



SUMMARY OF THE FIFTH CONFERENCE OF THE PARTIES TO THE BASEL CONVENTION ON THE CONTROL OF TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES AND THEIR DISPOSAL: 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, met in Basel, Switzerland, from 6-10 December 1999. With over 450 participants in attendance and 115 Parties represented, delegates celebrated the 10th anniversary of the adoption of the Convention. They also adopted the long-awaited Protocol on Liability and Compensation for damage resulting from transboundary movements of hazardous wastes and their disposal and a ministerial declaration on their vision for promoting the environmentally sound management of hazardous wastes over the next 10 years, along with a decision setting the next decade's agenda.

Delegates met in a preparatory segment from 6-8 December followed by a high-level segment on 9-10 December. The COP adopted a number of decisions, many of which had been already considered and agreed upon by the Fourth session of the Open-ended *Ad Hoc* Committee for the implementation of the Convention. These decisions cover: Convention implementation and monitoring, legal matters, prevention and monitoring of illegal traffic, technical matters, and institutional, financial and procedural arrangements. The Plenary was assisted in its work by the Legal Working Group, which considered the draft Protocol, the Financial Working Group, which considered the budget for 2001-2002, a contact group on the ministerial declaration and various informal discussion groups. Fifty-six ministers and other heads of delegation addressed COP-5 during its high-level segment. Delegates completed their work in an atmosphere of true celebration of the 10th anniversary of the Convention.

A BRIEF HISTORY OF THE BASEL CONVENTION

The Basel Convention was adopted in 1989 and entered into force on 5 May 1992. It was created to address concerns over the management, disposal and transboundary movements of annual worldwide production of 400 million tonnes of wastes hazardous to people or the environment, according to UNEP estimates. The main principles of the Convention are: transboundary movements of hazardous wastes should be reduced to a minimum consistent with their environmen-

tally 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 (EC) 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 of hazardous wastes intended for final disposal from OECD to non-OECD countries. 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.

IN THIS ISSUE

A Brief History of the Basel Convention	1
COP-5 Report	3
Implementation and Monitoring	3
Legal Matters	4
Prevention and Monitoring of Illegal Traffic in Hazardous Wastes and Other Wastes	5
Technical Matters	5
Institutional and Financial Arrangements	5
Challenges for the Next Decade	6
Protocol on Liability and Compensation	6
Tenth Anniversary Celebration	10
Closing Plenary	11
A Brief Analysis of COP-5	12
Things to Look For	13

This issue of the *Earth Negotiations Bulletin* © <enb@iisd.org> is written and edited by Paola Bettelli <pbettelli@iisd.org>, Richard Campbell <richcam@hotmail.com>, Valerie Colas de Thibouville <vcolas@iisd.org> and Juliette Voinov <cedrickohler@email.msn.com>. The Editor is Pamela Chasek, Ph.D. <pam@iisd.org> and the Managing Editor is Langston James "Kimo" Goree <kimo@iisd.org>. Digital editing by Kenneth Tong <k80@interlog.com>. Logistics coordinated by P.J. Goldfeder (pjgold14@aol.com). The Sustaining Donors of the *Bulletin* are The Netherlands Ministry of Foreign Affairs, the Government of Canada (through CIDA), the United States (through USAID), the Swiss Agency for Environment, Forests and Landscape, the United Kingdom Department for International Development (DFID) and the European Commission (DG-XI). General Support for the *Bulletin* during 1999 is provided by the the German Federal Ministry of Environment (BMU) and the German Federal Ministry of Development Cooperation (BMZ), the Danish Ministry of Foreign Affairs, the Government of Australia, the Ministry of Environment of Austria, the Ministries of Foreign Affairs and Environment of Norway, the Ministry of Environment and Foreign Affairs of Finland, the Government of Sweden, the United Nations Development Programme (UNDP), the Global Environment Facility (GEF) and BP Amoco. The *Bulletin* can be contacted by e-mail at <enb@iisd.org> and at tel: +1-212-644-0204; fax: +1-212-644-0206. IISD can be contacted by e-mail at <info@iisd.ca> and at 161 Portage Avenue East, 6th Floor, Winnipeg, Manitoba R3B 0Y4, Canada. The opinions expressed in the *Earth Negotiations Bulletin* are those of the authors and do not necessarily reflect the views of IISD and other funders. Excerpts from the *Earth Negotiations Bulletin* may be used in non-commercial publications only and only with appropriate academic citation. For permission to use this material in commercial publications, contact the Managing Editor. Electronic versions of the *Bulletin* are sent to e-mail distribution lists and can be found on the Linkages WWW server at <http://www.iisd.ca/linkages/>. The satellite image was taken above Basel (c)1999 The Living Earth, Inc. <http://livingearth.com>. For information on the *Earth Negotiations Bulletin*, send e-mail to <enb@iisd.org>.



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 (EU, OECD, Liechtenstein) to non-Annex VII countries. It thus is not in itself a barrier for 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). In this decision, COP-4 also requests the Secretariat to undertake a study of the issues related to Annex VII. 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.

TWG-13 TO 15: 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 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; a course of action for the review of wastes placed in list C (working list of wastes awaiting classification); and development of scoping papers on the hazard characterization of wastes.

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 Annex VII (EU, OECD and Liechtenstein), 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 remains 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 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.

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 (the Committee) 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 the ban amendment, international cooperation, the role of the regional and subregional 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. On the development of the Protocol, 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. 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 limits for liability under Convention Article 4.



COP-5 REPORT

Philippe Roch, State Secretary and Head of the Swiss Agency for the Environment, Forests and Landscape, speaking on behalf of the Government of Switzerland, opened COP-5 on Monday, 6 December, and welcomed delegates to Basel. He said the Basel Convention (BC) was a model convention coming to fruition that required more intensive cooperation with the industry sector. He added that there was a need for good coordination, through UNEP, between the Convention and other international legal instruments dealing with chemicals. He also stressed that the Convention deals with both environmental and trade issues.

Jorge Illueca, speaking on behalf of UNEP Executive Director Klaus Töpfer, said the future of the BC should follow a bipolar strategy responding to the needs of developed as well as developing countries. It should, therefore, focus both on the classification or characterization of wastes and on their environmentally sound management. He added that the adoption of the Protocol would constitute a major advancement in international law and complete the set of tools under the Convention to ensure the protection of human health and the environment.

COP-4 President Ibarahim Rosnani (Malaysia) considered the new millennium as a pertinent time to reflect on the past and future of the Convention. Noting progress in minimizing dumping of hazardous wastes, she said the stage is set to implement the ban amendment and to turn to the priorities of capacity building, illegal traffic and technology transfer, and stressed completion of the Protocol.

ORGANIZATIONAL MATTERS: The COP then adopted its provisional agenda (UNEP/CHW.5/1) and elected Philippe Roch as COP-5 President. The COP elected the following Bureau members: Vice-Presidents Arturo Navarro (Costa Rica), Vlastimila Mikulová (the Czech Republic) and Mohamed El Zarka (Egypt). Indrani Chandrasekaran (India) was elected Rapporteur. Delegates established two working groups and one contact group to assist the Plenary in its work on the Protocol, financial arrangements and challenges for the next decade. The following Chairs were elected: Everton Vargas (Brazil) for the Legal Working Group (LWG); Dick C. de Bruijn (the Netherlands) for the Financial Working Group (FWG) and John Myslicki (Canada) for the contact group on the ministerial declaration. The COP then heard a report from Chair Vargas on the organization of work of the LWG. On Tuesday, 7 December, the COP endorsed a proposal put forward by Iran to elect Jawed Ali Khan (Pakistan) Chair of the Technical Working Group (TWG).

This report is divided into sections reporting the proceedings of work undertaken in: the Plenary; the LWG tasked with finalizing the Protocol on Liability and Compensation; and the high-level segment celebrating the 10th anniversary of the Convention.

IMPLEMENTATION AND MONITORING

IMPLEMENTATION OF ISSUES RELATED TO DECISION II/12 AND THE AMENDMENT CONTAINED IN DECISION III/1:

On Tuesday, 7 December, the Plenary considered the implementation of issues related to Decision II/12 and the amendment contained in Decision III/1. BRAZIL, supported by others, said non-ratification of the ban amendment was linked to the absence of technical and scientific criteria for inclusion in BC Annex VII (EU, OECD, Liechtenstein). She said work was needed to develop such criteria based on the capacities of countries to manage wastes in an environmentally sound manner, rather than on a developing/developed country basis. EGYPT, supported by others, said Phase I of the study on issues related to BC Annex VII highlighted the need for capacity building in data collection and waste management in developing countries. The Plenary adopted the three draft decisions put forward by the Committee with a minor amendment on the Annex VII decision. In these decisions, COP-5: encourages Parties as well as non-Parties to

report on the implementation of decisions II/12 (ban decision) (draft decision 1 in UNEP/CHW.5/27); strongly appeals to Parties to ratify the ban amendment (draft decision 2 in UNEP/CHW.5/27); and requests the Secretariat to continue its work on the second phase of the analysis of the issues related to Annex VII (draft decision 3 in UNEP/CHW.5/27). On Wednesday, 8 December, the Plenary took note of a submission made by Israel in which it withdraws its proposal to amend BC Annex VII (UNEP/CHW.5/CRP.1).

CAPACITY-BUILDING ACTIVITIES: Regional and Subregional Centres for Training and Technology Transfer: On Monday, 6 December, delegates considered the report on regional and subregional centres for training and technology transfer and the corresponding draft decision put forward by the Committee (decision 23 in UNEP/CHW.5/27). EGYPT, supported by SENEGAL, NIGERIA and ALGERIA, said equality between the different regions was needed, as well as establishment of training centres in Africa. SENEGAL, with others, stressed the problem of financing the centres and suggested a working group be established on this issue. The RUSSIAN FEDERATION, supported by CHINA, opposed the creation of new centres and said the functioning of existing centres should be ensured. She called on the Secretariat to tackle the financing issue as opposed to leaving centres to find individual solutions. Ibrahim Sow (Senegal) agreed to chair a drafting group to finalize the text of the draft decision.

The drafting group met on Tuesday, 7 December, and had preliminary discussions on the main concerns raised at the regional centres workshop, held immediately prior to COP-5, including sustainability and legal status of centres, equality of centres, and the need for synergy. On Wednesday, 8 December, the Plenary considered, but could not agree upon, the draft decision put forward by the drafting group and President Roch invited this group to re-consider the issue further. On Friday, 10 December, the Plenary considered and adopted, with a minor amendment, a new draft decision (UNEP/CHW.5/CRP.4/Rev.1). The decision, *inter alia*:

- takes note of progress in the establishment and operation of regional and subregional centres;
- requests the Secretariat to explore possibilities for the establishment of partnerships with the industry sector, relevant NGOs and other stakeholders in the work of the centres, in order to ensure the long-term sustainability of their operation;
- recognizes the need for the enhancement of the status of the centres as a way to attract additional financial support and to identify diverse sources of funding;
- emphasizes the importance of equality between centres with regard to financial support and operational arrangements; and
- requests the Secretariat to develop a draft framework agreement for consideration by the Implementation Working Group (IWG) and for adoption at COP-6.

Training and Seminars: On Friday, 10 December, the Plenary adopted, without discussing, the draft decision on training and seminars previously adopted by the Committee (decision 24 in UNEP/CHW.5/27). In this decision, COP-5, *inter alia*:

- requests the Secretariat to continue developing training programmes and organizing training activities within the framework of regional centres;
- requests the Secretariat to continue promoting public awareness; and
- urges Parties to contribute to the Trust Fund to Assist Developing and Other Countries in Need of Technical Assistance (BD Trust Fund).

Current and planned legal, technical and institutional assistance: On Friday, 10 December, the Plenary adopted, without discussing, the draft decision on current and planned legal, technical and institutional assistance previously adopted by the Committee (decision 25 in UNEP/CHW.5/27). In this decision, COP-5, *inter alia*,



reiterates the importance of the provision of financial resources to the BD Trust Fund, and invites all stakeholders to provide financial resources and assistance in-kind.

INTERNATIONAL COOPERATION: On Monday, 6 December, the Plenary considered draft decisions, put forward by the Committee, on international cooperation with: UNEP on the activities undertaken at the global level on persistent organic pollutants (POPs); the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade; the World Customs Organization; the OECD; and UN bodies, specialized agencies, regional systems and organizations, and others (decisions 17, 18, 19, 20 and 21 in UNEP/CHW.5/27).

Concerning cooperation with UNEP on POPs, the RUSSIAN FEDERATION suggested the Secretariat continue its cooperation with a view to building the capacities of developing countries "and other countries in need" to manage waste POPs. On Wednesday, 8 December, the Plenary adopted a new draft decision on cooperation with UNEP on activities on POPs, which integrates the amendment proposal put forward by the RUSSIAN FEDERATION (UNEP/CHW.5/CRP.2), along with the four other decisions on international cooperation. In these decisions, COP-5, *inter alia*, requests the Secretariat to continue its cooperation with these institutions with a view to promoting synergy and avoiding duplication.

PARTNERSHIPS WITH THE INDUSTRY AND BUSINESS SECTORS AND WITH ENVIRONMENTAL NGOS: On Friday, 10 December, the Plenary adopted, without discussion, a draft decision previously adopted by the Committee (decision 22 in UNEP/CHW.5/27) on partnerships with the industry and business sectors and with environmental NGOs.

INFORMATION MANAGEMENT AND DISSEMINATION: On Tuesday, 7 December, delegates considered the draft decisions on implementation of decision IV/3 (transmission of information) and on the development of the information system on hazardous wastes and their management, put forward by the Committee (decisions 13 and 14 in UNEP/CHW.5/27). CANADA stressed the importance of reporting to consider Parties' implementation of the BC and, with BRAZIL and NEW ZEALAND, said the questionnaire covering all the basic data needed to assess country status relevant to the generation and management of wastes should be more specific. President Roch said that a new draft decision on the development of an information system would include reference to streamlining the questionnaire.

On Wednesday, 8 December, the Plenary adopted the draft decision concerning transmission of information which, *inter alia*, requests the Secretariat to review the existing questionnaire used for reporting with a view to simplifying it as appropriate, so as to facilitate reporting from Parties (UNEP/CHW.5/CRP.3). The Plenary also adopted the draft decision concerning the development of the information system on hazardous wastes and their management, as amended by the RUSSIAN FEDERATION (UNEP/CHW.5/11). In this decision, COP-5, *inter alia*:

- welcomes the development of the three-level questionnaire which is intended to facilitate compliance by Parties with the reporting requirement under the BC;
- requests the Secretariat to promote access to the BC information system on the internet; and
- requests the Secretariat to explore the possibility of making the questionnaire for BC reporting available on the internet.

The amendment deletes the specification that the three-level questionnaire is intended to facilitate compliance "in particular for Parties that are developing countries and countries with economies in transition."

LEGAL MATTERS

MONITORING THE IMPLEMENTATION OF AND COMPLIANCE WITH THE OBLIGATIONS SET OUT BY THE BC: On Tuesday, 7 December, the Plenary considered a draft decision on monitoring the implementation of and compliance with the obligations set out by the BC, forwarded by the Committee. CANADA, supported by BRAZIL, GERMANY and the PHILIPPINES, but opposed by the UK, said the Committee, rather than the LWG, should be entrusted with the task of preparing a draft decision since it has broader Party representation. Following consultations on this issue, the Secretariat said it would prepare a new draft decision integrating amendments put forward by the UK in which, *inter alia*, "a proposed decision" rather than "a proposal" for adoption should be prepared on the establishment of a "compliance" mechanism, rather than on "a mechanism on implementation and compliance." On Wednesday, 8 December, the Plenary adopted the draft decision with an amendment stating that the LWG is requested to prepare a "draft" decision establishing a "mechanism for promoting the implementation and compliance based on the draft elements annexed to the present decision" (UNEP/CHW.5/CRP.6/Rev.1).

ANALYSIS OF THE DISPUTE SETTLEMENT MECHANISM UNDER ARTICLE 20: On Tuesday, 7 December, delegates considered the analysis of the dispute settlement mechanism under Article 20 and, without discussion, adopted the draft decision forwarded by the Committee, which extends the mandate of the LWG to give further consideration to this issue (decision 5 in UNEP/CHW.5/27).

WORK ON THE EMERGENCY FUND AND MECHANISM: On Tuesday, 7 December, the Plenary considered the draft decision on the work on the emergency fund and mechanism. NORWAY, with CANADA, AUSTRALIA and FRANCE, highlighted the risk of overlap with work undertaken on this issue in the LWG. President Roch invited the Secretariat to come back to the Plenary with a draft decision harmonized with the outcome from that group. This issue was considered by the LWG when addressing Protocol Article 15 (financial mechanism). [Note: See discussion on the Protocol on page 9.]

COMPETENT AUTHORITIES AND FOCAL POINTS: On Tuesday, 7 December, the Plenary adopted, without discussion, the draft decision on competent authorities and focal points forwarded by the Committee (decision 7 in UNEP/CHW.5/27). In the decision, COP-5 invites Parties to inform the Secretariat of the designation of their competent authorities and focal points as soon as possible.

AGREEMENTS AND ARRANGEMENTS: On Tuesday, 7 December, the Plenary considered the report on bilateral, multilateral and regional agreements or arrangements concluded under BC Article 11 and the draft guidance elements for bilateral, multilateral or regional agreements or arrangements. The Plenary adopted the draft decisions forwarded by the Committee without discussion (decisions 15 and 16 in UNEP/CHW.5/27). The former requests Parties to report on the conformity with Article 11 of any agreements or arrangements they have entered into. The latter extends the mandate of the TWG and the Consultative Subgroup of Legal and Technical Experts and requests them to finalize the draft guidance elements for approval at COP-6.

PROPOSED WORK PROGRAMME OF THE LEGAL WORKING GROUP: On Wednesday, 8 December, the Plenary considered the draft decision on the work programme of the LWG prepared by the Secretariat at the request of the Committee. CANADA, opposed by the EC, said the TWG, rather than the LWG in cooperation with the TWG, should assume the main responsibilities in the execution of decision IV/8 (study on issues relating to BC Annex VII) since most of the work to be undertaken was of a technical nature. GERMANY suggested that the Expanded Bureau be charged with the responsibility of ensuring an efficient allocation of the work on this



issue between the TWG and the LWG. The draft decision was adopted without amendment (UNEP/CHW.5/CRP.5). In the decision, COP-5 adopts the LWG's programme of work and requests the LWG to prioritize the activities to be carried out.

PREVENTION AND MONITORING OF ILLEGAL TRAFFIC IN HAZARDOUS WASTES AND OTHER WASTES

On Tuesday, 7 December, the Plenary adopted the draft decision forwarded by the Committee, as amended by CANADA, in which Parties are requested to bring alleged cases of illegal traffic to the attention of the Secretariat after "consultation and agreement of" the other Parties involved (decision 8 in UNEP/CHW.5/27).

TECHNICAL MATTERS

The Plenary considered the four draft decisions put forward by the Committee on this agenda item on Tuesday, 7 December. It adopted the proposed work programme of the TWG as well as the technical guidelines on physico-chemical treatment and biological treatment and the technical guidelines on the identification and management of used tires (decision 12 in UNEP/CHW.5/27). BRAZIL highlighted that the work programme assigns the TWG with the task of developing technical guidelines on waste batteries.

On hazardous wastes minimization, the Plenary adopted the draft decision with a proposal from NEW ZEALAND that the COP also request the TWG "to explore specific measures that can be used to encourage the minimization of hazardous wastes generation" (decision 10 in UNEP/CHW.5/27).

The Plenary adopted, without discussion, the draft decision on the technical guidelines for the identification and environmentally sound management of plastic waste and for its disposal (decision 11 in UNEP/CHW.5/27). In this decision, COP-5, *inter alia*:

- takes note of the draft technical guidelines;
- requests the Secretariat to prepare a revised version of technical guidelines; and
- requests the TWG to finalize its work for consideration by COP-6.

The Plenary also adopted, without discussion, the draft decision on dismantling of ships (decision 26 in UNEP/CHW.5/27). In this decision, COP-5 *inter alia*: gives a mandate to the TWG to prepare, in collaboration with the appropriate body of the International Maritime Organization, guidelines for the environmentally sound management of the dismantling of ships; and gives a mandate to the TWG and the LWG to discuss the related legal aspects under the BC.

INSTITUTIONAL, FINANCIAL AND PROCEDURAL ARRANGEMENTS

INSTITUTIONAL ARRANGEMENTS: On Wednesday, 8 December, the Plenary considered the draft decision on institutional arrangements prepared by the Secretariat at the request of the Committee. The draft decision (UNEP/CHW.5/CRP.7/Rev.1) was adopted with several minor amendments and states, *inter alia*:

- the subsidiary organs are reorganized in the following manner: Expanded Bureau, the IWG, TWG, LWG;
- the Expanded Bureau will, *inter alia*, perform functions requested by the IWG;
- the IWG will take over the role currently performed by the Open-ended *Ad Hoc* Committee for Implementation and will consider, *inter alia*, matters related to the budget of the BC and the bilateral, multilateral and regional agreements or arrangements;
- the IWG may request the Expanded Bureau to perform, on an *ad hoc* basis, some of its functions;
- the Secretariat is requested to prepare a draft work programme for consideration and adoption by the IWG at its first session;
- the LWG will take over the functions currently performed by the Consultative Subgroup of Legal and Technical Experts; and
- the subsidiary bodies may establish small task forces during the

meetings, with equitable geographic representation, to perform specific tasks on an *ad hoc* basis.

FINANCIAL ARRANGEMENTS: On Monday, 6 December, the FWG meeting, chaired by de Bruijn (the Netherlands), was attended by SWITZERLAND, FINLAND, GERMANY, AUSTRIA, BELGIUM, FRANCE, JAPAN, the NETHERLANDS, and the US as a non-Party observer. There was unanimous concern over the lack of developing country representation in the group, especially since the cost of developing country expert participation was the main issue to be settled. Delegates considered the budget for the Trust Fund for the Implementation of the BC (BC Trust Fund) for 2001-2002. Most delegates expressed preference for Alternative I (the budget for 2001-2002 is the same as for 2000) over Alternative II (the budget for 2001-2002 is the same as Alternative I with the inclusion of the funding for developing country expert participation). Delegates also briefly considered, *inter alia*: reclassification of two existing UNEP posts; establishment of a new post; and costs of translation of working documents in all subsidiary body meetings. SWITZERLAND said it was unreasonable to begin substantive discussions on these matters without equal representation of both developed and developing countries.

On Tuesday, 7 December, with developing countries present, the FWG continued deliberation of the two budget alternatives for the BC Trust Fund for 2001-2002. The G-77/CHINA expressed preference for the budget alternative that includes funding of developing country expert participation (Alternative II). The group considered elements of a draft decision on financial arrangements, including: reduction of the reserve and fund balance in the BC Trust Fund; and voluntary contributions to the BD Trust Fund and the BC Trust Fund.

On Wednesday, 8 December, the FWG reached consensus on the draft decision on financial arrangements, with the exception of the budget amounts. In drafting the text, delegates considered, *inter alia*: the surplus of carry-over; recognition that voluntary contributions for both trust funds are essential to the BC's functioning; proposals for new activities that have financial implications, such as translation of meeting documents in three or six UN languages; and concerns over increasing the contributions to both trust funds.

On Thursday, 9 December, the FWG agreed on the costs associated with the translation of meeting documents into three or six UN languages. Delegates decided to allot US\$250,000, taken from information systems and savings from Secretariat staff salary scales, for the translation of prioritized meeting documents into the six UN languages. Documents for the LWG and Expanded Bureau will remain in English. The draft decision authorizes the BC Executive Secretary to utilize from the reserve and fund balance of the BC Trust Fund an amount not exceeding US\$900,000 in the three-year period 2000-2002, for the purpose of implementing prioritized activities relating to the Basel declaration and decision.

On Friday, 10 December, the Plenary adopted the draft decision on financial arrangements (UNEP/CHW.5/CRP.12). This decision states that, *inter alia*:

- the approved budget for the BC Trust Fund is US\$4,201,854 per annum for 2001 and 2002, and the reserve and fund balance for the years 2001 and 2002 is reduced by US\$1,200,000 per annum, the level of contributions being established accordingly;
- the budget for the BD Trust Fund to assist developing countries and other countries in need of technical assistance is US\$2,175,250 per annum for 2001 and 2002;
- voluntary contributions are essential for effective BC implementation and should be made to the BD Trust Fund and the BC Trust Fund; and
- the Executive Secretary is authorized to utilize in the period 2000-2002 an amount not exceeding US\$900,000 from the reserve and fund balance of the BC Trust Fund for implementing prioritized activities relating to the Basel Declaration and decision.



CHALLENGES FOR THE NEXT DECADE

On Tuesday, 7 December, the contact group on the ministerial declaration chaired by John Myslicki (Canada) had a general debate on the draft declaration and draft decision on environmentally sound management (UNEP/CHW.5/23). Delegates expressed broad agreement with the text and goals of both drafts. DENMARK, supported by IRAN, BANGLADESH, FINLAND and others, suggested striking a balance between administrative, institutional and technical capacity building. The UK recommended including a reference to national sustainable development to allow for funding from foreign development sources. The US proposed emphasizing the private sector's role in waste management and recycling. Minor suggestions or amendment proposals focused on, *inter alia*: headings and title of the declaration; reference to the precautionary principle; green labeling; and the need for clarified text on minimization of hazardous wastes, final disposal, and self-sufficiency and proximity. The group continued its work in a night session and focused discussion on activities of environmentally sound management.

On Wednesday, 8 December, delegates in the contact group met in several day and evening sessions, made drafting changes to the decision and declaration, and then agreed on the text of the draft declaration. Concerning the draft decision, two issues remained to be agreed upon: the paragraphs on budgetary and institutional matters, and the annex identifying proposed activities to assist in the implementation of the declaration and decision for 2000-2002. Chair Myslicki then reported to the Plenary on the progress made in the contact group.

On Thursday, 9 December, the contact group continued deliberating and agreed on the draft decision on environmentally sound management. Delegates also agreed to keep the titles of the draft declaration and decision 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 to have the proposed priority activities presented in table format listing the proposal, objective, method and outcome for each activity, and for the list to be annexed to the decision on environmentally sound management. The draft declaration, draft decision and annex were forwarded to the Plenary for adoption.

On Friday, 10 December, Chair Myslicki reported to the Plenary on the results achieved in the contact group on the ministerial declaration. He said all countries, observers and other participants were given the opportunity to be involved. He thanked in particular the G-77/CHINA, the private sector and NGOs for their help in the drafting and negotiating process. Chair Myslicki attributed the group's progress to the well-planned, inclusive and transparent process in which the declaration and its associated decision on environmentally sound management were produced. The Plenary then adopted the Basel Declaration on Environmentally Sound Management (UNEP/CHW.5/CRP.10), the draft decision on environmentally sound management (UNEP/CHW.5/CRP.11), and the table of proposed priority activities to assist in the implementation of the declaration and decision for 2000-2002, annexed to the decision on environmentally sound management (UNEP/CHW.5/CRP.9).

MINISTERIAL DECLARATION: The Declaration states that the ministers and other heads of delegations, *inter alia*:

- assert a vision that the environmentally sound management of hazardous and other wastes be accessible to all Parties;
- reaffirm the fundamental aims of the Convention;
- reiterate their commitment to sustainable development;
- undertake all efforts to ensure the universality of the Convention;
- focus their activities on specific actions and strengthen their efforts to achieve environmentally sound management;
- support pilot projects on best available technologies;
- recognize the need for a sound financial basis and development of

strategies to harness market forces to promote environmentally sound management; and

- agree that the decision "Environmentally Sound Management" constitutes their agenda for the next decade.

DECISION ON ENVIRONMENTALLY SOUND MANAGEMENT: In this decision, COP-5 decides that, in the next decade of the BC, *inter alia*:

- activities should be undertaken in: prevention, minimization, recycling, recovery and disposal of wastes; cleaner technologies; self-sufficiency and proximity principles; illegal traffic prevention and monitoring; institutional and technical capacity building; regional and subregional centres; information exchange; cooperation and partnership between countries, industry, NGOs and others; and compliance mechanisms, monitoring and effective implementation of the BC and its amendments;
- the TWG should work on selecting wastes streams for the development of pilot projects on cleaner production and contingency emergency plans;
- along with financial mechanisms, other activities need to be undertaken, to develop: projects in cooperation with UNEP for funding by international entities like the Global Environment Facility; financial strategies to harness market forces to promote waste minimization; and financial strategies for the operations and activities of the BC;
- under the guidance of the Expanded Bureau, the subsidiary bodies of the COP must elaborate on and prioritize the activities for the years 2000-2002 listed in the annex to this decision, and to start work as soon as possible;
- the subsidiary bodies should prepare a strategic plan for the period up to the year 2010 to address the objectives of this decision, and to develop a work programme by areas for work based on this decision for years 2003-2004, for consideration and adoption by COP-6;
- the subsidiary bodies should provide periodic information to the COP on progress of implementation of the agenda for the next decade on environmentally sound management;
- the Secretariat should collect and disseminate information needed for tasks and coordinate contracts with partners involved; and
- Parties should provide comments to the Secretariat on the attached annex to this decision by the end of February 2000.

The table of proposed priority activities to assist in the implementation of the declaration and decision for 2000-2002, annexed to the decision, lists the proposal, objective, method and outcome for each of the comprehensive and interrelated activities implementing the BC and moving towards the environmentally sound management of hazardous wastes.

PROTOCOL ON LIABILITY AND COMPENSATION

The LWG, tasked with developing the draft Protocol and chaired by Everton Vargas (Brazil), worked throughout the week on the following pending Protocol provisions: Articles 3.5 and 3.6 (instances where the Protocol does not apply); Article 12 (conflicts with other liability and compensation agreements); Article 15 (insurance and other financial guarantees); Article 16 (compensation mechanism); Article 31 (reservations and declarations); and an annex to Article 13 on financial limits to liability. It also worked on a new Article 26 *bis* (Meeting of the Parties). The group agreed to work on the basis of the draft Protocol text forwarded by the 10th session of the *Ad Hoc* Working Group (UNEP/CHW.5/22) and an unofficial Secretariat-prepared draft text on Protocol Articles 3.5, 3.6 and 16. This document included an enabling draft decision on enlargement of the scope of the BD Trust Fund.



Following deletion of a draft article (basis of claims) during the 10th session of the *Ad Hoc* Working Group and the inclusion of a new Article 23 (amendment of Annex B) during COP-5, the numbering of articles in the final version of the Protocol was adjusted. This re-numbering means that Articles 12, 15, 16, 26 and 31 became Articles 11, 14, 15, 24 and 30 respectively.

A Legal Drafting Group, chaired by Alistair McGlone (UK), was established on Tuesday, 7 December, to review articles agreed at the 10th session of the *Ad Hoc* Working Group and the pending articles following their agreement by the LWG. On Thursday, 9 December, the LWG reviewed and agreed on, with minor amendments, a consolidated text of the Protocol and the decision on the enlargement of the scope of the BD Trust Fund. It also agreed on a draft decision mandating COP-6 to further consider the scale on financial limits to strict liability contained in the Protocol Annex to Article 13. The LWG-agreed Protocol and associated decisions were adopted by the COP on Friday, 10 December. The following is a summary of the debate and substantive outcomes on the pending articles and their associated decisions. (The complete text of the Protocol will be posted on the Basel Convention website: <http://www.basel.int/>.)

PREAMBLE: On Wednesday, 8 December, delegates considered preamble text proposals from the UK and the Netherlands. The Netherlands proposal combined clauses from the UK proposal, the BC Preamble and a clause from the BC text noting Principle 13 of the Rio Declaration, which addresses liability and compensation. Delegates deleted a clause affirming State liability in international law, re-positioned the clause noting Principle 13 and made some minor amendments. The agreed preamble takes into account: relevant provisions of Principle 13 of the Rio Declaration requiring States to develop legal instruments regarding liability and compensation for victims of environmental damage; Protocol Parties' membership of and obligations under the BC; risk of damage caused by illegal transboundary traffic in wastes; BC Article 12 (Consultations on liability) and the need to set out liability rules and procedures and compensation for damage due to transboundary movement and disposal of wastes; and the need to provide for third party and environmental liability to ensure adequate and prompt compensation for such damage.

ARTICLE 3.5 (b) (INSTANCES WHERE THE PROTOCOL DOES NOT APPLY TO DAMAGE CAUSED BY WASTES DEFINED AS HAZARDOUS BY DOMESTIC LEGISLATION):

On Monday, 6 December, the group considered the Secretariat's proposed Article 3.5 (b) stating that the Protocol shall not apply to damage caused by wastes considered as hazardous by domestic legislation of the Party of export, import or transit, unless those wastes have been notified in accordance with BC Article 3 (notification) by the State of export and/or import and the damage arises in the territory of that State. In this case, liability shall be channeled in accordance with Protocol Article 4 (strict liability). Regarding Protocol Article 4, AUSTRIA, supported by FRANCE, called for an explicit reference indicating that responsibility shifts from the exporter to the importer in cases where damage is caused by wastes that are not defined as hazardous under national legislation of the exporter. He added that the importer should be strictly liable when required to notify the import of hazardous wastes and does not do so. The UK said this reference already existed under Protocol Article 4 when it indicates that BC Article 6.5 (importer/exporter notification requirements) applies *mutatis mutandis* to Protocol Article 3.5. BELGIUM, supported by the US and opposed by AUSTRIA, proposed including a reference stating that the Protocol shall not apply to damage due to wastes defined as hazardous by national legislation "unless the Parties and the Secretariat have been informed about national definitions of hazardous wastes according to BC Articles 3.2 and 3.3." The US observed that wastes under BC Article 1.1(b) (defined as hazardous by domestic

legislation) are not commonly considered "Basel wastes," and said the only way to know about them was through information provided to the Secretariat by the Parties.

On Tuesday, 7 December, the group considered draft text resulting from informal consultations conducted by France and Argentina. The draft text stated that the Protocol shall apply to damage resulting from an incident occurring during the transboundary movement of wastes defined or considered as hazardous by domestic legislation (wastes under BC Article 1.1(b)) only if: "those wastes have been notified in accordance with Article 3 of the Convention;" the damage arises in the territory of the notifying State; and BC Article 3 requirements have been met. The draft text had two bracketed alternatives on whether notification should be "by the State of export and/or import" or "by a State involved in the transboundary movement." FRANCE, with ARGENTINA, indicated that the formulation had been inverted from the negative (shall not apply) to the positive (shall apply). The UK, CANADA, AUSTRIA, AUSTRALIA and the REPUBLIC OF KOREA said inclusion of transit States in the notification process would render the Protocol inoperable. BRAZIL, CUBA, URUGUAY and ZAMBIA disagreed. The PHILIPPINES said both alternatives were superfluous since notification procedures are clearly spelled out in BC Article 3. Following additional informal consultations, the group considered and adopted the draft text of Protocol Article 3.5 (b).

The draft article states that the Protocol shall apply to: damage resulting from an incident occurring during transboundary movements of wastes under BC Article 1(b) "only if those wastes have been notified in accordance with Article 3 of the Convention by the State of export or import, or both, and the damage arises in an area under the national jurisdiction of a State, including a State of transit, that has defined or considers those wastes as hazardous, provided that the requirements of Article 3 of the Convention have been met." The adopted text also states that strict liability applies in this case, in accordance with Protocol Article 4 (strict liability).

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

On Monday, 6 December, delegates began their deliberations on the exemption of the Protocol's application to damage due to transboundary movements of wastes pursuant to agreements or arrangements under BC Article 11 (bilateral, regional and multilateral). The group considered two alternative texts on the exemption condition requiring existence of a liability and compensation regime applicable to damage from such movements. COLOMBIA supported the more detailed alternative since it specifically requires that the regime provide victims' compensation rights and remedies that meet or exceed those in Protocol Articles 4 (strict liability), 5 (fault-based liability), 13 (financial limits), 14 (time limit of liability), 15 (insurance) and 25 (mutual recognition and enforcement of judgments). SWEDEN, supported by GERMANY, AUSTRIA and SWITZERLAND, proposed, as a compromise, that following a notification by BC Article 11 Parties of the non-application of the Protocol and of the applicable alternative regime, actions for compensation under the alternative regime may not be taken under the Protocol.

COLOMBIA said this proposal was not a compromise and requested it be put in writing for clarification. A number of delegations stressed that it is up to the Party and not courts to decide whether the alternative regime meets the condition for exemption. COLOMBIA responded that stating this indicated a strengthening of the exclusion. AUSTRIA stressed that the exclusion is not a way to opt out of the Protocol and added this could be done by not signing it. The UK underscored that the exemption can only apply within the national jurisdiction of the Parties to BC Article 11 agreements.

On Tuesday, 7 December, the group discussed Sweden's written proposal. The proposal addressed the distinction between "monistic" and "dualistic" systems in relation to implementation of treaties and



ensured that under both systems the legislative body would be the one to decide on the eventual exemption. SWEDEN clarified that the proposal did not add or remove exemption conditions, but provided flexibility within them by clarifying that exemption applicability, as decided by the legislative body, cannot be overturned later by a court. COLOMBIA said it would need to see the complete provision as a package before agreeing. The EC, supported by others, queried who determines whether a notification under the Swedish proposal meets the exemption conditions for the alternative regime. CANADA stressed that there is a dispute resolution mechanism in the BC for this. The UK observed that the issue of valid notifications was not confined to the exemptions under discussion and should be addressed within a broader discussion.

On Wednesday, 8 December, the group agreed to compromise text resulting from informal consultations led by Sweden. As agreed, Protocol Article 3.6 allows an exemption from the Protocol for damage during movements pursuant to notified BC Article 11 Agreements if: the damage occurred within the national jurisdiction of any of the BC Article 11 Agreement Parties; an applicable liability and compensation regime in force fully meets or exceeds the Protocol's objective by providing a high level of protection to persons who have suffered damage; the BC Article 11 Party in which the damage has occurred has previously notified the Depository of the Protocol's non-application to the relevant damage; and the BC Article 11 Parties have not declared that the Protocol applies. Also a Party that has notified the Depository of non-application must notify the Secretariat and describe the applicable alternative regime and, after notification of non-application, actions for compensation for damage in BC Article 11 Parties' jurisdiction cannot be made under the Protocol. AUSTRALIA stressed a need for further consideration of the requirement for the BC Article 11 Party in which the damage has occurred to have previously notified the Depository of non-application of the Protocol to any damage occurring in its jurisdiction.

ARTICLE 4 (STRICT LIABILITY): Protocol Article 4 defines rules and exceptions to strict liability. Most provisions under this article were agreed upon by the *Ad Hoc* Working Group at its tenth session. The only outstanding provision (paragraph 2) referred to: strict liability for damages caused by wastes defined or considered as hazardous by domestic legislation in instances where the wastes have been notified as hazardous by the State of import in accordance with BC Article 3 (national definitions of hazardous wastes) but not by the state of export, or when no notification has taken place. On Thursday, 9 December, Legal Drafting Group Chair McGlone introduced new bracketed text for this provision. It indicated that in these instances, 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. Agreeing the provision would clarify the strict liability regime, the group agreed to its inclusion in Protocol Article 4.

ARTICLE 11 (CONFLICTS WITH OTHER LIABILITY AND COMPENSATION AGREEMENTS): This article contained two paragraphs and was considered on Wednesday, 8 December. The group agreed to the article without its second paragraph, which was deleted as a consequence of amendments to Article 3.6 (Exemption of Application of the Protocol to Bilateral, Regional and Multilateral Agreements). The agreed text refers to instances where both the provisions of the Protocol and the provisions of a bilateral, multilateral or regional agreement apply to liability and compensation for damage caused by an incident arising during the same portion of a trans-boundary movement. The text states that the Protocol shall not apply provided the other agreement is in force for the Party or Parties concerned and had been opened for signature when the Protocol was opened for signature, even if the agreement was subsequently amended.

ARTICLE 12 (FINANCIAL LIMITS FOR LIABILITY) AND ANNEX B:

This article sets financial limits for liability under the Protocol. On Wednesday, 8 December, the group considered draft text on this article and on the related draft Annex B. The proposed draft text stated that: financial limits for strict liability (Protocol Article 4) are specified in Annex B to the Protocol; such limits shall not include any interest or costs awarded by the competent court; and there shall be no limit for fault-based liability (Protocol Article 5). Draft Annex B stated that strict liability shall be determined by national law. It also contained a scale of financial limits for strict liability for any one incident. For the notifier or exporter, this scale ranged from one to 10 million units of account, according to shipment weight (from five to 10,000 tonnes) and established a maximum limit of 30 million units of account. For the disposer, Annex B established a minimum limit of two million units of account.

The US drew attention to inconsistencies in Annex B that may suggest unlimited strict liability and noted that the scale for liability based on shipment weight may render insurance for bulk shipments of recyclable wastes costly. ITALY suggested that the scale for liability be differentiated according to modes of transportation and travel distance. SWITZERLAND said the scale was based on consultations undertaken by the Secretariat with the insurance industry. INDIA, with others, indicated that provisions in Annex B should be part of the body of the article. AUSTRALIA expressed its reservation regarding the upper limits for liability contained in Annex B. CANADA proposed that the LWG be mandated by the COP to continue working on the Annex.

On Thursday, 9 December, the group reconsidered Annex B 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 added 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 for Annex B. It agreed to retain the Annex as it stood and to insert a new provision (Protocol Article 23) 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 be undertaken before the entry into force of the Protocol.

The group also agreed on a related draft COP-5 decision (UNEP/CHW.5/CRP. 13) that takes note of the new Protocol provision and requests the joint LWG/TWG to consider the financial limits for strict liability set out in Annex B with a view to presenting a recommendation to COP-6. It also requests the Secretariat to: undertake appropriate preparatory work in consultation with the Parties; facilitate the deliber-



ations of the LWG and the TWG on the basis of studies that have been undertaken; and consult experts in the field, as necessary. The group also agreed on the draft text for Protocol Article 12 as it stood.

ARTICLE 14 (INSURANCE AND OTHER FINANCIAL GUARANTEES): This article sets requirements for insurance and other financial guarantees for strict liability under Protocol Article 4. Most of the provisions in the article were agreed upon by the *Ad Hoc* Working Group at its tenth session. The only outstanding provision (paragraph 4) referred to the assertion of a direct claim against any person providing insurance, bonds or other financial guarantees.

On Wednesday, 8 December, the group considered and agreed on a draft provision on this issue, resulting from informal consultations conducted by Singapore and Switzerland. The provision states that: any claim under the Protocol may be asserted directly against any person providing insurance, bonds or other financial guarantees; the insurer or the person providing the financial guarantee shall have the right to require the person liable under Protocol Article 4 to be joined in the proceedings; and insurers and persons providing financial guarantees may invoke the defenses that the person liable under Protocol Article 4 would be entitled to invoke. The provision for this states that: notwithstanding this, a Contracting Party shall, by notification to the Depository at the time of signature, ratification, or approval of, or accession to the Protocol, indicate if it does not provide for a right to bring direct action; and the Secretariat shall maintain a record of the Contracting Parties who have given notification pursuant to the paragraph.

On Thursday, 9 December, the group reconsidered Protocol Article 14.4 during its review of the consolidated text of the Protocol. The group accepted the following changes: the requirement to maintain financial guarantees covering liability under Protocol Article 4 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.

ARTICLE 15 (FINANCIAL MECHANISM): On Tuesday, 7 December, the group addressed the Secretariat-prepared draft article on the compensation mechanism and associated draft decision on the enlargement of the scope of the BD Trust Fund. Draft Protocol Article 15 provided for emergency and compensation measures additional to the Protocol by using existing mechanisms, in order to ensure adequate and prompt compensation for all damage resulting from the transboundary movement of hazardous wastes. The draft decision provided for, *inter alia*: enlargement of the BD Trust Fund to assist developing countries or countries with economies in transition in cases of emergency and compensation for damage resulting from accidents arising from transboundary movements of hazardous wastes; use of the BD Trust Fund for such purposes and for capacity building for preventative measures; an evaluation of the mechanism within a year to assess specified objectives; and a call to Parties to make voluntary contributions to support the BD Trust Fund specified uses.

On the draft article, COLOMBIA, supported by SOUTH AFRICA, PERU and MOROCCO, called for compulsory contributions to the BD Trust Fund. The US, opposed by URUGUAY, said this would require an amendment to the Convention. AUSTRIA stressed the voluntary nature of the fund. Many delegates supported the Secretariat's draft article and decision package as a basis for further discussion. FRANCE, supported by AUSTRIA, SWITZERLAND and CANADA, called for guidelines to ensure appropriate use of the BD Trust Fund.

On Wednesday, 8 December, PERU introduced a revised article following informal consultations on both the article and the associated decision on enlargement of the scope of the BD Trust Fund. The revised article provided that: where compensation under the Protocol does not cover damage costs, additional and supplementary measures aimed at ensuring adequate and prompt compensation may be taken using existing mechanisms; and the Parties shall keep under review the possibility of improving existing mechanisms or establishing a new mechanism.

THE GAMBIA, supported by CHINA, NIGERIA and SENEGAL, preferred "need for" to "possibility of" improving existing mechanisms. The group accepted "the need for and possibility of" and the article was agreed to. The final article, however, states that it is the MOP that shall keep under review the possibility of improving existing mechanisms or establishing a new mechanism.

On the draft decision, AUSTRALIA introduced amendments, including: specifying that enlargement of the BD Trust Fund is on an interim basis; separating out provisions for emergency funding and compensation funding; adding transfer of technology as a BD Trust Fund use; requesting the Secretariat to provide the evaluation of information related to the BD Trust Fund within a year; and providing for the Expanded Bureau to produce guidelines for the Secretariat's use of the BD Trust Fund, which include provisions for repayment to the BD Trust Fund of emergency funds paid and subsequently recovered. JAPAN called for a provision to allow contributors to earmark voluntary contributions. On the guidelines, he questioned which body would develop them. AUSTRALIA noted potential difficulties with using a body larger than the Expanded Bureau. The US supported using a larger body to include important stakeholders. Chair Vargas noted the Expanded Bureau could consult with interested Parties and important stakeholders. After further informal consultations, AUSTRALIA presented a revised text of the decision that the group accepted with minor amendment.

In the agreed decision (UNEP/CHW.5/CRP.14), COP-5 decides:

- to enlarge the scope of the BD Trust Fund on an interim basis to assist the Contracting Parties that are developing countries or countries with economies in transition in cases of emergency and compensation for damage resulting from incidents arising from transboundary movements of wastes and their disposal;
- that the Secretariat may, upon request, use the contributed funds to assist such a Party in order to: estimate the magnitude of damage and preventative measures needed, take emergency measures to prevent or mitigate the damage, and help find assistance;
- that where damage covered by the Protocol occurs, the Secretariat may, upon request by such a Contracting Party, use the contributed funds to provide compensation for damage and reinstatement of the environment up to the limits provided for in the Protocol where such compensation and reinstatement is inadequate under the Protocol (this operates from the Protocol's entry into force);
- that the Secretariat may, upon request, use the contributed funds to assist such a Party in developing its capacity building and transfer of technology and in putting in place measures to prevent accidents and damage to the environment caused by transboundary waste movement and disposal;
- that the Parties shall evaluate information provided by the Secretariat on functioning of the interim arrangement, the number of incidents occurring and, with regard to each incident: the nature of the damage, costs of preventative and reinstatement measures, and extent to which damage was not compensated;
- to provide the Parties with this information as available and within a year of the decision's adoption;
- that the evaluation is to enable COP-6 to maintain, improve or change the interim arrangement or propose additional measures to provide for: costs of preventative and reinstatement measures for



damage from accidents arising from transboundary waste movements under the Convention or during the disposal of the wastes; and compensation when the person liable is unknown, disappears or cannot be found, is financially incapable of meeting his/her obligation or is exempted from liability under Protocol Article 4(5) (exemptions from strict liability), "and with regard to illegal traffic;"

- to urge Parties to provide contributions to the fund to support the activities identified by the decision; and to agree a contributor may earmark its contribution for the purposes specified in the activities; and
- to request the Expanded Bureau, in consultation with interested Parties and stakeholders, to produce interim guidelines on the Secretariat's tasks under the decision for submission to COP-6 for adoption; that the guidelines will include provisions for recovery, from sources such as liable Parties and providers of financial assurance, of funds paid by the BD Trust Fund; and that the recovered funds may be used for purposes specified in the decision while respecting the original earmarking, where appropriate.

ARTICLE 24 (MEETING OF THE PARTIES): This article establishes the Meeting of the Parties (MOP) to the Protocol. On Monday, 6 December, Chair Vargas said the *Ad Hoc* Working Group at its tenth session had not considered institutional arrangements for the Protocol and noted the need for an article on the MOP. The Legal Drafting Group was tasked with drafting a provision on this issue. On Thursday, 9 December, Chair McGlone introduced a draft provision stating that, *inter alia*, ordinary sessions of the 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 with" or "during" the COP; and the need to differentiate financial arrangements for these two bodies. Some delegations questioned the need for a MOP since liability was at the core of the BC and should be dealt with by the COP. Others noted the need for a MOP since Parties to the BC would not necessarily be those to the Protocol. Some said the financial rules for the COP should be differentiated from those for the MOP. 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.

Protocol Article 24 states that, *inter alia*: a MOP is established; the Secretariat shall convene the first MOP in conjunction with the first meeting of the COP after entry into force of the Protocol; and subsequent MOPs shall be held in conjunction with the meetings of the COP unless the MOP decides otherwise. It provides that extraordinary MOPs shall be held at such other times as may be deemed necessary by the MOP, or at the written request of any Contracting Party, provided that within six months of such a request being communicated by the Secretariat, it is supported by at least one-third of the Contracting Parties. It further provides that the Contracting Parties, at their first meeting, shall adopt by consensus the rules of procedure for their meetings, as well as the financial rules, and that the functions of the MOP shall be to:

- review the implementation of and compliance with the Protocol;
- provide for reporting and establish guidelines and procedures for such reporting where necessary;
- consider and adopt, where necessary, proposals for amendment of the Protocol or any annexes and for any new annexes; and
- consider and undertake any additional action that may be required for the purposes of the Protocol.

ARTICLE 30 (RESERVATIONS AND DECLARATIONS): On Thursday, 9 December, Chair McGlone introduced a new bracketed amendment stating that "without prejudice to the application of

Protocol provisions on scope (Protocol Article 3) and on insurance and other financial guarantees (Protocol Article 15)," no reservation or exception may be made to the Protocol. COLOMBIA, with PERU, strongly supported deletion of the amendment and said that a reference clearly stating that the Protocol does not admit reservations or exceptions was preferable. CANADA, AUSTRALIA and AUSTRIA objected. SWEDEN proposed a reformulation stating that "for the purposes of this Protocol, notifications according to Protocol Articles 3 and 15 shall not be regarded as reservations or exceptions."

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 direct action), shall not be regarded as reservations or exceptions; this does not preclude a State or a regional economic integration organization, when signing, ratifying, accepting, approving, formally confirming or acceding to the Protocol, from making declarations or statements, however phrased or named, with a view to, *inter alia*, the harmonization of its laws and regulations with the provisions of the Protocol, provided that such declarations or statements do not purport to exclude or to modify the legal effects of the provisions of the Protocol in their application to that State or organization.

TENTH ANNIVERSARY CELEBRATION

From 9-10 December, the Plenary met for its high-level segment to celebrate the 10th anniversary of the Convention and heard statements from 56 ministers and other heads of delegation, one guest of honor and UN bodies. 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.

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 stressed that waste minimization made economic sense, and both corporations and the environment may benefit from it. He concluded by underscoring the notion that "prevention pays."

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 and guest of honor at COP-5, said the increase in the 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.

Töpfer, speaking as Executive Director of UNEP, said the BC proved that it is an advantage for the quality of the solution and action at the global level to work in an open, very transparent process, integrating all nations on an equal footing and all parts of civil society. He said a multilateral environmental agreement was a suitable legal basis for important trade-related decisions, far from any green protectionism but for banning the export of risks and enjoying the advantages of economic growth at home.

Following the opening addresses, delegates heard policy statements delivered by ministers and heads of delegation. The following is a summary of the key themes addressed during the high-level segment.



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. NIGERIA enjoined Parties to further collaborate with NGOs in maintaining a monitoring team for prompt alert on alleged transboundary movements and illegal traffic in hazardous wastes. Highlighting the importance of enforcement, CANADA suggested that the compliance body be established under the BC and that it cooperate with the International Customs Organization.

BAN AMENDMENT AND BC ANNEX VII: URUGUAY, the EU, DENMARK, BENIN and SRI LANKA stressed the importance of the entry into 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, SLOVENIA and 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. UKRAINE said that progress was needed in terms of the introduction of new technologies dealing with disinfecting wastes.

PARTNERSHIPS: CÔTE D'IVOIRE, MICRONESIA, the EU, NEW ZEALAND, AUSTRALIA 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 and said this would constitute a historical moment. 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 BD Trust Fund was only an initial compromise step. COLOMBIA said the development of financial mechanisms under the Protocol was a priority. She hoped that the adoption of the Protocol would serve as an example for successes under other Conventions, particularly the Convention on Biological Diversity.

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. The CZECH REPUBLIC said prevention and minimization of wastes were the core activity of the declaration on environmentally sound management and IRAN suggested the development of multilateral instruments in this regard. CANADA stressed the importance of cleaner technologies and recycling.

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 toward improving their status and ensuring their financing. The REPUBLIC OF KOREA said cooperation with industry could help in strengthening regional centres.

OTHER TOPICS: Ministers and heads of delegation also highlighted the need for, *inter alia*: an international regime on dismantling of ships; the establishment of a procedure for preventing and moni-

toring illegal traffic; recognition of the importance of certain wastes to economies of developing countries and countries with economies in transition; increased cooperation between intergovernmental organizations and international instruments; and taking into account the particular challenges faced by transit States with limited resources.

CLOSING PLENARY

ADOPTION OF THE DRAFT PROTOCOL ON LIABILITY AND COMPENSATION: On Friday, 10 December, LWG Chair Everton reported that the group had concluded its work and agreed on all Protocol articles. He also referred to a draft COP-5 decision; the group had agreed on the relationship of the BC to the Protocol whereby the joint LWG/TWG is tasked with considering the scale of financial limits for strict liability contained in a Protocol Annex with a view to presenting its recommendation to COP-6. He also referred to a draft COP-5 decision enlarging the scope of the BD Trust Fund. He concluded by highlighting the delicate balance of the agreements, thanked the members of the LWG for their flexibility and for the good spirit in which they had conducted the deliberations. He then read a number of typographical corrections to the Protocol text.

AUSTRALIA said it continued to have a number of serious concerns regarding the Protocol text. He made an interpretative statement on Protocol Article 3.6. He then said that by allowing differences between or among the Parties to a BC Article 11 agreement or arrangement, as to whether the Protocol or another liability and compensation agreement applies, Protocol Article 3.6(a)iii may create uncertainty and a patchwork of applicable regimes for any given transboundary movement of wastes between or among such Parties. Concerning Protocol Article 3.2, he added that his main preference was that the end point of liability should be different for final disposal and recycling operations. Concerning Protocol Article 4, he said that by channeling responsibility to the exporter or notifier, rather than the person in operational control, this article did not reflect the "polluter pays principle." He further stated that Protocol Annex B was a matter of great concern since it did not set a consistent and known set of liability levels for all situations. He concluded by saying that the text of the Protocol contained serious deficiencies.

President Roch said he did not interpret the statement made by Australia as an objection to the adoption of the Protocol.

The RUSSIAN FEDERATION said that some elements of the Protocol, such as financial limits for liability, had not been discussed previously to COP-5. He reserved his right to study these aspects more thoroughly in order to determine a position regarding the Protocol. Referring to Protocol Article 12 (financial limits), MALAYSIA said that by virtue of Annex B, heavy financial burdens were imposed on developing countries that export wastes. CUBA expressed concern about the unequal treatment that transit States have been given in the Protocol. He called for reconsideration of this issue. ZAMBIA, speaking on behalf of the African Ministers, said Protocol Article 15 (financial mechanism) was weak and did not provide for adequate compensation, since it did not establish a mandatory fund. He said, however, that African Ministers were ready to adopt the Protocol in a spirit of compromise and requested COP-5 President to take their concerns into consideration in preparation for COP-6.

The Protocol was adopted by acclamation.

The Plenary also adopted the related decisions on: the relationship of the Protocol with the BC (UNEP/CHW.5/CRP.13), as agreed upon by the LWG on Thursday, 9 December; the enlargement of the scope of the BD Trust Fund (UNEP/CHW.5/CRP.14), as agreed upon by the LWG on Wednesday, 8 December, with minor amendments; and the emergency fund (UNEP/CHW.5/CRP.16). This decision, proposed by India, requests the LWG to consider and finalize a financial mechanism for emergency situations with a view to present COP-6 with a recommendation. The Plenary also adopted a draft decision on BC



Article 3 that requests the Secretariat to keep available an updated list of wastes defined or considered as hazardous by domestic legislation on a web site (UNEP/CHW.5/CRP.15).

Following the adoption of the Protocol, NEW ZEALAND suggested that it be called "the Basel Protocol." The EU expressed its satisfaction on the successful conclusion of the Protocol and said it constituted an important step forward in international environmental law. He highlighted the constructive cooperation that had prevailed during the negotiations. He added that the implementation of the Protocol required financial resources and informed the Plenary that EU members were seriously considering contributing to the BD Trust Fund. He concluded by saying he was convinced that the Protocol would be an effective and balanced tool in the implementation of the BC. DENMARK, SWITZERLAND and FINLAND announced they would make a contribution for emergency cases to the BD Trust Fund equivalent to their ordinary contribution to that fund. FRANCE announced a contribution of FF500,000. CANADA committed itself to provide a contribution to the fund for emergency purposes and supported AUSTRALIA's comment on Protocol Article 3.6.

Töpfer said COP-5 was a historic conference. He said the ministerial declaration constituted a shift towards handling wastes in line with the precautionary principle. He added that the Protocol was a major step forward in the field of compliance and constituted a breakthrough for other negotiations.

FRANCE and JAPAN said they had reservations on the decision on the emergency fund (UNEP/CHW.5/CRP.16). President Roch said the decision had already been adopted and that delegations' concerns would be incorporated in the report of the meeting. INDIA then introduced an amendment to the chapeau of the decision on the emergency fund: in which reference is made to the COP having "addressed" rather than "resolved" the issue of and need for a financial mechanism for emergency situations.

OTHER MATTERS: The Plenary agreed that COP-6 would take place in Geneva, Switzerland, in May 2002. The Plenary also endorsed nominations by the regional groups for candidates to Chair BC subsidiary bodies: Mariann Karcza (Hungary) for the LWG; Jawed Ali Khan (Pakistan) for the TWG; and Isatou Gaye (The Gambia) and Donald Cooper (Bahamas) for the IWG.

CANADA and COSTA RICA requested information on the filling of the BC Executive Secretary position. CANADA said the Expanded Bureau should be involved in the process while COSTA RICA requested the list of candidates so as to ensure transparency in the process. In the absence of UNEP officials to report on this, President Roch said these concerns would be included in the report of the meeting.

ADOPTION OF THE REPORT: On Wednesday, 8 December, the Plenary adopted the first part of the draft report of COP-5 (UNEP/CHW.5/L.1). On Friday, 10 December, the Plenary considered and adopted additional sections of the draft report of the meeting (UNEP/CHW.5/L.1/Add.1 and 2), with the understanding that the Rapporteur was entrusted with its finalization.

In closing the meeting, President Roch said COP-5 was an important conference celebrating an important anniversary. He stressed that significant results had been achieved at COP-5 and looked forward to increased progress in the next two years.

A BRIEF ANALYSIS OF COP-5

THE BASEL PROTOCOL: A CAKE IN THE MAKING

TEN YEARS OF BAKING IN THE INTERNATIONAL

KITCHEN: The occasion of the 10th anniversary of the Convention was appropriately celebrated with a magnificent Swiss chocolate cake that was testament to the progress and fruition of the Convention. As a member of the batch of "pre-Rio" multilateral environmental agreements, the 1989 Basel Convention has been considered a landmark instrument addressing one of the greatest environmental threats resulting from industrialization: hazardous wastes. This labeling is seen as well justified given the Convention's primary and laudable aim of protecting developing countries from being the targets of hazardous wastes movements originating in industrialized countries. This protection becomes critical when the recipients do not have adequate capacity to manage and dispose of such wastes in a safe and environmentally sound manner.

The early inertia of the Basel Protocol "baking process" may be attributed to an initial recipe that included the reluctance of developed countries to ban the transboundary movements of wastes to developing countries and concerns expressed about developing countries' lack of capacity for cleaning up unwanted hazardous waste dumps and spills in their territory. Without a general prohibition of such transboundary movements, the elaboration of a Protocol setting rules on liability and compensation for damage resulting from these movements was seen as a counter to the consequential risks to human health and the environment. And so began the baking process. As time passed and progress was made toward banning transboundary movements, greening appetites started to be satisfied and the focus shifted to the dessert. However, the prospects for completing the Protocol cake remained bleak.

Only after five years of debate was the legal working group able to lay down a structure and the constituent elements of the Protocol. Controversy focused on rules to govern liability and compensation and on funding measures for this purpose. At its 10th session, the *Ad Hoc* Working Group was expected to reach an agreement on the text of the Protocol to be adopted at COP-5. However, even after 10 sessions, the group could not even agree to the essential ingredients, much less put the cake in the oven. The controversial atmosphere that characterized deliberations at the 10th session of the *Ad-Hoc* Working Group did not bode well for the 10th anniversary of the Convention to be celebrated at COP-5. As the COP's international panel of negotiating chefs descended on Basel, the atmosphere in the Convention kitchen was an unlikely mix of uncertainty and concern countered by determined and increasingly desperate resolve.

MIXING THE INGREDIENTS: With the arrival of COP-5, essential ingredients for the Protocol were still not blended. These included: definition of its scope, including clarity of circumstances where the Protocol would not apply; a financial mechanism to supplement the Protocol; and insurance and financial limits to liability. Regarding the scope of the Protocol, varying positions clashed on the fine line between a universal and comprehensive regime on one hand and accommodating practical and workable regional arrangements on the other. In the end, in the interest of finalizing the Protocol, mutual trust prevailed over the suspicions of some developing countries that industrialized Parties were trying to circumvent the intent of the Protocol. The agreement on exemptions for equivalent arrangements reflects a workable compromise for addressing such concerns and needs.

Another important ingredient was the provision of assistance for emergencies and compensation for damage in situations not fully covered by the Protocol, such as where the person liable is unknown. Fortunately, the cooks cooperated in this regard and agreed to enlarge



the scope of the BD Trust Fund. The decision encouraged contributions for clearly specified purposes, provided for consultative development of fund expenditure guidelines, set up an evaluation procedure for the fund and also accommodated earmarking contributions. While some advocated that the absence of mandatory contributions might leave affected countries grasping at straws, others underscored that voluntary contributions would not detract from the success and ground-breaking achievement of the premiere protocol on liability and compensation.

THE MISSING INGREDIENT: FINANCIAL LIMITS FOR STRICT LIABILITY: Financial limits for strict liability were the missing and, as it transpired, unknown ingredient which almost led to the crumbling of the Protocol cake. In spite of resolve to overcome this hurdle, the legal and technical difficulties with this exotic ingredient proved almost insurmountable and underscored the complexities of the financial limits to strict liability. Attempts to bypass this complexity through political pressure proved impossible given conflicting positions and the need for better understanding of the implications. The ingenious solution arrived at was to retain the scale of the financial limits as discussed and formulate a new provision stating that COP-6 may, before the entry into force of the Protocol, amend the scale of financial limits for liability. This allowed adoption of the Protocol and time for gaining a better understanding of the subtleties of this issue as another dimension of breaking new ground in international law on compensation and liability.

TAKING THE CAKE OUT OF THE OVEN: Having all the ingredients for a cake is, however, not a guarantee for success. Producing fine cuisine is an art form that requires firstly mixing the ingredients in the right order and secondly a golden touch. A combination of carefully-prepared ground work on a complex issue, a positive spirit among participants, and a well organized and directed conference provided the recipe for combining the ingredients and avoiding yet another embarrassing Protocol failure. The quality and experience of the Grand Protocol Chef, Chair Everton Vargas, and the pressure of the 10-year anniversary deadline provided the impetus needed to bake a beautiful cake.

THE ICING ON THE CAKE: With the cake fresh out of the oven, it only remained to add the final touch. The combination of the declaration and decision on environmentally sound management served as the perfect icing on the cake. The shift in emphasis from controlling and reducing hazardous wastes movements to environmentally sound management of such wastes, particularly through minimization of waste at the source, satisfied the increasing appetite for tackling the problem at its source. This shift is welcomed all the more given the fact that research indicates a worldwide increase of waste generation over the last ten years. The ministerial declaration and decision on environmentally sound management adopted at COP-5 brings back waste minimization as one of the centerpieces of the Convention. Not only have ministers reiterated this fundamental objective of the Convention but they made it the vision for the next decade and have agreed that more than half of the specific activities to be undertaken in order to reach this objective address waste minimization. The strong consensus behind the declaration marks a welcome focus on addressing the root causes of hazardous wastes generation. The smooth advancement on the draft declaration and decisions was attributed to the well-planned and transparent process with which the group progressed. The COP-5 adoption of the Basel Declaration and the related decision strengthens the Convention's preambular conviction that "the most effective way to protect human health and the environment from the dangers posed by these wastes is the reduction of their generation," and will contribute significantly to future waste minimization efforts.

HAVING YOUR CAKE AND EATING IT, TOO: Although the essential ingredients of the cake may not cater to everyone's tastes and will require elaboration, the Protocol was not burned by heated debate and the chefs were able to retrieve it from the oven and present it triumphantly to the world. This result, in combination with the new vision for the first millennium decade of the Convention, presents the prospect of a promising and delectable future not only for this Convention but also for other international environmental cakes in the making.

THINGS TO LOOK FOR

FIRST SESSION OF THE CHEMICALS REVIEW COMMITTEE FOR THE ROTTERDAM CONVENTION: The First Session of the Chemicals Review Committee for the Rotterdam Convention on PIC is tentatively scheduled for 21-25 February 2000 in Geneva. For more information, contact: Gerold Wyrwal, FAO; tel: +39 (6) 5705 2753; fax: +39 (6) 5705 6347; e-mail: Gerold.Wyrwal@fao.org; Internet: <http://www.pic.int/>

PERSISTENT ORGANIC POLLUTANTS INC-4: The fourth session of the Intergovernmental Negotiating Committee for an International Legally Binding Instrument for Implementing International Action on Certain Persistent Organic Pollutants (INC-4) will take place from 20-25 March 2000 in Bonn. For more information contact: UNEP Chemicals (IRPTC); tel: +41 (22) 979-9111; fax: +41 (22) 797-3460; e-mail: dodgen@unep.ch; Internet: <http://irptc.unep.ch/pops/>.

FIFTH CONSULTATION ON THE PREVENTION AND DISPOSAL OF OBSOLETE AND UNWANTED STOCKS OF PESTICIDES: This meeting is scheduled for May 2000 in Rome to consider new provisions for the prevention and disposal of obsolete stocks and to update/prepare various technical guidelines in support of the FAO Code of Conduct. For information contact: Ale Wodageneh, FAO; tel: +39 (6) 5705 5192; fax: +39 (6) 5705 6347; e-mail: A.Wodageneh@fao.org.

FAO PANEL OF EXPERTS ON PESTICIDE SPECIFICATIONS: The 16th session of the Panel of Experts on Pesticide Specifications, Registration Requirements, Application Standards and PIC will be held from 22-29 May 2000 in Granada, Spain. For more information contact: Gero Vaagt, FAO; tel: +39 (6) 5705 5757; fax: +39 (6) 5705 6347; e-mail: Gero.Vaagt@fao.org.

25TH SESSION OF THE JOINT MEETING ON PESTICIDES RESIDUES: The 25th Joint Meeting of the FAO Panel of Experts on Pesticides Residues in Food and the Environment and the WHO Expert Group on Pesticides Residues will be held from 11-29 September 2000 in Geneva. For information contact: Amelia Tejada, FAO; tel: +39 (6) 5705 4010; fax: +39 (6) 5705 6347; e-mail: Amelia.Tejada@fao.org.

THIRD MEETING OF THE INTERNATIONAL FORUM ON CHEMICAL SAFETY: The Third Meeting of the International Forum on Chemical Safety will be held from 14-20 October 2000 in Salvador (Balina), Brazil. For more information contact: Executive Secretary, Intergovernmental Forum on Chemical Safety, c/o WHO, 20 Avenue Appia, CH-1211 Geneva 27, Switzerland; tel: +41 (22) 791 36 50/43 33; fax: +41 (22) 791 48 75; e-mail: ifcs@who.ch; Internet: <http://www.who.int/ifcs>.

SEVENTH PIC INC MEETING: The seventh session of the PIC INC is tentatively scheduled for September or October 2000 in Geneva to prepare COP-1. For more information contact: Niek Van der Graaf, FAO; tel: +39 (6) 5705 3441; fax: +39 (6) 5705 6347; e-mail: Niek.VanderGraaf@fao.org; Internet: <http://www.pic.int/>.