



Distr.: General
20 June 2011

Original: English

**Conference of the Parties to the Basel Convention
on the Control of Transboundary Movements of
Hazardous Wastes and Their Disposal
Tenth meeting**

Cartagena, Colombia, 17–21 October 2011

Item 3 (a) (iii) of the provisional agenda*

**Matters related to the implementation of the Convention:
strategic issues: Indonesian-Swiss country-led initiative
to improve the effectiveness of the Basel Convention**

Indonesian-Swiss country-led initiative to improve the effectiveness of the Basel Convention

Note by the Secretariat

Introduction

1. By its decision IX/26 on the President's statement on the possible way forward on the Ban Amendment, the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal acknowledged the President's statement set out in the annex to that decision and invited parties to take into consideration, wherever possible, that proposed way forward.
2. In his statement, the President sought to launch a process to reaffirm the Amendment's objectives and to explore means by which they might be achieved. The President called upon all parties to create enabling conditions, through, among other measures, country-led initiatives conducive to the attainment of those objectives.
3. Based on the President's statement, the Governments of Indonesia and Switzerland organized a country-led initiative to discuss, in an informal, dynamic and flexible manner, the variety of views held on a possible way forward to ensure that the transboundary movements of hazardous wastes, especially to developing countries and countries with economies in transition, constituted environmentally sound management of hazardous wastes as required by the Basel Convention.

I. Implementation

4. Three meetings were held as part of the Indonesian-Swiss country-led initiative, bringing together a small, balanced group of experts from countries from all regions:¹ the first from 15 to

* UNEP/CHW.10/1.

1 Experts from Argentina, Australia, Belgium, Brazil, Canada, China, Colombia, Denmark, Egypt, Germany, Hungary, India, Indonesia, Jamaica, Japan, Malaysia, Nigeria, New Zealand, Norway, Poland, Saudi Arabia, Senegal, South Africa, Spain, Switzerland, United Republic of Tanzania, Uruguay and the European Commission attended the meetings.

17 June 2009, in Bali, Indonesia; the second from 12 to 15 January 2010, in Wildhaus, Switzerland; and the third from 20 to 24 September 2010, in Hilterfingen, Switzerland.

5. The outcomes of the first two meetings were presented to the Open-ended Working Group at its seventh session (documents UNEP/CHW/OEWG/7/7 and UNEP/CHW/OEWG/7/INF/8). The documentation for and outcomes of all the meetings under the initiative were circulated to parties and other stakeholders by e-mail and through the Convention website. All parties and stakeholders were afforded the opportunity to comment on the issues to be discussed at the meetings and a number of stakeholders who were not directly involved in the initiative provided valuable input.

6. At the first meeting, participants considered the available statistics on transboundary movements of waste and discussed and identified a list of possible reasons why movements took place to countries where environmentally sound management could not be ensured. That discussion led to the preparation of an analysis of those reasons. The reasons were clustered into five groups: economic issues; legal issues; enforcement issues; awareness-raising and knowledge; and others. The detailed list of possible reasons can be found in document UNEP/CHW/OEWG/7/INF/8. The list was developed and revised taking into account comments received from parties, observers and other stakeholders.

7. At the second meeting, participants considered the analysis further, together with a paper on the impacts on human health and the environment of transboundary movements of hazardous wastes. The paper can be found on the Convention website under the section on the Indonesian-Swiss country-led initiative, with a summary to be made available in the form of an information document. In the light of those discussions, the participants developed a list of possible elements of a way forward, which were further refined on the basis of comments received following the meeting.

8. At the third meeting, participants focused on the preparation of specific proposals for recommendations for consideration by the Conference of the Parties at its tenth meeting. Taking into account the outcome of the seventh session of the Open-ended Working Group and other consultations, a draft omnibus decision comprising seven sections was prepared and revised. The draft decision was submitted to all parties, observers and interested stakeholders for comments.

9. Based on the work of the country-led initiative, Indonesia and Switzerland are proposing a comprehensive draft decision that reflects in a balanced manner a package for a way forward. It deals with the entry into force of the Ban Amendment; the development of standards and guidelines for environmentally sound management; the provision of further legal clarity; the further strengthening of the Basel Convention regional and coordinating centres; combating illegal traffic; assisting vulnerable countries; and capacity-building.

10. A more detailed explanatory note describing the background to these recommendations is set out in annex II to the present note. A summary of the main background documents of the country-led initiative process is set out in document UNEP/CHW.10/INF/4.

II. Proposed action

11. The Conference of the Parties may wish to adopt a decision along the following lines:²

The Conference of the Parties,

1. Addressing the entry into force of the Ban Amendment

Recognising that there are vulnerable Parties who are unable to handle hazardous and other wastes in an environmentally sound manner, but who continue to receive such wastes, which results in serious harm and needs to be addressed as a matter of urgency,

Noting that the amendment to the Basel Convention adopted by decision III/1 of the Conference of the Parties is one way of meeting that challenge but that other ways exist to meet that challenge responsibly, especially through a stringent application of the prior informed consent procedure, strengthening environmentally sound management and national legislation,

Bearing in mind decision VIII/30 of the Conference of the Parties emphasising that the Parties to the Convention have the ultimate power to agree on the interpretation of the Convention,

² The draft decision and the annexes thereto have been reproduced as received, without formal editing.

Stressing the need for the Parties to agree on an interpretation of paragraph 5 of Article 17 of the Basel Convention as an important step in the development of the Convention,

1. *Welcomes* the practical initiative and activities that have taken place in response to the call of the President of the ninth meeting of the Conference of the Parties for Parties to expedite ratification of the Ban Amendment, so as to facilitate its entry into force, and further invites Parties to continue to undertake concrete actions towards encouraging and assisting Parties to ratify the Amendment, including:

- (a) Specific actions, such as the Nordic Initiative, to assist Parties facing legal and technical difficulties in ratifying the Ban Amendment;
- (b) Regional meetings;
- (c) Country-specific studies of the implications of ratification and entry into force;

2. *Resolves*, without prejudice to any other multilateral environmental agreement, that the meaning of paragraph 5 of Article 17 of the Basel Convention be interpreted so as to mean that the acceptance of three-fourths of those Parties that were Parties at the time of the adoption of the amendment is required for the coming into force of such amendment, noting that such an interpretation of paragraph 5 of Article 17 does not compel any Party to ratify an amendment³.

2. Developing standards and guidelines for ESM

Recognising that harm to human health and the environment is still being caused throughout the world by inadequate waste management procedures,

Acknowledging the existing activities undertaken by Parties and others to ensure environmentally sound management of hazardous wastes and other wastes, including the development of technical guidelines, national legislation, reference documentation and other guidance, whilst also *acknowledging* that further dissemination of these activities is necessary,

Stressing the continuous need of Parties to have access to sufficient information to ensure that hazardous waste and other wastes to be exported are managed in an environmentally sound manner,

Noting that a more systematic and comprehensive effort is needed to improve requirements for environmentally sound waste management and to encourage their adoption,

1. *Invites* the Secretariat to disseminate information it receives on existing activities undertaken by Parties and other stakeholders to ensure the environmentally sound management of hazardous wastes and other wastes;
2. *Decides* to complete the development of a framework of requirements for the environmentally sound management of hazardous wastes and other wastes;
3. *Decides* to mandate a technical expert group drawn from Parties and signatories and based on equitable geographical representation of the five regional groups of the United Nations, to undertake work to further develop the framework, taking into account the elements listed in Annex I, and to submit the elaborated draft framework to the eleventh meeting of the Conference of the Parties for its consideration and possible adoption.

3. Providing further legal clarity

Noting that a number of the provisions of the Convention are interpreted differently by Parties and that implementation and application of these provisions would benefit from additional legal clarity,

Recognising that there needs to be a clear distinction between wastes and non-wastes for some used equipment and second-hand goods and that some countries receive unwanted imports of used and near end-of-life goods that soon become waste,

1. *Decides* to request the Committee for Administering the Mechanism for Promoting Implementation and Compliance, assisted by technical experts as appropriate to:

³ Since the fixed-time approach can be interpreted in several ways, a short explanation of four different variations of this approach has been prepared by the two lead countries and a short rationale for the interpretation chosen by the CLI is given. This will be made available as an information document.

(a) Review the implementation of the Convention as it relates to the definition or interpretation of certain terminology of the Convention and a list of other relevant terms related to the implementation of the Convention, including:

- (i) waste / non-waste;
- (ii) hazardous waste / non-hazardous waste;
- (iii) re-use;
- (iv) direct re-use;
- (v) refurbishment;
- (vi) second hand goods;
- (vii) used goods;

(b) Develop such guidance to provide the national authorities, regional centres and all other stakeholders with authoritative and consistent advice on the interpretation of these terms in connection with the Basel Convention, building on existing guidance and examples of good practice;

2. *Decides* to request the Committee for Administering the Mechanism for Promoting Implementation and Compliance, assisted by legal and technical experts as appropriate and taking into account other initiatives such as PACE, to review and identify the need for specific arrangements that can be applied to used and end of life goods:

- (a) To require take-back obligations to be put on the importers of such goods;
- (b) to clarify the status of 'charitable donations';
- (c) to evaluate and propose a definition of when used goods become waste;

3. *Decides* to request the Committee for Administering the Mechanism for Promoting Implementation and Compliance to submit the results of its work to the eleventh session of the Conference of the Parties for its consideration and possible adoption;

4. *Requests* that, following its possible adoption by the Conference of the Parties, the Basel Convention Regional and Coordinating Centres use this guidance in their training, capacity building and awareness raising activities.

4. Further strengthening the Basel Convention Regional and Coordinating Centres (BCRCs)

Recognising that the BCRCs play an important role in training, technical assistance and awareness raising and that this role should be strengthened,

Noting that many of the proposals included in the recommendations of the CLI ultimately involve initiatives that are best taken at the regional and sub-regional levels and the BCRCs are ideally placed to take them forward,

Hence identifying the need to expedite the ongoing review and strengthening of the operation of these centres,

1. *Requests* Parties to integrate the following activities into the plan for the development of the BCRC as foreseen in the strategic framework 2012 -2021 for the implementation of the Basel Convention:

- (a) Convene regional meetings to encourage and assist Parties in their ratification of the Ban Amendment or national measures to prohibit imports;
- (b) Disseminate guidance of ESM through their training, assistance and awareness raising activities;
- (c) Develop a program and deploying activities to bring actors together, to provide training and to coordinate joint actions to combat illegal traffic, with support of the Secretariat and other stakeholders as appropriate;
- (d) Consult the Parties within their regions and to identify the real needs of vulnerable countries and the difficulties that they face with unwanted imports of hazardous wastes;

- (e) Take action to secure political and public engagement with the work of the Convention;
- (f) Seek further collaboration with other agencies, non-governmental organizations and the private sector;
- (g) Seek out and mobilising relevant expertise in other relevant international and regional organisations.

5. Combating illegal traffic more effectively

Recognising the importance of preventing and combating illegal traffic in hazardous wastes and other wastes, and that illegal traffic in wastes, especially hazardous wastes, constitutes one of the main challenges to be addressed by the Parties to the Basel Convention in order to prevent harm to human health and the environment,

Noting that the provision of more legal clarity, strengthening the role of the BCRCs and building capacity would facilitate the work of enforcement agencies in preventing and combating illegal traffic more effectively,

Recognising that coordinated action would be the most effective way to improve effectiveness in preventing and combating illegal traffic,

1. *Requests* the Secretariat to build on and enhance existing actions to stimulate cooperation between existing networks of enforcement agencies including INECE, IMPEL-network of Europe, the Asian Network, and the green customs initiative;
2. *Requests* the Secretariat to stimulate the formation of new networks, in particular with other enforcement organisations or in regions where such networks currently do not exist;
3. *Requests* the Secretariat to further strengthen its collaboration with the World Customs Organization on the harmonisation of customs codes;
4. *Requests* the Secretariat to collect and disseminate examples of best practice in enforcement as well as practical arrangements, such as on procedures for take-back in case of detected illegal traffic;
5. *Requests* the BCRCs to consult with the Parties in their regions, with support of the Secretariat and other stakeholders as appropriate, in order to develop programmes and to deploy activities to bring actors together, to provide training and to coordinate joint actions in this field;
6. *Invites* Parties to report to the Secretariat on cases of illegal traffic, using the form for confirmed cases of illegal traffic, as adopted by decision IV/12 of the Conference of the Parties, and invites the Secretariat to explore ways of making better use of the information to guide the decision-making of the Conference of the Parties;
7. *Requests* the Committee for Administering the Mechanism for Promoting Implementation and Compliance to oversee the activities to be undertaken to prevent and combat illegal traffic more effectively and report on the progress to the Conference of the Parties at its eleventh meeting.

6. Assisting vulnerable countries to prohibit the import of hazardous wastes

Recognising that Parties have the right to prohibit the import of hazardous wastes or other wastes and to define additional wastes as hazardous in accordance with Article 3; paragraph 1 of Article 4 and paragraph 2 of Article 13 of the Basel Convention,

Noting that there remain obstacles to the full use of these provisions by Parties who would wish to be protected by them,

1. *Requests* BCRCs to consult the Parties within their regions and to identify the needs of such vulnerable countries and the difficulties that they face and to make this information available to the Secretariat for dissemination to Parties;
2. *Requests* the Secretariat to facilitate and encourage greater use of the Basel Convention model legislation for the development or revision of national legislative and other measures for the prohibition of imports of hazardous wastes and *further encourages* Parties to make use of this model legislation;

3. *Requests* the Secretariat to develop and disseminate material for use through the BCRCs for the purpose of raising awareness of these provisions in their regions;
4. *Encourages* Parties to develop and update national lists of prohibited hazardous wastes and to transmit them to the Secretariat in accordance with Article 3 of the Convention and to cooperate with each other in the development of such lists;
5. *Encourages* the Secretariat to continue to adopt a pro-active approach with regard to the collection of the information required under paragraph 1 of Article 4 and paragraph 2 of Article 13, especially the lists of prohibited wastes, and to disseminate such lists electronically to Parties at 6-month intervals;
6. *Requests* the Secretariat to assist Parties to develop national legislation and other measures to protect themselves from unwanted imports of wastes;
7. *Requests* the Secretariat to assist Parties towards a better understanding of the relationship between trade and the environment as relating to the transboundary movements of wastes.

7. Building capacity

Recognising that some of the proposals in this decision may require additional funding, expertise and technology transfer,

Recognising further that the objective of the Basel Convention contributes towards the achievement of the United Nations Millennium Development Goals and as such should be taken up by development agencies,

1. *Encourages* Parties to endeavour to ensure that the management of waste is considered in the preparation and implementation of development strategies and that waste management is recognized as part of meeting the Millennium Development Goals regarding environmental sustainability;
2. *Encourages* the Secretariat to forge links with high-profile initiatives such as climate change and human health, in particular taking into account resolution WHA.63.25 adopted by the WHO General Assembly, and to continue to explore the possibilities to use the synergy process and SAICM for these purposes;
3. *Encourages* the BCRCs to specify and quantify the needs for capacity building for different Parties, including capacity needed to improve of national reporting to monitor implementation;
4. *Encourages* the Secretariat, the BCRCs and Parties to take action to secure political and public engagement with the work of the Convention;
5. To that end, *invites* WHO, building on its earlier studies on health and environment, to initiate a study into the impact on human health of failures to manage wastes in an environmentally sound manner, and to utilise the result of that study to demonstrate the importance of the Convention's work;
6. *Encourages* the Secretariat to continue to exercise its advocacy role to promote and stimulate the inclusion of hazardous waste issues and implementation into other international and UN organisations' work programs;
7. *Encourages* the Secretariat, the BCRCs and Parties to seek further collaboration with other agencies, NGOs and the private sector;
8. *Encourages* the Secretariat and the BCRCs to seek out and mobilise relevant expertise in other international and regional organisations;

Annex I to the draft decision submitted by the Indonesian-Swiss country-led initiative to improve the effectiveness of the Basel Convention

Elements for the further development of a framework of requirements for the environmentally sound management of hazardous wastes and other wastes to be operationalised through tools or instruments for implementation and enforcement

- **Categories of requirements**

In developing the framework of requirements for the environmentally sound management of hazardous wastes and other wastes, the ESM criteria and “core performance elements” under the work of the Basel Convention and other organisations as well as the following elements shall be taken into account:

- Occupational health and safety requirements (e.g. regarding safety, health, liability, emergency response)
- Environmental protection requirements (e.g. prevention of pollution)
- Facility related requirements (e.g. regarding construction and infrastructure)
- Waste related requirements (e.g. collection, sorting, pre-treatment, treatment, storage, downstream management)
- Emission related requirements (e.g. emission limit values to air, water, and soil)
- Organizational requirements (e.g. valid licence/permit, monitoring, record keeping, information to be provided to authorities, aftercare, insurance, management abilities/training level environmental management systems)
- Regulatory requirements (consistency/complementarity)

- **Tools and instruments operationalising these requirements may include the following:**

- Legislation;
- Standards;
- Guidelines
- Policies (e.g. green procurement);
- Codes of good practice;
- Voluntary agreements.

- **The measures needed to implement the requirements may include:**

- Certification programmes;
- Licences and permits regularly validated;
- Training, awareness –raising and compliance promotion;
- Regular inspections and enforcement;
- Mechanism to ensure corrective action.

- **Ways in which this ESM framework and its elements might be linked to the issue of transboundary movement of hazardous waste.**

Annex II to the draft decision submitted by the Indonesian-Swiss country-led initiative to improve the effectiveness of the Basel Convention

Explanatory note to proposed draft omnibus decision

Introduction

The Indonesian-Swiss Country-Led Initiative (CLI) process was initiated by Indonesia and Switzerland in response to a statement made by the President of the Ninth Meeting of the Conference of the Parties to the Basel Convention⁴. The President encouraged Parties to explore ways of furthering the objectives of the Ban Amendment.

The Ban Amendment (Appendix 1) is an important instrument to protect vulnerable countries against adverse effects of imports of hazardous wastes they cannot handle in an environmentally sound manner and should enter into force. It divides the Parties to the Basel Convention into two groups, the first of which comprises of OECD and EU member countries as well as Liechtenstein; the second, all other countries. The Amendment prohibits movements of hazardous wastes from the first group of Parties who have ratified the Amendment to the second group. This includes movement for any sort of disposal, whether final disposal or recycling/recovery.

Although the ban was adopted as a decision at the first meeting of the Conference of the Parties in 1992 and subsequently adopted as an amendment to the Convention at the third meeting 15 years ago, it still has not entered into force. Thus, there are two possible approaches to furthering the objectives of the Ban Amendment as requested by the President's statement: to find a possible way forward on the Ban Amendment and to find other ways of protecting vulnerable countries. The CLI concluded that both these approaches are needed.

A. The CLI process

12. The two lead countries to the CLI invited experts from a number of Parties to participate in the process. The range of participation was selected from Annex VII and non-Annex VII Parties, and was intended to reflect the range of political positions on the Ban Amendment as well as being drawn from across the various United Nations geographic regions.

13. Three meetings were held to hear and consider evidence about flows of hazardous wastes, the reasons for those flows and the harm caused by inadequate management of the wastes. Each meeting lasted 4 or 5 days, was residential and held in a remote resort, to encourage participants to immerse themselves in the process. The participants were invited to discuss the issue in a pragmatic way, without taking a political stance. Chatham House rules applied, so that participants could speak frankly without attribution.

14. The outcomes of the meetings were a series of papers that were placed on the Basel Convention website for public consultation. Responses to the consultations were also published (where the author gave permission) and were referred to in revising the documents. Additionally, the outcomes of the first and second meetings were presented to and discussed by the Open Ended Working Group of the Basel Convention during its seventh session (10-14 May 2010). Therefore, even though the participation in the meetings was limited, the CLI was a transparent process.

15. This document reflects the outcome of the third meeting, which takes the form of a draft omnibus decision composed of seven sections to be presented for consideration by the tenth meeting of the Conference of the Parties. It also takes account of the suggestions that were put forward during consultation and discussion, at first between participants in the CLI process but then opening up to all Parties and interested stakeholders.

16. The draft omnibus decision emanating from the third meeting deals with all the building blocks to meet the objectives of the Ban Amendment: expediting ratification of the Ban Amendment (Building Block 1); promoting environmentally sound management (Building Block 2); and other measures to meet the Ban's objectives (Building Block 3). After adoption of some of the proposals, subsidiary bodies to the Convention would have to take up specific activities. These activities would therefore have to be included into the work programmes of these bodies.

17. Several elements of the draft omnibus decision presented by Indonesia and Switzerland are also addressed by the emerging Strategic Framework for the Convention. The New Strategic Framework is

4 Annex to Decision IX/26: President's statement on the possible way forward on the Ban Amendment

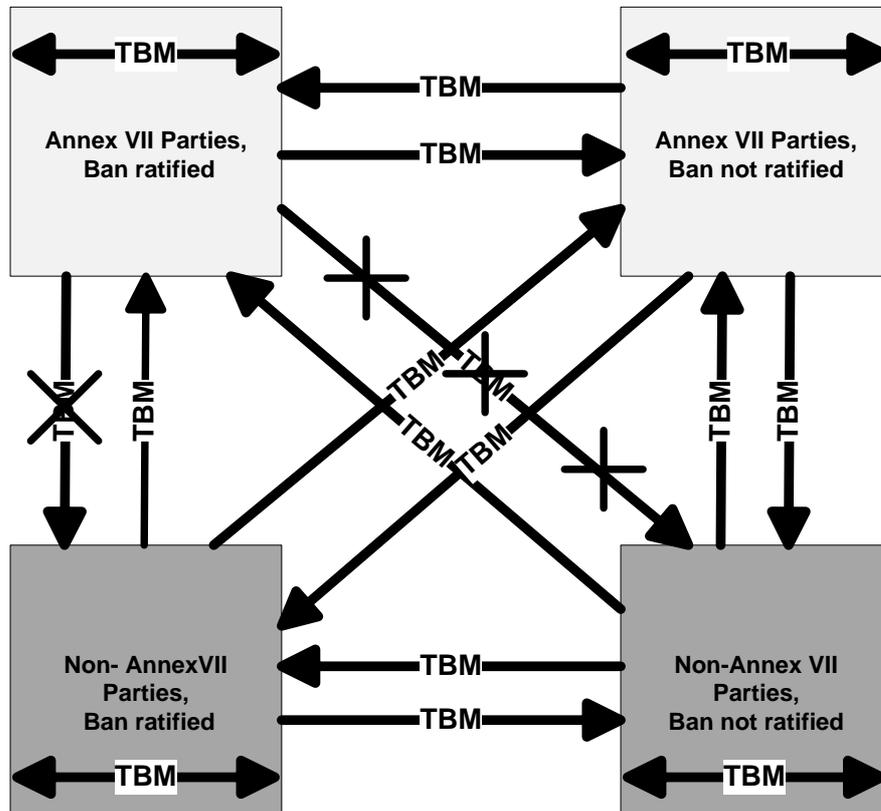
still under discussion and will cover all areas of further work within the Basel Convention, therefore also the work proposed by the CLI. It will be important to ensure at the meeting of the Conference of the Parties (COP) that the omnibus decision on improving the effectiveness of the Basel Convention and the Strategic Framework will be complementary and mutually supportive. No attempt has been made to align the current proposals with those other subjects that will be discussed during the COP, as these are still under development. Ultimately, however, it is important that these alignments be made when discussing the proposals during the COP.

1. Building Block 1: Promoting entry into force of the Ban Amendment

1. At the time of drafting this Explanatory Note, 69 Parties have ratified the Amendment. Depending on how the Convention's provision on entry into force of amendments is interpreted, the Ban Amendment may therefore still require ratification by a large number of Parties before it enters into force.
2. There are different reasons why many Parties may not be in a position to ratify the Ban Amendment. Some countries find it difficult to implement the necessary legislation or other measures necessary to ratify the amendment. Some Annex VII countries lack the necessary facilities for recycling certain wastes in their own country and find that an effective and efficient solution, consistent with the proximity principle, is to have the waste treated in environmentally sound facilities in nearby non-Annex VII countries. Some non-Annex VII countries rely on such imports as important sources of raw materials. In some regions, there are important collaborations between countries, using investment by an Annex VII country to promote improved environmentally sound waste management in nearby non-Annex VII countries.
3. The CLI identified a number of measures that could be brought forward to assist the first group of Parties – those who lack the resources or institutional capacity to propose and implement legislative or regulatory instruments to implement the Ban Amendment. For the others, though, it was recognised that these countries would be unlikely to ratify the Amendment even if it should enter into force.
4. It is important, if the Amendment is to enter into force in the foreseeable future to interpret the provisions of paragraph 5 of Article 17 of the Convention in a way that requires a low number of ratifications to this Amendment. Considering that the Parties to the Convention have the ultimate power to agree on the interpretation of the Convention, the CLI has proposed adopting a 'fixed-time' approach for amendments to the Convention, which is based on those Parties to the Convention at the time that the Amendment was adopted as the basis for entry into force⁵.
5. The CLI considered the consequences of entry into force of the Amendment. Regardless of whether the Amendment was in force or not, Annex VII countries that have ratified the Amendment can commit themselves to not export hazardous wastes to non-Annex VII countries – in fact many Annex VII countries that have already ratified the Amendment have also adopted legislation in line with the terms of the Ban. In the event Annex VII countries did not wish to ratify the Amendment, they would not be bound by it once it entered into force.
6. Following entry into force of the amendment, non-Annex VII countries will be expected not to receive any hazardous wastes from Annex VII countries that have ratified the Amendment. As indicated, in the light of the current policy of Annex VII countries which have ratified the Amendment to implement the ban already before its entry into force, the entry into force of the Amendment would primarily formalize internationally the current situation. Ratification of the Ban would not affect imports from other non-Annex VII countries. Therefore, to secure wider protection the countries would have to take active steps, e.g. via import bans in national legislation to prohibit imports from non-Annex VII countries, as provided by the Convention.
7. It was concluded that while entry into force of the Amendment would send a powerful political signal, there would be no practical implications. The only difference to the current situation would be that more Parties have ratified the Ban and thus the number of Parties applying the Ban would have increased. The graphic below visualises that the transboundary movements between the different Parties remain *de facto* the same no matter whether the Ban Amendment has entered into force or not.

⁵ Since the fixed time approach can be interpreted in several ways, a short explanation of four different variations of this approach has been prepared by the two lead countries and a short rationale for the interpretation chosen by the CLI is given. This will be made available as an information document.

Same transboundary movements of hazardous waste (TBM) independently whether the Ban amendment is in force or not



Building Block 2: Environmentally Sound Management

8. In spite of the steps taken to promote the Amendment's entry into force this is unlikely to happen in the near future, and when it does enter into force many countries will continue to choose not to ratify it. The Ban Amendment can, at best, be only a partial solution to protect vulnerable countries and other measures are therefore necessary to further its objective.

9. Broader measures are also important because the world has changed considerably over the last 15 years since the adoption of the Ban Amendment. Generation of hazardous wastes is increasingly a problem in developing countries. Transboundary movements of hazardous wastes from non-Annex VII countries to other non-Annex VII countries and treatment of domestically-generated hazardous wastes are therefore increasingly relevant. Also illegal traffic of hazardous wastes is a large problem. None of these issues would be addressed by the entry into force of the Ban Amendment.

10. For these reasons, the CLI has considered other ways of furthering the objective of the Ban Amendment - the protection of vulnerable countries. It has made recommendations about improving the ways hazardous wastes are dealt with, through the promotion of a framework of requirements for environmentally sound management (ESM)⁶. By establishing standards for environmentally sound management and linking these to transboundary movements, such standards would apply to movements between Annex VII countries that have not ratified the Ban Amendment and non-Annex VII countries, as well as the movements between non-Annex VII countries. This would therefore address an increasingly important gap in the application of the Ban Amendment to transboundary movements of hazardous wastes.

Building Block 3: Other elements

11. The CLI also considered and made recommendations about legal clarity and combating illegal traffic, recommendations for action at regional level and ways of assisting countries to build upon and utilise their rights to prohibit the import of hazardous wastes, from whatever source. The CLI also recognised that financing, expertise and technology would have to be found for such initiatives, and has proposed methods for raising awareness of the Convention's work and forging links with other initiatives.

The CLI's recommendations

The outcome of the CLI process is a proposal for a draft omnibus decision, currently in draft form, intended ultimately for presentation to the tenth meeting of the Conference of the Parties (COP) in October 2011. This proposal sets out a number of recommendations in the form of an omnibus draft decision for consideration by the COP. This decision is a compilation from a number of elements identified during the second meeting of the CLI and presented to the seventh session of the Open Ended Working Group (OEWG-7) in May 2010, which took note of the list of elements for inclusion in a possible way forward.

The proposal reflects a carefully balanced package. Indonesia and Switzerland believe that while the details of the different elements could be further developed and changed, the three building blocks will have to be maintained.

The following elements were identified:

- *Addressing the entry into force of the Amendment*

Following comments received at OEWG-7 this element was given greater priority, not least because of its political importance. Countries are encouraged to ratify the Amendment and would be assisted through regional cooperation and specific initiatives.

An agreed interpretation of paragraph 5 of article 17 - the provision of the Convention relating to the entry into force of amendments - so as to allow an early entry into force of the Ban Amendment is also recommended

- *Developing standards and guidance for Environmentally Sound Management*

⁶ ESM – environmentally sound management: taking all practicable steps to ensure that hazardous wastes or other wastes are managed in a manner which will protect human health and the environment from the adverse effects which may result from such wastes

The draft decision recommends that an expert technical group be established, taking into account regional balance to be mandated to further disseminate existing work, develop a new framework on ESM and investigate ways in which ESM standards might be linked to transboundary movements of hazardous wastes.

- *Providing further legal clarity*

CLI participants have identified a number of areas where the wording of the Convention, or its on-the-ground interpretation, is not clear or differs between countries. The CLI is recommending that work be undertaken within the Basel Convention Committee for Administering the Mechanism for Promoting Implementation and Compliance to provide additional clarity in this respect.

- *Further strengthening the Basel Convention Regional and Coordinating Centres (BCRCs)*

Many of the recommendations in the draft decision would be best implemented at regional level. For this reason, the COP is invited to recognise this, to enhance and further support the work of the Centres, including integrating this role into the BCRCs development within the new strategic framework for the Basel Convention.

- *Combating illegal traffic more effectively*

The CLI heard evidence that illegal traffic in hazardous wastes is causing considerable harm to human health and the environment. Clearly, better enforcement is essential to addressing this issue. Enforcement authorities already cooperate with each other in a number of ways, and the CLI recommends that this work is built upon, promulgated and encouraged in a number of specific ways.

- *Assisting vulnerable countries to prohibit the import of hazardous wastes*

The Convention provides for Parties to prohibit imports of hazardous wastes and a mechanism is provided to enable notification of such prohibitions. Some countries have, however, faced practical obstacles to taking the necessary steps to implement such prohibitions. The draft decision identifies a number of steps that might be taken by the Secretariat, by regional centres and by Parties to assist overcome these obstacles.

- *Building Capacity*

In many parts of the world there would be severe difficulties in finding the resources necessary to support a drive towards the improved environmentally sound waste management envisaged in the above mentioned elements. Thus, capacity building will need to be a priority in any such initiative implementing the draft decision. The CLI has identified a number of elements that might contribute to capacity building. In this context it is important to recognise that the resources that would be needed include not just financial resources but also expertise, knowledge and technology transfer.

An important first step would be to link and integrate the goals of the Convention with other important initiatives, such as the Millennium Development Goals, climate change, human health initiatives and so on. Securing political and public engagement is also necessary. At present, the data on the problems caused by inadequate management of hazardous waste is sparse when compared to the data relating to other health and environmental problems, such as water pollution, desertification, biodiversity loss, and so on. This makes it difficult for the Convention to present a strong case for resources and the draft decision also recommends a better assessment of impacts.

Appendix 1: The Ban Amendment

Decision III/1 adopted by the third meeting of the Conference of the Parties (the ‘Ban Amendment’) consists of the following elements:

(a) Insertion of a new preambular paragraph 7 bis stating:

“Recognizing that transboundary movements of hazardous wastes, especially to developing countries, have a high risk of not constituting an environmentally sound management of hazardous wastes as required by the Convention;”

(b) Insertion of a new Article 4A reading:

1. *Each Party listed in Annex VII shall prohibit all transboundary movements of hazardous wastes which are destined for operations according to Annex IV A, to States not listed in Annex VII.*
2. *Each Party listed in Annex VII shall phase out by 31 December 1997, and prohibit as of that date, all transboundary movements of hazardous wastes under Article 1 (1)(a) of the Convention which are destined for operations according to Annex IV B to States not listed in Annex VII. Such transboundary movements shall not be prohibited unless the wastes in question are characterised as hazardous under the Convention.”*

(c) Introduce a new Annex VII reading:

“Parties and other States which are members of OECD, EC, Liechtenstein.”

Please note that the Annex IV A mentioned in decision III/1 refers to the Annex of the Convention listing ‘operations which do not lead to the possibility of resource recovery, recycling, reclamation, direct re-use or alternative uses’. Annex IV B refers to the Annex of the Convention listing ‘operations which may lead to resource recovery, recycling reclamation, direct re-use or alternative uses’.
