

6

# BASEL CONVENTION

GUIDANCE ON THE IMPLEMENTATION OF PARAGRAPH 4  
OF ARTICLE 6 OF THE BASEL CONVENTION ON TRANSIT  
TRANSBOUNDARY MOVEMENTS OF HAZARDOUS  
WASTES AND OTHER WASTES

**UN**   
environment  
programme

  
BASEL CONVENTION



# 6

# BASEL CONVENTION

GUIDANCE ON THE IMPLEMENTATION OF PARAGRAPH 4  
OF ARTICLE 6 OF THE BASEL CONVENTION ON TRANSIT  
TRANSBOUNDARY MOVEMENTS OF HAZARDOUS  
WASTES AND OTHER WASTES

© Secretariat of the Basel Convention (SBC), July 2023.

This publication may be reproduced, in whole or in part, and in any form, for educational or non-profit purposes, without the special permission from the copyright holder i. e. SBC, provided acknowledgement of the source is made.

SBC would appreciate receiving a copy of any publication that uses this publication as a source. No use of this publication may be made for resale or for any other commercial purpose whatsoever without prior permission in writing from SBC.

**Disclaimer**

This publication has not been formally edited and is for informative purposes only.

SBC, the United Nations Environment Programme (UNEP) and the United Nations (UN) do not accept responsibility for the accuracy or completeness of the contents and shall not be liable for any loss or damage that may be occasioned, directly or indirectly, through the use of, or reliance on, the contents of this publication.

The designations employed, and the presentation of the contents, in this publication do not imply the expression of any opinion whatsoever on the part of SBC, UNEP or the UN, concerning the geo-political situations or the legal status of any country, territory, or city or area or their authorities, or concerning the delimitation of their frontiers or boundaries.

# PREFACE

Welcome to the issue **number 6** of the **Technical Series** of the Secretariat of the Basel, Rotterdam and Stockholm conventions. Launched in 2019, the Technical Series bring to you the authoritative guidance documents adopted by the respective Conferences of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, and the Stockholm Convention on Persistent Organic Pollutants.

The **Guidance on the implementation of paragraph 4 of Article 6 of the Basel Convention on transit transboundary movements of hazardous wastes and other wastes** is a comprehensive guidance document intended to help Parties with the implementation of the Convention's prior informed consent procedure in instances where a transboundary movement of hazardous wastes and other wastes involves one or more transit States. Developed by the Implementation and Compliance Committee, it was adopted by the fifteenth meeting of the Conference of the Parties in May 2022 by decision BC-15/17. The guidance presents information on the variety of ways in which Parties define a transit State and where to find that information. It then details each step to be taken by Parties in case a proposed transboundary movement may involve one or more such States. Guidance is also provided on specific instances that Parties may encounter in relation to transboundary movements involving a transit State: transit restrictions or prohibitions, and the rerouting of a ship. The guidance further provides information on the relationship between the obligations of Parties pursuant to paragraph 4 of Article 6 of the Convention and navigational rights and freedoms. Finally, you will find annex II to the guidance information on the meaning of transit in Customs terminology and in the 1982 United Nations Convention on the Law of the Sea (UNCLOS).

The development of this guidance document was made possible thanks to the financial support provided by the European Union, Japan and Norway.



**Rolph Payet**

*Executive Secretary of the Basel, Rotterdam and Stockholm conventions*

# CONTENTS

<b>INTRODUCTION</b> .....	<b>5</b>
<b>I. RELEVANT BASEL CONVENTION DEFINITIONS</b> .....	<b>6</b>
<b>II. THE PIC PROCEDURE AS IT APPLIES TO TRANSIT STATES</b> .....	<b>9</b>
<b>A. Overview of the PIC procedure</b> .....	<b>9</b>
<b>B. Transboundary movements through a transit State which is a Party</b> .....	<b>9</b>
1. Notification of proposed transboundary movement to transit States .....	9
2. Transit State promptly acknowledges receipt of notification .....	12
3. Transit State may consent with or without conditions, or deny permission .....	12
4. Transit restrictions and prohibitions.....	13
5. Specific issues .....	14
(a) Re-routing of shipments.....	14
(b) Navigational rights and freedoms.....	15
(c) Land-locked countries.....	16
<b>C. Transboundary movement through a transit State which is not a Party</b> .....	<b>16</b>
1. Notification of proposed transboundary movement to transit States .....	16
2. State of export may allow the transboundary movement to commence without consent .....	17
<b>III. TRANSIT MOVEMENTS AS PART OF TAKE-BACK OPERATIONS</b> .....	<b>18</b>
<b>CONCLUSION</b> .....	<b>19</b>
<b>ANNEX I: RELEVANT DECLARATIONS AND STATEMENTS TO THE BASEL CONVENTION</b> <b>(STATUS AS AT NOVEMBER 2021)</b> .....	<b>20</b>
<b>ANNEX II: THE MEANING OF TRANSIT IN CUSTOMS TERMINOLOGY AND IN UNCLOS</b> .....	<b>23</b>
<b>ANNEX III: OVERVIEW OF THE PIC PROCEDURE, WITH A FOCUS ON TRANSIT STATES</b> .....	<b>25</b>

# INTRODUCTION

1. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention/Convention) was adopted in 1989 and entered into force on 5 May 1992. As of November 2021 the Convention had 189 Parties.
2. The Basel Convention establishes, among others, an internationally agreed binding mechanism to control transboundary movements of hazardous wastes and other wastes subject to the Convention. Such movements can only take place in compliance with specific conditions and procedures, generally referred to as the prior informed consent (PIC) procedure. The PIC procedure includes the obligations to notify the State of import and any State of transit of a proposed transboundary movement and obtain their prior consent. This document was prepared with a view to providing guidance to Parties and stakeholders on how to implement and apply the PIC procedure as applicable to transit States.
3. The present guidance was prepared by the Committee Administering the Mechanism for Promoting Implementation and Compliance (Implementation and Compliance Committee/Committee), as part of its mandate to consider additional steps to improve the implementation of and compliance with Article 6 of the Basel Convention. The information on Parties' practices was collected through two questionnaires distributed by the Committee in 2016<sup>1</sup> and 2021,<sup>2</sup> as well as information transmitted by Parties in their national reports. The guidance was adopted by Decision BC-15/17 of the Conference of the Parties.
4. The development of this guidance document was made possible thanks to the financial support provided by the European Union and Norway.

---

<sup>1</sup> 41 Parties responded to the questionnaire of 2016. The responses are available at <http://www.basel.int/Implementation/LegalMatters/Compliance/GeneralIssuesActivities/Activities201617/ControlssystemTransitissues/tabid/4781/Default.aspx>. A summary and analysis of the replies is set out in the annex to document UNEP/CHW/CC.14/INF/18, available at: [www.basel.int/TheConvention/ImplementationComplianceCommittee/Meetings/ICC14/MeetingDocuments/tabid/8424/Default.aspx](http://www.basel.int/TheConvention/ImplementationComplianceCommittee/Meetings/ICC14/MeetingDocuments/tabid/8424/Default.aspx).

<sup>2</sup> 53 Parties responded to the questionnaire of 2021. The responses are available at: <http://www.basel.int/Implementation/LegalMatters/Compliance/GeneralIssuesActivities/Activities202021/Transittransboundarymovements/tabid/8182/Default.aspx>.

# I. RELEVANT BASEL CONVENTION DEFINITIONS

5. Pursuant to the Basel Convention, a State of transit is any State (Party or non-Party to the Basel Convention), other than the State of export or import, through which a movement of hazardous wastes or other wastes is planned or takes place.<sup>3</sup>
6. The definition of “State of transit” should be read in conjunction with the definitions of “State of export” and “State of import”:
  - (a) The “State of export” is the State (Party to the Basel Convention) from which a transboundary movement of hazardous wastes or other wastes is planned to be initiated or is initiated;<sup>4</sup>
  - (b) The “State of import” is the State (Party to the Basel Convention) to which a transboundary movement of hazardous wastes or other wastes is planned or takes place for the purpose of disposal therein (any operation listed in Annex IV to the Basel Convention) or for the purpose of loading prior to disposal in an area not under the national jurisdiction of any State.<sup>5</sup>
7. A “transit” under the Basel Convention must be understood accordingly as a movement through a “State of transit” as defined in the Convention, which is a movement through a State, where the movement is neither planned to be initiated or initiated in that State, nor planned to take place or taking place for the purpose of disposal therein (any operation listed in Annex IV to the Basel Convention), or for the purpose of loading prior to disposal in an area not under the national jurisdiction of any State.
8. In connection with the Basel Convention definition of “State of transit”, paragraph 3 of Article 2 defines “transboundary movement” as “any movement of hazardous wastes or other wastes from an area under the national jurisdiction of one State to or *through an area under the national jurisdiction of another State* or to or through an area not under the national jurisdiction of any State, provided that at least two States are involved in the movement” (emphasis added). The “area under the national jurisdiction of a State” comprises “any land, marine area or airspace within which a State exercises administrative and regulatory responsibility in accordance with international law in regard to the protection of human health and the environment.”<sup>6</sup>
9. Maritime zones that may a priori fall within the Basel Convention definition of “area under the national jurisdiction of a State,” are the zones over which the coastal States have sovereignty (internal waters, the territorial sea and the archipelagic waters), and jurisdiction (the contiguous zones, continental shelves and the exclusive economic zone (EEZ)) in accordance with international law.
10. In practice, Parties to the Basel Convention have different regulatory definitions and understandings as to the meaning of the term “transit” for the purpose of the Basel Convention, which reflect varying legal interpretations of the Convention text.<sup>7</sup> Based on the answers to the 2021 Committee questionnaire, the most commonly-agreed instance to amount to transit is that in which the transporter of wastes (ship or other) enters and leaves an area under national jurisdiction without offloading the wastes (40 out of 51 Parties in the case of ship, 39 out of 51 Parties in the case of another transporter). A slightly less common understanding of transit involves the offloading of the wastes: 29 out of 51 Parties indicated that a ship transporting wastes covered by the Basel Convention that calls at a port, with offloading and reloading of the wastes on the same ship, and leaves the port for a different port of discharge falls within the meaning of “transit”. Correspondingly, a ship transporting wastes covered by the Basel Convention which calls at a port, with offloading and reloading of the wastes on a different ship destined for a different port of discharge was agreed to amount to transit by 30 Parties. Furthermore, 29 Parties agreed that transit could mean a ship transporting wastes covered by the Basel Convention calls at a port, with offloading and reloading of the

<sup>3</sup> The definition is set out in paragraph 12 of Article 2 of the Basel Convention (‘State of transit’ means any State, other than the State of export or import, through which a movement of hazardous wastes or other wastes is planned or takes place).

<sup>4</sup> The definition is set out in paragraph 10 of Article 2 of the Basel Convention (‘State of export’ means a Party to which a transboundary movement of hazardous wastes or other wastes is planned to be initiated or is initiated).

<sup>5</sup> The definition is set out in paragraph 11 of Article 2 of the Basel Convention (‘State of import’ means a Party to which a transboundary movement of hazardous wastes or other wastes is planned or takes place for the purpose of disposal therein or for the purpose of loading prior to disposal in an area not under the national jurisdiction of any State).

<sup>6</sup> Paragraph 9 of Article 2 of the Basel Convention.

<sup>7</sup> The definitions of “State of transit” transmitted by Parties to the Secretariat in their annual national reports for the period from 2016 to 2018 are compiled in document UNEP/CHW/OEWG.12/INF/19.

wastes on a different transporter (e.g. truck, train) destined for a different country. According to 32 Parties, a transporter other than a ship (e.g. truck, train) transporting wastes covered by the Basel Convention enters an area under national jurisdiction, offloads and reloads the wastes and leaves the area under national jurisdiction can amount to the meaning of transit, and 32 Parties also agreed that in a similar circumstance where a transporter offloads and reloads the wastes on a different transporter that then leaves the territory would fall within the meaning of “transit”. Less common understandings of transit involve instances where a ship transporting wastes covered by the Basel Convention enters territorial waters (territorial sea or internal waters) (21 Parties); a ship transporting wastes covered by the Basel Convention enters the Exclusive Economic Zone (EEZ) (11 Parties); and a ship transporting wastes covered by the Basel Convention enters the free zone (9 Parties).

11. The main differences relate to two different aspects of the Basel Convention definition of “State of transit”. The first area of divergence has to do with the distinction between “State of transit” (or “transit”) and “State of import” (or “import”), where a carrier brings hazardous wastes or other wastes into an area under the national jurisdiction of a particular State by land or through a port, offloads and reloads the wastes on the same or a different means of transport, and takes the wastes out of the State again for disposal in a third country. Most Parties that replied to the questionnaire(s) qualify this instance as falling within the meaning of “transit”. Some of them also explicitly specify in their national implementing legislation that “transits” may involve temporary storage incidental to transport, as long as the passage through their territory is continuous.<sup>8</sup> Some Parties do however seem to treat instances that imply offloading and reloading of hazardous wastes or other wastes as “import” pursuant to the Basel Convention.<sup>9</sup>
12. The second area of divergence relates to transports by sea through the EEZ or the territorial sea not involving a call at a port. Some Parties consider that a ship transporting wastes covered by the Basel Convention which crosses the EEZ without calling a port constitutes a “transit” for the purpose of the Basel Convention.<sup>10</sup> Other Parties are understood to use a narrower definition of the term transit, according to which a ship transporting wastes covered by the Basel Convention entering their EEZ and territorial sea, or their EEZ only, falls outside that definition and therefore does not require notification and consent.<sup>11</sup> However, the PIC procedure applies for these Parties, where a ship calls at a port under their jurisdiction.<sup>12</sup> A few Parties go even further and only require notification and consent if it is planned that the wastes be offloaded and then reloaded again in a port under their national jurisdiction.<sup>13</sup>

---

<sup>8</sup> See, for example, the replies to Question #1b of the 2021 Committee questionnaire by Eritrea (legislation not yet adopted) and South Africa.

<sup>9</sup> This is presumably the case in the Dominican Republic, Egypt, El Salvador, Eritrea, Suriname, Ukraine and the United Arab Emirates. See their responses to Question #1c of the 2021 Committee questionnaire.

<sup>10</sup> See the responses to Question #1c of the 2021 Committee questionnaire by Brazil, Côte d'Ivoire, Dominican Republic, Egypt, Eritrea, Italy, Jamaica, Mexico and Peru. See also the responses to the 2016 Committee questionnaire by Colombia, Malaysia, the Republic of the Congo and Thailand. All those countries also consider a ship transporting wastes covered by the Basel Convention entering the territorial sea to constitute a “transit”. In its comments of September 2020, Iran expressed the view that any transit movement of waste through the EEZ of a transit State requires prior written permission, unless the transit State, according to paragraph 4 of Article 6 of the Basel Convention, decides not to require prior consent.

<sup>11</sup> Parties that responded to Question #1c of the 2021 Committee questionnaire that a ship transporting wastes covered by the Basel Convention entering their EEZ or territorial sea is not considered a transit for the purpose of the Basel Convention include Australia, Belgium, Benin, Costa Rica, Denmark, Finland, France, Germany, Guyana, Ireland, Luxembourg, Malta, the Netherlands, Nigeria, Portugal, Suriname, Togo, the United Arab Emirates and the United Kingdom of Great Britain and Northern Ireland. See also the responses to Question #2b of the 2016 Committee questionnaire by Austria, Bulgaria, Croatia and Estonia. Parties that indicated in their response to Question #1c of the 2021 Committee questionnaire that ships transporting wastes covered by the Basel Convention entering the EEZ only are not considered to constitute a “transit”, but ships entering the territorial waters do so, include Algeria, Canada, Cuba, El Salvador, Guatemala, Honduras, Monaco, Singapore, South Africa and Trinidad and Tobago. See also the response to Question #2b of the 2016 Committee questionnaire by Argentina. See furthermore the responses to Question #1c of the 2021 Committee questionnaire by Australia, Belgium, Benin, Canada, Costa Rica, Cuba, Eritrea, Guyana, Honduras, Ireland, Italy, Luxembourg, Monaco, Nigeria, Norway, Portugal, Singapore, South Africa, Suriname, Togo, Trinidad and Tobago, the United Arab Emirates and the United Kingdom of Great Britain and Northern Ireland, which exclude stops in the free zone from the definition of “transit”.

<sup>12</sup> During a visit to a port there is always a risk that wastes may be unloaded onto the dock, even if this was not planned, and then abandoned. The risks associated with the unloading of wastes also apply where a ship enters a roadstead (an area of water which is used for the loading, unloading and anchoring of ships and considered to be part of the territorial sea, not internal waters) instead of a port.

<sup>13</sup> See for example Montenegro's response to Question #2b of the 2016 Committee questionnaire indicating that it is not a transit where a ship calls at a port, without offloading the wastes, and leaves for a different port of discharge. However, where the ship offloads and reloads the wastes on the same or a different ship it is a transit for the purpose of the Basel Convention. See also the response to question #1c of the 2021 Committee questionnaire by Norway.



13. The different positions are also reflected in a number of declarations and statements to the Basel Convention, set out in Annex I to the present guidance document. Some countries with a narrower definition of transit link their position to Article 4, paragraph 12, of the Basel Convention on navigational rights and freedoms,<sup>14</sup> which they understand exempts vessels from their duty to notify and obtain consent for transports of hazardous wastes and other wastes if they exercise their right to passage through the territorial sea or freedom of navigation in an EEZ.
14. In light of those differences and in order to facilitate the effective implementation of the PIC procedure, it does seem important that Parties inform other Parties through the Secretariat of their national definitions or understanding of “State of transit” in connection with the application of the Basel Convention, by either answering Question 8 of the revised standardized reporting format for transmitting information on import and export prohibitions,<sup>15</sup> or Question 3 (h) of the reporting format.<sup>16</sup> The information received is made available on the Convention’s website.<sup>17</sup> A compilation of definitions/understandings by Parties of “transit” and “State of transit” in response to questions 3h (i) and (ii) of national reports for 2017-2019 and to the 2016 and 2021 questionnaires of the Committee on transit transboundary movements as at 1 October 2021 is set out in annex II to document UNEP/CHW/CC.14/INF/18.<sup>18</sup>
15. The use of the term transit under the Basel Convention does not necessarily coincide with how the term is used by Custom authorities or in the context of the United Nations Convention on the Law of the Sea (UNCLOS). For further information on these, see Annex II of the present guidance document.

---

<sup>14</sup> Article 4 paragraph 12 of the Basel Convention provides that “[n]othing in this Convention shall affect in any way the sovereignty of States over their territorial sea established in accordance with international law, and the sovereign rights and the jurisdiction which States have in their exclusive economic zones and their continental shelves in accordance with international law, and the exercise by ships and aircrafts of all States of navigational rights and freedoms as provided for in international law and as reflected in relevant international instruments.”

<sup>15</sup> The standardized reporting format for transmitting information under paragraphs 1 (a) and (b) of Article 4 and paragraphs 2 (c) and (d) of Article 13 of the Convention, as amended at the thirteenth meeting of the Conference of the Parties (import and export prohibitions) is available at: <http://basel.int/Procedures/ImportExportProhibitions/tabid/2751/Default.aspx>.

<sup>16</sup> The reporting format was adopted by decision BC-12/6 and amended by decision BC-13/9 and BC-14/10. The revised format is available at: <http://basel.int/Countries/NationalReporting/Guidance/tabid/1498/Default.aspx>. National reports may be consulted at: <http://www.basel.int/Countries/NationalReporting/ElectronicReportingSystem/tabid/3356/Default.aspx>.

<sup>17</sup> <http://www.basel.int/Countries/ImportExportRestrictions/tabid/4835/Default.aspx>.

<sup>18</sup> See: [www.basel.int/TheConvention/ImplementationComplianceCommittee/Meetings/ICC14/MeetingDocuments/tabid/8424/Default.aspx](http://www.basel.int/TheConvention/ImplementationComplianceCommittee/Meetings/ICC14/MeetingDocuments/tabid/8424/Default.aspx).

## II. THE PIC PROCEDURE AS IT APPLIES TO TRANSIT STATES

### A. OVERVIEW OF THE PIC PROCEDURE

16. The PIC procedure for transboundary movements of hazardous wastes or other wastes forms the foundation of the control system of the Basel Convention.<sup>19</sup> A transboundary movement of hazardous wastes or other wastes can take place only upon prior written notification by the State of export, generator or exporter to the competent authorities of the States of import and transit, and upon receipt by the notifier of the written consent from these authorities permitting the transboundary movement of wastes to or through their jurisdiction. The PIC procedure is primarily described in Article 6 of the Basel Convention. This guidance focuses on the role of transit States in the PIC procedure. Annex III of the present guidance document includes a diagram on the PIC procedure that reflects the guidance provided in this document on the role of transit States in the procedure and related obligations of the State of export, the exporter and the generator.

### B. TRANSBOUNDARY MOVEMENTS THROUGH A TRANSIT STATE WHICH IS A PARTY

#### 1. Notification of proposed transboundary movement to transit States

17. Pursuant to paragraph 1 of Article 6 of the Basel Convention, each State of transit must be notified of any proposed transboundary movement of hazardous wastes or other wastes.<sup>20</sup>
18. Transit notifications must be addressed to the competent authority designated to receive the notification in case of transit.<sup>21</sup> The list of competent authorities and their contact information as transmitted to the Secretariat by Parties is available on the Convention's website.<sup>22</sup>
19. Where the hazardous wastes or other wastes subject to the transboundary movement fall within the categories of wastes listed in the annexes to the Basel Convention, the duty to notify the transboundary movement to the State of transit lies with the State of export, or the generator or exporter if so required by legislation applicable in the State of export.
20. Where the wastes are not covered by the Annexes but are defined as, or considered to be, hazardous wastes by the domestic legislation of any State concerned,<sup>23</sup> the obligation to notify the transboundary movement to the State of transit applies to:
  - (a) The State of export, or the exporter or generator, where they are legally defined as, or considered to be, hazardous only by the State of export,<sup>24</sup> or where they are legally defined as, or considered to be, hazardous only by the State of transit;<sup>25</sup>
  - (b) The State of import, or importer or disposer, where the wastes are legally defined as, or considered to be, hazardous wastes only by the State of import, or where they are legally defined as, or considered

---

<sup>19</sup> For general guidance on the PIC procedure, see: the Manual for the Implementation of the Basel Convention, providing guidance to Parties on their obligations under the Basel Convention, including the PIC control regime; the Guide to the Control System, providing explanation and guidance on the PIC procedure to persons involved in the transboundary movements, such waste collectors, exporters, carriers, importers and disposers; and the Revised notification and movement documents for the control of transboundary movement of hazardous wastes and instructions for completing these documents. These documents are available at: <https://www.basel.int/Implementation/Publications/GuidanceManuals/tabid/2364/Default.aspx>.

<sup>20</sup> Hazardous wastes are defined in paragraph 1 of Article 1 read in conjunction with Annexes I, III, VIII and IX to the Convention. Other wastes are defined in paragraph 2 of Article 1 read in conjunction with Annex II to the Convention.

<sup>21</sup> See paragraph 1 of Article 5 of the Basel Convention, which obliges Parties to "[d]esignate 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.*" (emphasis added).

<sup>22</sup> <http://www.basel.int/Countries/CountryContacts/tabid/1342/Default.aspx>.

<sup>23</sup> See subparagraph 1 (b) of Article 1 of the Basel Convention.

<sup>24</sup> Subparagraph 5 (a) of Article 6 of the Basel Convention, which does not modify paragraph 1 of Article 6 of the Basel Convention, providing that the duty to notify lies with the State of export, or the exporter or generator.

<sup>25</sup> Subparagraph 5 (c) of Article 6 of the Basel Convention.

to be hazardous wastes by the State of import and some or all States of transit.<sup>26</sup> In cases where the State of import, or importer or disposer, acts as the notifier, the guidance on the application of the PIC procedure to transit Parties below applies *mutatis mutandis*.

21. The duty to notify the transboundary movement implies the step of identifying the States of transit that need to be notified of a proposed transboundary movement of hazardous wastes or other wastes. As described above, Parties have different interpretations of the Convention's provisions regarding the meaning of a "State of transit".
22. Some Parties, which themselves use a narrower definition of "transit", take into account other Parties' – sometimes larger – definitions of "transit", as communicated in their national reports, when acting as the State of export,<sup>27</sup> and/or require operators to communicate with all potential "States of transit" before making a determination as to whether they are "States of transit".<sup>28</sup>
23. Other Parties draw upon their own interpretation of the Convention text,<sup>29</sup> and/or a more specific definition of "transit" set out in Basel Convention implementing legislation, guidance or practice,<sup>30</sup> in order to determine which other States qualify as "State of transit" in terms of the Basel Convention.
24. While sole reliance on national definitions bears some potential for conflicting views, it is noteworthy that none of the Parties responding to the 2021 Committee questionnaire reported any incident where its own determination as to whether or not a particular State was a "State of transit" was contested by that State.<sup>31</sup>
25. Differences between two Parties on the interpretation of the term "State of transit" and/or the scope of paragraph 12 of Article 4 on navigational rights and freedoms are to be resolved in accordance with Article 20 of the Convention. In addition, a Party that has concerns or is affected by a failure to comply with and/or implement the Conventions' obligations by another Party with whom it is directly involved under the Convention may make a submission to the Committee. The Committee is to consider any submission with a view to determining the facts and root causes of the matter of concern and assist in its resolution.<sup>32</sup>
26. The applicability of navigational rights and freedoms to transit transboundary movements of wastes covered by the Basel Convention is further discussed in section II B 5(b) below.
27. Figure 1 below illustrates a situation where a generator located in State A plans to export hazardous wastes or other wastes to a disposer located in State D. In the example, the waste generator proposes to use a transport route through the territorial seas of States B and C, which does not however involve any call at a port other than the port of destination in State D.
28. The first transit State in the example, State B, has informed Parties through the Secretariat of its national definition of transit, in connection with the application of the Basel Convention, according to which transboundary movements by ship of hazardous wastes or other wastes through marine areas under its national jurisdiction that do not involve a call at a port are not considered to constitute a "transit" for the purpose of the Basel Convention and therefore do not require prior notification and consent. In consequence, State A is not required to notify the transit transboundary movement to State B.

---

<sup>26</sup> Subparagraph 5 (b) of Article 6 of the Basel Convention.

<sup>27</sup> See the responses to Question #2a of the 2021 Committee questionnaire by Benin, Guatemala, Nigeria and Singapore.

<sup>28</sup> See the responses to Question #2a of the 2021 Committee questionnaire by Algeria, Costa Rica, Norway and Switzerland. See also the responses by Côte d'Ivoire and the Dominican Republic, which – unlike the aforementioned States – interpret the term "transit" in a broad way, to include transports of hazardous wastes or other wastes by vessel through the EEZ.

<sup>29</sup> See responses to Question #2a of the 2021 Committee questionnaire by Australia, Brazil, Colombia, Cuba, Egypt, Eritrea, Guyana, Honduras, Jamaica, Kuwait, Luxembourg, Mexico, Monaco, Peru, South Africa, Suriname, Togo, Trinidad and Tobago, the United Arab Emirates and Zimbabwe.

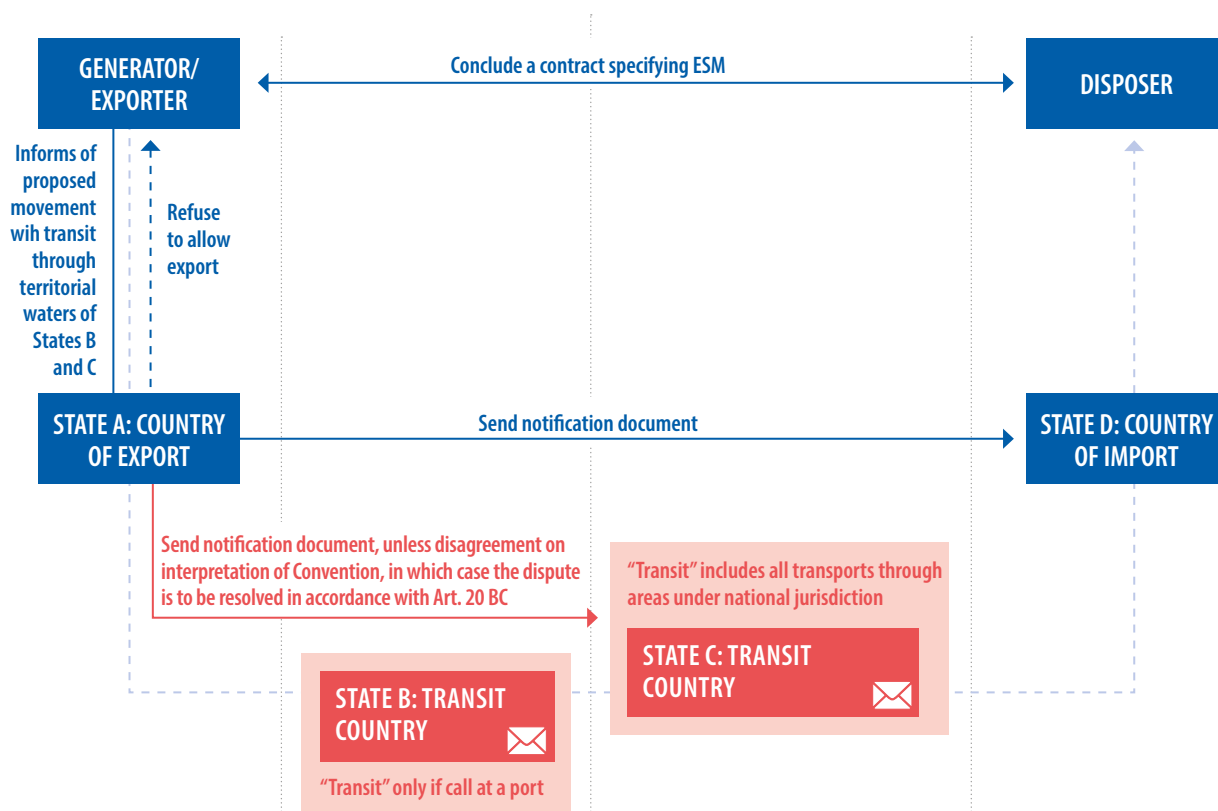
<sup>30</sup> See the responses to Question #2a of the 2021 Committee questionnaire by Belgium, Canada, Denmark, El Salvador, Finland, France, Ireland, Italy, the Netherlands, Portugal, Rwanda, Slovakia and the United Kingdom of Great Britain and Northern Ireland. Germany has different competent authorities at the level of Federal States. For exports from the European Union or imports into the European Union, most of them check the plausibility of the information provided by the notifier relying on the definition of "transit" contained in EU Regulation (EC) No 1013/2006. Some competent authorities also take into account other definitions of "transit" of countries outside the European Union.

<sup>31</sup> See the responses to Question #2b of the 2021 Committee questionnaire by Algeria, Australia, Belgium, Benin, Bosnia and Herzegovina, Brazil, Canada, Colombia, Costa Rica, Côte d'Ivoire, Cuba, Denmark, Dominican Republic, Egypt, El Salvador, Eritrea, Finland, France, Germany, Guatemala, Guyana, Honduras, Iraq, Ireland, Italy, Jamaica, Kuwait, Luxembourg; Malta, Mexico, Monaco, the Netherlands, Niger, Nigeria, Norway, Peru, the Philippines, Portugal, Rwanda, Saint Vincent and the Grenadines, Saudi Arabia, Singapore, Slovakia, South Africa, Suriname, Switzerland, Togo, Trinidad and Tobago, Ukraine, the United Arab Emirates, the United Kingdom of Great Britain and Northern Ireland and Zimbabwe.

<sup>32</sup> See [www.basel.int/TheConvention/ImplementationComplianceCommittee/Mandate/tabid/2296/Default.aspx](http://www.basel.int/TheConvention/ImplementationComplianceCommittee/Mandate/tabid/2296/Default.aspx).

29. The second transit State in the example, State C, has informed Parties through the Secretariat that it does consider all transports by ship of hazardous wastes or other wastes through marine areas under its jurisdiction to constitute a “transit” for the purpose of the Basel Convention. If State C’s definition or understanding of the term “transit” is not compatible with State A’s implementing legislation or practice, or its own interpretation of the relevant provisions of the Basel Convention, State A and State C should seek to solve their interpretative disagreement through negotiation or any other peaceful means of their choice.

**Figure 1: Notification of proposed transboundary movement to State of transit**



30. The Basel Convention allows, subject to the written consent of the States concerned, to use a general notification procedure for multiple shipments of hazardous wastes or other wastes of the same physical and chemical characteristics to the same disposer.<sup>33</sup> All shipments covered by a general notification must be shipped 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(s) of transit.<sup>34</sup> The general notification may cover multiple shipments during a maximum period of twelve months.<sup>35</sup>

<sup>33</sup> See paragraph 6 of Article 6 of the Basel Convention.

<sup>34</sup> *Idem*.

<sup>35</sup> See paragraph 8 of Article 6 of the Basel Convention.

## 2. Transit State promptly acknowledges receipt of notification

31. Paragraph 4 of Article 6 of the Basel Convention requires States of transit to promptly acknowledge to the notifier receipt of the notification.<sup>36</sup> Where the notifier is the generator or exporter a copy of the acknowledgement should be sent to the competent authority of the State of export. Acknowledgement of receipt does not imply that the transit movement will be approved and should not take longer than a few days. For example, the European Union legislation provides an acknowledgement must be sent within three working days.
32. If a competent authority of the State of transit may not be contacted, or the notifier does not receive an acknowledgement within a reasonable time (as may be specified in national legislation), it may be possible to follow up with a second communication, to contact a State through the focal point or, if needed, through diplomatic channels (e.g., Ministry of Foreign Affairs, embassy or permanent mission). In such instances, it is recommended to ensure a copy of the communication is nonetheless sent to the competent authority. The notifier may also invite the Secretariat to confirm with the State concerned that its contact information, as available on the website of the Convention, is up to date.
33. The lack of an acknowledgement of receipt cannot as such be interpreted as consent to a proposed transit movement.

## 3. Transit State may consent with or without conditions, or deny permission

34. Subsequently, the State of transit may respond to the notifier within 60 days, consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information.<sup>37</sup> The response must be given in written form, such as letter or fax or via email or other electronic correspondence. Formal requirements may arise from national legislation.
35. Transit States are encouraged to respond within the stipulated period of 60 days after having acknowledged receipt of the notification.<sup>38</sup>
36. The State of export must not allow the transboundary movement to commence until it has received the *written* consent of all transit States.<sup>39</sup> If the State of export has received a negative response or no response, the transboundary movement cannot proceed.
37. There is however one exception to this rule, where the required consent can take the form of *tacit* consent. This is the case, where a Party has informed other Parties through the Secretariat of its decision not to require prior written consent for transits of hazardous wastes or other wastes, either generally or under specific conditions.<sup>40</sup> In such a case, the State of export may allow the transboundary movement to proceed through that State of transit, if no response has been received within 60 days after receipt of the notification by the State of transit (tacit consent).<sup>41</sup> As long as the State of transit has not received the notification, the 60-day deadline does not start running.
38. Industry representatives have also underlined the benefits of the tacit consent procedure to the recycling industry in their efforts to implement a circular economy and have suggested that States of transit that prefer not to apply tacit consent in a general way, may for example consider applying the tacit consent procedure only to waste shipments destined for recovery operations or maritime shipments.<sup>42</sup>

---

<sup>36</sup> Paragraph 4 of Article 6 of the Basel Convention provides that “[e]ach State of transit which is a Party *shall* promptly acknowledge to the notifier receipt of the notification. [...]” See also subparagraph 18 (b) of Decision BC-13/9 which reminds Parties of “the *obligation* [t]o promptly acknowledge receipt of notifications of proposed transit transboundary movements, as provided for in paragraph 4 of Article 6 of the Convention.” (emphasis added).

<sup>37</sup> See paragraph 4 of Article 6, second sentence.

<sup>38</sup> See paragraph 20 (a) of Decision BC-13/9, which “*encourages* Parties to respond to notifications of proposed transit transboundary movements of hazardous wastes and other wastes within 60 days in accordance with paragraph 4 of Article 6 of the Convention.” (emphasis added) Some Parties have adopted legislation or mechanisms at the national level obliging their competent authority to reply to transit requests within a particular deadline. See, for example, the responses to Question #1e of the 2021 Committee questionnaire by Australia, Bosnia and Herzegovina, Dominican Republic, Eritrea, the European Union and its Member States, Rwanda and Saudi Arabia. See also the additional information provided by Canada, confirming the existence of mechanisms at the national level to ensure that an answer to each request for transit will be provided.

<sup>39</sup> See paragraph 4 of Article 6, third sentence.

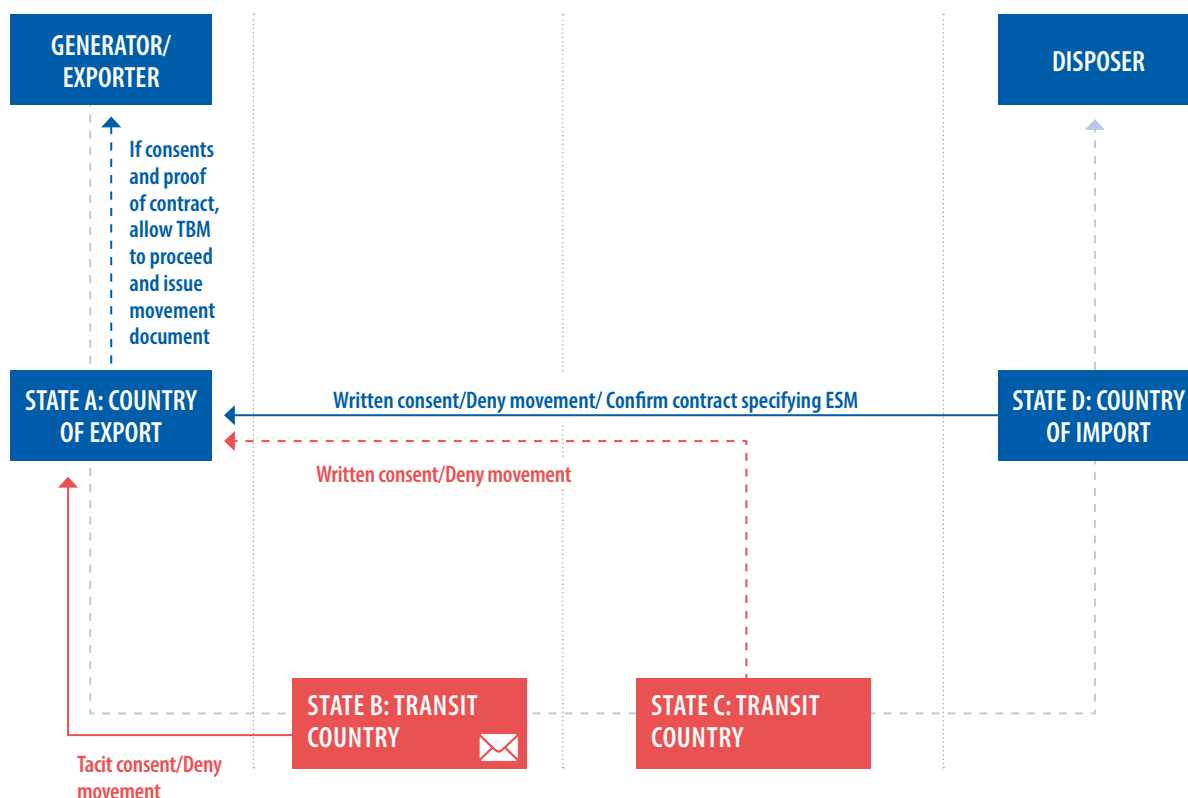
<sup>40</sup> See answers to question 3(g) of the national reports and answers to question 7 of the revised standardized reporting format for transmitting information on import and export prohibitions, available at: <http://www.basel.int/Countries/NationalReporting/NationalReports/tabid/4250/Default.aspx>; and <http://www.basel.int/Countries/ImportExportRestrictions/tabid/4835/Default.aspx>.

<sup>41</sup> See paragraph 4 of Article 6, fourth and fifth sentences.

<sup>42</sup> See submissions by Umicore of 26 September 2019 and 3 September 2020.

39. In the example in Figure 2 below, State B has notified Parties through the Secretariat of its decision not to require prior written consent for all transits of hazardous wastes or other wastes through its territory. Transit State C did not waive the requirement of written consent. In this example, State A (State of export) may allow the transboundary movement to proceed only after it has received the *tacit* consent of State B (no objection within 60 days after receipt of notification) and the *written* consent of State C.

**Figure 2: States of transit respond to notification and generator/exporter is allowed to proceed with TBM**



#### 4. Transit restrictions and prohibitions

40. Transit prohibitions and restrictions are not explicitly addressed in the Convention text. However, many Parties have adopted such prohibitions or restrictions at the national level.<sup>43</sup> They are invited to transmit information about these using either Question 6 of the revised standardized reporting format for transmitting information on import and export prohibitions,<sup>44</sup> or Question 3 (f) of the revised reporting format.<sup>45</sup> The information received by the Secretariat is made available on the Convention's website.<sup>46</sup>
41. Transit restrictions can take a variety of forms, such as:
- Restrictions related to the transit itinerary and transportation mode (e.g., entry/exit point, transit route, means of transport, loading/unloading-operations, transit time,<sup>47</sup> etc.);

<sup>43</sup> Among those Parties that prohibited the transit of hazardous wastes are Argentina, Colombia, Costa Rica, Dominican Republic (See respective responses to Question #3.a. of the 2016 Committee questionnaire) and El Salvador (See response to Question #1f of the 2021 Committee questionnaire). Other countries restricted all or certain types of transit movements.

<sup>44</sup> The standardized format for reporting is available at <http://basel.int/Procedures/ImportExportProhibitions/tabid/2751/Default.aspx>. See also new Question 3g of the revised reporting format for the Basel Convention national reporting.

<sup>45</sup> The revised format is available at <http://basel.int/Countries/NationalReporting/Guidance/tabid/1498/Default.aspx>.

<sup>46</sup> See <http://www.basel.int/Countries/NationalReporting/NationalReports/tabid/4250/Default.aspx>.

<sup>47</sup> See, for example, responses by Australia and Rwanda to Question #1g of the 2021 Committee questionnaire.

- (b) Restrictions related to the type of wastes (e.g., hazardous wastes/other wastes, hazardous waste categories); or
  - (c) Restriction related to the place and type of disposal operation (e.g., country of disposal, final disposal/recovery operation, etc.).
42. Parties that have not adopted general prohibitions or restrictions on transit maintain their right to not consent to, or impose conditions on, any proposed transit transboundary movement of hazardous wastes or other wastes, falling within the scope of the Convention, on a case-by-case basis.

## 5. Specific issues

### (a) Re-routing of shipments

43. The concept of re-routing refers to situations where it becomes necessary to change the transport route of a transboundary movement of hazardous wastes or other wastes after all consents having been obtained, for example, because the transporter (e.g., shipping line) modifies the itinerary of the ship transporting the wastes.
44. If the new transport route involves one or several new transit States, the Basel Convention requires that the new transit State(s) must be notified of the proposed transboundary movement and that the State of export must not allow the transboundary movement to commence until it has received the consent of the new transit State(s). A change in the transport route may also require a new notification to and consent of the involved States of import, export and transit, if applicable, if so requested by applicable legislation in any of those States. This is, for example, the case for transboundary movements to a member State of the European Union.<sup>48</sup>
45. Sometimes the cause of re-routing emerges after the transboundary movement has already commenced. If the required consents from the new States of transit, and the State of import and export, if applicable, can be obtained, the transboundary movement may proceed. If not, the transboundary movement cannot be completed as approved by the States concerned. Similar to cases in which the transboundary movement cannot be completed in accordance with the terms of the contract between the exporter and the disposer,<sup>49</sup> the State of export should 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. The State of export, the state of import and any State of transit should cooperate in the return of the wastes to the State of export.
46. Because of the obligation to submit new notifications and obtain consents, re-routing shipments of hazardous or other wastes, especially if the transboundary movement has already been initiated, can have important practical consequences (e.g., vessel blocked in transit port, delays, extra documentation, storage and transportation costs, relabelling and repackaging, permit fees, etc.). A possible solution could consist of notifying and obtaining the consent not only of the States of transit concerned by the planned route but also of any State that may become, following a need to re-route the shipment, a transit State, provided that such an approach is agreeable to all States concerned and permitted under the national legislations of the States of export and import. The downside of such an approach is that it increases the number of States from which consent must be obtained, which may significantly lengthen the process.
47. In cases where a ship or transporter enters the territory of a State due to *force majeure*, some Parties do not require a new notification procedure.<sup>50</sup> However, the competent authority and other relevant authorities

<sup>48</sup> See Article 17 of Regulation (EC) No 1013/2006 of the European Parliament and the Council of 14 June 2006 on shipments of waste. See also the additional information provided by Benin and Netherlands in response to the 2021 Committee questionnaire, highlighting the importance of reporting unforeseen route changes to all relevant competent authorities, including the competent authority of the State of export.

<sup>49</sup> This case is addressed by Article 8 of the Basel Convention.

<sup>50</sup> See responses to Question #1d of the 2021 Committee questionnaire by Algeria, Singapore, Finland, France, Ireland, Malta, the Netherlands, Portugal, Togo, Dominican Republic, Guyana and Italy. See also the reply by Côte d'Ivoire where, under extreme circumstance, the consent by the competent authority may be obtained orally. Australia, Belgium, Bosnia and Herzegovina, Brazil, Canada, Costa Rica, Cuba, Denmark, Egypt, El Salvador, Germany, Guatemala, Honduras, Jamaica, Mexico, Monaco, Niger, Nigeria, Norway, Peru, the Philippines, South Africa, Saint Vincent and the Grenadines, Suriname, Switzerland, Trinidad and Tobago, Ukraine, the United Arab Emirates, the United Kingdom of Great Britain and Northern Ireland and Zimbabwe do not grant exceptions to the applicable prior informed consent requirements in situations of *force majeure*. Note however that in Australia, Belgium, Costa Rica, Denmark, Germany, Nigeria, Suriname, the United Arab Emirates and the United Kingdom of Great Britain and Northern Ireland transits by sea that do not involve a call at a port are not subject to prior notification and consent.

(Port authority, Customs) usually need to be informed of the incident without delay.<sup>51</sup> Depending on the State involved, incidents qualifying as *force majeure* may include extreme weather conditions,<sup>52</sup> unpredictable road work,<sup>53</sup> damages to a ship requiring repair,<sup>54</sup> medical emergencies on board of a ship,<sup>55</sup> and other unforeseeable circumstances compelling a ship or a transporter to transit through the State's territory.<sup>56</sup>

48. Some Parties may also apply flexibility (e.g. expedite procedures) in instances where a request for re-routing relates to factors outside of the control of the carrier that do not amount to *force majeure*.<sup>57</sup>

**(b) Navigational rights and freedoms**

49. During the negotiation of the Basel Convention, the rights to be given to transit States were subject to extensive discussions. Some States proposed that transit States should have the same rights as States of import. Others argued against this, maintaining that such rights would not be consistent with navigational rights and freedoms guaranteed in international law, in particular the right of innocent passage and overflight.<sup>58</sup> The outcome is reflected on the one hand in the definition of "State of transit" in paragraph 12 of Article 2 of the Convention, and on the other hand in paragraph 12 of Article 4 of the Basel Convention which provides: "Nothing in this Convention shall affect in any way the sovereignty of States over their territorial sea established in accordance with international law, and the sovereign rights and the jurisdiction which States have in their exclusive economic zones and their continental shelves in accordance with international law, and the exercise by ships and aircrafts of all States of navigational rights and freedoms as provided for in international law and as reflected in relevant international instruments."

50. The right to freedom of navigation in waters superjacent to the continental shelf and in the EEZ is enshrined in articles 58, paragraphs 1 and 2, and 78, paragraph 1, of UNCLOS. Articles 17 and 18 of UNCLOS provides for the "right of innocent passage through the territorial sea"<sup>59</sup> for the purpose of

"(a) traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters or a call at such roadstead or port facility.

(b) proceeding to or from internal waters or a call at such roadstead or port facility."<sup>60</sup>

The passage "shall be continued and expeditious. However, passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by *force majeure* or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress."<sup>61</sup>

51. While most Parties that replied to the 2021 Committee questionnaire do not read the reference to "navigational rights and freedoms" in Article 4, paragraph 12, of the Basel Convention to mean that transports of hazardous wastes or other wastes through the EEZ or the territorial sea are – as a general rule – exempted from the duty to notify and obtain consent for that transport from the coastal State,<sup>62</sup> some Parties read the reference to "navigational rights and freedoms" to mean exactly this, provided that the ship carrying the wastes exercises the right to passage or to freedom of navigation in accordance with

<sup>51</sup> See responses to Question #1d of the 2021 Committee questionnaire by Finland, France, Ireland, Malta and Italy.

<sup>52</sup> See responses to Question #1d of the 2021 Committee questionnaire by Algeria, Luxembourg, the Netherlands, Portugal and the Dominican Republic.

<sup>53</sup> See the response to Question #1d of the 2021 Committee questionnaire by Luxembourg.

<sup>54</sup> See the responses to Question #1d of the 2021 Committee questionnaire by Ireland and the Netherlands. See also the reply by Singapore with regard to ships that are not seaworthy and endanger human safety and the environment.

<sup>55</sup> See the response to Question #1d of the 2021 Committee questionnaire by Ireland.

<sup>56</sup> See responses to Question #1d of the 2021 Committee questionnaire by Singapore and Italy. See also the replies by Malta, which assesses each situation on a case-by-case basis, and Guyana, which relies on common law standards to determine whether a given situation qualifies as *force majeure*.

<sup>57</sup> See the responses to Question #1f of the 2021 Committee questionnaire by Benin, Brazil, Ireland, the Netherlands, Saint Vincent and the Grenadines, Trinidad and Tobago and Togo. See also the replies by Finland and Malta, which consider the necessity of a new notification in unforeseen situations on a case-by-case basis.

<sup>58</sup> It is noted that UNCLOS states that the sovereignty of the coastal State extends to the airspace over the territorial sea and that it does not provide for a right of innocent passage in the airspace over the territorial sea. However, overflight rights exist when exercising transit passage and archipelagic sea-lane passage and when exercising the freedom of overflight in the EEZ.

<sup>59</sup> Article 17 of UNCLOS.

<sup>60</sup> Paragraph 1 of Article 18 of UNCLOS.

<sup>61</sup> Paragraph 2 of Article of UNCLOS.

<sup>62</sup> See the responses to Question #2d of the 2021 Committee questionnaire by Australia, Belgium, Benin, Colombia, Costa Rica, Côte d'Ivoire, Cuba, Dominican Republic, Egypt, El Salvador, Eritrea, Guatemala, Guyana, Honduras, Iraq, Ireland, Italy, Jamaica, Kuwait, Luxembourg, Mexico, Monaco, Niger, Nigeria, Norway, Peru, Philippines, Rwanda, Saint Vincent and the Grenadines, Saudi Arabia, Slovakia, South Africa, Suriname, Togo, Trinidad and Tobago, Ukraine, United Arab Emirates and Zimbabwe.



the provisions of UNCLOS.<sup>63</sup> Others understand paragraph 12 of Article 4 of the Basel Convention to only exempt transports through the EEZ from the Basel Convention prior informed consent procedure.<sup>64</sup>

52. This being said, a narrow reading of the reference to “navigational rights and freedoms” in Article 4, paragraph 12, of the Basel Convention (i.e. the article does not provide for a general exemption) by a particular State *may*, but does not necessarily, translate into a broad control policy over transports of hazardous wastes or other wastes through the territorial sea and/or the EEZ of that State. In fact, some Parties that do not regard the reference to “navigational rights and freedoms” as justifying an absolute exemption from the prior informed consent procedure, nonetheless apply a narrow definition of “transit” in practice, in the sense that they do not require prior notification and consent for continuous transports through their territorial sea,<sup>65</sup> and/or EEZ.<sup>66</sup>

### (c) Land-locked countries

53. Land-locked countries that do not have proper facilities for the environmentally sound disposal of hazardous wastes (or certain categories of hazardous wastes) or other wastes, may experience difficulties in ensuring their environmentally sound disposal, if all neighbouring countries prohibit or do not consent to the transit of such wastes.<sup>67</sup> Similar difficulties may arise, where transit States with strategically located hub ports decide to prohibit the transit of certain categories of hazardous wastes. In addition to bilateral discussions, Basel Convention Regional Centres or other regional bodies (e.g., Customs Unions<sup>68</sup>) may provide an appropriate forum to raise, discuss and resolve such concerns.<sup>69</sup>

## C. TRANSBOUNDARY MOVEMENT THROUGH A TRANSIT STATE WHICH IS NOT A PARTY

### 1. Notification of proposed transboundary movement to transit States

54. The obligation to notify a proposed transboundary movement of hazardous wastes or other wastes to transit States also applies where the transit State is not a Party to the Basel Convention. Article 7 of the Basel Convention requires that paragraph 1 of Article 6 of the Convention, which sets out the duty of the State of export, or the generator or exporter, to notify any proposed transboundary movement, shall apply *mutatis mutandis* to transboundary movements of hazardous wastes or other wastes from a Party through a State or States which are not Parties. Notifications should be addressed to the transit State’s competent authority.<sup>70</sup>

---

<sup>63</sup> See the responses to Question #2d of the 2021 Committee questionnaire by Denmark, Finland, France, Germany, Malta, the Netherlands, and the United Kingdom of Great Britain and Northern Ireland.

<sup>64</sup> See response to Question #2d of the 2021 Committee questionnaire by Canada. See also the responses to Question #2d (read in conjunction with the responses to Question #1c) of the 2021 Committee questionnaire by Algeria and Singapore.

<sup>65</sup> See the responses to Question #2d (read in conjunction with the responses to Question #1c) of the 2021 Committee questionnaire by Australia, Belgium, Benin, Costa Rica, Ireland, Luxembourg, Nigeria, Norway, Suriname, Togo and the United Arab Emirates.

<sup>66</sup> See the responses to Question #2d (read in conjunction with the responses to Question #1c) of the 2021 Committee questionnaire by Australia, Belgium, Benin, Costa Rica, Cuba, El Salvador, Guatemala, Honduras, Ireland, Luxembourg, Monaco, Nigeria, Norway, South Africa, Suriname, Togo, Trinidad and Tobago, and the United Arab Emirates. Several landlocked countries did not answer Question #1c with regard to transports by sea. See also the responses by Australia, Belgium, Benin, Canada, Costa Rica, Cuba, Eritrea, Guyana, Honduras, Ireland, Italy, Luxembourg, Monaco, Nigeria, Norway, South Africa, Suriname, Togo, Trinidad and Tobago, and the United Arab Emirates, which exclude stops in the free zone from the definition of “transit”.

<sup>67</sup> See, for example, Kazakhstan’s response to Question #10 of the 2016 Committee questionnaire. Kazakhstan highlights difficulties with exports of wastes containing POPs for environmentally sound disposal, because its neighbouring countries enacted legislation that prohibits the import or transit of such wastes. See also UNDP’s responses to Questions #7 and #8 to the Questionnaire, on the same case. See also Part X of UNCLOS concerning the right of access of land-locked States to and from the sea and freedom of transit, in particular paragraph 2 of Article 125. See also the response by Guyana to Questions #1c and #1d of the 2021 Committee questionnaire on the need to provide further clarity on the obligations of coastal states vis-à-vis landlocked countries and on road transits through coastal states for onward transport by sea in general.

<sup>68</sup> See Kazakhstan’s response to Question #10 of the 2016 Committee questionnaire: Kazakhstan repeatedly brought up the issue of PCB transits in the intergovernmental commission of the Customs Union. As a result, a proposal to delete PCB waste oils from the list of prohibited transit goods was approved and adopted by the Commission in April 2014. See also the practical difficulties raised by Umicore in their comments of 11 January and 26 September 2019.

<sup>69</sup> A possible solution could also involve the construction of disposal plants using environmentally sound disposal techniques at the national level in the long term.

<sup>70</sup> All country contacts that have been notified to the Secretariat are available at: <http://basel.int/Countries/CountryContacts/tabid/1342/Default.aspx>.

55. The obligation to notify a transboundary movement only applies to transports of wastes that fall within the definitions of hazardous wastes and other wastes of the Basel Convention.<sup>71</sup> Where the wastes are not covered by Annexes I, III and VIII to the Convention but are defined as, or considered to be, hazardous wastes by the domestic legislation of the State of import or export, the Convention does not require notification of the transboundary movement to a transit State that is not a Party to the Convention.

## **2. State of export may allow the transboundary movement to commence without consent**

56. The Basel Convention does not require written or tacit consent of non-Party transit States. However, many Parties' national legislations provide that a transboundary movement shall not be allowed to proceed, until all States of transit, including non-Party States, have given their written consent to the movement.<sup>72</sup>

---

<sup>71</sup> Hazardous wastes are defined in paragraph 1 of Article 1 read in conjunction with Annexes I, III, VIII and IX to the Convention. Other wastes are defined in paragraph 2 of Article 1 read in conjunction with Annex II to the Convention.

<sup>72</sup> See Guide to the Control System, at paragraph 27.

### III. TRANSIT MOVEMENTS AS PART OF TAKE-BACK OPERATIONS

57. In cases of take-back of hazardous wastes or other wastes that are deemed to be illegal traffic pursuant to paragraph 2 of Article 9 of the Basel Convention, the Convention text provides that the State of transit “shall not oppose, hinder or prevent the return of those wastes to the State of export.”<sup>73</sup> Although the Basel Convention is silent in relation to a consent of a State of transit in such a case, best practice suggests that the transit States should nonetheless be notified of the take-back, unless all the involved competent authorities agree that this is not necessary. Detailed guidance on the procedure that should be followed in cases of illegal traffic is available in the Guidance on the implementation of the Basel Convention provisions dealing with illegal traffic.<sup>74</sup>

---

<sup>73</sup> See paragraph 2 of Article 9 (*in fine*) of the Basel Convention.

<sup>74</sup> See, in particular, paragraphs 68 and 81-87 of the *Guidance on the implementation of the Basel Convention provisions dealing with illegal traffic*. The guidance was adopted by the thirteenth meeting of the COP (BC-13/9, paragraph 15) and is available in document UNEP/CHW.13/9/Add.1/Rev.1, and on the Convention’s website at: <https://www.basel.int/Implementation/Publications/GuidanceManuals/tabid/2364/Default.aspx>.

# CONCLUSION

58. The identification of transit States appears to be the main *legal* difficulty in the implementation of the Basel Convention control regime vis-à-vis transit States, because Parties have different understandings of the Convention's provisions regarding the meaning of "State of transit", in particular in case of transport by sea. The definition of "State of transit" in paragraph 12 of Article 2 of the Basel Convention, on the one hand, and the reference to "navigational rights and freedoms" in paragraph 12 of Article 4 of the Basel Convention, on the other hand, represent a compromise and leave room for interpretation.
59. The information received from Parties indicates that many Parties do not read the reference to "navigational rights and freedoms" to mean that transports of hazardous wastes or other wastes through the EEZ or the territorial sea of a coastal State are – as a general rule – exempted from the duty to notify and obtain consent for that transport from that State. In practice, some of those States nonetheless apply a narrow definition of "transit" to transports through maritime areas under their jurisdiction, in the sense that they do not require prior notification and consent for continuous transports through their territorial sea and/or EEZ. Other Parties interpret the reference to "navigational rights and freedoms" in paragraph 12 of Article 4 of the Basel Convention as exempting transports through the EEZ or territorial sea of a coastal State from the prior informed consent procedure, provided that the ship carrying the wastes exercises the right to passage or to freedom of navigation in accordance with the provisions of UNCLOS.
60. The collected information further reveals that some Parties take into account other Parties' – sometimes larger – definitions of "transit", as communicated in their national reports, when acting as the State of export, or require operators to communicate with all potential "States of transit" before making a determination as to whether they are "States of transit". In light of this, it does seem important for Parties to inform each other through the Secretariat of their national definitions or understanding of "State of transit" in connection with the application of the Basel Convention.

# ANNEX I: RELEVANT DECLARATIONS AND STATEMENTS TO THE BASEL CONVENTION (STATUS AS AT NOVEMBER 2021)

## Declarations and statements

### **Chile**

Declaration: The Government of Chile considers that the provisions of this Convention [. . .] help to consolidate and expand the legal regime that Chile has established through various international instruments on the control of transboundary movements of hazardous wastes and their disposal, whose scope of application covers both the continental territory of the Republic and its area of jurisdiction situated south of latitude 60oS, in accordance with the provisions of article 4, paragraph 6, of the present Convention.

### **Colombia**

Upon signature: It is the understanding of Colombia that the implementation of the present Convention shall in no case restrict, but rather shall strengthen, the application of the juridical and political principles which, as [was] made clear in the statement [made on 21 March to the Basel Conference], govern the actions taken by the Colombian State in matters covered by the Convention -- in other words, *inter alia*, the latter may in no case be interpreted or applied in a manner inconsistent with the competence of the Colombian State to apply those principles and other norms of its internal rule to its land area (including the subsoil), air space, territorial sea, submarine continental shelf and exclusive economic maritime zone, in accordance with international law.

Upon ratification: The Government of Colombia, pursuant to article 26, paragraph 2, of the [said Convention], declares, for the purposes of implementing this international instrument, that article 81 of the Political Constitution of Colombia prohibits the bringing of nuclear residues and toxic wastes into the national territory.

### **Ecuador**

Upon signature: The elements contained in the Convention which has been signed may in no way be interpreted in a manner inconsistent with the domestic legal norms of the Ecuadorian State, or with the exercise of its national sovereignty.

### **Germany**

Declaration made upon signature and confirmed upon ratification: It is the understanding of the Government of the Federal Republic of Germany that the provisions in article 4, paragraph 12 of this Convention shall in no way affect the exercise of navigation rights and freedoms as provided for in international law. Accordingly, it is the view of the Government of the Federal Republic of Germany that nothing in this Convention shall be deemed to require the giving of notice to or the consent of any State for the passage of hazardous wastes on a vessel under the flag of a party exercising its right of innocent passage through the territorial sea or the freedom of navigation in an exclusive economic zone under international law.

### **Japan**

Declaration: The Government of Japan declares that nothing in the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal be interpreted as requiring notice to or consent of any State for the mere passage of hazardous wastes or other wastes on a vessel exercising navigational rights and freedoms, as paragraph 12 of article 4 of the said Convention stipulates that nothing in the Convention shall affect in any way the exercise of navigational rights and freedoms as provided for in international law and as reflected in relevant international instruments.

## **Mexico**

Declaration made upon signature and confirmed upon ratification: Mexico is signing *ad referendum* the Basel Convention on the Control of the Transboundary Movements of Hazardous Wastes and their disposal because it duly protects its rights as a coastal State in the areas subject to its national jurisdiction, including the territorial sea, the exclusive economic zone and the continental shelf and, in so far as it is relevant, its airspace, and the exercise in those areas of its legislative and administrative competence in relation to the protection and preservation of the environment, as recognized by international law and, in particular, the law of the sea. Mexico considers that, by means of this Convention, important progress has been made in protection of the environment through the legal regulation of transboundary movements of hazardous wastes. A framework of general obligations for States parties has been established, fundamentally with a view to reducing to a minimum the generation and transboundary movement of dangerous wastes and ensuring their environmentally rational management, promoting international co-operation for those purposes, establishing co-ordination and follow-up machinery and regulating the implementation of procedures for the peaceful settlement of disputes. Mexico further hopes that, as an essential supplement to the standard-setting character of the Convention, a protocol will be adopted as soon as possible, establishing, in accordance with the principles and provisions of international law, appropriate procedures in the matter of responsibility and compensation for damage resulting from the transboundary movement and management of dangerous wastes.

## **Russian Federation**

Understanding: The definition of "Territory" in the Cairo Guidelines and Principles for the Environmentally Sound Management of Hazardous Wastes (UNEP Governing Council decision 14/30 of 17 June 1987) to which reference is made in the preamble to the Convention is a special formulation and cannot be used for purposes of interpreting the present Convention or any of its provisions in the light of article 31, paragraph 2, or article 32 of the 1969 Vienna Convention on the Law of Treaties or on any other basis.

## **Singapore**

Declaration: The Government of Singapore declares that, in accordance with article 4 (12), the provisions of the Convention do not in any way affect the exercise of navigational rights and freedoms as provided in international law. Accordingly, nothing in this Convention requires notice to or consent of any State for the passage of a vessel under the flag of a party, exercising rights of passage through the territorial sea or freedom of navigation in an exclusive economic zone under international law.

## **United Kingdom of Great Britain and Northern Ireland**

Declaration made upon signature and confirmed upon ratification: The Government of the United Kingdom of Great Britain and Northern Ireland declare that, in accordance with article 4 (12), the provisions of the Convention do not affect in any way the exercise of navigational rights and freedoms as provided for in international law. Accordingly, nothing in this Convention requires notice to or consent of any state for the passage of hazardous wastes on a vessel under the flag of a party, exercising rights of passage through the territorial sea or freedom of navigation in an exclusive economic zone under international law.

## **Uruguay**

Upon signature: Uruguay is signing *ad referendum* the Convention on the Control of the Transboundary Movements of Hazardous Wastes and their Disposal because it is duly protecting its rights as a riparian State in the areas subject to its national jurisdiction, including the territorial sea, the exclusive economic zone and the continental shelf and, as appropriate, the superjacent air space as well as the exercise in such areas of its standard-setting and administrative competence in connection with the protection and preservation of the environment as recognized by international law and, in particular, by the law of the sea.

## **Venezuela (Bolivarian Republic of)**

Upon signature: Venezuela considers that the Convention [as] adopted properly protects its sovereign rights as a riparian State over the areas under its national jurisdiction, including its territorial sea, exclusive economic zone and continental shelf, and, as appropriate, its air space. The Convention also safeguards the exercise in such areas of its standard-setting and administrative jurisdiction for the purpose of protecting and preserving the environment and its natural resources in accordance with international law, and in particular the law of the sea.

## **Objections**

### **Italy**

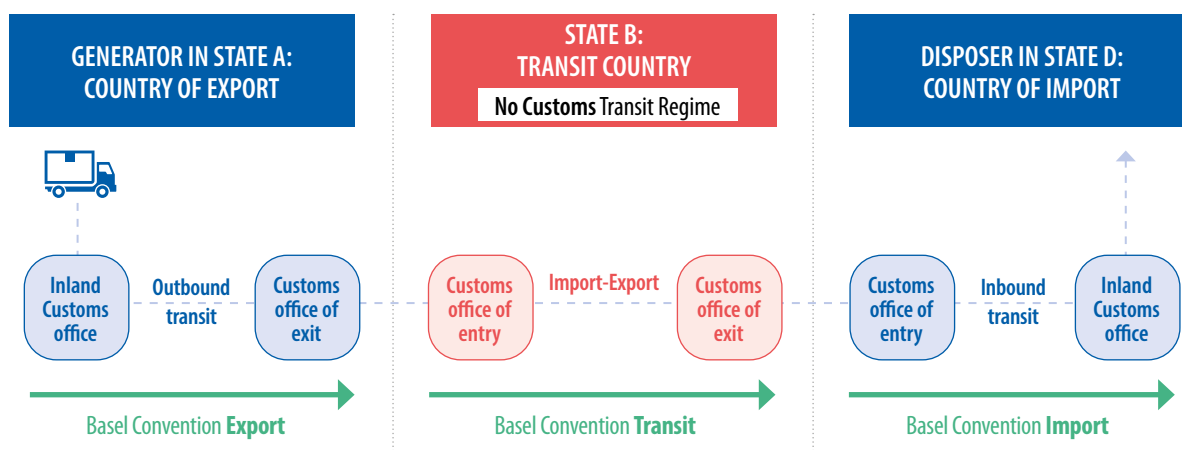
The Government of Italy, in expressing its objections *vis-à-vis* the declarations made, upon signature, by the Governments of Colombia, Ecuador, Mexico, Uruguay and Venezuela, as well as other declarations of similar tenor that might be made in the future, considers that no provision of this Convention should be interpreted as restricting navigational rights recognized by international law. Consequently, a State party is not obliged to notify any other State or obtain authorization from it for simple passage through the territorial sea or the exercise of freedom of navigation in the exclusive economic zone by a vessel showing its flag and carrying a cargo of hazardous wastes.

# ANNEX II: THE MEANING OF TRANSIT IN CUSTOMS TERMINOLOGY AND IN UNCLOS

## Customs terminology

1. The use of the term transit under the Basel Convention does not necessarily coincide with how the term is used by Custom authorities. The basic principle of Customs transit is to permit goods to move, under Customs control, from one Customs office to another in the same Customs territory or another Customs territory, without collecting duties and taxes and without applying economic prohibitions or restrictions, or other commercial policy measures.<sup>1</sup> In the context of Customs procedures, the term transit is thus usually described as the procedure whereby goods are transported under Customs control from the Customs office of departure to the Customs office of final destination, including outbound transit (also “transit for exportation”) and inbound transit (also “transit for importation”).<sup>2</sup> Because of potential differences at the national level in the meaning of the term transit for Competent Authorities and Customs, it is important to ensure that both are aware of the respective definitions and coordinate accordingly. Figures 1 and 2 below illustrate the concept of transit under the Basel Convention and under Customs terminology.
2. In the example of Figure A, transit State B does not have a Customs transit regime. Any entry into the territory of State B through a Customs office of entry is treated as an import for Customs purposes, even if the wastes are destined to cross the territory of State B (without any disposal operation taking place), and then leave the country to be disposed of in State D. State B acts as a “State of transit” for the purpose of the application of the Basel Convention PIC procedure. This Basel Convention “transit” through State B does however involve an import and subsequent export in terms of State B’s Customs procedures.

**Figure A: The concept of transit under the Basel Convention as opposed to Customs terminology where the transit State does not have a Customs transit regime**



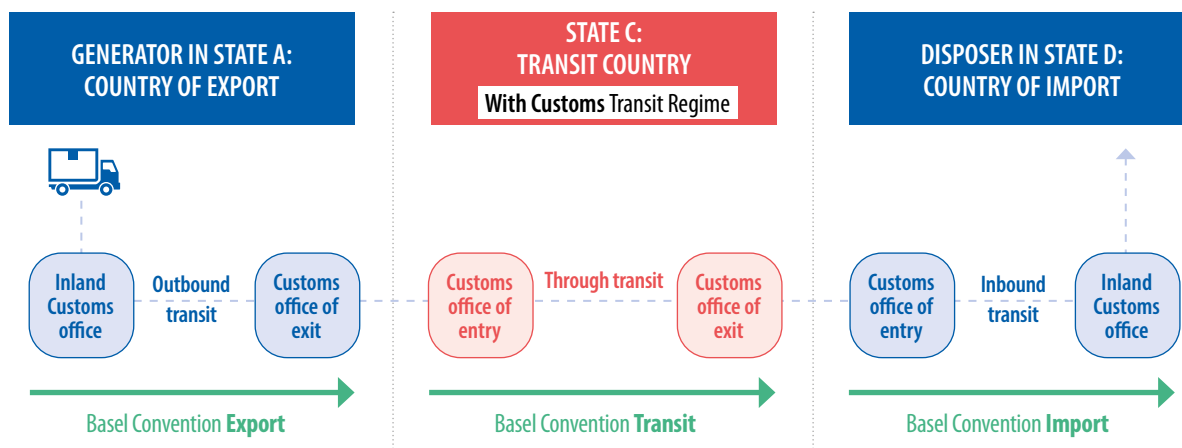
3. In countries that do have a Customs transit regime, such as State C in Figure B below, a Basel Convention transit usually corresponds to a so-called “through transit” in terms of Customs procedures (i.e., direct transport from a Customs office of entry to a Customs office of exit).

<sup>1</sup> World Customs Organization (WCO), Transit Handbook (2014), p. 1.

<sup>2</sup> See, for example, the use of the word transit in Annex E (paragraph 2) of the International Convention on the Simplification and Harmonization of Customs Procedures (revised Kyoto Convention) of 1999 according to which “the Customs shall allow goods to be transported under Customs transit in their territory: (a) from an office of entry to an office of exit; (b) from an office of entry to an inland Customs office; (c) from an inland Customs office to an office of exit; and (d) from one inland Customs office to another inland Customs office.”



**Figure B: The concept of transit under the Basel Convention as opposed to Customs terminology where the transit State does have a Customs transit regime**



### **Terminology of UNCLOS**

4. The use of the term transit under the Basel Convention also differs from how the term is used under the 1982 United Nations Convention on the Law of the Sea (UNCLOS). UNCLOS “sets out the legal framework within which all activities in the oceans and seas must be carried out,”<sup>3</sup> and provides, amongst others, for the rights and duties of States in the various maritime zones and the high seas.<sup>4</sup>
5. Under UNCLOS, the term transit is only used in relation to “transit passage” through straits used for international navigation,<sup>5</sup> and in relation to the right of land-locked States to enjoy freedom of transit to and from the sea, as agreed between the land-locked States and transit States concerned.<sup>6</sup>
6. UNCLOS also uses the more general term “passage” in relation to navigation through the territorial sea and archipelagic waters, and, in some cases, internal waters (“innocent passage”), straits used for international navigation (“transit passage”) and archipelagic sea lanes (“archipelagic sea-lane passage”). Article 18, paragraph 1, of UNCLOS provides that “Passage means navigation through the territorial sea for the purpose of: (a) traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters; or (b) proceeding to or from internal waters or a call at such roadstead or port facility [...]” Paragraph 2 of Article 18 further provides that “Passage shall be continuous and expeditious. However, passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress.”
7. A passage for the purpose of UNCLOS can be an export, transit, or import in terms of the Basel Convention, depending on where the transported wastes were generated and where their disposal takes place or is planned to take place.

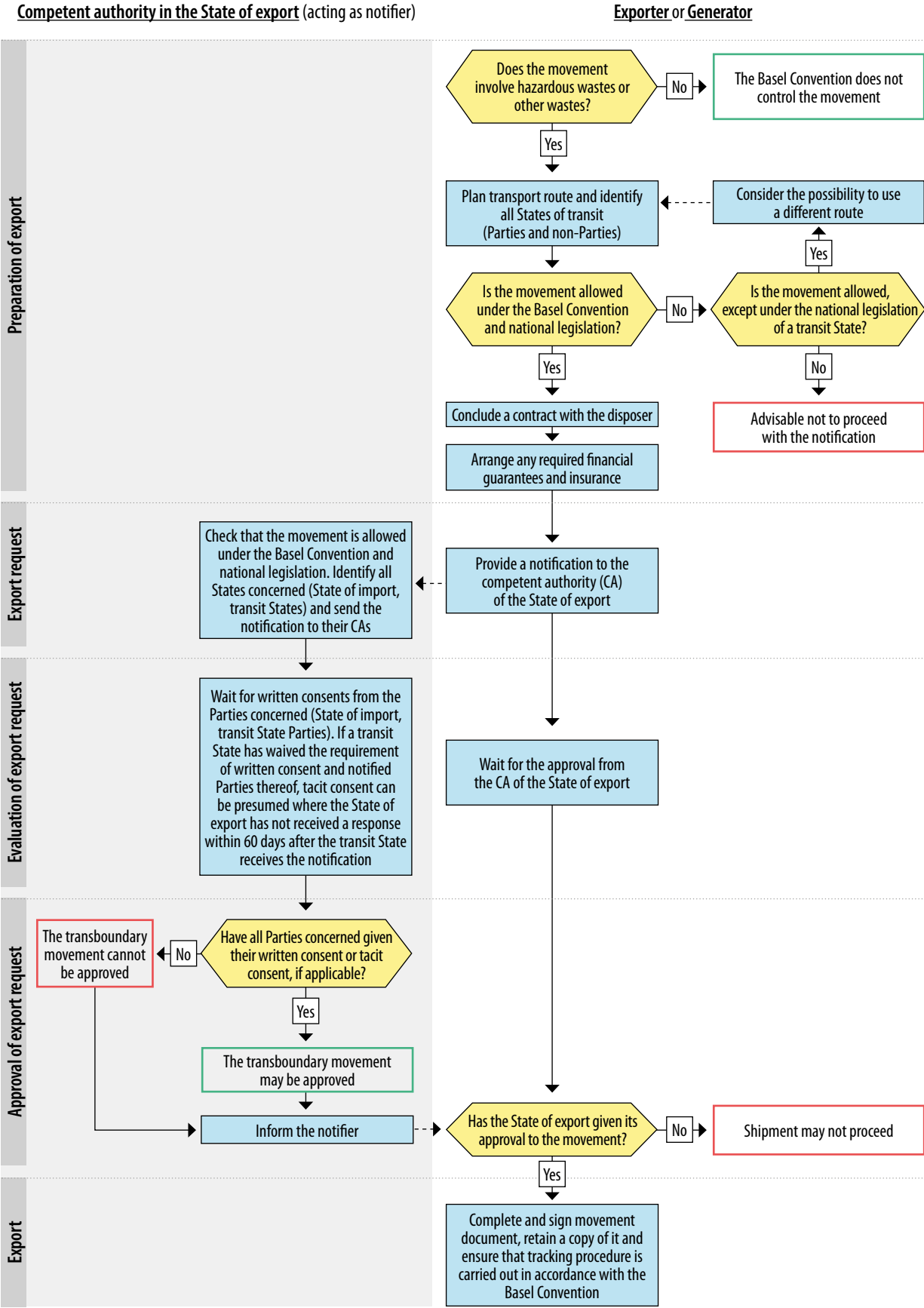
<sup>3</sup> See, for example, General Assembly resolution 73/124 of 11 December 2019, Preamble. It is noted that many of the provisions in UNCLOS are also considered to be part of customary international law.

<sup>4</sup> UNCLOS provides for the deposit of charts and lists of geographical coordinates of points, and due publicity thereto, concerning the limits of maritime zones, including the lines of delimitation.

<sup>5</sup> Articles 38-44 of UNCLOS.

<sup>6</sup> Paragraph 2 of Article 125 of UNCLOS.

# ANNEX III: OVERVIEW OF THE PIC PROCEDURE, WITH A FOCUS ON TRANSIT STATES



# [www.basel.int](http://www.basel.int)

## Secretariat of the Basel Convention

Office address:

United Nations Environment Programme (UNEP)  
International Environment House 1  
11-13 Chemin des Anémones  
CH-1219 Châtelaine GE  
Switzerland

Postal address :

Palais des Nations  
Avenue de la Paix 8-14  
CH-1211 Genève 10  
Switzerland

Tel: +41 22 917 82 71

Fax: +41 22 917 80 98

Email: [brs@un.org](mailto:brs@un.org)

