementation of the Basel Convention.

#### **Principle I: All proposals must be submitted on time.**

*Possible element for Conference of the Parties decision:*

*Requests* the Secretariat to organize and compile the project proposals submitted by Parties or Basel Convention regional centres on or before 30 November 2004 for submission to the Open-ended Working Group for consideration.

#### **Principle II: Add a funding cap to the group 1 relevant criteria.**

*Possible element for Conference of the Parties decision:*

*Agrees* to amend the list of group 1 relevant criteria contained in the appendix to decision VI/2 to include:

“Each project must:

- Require not more than 10 per cent of the total funds allocated by the Conference of the Parties for this purpose.”

#### **Principle III: The Secretariat must assess whether proposals meet all group 1 relevant criteria.**

*Possible element for Conference of the Parties decision:*

*Requests* the Secretariat [to post on the web site, at least two months before OEWG4,] a list of all project proposals that meet all group 1 relevant criteria contained in the appendix to decision VI/2.

#### **Principle IV: The Secretariat must evaluate all projects on the basis of the group 2 value criteria.**

*Possible element for Conference of the Parties decision:*

*Requests* the Secretariat [to post on the web site, at least two months before the fourth session of the Open-ended Working Group,] an evaluation of all project proposals that meet all group 1 relevant criteria, on the basis of the group 2 value criteria contained in the appendix to decision VI/2.

#### **Principle V: Regional groups must place all projects from their region in order of priority on the basis of the group 2 value criteria, using the evaluation prepared by the Secretariat.**

*Possible element for Conference of the Parties decision:*

*Requests* Parties [,according to regional groups and in consultation with Basel Convention regional centres,] to place all project proposals from their region in clear order of priority, with no equal rankings, on the basis of the group 2 value criteria contained in the appendix to decision VI/2, using the evaluation prepared by the Secretariat.

**Principle VI: The Open-ended Working Group must distribute projects equitably, taking into account regional and national diversities and specificities as appropriate.**

*Possible element for Conference of the Parties decision:*

*Requests* the Open-ended Working Group to consider the proposals submitted that meet all group 1 relevant criteria in the order of priority determined for each regional group and to choose those that qualify for funding, taking into account regional and national circumstances as appropriate.

2. The working group also expressed very strong concern that significantly increased funding would be required to adequately fund the project proposals identified under the Strategic Plan.

## Annex IV

### **Declaration by the African Group at the third session of the Open-Ended Working Group, 26–30 April 2004, Geneva, Switzerland**

Aware of the risks and harm to human health and the environment caused by hazardous wastes and other wastes and the importance of environmentally sound management of wastes and other substances to the achievement of sustainable development by African States;

Recognizing that cooperation among states at the regional and international levels on capacity-building, training and technology transfer is essential;

Noting that Africa facilitates environmentally sound management of wastes and other wastes which is essential, taking into account regional priorities in the implementation of obligations arising under the multilateral environment agreements, such as the Basel, Bamako, Rotterdam and the Stockholm Conventions and the Montreal Protocol, and other relevant international agreements;

Also recalling the Rabat Declaration on environmentally sound management of wastes and other wastes in Africa in 1999 and the Basel Declaration on environmentally sound management of hazardous wastes and other wastes at the fifth Conference of the Parties to the Basel Convention in 2000;

Recognizing the importance of the Ban Amendment of the Basel Convention and its relevance to protecting the state of the environment in Africa, and taking into account the opinion of a large number of African country representatives who have indicated commitment to ratify before COP VII; and

Reaffirming the decision of the Conference of Parties to leave Annex VII unchanged until the amendment contained in decision III/1 enters into force;

In keeping with the plan of action of the World Summit on Sustainable Development, and the vision of the New Partnership for Africa's Development (NEPAD) and the objective to promote sustainable partnerships in economic productivity;

Further recalling the adoption of the strategic plan for the implementation of the Basel Convention in 2002 and the importance of the Basel Convention Regional centres in the delivery of the programme activities stipulated in the strategic plan;

Also recalling the endorsement in November 2002 by the African Ministerial Conference on the Environment of the utilization of the African BCRCs for the implementation of the NEPAD Environment Initiative with respect to the management of hazardous wastes and other wastes and decision IV/10 of the Conference of the Parties to the Basel Convention that the Secretariat of the Basel Convention and the African BCRCs to cooperate closely with the Secretariats of the AMCEN and that of the NEPAD;

Declares:

1. The African Group endorses the establishment of a financial mechanism for the Basel Convention through GEF for the implementation of the ten year strategic plan to ensure and promote effective delivery of technical assistance to African countries,
2. That it encourages other stakeholders to contribute financially and with other means to activities concerning the implementation of the Basel convention in Africa as prioritized in the Action Plan of the Environment Initiative of the NEPAD, especially through partnerships and other activities related to environmentally sound management in small and medium enterprises;
3. That all producers be fully responsible and liable for the cradle-to-grave management of their products;
4. It notes the finalization of the Annex VII study during the OEWG-3 meeting;

5. It emphasizes the importance of organization of the workshops by the BCRCs, which would assist in the ratification of the Ban Amendment;
6. It supports the proposal of the hosting of the COP-8 in Nairobi in its commitment to environmental issues;
7. It requests fast-tracking the completion of work on Technical Guidelines on POPs waste management, ship dismantling, and on regional workshops on the Protocol and Liability and Compensation.

## Annex V

### **Report of the informal contact group on the environmentally sound management of ships**

#### **Establishment of the Joint Working Group of the International Labour Organization, the International Maritime Organization and the Basel Convention: report of the contact group on ship dismantling on its sessions of 26–28 April 2004**

**Co-Chair: Mr. Moin Ahmed (Bangladesh)**

#### **I. Background**

1. The contact group on ship dismantling considered both the terms of reference of the Joint Working Group of the International Labour Organization (ILO), the International Maritime Organization (IMO) and the Basel Convention and its working arrangements.

#### **II. Terms of reference of the Joint Working Group**

2. While considering the terms of reference, the group agreed that it would be preferable to adopt the terms of reference as amended by the Marine Environment Protection Committee of IMO and circulated in the conference room paper on the issue.

3. The group emphasized the need for the Joint Working Group to come up with specific solutions to be considered by the three organizations in putting environmentally sound management into practice. In this regard, the group looks forward to the interactive sharing of information and analysis with the Joint Working Group.

#### **III. Working arrangements**

4. The contact group on ship dismantling was informed about the way in which IMO had worked through the issue and had nominated five countries to participate in the Joint Working Group. The five member States nominated by IMO were: Bangladesh, Japan, the Netherlands, Norway and the United States of America.

5. The contact group considered it important that Parties nominated to participate in the Joint Working Group should have a commitment to the Basel Convention and a strong environmental interest. The contact group suggested that a possible way forward in selecting the Parties would be for each regional group to nominate one country. The contact group also recognized that nomination should not duplicate nominations already agreed by IMO.

#### **IV. Proposed decision**

6. In order to reflect the minor changes agreed upon by IMO, the contact group agreed to amend the proposed decision contained in document UNEP/CHW/OEWG/3/9. The revised proposed decision is set out in the appendix to the present report.

## **Appendix to the report of the informal contact group on the environmentally sound management of ships**

### **Proposed decision on the Joint Working Group of the International Labour Organization, the International Maritime Organization and the Basel Convention submitted by the informal contact group on the environmentally sound management of ships**

*The Open-ended Working Group,*

*Considering* the report of the joint meeting between the International Labour Office, the Secretariat of the International Maritime Organization and the Secretariat of the Basel Convention, held at Geneva on 13 and 14 January 2004 and reproduced in annex I to the present decision;

*Taking into account* the terms of reference proposed by the joint secretariat meeting for the Joint Working Group of the International Labour Organization, the International Maritime Organization and the Basel Convention::;

*Noting* that the report of the joint secretariat meeting has been submitted to the Marine Environment Protection Committee of the International Maritime Organization for consideration at its fifty-first session, held from 29 March to 2 April 2004, and to the Sectoral and Technical Meetings Committee of the Governing Body of the International Labour Office, at its session in February and March 2004;

*Also noting* that the Governing Body of the International Labour Office took note of the report of the joint secretariat meeting;

*Further noting* that the terms of reference for the Joint Working Group of the International Labour Organization, the International Maritime Organization and the Basel Convention:, as proposed by the joint secretariat meeting, have been approved, with minor editorial amendments, by the Marine Environment Protection Committee of the International Maritime Organization at its fifty-first session,

1. *Agrees* to the terms of reference of the Joint Working Group of the International Labour Organization, the International Maritime Organization and the Basel Convention:as amended by the meeting to reflect the minor changes agreed upon by the International Maritime Organization, contained in annex II to the present decision;

2. *Also agrees:*

(a) That the Joint Working Group will meet on a regular basis, rotating between the headquarters of the International Labour Organization, the International Maritime Organization and the Secretariat of the Basel Convention, or any other venue agreed upon and that the host organization would assume the role of the secretariat;

(b) That participation in the Joint Working Group should ensure representation of all geographical regions;

(c) That five Parties to the Basel Convention shall be nominated to participate in the Joint Working Group on the understanding that representatives of other Parties, signatories, intergovernmental or non-governmental organizations may participate as observers and that such nominations should be sent to the Secretariat by 30 June 2004;

3. *Invites* the Joint Working Group to propose practical solutions that provide guidance to be considered by the three organizations to promote environmentally sound management for the dismantling of ships;

4. *Considers* that the Joint Working Group shall not be considered as taking precedence over or superseding the work of the Open-ended Working Group or other activities of the Basel Convention regarding the dismantling of ships;

5. *Requests* the Secretariat to report to the Conference of the Parties at its seventh meeting on progress, including the possibility of a first meeting of the Joint Working Group of the International Labour Organization, the International Maritime Organization and the Basel Convention.

## **Annex I\* to the proposed decision on the Joint Working Group of the International Labour Organization, the International Maritime Organization and the Basel Convention submitted by the informal contact group on the environmentally sound management of ships**

### **Report of the meeting between the International Labour Office (ILO), the secretariat of the International Maritime Organization (IMO), and the secretariat of the Basel Convention (SBC) held at ILO Headquarters, Geneva, 13-14 January 2004**

#### **Background**

1. The sixth meeting of the Conference of the Parties to the Basel Convention (COP 6) requested SBC to explore the possibility of the development of an inter-agency technical assistance project on ship dismantling together with IMO and ILO, and to consider the establishment of a joint working group with IMO and ILO as a means of achieving a common understanding of the problem and character of the required solutions.
2. The ILO responded positively to these initiatives and the IMO Marine Environment Protection Committee (MEPC), at its forty-ninth session, was, in principle, supportive of these proposals and requested the IMO Secretariat to liaise with ILO and SBC in order to prepare draft project objectives for the inter-agency technical assistance project and draft terms of reference for the joint working group, for consideration by the fifty-first session of MEPC.
3. In order to advance the issue of the inter-agency co-operation the Secretariats of IMO, ILO and SBC held a joint meeting at ILO Headquarters in Geneva from 13 to 14 January 2004. The list of participants is attached in appendix I.

#### **Adoption of the agenda**

4. The provisional agenda as set out in appendix II was adopted.

#### **Report of the outcome of the ILO Meeting on Safety and Health in Shipbreaking, Bangkok, 7-14 October 2003**

5. The representative of ILO informed the meeting that at the Interregional Tripartite Meeting of Experts on Safety and Health in Shipbreaking for Selected Asian Countries and Turkey, held at Bangkok in October 2003, the "Guidelines" were adopted and will be published as "Safety and health in shipbreaking: Guidelines for Asian countries and Turkey". The Guidelines as adopted by the meeting, together with a Report on the Meeting, were in the process of being transmitted to the February-March 2004 session of the ILO Governing Body for endorsement. This would include versions in Spanish and French. A priority was, however, to translate the Guidelines into the languages of the countries where shipbreaking was done: Bengali, Chinese, Hindu, Urdu and Turkish.

#### **Report of the outcome of the 2<sup>nd</sup> session of the Open-ended Working Group of the Basel Convention**

6. The representative of SBC informed the meeting that the second session of the Open-ended Working Group (OEWG2) that met in Geneva in October 2003 considered the legal aspects of the dismantling of ships as well as co-operation with IMO and ILO on this issue. The meeting agreed on the establishment of an intersessional working group that would deliberate on the legal aspects. On the formation of the Joint Working Group, there was an indication that some Basel Convention constituencies may want to be involved in this work once the Terms of Reference have been finalised and agreed upon. On technical assistance projects for States involved in ship dismantling, there is a need for a concerted effort in resource mobilization. Finally, he said that there are great expectations

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\* The report is being reproduced as submitted, without formal editing.



from all stakeholders in having the Joint Working Group playing an active role in ship dismantling.

### **Report of the outcome of the 23<sup>rd</sup> session of the IMO Assembly**

7. The representative of the IMO Secretariat informed the meeting about the discussions that took place during the twenty-third session of the Assembly on the issue of ship recycling and that the IMO Guidelines on Ship Recycling were finally adopted by resolution A.962(23). The meeting was also informed of the amendments to Annex I of MARPOL 73/78, adopted by MEPC 50, regarding the accelerated phase-out scheme for single-hull tankers and that the Committee, having realized that these new requirements would increase the number of the vessels to be recycled within a specific period of time, adopted resolution MEPC.113(50) on ship recycling for the smooth implementation of the amendments to Annex I of MARPOL 73/78.

### **Role of the joint ILO/IMO/Basel Convention Working Group**

8. The role of the joint ILO/IMO/Basel Convention Working Group (hereafter referred to as the Joint WG) was discussed and it was agreed that this Group should act as a platform for consultation, co-ordination and co-operation in relation to the work programme and activities of ILO, IMO and the Conference of Parties to the Basel Convention with regard to issues related to ship scrapping<sup>1</sup>. The Joint WG should pursue a co-ordinated approach to the relevant aspects of ship scrapping with the aim of avoiding duplication of work and overlapping of responsibilities and competencies between the three Organizations.

### **Terms of reference for the Joint WG**

9. The Terms of Reference as proposed by the three Secretariats are as follows:

The Joint WG should:

1. consider the respective work programmes of ILO, IMO and the Conference of Parties to the Basel Convention on the issue of ship scrapping in order to avoid duplication of work and overlapping of responsibilities and competencies between the three Organizations, and identify further needs;
2. facilitate the exchange of views between the three Organizations in order to ensure a co-ordinated approach to all the relevant aspects of ship scrapping;
3. undertake a comprehensive initial examination of the:
  - *Technical Guidelines for the Environmentally Sound Management of the Full and Partial Dismantling of Ships*, adopted by the Sixth Meeting of the Conference of Parties to the Basel Convention;
  - *IMO Guidelines on Ship Recycling*, adopted by resolution A.962(23); and
  - *Safety and Health in Shipbreaking: Guidelines for Asian countries and Turkey*, developed by ILO, with a view to identifying any possible gap, overlap, or ambiguities;
  - consider mechanisms to jointly promote the implementation of the relevant Guidelines on Ship Scrapping;
  - monitor progress of any jointly organized technical cooperation activities; and
  - submit recommendations and any other relevant information on the above or other pertinent matters to bodies of IMO, ILO and the Basel Convention, as appropriate.

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<sup>1</sup> In view of the fact that the three agencies used breaking/dismantling/recycling in their respective documents, it was agreed for the purposes of this report to use the term “ship scrapping”.

### **Working arrangements**

10. The meeting considered the working arrangements of the proposed Joint WG and it was agreed that the Joint WG should meet on a regular basis, rotating between the Headquarters of ILO, IMO and SBC, or any other venue agreed upon. The host Organization would assume the role of Secretariat.

11. The composition of the Joint WG should consist of representatives appointed by each Organization, the number to be appointed by each being decided by agreement between the three Organizations<sup>2</sup>. The Joint WG should ensure, as appropriate, representation of all geographical regions of the world with an interest in the subject matter. Other interested parties, who express a wish, may be allowed to participate in the discussions of the Joint WG.

12. The Joint WG shall determine its own procedures.

### **Technical cooperation activities on ship scrapping**

13. The representatives of each Organization introduced those activities already launched or planned by each Organization.

14. The representative of ILO stated that ILO has secured a new US\$1.3 million UNDP-funded project in Bangladesh on safe and environmental friendly shipbreaking. The project will seek, through a comprehensive approach based on policy dialogue, safety training and public awareness, to align current work practices in the shipbreaking industry with international and national rules and regulations. He also stated that ILO has prepared similar project proposals for India, China, Pakistan and Turkey.

15. The representative of the IMO Secretariat stated that IMO has established an Integrated Technical Co-operation Programme (ITCP), the purpose of which is to assist countries in building up their human and institutional capacities for uniform and effective compliance with the Organization's regulatory framework. Ship Recycling has been included in the revised ITCP thematic priorities for 2004-2005 and a strategy has been developed to achieve the set objectives. The meeting was also informed that two technical co-operation activities, one national workshop in Bangladesh and one regional workshop in Asia, have already been planned for the biennium 2004-5.

16. The representative of the SBC informed the meeting that the OEWG2 has invited the IMO, ILO and Basel Convention to organize a workshop with a view to exchanging of views on the issues included in the Terms of Reference of the proposed Joint WG. He also suggested that such workshop could be held at the regional level and the Basel Convention Regional Centre could be involved in its organization.

17. It was agreed that each Organization would invite the other two Organizations to participate in workshops or seminars.

### **Interagency technical assistance**

#### **National/regional workshop/seminars**

18. It was suggested that regional or national workshops and seminars on ship recycling may be organized jointly, or individually by IMO, ILO and SBC. These workshops/seminars should aim at raising awareness on the safety, health and environmental issues associated with ship scrapping and providing guidance on the implementation of the provisions of the respective Guidelines.

#### **Global programme**

19. It was acknowledged that for some developing countries the implementation of the relevant guidelines on ship scrapping would necessitate massive investment, e.g. adequate waste reception facilities at the recycling yards, environmentally sound waste management systems and appropriate infrastructure. For this reason, there may be a need for the development of a global programme aiming

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<sup>2</sup> Language drawn from the existing Agreement between ILO and IMO (1959)

at resource mobilization (e.g. World Bank, ADB, GEF, UNDP, bilateral donors), in which the three Organizations would participate. The ILO volunteered to prepare a draft background project document for consideration by IMO and SBC.

#### **Work of other bodies on ship scrapping**

20. An exchange of information took place with regard to initiatives on ship scrapping taken by intergovernmental or non-governmental organizations. The European Commission had recently written to all three Organizations and the SBC had met with the EU Commissioner for the Environment on this topic.

#### **Any other business**

21. There was an exchange of data on the volume of ship scrapping and market characteristics.

#### **Further action**

22. This report will be submitted for consideration to the 51<sup>st</sup> session of the Marine Environment Protection Committee (29 March to 2 April 2004), the Sectoral and Technical Meetings Committee of the ILO's Governing Body (February-March 2004) and the third session of the Open-ended Working Group of the Basel Convention (26-30 April 2004).

23. If the establishment of the Joint Working Group is approved then the first meeting could be held before the end of 2004.

## **Annex II\* to the proposed decision on the Joint Working Group of the International Labour Organization, the International Maritime Organization and the Basel Convention submitted by the informal contact group on the environmentally sound management of ships**

### **Terms of reference for the joint ILO/IMO/Basel Convention Working Group**

The Joint ILO/IMO/Basel Convention Working Group should:

1. Consider the respective work programmes of the pertinent bodies of ILO, IMO and the Conference of Parties to the Basel Convention on the issue of ship scrapping in order to avoid duplication of work and overlapping of roles, responsibilities and competencies between the three Organizations, and identify further needs;
2. Facilitate the exchange of views between the three organizations in order to ensure a coordinated approach to all the relevant aspects of ship scrapping;
3. Undertake a comprehensive initial examination of the:
  - (a) Technical Guidelines for the Environmentally Sound Management of the Full and Partial Dismantling of Ships, adopted by the Conference of Parties to the Basel Convention at its sixth meeting;
  - (b) IMO Guidelines on Ship Recycling, adopted by resolution A.962(23); and
  - (c) Safety and Health in Shipbreaking: Guidelines for Asian countries and Turkey endorsed by the Governing Body of the International Labour Office, with a view to identifying any possible gap, overlap, or ambiguities;
4. Consider mechanisms jointly to promote the implementation of the relevant Guidelines on Ship Scrapping;
5. Monitor progress of any jointly organized technical cooperation activities; and
6. Submit its reports, recommendations and any other relevant information on the above or other pertinent matters to bodies of IMO, ILO and the Basel Convention, as appropriate.

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\* The terms of reference are being reproduced as submitted, without formal editing.

## Annex VI

### **Declaration on the environmentally sound management of ships and the transboundary movements of hazardous and other wastes**

#### **Proposal submitted by the European Union**

*The European Union and the accession countries,*

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

*Recognizing that many ships and other floating structures are known to contain hazardous materials that were used in their construction and operation and that such hazardous materials are classified as hazardous wastes for control in the annexes to the Basel Convention,*

*Concerned that ships and other floating structures may pose a threat to the environment and human health if they are not, when dismantled, managed in an environmentally sound manner,*

*Noting that a ship may become waste, in accordance with article 2 of the Basel Convention, and that at the same time it may be defined as a ship under other international rules,*

*Recognizing that the scope of application of the Basel Convention to ships and other floating structures is as yet partly undetermined,*

*Further recognizing the need to ensure effective enforcement of the applicable provisions,*

*Recalling decision V/28 on the dismantling of ships that gave a mandate to the Technical Working Group to collaborate with the International Maritime Organization on the subject of the full and partial dismantling of ships and to discuss the legal aspects under the Basel Convention relating to the issue of the full and partial dismantling of ships,*

*Further recalling decision VI/24 on technical guidelines for the environmentally sound management of the full and partial dismantling of ships,*

*Desiring that ships and other floating structures be dismantled in an environmentally sound manner,*

*Noting that the International Maritime Organization and the International Labour Organization together with the Basel Convention have agreed to establish a joint working group to pursue issues relating to the human health and environmental risk associated with the full and partial dismantling of ships,*

*Further noting that the International Labour Organization has adopted guidelines on safety and health in ship breaking, the International Maritime Organization has adopted guidelines on ship-recycling and the Basel Convention has adopted technical guidelines for the environmentally sound management of the full and partial dismantling of ships,*

*Desiring an effective solution that clarifies the application of the provisions of the Basel Convention to ships and other floating structures, in particular those relating to prior informed consent and environmentally sound management of wastes,*

*Recognizing the important role that flag States have to play in ensuring the environmentally sound management of ships, when they become waste for control in accordance with the objectives of the Basel Convention,*

1. *Urge* the Parties that are flag States, States of export or States of import to implement the provisions of the Basel Convention in particular with respect to the application of the obligations of prior informed consent and principles of environmentally sound management;
2. *Further urge* Parties to seek means to achieve the objectives of the Basel Convention with respect to the environmentally sound management of ships when they become waste for control;
3. *Encourage* the Parties to ensure their full and effective participation in the deliberations of the Joint Working Group either as observers or through their representatives or under the auspices of the International Maritime Organization, the International Labour Organization or the Basel Convention;
4. *Request* the Open-ended Working Group further to consider the legal aspects of the dismantling of ships with the aim of resolving this issue by the eighth meeting of the Conference of the Parties.

## **Annex VII**

### **Statement by Canada on dismantling of ships**

Canada recognizes that ship dismantling is a complex issue and that identification of solutions requires careful consideration. Canada wishes to note its disappointment on the lack of progress made on substantive matters regarding the ship dismantling issue and an effective and efficient regime for prior informed consent. It is Canada's view that a comprehensive approach to dealing with ships destined for recycling requires a workable prior informed consent regime. Canada looks forward to participating in a constructive engagement on this issue through the OEWG workplan, at Basel COP-7, at the meetings of the Joint Working Group and at the IMO Marine Environment Protection Committee.

## Annex VIII

### Report by the Chair of the contact group on technical guidelines regarding POPs<sup>1</sup>

1. In addition to the draft decision proposed by the contact group, in particular the following points were discussed.
2. With regard to provisional definitions for **low POP content**, the following was discussed:
  - a) Some explanation on the rationale for such definitions should be included in the guidelines, in particular the following:
    - i) The disposal of wastes with a high POP content, including waste stockpiles, should be a priority criterion for the decision on these definitions;
    - ii) Limit values in national legislation are relevant; it was noted that for PCBs the value of 50 mg/kg is contained in the legislation of many countries (i.e. above this value, the hazardous waste legislation applies) and is used for the distinction of hazardous from non hazardous waste in the Basel Convention;
    - iii) The availability of analytical methods is one criterion for the decision on these definitions; it was noted that for a level of 50 mg/kg for PCB several quick tests are available;
  - b) For PCB, a value of 50 mg/kg was agreed; however, no agreement could be reached at this stage if the value should be either 50 mg/kg or 50 mg/kg dry mass for solid wastes and if the value should be either 50 mg/kg or 50 mg/l for liquids, taking into account standards for analytical methods;
  - c) With regard to PCB, some participants suggested that a different and lower level than 50 mg/kg should be set for liquid wastes or at least for waste oil;
  - d) For PCDD/PCDF, values of 1, 10 and 50 µg TEQ/kg were contained in issue paper 1 and were the starting point for the discussion. Most of the participants, who spoke, supported 10 µg TEQ/kg. There was also support for the other values, and one participant proposed 0.1 µg TEQ/kg;
  - e) There are different analytical methods for measuring the POP content in wastes and the meaning of low POP content depends on these analytical methods; in this respect some participants expressed the view that appropriate sampling and analytical methods should be considered after COP7 and agreed upon in updated versions of the guidelines; it was noted that with regard to PCB the different methods used are based on a different number of congeners;
  - f) Definitions for low POP content in national legislation may be lower than the definitions that will be adopted by the COP of the Stockholm Convention.
3. With regard to **levels of destruction and irreversible transformation**:
  - a) It was felt that the concentrations in solid wastes referred to in para. 2 (b) (i) of decision OEWG-III/... are a starting point for further comments and discussion as no concrete suggestions had been made so far; it was noted that inter alia the limit values in the United States Universal Treatment Standard as referred to Appendix 3 of Issue paper 2 could also be relevant;
  - b) No practical and acceptable approach could be found for PCDD/PCDF at this stage;
  - c) One participant suggested that:
    - i) The technology should provide for a destruction and irreversible transformation which should lead to a PCDD/PCDF content below the low POP content to be defined

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<sup>1</sup> The report is being reproduced as submitted, without formal editing.



or

- ii) In cases where in one output waste stream unintentional produced PCDD/PCDF occur in a higher concentration, this should not preclude the method to be used provided that:
  - the contaminated output waste stream could either be treated or
  - may be otherwise disposed of in an environmentally sound manner when destruction or irreversible transformation is not the environmentally preferable option;

d) Another participant suggested that for treatment residues contaminated with unintentionally produced PCDD/PCDF the concentrations in solid wastes referred to in para. 2 (b) (i) of decision **OEWG-III/...** should not apply;

- e) The suggestions of these two participants were not discussed.

4. With regard to the expansion of the relevant chapter regarding **destruction and irreversible transformation methods** as referred to in para. 3 (a) of decision OEWG-III/..., it was noted that inter alia Part 1 of Annex V of the European Union Regulation on POPs adopted on 27 April 2004 could be relevant; this Regulation, which will be published in a few weeks, would be made available on [www.basel.int](http://www.basel.int) in the interim.

5. In considering which technologies should be classified as environmentally sound and commercially available,

- a) It was noted that the classification depends on which levels of destruction and irreversible transformation would be established;

- b) No conclusion on molten salt oxidation could be drawn because of different information in the available documents; therefore it was agreed to include this technology in the draft decision in square brackets; Canada would look into this issue;

- c) It was felt useful to include subheadings in the relevant chapters.

6. With regard to **other disposal methods when destruction and irreversible transformation does not represent the environmentally preferable option** as referred to in para. 4 of decision OEWG-III/..., it was noted that inter alia Art. 7(4) (b) and Part 2 of Annex V of the EU Regulation on POPs could be relevant.

7. It was agreed to generally include the suggestions regarding waste equipment containing or contaminated with PCBs as contained in Issue paper 1 in the revised draft for further discussion.

8. After having considered the issues referred to in Art. 6(2) of the Stockholm Convention and the respective issue papers, the **text of the general and the PCB guideline** was considered chapter by chapter. In doing this, it was agreed

- a) Which parts of the text should appear in the general guideline and which in the PCB guideline; in a number of instances, a reference to the general guideline would be included in the PCB guideline;

- b) That in the sections regarding Convention provisions the relevant texts should be cited together with an explanation where necessary;

- c) That there would be no need to prepare further issue papers and that the outcome of the discussion during OEWG III would be included in the relevant chapters;

- d) That in the chapters with respect to remediation of contaminated sites, the issue of environmental implications regarding contaminated sites related to the disposal of stockpiles would be addressed; however, regarding environmentally sound remediation of such sites, it would be referred to pertinent national and international rules and standards;

- e) To replace the Appendix regarding destruction methods that are currently operating at a pilot or test basis by a reference to a recently published Report of the STAP/GEF POPs Workshop on Non-Combustion Technologies for the Destruction of POPs Stockpiles, Washington D.C., October 1-3, 2003.

9. The following **tentative timetable** was discussed with regard to the general and the PCB guideline:

a) Preparation of revised draft guidelines by 15 May 2004 in which structural and other minor changes discussed at OEWG3 compared to document UNEP/CHW/OEWG/INF/7 and Add.1 would be shown; these drafts would be made available on [www.basel.int](http://www.basel.int);

b) Comments by Parties and others on these drafts preferably by 15 June 2004; in doing this, concrete text proposals together with a rationale if necessary would be welcomed;

c) Preparation of revised draft guidelines by early August 2004; these drafts would be made available on [www.basel.int](http://www.basel.int) in English at this time;

d) Translation of the guidelines in other UN languages by mid September 2004; these drafts would be made available on [www.basel.int](http://www.basel.int) in English at this time;

e) Consideration of these revised drafts by the SIWG at a meeting immediately before COP7; comments in particular by participants of the SIWG on these drafts by mid October 2004 to Canada and the other participants of the SIWG would be welcome;

f) The secretariat would forward the outcome of this SIWG meeting to the COP in CRPs; in these CRPs, the changes compared to the COP documents would be shown if appropriate.

10. It was understood that Canada would inform the SIWG by E-mail in advance of a detailed timetable and the availability of new drafts.

11. It was suggested that the main elements of the outcome regarding the issues referred to in Art. 6(2) of the Stockholm Convention should be included in the relevant draft decision for COP7.

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