

Basel Convention

“From Cairo to Basel”

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Thank you for this introduction. As part of my presentation I would like to give you a bit of background on why the transboundary movement was an issue at the time the Cairo guidelines were being developed. I will also try to share with you some of the information on technical issues that were discussed during various negotiation sessions of the global convention, which eventually became to be known as the Basel Convention. However, I will not be able to tell you all the things that happen behind the scenes, as this require me to stand here for more than two days. Finally, I will try to summarize some of the decisions that were adopted during the last seven meetings of the Conference of Parties (COP).

As we already heard from vice president's speech that early "80s" was a period during which there were an increasing number of waste exports to the developing countries. The reason for such exports was that it was much cheaper to dispose of waste in the developing countries than in many OECD countries. Someone mentioned that one importer was offering USD 20 per ton for disposal of hazardous waste in a particular developing country, while the cost to dispose such wastes in most OECD countries would be USD 200 to USD 400 dollar per ton. It meant that the cost was 1/10 or 1/20 of what would normally cost to dispose of such wastes in any developed country.

I would like to share with you some information about one transboundary movement that attracted a great deal public attention. A ship named "Khian Sea", a Norwegian ship registered in Liberia, picked up about 13, 000 tons of incinerator ash from Philadelphia and tried to find a developing country that could accept those wastes. It travelled all over the world for two years trying to find a country to unload its cargo. It's started from Philadelphia, and then went to Bahamas, Barbados, and Panama. All these countries refused its entry to their port. It then went all the way to Africa, where authorities of a number of countries also refused its entry to their ports. It came back to Haiti, unloaded some of its ash, but due to elections in Haiti and public outcry the ship had to leave again with most of its cargo. It went back to Africa trying again to unload its incinerator ash. After two years voyage, the ship arrived in Singapore

without its cargo and nobody knows what's happened to it. When the captain was questioned he refused to answer any specific questions. He only said that one of the African countries accepted the waste. No one knows what happened to that cargo. Some speculated that the ship dumped its cargo at high seas, some place in the Indian Ocean.

This is one of the examples why many countries felt that controls on transboundary movement were necessary, as there was a tremendous economic pressure on many developing countries to accept hazardous wastes. I heard that one of European exporter was offering to ship one million tons of waste from Europe to a particular developing country at USD 20 per ton. That's annual revenue of twenty million dollars for a particular country. So the economic pressure was tremendous on many developing countries to accept such waste.

This morning it was also mentioned that there were a number of stranded shipments. Yes this is true, deals were made, money exchanged and then such shipments were detained at ports by importing authorities. This followed by governments of those countries requesting exporting countries to reaccept such shipments. Many countries had experiences of repatriating such shipments, and I'm sure Germany also had some experiences where waste had to be returned back to Germany at the cost of German government.

Canada also had one such situation where old paints were shipped to Lebanon as products. I was still with the Canadian department of the environment, responsible for transboundary movement. In this situation we were asked to bring back these old paints from Lebanon to Canada since the exporter refused to take any responsibility, claiming that these paints were sold as products to a Lebanese importer. All the cost of bringing them back and eventually disposing of them, was covered by the Canadian government.

Now let me share with you information on the process of negotiating a global convention. The process started back in 1982 where countries decided to develop a guideline on environmentally sound management of hazardous wastes. The guideline was finished in 1986, which became to be known as the Cairo guideline. It was finalized in Cairo, Egypt where most of the west European countries (Germany, UK, France, Switzerland, Sweden, Finland, Norway, Netherlands), where

represented, plus Canada and United States. In addition there were a number of selected developing countries, from Arab speaking countries and from South American, African, and Asian countries.

The Cairo guideline deals with the environmentally sound management of hazardous waste, and contains provisions such as: the notification procedures (who should be notified, what information should be on the notice, and notice responsibility of the generator exporter), requirement to have ESM facilities, duty to re-import, transfer of technology, capacity building, and public access to information. Most of these provisions, although expanded, eventually have been incorporated in the Basel Convention. This guideline was submitted to the UNEP Governing Council meeting in 1987 for adoption. During this meeting, the guideline was adopted and a proposal made to develop a global convention on transboundary movement of hazardous wastes. The Governing Council asked the Executive Director of UNEP, Dr. Tolba, to set up a working group and start the process to negotiate a global convention. Also at that meeting Switzerland proposed to host a diplomatic conference in 1989 to adopt such a convention, while Hungary agreed to host a first organizational meeting. If one looks at the time allowed for the negotiations, the period was very short. It started in October of 1987, and was completed in March of 1989. It took less than two years to come up with a global convention dealing with transboundary movement of hazardous waste and their disposal.

The organizational meeting took place in Budapest, Hungary, in October of 1987 during which we elected Alain Clerc from Switzerland as the chair of the working group responsible for negotiating the global convention. Tuomas Aarnio from Finland, who still participates in Basel meetings, was elected as the Rapporteur. Two additional vice chairmen, one from Venezuela and one from Hungary were also elected to the Bureau, but I don't recall their names. The meeting in Budapest was a short one, it was only two days. After electing the Bureau we identified some of the tasks for our next steps, so that the actual negotiation of convention's provisions could start at the next session. It was agreed that the next meeting should be in Geneva since there are adequate UN facilities for such a meeting.

The group also asked Ms. Iwona Rummel-Bulska, who was the chief of UNEP's legal office in Nairobi, to propose a number of articles for such a convention. Some of these articles came from the Cairo Guidelines, while others were taken from other

international agreements or conventions such as the draft OECD agreement on transboundary movement. As a reminder, following adoption of the Cairo Guidelines, OECD countries decided to develop an OECD Agreement on transboundary movement. It was almost completed in 1987, when some of the OECD countries suggested that it be put on hold since we started a process to develop a global convention. If you look at the OECD agreement, which was never adopted, and the Basel Convention you will find a number of similar provisions, especially provisions dealing with technical issues such as: waste lists, hazard characteristics, list of disposal operations, prior informed consent (PIC), and movement document information. All that work, which was developed by OECD countries, was made available to the group that was negotiating the global convention.

Now I would like to provide you with information on all the negotiation sessions. In total there were six, four of which were held in Geneva (first, third, fourth and sixth). The second one was in Caracas, Venezuela, and the fifth session was held in Luxembourg. The final negotiation session (sixth session), was first held in Geneva and then moved to Basel, Switzerland, where the global convention was adopted.

What were some the major issues that came up during various negotiation sessions? My next few slides will show you some of the issues that came up during each of the negotiation sessions. However, there were a number of same issues that kept coming up during every session, these were as follows:

- Export ban- request by number of developing countries to ban exports of all wastes.
- Shipments through territorial waters, an issue that was very important for many coastal states, including Canada. The territorial water shipment issue was simply a request by coastal states to be notified of such transit shipments. Other countries were not ready to accept that provision because of the innocent passage provision under the Law of the Sea Convention.
- Article 11 agreements - some countries wanted to ensure that any existing agreements should be grandfathered. One such agreement was the Canada-US agreement, which was signed in 1986 by both countries, prior to start of the negotiation process. Both countries wanted to ensure that this agreement would

not effected by the Basel Convention as long as it is consistent with environmentally sound management principles, and does not impact on any third country. A number of other countries, that had a similar agreements or arrangements, wanted these to be recognized.

- Municipal wastes - many countries wanted to control them as hazardous wastes. Some suggested that the scope of coverage should be expanded to include all wastes.
- Liability compensation for damage caused by transboundary movement of hazardous wastes.
- Finally, a number of countries did not wanted to control waste destined for recovery/recycling operations in the same way as those destined for disposal. At the end, recyclables were included in the Basel Convention.

During the first negotiation session in Geneva, the session was mainly to get to know each other and to identify priorities for future discussions. However the notification system came into play right away, as countries started to discuss: who should be notified? What kind of information to be included in the convention? The issue of tacit consent versus written consent came up, and the OECD notification system for listed wastes. As most of you are familiar the tacit consent provision means that you notify authorities in the importing and transit countries, wait a specified period of time, and if you don't hear a response from these authorities you may decide to ship. This issue was debated in great detail but at the end the tacit consent provision was not accepted.

The list of hazardous waste recovery and disposal operations, taken from the draft OECD agreement was briefly discussed and adopted. In addition the definition of waste and scope of coverage which included hazardous wastes were incorporated. Again the issue of whether or not waste destined for recycling operations should be covered under this convention came up. Many OECD countries had a very strong view at this first session that recyclables should not be covered, and only waste destined for disposal operations. At the end both recyclables and wastes destined for disposal were included in the convention (Annex IV).

The second meeting, which was in Caracas, Venezuela, broaden the area of discussions. Discussions were on certain definitions, associated with transit shipments that should be included in the convention such as: territorial waters, area under national jurisdiction. Many South American countries wanted to be notified for any transit shipments that would take place within 200 miles from their coast. The discussion also was on the type of notification provisions required for transit shipments through territorial waters and those through the area under national jurisdiction. Of course the definition proposed by some countries for area under national jurisdiction was not acceptable to others. At the end a general definition of area under national jurisdiction was agreed to, which "states" means any land, marine area or air space within which a State exercises administrative and regulatory responsibility in accordance with international law in regard to the protection of human health and the environment".

Some other definitions were introduced such as: the transboundary movement, waste, exporter, generator etc. Some EU countries introduced the term "holder", which was not familiar to others and prolonged this discussion. The issue of whether radioactive waste should be covered in the convention came up as well? When this issue came up, representatives from the International Atomic Energy Agency (IAEA) explained that they have a code of practice on management of radioactive waste and therefore it should not be considered for this convention. Based on the fact that IAEA has expertise in this area it was decided to exclude radioactive waste from the scope of coverage. In addition hazard class 7 was excluded from Annex III.

The third session was held in Geneva. During this session participants reviewed what already had been discussed and proceeded to discuss some of the preambular paragraphs, introduced by the UNEP's legal office. I believe this is what most of the lawyers were waiting for. Up until now lawyers played a small role when technical issues were discussed. Finally they had something to discuss. The UNEP proposed 3 pages of preambular paragraphs, all very interesting but not very helpful when dealing transboundary movement controls. While lawyers discussed these preambular paragraphs a technical group was tasked to deal with the list of hazard characteristics and some of the general obligations. The group decided to take hazard characteristics, hazard characteristics for classes H1 to H9, from the transport of dangerous goods recommendations (TDGR). In the TDGR, Class H9 is called

environmentally dangerous substances, which the group decided to expand introducing H10, H11, H12 and H13. In addition we discussed a numbers of general obligations, most of which were incorporated in the convention, such as: reduction in waste generation, reduction of transboundary movement, prohibition of exports to non-Party, not allowing exports to countries where wastes would not be managed in an environmentally sound manner, etc.

Finally, the issue of what to be done in the case of illegal traffic took a bit of time to debate it, in particular issue as far as who should be responsible for illegal export. At the end provisions were developed identifying what constitutes an illegal traffic and specifying what should be done if the illegal traffic is as a result of conduct on the part of exporter, and also on the part of importer.

The fourth meeting was also held in Geneva during which participants saw for the first time a draft convention with different provisions and articles being incorporated. Up until we discussed different provisions etc. but had no clue how these will be incorporated into a draft convention. The UNEP legal office introduced a draft convention, based on all provisions that were negotiated up to now. Those provisions where there was no agreement were put into square brackets. For the first time delegates saw convention's text with 3 pages of preambular paragraphs, scope of coverage, definitions, responsibility of the exporters, general obligations, notification procedures, duty to re-import, illegal traffic etc.

It was at this meeting that African countries made it very clear that they wanted a much stronger provisions dealing with prohibitions on exports and imports. Following this meeting in Geneva, African Ministers met in Dakar, Senegal, where they stated that they were not happy with some of the provisions on exports and imports and wanted to introduce their own convention for Africa, by introducing a total ban on imports of hazardous wastes including radioactive wastes. This convention eventually became to be known as the Bamako Convention. It was signed in 1991, two years after the Basel Convention was adopted. I'm not sure it is in force, lacking sufficient number of ratifications. When African countries made this very strong pitch for total prohibition on exports and imports some of the participants were wondering if this tactic was to derail the finalization of the global convention and to concentrate on a regional approach.

The fifth negotiation session was in Luxembourg, in February of 1989, which I consider was the most difficult negotiation session. It was due to the fact that it followed the Dakar meeting of the African countries, bad weather, and not much time was left to finalize all articles. It became very clear that all African countries were united as far as their position on the need for prohibitions of exports and imports. This issue dominated most of the discussions, and many countries felt the time is running out before the diplomatic conference to be held in March of 1989, as proposed by Switzerland. For some reasons many delegations, maybe because they had no instructions to negotiate some of the new provisions that were introduced just prior to this meeting, were making reservations on almost every article without providing any explanations for their reservations. It was evident to all that the chair, Alain Clerc, was very frustrated when trying to make some progress and was not getting any cooperation from some delegations. It was a difficult meeting and even the weather did not help.

When we left Luxemburg, at the end of the week, it was very foggy and most of the delegations had problems of getting back to their capitals because the airport was shut down for 2 days. One could compare the foggy weather to the foggy outcome of our negotiation session in Luxembourg. I also think the UNEP officials, were very concerned over very little progress made in Luxembourg and the fact that we had only a month left before we should be going to Basel to adapt the global convention.

The sixth meeting, which was two weeks in duration, started in Geneva and then moved to Basel for the final week. I can tell you that during those two weeks there was not even one day when we finished before eleven o'clock at night. The position of African countries continued to dominate this negotiation session. Some of the other outstanding issue such as: the shipments through territorial waters as many countries continued to insist on notification of transit shipments of hazardous waste; municipal waste; liability compensation provisions; and the partial or total ban provision, which eventually became article 15 paragraph 7. A representative of the Organisation of African Union (OAU) stated that African countries will not sign the convention in Basel and they proposed over 20 modifications. Some of their main issues were:

- The coverage of municipal waste as hazardous waste. What we eventually did with the municipal waste issue was to create Annex II (categories of wastes

requiring special consideration). Those that are familiar with Annex II, it contains 2 entries: waste collected from households and the second entry is the incinerator ash from the incineration of municipal waste.

- In addition, we added Article 1.1(b) to cover waste that are defined as being hazardous in the exporting country, transit country and importing country.
- The article 15 paragraph 7 was added which states that 3 years after the Convention enters into force, Parties are to evaluate its effectiveness and to consider the adoption of a complete or partial ban of transboundary movement of hazardous wastes.

The second part of this sixth session, that took place in Basel, which was attended by 116 countries. At the end 105 countries plus EU signed the final act, while 35 countries plus EU signed the Convention, which became known as the Basel Convention. Canada was the only North American country that signed the convention in Basel, Switzerland on March 22, 1989. Canada also ratified it in 1992. From all of the industrialized countries United States is the only country that has not ratified the Basel Convention. As the meeting in Basel progressed to its final phase, African countries agreed not to block the signing of the convention but none of agreed to sign it in Basel.

When one looks at the Basel Convention, it has a number of important provisions required to control the transboundary movement of hazardous wastes, and to ensure that their disposal is carried out in an environmentally sound manner. I'm sure everyone is aware of these provisions and I don't have to repeat them here. Since the meeting in Basel, Switzerland, there were seven conferences of parties where additional issues were deliberated.

We have adopted a protocol on liability and compensation (COP 5), which is not yet in force. We have adopted a ban amendment (COP 3) which also is not in force. Three new Annexes: Annex VII which applies to the ban amendment itself (which lists OECD countries plus Liechtenstein); Annex VIII, which is the list of the hazardous wastes; and Annex IX which lists non-hazardous waste. Those three Annexes have been adapted after the convention came into force. Quickly I put together a comparison chart between the Cairo Guideline and Basel Convention so

that you can see that there are a number of similarities between the two. Provisions are similar but the Basel Convention articles are more detailed ones than those in the Cairo guidelines. As I mentioned before there were seven COP meetings since the Basel Convention came into force. The last COP, COP 7, just took place last month in Geneva. During these seven meetings of the Conferences of Parties, a number of important decisions, in addition to the ban amendment, liability protocol, and 3 annexes, were adopted.

I will try to briefly list some of them: uniform notice and movements documents; establishment of 13 Basel Convention Regional Centres (BCRCs); Ministerial Declaration on ESM; 10 year strategic plan for the implementation of the Basel Convention, amendments to waste lists; a number of technical guidelines and various implementational guides. In addition issues, dealing with partnership initiatives for mobile phones and e-waste are being considered under the Basel Convention. During COP 7, Parties also adapted a decision on global waste challenge with emphasis on waste minimisation. In your binder there is a hand-out listing some of the other things that were adopted by Parties to the Basel Convention, and Pierre Porters from the Basel Secretariat may want to elaborate further.

The next overhead of my presentation "From Cairo to Basel" is my last one, so I'm almost finished.

Has the road been easy and straight forward? I think we went through very difficult negotiations with some detours on a number of provisions, which are now part of the convention. Also, the ban issue spilled over to discussions during the COP 1, 2 and 3 meetings, and resulted in the adoption of the ban amendment. This issue used up a lot of our resources and pitted a number of different countries and stakeholders against each. While this was going on, very little additional resources were made available to the Basel Secretariat for capacity building in developing countries, and lack of resources for an effective implementation of the Basel Convention. Some one asked me if we are better off now than before. Personally,

I think we have made significant progress to reduce illegal exports, as we haven't heard of any Khian Sea ships going from port to port trying to dump hazardous wastes. In addition, there has been some reduction of transboundary movements of

waste destined for final disposal and there has been increased awareness thanks to seminars and workshops hosted by Basel Convention regional training centres.

However, there are new challenges, new types of wastes such as e-wastes being exported for reuse and recycling in developing countries. Such shipments need to be better controlled to ensure such reuse and recycling operations are managed in an environmentally sound manner. Also, there are some issues that need future attention and I'll try to identify these very quickly. In my views waste generation continues to increase and we need to implement new approaches and policies that would promote reduction at source. The COP decision dealing with global waste challenge, adopted during last COP, is a good start and should help this effect. Extra effort and resources are needed for capacity building in developing countries to ensure that they have access to technologies and know how that would allow them to manage their wastes in an environmentally sound manner. The Basel Convention regional centres needs to be strengthened, and I think these centres should become more efficient and effective in delivering their responsibilities.

Finally, we need to continue to promote partnerships with industry and NGOs to address end-of-life products such as the partnership initiative on mobile phones, which was sponsored and promoted by Switzerland. Other partnerships dealing with end-of-life products should be considered, and these should take into consideration producer responsibilities and life cycle thinking during the product design.

Last but not least, I would like to mention that we need to improve and strengthen cooperation with other global conventions such as the Stockholm Convention and Rotterdam Convention to build synergies and to minimize any duplications, in particular as it deals with capacity building in developing countries.

Thank you!