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**Conference of the Parties to the Basel Convention  
on the Control of Transboundary Movements of  
Hazardous Wastes and Their Disposal  
Twelfth meeting**  
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Agenda item 4 (c) (i)

**Matters related to the implementation of the Convention:  
legal, compliance and governance matters:  
Committee for Administering the Mechanism for  
Promoting Implementation and Compliance of the  
Basel Convention**

## **Committee for Administering the Mechanism for Promoting Implementation and Compliance of the Basel Convention**

### **Manual for the implementation of the Basel Convention**

#### **Note by the Secretariat**

At its twelfth meeting, the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal adopted, in decision BC-12/7 on the Committee for Administering the Mechanism for Promoting Implementation and Compliance of the Basel Convention, the manual for the implementation of the Basel Convention on the basis of the draft manual contained in document UNEP/CHW.12/9/Add.4, which was prepared by the Committee for Administering the Mechanism for Promoting Implementation and Compliance of the Basel Convention. The text of the final version of the manual for the implementation of the Basel Convention, as adopted, is set out in the annex to the present note.

## **Annex**

# **Manual for the Implementation of the Basel Convention**

## **Foreword**

At its third meeting in 1995, the Conference of the Parties (COP), by decision III/8, approved the manual for the implementation of the Basel Convention. This manual was developed to assist parties, non-parties, the private sector, non-governmental organizations and individuals in understanding the obligations contained in the Convention. The manual has not been updated or revised since this date.

The Conference of the Parties, by decision VII/32, requested the Secretariat in cooperation with the Committee for Administering the Mechanism for Promoting Implementation and Compliance with the Basel Convention (hereinafter referred to as the Committee) to prepare the checklist for the legislator. The checklist was conceived as a tool to assist parties to fully implement their obligations under the Basel Convention, and has not been updated or revised since it was first developed.

At its eleventh meeting, the COP adopted decision BC-11/8, which sets out the work programme for 2014–2015 of the Committee. In that decision, the COP requested the Committee, *inter alia*, to:

- (a) Consider an expansion of the checklist for the legislator (the checklist); and
- (b) Improve the implementation of and compliance with the Convention by reviewing and updating the manual for the implementation of the Convention of the Basel Convention.

The Committee, in consultation with the Open-ended Working Group and with the support of a financial contribution from the European Union, prepared the manual for the implementation of the Basel Convention, including an expanded checklist for the legislator. The manual was adopted by the COP at its twelfth meeting by decision BC-12/7.

This current version of the manual supersedes the version that was adopted by the COP at its third meeting, by decision III/8. Annex I includes the expanded checklist for the legislator, which supersedes that previously approved by the Committee.

Additional guidance for all persons involved in the transboundary movements of the wastes subject to the Basel Convention, in particular waste generators, collectors, exporters, carriers, importers and disposers, is available in the Guide to the control system adopted by the COP at its twelfth meeting by decision BC-12/7.

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## I. Introduction

### A. The Convention

1. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (hereafter referred to as the Convention) was adopted on 22 March 1989 and entered into force on 5 May 1992. At its tenth meeting in October 2011, the Conference of the Parties, by decision BC-10/2,<sup>1</sup> adopted a Strategic Framework for the implementation of the Basel Convention for 2012–2021, setting out the following strategic goals and objectives:

(a) Goal 1: Effective implementation of parties' obligations on transboundary movements of hazardous and other wastes;

(b) Goal 2: Strengthening the environmentally sound management of hazardous and other wastes; and

(c) Goal 3: Promoting the implementation of the environmentally sound management of hazardous and other wastes as an essential contribution to the attainment of sustainable livelihoods, the Millennium Development Goals and the protection of human health and the environment.

2. The importance of national legal frameworks in the implementation of the Basel Convention has been highlighted on numerous occasions through decisions adopted by the COP, including within key strategic documents related to the Convention.<sup>2</sup>

3. For the purposes of this manual, parties "implement" the Convention by making obligations arising under the Convention effective in their national legal systems. One of the ways this is done is through the adoption of national legislation, including subordinate legislation, i.e. legal measures normally adopted by the executive branch, such as orders, regulations or decrees.

4. It is not the case that *all* provisions in the Convention need to be implemented through legislation. Article 4(4) of the Convention provides as follows:

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

5. Parties can introduce a number of measures to implement the Convention and, provided they are fully compliant with their obligations, also enjoy a margin of discretion on the extent to which these measures may be implemented by legislation.

6. In some cases only legislation will do: Article 9 requires parties to introduce "*appropriate national/domestic legislation to prevent and punish illegal traffic*". What is more, if parties are to exercise the rights granted by the Convention, for instance to define or consider wastes as hazardous or to provide that substances or objects are wastes<sup>3</sup> they must do so by legislation. In addition, the Convention frequently uses terms such as punish,<sup>4</sup> prohibit,<sup>5</sup> permit<sup>6</sup> or allow / not allow<sup>7</sup> that imply implementation by legislation. It is difficult, for example, to give any meaning, in the context of the Convention, to an obligation to permit or allow something unless it would otherwise be prohibited by legislation.

7. This manual and the annexed checklist are based on obligations arising under the Convention and may be divided into two broad categories, namely:

<sup>1</sup> Available at: <http://archive.basel.int/meetings/cop/cop10/documents/28e.pdf>.

<sup>2</sup> For instance, in the Framework for the environmentally sound management of hazardous wastes and other wastes, which was adopted by the COP, by its decision BC-11/1. Reference is also made to decision BC-11/10 that urges parties to fulfill their obligations including by updating or developing stringent legislation on the control of transboundary movements of hazardous wastes, and by incorporating into their national legislation appropriate sanctions or penalties.

<sup>3</sup> See Article 1(b) of the Convention, which provides that hazardous waste include "*Wastes...that are defined as, or are considered to be, hazardous wastes by the domestic legislation of the Party of export, import or transit*". Also, Article 2(1) of the Convention "wastes" are "*...substances or objects which are disposed of or are intended to be disposed of or that are required to be disposed of by the provisions of national law*".

<sup>4</sup> Article 4(4) provides that the measure to implement and enforce the provisions of the Convention will include "*... measures to prevent and punish conduct in contravention of the Convention*".

<sup>5</sup> See Articles 4(1) and (7).

<sup>6</sup> See Articles 2(5) and 4(1) and (5).

<sup>7</sup> See Article 4(7)(a) and (9).

- (a) Those that the Convention requires to be implemented by legislation, and those that should be implemented by legislation; and
- (b) Those that may be implemented by means other than legislation.

## B. Monism and dualism

8. The way parties implement the Convention will depend on their legal systems and, in particular, on whether an implementing party has a monist or dualist system as follows:

(a) In a monist system, national and international law form part of one legal structure in which international law is supreme. As such, an international treaty such as the Basel Convention becomes part of national law once a State has consented to be bound by it and once it has entered into force. This can mean there is no need for implementing legislation, or a reduced need;

(b) In a dualist system, national and international law are separate systems operating in different fields. The rights and obligations under a treaty have no effect in domestic law unless legislation is enacted to give effect to them, after which they are incorporated into domestic law and are enforceable in the domestic courts.

9. To the extent that a treaty is self-executing, it requires no implementing legislation. Nevertheless, in the case of the Basel Convention, States should consider using the legislator's checklist, identify which provisions of the Convention are self-executing, and whether self-executing provisions need to be complemented by national legislation. For example a self-executing prohibition may not be effective without national legislation providing for sanctions where that prohibition is breached.

## C. Purpose of the manual

10. The manual, including its checklist, is designed to assist parties and potential parties to understand the obligations set out in the Convention and how to implement them. It also explores how parties may exercise the discretionary powers afforded to them under the Convention. As an ancillary benefit, it will also assist other stakeholders, including civil society, the private sector, non-governmental organizations and individuals, to understand how the Convention works.

11. In particular:

(a) The **manual** takes the reader through provisions of the Convention article by article, and explain what parties need to do to implement the Convention;

(b) The **checklist** (see annex I) provides a concise table listing obligations that parties must, or should, implement in their national legislation.

12. The manual is intended as a practical guide only. It has no legal effect and must not be construed as an agreement between parties regarding the application of the Convention. It does not replace the text of the Convention in any way, nor does it replace any national legislation.

13. The manual contains links to the most up-to-date materials on the Basel Convention website at the time of publication. Annex II of the manual contains a list of the technical guidelines and guidance documents pertaining to environmentally sound management (ESM) adopted by the COP over the years. The attention of the reader is also drawn in particular to the Guide to the Control System,<sup>8</sup> which is intended as an instruction manual for use by persons involved in the transboundary movements of hazardous wastes. The Guide contains technical details which are not duplicated in this manual. Nor does this manual take exporters, generators or disposers through the control procedure set out under the Convention. Annex III of the manual presents a graphic illustration of the prior informed consent (PIC) procedure.

14. The manual focuses on provisions in the Convention that parties must or should implement, and does not cover or discuss in detail some articles of the Convention. Nevertheless, officials engaged in implementation will wish to be aware of the following:

(a) The **COP** is the governing body of the Convention, and has been attributed extensive duties and powers in the text of the Convention (see Article 15). These include keeping under continuous review and evaluation the effective implementation of the Convention (paragraph 5, Article 15), and making policy and legal decisions that have an impact on implementation. Decisions adopted by the COP, as well as meeting reports and documents, can be consulted on the Convention website.<sup>9</sup>

<sup>8</sup> Adopted by decision BC-12/7.

<sup>9</sup> Available at:

<http://www.basel.int/TheConvention/ConferenceoftheParties/OverviewandMandate/tabid/1316/Default.aspx>.

(b) The Mechanism for Promoting Implementation and Compliance with the Basel Convention and its Committee (**the Committee**) were established in 2002 by the COP, by decision VI/12, and its terms of reference were amended at the tenth meeting of the COP. Under paragraph 1 of its terms of reference, the objective of the mechanism that the Committee serves “*is to assist Parties to comply with their obligations under the Convention and to facilitate, promote, monitor and aim to secure the implementation of and compliance with the obligations under the Convention.*”

(c) The Convention and its Annexes may be **amended** (see Articles 17 and 18). In particular, parties may wish to note that new annexes and amendments to existing annexes will become effective for all those parties that have not given formal notice that they are unable to accept an annex or amendment thereto (see Article 18(2)(c)). Parties may thus find themselves bound by new obligations six months after being notified of the amendment, and should therefore review and, if necessary, adjust their national legislation to implement any new obligation.

## II. Review of the provisions of the Convention

15. The second part of this manual discusses the operative part of the Convention, article by article. Following a reproduction of the article, the manual presents special issues to be considered for implementation as well as any other relevant information, and examples of implementation of the article. In these examples, the letters A, B and C are used to identify States, the letter E is used for “exporter”, the letter G for “generator”, the letter I for “importer”, the letter D for “disposer”, and the letters “W” “Y” or “Z” for waste.

16. Each party has to determine whether specific action needs to be taken to give effect to the obligations arising under the Convention, and whether adequate implementing legislation already exists in national law, or whether, in accordance with its domestic legal tradition, the Convention or any of its articles are self-executing and can be applied directly.

17. This chapter does not include commentary on:

(a) The Convention’s preamble, which does not contain any legal obligations that supplement the articles and annexes to the Convention;

(b) The final clauses of the Convention, which are not of direct interest to those implementing the Convention; or

(c) The annexes of the Convention, the detail of which is discussed at some length in the Guide to the Control System.

### Article 1: Scope of the Convention

#### (a) Text of article

1. *The following wastes that are subject to transboundary movement shall be “hazardous wastes” for the purposes of this Convention:*

(a) *Wastes that belong to any category contained in Annex I, unless they do -not possess any of the characteristics contained in Annex III; and*

(b) *Wastes that are not covered under paragraph (a) but are defined as, or are considered to be, hazardous wastes by the domestic legislation of the Party of export, import or transit.*

2. *Wastes that belong to any category contained in Annex II that are subject to transboundary movement shall be “other wastes” for the purposes of this Convention.*

3. *Wastes which, as a result of being radioactive, are subject to other international control systems, including international instruments, applying specifically to radioactive materials, are excluded from the scope of this Convention.*

4. *Wastes which derive from the normal operations of a ship, the discharge of which is covered by another international instrument, are excluded from the scope of this Convention.*

#### (b) Are there special issues to be considered for implementation?

While these provisions do not establish obligations on parties, they are key to understanding the obligations which follow, and as such, the following issues need to be taken into consideration:

**Additional waste defined or considered as hazardous:** Parties have the discretion to bring additional waste(s) within the scope of the Convention by defining or considering certain waste as hazardous, as provided for in Article 1(1)(b). In order to make use of this provision of the Convention, a party must:

- (a) Define or consider the waste as hazardous in domestic legislation, or adopt legislation that defines or considers the waste to be hazardous; and
- (b) Notify the Secretariat of the Basel Convention, as required under Article 3 (see below).

**Annexes VIII and IX:** Officials engaged in the implementation of the Convention need to bear in mind that Annexes VIII and IX of the Convention were adopted<sup>10</sup> for the purposes of providing greater clarity to Annexes I and III. Annexes VIII and IX, which are not referred to in the main text of the Convention, may be amended from time to time.<sup>11</sup> In order to adequately regulate wastes covered by the Convention, parties will need to ensure that they keep track of amendments to those annexes, e.g. by periodically checking the Basel Convention website, decisions of the COP and depositary notifications.<sup>12</sup>

**Annexes I-III, VIII and IX:** Parties should note that new annexes and amendments to existing annexes shall become effective for parties that have not notified the depositary that they are unable to accept the annex or amendment thereto (see Article 18(2)(c)). Parties may find themselves bound by new legal obligations six months after being notified of the adoption of the corresponding amendment. However, they should be able to adjust any national legislation, as necessary, to implement new obligations before or within the relevant deadline. It may follow that parties will wish to provide for their legislation implementing annexes to be amended by legal measures, such as regulations, orders, resolutions or decrees.

#### (c) Other information

In addition to hazardous wastes as defined in Article 1, the Convention also applies to “**other wastes**”, which are categories of wastes contained in its Annex II. “Other wastes” are treated identically to “hazardous wastes” in the operative provisions of the Convention. For this reason, unless stated otherwise, the term “hazardous waste” in this manual will cover both types of waste.

The Guide to the Control System should be consulted for a full description of the relationship between the provisions of Article 1 and annexes to the Convention.

**Exclusions:** Article 1(3) and (4) exclude two specific types of wastes from the scope of the Convention. See the Guide to the Control System for further details.

**Technical guidelines and guidance documents:**<sup>13</sup> specific and general technical guidelines and guidance documents with respect to the ESM of waste streams and disposal operations may be found on the Convention website.<sup>14</sup>

#### (d) Example

**Amendment of Annex VIII:** Under Article 18 of the Convention, the COP adopts an amendment to Annex VIII of the Convention. The amendment adds waste W to the list of wastes characterized as hazardous under Article 1(1)(a) of the Convention. All parties receive formal notification of the amendment from the depositary. Subsequently, State A, a party to the Convention, does not respond to that notification. Six months after the notification of the amendment, it enters into force for State A, which must give effect to the amendment in its national legal system (unless it is a Monist State that has earlier provided an appropriate legal framework).

<sup>10</sup> By the fourth meeting of the COP: see decision IV/8.

<sup>11</sup> Through the procedure provided for in COP decision VIII/15.

<sup>12</sup> Annex VIII is available at:

<http://www.basel.int/Implementation/TechnicalMatters/WasteClassificationandControlProcedures/AnnexVIII/tabid/2387/Default.aspx>.

Annex IX is available at:

<http://www.basel.int/Implementation/TechnicalMatters/WasteClassificationandControlProcedures/AnnexIX/tabid/2388/Default.aspx>.

<sup>13</sup> See Annex II for a list of technical guidelines and guidance documents.

<sup>14</sup> Available at:

<http://www.basel.int/Implementation/TechnicalMatters/DevelopmentofTechnicalGuidelines/AdoptedTechnicalGuidelines/tabid/2376/Default.aspx>.

## Article 2: Definitions

### (a) Text of article

*For the purposes of this Convention:*

1. *“Wastes” are substances or objects which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law;*
2. *“Management” means the collection, transport and disposal of hazardous wastes or other wastes, including after-care of disposal sites;*
3. *“Transboundary movement” means 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 at least two States are involved in the movement;*
4. *“Disposal” means any operation specified in Annex IV to this Convention;*
5. *“Approved site or facility” means a site or facility for the disposal of hazardous wastes or other wastes which is authorized or permitted to operate for this purpose by a relevant authority of the State where the site or facility is located;*
6. *“Competent authority” means one governmental authority designated by a Party to be responsible, within such geographical areas as the Party may think fit, for receiving the notification of a transboundary movement of hazardous wastes or other wastes, and any information related to it, and for responding to such a notification, as provided in Article 6;*
7. *“Focal point” means the entity of a Party referred to in Article 5 responsible for receiving and submitting information as provided for in Articles 13 and 16;*
8. *“Environmentally sound management of hazardous wastes or other wastes” means taking all practicable steps to ensure that hazardous wastes or other wastes are managed in a manner which will protect human health and the environment against the adverse effects which may result from such wastes;*
9. *“Area under the national jurisdiction of a State” means 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 or the environment;*
10. *“State of export” means a Party from which a transboundary movement of hazardous wastes or other wastes is planned to be initiated or is initiated;*
11. *“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;*
12. *“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;*
13. *“States concerned” means Parties which are States of export or import, or transit States, whether or not Parties;*
14. *“Person” means any natural or legal person;*
15. *“Exporter” means any person under the jurisdiction of the State of export who arranges for hazardous wastes or other wastes to be exported;*
16. *“Importer” means any person under the jurisdiction of the State of import who arranges for hazardous wastes or other wastes to be imported;*
17. *“Carrier” means any person who carries out the transport of hazardous wastes or other wastes;*
18. *“Generator” means any person whose activity produces hazardous wastes or other wastes or, if that person is not known, the person who is in possession and/or control of those wastes;*
19. *“Disposer” means any person to whom hazardous wastes or other wastes are shipped and who carries out the disposal of such wastes;*
20. *“Political and/or economic integration organization” means an organization constituted by sovereign States to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve, formally confirm or accede to it;*

21. *“Illegal traffic” means any transboundary movement of hazardous wastes or other wastes as specified in Article 9.*

**(b) Are there special issues to be considered for implementation?**

Some substances or objects will be “wastes”, within the meaning of Article 2(1), **only in one or more but not all of the States concerned.** Parties need to pay significant consideration to this point when implementing Article 6(5).

**Environmentally sound management (ESM)** is an important concept in the implementation of the Convention and has been highlighted in various strategic and guidance documents developed within the context of the Convention. See, for example, the references to ESM in the goals to the Strategic Framework for the implementation of the Convention for 2012-2021.<sup>15</sup> There are several general obligations under the Convention that relate to ESM. In particular, transboundary movement is only allowed if “...*the State of export does not have the technical capacity and the necessary facilities, capacity or suitable disposal sites in order to dispose of the wastes in question in an environmentally sound and efficient manner*” (Article 4.9.a.). Moreover, a State of export may not allow the commencement of a transboundary movement unless “*the notifier has received from the state of import confirmation of the existence of a contract between the exporter and the disposer specifying environmentally sound management of the wastes in question*” (Article 6(3)(b)).

**(c) Other information**

**The Framework for the ESM of hazardous wastes and other wastes (the ESM framework)** was adopted by the eleventh meeting of the COP, in its decision BC-11/1 on the follow-up to the Indonesian-Swiss country-led initiative to improve the effectiveness of the Basel Convention. The ESM framework is a practical guide for all stakeholders participating in the management of wastes as it identifies what countries need to do to address the challenges of implementing ESM in a systematic and comprehensive manner. ESM is defined in Article 2 of the Basel Convention but it is widely acknowledged that the concept is understood and implemented differently by parties. As this manual will not duplicate the ESM framework, parties that wish to obtain detailed guidance on the implementation of ESM should refer to the latter document and accompanying technical guidelines and guidance documents on ESM that are specific to particular waste streams (see annex II to this manual). While the Convention does not expressly require legislation to implement ESM, parties should note that the framework states that strategies to implement ESM should ensure that certain core goals are met and that a comprehensive legal framework is established in order to, inter alia, “[a]ddress movements of waste in accordance with applicable international and regional agreements and conventions, including the Basel Convention”. Further information on ESM can be found on the Convention website.<sup>16</sup>

**(d) Example**

**Article 2(1):** S is an industrial by-product and used as feedstock in another industry. In State A, S does not fall within the definition of waste in Article 2(1) as it is not a substance or object which is disposed of, or intended to be disposed of, or required to be disposed of by the provisions of national law of State A. However, the provisions of national law in State B require S to be disposed of, bringing S in that State within the definition of “wastes” under Article 2(1).

### **Article 3: National definitions of hazardous wastes**

**(a) Text of article**

1. *Each Party shall, within six months of becoming a Party to this Convention, inform the Secretariat of the Convention of the wastes, other than those listed in Annexes I and II, considered or defined as hazardous under its national legislation and of any requirements concerning transboundary movement procedures applicable to such wastes.*
2. *Each Party shall subsequently inform the Secretariat of any significant changes to the information it has provided pursuant to paragraph 1.*
3. *The Secretariat shall forthwith inform all Parties of the information it has received pursuant to paragraphs 1 and 2.*
4. *Parties shall be responsible for making the information transmitted to them by the Secretariat under paragraph 3 available to their exporters.*

<sup>15</sup> As referred to in paragraph 1 of the introduction to this manual.

<sup>16</sup> Available at:

<http://www.basel.int/Implementation/CountryLedInitiative/EnvironmentallySoundManagement/ExpertWorkingGrouponESM/tabid/3617/Default.aspx>.

**(b) Are there special issues to be considered for implementation?**

The efficiency of the Convention's control regime depends on cooperation between parties, including for the exchange of information. If parties fail to comply with the information requirements in Article 3, wastes defined as, or considered to be, hazardous under Article 1(1)(b), may fail to be controlled under the Convention simply because parties may be unaware that they are hazardous.

There is a strong link between parties' implementation of Article 3 and Article 6(5). The latter article provides for the control of a transboundary movement of wastes where they are legally defined or considered to be hazardous in one or more (but not all) of the States concerned. The parties that do not define or consider additional wastes as hazardous rely on notifications transmitted in accordance with Article 3 to be aware of waste that is hazardous by virtue of Article 1(1)(b).

**(c) Other information**

Parties that wish to use their national legislation to bring additional wastes within the scope of the Convention under Article 1(1)(b) must:

- (a) Inform the Secretariat of such wastes, and any transboundary movement procedures applicable to them, within six months of becoming parties to the Convention; and
- (b) Inform the Secretariat of any changes to that information

The Secretariat will thereafter communicate this information to parties, who are then obliged to make it available to their exporters.

More information on the frequency and format of notifications to the Secretariat of national definitions of hazardous waste, as well as notifications transmitted by parties, can be found on the Convention website.<sup>17</sup>

**(d) Examples**

**Article 3 (also see Article 1(1)(b) and Article 6(5)):** Wastes Y and Z are not covered as hazardous wastes under Article 1(1)(a) of the Convention, but are defined as hazardous by the national legislation of State B. State B becomes a party to the Convention and duly notifies the Secretariat, under Article 3(1), that wastes Y and Z are defined as hazardous under its national legislation. The Secretariat immediately informs all parties under Article 3(2). The outcomes of this procedure are that:

- (a) Wastes Y and Z are considered as hazardous wastes by virtue of Article 1(1)(b);
- (b) State B has complied with Article 3(1) and, consequently, parties are aware of the status of wastes Y and Z in State B and therefore have obligations under the Convention;
- (c) The rules in Article 6(5) about responsibilities for the movement are applicable in this context.

**Article 4: General obligations****(a) Text of article**

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

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

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

2. *Each Party shall take the appropriate measures to:*

(a) *Ensure that the generation of hazardous wastes and other wastes within it is reduced to a minimum, taking into account social, technological and economic aspects;*

(b) *Ensure the availability of adequate disposal facilities, for the environmentally sound management of hazardous wastes and other wastes, that shall be located, to the extent possible, within it, whatever the place of their disposal;*

<sup>17</sup> At <http://www.basel.int/Procedures/NationalDefinitions/tabid/1321/Default.aspx> and <http://www.basel.int/Countries/NationalDefinitions/tabid/1480/Default.aspx>

(c) *Ensure that persons involved in the management of hazardous wastes or other wastes within it take such steps as are necessary to prevent pollution due to hazardous wastes and other wastes arising from such management and, if such pollution occurs, to minimize the consequences thereof for human health and the environment;*

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

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

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

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

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

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

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

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

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

7. *Furthermore, each Party shall:*

(a) *Prohibit all persons under its national jurisdiction from transporting or disposing of hazardous wastes or other wastes unless such persons are authorized or allowed to perform such types of operations;*

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

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

8. *Each Party shall require that hazardous wastes or other wastes, to be exported, are managed in an environmentally sound manner in the State of import or elsewhere. Technical guidelines for the environmentally sound management of wastes subject to this Convention shall be decided by the Parties at their first meeting.*

9. *Parties shall take the appropriate measures to ensure that the transboundary movement of hazardous wastes and other wastes only be allowed if:*

(a) *The State of export does not have the technical capacity and the necessary facilities, capacity or suitable disposal sites in order to dispose of the wastes in question in an environmentally sound and efficient manner; or*

(b) *The wastes in question are required as a raw material for recycling or recovery industries in the State of import; or*

(c) *The transboundary movement in question is in accordance with other criteria to be decided by the Parties, provided those criteria do not differ from the objectives of this Convention.*

10. *The obligation under this Convention of States in which hazardous wastes and other wastes are generated to require that those wastes are managed in an environmentally sound manner may not under any circumstances be transferred to the States of import or transit.*

11. *Nothing in this Convention shall prevent a Party from imposing additional requirements that are consistent with the provisions of this Convention, and are in accordance with the rules of international law, in order better to protect human health and the environment.*

12. *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 aircraft of all States of navigational rights and freedoms as provided for in international law and as reflected in relevant international instruments.*

13. *Parties shall undertake to review periodically the possibilities for the reduction of the amount and/or the pollution potential of hazardous wastes and other wastes which are exported to other States, in particular to developing countries.*

**(b) Are there special issues to be considered for implementation?**

This article contains a mixture of provisions, some of which explain, provide the context for and/or qualify specific provisions that appear later in the Convention.

The Convention recognizes that parties have a **right to prohibit the import of hazardous and other wastes**.<sup>18</sup> For effective implementation of the Convention, parties wishing to exercise this right are required under Article 4(1) to notify other parties under Article 13. The list of Article 4(1) prohibitions notified by parties appears on the Convention website.<sup>19</sup> Once an import prohibition has been notified in accordance with Article 13, other parties must give effect to that prohibition by either prohibiting or not permitting the export of the relevant waste to the prohibiting party (Article 4(1)(b)).

By decision III/1, parties adopted an amendment to the Convention, adding a new preambular paragraph 7bis,<sup>20</sup> Article 4A,<sup>21</sup> and Annex VII.<sup>22</sup> This amendment (**the ban amendment**) is not in force at the time the manual was adopted. If it enters into force, ratifying parties will be obliged to prohibit the export of hazardous waste, for any reason, from a list of parties in Annex VII to any State not listed in this annex. For these parties, this will require the implementation of relevant export and import obligations in their domestic legislation, if they have not already done so.

**(c) Other information**

Of the list of **general obligations** set out in paragraph 2 of Article 4:

(a) Relating to the generation of hazardous wastes; availability of adequate disposal facilities; the prevention and minimization of pollution; and the minimization of transboundary movement (subparagraphs (a) to (d)) may be implemented in the comprehensive legal framework recommended in the ESM framework. The latter sets out guidance on how to implement those subparagraphs; and

<sup>18</sup> Some States exercise this right in their implementation of obligations under other international agreements such as: (a) The Bamako Convention on the ban on the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, which bans imports of hazardous waste into Africa and addresses the control of transboundary movement and management of hazardous wastes within Africa; and (b) The Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes within the South Pacific Region (the Waigani Convention), which requires certain parties to ban imports of hazardous and radioactive wastes from countries outside the area covered by the Convention and addresses the control of transboundary movements and management of hazardous wastes within the south pacific region.

<sup>19</sup> Available at:

<http://www.basel.int/Procedures/ImportExportProhibitions/tabid/2751/Default.aspx>

<sup>20</sup> "Recognizing that transboundary movements of hazardous wastes, especially to developing countries, have a high risk of not constituting an environmentally sound management of hazardous wastes as required by this Convention;"

<sup>21</sup> "1. Each Party listed in Annex VII shall prohibit all transboundary movements of hazardous wastes which are destined for operations according to Annex IV A, to States not listed in Annex VII.

2. Each Party listed in Annex VII shall phase out by 31 December 1997, and prohibit as of that date, all transboundary movements of hazardous wastes under Article 1(1)(a) of the Convention which are destined for operations according to Annex IV B to States not listed in Annex VII. Such transboundary movement shall not be prohibited unless the wastes in question are characterised as hazardous under the Convention. ..."

<sup>22</sup> "Parties and other States which are members of the OECD, EC, Liechtenstein".

(b) Concerning not allowing the export of hazardous wastes in particular circumstances, requiring information related to Annex V A, preventing the import of hazardous waste and cooperating with other parties (subparagraphs e to h) may be implemented in conjunction with other provisions of the Convention.<sup>23</sup>

Paragraph 3 on **illegal traffic** is linked to the requirements of Article 9.

Paragraph 4 recognizes that parties will take a range of **appropriate legal, administrative and other measures** to implement the Convention, and that they enjoy a margin of discretion in instances where the Convention does not specify that they must implement legislatively, as mentioned in the introduction to this manual.

Paragraph 5 on the **ban on the export of hazardous wastes to non-parties** should be read in conjunction with Article 11, which allows such movements to take place under certain circumstances.

Paragraph 6 provides for an absolute prohibition of the export of hazardous wastes for disposal within **the area south of 60° South latitude**, i.e. Antarctica.

With respect to the second sentence of paragraph 8, a series of **technical guidelines**<sup>24</sup> on ESM have been developed and adopted by the COP. While the guidelines are not legally binding, they have a legal basis in the Convention and provide guidance (under the authority of the COP) on what constitutes ESM with respect to particular wastes; in this sense they provide legal content to ESM in the context of particular waste streams. To the extent that the guidelines set out “*criteria ... decided on by the Parties at their first meeting*” within the meaning of Article 4(2)(e), they have legal effect because each party, in certain circumstances, must not allow the export of hazardous wastes if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner according to such criteria.

Paragraphs 7 and 9 and the first sentence of paragraph 8 should be implemented through the measures a party adopts to put in place the **prior informed consent (PIC)** regime under Article 6.

Paragraph 10 provides that there may be no transfer to a State of import or transit of the obligation of the generating state to require ESM.

A party may introduce legislation related to its obligations under the Basel Convention that goes **beyond what is required** to implement the Convention. Paragraph 11 expressly acknowledges that parties are free to adopt additional requirements provided that they are consistent with the Convention and in accordance with international law.

Paragraph 12 reaffirms the **sovereign** rights and **jurisdiction** of States over their territorial sea, exclusive economic zones and continental shelves, in accordance with international law. It also affirms that the Convention does not prejudice **freedom of navigation**, as provided in international law.

#### (d) Examples

**Article 4(1):** State A introduces legislation that bans the import of hazardous waste and, pursuant to Article 13, informs other parties. State B responds by prohibiting the export of hazardous waste to State A. State C does not ban the export of hazardous waste to State A; however, each time a generator or exporter in State C notifies its competent authority of a proposed transboundary movement of hazardous wastes to State A, the competent authority does not allow the proposed movement. In this instance, all three States are complying with their obligations under Article 4(1).

**Article 4(4):** State A becomes a party and uses a variety of legal, administrative and other measures to implement the Convention. Included in these measures are the following:

(a) The PIC regime provided for in Article 6 is implemented by primary legislation adopted following the applicable procedures in its national parliament;

(b) While the definition of “hazardous wastes” appears in primary legislation, that legislation cross-refers to subordinate legislation which implements the provisions that appear in Annexes I, III, VIII and IX of the Convention. That subordinate legislation is adopted by the executive branch and therefore allows amendments to those Annexes to be swiftly adopted.

<sup>23</sup> Subparagraph (e) may be implemented in conjunction with Articles 4(1) and 6(3)(b); subparagraph (f) may be implemented in conjunction with Article 6(1); subparagraph (g) may be implemented in conjunction with Article 6(3)(b); and subparagraph (h) may be implemented in conjunction with Article 13.

<sup>24</sup> Available at:

<http://www.basel.int/TheConvention/Publications/TechnicalGuidelines/tabid/2362/Default.aspx>

Please see Annex II for list of technical guidelines.

(c) Primary legislation defines as “hazardous” wastes not covered by Article 1(1)(a). The focal point designated by that party completes the relevant form and transmits it to the Secretariat as a notification under Article 3.

**Article 4 (5):** State A is not a party and has not entered into an Article 11 agreement or arrangement with any other party. It proposes a transboundary movement of hazardous wastes to the State of import (party B), and through the State of transit (party C). Both parties B and C shall not permit the proposed transboundary movement.

## **Article 5: Designation of competent authorities and focal point**

### **(a) Text of article**

*To facilitate the implementation of this Convention, the Parties shall:*

1. *Designate or establish one or more competent authorities and one focal point. One competent authority shall be designated to receive the notification in case of a State of transit.*
2. *Inform the Secretariat, within three months of the date of the entry into force of this Convention for them, which agencies they have designated as their focal point and their competent authorities.*
3. *Inform the Secretariat, within one month of the date of decision, of any changes regarding the designation made by them under paragraph 2 above.*

### **(b) Are there special issues to be considered for implementation?**

It is not necessarily the case that competent authorities and focal points will be designated by implementing legislation; although their designation will have legal effect under the Convention.

### **(c) Other information**

“Competent authority” and “focal point” are defined by Article 2(6) and (7), respectively. **Competent authorities** receive and respond to notifications of transboundary movements of hazardous waste, and **focal points** are responsible for receiving and transmitting information as provided for in Articles 13 and 16. It follows that the control system under the Convention cannot function properly unless competent authorities and focal points are designated and known to the Secretariat and the other parties. Only one focal point is to be designated. One or more competent authorities may be designated; however, only one competent authority of transit is to be designated.

Under the Convention, parties are obliged to:

- (a) Inform the Secretariat of their designations within three months of the date the Convention enters into force for them; and
- (b) Inform the Secretariat of any changes in designations.

The Secretariat then serves as a vehicle to inform other parties of the designations.<sup>25</sup>

For further information, see the **Role of competent authorities and focal points under the Basel Convention**.<sup>26</sup> More information on the frequency and format of notifications of designations of contacts to the Secretariat, as well as a **list of competent authorities and focal points may be found on the Convention website**.<sup>27</sup>

<sup>25</sup> See Article 13(2)(a).

<sup>26</sup> Available at:

<http://www.basel.int/Portals/4/Basel%20Convention/docs/pub/leaflets/Role-CA-FP-01Dec2010-en.pdf>.

<sup>27</sup> Available at: <http://www.basel.int/Procedures/FocalPoint/tabid/1325/Default.aspx> and

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

## Article 6: Transboundary movement between parties

### (a) Text of article

1. *The State of export shall notify, or shall require the generator or exporter to notify, in writing, through the channel of the competent authority of the State of export, the competent authority of the States concerned of any proposed transboundary movement of hazardous wastes or other wastes. Such notification shall contain the declarations and information specified in Annex V A, written in a language acceptable to the State of import. Only one notification needs to be sent to each State concerned.*
2. *The State of import shall respond to the notifier in writing, consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information. A copy of the final response of the State of import shall be sent to the competent authorities of the States concerned which are Parties.*
3. *The State of export shall not allow the generator or exporter to commence the transboundary movement until it has received written confirmation that:*
  - (a) *The notifier has received the written consent of the State of import; and*
  - (b) *The notifier has received from the State of import confirmation of the existence of a contract between the exporter and the disposer specifying environmentally sound management of the wastes in question.*
4. *Each State of transit which is a Party shall promptly acknowledge to the notifier receipt of the notification. It may subsequently respond to the notifier in writing, within 60 days, consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information. The State of export shall not allow the transboundary movement to commence until it has received the written consent of the State of transit. However, if at any time a Party decides not to require prior written consent, either generally or under specific conditions, for transit transboundary movements of hazardous wastes or other wastes, or modifies its requirements in this respect, it shall forthwith inform the other Parties of its decision pursuant to Article 13. In this latter case, if no response is received by the State of export within 60 days of the receipt of a given notification by the State of transit, the State of export may allow the export to proceed through the State of transit.*
5. *In the case of a transboundary movement of wastes where the wastes are legally defined as or considered to be hazardous wastes only:*
  - (a) *By the State of export, the requirements of paragraph 9 of this Article that apply to the importer or disposer and the State of import shall apply mutatis mutandis to the exporter and State of export, respectively;*
  - (b) *By the State of import, or by the States of import and transit which are Parties, the requirements of paragraphs 1, 3, 4 and 6 of this Article that apply to the exporter and State of export shall apply mutatis mutandis to the importer or disposer and State of import, respectively; or*
  - (c) *By any State of transit which is a Party, the provisions of paragraph 4 shall apply to such State.*
6. *The State of export may, subject to the written consent of the States concerned, allow the generator or the exporter to use a general notification where hazardous wastes or other wastes having the same physical and chemical characteristics are shipped regularly to the same disposer via the same customs office of exit of the State of export via the same customs office of entry of the State of import, and, in the case of transit, via the same customs office of entry and exit of the State or States of transit.*
7. *The States concerned may make their written consent to the use of the general notification referred to in paragraph 6 subject to the supply of certain information, such as the exact quantities or periodical lists of hazardous wastes or other wastes to be shipped.*
8. *The general notification and written consent referred to in paragraphs 6 and 7 may cover multiple shipments of hazardous wastes or other wastes during a maximum period of 12 months.*
9. *The Parties shall require that each person who takes charge of a transboundary movement of hazardous wastes or other wastes sign the movement document either upon delivery or receipt of the wastes in question. They shall also require that the disposer inform both the exporter and the competent authority of the State of export of receipt by the disposer of the wastes in question and, in due course, of the completion of disposal as specified in the notification. If no such information is received within the State of export, the competent authority of the State of export or the exporter shall so notify the State of import.*
10. *The notification and response required by this Article shall be transmitted to the competent authority of the Parties concerned or to such governmental authority as may be appropriate in the case of non-Parties.*

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

**(b) Are there special issues to be considered for implementation?**

The PIC regime is central to the Convention. If properly implemented, it should ensure that the transboundary movements of hazardous waste are consistent with the protection of human health and the environment, regardless of the place of disposal, and that such movements are permitted only when they do not endanger human health and the environment.

Note the relationship between the general obligations in Article 4 and the PIC regime: see in particular the ‘Other information’ on Article 4(2) above, as well as section (c) below.

**(c) Other information**

The PIC procedure is explained below, by identifying key rights and duties of all States concerned with the movement, and how they engage with the procedure outlined in Article 6.

Firstly, Article 6 relates to the **States of export and import** as follows:

The **State of export** must **notify** import and transit States that a transboundary movement of waste is planned. This can be done by the State of export, or by the generator or exporter through the competent authority of the State of export. The notification must contain the declarations and information set out in Annex VA to the Convention (paragraph 1).

Instead of notifying each shipment individually, the State of **export** may (with the written consent of the import and transit States) allow a **general notification of wastes** with the same characteristics using the same route for a maximum period of 12 months (paragraphs 6, 7 and 8).

The **State of import** must **respond** to the notifier in writing, either consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information (paragraph 2). If the State in question consents to the movement, it should confirm the existence of a contract specifying ESM of the wastes (i.e. the ESM contract) between the exporter and the disposer (paragraph 3b). It should also send copies of its final response to the competent authorities of the concerned parties (paragraph 2).

The **State of export** shall not allow a movement to begin unless it has received written confirmation that the notifier has the written consent of the State of import (paragraph 3a) and that the notifier has received confirmation of the existence of an ESM contract from the State of import (paragraph 3b). For this reason, it is essential that the response from the State of import is not only addressed to the notifier, but also to the competent authority of the State of export. Moreover, the State of export shall not allow a movement to begin until it has received the written consent from any State of transit, unless that State has waived the requirement for its PIC (see below).

Second, Article 6 relates to the **State of transit**, as follows:

The **State of transit**, after receiving a notification from the State of export, must promptly acknowledge its receipt. The State of transit may respond to the notifier in writing within 60 days, on the same terms as the State of import, i.e. consenting to the movement with or without conditions, denying permission for the movement, or request additional information (paragraph 4).

A State of transit that is a party *may* waive the PIC requirement, either generally or under specific conditions. Notice of that waiver must be given to the parties through the Secretariat pursuant to Article 13. Unless such notice is given, the State of export shall not allow the transboundary movement to commence until it has received the written consent of the State of transit.

Note that the position of non-party States of transit is set out in Article 7. A graphic illustration of the various steps of the PIC procedure can be found in annex III of this manual.

For an overview of the PIC procedure from the perspective of private actors, for instance the generator, exporter, importer or disposer, see the Guide to the Control System.<sup>28</sup> Reference is also made to the leaflet on Controlling Movements of Hazardous Wastes.<sup>29</sup>

Paragraph 5 adapts the PIC procedure **when wastes are legally defined or considered to be hazardous wastes by only one of the States concerned**, as provided for in Article 1(1) (b). This could be, for example, because a party’s domestic legislation expressly defines additional wastes as hazardous, or because its national law requires a substance,

<sup>28</sup> Available at:

<http://www.basel.int/Implementation/Controllingtransboundarymovements/Guidance/tabid/4313/Default.aspx>

<sup>29</sup> Available at: <http://www.basel.int/Portals/4/Basel%20Convention/docs/pub/leaflets/leaflet-control-procedures-en.pdf>

which would not otherwise be waste, to be disposed of (see Article 2(1)) when that substance does not belong to any category contained in Annex I, and if it does not possess any of the characteristics contained in Annex III (see Article 1(a)). The effect of the Article 6(5) adaptation is to provide that the State in which the waste is legally defined or considered to be hazardous takes on different responsibilities for notification and other obligations in the PIC system when the other parties involved in the shipment do not define the waste as hazardous. These responsibilities are illustrated in the examples provided below.

Paragraph 9 relates, inter alia, to the **movement document**, and should be read in conjunction with Article 4(7)(c) which imposes a duty on parties to require hazardous wastes and other wastes to be accompanied by a movement document from the point at which a transboundary movement commences to the point of disposal. The movement document must travel with the waste consignment at all times from the point at which the transboundary movement commences to its arrival at a disposal facility in another State. Each person who takes charge of a transboundary movement is to sign the movement document, either upon delivery or receipt of the wastes in question. The document is to be used by the relevant disposal facility to inform both the exporter and the competent authority of the State of export that the waste has been received and that the disposal operation has been completed, as specified in the notification. In 2006, the COP at its eighth session, in its decision VIII/18, adopted new forms for the notification and movement documents which build on Annexes VA and VB of the Convention.<sup>30</sup>

Paragraph 11 requires transboundary movements to be covered by **insurance, bond or other guarantee** as may be required by the State of import or any party State of transit.<sup>31</sup>

#### (d) Examples

**Article 6:** E is an exporter in State A and is planning a transboundary movement of hazardous waste for disposal in State C, with transit through State B. E notifies the competent authorities of States B and C of the proposed transboundary movement through the competent authority of State A. The competent authority of State C consents to the movement, writing to E and copying that consent, together with the confirmation of the existence of the contract (e.g. by attaching a copy of the contract) between E and the proposed disposer specifying the ESM of the wastes in question, to the competent authorities of States A and B. As soon as it receives the notification from E, State B acknowledges receipt, and after 40 days State B writes to E consenting to the movement, copying that consent to the competent authorities of States A and C. The competent authority of State A allows the transboundary movement after it has received the written consent of States B and C and the confirmation of the existence of the contract between E and the proposed disposer.

**Article 6(3) (a):** G, a generator in State A, notifies State B (through the competent authority of State A) of a proposed transboundary movement of hazardous waste for disposal by D in State B. State B consents to the shipment without conditions but sends the consent only to G. This results in State A not allowing the transboundary movement to proceed.

**Article 6(3)(b):** G, a generator in State A, notifies State B (through the competent authority of State A) of a proposed transboundary movement of hazardous waste for disposal by D in State B. State B consents to the shipment without conditions. State A has the written consent of State B, as well as a copy of the contract between E, the exporter of the waste and D. But the contract only contains information on the price of the shipment and the means of the disposal and, as there is nothing in the contract that specifies the ESM of the wastes in question, State A does not allow the shipment to proceed.

**Article 6(5):** State C defines waste W as hazardous as provided for in Article 1(1)(b). It therefore informs the Secretariat, which in turn informs the parties, pursuant to Article 3. Waste W is not defined as hazardous in States A and B.

(a) **Article 6(5)(a):** E, an exporter in State C, exports waste W to State A for disposal. When the waste is received by the disposer and the waste disposal is completed, E informs the competent authority of State C.

(b) **Article 6(5)(b):** I, an importer in State C, wishes to import waste W from State B. I notifies the competent authority of State C under Article 6(1). I must have the written consent of State C and a contract with the exporter before the shipment commences specifying the ESM of waste W (Article 6(3)).

(c) **Article 6(5)(c):** There is a proposed shipment of waste W from State A to State B through State C. State A must not allow the transboundary movement until it has the written consent of State C (Article 6(4)).

<sup>30</sup> For access to the form, as well as the instructions for completing it, please see:  
<http://www.basel.int/Default.aspx?tabid=1327>

<sup>31</sup> For information on this issue, see the work of the Implementation and Compliance Committee, available at:  
<http://www.basel.int/Implementation/LegalMatters/Compliance/GeneralIssuesActivities/Activities201415/Insurance,bond,guarantee/tabid/3691/Default.aspx>. See also the work of the Expert Working Group on ESM available at:  
<http://www.basel.int/Implementation/CountryLedInitiative/EnvironmentallySoundManagement/Overview/tabid/3615/Default.aspx>.

**Article 6(6) to (8):** E is an exporter in State A. Each month, E ships hazardous wastes with the same physical and chemical characteristics, to D, a disposer in State C. Each time the hazardous waste leaves State A via the same customs office; the waste passes through State B, via the same entry and exit Customs offices, and then it enters State C through the same Customs office of entry. State A asks States B and C for written consent to use the general notification procedure. State B provides its immediate consent. State C asks for further information on the exact quantities of waste to be shipped and, on receipt of that information, also provides its consent as well. Both States B and C consent for the maximum period of 12 months, with respect to which E may use the general notification.

## **Article 7: Transboundary movement from a party through States which are not parties to the Convention**

### **(a) Text of article**

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

### **(b) Are there special issues to be considered for implementation?**

It may be noted that, in addition to Article 6 (1) on notification, if the importing State is a non-party, then Articles 4(5) and 11 are also relevant.

### **(c) Other information**

For the purposes of the PIC regime, **States of export** should ensure that non-party States of transit are treated as if they are parties.<sup>32</sup> The challenge for States of export will be to locate the relevant authorities of non-party States of transit. Some non-parties have notified the Basel Secretariat of their focal points and competent authorities, which may be found on the Convention website.<sup>33</sup>

### **(d) Example**

**Article 7:** E proposes to move hazardous waste from State A for disposal in State B via State C. States A and B are parties but State C is not. As a party, State A's legislation requires E, through its competent authority, to notify the competent authorities of States A, C and B of the proposed movement. E identifies the competent authority for transboundary movements of waste in State C through the focal point of State A, which obtains the necessary information from the Convention website. As required, E notifies the competent authorities and then waits for the consent of all authorities before the movement can take place.

## **Article 8: Duty to re-import**

### **(a) Text of article**

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

### **(b) Are there special issues to be considered for implementation?**

Where it is not possible to complete a shipment in accordance with the terms of a contract, the States of export and import, and any party of transit, are obliged to cooperate to ensure the wastes in question are taken back.

### **(c) Other information**

A **party** that is a **State of export** must ensure that it takes back wastes where a transboundary movement, to which consent has been given by the States concerned, cannot be completed in accordance with the terms of the contract if alternative arrangements cannot be made for the disposal of the wastes in an environmentally sound manner. **This applies where there is no illegal traffic.** This must occur within 90 days from the time the importing party has

<sup>32</sup> A list of Parties to the Convention is available at: <http://www.basel.int/Default.aspx?tabid=1290>

<sup>33</sup> At <http://www.basel.int/Countries/CountryContacts/tabid/1342/Default.aspx>

notified the party and the secretariat, or such other period of time as the States concerned agree. **Both the State of export and any party of transit** shall not oppose, hinder or prevent the return of the shipment to the State of export.

**(d) Example**

E, an exporter in State A, commences a transboundary movement of hazardous wastes to disposer D in State C through State B. The transboundary movement has been duly notified and the necessary consents have been obtained. While the waste is in transit in State B, E receives information from D, the prospective disposer of the waste, that an earthquake in State C has damaged the site where the wastes were to be disposed of, making it impossible for D to dispose of the wastes in an environmentally sound manner. State B permits the hazardous wastes to be kept on its territory while arrangements are made to return them to State A. In this scenario, E is required to take the hazardous waste back, according to the national legislation of State A.

**Article 9: Illegal traffic**

**(a) Text of article**

1. *For the purpose of this Convention, any transboundary movement of hazardous wastes or other wastes:*
  - (a) *without notification pursuant to the provisions of this Convention to all States concerned; or*
  - (b) *without the consent pursuant to the provisions of this Convention of a State concerned; or*
  - (c) *with consent obtained from States concerned through falsification, misrepresentation or fraud; or*
  - (d) *that does not conform in a material way with the documents; or*
  - (e) *that results in deliberate disposal (e.g. dumping) of hazardous wastes or other wastes in contravention of this Convention and of general principles of international law,*  
*shall be deemed to be illegal traffic.*
2. *In case of a transboundary movement of hazardous wastes or other wastes deemed to be illegal traffic as the result of conduct on the part of the exporter or generator, the State of export shall ensure that the wastes in question are:*
  - (a) *taken back by the exporter or the generator or, if necessary, by itself into the State of export, or, if impracticable,*
  - (b) *are otherwise disposed of in accordance with the provisions of this Convention,*  
*within 30 days from the time the State of export has been informed about the illegal traffic or such other period of time as States concerned may agree. To this end the Parties concerned shall not oppose, hinder or prevent the return of those wastes to the State of export.*
3. *In the case of a transboundary movement of hazardous wastes or other wastes deemed to be illegal traffic as the result of conduct on the part of the importer or disposer, the State of import shall ensure that the wastes in question are disposed of in an environmentally sound manner by the importer or disposer or, if necessary, by itself within 30 days from the time the illegal traffic has come to the attention of the State of import or such other period of time as the States concerned may agree. To this end, the Parties concerned shall co-operate, as necessary, in the disposal of the wastes in an environmentally sound manner.*
4. *In cases where the responsibility for the illegal traffic cannot be assigned either to the exporter or generator or to the importer or disposer, the Parties concerned or other Parties, as appropriate, shall ensure, through co-operation, that the wastes in question are disposed of as soon as possible in an environmentally sound manner either in the State of export or the State of import or elsewhere as appropriate.*
5. *Each Party shall introduce appropriate national/domestic legislation to prevent and punish illegal traffic. The Parties shall co-operate with a view to achieving the objects of this Article.*

**(b) Are there special issues to be considered for implementation?**

Article 9(5) expressly requires the introduction of national/domestic legislation to prevent and punish illegal traffic; parties therefore have no discretion to implement administrative or other measures towards that end. In deciding what penalties to impose, parties should also take into account Article 4(3), which states that illegal traffic in hazardous wastes or other wastes is criminal.

**(c) Other information**

Article 9(1) defines **illegal traffic**. In order fully to implement the Convention, parties must ensure that they have in

place appropriate legal, administrative and other measures to deliver the obligations set out in this Article.

**Where traffic is illegal as the result of conduct on the part of the exporter or generator**, Article 9(2) provides the State of export must ensure that the wastes in question are taken back by the exporter or generator or, if necessary, by itself, the State of export. If this is impracticable, the State of export must ensure that the wastes are disposed of in accordance with the provisions of the Convention. These obligations must be performed within 30 days of the State of export being informed of the illegal traffic, or within such other time as the States concerned agree. The parties concerned shall not oppose, hinder or prevent the return of the wastes to the State of export.

**Where the traffic is illegal as the result of conduct on the part of the importer or disposer**, Article 9(3) provides that the State of import must ensure the wastes in question are disposed of in an environmentally sound manner by the importer or disposer or, if necessary, by the party itself. The State of import must perform these obligations within 30 days from the time the illegal traffic has come to its attention, or within such other time as the States concerned agree. The States concerned are required to cooperate, as necessary, in the disposal of the wastes in an environmentally sound manner.

By virtue of Article 9(4), **where the responsibility for the illegal traffic cannot be assigned**, parties must cooperate to ensure that the wastes in question are disposed of as soon as possible in an environmentally sound manner.

By virtue of Article 9(5), all parties **shall cooperate** with a view to achieving the objects of Article 9.

**Other guidance** developed under the authority of the COP with a view to achieving the objectives of preventing and combating illegal traffic is available on the Convention website.<sup>34</sup> The COP has adopted a series of **decisions** on the matter of illegal traffic which are also available on the Convention website.<sup>35</sup>

**Confirmed cases of illegal traffic** should be reported to the Secretariat using the form for confirmed cases of illegal traffic.<sup>36</sup> Confirmed cases of illegal traffic reported to the Secretariat by the parties are also available on the Convention website.<sup>37</sup>

Also see the commentary below, relating to Article 10, on the Environmental Network for Optimizing Regulatory Compliance on Illegal Traffic (ENFORCE).

#### (d) Examples

**Article 9(1)(a) and (b) and (2):** E exports hazardous waste from State A to State B, for disposal by disposer D without notifying State B or obtaining its consent. On receipt of the waste, D is suspicious and alerts the competent authority in State B. The waste is analysed and is confirmed as hazardous. The competent authority of State B requests its counterpart in State A to arrange for the waste to be taken back by E within 30 days, but E is bankrupt and has no means to manage the waste in an environmentally sound manner. State A obtains the agreement of State B to take the waste back within two months, during which time it makes arrangements for the ESM of the waste. E is convicted of a criminal offence under State A's national legislation implementing Article 9(5).

**Article 9(1)(e) and (3):** E intends to export hazardous waste from State A to State B. E obtains in State A the necessary consents for the movement of hazardous waste to State B for disposal by D. On receiving the waste D transports it to a populated area in State B and dumps it. The local population find the waste two months later and alert the authorities in State B, which analyse and identify the waste. At the request of State B, State A's experts give technical advice on cleaning up the site of the illegal dumping. D is prosecuted under the implementing laws of State B, and the competent authority of that State also requires D to arrange for the environmentally sound disposal of the waste.

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<sup>34</sup> Available at:  
<http://www.basel.int/Implementation/LegalMatters/IllegalTraffic/Guidance/tabid/3423/Default.aspx>

<sup>35</sup> Available at:  
<http://www.basel.int/Implementation/LegalMatters/IllegalTraffic/Decisions/tabid/3422/Default.aspx>

<sup>36</sup> This form is available at:  
<http://www.basel.int/Procedures/ReportingonIllegalTraffic/tabid/1544/Default.aspx>

<sup>37</sup> Available at:  
<http://www.basel.int/Implementation/LegalMatters/IllegalTraffic/CasesofIllegalTraffic/tabid/3424/Default.aspx>

## Article 10: International cooperation

### (a) Text of article

1. *The Parties shall co-operate with each other in order to improve and achieve environmentally sound management of hazardous wastes and other wastes.*
2. *To this end, the Parties shall:*
  - (a) *Upon request, make available information, whether on a bilateral or multilateral basis, with a view to promoting the environmentally sound management of hazardous wastes and other wastes, including harmonization of technical standards and practices for the adequate management of hazardous wastes and other wastes;*
  - (b) *Co-operate in monitoring the effects of the management of hazardous wastes on human health and the environment;*
  - (c) *Co-operate, subject to their national laws, regulations and policies, in the development and implementation of new environmentally sound low-waste technologies and the improvement of existing technologies with a view to eliminating, as far as practicable, the generation of hazardous wastes and other wastes and achieving more effective and efficient methods of ensuring their management in an environmentally sound manner, including the study of the economic, social and environmental effects of the adoption of such new or improved technologies;*
  - (d) *Co-operate actively, subject to their national laws, regulations and policies, in the transfer of technology and management systems related to the environmentally sound management of hazardous wastes and other wastes. They shall also co-operate in developing the technical capacity among Parties, especially those which may need and request technical assistance in this field;*
  - (e) *Co-operate in developing appropriate technical guidelines and/or codes of practice.*
3. *The Parties shall employ appropriate means to co-operate in order to assist developing countries in the implementation of subparagraphs a, b, c and d of paragraph 2 of Article 4.*
4. *Taking into account the needs of developing countries, co-operation between Parties and the competent international organizations is encouraged to promote, inter alia, public awareness, the development of sound management of hazardous wastes and other wastes and the adoption of new low-waste technologies.*

### (b) Are there special issues to be considered for implementation?

This article is unlikely to be directly implemented by domestic legislation.

### (c) Other information

Article 10 provides for extensive duties of cooperation. The provisions in paragraph 2 aim to improve and achieve ESM of hazardous and other wastes. They include:

- (a) Harmonization of technical standards and practices;
- (b) Monitoring the effects of waste management on human health and the environment;
- (c) Development of low-waste technologies and environmentally sound waste management systems;
- (d) Transfer of technology; and
- (e) Development of technical guidelines and codes of practice.

Paragraph 3 provides for assistance to be given to developing countries in implementation of their general obligations.

The parties take specific action, collectively and individually, to implement the obligations arising under paragraphs 2 and 3. For example, transfer of technology may occur through the activities under the aegis of the Basel Convention Regional and Coordinating Centres (BCRCS), and the development of technical guidelines on ESM under the Basel Convention.

There has been significant activity to implement paragraph 4, which encourages the cooperation between parties and competent international organizations. For example, at its eleventh meeting, the COP established the Environmental Network for Optimizing Regulatory Compliance on Illegal Traffic (“ENFORCE”) in order to improve cooperation and coordination between relevant entities with a specific mandate to deliver capacity-building activities and tools on preventing and combating illegal traffic.<sup>38</sup> Other examples of cooperation between parties include the **Partnership for Action on Computing Equipment (PACE)** and the **Mobile Phone Partnership Initiative (MPPI)**. More

<sup>38</sup> See paragraph 1, section A, Terms of reference for ENFORCE. For information on international cooperation, see also: <http://www.basel.int/Default.aspx?tabid=3425>

information on these partnerships and the guidance developed under their auspices is available on the Convention website.<sup>39</sup>

## Article 11: Bilateral, multilateral and regional agreements

### (a) Text of article

1. *Notwithstanding the provisions of Article 4 paragraph 5, Parties may enter into bilateral, multilateral, or regional agreements or arrangements regarding transboundary movement of hazardous wastes or other wastes with Parties or non-Parties provided that such agreements or arrangements do not derogate from the environmentally sound management of hazardous wastes and other wastes as required by this Convention. These agreements or arrangements shall stipulate provisions which are not less environmentally sound than those provided for by this Convention in particular taking into account the interests of developing countries.*

2. *Parties shall notify the Secretariat of any bilateral, multilateral or regional agreements or arrangements referred to in paragraph 1 and those which they have entered into prior to the entry into force of this Convention for them, for the purpose of controlling transboundary movements of hazardous wastes and other wastes which take place entirely among the Parties to such agreements. The provisions of this Convention shall not affect transboundary movements which take place pursuant to such agreements provided that such agreements are compatible with the environmentally sound management of hazardous wastes and other wastes as required by this Convention.*

### (b) Are there special issues to be considered for implementation?

If a **State of export or import** wishes to export to or import from a non-party, trade is prima facie prohibited by Article 4(5). If the export or import is to take place it must be pursuant to an agreement or an arrangement that meets the requirements of Article 11 (Bilateral, multilateral and regional agreements). “Agreements” refers to legally binding instruments, and “arrangements” refers to non-binding instruments.

### (c) Other information

There are two types of Article 11 agreements.

Under Article 11(1) there are agreements or arrangements entered into by parties, after the Convention entered into force for them, **with parties or non-parties** provided:

(a) The agreements or arrangements do not derogate from ESM of hazardous wastes and other wastes, as required by the Convention; and

(b) The agreements or arrangements stipulate provisions that are not less environmentally sound than those provided for by the Convention, taking into account the interests of developing countries.

Under Article 11(2) there are agreements or arrangements entered into **by Convention parties prior to the entry into force of the Convention** for them, provided:

(a) The agreements or arrangements are for the purpose of controlling transboundary movements of hazardous wastes and other wastes which take place entirely among the parties to such agreements; and

(b) The agreements or arrangements are compatible with ESM of hazardous wastes and other wastes as required by the Convention.

**Parties must notify the Secretariat of** bilateral, multilateral and regional arrangements and agreements that fall within the scope of Article 11.<sup>40</sup>

### (d) Examples

**Article 11(1):** No agreement has been entered on transboundary movements of hazardous wastes or other wastes between a party to the Convention (State A) and a non-party (State B). E, in State A, wishes to export hazardous wastes to State B for disposal. E approaches the authorities in State A, who negotiate a bilateral agreement with State B on transboundary movements of hazardous wastes between the two States. The agreement contains no provisions relating to the ESM of waste. After the agreement is concluded, E exports the hazardous wastes to State B. State A and B then notify the Secretariat of the bilateral agreement. The transboundary movement of waste was not consistent with the Convention because the agreement derogated from the ESM of waste, as required by the Convention.

<sup>39</sup> See <http://www.basel.int/Implementation/PartnershipProgramme/tabid/3235/Default.aspx>

<sup>40</sup> See <http://www.basel.int/Countries/Agreements/MultilateralAgreements/tabid/1518/Default.aspx> and <http://www.basel.int/Implementation/LegalMatters/Agreements/BilateralAgreements/tabid/1517/language/en-US/Default.aspx>

**Article 11(2):** States A, B and C, all non-parties, enter into an agreement for controlling transboundary movements of hazardous wastes between them. The agreement contains detailed provisions on the ESM of hazardous wastes; these provisions are more stringent than those in the Convention. State A subsequently ratifies the Convention. After it enters into force for State A, the Convention will not affect transboundary movements with States B and C as the agreement they entered is compatible with the ESM of hazardous wastes and other wastes, as required by the Convention.

## Article 12: Consultations on liability

### (a) Text of article

*The Parties shall co-operate with a view to adopting, as soon as practicable, a protocol setting out appropriate rules and procedures in the field of liability and compensation for damage resulting from the transboundary movement and disposal of hazardous wastes and other wastes.*

### (b) Are there special issues to be considered for implementation?

This article will not be implemented by domestic legislation.

### (c) Other information

**Protocol setting out rules and procedures in the field of liability and compensation:** In December 1999, the Basel Protocol on Liability and Compensation for Damage resulting from Transboundary Movements of Hazardous Wastes and their Disposal was adopted by the Conference of the Parties at its fifth meeting. The Protocol has not yet entered into force at the time of adoption of this manual.<sup>41</sup>

## Article 13: Transmission of information

### (a) Text of article

1. *The Parties shall, whenever it comes to their knowledge, ensure that, in the case of an accident occurring during the transboundary movement of hazardous wastes or other wastes or their disposal, which are likely to present risks to human health and the environment in other States, those States are immediately informed.*

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

- (a) *Changes regarding the designation of competent authorities and/or focal points, pursuant to Article 5;*
- (b) *Changes in their national definition of hazardous wastes, pursuant to Article 3;*

*and, as soon as possible,*

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

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

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

3. *The Parties, consistent with national laws and regulations, shall transmit, through the Secretariat, to the Conference of the Parties established under Article 15, before the end of each calendar year, a report on the previous calendar year, containing the following information:*

(a) *Competent authorities and focal points that have been designated by them pursuant to Article 5;*

(b) *Information regarding transboundary movements of hazardous wastes or other wastes in which they have been involved, including:*

- (i) *The amount of hazardous wastes and other wastes exported, their category, characteristics, destination, any transit country and disposal method as stated on the response to notification;*
- (ii) *The amount of hazardous wastes and other wastes imported, their category, characteristics, origin, and disposal methods;*
- (iii) *Disposals which did not proceed as intended;*

<sup>41</sup> For status of ratifications of the Protocol, see <http://www.basel.int/Countries/StatusofRatifications/TheProtocol/tabid/1345/Default.aspx>

- (iv) *Efforts to achieve a reduction of the amount of hazardous wastes or other wastes subject to transboundary movement;*
- (c) *Information on the measures adopted by them in implementation of this Convention;*
- (d) *Information on available qualified statistics which have been compiled by them on the effects on human health and the environment of the generation, transportation and disposal of hazardous wastes or other wastes;*
- (e) *Information concerning bilateral, multilateral and regional agreements and arrangements entered into pursuant to Article 11 of this Convention;*
- (f) *Information on accidents occurring during the transboundary movement and disposal of hazardous wastes and other wastes and on the measures undertaken to deal with them;*
- (g) *Information on disposal options operated within the area of their national jurisdiction;*
- (h) *Information on measures undertaken for development of technologies for the reduction and/or elimination of production of hazardous wastes and other wastes; and*
- (i) *Such other matters as the Conference of the Parties shall deem relevant.*

4. *The Parties, consistent with national laws and regulations, shall ensure that copies of each notification concerning any given transboundary movement of hazardous wastes or other wastes, and the response to it, are sent to the Secretariat when a Party considers that its environment may be affected by that transboundary movement has requested that this should be done.*

**(b) Are there special issues to be considered for implementation?**

This article is unlikely to be directly implemented by domestic legislation, as the submission of information is an administrative act. However, the legislation may need to provide national authorities with the legal authority to collect and the stakeholders with the obligation to provide, information that must be reported by the party under Article 13 (3).

In some circumstances, the transmission of information or the failure to transmit information, may have legal effect. So, for example, parties are obliged to respect prohibitions on the import of waste under Article 4 provided that the prohibiting party has notified the prohibition under this article.

**(c) Other information**

Article 13(3) sets out **reporting obligations for the parties**. There are a number of tools available to help parties to implement these obligations. Information on the procedure for transmitting National Reports is on the Convention website.<sup>42</sup> As of November 2013, a new Electronic Reporting System<sup>43</sup> is available for use by parties to submit annual national reports.

Data and information transmitted by parties pursuant to Article 13(3) can be found on the Convention website.<sup>44</sup>

In order to make it easier for parties to transmit their reports, a revised questionnaire on transmission of information was adopted by the twelfth meeting of the Conference of the Parties, by Decision BC-12/6. This decision also provides for the development of an electronic user manual for the electronic reporting system and the revised format for national reporting. The questionnaire seeks to collect information of a legal and institutional nature as well as data.

Further guidance on how to complete the questionnaire was developed by the Committee and is available on the website.<sup>45</sup>

- (a) “Benchmark report” to show what a good report under Article 13(3) would look like;
- (b) Guidance document on improving national reporting;
- (c) [Guidance on the development of inventories.]

<sup>42</sup> Available at: <http://www.basel.int/Procedures/NationalReporting/tabid/1332/Default.aspx>

<sup>43</sup> Available at: <http://www.basel.int/Countries/NationalReporting/ElectronicReportingSystem/tabid/3356/Default.aspx>

<sup>44</sup> Available at: <http://www.basel.int/Countries/NationalReporting/ReportingDatabase/tabid/1494/Default.aspx>

<sup>45</sup> Available at: <http://www.basel.int/Countries/NationalReporting/Guidance/tabid/1498/Default.aspx>

## Article 14: Financial aspects

### (a) Text of article

1. *The Parties agree that, according to the specific needs of different regions and subregions, regional or sub-regional centres for training and technology transfers regarding the management of hazardous wastes and other wastes and the minimization of their generation should be established. The Parties shall decide on the establishment of appropriate funding mechanisms of a voluntary nature.*
2. *The Parties shall consider the establishment of a revolving fund to assist on an interim basis in case of emergency situations to minimize damage from accidents arising from transboundary movements of hazardous wastes and other wastes or during the disposal of those wastes.*

### (b) Are there special issues to be considered for implementation?

There are no obligations that are required to be directly implemented in parties' national legislation.

### (c) Other information

**Regional or subregional centres for training and technology transfers regarding the management of hazardous wastes and other wastes:** A network of 14 BCRCs for Capacity Building and Technology Transfer<sup>46</sup> deliver training, dissemination of information, consulting, awareness-raising activities and technology transfer on matters relevant to the implementation of the Basel Convention and ESM. They are able to provide support and training to officials involved in the implementation of the Convention.<sup>47</sup>

**Appropriate funding mechanisms of a voluntary nature:** The Technical Cooperation Trust Fund, a voluntary funding mechanism under the Convention, was established to assist developing countries and other countries in need of technical assistance in the implementation of the Convention, including in cases of emergency and compensation for damage resulting from incidents arising from transboundary movements of hazardous wastes and other wastes and their disposal.<sup>48</sup>

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<sup>46</sup> Argentina, China, Egypt, El Salvador, Indonesia, Islamic Republic of Iran, Nigeria, Russian Federation, Senegal, Slovak Republic, South Pacific Regional Environment Programme (Samoa), South Africa, Trinidad and Tobago and Uruguay. For more information, see:  
<http://www.basel.int/Partners/RegionalCentres/DirectorsContactPersons/tabid/1558/Default.aspx>

<sup>47</sup> Available at:

<http://www.basel.int/Partners/RegionalCentres/Overview/tabid/2334/Default.aspx>

<sup>48</sup> For more information on the fund, including who may contribute to it and what activities may be supported with the contributions received. The relevant financial rules are available at:  
<http://www.basel.int/TheConvention/ConferenceoftheParties/RulesofProcedure/tabid/2281/Default.aspx>. For information about the emergency fund that relates to Art. 14.2; see  
<http://www.basel.int/Implementation/TechnicalAssistance/EmergencyFund/tabid/2370/Default.aspx>.

## Annex I

### The legislator's checklist

This checklist, which should be used in conjunction with the first and second part of the manual for the implementation of the Basel Convention, focuses on the Basel Convention provisions that require legislative implementation, unless otherwise noted. It is designed to:

(a) **Assist parties to deliver full legislative implementation** of the Basel Convention, by separating out and listing each obligation that must, or should, be implemented by legislation (laws or regulations); and

(b) **Ensure consistency in implementation**, which is an important objective for a global treaty establishing a transboundary regime that depends on parties' legislation working together to create a coherent and functioning international system to control transboundary movement of hazardous wastes.

When transposing the PIC provisions of the Convention into implementing legislation it may be appropriate to make separate provision for transboundary movements when the implementing party is the State of import, State of export or State of transit.

The checklist is in tabular form. Each line of the table will contain:

- (a) A reference to a provision in the Convention;
- (b) A checkbox; and
- (c) A description of the obligation that is contained in the provision that must, or should, be implemented by legislation.

<b>Article 1: Scope of the Convention</b>	
Article 1 (1) (a)	<input type="checkbox"/> Define "hazardous wastes".
Article 1 (1)(b)	<input type="checkbox"/> Decide on whether to include in national legislation provisions that would define or consider wastes not covered under Article (1)(a) as hazardous wastes; if so decided, implement the decision in national legislation (see also article 3 (1)).
Article 1 (2)	<input type="checkbox"/> Define "other wastes"
Article 1(3)	<input type="checkbox"/> Exclude radioactive wastes that are excluded from the Convention.
Article 1(4)	<input type="checkbox"/> Exclude wastes derived from the normal operations of a ship which are excluded from the Convention.
<b>Article 2: Definitions</b>	
Article 2 (1)	<input type="checkbox"/> Define "Wastes"

Article 2 (1)	<input type="checkbox"/> Decide on whether to introduce provisions of national law that require substances or objects to be disposed of; if so decided, implement the decision in national legislation.
Article 2 (2)	<input type="checkbox"/> Define "Management".
Article 2 (3)	<input type="checkbox"/> Define "Transboundary movement".
Article 2 (4)	<input type="checkbox"/> Define "Disposal".
Article 2 (5)	<input type="checkbox"/> Define "Approved site or facility".
Article 2 (6)	<input type="checkbox"/> Define "Competent authority" and establish mechanism for designation of one or more competent authority or authorities. The establishment of the mechanism could be implemented administratively.
Article 2 (7)	<input type="checkbox"/> Define "Focal point" and establish a mechanism for the designation of a focal point. The establishment of the mechanism could be implemented administratively.
Article 2 (8)	<input type="checkbox"/> Define "Environmentally sound management of hazardous wastes or other wastes".
Article 2 (8)	<input type="checkbox"/> Decide on whether to establish a comprehensive legal framework relating to ESM, as recommended in the ESM framework; if so, implement decision in national legislation.
Article 2 (9)	Define "Area under the national jurisdiction of a State".
Article 2 (10)	<input type="checkbox"/> Define "State of export".
Article 2 (11)	<input type="checkbox"/> Define "State of import".
Article 2 (12)	<input type="checkbox"/> Define "State of transit".
Article 2 (13)	<input type="checkbox"/> Define "States concerned".
Article 2 (14)	<input type="checkbox"/> Define "Person".

Article 2 (15)	<input type="checkbox"/> Define "Exporter".
Article 2 (16)	<input type="checkbox"/> Define "Importer".
Article 2 (17)	<input type="checkbox"/> Define "Carrier".
Article 2 (18)	<input type="checkbox"/> Define "Generator".
Article 2 (19)	<input type="checkbox"/> Define "Disposer".
Article 2 (21)	<input type="checkbox"/> Define "Illegal traffic".
<b>Article 3: National definition of hazardous wastes</b>	
Article 3 (1)	<input type="checkbox"/> Make provision for the obligation to inform the Secretariat of national legislation provisions that would define or consider wastes not covered under Article 1 (1)(a) as hazardous wastes along with any requirements concerning transboundary movement procedures applicable to such wastes. This could be implemented administratively.
Article 3 (2)	<input type="checkbox"/> Make provision for the obligation to inform the Secretariat of any significant changes to the information provided under Article 3(1). This could be implemented administratively.
Article 3 (4)	<input type="checkbox"/> Make provision for the obligation to inform exporters of any information transmitted under Article 3(3) This could be implemented administratively.
<b>Article 4: General Obligations</b>	
Article 4 (1)(a)	<input type="checkbox"/> Decide on whether to prohibit the import of hazardous wastes and other wastes for disposal; if so, implement decision in national legislation, and inform other parties pursuant to Article 13.

Article 4 (1)(b)	<input type="checkbox"/> Implement obligation to prohibit or not permit the export of hazardous wastes to parties which have prohibited the import of such wastes; consider implementing this in conjunction with the introduction of the PIC regime provided for in Article 6.
Article 4 (1)(c)	<input type="checkbox"/> Implement obligation to prohibit or not permit the export of hazardous wastes if the State of import does not consent in writing to the specific import; consider implementing this in conjunction with the introduction of the PIC regime provided for in Article 6.
Article 4 (2)(a)	<input type="checkbox"/> Implement obligation relating to reducing generation of hazardous wastes to a minimum. This could be implemented administratively.
Article 4 (2)(b)	<input type="checkbox"/> Implement obligation relating to the availability of adequate disposal facilities. This could be implemented administratively.
Article 4 (2) (c)	<input type="checkbox"/> Implement obligation relating to persons involved in the management of hazardous wastes.
Article 4 (2)(d)	<input type="checkbox"/> Implement obligations concerning minimization of movement of hazardous waste and protection of human health and the environment. This could be implemented administratively.
Article 4 (2)(e) to (g)	<input type="checkbox"/> Implement these obligations in conjunction with Article 6.
Article 4 (5)	<input type="checkbox"/> Prohibit export to a non-Party and import from a non-Party of hazardous waste (subject to Article 4(11)).
Article 4 (6)	<input type="checkbox"/> Prohibit, or do not allow, the export of hazardous wastes for disposal within the area south of 60° South latitude.
Article 4 (7)	<input type="checkbox"/> Implement in conjunction with Article 6.
Article 4 (8)	<input type="checkbox"/> Implement in conjunction with Article 6.
Article 4 (9)	<input type="checkbox"/> Implement in conjunction with Article 6.

Article 4 (11)	<input type="checkbox"/> Make policy decision on whether to include additional requirements; if so, do they need legislation?
<b>Article 5: Designation of competent authorities and focal point</b>	<input type="checkbox"/> Put in place a mechanism to designate one or more competent authorities and a focal point. <input type="checkbox"/> Include provision for changes to the designations and notification of the designation to the Secretariat. This could be done administratively.
<b>Article 6: Transboundary movement between parties</b>	<i>Note: The legislator may consider separate provisions to implement Article 6 to address all circumstances, such as when the implementing party acts as a State of export, State of import or State of transit.</i>
Article 6(1)	<input type="checkbox"/> Provide for notification from the implementing party acting as State of export or generator or exporter of any proposed transboundary movement of hazardous wastes.
Article 6(2)	<input type="checkbox"/> Provide for the implementing party acting as State of import to respond to notification.
Article 6(3)	<input type="checkbox"/> Provide that the implementing party acting as State of export is not to allow movement to commence until it has the written consent of the State of import; and received confirmation of the existence of an ESM contract.
Article 6(4)	<input type="checkbox"/> Provide that the implementing party acting as State of transit is to acknowledge notification and to consent, unless it has decided otherwise.
Article 6(5)	<input type="checkbox"/> Make special arrangements where wastes are legally defined as, or considered to be, hazardous wastes only in one State concerned.
Article 6 (6 – 8)	<input type="checkbox"/> Provide for general notification procedure.
Article 6 (9)	<input type="checkbox"/> Provide for movement document to accompany wastes and for disposer to inform exporter and competent authority of State of export on completion of disposal.
Article 6 (10)	<input type="checkbox"/> Require transmission of notification and response required by the Article to be transmitted to competent authority of the parties concerned, etc.

Article 6(11)	<input type="checkbox"/> Consider establishing an obligation on the generator, exporter, importer, disposer and/or carrier to have insurance, bond or other form of guarantee; and if so, require transboundary movement to be covered by insurance, bond or other guarantee.
<b>Article 7: Transboundary Movement from a Party through States which are not parties</b>	<input type="checkbox"/> Make provision for the obligation to notify a State of transit that is not a party of a proposed transboundary movement of hazardous wastes or other wastes (Note: see Article 6.1).
<b>Article 8: Duty to re-import</b>	<input type="checkbox"/> Give necessary powers when implementing party is State of export, to ensure that the wastes in question are taken back by the exporter.  <input type="checkbox"/> Give necessary powers when implementing party is State of transit, to ensure that return of the wastes in question to the State of export is not opposed or hindered by the State of transit
<b>Article 9 Illegal Traffic</b>	
Article 9 (1)	<input type="checkbox"/> Define “illegal traffic”.
Article 9 (2)	<input type="checkbox"/> When the implementing party is the State of export, ensure that it has the necessary powers to oblige the exporter or generator to take back hazardous wastes deemed to be illegal traffic.
Article 9 (3)	<input type="checkbox"/> When the implementing party is the State of import, ensure that it has the necessary powers to oblige the importer or disposer to dispose of hazardous wastes deemed to be illegal traffic in an environmentally sound manner.
Article 9 (5)	<input type="checkbox"/> Introduce appropriate national/domestic legislation to prevent and punish illegal traffic, bearing in mind Article 4(3).
<b>Article 11: Bilateral, multilateral and regional agreements</b>	<input type="checkbox"/> Provide for derogation from the prohibition in Article 4(5) where there is a relevant bilateral, multilateral or regional agreement or arrangement that satisfies the requirements of paragraph (1) or (2).

**Article 13: Transmission of information**

Provide for an obligation for authorities or stakeholders to collect and share information that must be reported/notified to the Secretariat.

## Annex II

### List of technical guidelines and guidance documents

Guidance document on environmentally sound management of used and end-of-life computing equipment (sections 1, 2, 4 and 5, adopted by decision BC-11/15)

Technical guidelines on the environmentally sound co-processing of hazardous wastes in cement kilns (adopted by decision BC-10/8)

Technical guidelines for the environmentally sound management of wastes consisting of elemental mercury and wastes containing or contaminated with mercury (adopted by decision BC-12/4)

Technical guidelines for the environmentally sound management of used and waste pneumatic tyres (adopted by decision BC-10/6)

Guidance document on the environmentally sound management of used and end-of-life mobile phones (adopted by decision BC-9/8)

Updated general technical guidelines for the environmentally sound management of wastes consisting of, containing or contaminated with persistent organic pollutants (POPs) (adopted by decision BC-12/3)

Updated technical guidelines for the environmentally sound management of wastes consisting of, containing or contaminated with polychlorinated biphenyls (PCBs), polychlorinated terphenyls (PCTs) or polybrominated biphenyls (PBBs) (adopted by decision BC-12/3)

Technical guidelines for the environmentally sound management of wastes consisting of, containing or contaminated with 1,1,1 trichloro 2,2 bis (4 chlorophenyl)ethane (DDT) (adopted by decision BC-12/3)

Technical guidelines on the environmentally sound management of wastes containing or contaminated with unintentionally produced PCDDs, PCDFs, HCB or PCBs (adopted by decision BC-12/3)

Technical guidelines on the environmentally sound management of wastes consisting of, containing or contaminated with the pesticides aldrin, chlordane, dieldrin, endrin, heptachlor, HCB, mirex or toxaphene or with HCB as an industrial chemical (adopted by decision BC-12/3)

Guidance paper on hazardous characteristic H6.2 (Infectious substances) (adopted by decision BC-7/17)

Work on hazard characteristics – Approach to Basel Convention hazard characteristic H11: characterization of chronic or delayed toxicity (adopted by decision BC-7/17)

Interim guidelines on hazard characteristic H13 of Annex III to the Basel Convention (adopted by decision BC-7/17)

Technical guidelines on the environmentally sound recycling/reclamation of metals and metal compounds (R4) (adopted by decision BC-7/14)

Interim guidelines on the hazardous characteristic H12-Ecotoxic (adopted by decision BC-6/26)

Technical guidelines for the environmentally sound management of the full and partial dismantling of ships (adopted by decision BC-6/24)

Technical guidelines for the environmentally sound management of waste lead-acid batteries (adopted by decision BC-6/22)

Technical guidelines for the identification and environmentally sound management of plastic wastes and for their disposal (adopted by decision BC-6/21)

Technical guidelines on the environmentally sound management of biomedical and healthcare wastes (Y1; Y3) (adopted by decision BC-6/20)

Technical guidelines on hazardous waste physico-chemical treatment (D9) / biological treatment (D8) (adopted by decision BC-5/26)

Technical guidelines on specially engineered landfill (D5) (adopted by decision BC-3/13)

Technical guidelines on incineration on land (D10) (adopted by decision BC-3/13)

Technical guidelines on used oil re-refining or other re-uses of previously used oil (R9) (adopted by decision BC-3/13)

Technical guidelines on hazardous waste from the production and use of organic solvents (Y6) (adopted by decision BC-2/13)

Technical guidelines on waste oils from petroleum origins and sources (Y8) (adopted by decision BC-2/13)

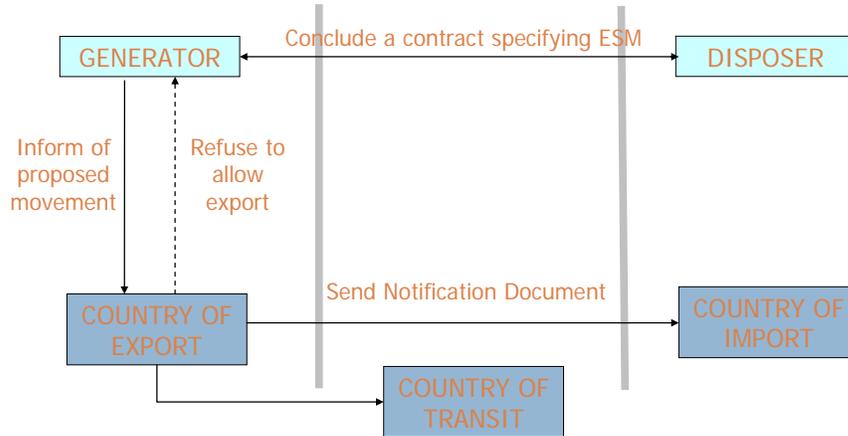
Technical guidelines on wastes collected from households (Y46) (adopted by decision BC-2/13)

The Framework Document 1994 on the preparation of technical guidelines for the environmentally sound management of wastes subject to the Basel Convention (adopted by decision BC-2/13)

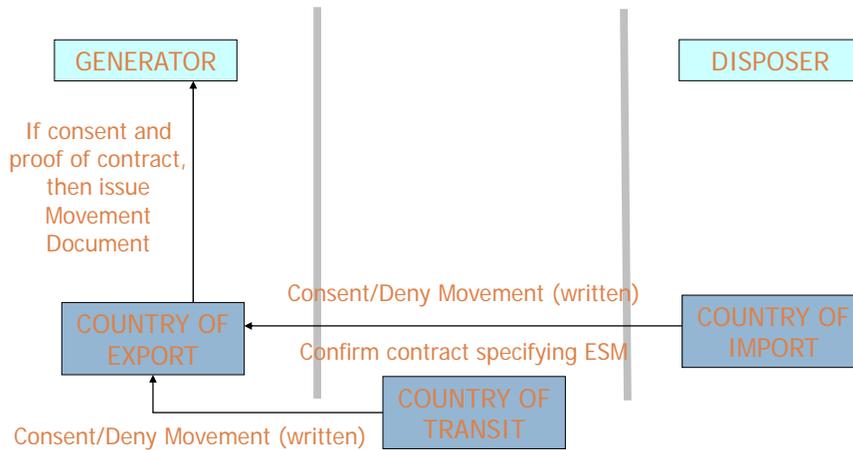
## Annex III

### Illustration of the PIC procedure

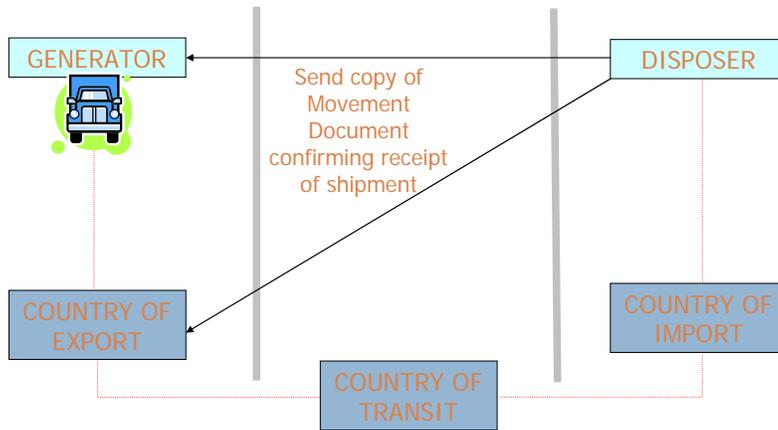
#### Stage 1: Notification (Article 6 and Annex VA of the Basel Convention)



#### Stage 2: Consent and issuance of movement document (Article 6 and Annex VB of the Basel Convention)



**Stage 3: Transboundary movement**



**Stage 4: Confirmation of disposal**

