



Distr.: General

16 July 2014

English only

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

Geneva, 16–19 September 2014

Item 3 (c) (i) of the provisional agenda*

**Matters related to the work programme of the
Open-ended Working Group for 2014–2015:
legal, governance and enforcement matters:
consultation with the Committee for Administering
the Mechanism for Promoting Implementation and
Compliance of the Convention**

Updated manual for the implementation of the Basel Convention

Note by the Secretariat

As referred to in document UNEP/CHW/OEWG.9/10 on the consultation with the Committee for Administering the Mechanism for Promoting Implementation and Compliance of the Convention, the annex to the present note sets out the updated manual for the implementation of the Basel Convention. The present note, including its annex, has not been formally edited.

* UNEP/CHW/OEWG.9/1.

Annex

Updated Manual for the Implementation of the Basel Convention

(draft of 24 June 2014)

I. Introduction

1. The Convention

1. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (“the Convention”) was adopted on 22 March 1989 and entered into force on 5 May 1992. The tenth meeting of the Conference of the Parties (“COP”) to the Basel Convention, by its decision BC-10/2,¹ adopted a Strategic Framework for the implementation of the Basel Convention for 2012–2021, setting out the following strategic goals and objectives:

- (a) Goal 1: Effective implementation of parties’ obligations on transboundary movements of hazardous and other wastes;
- (b) Goal 2: Strengthening the environmentally sound management of hazardous and other wastes;
- (c) Goal 3: Promoting the implementation of the environmentally sound management of hazardous and other wastes as an essential contribution to the attainment of sustainable livelihood, the Millennium Development Goals and the protection of human health and the environment.

2. The importance of national legal frameworks implementing the Basel Convention has been highlighted on numerous occasions through decisions adopted by the Conference of the Parties, including within key strategic documents related to the Convention.²

3. For the purposes of this manual, Parties “implement” the Convention by making obligations arising under the Convention effective in their national legal systems; this is done in a number of ways. One way is the adoption of national legislation, including subordinate legislation, i.e. legal measures normally adopted by the executive such as regulations, orders and decrees.

4. It is not the case that *all* provisions in the Convention need to be implemented legislatively. Article 4(4) of the Convention provides as follows:

“Each Party shall take appropriate legal, administrative and other measures to implement and enforce the provisions of this Convention, including measures to prevent and punish conduct in contravention of the Convention”.

5. It follows that there will be a range of measures that Parties will take to implement the Convention and in theory – provided they are fully compliant with their obligations – Parties will enjoy a margin of discretion as to the extent that they may implement legislatively.

6. In some cases only legislation will do: Article 9 requires Parties to introduce “appropriate national/domestic legislation to prevent and punish illegal traffic”. What is more, if Parties are to exercise the rights, granted by the Convention, to define or consider wastes as hazardous or to provide that substances are wastes³ they must do so by legislation. In addition, the Convention frequently uses words – such as punish,⁴ prohibit,⁵ permit⁶ or allow⁷ - that at least imply legislative implementation. It is difficult, for example, to give

¹ At <http://archive.basel.int/meetings/cop/cop10/documents/28e.pdf>

² For instance in the Framework for the Environmentally Sound Management of hazardous wastes and other wastes, adopted by COP decision BC-11/1. Reference is also made to decision BC-11/10 that urges Parties to fulfill their obligations including by updating or developing stringent legislation on the control of transboundary movements of hazardous wastes, and by incorporating into their national legislation appropriate sanctions or penalties.

³ See Article 1(b) of the Convention, which provides that hazardous waste include “Wastes...that are defined as, or are considered to be, hazardous wastes by the domestic legislation of the Party of export, import or transit. “. Also, Article 2(1) of the Convention “wastes” are “...substances or objects which are disposed of or are intended to be disposed of or that are required to be disposed of by the provisions of national law”.

⁴ Article 4(4) provides that the measure to implement and enforce the provisions of the Convention will include *measures to prevent and punish conduct in contravention of the Convention*.

⁵ See Articles 4(1) and (7).

any meaning, in the context of the Convention, to an obligation to permit or allow something unless it would otherwise be prohibited by legislation.

7. This manual and the annexed checklist work on the basis that obligations arising under the Convention may be divided into two broad categories, namely:

- (a) Those that the Convention requires to be implemented by legislation, and those that should be implemented by legislation;
- (b) Those that may be implemented by means other than legislation.

2. Dualism and monism

8. The way Parties implement the Convention will depend on their legal systems; and in particular, on whether an implementing Party has a monist or dualist system as follows:

(a) In a monist system, national and international law form part of one legal structure in which international law is supreme. As such, an international treaty such as the Basel Convention becomes part of national law once a State has consented to be bound by it and once it has entered into force for that State. This can mean there is no need for implementing legislation, or a reduced need;

(b) In a dualist system, national and international law are separate systems operating in different fields. The rights and obligations created by a treaty have no effect in domestic law unless legislation gives effect to them, after which they are incorporated into domestic law and are enforceable in the domestic courts.

9. To the extent that a treaty is self-executing, it requires no implementing legislation. Nevertheless in the case of the Basel Convention, States should consider using the legislator's checklist, which provisions of Basel are self-executing, and whether self-executing provisions need supplementing by national legislation; for example a self-executing prohibition may not be effective without national legislation providing for sanctions where that prohibition is breached.

3. Mandate for the Manual

10. At its third meeting in 1995, by decision III/8, the Conference of the Parties approved the Manual for the Implementation of the Basel Convention, which aimed at assisting Parties as well as non-Parties, the private sector, NGOs, and individuals to understand the obligations set up in the Convention. The Manual has not been updated or revised since.

11. As directed by the COP in its decision VII/32, the checklist for the legislator was prepared by the Secretariat in cooperation with the Committee for Administering the Mechanism for Promoting Implementation and Compliance with the Basel Convention ("ICC"). It is meant to be a tool for Parties to assist them in fully implementing their obligations under the Basel Convention. The checklist has not been updated or revised since.

12. At its eleventh meeting, the COP adopted decision BC-11/8, which sets out the work programme for 2014–2015 of the ICC. In that decision, the COP requested the ICC, inter alia, to:

- (a) Consider an expansion of the checklist for the legislator ("the checklist"); and to
- (b) Improve the implementation of and compliance with the Convention by reviewing and updating the Manual for the Implementation of the Convention of the Basel Convention.

13. In considering the issue of national legislation during its tenth meeting, the ICC highlighted the link between the expansion of the checklist for the legislator and the updating of the Manual for the Implementation of the Convention, and decided to consider both activities jointly.⁸ The ICC subsequently agreed:

- (a) To use as a basis for the structure of the Manual for the Implementation of the Convention the structure of the manual for the implementation of the Basel Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and Their Disposal, which provides guidance on an article-by-article basis;

⁶ See Articles 2(5) and 4(1) and (5).

⁷ See Article 4(7)(a) and (9).

⁸ The ICC considered this during its tenth meeting on the basis of documents UNEP/CHW/CC.10/8 and UNEP/CHW/CC.10/13. Meeting documents are available at: <http://www.basel.int/TheConvention/ImplementationComplianceCommittee/Meetings/ICC10/MeetingDocuments/tabid/3396/Default.aspx>

(b) With respect to the checklist, that the expanded checklist for the legislator would build on the updated version of the manual.⁹

14. The ICC therefore requested the Secretariat to develop an updated manual for the implementation of the Convention for the consideration of the Open-ended Working Group during its ninth meeting and the Committee during its eleventh meeting.

15. The Open-ended Working Group, during its ninth meeting, was consulted in the process of reviewing and updating the manual. The manual was considered and adopted by the COP at its twelfth meeting by [decision number to be inserted].

4. Purpose of the Manual

16. The Manual replaces the manual for the implementation of the Basel Convention approved in 1995. Annex I to this Manual contains a revised checklist for the legislator, which replaces the checklist prepared by the Secretariat in cooperation with the ICC.

17. The Manual, including its checklist, is designed to assist Parties and potential Parties to understand the obligations set out in the Convention and how to implement them. It also explores how Parties may exercise the margins of discretion afforded to them under the Convention. As an ancillary benefit it will also assist other stakeholders – including civil society, the private sector, NGOs and individuals - to understand how the Convention works.

18. In particular:

(a) The **Manual** takes the reader through provisions of the Convention article by article, and explain what Parties need to do to implement the Convention;

(b) The **checklist** provides a concise table listing obligations that Parties must, or should, implement in their national legislation.

19. The Manual is intended as a practical guide only. It has no legal effect and must not be construed as an agreement between Parties regarding the application of the Convention. It does not replace the text of the Convention in any way; nor does it replace any national legislation.

20. The Manual contains links to the most up to date materials on the Basel Convention website at the time of publication. It also sets out in its annexes II and III two lists of the technical guidelines adopted by the COP over the years. The attention of the reader is also drawn in particular to the Revised Guide to the Control System¹⁰ which is intended as an instruction manual for use by persons involved in the transboundary movements of hazardous wastes. The Guide is rich in technical detail, which this manual does not duplicate. Nor does this manual take exporters, generators or disposers through the control procedure under the Convention.

21. The Manual focuses on provisions in the Convention that Parties must or should take action to implement, so some Articles are not listed or discussed in depth. Nevertheless officials engaged in implementation will wish to be aware of the following:

(a) The **COP** is the governing body of the Convention, with extensive duties and powers conferred on it by the Convention text (see Article 15). These include keeping under continuous review and evaluation the effective implementation of the Convention (paragraph 3, Article 15); and making policy and legal decisions that have an impact on implementation. Decisions adopted by the COP, as well as meeting reports and documents, can be consulted on the Convention website;¹¹

(b) The Mechanism for Promoting Implementation and Compliance with the Basel Convention and its Committee (**the ICC**) were established in 2002 by decision VI/12 of the COP and its terms of reference were amended by the tenth meeting of the Conference of the Parties. Under paragraph 1 of its terms of reference, the objective of the mechanism that the Committee serves “is to assist Parties to comply with their obligations under the Convention and to facilitate, promote, monitor and aim to secure the implementation of and compliance with the obligations under the Convention.”

(c) The Convention and its Annexes may be **amended** (see Articles 17 and 18 respectively). In particular Parties may want to note that new annexes and amendments to existing annexes will become effective for all Parties who have not given formal notice that they are unable to accept the annex or

⁹ The report of the tenth meeting of the ICC is document UNEP/CHW/CC.10/14 available at: <http://www.basel.int/TheConvention/ImplementationComplianceCommittee/Reports/tabid/2289/Default.aspx>

¹⁰ At [link to the revised guide to be inserted]

¹¹ At

<http://www.basel.int/TheConvention/ConferenceoftheParties/OverviewandMandate/tabid/1316/Default.aspx>.

amendment (see Article 18(2)(c)). Parties may thus find themselves bound by new legal obligations six months after being notified of that obligation. They should be able quickly to adjust their national legislation to implement such new obligations.

II. Article by article review of the provisions of the Convention

22. Part II of the Manual explains the operative part of the Convention. It also identifies the provisions that raise issues for special consideration. It will be for each Party to determine whether there is a need for specific action to be taken to give effect to the obligations arising under the Convention, whether adequate implementing legislation already exists in national law or whether, in accordance with its domestic legal tradition, the Convention or any of its Articles are self executing and can be applied directly.

23. This chapter does not include commentary on:

(a) The Convention's preamble, which does not contain any legal obligations that supplement the Articles and Annexes to the Convention;

(b) The final clauses of the Convention, which are not of direct interest to those implementing the Convention, but some of which are referred to in the preceding paragraph; or

(c) The Annexes of the Convention, the detail of which is discussed at some length in the Revised Guide to the Control System.

ARTICLE 1: SCOPE OF THE CONVENTION

A. Text of article

1. *The following wastes that are subject to transboundary movement shall be "hazardous wastes" for the purposes of this Convention:*

(a) *Wastes that belong to any category contained in Annex I, unless they do not possess any of the characteristics contained in Annex III; and*

(b) *Wastes that are not covered under paragraph (a) but are defined as, or are considered to be, hazardous wastes by the domestic legislation of the Party of export, import or transit.*

2. *Wastes that belong to any category contained in Annex II that are subject to transboundary movement shall be "other wastes" for the purposes of this Convention.*

3. *Wastes, which, as a result of being radioactive, are subject to other international control systems, including international instruments, applying specifically to radioactive materials, are excluded from the scope of this Convention.*

4. *Wastes, which derive from the normal operations of a ship, the discharge of which is covered by another international instrument, are excluded from the scope of this Convention.*

B. Are there special issues to be considered for implementation?

While these provisions do not establish obligations on Parties, they are key to understanding the obligations which follow, and as such, a number of issues are highlighted:

Additional waste defined or considered as hazardous: Parties have the discretion to bring additional waste(s) within the scope of the Convention by defining or considering waste as hazardous, as provided for in Article 1(1)(b). In order to make use of this provision of the Convention, the Party must:

(a) Define or consider the waste as hazardous in domestic legislation; or adopt legislation that defines or considers the waste to be hazardous; and

(b) Notify the Secretariat under Article 3 (see below).

Monitoring Annexes VIII and IX: Officials engaged in the implementation of the Convention need to bear in mind that Annexes VIII and IX of the Convention were adopted¹² for the purposes of providing greater clarity to Annexes I and III. Annexes VIII and IX, which are not referred to in the main text of the Convention, are monitored and may be

¹² By the fourth meeting of the COP: see Decision IV/8.

amended from time to time.¹³ In order to adequately regulate wastes covered by the Convention, Parties will need to ensure that they keep track of amendments to those Annexes by periodically checking the Basel Convention website.¹⁴

Annexes I-III, VIII and IX: Parties should note that new annexes and amendments to existing annexes shall become effective for all Parties who have not notified the depositary that they are unable to accept the annex or amendment thereto (see Article 18(2)(c)). Parties may find themselves bound by new legal obligations six months after being notified of adoption of the corresponding amendment. They should be able to quickly adjust any national legislation as necessary to implement new obligations before or within the relevant deadline. It may follow that Parties will wish to provide for their legislation implementing Annexes to be amended by legal measures such as regulations, orders or decrees.

C. Other information

In addition to hazardous wastes as defined in Article 1, the Convention also applies to “**other wastes**”, categories of which are contained in Annex II. “Other wastes” are treated identically to “hazardous wastes” in the operative provisions in the Convention. For this reason, unless stated otherwise, the term “hazardous waste” in this manual will cover both types of waste.

For a **full description of the relationship between the provisions of Article 1 and the Annexes to the Convention**, see the Revised Guide to the Control System.

Exclusions: Article 1(3) and (4) exclude two specific types of wastes from the scope of the Convention. See the Revised Guide to the Control System for further details.

Technical guidelines¹⁵ on categorisation of waste: specific and general technical guidelines with respect to categories of waste generally may be found on the Convention website.¹⁶

D. Example

Example of amendment of Annex VIII: Under Article 18 of the Convention, the COP adopts an amendment to Annex VIII of the Convention. The amendment adds waste X to the list of wastes characterised as hazardous under Article 1(1)(a) of the Convention. All the Parties receive formal notification of the amendment. Country A, which is a Party, does not respond to that notification. Six months after the notification of the amendment, it enters into force for Country A, which must give effect to the amendment in its national legal system (unless it is a Monist State that has earlier provided an appropriate legal framework.).

ARTICLE 2: DEFINITIONS

A. Text of article

For the purposes of this Convention:

1. “Wastes” are substances or objects which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law;
2. “Management” means the collection, transport and disposal of hazardous wastes or other wastes, including after-care of disposal sites;
3. “Transboundary movement” means any movement of hazardous wastes or other wastes from an area under the national jurisdiction of one State to or through an area under the national jurisdiction of another State or to or through an area not under the national jurisdiction of any State, provided at least two States are involved in the movement;
4. “Disposal” means any operation specified in Annex IV to this Convention;

¹³ Through the procedure provided for in COP Decision VIII/14

¹⁴ Annex VIII at <http://www.basel.int/Implementation/TechnicalMatters/WasteClassificationandControlProcedures/AnnexVIII/tabid/2387/Default.aspx>

Annex IX at <http://www.basel.int/Implementation/TechnicalMatters/WasteClassificationandControlProcedures/AnnexIX/tabid/2388/Default.aspx>

¹⁵ For a list of them, see Annex II

¹⁶ At <http://www.basel.int/Implementation/TechnicalMatters/DevelopmentofTechnicalGuidelines/AdoptedTechnicalGuidelines/tabid/2376/Default.aspx>

5. “Approved site or facility” means a site or facility for the disposal of hazardous wastes or other wastes which is authorized or permitted to operate for this purpose by a relevant authority of the State where the site or facility is located;
6. “Competent authority” means one governmental authority designated by a Party to be responsible, within such geographical areas as the Party may think fit, for receiving the notification of a transboundary movement of hazardous wastes or other wastes, and any information related to it, and for responding to such a notification, as provided in Article 6;
7. “Focal point” means the entity of a Party referred to in Article 5 responsible for receiving and submitting information as provided for in Articles 13 and 16;
8. “Environmentally sound management of hazardous wastes or other wastes” means taking all practicable steps to ensure that hazardous wastes or other wastes are managed in a manner which will protect human health and the environment against the adverse effects which may result from such wastes;
9. “Area under the national jurisdiction of a State” means any land, marine area or airspace within which a State exercises administrative and regulatory responsibility in accordance with international law in regard to the protection of human health or the environment;
10. “State of export” means a Party from which a transboundary movement of hazardous wastes or other wastes is planned to be initiated or is initiated;
11. “State of import” means a Party to which a transboundary movement of hazardous wastes or other wastes is planned or takes place for the purpose of disposal therein or for the purpose of loading prior to disposal in an area not under the national jurisdiction of any State;
12. “State of transit” means any State, other than the State of export or import, through which a movement of hazardous wastes or other wastes is planned or takes place;
13. “States concerned” means Parties which are States of export or import, or transit States, whether or not Parties;
14. “Person” means any natural or legal person;
15. “Exporter” means any person under the jurisdiction of the State of export who arranges for hazardous wastes or other wastes to be exported;
16. “Importer” means any person under the jurisdiction of the State of import who arranges for hazardous wastes or other wastes to be imported;
17. “Carrier” means any person who carries out the transport of hazardous wastes or other wastes;
18. “Generator” means any person whose activity produces hazardous wastes or other wastes or, if that person is not known, the person who is in possession and/or control of those wastes;
19. “Disposer” means any person to whom hazardous wastes or other wastes are shipped and who carries out the disposal of such wastes;
20. “Political and/or economic integration organization” means an organization constituted by sovereign States to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve, formally confirm or accede to it;
21. “Illegal traffic” means any transboundary movement of hazardous wastes or other wastes as specified in Article 9.

B. Are there special issues to be considered for implementation?

Some substances will be “wastes” within the meaning of Article 2(1) **only in one or more but not all of the States concerned**. This is a significant consideration for Parties when implementing Article 6(5).

Environmentally sound management (ESM) is an important concept in implementation of the Convention, which has been highlighted in various strategic and guidance documents developed within the context of the Convention. See, for example, the references to ESM in the goals to the Strategic Framework for the implementation of the Convention for 2012-2021.¹⁷ There are several general obligations under the Convention that relate to ESM. In particular, transboundary movement is only allowed if the state of export “...does not have the technical capacity and the necessary facilities, capacity or suitable disposal sites in order to dispose of the wastes in question in an environmentally sound and efficient manner” (Article 4(9)(a)). Moreover, a state of export may not allow the

¹⁷ [Mentioned in paragraph 2 of the introduction to this manual.]

commencement of a transboundary movement unless the notifier has received from the state of import “confirmation of the existence of a contract between the exporter and the disposer specifying environmentally sound management of the wastes in question” (Article 6(3)(b)).

C. Other information

The Framework for the ESM of hazardous wastes and other wastes (“the ESM framework”)¹⁸ was adopted by the eleventh meeting of the COP in its decision BC-11/1 on Follow-up to the Indonesian-Swiss country-led initiative to improve the effectiveness of the Basel Convention. The ESM framework is a practical guide for all stakeholders participating in the management of wastes; it identifies what countries should do to address the challenges of implementing ESM in a systematic and comprehensive manner. The ESM Framework explains that although ESM is defined in Article 2 of the Basel Convention, it is widely acknowledged that the concept is understood and implemented differently. This manual will not duplicate the ESM Framework; Parties that wish for detailed advice on implementation of ESM should refer to the latter document and accompanying technical guidance that is specific to particular waste streams. Whilst the Convention does not expressly require legislation to implement ESM, Parties will wish to note that the framework says the strategies to implement ESM should ensure that certain core goals are met, including the establishment of a comprehensive legal framework to, inter alia “[a]ddress movements of waste in accordance with applicable international and regional agreements and conventions, including the Basel Convention”. Further work on the issue of ESM may be found on the Convention website.¹⁹

When considering and implementing the definitions in the Convention, Parties might wish to bear in mind that there is continuing work on **the legal clarity** of terms used in the Convention, in order to support implementation by the Parties. In particular, a small intersessional working group (SIWG) was also established by decision BC-11/1 to continue the work towards clarifying terminology used in the Convention. The SIWG’s mandate includes the completion of a glossary of terms and the identification of terms for which it would be useful to have further explanations. The outcomes of the SIWG’s work are available on the Convention website.²⁰

D. Example

Article 2(1): S is a by-product of one industry and used as a feedstock in another industry. S does not fall within the definition in Article 2(1) of substances or objects which are disposed of or intended to be disposed of or required to be disposed of by the provisions of national law of country A. However, the provisions of national law in Country B require S to be disposed of, bringing S within the definition of “wastes” under Article 2(1).

ARTICLE 3: NATIONAL DEFINITIONS OF HAZARDOUS WASTES

A. Text of article

1. *Each Party shall, within six months of becoming a Party to this Convention, inform the Secretariat of the Convention of the wastes, other than those listed in Annexes I and II, considered or defined as hazardous under its national legislation and of any requirements concerning transboundary movement procedures applicable to such wastes.*
2. *Each Party shall subsequently inform the Secretariat of any significant changes to the information it has provided pursuant to paragraph 1.*
3. *The Secretariat shall forthwith inform all Parties of the information it has received pursuant to paragraphs 1 and 2.*
4. *Parties shall be responsible for making the information transmitted to them by the Secretariat under paragraph 3 available to their exporters.*

¹⁸ At <http://www.basel.int/Default.aspx?tabid=3616>

¹⁹ At <http://www.basel.int/Implementation/CountryLedInitiative/EnvironmentallySoundManagement/ExpertWorkingGroup/ESM/tabid/3617/Default.aspx>

²⁰ At <http://www.basel.int/Implementation/LegalMatters/LegalClarity/SmallIntersessionalWorkingGroup/tabid/3622/Default.aspx>

B. Are there special issues to be considered for implementation?

The efficiency of the Convention's control regime depends on cooperation of and between Parties, including for the exchange of information. If Parties fail to comply with the information requirements in Article 3 there is a strong risk regarding wastes defined as, or considered to be, hazardous under Article 1(1)(b). Those wastes may fail to be controlled under the Convention simply because Parties are unaware that the wastes are hazardous.

There is a strong link between Parties' implementation of Article 3 and Article 6(5). The latter Article provides for the control of a transboundary movement of wastes where the wastes are legally defined or considered to be hazardous only in one or more (but not all) of the States concerned. The Parties that do not define or consider additional wastes as hazardous depend on notifications transmitted in accordance with Article 3 to be aware of waste that is hazardous by virtue of Article 1(1)(b).

C. Other information

Parties that wish to use their national legislation to bring additional wastes within the scope of the Convention under Article 1(1)(b) must:

- (a) Inform the Secretariat of such wastes, and any transboundary movement procedures applicable to them, within six months of becoming Parties to the Convention; and
- (b) Inform the Secretariat of any changes to the information given to the Secretariat.

The Secretariat immediately passes on that information to all Parties; and the Parties must then make that information available to their exporters.

More information on the frequency and format of notifications to the Secretariat of national definitions of hazardous waste, as well as notifications transmitted by Parties, can be found on the Convention website.²¹

D. Examples

Article 3 (also see Article 1(1)(b) and Article 6(5)): Wastes Y and Z are not covered as hazardous wastes under Article 1(1)(a) of the Convention, but are defined as hazardous by the national legislation of Country B. Country B becomes a Party to the Convention and notifies the Secretariat, under Article 3(1), that wastes Y and Z are defined as hazardous under its national legislation. The Secretariat immediately informs all Parties under Article 3(2). The outcomes are:

- (a) Wastes Y and Z are hazardous wastes by virtue of Article 1(1)(b);
- (b) Country B has complied with Article 3(1); and so (c) all Parties are aware of the status of wastes Y and Z in Country B and have obligations under the Convention as a consequence;
- (c) The rules in Article 6(5) about responsibilities for the shipment apply.

ARTICLE 4: GENERAL OBLIGATIONS**A. Text of article**

1. (a) *Parties exercising their right to prohibit the import of hazardous wastes or other wastes for disposal shall inform the other Parties of their decision pursuant to Article 13.*

(b) *Parties shall prohibit or shall not permit the export of hazardous wastes and other wastes to the Parties which have prohibited the import of such wastes, when notified pursuant to subparagraph (a) above.*

(c) *Parties shall prohibit or shall not permit the export of hazardous wastes and other wastes if the State of import does not consent in writing to the specific import, in the case where that State of import has not prohibited the import of such wastes.*

2. *Each Party shall take the appropriate measures to:*

(a) *Ensure that the generation of hazardous wastes and other wastes within it is reduced to a minimum, taking into account social, technological and economic aspects;*

(b) *Ensure the availability of adequate disposal facilities, for the environmentally sound management of hazardous wastes and other wastes, that shall be located, to the extent possible, within it, whatever the place of their disposal;*

²¹ At <http://www.basel.int/Procedures/NationalDefinitions/tabid/1321/Default.aspx> and <http://www.basel.int/Countries/NationalDefinitions/tabid/1480/Default.aspx>

- (c) *Ensure that persons involved in the management of hazardous wastes or other wastes within it take such steps as are necessary to prevent pollution due to hazardous wastes and other wastes arising from such management and, if such pollution occurs, to minimize the consequences thereof for human health and the environment;*
- (d) *Ensure that the transboundary movement of hazardous wastes and other wastes is reduced to the minimum consistent with the environmentally sound and efficient management of such wastes, and is conducted in a manner which will protect human health and the environment against the adverse effects which may result from such movement;*
- (e) *Not allow the export of hazardous wastes or other wastes to a State or group of States belonging to an economic and/or political integration organization that are Parties, particularly developing countries, which have prohibited by their legislation all imports, or if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner, according to criteria to be decided on by the Parties at their first meeting;*
- (f) *Require that information about a proposed transboundary movement of hazardous wastes and other wastes be provided to the States concerned, according to Annex V A, to state clearly the effects of the proposed movement on human health and the environment;*
- (g) *Prevent the import of hazardous wastes and other wastes if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner;*
- (h) *Co-operate in activities with other Parties and interested organizations, directly and through the Secretariat, including the dissemination of information on the transboundary movement of hazardous wastes and other wastes, in order to improve the environmentally sound management of such wastes and to achieve the prevention of illegal traffic.*
3. *The Parties consider that illegal traffic in hazardous wastes or other wastes is criminal.*
4. *Each Party shall take appropriate legal, administrative and other measures to implement and enforce the provisions of this Convention, including measures to prevent and punish conduct in contravention of the Convention.*
5. *A Party shall not permit hazardous wastes or other wastes to be exported to a non-Party or to be imported from a non-Party.*
6. *The Parties agree not to allow the export of hazardous wastes or other wastes for disposal within the area south of 60° South latitude, whether or not such wastes are subject to transboundary movement.*
7. *Furthermore, each Party shall:*
- (a) *Prohibit all persons under its national jurisdiction from transporting or disposing of hazardous wastes or other wastes unless such persons are authorized or allowed to perform such types of operations;*
- (b) *Require that hazardous wastes and other wastes that are to be the subject of a transboundary movement be packaged, labelled, and transported in conformity with generally accepted and recognized international rules and standards in the field of packaging, labelling, and transport, and that due account is taken of relevant internationally recognized practices;*
- (c) *Require that hazardous wastes and other wastes be accompanied by a movement document from the point at which a transboundary movement commences to the point of disposal.*
8. *Each Party shall require that hazardous wastes or other wastes, to be exported, are managed in an environmentally sound manner in the State of import or elsewhere. Technical guidelines for the environmentally sound management of wastes subject to this Convention shall be decided by the Parties at their first meeting.*
9. *Parties shall take the appropriate measures to ensure that the transboundary movement of hazardous wastes and other wastes only be allowed if:*
- (a) *The State of export does not have the technical capacity and the necessary facilities, capacity or suitable disposal sites in order to dispose of the wastes in question in an environmentally sound and efficient manner; or*
- (b) *The wastes in question are required as a raw material for recycling or recovery industries in the State of import; or*
- (c) *The transboundary movement in question is in accordance with other criteria to be decided by the Parties, provided those criteria do not differ from the objectives of this Convention.*

10. *The obligation under this Convention of States in which hazardous wastes and other wastes are generated to require that those wastes are managed in an environmentally sound manner may not under any circumstances be transferred to the States of import or transit.*

11. *Nothing in this Convention shall prevent a Party from imposing additional requirements that are consistent with the provisions of this Convention, and are in accordance with the rules of international law, in order better to protect human health and the environment.*

12. *Nothing in this Convention shall affect in any way the sovereignty of States over their territorial sea established in accordance with international law, and the sovereign rights and the jurisdiction which States have in their exclusive economic zones and their continental shelves in accordance with international law, and the exercise by ships and aircraft of all States of navigational rights and freedoms as provided for in international law and as reflected in relevant international instruments.*

13. *Parties shall undertake to review periodically the possibilities for the reduction of the amount and/or the pollution potential of hazardous wastes and other wastes which are exported to other States, in particular to developing countries.*

B. Are there special issues to be considered for implementation?

This Article contains a mixture of provisions, some of which explain, provide the context for and/or qualify specific provisions that appear later in the Convention.

The Convention recognises Parties have a **right to prohibit the import of hazardous and other wastes**.²² For effective implementation of the Convention, Parties wishing to exercise this right are required under Article 4(1) to notify other Parties under Article 13. The list of Article 4(1) prohibitions notified by Parties appears on the Convention website.²³ Once a prohibiting Party has notified in accordance with Article 13, other Parties must give effect to that prohibition by either prohibiting or not permitting the export of the relevant waste to the prohibiting Party (Article 4(1)(b) - similar provision is made in Article 4(2)(e) which provides for a judgment call that the receiving Party cannot handle waste properly).

By decision III/1, the Parties adopted an amendment to the Convention, adding a new preambular paragraph 7bis²⁴ Article 4A²⁵ and Annex VII²⁶ to the Convention. This amendment (“**the ban amendment**”) is not yet in force as at [date to be inserted]. If it enters into force, it will, for the Parties that ratify it, prohibit the export of hazardous waste, for any reason, from a list of countries in Annex VII to any country not listed in that Annex. For certain Parties, this will require implementation of relevant obligations in their domestic legislation, both on export and import.

C. Other information

Of the list of **general obligations** set out in paragraph (2):

(a) Obligations relating to the generation of hazardous wastes; availability of adequate disposal facilities; the prevention and minimisation of pollution; and the minimisation of transboundary movement (subparagraphs (a) to

²² Some countries exercise this right in their implementation of obligations under other international agreements such as:

(a) The Bamako Convention on the ban on the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, which bans imports of hazardous waste into Africa and addresses the control of transboundary movement and management of hazardous wastes within Africa, and

(b) 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 (the Waigani Convention), which requires certain Parties to ban imports of hazardous and radioactive wastes from countries outside the area covered by the Convention and addresses the control of transboundary movements and management of hazardous wastes within the south pacific region.

²³ At

<http://www.basel.int/Procedures/ImportExportProhibitions/tabid/2751/Default.aspx>

²⁴ “Recognizing that transboundary movements of hazardous wastes, especially to developing countries, have a high risk of not constituting an environmentally sound management of hazardous wastes as required by this Convention;”

²⁵ “1. Each Party listed in Annex VII shall prohibit all transboundary movements of hazardous wastes which are destined for operations according to Annex IV A, to States not listed in Annex VII.

2. Each Party listed in Annex VII shall phase out by 31 December 1997, and prohibit as of that date, all transboundary movements of hazardous wastes under Article 1(1)(a) of the Convention which are destined for operations according to Annex IV B to States not listed in Annex VII. Such transboundary movement shall not be prohibited unless the wastes in question are characterised as hazardous under the Convention. ...”

²⁶ “Parties and other States which are members of OECD, EC, Liechtenstein”

(d) may be implemented in the comprehensive legal framework recommended in the ESM framework; the latter sets out guidance on how to implement those subparagraphs; and

(b) Those obligations concerning not allowing the export of hazardous wastes in particular circumstances, requiring information related to Annex V A, preventing the import of hazardous waste and cooperating with other Parties (i.e. those obligations set out in subparagraphs (e) to (h)) may be implemented in conjunction with other provisions in the Convention.²⁷

Paragraph (3) on **illegal traffic** is linked to the requirements of Article 9.

Paragraph (4) recognizes that Parties will take a range of “**appropriate legal, administrative and other measures**” to implement the Convention. Parties will enjoy a margin of discretion in instances where the Convention does not specify that they must implement legislatively, as mentioned in the introduction to this manual.

Paragraph (5) on **ban on the export of hazardous wastes to non-Parties** should be read in conjunction with Article 11, which allows such movements to take place under certain circumstances.

Paragraph (6) provides for an absolute prohibition of the export of hazardous wastes for disposal within **the area south of 60° South latitude**, which is the Antarctic Treaty System definition of Antarctica.

With respect to paragraph (8), a series of **technical guidelines**²⁸ on ESM have been developed and adopted by the COP, using, inter alia, the authority provided for their adoption in Article 4(8). While the guidelines are not, per se, legally binding, they have a legal basis in the Convention and provide guidance under the authority of the COP on what constitutes ESM with respect to particular wastes; in this sense they provide legal content to ESM in the context of particular waste streams. To the extent that the guidelines set out “criteria ... decided on by the Parties at their first meeting” within the meaning of Article 4(2)(e) they have legal effect, because each Party, in certain circumstances, must not allow the export of hazardous wastes if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner according to such criteria.

Paragraphs (7) and (9) and the first sentence of paragraph (8) should be implemented through the measures a Party adopts to put in place the **prior informed consent** regime under Article 6. There may be no transfer of the obligation of the generating state to deliver ESM to a state of import or transit.

A Party may introduce legislation related to its obligations under the Basel Convention that goes **beyond what is required** to implement the Convention. Paragraph (11) expressly acknowledges that Parties are free to adopt additional requirements provided that they are consistent with the Convention and in accordance with the rules of international law.

Paragraph (12) reaffirms the **sovereign** rights and **jurisdiction** of states over their territorial sea, exclusive economic zones and continental shelves in accordance with international law. It also affirms that the Convention does not prejudice **freedom of navigation** as provided in international law.

D. Examples

Article 4(1): Country A introduces legislation that bans the import of hazardous waste and informs the other Parties pursuant to Article 13. Country B responds by prohibiting the export of hazardous waste to Country A. Country C does not ban the export of hazardous waste to Country A, but each time a generator or exporter in Country C notifies its competent authority of a proposed transboundary movement of hazardous wastes to Country A the authority does not allow the proposed movement. All three countries comply with their obligations under Article 4(1).

Article 4(4): Country A becomes a Party and uses a variety of legal, administrative and other measures for implementing the Convention. Including in those measures are the following:

(a) The prior informed consent regime provided for in Article 6 is implemented by primary legislation adopted following the applicable procedures in its national parliament;

(b) Whilst the Article 1(1)(b) definition of “hazardous wastes” appears in primary legislation, that legislation cross refers to subordinate legislation which implements the provisions that appear in Annexes I, III, VIII and IX of the Convention. That subordinate legislation is adopted by the executive subject to a light parliamentary procedure, which takes less time than primary legislation and so allows amendments to those Annexes swiftly to be adopted.

²⁷ Subparagraph (e) may be implemented in conjunction with Articles 4(1) and 6(3)(b), subparagraph (f) may be implemented in conjunction with Article 6(1), subparagraph (g) may be implemented in conjunction with Article 6(3)(b) and subparagraph (h) may be implemented in conjunction with Article 13.

²⁸ At

<http://www.basel.int/TheConvention/Publications/TechnicalGuidelines/tabid/2362/Default.aspx>

Please see Annex III for list of technical guidelines.

(c) Primary legislation defines as “hazardous” wastes not covered by Article 1(b). The focal point designated by that Party completes the form and transmits to the Secretariat as a notification under Article 3.

ARTICLE 5: DESIGNATION OF COMPETENT AUTHORITIES AND FOCAL POINT

A. Text of article

To facilitate the implementation of this Convention, the Parties shall:

1. *Designate or establish one or more competent authorities and one focal point. One competent authority shall be designated to receive the notification in case of a State of transit.*
2. *Inform the Secretariat, within three months of the date of the entry into force of this Convention for them, which agencies they have designated as their focal point and their competent authorities.*
3. *Inform the Secretariat, within one month of the date of decision, of any changes regarding the designation made by them under paragraph 2 above.*

B. Are there special issues to be considered for implementation?

It is not necessarily the case that competent authorities and focal points will be designated by implementing legislation; although their designation will have legal effect under the Convention.

C. Other information

“Competent authority” and “focal point” are defined by Article 1(6) and (7) respectively. **Competent authorities** receive and respond to notifications of transboundary movements of hazardous waste, and **focal points** are responsible for receiving and transmitting information as provided for in Articles 13 and 16. It follows that the control system under the Convention cannot function properly unless competent authorities and focal points are designated and known to the Secretariat and the other Parties.

Only one focal point is to be designated, whilst one or more competent authorities may be designated, except that there is to be only one competent authority of transit.

Parties must:

- (a) Inform the Secretariat of their designations within three months of the date the Convention enters into force for them; and
- (b) Inform the Secretariat of any changes in designations.

The Secretariat then serves as a vehicle to inform other Parties of the designations (See Article 13(2)(a).)

For further information, see the **Role of Competent Authorities and Focal Points under the Basel Convention**.²⁹ More information on the frequency and format of notifications of designations of contacts to the Secretariat, as well as a **list of competent authorities and focal points may be found on the Convention website**.³⁰

ARTICLE 6: TRANSBOUNDARY MOVEMENT BETWEEN PARTIES

A. Text of article

1. *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 State of export, the competent authority of the States concerned of any proposed transboundary movement of hazardous wastes or other wastes. Such notification shall contain the declarations and information specified in Annex V A, written in a language acceptable to the State of import. Only one notification needs to be sent to each State concerned.*
2. *The State of import shall respond to the notifier in writing, consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information. A copy of the final response of the State of import shall be sent to the competent authorities of the States concerned which are Parties.*

²⁹At

<http://www.basel.int/Portals/4/Basel%20Convention/docs/pub/leaflets/Role-CA-FP-01Dec2010-en.pdf>

³⁰ At <http://www.basel.int/Procedures/FocalPoint/tabid/1325/Default.aspx> and

<http://www.basel.int/Countries/CountryContacts/tabid/1342/Default.aspx>

3. *The State of export shall not allow the generator or exporter to commence the transboundary movement until it has received written confirmation that:*

(a) *The notifier has received the written consent of the State of import; and*

(b) *The notifier has received from the State of import of a contract between the exporter and the disposer specifying environmentally sound management of the wastes in question.*

4. *Each State of transit which is a Party shall promptly acknowledge to the notifier receipt of the notification. It may subsequently respond to the notifier in writing, within 60 days, consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information. The State of export shall not allow the transboundary movement to commence until it has received the written consent of the State of transit. However, if at any time a Party decides not to require prior written consent, either generally or under specific conditions, for transit transboundary movements of hazardous wastes or other wastes, or modifies its requirements in this respect, it shall forthwith inform the other Parties of its decision pursuant to Article 13. In this latter case, if no response is received by the State of export within 60 days of the receipt of a given notification by the State of transit, the State of export may allow the export to proceed through the State of transit.*

5. *In the case of a transboundary movement of wastes where the wastes are legally defined as or considered to be hazardous wastes only:*

(a) *By the State of export, the requirements of paragraph 9 of this Article that apply to the importer or disposer and the State of import shall apply mutatis mutandis to the exporter and State of export, respectively;*

(b) *By the State of import, or by the States of import and transit which are Parties, the requirements of paragraphs 1, 3, 4 and 6 of this Article that apply to the exporter and State of export shall apply mutatis mutandis to the importer or disposer and State of import, respectively; or*

(c) *By any State of transit which is a Party, the provisions of paragraph 4 shall apply to such State.*

6. *The State of export may, subject to the written consent of the States concerned, allow the generator or the exporter to use a general notification where hazardous wastes or other wastes having the same physical and chemical characteristics are shipped regularly to the same disposer via the same customs office of exit of the State of export via the same customs office of entry of the State of import, and, in the case of transit, via the same customs office of entry and exit of the State or States of transit.*

7. *The States concerned may make their written consent to the use of the general notification referred to in paragraph 6 subject to the supply of certain information, such as the exact quantities or periodical lists of hazardous wastes or other wastes to be shipped.*

8. *The general notification and written consent referred to in paragraphs 6 and 7 may cover multiple shipments of hazardous wastes or other wastes during a maximum period of 12 months.*

9. *The Parties shall require that each person who takes charge of a transboundary movement of hazardous wastes or other wastes sign the movement document either upon delivery or receipt of the wastes in question. They shall also require that the disposer inform both the exporter and the competent authority of the State of export of receipt by the disposer of the wastes in question and, in due course, of the completion of disposal as specified in the notification. If no such information is received within the State of export, the competent authority of the State of export or the exporter shall so notify the State of import.*

10. *The notification and response required by this Article shall be transmitted to the competent authority of the Parties concerned or to such governmental authority as may be appropriate in the case of non-Parties.*

11. *Any transboundary movement of hazardous wastes or other wastes shall be covered by insurance, bond or other guarantee as may be required by the State of import or any State of transit which is a Party.*

B. Are there special issues to be considered for implementation?

The prior informed consent (PIC) regime is central to the Convention. If properly implemented, it should ensure that the transboundary movements of hazardous waste are consistent with the protection of human health and the environment wherever the place of disposal, and that in particular such movements are permitted only when they do not endanger human health and the environment.

Bear in mind the relationship between the general obligations in Article 4 and the PIC regime: see in particular the 'Other information' on Article 4(2) above, as well as section (c) below.

C. Other information

The PIC procedure is explained below, by identifying key rights and duties of all states concerned with the movement, and how they engage with the Article 6 procedure.

Firstly, Article 6 relates to the **states of export and import** as follows:

[Graphs could be included to better illustrate the various steps of the PIC procedure, for instance the graphs set out in the leaflet on the control procedure: <http://www.basel.int/Portals/4/Basel%20Convention/docs/pub/leaflets/leaflet-control-procedures-en.pdf>]

The **state of export** must **notify** the states of import and transit of the planned transboundary movement of waste; the state of export must do this itself, or it can require the generator or exporter to do so through its competent authority. The notification must contain the declarations and information set out in Annex VA to the Convention (paragraph (1)).

Instead of notifying each shipment individually, the state of **export** may (with the written consent of the states of import and transit) allow a **general notification of wastes** with the same characteristics using the same route for a maximum period of 12 months (paragraphs (6) and (8)).

The **state of import** must **respond** to the notifier in writing, either consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information (paragraph (2)). If the state consents to the movement it should confirm the existence of a contract (“the ESM contract”) between the exporter and the disposer specifying ESM of the wastes in question (paragraph (3)(b)). It should also send copies of its final response to the competent authorities of all the states concerned that are Parties (paragraph (2)).

The **state of export** may not allow a movement to begin unless it has received written confirmation first that the notifier has the state of import’s written consent (paragraph (3)(a)) and second that the notifier has received from the state of import the ESM contract (paragraph (3)(b)). If there is a state of transit the state of export may not allow a movement to begin until it has received the written consent of any state of transit (unless that state has waived the requirement for its prior informed consent – see below).

Second, this is how Article 6 relates to the **state of transit**.

After receiving a notification, the state of transit must promptly acknowledge the receipt of the notification. The state may respond to the notifier within 60 days, on the same terms as the state of import, i.e. consenting to the movement with or without conditions, denying permission for the movement; or requesting additional information (paragraph (4)).

A state of transit that is a Party *may* waive the requirement for PIC, either generally or under specific conditions. Notice of that waiver must be given to the Parties through the Secretariat pursuant to Article 13.

Note that the position of non-Party states of transit is set out in Article 7.

For an overview of the PIC procedure from the perspective of private actors, for instance the generator, exporter, importer or disposer, see the Revised Guide to the Control System.³¹ Reference is also made to the leaflet on Controlling Movements of Hazardous Wastes.³²

Paragraph (5) adapts the PIC procedure **when wastes are legally defined or considered to be hazardous wastes only by one of the states concerned** as provided for in Article 1(1) (b). This could be, for example, because one Party’s domestic legislation expressly defines waste as hazardous; or because one Party’s national law requires a substance, which would not otherwise be waste, to be disposed of (see Article 2(1)) when that substance does not belong to any category contained in Annex I and does not possess any of the characteristics contained in Annex III (see Article 1(a)). The effect of the Article 6(5) adaptation is to provide that the state in which the waste is legally defined or considered to be hazardous takes on different responsibilities for notification and other obligations in the PIC system when the other Parties involved in the shipment do not define the waste as hazardous.

Paragraph (9), which relates, inter alia, to the **movement document**, should be read in conjunction with Article 4(7)(c) (which imposes a duty on each Party to require hazardous wastes and other wastes to be accompanied by a movement document from the point at which a transboundary movement commences to the point of disposal). The movement document must travel with a consignment of waste at all times from the moment it leaves the waste generator to its arrival at a disposal or recovery facility in another country. Each person who takes charge of a transboundary movement is to sign the movement document either upon delivery or receipt of the wastes in question. The document is to be used by the relevant disposal or recovery facility to inform the both the exporter and the competent authority of the State of export that the waste has been received and that the recovery or disposal operation has been completed as specified in the notification. In 2006 decision VIII/18 of the 8th COP adopted new forms for the notification and movement documents.³³

³¹ At [link to the revised guide to be inserted].

³² At <http://www.basel.int/Portals/4/Basel%20Convention/docs/pub/leaflets/leaflet-control-procedures-en.pdf>

³³ At <http://www.basel.int/Default.aspx?tabid=1327>

Paragraph (11) requires transboundary movements to be covered by **insurance, bond or other guarantee** as may be required by the State of import or any Party State of transit. [To be completed in light of the outcome of the work of the ICC]

D. Examples

Article 6: E is an exporter in Country A. E plans a transboundary movement of hazardous waste for disposal in Country C, with transit through Country B. Through the channel of the competent authority of Country A, E notifies the competent authorities of Countries B and C of the proposed transboundary movement. The competent authority of Country C consents to the movement, writing to E and copying that consent, together with a copy of the contract between E and the proposed disposer specifying the environmentally sound management of the wastes in question, to the competent authorities of Countries A and B. As soon as it receives the notification from E, Country B acknowledges it; and after 40 days Country B writes to E consenting to the movement, copying that consent to the competent authorities of Countries A and C. The competent authority of Country A allows the transboundary movement after it has received the written consent of Countries B and C and the contract between E and the proposed disposer.

Article 6(3)(a): G is a generator in Country P, who notifies Country Q through the channel of Country P's competent authority, of a proposed transboundary movement of hazardous waste for disposal by D in Country Q. Country Q consents to the shipment without conditions. Country P has the written consent of Country Q, and also a copy of the contract between E, the exporter of the waste, and D. But the contract relates only to the price of the shipment and the means of the disposal; there is nothing in the contract specifying environmentally sound management of the wastes in question, so Country P does not allow the shipment to proceed.

Article 6(5): Country X defines waste Z as hazardous as provided for in Article 1(1)(b); it informs the Secretariat, and the Secretariat informs the Parties, pursuant to Article 3. Waste Z is not defined as hazardous in Countries A and B.

(a) **Article 6(5)(a):** E, an exporter in Country X, exports waste Z to Country A for disposal. When the waste is received by the disposer, and later when the disposal of the waste is completed, E informs the competent authority of Country X.

(b) **Article 6(5)(b):** I, an importer in Country X, wishes to import waste Z from Country B. I notifies the competent authority of Country X under Article 6(1). I must have the written consent of Country X and a contract with the exporter before the shipment commences specifying the ESM of waste Z (Article 6(3)).

(c) **Article 6(5)(c):** There is a proposed shipment of waste Z from Country A to Country B through Country X. Country A must not allow the transboundary movement until it has the written consent of Country X (Article 6(4)).

Article 6(6) to (8): E is an exporter in Country A. Each month E ships hazardous wastes, which have the same physical and chemical characteristics, to D, a disposer in Country C. Each time the hazardous waste leaves Country A via the same customs office; the waste passes through Country B, via the same customs offices of entry and exit; and then it enters Country C through the same customs office of entry. Country A asks Countries B and C for written consent to use the general notification procedure. Country B consents immediately. Country C asks for further information about the exact quantities of waste to be shipped; on receipt of that information Country C consents too. Both Countries B and C consent for the maximum period of 12 months, with respect to which period E may use a general notification.

ARTICLE 7: TRANSBOUNDARY MOVEMENT FROM A PARTY THROUGH STATES WHICH ARE NOT PARTIES

A. Text of article

Paragraph 1 of Article 6 of the Convention shall apply mutatis mutandis to transboundary movement of hazardous wastes or other wastes from a Party through a State or States which are not Parties.

B. Are there special issues to be considered for implementation?

None

C. Other information

States of export should ensure non-Party states of transit are treated, for the purposes of the PIC regime, as if they are Parties.³⁴ The challenge for states of export will be to locate the relevant authorities of non-Party states of transit.

³⁴ A list of Parties is available on the Convention website at <http://www.basel.int/Default.aspx?tabid=1290>

Some non-Parties have notified the Basel Secretariat of their focal points and competent authorities, which may be found on the Convention website.³⁵

D. Example

Article 7: E proposes to move hazardous waste from Country A for disposal in Country B via Country Z. Countries A and B are Convention Parties, but Country Z is not. Country A has legislation that fully implements the Convention, and the implementing legislation requires E, through the competent authority of Country A, to notify the competent authorities of Countries A, Z and B of the proposed movement. E finds out what authority in Country Z is competent for transboundary movements of waste through the focal point of Country A, which gets the necessary information from the Convention website. E notifies the competent authorities as required, and the movement does not take place until all authorities have consented.

ARTICLE 8: DUTY TO RE-IMPORT

A. Text of article

When a transboundary movement of hazardous wastes or other wastes to which the consent of the States concerned has been given, subject to the provisions of this Convention, cannot be completed in accordance with the terms of the contract, the State of export shall ensure that the wastes in question are taken back into the State of export, by the exporter, if alternative arrangements cannot be made for their disposal in an environmentally sound manner, within 90 days from the time that the importing State informed the State of export and the Secretariat, or such other period of time as the States concerned agree. To this end, the State of export and any Party of transit shall not oppose, hinder or prevent the return of those wastes to the State of export.

B. Are there special issues to be considered for implementation?

Where it is not possible to complete a shipment in accordance with the terms of a contract, the states of export and import, and any Party of transit, are obliged to cooperate to ensure the wastes in question are taken back.

C. Other information

A Party that is a **state of export** must ensure that it takes back wastes where a transboundary movement, to which consent has been given by the States concerned, cannot be completed in accordance with the terms of the contract if alternative arrangements cannot be made for the disposal of the wastes in an environmentally sound manner. **This applies where there is no illegal traffic.** This must occur within 90 days from the time that the importing Party has notified the Party of export and the secretariat, or such other period of time as the States concerned agree. **Both the state of export and any Party of transit** must not oppose, hinder or prevent the return of the shipment to the State of export.

D. Example

E, an exporter in Country A, commences a transboundary movement of hazardous wastes to Country C. The transboundary movement has been duly notified and received the necessary consents. Whilst the waste is in transit in Country B, E receives information from D, the prospective disposer of the waste: there has been an earthquake in Country C that has damaged the site at which the wastes were to be disposed of. This means that D no longer has the capacity to dispose of the wastes in an environmentally sound manner. Country B permits the hazardous wastes to be kept in its territory whilst arrangements are made to return them to Country A. E is required, by the national legislation of Country A, to take the hazardous waste back.

ARTICLE 9: ILLEGAL TRAFFIC

A. Text of article

1. *For the purpose of this Convention, any transboundary movement of hazardous wastes or other wastes:*
 - (a) *without notification pursuant to the provisions of this Convention to all States concerned; or*
 - (b) *without the consent pursuant to the provisions of this Convention of a State concerned; or*

³⁵ At

<http://www.basel.int/Countries/CountryContacts/tabid/1342/Default.aspx>

- (c) *with consent obtained from States concerned through falsification, misrepresentation or fraud; or*
 - (d) *that does not conform in a material way with the documents; or*
 - (e) *that results in deliberate disposal (e.g. dumping) of hazardous wastes or other wastes in contravention of this Convention and of general principles of international law,*
- shall be deemed to be illegal traffic.*

2. *In case of a transboundary movement of hazardous wastes or other wastes deemed to be illegal traffic as the result of conduct on the part of the exporter or generator, the State of export shall ensure that the wastes in question are:*

- (a) *taken back by the exporter or the generator or, if necessary, by itself into the State of export, or, if impracticable,*
- (b) *are otherwise disposed of in accordance with the provisions of this Convention,*

within 30 days from the time the State of export has been informed about the illegal traffic or such other period of time as States concerned may agree. To this end the Parties concerned shall not oppose, hinder or prevent the return of those wastes to the State of export.

3. *In the case of a transboundary movement of hazardous wastes or other wastes deemed to be illegal traffic as the result of conduct on the part of the importer or disposer, the State of import shall ensure that the wastes in question are disposed of in an environmentally sound manner by the importer or disposer or, if necessary, by itself within 30 days from the time the illegal traffic has come to the attention of the State of import or such other period of time as the States concerned may agree. To this end, the Parties concerned shall co-operate, as necessary, in the disposal of the wastes in an environmentally sound manner.*

4. *In cases where the responsibility for the illegal traffic cannot be assigned either to the exporter or generator or to the importer or disposer, the Parties concerned or other Parties, as appropriate, shall ensure, through co-operation, that the wastes in question are disposed of as soon as possible in an environmentally sound manner either in the State of export or the State of import or elsewhere as appropriate.*

5. *Each Party shall introduce appropriate national/domestic legislation to prevent and punish illegal traffic. The Parties shall co-operate with a view to achieving the objects of this Article.*

B. Are there special issues to be considered for implementation?

Article 9(5) expressly requires the introduction of national/domestic legislation to prevent and punish illegal traffic; and in that regard Parties have no discretion to implement by administrative or other measures. In deciding what penalties to impose, Parties should also take into account Article 4(3), which says that Parties consider illegal traffic in hazardous wastes or other wastes is criminal.

C. Other information

Article 9(1) defines **illegal traffic**. In order fully to implement the Convention, Parties must ensure that they have in place appropriate legal, administrative and other measures to deliver the obligations set out in this Article.

Where traffic is illegal as the result of conduct on the part of the exporter or generator, Article 9(2) provides the State of export must ensure that the wastes in question are taken back by the exporter or generator or, if necessary, by itself, the State of export. If this is impracticable, the State of export must ensure that the wastes are disposed of in accordance with the provisions of the Convention. These obligations must be performed within 30 days of the State of export being informed of the illegal traffic, or within such other time as the States concerned agree. The Parties concerned should not oppose, hinder or prevent the return of the wastes to the State of export.

[**Guidance on the take back provision** set out in Article 9(2) was developed by the ICC and adopted by COP-12 in its decision [number]. The guidance may be found on the Convention website.³⁶]

Where the traffic is illegal as the result of conduct on the part of the importer or disposer, Article 9(3) provides that the State of import must ensure the wastes in question are disposed of in an environmentally sound manner by the importer or disposer or, if necessary, by the Party itself. A similar time limit applies: the State of import must perform these obligations within 30 days from the time the illegal traffic came to its attention, or within such other time as the States concerned agree. The States concerned are required to cooperate, as necessary, in the disposal of the wastes in an environmentally sound manner.

By virtue of Article 9(4), **where the responsibility for the illegal traffic cannot be assigned**, Parties must cooperate to ensure that the wastes in question are disposed of as soon as possible in an environmentally sound manner.

Guidance developed under the authority of the Conference of the Parties with a view to achieving the objectives of preventing and combating illegal traffic is available on the Convention website.³⁷ The Conference of the Parties has adopted a series of **decisions** on the matter of illegal traffic; these are also available on the Convention website.³⁸

Confirmed cases of illegal traffic should be reported to the Secretariat using the form for confirmed cases of illegal traffic.³⁹ Confirmed cases of illegal traffic reported to the Secretariat by Parties are also available on the Convention website.⁴⁰

Also see the commentary below, relating to Article 10, on the Environmental Network for Optimizing Regulatory Compliance on Illegal Traffic (“ENFORCE”).

D. Examples

Article 9(1)(c) and (2): E proposes to move hazardous waste from Country A to Country B for disposal by D. E forges a contract for the environmentally sound management of the waste; D does not know the waste is hazardous and does not have the capacity to dispose of it without harm to human health and the environment. E gets the necessary consents and the movement proceeds. On receipt of the waste, D is suspicious and alerts the competent authority in Country B. The waste is analysed and it is confirmed as hazardous. The competent authority of Country B requests the competent authority of Country A to arrange for the waste to be taken back by E within 30 days. But E has become bankrupt and has no means to manage the waste in an environmentally sound manner. Country A obtains the agreement of Country B to take the waste back within two months, during which time it finds and prepares a facility for the environmentally sound management of the waste. E is convicted of a criminal offence under Country A’s national legislation implementing Article 9(5).

Article 9(1)(e) and (3): E in Country A obtains the necessary consents for the movement of hazardous waste to Country B for disposal by D. On receiving the waste D transports it to a thinly populated area in Country B and dumps it. The local population find the waste two months later and alert the authorities of Country B, which analyse the waste and identify it. At the request of Country B, Country A’s experts give technical advice on cleaning up the site of the illegal dumping. I is prosecuted under the implementing laws of Country B; the competent authority of that country also require I to arrange for the environmentally sound disposal of the waste.

ARTICLE 10: INTERNATIONAL CO-OPERATION

A. Text of article

1. *The Parties shall co-operate with each other in order to improve and achieve environmentally sound management of hazardous wastes and other wastes.*
2. *To this end, the Parties shall:*

³⁶ At

<http://www.basel.int/Implementation/LegalMatters/Compliance/Activities/IllegalTrafficTakeBackProvision/tabid/3195/Default.aspx>

³⁷ At

<http://www.basel.int/Implementation/LegalMatters/IllegalTraffic/Guidance/tabid/3423/Default.aspx>

³⁸ At

<http://www.basel.int/Implementation/LegalMatters/IllegalTraffic/Decisions/tabid/3422/Default.aspx>

³⁹ At

<http://www.basel.int/Procedures/ReportingonIllegalTraffic/tabid/1544/Default.aspx>

⁴⁰ At

<http://www.basel.int/Implementation/LegalMatters/IllegalTraffic/CasesofIllegalTraffic/tabid/3424/Default.aspx>

(a) Upon request, make available information, whether on a bilateral or multilateral basis, with a view to promoting the environmentally sound management of hazardous wastes and other wastes, including harmonization of technical standards and practices for the adequate management of hazardous wastes and other wastes;

(b) Co-operate in monitoring the effects of the management of hazardous wastes on human health and the environment;

(c) Co-operate, subject to their national laws, regulations and policies, in the development and implementation of new environmentally sound low-waste technologies and the improvement of existing technologies with a view to eliminating, as far as practicable, the generation of hazardous wastes and other wastes and achieving more effective and efficient methods of ensuring their management in an environmentally sound manner, including the study of the economic, social and environmental effects of the adoption of such new or improved technologies;

(d) Co-operate actively, subject to their national laws, regulations and policies, in the transfer of technology and management systems related to the environmentally sound management of hazardous wastes and other wastes. They shall also co-operate in developing the technical capacity among Parties, especially those which may need and request technical assistance in this field;

(e) Co-operate in developing appropriate technical guidelines and/or codes of practice.

3. The Parties shall employ appropriate means to co-operate in order to assist developing countries in the implementation of subparagraphs a, b, c and d of paragraph 2 of Article 4.

4. Taking into account the needs of developing countries, co-operation between Parties and the competent international organizations is encouraged to promote, *inter alia*, public awareness, the development of sound management of hazardous wastes and other wastes and the adoption of new low-waste technologies.

B. Are there special issues to be considered for implementation?

This Article is unlikely to be directly implemented by domestic legislation.

C. Other information

Article 10 provides for extensive duties of cooperation; those in paragraph (2) aim to improve and achieve ESM of hazardous and other wastes. They include:

- (a) Harmonisation of technical standards and practices;
- (b) Monitoring the effects of waste management on human health and the environment;
- (c) Development of low-waste technologies and environmentally sound waste management systems;
- (d) Transfer of technology; and
- (e) Development of technical guidelines and codes of practice.

Paragraph (3) provides for assistance to be given to developing countries in implementation of their general obligations.

The Parties take specific action, collectively and individually, to implement the obligations arising under paragraphs (2) and (3). For example, transfer of technology may occur through the activities under the aegis of BCRCs, and the Parties develop technical guidelines on ESM.

There has been significant activity to implement paragraph (4), which encourages the cooperation between Parties and competent international organisations. For example with a view to improving cooperation and coordination between relevant entities with a specific mandate to deliver capacity-building activities and tools on preventing and combating illegal traffic, COP11 established the Environmental Network for Optimizing Regulatory Compliance on Illegal Traffic (“ENFORCE”).⁴¹ Other examples of cooperation between Parties include the **Partnership for Action on Computing Equipment (PACE)** and the **Mobile Phone Partnership Initiative (MPPI)**. For more information on these partnerships and the guidance developed under their auspices (Guidance Document on the Environmentally Sound Management of Used and End-of-Life Mobile Phones - adopted at COP 10, and Guidance Document on Environmentally Sound Management of Used and End-of-Life Computing Equipment - section 1,2,4 and 5 adopted at COP 11), reference is made to the information available on the Convention website.⁴²

⁴¹ See paragraph 1, section A, Terms of reference for ENFORCE. For information on international cooperation, see also: <http://www.basel.int/Default.aspx?tabid=3425>

⁴² <http://www.basel.int/Implementation/PartnershipProgramme/tabid/3235/Default.aspx>

ARTICLE 11: BILATERAL, MULTILATERAL AND REGIONAL AGREEMENTS

A. Text of article

1. *Notwithstanding the provisions of Article 4 paragraph 5, Parties may enter into bilateral, multilateral, or regional agreements or arrangements regarding transboundary movement of hazardous wastes or other wastes with Parties or non-Parties provided that such agreements or arrangements do not derogate from the environmentally sound management of hazardous wastes and other wastes as required by this Convention. These agreements or arrangements shall stipulate provisions which are not less environmentally sound than those provided for by this Convention in particular taking into account the interests of developing countries.*

2. *Parties shall notify the Secretariat of any bilateral, multilateral or regional agreements or arrangements referred to in paragraph 1 and those which they have entered into prior to the entry into force of this Convention for them, for the purpose of controlling transboundary movements of hazardous wastes and other wastes which take place entirely among the Parties to such agreements. The provisions of this Convention shall not affect transboundary movements which take place pursuant to such agreements provided that such agreements are compatible with the environmentally sound management of hazardous wastes and other wastes as required by this Convention.*

B. Are there special issues to be considered for implementation?

If a **State of export or import** wishes to export to, or import from a non-Party, trade is prima facie prohibited by Article 4(5). If the export or import is to take place it must be pursuant to an agreement or an arrangement that meets the requirements of Article 11 (“Article 11 agreements”).

C. Other information

There are two types of Article 11 agreements.

Under Article 11(1) there are agreements or arrangements entered into by Parties, after the Convention entered into force for them, **with Parties or non-Parties** provided:

(a) The agreements or arrangements do not derogate from ESM of hazardous wastes and other wastes as required by the Convention; and

(b) The agreements or arrangements stipulate provisions that are not less environmentally sound than those provided for by the Convention, taking into account the interests of developing Countries.

Under Article 11(2) there are agreements or arrangements entered into **by Convention Parties prior to the entry into force of the Convention** for them, provided:

(a) The agreements or arrangements are for the purpose of controlling transboundary movements of hazardous wastes and other wastes which take place entirely among the Parties to such agreements; and

(b) The agreements are compatible with ESM of hazardous wastes and other wastes as required by the Convention.

Parties must notify the Secretariat of bilateral, multilateral and regional arrangements and agreements that fall within the scope of Article 11.⁴³

D. Examples

Article 11(1): there is no Article 11 Agreement between Country A, a Convention Party, and Country B, a non-Party. E in Country A wishes to export hazardous waste to Country B for disposal. E approaches the authorities in Country A, who negotiate a bilateral agreement with Country B regarding transboundary movements of hazardous wastes between the two countries. The agreement contains no provisions relating to the environmentally sound management of waste. Immediately after the agreement is concluded, E exports the hazardous wastes to Country B. Countries A and B then notify the Secretariat of the bilateral agreement. The transboundary movement of waste was not consistent with the Convention, because at the time it took place the bilateral agreement was not notified to the Secretariat, and in any event the agreement derogated from the environmentally sound management of waste as required by the Convention.

Article 11(2): Country C, Country D and Country E are not Parties to the Convention. They enter into an agreement for controlling transboundary movements between them. The agreement contains detailed provisions on the environmentally sound management of wastes and other wastes; those provisions are more stringent than those in the Convention. Country C ratifies the Convention; after it enters into force for Country C, the Convention will not affect

⁴³ See <http://www.basel.int/Countries/Agreements/MultilateralAgreements/tabid/1518/Default.aspx> and <http://www.basel.int/Implementation/LegalMatters/Agreements/BilateralAgreements/tabid/1517/language/en-US/Default.aspx>

transboundary movements under the agreement, because it is compatible with the environmentally sound management of hazardous wastes and other wastes as required by the Convention.

ARTICLE 12: CONSULTATIONS ON LIABILITY

A. Text of article

The Parties shall co-operate with a view to adopting, as soon as practicable, a protocol setting out appropriate rules and procedures in the field of liability and compensation for damage resulting from the transboundary movement and disposal of hazardous wastes and other wastes.

B. Are there special issues to be considered for implementation?

This Article will not be implemented by domestic legislation.

C. Other information

Protocol setting out rules and procedures in the field of liability and compensation: In December 1999, the Basel Protocol on Liability and Compensation for Damage resulting from Transboundary Movements of Hazardous Wastes and their Disposal was adopted by the fifth meeting of the COP (COP 5). The Protocol has not yet entered into force at the time of drafting this manual.⁴⁴

ARTICLE 13: TRANSMISSION OF INFORMATION

A. Text of article

1. *The Parties shall, whenever it comes to their knowledge, ensure that, in the case of an accident occurring during the transboundary movement of hazardous wastes or other wastes or their disposal, which are likely to present risks to human health and the environment in other States, those States are immediately informed.*

2. *The Parties shall inform each other, through the Secretariat, of:*

- (a) *Changes regarding the designation of competent authorities and/or focal points, pursuant to Article 5;*
- (b) *Changes in their national definition of hazardous wastes, pursuant to Article 3; and, as soon as possible,*
- (c) *Decisions made by them not to consent totally or partially to the import of hazardous wastes or other wastes for disposal within the area under their national jurisdiction;*
- (d) *Decisions taken by them to limit or ban the export of hazardous wastes or other wastes;*
- (e) *Any other information required pursuant to paragraph 4 of this Article.*

3. *The Parties, consistent with national laws and regulations, shall transmit, through the Secretariat, to the Conference of the Parties established under Article 15, before the end of each calendar year, a report on the previous calendar year, containing the following information:*

- (a) *Competent authorities and focal points that have been designated by them pursuant to Article 5;*
- (b) *Information regarding transboundary movements of hazardous wastes or other wastes in which they have been involved, including:*
 - (i) *The amount of hazardous wastes and other wastes exported, their category, characteristics, destination, any transit country and disposal method as stated on the response to notification;*
 - (ii) *The amount of hazardous wastes and other wastes imported, their category, characteristics, origin, and disposal methods;*
 - (iii) *Disposals which did not proceed as intended;*
 - (iv) *Efforts to achieve a reduction of the amount of hazardous wastes or other wastes subject to transboundary movement;*
- (c) *Information on the measures adopted by them in implementation of this Convention;*

⁴⁴ For status of ratifications of the Protocol, see <http://www.basel.int/Countries/StatusofRatifications/TheProtocol/tabid/1345/Default.aspx>

- (d) Information on available qualified statistics which have been compiled by them on the effects on human health and the environment of the generation, transportation and disposal of hazardous wastes or other wastes;
- (e) Information concerning bilateral, multilateral and regional agreements and arrangements entered into pursuant to Article 11 of this Convention;
- (f) Information on accidents occurring during the transboundary movement and disposal of hazardous wastes and other wastes and on the measures undertaken to deal with them;
- (g) Information on disposal options operated within the area of their national jurisdiction;
- (h) Information on measures undertaken for development of technologies for the reduction and/or elimination of production of hazardous wastes and other wastes; and
- (i) Such other matters as the Conference of the Parties shall deem relevant.

4. The Parties, consistent with national laws and regulations, shall ensure that copies of each notification concerning any given transboundary movement of hazardous wastes or other wastes, and the response to it, are sent to the Secretariat when a Party considers that its environment may be affected by that transboundary movement has requested that this should be done.

B. Are there special issues to be considered for implementation?

This Article is unlikely to be directly implemented by domestic legislation, as the submission of information is an administrative act. However, the legislation may need to provide for the legal authority for national authorities to collect, or stakeholders to provide, information that must be reported by the Party under Article 13 (3).

In some circumstances, the transmission of information, or the failure to transmit information, may have legal effect. So, for example, Parties are obliged to respect prohibitions on the import of waste under Article 4 provided that the prohibiting Party has notified the prohibition under this Article.

C. Other information

Article 13(3) sets out **reporting obligations for the Parties**. There are a number of tools available to help Parties to implement these obligations. Information on the procedure for transmitting National Reports is on the Convention website.⁴⁵ A new Electronic Reporting System⁴⁶ has been developed and has been used by Parties from November 2013 to submit annual national reports.

Data and information transmitted by Parties pursuant to Article 13(3) of the Convention is on the Convention website.⁴⁷

In order to make it easier for Parties to transmit their reports, decision VI/27 adopted a revised questionnaire on transmission of information (UNEP/CHW.6/29) and a manual providing guidance to Parties on how to complete the questionnaire.⁴⁸ Part I of the questionnaire seek to collect information of a legal and institutional nature while Part II seeks the collection of data. [Further work is ongoing on the reporting format to facilitate and support Parties in their efforts, which may lead to the adoption of a revised format by COP-12⁴⁹]

Further guidance on how to complete the questionnaire was developed by the ICC and is available on the website.⁵⁰

- (a) “Benchmark report” to show what a good Article 13(3) report would look like;
- (b) Guidance document on improving national reporting;
- (c) [Guidance on the development of inventories].

ARTICLE 14: FINANCIAL ASPECTS

A. Text of article

1. The Parties agree that, according to the specific needs of different regions and subregions, regional or sub-regional centres for training and technology transfers regarding the management of hazardous wastes and other

⁴⁵ At <http://www.basel.int/Procedures/NationalReporting/tabid/1332/Default.aspx>

⁴⁶ <http://www.basel.int/Countries/NationalReporting/ElectronicReportingSystem/tabid/3356/Default.aspx>

⁴⁷ <http://www.basel.int/Countries/NationalReporting/ReportingDatabase/tabid/1494/Default.aspx>

⁴⁸ At <http://www.basel.int/Countries/NationalReporting/Guidance/tabid/1498/Default.aspx>

⁴⁹ See commentary on Article 2.

⁵⁰ <http://www.basel.int/Countries/NationalReporting/Guidance/tabid/1498/Default.aspx>

wastes and the minimization of their generation should be established. The Parties shall decide on the establishment of appropriate funding mechanisms of a voluntary nature.

2. The Parties shall consider the establishment of a revolving fund to assist on an interim basis in case of emergency situations to minimize damage from accidents arising from transboundary movements of hazardous wastes and other wastes or during the disposal of those wastes.

B. Are there special issues to be considered for implementation?

There are no obligations here that are required to be directly implemented in Parties' national legislation.

C. Other information

Regional or sub-regional centres for training and technology transfers regarding the management of hazardous wastes and other wastes: there is a network of fourteen Regional and Coordinating Centres for Capacity Building and Technology Transfer (BCRCs).⁵¹ They deliver training, dissemination of information, consulting, awareness raising activities and technology transfer on matters relevant to the implementation of the Basel Convention and to ESM. They will be able to provide some support and training to officials involved in the implementation of the Convention.⁵²

Appropriate funding mechanisms of a voluntary nature; there are two funding mechanisms under the Convention. One of them – the Technical Cooperation Trust Fund was established to assist developing countries and other countries in need of technical assistance in the implementation of the Convention.

⁵¹ Argentina, China, Egypt, El Salvador, Indonesia, Islamic Republic of Iran, Nigeria, Russian Federation, Senegal, Slovak Republic, South Pacific Regional Environment Programme (Samoa), South Africa, Trinidad and Tobago, and Uruguay. See <http://www.basel.int/Partners/RegionalCentres/DirectorsContactPersons/tabid/1558/Default.aspx>

⁵² At <http://www.basel.int/Partners/RegionalCentres/Overview/tabid/2334/Default.aspx>

Annex I

The legislator's checklist

This checklist, which should be used in conjunction with the Manual for the Implementation of the Basel Convention, focuses on the Basel Convention provisions that require legislative implementation unless otherwise noted. It is designed to:

(a) **Help Parties to deliver full legislative implementation** of the Basel Convention, by separating out and listing each obligation that must, or should, be implemented by legislation (laws or regulations); and

(b) **Ensure consistency in implementation**, which is an important objective for a global treaty establishing a transboundary regime that depends on Parties' legislation dovetailing to create a coherent and functioning international system to control transboundary movement of hazardous wastes.

[text to be inserted explaining how the legislator could use the table and tease out the distinction between how a legislator in a monist vs. dualist legal system could use this tool]

When transposing the prior informed consent provisions of the Convention into implementing legislation it may be appropriate to make separate provision for transboundary movements when the implementing Party is the State of import, State of export or State of transit.

The checklist is in tabular form. Each line of the table will contain:

- (a) A reference to a provision in the Convention;
- (b) A checkbox; and
- (c) A description of the obligation that is contained in the provision that must, or should, be implemented by legislation.

Article 1 Scope of the Convention	
1 (a)	<input type="checkbox"/> Define "hazardous wastes".
1(b)	<input type="checkbox"/> Decide on whether to include in national legislation provisions that would define or consider wastes not covered under (1)(a) as hazardous wastes; if so decided, implement the decision in national legislation (NB: see also article 3.1).
2	<input type="checkbox"/> Define "other wastes".
3	<input type="checkbox"/> Exclude radioactive wastes that are excluded from the Convention.
4	<input type="checkbox"/> Exclude wastes derived from the normal operations of a ship which are excluded from the Convention.
Article 2 Definitions	

1	<input type="checkbox"/> Define "Wastes".
1	<input type="checkbox"/> Decide on whether to introduce provisions of national law that require substances or objects to be disposed of; if so decided, implement the decision in national legislation.
2	<input type="checkbox"/> Define "Management".
3	<input type="checkbox"/> Define "Transboundary movement".
4	<input type="checkbox"/> Define "Disposal".
5	<input type="checkbox"/> Define "Approved site or facility".
6	<input type="checkbox"/> Define "Competent authority" and establish mechanism for designation of one or more competent authority/ies. The establishment of the mechanism could be implemented administratively.
7	<input type="checkbox"/> Define "Focal point" and establish mechanism for designation of focal point. The establishment of the mechanism could be implemented administratively.
8	<input type="checkbox"/> Define "Environmentally sound management of hazardous wastes or other wastes".
8	<input type="checkbox"/> Decide on whether to establish a comprehensive legal framework relating to ESM, as recommended in the ESM framework; if so, implement decision in national legislation.
9	Define "Area under the national jurisdiction of a State".
10	<input type="checkbox"/> Define "State of export".
11	<input type="checkbox"/> Define "State of import".
12	<input type="checkbox"/> Define "State of transit".
13	<input type="checkbox"/> Define "States concerned".
14	<input type="checkbox"/> Define "Person".

15	<input type="checkbox"/> Define "Exporter".
16	<input type="checkbox"/> Define "Importer".
17	<input type="checkbox"/> Define "Carrier".
18	<input type="checkbox"/> Define "Generator".
19	<input type="checkbox"/> Define "Disposer".
21	<input type="checkbox"/> Define "Illegal traffic".
Article 3 National definition of Hazardous wastes	
1	<input type="checkbox"/> Decide on whether to include in national legislation provisions that would define or consider wastes not covered under (1)(a) as hazardous wastes and of any requirements concerning transboundary movement procedures applicable to such wastes; if so decided, implement the decision in national legislation (Note: see also Article 1.1 (b)) .
2	<input type="checkbox"/> Make provision for the obligation to inform the Secretariat of any significant changes to the information provided under Article 3.1. This could be implemented administratively.
4	<input type="checkbox"/> Make provision for the obligation to inform exporters of any information transmitted under Article 3.3 This could be implemented administratively.
Article 4 General Obligations	
1(a)	<input type="checkbox"/> Decide on whether to prohibit the import of hazardous wastes and other wastes for disposal; if so, implement decision in national legislation.
1(b)	<input type="checkbox"/> Implement obligation to prohibit or not permit the export of hazardous wastes to Parties which have prohibited the import of such wastes; consider implementing this in conjunction with the introduction of the PIC regime provided for in Article 6.

(c)	<input type="checkbox"/> Implement obligation to prohibit or not permit the export of hazardous wastes if the State of import does not consent in writing to the specific import; consider implementing this in conjunction with the introduction of the PIC regime provided for in Article 6.
2(a)	<input type="checkbox"/> Implement obligation relating to reducing generation of hazardous wastes to a minimum. This could be implemented administratively.
(b)	<input type="checkbox"/> Implement obligation relating to the availability of adequate disposal facilities. This could be implemented administratively.
(c)	<input type="checkbox"/> Implement obligation relating to persons involved in the management of hazardous wastes.
(d)	<input type="checkbox"/> Implement obligations concerning minimisation of movement of hazardous waste and protection of human health and the environment. This could be implemented administratively.
(e) to (g)	<input type="checkbox"/> Implement these obligations in conjunction with Article 6.
5	<input type="checkbox"/> Prohibit export to a non-Party and import from a non-Party of hazardous waste (subject to Article 4(11)).
6	<input type="checkbox"/> Prohibit, or do not allow, the export of hazardous wastes for disposal within the area south of 60° South latitude.
7	<input type="checkbox"/> Implement in conjunction with Article 6.
8	<input type="checkbox"/> Implement in conjunction with Article 6.
9	<input type="checkbox"/> Implement in conjunction with Article 6.
11	<input type="checkbox"/> Make policy decision on whether to include additional requirements; if so, do they need legislation?

<p>Article 5 Designation of Competent Authorities and Focal Point</p>	<p><input type="checkbox"/> Put in place a mechanism to designate one or more competent authorities and a focal point.</p> <p><input type="checkbox"/> Include provision for changes to the designations and notification of the designation to the Secretariat. This could be done administratively.</p>
<p>Article 6 Transboundary Movement between Parties</p>	<p><input type="checkbox"/> Consider separate provision to implement Article 6 depending on whether the implementing Party is a State of export, State of import and State of transit.</p>
<p>1</p>	<p><input type="checkbox"/> Provide for notification from State of export or generator or exporter of any proposed transboundary movement of hazardous wastes.</p>
<p>2</p>	<p><input type="checkbox"/> Provide for State of import's response to notification.</p>
<p>3</p>	<p><input type="checkbox"/> Provide that state of export is not to allow movement to commence until it has the written consent of the State of import; and received confirmation of the existence of an ESM contract.</p>
<p>4</p>	<p><input type="checkbox"/> Provide for Party State of transit to acknowledge notification and, where appropriate, to consent.</p>
<p>5</p>	<p><input type="checkbox"/> Make special arrangements where wastes are legally defined as or considered to be hazardous wastes only in one State concerned.</p>
<p>6 – 8</p>	<p><input type="checkbox"/> Provide for general notification procedure.</p>
<p>9</p>	<p><input type="checkbox"/> Provide for movement document to accompany wastes and for disposer to inform exporter and competent authority of State of export on completion of disposal.</p>
<p>10</p>	<p><input type="checkbox"/> Require transmission of notification of response required by the Article to be transmitted to competent authority of the Parties concerned, etc.</p>
<p>11</p>	<p><input type="checkbox"/> Consider establishing an obligation on the generator, exporter, importer, disposer and/or carrier to have insurance, bond or other form of guarantee; and if so, require transboundary movement to be covered by insurance, bond or other guarantee.</p>

<p>Article 7 Transboundary Movement from a Party through States which are not Parties</p>	<p><input type="checkbox"/> Make provision for the obligation to notify a State of transit that is not a Party of a proposed transboundary movement of hazardous wastes or other wastes (Note: see Article 6.1).</p>
<p>Article 8 Duty to Re-import</p>	<p><input type="checkbox"/> Give necessary powers when implementing state is State of export, to ensure that the wastes in question are taken back by the exporter.</p>
<p>Article 9 Illegal Traffic</p>	
<p>1</p>	<p><input type="checkbox"/> Define “illegal traffic”.</p>
<p>2</p>	<p><input type="checkbox"/> Give necessary powers, when implementing state is State of export, to ensure transboundary movement of hazardous wastes deemed to be illegal traffic is taken back by the exporter or the generator, or by itself.</p>
<p>3</p>	<p><input type="checkbox"/> Give necessary powers, when implementing state is State of import, to ensure transboundary movement of hazardous wastes deemed to be illegal traffic are disposed of in an environmentally sound manner by the importer or disposer.</p>
<p>5</p>	<p><input type="checkbox"/> Introduce appropriate national/domestic legislation to prevent and punish illegal traffic, bearing in mind Article 4(3).</p>
<p>Article 11 Bilateral, Multilateral and Regional Agreements</p>	<p><input type="checkbox"/> Provide for derogation from the prohibition in Article 4(5) where there is a relevant bilateral, multilateral or regional agreement that satisfies the requirements of paragraph (1) or (2).</p>
<p>Article 13 Transmission of information</p>	<p><input type="checkbox"/> Provide for an obligation for authorities or stakeholders to collect and share information that must be reported/notified to the Secretariat.</p>

Annex II

List of technical guidelines on identification of wastes and with respect to categories of waste generally

Guidance paper on hazardous characteristic H6.2 (Infectious substances)

Work on hazard characteristics – Approach to Basel Convention hazard characteristic H11: characterization of chronic or delayed toxicity

Interim guidelines on the hazardous characteristic H12-Ecotoxic

Interim guidelines on hazard characteristic H13 of Annex III to the Basel Convention

Basel Convention Technical Guidelines on Hazardous Waste from the Production and use of Organic Solvents (Y6)

Basel Convention Technical Guidelines on Waste Oils from Petroleum Origins and Sources (Y8)

Technical Guidelines on Wastes Collected from Households (Y46)

Basel Convention Technical Guidelines on the Identification and Management of Used Tyres

Basel Convention Technical Guidelines on Incineration on Land (D10)

Basel Convention Technical Guidelines on Used Oil Re-Refining or Other Re-Uses of Previously Used Oil (R9)

Basel Convention Technical Guidelines on Hazardous Waste Physico-Chemical Treatment (D9) / Biological Treatment (D8)

Annex III

List of technical guidelines on environmentally sound management

- The Framework Document 1994 on the preparation of technical guidelines for the environmentally sound management of wastes subject to the Basel Convention
- Revised technical guidelines for the environmentally sound management of used and waste pneumatic tyres
- Technical guidelines on the environmentally sound co-processing of hazardous wastes in cement kilns
- Technical guidelines for the environmentally sound management of wastes consisting of elemental mercury and wastes containing or contaminated with mercury
- Technical guidelines on the environmentally sound co-processing of hazardous wastes in cement kilns (adopted at COP10)
- Technical guidelines for the environmentally sound management of wastes consisting of elemental mercury and wastes containing or contaminated with mercury (adopted at COP10)
- Technical guidelines for the environmentally sound management of used and waste pneumatic tyres (adopted at COP10)
- Updated general technical guidelines for the environmentally sound management of wastes consisting of, containing or contaminated with persistent organic pollutants (POPs).
- Technical guidelines for the environmentally sound management of wastes consisting of, containing or contaminated with polychlorinated biphenyls (PCBs), polychlorinated terphenyls (PCTs) or polybrominated biphenyls (PBBs).
- Technical guidelines for the environmentally sound management of wastes consisting of, containing or contaminated with 1,1,1 trichloro 2,2 bis (4 chlorophenyl)ethane (DDT)
- Technical guidelines on the environmentally sound management of wastes containing or contaminated with unintentionally produced PCDDs, PCDFs, HCB or PCBs
- Technical guidelines on the environmentally sound management of wastes consisting of, containing or contaminated with the pesticides aldrin, chlordane, dieldrin, endrin, heptachlor, HCB, mirex or toxaphene or with HCB as an industrial chemical
- Technical guidelines for the identification and environmentally sound management of plastic wastes and for their disposal
- Technical guidelines for the environmentally sound management of the full and partial dismantling of ships
- Technical Guidelines for the Environmentally Sound Management of Waste Lead-acid Batteries
- Technical Guidelines on the Environmentally Sound Management of Biomedical and Healthcare Wastes (Y1; Y3)
- Technical guidelines on the environmentally sound recycling/reclamation of metals and metal compounds (R4)