



## BASEL COP-5 HIGHLIGHTS TUESDAY, 7 DECEMBER 1999

Delegates met in Plenary to continue consideration of implementation and monitoring and to consider legal matters, illegal traffic and technical matters. The Legal Working Group (LWG) continued consideration of Protocol Article 3.5 (b) (instances where the Protocol does not apply to damage caused by wastes defined as hazardous by domestic legislation) along with a related draft decision on Article 3 (national definitions of hazardous wastes) of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (BC), a draft text on Protocol Article 3.6 (exemptions of application of the Protocol to bilateral, regional and multilateral agreements), and Protocol Article 16 (compensation mechanism). Contact groups of the LWG on financial limits to liability and on Protocol Articles 3.5 and 3.6 met throughout the day. The Financial Working Group (FWG) continued consideration of the 2001-2002 budget and considered a draft decision on institutional, financial and procedural arrangements. The Contact Group on the Ministerial Declaration considered the draft declaration and draft decision on environmentally sound management. The Contact Group on the Regional Centres considered the main concerns raised at the regional centres workshop.

### PLENARY

**IMPLEMENTATION AND MONITORING:** On 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 (the EU, the 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 Secretariat with a minor amendment on the decision regarding Annex VII (draft decisions 1, 2 and 3 in UNEP/CHW.5/27).

On information management and dissemination, 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 the country status relevant to the generation and management of wastes should be more specific. President Roch said that, following a proposal by GERMANY, a new draft decision on reporting would merge its two parts and that a new draft decision on the development of an information system would include reference to streamlining the questionnaire.

**LEGAL MATTERS:** On monitoring the implementation of and compliance with the obligations set out by the BC, CANADA, supported by BRAZIL, GERMANY and the PHILIPPINES, but opposed by the UK, said the Committee for Implementation, rather than the LWG, should be entrusted with the task of preparing a draft decision since that committee has greater Party representation. Following consultations on this issue, the Secretariat will prepare a new draft decision integrating a draft amendment put forward by the UK whereby, *inter alia*, "a proposed decision" rather than "a proposal" for adoption should be prepared on the establishment of a compliance mechanism.

On the analysis of the dispute settlement mechanism under BC Article 20, the Plenary adopted the draft decision that extends the mandate of the LWG to give further consideration to this issue (UNEP/CHW.5/13).

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 of that group. On competent authorities and focal points, the Plenary adopted the draft decision (UNEP/CHW.5/15). On the report on bilateral, multilateral and regional agreements or arrangements concluded under BC Article 11 and on the draft guidance elements for bilateral, multilateral or regional agreements or arrangements, the Plenary adopted the draft decisions (UNEP/CHW.5/16 and UNEP/CHW.5/17).

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

**WASTES:** On this issue, the Plenary adopted the draft decision as amended by CANADA whereby 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 (UNEP/CHW.5/18).

**TECHNICAL MATTERS:** On the report of the Technical Working Group (TWG) on its work for 1998-1999 and its proposed work program, the Plenary adopted the draft decisions (UNEP/CHW.5/19 and Add.1 and 2). On hazardous wastes minimization, the Plenary adopted the draft decision with a proposal from NEW ZEALAND that the COP request the TWG "to explore specific measures than can be used to encourage the minimization of hazardous wastes generation" (UNEP/CHW.5/20). On dismantling of ships, the Plenary adopted the draft decision (UNEP/CHW.5/21).

### LEGAL WORKING GROUP

On Protocol Article 3.5 (b), the group considered draft text resulting from informal consultations undertaken by France and Argentina. The draft text states that the Protocol shall apply to damage resulting from an incident occurring during the trans-



boundary movement of wastes defined or considered as hazardous by domestic legislation (wastes under BC Article 1.1.(b)) only if: these wastes have been notified in accordance with BC Article 3 (national definitions of hazardous wastes); 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 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 a revised draft of Protocol Article 3.5 (b). It states that the Protocol applies to: damage resulting from an incident occurring during transboundary movements of wastes defined or considered as hazardous by domestic legislation "only if those wastes have been notified in accordance with Article 3 of the Convention by the State of export and/or import, and the damage arises in the areas of national jurisdiction of those States, including a Transit State, that has notified those wastes as hazardous under Article 3 of the Convention provided that 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). The group forwarded the text to the legal drafting group for fine-tuning.

The group then turned to the exemption of the Protocol's application to damage due to transboundary waste movements pursuant to BC Article 11 agreements or arrangements (Protocol Article 3.6). It addressed Sweden's written proposal which states 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. The proposal addresses the distinction between "monistic" and "dualistic" systems in relation to implementation of treaties and ensures that under both systems the legislative body would be the one to decide on the eventual exemption. SWEDEN clarified that the proposal does not add or remove exemption conditions, but provides 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. Regarding the general and specific alternatives for the exemption condition, CANADA, supported by AUSTRALIA, the US and the REPUBLIC OF KOREA, and opposed by SWITZERLAND, proposed a compromise formula which specifies standards for existing and for new agreements.

The group then considered the Secretariat-prepared draft text on the compensation mechanism (Protocol Article 16) and draft decision on the enlargement of the scope of the BC Technical Cooperation Trust Fund. The draft text on Protocol Article 16 provides for additional emergency and compensation measures by using existing mechanisms, in order to ensure adequate and prompt compensation for all damage resulting from the transboundary movement of hazardous wastes. COLOMBIA, supported by SOUTH AFRICA, PERU and MOROCCO, called for compulsory contributions to the fund. The US, opposed by URUGUAY, said this would require an amendment to the BC. 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. PERU said the package was unacceptable in its current form. FRANCE, supported by AUSTRIA, SWITZERLAND and CANADA, called for guidelines to ensure appropriate use of the fund. The UK noted a provision in the draft decision providing for issuing guidelines. The group established a working group to meet in the evening to progress the draft article and draft decision.

#### **FINANCIAL WORKING GROUP**

The Financial Working Group (FWG) continued deliberation of the two budget alternatives for the Trust Fund for the Implementation of the BC (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). On institutional, financial and procedural arrangements, the group considered elements of a draft decision, including: reduction of Reserve and Fund Balance in the BC Fund; and voluntary contributions to the Technical Cooperation Trust Fund and the BC Fund.

#### **CONTACT GROUPS**

**REGIONAL CENTRES:** The contact group, chaired by Ibrahim Sow (Senegal), had preliminary discussions on the main concerns raised at the regional centres workshop, including: sustainability and legal status of centres, equality of centres and the need for synergy.

**MINISTERIAL DECLARATION:** Delegates expressed broad agreement with the text and goals of the draft declaration and draft decision on environmentally sound management. DENMARK, supported by IRAN, BANGLADESH, FINLAND and others, suggested striking a balance between administrative, institutional and technical capacity building. The UK suggested 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*: heading and title of the declaration; reference to the precautionary principle; green labeling; and the need for a clarified text on minimization of hazardous wastes, final disposal, and self-sufficiency and proximity. The group continued consideration of the issue in a night session that focused on projects of environmentally sound management.

#### **IN THE CORRIDORS**

After heavy negotiations in the Legal Working Group, many delegates welcomed the contrast of the consensual atmosphere in the Contact Group on the Ministerial Declaration. Most attributed the smooth progress of this group to the well-planned, inclusive and transparent process in producing the declaration and its associated decision on environmentally sound management.

#### **THINGS TO LOOK FOR TODAY**

**PLENARY:** The Plenary is scheduled to meet from 3:00-6:00 pm and, if required, at 10:30 pm in the San Francisco room to consider: Conference Room Papers and the first part of the report of the meeting; challenges of the next decade of the BC; the Draft Protocol; and institutional and procedural arrangements.

**LEGAL WORKING GROUP:** The LWG is expected to meet from 10:00 am-1:00 pm, from 3:00-5:00 pm and, if required, at 9:00 pm in the Montreal room.

**FINANCIAL WORKING GROUP:** The FWG is expected to meet from 10:00 am-1:00 pm in Office 10.

**CONTACT GROUPS:** The Contact Group on the Ministerial Declaration is expected to meet from 10:00 am-12:00 pm and, if required, at 9:00 pm in the Singapore room.