



Regional workshop for Central and Eastern Europe, Caucasus and Central Asia countries on the prosecution of illegal traffic of hazardous wastes and other wastes under the Basel Convention; Bratislava, Slovak Republic, June 26-27, 2012

Report of the Meeting

June 26, 2012

1. The regional workshop on the prosecution of illegal traffic of hazardous wastes and other wastes under the Basel Convention was opened by Ms Dana Lapešová, Director of the Basel Convention Regional Centre in Slovakia hosted by the Slovak Environmental Agency (BCRC Slovakia). She welcomed guests - Ms. Dagmar Rajčanová, Director General of the Slovak Environmental Agency (SEA) and Ms. Elena Bodíková, Director of the Waste Management Centre of the SEA, all speakers and participants. Noting that several participants may not be familiar with the Basel Convention, she provided participants with an overview of this treaty as well as on the BCRC Slovakia's role in the region.
2. Ms. Dagmar Rajčanová, Director General, Slovak Environmental Agency, welcomed participants in her opening speech. She also gave information about the activities of the Slovak Environmental Agency that provides professional support to the Ministry of the Environment of the Slovak Republic. The Slovak Environmental Agency has been hosting the BCRC Slovakia since 1997 and it provides sustainable support for its regional activities.
3. Ms Juliette Kohler Voinov, Legal and Policy Advisor, Secretariat of the Basel, Rotterdam and Stockholm Conventions, welcomed the representatives of the Slovak Environmental Agency as well as all experts and participants. In her statement she underlined the importance of the role of prosecutors in preventing and combating illegal traffic in hazardous and other wastes and the value of looking at lessons learned from other multilateral environmental agreements with similar trade-related control measures. She explained that an instruction manual on the prosecution of illegal traffic had been approved by the tenth meeting of the Conference of the Parties to the Basel Convention in October 2011 and that this workshop was the first of its kind.
4. Ms. Kohler outlined the objective of the workshop and subtitles of proposed agenda. The workshop was divided into six sessions:
 - The role of prosecutors in enforcing multilateral environmental agreements
 - What prosecutors need to know about the Basel Convention
 - Examples of national and regional implementation of the Basel Convention
 - Prosecuting a suspected case of illegal traffic under Basel Convention
 - Successes and challenges in prosecuting illegal traffic in environmentally sensitive goods
 - Enforcement networks
5. The round table introduction of experts and participants followed. All participants expressed their gratitude to be invited to the workshop. Representatives from the following countries attended the workshop: Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Georgia, Kazakhstan, Montenegro, Poland and Serbia.

Session 1: The role of prosecutors in enforcing multilateral environmental agreements

6. The first presentation was made by Ms. Barbara Ruis, UNEP/Division on Law and Convention (DELIC) who provided a global picture of the role of the judiciary in international environmental law. Ms Ruis provided information on the UNEP DELIC programme for judges and reported on the Outcome of the World Congress on Justice, Governance and Law for Environmental Sustainability organized in the



context of the Rio + 20 United Nations Conference on Sustainable Development (20-22 June 2012)..She indicated that there are well organized network of judges in the EU and underlined the importance of prosecutors to establish or participate in such networks.

7. In his presentation, Mr. Ezra Clark from OzoneAction, UNEP/Division of Technology, Industry and Economic (DTIE), made a presentation on Experiences from the Montreal Protocol – prosecutors as one element of the enforcement chain. Mr Clark presented an overview of the Montreal Protocol and the legal framework applicable to the international trade in ozone depleting substances (ODS). Turning to the issue of illegal trade in ODS, he listed some of the factors that had an impact on the efficient enforcement of the trade-related provisions of the Protocol and presented various initiatives undertaken to prevent and combat the illegal trade in ODS. He said that the work of DTIE had focused a lot on Customs and border control officers and that, with the exception of the United States of America, cases of prosecution of illegal trade in ODS appeared to rare.
8. In her presentation, Ms. Liliane Garcia Ferreira from UNEP/CITES Secretariat focused on the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the role of prosecutors networks in combating environmental crimes. She introduced the relevant provisions of the Convention and provided information on the features of the illegal trade in CITES species, such as the presence of well-armed and organized groups of criminals. She highlighted the importance of cooperation at the domestic and regional levels, including between environmental enforcement authorities and prosecutors, and the necessity of adequate penalties in the domestic legal framework.
9. In the following presentation, the attention of participants was drawn to institutional issues, more specifically the building blocks that need to be put in place at the domestic level for the prosecution of environmental crimes to successfully take place. Mr. Antonio Vercher, Chief Prosecutor, Public Prosecutors Office for the Protection of Environment and Land Planning, Madrid, Spain, reported on the Spanish experiences aimed at engaging prosecutors in combating environmental crime. He described the specialized Office of Environmental Prosecutors, created in 2006, and outlined its main elements which include the support of a technical unit and a police unit. Mr Vercher also reported that in 2011, 670 convictions pertaining to environmental issues, in the broad sense, had been issued.

Session 2: What prosecutors need to know about the Basel Convention

10. The last presentation of the morning session, delivered by Ms Kohler, focused on what prosecutors need to know about the Basel Convention. The presentation included information about the Convention, its main pillars and aims. Ms Kohler gave detailed information about the terminology used in the Convention, the control procedure for transboundary movements of hazardous wastes and other wastes as well as the Convention's provisions pertaining to illegal traffic.

Session 3: Examples of regional and national implementation of the Basel Convention

11. The afternoon session started with a presentation by Mr. Howard McCann, Principal Counsel, Legal Services, Environment Agency, on the European Union's Waste Shipment Regulation (WSR) 1013/2006) and the legal framework in the United Kingdom pertaining to transboundary movements of hazardous and other wastes. In his first presentation, Mr McCann provided detailed information on these pieces of legislation as well as the UK Environmental Agency's structure, teams and the main topics it focuses upon. He also introduced the take back system, relevant costs associated with this procedure and other relevant elements pertaining to enforcement such as the criminal intent, the level of penalties, at what point in time a "shipment" is deemed to have taken place and deception techniques.
12. The afternoon session continued with two presentations from representatives of Serbia. The first presentation was delivered by Ms. Penka Nikolovski, Adviser and Focal Point for the Basel Convention, Department for Waste Management, Ministry of the Environment, Mining and Spatial Planning. She provided detailed information about the Serbian legislation related to the transboundary movements of wastes. The Environmental Inspection, Customs and public prosecutor's office are entities involved in control procedure.



13. Ms. Jelena Samuilov, Senior Assistant to Public Prosecutor, Basic prosecutor's office Pancevo, Serbia, then introduced the current Serbian legislation related to the environmental crimes, regulations, and the institutions cooperating on such issues for instance authorities from Environmental Inspection, Police and Customs. She underlined the main challenge faced by prosecutors was a lack of waste experts and a lack of primary and secondary legislation. Both representatives from Serbia mentioned a high number of cases of illegal traffic in their country.

Working groups on institutional matters

14. Participants were divided in two working groups to discuss institutional matters such as:
- Has the country adequately implemented the Basel Convention into its national legislation?
 - Has the country enacted such legislation, does it reflect BC provisions and is it adequate for prosecutions of cases of illegal traffic to take place successfully?
 - What kind of additional provisions should be included into national legislation for prosecution of cases of illegal traffic?
 - What are the different types of penalties available for cases of illegal traffic?
 - Are prosecutors provided with adequate means to prosecute cases of illegal traffic?
 - What kind of resources, measures and policies will encourage prosecutors to prosecute illegal traffic?
 - How can cooperation at national level be fostered?

Discussions were facilitated by Mr. Clark and Mr. Vercher.

15. Reporting back to plenary, Mr Clark indicated that his group felt that the legal frameworks implementing the Basel Convention in their countries were adequate, including appropriate penalties for illegal traffic. They considered that there were no specific issues of national coordination or international cooperation to be mentioned and that environmental crimes were considered to be as severe as any other kind of other crime. Mr Clark also reported that the members of the group came from countries where no case of illegal traffic had been prosecuted. The group saw value in sharing good practices and specialized training on environmental issues.
16. Reporting back to plenary, Mr Vercher said that his group has seen similarities in approaches among the various countries, with both administrative and criminal procedures in case of illegal traffic, with the recommendation that both tracks be well coordinated. The group also highlighted the following issues: the need for a harmonized interpretation of the Basel Convention provisions, the importance of prosecutors specializing in environmental crime, the need for prosecutors to independently have access to technical experts, the need for a better training of all enforcement officers involved in cases of illegal traffic, the imbalance of means available to prosecutors (as opposed to companies that are suspected criminals) and the issue of possible corruption of public officials, and the value of both formal and informal cooperation at the international level.

June 27, 2012

Session 4: Prosecuting a suspected of illegal traffic under the Basel Convention

17. At the beginning of the morning session, a presentation was made by Ms. Kohler on Prosecuting a suspected case of illegal traffic. Ms. Kohler explained the most frequent reasons for illegal traffic taking place and why it is important to prosecute such crimes. As possible consequences she mentioned out-of-court settlements, administrative sanctions, civil measures and criminal procedures. She gave information on the definition of "hazardous waste", on when a shipment is considered to be illegal and how the individuals or entities could be prosecuted. Building cooperation among investigative and enforcement agencies not only at the national, but also at international levels was considered very important. She informed participants that Parties to the Basel Convention are invited to share information about cases of illegal traffic and she invited participants to do so.



Session 5: Successes and challenges in prosecuting illegal traffic in environmentally sensitive goods

18. Experiences and lessons learned in the UK were presented by Mr. McCann. In his presentation he provided detailed information about concrete cases of illegal traffic. The cases illustrated many of the issues a prosecutor may face, including: whom to prosecute, how to prove the existence of “waste” in particular in the case of electronic and electrical equipment, the need for expertise to prove hazardous characteristic of a waste, and at what point in time an “export” is deemed to have taken place. He provided also information about the IMPEL TFS prosecutors project which he considered as very important. He encouraged participants to join this network.
19. Mr. Clark gave a presentation on experiences gained under the Montreal Protocol. He showed to participants concrete examples of illegal traffic in ODS that had taken place in the US but said that despite numerous seizures by Customs, very few cases of illegal traffic in ODS had been prosecuted in developing countries. He also explained the disincentives that may exist for enforcement authorities to actually stop shipments of illegal ODS (high costs for testing and destroying the ODS, as opposed to weak fines for smuggling ODS). In conclusion he indicated that the identification of needs for prosecutor training was very important.

Working groups on prosecuting cases of illegal traffic

20. Participants were divided in two working groups to discuss two fictitious case studies illustrating the possible issues that a prosecutor could face. Among the issues to be considered were:
 - The relevance or not of the Party status of a country
 - The definition and identification of “waste” as opposed to a second hand good
 - The scope of the “hazardous wastes” covered by the Convention
 - The relevance of the existence or not of a movement document
 - Who is liable for prosecution and who should be prosecuted
 - What to do with a seized shipment
 - The impact of export or import prohibitions

The working groups were facilitated by Mr. McCann and Mr. Lasha Phanchulidze from Georgia.

21. When reported back to plenary, it was mentioned that participants had had fruitful and stimulating discussions on both cases.

Session 6: Enforcement networks

22. The last session of the workshop focused on Enforcement networks. Ms. Kohler introduced the session by making a presentation on the Role and value of enforcement networks. She explained what is considered as an enforcement network and why such networks have value. There are different types of networks based on purpose or activities but with the same aim to assist the combat with illegal traffic. She underlined the important role of enforcement networks such as Interpol, WCO, IMPEL, the Asian network on prevention of Transboundary movement of hazardous wastes, the Green Customs Initiative, the European network of prosecutors for the Environment (ENPE) and the IMPEL TFS prosecutors network. She invited prosecutors to consider joining an existing prosecutors’ network or, if none was available, to consider establishing such a network in their region.
23. Mr Vercher and McCann then introduced the IMPEL TFS prosecutors network. Mr. Vercher provided information on the first workshop planned by the network, (November 23-25, 2012 in Spain). He invited prosecutors from the EU to express their interest in participating in the workshop and in joining the network.
24. Mr. McCann then introduced the IMPEL TFS prosecutors network. He provided information on the project team members, on results achieved so far and on forthcoming activities: a collection of relevant



- case law and documents, exchange of information among prosecutors, and the organization of the November 2012 prosecutors workshop.
25. The workshop participants stressed the importance of prosecutors' trainings at the national and regional levels on environmental matters, including if possible other enforcement entities and environmental authorities responsible for the implementation and enforcement of the Basel Convention. Participants also highlighted the importance of being involved in enforcement networks and of disseminating information on cases of prosecution.
 26. Following the distribution and collection of evaluation forms and the delivery of concluding remarks by Ms Lapesova and Ms Kohler, the workshop was brought to a close.



**Annex I
Workshop Agenda**

Workshop for Central and Eastern Europe, Caucasus and Central Asia countries on the prosecution of illegal traffic of hazardous wastes and other wastes under the Basel Convention

Bratislava, Slovakia

26-27 June 2012

Day 1: Role of prosecutors in enforcing multilateral environmental agreements		
08:30 - 09:00	Registration of participants	
09:00 - 09:15	Opening remarks	Ms. Dana Lapesova, Director of the Basel Convention Regional Centre for Central Europe, Slovakia (BCRC-Slovakia) Ms. Juliette Voinov Kohler, Secretariat of the Basel, Rotterdam & Stockholm Conventions (BRS Secretariat)
09:15 - 9:30	Objectives of the workshop	Ms. Juliette Voinov Kohler, BRS Secretariat
9:30 - 9:45	Introduction of the participants and warm-up session	All participants
<i>Session 1: The role of prosecutors in enforcing multilateral environmental agreements</i>		
9:45 - 10:15	Outcome of the World Congress on Justice, Governance and Law for Environmental Sustainability	Ms. Barbara Ruis, UNEP Division of Environmental Law and Conventions (DELIC)
10:15-10:45	Experiences from the Montreal Protocol: prosecutors as one element of the enforcement chain	Mr. Ezra Clark, OzoneAction, UNEP Division of Technology, Industry and Economics (DTIE)
10:45 – 11:00	<i>Coffee break</i>	
11:00 - 11:30	Introduction to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the role of prosecutors networks in combating environmental crimes	Ms. Liliane Garcia Ferreira, CITES Secretariat



11:30 - 12:00	Engaging prosecutors in combating environmental crime: the Spanish experience	Mr. Antonio Vercher, Public Prosecutor's Office for the Protection of Environment and Land Planning, Spain
12:00-13:30	<i>Lunch break</i>	
<i>Session 2: What prosecutors need to know about the Basel Convention</i>		
13:30 - 14:00	The control procedure for transboundary movements of hazardous wastes and other wastes, and illegal traffic of hazardous wastes and other wastes	Ms. Juliette Voinov Kohler, BRS Secretariat
<i>Session 3: Examples of regional and national implementation of the Basel Convention</i>		
14:00 - 14:40	The Waste Shipment Regulation and the legal framework in the United Kingdom	Mr. Howard McCann, Environment Agency, United Kingdom
14:40 – 15:15	Brief examples of national legal frameworks	Country representatives
15:15 - 15:30	<i>Coffee break</i>	
15:30 - 17:30	Working groups on institutional matters	All participants
17:30-18:00	Presentation of working group reports	All Participants
Day 2: Prosecuting a suspected case of illegal traffic		
<i>Session 4: Prosecuting a suspected case of illegal traffic under the Basel Convention</i>		
09:00-09:30	Prosecuting a suspected case of illegal traffic	Ms. Juliette Voinov Kohler, BRS Secretariat
<i>Session 5: Successes and challenges in prosecuting illegal traffic in environmentally sensitive goods</i>		
09:30-10:15	Experiences and lessons learned in the United Kingdom	Mr. Howard McCann, Environment Agency, United Kingdom
10:15-10:45	Experiences gained under the Montreal Protocol	Mr. Ezra Clark, OzoneAction, UNEP DTIE
10:45-11:00	<i>Coffee break</i>	
11:00-11:30	Experiences and lessons learned in selected countries	Country representatives



11:30-12:30	Working groups on prosecuting cases of illegal traffic of hazardous and other wastes	All participants
12:30-13:30	<i>Lunch</i>	
13:30-15:30	Working groups (continued)	All participants
15:30 – 15:45	<i>Coffee break</i>	
15:45 – 16:15	Presentation of working group reports	All participants
Session 6: Enforcement networks		
16:15-16:40	The role and value of enforcement networks	Ms. Juliette Voinov Kohler, BRS Secretariat
16:40-17:15	The European Union Network for the Implementation and Enforcement of Environmental Law transfrontier shipment of waste (IMPEL TFS) network of prosecutors	Mr. Antonio Vercher, Public Prosecutor's Office, Spain and Mr. Howard McCann, Environment Agency, United Kingdom
17:15-17:30	Conclusions and recommendations	Ms. Juliette Voinov Kohler, BRS Secretariat
17:30 – 18:00	Evaluation forms and closing session	Ms. Dana Lapesova , BCRC-Slovakia, and Ms. Juliette Voinov Kohler, BRS Secretariat



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Annex II List of participants

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