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THE BASEL CONVENTION

THE BASEL CONVENTION ON THE CONTROL OF TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES AND THEIR DISPOSAL

INTRODUCTION

Since World War II, and especially since the 1960s, the world has experienced unprecedented industrialization and economic growth. At the same time the harmful effects on human health and on the environment of wastes generated by producing and consuming industrial and agricultural goods have become increasingly striking.

Each year, almost 400 million tons of hazardous waste is generated worldwide, much of it crossing national borders. Stockpiles of corrosive acids, organic chemicals, toxic metals and other wastes pose serious long-term health and ecological threats, causing groundwater contamination, leaching and other types of pollution. But higher volumes and increased movement of wastes also mean increased difficulties in disposing of these wastes in an environmentally sound manner.

In recent decades, disposal facilities, especially landfill space, have become more scarce and therefore more expensive. Also, the cost of cleaning up existing landfills is rising. As a result, there is a growing tendency to export hazardous wastes, especially to less industrialized countries. Disposal costs in the Third World can be a fraction of what they are in the North, often because developed countries have restrictive legislation on waste disposal. Most developing countries, on the other hand, lack the necessary legal and institutional framework to effectively control and prevent the dumping of hazardous waste on their territory. And they have few—if any—environmentally sound waste disposal facilities. Today, transboundary movements of hazardous wastes have become a global problem demanding global solutions.

TOWARDS A CONVENTION

The United Nations Environment Programme (UNEP) began dealing with the problem of transboundary movements and

especially with illegal international traffic of hazardous wastes in the early 1980s.

In May 1981, UNEP's ninth Governing Council session set up an ad hoc meeting of senior government officials with expertise in environmental law to identify key subject areas for greater global and regional cooperation on a legal level. The disposal of hazardous wastes was a principal topic of discussion.

The ad hoc group met from 28 October-6 November 1981 in Montevideo (Uruguay) and produced a report, known as the Montevideo Programme for the Development and Periodic Review of Environmental Law, submitted to UNEP's Governing Council in December 1981. The report established the environmental policy directions to be adopted by UNEP, outlining several issues considered particularly important. One of these was the transport, handling and disposal of toxic and dangerous wastes. The Montevideo Programme contained principles and guidelines which would lay the groundwork for a global convention on the control of hazardous wastes.

Pursuing the Montevideo Programme's recommendations, in May 1982 UNEP's Governing Council convened a working group of experts, the Ad Hoc Working Group of Experts on the Environmentally Sound Management of Hazardous Wastes, to develop principles or guidelines on the environmentally sound transport, management and disposal of hazardous wastes. The group met three times: in Munich in March 1984, in Geneva in December 1984 and in Cairo in December 1985, when it submitted its final report, with the Cairo Guidelines and Principles on the Environmentally Sound Management of Hazardous Wastes as an annex.

The Cairo Guidelines were then adopted in June 1987 at UNEP's Governing Council's fourteenth session. The council authorized UNEP's Executive Director to convene a working group of legal and technical experts to begin preparing a global convention on the control of transboundary movements

of wastes, drawing on the Cairo Guidelines and the relevant work of national, regional and international bodies. UNEP was also requested to convene a diplomatic conference in early 1989 to adopt and sign the convention being prepared by the working group.

The organizational meeting of the ad hoc working group took place in Budapest (Hungary) in October 1987. It discussed the general principles to be incorporated into the convention, and considered a first draft of the convention prepared by the UNEP secretariat. The draft was based on the Cairo Guidelines, but also took into consideration the work of the 1984 European Community's (EC) Directive on Transfrontier Shipment of Hazardous Wastes and the OECD Agreement on Control of Transfrontier Movement of Hazardous Wastes. Between February 1988 and March 1989, the working group met five times: representatives from 96 states and observers from 50 organizations took part in revising the draft convention.

Early on, the experts agreed that this should be a two-tiered convention: it should take the form of a framework convention calling for further specific implementation instruments, but should also contain provisions with direct implications for the control of transboundary movements of hazardous wastes, specifying clearly the responsibility of states involved in such movements. As negotiations moved forward, the draft convention was strengthened to provide for strict control measures, setting out the rights and responsibilities of states involved. A number of particularly important issues were discussed, including the definition of hazardous wastes, the prior written consent of the importing state to the import of hazardous wastes, the rights of transit states with respect to transboundary movements through their territories, and the provision of assistance to developing countries to increase their capabilities in monitoring waste movement and disposal.

Throughout the negotiating process, these issues were both the most important and the most contentious. At its first meeting, the working group agreed to define the wastes covered by the convention according to a core list of wastes unanimously recognized as hazardous, which would be annexed to the convention. The second meeting elaborated definitions of hazardous wastes and disposal operations and information, and the scope of the convention was extended beyond the core list to cover wastes defined as hazardous at least by one state involved in a given movement; the system of prior written consent to a movement of wastes by import and transit states was also established. The third meeting broadened the scope of general obligations, including such important ones as the disposal of hazardous wastes as close as possible to where they were generated. The fourth meeting introduced the concept of limited ban, which allows waste to move between contracting parties only.

After a report on illicit waste dumping in developing countries was produced by UNEP's Executive Director on behalf of the Secretary-General of the United Nations in response to the 1987 resolution adopted by the UN General Assembly, the issue of illegal traffic gained prominence. Subsequently the fifth meeting defined illegal traffic, the responsibility of states

involved, the provision declaring illegal traffic to be criminal and the obligation of parties to pass national legislation to prevent and punish it.

The functions of the secretariat were extended, as was the scope of international cooperation, notably with respect to assistance for developing contracting parties. Household wastes and incinerator ash were also brought under the scope of the convention.

To get a better sense of the issues and parties involved, UNEP's Executive Director held a number of informal consultations with governments and industry. These meetings made substantial contributions to the convention process.

The final Conference of Plenipotentiaries on the Global Convention on the Control of Transboundary Movements of Hazardous Wastes was convened in Basel (Switzerland) from 20-22 March 1989 to consider the final draft of the convention. Provisions were finalized at the meeting and several important issues were addressed, including the development of a protocol on liability and technical guidelines to assist the parties in the environmentally sound management of hazardous wastes; institutional and financial arrangements for the interim secretariat; and cooperation with other international organizations to harmonize other international legal instruments with the Basel Convention.

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal was adopted unanimously by the conference on 22 March 1989; 105 states and the European Community signed the Final Act of the conference, and 35 states and the EC signed the convention immediately after its adoption. The conference also adopted eight resolutions to develop and further implement the convention.

The convention entered into force on 5 May 1992, 90 days after it was ratified by the 20th state, Australia.

The first meeting of the COP established the permanent secretariat to ensure that parties cooperate and that the information needed under the provisions of the convention is disseminated; the secretariat is also there to assist parties in implementing the convention, notably by identifying sources of technical assistance, training and know-how related to the sound management of hazardous wastes and the handling of the notification system. The secretariat also helps parties, on request, to identify cases of illegal traffic and cooperates with parties and organizations to provide experts and equipment for emergency situations.

IMPLEMENTATION

The first meeting of the Conference of the Parties (COP) was to be held within one year of the convention's entry into force. It took place in Montevideo (Uruguay) from 30 November-4 December 1992, and was attended by 56 states, the EC and observers from 13 international, governmental and non-governmental organizations.

The conference adopted 23 decisions covering a protocol on liability and compensation for damage resulting from the transboundary movement and disposal of hazardous wastes; technical guidelines to facilitate the implementation of the convention; notification and movement documents; the development of models for national legislation; training activities; and the establishment of regional centers for training and technology transfer.

The COP created two working groups. A Technical Working Group was established to develop criteria on which wastes are suitable for recovery and recycling operations. These wastes would be eligible for transboundary movements from developed to developing countries, provided they met the conditions of movement under the convention (recovery includes resource recovery, recycling, reclamation, direct reuse and alternative uses). A Legal Working Group was created to develop a protocol on liability and compensation and to consider setting up a compensation fund and an emergency fund.

With Agenda 21 in mind, the COP prepared a list of priority activities, focusing on support to developing countries in an effort to strengthen their national capacities to deal with hazardous wastes.

Two trust funds were also established: the Trust Fund to implement the Basel Convention, with a budget of US\$2,587,248 and US\$2,595,277 for 1995 and 1996 respectively, and the Technical Cooperation Trust Fund, the voluntary contribution of the parties and non-parties to assist developing countries in implementing the convention, with a budget of US\$1,297,240 for 1995 and US\$1,427,190 for 1996.

The Technical Working Group finalized its work on the preparation of a Framework Document for the Preparation of Technical Guidelines for the Environmentally Sound Management of the wastes subject to the convention.

The Legal Working Group met in Geneva during 13-17 September 1993. Experts from 51 countries agreed on a preliminary definition of "damage" for the purposes of compensation in cases where damage results from an accident during a transboundary movement of hazardous wastes and their disposal, and on the objective and scope of the draft protocol. The experts drew up detailed articles on the civil liability regime, and agreed on a strict liability regime allowing for few exonerations. General discussions were also held on the establishment of a Compensation Fund and an Emergency Fund. Issues left unresolved on liability and compensation included identification of the person liable for paying the compensation, the limits of compensation covered by insurance and other financial guarantees, and the relationship of the future protocol to other bilateral, multilateral and regional agreements in this field.

The secretariat was quite active during this process. It prepared model national legislation on transboundary movements and developed regional centers for training and technology transfer; it also developed training programmes for technical workshops and seminars relating to the convention. In the field of information, notification and movement

documents were developed and sent to parties for their use, and efforts were made to harmonize these forms with those of the OECD and the European Community. A manual to facilitate the implementation of the Basel Convention was prepared and distributed.

The second meeting of the COP, from 21-25 March 1994 in Geneva, adopted a comprehensive work programme which was a significant step forward, not only in fulfilling the convention's obligations, but in providing a blueprint for implementation for its parties. More than 60 parties and 100 observers from government, United Nations organizations, intergovernmental groups and NGOs were present.

The second COP reached a crucial agreement: it decided to prohibit the export of hazardous wastes from OECD to non-OECD member states for final disposal, effective immediately. This confirmed the decision adopted by the parties at their first meeting.

Furthermore, to meet the needs of non-OECD countries, both developed and developing countries agreed export of hazardous wastes for recovery operations from OECD to non-OECD party countries would cease by 31 December 1997. To make the ban effective, the parties agreed to a reporting system on the decision's implementation. The ban is expected to buttress efforts by countries to reduce transboundary movements of hazardous wastes, to consolidate policies on treating and disposing of wastes as close as possible to their home, and to act as an incentive to introduce cleaner production methods in industrial processes, minimizing the generation of hazardous wastes.

Certain areas of the secretariat's work are particularly significant in light of the ban :

Prevention and Monitoring of Illegal Traffic in Hazardous Wastes

Parties are now moving towards implementing a strategy to combat illegal traffic. Measures include strict national legislation on transboundary movements of hazardous wastes. Regional or subregional cooperation is called for against illegal traffic, and it has been suggested that the UN regional commissions play a monitoring role.

Control at Border Points

Inspection of material crossing borders by competent customs officers is key to the Basel Convention's global regulatory regime. To achieve it, the secretariat is cooperating with parties, the Commission of the now-named European Union, the Customs Cooperation Council and the Technical Working Group of the Basel Convention to develop classification criteria and to classify wastes and hazardous characteristics subject to the Basel Convention.

Environmentally Sound Management of Hazardous Wastes

Countries developing their national capacity to treat and dispose of hazardous wastes can be guided by four sets of technical guidelines on priority waste streams, three sets of technical guidelines on disposal operations, and the framework document on the preparation of technical

guidelines adopted by the parties. Together with the revised draft model national legislation and three manuals for the implementation of the convention, they form a comprehensive framework for the environmentally sound management of these wastes and their transport.

Technical Assistance and Training

Adequate national and regional capacity and effective cooperation are crucial to the convention's success. At the same time, cooperation is needed to develop environmentally sound technologies and to reduce generation of hazardous wastes. The secretariat is coordinating feasibility studies on establishing regional centers for training and technology transfer.

The COP also adopted 27 decisions, which make up a detailed work programme for the parties.

The parties agreed on a work programme for the Technical Working Group, which included preparing new technical guidelines for the environmentally sound management of hazardous wastes, and elaborating further criteria for wastes destined for recovery operations. Sites were chosen for training programmes on implementing the convention.

The COP also extended the mandate of the Legal Working Group so it could finish its work on a liability and compensation protocol before the third meeting of the COP. A manual to facilitate the convention's implementation and a strategy to prevent and monitor illegal traffic in hazardous wastes were adopted, and model national legislation to assist parties and non-parties in revising their own legislation on the management of hazardous waste was accepted.

THE CONVENTION

Objective and Key Principles of the Convention

According to its preamble, the convention's overall goal is to protect, by strict control, human health and the environment against the adverse effects which may result from the generation, transboundary movement and management of hazardous and other wastes.

Further objectives can be found in the convention's provisions, including :

- ▢ reducing transboundary movements of wastes to a minimum consistent with their environmentally sound and efficient management, and controlling any permitted transboundary movement under the terms of the convention;
- ▢ minimizing the amount of hazardous wastes generated and ensuring their environmentally sound management; and
- ▢ assisting developing countries in environmentally sound management of the hazardous and other wastes they generate.

The Basel Convention is based on the following principles: the generation of hazardous wastes and other wastes should be reduced to a minimum in terms of quantity and toxicity; where this generation is unavoidable, wastes must be disposed of as near as possible to their source of generation; moreover, the environmentally sound management of the wastes must be

guaranteed, wherever they are disposed; hazardous wastes can be exported only if the state they come from does not have the technical capability to dispose of them in an environmentally sound manner.

In other words, the aim of the Basel Convention is to help reduce the transboundary movements and amounts of hazardous wastes to a minimum, and to manage and dispose of these wastes in an environmentally sound manner.

DEFINITIONS

Defining the issues with which the convention deals is key to its implementation. Article 1 defines wastes as "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."

Disposal, as defined in Annex IV of the convention, encompasses operations leading to final disposal, such as landfill, incineration or release into a waterbody, and operations leading to resource recovery, recycling, reclamation, direct reuse or alternate use.

The convention covers two categories of waste. The first is that of "hazardous wastes" as defined in Annex I according to their source of generation (waste stream) or their constituents. All such wastes fall under the provisions of the convention, unless they have none of the "hazardous characteristics" defined in Annex III. Furthermore, a waste not listed in the annexes is considered "hazardous" for the purpose of the convention if it is defined as or considered to be hazardous by domestic law in at least one state party involved in its movement. The second category, "other wastes," covers household wastes and incinerator ash, which though not "hazardous," are subject to the convention's provisions.

Wastes covered by other international instruments, such as radioactive wastes and wastes under the International Convention for the Prevention of Pollution from Ships (MARPOL), are expressly excluded from the scope of the convention. However, after a resolution adopted by the Conference of Plenipotentiaries on the Global Convention on the Control of Transboundary Movements of Hazardous Wastes in 1989, UNEP and the International Atomic Energy Agency (IAEA) are cooperating to make sure that the provisions of the Basel Convention are taken into full account and are considered a bottom line for instruments which regulate the transactions involving nuclear wastes. UNEP and the International Maritime Organization (IMO) collaborate to harmonize the provisions of the Basel Convention and other international instruments in the field of marine transportation of hazardous wastes, such as the Convention on the Prevention of Marine Pollution from Ships (London Dumping Convention, 1972), and MARPOL.

GENERAL OBLIGATIONS

The convention recognizes that every state has the sovereign right to ban the import of hazardous wastes or other wastes.

However, it specifies that a state exercising this right will inform the other states of its decision. No state will allow any transboundary movement of hazardous or other wastes to a state which has prohibited their import. Parties shall also prohibit the export of hazardous or other wastes to a group of states belonging to an economic and/or political integration organization prohibiting such imports.

The export of hazardous wastes to a state not party to the Basel Convention and the import of hazardous wastes from a non-party state is prohibited. Parties have the right, however, to make multilateral, bilateral or regional agreements with other parties or with non-parties, provided these agreements establish requirements which are no less environmentally sound than the the Basel Convention and their provisions are no less stringent. In other words, the Basel Convention's provisions are the benchmark with regards to hazardous wastes management and control for all contracting parties between each other and in their agreements with non-parties. The secretariat must be informed each time a party enters into such an agreement.

Movements allowed under the Basel Convention must take place in accordance with the control measures stipulated by the convention. In particular, hazardous wastes or other wastes subject to transboundary movements must be packaged, labeled and transported in conformity with generally accepted international rules and standards.

Where transboundary movements of hazardous wastes are generally permissible, regulations are very strict. The convention provides for a control system based on the key principle of a "written prior informed consent" which imposes certain rights and duties on exporting states, importing states and states of transit.

SPECIFIC OBLIGATIONS

The exporting state must officially inform the importing state of any intended transboundary movement, either by providing sufficiently detailed information to enable the importing state to assess the risks implied by the movement, or by requesting the generator to do so. This must include information on the reason for the movement, the exporter, the generator of the waste, the nature of the waste, packaging and itinerary, the disposer and the method of disposal. The importing state must consent in writing, laying down conditions or denying permission for the movement. The exporting state cannot allow the waste to be moved without this written consent and until a contract is established between the generator and the disposer, setting out the environmentally sound conditions under which the wastes are to be managed.

States of transit—states through which a movement of hazardous waste is planned—must be given prior notification with the same information given to the state of import, whether it is a party to the convention or not. If the state of transit is not a party, the same prior written consent procedure as for the state of import is applicable. If the state of transit is a party, it must acknowledge on receipt of notification and

GENERAL DOCUMENTATION

CETDEM, Regional Seminar on the Implementation of the Basel Convention on the Transboundary Movements of Hazardous Wastes and their Disposal, 11-13 April 1994, Kuala Lumpur, Malaysia, Proceedings, UNEP, May 1994.

Ministry for Environment and Regional Policy of Hungary, The Basel Convention, lectures delivered on the workshop held in Budapest, 7-11 October 1991, Budapest, 1992.

Secretariat of the Basel Convention, Managing Hazardous Wastes, Newsletter of the Basel Convention, No.1; No.2, November 1992; No.3, April 1993, No.4, March 1994.

UNEP, The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, Environmental Law and Institutions Unit, Nairobi, 1990.

UNEP, Final Report of the Working Group of Experts on the Environmentally Sound Management of Hazardous Wastes, with the Cairo Guidelines and Principles for the Environmentally Sound Management of Hazardous Wastes as Annex, UNEP/WG.122/3, UNEP/CG.14/17, Annex II, 9 December 1985.

then respond within 60 days, either granting or denying permission.

Any party may waive the requirement of prior written consent for transit movements of hazardous wastes through its territory. In this case, the state of export may allow a movement to proceed through the transit state if it has received no response within 60 days after receipt of a notification by the state of transit.

Even if the waste involved is not considered hazardous by every state involved, those states which do consider it hazardous retain the right to treat it as such, whether they are transit or importing states.

Movement documents must be signed by every person taking charge of transboundary movement of hazardous wastes; the disposer must also inform the exporter and the state of export of the receipt of the wastes and the completion of their disposal. Insurance coverage or another financial guarantee must be provided for every transboundary movement of hazardous wastes or other wastes.

One outstanding aspect of the convention is that illegal traffic—transboundary movement of hazardous wastes carried out in a manner not consistent with the provisions of the convention or its control system—is considered criminal. Accordingly, parties have an obligation to enact national legislation to prevent and punish it. In the international field, the state of export is responsible for the actions of the exporter and the generator, while the state of import is responsible for the actions of the importer and the disposer. The state responsible for the action leading to an illegal movement has the obligation to ensure the wastes'

environmentally sound disposal by reimportation into the state of export or otherwise, within 30 days of receiving information about the illegal movement. Moreover, if an otherwise legal transboundary movement cannot be performed in accordance with the contractual agreement, the state of export has a duty to ensure the reimportation of the waste, unless alternative arrangements for their environmentally sound management is agreed.

Membership in the convention is open to states and political and/or economic integration organizations. No reservations are possible.

NGO VIEWS

As with all conventions, parties and observers have their say and are not necessarily in full agreement with the final instrument.

One example is the view of the Executive Director of the Center for Environment, Technology and Development of Malaysia, expressed at the Regional Seminar on the Implementation of the Basel Convention which was held in Kuala Lumpur, Malaysia from 11-13 April 1994. He felt the convention's scope was too narrow; he pointed to the exclusion of nuclear wastes and wastes from normal ship operations, the qualifier "taking all practicable steps" with respect to environmental sound management of hazardous wastes, the lack of consistency in the enforcement of sanctions against illegal traffic despite its qualification as criminal, the allowance of international agreements on transboundary movement of hazardous wastes provided they are compatible with the convention, and not fully complying with it, the weakness of the financial mechanism based on entirely voluntary contributions, the lack of firm commitment to the establishment of an interim fund to cope with emergencies, and the narrow mandate given to the secretariat, excluding an advisory role. He further criticized the convention on the basis of its unwillingness to share clean technologies on concessional terms with developing countries, poor enforcement and monitoring capabilities, the lack of adequate national legislation to match the provisions of the convention, the absence, as of now, of an international liability and compensation mechanism, and the marginalization of the role of ordinary citizens in toxic wastes management.

At the time the convention was adopted, developing countries and NGOs expressed concern about the fact that the convention does not, in principle, ban transboundary movements of hazardous wastes. However, such a general prohibition may run counter to the objective of environmentally sound disposal of hazardous wastes, for instance where one developed country exports such waste to

OFFICIAL DOCUMENTATION

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (*text of the convention and of the decisions adopted at the First and Second Meetings of the COP*).

Revised Draft Model National Legislation on the Management of Hazardous Wastes and Other Wastes as well as on the Control of Transboundary Movements of Hazardous Wastes and Other Wastes and their Disposal.

Manual for the Implementation of the Basel Convention.

Texts on the Bilateral, Multilateral and Regional Agreements or Arrangements regarding Transboundary Movements of Hazardous Wastes and other Wastes.

The Basel Convention and the African Countries.

Reporting and Transmission of Information Required under the Basel Convention: Compilation of Information Received June 1994-December 1994.

Guidance in Developing National or Regional Strategies for the Environmentally Sound Management of Hazardous Wastes.

A full list of publications of official documentation is available from: Secretariat of the Basel Convention, Geneva Executive Center, 15 Chemin des Anémones (Building D), 1219 Châtelaine (GE), Switzerland. Tel: +41-

another developed country that has more appropriate disposal facilities. Moreover, some of these criticism were allayed following the ban on hazardous wastes export from OECD to non-OECD parties imposed by the second COP. It is also feared that many developing countries do not possess the technical capacity and know-how to make appropriate use of the control system and that illegal practices are therefore bound to continue. The monitoring functions of the secretariat will be essential in the context of the control system, as well as the implementation of the convention's provisions regarding international cooperation, training and assistance and the transfer of technology.

FOLLOW-UP

The third Conference of the Parties will be held in September/October 1995 in Nairobi (Kenya), with exact dates to be determined.

This issue of E&D File has been compiled by David Kupeczek for the United Nations Non-Governmental Liaison Service (NGLS). For more information or additional copies write to: NGLS, Palais des Nations, CH-1211 Geneva 10, Switzerland, or NGLS, Room 6015, 866 UN Plaza, New York NY 10017, USA.

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