



**Interim Guidelines for the
implementation of decision V/32
on «Enlargement of the scope
of the technical cooperation trust fund»**



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PART 1

EMERGENCY ASSISTANCE

I. WHO CAN APPLY FOR EMERGENCY ASSISTANCE

Only States which are developing countries or a country with economy in transition and Party to the Basel Convention may request emergency assistance.

The list used for determining which countries are developing countries and countries with economies in transition will be taken from the Organization for Economic Cooperation and Development (OECD).

II. LEGAL FRAMEWORK

Introduction

The Enlarged Technical Cooperation Trust Fund operates within the framework of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, as well as of the recently adopted Basel Protocol on Liability and Compensation for Damage resulting from Transboundary Movements of Hazardous Wastes and their Disposal.

Decision V/32 makes reference in its preamble to the adoption of the Protocol on Liability and Compensation. Therefore, the present Guidelines were prepared following the definitions (e.g. for damage, preventive measures), the scope of application and other relevant rules of the Protocol. These Interim Guidelines do not consider legal questions in detail. These questions vary according to the type of request submitted and the circumstances of the incident. The statements in the Guidelines are therefore without prejudice to the position of the secretariat of the Basel Convention or of contributors concerning individual requests. The Guidelines should not be seen as an interpretation of decision V/32, the Basel Protocol or the Basel Convention.

Enlargement of the Scope of the Technical Cooperation Trust Fund

According to decision V/32, entitled "Enlargement of the Scope of the Technical Cooperation Trust Fund", the secretariat of the Basel Convention may, upon request, assist a Party to the Convention which is a developing country or a country with economy in transition in case of an incident occurring during a transboundary movement of hazardous wastes and other wastes and their disposal, including illegal traffic as defined in the Convention.

Furthermore, paragraph 8 of decision V/32 urges Parties to provide contributions to the Technical Cooperation Trust Fund to support emergency assistance. A contributor may specify that its contribution be used for specific purposes.

Transboundary movement

"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.

The Guidelines are applicable for a transboundary movement from the point where the wastes are loaded on the means of transport in an area under the national jurisdiction of a State of export.

However, according to Article 3.1 of the Protocol, a State of export may, by way of a notification to the Depository, decide that the starting point is the point at which the shipment leaves the territory or territorial sea of that State of export.

The end of the scope is the point of disposal in the State of import, which will depend on the type of disposal operation, as outlined below.

Disposal

"Disposal" means any operation specified in Annex IV to the Basel Convention.

The Guidelines shall apply:

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

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

Geographical Scope

The Guidelines apply to emergency measures, which are to be taken to prevent or mitigate damage in an area under the national jurisdiction of a Party to the Convention.

The Guidelines also apply to emergency measures to prevent or mitigate loss of life, personal injury and damage to property in areas beyond national jurisdiction.

Hazardous wastes and other wastes

These Interim Guidelines apply to emergency assistance which can be given in case of incidents involving hazardous wastes and other wastes within the meaning of Article 1 of the Basel Convention.

Incidents and illegal traffic

Emergency measures can be taken in the case of an incident occurring during a transboundary movement of hazardous wastes and other wastes and their disposal, including illegal traffic in those wastes.

"Incident" defined by Article 2, paragraph 2(h) of the Protocol is any occurrence, or series of occurrences having the same origin, that causes damage or creates a grave and imminent threat of causing damage.

"Illegal traffic" means any transboundary movement of hazardous wastes or other wastes as specified in Article 9, paragraph 1 of the Basel Convention.

Damage

The secretariat can only respond to a request for emergency assistance in order to prevent or mitigate the following damage defined by the Basel Protocol:

Loss of life or personal injury

Loss of or damage to property other than property held by the person liable in accordance with the Basel Protocol;

Loss of income directly deriving from an economic interest in any use of the environment, incurred as a result of impairment of the environment and;

The cost of preventive measures, including any loss or damage caused by such damage to the extent that damage arises out of or results from hazardous properties of the wastes involved in the transboundary movement and disposal of hazardous wastes and other wastes.

III. APPLYING FOR EMERGENCY ASSISTANCE

Role of the secretariat of the Basel Convention

The secretariat of the Basel Convention will advise on the preparation and submission of requests for emergency assistance. Applicants may also consult the secretariat on all related matters, such as the taking of preventive measures or engaging of experts for purposes of assessment.

To whom should the request be addressed

Using the form drawn up by the secretariat, requests should be submitted to the Executive Secretary of the secretariat of the Basel Convention:

UNEP – Secretariat of the Basel, Rotterdam and Stockholm Conventions

15, chemin des Anémones

1219 Châtelaine (Geneva), Switzerland

Tel: +41 22 917 82 12

Fax: +41 22 797 34 54

E-Mail: brs-mail@brsmeas.org

Web: www.basel.int

In extremely urgent cases, the Duty System of the Office for the Coordination of Humanitarian Affairs can be utilized 24 hours, 365 days a year:

Joint UNEP/OCHA Environment Unit
Emergency Services Branch
Office for the Coordination of Humanitarian Affairs
Palais des Nations
CH 1211 Geneva 10
Switzerland
Tel: +41 22 917 2010 (OCHA Duty Officer, available 24/7)
Fax: +41 22 917 0023
E-Mail: ochaunep@un.org
Web: www.unocha.org/unesp
www.eecentre.org

How should the request be presented?

The request for emergency assistance should be submitted in written form (electronic mail, letter, fax). It can be submitted by using the Standard form for request for emergency assistance adopted by the Conference of the Parties at its ninth meeting. (attached).

The Standard form is available in all six official United Nations languages on the website of the Basel Convention at

<http://www.basel.int>

Which information should the request contain?

Each request should contain the following basic information, if known by the requesting authority:

Name, address and bank details of requesting authority;

Date, place and specific details of the incident;

Description of hazardous wastes or other wastes involved (name, origin, physical form, major constituents, typical contaminants, volume/quantity, waste code);

Name of States involved in the transboundary movement (e.g. country of origin, transit or destination);

Name and address of persons involved in the transboundary movement (e.g. exporter, importer, notifier, carrier, disposer) and of insurance, if any;

Measures which have been taken in response to the incident, including the request for assistance from other countries involved in the incident;

Type and extent of damage that occurred or is likely to occur; (e.g. dilution factors, dispersion problems, rate of spread, etc.);

Preventive measures that are necessary in order to prevent or mitigate damage;

What kind of emergency assistance is required.

IV. IMPLEMENTATION OF EMERGENCY ASSISTANCE

General provisions

- The Party which requests emergency assistance will first try to solve the problems with its own means;
- If there is a national system for emergency assistance in response to incidents, measures under the national system will first be taken. If these measures are not sufficient the request for assistance may be made;
- If the citizens or companies of the Party to the Convention in which the incident happened have been responsible for causing the incident, the Party should take actions to compel these persons or companies to participate in the prevention of the damage or its mitigation. If this is not possible, the Party should take the required actions itself, and later take legal action to recuperate the funds received from the Technical Cooperation Trust Fund. Parties can assign their rights to legal action to the secretariat to recover the money paid out by the Trust Fund;
- The amount received in such legal action should serve to reimburse the Technical Cooperation Trust Fund for the amount taken from the Fund to provide assistance.

Procedure

- (i) Requests submitted to the secretariat (i) are dealt with promptly. On the basis of the present Interim Guidelines, the Executive Secretary in consultation with the Bureau, using a quick procedure, may

provide assistance to a Party to the Convention from the Technical Cooperation Trust Fund.

- (ii) The Executive Secretary will also consult with contributors, especially in cases where contributions to the Trust Fund are earmarked with conditions.
- (iii) Upon receiving a request for emergency assistance, the secretariat shall consult with experts, through the national focal point, in order to clarify the urgency, the imminence of the threat or the type of measures necessary to be taken for that specific incident.
- (iv) All decisions taken should be reported to the Bureau, Working Groups and to the next meeting of the Conference of the Parties.

Task Force

All activities of emergency assistance shall be coordinated by the Executive Secretary. Whenever necessary, the Executive Secretary shall establish a task force for her support, which will handle all required tasks of emergency assistance.

Policy of attribution of emergency assistance

Each request shall be considered on the basis of its own merits, in light of the particular circumstances of the case.

In order to promote transparency, accountability and consistency, the secretariat will ensure that the general criteria in these Interim Guidelines are followed when assessing requests for emergency assistance.

General criteria

The following general criteria apply to all requests:

- An incident falling within the scope of these Guidelines must have occurred;
- There must be a grave and imminent threat that (further) damage will be caused by the incident;
- Any request must relate to measures which are deemed urgent, necessary, reasonable and justifiable as jointly agreed by the affected Party and by the secretariat.

- The request is admissible only if and to the extent the damage arises out of or results from hazardous properties of the hazardous wastes and other wastes involved in the incident;
- The developing country or country with economy in transition requires assistance in order to be capable of effectively preventing or mitigating the damage.

What kind of emergency assistance can be provided?

According to decision V/32, the secretariat may assist a Party which has suffered an incident:

- To estimate the magnitude of damage that has occurred or damage that may occur and the measures needed to mitigate and prevent (further) damage (hereinafter referred to as "rapid assessment");
- To take appropriate emergency measures to prevent or mitigate the damage (hereinafter referred to as "emergency measures");
- To help find those Parties and other entities in a position to give the assistance needed (hereinafter referred to as "broker activities").

In doing so, the secretariat will, among other things,

- Liaise with the government of the affected Party and provide the Bureau with an assessment of the situation on the ground;
- Serve as a focal point for coordination of activities and dissemination of information; and
- Provide logistical support, upon approval by the Bureau, for the delivery of assistance.

The secretariat will also serve as the point of contact with local authorities, media, donor countries and agencies and other organizations present in the field (e.g. Office of the United Nations High Commissioner for Refugees (UNHCR), United Nations Office for the Coordination of Humanitarian Affairs (OCHA), Pan American Health Organization (PAHO)) and provide regular updates on the evolving situation.

Rapid assessment

In the case of an incident, the secretariat shall, within the capacity and the means available to it, assist a Party to assess the damage and the necessity

and urgency of emergency measures if so required. The assessment can be done by national experts, consultants or staff of an international organization, who are appointed by the Executive Secretary.

Which information shall the rapid assessment provide?

In order to provide a sound basis for decision on further action, the report of the rapid assessment of the incident will respond to the following questions:

- Details of incident and estimation of the magnitude of the damage that has occurred;
- The gravity of (further) damage that may occur, and degree of imminence and threat that such damage may occur;
- Detailed recommendations as to measures needed to prevent or mitigate damage, and reasonable costs of such measures;
- Those capacities lacking in the requesting country to allow it to respond to the incident.

Emergency measures

According to decision V/32, the secretariat may assist a Party that has suffered an incident to take appropriate "measures to prevent or mitigate damage". Article 2 paragraph 2 (e) of the Protocol contains a definition of "preventive measures", meaning any reasonable measures taken by any person in response to an incident, to prevent, minimize, or mitigate loss or damage, or to effect environmental clean-up.

To be distinguished from the preventive measures in the context of the Protocol are the "measures of reinstatement", which aim at reinstating or restoring damaged or destroyed parts of the environment. Measures of reinstatement do not fall within the scope of emergency measures.

When deciding upon the taking of emergency measures, the Executive Secretary shall take particularly into account:

- The gravity of damage that may occur;
- The degree of imminence and threat that such damage may occur;
- The nature and cost of urgent and necessary reasonable measures;

- Which assistance is required by the requesting country;
- Availability of bilateral assistance;
- Availability of funds; and
- Conditions imposed by donors.

Broker activities

According to decision V/32, the secretariat shall help find those Parties and other entities in a position to give the assistance needed. The secretariat will act as a broker between the country that is the victim of an incident and potential donors (financial or in-kind). Furthermore, the secretariat shall maintain a list of and establish contact with entities, such as other international organizations involved in the field of emergency response, research institutions, private companies, non-governmental organizations or public institutions, with expertise in the relevant fields of emergency response.

The secretariat should encourage and facilitate, where appropriate, bilateral or multilateral assistance arrangements among and between Parties. A first attempt will be made to broker bilateral assistance, whenever that assistance will be possible or appropriate.

Service provided by UNEP/OCHA

The mandate of UNEP/OCHA is to improve the international response to environmental emergencies by serving as a clearing-house for information and a switchboard for disaster notification, and alerting and acting as a broker between affected and donor countries.

The secretariat should use the services provided by the Joint UNEP/OCHA Environment Unit in offering its emergency assistance. These services could include rapid assessment through international experts, the implementation of emergency measures, and the broker function between the affected country and donor countries that are ready and willing to assist.

The secretariat will seek the support of the Joint UNEP/OCHA Environment Unit in particular through its global network of National Focal Points, consisting of governmental organizations responsible for environmental

emergencies at the national level, and its other partners worldwide, for the provision of emergency assistance.

The secretariat will invite the Joint UNEP/OCHA Environment Unit to cooperate in the preparation of framework contracts with interested national experts in order to create a "stand-by situation", ensuring the immediate operability of an expert in an emergency situation without bureaucratic delay.

These stand-by contracts will be consultancy contracts prepared in advance for the stand-by period (e.g. for one/two year(s)). The framework contracts will be at no cost to the organization during the stand-by period, if no actual operation is undertaken.

Experts shall be selected according to expertise, language and geographical criteria. The experts shall be selected by the Executive Secretary of the secretariat of the Basel Convention and nominated to the UNEP/OCHA Joint Environment Unit.

A Memorandum of Understanding has been signed between the secretariat of the Basel Convention and the UNEP/OCHA Environmental Unit, identifying the areas and the methodology for cooperation.

Transparency and accountability

The secretariat will submit periodic reports on its decisions related to emergency assistance to the Bureau for its review. The reports shall contain all factual and financial information (accounting) required to give a clear picture of the requests for assistance considered and approved. A consolidated report will be submitted to the meetings of the Conference of the Parties.

V. FINANCIAL RULES

Earmarking of contributions

Contributions made for emergency assistance to the Technical Cooperation Trust Fund shall be used within the terms of paragraph 2 of decision V/32. These contributions to the Technical Cooperation Trust Fund can be earmarked for general emergency assistance or may be earmarked for concrete activities. Whenever contributions are earmarked for specific

activities, they will be used accordingly. In the event of an emergency, contributions earmarked for emergency assistance would be used first, followed by contributions which have not been earmarked.

Relevant rules

The contribution to and the attribution of expenditures from the Technical Cooperation Trust Fund for emergency assistance are subject to the financial regulations of the United Nations Environment Programme.

The operation of emergency assistance under the Trust Fund is governed by the Terms of Reference for the Administration of the Trust Fund for the Basel Convention, as laid down in Annex II to decision I/7 of the first meeting of the Conference of the Parties to the Basel Convention.

Payments

Payments from the Technical Cooperation Trust Fund for emergency assistance are discretionary and subject to the availability of resources and will be made by the Executive Secretary in consultation with the Bureau, using a quick procedure. If the total amount of requests exceeds the total amount of emergency assistance available in the Fund, the Executive Secretary shall decide on which requests should be given priority, based on the present criteria and guidelines, and inform the Bureau if demands exceed available funding. The assistance provided to each requesting authority may be reduced proportionately or as deemed necessary.

Developing countries or countries with economies in transition which have ratified the Basel Protocol on Liability and Compensation or are in an advanced stage of the process of ratification will have priority in receiving assistance.

In-kind contributions may also be made (for example, for provision of experts or equipment).

With respect to each incident, the Executive Secretary should not use more than 30 per cent of the amount of funds available in the Fund at any given time. The Fund should also have a reserve of 30 per cent for the next possible case and 10 per cent should never be used, except with express approval of the Bureau. These limits can be waived by the Bureau in

exceptional circumstances. These limits shall also not apply to earmarked contributions.

Possible recourse action

The policy of the secretariat shall be to take recourse action whenever appropriate and the Executive Secretary should in each case consider whether it would be possible to recover any amounts paid by it for emergency assistance. The decision whether or not to take such action should be made on a case by case basis, in the light of the prospect of success within the legal system in question. The Executive Secretary should in each case cooperate with the Party which requested assistance, in order to recover the amounts paid by it for emergency assistance.

The entry into force of the Basel Protocol on Liability and Compensation will be a significant step in facilitating recourse action. There will be no funding available if the recovery for emergency action is obtained under the Protocol. The secretariat shall seek cooperation with major international insurance companies in order to explore ways of recovery of amounts paid, as well as the possibility of advance or interim payments by the insurance.

Each Party which receives financial assistance will be required to take appropriate actions to sue the liable company or persons for the recovery of the funds spent from the Fund, where this is possible under the relevant national law. Other Parties will be requested to offer, in accordance with their respective legal regime, any assistance necessary to overcome procedural barriers to suing in another jurisdiction. The secretariat will also render assistance in this regard.

A recipient Party may assign its right to a legal action to the secretariat or to another Party to recover the money utilized from the Trust Fund.

The amount recovered in such legal action should serve to reimburse the Technical Cooperation Trust Fund for the amount taken from the Fund to provide assistance.

Transparency and accountability

The secretariat will submit periodical reports on its decisions related to payment for compensation to the Bureau for its review. The reports shall contain all factual and financial information (accounting) required to give

a clear picture of the projects considered. A consolidated report will be submitted to the meetings of the Conference of the Parties.

VI. CONTINGENCY/EMERGENCY PLANS

Each Party should have, or should develop and implement, a participatory contingency or emergency plan.

Parties that have prepared operating procedures for response to disasters (natural or man-made) or emergency plans should provide copies to the secretariat so that it is apprised of the procedure to follow in those countries.

The emergency assistance will not be denied for non-existence of such contingency or emergency plans, but the development of such plans should be encouraged and the secretariat could be requested to offer assistance in the development of these plans.

Prevention should be the policy of both the Parties and the secretariat.

PART 2

COMPENSATION FOR DAMAGE TO AND REINSTATEMENT OF THE ENVIRONMENT

I. WHO CAN APPLY FOR COMPENSATION FOR DAMAGE AND REINSTATEMENT

Compensation can be provided upon request of a Contracting Party to the Protocol, which is a developing country or a country with economy in transition. The secretariat will use the lists produced by the OECD Development Assistance Committee to determine whether a country is a developing country or a country with an economy in transition (Annex I - DAC List of Aid Recipients).

Private persons, institutions or companies may be compensated if so requested by a developing country or a country with economy in transition concerned. A private person, institution or company shall apply for compensation for damage to and reinstatement of the environment with the Competent Authority of the developing country or the country with economy in transition, where the damage was incurred. If considered adequate by the Competent Authority concerned, it shall submit the request to the secretariat. Competent Authorities shall establish procedures for application from private persons, institutions or companies, which shall be reported to the secretariat.

Where there is more than one claimant with respect to a single incident, the relevant Contracting Party is encouraged to collate the individual claims and transmit them to the secretariat. If one or more of the requests for compensation are granted, upon receipt of the funds from the secretariat the relevant Party shall be responsible for transmitting payment to the individual claimant or claimants.

II. LEGAL FRAMEWORK

Introduction

The Guidelines should not be seen as an interpretation of decision V/32, the Basel Convention or Protocol but rather, as an interim measure until a review of the Guidelines by the Conference of the Parties can be made.

The Enlarged Technical Cooperation Trust Fund operates within the framework of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal as well as of the Basel Protocol on Liability and Compensation for Damage resulting from Transboundary Movements of Hazardous Wastes and their Disposal. Therefore, the Guidelines Part 2 follow the provisions of the Basel Convention and of its Protocol.

Operation with entry into force of Protocol

Part 2 of the Guidelines, relating to compensation for damage to and reinstatement of the environment, will become operational on the date the Protocol enters into force. Article 29 of the Protocol provides for entry into force 90 days after the date of deposit of the twentieth instrument of ratification, acceptance, formal confirmation, approval or accession.

Compensation under the Protocol on Liability and Compensation

Under Article 4 of the Protocol on Liability and Compensation, the notifier (exporter or importer) or disposer has strict liability for damage due to an incident occurring during a transboundary movement of hazardous wastes and their disposal, including illegal traffic.

Financial limits to liability under Article 4 of the Protocol are in accordance with Article 12 and Annex B of the Protocol. There is no financial limit where damage was caused or contributed by the liable person's lack of compliance with the provisions implementing the Convention or by his wrongful intentional, reckless or negligent acts or omissions (Article 5 of the Protocol).

The person liable under Article 4 of the Protocol shall establish and maintain during the period of the time limit of liability, insurance, bonds or other financial guarantees covering their liability under Article 4 of the Protocol

for amounts not less than the minimum limits specified in paragraph 2 of Annex B of the Protocol and not more than the maximum limits stipulated under the relevant national law.

Compensation under the Enlarged Technical Cooperation Trust Fund

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

Compensation under the Protocol may be considered inadequate, e.g., in the following situations:

- The notifier (exporter or importer) or disposer is exempt from liability under Article 4.5 of the Protocol[1], because the damage was:
 - (a) The result of an act of armed conflict, hostilities, civil war or insurrection;
 - (b) The result of a natural phenomenon of exceptional, inevitable, unforeseeable and irresistible character;
 - (c) Wholly the result of compliance with a compulsory measure of a public authority of the States where the damage occurred;
 - (d) Wholly the result of the wrongful intentional conduct of a third party, including the person who suffered the damage.
- The liable person is financially incapable of meeting his obligations under the Protocol on Liability and Compensation in full and any financial security that may be provided by Article 14 of the Protocol does not cover or is insufficient to satisfy adequate compensation.

Pursuant to decision V/32, the secretariat may respond to a request by a developing country or a country with an economy in transition that is a Contracting Party to the Protocol for compensation for damage to and reinstatement of the environment in those cases where, due to an incident, such damage is covered by the Liability and Compensation Protocol and the compensation provided under the Protocol is not adequate (i.e. they have already applied for / received compensation from the Protocol).

Recoverable damages can include:

(a) The costs of measures of reinstatement of the impaired environment, limited to the costs of measures actually taken or to be undertaken;

(b) The costs of preventive measures, including any loss or damage caused by such measures, as far as they aim at preventing damage to the environment or reinstating the environment according to the above paragraph (a).

“Measures of reinstatement” means any reasonable measures aiming to assess, reinstate or restore damaged or destroyed components of the environment.

“Incident” defined by Article 2, paragraph 2(h) of the Protocol, is any occurrence, or series of occurrences having the same origin, that causes damage or creates a grave and imminent threat of causing damage.

Compensation can only be provided to the extent that the damage arises out of or results from hazardous properties of the wastes involved in the transboundary movement and disposal of hazardous wastes and other wastes subject to the Convention.

Maximum Cap for Compensation

The aggregate amount payable for compensation for damage to and reinstatement of the environment shall in respect of any one incident be limited by applying mutatis mutandis paragraph 2 of Annex B to the Protocol.

The limit of the amount of compensation through the Trust Fund will be reviewed simultaneously with the review of Annex B of the Protocol.

Reduction in the case of wrongful intentional conduct or negligence

The secretariat may reduce the amount of or provide no compensation from the Technical Cooperation Trust Fund if the damage to the environment resulted wholly or partially either from the wrongful intentional conduct or negligence of the person who suffered the damage or a person for whom he is responsible under domestic law. Such behaviour has the same meaning as in “by his own fault” as specified in Article 9 of the Protocol.

Bilateral, Multilateral or Regional Agreements or Arrangements

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

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

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

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

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

Non-Contracting Parties

When the State of import, but not the State of export, is a contracting Party to the Basel Convention and Protocol, the Guidelines shall apply only with respect to damage arising from an incident which takes place after the moment at which the disposer has taken possession of the hazardous wastes. When the State of export, but not the State of import, is a Contracting Party to the Basel Convention and Protocol, the Guidelines shall apply only with respect to damage arising from an incident which takes place prior to the moment at which the disposer takes possession of the hazardous wastes and other wastes. When neither the State of export nor the State of import is a Contracting Party, the Guidelines shall not apply.

The Guidelines shall also apply to damage suffered in an area under the national jurisdiction of a State of transit which is not a Contracting Party, provided that such State appears in Annex A of the Protocol on Liability and Compensation and has acceded to a multilateral or regional agreement concerning transboundary movements of hazardous waste which is in force. Subparagraph (d) of paragraph 2 of Article 3 of the Protocol on Liability and Compensation will apply *mutatis mutandis*.

Transboundary movement

“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 jurisdiction of any State, provided that at least two States are involved in the movement.

The Guidelines are applicable for a transboundary movement, as defined in the Basel Convention, from the point where the wastes are loaded onto the means of transport in an area under the national jurisdiction of a State of export.

There shall be no compensation when a Contracting Party to the Protocol has by way of notification to the Depository excluded the application of the Protocol, in respect of all transboundary movements for which it is the State of export, for such incidents which occur in an area under its national jurisdiction, as regards damage in its area of national jurisdiction.

The Guidelines shall apply:

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

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

The Guidelines shall also apply to re-imports under Articles 8 and 9 sub-paragraph 2 (a) or Article 9, paragraph 4, of the Convention.

Disposal

“Disposal” means any operation specified in Annex IV to the Basel Convention.

Geographical Scope

The Guidelines apply to damage to and reinstatement of the environment which occurred in an area under the national jurisdiction of a Contracting Party to the Protocol, which is a developing country or a country with economy in transition. The secretariat will use the lists produced by the OECD Development Assistance Committee to determine whether a country is a developing country or a country with economy in transition (Annex I - DAC List of Aid Recipients).

In addition, as far as compensation for the costs of preventive measures is concerned, such compensation may also be provided for damage suffered in areas beyond any national jurisdiction.

The Guidelines shall also apply to damage suffered in an area under the national jurisdiction of a State of transit which is not a Contracting Party, provided that such State appears in Annex A of the Protocol on Liability and Compensation and has acceded to a multilateral or regional agreement concerning transboundary movements of hazardous waste which is in force. Subparagraph (d) of paragraph 2 of Article 3 of the Protocol on Liability and Compensation will apply, *mutatis mutandis*.

Hazardous wastes and other wastes

These Guidelines apply to compensation for damage to and reinstatement of the environment which results from the transboundary movement and disposal of hazardous wastes and other wastes as defined in Article 1 of the Basel Convention.

The Guidelines shall apply to damage resulting from an incident occurring during a transboundary movement of wastes falling under Article 1, subparagraph 1(b), of the Convention only if those wastes have been notified in accordance with Article 3 of the Convention by the State of export or import, or both, and the damage arises in an area under the

national jurisdiction of a State, including a State of transit, that has defined or considers those wastes as hazardous provided that the requirements of Article 3 of the Convention have been met.

Incidents and illegal traffic

Compensation for damage to and reinstatement of the environment can be provided in the case of an incident occurring during a transboundary movement of hazardous wastes and other wastes and their disposal including illegal traffic in those wastes.

“Illegal traffic” means any transboundary movement of hazardous wastes or other wastes as specified in Article 9, paragraph 1, of the Basel Convention.

General Criteria

The following criteria shall apply to all requests:

(a) An incident falling within the scope of these Guidelines must have occurred;

(b) The costs of measures of reinstatement of the impaired environment, limited to the costs of measures actually taken or to be undertaken;

(c) Any expense must relate to measures which are deemed concurrently by the affected Party and the secretariat necessary, reasonable and justifiable;

(d) A request for compensation from the Technical Cooperation Trust Fund can only be considered if the damage was caused through the hazardous properties of the hazardous wastes or other wastes involved in the movement;

(e) There must be a causal link between the expense/loss/damage for which compensation is requested and the incident occurring during the transboundary movement of hazardous wastes;

(f) The person who requests compensation must have suffered a quantifiable economic loss;

(g) The person who requests compensation has to prove the amount of the loss or damage by producing appropriate documents or other evidence.

Thus, a request will only be considered to the extent that the amount of the loss or damage is actually demonstrated. Certain flexibility is nevertheless exercised in respect of the requirement to present documents, taking into account the particular circumstances of the case.

In determining the amount of compensation, the efforts by the claimant to mitigate damages shall be taken into account.

III. COMPENSATION FOR DAMAGE TO AND REINSTATEMENT OF THE ENVIRONMENT

As noted in Section I above, pursuant to decision V/32, the secretariat may respond to a request for compensation for damage to and reinstatement of the environment.

Measures of Reinstatement

Funds may be provided from the expanded Technical Cooperation Trust Fund to cover the costs of measures taken to reinstate the environment. To be admissible for consideration, such measures should fulfil the following criteria:

- The cost of the measures should be reasonable;
- The cost of the measures should not be disproportionate to the results achieved or the results which could reasonably be expected; and
- The measures should be appropriate and offer a reasonable prospect of success.

The measures should be reasonable from an objective point of view in light of the information available when the specific measures are taken.

Compensation assistance may be provided only for measures actually undertaken or to be undertaken.

Post-incident environmental studies can be carried out to establish the precise nature and extent of damage to the environment caused by the incident as well as the need for reinstatement measures. The Fund may contribute to the reasonable cost of such studies, provided that the studies concern damage falling within the definition of “damage to and reinstatement of the environment”.

The secretariat shall be involved at as early a stage as possible in the selection of experts and the determination of the mandate of these experts.

The studies should be practical and deliver the required data. Their scale should not be out of proportion to the extent of the contamination and the predictable effects.

Preventive Measures

“Preventive measures” means any reasonable measures taken by any person in response to an incident, to prevent, minimize or mitigate damage to and the necessity of reinstatement of the environment, or to effect environmental clean-up.

Measures shall only be considered as preventive under the current Guidelines to the extent that they aim at preventing damage to the environment or reduce necessary measures of reinstatement. If the measures have another purpose, the costs incurred shall not be considered under these Guidelines. If they are undertaken for both the purpose of preventing damage to the environment and another purpose, and it is not possible to establish with any certainty their primary purpose, the costs will be apportioned between preventive measures and measures of another nature.

Clean-up operations

Requests for costs are not accepted when it could have been foreseen that the measures taken would be ineffective. On the other hand, the fact that the measures proved to be ineffective is not in itself a reason for rejection of a claim for the costs incurred. The costs incurred, and the relationship between the costs and the benefits expected, should be reasonable.

Reinstatement of the environment includes clean-up measures on land and sea

Requests for compensation for costs of clean-up operations may include the cost of personnel (for example wages, travel expenses) and the hire or purchase of equipment and materials. They may also include costs of repairing and cleaning the clean-up equipment.

If the equipment used was purchased for a particular incident, deductions are made for the residual value when the amount of compensation is assessed.

If materials or equipment have been purchased and maintained so that they are immediately available if an incident occurs, compensation is paid for a reasonable part of the purchase price of the materials and equipment actually used.

Disposal of Collected Wastes

Clean-up operations may result in considerable quantities of hazardous wastes and other wastes collected. Reasonable costs for disposing of the collected wastes can be compensated.

Fixed Costs

Clean-up operations may be carried out by public authorities, which use permanently employed personnel, or vessels, vehicles and equipment owned by those authorities. The authorities may then incur additional costs, e.g. expenses which arise solely as a result of the incident and which would not have been incurred had the incident and related operations not taken place. Reasonable additional costs may be compensated.

IV. APPLYING FOR COMPENSATION FOR DAMAGE TO AND REINSTATEMENT OF THE ENVIRONMENT

Role of the secretariat of the Basel Convention

The secretariat of the Basel Convention may advise and assist, if requested, on the preparation and submission of requests for compensation for damage to and reinstatement of the environment.

To whom should the request be addressed?

Requests should be addressed to the Executive Secretary of the secretariat of the Basel Convention:

UNEP - Secretariat of the Basel, Rotterdam and Stockholm Conventions
15, chemin des Anémones
1219 Chatelaine/Geneva, Switzerland
Tel: +41 22 917 82 12
Fax: +41 22 797 34 54
E-Mail: brs-mail@brsmeas.org
Web: www.basel.int

How should the request be presented?

The request for compensation for damage and reinstatement should be submitted in written form (letter, fax, electronic mail). A request should be presented clearly and with sufficient detail for the secretariat to assess the amount of the damage on the basis of the facts and the supporting documentation presented. Each item of compensation should be substantiated by an invoice, or other relevant supporting documentation, such as work sheets, explanatory notes, accounts and photographs. It is the responsibility of the applicant to submit exhaustive supportive documentation.

The secretariat may appoint, to the extent possible under available resources, technical advisers to investigate the technical merits of the request. A request can only be considered promptly if the applicant cooperates fully and provides all relevant information deemed necessary for the assessment of the request.

The speed with which the requests are dealt with depends largely on how long it takes for the applicant to provide the secretariat with the required information. It is therefore advisable to follow the present Guidelines as closely as possible.

The request can be presented in any of the six official languages of the United Nations. Because the working languages of the United Nations are English, French and Spanish, consideration of the request will proceed more quickly if the request or request summary is presented in one of these languages.

Within what period should a request be submitted?

Requests should be submitted as soon as possible after the damage has occurred. Requests shall only be admissible if submitted within five years from the date the applicant knew or ought reasonably to have known of the damage and, in any case, within 10 years from the date of the incident or within the lifetime of these Guidelines, whichever is the earlier.

If court action is being brought by the applicant, he may submit his request within that period and will notify the secretariat that court action has been brought. The secretariat will, unless in the circumstances it is unreasonable to do so, await the outcome of the national court action before considering the request. In its consideration, the secretariat shall use the assessment of damage carried out by the national court(s) in question.

Which information should the request contain?

Each request should contain the following basic information:

- Name, address and bank details of requesting authority;
- Name, address and bank details of person who has suffered the damage, if different from requesting authority;
- Date, place and specific details of the incident;
- Description of hazardous wastes or other wastes involved (name, origin, physical form, major constituents, typical contaminants, volume/quantity, waste code);
- Name of States involved in the transboundary movement (e.g. country of origin, transit or destination);
- Name and address of persons involved in the transboundary movement (e.g. exporter, importer, notifier, carrier, disposer) and of insurance, if any;
- Type and extent of damage to and reinstatement of the environment that occurred or will occur;
- Measures of reinstatement and preventive measures that were/will be necessary;

- Amount of compensation requested for damage to and reinstatement of the environment requested.

Documentation regarding measures of reinstatement and preventive measures (clean-up operations)

It is necessary that supporting documentation shows how the expenses are linked with actions taken at work sites. Major expenditures may be incurred for the use of equipment, personnel or vehicles, as well as for the disposal of the wastes. Some of those actions can be carried out by government, others may be subject of contractual arrangements or can be carried out by private persons or organizations. The request should contain a comprehensive record of all operations and expenditures resulting from that incident.

The request should be itemized as follows:

- Delineation of the area affected, describing the extent of damage to the environment suffered and identifying those areas most heavily affected;
- Analytical and other evidence linking the damage with the incident that occurred (e.g. chemical analysis of samples of hazardous wastes);
- Summary of events, including a description and justification of the work carried out, together with an explanation of why the various working methods were selected;
- Description and costing (personnel, equipment, travel, transport) of work carried out at each site;
- Cost of storage and disposal of recovered hazardous wastes in question;
- Daily records of the operations in progress, which are treated as a document on prevention matters;
- Any remaining value at the end of the operations of equipment and materials purchased; and
- Age of equipment not purchased, but used in the incident.

V. IMPLEMENTATION OF COMPENSATION FOR DAMAGE AND REINSTATEMENT

Procedure

Requests submitted to the secretariat are dealt with promptly and circumspectly. On the basis of the present Guidelines, it is the sole responsibility of the Executive Secretary to decide on which requests shall be given priority in the attribution of compensation for damage and reinstatement.

Prior to making the final decision, the Executive Secretary will consult with the Bureau and, in cases where contributions to the Trust Fund are earmarked with conditions, with the contributors. Upon receiving a request for compensation for damage and reinstatement, the secretariat could consult with the "technical advisers" mentioned in the section "How should the request be presented" above, in order to clarify the measures of prevention and reinstatement which were/are necessary to be taken for that specific incident.

VI. FINANCIAL RULES

Earmarking of contributions

Contributions made to the Technical Cooperation Trust Fund for compensation may only be used for compensation for damage to and reinstatement of the environment.

Such contributions to the Technical Cooperation Trust Fund can be earmarked for compensation for damage to and reinstatement of the environment in general or can be earmarked for specific activities. Whenever contributions are earmarked for specific activities, they will be used accordingly unless the Contributors consent otherwise to divert the earmarked contribution for this purpose.

In the event of an incident, contributions earmarked for specific activities will be used first, followed by contributions for "Compensation for damage to and reinstatement of the environment" which have not been specifically earmarked.

Relevant rules

The contribution to and the attribution of expenditures from the Technical Cooperation Trust Fund for compensation for damage and reinstatement are subject to the financial regulations of the United Nations Environment Programme.

The operation of compensation for damage to and reinstatement of the environment under the Enlarged Technical Cooperation Trust Fund is governed by the Terms of Reference for the Administration of the Trust Fund for the Basel Convention, as laid down in Annex II to decision I/7 of the first meeting of the Conference of the Parties to the Basel Convention.

Payments

The attribution of payments from the Technical Cooperation Trust Fund is discretionary and subject to the availability of resources and shall be made by the Executive Secretary in consultation with the Bureau, using a quick procedure. If the total amount of requests exceeds the total amount of compensation available in the Fund, the Executive Secretary shall decide on which requests should be given priority based on the present criteria and Guidelines and inform the Bureau that the resources available in the Fund are exceeded by demand.

In such a case, the compensation provided to each requesting person may be reduced proportionately or as deemed necessary. If there is a risk that such a situation may arise in the future, the Executive Secretary may have to restrict payments to a fixed percentage, in order to ensure that all applicants considered are given equal treatment.

Without approval of the Bureau, with respect to each incident the Executive Secretary should not use more than 30 per cent of the amount of funds not earmarked for specific activities available in the Fund at any given time, and the minimum reserve of 10 per cent should never be used except with express approval of the Bureau. These limits shall not apply to earmarked contributions.

Transparency and accountability

The secretariat will submit periodical reports on its decisions related to the projects considered, whether approved or not, to the Bureau for its

consideration and review. The reports shall contain all relevant factual and financial information (accounting). A consolidated report will be submitted to the meetings of the Conference of the Parties.

Possible recourse action

The policy of the secretariat shall be to take recourse action, whenever appropriate against any liable person, whenever appropriate, and the Executive Secretary should in each case consider whether it would be possible to recover any amounts paid from the Enlarged Technical Cooperation Trust Fund for compensation. The decision whether or not to take such action should be made on a case by case basis, in the light of the prospect of success and the provisions of the relevant national law. The Executive Secretary should in each case cooperate with the Party which requested assistance in order to recover the amounts paid by it for compensation for damage to and reinstatement of the environment.

Each Party, which has received financial assistance will be required to take appropriate actions to sue the liable company or persons for the recovery of the funds spent from the Fund, where this is possible under the relevant national law. Other Parties will be requested to offer any assistance, in accordance with the respective legal regime, necessary to overcome procedural barriers to suing in another jurisdiction.

If appropriate, the secretariat shall also take steps to recover monies paid for compensation if the claimant is subsequently successful in a private legal action with respect to the same incident and damage.

Cooperation with Private Sector/Insurance Industry

The entry into force of the Basel Protocol on Liability and Compensation will be a significant step in seeking any recourse. The secretariat shall seek cooperation with major international insurance companies in order to explore ways of recovery of amounts paid as well as the possibility of advance or interim payments by the insurance.

PART 3

DEVELOPMENT OF CAPACITY-BUILDING, TRANSFER OF TECHNOLOGY AND PUTTING IN PLACE MEASURES TO PREVENT ACCIDENTS AND DAMAGE TO THE ENVIRONMENT CAUSED BY THE TRANSBOUNDARY MOVEMENT OF HAZARDOUS WASTES AND OTHER WASTES AND THEIR DISPOSAL

I. WHO CAN APPLY FOR ASSISTANCE

Only Parties to the Basel Convention which are a developing country or country with an economy in transition can request assistance. The secretariat will use the lists produced by the OECD Development Assistance Committee's to determine whether a country is a developing country or a country with an economy in transition (Annex I - DAC List of Aid Recipients).

II. LEGAL FRAMEWORK

The Enlarged Technical Cooperation Trust Fund operates within the framework of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal as well as of the Basel Protocol on Liability and Compensation for Damage resulting from Transboundary Movements of Hazardous Wastes and their Disposal.

According to paragraph 4 of decision V/32, the secretariat may, upon request, use funds of the Enlarged Technical Cooperation Trust Fund to assist a Party to the Convention which is a developing country or a country with economy in transition in developing its capacity-building and transfer of technology and in putting in place measures to prevent accidents and damage to the environment caused by the transboundary movement of hazardous wastes and other wastes and their disposal.

Project Areas

The secretariat can support various projects aimed at developing capacity-building and transfer of technology and in putting in place measures to prevent accidents and damage to the environment caused by the

transboundary movement of hazardous wastes and other wastes and their disposal.

Hence, technical cooperation under these Guidelines aims both at measures of risk reduction to prevent accidents, as well as emergency preparedness to prevent damage, once an incident has occurred.

Measures to Prevent Accidents and Damage to the Environment

(a) Safety, Risk Reduction and Accident Prevention

This project area includes projects which primarily aim at enhancing safety and reducing the risks of accidents during the transboundary movement of hazardous wastes and other wastes and their disposal. Proposed activities could relate to measures preventing accidents during transport, storage and disposal of hazardous wastes or other wastes subject to a transboundary movement. It also comprises measures to enhance compliance with international rules and standards in the field of packaging, labelling and transport, as well as implementation of internationally recognized practices. If appropriate, funding could also be provided for administration/ coordination activities such as seed money for proposal development and identification of potential partners.

(b) Emergency Response and Contingency Planning

This area comprises projects aiming at enhancing effectiveness of emergency response, including preventive measures, at the national, regional or local level. For example, it includes projects aiming at developing and implementing emergency or contingency plans by authorities in cooperation with the private sector. Such projects should take into account the related work of all international organizations involved. If appropriate, funding could also be provided for administrative/ coordination activities such as seed money for proposal development and identification of potential partners.

III. SUBMITTING PROPOSALS

Regional Centres for Training and Technology Transfer

The Basel Convention Regional Centre in the region could assist, upon request, in the development and submission of proposals. Parties are encouraged to cooperate with the respective Regional Centre throughout the whole project cycle, including project design, implementation, monitoring and evaluation.

Role of the secretariat of the Basel Convention

The secretariat of the Basel Convention may advise and assist, if requested, on the preparation and submission of proposals for technical cooperation for the prevention of accidents and damage.

Proposal format

Requests should be presented as UNEP project proposals. Project implementation, monitoring and evaluation shall be carried out according to existing rules and practices of UNEP, or as otherwise decided by the Conference of the Parties.

To whom should the proposal be addressed?

Proposals should be addressed to the Executive Secretary of the secretariat of the Basel Convention:

UNEP – Secretariat of the Basel, Rotterdam and Stockholm Conventions
15, chemin des Anémones
1219 Chatelaine/Geneva, Switzerland
Tel: +41 22 917 82 12
Fax: +41 22 797 34 54
E-Mail: brs-mail@brsmeas.org
Web: www.basel.int

IV. DECISION-MAKING PROCEDURE

Selection of Projects

On the basis of the present Guidelines, it is the sole responsibility of the Executive Secretary to decide which proposals should be given priority.

The selection of the projects is discretionary and subject to the availability of resources and shall be made by the Executive Secretary in consultation with the Bureau, using a quick procedure. In case contributions to the Technical Cooperation Trust Fund are earmarked with conditions, the Executive Secretary will consult with the contributors.

Risk Assessment

In order to assist in determining which requests will be given priority, a risk assessment should be included in the proposal, including on the likely impact and severity of any incident in a particular area. The secretariat could, if necessary, proceed with its own risk assessment. Factors to be considered should include, e.g.:

- Frequency of transport or disposal;
- Hazard of the wastes;
- Type of hazard;
- The dispersibility of the hazardous wastes involved;
 - Whether the area in which the accident might happen is deserving of special consideration (e.g. World Heritage Site, Ramsar wetland site or catchment, risk to livelihood of communities, etc.);
 - What technical capacity would be needed in a given place to prevent accidents and damage;
 - What technology would need to be transferred to a given place to prevent accidents and damage.

By carrying out the assessment, the secretariat could judge the likely impact and severity of any incident in a particular area.

V. FINANCIAL RULES

Earmarking of contributions

Where contributions made to the Technical Cooperation Trust Fund are earmarked for developing capacity-building and transfer of technology and putting in place measures to prevent accidents and damage to the environment caused by the transboundary movement of hazardous wastes and other wastes and their disposal they shall be used accordingly.

Such contributions to the Technical Cooperation Trust Fund can be earmarked in general or can be earmarked for specific activities. Whenever contributions are earmarked for specific activities, they will be used accordingly.

If a request is made, contributions earmarked for specific activities would be used first, followed by contributions which have not been specifically earmarked.

Relevant rules

The contribution to and the attribution of expenditures from the Technical Cooperation Trust Fund are subject to the financial regulations of the United Nations Environment Programme. The operations for the third part of these Guidelines are governed by the Terms of Reference for the Administration of the Trust Fund for the Basel Convention, as laid down in Annex II to decision I/7 of the first meeting of the Conference of the Parties to the Basel Convention.

Payments

The attribution of payments from the Technical Cooperation Trust Fund is subject to the availability of resources. The Executive Secretary shall decide on which requests should be given priority based on the present criteria and Guidelines, and in consultation with relevant donors.

Without approval of the Bureau, with respect to each request, the Executive Secretary should not use more than 30 per cent of the amount of funds contributed for the purpose of this third part of the Guidelines that are not earmarked for specific activities, and available in the Fund. Also, the

minimum reserve of 10 per cent should never be used, except with express approval of the Bureau.

Transparency and accountability

The secretariat will submit periodical reports on its decisions related to the projects considered, whether approved or not, to the Bureau for its review. The reports shall contain all factual and financial information (accounting) required to give a clear picture of the projects considered. A consolidated report will be submitted to the meetings of the Conference of the Parties.

APPENDIX

Texts containing Definitions taken from the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal

and

The Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and Their Disposal

TEXT OF THE BASEL CONVENTION

ARTICLE 2

Definitions

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 operations specified in Annex IV to this Convention;
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 are 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 air space 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.

PROTOCOL ON LIABILITY AND COMPENSATION FOR DAMAGE RESULTING FROM TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES AND THEIR DISPOSAL

ARTICLE 2

Definitions

1. The definitions of terms contained in the Convention apply to the Protocol, unless expressly provided otherwise in the Protocol.

2. For the purposes of the Protocol:

(a) "The Convention" means the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal;

(b) "Hazardous wastes and other wastes" means hazardous wastes and other wastes within the meaning of Article 1 of the Convention;

(c) "Damage" means:

(i) Loss of life or personal injury;

(ii) Loss of or damage to property other than property held by the person liable in accordance with the present Protocol;

- (iii) Loss of income directly deriving from an economic interest in any use of the environment, incurred as a result of impairment of the environment, taking into account savings and costs;
- (iv) The costs of measures of reinstatement of the impaired environment, limited to the costs of measures actually taken or to be undertaken; and
- (v) The costs of preventive measures, including any loss or damage caused by such measures, to the extent that the damage arises out of or results from hazardous properties of the wastes involved in the transboundary movement and disposal of hazardous wastes and other wastes subject to the Convention.

(d) "Measures of reinstatement" means any reasonable measures aiming to assess, reinstate or restore damaged or destroyed components of the environment. Domestic law may indicate who will be entitled to take such measures;

(e) "Preventive measures" means any reasonable measures taken by any person in response to an incident, to prevent, minimize, or mitigate loss or damage, or to effect environmental clean-up;

(f) "Contracting Party" means a Party to the Protocol;

(g) "Protocol" means the present Protocol;

(h) "Incident" means any occurrence, or series of occurrences having the same origin that causes damage or creates a grave and imminent threat of causing damage;

(i) "Regional economic integration organization" means an organization constituted by sovereign States to which its member States have transferred competence in respect of matters governed by the Protocol and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve, formally confirm or accede to it;

(j) "Unit of account" means the Special Drawing Right as defined by the International Monetary Fund.

**STANDARD FORM FOR REQUEST FOR EMERGENCY ASSISTANCE
FROM THE TECHNICAL COOPERATION TRUST FUND BY
DEVELOPING AND OTHER COUNTRIES**

Details of the State requesting assistance	
Name of country requesting assistance:	
Name and address of requesting authority including details of the Basel Convention focal point and a contact point for this request: <i>(Please include full name, address, telephone and fax numbers and e-mail address)</i>	
Name and contact points of any other United Nations organizations or other bodies contacted in connection with this incident:	
Technical details of the incident and those involved	
Date and location of the incident: <i>(Please attach a map and/or other means of identifying where the incident occurred, and/or sketch of the incident or other material, e.g., photographs of the pollution or damage caused)</i>	
Information that defines the material involved as waste (e.g., especially where there is no accompanying documentation stating as such with the shipment):	
Specific details on the incident, including: (i) a description of how the incident occurred and who was involved; (ii) when it was discovered and by whom; (iii) whether the waste involved was subject to written consent under the Basel Convention notification procedure; (iv) any data from samples taken.	
Description of hazardous wastes or other wastes involved (name, origin, physical form, major constituents, typical contaminants, volume/ quantity, waste code) and how it was packaged and labelled; ¹ <i>(Please supply photographs)</i>	

¹ Further to paragraph 7 (b) of article 4 of the Basel Convention.

Technical details of the incident and those involved	
Type and extent of damage that has occurred and is likely to occur (e.g., dilution factors, dispersion problems, rate of spread): <i>(If trajectory models are used please give brief details)</i>	
Names and roles of other States involved in the transboundary movements in question (e.g., state of origin, transit or destination) and the names of relevant competent authorities: <i>(Please include full names, addresses, telephone and fax numbers and e-mail addresses)</i>	
Names and addresses of persons involved in the transboundary movements in question (e.g., exporter, importer, notifier, carrier, disposer): <i>(Please include full names, addresses, telephone and fax numbers and e-mail addresses)</i>	
Names and addresses of insurers, ² if any: <i>(Please include full name, address, telephone and fax numbers and e-mail address)</i>	
Actions required to be undertaken for which assistance is requested	
Measures taken in response to the incident:	
Requests for assistance from other countries involved in the incident:	
Any legal or other relevant information, for example if there is an ongoing investigation into illegal traffic in respect of the incident that may include gathering or use of this information as evidence:	
Preventive measures that are necessary to mitigate damage:	
Breakdown of costs for the preventive and other measures:	
Type of emergency assistance required, such as financial assistance, materials, equipment, expertise or other resources (please indicate priority and timing if possible):	

² Further to paragraph 11 of article 6 of the Basel Convention.

Signed:

Position (e.g., Director, Minister, etc.):

On behalf of (Government name):

Date:

Please submit this request to:

UNEP – Secretariat of the Basel, Rotterdam and Stockholm Conventions

15, chemin des Anémones

1219 Châtelaine (Geneva), Switzerland

Tel: +41 22 917 82 12

Fax: +41 22 797 34 54

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