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

Eighth meeting

Nairobi, 27 November–1 December 2006

Item 6 (e) of the provisional agenda\*

**Implementation of the decisions adopted by the Conference  
of the Parties at its seventh meeting: Legal matters**

**Basel Protocol on Liability and Compensation:  
report on workshops**

**Note by the Secretariat**

Attached to the present note is the report of a regional workshop aimed at promoting ratification of the Basel Protocol on Liability and Compensation for Damage resulting from Transboundary Movements of Hazardous Wastes and their Disposal, which was held in Cairo, Egypt, from 30 October to 1 November 2006. For the list of participants, and responses to the questionnaires issued to provide a basis for discussions at the workshop, please see the Convention website (<http://www.basel.int/legalmatters/index.html>).

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# **Regional Workshop Aimed at Promoting Ratification of the Basel Protocol on Liability and Compensation for Damage resulting from Transboundary Movements of Hazardous Wastes and their Disposal**

## **30 October to 1 November 2006**

### **Cairo, Egypt**

## **Meeting Report**

### **30 October 2006**

1. The opening session of the Regional Workshop Aimed at Promoting Ratification of the Basel Protocol on Liability and Compensation for Damage resulting from Transboundary Movements of Hazardous Wastes and their Disposal (the Liability Protocol) was chaired by Prof. Mourtada El-Aref, Director of the Basel Convention Regional Centre for Arabic Speaking Countries in Egypt (the BCRC – Egypt). The following were represented at the workshop; Bahrain, Djibuti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Palestine, Qatar, Saudi Arabia, Sudan, Syria, United Arab Emirates, and Yemen.
2. Prof. El Aref welcomed the participants, thanked the Government of Finland for the financial support to the Centre including for this workshop and stressed the importance of promoting the knowledge of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (the Basel Convention), its amendment, the Liability Protocol, and the various guidelines adopted by the Conference of the Parties to the Basel Convention (the COP) in order to build the capacity of the countries in the region concerning the environmentally sound management of hazardous and other wastes.
3. These remarks were followed by a statement from Ms. Sachiko Kuwabara-Yamamoto, Executive Secretary of the Secretariat of the Basel Convention (SBC), read by Ms. Laura Thompson, Legal Expert provided by SBC. In these remarks, Ms. Kuwabara-Yamamoto, thanked the Government of Finland for its financial support and the Governments of Egypt and Switzerland for their support for this workshop, as well as the Director and the staff of the BCRC – Egypt for their work. Furthermore, she stressed the importance of pushing forward the environmental considerations in the development agenda of the developing countries hoping that such a workshop would assist countries in the region in meeting their commitments to set up a comprehensive legal regime that would adequately protect the human health and the environment from the adverse effects of the transboundary movements of hazardous wastes. Ms. Kuwabara-Yamamoto also drew the attention of the important role played by the Basel Convention Regional Centres, including the BCRC – Egypt, in facilitating the implementation of the Basel Convention.
4. Subsequently, Mr. Eirola Martti, Representative of the Embassy of Finland in Egypt, welcomed the participants and wished them fruitful discussions leading to facing the problems of hazardous wastes. To finalise the opening remarks, Eng. Adel Elshafey, representing the Egyptian Minister of State for Environment, welcomed the participants to Egypt and express his hope that the recommendations agreed upon this meeting, would indicate the difficulties and challenges faced by countries in ratifying the Liability Protocol.
5. The substantive part of the meeting began with an overview of the Basel Convention's history, goals and procedures presented by Ms. Thompson, with special focus on the control system of the transboundary movements of hazardous and other wastes established by the Convention and the Environmentally Sound Management of wastes.
6. Following Ms. Thompson's presentation, Mr. Jurg Bally, Head of International Affairs at the Legal Division of the Swiss Agency for the Environment Forests and Landscape, presented the Key Elements of the Liability Protocol including, the scope of application; the definition of damage; the types, elements and limits of the liability; and its relationship with the Basel Convention. Mr. Bally stressed the importance of having an international legal regime that establishes liability and provides for prompt and adequate compensation.
7. The above-mentioned interventions were followed by presentations made by each country in the Arab region on the key elements of civil liability under their domestic legislation, based on the

responses to Questionnaire No. 1 on Civil Liability that had been circulated to participants before the workshop. The major elements referred by the countries in their presentations are as follows:

- (a) The apportionment of the responsibility as a result of incidents during transboundary movements of hazardous wastes varies in the different countries between the owner/exporter of the wastes, the carrier, and the importer;
- (b) In most countries damage such as personal injury, damage to property and environmental damage are covered in the domestic law;
- (c) The enforcement of environmental law was apportioned between environmental authorities (ministries, agencies, inspectorates), public prosecutors, and civil courts;
- (d) All countries agreed that the nature of liability depends on the type of damage caused;
- (e) In most countries there is a time limit for liability, mostly 10 years, while others had no limit;
- (f) In some countries there is no minimum/maximum financial limits to liability;
- (g) In some countries insurance coverage is required;
- (h) All countries indicated that their liability legislation presents some gaps;
- (i) Some countries indicated that they have entered into bilateral agreements.

8. At the end of the day, the participants were divided into three working groups and requested to resolve a case study on liability and compensation according to their national regimes.

9. The meeting was suspended at 18:45.

### **31 October 2006**

10. Mr. Mohamed Borham from the Egyptian Environmental Affairs Agency of Egypt started the day with a presentation on the liability and compensation regimes for oil spills including the following instruments: i) International Convention for the Prevention of Pollution from Ships and its Protocols; ii) International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001; iii) International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS), 1996; iv) International Oil Pollution Compensation Fund (IOPC), 1992; v) International Convention on Civil Liability for Oil Pollution Damage (CLC). He also explained the scope and level of compensation of the Oil Pollution Compensation Fund. Following a discussion concerning potential overlaps between the Oil Pollution Fund and the Liability Protocol, Ms. Thompson clarified that there was no overlap as the Basel Convention and its Liability Protocol only applied to hazardous and other wastes and not to damages caused by products such as oil.

11. Next, Ms. Thompson made a presentation on the Necessary Actions Before and Upon Ratification of the Liability Protocol, in which she explained the decisions and actions that a country that has decided to become a Party to the Liability Protocol must take before and/or upon ratification at the international and at the national level. Prof. El Aref indicated that the BCRC - Egypt is willing, through the business plan for the next biennium, to help countries in the region to adapt their legislation to the requirements established by the Basel Convention and the Liability Protocol. Priority will be given to countries that are in the process of developing or updating their hazardous waste national legislation.

12. Following the above, presentations were made by each country on the difficulties faced in ratifying the Liability Protocol on the basis of Questionnaire No. 2 on Ratification, that had been previously circulated to the participants. The following points were raised in the presentations:

- (a) The Syrian Arab Republic has already ratified the Liability Protocol. Yemen and Saudi Arabia informed that they have finalized the ratification procedure of the Liability Protocol and indicated that they were in the process of transmitting the relevant ratification instruments to the Depositary in New York. From the remaining countries, some countries have taken steps towards ratifying the Liability Protocol;
- (b) In most countries, the ratification process is initiated by the authority responsible for environmental affairs. The Ministries of Foreign Affairs, Justice and/or other institutions or stakeholders should also be consulted in most countries. The final decision is mostly taken by the Parliament, Cabinet and/or the President;

- (c) In several countries the publication of the ratification instrument in the Gazette is necessary for its entry into force;
- (d) The following difficulties and concerns were raised in connection with the ratification of the Liability Protocol:
  - (i) Lack of human and financial resources;
  - (ii) Lack of insurance coverage in the insurance international market;
  - (iii) Potential conflicts or discrepancies with the current national legislation;
  - (iv) Cumbersome and long lasting ratifications procedures;
  - (v) Lack of statistical information on number and magnitude of incidents occurred.

13. Participants suggested that the SBC should undertake the following actions in order to remove the above-mentioned obstacles and facilitate the ratification of the Liability Protocol:

- (a) Providing additional training and capacity building of relevant staff at the national level including workshops;
- (b) Assist countries in revising their domestic legislation in order to adapt it to the Liability Protocol;
- (c) Assist countries in raising the level of awareness at the national level of the Liability Protocol and the system established by it.

14. Following the above, Prof El Aref introduced Dr. Lubna Farid, Associate Professor at the Faculty of Commerce of the Cairo University on Insurance. Dr. Lubna Farid presented an overview of the current Egyptian insurance market and indicated that there is no available coverage for damage suffered in connection with transboundary movements of hazardous wastes. She suggested organising an international workshop that would include the insurance and reinsurance companies to discuss the potential solutions to this problem taking into account the nature of the risk, the rules governing the liability, the amount of the loss, and the financial and time limits of the compensation. She further indicated that in her opinion, only pools or groups of insurance companies could accept the type of damages covered by the Liability Protocol due to the nature of the risk involved and the possibility that such pools have of dividing the risk. One country suggested that the banking sector should also be invited to such a workshop as the Liability Protocol stipulated also that bonds and other financial guarantees could be issued to cover the transboundary movements.

15. Next, Mr. Bally made a presentation entitled Setting of Financial Limits to be Determined under Domestic Law - What is Feasible, Realistic and What is Reasonable, in which he explained the financial limits established by the Liability Protocol.

16. Following Mr. Bally's intervention, the participants made presentation on the problems faced by their countries in connection with the financial limits based on Questionnaire No. 3 Financial Limits and Insurance that had been previously circulated to the participants. The following issues were raised:

- (a) Most countries do have financial difficulties with the minimum limits of liability;
- (b) One country suggested that Annex B should be based on the composition and toxicity of the wastes rather than on their quantity;
- (c) Few countries have consulted the private insurance companies in their countries;
- (d) It was indicated that SBC should assist countries on the issue of the financial limits and in particular in the identification of institutions or companies that will be willing to provide insurance coverage as specified in the Liability Protocol.

17. The meeting was suspended at 17:40.

### **1 November 2006**

18. The third day of the workshop started with a case study on the financial limits established by the Liability Protocol in order to facilitate the understanding of the participants as to how the liability and compensation contemplated by the Protocol will apply to damages suffered in connection with transboundary movements of hazardous and other wastes. A discussion followed the presentation of the working groups.

19. Next, Prof. El Aref made a presentation on the work of the BCRC – Egypt including, past, present and future activities and projects and the workplan of the Centre for 2007-2008. At the end, Prof. El Aref recommended the participants to visit the websites of the BCRC - Egypt ([www.baselegypt.org](http://www.baselegypt.org)) and the SBC ([www.basel.int](http://www.basel.int)) for further information.
  20. The following recommendations to the COP were agreed by the participants:
    - (a) Request SBC and BCRC – Egypt to organise regional and sub-regional events within the business plan of the BCRC – Egypt to enhance awareness and build the capacity of the region, using the experiences gained from the current workshop.
    - (b) Invite countries to organise events at the national level to enhance awareness and build the capacity of the relevant staff with the support of SBC and BCRC – Egypt.
    - (c) Provide financial resources to undertake a review of the domestic laws and regulations of the countries in the region in order to avoid discrepancies between these legislations and the Liability Protocol.
    - (d) Provide financial resources to countries that have ratified the Liability Protocol in order to take the necessary steps to implement the Protocol.
    - (e) Request SBC and other donor countries, organisations and/or financial institutions to work towards the organisation of an international workshop that would involve the participation of insurance and reinsurance companies as well as the banking sector of the different regions in order to discuss potential solutions to the lack of insurance available to cover the damages contemplated by the Liability Protocol.
    - (f) Invite the countries that have ratified the Liability Protocol and the BCRC – Egypt to facilitate the exchange of information concerning the steps that these countries have taken to implement the Protocol and the problems faced.
    - (g) Urge donor countries and organisations and other stakeholders to provide voluntary contributions to the Emergency Fund.
  21. Finally, it was noted that the workshop provided a very useful opportunity to exchange views and options among the countries in the region on the process of ratification of the Liability Protocol and the implementation of the Basel Convention.
  22. The report of the workshop was adopted by the participants.
  23. The workshop was closed at 17:50.
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