



FIFTH CONFERENCE OF THE PARTIES TO THE BASEL CONVENTION 6 – 10 DECEMBER 1999

The Fifth Conference of the Parties (COP-5) to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, hosted by the Swiss Agency for the Environment, Forests and Landscape, opens today in Basel, Switzerland, and will continue until 10 December 1999. A high-level segment for ministers and heads of delegations will take place from 9–10 December. Delegates to COP-5 will celebrate the 10th anniversary of the adoption of the Convention and are expected to adopt a declaration on their vision for promoting the environmentally sound management of hazardous wastes over the next 10 years, together with a decision setting the agenda for this period. They will also attempt to adopt a Protocol setting rules on liability and compensation for damage resulting from transboundary movements of hazardous wastes and their disposal.

A BRIEF HISTORY OF THE BASEL CONVENTION

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal was adopted in 1989 and entered into force on 5 May 1992. The Convention was a response to concerns over the management, disposal and transboundary movements of annual worldwide production of 400 million tonnes of wastes hazardous to people or the environment. The main principles of the Convention are: transboundary movements of hazardous wastes should be reduced to a minimum consistent with their environmentally sound management; hazardous wastes should be treated and disposed of as close as possible to their source of generation; and hazardous waste generation should be reduced and minimized at the source. Currently, 132 States and the European Community are Parties to the Convention.

COP-1: The First Conference of the Parties was held in Piriapolis, Uruguay, from 3–4 December 1992. COP-1 requested industrialized countries to prohibit transboundary movements of hazardous wastes for disposal to developing countries. It also noted that transboundary movements of wastes destined for recovery and recycling take place in accordance with the requirement that the waste be handled in an environmentally sound manner (Decision I/22). As Decision I/22 was not legally binding, a “pro-ban coalition,” consisting of developing countries, Greenpeace and the Nordic States, urged delegates to adopt a binding amendment to the Convention. The issue of hazardous wastes destined for recycling and recovery was forwarded to the Technical Working Group (TWG) for further study.

COP-2: During the Second Conference of the Parties, held in Geneva from 21–25 March 1994, Parties agreed on an immediate ban on the export from OECD to non-OECD countries of hazardous wastes intended for final disposal. Parties also agreed to ban, by 31 December 1997, the export of wastes intended for recovery and recycling (Decision II/12). The issue of whether or not the ban was legally binding was unclear, since Decision II/12 was not incorporated into the text of the Convention itself.

COP-3: At the Third Conference of the Parties, held in Geneva from 18–22 September 1995, the ban was adopted as an amendment to the Convention (Decision III/1). This amendment does not use the OECD/non-OECD membership distinction, but bans the export of hazardous wastes for final disposal and recycling from Annex VII countries (Parties and other States that are members of the EU, OECD, Liechtenstein) to non-Annex VII countries. It thus permits non-OECD countries to retain the option of receiving OECD hazardous wastes for recycling purposes by joining Annex VII. This amendment will enter into force following its 62nd ratification. To date, it has been ratified by 17 Parties. COP-3 further mandated the TWG to continue its work on the characterization of “hazardous wastes” and the development of lists of wastes that are hazardous (Decision III/12).

COP-4: Two of the major decisions adopted at the Fourth Conference of the Parties, held in Kuching, Malaysia, from 23–27 February 1998, related to the ban amendment. COP-4 considered proposals by countries, including Slovenia, Israel and Monaco, to join Annex VII and decided that the composition of this Annex would remain unchanged until the ban amendment enters into force (Decision IV/8). On the clarification of which wastes should be included under the ban, COP-4 considered the proposal put forward by the TWG on List A, identifying wastes characterized as hazardous, and List B, identifying non-hazardous wastes. COP-4 decided to incorporate these lists as Annex VIII and Annex IX respectively.

INTERSESSIONAL HIGHLIGHTS

TECHNICAL WORKING GROUP: The TWG met for its 13th session from 27–29 April 1998 in Geneva, its 14th session from 2–5 November 1998 in Pretoria and its 15th session from 11–14 April 1999 in Geneva. Delegates considered and agreed on: a procedure for reviewing or adjusting the lists of wastes contained in Convention Annexes VIII and IX; and draft technical guidelines on physico-chemical treatment and on the identification and management of used tires. The TWG also advanced its work on, *inter alia*: guidelines on the management of biomedical and health care wastes and on the identification and management of plastic wastes; course of action for the review of wastes placed in list C (working

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list of wastes awaiting classification); and development of scoping papers on the hazard characterization of wastes. The reports of the meetings can be found at: <http://www.unep.ch/basel/meetings/sbc/twg>.

SECOND JOINT MEETING OF THE TECHNICAL WORKING GROUP WITH THE CONSULTATIVE SUB-GROUP OF LEGAL AND TECHNICAL EXPERTS: The Second Joint Meeting of the Technical Working Group and Consultative Sub-group of Legal and Technical Experts (TWG/Consultative Sub-group) met from 14-16 April 1999 in Geneva. Delegates considered the implementation of decisions adopted at COP-4. On Convention Annex VII (Parties that are members of the EU, OECD and Liechtenstein to which the ban amendment could apply), delegates agreed on the terms of reference for Part II of the study on issues related to this Annex. The purpose of the Part II analysis is to explore health, environmental, social, economic and other issues related to Annex VII that are considered important by the COP and to assist Parties in ratifying the ban amendment. In their consideration of the draft guidance elements for bilateral, multilateral or regional agreements and arrangements, delegates debated the issue of the relationship of these agreements and arrangements with Decision III/1 (ban amendment). Concerning the development of procedures to assist Parties in preventing, identifying and managing illegal traffic, delegates decided that more work was needed on the draft guidance elements elaborated at their previous meeting (6-7 November 1998 in Pretoria) and that COP-5 should therefore confirm that this item remain on its agenda.

Delegates also considered the proposal for the creation of a monitoring and compliance regime for the Convention, as well as the document titled "Monitoring the Implementation of and Compliance with the Obligations set out by the Basel Convention" prepared by an informal group of the Consultative Sub-group. Delegates agreed to leave aside the discussion on the nature of such a mechanism and that further work was needed on the terms of reference for the regime.

On the analysis of Convention Article 20 (dispute settlement), delegates disagreed on whether the article continues to meet the needs of Parties. They agreed to keep consideration of this item on the agenda and invited the Secretariat to prepare a working document synthesizing responses from Parties to a questionnaire on Article 20 for the next meeting of the TWG/Consultative Sub-group. On the issue of an emergency fund, delegates expressed diverging views on the need for its establishment and considered a Caribbean proposal that suggests the issue be addressed within the development of a framework of an overall emergency response mechanism. They also considered the issue of the dismantling of ships. In this regard, they agreed to invite COP-5 to mandate the TWG to develop management guidelines in collaboration with the International Maritime Organization, and to mandate the TWG/Consultative Sub-group to discuss the related legal aspects under the Convention. The report of the meeting can be found at: <http://www.unep.ch/basel/meetings/sbc/jtwg-2a.htm>.

FOURTH SESSION OF THE OPEN-ENDED AD HOC COMMITTEE FOR THE IMPLEMENTATION OF THE BASEL CONVENTION: The Fourth Open-Ended *Ad Hoc* Committee for the Implementation of the Basel Convention met from 21-24 June 1999 in Geneva. Representatives from 82 Parties, two non-Party States, three intergovernmental organizations and three NGOs attended the meeting. Parties met to review the COP-5 agenda as well as the draft decisions to be forwarded to COP-5 for adoption. The Committee considered and adopted 26 decisions. A number of these are based on the outcome of the meetings of the TWG and of the second Joint Meeting of the TWG/Consultative

Sub-Group. The other decisions cover, *inter alia*, the implementation of Decision III/1 (ban amendment), international cooperation, the role of the regional and sub-regional centres for training and technology transfer, and capacity building activities. The Committee also invited the Secretariat to prepare, for consideration by COP-5, a list of all the legal tasks of relevance to the work of the subsidiary bodies, as well as draft decisions on the task and mandate of each subsidiary body. The Committee considered a draft declaration on the challenges of the Convention for the next decade and the associated decision that would constitute the agenda on the environmentally sound management of wastes for this period. The declaration and decision are expected to be finalized in a sub-group held during the preparatory segment of COP-5.

On the development of a Draft Protocol on Liability and Compensation, the Committee noted that the 10th session of the *Ad Hoc* Working Group was scheduled to meet before COP-5 and requested that the Secretariat prepare a draft decision for consideration by COP-5. The Convention's Executive Secretary informed the Committee that special arrangements would be made during COP-5 to allow for signature of the Protocol. Finally, on the budget for 2001-2002, discussions focused on the cost of participation of developing country experts. Two alternative budget proposals were forwarded to COP-5.

10TH SESSION OF THE AD-HOC WORKING GROUP OF LEGAL AND TECHNICAL EXPERTS TO CONSIDER AND DEVELOP A DRAFT PROTOCOL ON LIABILITY AND COMPENSATION FOR DAMAGE RESULTING FROM THE TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES AND THEIR DISPOSAL: The 10th

session of the *Ad Hoc* Working Group met from 30 August-3 September 1999 in Geneva. The Group considered the draft text resulting from its previous sessions. It agreed on Protocol Article 13, except its Annex, concerning financial limits for liability under Convention Articles 4 (general obligations) and 5 (competent authorities and focal point). The Group also agreed on a text addressing the relationship between the Protocol and the law of the competent court under domestic law, and to delete Protocol Article 10 (basis of claims). Delegates also considered, yet could not agree upon, articles on: the scope of application; strict liability; insurance and other financial guarantees; financial mechanism; and the Annex to Protocol Article 13 which specifies the financial limit for liability under Convention Article 4. The report of the meeting can be found at: <http://www.unep.ch/basel/meetings/sbc/liab10-2.htm>.

THINGS TO LOOK FOR TODAY

PLENARY: The Plenary is scheduled to meet from 10:00 am-12:00 pm and from 3:00-6:00 pm in the San Francisco room. In the morning Plenary, delegates will hear opening statements from: Philippe Roch, State Secretary, Head of the Swiss Agency for the Environment, Forests and Landscape; Jorge Illueca, speaking on behalf of UNEP Executive Director Klaus Toepfer; and COP-4 President Ibarahim Rosnani (Malaysia). The Plenary will then consider organizational matters, including the adoption of the agenda, election of officers, organization of work and examination of credentials. In the afternoon, the Plenary is expected to consider: implementation and monitoring, capacity-building activities, international cooperation, partnerships and challenges for the next decade of the Convention.

LEGAL WORKING GROUP ON THE DRAFT LIABILITY PROTOCOL: The Group is scheduled to meet from 12:00-1:00 pm to consider the organization of its work.