



BASEL COP-5 HIGHLIGHTS THURSDAY, 9 DECEMBER 1999

The Plenary met for its high-level segment to celebrate the 10th celebration of the Basel Convention (BC) and heard statements from 33 ministers and other heads of delegation, one guest of honor and UN bodies. The Legal Working Group (LWG) met to finalize draft text on pending Protocol on Liability and Compensation articles on: exemption of application of the Protocol to bilateral, regional and multilateral agreements (Protocol Article 3.6); strict liability (Protocol Article 4); insurance and other financial guarantees (Protocol Article 15); Meeting of the Parties (Protocol Article 26 bis); and on reservations and declarations (Protocol Article 31). The group then undertook a revision of the complete text of the Protocol and adopted a draft decision on the enlargement of the scope of the BC Trust Fund on Technical Cooperation.

The Financial Working Group (FWG) continued consideration of and agreed on a draft decision on financial arrangements. The contact group on the ministerial declaration continued consideration of and agreed on the draft declaration and draft decision on environmentally sound management.

HIGH LEVEL SEGMENT

COP-5 President Roch noted the decisions already adopted by the COP, the 10th anniversary of the BC and expressed satisfaction with the progress of the negotiations. Moritz Leuenberger, Member of the Federal Council of Switzerland and Head of the Federal Department for the Environment, Transport, Energy and Communications, highlighted that the objective of the ministerial declaration is for all countries to have the capacity to manage their wastes and said this objective would be achieved through exchange of information, transfer of technology and pilot projects. He characterized the Protocol as a source of inspiration for all environmental conventions.

Mostafa Tolba, former Executive Director of UNEP, said the increase in generation of hazardous wastes and the difficulty to obtain accurate information on waste production were major problems. He called for ratification of the BC by the US. He emphasized the need for transfer of cleaner technology and for provision of financial resources to allow cleaner production methods.

UNEP Executive Director Klaus Töpfer, speaking on behalf of UN Secretary General Kofi Annan, urged Parties to strengthen alliances with NGOs, industries and others with a view to building capacity to manage wastes, and to support developing countries' efforts toward sustainable development. He underscored the notion that "prevention pays" since waste minimization makes good economic sense, and both corporations and the environment may benefit from it.

Töpfer, speaking as Executive Director of UNEP, then said the BC proved that a multilateral agreement is a suitable legal basis for trade relations, "banning the export of risks" and enjoying economic advantages.

EFFECTIVE IMPLEMENTATION: CUBA said lack of financial and technical resources is a major problem for BC implementation by developing countries. ROMANIA said training for customs and other authorities was particularly important for BC implementation.

BAN AMENDMENT AND BC ANNEX VII (EU, OECD AND LIECHTESTEIN): URUGUAY, the EU, DENMARK, BENIN and SRI LANKA stressed the importance of the entry force of the ban amendment. NORWAY called for entry into force by COP-6. INDIA argued that the ban amendment may impede technology upgrading of the recycling industry in non-Annex VII countries. On Annex VII, ISRAEL called for criteria based on the technical expertise of the Parties for maintaining an environmentally sound industry.

CAPACITY BUILDING AND TECHNOLOGY

TRANSFER: Many delegates stressed the importance of capacity building and technology transfer. EL SALVADOR and JAPAN emphasized the role of strengthened regional centres in capacity building. UNITAR said it could make a valuable contribution to the work of the BC regional centres in the field of institutional capacity building.

PARTNERSHIPS: COTE D'IVOIRE, MICRONESIA, the EU and INDONESIA emphasized the need for cooperation between Parties and partnerships with the private sector to ensure BC implementation. GERMANY said market forces and actors must be part of BC implementation efforts.

PROTOCOL ON LIABILITY AND COMPENSATION: A number of delegates supported adoption of the Protocol at COP-5. The G-77/CHINA, with others, stressed the need for predictable funds to ensure Protocol functioning. SOUTH AFRICA said the decision to enlarge the scope of the BC Trust Fund on Technical Cooperation was only an initial compromise step.

WASTE MINIMIZATION: EL SALVADOR said waste minimization through cleaner production should be the future focus of the BC. The G-77/CHINA emphasized that progress was needed in terms of promotion and use of cleaner technologies.

REGIONAL CENTRES: A number of delegations underscored the importance of regional centres. EL SALVADOR emphasized the need for the sustainability of the centres through the allocation of a greater part of the budget and other forms of support. The EU announced that although the centres should be financially self-sufficient, it would assist and support them in their initial years. URUGUAY welcomed the work done at COP-5 towards improving their status and ensuring their financing.

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In addition, delegations highlighted the need: for an international regime on dismantling of ships; for the establishment of a procedure for preventing and monitoring illegal traffic; for recognition of the importance of certain wastes to economies of developing countries and countries with economies in transition; and to take into account the particular challenges faced by transit States with limited resources.

LEGAL WORKING GROUP

DRAFT PROTOCOL ARTICLE 3.6 (EXEMPTION OF APPLICATION OF THE PROTOCOL TO BILATERAL, REGIONAL AND MULTILATERAL AGREEMENTS):

AUSTRALIA said further consultation was needed on one of the conditions for exemption. This condition requires that the BC Article 11 Party in which the damage has occurred has previously notified the Depository of the non-application of the Protocol to any damage occurring in its jurisdiction. He said the provision produced a complex situation in which the Protocol applied in some cases and not in others.

DRAFT PROTOCOL ARTICLE 4 (STRICT LIABILITY):

Legal Drafting Group Chair Alister McGlone (UK) introduced bracketed text for instances where wastes have been notified as hazardous by the State of import but not by the state of export, or when no notification has taken place. The draft text indicates that in these cases the importer shall be liable until the disposer has taken possession of the wastes if the State of import is the notifier or if no notification has taken place. Thereafter, the disposer shall be liable for damage. The group agreed to the text with minor amendments to clauses on liability in respect of re-importation.

DRAFT PROTOCOL ARTICLE 15 (INSURANCE AND OTHER FINANCIAL GUARANTEES): Delegates accepted the following changes: the requirement to maintain financial guarantees covering liability under Protocol Article 4 (strict liability) was amended to apply to persons liable under that provision instead of to "the notifier and disposer"; the requirement that such financial guarantees only be drawn upon to provide compensation for damage covered by the Protocol was specified to be in respect of liability of the notifier, exporter or importer; and the requirement to notify coverage of liability was similarly specified to be coverage of the notifier, exporter or importer.

DRAFT PROTOCOL ARTICLE 26 bis (MEETING OF THE PARTIES): Chair McGlone introduced a draft provision that states that, *inter alia*, ordinary sessions of the Meeting of the Parties (MOP) shall meet in conjunction with meetings of the COP. Differing views focused on: the need for the MOP; whether its meetings should take place "back to back", "in conjunction" or "during" the COP; and the need to differentiate financial arrangements for these two bodies. Chair McGlone noted that the draft provision was based on the assumption that each body would have its own financial arrangements. The group agreed to the MOP meeting in conjunction with the COP on the understanding that this assumption be noted in the report of COP-5.

DRAFT PROTOCOL ARTICLE 31 (RESERVATIONS AND DECLARATIONS): Following informal consultations, the group agreed to text stating that: no reservation or exception may be made to the Protocol; and for the purposes of the Protocol, notifications according to Protocol Article 3.1 and 3.6 (scope of application) or Protocol Article 15.5 (notification on availability of direct action), shall not be regarded as reservations or exceptions.

DRAFT PROTOCOL ANNEX B (FINANCIAL LIMITS FOR LIABILITY): The group reconsidered this Annex during its review of the consolidated text of the Protocol. AUSTRALIA reiterated its reservation to Annex B provisions, particularly the scale of financial limits for strict liability for any one incident. Supported by the US, the NETHERLANDS and the REPUBLIC OF KOREA, he indicated that instead of setting a ceiling for financial limits, the scale set a floor and noted that it would render insurance for bulk shipments of recyclables unobtainable. He stated that, if not

addressed, these concerns could impede adoption of the Protocol. As a solution, he proposed setting the Annex aside and mandating the COP or the MOP to reconsider it.

HUNGARY, SLOVAKIA, the RUSSIAN FEDERATION and MALAYSIA noted the need to review financial limits for liability taking into account the special circumstances of countries with economies in transition. SWEDEN, with GERMANY, BELGIUM and JAPAN, expressed reluctance to review the scale. She indicated that financial limits to liability were core to the effectiveness of the Protocol. AUSTRIA noted that unlimited strict liability was the reason other international instruments had not been adopted. The EC, with DENMARK, COLOMBIA and HONDURAS, stressed that the Protocol's objective was not to reduce risks for the insurance industry but to reduce the risks to human health and the environment.

Following intensive informal consultations, the group arrived at a solution. It agreed to insert a provision under Protocol Article 26 (MOP) stating that COP-6 may amend the scale of financial limits for liability of Annex B following the procedure set out in BC Article 18 (Adoption and Amendment of Annexes), and that such procedure may take place before the entry into force of the Protocol. The group also agreed on a related draft COP decision taking note of the new Protocol provision and requesting the joint LWG/TWG to consider the financial limits set out in Annex B.

FINANCIAL WORKING GROUP

On the draft decision on financial arrangements, the FWG discussed and agreed on, *inter alia*, the costs associated with the translation of meeting documents into three and six UN languages. Delegates agreed to reallocate US\$250,000 from information systems and savings from Secretariat staff salary scales to "prioritized meeting documents" to be translated into the six UN languages. Documents for the LWG and Expanded Bureau will remain in English. The draft decision also authorizes the BC Executive Secretary to utilize, on an exceptional basis, up to US\$900,000 from the reserve and fund balance of the BC Fund for the purpose of implementing prioritized activities related to the draft decision on environmentally sound management in the three year period 2000-2002.

CONTACT GROUP ON THE MINISTERIAL DECLARATION

The contact group continued discussion of and agreed on the draft declaration and related draft decision on environmentally sound management. Delegates discussed the title of these texts and agreed that it should remain unchanged. The G-77/CHINA suggested more activities be included in the draft decision annex (proposed activities to assist in the implementation of the declaration and decision for 2000-2002). Following informal consultations, the contact group agreed on a table containing the proposal, objectives, method and outcome for each proposed activity.

IN THE CORRIDORS

Thursday's sudden storm over financial limits to strict liability, which saw the Protocol teeter on the brink and then scramble to safety, left delegates speculating as to the degree of genuine resolve for a Protocol. Some suggested the eleventh-hour difficulty on such a fundamental element of the Protocol was indicative of more widespread but unvoiced difficulties which reflect conflicting positions that, after ten years of negotiations, still have to be reconciled. In spite of today's quick fix, they pondered the implications for the convention of having to resort to such short-term solutions.

THINGS TO LOOK FOR TODAY

PLENARY: The Plenary will continue its high-level segment from 10:00 am-1:00 pm and 3:00-4:30 pm in the San Francisco room and is expected to hear approximately 20 statements. The Plenary will then consider: the Protocol; challenges of the BC for the next decade; institutional, financial and procedural arrangements; implementation and monitoring; and adoption of decisions and the report.