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**Conference of the Parties to the Basel Convention
on the Control of Transboundary Movements of
Hazardous Wastes and Their Disposal**
Seventh meeting
Geneva, 25-29 October 2004
Item 6 of the provisional agenda *

**Report on the implementation of the decisions adopted by the
Conference of the Parties at its sixth meeting**

Basel Protocol on Liability and Compensation: report on workshops

Note by the Secretariat

Attached in the annex to the present note is the report of a regional workshop aimed at promoting ratification of the Basel Protocol on Liability and Compensation for Damage resulting from Transboundary Movements of Hazardous Wastes and their Disposal, which was held in Buenos Aires, Argentina, from 22 to 25 June 2004, with support from the Government of Switzerland. For the annexes of the report, please see the Convention web site (<http://www.basel.int/legalmatters/index.html>).

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Annex

[Original: Spanish]

Final report

Regional workshop aimed at promoting the ratification of the Protocol on Liability and Compensation for Damage resulting from Transboundary Movements of Hazardous Wastes and their Disposal

The regional workshop was aimed at promoting ratification of the Protocol on Liability and Compensation for Damage resulting from Transboundary Movements of Hazardous Wastes and their Disposal. It was held in Buenos Aires, Argentina, from 22 to 25 June 2005.

Participating in the workshop were ten countries from the South American region: Argentina, Brazil, Bolivia, Colombia, Chile, Ecuador, Peru, Paraguay, Uruguay, and Venezuela. During the workshop, discussions were held on issues relating to the regimes of civil liability in each of the participating countries, the obstacles and difficulties each country faced with respect to the ratification of the Protocol, and, lastly, the current insurance market in regard to the transboundary movement of hazardous wastes.

With the holding of the workshop, a first objective of training focal points and competent technical bodies was achieved, which constituted a first step in the process of ratifying the Protocol and the future implementation of a capacity-building project at the country level to target all the actors involved in such processes in the countries associated with the South American regional centre.

The South American regional centre will arrange with the Secretariat to organize national workshops for the implementation of the Basel Convention and its Protocol, targeting all the actors involved in such a process, as specifically requested by Bolivia, Paraguay, Peru and Venezuela.

A diagnostic study of the countries of the region was made, based on the questionnaires prepared by the centre and the Convention Secretariat and on the responses, presentations and experiences of the participating countries.

The workshop benefited from the participation and contributions of a Basel Convention Secretariat Legal Officer, Ms. Laura Thompson, and the Adviser to the Legal Affairs Division of the Swiss Agency for the Environment, Forests and Landscape, Mr. Jürg Bally, both of whom fully explained the protocol, its interpretation and the advantages of its adoption.

Below are summaries of the topics dealt with during the workshop.

Civil liability: An analysis was made of those responsible (generators, transporters, operators), the types of damage covered, the competent bodies, the legal situation, time and financial limits and insurance coverage. The discussion was intended to facilitate an overall picture of the main features of the regimes of civil and/or environmental liability, without implying an evaluation of the different alternatives, or aiming at normative harmonization. Administrative and penal aspects were not considered.

Obstacles and difficulties encountered by each country with respect to the ratification of the Protocol: Each country gave a presentation on its process for ratifying international agreements and its constitutional structure. Within that framework, the situation of each country regarding the process of ratification of the Protocol was described. Various countries have initiated the process and others have undertaken activities related to the application of the Protocol, consistent with their local legislation and with a view to implementing the Protocol. As far as the elimination of obstacles is concerned, it would be of great help to raise the awareness of decision makers and to give wider publicity to the advantages and disadvantages of being a party to the protocol. It was also noted that there was a need to harmonize the provisions of the Protocol and the domestic law of countries.

The current insurance market: A general review of the insurance market in each country was carried out, focusing on its application to the transboundary movement of hazardous wastes and the Protocol. It was clear that most countries faced difficulties in formulating environmental insurance policies, in particular for the kind of issues we were dealing with in the workshop. Some countries sought the assistance of insurance companies with the drafting of applicable contract clauses.

A participant who was an insurance expert stressed the need to set both financial and time limits with respect to the events insured against. Among the main conclusions reached concerning insurance were the following:

- By all accounts, it seems that individual insurance companies could provide only a limited response to the problem of insuring against environmental risks. That is why collective responses such as “pooled” insurance, i.e., groups of companies that pool their resources and capacities to provide solutions that they could not provide individually came into existence;
- A pool of insurance companies can provide low-level limited cover for emergency contamination cases, and also for progressive contamination (a wider cover). However, progressive contamination is always accidental, unforeseen and out of the ordinary; its occurrence is not part of the normal and established routine of the insured installation;
- As far as time limits are concerned, the policy could settle on the first verifiable manifestation of the contamination within the insurance period. In addition, it could provide that claims for damages be made within the insurance period or within two years of the end of the last extension of cover.
- Other options were also suggested, such as self-insurance, bank guarantees and compensation funds.
- In principle, the idea of the funds is that they would pay for damages when no liability action can be brought. When civil liability cannot be applied, the funds would be used.
- Types of funds:
 - Guarantee funds: when there is liability on the part of the polluter, but the latter is insolvent or his insurance cover is inadequate or his insurer is insolvent;
 - Supplementary compensation funds: when the liability limits fixed for a certain type of damage are exceeded or when the person causing the damage has a valid defence which exempts him from liability;
 - Autonomous compensation funds: for cases with no identified sources or caused by *force majeure* or for cases in which blame for an illegal act cannot be attached to anyone.
- The solution put forward by the European Union through the Green Book is a combined solution, in which civil liability would hold between individual persons where the damage is attributable to a specific person, while the funds would enter into the equation when the cause is not identifiable or is declared insolvent.

Among other matters considered: comments on the manual for the implementation of the Protocol, namely:

- Add a reference to the articles in the introduction to the manual;
- It was suggested that where articles are expressly referred to in the manual (for example in paragraph 1.3 of the introduction) they should be reproduced in their entirety. In cases where the reference is repeated, however, there is no need to do so.
- So that the articles may be better understood, the examples given should be more detailed.

A useful discussion took place on time limits and their application to the domestic laws of each country.

The workshop provided an opportunity to describe the functioning and future activities of the coordinating centre based in Uruguay, as well as of the regional centre that organized the workshop.

As part of that activity, emphasis was laid on the need to support Governments through the regional centre for the holding of national workshops to promote and publicize the protocol, as had been undertaken at a regional level.
