

VI/16. Guidance Elements for Detection, Prevention and Control of Illegal Traffic in Hazardous Wastes

The Conference of the Parties,

Recalling its decision V/23 on the prevention and monitoring of illegal traffic in hazardous wastes and other wastes,

Welcoming the efforts made by the secretariat and the assistance offered by Australia and Canada in the preparation of the Guidance Elements for the Detection, Prevention and Control of Illegal Traffic in Hazardous Wastes,

1. Approves the Guidance Elements for Detection, Prevention and Control of Illegal Traffic in Hazardous Wastes contained in the appendix to the present decision;

2. Requests the secretariat, in collaboration with the Basel Convention Regional Centres, to assist Parties, particularly developing countries, in implementing the Guidance Elements for Detection, Prevention and Control of Illegal Traffic in Hazardous Wastes at the national level, including the development of national contingency plans.

Appendix

Guidance Elements for Detection, Prevention and Control of Illegal Traffic in Hazardous Wastes

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	
80	
Purpose of these Guidance Elements	
80	
Objectives	
80	
Background	
80	
Developing a National Capacity to identify and manage Illegal Traffic	81
National Legislation	
81	
Definitions	
81	
Summary of the provisions of the Basel Convention concerning Illegal Traffic and of the Decisions of the Conference of the Parties	82
Part 1. National Capacity Building and International Cooperation	85
National Capacity Building	
85	
1a Competent Authority/Focal Point	
85	
1b Administrative procedures	
85	

1c	National inventories	
	85	
1d	Promotion of compliance	
	85	
1e	Training of enforcement personnel	
	86	
1f	Technical expertise/facilities	
	86	
1g	Enforcement/intelligence capacity	
	86	
1h	Effective licensing and monitoring of facilities	87
1i	Effective inter-agency cooperation, etc.	87

International Cooperation

88

Part 2. Prevention

89

2a	Problems relating to transit	
	89	
2b	Cooperation with Customs and other regulatory authorities	
	90	
2c	Identification of waste stream at source	
	90	
2d	Packaging, labelling, sampling and analysis	
	90	
2e	Promoting awareness	
	91	
2f	Guidance documents by national authorities	
	91	
2g	Inspection: overt and covert	
	91	
2h	Dealing with ambiguity	
	92	
2i	International cooperation at all levels	
	93	
2j	Insurance and bonds	
	93	

Part 3. Managing Alleged and Confirmed Cases

94

3a	Determining whether illegal traffic has occurred	95
3b	Determining who was the exporter of the waste	95
3c	Determining how to return the waste	
	95	
3d	Whether the exporter followed the requirements of the Basel Convention	96
3e	Seizure of the material	
	96	
3f	Temporary storage	
	96	
3g	Dealing with abandoned waste	
	96	
3h	Notification to the SBC and concerned Parties	97

3i	Differences in interpretation of the countries involved	97
Part 4. Use of Electronic Information		97
4a	Domestic Examples	97
4b	International Examples	98
Appendix 1	Provisions of the Basel Convention and decisions adopted	98-
108	by the Conferences of the Parties to the Basel Convention	
Appendix 2	Case studies/examples of successful actions of Parties	
108-117		
Appendix 3	Sampling and analysis	
118-120		
Appendix 4	Guidelines for Risk Management Approach	
120-122		

GUIDANCE ELEMENTS FOR DETECTION, PREVENTION AND CONTROL OF ILLEGAL TRAFFIC IN HAZARDOUS WASTES

INTRODUCTION

Purpose of these guidance elements

1. Decision IV/12 recognised that the issue of illegal traffic remained a high priority with particular emphasis on cases involving alleged illegal traffic. The Decision requested the Technical Working Group and the Consultative Sub-group of Legal and Technical Experts, at their joint meeting, to develop recommended procedures to assist Parties in preventing, identifying and managing illegal traffic.
2. Decision V/23 extended the mandate of the Technical Working Group and requested the Legal Working Group to give further consideration to the issue of illegal traffic in hazardous wastes and other wastes, to develop recommended procedures to address alleged cases of illegal traffic and to assist Parties in preventing, identifying, monitoring and managing illegal traffic. This work should take into account the draft guidance elements for the detection, prevention and control of illegal traffic in hazardous wastes, approved at a joint meeting in Pretoria in November 1998.
3. The purpose of the document is to be a practical guide to assist enforcement of national law implementing the Basel Convention.
4. Its intended audience includes Party Governments, ministries, federal and state authorities and agencies, law enforcement authorities and competent authorities.
5. Various readers will be interested in paragraphs dealing with matters related to their particular sphere of concern.
6. Representatives of Governments and ministries will be mainly interested in those paragraphs providing guidance for developing their national legislation or institution arrangements (e.g. paragraphs 13 to 16; 38 to 45; 49-50 and Appendix 1). Police officers will be more interested in reading paragraphs which could be useful to their particular mandate and activity (e.g. paragraphs 46 to 48; 52 to 56; 84 to 90). Customs officers will find it useful to read those paragraphs dealing with techniques of inspection of consignments on how to determine whether the material is or is not a hazardous waste.
7. These guidance elements are intended to set out the recommended procedures requested in Decisions IV/12 and V/23.

Objectives

8. These guidelines focus on enforcement at the domestic level. By reference to the Convention documents and other resources they also provide guidance for Parties who have yet to develop implementing legislation.

Background

9. Ensuring enforcement of law implementing Multilateral Environmental Agreements (MEAs) is a widely recognised problem because enforcing national legislation and procedures across international boundaries is difficult and complex. Nevertheless, there is much useful experience of enforcement of law implementing MEAs amongst countries.

10. By decision SS VII/4, the Seventh Special Session of the Governing Council/Global Ministerial Environment Forum of UNEP, adopted the Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements.

11. The process of adoption of these Guidelines has highlighted the need for Parties to have the flexibility to design domestic implementation measures that are suited to their national circumstances and attributes.

Developing a national capacity to identify and manage illegal traffic

12. In order to implement the Basel Convention effectively, it is important to develop and/or maintain national capacity for identifying, controlling and managing illegal traffic. The secretariat of the Basel Convention will continue to support measures designed to enhance national and local capacity to comply with the agreements. These include technical and financial assistance, training and technology transfer. The private sector should also be encouraged to take a role.

13. As there are a number of complex legal and technical aspects to effective management of illegal traffic, a multifaceted approach to combating illegal traffic will be required.

National legislation

14. A key element in preventing and managing illegal traffic is an effective national regulatory environment. States should develop and implement a participatory approach to determining domestic needs and to setting priorities to encourage a culture of compliance. States should also provide for effective participation by civil society, including industry and non-governmental organizations when developing legislation and strengthen domestic institutions, including the judiciary.

15. Building an effective legal and institutional framework for enforcement and awareness raising, taking into account interlinkages between obligations in various MEAs, should be considered by Parties.

16. The secretariat of the Basel Convention will continue to offer legal assistance to Parties that request it.

17. Those Parties in need of assistance for developing their national legislation, in addition to contacting the secretariat of the Basel Convention, could contact the UNEP Division for Policy Development and Law; UNEP regional offices; the Basel Convention Regional Centres; the secretariats of regional conventions (e.g. Bamako, Waigani); national representatives of UNDP, or they could use bilateral assistance from other parties, etc. It is also useful to consult three documents adopted by the Conference of the Parties to the Basel Convention: Model National Legislation; the Manual for the Implementation of the Basel Convention and the Instruction Manual.

Definitions

18. There are different interpretations for terms such as "compliance", "enforcement" and "environmental crime" in international practice and law. These definitions are currently the subject of considerable debate in the international area.

19. The Basel Convention contains a number of definitions that are relevant to managing illegal traffic. They include, for example, "wastes", "transboundary movement", "disposal", "environmentally sound management", "area under the national jurisdiction of a State", "state

of import", "state of export", "state of transit", "person", "exporter", "importer", "carrier" and "generator" and "disposer". These all have a bearing on how intelligence is gathered and how illegal traffic is detected and monitored. Moreover, different Parties implement their Basel obligations under different forms of national legislation, which all carry their own definitions. These may be broader than those laid out by the Basel Convention.

20. Hazardous wastes are defined, in Article 1.1(a) of the Basel Convention, as wastes that belong to any category contained in Annex I, unless they do not possess any of the characteristics listed in Annex III. Annex I of the Basel Convention lists the categories of wastes to be controlled. Annexes VIII and IX of the Basel Convention are an elaboration and clarification of the provisions of Article 1.1(a) and provide useful clarification of the scope of Annex I.

21. Annex III lists the hazardous characteristics of Basel Convention wastes. The seventh session of the Technical Working Group noted that the United Nations Committee of Experts on the Transport of Dangerous Goods *Recommendations on the Transport of Dangerous Goods, English revised edition 1993* had defined test procedures that elaborated the interpretation of H1, H3, H4.1, H4.2, H4.3, H5.1, H5.2, H6.1 and H8. However, it also noted that these were relevant only to the transport of the wastes, not their disposal. Annex III notes that many countries have developed national tests which can be applied to materials listed in Annex I, in order to decide if these materials exhibit any of the characteristics listed in Annex III. Decision V/24 requested the Technical Working Group to finalise its work on hazard characteristics H6.2, H11, H12 and H13, and to initiate work on H10.

22. Hazardous wastes are also defined, in Article 1.1(b) of the Basel Convention, as wastes that are not covered under paragraph (a) but are defined as, or are considered to be, hazardous wastes by the domestic legislation of the Party of export, import or transit. Article 3 states that each Party shall, within six months of becoming a Party, inform the secretariat of the wastes that, under its national legislation, are covered under Article 1.1(b). Parties shall also inform the secretariat of any significant changes to the information provided. The secretariat shall inform all Parties of the information it has received. Parties shall be responsible for making this information available to their exporters.

23. Interpretation of these definitions is complex and cases of illegal traffic may stem from differing interpretations of hazardous waste definitions. This may be further complicated by problems in translation from one language to another.

Summary of the provisions of the Basel Convention concerning Illegal Traffic and of the Decisions of the Conference of the Parties

24. Illegal traffic is the subject of Article 9 of the Basel Convention. Article 9.1 defines illegal traffic as any transboundary movement of hazardous wastes or other wastes:

(a) without notification pursuant to the provisions of this Convention to all States concerned; or

(b) without the consent pursuant to the provisions of this Convention of a State concerned; or

(c) with consent obtained from States concerned through falsification, misrepresentation or fraud; or

(d) that does not conform in a material way with the documents; or

(e) that results in deliberate disposal (e.g. dumping) of hazardous wastes or other wastes in contravention of this Convention and of general principles of international law.

25. Article 9.2 specifies what must be done if a transboundary movement is deemed to be illegal traffic as the result of conduct on the part of the exporter or generator. The State of export shall ensure that the wastes in question are:

(a) taken back by the exporter or the generator or, if necessary, by itself into the State of export, or, if impracticable,

(b) are otherwise disposed of in accordance with the provisions of this Convention,

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

26. Article 9.3 specifies what must be done if a transboundary movement is deemed to be illegal traffic as the result of conduct on the part of the importer or disposer. The State of import shall ensure that the wastes in question are disposed of in an environmentally sound manner by the importer or disposer or, if necessary, by itself. This shall be done within 30 days from the time the illegal traffic has come to the attention of the State of import or such other period of time as the States concerned may agree on. To this end, the Parties concerned shall cooperate, as necessary, in the disposal of the wastes in an environmentally sound manner.

27. Article 9.4 specifies what must be done if responsibility for the illegal traffic cannot be assigned either to the exporter or generator or to the importer or disposer. The Parties concerned or other Parties, as appropriate, shall cooperate to ensure that the wastes in question are disposed of as soon as possible in an environmentally sound manner either in the State of export or the State of import or elsewhere as appropriate.

28. Article 9.5 requires each Party to introduce appropriate national/domestic legislation to prevent and punish illegal traffic. The Parties shall cooperate with a view to achieving the objectives under this Article.

29. The prevention and control of illegal traffic in hazardous wastes and other waste has been an important issue for the Basel Convention ever since it entered into force in 1992.

30. All five meetings of the Conference of the Parties debated the issue of illegal traffic and adopted resolutions on this issue.

31. The main provisions of the 5 decisions adopted by the Conferences of the Parties on the issue of illegal traffic are:

- urge the Parties to the Basel Convention who have not yet done so, to promulgate laws that consider illegal traffic in hazardous wastes a criminal act;
- request the Parties to incorporate in their legal system, appropriate sanctions or penalties for the illegal traffic in hazardous wastes and other wastes, to take appropriate measures to ensure the effective implementation of this legislation and inform the secretariat of the Basel Convention accordingly;

- encourage Parties to build up these enforcement capacities, inter alia, through cooperation with international bodies such as Interpol, WCO and the International Network for Environmental Complaints, in the development of training and networking for enforcement personnel involved in the presentation of illegal traffic;
- request all governments to promote the interministerial coordination within the respective government to prevent and penalize illegal traffic in hazardous wastes and other wastes;
- note that the classification and characterization of wastes represent an essential tool to assist in the identification and prevention of illegal traffic;
- invite Parties to promote consistency when addressing the issue of illegal traffic in the relevant United Nations bodies, while avoiding duplication;
- invite Parties to use approved forms in their reports related to confirmed cases of illegal traffic to the secretariat;
- appeal to Parties to bring any confirmed case or, after consultation and agreement with the other Parties involved, alleged case of illegal traffic to the attention of the secretariat of the Basel Convention, with all the necessary information to enable the secretariat to take appropriate action, including support for any efforts by the Parties to solve the issues, such as the provision of appropriate expertise;
- request the Parties and the secretariat to take the necessary preventive measures, in particular through the dissemination of information on the Basel Convention and through working closely with the World Customs Organization, to include, as a matter of priority, the wastes under the scope of the Convention in the Harmonized System;
- request the Parties, with the assistance of the secretariat, to organize training courses and develop training manuals, at national and regional levels, for customs officers and police forces, in cooperation with the World Customs Organization, the International Criminal Police Organization and other appropriate bodies, including the United Nations regional commissions and secretariats of regional agreements dealing with similar issues.

32. The secretariat of the Basel Convention was requested by the decisions adopted by five meetings of the Conference of the Parties to:

- work closely with the United Nations Committee of Experts on the Transport of Dangerous Goods to harmonize classification and labelling systems for hazardous wastes and dangerous goods;
- continue its cooperation with various regional commissions and secretariats of regional conventions and protocols, non-governmental organizations, the industrial sector and the private sector, as well as the World Customs Organization and the International Criminal Police Organization, in order to achieve better control and monitoring of cases or alleged cases of illegal traffic in hazardous wastes and other wastes;

- assist Parties in capacity building, including the development of an appropriate infrastructure, with a view to preventing and penalizing cases of illegal traffic in hazardous wastes and other wastes and to ensuring the involvement of national authorities and focal points for the Basel Convention in the prevention and monitoring of illegal traffic in hazardous wastes and other wastes.

33. Appendix 1 contains all the provisions of the Basel Convention related to illegal traffic and all the provisions of the 5 decisions adopted by the Conference of the Parties of the Basel Convention in relation to the issue of illegal traffic.

34. The issue of illegal traffic was considered one of the priorities for the next 10 years by the Ministerial Declaration adopted by the fifth meeting of the Conference of the Parties to the Basel Convention.

35. The five parts of the guidance elements for the detection, prevention and control of illegal traffic in hazardous waste should be considered in their entirety including all appendices, each part bringing specific suggestions for the same general goal.

36. Appendix 2 contains case studies/examples of successful actions of Parties.

37. Decision V/23 requested the Legal Working Group and Technical Working Group to give further consideration to the issue of illegal traffic in hazardous wastes and other wastes, to develop recommended procedures to address alleged cases of illegal traffic and to assist Parties in preventing, identifying, monitoring and managing illegal traffic. This work should take into account the draft guidance elements for the detection, prevention and control of illegal traffic in hazardous wastes, approved in Pretoria in November 1998.

38. These Draft Guidance Elements were prepared by the secretariat using suggestions from Parties.

PART 1. NATIONAL CAPACITY BUILDING AND INTERNATIONAL COOPERATION

National Capacity Building

1a. Competent Authority/Focal Point

39. Article 5 of the Basel Convention requires Parties to designate or establish one or more competent authorities and one focal point. One competent authority shall be designated to receive the notification in case of a State of transit. Parties must inform the secretariat, within one month of the date of decision, of any changes in these arrangements.

40. National competent authorities have the main obligation to prevent, manage and punish illegal traffic of hazardous wastes. The secretariat should continue to organize training activities for competent authorities.

1b. Administrative procedures

41. Effective and transparent administrative procedures are another key agent in preventing and managing illegal cases of hazardous wastes.

1c. National inventories

42. National authorities should adopt a common approach for compiling statistics (including from the export/importing companies) on the legal and illegal transboundary movements of hazardous wastes. Such an approach should incorporate both the Basel Convention and the Harmonised System of classification.

43. National inventories should be maintained on a yearly basis and should be used as a policy tool against illegal traffic, and to implement pragmatic and focused preventive and coercive measures against illegal traffic.

1d. Promotion of compliance

44. Competent authorities should develop compliance and enforcement strategies covering the four main components of compliance. These are education and information dissemination, permitting, detecting offences and investigations and enforcement action.

a. Education and information dissemination

45. This component focuses on behaviour modification and includes dissemination of information to shippers and exporters, responding to inquiries about the scope of the Convention and ensuring easy access for industry to guidance documents and promotional material. Another important thrust concerns proactive activities which seek to find solutions for waste disposal in country or to improve industry practice. These activities may include regular advertisements, production of guidance documents for dissemination to industry, initiating and participating in workshops, workgroups and discussions to assist where possible in establishing appropriate domestic solutions to waste disposal and encouraging companies to implement waste minimisation practices, cleaner production techniques and best practice technologies and methodologies.

b. Permitting

46. This component is about ensuring that any system of permits has in place checks and balances. It aims to ensure clarity of requirements, crossing-checking of information, minimum standard requirements for public notices and tailoring of permit conditions to particular circumstances. Activities may include revision of forms to make requirements clear, ensuring the security of permit numbers, establishing procedures to cross check actual movements, as reported in Customs data, against those specified in permits. The permits should clearly specify the obligations of the exporters.

c. Detecting offences

47. This component involves ad hoc inspections of shipments, taking of samples by inspectors, targeting particular types of export/import movements for compliance checks, checking of Customs data and provision of intelligence to Customs, targeting high-risk situations and initiating specific enforcement activities. Activities include ensuring a regular supply of information from Customs and establishing protocols for reviewing Customs data on a regular basis and responding to data that needs further action, targeting high-risk shipments for inspection and developing training courses for inspectors and Customs personnel.

d. Investigations and enforcement actions

48. This component consists of referral of possible breaches of the laws implementing the Convention to law-enforcement agencies. Activities may include developing standard operating procedures to assist in conducting investigation and developing comprehensive investigative procedures which do not risk compromising an investigation.

49. As enforcement of law becomes increasingly diverse and complex more demands are being made of all sectors of the community to ensure compliance with the law. This can be achieved proactively through education or reactively through investigation and subsequently, possible prosecution. Non-governmental organizations and community groups can make important contributions to enforcement and competent authorities should ensure that they can work effectively with them.

1e. Training of enforcement personnel

50. Training of personnel involved in preventing, identifying and managing illegal traffic is central to effective control. Where there is a breach of a law an investigation is often necessary. Given the complexities inherent in such an investigation it is essential that the investigator be equipped with appropriate competencies and knowledge in order to fulfil the role effectively and efficiently. A basic training manual jointly prepared by the SBC, Interpol and WCO will be attached to this Guidance as Appendix 5.

1f. Technical expertise/facilities

51. Lack of technical expertise/facilities is an obstacle to effective prevention, monitoring and management of illegal traffic in hazardous wastes. The secretariat shall develop Guidelines on the development of incident, accident and contingency preparedness plan for hazardous wastes. Regional and sub-regional mechanism for Dump Watch alert system are encourage.

52. Where use of a national laboratory or facility is not feasible a regional solution should be sought. Regional training centres could play a key role in addressing this issue. Advice may be sought from the secretariat of the Basel Convention, which may refer inquiries to

relevant experts. The International Network on Compliance and Enforcement (INECE) can also help.

1g. Enforcement/intelligence capacity

53. When developing strategies for preventing and managing illegal traffic in hazardous wastes, Parties could use any existing draft guidelines for compliance and enforcement. In particular, recommendations on transparency of approach, strengthening treaty reporting requirements, site monitoring, compliance incentives, building national capacity and education and awareness raising would provide a sound basis for such work.

54. Data gathering and information analysis is also a very important tool. In particular, close monitoring of hazardous waste import and export statistics, should be based on waste trade patterns and the modus operandi of confirmed illegal shipments to form an overall picture. For example, much of the data on illegal traffic in hazardous wastes is related to contaminated waste (i.e. wastes mixed with hazardous substances) or non-recyclable wastes. Past experience indicates that illegally imported or exported waste is often declared as non-hazardous scrap (e.g. mixed metal scrap and plastic scrap) and tends to be exported by small trading firms or agents with no waste recycling facilities, rather than original waste generators. Prior to the arrival of the waste at its destination, the waste is likely to have changed hands several times. Consequently, illegal traffic is generally suspected where the origin or exporter of a shipment is difficult to determine.

55. Some countries have been liaising with their major waste trade partners to share operational experience and refine the criteria for selecting shipments for inspection. Cooperation between competent authorities is also useful in determining the legal status of a shipment.

56. Heavy cargo traffic at many international ports and the time taken to conduct random screening and inspection, mean that sometimes illegal traffic is not detected prior to departure. Where an illegal shipment is suspected, competent authorities can exchange information on the name of the vessel, the contained number(s) and the date of departure so that the waste can be intercepted on its arrival at its destination. This type of cooperation can benefit both parties, as it allows time for shipping documents to be scrutinised and for inspections to be organized. It is also relevant to all modes of transport including sea, road, rail, river and air.

57. Competent authorities should use a risk management approach to setting compliance and enforcement priorities, to ensure that their resources are targeted effectively. A typical approach would involve five steps, namely:

1. Establish the context
2. Identify the risks
3. Analyse the risks
4. Assess the risks and set priorities
5. Treat the risks
6. Following-up the process

58. Guidelines for such a risk management approach are provided in Appendix 4.

1h. Effective licensing and monitoring of facilities

59. The Basel Convention provides that each Party shall prohibit all persons under its national jurisdiction from transporting or disposing of hazardous wastes or other waste unless such persons are authorised or allowed to perform such types of operation. In order to meet this obligation all parties must have effective licensing and monitoring systems in place.

1i. Effective inter-agency cooperation etc.

60. National environmental agencies generally work with local, national and international authorities to enforce controls on transboundary movements of hazardous waste. Customs agencies and competent authorities are key partners in detecting, intercepting and inspecting suspect hazardous waste shipments at critical control points.

61. International and national environmental agencies should collaborate with competent authorities, local police, transport companies, recycling industries, NGOs, etc. in detecting, investigating and managing illegal waste traffic. A high level of cooperation is crucial in managing and monitoring the waste if it is to be safely and quickly returned to its place of origin.

62. Illegal hazardous waste shipments can often be detected by reviewing information contained in shipping manifests. Information received from partner agencies is also useful in building profiles for targeting illegal waste traders. For example, companies previously involved in illegal or problematic shipments are targeted for inspection as are shipments with profiles describe above. Often such shipments are identified in cooperation with overseas control authorities, and provide an effective additional check to random inspections.

International Cooperation

a. Levels of international cooperation

63. International cooperation for detection, prevention and control of illegal traffic in hazardous wastes can occur on the following levels:

- interaction of competent authorities
- use of international intelligence networks by enforcement/intelligence officers
- role of/cooperation with other international organizations such as the World Customs Organization (WCO), Interpol, etc.

64. The interaction between the competent authorities of the country of export, country of import and countries of transit is necessary and could help in detecting, preventing and controlling the illegal traffic of hazardous wastes. Formal and informal communication could be used, including e-mail messages which facilitate quick interaction.

65. The World Customs Organization initiated in July 2000 a network called Customs Enforcement Network (CEN). The aim of this network is to link all customs administrations for enforcement purposes and provide them with a common database and reference system. Any national customs administration should be connected to CEN through its National Contact Point. By using the CEN network, national customs administration can have immediate and direct access to the database of all previous cases of illegal traffic of hazardous wastes.

66. Another source of intelligence and useful information about past cases of illegal traffic of hazardous wastes and modus operandi could be obtained from Interpol through National Central Bureaus.

67. Such profiles will need to be continually updated if regulatory authorities are to keep abreast of developments in illegal traffic trends.

b. Role of the secretariat of the Basel Convention

68. The secretariat of the Basel Convention is rapidly improving its ability to facilitate international cooperation in the prevention, identification and management of illegal traffic in hazardous waste. In particular, the secretariat has identified a large number of relevant international organizations that could cooperate in joint activities aimed at better controlling and monitoring alleged or confirmed cases of illegal traffic. These include Interpol, World Customs Organization, UN Commission on Crime Prevention and Criminal Justice, UNEP, UNDP, IAEA/World Atom, the Secretariat of Climate Change, CITES, Ozone Secretariat, the UN High Commissioner for Human Rights, the Food and Agriculture Organization of the United Nations (FAO), the European Commission, the International Maritime Organization (IMO), the Organization for Economic Cooperation and Development (OECD), the Organization for the Prohibition of Chemical Weapons (OPCW).

69. The secretariat intends to develop Memoranda of Understanding or similar agreements with most, if not all, these organizations. These agreements will outline each party's area of responsibility and modalities for cooperation.

70. Future cooperative efforts will be focused on achieving practical and concrete results in the following priority areas:

- (i) identifying opportunities for combating illegal traffic;
- (ii) information exchange;
- (iii) improving data collection and analysis;
- (iv) updating criminal profiling;
- (v) improving methodologies for compliance and enforcement;
- (vi) identifying and resolving deficiencies in existing national legislation;
- (vii) training in compliance and enforcement;
- (viii) awareness raising and information dissemination.

PART 2. PREVENTION

71. It is very important for Parties prohibiting the import of various wastes to ensure that this information is transmitted to other Parties via the secretariat as required by Article 4.1(a) and Article 13 of the Convention.

72. Article 3.1 of the Basel Convention requires each Party, within six months of becoming a Party to the Convention, to inform the secretariat of the Convention of the wastes, other than those listed in Annexes I and II, considered or defined as hazardous under its national legislation and of any requirements concerning transboundary movement procedures applicable to such wastes.

73. Article 3.4 requires Parties to be responsible for making the information transmitted to them by the secretariat available to their exporters.

74. In cases where national legislation is defective or where there is information or technical obstacles to compliance, there are a range of measures that might enhance the capacity of Parties to comply, such as legal and technical assistance which could be requested through the Basel secretariat.

75. Prevention can encompass detection, investigation, management of the intercepted cargo and legal action.

2a. *Problems relating to transit*

76. The Basel Convention defines "State of transit" as 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. The definition of "transboundary movement" includes movement through an area under the national jurisdiction of another State, including any land, marine area or air space within which a State exercises administrative and regulatory responsibility in accordance with international law in regard to protection of human health and the environment. Article 4.12 states that nothing in the Convention shall affect in any way the sovereignty of States over their territorial sea, and the jurisdiction which States have in their exclusive economic zones, and the exercise by ships and aircraft of all States of navigational rights and freedoms.

77. The Convention allows a State to require notification and consent for transits of hazardous wastes which are planned to cross its territorial sea or exclusive economic zone. In practice, however, most Parties are understood to require notification and consent only when a ship enters a port under their jurisdiction. This is because during a visit to a port there is always a risk that wastes may be unloaded, even if this was not planned, and then abandoned. However, some Parties only require notification and consent if it is planned that the wastes be unloaded and then loaded again.

78. Because there is a risk associated with unloading of the wastes, some Parties require notification and consent if the ship enters a roadstead instead of a port. At international law a roadstead is an area of water which is normally used for the loading, unloading and anchoring of ships. The definition of a port would not include a roadstead: in referring to ports Article 11 of the UN Law of the Sea Convention (UNCLOS) does not expressly include roadsteads. Rather, the provision includes "permanent harbour works which form an integral part of the harbour system" but expressly excludes off-shore installations and artificial islands. Article 12 of UNCLOS provides for roadsteads to be considered part of the territorial sea and not part of internal waters.

79. It is recommended that Competent Authorities should follow the notification and consent procedure for all transboundary movements involving entry into a port or roadstead, unless they are aware that the wastes are not proposed to be unloaded and the particular State of transit does not require notification under those circumstances. It is recommended that Parties which require notification and consent for transits through their territorial sea or exclusive economic zone should advise other Parties, through the secretariat, of their requirements.

80. Similar principles apply to proposed transits through airspace and airports.

81. Written consent from a State of transit is required for each movement that passes through it. International canals and free ports present special problems where a central system of control should be instituted.

2b. *Cooperation with Customs and other regulatory authorities*

82. Cooperation with Customs and other regulatory authorities is central to preventing illegal traffic. Work currently being undertaken on the Harmonised System (HS) of the World Customs Organization will provide a much greater understanding of the extent of the illegal traffic problem and will allow greater scope for identifying and targeting problem areas. Customs authorities are key players in detecting and intercepting illegal traffic. However, the current Harmonised System Code does not allow for the identification of hazardous wastes and other wastes, making the task of customs authorities even more difficult in the task of identifying illegal traffic. For this reason, competent authorities, in cooperation with Customs, have begun to develop procedures for aligning Basel Convention wastes with categories in the Harmonised System. Only through close cooperation between customs authorities and national environmental agencies, will customs authorities be able to become effective agents in the battle against illegal traffic in hazardous wastes.

83. In particular, it would be useful to develop a table relating Annexes VIII and IX of the Convention to the Harmonised Customs Codes. This would assist Parties in identifying priority areas requiring review. These could then be brought to the attention of the World Customs Organization.

84. There is today wide agreement about the importance of strengthening linkages among MEAs that will allow greater compliance verification and problem identification. Cooperation between secretariats, government agencies and non-governmental experts in on-site monitoring as a measure for increasing transparency is developing.

2c. Identification of waste streams at source

85. Export countries should develop strategies for identifying hazardous waste streams at the point of exit. This could be achieved by identifying regular hazardous waste exporters, maintaining tight administrative control at the notification stage, promoting enhanced cooperation and information exchange amongst relevant national authorities, and tightening legal provisions relating to the 'duty to reimport' under their national laws in accordance with Article 8 of the Basel Convention.

86. For some wastes, however, it may be best to identify waste streams at source. For example, hazardous electronic scrap is likely to be shipped under a general customs code such as "mixed metal scrap". It is very difficult to identify electronic scrap among the numerous entries for this code. However, companies that collect and dispose of electronic scrap will advertise their services, and it should be possible to check what each company is doing with the waste it collects.

2d. Packaging, labelling, sampling and analysis

87. The Basel Convention obliges each Party to ensure that all hazardous wastes and other wastes that are to be transported are packed, labelled and transported in conformity with generally accepted and recognised international rules and standards. Accepted international standards have been established under the UN Dangerous Goods Codes and ISO 14000 and all packaging, labelling and transportation procedures should conform to these standards.

88. Improper packaging and labelling may be indicative of illegal traffic, and any shipment that does not conform to the above standards should be investigated.

89. Sampling and analysis is dealt with in Appendix 3.

2e. Promoting awareness

90. Some cases of illegal traffic are due to lack of information and for this reason a key strategy for prevention will be international and national awareness raising campaigns. This might include activities such as training courses, seminars, advertising, information papers and guidance documents targeted at those involved in the import and export of hazardous waste. Ensuring clear and enforceable regulations is also an effective prevention measure.

91. For intentional cases, publicity of prosecuted illegal cases may be an effective deterrent if detection and enforcement measures are successful. Other options for prevention might be advertising, strengthening detection and enforcement measures, closing loopholes in legislation and raising penalties to a level that will act as an effective deterrent.

2f. *Guidance documents by national authorities*

92. Guidance documents targeted at importers and exporters are essential for preventing inadvertent breaches of legislation. In areas of uncertainty such as determining waste from non-waste, whether or not a waste is hazardous, and what constitutes environmentally sound management, guidance documents can be useful in clarifying the Convention's rules. They also provide a transparent and consistent basis for determining how the Convention will be interpreted. For hazardous waste importers and exporters, such guidance provides clarification on issues that could potentially lead to illegal activity and leads to greater certainty in planning and administration.

93. Guidance documents are also useful for providing a simple explanation of the rules that need to be followed. Often legislation is difficult to interpret and contains ambiguities that could lead to potential inadvertent breaches. Providing simple explanation and clarification of legislative instruments promotes an environment of transparency, cooperation, awareness and trust and can therefore be a useful tool in preventing illegal traffic.

2g. *Inspection: overt and covert*

94. In preventing illegal activity, it is important to know how and why breaches occur. It is also useful to know whether there are patterns or linkages of non-compliance that may point to potential or further illegal activity and whether there are obstacles or loopholes that act as disincentives to compliance. Strategies to promote transparency, cooperation amongst parties, public awareness and opportunities for a wide range of stakeholders to contribute to identifying problems and possible solutions should be encouraged.

95. It is important and necessary that each Party shall designate one or more competent authorities to work together to address illegal traffic and share enforcement information through a confidential network.

96. Data gathering and analysis can take place at many stages, especially where the activity has been observed by intelligence gathering operations as potentially illegal. This may then trigger requests to customs authorities to investigate as the next paragraph suggests.

97. Typically, investigation of alleged illegal traffic is triggered by the detection of suspect material by customs officials or competent authorities in the country of import. Generally such shipments are not accompanied by the relevant documentation or the documentation provided does not correspond to description of the material being transported. Such cases tend to be intentional and are generally more difficult to resolve than unintentional breaches of the Convention involving companies that routinely comply with established regulations.

98. Intelligence about intentions of identified illegal traffic is crucial for preventing, monitoring and detecting illegal activities. Where unintentional breaches are detected, the

reasons for non-compliance can be assessed and procedures refined or education programmes targeted to reduce the likelihood of a recurrence. Intentional breaches can point to loopholes in national legislation or procedures that may need amended or may point to wider organized criminal activity that may require further monitoring.

99. Once an illegal shipment is detected, further investigation is necessary to confirm who is responsible for the illegal activities and whether or not prosecution is likely to be successful. Collection of evidence is crucial for successful prosecution, and should be conducted strictly in accordance with established procedures.

100. Proper procedure for evidence collection and witness interviewing are vital if a successful prosecution is to take place under the relevant jurisdiction.

101. In some cases it would be more convenient to inspect a transboundary shipment when it arrives at the importer's facility rather than at the border crossing. In this case the inspectors may wish to follow up their inspection of transboundary shipment by also inspecting equipment and processes at the inspector's facility to assess if they are consistent with the recycling and/or disposal operation(s) indicated in their licences/permits. Non-tariff requirements could be established so that at the border the environmental inspectors could verify the documents related to hazardous wastes.

102. In other cases, taking into account intelligence information, the inspection could also be undertaken at an export facility.

103. In all circumstances, the inspection procedure will begin with collection of all documents related to the generation of hazardous wastes, related to plans of export/import, related to recycling activities, disposal facilities and any other documents which might be useful (record information about exporter, carrier, importer, etc.).

104. After the documents are gathered and checked, a visual inspection of the hazardous waste is necessary, including storage facilities. People undertaking inspections should always take appropriate precautions. For example, closed shoes with steel caps should normally be worn in cargo-handling areas. Care should be taken when opening containers in case cargoes have shifted in transit. Respiratory protection and gloves should be worn if there is a risk of exposure to hazardous dusts.

105. Last, but not least, sampling might be necessary, for determining precisely what are the characteristics of the hazardous wastes. Sampling should always be done in accordance with the guidance in Appendix 3. As with visual inspections, appropriate safety precautions must always be taken.

106. In all cases of inspection, if there are signs of violation, the inspectors should remember that the purpose of inspection is to collect evidence to determine if a violation of the law was made. Subsequently, if this is the case the appropriate procedures of investigation should be followed.

2h. *Dealing with ambiguity*

107. Ambiguities can be of a legal, technical and/or practical nature and important ones must be resolved before an illegal shipment can be confirmed.

108. Legal ambiguities stem from different interpretations about what is or is not covered by the Convention. These are further complicated by national definitions of hazardous wastes. Consequently, despite clarification and refinement of the Basel lists, a certain level of ambiguity will always remain. Ultimately Parties will need to resolve these matters through

existing mechanisms established under the Convention, or though lengthy and costly legal proceedings in the Courts.

109. Technical ambiguities are related to determining the physical properties of a material. These relate to questions of whether a material is considered to be a waste or whether a waste is considered hazardous. Currently, these ambiguities are resolved by the Basel Convention Technical Working Group which considers applications for placement or removal from the Basel annexes. Open debate within this forum provides the opportunity for Parties to state their case and have their proposal examined by experts in a number of countries.

110. Ambiguities may also arise from disputes over sampling and analytical methods (see Appendix 3, Sampling and analysis).

111. Practical ambiguities relate to problems such as identifying a party or parties responsible for an illegal shipment, the ability of an aggrieved party to recover costs, differences in opinion about concepts such as temporary storage and determining the responsibility of concerned parties in meeting the Basel Convention obligations on the cooperative resolution of illegal traffic.

112. In establishing certainty, it is useful to consult Part 3 of these Guidelines, especially paragraphs 127 to 135.

2i. *International cooperation at all levels*

113. International cooperation amongst key players and at all levels is central to prevention and management of illegal traffic. These include national competent authorities, the secretariat of the Basel Convention, the secretariats of other environmental conventions, UNEP, Interpol, World Customs Organization, etc.

114. In addition, Parties should promote, as appropriate, strategies to bring their actions as well as actions of other relevant participants in the open for appropriate scrutiny by Parties, and as appropriate, other groups in the international system. The public should have access to information about the Convention, including reports on national compliance pursuant to Article 13 of the Basel Convention and opportunities to assist in monitoring compliance.

115. Parties should consider making provision for measures designed to enhance national and local capacity, to comply with the Basel Convention requirements. These include such measures as technical and financial assistance, training and supplying necessary equipment. The private sector should be encouraged to assist in enhancing the national capacity to comply. Economic or other incentives should be considered to facilitate effective implementation of the Basel Convention.

116. Cooperation amongst the secretariats of relevant international Conventions, non-government and government experts, business and industrial association, recycling industries, universities, technical institutes, research centres, NGOs and individuals should be initiated in order to prevent and reduce illegal traffic.

2j. *Insurance and bonds*

Insurance

117. Article 6(11) of the Basel Convention provides that any transboundary movement of hazardous wastes or other wastes shall be covered by an insurance policy, bond or other guarantee as may be required by the state of import or any state of transit, which is a Party. It does not stipulate the level of or type of insurance that is required.

118. There are many insurance options that competent authorities can consider when determining insurance scheme. For example, insured legal liability to third parties covers claims in respect of personal injury or damage to property. It can also cover the cost of removing, nullifying or cleaning up any contamination or pollution, which is caused by a "sudden and accidental" event (insurance policies commonly exclude liability caused by or arising out of contamination or pollution unless caused by a sudden, identifiable, unintended, unexpected and accidental event). Competent authorities could choose to accept this double exclusion or they could require a less restrictive (but more expensive) type of insurance such as environment impairment liability insurance. This may cover any disposal, release, dispersal, discharge or seepage, even if it is not "sudden and accidental".

119. Geographical exclusions and conditions are also common in policies. Competent authorities may wish to consider not accepting such exclusions if the excluded countries include the proposed state of import, export or transit.

120. A common feature of insurance policies however, is that they generally do not cover cases where shipments are deemed illegal. Where an accident occurs as a result of an illegal shipment, it may be difficult to apportion liability and even more difficult to enforce laws that will ensure adequate environmental clean up. In cases where an illegal shipment has resulted from an inadvertent error, financial guarantees or bonds, in addition to insurance, may minimize the exporting country's risk of having to meet the cost of environmental damage.

121. An analysis of the amount required for insurance, bonds or other guarantees in relation to the quantity and quality of hazardous wastes described in the shipping or movement documents could also provide useful for the detection or prevention of illegal traffic.

Financial Guarantees and Bonds

122. Article 8 of the Basel Convention requires States of export to ensure that wastes are taken back, by the exporter, if a transboundary movement cannot be completed in accordance with the terms of the contract. To ensure that exporters are able to do this, competent authorities may require financial guarantees and bonds. The amount of money involved should be calculated so that all likely costs of a forced return and disposal of the wastes are covered. Financial guarantees and bonds may not be required if the competent authority is satisfied that the exporter has sufficient assets to be able to meet these costs.

123. The major benefit of financial guarantees and bonds over insurance is that financial payouts are assured regardless of the legal status of the shipment. In short, they ensure that the risk lies with those responsible for shipping the waste.

124. Multiple financial guarantees or bonds may be required by all States concerned, that is the States of export, import and transit. It is not normally appropriate for one State to rely on another State's financial guarantee because for example, the State of import may wish to call on a financial guarantee in circumstances outside the scope of the financial guarantee held by the State of export.

Protocol on liability and compensation for damage resulting from transboundary movements of hazardous wastes and their disposal

125. The Protocol on liability and compensation adopted by the fifth meeting of the Conference of the Parties in December 1999, although not yet in force, contains important provisions which could nevertheless be taken into consideration as a useful guide by the Parties.

PART 3. MANAGING ALLEGED AND CONFIRMED CASES

126. There are many challenges that face regulators in their efforts to effectively manage alleged cases of illegal traffic. One of the most difficult amongst them is determining whether the alleged case constitutes illegal traffic. Another key issue is determining who is responsible until illegal traffic has been confirmed. And once liability has been apportioned, the question of how to bring the perpetrator or perpetrators to justice poses further problems that can be extremely difficult to resolve.

127. Given the multiple jurisdictions and different legal systems that are often involved, resolving these challenges can be a complex and lengthy process. In many cases, national legislation is unable to effectively deal with inter-jurisdictional matters, making incidents of illegal traffic extremely difficult, if not impossible, to resolve within the 30-day time period contemplated in Article 9 of the Convention. However, with effective cooperation of all authorities involved, cases of illegal traffic can be successfully resolved with minimal impact on the environment.

3a. Determining whether illegal traffic has occurred

128. Once suspected illegal shipments are detected, further investigation must be carried out to confirm whether or not it is illegal traffic. Through intelligence received from various national and international sources, waste shipments may be intercepted for inspection at key control points such as container terminals. In later stages, investigations will be aimed at determining those responsible for undertaking the alleged illegal activities and whether or not prosecutions will be likely to succeed. As evidence is collected both locally and internationally, cooperation between relevant competent authorities is central to illegal traffic management. All legal requirements (provisions of the Basel Convention, national laws and regulations) should be taken into account when determining whether or not a transboundary shipment of hazardous wastes is illegal.

129. Identification of hazardous waste in one country may not necessarily provide a basis for enforcement in another. Even where there is general agreement, Parties' rights under Article 3 of the Convention, to define non-Basel waste as hazardous wastes under national legislation, may make prosecution difficult. This highlights the importance of the Basel Convention's notification and consent procedures and the requirement under Article 3 to inform the secretariat of any non-Basel hazardous wastes defined under national legislation.

130. There may also be a time lag between the arrival of the wastes in the state of import and notification of the State of export of illegal traffic. Within 30 days from the time the state of export has been informed of the illegal traffic, the State of export or the generator shall take back the waste in question. The States concerned could agree to extend the period of 30 days. If it is impracticable to take back the wastes, the State of export or the generator shall dispose of the waste in accordance with the provisions of the Basel Convention. Nevertheless, Parties' obligations to cooperate to resolve illegal traffic incidents should ensure that the material is returned to the country of origin and dealt with in an environmentally sound manner as soon as possible.

131. The tendency for countries to reject extra-territorial application of national laws in criminal cases makes it difficult for the exporting country to pursue prosecution of illegal traders based solely on allegations of the country of import. The country of export has to have legal authority to require reimportation and the country of import has the right to insist on the duty of the Party of export to take back the illegal waste.

3b. Determining who was the exporter of the waste

132. Under the Basel Convention, exporter means any person under the jurisdiction of the State of export who arranges for hazardous wastes or other wastes to be exported. National legislation

reflecting elements of the Convention, could provide that the exporter may be the generator, broker, carrier or other person with responsibility for the waste.

133. Considerable time may be spent determining the person or persons responsible for an illegal shipment. Complications increase with complexity in relationships between companies especially where foreign companies are involved. For example, the use of subsidiary companies, foreign brokers and agents and the sale of wastes to foreign companies prior to physical transfer of the waste can introduce complexities that obscure the identity of the exporter. Additional questions may arise if the exporter is an overseas-based company without a presence or agent in the States of export. In the absence of adequate legislative provisions to ensure legal liability is enforceable, the country of export must accept responsibility for making arrangements for the return of the waste. It is therefore in a party's interest to ensure that all loopholes in its national legislation are eliminated.

3c. Determining how to return the waste

134. Although the provisions of the Basel Convention require the State of export to ensure that the wastes in question are taken back by the exporter or the generator or, if necessary, by itself into State of export within 30 days from the time of receiving information about the illegal traffic or such other period of time as States concerned may agree when the illegal traffic operation is the result of conduct on the part of the exporter or generator, the past experience showed that complications could occur, such as ownership of the waste

135. Where there is a dispute between parties as to the legal ownership of the waste, the time taken to resolve the dispute could be lengthy, thus delaying the speedy return of the waste as required by the Basel Convention.

136. The domestic law of some countries requires a successful conviction before steps can be taken to reimport an illegal shipment. In such cases, if the company involved in the illegal shipment does not voluntarily agree to reimport the waste, the time taken to resolve the illegal traffic incident is likely to be lengthy.

137. Because of the difficulties mentioned in the above paragraphs, unfortunately, once an illegal shipment of hazardous or contaminated waste has been intercepted, the country of import has been obliged to adopt measures for arranging the return of the waste to the country of origin. To facilitate early return of the waste in accordance with the requirements of the Basel Convention, effective cooperation and liaison between the competent authority of the importing state and other relevant states should be a priority.

3d. Whether the exporter followed the requirements of the Basel Convention

138. The country of export may take all reasonable steps to ensure that an illegal shipment is reimported and disposed of in accordance with the Convention. Nevertheless, it is possible that the Convention could once again be breached, either fraudulently or unintentionally, in the course of reimportation. In such cases, the reimport of the material would also be considered to be illegal traffic. Once confirmed, steps should be taken to investigate the breach and the perpetrators brought to justice.

3e. Seizure of the material

139. If the waste (in particular recyclable material that has economic value) is still legally owned by the exporting or importing company, but this company refuses to comply with requests to return the waste, government authorities may face legal difficulties in seizing or moving wastes that they do not own. Difficulties encountered by governments in seizing or moving waste be addressed through provisions in national law.

3f. *Temporary storage*

140. It is important that the material is safely stored during an illegal traffic investigation. In particular, consideration should be given to protecting human health and the environment, safeguarding the chain of evidence and avoiding any counter-claims by companies relating to damage to their material.

141. Once an alleged illegal shipment of wastes has been identified, sampling and analysis is carried out to determine whether or not the material is hazardous. As the quality of sampling and analysis is central to legal proceedings and, later, whether or not a prosecution is likely to succeed, it is crucial that correct procedures are followed and evidence is not compromised. To ensure that highest quality results are obtained, the considerations in Appendix 3 should be taken into account in investigations of alleged illegal traffic.

3g. *Dealing with abandoned waste*

142. Cases of abandoned illegal shipments of hazardous wastes are increasing. It is therefore important to institute national legal and technical provisions and mechanisms for dealing with each case. For example old ships are being abandoned in the ports of developing countries or are dumped in the territorial waters of developing countries.

3h. *Notification to the SBC and concerned Parties*

143. Article 16,(1)(i) of the Basel Convention gave the secretariat the mandate to assist Parties upon request in identification of cases of illegal traffic and to circulate immediately to the Parties concerned, any information it has received regarding illegal traffic.

144. Ensuring that all relevant countries are aware of alleged illegal shipments is crucial in preventing illegal traffic. Notification, either by the secretariat for the Parties, or directly between Parties, encourages governments, companies, NGOs and other stakeholders to work together to develop effective prevention strategies and provides an incentive to quickly and effectively resolve illegal traffic incidents, to the extent that is consistent with legal requirements and enforcement practice.

3i. *Differences in interpretations of the countries involved*

145. On-going negotiation by relevant countries is crucial in resolving cases of illegal traffic where the countries of export and import disagree on the status of the shipment. Where agreement cannot be reached, despite the genuine effort of both Parties, it might be necessary to resort to the procedure for settlement of disputes described in Article 20 of the Convention.

PART 4. USE OF ELECTRONIC INFORMATION

4a. *Domestic Examples*

146. Opportunities for increasing the automated administration of national legislation are increasing all the time. This includes both the collection of notification information from companies regarding proposed exports, imports and transits, the issuance of permits electronically, and the development of software for the electronic tracking of shipments. Some considerations experience include not only hardware and software capability within the administering agency, but also parallel and compatible electronic systems within industry and among trading partners.

147. Automated administration would likely require a large electronic database of information for example that is drawn from notification and movement documents. Other software uses could

include systems that query these databases and can quickly provide information to officers in the field via a secure website which limits access to authorized individuals. These systems allow for direct access to the database, and at the same time, reports can be generated, shared and transmitted electronically. These are all technologies that Parties to the Conventions may have already implemented, or could consider developing.

148. For communication with regulated companies, one possibility is an internet based system of electronic data exchange (EDE). With such a system, it is possible to deposit notifications and movement documents directly into a database using either of the following methods:

- regulates fill out electronic forms over the internet; or
- regulates transfer bulk notification and movement document information from their databases using an e-mail attachment.

149. Given that not all regulates have the same level of technological capacity, an electronic system should also allow interface with traditional paper-based systems.

150. The systems outlined above support the generation and collection of data. The collected data can then be used to monitor regulatees' regulatory compliance. Additionally, the same or similar databases may be used to support intelligence and enforcement activities. Details regarding these activities may be considered to be confidential for security reasons. One possibility is the use of electronic libraries that contain case assessments.

4b. International Examples

151. In the international setting, there are also automated customs, trade and investigative processes that can incorporate electronic information and allow customs and law enforcement officers to track shipments and possession of wastes and to detect illegal shipments or dumping. For example, the World Customs Organization has a Customs Enforcement Network which has international accessibility restricted to authorized customs enforcement officers.

152. Bar codes and global positioning systems represent other electronic technologies with applicability to transboundary movements of hazardous wastes, particularly during their transportation. Partnerships among regulatory and enforcement authorities, and the affected industry (e.g. transportation) can be important aspects of the effective operation of such initiatives. These technologies can expedite customs clearance at international borders and also flag shipments which do not comply.

Appendix 1

Provisions of the Basel Convention and decisions adopted by the Conferences of the Parties to the Basel Convention

Article 4

General Obligations

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

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

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

2. Each Party shall take the appropriate measures to:

[.....]

(d) Ensure that the transboundary movement of hazardous wastes and other wastes is reduced to the minimum consistent with the environmentally sound and efficient management of such wastes, and is conducted in a manner which will protect human health and the environment against the adverse effects which may result from such movement;

(e) Not allow the export of hazardous wastes or other wastes to a State or group of States belonging to an economic and/or political integration organization that are Parties, particularly developing countries, which have prohibited by their legislation all imports, or if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner, according to criteria to be decided on by the Parties at their first meeting;

(f) Require that information about a proposed transboundary movement of hazardous wastes and other wastes be provided to the States concerned, according to Annex V A, to state clearly the effects of the proposed movement on human health and the environment;

(g) Prevent the import of hazardous wastes and other wastes if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner;

(h) Cooperate in activities with other Parties and interested organizations, directly and through the Secretariat, including the dissemination of information on the transboundary movement of hazardous wastes and other wastes, in order to improve the environmentally sound management of such wastes and to achieve the prevention of illegal traffic.

3. The Parties consider that illegal traffic in hazardous wastes or other wastes is criminal.

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

5. A Party shall not permit hazardous wastes or other wastes to be exported to a non-Party or to be imported from a non-Party.

6. The Parties agree not to allow the export of hazardous wastes or other wastes for disposal within the area south of 60° South latitude, whether or not such wastes are subject to transboundary movement.

7. Furthermore, each Party shall:

[.....]

(b) Require that hazardous wastes and other wastes that are to be the subject of a transboundary movement be packaged, labelled, and transported in conformity with generally accepted and recognized international rules and standards in the field of packaging, labelling, and transport, and that due account is taken of relevant internationally recognized practices;

(c) Require that hazardous wastes and other wastes be accompanied by a movement document from the point at which a transboundary movement commences to the point of disposal.

Article 6

Transboundary Movement between Parties

1. The State of export shall notify, or shall require the generator or exporter to notify, in writing, through the channel of the competent authority of the State of export, the competent authority of the States concerned of any proposed transboundary movement of hazardous wastes or other wastes. Such notification shall contain the declarations and information specified in Annex V A, written in a language acceptable to the State of import. Only one notification needs to be sent to each State concerned.
2. The State of import shall respond to the notifier in writing, consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information. A copy of the final response of the State of import shall be sent to the competent authorities of the States concerned which are Parties.
3. The State of export shall not allow the generator or exporter to commence the transboundary movement until it has received written confirmation that:
 - (a) The notifier has received the written consent of the State of import; and
 - (b) The notifier has received from the State of import confirmation of the existence of a contract between the exporter and the disposer specifying environmentally sound management of the wastes in question.
4. Each State of transit which is a Party shall promptly acknowledge to the notifier receipt of the notification. It may subsequently respond to the notifier in writing, within 60 days, consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information. The State of export shall not allow the transboundary movement to commence until it has received the written consent of the State of transit. However, if at any time a Party decides not to require prior written consent, either generally or under specific conditions, for transit transboundary movements of hazardous wastes or other wastes, or modifies its requirements in this respect, it shall forthwith inform the other Parties of its decision pursuant to Article 13. In this latter case, if no response is received by the State of export within 60 days of the receipt of a given notification by the State of transit, the State of export may allow the export to proceed through the State of transit.
5. In the case of a transboundary movement of wastes where the wastes are legally defined as or considered to be hazardous wastes only:
 - (a) By the State of export, the requirements of paragraph 9 of this Article that apply to the importer or disposer and the State of import shall apply *mutatis mutandis* to the exporter and State of export, respectively;
 - (b) By the State of import, or by the States of import and transit which are Parties, the requirements of paragraphs 1, 3, 4 and 6 of this Article that apply to the exporter and State of export shall apply *mutatis mutandis* to the importer or disposer and State of import, respectively; or
 - (c) By any State of transit which is a Party, the provisions of paragraph 4 shall apply to such State.
6. The State of export may, subject to the written consent of the States concerned, allow the

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

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

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

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

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

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

Article 7

Transboundary Movement from a Party through States which are not Parties

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

Article 8

Duty to Re-import

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

Article 9

Illegal Traffic

1. For the purpose of this Convention, any transboundary movement of hazardous wastes or other wastes:

(a) without notification pursuant to the provisions of this Convention to all States concerned; or

(b) without the consent pursuant to the provisions of this Convention of a State concerned; or

(c) with consent obtained from States concerned through falsification, misrepresentation or fraud; or

(d) that does not conform in a material way with the documents; or

(e) that results in deliberate disposal (e.g. dumping) of hazardous wastes or other wastes in contravention of this Convention and of general principles of international law, shall be deemed to be illegal traffic.

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

(a) taken back by the exporter or the generator or, if necessary, by itself into the State of export, or, if impracticable,

(b) are otherwise disposed of in accordance with the provisions of this Convention,

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

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

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

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

Article 13

Transmission of Information

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

(a) Changes regarding the designation of competent authorities and/or focal points, pursuant to Article 5;

(b) Changes in their national definition of hazardous wastes, pursuant to Article 3; and, as soon as possible,

(c) Decisions made by them not to consent totally or partially to the import of hazardous wastes or other wastes for disposal within the area under their national jurisdiction;

(d) Decisions taken by them to limit or ban the export of hazardous wastes or other wastes;

(e) Any other information required pursuant to paragraph 4 of this Article.

Article 16

Secretariat

1. The functions of the Secretariat shall be:

[.....]

(i) to assist Parties upon request in identification of cases of illegal traffic and to circulate immediately to the Parties concerned, any information it has received regarding illegal traffic.

Decisions adopted by the Conferences of the Parties to the Basel Convention

I/15. ILLEGAL TRAFFIC IN HAZARDOUS WASTES

The Conference

Expressing its concern at the problem of illegal traffic in hazardous wastes, in particular to developing countries,

Conscious of the negative consequences of the illegal traffic on human health and the environment,

Convinced that the prevention of illegal traffic requires close cooperation among States, with the support of the secretariat of the Basel Convention and all interested organizations,

1. Welcomes the United Nations Environment Programme (UNEP) and Economic and Social Commission for Asia and the Pacific (ESCAP) joint project currently being implemented on monitoring and assessment of illegal traffic in toxic and dangerous products and wastes in that region;
2. Requests the secretariat to present an analytical report on the results of the UNEP-ESCAP joint project to the Second Meeting of the Conference of the Parties to the Basel Convention;
3. Also requests the secretariat to cooperate with other regional commissions in order to achieve the goal of prevention of illegal traffic in hazardous wastes;
4. Urges the Parties to the Basel Convention that have not yet done so to promulgate laws that consider illegal traffic in hazardous wastes a criminal act;
5. Calls upon Parties in a position to do so to cooperate with the secretariat to enable it to provide assistance to other Parties for the identification of cases of illegal traffic in accordance with Article 16, paragraph 1(i) of the Basel Convention;
6. Requests the Open-ended Ad Hoc Committee to study ways and means of enhancing the monitoring and prevention of illegal traffic in hazardous wastes and other wastes and to report its findings to the Conference of the Parties at its second meeting.

II/4. ILLEGAL TRAFFIC IN HAZARDOUS WASTES AND OTHER WASTES

The Conference

Expressing its concern at the problems of illegal traffic in hazardous wastes and other wastes, in particular to developing countries and to the countries in transition,

Recalling Decision I/15 of the First Meeting of the Conference of the Parties,

Having considered the report of the secretariat contained in document UNEP/CHW.2/8,

Having further considered the Open-ended Ad Hoc Committee recommendations contained in its Decision I/6 on "Illegal Traffic in Hazardous Wastes and other Wastes,"

1. Requests the Parties to promulgate or develop stringent national legislation on the control of transboundary movements of hazardous wastes taking into account the elements contained in document UNEP/CHW/C.1/1/7;
2. Further requests the Parties to incorporate in their legal systems, appropriate sanctions or penalties for the illegal traffic in hazardous wastes and other wastes;

3. Requests the regional commissions and secretariats of regional conventions and protocols to take an effective role in the monitoring and prevention of illegal traffic in hazardous wastes and other wastes and to coordinate their efforts and activities in this regard with the secretariat of the Basel Convention;
4. Requests all governments to promote the interministerial coordination within the respective government to prevent and penalize illegal traffic in hazardous wastes and other wastes;
5. Requests the secretariat of the Basel Convention to:
 - (a) Assist Parties in developing national legislation to deal with illegal traffic and hazardous wastes and other wastes;
 - (b) Assist Parties in capacity-building including the development of an appropriate infrastructure with a view of the prevention and penalization of illegal traffic in hazardous wastes and other wastes and to ensure the involvement of national authorities and focal points for the Basel Convention in the prevention and monitoring of illegal traffic in hazardous wastes and other wastes;
 - (c) Liaise with the various regional commissions and secretariats of regional conventions and protocols with a view to promoting the development of compatible regional mechanisms and systems;
 - (d) Promote the implementation of the appropriate parts of chapter 20 of Agenda 21 related to the illegal traffic in hazardous wastes, in particular its section D. In this regard a report should be presented to the relevant substantive session of the United Nations Commission on Sustainable Development;
 - (e) Continue its cooperation with the Customs Cooperation Council Secretariat with a view to ensure better control of import and export of hazardous wastes and other wastes and in particular to identify hazardous wastes and other wastes subjected to the Basel Convention in the Harmonized System;
 - (f) Include, in cooperation with the governments concerned, the Customs Cooperation Council and the International Maritime Organization, the training of customs and ports officers in relation to the import and export of hazardous wastes and other wastes in its programme of training activities;
 - (g) Receive, collate and disseminate information on illegal traffic in hazardous wastes and other wastes promptly and systematically with a view to ensuring that hazardous waste detected and rejected by one country is not dumped in another;
 - (h) Explore the possibility of cooperation with Interpol in cases of illegal traffic in hazardous wastes and other wastes;
 - (i) Establish a well-defined reporting system on cases of illegal traffic in hazardous wastes and other wastes, which would:
 - (i) Request Parties to report to the secretariat on any cases of illegal traffic in hazardous wastes and other wastes as defined by the Basel Convention and the actions taken to monitor and prevent such cases, and
 - (ii) Include a submission by the secretariat to the Conference of the Parties to the Basel Convention of reports, based on information received from the Parties,

on cases of illegal traffic in hazardous wastes and other wastes and the publication of these reports;

- (iii) Enhance its cooperation in the prevention and monitoring of illegal traffic in hazardous wastes and other wastes with non-governmental organizations, industry and the private sector;
- (iv) Submit a report on the above-mentioned activities to the third meeting of the Conference of the Parties to the Basel Convention.

III/5. ILLEGAL TRAFFIC IN HAZARDOUS WASTES AND OTHER WASTES

The Conference

Recalling decision II/4 of the second meeting of the Conference of the Parties,

1. Decides that a form be developed for use by Parties to report cases of confirmed illegal traffic;
2. Requests the Technical Working Group to review and revise the draft form developed by the secretariat of the Basel Convention and attached to this document as Appendix;
3. Requests Parties to review the draft form and submit comments for consideration by the Technical Working Group;
4. Requests Parties to cooperate with each other and the secretariat of the Basel Convention on alleged cases of illegal traffic;
5. Requests the Parties to:
 - (a) promulgate or develop stringent legislation on the control of transboundary movements of hazardous wastes and incorporate in this legal system appropriate sanctions or penalties for the illegal traffic in hazardous wastes and other wastes, to take appropriate measures to ensure the effective implementation of this legislation and inform the secretariat of the Basel Convention thereon;
 - (b) provide the secretariat of the Basel Convention with replies regarding the reported cases on illegal traffic;
 - (c) extend cooperation with Interpol with a view to presenting to future meetings of the Contracting Parties detailed reports on activities undertaken by the secretariat of the Basel Convention and Interpol to prevent illegal traffic in hazardous wastes and to provide detailed reports to the Bureau and the meetings of the Contracting Parties on any cases of illegal traffic, their sources, actions undertaken by the governments during the discovery of cases and follow-up activities by the Contracting Parties.
6. Requests the secretariat of the Basel Convention to:
 - (a) assist Parties in developing national legislation to deal with illegal traffic in hazardous wastes;
 - (b) assist Parties in capacity-building including the development of an appropriate infrastructure with a view to preventing and penalizing cases of illegal traffic in hazardous wastes and other wastes and to ensuring the involvement of national authorities and focal points for the

Basel Convention in the prevention and monitoring of illegal traffic in hazardous wastes and other wastes;

(c) continue its cooperation with the various regional commissions and secretariats of regional conventions and protocols, NGOs, industry, private sector, as well as the World Customs Organization (WCO) and Interpol in order to achieve a better control and monitoring of cases or alleged cases of illegal traffic in hazardous wastes and other wastes;

(d) organize training courses for customs officers, port authorities, judiciary personnel and police forces in cooperation with WCO, Interpol and other appropriate bodies, including UN regional commissions and secretariats of regional agreements dealing with similar aspects.

IV/12. ILLEGAL TRAFFIC IN HAZARDOUS WASTES AND OTHER WASTES

The Conference

1. Welcomes the work of the Technical Working Group on confirmed cases of illegal traffic and recognizes that the issue of illegal traffic remains a high priority with particular emphasis on cases involving alleged illegal traffic;

(a) Appeals to Parties to bring any case or, if appropriate, alleged case of illegal traffic to the attention of the secretariat and to provide the secretariat with all necessary information to enable it to take any appropriate action, including preventive measures through initial dissemination of information to Parties concerned;

(b) Welcomes steps taken by Parties to submit information on how Parties may have dealt with illegal traffic, including alleged cases of illegal traffic, with regard to difficulties they could be facing when seeking compliance with the provisions of the Basel Convention;

(c) Recognizes that illegal traffic can take many different forms and be of different magnitudes ranging from, for example, falsification of documents to large-scale organized activities;

(d) Requests Parties to cooperate with each other and the secretariat on alleged cases of illegal traffic;

(e) Assigns the Consultative Sub-group of Legal and Technical Experts the task of developing procedures to address alleged cases of illegal traffic;

(f) Adopts the draft Form for Confirmed Cases of Illegal Traffic for use by Parties in confirmed cases of illegal traffic;

(g) Invites Parties to use this form in their reports related to confirmed cases of illegal traffic to the secretariat;

(h) Requests the secretariat to report to the fifth meeting of the Conference of the Parties, through the Open-ended Ad Hoc Committee for the Implementation of the Basel Convention, as appropriate, on information received by Parties on cases of illegal traffic;

2. Welcomes the convening of meetings and conferences on the prevention of illegal traffic approved by decision III/28 and urges Parties to promote the effective participation of developing countries in these meetings;

3. Urges Parties to fulfil their obligations under Article 9, paragraph 5 of the Basel Convention, in particular:

(a) To promulgate, update and/or develop stringent legislation on the control of transboundary movements of hazardous wastes;

(b) To incorporate in their national legislation appropriate sanctions or penalties for illegal traffic in hazardous wastes and other wastes covered by the Basel Convention;

4. (a) Notes that the classification and characterization of wastes represent essential tools to assist in the identification and prevention of illegal traffic;

(b) Requests the secretariat of the Basel Convention, bearing in mind decisions I/18 and II/23, to work closely with the United Nations Committee of Experts on the Transport of Dangerous Goods towards the development of an appropriate classification and labelling system;

(c) Requests the secretariat to continue its cooperation with various regional commissions and secretariats of regional conventions and protocols, non-governmental organizations, industry and the private sector, as well as the World Customs Organization and Interpol, in order to achieve better control and monitoring of cases or alleged cases of illegal traffic in hazardous wastes and other wastes;

(d) Requests the secretariat to organize training courses for customs officers and police forces in cooperation with the World Customs Organization, Interpol and other appropriate bodies, including United Nations regional commissions and secretariats of regional agreements dealing with similar aspects;

(e) Requests the secretariat to assist Parties in capacity building, including the development of an appropriate infrastructure, with a view to preventing and penalizing cases of illegal traffic in hazardous wastes and other wastes and to ensuring the involvement of national authorities and focal points for the Basel Convention in the prevention and monitoring of illegal traffic in hazardous wastes and other wastes;

(f) Encourages Parties to build up their enforcement capacities, *inter alia*, through cooperation with international bodies such as Interpol and the International Network for Environmental Complaints, in the development of training and networking for enforcement personnel involved in the prevention of illegal traffic;

(g) Invites Parties to promote consistency when addressing the issue of illegal traffic in the relevant United Nations bodies, while avoiding duplication;

5. Requests the Technical Working Group and the Consultative Sub-group of Legal and Technical Experts, at their joint meeting, keeping in mind the discussions within the Ad Hoc Working Group of Legal and Technical Experts to Consider and Develop a Draft Protocol on Liability and Compensation, to develop recommended procedures to assist Parties in preventing, identifying and managing illegal traffic.

V/23. PREVENTION AND MONITORING OF ILLEGAL TRAFFIC IN HAZARDOUS WASTES AND OTHER WASTES

The Conference

1. Extends the mandate of the Technical Working Group and requests the Legal Working Group to give further consideration to the issue of illegal traffic in hazardous wastes and other wastes, to develop recommended procedures to address alleged cases of illegal traffic and to assist Parties in preventing, identifying, monitoring and managing illegal traffic, taking into account the draft guidance elements for the detection, prevention and control of illegal traffic in

hazardous wastes, approved by the Technical Working Group and the Consultative Subgroup of Legal and Technical Experts at their first joint meeting, in Pretoria, in November 1998;

2. Appeals to Parties to bring any confirmed case or, after consultation and agreement with the other Parties involved, alleged case of illegal traffic to the attention of the secretariat of the Basel Convention, with all the necessary information to enable the secretariat to take appropriate action, including support for any efforts by the Parties to solve the issues, such as the provision of appropriate expertise;

3. Invites Parties to use the approved form in their reports to the secretariat related to confirmed cases of illegal traffic;

4. Requests the secretariat to continue its cooperation with various regional commissions and secretariats of regional conventions and protocols, non-governmental organization, the industry sector and the private sector, as well as the World Customs Organization and the International Criminal Police Organization, in order to achieve a better control and monitoring of cases or alleged cases of illegal traffic in hazardous wastes and other wastes;

5. Requests the Parties and the secretariat to take the necessary preventive measures, in particular through the dissemination of information on the Basel Convention and through working closely with the World Customs Organization, to include, as a matter of priority, the wastes under the scope of the Convention in the Harmonized System;

6. Requests the secretariat, bearing in mind the provisions of decision IV/12, to work closely with the United Nations Committee of Experts on the Transport of Dangerous Goods to harmonize classification and labelling systems for hazardous wastes and dangerous goods;

7. Requests the Parties, with the assistance of the secretariat, to organize training courses and develop training manuals, at the national and regional levels, for customs officers and police forces, in cooperation with the World Customs Organization, the International Criminal Police Organization and other appropriate bodies, including United Nations regional commissions and secretariats of regional agreements dealing with similar issues.

BASEL DECLARATION ON ENVIRONMENTALLY SOUND MANAGEMENT

We, the Ministers and other heads of delegation from the Parties to the Basel Convention and from other States,

Having met in Basel, Switzerland, from 6 to 10 December 1999, on the occasion of the fifth meeting of the Conference of the Parties to the Basel Convention and the tenth anniversary of the adoption of the Basel Convention,

[.....]

6. Recognize the need to focus our activities within the next decade on specific actions to promote the implementation of the Convention and its amendments worldwide, at all levels, and, to this end, agree to enhance and strengthen our efforts and cooperation to achieve environmentally sound management in the following fields:

[.....]

(a) Prevention and monitoring of illegal traffic;

Appendix 2

C.2. Name of States affected by the illegal traffic (i.e. country of origin, transit or destination):

Country of Origin: Australia

Countries of Transit: Singapore

Country of Destination: Philippines

C.3. Brief description of the waste(s) subject to the illegal act, including modes of transport, place of discovery, environmental conditions of the location:

Description of the waste: Scrap drained/dry whole intact lead batteries ("Rains").

Modes of Transport: The waste was loaded into shipping containers, transported by road, loaded onto a ship at the Port of Burnie, Tasmania, Australia and offloaded at Manila in the Philippines.

Place of Discovery: The illegal export was discovered in Australia during a routine check of Australian Customs records.

Date of discovery of the wastes: April 1997

C.4. Date of the infraction:

Infraction: Day Month Year
13 / 12 / 96

D. WASTE IDENTIFICATION

D.1. Description of the waste:

Name of the Waste: Waste lead-acid batteries, whole or crushed (Annex VIII entry A1020).

Origin of the Waste: Tasmania, Australia.

Physical form: Solid.

Major constituents: Lead, plastic.

Typical contaminants: Not known.

Volume/Quantity of wastes: 84,000kgs.

Waste Code: Y number(s) Y31

UN Class 6.1

H number(s) 6.1,11,12

UN number

IWIC
EWC

OECD

HS

D.2. Sampling and testing:

No sampling or testing was done on the waste.

Results:

D.3. Other relevant information (e.g. containment appearance, etc.):

None

E. DETECTION OF ILLEGAL TRAFFIC, TYPES OF DAMAGES, REMEDIAL ACTIONS AND DISPOSAL

E.1. Detection of illegal traffic:

By whom: Environment Australia

Where: Australia

When: April 1997

E.2. Damages:

Details of type and extent of known damages:

There were no damages reported from the illegal traffic.

E.3. Remedial actions:

Type of action(s):

No remedial actions were necessary.

Date: _____
Cost: _____
Allocation: _____

E.4. Final disposal of wastes subject to illegal traffic (i.e. measures taken, State of disposal, etc.)

The waste was disposed of by recycling/reclamation of metals and metal compounds in the State of import, by Philippine Recyclers Inc at Manila, Philippines.

F. PUNISHMENT

F.1. State of conviction: Australia

F.2. Date of conviction:

Conviction: Day Month Year
 25 / 05 / 1999

F.3. Description of punishment by the authority in the State of conviction:

The exporting company pleaded guilty to negligently contravening Section 40(1) of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* by exporting a hazardous waste without an export permit. An executive officer of the company pleaded guilty to contravening Section 40B(1) of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* by being negligent as to whether the contravention of section 40(1) would occur, being in a position to influence the conduct of the company and failing to take all reasonable steps to prevent the contravention. The exporting company was convicted and fined AUD2,000. The executive officer was convicted and fined AUD500.

As this matter was the first prosecution under the amendments to the Act, which entered into force on 12 December 1996, the Magistrate made a number of general remarks in relation to the offences prior to passing sentence. Of particular note were his comments that this was not a matter where there had been a deliberate plot to export the battery waste or a conscious decision not to apply for a permit. Rather, the commission of this offence was the unintentional consequence of a series of events which had been occurring over a number of months. The Magistrate noted that the plea of guilty was in respect of a negligent export of lead battery waste without a permit, rather than a deliberate act.

If more space required, please use additional sheet(s)

Authority completing the Form shall forward a copy to all Competent Authorities or Focal Points in the State(s) concerned as appropriate.

2. SECOND CASE FROM AUSTRALIA

On 1 September 1997, a shipment of approximately 60 tonnes of waste, mainly computer scrap, was exported from Sydney, Australia, bound for Hong Kong. On 22 September 1997, the Hong

Kong authorities, after being notified by Greenpeace Australia of the hazardous nature of the goods, refused to allow the scrap entry. The containers were subsequently returned to Sydney, together with another two containers, also consigned to Hong Kong, that were removed from another vessel before it left Brisbane, Australia, on 1 October 1997.

The shipments contravened Articles 6.1 and 6.3 of the Basel Convention because the requirements for notification and consent were not observed. The export also contravened section 40 of the Australian Hazardous Waste (Regulation of Exports and Imports) Act 1989 ('Act'), which prohibits the export of hazardous waste without a permit. The suspected contravention of the Act was the subject of a joint investigation by the Australian Federal Police (AFP) and the Department of the Environment and Heritage.

The investigation found that the computer scrap had been collected by an Australian company concerned with the collection and re-sale of most kinds of metal and electrical scrap. In August 1997, the Australian company sold the scrap to a foreign company for AUD26,693. The Australian company then stuffed the containers and transported them to the docks. During the process of stuffing the containers, Greenpeace Australia became aware of the possible hazardous nature of the goods.

The problem during the investigation centred upon which company was responsible for the illegal export of the goods. The investigation found that the terms of the contract between the Australian company and the foreign company were Free on Board (FOB) and under commercial law this in effect made the foreign company the owner and exporter of the waste. However, there was no basis for criminal proceedings against the foreign company because an offence against section 40 of the Act can only be committed by a person who acts knowingly or recklessly. It could not be shown that anyone associated with the foreign company knew or ought to have known that the containers contained hazardous waste.

It could be argued that the Australian company was the exporter of the scrap for the purposes of section 40, having sold the scrap and packed it into the containers knowing that it was to be shipped to Hong Kong. Nevertheless, the investigation found that the prospects for a successful prosecution were not good, partly because the only individual who clearly knew precisely what was in the containers had died during the investigation, and partly because it was uncertain whether a company could be an exporter for the purpose of section 40 unless it was also the exporter for the purpose of commercial law. The Australian company was wound up while the investigation proceeded.

The Act is currently being amended to close this loophole by making it illegal for Australian companies to sell hazardous waste to foreign companies unless an export permit is in place.

The hazardous waste was disposed of in Australia, under Australian law, at the expense of the Australian Federal Government and at a total cost of AUD94,426. There are provisions in the Act under which the Government may seek to recover these costs from the foreign company.

3. THIRD CASE FROM AUSTRALIA

An alleged import of waste oil from a South Pacific island country was detected in October 1999 when the oil was transported from an Australian port to a storage facility without the waste transport certificates that were required by the local environment agency.

Investigations by the Australian Federal Police confirmed that 20,000 litres of waste oil had been imported on 12 October 1999 in an isotainer that was owned/leased by an Australian oil company. The oil was owned by a mining company based in the South Pacific island country. This company was unable to dispose of the oil in their previous manner, through a local liquid soap manufacturer, because that manufacturer had closed due to civil unrest.

Enquiries subsequently found that a previous import of 16,800 litres of waste oil had occurred on 17 June 1999. This oil had been treated by a local recycling facility before disposal to a power generating plant.

The Director of Public Prosecutions determined that a *prima facie* case existed against the Australian oil company but prosecution would not be in the public interest after considering that:

(a) the imports were designed to ensure the disposal of the waste oil in a more environmentally friendly manner in the light of the civil unrest in the South Pacific island country at the time;

(b) no waste oil was spilled or caused any damage as a result of the import; and

(c) the two imports were isolated incidents occurring four months apart and were not part of a continuing course of conduct.

A letter of caution was formally issued to the Australian oil company.

Case from the United Kingdom of Great Britain and Northern Ireland

Please specify if different from Transmitting Authority:

(Form for)
CONFIRMED CASES OF ILLEGAL TRAFFIC

A. TRANSMITTING AUTHORITY

Name: Department for Environment, Food and Rural Affairs
Address: Waste Policy Division,
Ashdown House
123 Victoria Street
London, SW1 6DE

Tel: + 44 (0) 20 7944 6424
Fax: + 44 (0) 20 7944 6409
E-mail: waste_policy@defra.gsi.gov.uk

Date of transmission: 3 September 2001

B. REPORTING BODY

Name: As above
Address:

Tel:
Fax:
E-mail:

C. DESCRIPTION OF THE ILLEGAL ACT

C.1. Act(s) found to be illegal traffic (please include information on which Basel Convention provisions has (have) been contravened)

Description:

Shipment of hazardous waste from Sweden to the UK without notification to the relevant Competent Authorities. This contravened Article 9(1)(a) of the Basel Convention and Article 26(1)(a) of Council Regulation (EEC) No 259/93 on the supervision and control of shipments of waste within, into and out of the European Community.

C.2. Name of States affected by the illegal traffic (i.e. country of origin, transit or

destination):

Sweden (country of origin) and the United Kingdom (country of destination)

C.3. Brief description of the waste(s) subject to the illegal act, including modes of transport, place of discovery, environmental conditions of the location:

Waste rags, gloves, overalls and liquid solvents, including acetone. The waste arrived in 45 gallon drums at a solvent recovery facility in Morecambe, Lancashire. An employee at the site contacted the Environment Agency as the load was not accompanied by all the necessary paperwork. The waste was inspected by Agency officers and some of the drums were found to be damaged, there was a strong smell of solvents coming from the drums and wood and rags were visible in a number of drums without lids. The load was poorly secured and was not clearly labelled. Further examination of the load revealed rags, overalls, gloves and liquid solvents. The paperwork with the drums indicated a further load which were eventually traced (again 45-gallon drums) to the docks at Immingham. These drums were crudely packaged in shrink-wrapped polythene and there was no waste description, or hazard warning labels.

Date of discovery of the wastes:

1 December 1999

C.4. Date of the infraction:

1 December 1999

D. WASTE IDENTIFICATION

D.1. Description of the waste:

Name of the Waste: Acetone and waste cloths contaminated with resins and polymers.

Origin of the Waste: Malmo, Sweden

Physical form: Liquids, sludges and contaminated solids

Major constituents: Contaminated rags, packaging, protective clothing, polymers and resins.

Typical contaminants: Resins and Polymers.

Volume/Quantity of wastes: 13500 Kg

Waste Code: Y number(s) Y13 UN Class 3

H number(s) _H3 _____ UN number: 1993

IWIC Q16/D9/P13/C42/H3/A243 OECD ____ HS ____

EWC: 080102

D.2. Sampling and testing:

On 13 December 1999 seven samples of liquid solvent waste were submitted by the Environment Agency to Lancashire County Council Laboratory for analysis. These samples were obtained by Environment Agency officers on 10 December 1999.

Results:

The samples were found to contain concentrations of acetone varying from 4.1% to 67%. Flash point analysis carried out on the waste sampled varied from -10 degrees centigrade to 55 degrees centigrade.

D.3. Other relevant information (e.g. containment appearance, etc.):

The waste was poorly packaged in 45 gallon drums some of which had missing lids and sealing bungs. The waste gave off strong solvent odours and was a potentially explosive cocktail of substances.

Only a small amount of the total quantity of waste would have been suitable for solvent recovery, whilst the majority of the waste would have required final disposal.

E. DETECTION OF ILLEGAL TRAFFIC, TYPES OF DAMAGES, REMEDIAL ACTIONS AND DISPOSAL

E.1. Detection of illegal traffic:

By whom: Employee of the solvent recovery site at Morecambe, Lancashire, UK.

Where: Solvent recovery site, Morecambe, Lancashire, UK.

When: 1 December 1999

E.2. Damages:

Details of type and extent of known damages: None

E.3. Remedial actions:

Type of action(s):

Date:

Cost:

Allocation:

E.4. Final disposal of wastes subject to illegal traffic (i.e. measures taken, State of disposal, etc.)

The Environment Agency arranged for the waste to be shipped back to Sweden at Stirling Lloyd's cost. TFS notification no. GB 004528

F. PUNISHMENT

F.1. State of conviction:

United Kingdom

F.2. Date of conviction:

Conviction: 17 November 2000

F.3. Description of punishment by the authority in the State of conviction:

Stirling Lloyd Contracts Limited were fined £1500 for the illegal shipment and were ordered to pay £4594.80 costs to the Environment Agency.

If more space required, please use additional sheet(s)

Authority completing the Form shall forward a copy to all Competent Authorities or Focal Points in the State(s) concerned as appropriate.

Adopted by the fourth meeting of the
Conference of the Parties to the Basel Convention
February 1998

Appendix 3

Sampling and analysis

A. Quality of Investigations

1. It is important that investigation officers are familiar with sampling and analysis procedures before proceeding with investigations. Improper collection of evidence may compromise the likelihood of a successful prosecution. Consequently, investigation officers should be trained in determining the chain of custody, retaining samples and security procedures that the sampling team and laboratory intend to follow.
2. Experienced government agencies that regularly deal with environmental crime will have the relevant background and expertise to carry out investigations to a high standard. However, if a less experienced local officer, the person in charge of the investigation, is taking samples will need to ensure that appropriate chains of custody procedures are followed.

B. Quality of Analysis

3. Similarly, it cannot be assumed that laboratories will necessarily follow appropriate procedures once samples have been taken. This is especially true for laboratories or personnel that are relatively inexperienced in collecting and analysing samples for use in criminal proceedings. Consequently, it is important to work with accredited or certified laboratories that are familiar with the relevant procedures.

C. Sampling Procedures

4. A number of questions may be asked to ensure proper handling of samples, as follows:
 - (a) Does the chain of custody form follow the samples from the time they are taken until the time they are delivered to the laboratory for analysis?
 - (b) If sampling exceeds one day or samples require storage prior to delivery to the laboratory, investigators should determine what the samples are intended to be used for and what security procedures are in place to protect existing samples. Procedures should ensure secure overnight storage for all samples which are to be used as evidence in criminal cases. For example if the samples are to be stored in a locked vehicle, then the vehicle should be garaged in secure conditions. Where samples are being taken to determine clean-up costs for civil cases, secured storage is not required. They should also determine whether there are any other storage or packaging requirements relevant to the material being sampled and check how the samples will be packaged. For example the samples may need to be stored at a certain temperature, in a dark place and/or away from moisture until analysis is carried out to ensure their integrity. Ensure that all packaging and storage requirements are met.
 - (c) Is a chain of custody procedure or other record generated when the laboratory receives the samples?
 - (d) How does the laboratory store the samples prior to analysis?
 - (e) Will the samples be handled by multiple personnel during the course of analysis? If so, what records are maintained to track samples and procedures?
 - (f) What happens to the samples after analysis? Does the laboratory retain the samples? If so, how long are the samples retained and are the samples secure?

5. **D. *Capability of Laboratory***

(a) Are approved testing methods used to analyse samples and are the correct methods used for the specific circumstance?

(b) Are appropriate quality assurance/quality control procedures strictly applied?

(c) Does the laboratory have a track record in providing high quality services for criminal investigation? The experience and reputation of the laboratory undertaking the analysis will have a direct bearing on the quality of the analysis. Certification or accreditation should be a minimum requirement for all cases involving criminal investigations. To this end, consideration should be given to establishing a regional network of accredited laboratories that can be used for this purpose.

(d) Does the laboratory understand the objectives of the investigation?

E. *Capability of Inspectors*

6. A number of questions may be asked to ensure laboratory capability, as follows:

(a) Does the investigator understand the correct analytical procedures to be followed and what information is required? As with sampling, it is important to furnish scientific personnel with as much relevant case history as possible prior to analysis to maximise the accuracy of the results.

(b) Can the investigator accurately interpret the results? If not, has he/she clarified any areas of confusion? It is important to obtain early clarification of results in areas where there may be confusion or a lack of understanding.

(c) Has the investigators asked the laboratory to retain the samples for the requisite period of time?

F. *Treatment of video and photographic evidence*

7. As a general rule, photographic or videotaped evidence is not recommended for recording sampling or analysis procedures. However, should photographic or videotaped evidence be required, the following measures should be taken:

(a) personnel undertaking sampling or analysis should not be videotaped or photographed.

(b) the sample area and sample jars should be videotaped or photographed before and after sampling takes place as a record that correct procedures have been followed.

(c) where a videotaped record of sampling and analysis procedures is undertaken, a new video cassette should be used, the sound turned off and the original tape retained by the investigator in charge.

(d) where a photographic record of sampling and analysis procedures is undertaken, a full record of the photographic evidence should be kept including photo sequence numbers, a description of the photograph and the time and date of photography. As with videotaped evidence, films should be retained by the investigator in charge.

(e) should the company under investigation request the right to videotape or photograph sampling procedures, permission should not be granted where there is a risk of interference with the sampling being undertaken.

G. Treatment of original documents

8. The sampling team and other technical staff involved in investigations should be informed that all original documents must be stored in a secure location until the investigator notified them that the documents are no longer required. These documents include chain of custody forms, field notes and reports.

9. Likewise, the laboratory responsible for analysing the samples should be requested to maintain all original documents relating to the analysis until otherwise informed. These documents include laboratory notes, chromatograms and final reports.

H. Treatment in the Laboratory

10. Treatment in the laboratory includes the following operations:

(a) Sample pre-treatment: homogenisation, subsampling, extraction, clean-up, purification, irradiation, etc.

(b) Component separation, chemical and physico-chemicals.

(c) Components measure: detection, identification, quantification.

I. Results and Data

11. Reliability of analytical data means that it is precise and true. Precision is achieved when random errors are minimised. Accuracy is reached when systematic errors are eliminated.

Note: At some later date Appendix 3 might benefit from some worked examples. Such examples could be added after the guidance elements have been adopted and used in practice.

Appendix 4

Guidelines for Risk Management Approach

Step 1: Establish the context

1. The political, social, economic, legal and physical environments in which the competent authority operates must be considered in establishing the context. The following questions may be asked:

- What legislation is being enforced?
- What does the legislation seek to control?
- What, broadly, is the nature, size and complexity of the business or community activity concerned?
- What are the major threats of non-compliance?
- What are the major outcomes expected/desired?
- Who has an interest in ensuring compliance with the legislation?
- Who must comply with the legislation?
- What is their interest in the matters the legislation is protecting?

- What must individuals or organizations external to the competent authority do, in order to comply with the legislation?
- What problems or obstacles have been identified?

Step 2: Identify the risks

2. For the purposes of compliance and enforcement, risk means the risks, or incidents, of failure to comply with the legislation. This step is concerned with identifying the potential or actual incident. The consequences and likely occurrence of these non-compliance risks or incidents will be analysed in step 3. The following questions may be asked:

- What is the source of each non-compliance risk or incident?
- When is an incident of failure to comply with the Convention likely to occur?
- What is the compliance rate at present for similar activities?
- Are there any geographical regions in which breaches of the Convention are particularly prevalent?
- Why might an individual or organization not comply with the Convention?
 - ignorance of existence of the Convention
 - knowledge of the Convention but insufficient awareness of provisions
 - wilful non-compliance
 - lack of clarity of Convention/processes/regulations
 - ignorance/inadvertence/recklessness/negligence
- What advantages might be gained by failing to comply with the Convention?
- What is the nature of penalties vis-à-vis potential advantages from non-compliance?
- Are individuals or organizations aware of their responsibilities under the Convention?
- Have any individual, or classes, of people or organizations displayed a particular tendency not to comply with the Convention in the past?
- What problems might arise from excessive or inadequate enforcement activity?

Step 3: Analyse the risks

3. In this step the level of risk will be determined. The level of risk is determined by the relationship between the likelihood that a person or organization will fail to comply with the Convention and the consequences of that failure. The consequence of a failure to comply should be considered from three perspectives:

- the consequences for the environment,
- consequences for the community, present and future, and
- consequences for the Government

4. The level of risk may be determined by answering the following questions:

- What is the potential likelihood of the non-compliance risks or incidents occurring?
- What is the compliance rate at present for similar activities?
- Are there any geographical regions in which breaches of the legislation are particularly likely to occur?
- What advantages might be gained by failing to comply with the legislation?
- What is the nature of penalties vis-à-vis potential advantages from non-compliance?
- Are individuals or organizations aware of their responsibilities under the legislation?
- Have any individual, or classes, of people or organizations displayed a particular tendency not to comply with the legislation in the past?

- What are the potential consequences of each non-compliance risk or incident, should it occur?
- What environmental damage may result from the failure to comply with the legislation?
 - Are there any classes of illegal activities that are likely to damage the environment more than others?
 - Are there any geographic regions where damage as a result of failure to comply with the legislation may be particularly severe?
 - Are there any protected elements of the environment (e.g. particular species, objects and/or places, or cultural values) which are particularly vulnerable to illegal actions (or failures to act)?
 - Are there any matters covered by the legislation that have a high public profile in which there is a high degree of community or political interest?
 - What are the current controls which may detect or prevent potential non-compliance risks or incidents?

Step 4: Assess risk and set priorities

5. This step involves deciding whether a given risk (assessed in Step 3 as severe, high, etc.) is acceptable or unacceptable. An assessment of the acceptability of the risk involves, takes into account cost impact, benefits and opportunities presented by the risk. Thresholds may be appropriate in some cases, to determine how much effort is warranted in relation to each area of level of risk.

6. In order to set priorities and assess the risk, the following key questions should be answered:

- What is the acceptable level of risk (for the environment, for the community and for the Government)?
- Are there any matters covered by the legislation that have a high public profile or in which there is a high degree of community or political interest?
- What level or priority is the risk (severe, high, etc.)?

Step 5: Treat the risks

7. This step involved deciding what measures need to be taken to minimise identified risks and their impacts. Promoting compliance with legislation will reduce the risks and incidents; certain measures may be necessary to promote compliance. The information identified in the previous steps will help identify which strategies are the most appropriate under a given set of circumstances.

- What are the current controls which may detect or prevent potential non-compliance risks or incidents?
- How may these be improved?
- What other strategies may promote compliance and enforcement activities?

8. Possible strategies include:

- Compliance assistance
- Education and awareness
- Technical assistance
- Partnership arrangements
- Monitoring and investigation

- Addressing contraventions
- Enforcement options
- Remedial actions
- Managing key partnerships
- Ensuring other agencies can be relied upon for some of the compliance and enforcement functions.

Monitoring and review

9. Periodic review is necessary to ensure changing circumstances do not alter risk priorities.

Note: At some later date Appendix 4 might benefit from some worked examples. Such examples could be added after the guidance elements have been adopted and used in practice.