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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**

Attached is the report of the 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 held in Addis Ababa, Ethiopia from 30 August to 2 September 2004 with kind contribution from the Government of Switzerland. For the list of participants of the workshop (Annex of the report), please see our website (<http://www.basel.int/legalmatters/index.html>).

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\* UNEP/CHW.7/1.



## **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**

### **Addis Ababa, Ethiopia, 30 August to 2 September 2004**

#### **Report of the Meeting**

30 August 2004

1. The Opening Ceremony was chaired by Dr. Tewolde Birhan Gebre Egziabher, Director General of the Environmental Protection Authority of Ethiopia. The workshop was opened by His Excellency Mr. Harka Haroye, Minister of Justice of the Federal Republic of Ethiopia. His Excellency Mr. Schaetti René, the Ambassador of Switzerland to Ethiopia and Djibouti also made a statement. A video taped message from Dr. Sachiko Kuwabara-Yamamoto, Executive Secretary of the Secretariat of the Basel Convention was presented to the participants.<sup>1</sup>
2. The meeting began with an overview of the Basel Convention and Basel Protocol. Ms. Donata Rugarabamu, Senior Legal Officer, Secretariat of the Basel Convention (SBC), made a brief presentation on the history and goals of the Basel Convention and Basel Protocol. Ms. Maiko Igarashi, Associate Legal Officer, SBC then made a brief presentation on the key elements of the Protocol. This was followed by presentations by each country on the key elements of civil liability under their domestic law, based on responses to Questionnaire No. 1 on Civil Liability that were circulated to participants before the Workshop.

#### Summary of Country Presentations on Civil Liability Questionnaire

- The current legal framework that is in place in the countries is reflected in the submissions received in response to the questionnaire and may be viewed at the Basel Convention website.
- Ethiopia mentioned that the term pollution was clearly defined under its law, but there is no clear definition of the “Polluter”. Under the Ethiopian Law an indirect interpretation can be made in order to identify the person liable for damage caused.
- In most countries enforcement of environmental laws was apportioned between environmental agencies and Attorney-General’s Chambers / domestic courts.
- In most countries there is strict liability as well as fault based. In most countries if the owner of the waste cannot be identified, the Government takes up the responsibility for cleanup. For Ghana, on strict liability the answer will depend on whether the enforcement / liability is civil or criminal. In

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<sup>1</sup> The delegates present are listed in Annex hereto. The documents presented at the meeting will be placed on the Basel Convention website.

tort, the extent of financial liability depends on extent of damage pleaded by the body or person who has suffered damage or harm. The Workmens' Compensation Law has provided various degrees of percentages for injuries sustained by employees in their employment. In Seychelles, the Environment Protection Act covers for compensation in cases of accidents.

- In most countries the time limit for liability is shorter than that provided under the Protocol. Certain countries have met the time limit; e.g. Mauritius. Mozambique has no time limits; In Zimbabwe the time limit for liability can be established as need arises.
  - National laws do not provide for the financial limit that would meet the minimum requirements established in the Protocol. Most countries mentioned that this would depend on the extent of the damage caused. However, the Protocol states the minimum financial compensation. In Botswana the fine is about US\$ 2,800 or 10 years imprisonment. In most countries, fines are imposed based on the national law, and these are not deterrents because they are very low.
  - No country had experienced any incident which would have been dealt with under the Protocol.
  - No country has an insurance policy to cover the risks associated with transboundary movements of hazardous waste. In Tanzania, the insurance to cover the risks must be applied for through the country's Commissioner for Insurance Supervisory Department in the Ministry of Finance. In Uganda, vehicles used as carriers should have 3rd Party insurance cover. Kenya mentioned that the insurance cover is expensive and, therefore, companies take it optionally, but COMESA has a Yellow Card insurance scheme to cover damages / accidents that might occur during the transport of goods.<sup>2</sup>
  - Except for some countries being Parties and signatories to the Bamako Convention, none of the countries present are party to any other regional bilateral agreements related to hazardous waste. Zambia believes that Basel Convention bodies like SBC and the Basel Convention Regional Center (BCRC) could assist in awareness-raising, information exchange and collaborative programmes in relation to ratification and implementation of the Protocol.
3. Ms. Maiko Igarashi then made a presentation on the roles and responsibilities under the Protocol of Parties (Generators, Exporters, Importers and Disposers). This was followed by a presentation on the relationship between the Protocol and the Basel Convention by Mr. Jürg Bally, Advisor, Legal Division, Swiss Agency for the Environment, Forests and Landscape.

#### 31 August 2004

4. The session commenced with a presentation on the framework of the Protocol by Mr. Bally. This was followed by a presentation on the "Availability of insurance and other financial guarantees: Coverage of the liability for generators, exporters, importers and disposers", by Ms. Margaret Ikongo, Managing Director, National Insurance Corporation of Tanzania Ltd. She proposed that a possible solution to insurance requirements under the Protocol could be met by pooling. She gave examples of existing pools that addressed risks such as those encountered in the aviation industry. The pool could be partly funded by international organizations (such as World Bank or GEF) and derive income from premiums paid by notifiers and disposers.
5. Mr. Bally followed with a presentation on the setting of financial limits to be determined under domestic law.

#### Comments and Questions of Participants on the Availability of Insurance and other Financial Guarantees

- It was noted that most African countries have import bans on hazardous wastes.
- It was agreed that there is a need to investigate insurance and other mechanisms to cover hazardous waste risks, such as deposit bonds, financial guarantees etc.

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<sup>2</sup> The Gambia later reported that ECOWAS has a similar scheme.

- Could there be linkage between existing insurance pools in Africa and the new suggested insurance pools? Answer: AFRICA RE, which manages Africa Aviation Pool and the Africa Oil and Energy Pool, could, for example, manage the insurance pool for hazardous waste transboundary movements.
  - How could Governments be convinced of the need to address the matter of insurance cover for risks associated with hazardous waste transboundary movements? Answer: Governments need to shift from responding to incidents; they need to be proactive and consider in advance the risks associated with hazardous waste. Moreover, if a pool was established, the funds in the pool could be managed to generate income and therefore could be seen as an investment.
  - What would be the role of the private sector in the pool? Answer: Article 14 of the Protocol states that “The persons liable under Article 4 shall establish and maintain during the period of the time limit of liability, insurance, bonds or other financial guarantees covering their liability under Article 4 of the Protocol for amounts not less than the minimum limits specified in paragraph 2 of Annex B.
  - Are there pools that cover natural catastrophes and what is the link between the normal insurance and insurance that covers natural catastrophes? Answer: The contents and conditions of the insurance policy can be made to cover the natural catastrophes and other risks according to the needs of the Parties.
  - Are there any experiences or lessons that can be shared with the participants to demonstrate the application of insurance to incidents covered by the Protocol? Answer: The Protocol is still not in force and, therefore, there are no examples of incidents dealt with under the Protocol.
  - Could institutions such as SBC or the BCRC manage pool funds? Answer: This might not work well, as neither of the two are financial institutions and they do not have expertise to manage investments.
  - Is there any possibility that global organizations like GEF can contribute towards a pool, as developing countries have other priority issues for financing such as poverty alleviation? This would motivate Governments to ratify the Protocol. Answer: This issue should be raised by Parties at the forthcoming meeting of the Conference of the Parties to the Basel Convention.
6. The afternoon session concluded with a presentation entitled “The Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa: Its Importance for Sustainable Development” by Dr. Kwadwo Tutu, Environment and Development Officer, United Nations Economic Commission for Africa. It was noted that there was a need to explore possible areas for collaboration and harmonization of the Basel and Bamako Conventions for their effective implementation. SBC reported that coordinated implementation of the Basel and Bamako Conventions was a priority and remarked that the Africa Institute had, as one of its stated aims, the implementation of the Bamako Convention.

1 September 2004

7. Two countries present, Botswana and Ethiopia, had acceded to the Protocol. Ghana was in the process of preparing the instruments of accession.
8. The morning session commenced with each country making a presentation on the difficulties faced by them in ratifying the Protocol (based on Questionnaire No. 2: Ratification, previously circulated to participants). A Drafting Group comprising certain countries outlined the main comments and concerns of the English-speaking African Countries with respect to the ratification and implementation of the Protocol. These comments and concerns are set forth in the following paragraphs.
9. Countries stated that the following were the problems that they encountered in the ratification process:
- The need for training of those that would be involved in the implementation of the Protocol.

- The need for awareness-raising, amongst decision-makers as well as stakeholders, as to the benefits of the Protocol.
  - The lack of technical and legal expertise necessary for drafting implementing legislation and in the subsequent implementation of the Protocol. For example, risk evaluation is a new field for many countries.
  - Limited human resources in ministries and agencies.
  - Delays in the consultation process, including delays in obtaining responses from stakeholders that have to be consulted prior to accession to an international instrument.
  - Lack of a mechanism to address the financial guarantee/insurance requirement.
  - Unwillingness of private sector insurance companies to provide insurance required under the Protocol.
  - Concern as to the financial limits stated in Annex B.
  - Possible conflict between the Protocol provisions and existing domestic laws.
10. The following suggestions were made as to actions which could be taken to facilitate ratification and implementation:
- SBC could provide resources and resource persons to raise awareness amongst relevant stakeholders.
  - Policy, legal and institutional assessments could be undertaken for the purpose of identifying implication and needs pertinent to ratification and implementation of the Protocol, with assistance from SBC.
  - SBC could lobby countries, using international meetings and bilateral meetings, to encourage them to ratify the Protocol.
  - Issues related to the development of financial guarantees and/or insurance requirements under the Protocol should be addressed and mechanisms developed.
  - SBC could prepare a basic manual on implementation of the Protocol, which could be used as tool to assist stakeholders in understanding the aims and objectives of the Protocol.
11. The participants identified the following problems that might be encountered during implementation:
- The lack of technical and legal expertise necessary for implementation of the Protocol.
  - Restricted human resources.
12. The following suggestions were made as to measures which might facilitate implementation:
- Training could be provided at different levels regarding *viz*:
    - Legal and policy issues, e.g. drafting of national laws and domestication of the international instrument, claim and compensation process.
    - Judiciary and enforcement e.g. licensing mechanism.
    - Technical training for relevant role players, such as notifiers, insurers, custom officials, emergency officials, etc.

- Information sharing among the countries, particularly with respect to their experiences in implementation.
  - Harmonization of legislation, policies and procedures.
  - The formulation of implementing legislation for the Protocol, where required.
13. It was agreed that information could be exchanged through the website of the BCRC.
14. The Secretariat invited countries to transmit documents containing information on the types of wastes and quantities normally the subject of standard transboundary movements. This information would be shared with Mrs. Ikongo, with a view to further developing ideas on a possible insurance pool to address risks associated with hazardous wastes.
15. The afternoon session concluded with a presentation by Mr. Bally on liability / compliance mechanisms under other MEAs.
16. The Secretariat was requested to circulate a questionnaire for participants, to assess the extent to which the Workshop had assisted them to address the ratification of the Protocol. Specifically, the questionnaire should address whether the Workshop had assisted those delegates from countries which had not started the process of consultations in finding arguments to support ratification to present to the decision-makers.

2 September 2004

17. The meeting reconvened at 2.00 pm, the morning having been spent preparing the draft report of the meeting for consideration by the participants. The meeting considered the draft report. However, there was insufficient time to complete the review of the report. It was agreed that the draft report would be open for comment and consideration by the participants until Friday 10 September 2004. Thereafter, comments received would be incorporated and the report considered as adopted.
18. The closing ceremony commenced at 2 pm. The participants were addressed by Dr. Tewolde Birhan Gebre Egziabher, Director General of the Environmental Protection Authority of Ethiopia. The Ambassador of Switzerland was present. The meeting was then formally closed. This was followed by a reception hosted by the Ethiopian hosts.
19. The participants expressed their appreciation of the receptions hosted by Environmental Protection Authority of Ethiopia and by the Embassy of Switzerland in Ethiopia.
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