Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal

Study on Annex VII, part II

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Executive summary

1. The purpose of the present study is to evaluate the institutional and legal framework for the implementation of decision III/1, as outlined in paragraph B of the terms of reference for part II of the study on Annex VII.

2. In the first question addressed in the study, we consider what objectives the legal and institutional infrastructure of a country must achieve in order to ensure effective implementation of decision III/1, i.e., to ensure that there is no export of hazardous wastes from Organization for Economic Cooperation and Development (OECD) countries to non-OECD countries. If a given activity is to be effectively prohibited, the State must have control over that activity. In general terms, the objective of a national infrastructure is therefore to ensure that the State has control over all activities related to the management of hazardous wastes within its territory.

3. This general objective has two main elements: first, the control of import and export of hazardous wastes, the application of the prior informed consent (PIC) procedure, and the prohibition of movements that are in contravention of the Basel Convention; and, second, the imposition of sanctions (criminal and civil) for contraventions. The Basel Convention already provides for a number of export prohibitions (i.e., to non-Parties, and to Antarctica). Decision III/1 adds an additional prohibition, which is not conceptually different from those already existing. Accordingly, the legal and institutional requirements for the implementation of decision III/1 do not differ from the requirements for other import and export prohibitions. In other words, if a country has the infrastructure to implement the Convention as it stands, it will also be able to implement decision III/1.

4. The objectives outlined above must be achieved if the export and the import of hazardous wastes are to be prevented. For this reason, although the situation of OECD countries differs conceptually from that of non-OECD countries, in that the former have an obligation to prevent export and the latter a right not to receive hazardous wastes, the legal and institutional elements required by OECD countries to comply with their obligation, and by non-OECD countries to exercise their right, are essentially the same.

5. For the achievement of the objectives, the following main elements of a legal and institutional infrastructure should ideally be present:

   (a) Legal infrastructure elements:

      (i) Definitions of wastes, hazardous wastes, and persons deemed to be responsible for the wastes (generator, holder, exporter, importer, carrier, etc.);

      (ii) System under which the person responsible must obtain prior permission from a government authority for the import or export of hazardous wastes, which is only granted if the conditions imposed by law are fulfilled;

      (iii) Norms prohibiting or restricting the import or export of hazardous wastes;

      (iv) Sanctions for contraventions;

      (v) Obligation to remedy the situation in cases of illegal transactions;

      (vi) Rules on civil liability for damage caused by transactions involving hazardous wastes;

   (b) Institutional infrastructure elements:

      (i) Government authority or authorities designated by law to formulate rules and regulations, to administer the system for prior permission, and to enforce the rules (including customs control). These authorities must have sufficient standing, expertise and resources to perform their functions effectively;
(ii) Civil, criminal and administrative courts competent to address issues related to the management of hazardous wastes, and possibilities of appeal;

(iii) Measures to ensure that the addressees of the legislation are aware of the rules in force.

6. The ideal case would be for all the above elements to be present in an existing legal and institutional infrastructure, but this is unlikely to be found in any country. If, however, we consider the legal and institutional infrastructures of eight countries that are considered to be representative of the principal situations that exist in the world with respect to waste management, we may classify them broadly into three levels of institutional and legal development with regard to hazardous waste management. These levels do not necessarily coincide with the countries’ formal status as developed countries, developing countries or countries with economies in transition, or as OECD or non-OECD countries:

(a) High level of legal and institutional development: Countries at this level have a comprehensive legal and institutional framework for waste management in that the large majority of the elements identified above are present, ensuring effective implementation of the Basel Convention and decision III/1;

(b) Medium level of legal and institutional development: Countries at this level have a fairly comprehensive legal framework, including a good proportion of the elements identified above, and a comprehensive institutional framework in theory, in the sense that authorities have been designated to perform the functions required by law. Difficulties are likely to arise with practical implementation, owing to a lack of resources and personnel, organizational shortcomings and, in some cases, corruption-related problems;

(c) Low level of legal and institutional development: In countries at this level, a specific waste-related legal and institutional framework is only partially developed. Difficulties arise with implementation and enforcement, owing to a lack of personnel and resources, organizational shortcomings and, in some cases, corruption-related problems.

7. The international legal and institutional infrastructure established within the framework of the Convention has the potential to support the national infrastructures, or to assist countries in the further development of their national infrastructures. The Basel Protocol on Liability and Compensation provides a basic framework for all countries, whereas the future compliance mechanism (especially its advisory element), the regional centres for training and technology transfer, and bilateral and multilateral development cooperation programmes are primarily useful in tackling the problems of countries at a medium or low level of legal and institutional development. The mechanisms can only support – never replace – the building and implementation of a legal and institutional infrastructure at the national level.
I. BASIC LEGAL AND INSTITUTIONAL INFRASTRUCTURE NECESSARY FOR THE EFFECTIVE IMPLEMENTATION OF DECISION III/1

A. Scope of the present analysis

1. Ideally, a given national legislation and institutional infrastructure should cover all aspects of the hazardous waste management cycle, including generation, transport, treatment, storage, import, export, disposal, and recycling. Such a comprehensive waste management legislative and institutional framework is also a prerequisite of the effective implementation of decision III/1. That said, an analysis of the entire waste management system is beyond the scope of this study. In accordance with paragraph B of the terms of reference for part II of the study on Annex VII, the present analysis focuses on legislation and infrastructure directly relevant to the implementation of decision III/1. Other aspects are considered only marginally. Similarly, the analysis is limited to the legal and institutional aspects and does not directly address technical and financial capacity, public awareness, training, and similar issues.

2. All statements made in this paper are based on the assumption that decision III/1 will enter into force (as article 4A) and thus will become a legally binding part of the Basel Convention.

B. Obligations and rights of Annex VII and non-Annex VII countries under decision III/1

3. In accordance with the wording of its text, the main obligation to implement decision III/1 rests with the Annex VII Parties (“Each Party listed in Annex VII shall prohibit all transboundary movements of hazardous wastes […] to States not listed in Annex VII”). Accordingly, Annex VII Parties have an obligation towards non-Annex VII Parties to prohibit the export of hazardous wastes to them, and non-Annex VII Parties have a right vis-à-vis Annex VII Parties not to receive hazardous wastes from them. The position of countries in the two groups is thus conceptually different. Annex VII Parties need the legal and institutional infrastructure to comply with their obligation (i.e., to prevent hazardous wastes from being exported to non-Annex VII countries), and non-Annex VII Parties need the infrastructure to exercise their right (i.e., to prevent hazardous wastes from being imported from Annex VII countries). Thus, for the first group, the function of the legal and institutional infrastructure is prohibition of export and, for the second, prohibition of import of the hazardous wastes covered by decision III/1.

C. Essential prerequisites for the effective implementation of decision III/1

1. Legal and institutional infrastructure to control and prohibit the import and export of hazardous wastes

4. Even before the adoption of decision III/1, the Basel Convention recognized the right of countries to prohibit the import of hazardous wastes. Accordingly, the Convention obliges Parties to prohibit the export of hazardous wastes to countries exercising this right, as well as to non-Parties to the Basel Convention (article 4). Hence, even prior to the entry into force of decision III/1, potential exporting countries need the legal and institutional infrastructure necessary to prohibit the export of hazardous wastes, and potential importing countries need the legal infrastructure to prohibit their import (especially if they have enacted a general import prohibition). In this sense, decision III/1 does not substantially change the situation: the innovation it provides is generally to extend an already existing and recognized right – namely, the right to enact a national import prohibition – to a clearly defined group of countries and to oblige the other countries to respect this right.

5. Accordingly, non-Annex VII Parties will no longer need expressly to prohibit imports from Annex VII Parties, as this will be provided for under the Convention. Annex VII countries will no longer need to find out which countries have prohibited imports, as the Basel Convention imposes a general prohibition. In this sense, decision III/1 facilitates the task of national authorities of both groups of countries. On the other hand, non-Annex VII countries are no longer free to choose whether or not to accept the import of hazardous wastes from Annex VII countries. In this sense, decision III/1 restricts their freedom. As far as the legal and institutional infrastructure required by countries is concerned, however, this basically remains the same: countries need the infrastructure for the effective control of the import and export of hazardous wastes.
6. To be able to exercise such control and, accordingly, to implement decision III/3, it is essential that a country has full knowledge of the import and export of hazardous wastes and of any relevant schemes being planned or implemented which involve its territory. The Basel Convention provides a framework for this: the PIC procedure (articles 6 and 7), which requires that the country of export notifies the country of import of any intended transboundary movements, supplying detailed information, and that the country of import decides whether to permit the transboundary movement, based on an assessment of this information.

7. To use this procedure, both countries must obtain the relevant information from the operators responsible for the transboundary movements. This they can only do if they have a national infrastructure that allows them to monitor relevant schemes, and to identify the responsible operators. If through this system the country of export receives information leading it to conclude that the intended transboundary movements will be in contravention of decision III/1, it will refuse permission even without submitting the request to the importing country. This means that, for the effective monitoring and control of exports and imports, countries need no more and no less than a functioning legal and institutional infrastructure allowing them to apply the PIC procedure as prescribed by the Basel Convention.

2. Legal and institutional infrastructure to impose sanctions for contraventions (illegal traffic)

8. In accordance with article 9 of the Basel Convention, contravention of an export or import prohibition imposed by the Convention which leads to the deliberate disposal of hazardous wastes is considered illegal traffic (article 9). It follows that any contravention of the export prohibition set out in decision III/1 also comes under the heading of illegal traffic. In order to punish such contravention, Parties therefore need the same legal and institutional infrastructure that is required in the general context of illegal traffic. Such infrastructure must provide both criminal law and civil law sanctions for contraventions, i.e., the imposition of fines or prison sentences as well as civil liability for damage caused. Here too, decision III/1 does not introduce any fundamentally new requirements.

9. The Basel Convention obliges Parties to adopt and enforce legislation to prevent and punish illegal traffic (articles 4, paragraph 4, and 9, paragraph 5). These provisions give some guidance concerning the legislation and infrastructure that countries need to establish. In this respect also, decision III/1 adds no new requirements. The Basel Protocol on Civil Liability extends to damage caused by illegal traffic. Once it comes into force, it will require Parties to put into place the framework to ensure its appropriate support by national law. The infrastructure required in this respect also remains basically the same.

Conclusion

10. The legal and institutional infrastructure required by Parties to implement decision III/1 must achieve two main objectives: first, control of import and export, application of the PIC procedure, prohibition of movements that are in contravention of the Basel Convention; and, second, imposition of sanctions (criminal and civil) for contraventions. It does not require elements additional to those necessary to implement the obligations of the Basel Convention prior to the adoption of decision III/1.

3. Requirements for Annex VII countries (compliance with the obligation not to export hazardous wastes to non-Annex VII countries)

11. The requirements for Annex VII countries under their obligation not to export hazardous wastes to non-Annex VII countries may be categorized as follows:

(a) Prohibition and control of exports and application of the PIC procedure:

   (i) Legal basis for prohibiting export of hazardous wastes subject to decision III/1;

   (ii) Definition and identification of the categories of wastes the export of which is prohibited under the Basel Convention and decision III/1, as opposed to wastes not prohibited;

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1 Article 9, paragraph 1 (e) of the Basel Convention contains the following general clause: “…any transboundary movement of hazardous wastes that results in deliberate disposal (e.g., dumping) of hazardous wastes or other wastes in contravention of this Convention… shall be deemed illegal traffic.”
(iii) Means of identifying the operators managing hazardous wastes in the country, and exporting such wastes;

(iv) Means and capacity to monitor and control the export of hazardous wastes: prior authorization, monitoring of export schemes of operators, border control;

(b) Sanctions for contraventions (criminal and civil):

(i) Legal basis for imposing criminal sanctions for contraventions, courts competent to pass judgements, and the means and capacity to enforce these judgements;

(ii) Legal basis for imposing civil liability for damage caused through contraventions, courts competent to pass judgements;

(iii) Legal basis and capacity for implementing and enforcing the duty to re-import under the Basel Convention;

(c) Other: Framework for cooperation and the exchange of information with potential importing and transit countries.

4. Requirements for non-Annex VII countries (exercise of the right not to receive hazardous wastes from Annex VII countries)

12. The requirements for non-Annex VII countries to be able to exercise their right not to receive hazardous wastes from Annex VII countries may be categorized as follows:

(a) Prohibition and control of import and application of the PIC procedure:

(i) Legal basis for prohibiting the import of hazardous wastes subject to decision III/12;

(ii) Definition and identification of the categories of wastes the import of which is prohibited under the Basel Convention and decision III/1, as opposed to wastes not prohibited;

(iii) Identification of the operators importing, managing and disposing hazardous wastes in the country;

(iv) Identification of existing disposal and recycling facilities in the country;

(v) Means and capacity to monitor and control the import of hazardous wastes: prior authorization, monitoring of import schemes by operators, border control, monitoring of the management and disposal or recycling of imported wastes;

(b) Sanctions for contraventions (criminal and civil):

(i) Legal basis for imposing criminal sanctions for contraventions, courts competent to pass judgements, and the means and capacity to enforce these judgements;

(ii) Legal basis for civil liability for damage caused through contraventions, courts competent to pass judgements;

(c) Other: Framework for cooperation and the exchange of information with potential exporting and transit countries.

2 As decision III/1 already prohibits the introduction of hazardous wastes from Annex VII Parties, such a legal basis is not strictly necessary. All the same, it can strengthen the obligation imposed by the Convention.
Conclusion

13. The above outline shows that, notwithstanding the conceptually different positions of importing and exporting countries, there is little factual difference between the legal and institutional infrastructure that they require.

14. In the following two sections we consider the elements of the legal and institutional infrastructures that a country would ideally require to achieve the objectives outlined above.

D. Legal infrastructure

15. For the purpose of this analysis, a legal infrastructure is defined as a concise, coherent and comprehensive legal framework addressing the export and import of hazardous wastes, where necessary taking into account different levels of government (depending on the form of government of the country in question), featuring provisions of sufficient precision and detail to allow effective regulation. The legislation can be designed in different ways, e.g., as part of a waste management chapter of a law on environmental protection, as a section of a general waste management law, as a separate law within a framework law, etc. The issues can also be addressed at different levels of legislative authority or different levels of government (e.g., a law dealing with the fundamental issues, and a regulation or ordinance dealing with the details).

16. The aim of the legislation should be the control of the import and export of hazardous wastes, in accordance with the provisions of the Basel Convention, including decision III/1. Ideally, the following elements should be present:

(a) Definition of wastes and hazardous wastes, including:

   (i) Hazardous wastes subject to the legislation (in accordance with article 1 and Annexes I, III, VIII and IX of the Basel Convention);

   (ii) Wastes subject to the import and export ban (in accordance with Annexes I, III and VIII of the Basel Convention);

   (iii) Wastes not subject to the import and export ban (in accordance with Annex IX of the Basel Convention);

(b) Definition of the responsible person or persons: The natural or legal persons deemed responsible for complying with the provisions of the legislation (e.g., importer, exporter, carrier, generator, disposer, other operator);

(c) Permit system for imports and exports: A mechanism under which a responsible person must obtain prior permission from the national competent authority for the intended export or import of hazardous wastes, and the competent authority must carefully examine the request prior to granting permission (in accordance with the PIC procedure of the Basel Convention), based on detailed information to be submitted to it;

(d) Movement document: A requirement for documentation to accompany wastes subject to transboundary movement, in accordance with article 4, paragraph 7 (c) of the Basel Convention, providing information on the consignment;

(e) Licensing system for the management of hazardous wastes: A mechanism under which persons managing hazardous waste or operating disposal facilities must obtain a license from the competent government authority and which makes provision for monitoring of the activity or facility by the authority;

(f) Restriction or prohibition of export or import: Norms prohibiting or restricting the export or import of hazardous wastes in accordance with the criteria prescribed by the Basel Convention, which must be verified by the authority issuing relevant permits. In the case of Annex VII countries, a prohibition of
export to non-Annex VII countries should be included, and non-Annex VII countries should include a prohibition of import from Annex VII countries;

(g) Sanctions: Criminal sanctions for contraventions by importers, exporters or other operators to whom the legislation assigns responsibility (prison sentences, fines);

(h) Disposal and clean-up in cases of illegal traffic: Obligations for the environmentally sound disposal, re-export or other remedies in the case of illegal transboundary movements, including a system for payment of expenses by the persons responsible;

(i) Civil liability: Rules on civil liability for damage (including damage to the environment) arising from the management of hazardous wastes, including import and export.

E. Institutional infrastructure

17. For the purpose of this analysis, an institutional infrastructure is defined as a functional State-administered infrastructure consisting of institutions and authorities with the necessary powers, competence and resources to allow the effective implementation and enforcement of the legal framework. Ideally, the elements outlined in the following subsections should be present.

F. Implementation and enforcement authorities

18. Authorities responsible for implementation and enforcement of the regulations should be in place, as described below:

(a) Authority competent to formulate rules and regulations: A regulatory authority or authorities designated under national legislation to formulate and adopt rules, regulations, schemes and guidelines in order to implement the legislation, including at the technical level;

(b) Authority competent to administer the licensing system for treatment and disposal facilities: An authority or authorities designated under national legislation to issue permits for the management of hazardous wastes and the operation of treatment and disposal sites, and having the competence to monitor such activities;

(c) Authority competent to administer the import and export permit system: An authority or authorities designated under national legislation to administer the permit system and to assess all requests for exports and imports, refusing those that are not in conformity with the applicable legislation or with decision III/1. This function may or may not be carried out by the competent authority or authorities established in accordance with article 5 of the Basel Convention;

(d) Authority in charge of customs control: An authority or authorities designated under national legislation to carry out customs control (which may include verification of movement documents, spot-checking, sampling and, possibly, identification of special check-points for hazardous wastes at border crossings). The system should make provision for the effective control of waste shipments;

(e) Authorities in charge of monitoring and enforcement: Authorities designated by law, at all levels of government, competent to enforce relevant legislation (e.g., environmental inspectorates, police forces, port and airport authorities, coast guards), with the necessary training, expertise and resources.

G. Courts

19. The court system should comprise courts or other judicial bodies competent to deal with infringements of pertinent national legislation (administrative, criminal and civil aspects), including possibilities of appeal
H. Promotion of information

20. In the area of information, it is essential that there should be formal or informal means of providing all persons and companies concerned with information on the applicable legislation and on the sanctions in case of infringement.

II. COUNTRY STUDIES

21. In practice, not all the elements identified in chapter I are indispensable, nor are they of equal importance. In practice, it is highly unlikely that there is any country whose legal and institutional framework includes all the elements listed. In this chapter, we shall analyse the legal and institutional frameworks of eight selected countries in different regions of the world, which are considered to be representative of the different situations with respect to the various waste management situations to be found in the world today. These existing frameworks are measured against the elements of an ideal implementation framework for decision III/1, and conclusions are drawn as to the effectiveness of the frameworks and the importance of the individual elements. It should be noted that the emphasis of the analysis is not on the individual countries as such, but on the prototypical situations which they represent.

A. Category 1: Least developed country, non-OECD member, minimal waste infrastructure

1. Country characteristics

22. The country selected as representative of the category 1 countries for the purposes of the present analysis – namely, least-developed countries, not members of OECD and with only minimal waste infrastructures – has the following characteristics:

(a) In terms of its level of development, a least developed country according to the United Nations listing, non-member of OECD, non-Annex VII country under the Basel Convention;

(b) In terms of its economic situation, among the 10 lowest performers worldwide on the human development index and with over 65 per cent of its population below the national poverty line;

(c) In terms of its industry, a country with such industrial sectors as food and beverages, chemicals (fertilizer, soap, paints), petroleum products, textiles, cement, glass, asbestos, tobacco; a traditionally agricultural country in which the share of industry and services has increased over the last few decades and agriculture currently accounts for roughly 30 per cent of gross domestic product (GDP). The percentage of the labour force in this country is as follows: agriculture 81 per cent, industry 6 per cent, services 13 per cent and the annual economic growth rate measures: 10 per cent (all figures for late 1990s);

(d) In terms of its population, with low population density: approximately 20-25 persons per km$^2$;

(e) In terms of its waste management situation, a country in which, in accordance with the low level of industrial development, there is only very modest generation of hazardous wastes. In this country, the waste management infrastructure is reportedly not well developed; there is a lack of disposal facilities and resources. There are no reported exports of hazardous wastes. There is evidence that some import of hazardous wastes takes place, often in contravention of the applicable rules.

2. Legal infrastructure

(a) Legal basis

23. The constitution of the country confers on every citizen both the right to live in a balanced environment as well all the duty to defend this right. Based on the relevant provision of the constitution, the Environmental Law of 1997 provides a general framework for environmental protection, including management of hazardous wastes. The purpose of the Law is “to define the legal basis for the proper use and management of the environment and its elements in order to establish a system of sustainable development” in the country. The Law includes several provisions addressing this issue (see below). There
is as yet no specific legal instrument on the management of hazardous wastes, nor on the export and import of such wastes. Work is under way to develop several regulations under the Law.

(b) **Elements**

24. The following aspects of hazardous waste management are addressed in the Environmental Law or a separate regulation:

   (a) **Definition of wastes and hazardous wastes:** The Environmental Law (section on “Definitions”) defines hazardous wastes and residues as substances destined for elimination, and posing a risk to human health or the environment due to one or more of the characteristics listed in the provision. This definition follows the system of the Basel Convention (articles 1 and 2);

   (b) **Licensing system for management of hazardous wastes:** This is partly addressed in the regulation on environmental impact assessment;

   (c) **Restriction or prohibition of imports and exports:** Under the Environmental Law, the import of toxic residues or wastes is expressly prohibited, except under the terms that would be established under specific legislation. Such legislation does not as yet exist;

   (d) **Civil liability and issues of disposal and clean-up:** In general terms, the Environmental Law places a strict liability on persons who cause material damage to the environment. The State has the right to assess the damage, fix the amount of compensation and to take countermeasures at the expense of the person causing the damage. The provision does not relate to hazardous wastes specifically.

25. There is no specific legal basis for all other issues related to the management of hazardous wastes, including the definition of persons responsible for waste transactions, a system for obtaining prior permission for waste transactions and legal consequences of infringement, and accompanying documents. The rules of the Basel Convention are directly applicable. Reportedly, the rules are not fully implemented even where they do exist in theory.

3. **Institutional infrastructure**

(a) **Implementation and enforcement**

26. The following authorities are responsible for implementation and enforcement:

   (a) **Authorities competent to formulate rules and regulations:** Ministry of Environment and Ministry of Planning and Finance;

   (b) **Authorities competent to administer the licensing system for treatment and disposal facilities:** Ministry of Environment and National Directorate of Environmental Impact Studies;

   (c) **Authority to administer the import and export permit system:** The Ministry of Environment has been designated as the authority competent to administer the permit system such as it exists under the Basel Convention;

   (d) **Authority in charge of customs control:** Customs Department in cooperation with Ministry of Environment and other agencies. Reportedly, the Customs Department forwards little information to the other entities;

   (e) **Authorities responsible for enforcement:** Ministry of Environment, Ministry of the Interior, Customs Department, coastal protection guard (navy).

27. Reportedly, the authorities named above have been assigned competence for the relevant functions, but are often unable to carry them out for lack of enforcement staff. In addition, in practice cooperation is often lacking between different Government agencies.
(b) Courts

28. The civil courts are competent to deal with civil matters such as civil liability. The criminal court of the place of the offence is competent in criminal matters. There exist possibilities of appeal.

(c) Promotion of information

29. A variety of awareness raising measures are in progress, mostly in the framework of donor funded projects. These include seminars and courses for different target groups.

4. Observations and conclusions

30. This country has recently enacted a basic legal framework for environmental protection, which addresses some of the issues related to waste management. The law also expressly prohibits import of hazardous wastes. This law notwithstanding, most of the legal elements necessary for the control of the waste trade, and thus for the successful implementation of the Convention and the Ban Amendment, as outlined in chapter I of the present analysis, are absent.

31. On the institutional side, a government agency exists within the Ministry of Environment which has competence in matters related to waste management. Reportedly, the vigilance of the officer in charge has already prevented many attempts at illegal imports of hazardous wastes.

32. Nevertheless, the Ministry and in particular the agency in charge of waste management are said to have a low status, as do issues related to environmental protection on the political agenda of the country. Coordination with other government authorities is often insufficient, and the staff of the agency does not always receive the documentation necessary to carry out their tasks. There is evidence to suggest that someone in government circles is issuing permits for hazardous waste to unscrupulous brokers from the North, who constantly try to circumvent the existing regulations. Reportedly, there is a suspicion that hazardous waste imports sometimes also take place against the specific advice of the waste management agency, especially where large “fees” are involved.

33. In summary, evidence suggests that the legal basis is insufficient, and that the regulations, where they exist, are often not implemented in practice. This is a problem encountered in a majority of developing countries. The reasons include a lack of personnel and resources, a lack of facilities for waste management and disposal, a lack of interest among those in government circles and a corresponding lack of power of the competent Ministry, and strong opposing interests which resort to corruption. In the present case, it appears that where projects related to waste management exist within the framework of bilateral development cooperation, these often fail to address the pressing issues, as they set goals that are too ambitious and not adapted to the realities of the country.

34. The example of this country, which can be considered to be representative of many others, shows that constitutional guarantees and a prohibition of hazardous waste import under national legislation is insufficient to implement decision III/1. What is needed is a detailed legal basis for the operation of a control and monitoring system, and – even more importantly – an efficient infrastructure with sufficient resources to implement such a system.

B. Category 2: Developing country, OECD member, some waste management infrastructure

1. Country characteristics

35. The country identified as representative of the category 2 countries for the purposes of this analysis – namely, developing countries according to the United Nations listing, members of OECD and Annex VII countries under the Basel Convention – may be considered to have the following characteristics:

(a) In terms of its economic situation, with medium performance as measured on the human development index; significant income inequality, a dual economy (one developed, one poor); approximately 17 million people estimated to live in conditions of extreme poverty in the early 1990s, and a much larger number in conditions of moderate poverty;
(b) In terms of its types of industry: services account for 67 per cent of GDP, industry for 28 per cent and agriculture for 5 per cent. Where the workforce is concerned, 55 per cent is in services, 23 per cent in industry and 22 per cent in agriculture. Exploitation of mineral resources is also an important source of revenue;

(c) In terms of its population, with an average density of approximately 50 persons per km$^2$, very variable in different parts of the country;

(d) In terms of its waste management situation:

(i) Estimated amount of hazardous wastes generated annually (2000): approximately 4 million metric tons produced by around 27,000 generators, with a major proportion coming from manufacturing industries; approximately 570 enterprises authorized to manage hazardous wastes, including approximately 130 recycling facilities (1999);

(ii) About 200,000 tons of hazardous wastes were imported in the year 2000, mainly to one company that recovers valuable metals. These are subsequently exported, and the residual wastes are reused by national companies as secondary materials;

(iii) Annual exports of hazardous wastes measure approximately 22,000 metric tons (1998). In 2000, about 60,000 tons were returned to a neighbouring country by companies subject to a regime of temporary importation of materials used to produce goods for exportation only, and obliged to return the wastes generated by such processes to the country of origin. About 500 tons of polychlorinated biphenyls (PCBs) were sent to Europe for incineration.

2. Legal infrastructure

(a) Legal basis

36. The legal and institutional framework is based on the General Law on Ecological Equilibrium and Environmental Protection, its Regulation on Hazardous Wastes, and a technical ecological norm establishing criteria for defining hazardous wastes. All of these provisions have recently been reviewed or are under revision in accordance with changes in the environmental policy and the structure of the Government. In particular, it is expected that hazardous chemicals and high-risk installations, as well as the need to prevent pollution by hazardous wastes and to conduct remediation measures, will be incorporated in the Regulation on Hazardous Wastes in 2001.

37. Another regulation incorporates the recommendations of the United Nations Committee of Experts on the Transport of Dangerous Goods. In addition, the country has agreed to implement the pertinent decisions of the OECD Council of Ministers and the provisions of a regional agreement to which it is a party. The latter determines the procedures for transboundary movements of hazardous chemicals and wastes between its parties, and sets up an information system on such movements.

38. Reportedly, there is an urgent need to improve and harmonize the different pieces of legislation that address the management of hazardous chemicals and wastes.

(b) Elements

39. The legal infrastructure in this area can be seen as comprising the following elements:

(a) Definition of wastes and of hazardous wastes: the Environmental Law defines the terms “waste”, “hazardous waste” and “hazardous materials”, providing definitions based on a description of the use and properties of a substance rather than on a list of materials and characteristics;

(b) Definition of responsible persons: the generator is defined in the Regulation on Hazardous Wastes as a natural or legal person who generates hazardous wastes as a result of his or her activities;
(c) Permit system for imports and exports: in accordance with the Environmental Law and the Regulation on Hazardous Wastes, the import, export and transit of hazardous wastes is subject to prior authorization by the Ministry of Environment. The substances to which this requirement applies are defined in a set of lists contained in an inter-ministerial agreement. The authorization is delivered upon confirmation of compliance with the applicable legislation and subject to the ability to redress any damage that may be caused in the territory of the country or abroad. The authorization may be revoked under certain circumstances; these are defined in the Environmental Law and the Regulation on Hazardous Wastes. When applying for an authorization, detailed information on the planned transboundary movement must be provided, as specified in the applicable legislation. A form is used for this purpose, which is closely adapted to the Basel Convention requirements and includes references to the classification systems of OECD and the United Nations Committee on the Transport of Dangerous Goods;

(d) Accompanying documents: no information is available on this issue;

(e) Licensing systems for management of hazardous wastes: licences for the construction of installations for the management of hazardous wastes (in particular controlled landfills and incinerators, facilities for recycling, reuse and storage) as well as for hazardous waste transports are delivered by the competent agency within the Ministry of Environment;

(f) Restriction or prohibition of imports and exports: an authorization for the export of hazardous wastes is delivered subject to the prior written consent of the recipient country, if the other conditions imposed by law are met. It is not authorized if the sole purpose is final disposal abroad. An authorization for import is only delivered where the purpose of the import is recycling or reuse in the national territory. Authorization of transit is also subject to prior written consent of the country of destination. Even in cases where the conditions are met, the Ministry can deny authorization if the wastes constitute a high risk to the environment. A special system exists with respect to wastes imported from a neighbouring country under the regime of temporary importation, allowing import of materials for industrial production and requiring re-export of the wastes generated in the process;

(g) Sanctions: the Ministry of Environment has the authority to impose administrative sanctions for contravention of the Environmental Law and the Regulation on Hazardous Wastes (fines, closure, administrative arrest). Sanctions can be imposed for the duration of the illegal situation, and can be increased in cases of recidivism. Any person can denounce contraventions of the legislation to the Ministry or to competent local authorities;

(h) Disposal and clean-up in cases of illegal traffic: hazardous wastes imported into the country without an authorization from the Ministry of Environment must be re-exported to the country of origin by the importer. This provision applies without prejudice to sanctions;

(i) Civil liability: prior to delivery of the authorization, the Ministry of Environment establishes the amount of insurance or other financial guarantee to be provided to cover possible damages caused by the transport, within the national territory or abroad.

3. Institutional infrastructure

(a) Implementation and enforcement authorities

40. Since the creation of the first government agencies in charge of environmental issues in the early 1970s, there have been a number of changes in the institutional infrastructure. Another restructuring exercise is currently under way. Accordingly, some of the competences outlined below may change in the near future. Under current arrangements, the following authorities are responsible for implementation and enforcement:
(a) Authority competent to formulate rules and regulations: regulations are promulgated by the President, with the technical support of the competent agency within the Ministry of Environment. The Ministry of Environment is the authority with competence to regulate and control the generation, management and final disposal of hazardous wastes. The Ministry has regional offices that are competent to exercise some of its functions;

(b) Authority competent to administer the licensing system for treatment and disposal facilities: the competent agency within the Ministry of Environment;

(c) Authority to administer the import and export permit system: the competent agency within the Ministry of Environment, created in 1992;

(d) Authority in charge of customs control: customs authorities with officers in aerial, maritime and terrestrial ports. They inspect goods to be imported or exported, mainly with a view to ascertain the payment of duties. In accordance with the Customs Law, this is done through a system of spot-checking. The Ministry of Environment and the Ministry of Health also have competence to inspect the shipment of goods in all ports;

(e) Authority in charge of monitoring and enforcement: the Office of the Attorney for Environmental Protection, with regional offices. The Ministry of Environment has powers of inspection and surveillance of activities covered by the Regulation on Hazardous Wastes.

(b) Courts

41. Civil courts are competent in matters related to the infringement of civil laws, and the district courts in criminal matters deal with the criminal law aspects. In both cases, there are possibilities of appeal.

42. The Ministry of Environment can issue a technical pronouncement or judgement on an alleged violation of the Environmental Law and the Regulation on Hazardous Wastes if this has caused damage, at the request of the interested Parties.

(c) Promotion of information

43. The rules in force are accessible through the web sites of the Ministry of Environment. Information is disseminated to companies by the industrial chambers, and training courses on environmental legislation are organized by universities and professional associations.

4. Observations and conclusions

44. The situation of this country is characterized by a fairly elaborate legal and institutional framework in which the majority of the elements identified in chapter I of the present study are present.

45. The legal framework addresses most of the important aspects of transboundary movements of hazardous wastes, although in some cases only partially. For example, the definitions of hazardous wastes and of responsible persons are somewhat incomplete, and there is no full transposition of the PIC system into national legislation. The legislation appears to be focused more on preventing import than preventing export, and there is no explicit prohibition of export to non-OECD countries. Thus the legislation does not take full account of the country’s status as an OECD member and therefore as an Annex VII country under the Basel Convention.

46. The institutional framework assigns all necessary functions to a government authority, predominantly the Ministry of Environment. Reportedly, however, the enforcement of the applicable legislation presents some difficulties in practice. The main problems include a lack of personnel, an insufficient number of experts on hazardous chemicals and wastes, and a lack of laboratories and resources to carry out sampling and testing. Personnel of government authorities competent to inspect shipments usually do not have access to the customs area and are therefore unable to exercise their functions. Shipments of hazardous chemicals arriving at the border are sometimes not reclaimed (e.g., in order to avoid penalties for infringements of tax rules, or to avoid storage costs), leaving the authorities with the task of disposing of the wastes. There have
also been cases of mislabelling, which suggests that illegal traffic may indeed occur. In addition, the large size of the country and a border of over 3,000 kilometres with the most important neighbouring country make the control of transboundary trade of any description very difficult.

47. To summarize, there is a certain discrepancy between a legal and institutional framework that appears to be appropriate in theory, and the functioning of this framework in practice. Many of the problems encountered are related to a lack of human and technical resources and training, as well as to corruption. It might be presumed that the frequent restructuring of the competent government agencies over the past 30 years has further compounded the difficulties. These are problems characteristic of developing countries. Nevertheless, the country is required to assume the obligations of an Annex VII country, which at present it accomplishes only in an incomplete way.

48. At the same time, the country shows some of the characteristics of a more advanced economy, e.g., the requirement for certain types of wastes as secondary raw materials by national industries. Such wastes are imported for recycling and recovery purposes by a specialized facility, and the legislation provides for the possibility of importing wastes with this aim.

49. In general, the country finds itself in a dual position with respect to the Basel Convention, which appears to be fairly difficult to handle in practice.

C. Category 3: Developing country, non-OECD member, advanced level of economic development and infrastructure (“newly industrialized country”)

1. Country characteristics

50. The country identified as representative of category 3 for the purposes of this analysis may be considered to have the following characteristics:

(a) In terms of its level of development: a developing country according to the United Nations listing, non-member of OECD, non-Annex VII country under the Basel Convention;

(b) In terms of its economic situation: with medium performance on the human development index, rapid economic and industrial growth in the last decades, a corresponding increase in GDP and per capita income, successful poverty reduction (with none of its population below the national poverty line in the late 1990s) and a rising level of industrialization;

(c) In terms of its types of industry: industry and services account for nearly 90 per cent of GDP. Manufactured goods, such as textiles and high-technology computers, are playing an increasingly important role in the economy, including external trade. The country is aiming to strengthen this role yet further;

(d) In terms of population: with a population density of approximately 65-70 persons per km²;

(e) In terms of its waste management situation: with an annual generation of hazardous wastes of approximately 400,000 metric tons, exports amounting to approximately 5,000 metric tons (some to industrialized countries for recovery) and imports (for recovery) to approximately 1.6 million metric tons (1999 figures). The country has a number of facilities for disposal and recycling for different types of hazardous wastes. The most notable pollution abatement achievement in recent years is the completion of the country’s integrated scheduled waste treatment and disposal facility in 1998. The facility is expected to handle most of the scheduled wastes generated in the country in an environmentally sound manner.

2. Legal infrastructure

(a) Legal basis

51. Issues related to waste management are addressed at the federal level of government. The Environmental Quality Act of 1974 contains enabling provisions for the prevention, abatement and control of pollution. The Environmental Quality (Scheduled Wastes) Regulations entered into force in 1989. They provide the framework for the management of scheduled wastes, including definitions, requirements of
notification, storage, transportation, labelling, treatment, reduction, and disposal; measures to be adopted in cases of spillage or accidental discharge, as well as the compounding of offences. An amendment to the Act was adopted in 1996, attributing powers to the Director General of Environment to require responsible persons to obtain prior written approval for certain transactions involving scheduled wastes, and introducing more severe penalties for offences (see below). This legislation is supported by the Customs (Prohibition of Imports and Exports) Orders for Scheduled Wastes, enacted in 1993 and updated in 1998. Specific guidelines have been elaborated between 1995 and 1998 to assist those involved in import and export of hazardous wastes.

52. The Environmental Quality (Scheduled Wastes) Regulations are currently undergoing a process of amendment, with the aim to address weaknesses in terms of the waste list, to incorporate the power to require the submission of a waste reduction plan, storage and training of personnel.

(b) Elements

53. The following elements are identified in the country’s waste-related legislation:

(a) Definition of wastes and hazardous wastes: There is a general definition of waste. Any waste included in the categories listed in the First Schedule of the Regulations are defined as “scheduled wastes” (hazardous wastes), regardless of their actual hazardous properties and concentration. The list of wastes is divided into two parts: the first part identifies the wastes by their composition only, while the second part also includes a specified source;

(b) Definition of responsible persons: Anyone who deposits or causes the deposit of scheduled wastes within the national territory, including territorial waters, or who exports, imports, or arranges for transit of scheduled waste, is considered responsible for handling the waste;

(c) Permit system for imports and exports: A system of prior written approval is provided by law (see below);

(d) Accompanying documents: A movement document must accompany hazardous wastes in accordance with article 4, paragraph 7 (c), of the Basel Convention;

(e) Licensing system for the management of hazardous wastes: Scheduled waste treatment and disposal facilities are prescribed premises that require the submission and approval of an environmental impact assessment report before approval of the relevant activity is granted by the competent authority. The construction of the facility requires a prior written permission, and its occupation or use requires a license. The use of premises for these operations without a license is an offence under the applicable legislation;

(f) Restriction or prohibition of imports and exports: Import or export of scheduled wastes is prohibited unless prior written approval is obtained from the Director General of Environment. When deciding on the grant of prior approval, the Director must ensure that the import or export is managed by approved facilities and in an environmentally sound manner. The import of scheduled wastes is only permitted after a thorough examination of possible impacts on the environment and the national economy. Permission is usually granted if the wastes are needed as raw material and are not available from national sources. The export of hazardous wastes is generally allowed for the purpose of recycling, treatment or final disposal, provided prior written approval has been obtained from the prospective country of import. Since late 1995, export of scheduled wastes other than for purposes of recovery and special treatment is not permitted. The export restriction applies to categories of wastes that can be treated and disposed at the recently constructed integrated facility (see above);

(g) Sanctions: In accordance with the amended Act, penalties for offences (including illegal trafficking) comprise fines up to US$ 130,000 and imprisonment for periods of up to five years;

(h) Disposal and clean-up in cases of illegal traffic: The Director General of Environment may require the owner or occupier of any vehicle or premises to adopt the necessary measures to eliminate or counteract pollution. The obligation to re-import or re-export wastes if the need arises is usually stipulated as a condition for the written approval;
Civil liability: There is no specific legislation. With the entry into force for the country of the Basel Protocol on Liability and Compensation, the relevant rules and procedures will become applicable.

3. Institutional infrastructure

(a) Implementation and enforcement authorities

54. The following authorities are responsible for implementation and enforcement of the legislation and regulations:

(a) Authority competent to formulate rules and regulations: the Director General of Environment (within the Ministry of Environment) is the competent authority;

(b) Authority competent to administer the licensing system for treatment and disposal facilities: the Director General of Environment is the competent authority;

(c) Authority competent to administer the import and export permit system: in accordance with the appropriate regulations, the Director General of Environment exercises this function. He is also the competent authority and the focal point under the Basel Convention (article 5). In the administration of the permit system, difficulties can occur in the characterization of the wastes;

(d) Authority in charge of customs control: the Customs and Excise Department carries out checks of the documentation and consignment checks. The Office of the Director General of Environment is planning to provide on-line status of imports and exports to Customs to facilitate their task;

(e) Authority in charge of monitoring and enforcement: the Director General of Environment and the Customs and Excise Department carry out the relevant functions.

(b) Courts

55. Different regional courts are competent in civil and criminal matters in the different parts of the country.

56. The Environmental Quality Act provides for the possibility of appeal by any person who is aggrieved by a decision made in relation with the applicable provisions. An Appeals Board is competent to judge the matter.

(c) Promotion of information

57. Measures to make addressees of the rules aware of their contents include web sites, guidelines, pamphlets, newsletters and bulletins, as well as workshops and seminars.

4. Observations and conclusions

58. The situation of this country is characterized by a fairly elaborate legal and institutional framework, in which the majority of the elements identified in chapter I of this study are present. The legal framework has recently been revised to cover all elements of hazardous waste management, and relevant functions have been assigned to competent authorities. A strong point in the country’s institutional framework is the existence of a single government authority (the Ministry of Environment through the Director General of Environment) with widespread competences, which include the formulation of rules, the administration of the permit system, the enforcement of the rules, and active involvement in customs control.

59. The legal and institutional framework reflects the situation of the country, which has experienced significant economic growth and development in recent years. The fact that a need for certain types of wastes for recycling purposes does exist in the country is taken into account in the stipulation of the conditions for import. These seem appropriate, in particular as the conditions for import are not limited to the demonstration of a need, but include the obligation of the competent authority to ascertain that
environmentally sound management in an approved facility is ensured. After the entry into force of the Ban Amendment for this country, the provisions related to import will only be applicable to imports from non-OECD countries.

D. Category 4: Small island developing State, non-OECD member, some waste management infrastructure

1. Country characteristics

60. The country identified as representative of category 4 for the purposes of this analysis may be considered to have the following characteristics:

(a) In terms of its level of development: a small island developing State, according to the United Nations listing, non-member of OECD, non-Annex VII country under the Basel Convention;

(b) In terms of its economic situation: with medium performance on the human development index. Owing to its heavy dependence on oil and natural gas production, the country encountered economic difficulties in the 1980s with the collapse of oil prices. Since 1994, it has experienced a certain economic growth, mainly in the services sector. Nevertheless, poverty remains at 21 per cent of the population, mainly due to unemployment;

(c) In terms of its types of industry: services account for approximately 54 per cent of GDP, industry for 42 per cent and agriculture for 3 per cent;

(d) In terms of population: with high population density, with approximately 250 persons per km²;

(e) In terms of its waste management situation: no information available.

2. Legal infrastructure

(a) Legal basis

61. In 2000, the Environmental Management Act was enacted, which provides a fairly extensive basis for addressing environmental matters, including the inception of a waste management programme. Under the Act, the Environmental Management Authority and the Environmental Commission, a court competent to deal with environmental concerns, have been established. The Act remains to be fully implemented. In addition, some aspects of waste management are addressed in various pieces of legislation, most of which were enacted prior to 1980. They do not provide a comprehensive legal framework for waste management. A number of these laws will be repealed when the Environmental Management Act is fully implemented. Even after the implementation of the Act, the focus will remain on national aspects of waste management. There is no specific framework for addressing transboundary movements of hazardous wastes.

(b) Elements

62. The legislation in this area includes the following elements:

(a) Definition of wastes and hazardous wastes: A general definition of “litter” (by way of enumeration) can be found in the Litter Act (1980/81). This Act defines “waste” as including domestic waste, industrial waste or commercial waste. The Environmental Management Act defines wastes in a general manner (by way of an enumeration of material subject to discarding). There is no special definition of hazardous wastes. In the waste management programme that will be established, there is to be a distinction between hazardous and non-hazardous waste. The Environmental Management Authority has the competence to determine the volume and nature of the wastes that are being disposed in the country;

(b) Definition of responsible persons: no provision;

(c) Permit system for imports and exports: no provision;
(d) Accompanying documents: no provision;

(e) Licensing system for management of hazardous wastes: in the existing legislation, there are several references to disposal sites and their administration by the authorities in charge. Under the Environmental Management Act, the Environmental Management Facility will be competent to issue permits for waste disposal and the management of disposal facilities. Again, there is no specific reference to hazardous wastes;

(f) Restriction or prohibition of imports and exports: both the Customs Act (revised 1980) and the Trade Ordinance (1958) provide that the importation of any goods may be prohibited. This can be construed to include wastes. There is no specific legislation concerning the import or export of hazardous wastes;

(g) Sanctions: the applicable legislation provides sanctions for various offences related to waste disposal, mainly littering (Litter Act, revised 1980), sewerage disposal (Water and Sewerage Act, 1980), as well as illicit disposal on highway and at airports. There is no specific reference to hazardous wastes;

(h) Disposal and clean-up in cases of illegal traffic: no provision;

(i) Civil liability: no special liability is provided for transboundary movements of hazardous wastes.

3. Institutional infrastructure

(a) Implementation and enforcement authorities

63. The following authorities are responsible for the implementation and enforcement of legislation in this area:

   (a) Authority competent to formulate rules and regulations: under the Environmental Management Act, the Environmental Management Authority will assume this competence;

   (b) Authority competent to administer the licensing system for treatment and disposal facilities: under the Environmental Management Act, the Environmental Management Authority will be primarily responsible for waste management. It has also been designated as focal point under the Basel Convention. This system is expected to be established by late 2001. Previously, this responsibility was not assigned to any single authority;

   (c) Authority competent to administer the import and export permit system: permission to import is handled by Ministry of Trade, coordinated via the Customs Department;

   (d) Authority in charge of customs control: the customs authorities, with no particular unit for dealing with hazardous wastes. Documentation is checked upon the import and export of any goods;

   (e) Authority in charge of monitoring and enforcement: the customs police, port police, and coast guard, with different levels of authority on issues related to import and export of goods.

(b) Courts

64. In civil and criminal matters, there are three levels of jurisdiction. In administrative matters related to the environment, the Environmental Commission is competent to hear appeals concerning decisions of the Environmental Management Authority. Appeals against the decisions of the Commission may be lodged with the appellate court of the country.

(c) Promotion of information

65. Under the Environmental Management Act, there is certain scope for public participation in the adoption of rules, in that drafts are published and comments from the public are invited. Public awareness is further promoted through a web site as well as press campaigns, workshops and similar measures.
4. Observations and conclusions

66. Judging from the available information, the management and import of hazardous wastes would appear not to rank among the country’s most important environmental problems. Problems directly related to the country’s situation as a small island State rich in biological diversity appear at the top of the environmental agenda. Reportedly, there have not been any known problems with hazardous waste imports, and very little information is available on the matter.

67. The legal and institutional framework related to hazardous waste management is little developed. Many of the elements identified in chapter I of this study as essential to the implementation of decision III/1 are non-existent or only partly developed. In the absence of specific legislation, the import and export of hazardous wastes is dealt with under the general legislation related to trade in any types of goods, and to customs, under the responsibility of the Ministry of Trade and the customs authorities. The situation is expected to improve somewhat after enactment of the new Environmental Management Act. A more active role of the authorities is envisaged under this Act. This provides a useful first step, but does not replace a legal framework that would be necessary for successfully implement the Basel Convention and hence decision III/1.

E. Category 5: Central and Eastern European country, non-OECD member

1. Country characteristics

68. The country identified as representative of category 5 for the purposes of this analysis may be considered to have the following characteristics:

   (a) In terms of its level of development: a member of the group of Central and Eastern European countries according to the United Nations listing, non-member of OECD, non-Annex VII country under the Basel Convention;

   (b) In terms of its economic situation: a Central and Eastern European country with a slow rate of reform and with medium performance on the human development index. Before 1997, the unstable political climate, combined with the slow pace of reform, caused a disappointing economic performance and higher poverty rates, with approximately one third of the population below the national poverty line in the late 1990s. There are now indications of economic recovery;

   (c) In terms of its types of industry: the country is rich in natural resources (petroleum, timber, natural gas, coal, iron ore, and salt). Agriculture is a major contributor to the economy, accounting for 15.5 per cent of GDP and 20 per cent of total employment. Industry accounts for 31 per cent and services for 53.5 per cent of GDP. Many economic entities are in the process of being privatized and are undergoing restructuring;

   (d) In terms of its population density: with approximately 98 persons per km²;

   (e) In terms of its waste management situation: the reported annual generation of hazardous wastes (1999) measures approximately 2.3 million metric tons. No imports and exports of hazardous wastes included in Annex A of the decision of 1992 (see below) have been reported. There are some technologies for the recycling and reuse of wastes. The most frequent disposal method is landfill, which is also applied to large amounts of hazardous wastes. The are limited disposal and recovery capacities for hazardous wastes.

2. Legal infrastructure

(a) Legal basis

69. There are several pieces of legislation at different levels of Government applicable to the issue, all of fairly recent date:
(a) Law on Environmental Protection (1995), establishing a number of basic definitions and principles;

(b) Law on the country’s accession to the Basel Convention (1991);

(c) Government decision establishing an import regime for wastes and residues of any type (1992);

(d) Emergency Ordinance for the Waste Regime (2000), which sets out most of the detailed procedures for waste management, using the Basel Convention system as a basis;

(e) Some additional pieces of legislation addressing specific issues.

70. Additional pieces of legislation are at an advanced stage of elaboration. The legislation generally takes good account of recent international developments, in particular the Basel Convention, and the various pieces of legislation appear to be well coordinated with one another. A national plan for the management of hazardous wastes, which will include local management plans, is expected to be finalized in 2002.

(b) Elements

71. The legislation in this area includes the following elements:

(a) Definition of wastes and of hazardous wastes: there are two main sets of definitions for wastes and hazardous wastes. One is laid down in the Law on Environmental Protection, which defines waste as substances resulting from biological or technical processes, that cannot be used; and hazardous wastes in accordance with a short list of characteristics. The other set is based on the Emergency Ordinance for the Waste Regime and is generally based on the relevant definitions of the Basel Convention and the pertinent European Union directives. A definition of wastes and residues is contained in the government decision dealing with the import of wastes of every description. This covers any materials having no value for use, and household wastes;

(b) Definition of responsible persons: the applicable legislation defines the importer and exporter as in the Basel Convention. The holder and the producer are defined in broad terms; they include natural persons authorized to carry out independent activities related to wastes, as well as legal persons possessing the wastes (holder) and whose activity generates the wastes (producer). The term “producer” also covers persons performing an operation that leads to a change in nature or composition of the wastes;

(c) Permit system for imports and exports: there is an elaborate permit system for the import of wastes (where this is not prohibited, see below). A permit is issued by the Ministry of Environment with the endorsement of the Ministry of Health and the Ministry of Industry and Resources, on submission of clearly specified documentation which proves that conditions of import are fulfilled, and including a certificate from the Trade and Industry Chamber. A permit system is also applicable to hazardous waste exports;

(d) Accompanying documents: the documents required for issuing the import permit (see above);

(e) Licensing systems for the management of hazardous wastes: this has been established by ministerial order on the basis of the Law on Environmental Protection, for all economic and social activities having an environmental impact;

(f) Restriction or prohibition of imports and exports: in accordance with the Law on Environmental Protection, the import of hazardous wastes is prohibited, with the exception of wastes that constitute secondary resources of useful raw materials. 15 categories of materials to which this exception is applicable are defined in a list annexed to the pertinent government decision, which also sets out a number of additional conditions under which an exception to the import prohibition is granted. The legislation does not make a distinction as to the provenance of the materials. The export and transit of hazardous wastes may take place in accordance with international agreements to which the country is a party. In the case of export, the responsible operator must ensure that international obligations are observed and that the consent of the recipient country has been obtained;
(g) Sanctions: the applicable legislation subjects contraventions of the obligations related to waste management to sanctions, including attempts at contravention, and including failure to return imported waste to the country of origin in accordance with a decision of the competent authority;

(h) Disposal and clean-up in cases of illegal traffic: in accordance with the applicable legislation, the responsible operators as per the national definitions have the obligation to re-export illegally imported waste and to re-import wastes that were illegally exported from the country, at the operators’ expense. They must also take the measures imposed by the competent authorities to rehabilitate the environment damaged by the wastes;

(i) Civil liability: under the applicable legal instruments, the responsible operators as per the national definitions are liable for damages to the population, to the public, to companies and to organizations caused by improper waste management.

3. Institutional infrastructure

(a) Implementation and enforcement authorities

72. The authorities responsible for implementation and enforcement of the legislation in this area include the following:

(a) Authority competent to formulate rules and regulations: the national environmental protection authority;

(b) Authority competent to administer the licensing system for treatment and disposal facilities: the national and regional environmental protection authorities. For industrial wastes: involvement of the Ministry of Industry and Resources. For clinical wastes: involvement of the Ministry of Health. An additional procedure for waste management is currently being elaborated under the responsibility of the national environmental protection authority;

(c) Authority competent to administer the import and export permit system: permits for import (where this is not in principle prohibited) are issued by the national environmental protection authority on the basis of permits issued by the Ministry of Health and the Ministry of Industry and Resources. Permits for export are issued by the national environmental protection authority. There are no reported difficulties with imports or exports;

(d) Authority in charge of customs control: the customs authorities assume this function; where they consider it necessary, they may invite the environmental protection authorities, the health authorities, and representatives of the Ministry of Industry, the Ministry of Agriculture and the National Commission for Standards to participate in the controls. There are no reported difficulties;

(e) Authority in charge of monitoring and enforcement: national and regional environmental protection authorities, health authorities, customs authorities, police.

(b) Courts

73. The applicable legislation distinguishes between administrative, civil and criminal matters, for which there exist different types of legal proceedings and for which different courts are competent:

(a) Civil liability of legal and natural persons: civil courts;

(b) Criminal law provisions, sanctions: criminal courts;

(c) Where both civil and criminal issues are at stake, the criminal law procedure will be initiated first;

(d) Where the State is involved, the contentious administrative court is competent to deal with the legal aspects.
74. **Observations and conclusions**

75. This country has a sound and comprehensive legal framework, which takes into account practically all the necessary elements as outlined in chapter I of this study, and includes the important elements of the Basel Convention. Every aspect of export and import of hazardous wastes is addressed, and responsibilities are assigned to the authorities. There is legislation at different levels of government. Some of the rules are contained in an emergency ordinance, which may be an indication that more definite legislation is in the process of being elaborated.

76. In particular, the applicable legislation provides for a system of restricted import that seems well adapted to the situation and needs of the country. Import of hazardous wastes is prohibited not in relation to the geographical origin of the wastes (i.e., whether OECD or non-OECD), but as a function of their nature and prospective use. The principle is the import prohibition (from whatever country); the exception is permission of import of certain wastes based on a list of criteria, to be authorized by the competent authority. Since the country does require certain wastes as secondary raw materials, the legislation stipulates an exception to the import ban, which is, however, granted only if the conditions related to environmentally sound management are fulfilled. After the entry into force of decision III/1 for this country, this provision will be applicable only to imports from non-OECD countries.

77. The country’s institutional framework also appears to be fairly complete. Responsibilities for all relevant aspects of waste management are clearly assigned to relevant authorities at the national and regional levels. In theory at least, there appears to be extensive cooperation among different authorities with different areas of expertise, e.g., in the issuing of import permits and in customs control.

78. Reportedly, however, the effective implementation of the legal framework poses problems, related chiefly to the fact that the country’s economy is in a process of transition. The main difficulties are the lack of financial resources, the lack of capacities, and the lack of trained personnel to deal with the issues in practice. For example, economic entities are required by law to establish conformity plans for compliance with legal obligations, but in practice this is often not done for lack of resources.

79. This discrepancy between a theoretically solid legal and institutional framework on the one hand and the lack of successful implementation on the other is characteristic of many countries with economies in transition. This is in part the result of a fairly high level of development combined with the financial and structural difficulties related to the transition to a market economy.

F. **Category 6: Industrialized country, OECD member, geographically situated within main OECD area**

1. **Country characteristics**

80. The country identified as representative of category 6 for the purposes of this analysis may be considered to have the following characteristics:

   (a) In terms of its level of development: an industrialized country according to the United Nations listing, member of OECD, Annex VII country under the Basel Convention;

   (b) In terms of its economic situation: a country with high performance under the human development index and a high level of industrialization;

   (c) In terms of its types of industry: with mainly finishing industry and services and little heavy industry;

   (d) In terms of its population: with a high population density, of approximately 175 persons per km²;
(e) In terms of its waste management situation: with an annual generation of hazardous wastes measuring approximately 1 million metric tons, exports of approximately 123,000 metric tons and imports of approximately 20,000 metric tons (1998); and with extensive capacities and infrastructure for management and disposal of hazardous wastes. In 1995, 86 per cent of the hazardous wastes generated were disposed within the country; the rest was exported to neighbouring OECD countries. Export to non-OECD countries has not been authorized for many years. The country is largely self-sufficient as concerns capacities for incineration of hazardous wastes; hence all exports (to any country) of hazardous wastes for incineration and deposit on to land are prohibited in practice. The export and import of hazardous wastes takes place to OECD countries for disposal by other methods (in particular physiochemical treatment and landfill), in accordance with applicable international rules, including agreements for transboundary cooperation in border regions. There is very little recycling of hazardous wastes, in particular metal wastes; hence significant quantities of these types of wastes are exported to other OECD countries.

2. Legal infrastructure

(a) Legal basis

81. The principal legal basis is provided by the Law on Environmental Protection of 1983, which underwent a major revision in 1995. It lays down the fundamental principles of waste management: first, prevention of the generation of wastes as far as possible; second, reuse or recycling of wastes as far as possible; third, the environmentally sound disposal of all wastes, wherever possible within the national territory. In chapter 4, the Law provides the framework for the implementation of these principles through ordinances of the Federal Government.

82. A number of ordinances have been enacted to address specific problems related to waste management, including a technical ordinance on wastes and an ordinance on movements of special wastes. The latter, enacted in 1986, lays down the rules related to the control of transboundary movements of hazardous wastes. A major revision of this ordinance is under preparation, with the aim, among other things, of fully transposing the Ban Amendment into national legislation. In addition, the provisions of the Basel Convention are directly applicable.

(b) Elements

83. The legislation in this area includes the following elements:

(a) Definition of wastes and hazardous wastes: wastes are defined in the Law as objects subject to disposal. The special ordinance on wastes defines “special wastes” (hazardous wastes) through a list set out in an Annex. The list is structured in accordance with the properties of the wastes and their provenance. This definition is broader than the definition of the Basel Convention;

(b) Definition of responsible persons: the special ordinance on wastes defines the consignor and the consignee as well as the carrier as persons deemed responsible for waste management transactions;

(c) Permit system for imports and exports: the import and export of special wastes is subject to prior authorization of the competent government authority. The applicant must provide details of the planned movement, including the intended use of the wastes, a contract, and evidence that the wastes will be managed in an environmentally sound manner. In the case of export, the applicant must also submit evidence that the authority of the prospective import country has been notified and does not object to the movement. The authority grants or denies permission based on an assessment of the evidence submitted;

(d) Accompanying documents: in accordance with the special ordinance on waste, a consignment document containing the information specified in an annex must accompany any movement of hazardous wastes;
(e) Licensing system for the management of hazardous wastes: in accordance with the Law, the licensing of facilities is within the competence of the federal states. A license is issued only if the environmentally sound management of the wastes is guaranteed. It is valid for five years. All licenses are registered with the Federal Environment Agency;

(f) Restriction or prohibition of imports and exports: export permits are granted only if the applicable conditions are fulfilled. In order to authorize export, the competent authority must have received sufficient proof that the wastes will be managed in an environmentally sound manner. The country of import must have given its consent explicitly (in the case of non-OECD countries) or tacitly (in the case of OECD countries). In practice, the export of hazardous wastes for incineration and their deposit on to land is not authorized, and no exports to non-OECD countries have been authorized since the mid-1980s;

(g) Sanctions: the Law imposes criminal sanctions (fines or imprisonment) for contravention of the licensing systems for waste management, including import or export of hazardous wastes without the permission of the competent authority. Where the contravention seriously endangers humans or the environment, the sanction is imprisonment;

(h) Disposal and clean-up in cases of illegal traffic: in accordance with the special ordinance on waste, hazardous wastes must be re-imported if the authorities of the State of import have requested this and the national authority has accepted the request by decree. The Law also imposes a duty to remedy damage caused by wastes;

(i) Civil liability: the Law imposes strict and unlimited liability for damage caused by inherently dangerous activities and installations, including transport and management of hazardous wastes. This is limited to damage to persons and property occurring within the national territory; damage abroad is not covered. There is no obligation to provide insurance or other guarantee. In the case of transboundary movements between this country and other OECD member States which have similar legal frameworks and standards on civil liability, the countries mostly agree to apply their respective legal systems to damage occurring during such transboundary movement: the law of the country where the damage occurs is applicable in such cases.

(j) Adherence to the Basel Protocol on Liability and Compensation would provide a basis for civil liability for damage caused by wastes subject to transboundary movement. It would introduce the obligation to provide insurance or other financial guarantee for such movements. Since the Basel Protocol provides a financial limitation on liability, whereas the country’s legislation does not, adherence to the Basel Protocol would result in less strict rules in this respect.

3. Institutional infrastructure

(a) Implementation and enforcement authorities

84. The following authorities are responsible for the implementation and enforcement of legislation in this area:

   (a) Authority competent to formulate rules and regulations: in accordance with the Law, the regulatory authority is the Federal Government;

   (b) Authority competent to administer the licensing system for treatment and disposal facilities: in accordance with the Law, this lies within the competence of the federal state authorities. The Federal Environment Agency acts as supervisory authority;

   (c) Authority competent to administer the import-export permit system and designation of competent authority: in accordance with the Law, this competence is exercised by the Federal Environment Agency, which is also the competent authority under Article 5 of the Basel Convention;

   (d) Authorities in charge of enforcement and customs control: these functions are exercised jointly by the Federal Environment Agency and the Customs Directorate. These two authorities issue instructions to customs offices in the handling of transports of special wastes. Customs offices may request support of
the authorities of the federal states and regions for inspections. There are no special checkpoints for export and import hazardous wastes. In practice, customs authorities verify the movement document, which confirms the authorization of the transport by the Federal Environment Agency. If no movement document is presented, the shipment is inspected, and the assistance of specialist federal state authorities is requested if necessary, e.g., to carry out sampling or testing. Otherwise, spot-checks are carried out. If a shipment is stopped, the Federal Environment Agency is immediately informed; it analyses the situation. The shipment can only be released by the Agency. There is no general checking of all hazardous wastes shipments crossing the border. In practice, there is good cooperation with the competent authorities of other OECD countries. This includes mutual information on illegal shipments that have been detained or other illegal schemes that have been detected.

(b) Courts

85. The applicable legislation distinguishes between administrative, civil and criminal matters, for which there exist different types of legal proceedings and for which different courts are competent, as described below:

(a) Civil liability: civil courts;

(b) Criminal law provisions, sanctions: criminal courts;

(c) Obligations related to standards for technical management of hazardous wastes, licensing requirements: administrative courts.

86. All three types of proceedings, there are several instances. The supreme court of the country has final appellate jurisdiction in all three proceedings.

(c) Promotion of information

87. The web site of the Federal Environment Agency provides detailed information and indicates further sources of information. The competent authorities at all levels of government accord importance to cooperation with the private sector in matters related to waste management. Private sector actors are generally well informed, and there is a certain level of professionalism among them.

4. Observations and conclusions

88. The legal and institutional framework of this country is fairly comprehensive in that it contains almost all the elements identified in chapter I of the present study. The one significant lacuna is the absence of a formal prohibition of hazardous waste export to non-OECD countries. It can therefore be argued that the legislation does not provide a sufficient basis for the implementation of the obligation to prohibit export to non-OECD countries. The reason for this omission is that the problem was not yet on the international agenda at the time of adoption of the pertinent legislation; this will be remedied in the planned revision of the special ordinance on waste.

89. Notwithstanding this lacuna, the Ban Amendment is implemented effectively in practice, i.e., the export of hazardous wastes to non-OECD countries is never authorized, and border control is fairly effective. Two factors are significant in this: There exists a functioning infrastructure endowed with the necessary authority and expertise - at the Federal as well as at the federal state level -, and a political will of the competent Government authorities. Contributing factors include the general political agenda of the country, a critical interest of the public and the press, and a certain level of self-control of the industry involved in hazardous waste management (denunciation of companies not in compliance with the rules by their competitors). The small size of the country, and the fact that it is land-locked, are also significant factors in the relative effectiveness of border control.

90. It would appear from this that an effective infrastructure is more essential for the implementation of the Basel Convention, and hence decision III/1, than the existence of comprehensive legislation addressing every aspect of the problem.
91. The example of this country also shows that cooperation on both formal and informal levels is fairly well developed within the main OECD region, e.g., in the control of import and export, border control, and the application of civil liability rules. This manner of cooperation among a group of countries with broadly similar factual situations and legal systems further enhances the effectiveness of the individual national infrastructures.

G. Category 7: Industrialized country, OECD member, geographically isolated from main OECD area

1. Country characteristics

92. The country identified as representative of category 7 for the purposes of this analysis may be considered to have the following characteristics:

(a) In terms of its level of development: an industrialized country according to the United Nations listing, member of OECD, Annex VII country under the Basel Convention;

(b) In terms of its economic situation: among the top 10 performers worldwide on the human development index, a high level of industrialization, with services predominating and a certain level of manufacturing and mining;

(c) In terms of its types of industry: with resource-intensive industries and non-ferrous metal industries on the increase and a significant proportion of all trade taking place with non-OECD countries;

(d) In terms of population: with a low population density, of approximately 2.4 persons per km\(^2\) on average, concentrated mainly in urban areas;

(e) In terms of its waste management situation: with treatment of hazardous wastes from large industries often on site, and often to the point where it can enter the regular waste stream. Some hazardous wastes are recycled within industrial processes. The use of incinerators is largely limited to hospitals and medical facilities, owing to public resistance and the availability of other disposal and storage options. Export and import data for 1998 show annual exports at approximately 31,000 metric tons and annual imports at approximately 1500 metric tons. There have been no exports for final disposal since 1992. Exports for recovery: 80 per cent to other OECD countries; until 1996: some export for recovery to non-OECD trading partners. Since 1996, only one export to a non-OECD country has been authorized.

2. Legal infrastructure

(a) Legal basis

93. Issues pertaining to the management of hazardous wastes are addressed in the Hazardous Waste (Regulation of Exports and Imports) Act of 1989, with various amendments. A 1996 amendment aims at coverage of recyclable wastes that possess financial value. Further amendments are expected to be introduced in the next sitting of Parliament in May 2001. The main purpose of these is to ensure that companies domiciled in the country cannot avoid the Act’s requirements by selling hazardous wastes to foreign companies. This has its origin in an incident in which a national company sold hazardous wastes to a foreign company, which then arranged for the wastes to be exported in contravention of the country’s obligations under the Basel Convention. The authorities were obliged to re-import the wastes, but under current legislation were unable to prosecute the national company, and had no jurisdiction over the foreign company. The amendments are expected to close this loophole. Other amendments to the Act will allow ministerial orders to be made in a more effective and appropriate manner in incidents of this kind. They will also deal with administrative matters such as clarifying the definition of hazardous wastes. There are a number of regulations related to the Act.

94. The country has not ratified the amendment to the Convention in decision III/1, which in any case is not yet in force generally, and therefore does not consider itself bound by the terms of the amendment. Neither does it consider that decision III/1 in itself creates legal obligations.
95. The legislation in this area includes the following elements:

(a) Definition of wastes and hazardous wastes: these definitions are contained in the Hazardous Waste Act, which covers hazardous wastes only. The definition of wastes is based on article 2 of the Basel Convention, duly adapted to the government system in the country. The definition of hazardous wastes is also based on the definition of the Basel Convention (article 1, paragraphs 1 (a) and 2), but includes wastes prescribed by the applicable regulations and possessing characteristics listed in Annex III of the Basel Convention. This last category currently includes the red and amber wastes of the OECD system that are not covered by the Basel Convention. There are extended meanings of hazardous wastes in particular situations, which are also covered by the Act;

(b) Definition of responsible persons: under the Act, the holder, in relation to a permit issued by the competent government authority, is defined as the person to whom the permit was granted. All other definitions of persons are those in general use in the legislation of the country. For example, the exporter is understood to be the person who has legal title in the wastes at the time of export;

(c) Permit system for imports and exports: for the export, import and transit of hazardous waste (according to the national definition), a permit is required, which is granted by the Minister for the Environment and Heritage. Part 2 of the Hazardous Waste Act establishes the system under which permits may be obtained. The type of permit differs according to the type of operation intended (export, import or transit). In order to obtain a permit, the applicant must provide the prescribed application and notification forms, a written contract, as well as evidence of insurance and financial viability. If export is intended, detailed evidence must be provided that the waste will be managed in an environmentally sound manner in the country of import;

(d) Accompanying documents: an appropriate movement or tracking form must accompany every shipment;

(e) Licensing system for the management of hazardous wastes: in accordance with the country’s constitution, this is the responsibility of the federal states;

(f) Restriction or prohibition of imports and exports: the Hazardous Waste Act imposes strict rules regarding the issuing of export or import permits by the Minister for the Environment and Heritage. These are closely modelled on the Basel Convention requirements. In summary, the Minister must be convinced that the prescribed conditions are met and that the intended operation is consistent with environmentally sound waste management. For export permits, the competent authority of the importing country must have given its written consent to the intended movement. Export for final disposal to any country is not permitted except under exceptional circumstances, e.g., if there is a danger to human health and the environment if the wastes remain in the country, or if it is exported for research or testing purposes. In practice, only one export to a non-OECD country has been permitted since 1996;

(g) Sanctions: in accordance with part 4 of the Hazardous Waste Act, the export, import or transit without a permit, or other than in accordance with the permit, is punishable by a fine of up to US$ 500,000 or imprisonment for periods of up to five years if the contravention injures or damages, or is likely to injure or damage, human beings or the environment. A lesser fine of up to US$ 125,000, or imprisonment for periods of up to two years, applies without the injury or damage provisions. Executive officers of bodies corporate are liable for their actions and conduct, and injunctions may be granted to restrain illegal conduct;

(h) Disposal and clean-up in cases of illegal traffic: part 3 of the Act enables the Minister for the Environment and Heritage to make orders to deal with waste in a specified way if the Act has been contravened;

(i) Civil liability: there are no specific rules on civil liability in the Hazardous Waste Act. The general provisions of the country’s pertinent legislation apply.
3. Institutional infrastructure

(a) Implementation and enforcement authorities

96. Implementation and enforcement of the legislation in this area is the responsibility of the following authorities:

(a) Authority competent to formulate rules and regulations: this function lies within the competence of the Minister for the Environment and Heritage, and on a day-to-day basis of the Hazardous Waste Section within the Department of the Environment and Heritage. In relation to technical guidelines and similar matters, the Act requires the Minister to establish a Hazardous Waste Technical Group and to consult that Group on certain issues;

(b) Authority competent to administer the licensing system for treatment and disposal facilities: as this is within the competence of the federal states, the authorities are designated at the federal state level;

(c) Authority to administer the import and export permit system: in accordance with the Act, the Hazardous Waste Section within the Department of the Environment and Heritage administers the licensing system under delegation from the Minister. It also acts as competent authority under article 5 of the Basel Convention. A common difficulty encountered in the application of the permit system is getting replies from overseas Governments;

(d) Authority in charge of customs control: the national Customs Service is in charge of customs control. There is some checking of accompanying documentation and spot-checks, but the main control mechanism is the procedure whereby certain cargoes, destinations and companies may be flagged by Customs for referral to the Department of the Environment and Heritage. The major difficulty encountered in this area is that the customs codes do not align closely with the lists of hazardous wastes under the Basel Convention and the OECD control systems. Another problem is that exporters quite often make mistakes in entering the customs codes on their forms and thus a cargo coded, for example, as battery scrap (8548.10.01) may turn out to be electronic equipment not specified elsewhere (8548.90.00, which is the next entry in the list);

(e) Authority in charge of monitoring and enforcement: this is primarily the responsibility of the Department of the Environment and Heritage, working in close cooperation with the national Customs Service and the environment departments of the federal states. Apparent breaches of the Hazardous Waste Act are referred to the Federal Police for investigation. The outcomes of police investigations are referred to the Director of Public Prosecutions, who decides whether a prima facie case exists and whether prosecution is in the public interest. Examples of the sort of difficulties that arise include one case where the exporter of the waste was outside national jurisdiction (see above), and other cases where imports from neighbouring countries were illegal but disposal within the national territory was considered to be the best environmental outcome.

(b) Courts

97. Different types of legal proceedings are instituted for administrative, civil and criminal matters:

(a) Administrative matters (e.g., concerning decisions related to the permit system): the Hazardous Waste Act provides that applications can be made to the Administrative Appeals Tribunal for the review of specified decisions. It also provides for extended standing of individuals and organizations to seek judicial review of decisions under the Act;

(b) Civil matters (e.g., civil liability) are within the competence of the Federal Court of the country;

(c) Criminal matters (e.g., sanctions) are within the competence of federal state courts, which exercise federal jurisdiction.
98. The authorities of the country employ a wide range of measures to promote awareness of the applicable rules. These include the web site of the Department of the Environment and Heritage, which provides detailed and comprehensive information; consultation with stakeholders through the Hazardous Waste Act Policy Reference Group; information papers, and direct contact with industry associations and other stakeholders.

4. Observations and conclusions

99. This country’s legal and institutional framework related to transboundary movements is very detailed and comprehensive. It contains virtually all the elements identified in chapter I of the present study. At the federal level, there is a single legal instrument (the Hazardous Waste Act) which provides a comprehensive basis for hazardous waste management at all levels of Government and in international relations. Other national and regional legal instruments are based on the Act and linked to it. This approach provides a consistent legal basis and avoids duplication, overlaps and gaps in the legal framework.

100. A strong point in the country’s institutional set-up is the existence of a single government authority (the Department of the Environment and Heritage through its Hazardous Waste Section) with widespread competences, which include the formulation of rules, the administration of the permit system, the enforcement of the rules, and an active involvement in customs control, as well as representation of the country in international negotiations and the provision of information to stakeholders. This facilitates a consistent approach to the handling of the system at all its stages, and avoids institutional conflicts and loopholes.

101. It can be argued that the country’s legal framework is incomplete with respect to decision III/1, as it does not explicitly prohibit hazardous waste exports to non-OECD countries. This shortcoming is somewhat offset, however, by an elaborate permit system, which is effectively applied by the competent authority. The system appears to be very efficient in practice, mainly because there is an efficient infrastructure in place. Existing difficulties with the implementation of the legal rules related to the transboundary management of hazardous wastes appear to be minor. They are generally of a practical or technical nature and do not undermine the system as such.

102. The analysis of this country’s legal and institutional framework suggests that the existence of an effective institutional framework and political will of the competent authorities can ensure appropriate implementation of the Basel Convention if it is based on a solid legal framework, even if there are certain elements missing in the latter.

H. Category 8: de facto industrialized State, non-OECD member, advanced level of development, geographically bordering on OECD region

1. Country characteristics

103. The country identified as representative of category 8 for the purposes of this analysis may be considered to have the following characteristics:

(a) In terms of its level of development: a developing country according to the United Nations listing, non-member of OECD, non-Annex VII country under the Basel Convention, geographically bordering on the OECD region;

(b) In terms of its economic situation: with a high performance on the human development index and a fairly prosperous economy, depending to a considerable extent on tourism. Trade relations with OECD countries, in particular the European Union, are of particular importance. The country is working towards accession to the European Union;
In terms of its types of industry: agriculture, with approximately 6.3 per cent of GDP in the late 1990s; industry, with 22.4 per cent; and services, with 71.3 per cent. Little heavy industry; mainly manufacturing (especially food, beverages, textiles). Tourism constitutes the most important part of the services sector;

In terms of its population: with a population density of approximately 82 persons per km$^2$;

In terms of its waste management situation: with an annual generation of hazardous wastes or 6.7 metric tons; exports of 4 metric tons; and no imports (1998). There is one central treatment facility for the small amount generated nationally, and preparatory work is under way for the establishment of a recovery and recycling facility;

2. Legal infrastructure

(a) Legal basis

A law on waste management, modelled on the waste management legislation of the European Union, is currently under preparation and is expected to be submitted to Parliament in late 2001. The law will incorporate the requirements and provisions of the European Union Shipment Regulation with respect to the import and export of hazardous wastes. The country is expected to have transposed and implemented the European Union environmental rules in the field of waste management by 2003.

(b) Elements

The new law will incorporate the relevant requirements of the European Union Shipment Regulation as well as the applicable European Union directives relating to definitions of wastes and responsible persons, permit systems for waste treatment facilities and import and export, documentation, and designation of competent authorities. Prior to the enactment of this legislation, the pertinent issues are addressed as follows:

(a) Definition of hazardous wastes: the definition of hazardous wastes will be included in the law on waste management, currently being drafted. The only other definition is that in the Law on the ratification of the Basel Convention;

(b) Permit system for import and export: the PIC procedure of the Basel Convention is applied. Reportedly, no problems are faced;

(c) Restriction or prohibition of imports and exports: no import of hazardous wastes for disposal is permitted, pending the establishment of a hazardous waste management system. The import of wastes for recovery purposes is considered on a case-by-case basis;

(d) Sanctions: causing damage to the environment is punishable under the applicable criminal legislation both as a public wrong (infringement of protection of human health) and as a moral wrong (infringement of protection of the environment).

3. Institutional infrastructure

(a) Implementation and enforcement authorities

The following authorities are responsible for implementation and enforcement of the legislation in this area:

(a) Authority competent to formulate rules and regulations: the Environment Service of the Ministry of Agriculture, Natural Resources and Environment;
(b) Authority competent to administer the licensing system for treatment and disposal facilities: management of municipal solid waste is within the competence of the municipalities. There is as yet no system for the management of hazardous wastes, but a study on this issue is under preparation;

(c) Authority to administer the import and export permit system: the Environment Service of the Ministry of Agriculture, Natural Resources and Environment. Reportedly, no problems are faced;

(d) Authorities in charge of customs control and enforcement: Department of Customs and Excise and the Port Authority. Export or import may only proceed if the consignee holds the relevant documents signed by the Environment Service. There is close cooperation between the authorities involved. Reportedly, no problems are faced.

(b) Courts

108. The civil and criminal courts of the country are competent to deal with the relevant aspects of waste management. The criminal procedure is applicable to sanctions both for direct acts of pollution in contravention of relevant legislation and for non-compliance with the administrative process. There are possibilities of appeal in both procedures.

(c) Promotion of information

109. In accordance with the Law on the Freedom of Access to Information, enacted in 2000, any person has the right to obtain information without demonstrating a personal interest. The Minister of Environment is required to publish a state-of-the-environment report every two years. Information leaflets on this Law have been distributed. Information leaflets on water pollution issues are also being distributed, and a leaflet on the Basel Convention is expected to be ready for distribution shortly.

4. Observations and conclusions

110. The most important feature in this country’s legislation is the ongoing adaptation to the pertinent rules of the European Union, in accordance with the country’s status as an accession country. This status is likely to have been promoted by factors such as the relative vicinity of the country to the European Union and OECD regions, as well as its economic and political relations with the member states of those organizations, in addition to the country’s own level of economic development. Prior to the enactment of the new law, the country’s legislation appears to be rudimentary and not in accord with the country’s level of actual economic development. The current legal and institutional framework contains only a few of the elements identified in chapter I of the present study. In the majority of the relevant areas, there is no specific legislation; the provisions of the Basel Convention are directly applicable. In its current form, the legislation therefore appears insufficient to implement decision III/1 of the Basel Convention. Once the new legislation is in place, this situation may change drastically. This will of course also depend on whether the necessary institutional framework is established.

111. In this country’s case, the envisaged accession to the European Union will be crucial in improving both the legal and the institutional infrastructure. Once the European Union environmental rules have been successfully incorporated into national legislation, and appropriate follow-up measures implemented at the institutional level, the legal and institutional framework of the country will have undergone a transition from a rudimentary level to a standard that conforms to one of the highest in the world.

III. ROLE OF THE BASEL CONVENTION’S INTERNATIONAL MECHANISMS

112. In this chapter, we shall analyse the role of the international mechanisms of the Basel Convention in assisting countries with the implementation of decision III/1. All existing mechanisms, as well as those currently being elaborated or being given serious consideration by the Conference of the Parties, are examined. The analysis is based on the current status of the mechanisms, as an examination of their possible future development is beyond the scope of this study.
113. Since both formal and informal mechanisms have the potential to assist countries in implementing the decision, no differentiation is made among the various instruments in terms of their legal nature or status.

A. Basel Protocol on Liability and Compensation

1. General

114. As concluded in chapter I above, legal rules on civil liability for damage arising from transboundary movements and management of hazardous wastes, including import and export, are a part of the necessary legal infrastructure of a country, and courts competent to apply these rules are a part of the necessary institutional infrastructure. The Basel Protocol, in common with other international civil liability regimes, constitutes a unification of national laws: unlike most multilateral environmental agreements, which regulate relations between States only, it directly confers rights and imposes obligations on private persons operating under the jurisdiction of States Parties – in this particular case, operators involved in management and transboundary movements of hazardous wastes and victims of damage resulting therefrom. The Basel Protocol thus provides countries that are Parties to the Basel Convention and the Protocol with a basic legal framework covering civil liability for damage occurring during transboundary movements of hazardous wastes, including illegal traffic (Basel Protocol, articles 1 and 3). This means that transboundary movements in contravention of decision III/1, which are considered illegal traffic (article 9 of the Basel Convention), are covered by the Protocol.

115. Thus, to a certain extent, the Basel Protocol may take the place of national legislation of the Parties with respect to the issues it addresses. Whereas national legislation often covers damage occurring in the national territory only, the advantage of the Basel Protocol is that it applies to damage that occurs at any point during a transaction involving more than one national jurisdiction. The victim is therefore spared the necessity of submitting claims under different national legal systems.

116. The Basel Protocol provides the following essential rules and principles regarding civil liability:

   (a) Definition of damage to which the Basel Protocol applies;

   (b) Strict liability (i.e., liability regardless of whether or not the liable person is at fault) of the responsible operator, for damage that occurred during a transboundary movement of hazardous wastes, and determination of the operator responsible at any given moment;

   (c) Fault-based liability (i.e., liability only where the person is at fault) of other persons causing, or contributing to, damage caused by a transboundary movement of hazardous wastes;

   (d) Obligation of the person in operational control at the time of the incident to take mitigating measures;

   (e) Right of recourse of the liable person;

   (f) Financial limits for strict liability;

   (g) Time limits for submission of a claim;

   (h) Obligation of liable persons to establish insurance, bonds or other guarantee;

   (i) Procedural provisions.

117. Thus, if a country’s national legislation does not regulate one or more of the above points, or if it addresses it but does not provide comprehensive regulation, the Basel Protocol will directly provide the legal rule in question if and when the country accedes to the Protocol, as regards transactions covered by the scope of the Protocol. These include contraventions of decision III/1, as outlined above. To give an example: A country has a comprehensive legal framework on civil liability, but this does not include an obligation to the

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3 See chapter I, section C, sub-section 1, above.
operator to provide insurance or other financial guarantee. When the country accedes to the Basel Protocol, operators acting under its jurisdiction will have to assume this obligation for import or export of hazardous wastes.

118. The Basel Protocol expressly leaves the regulation of certain points to national legislation (e.g., liability of servants and agents, article 5). In addition, the Protocol requires Parties to “adopt the legislative, regulatory and administrative measures necessary to implement the Protocol” (article 10). It refers any matter not specifically regulated in the Protocol to the national legislation of the competent court (article 19). Thus the Protocol does not fully replace national legislation. It does however provide a basic regulation of the principles on which national legislation can build in addressing the details.

119. As regards infrastructure, the Protocol provides little help or guidance to countries. It merely requires Parties to “ensure that its courts possess the necessary competence” to entertain claims for compensation (article 17, paragraph 2). The fact that the basic legal framework is in place (in the shape of the Protocol) should, however, make it easier to design an infrastructure adapted to it.

2. Different groups of countries

(a) Developed countries

120. Countries in this category have often already enacted legal rules on civil liability. In this case, the Protocol can supplement national legislation in that it covers aspects not addressed, or insufficiently addressed, by national legislation. For example, national legislation often covers damage occurring in the national territory only (see the study for category 6 countries), whereas the Protocol covers the entire movement. It is also possible, however, that the entry into force of the Protocol for a country leads to the replacement of the country’s more stringent rules by the less stringent rules of the Protocol. An example of this is also shown in the study for category 6.

121. On the other hand, some developed countries do not have special civil liability rules on waste management, as evidenced in the study for category 7. In such cases, the general civil liability rules of the country apply. The Basel Protocol can provide additional rules (on issues not covered by national legislation) or more stringent rules on some aspects of liability.

122. In the case of transboundary movements between OECD member states which generally have similar legal frameworks and standards on civil liability, the countries apply their respective legal systems to damage occurring during such transboundary movements, as evidenced by the study for category 6 countries. The law of the country in whose territory the damage occurs is applied in such cases.

(b) Developing countries and countries with economies in transition

123. Members of these groups of countries often have no national legislation on liability for damage caused by wastes (see the studies for categories 3, 4, and 8), or an insufficient framework stating liability in general terms but providing no specific rules for waste management (see the studies for categories 1 and 2). In these cases, the Protocol can provide a minimal framework and guidelines for the elaboration of pertinent rules at the national level. The Protocol cannot, however, fully replace a national civil liability regime, as it has not been designed to assume this function. It remains crucial, therefore, that countries elaborate their own national legislation.

124. Some countries that fall within this group do have national rules on civil liability, as evidenced by the study for category 5 countries. In these cases, the role of the Protocol is the same as for developed countries.

Conclusion

125. The Basel Protocol provides its Parties with a minimal legal infrastructure to address civil liability for damage caused by contravention of decision III/1. There remains however a need for national legislation to address the remaining points. The issue of institutional infrastructure is not directly addressed by the Basel Protocol.
126. There is as yet no mechanism for compliance monitoring, comparable to the Basel Protocol on Liability and Compensation. Conference decision V/16 mandates the Legal Working Group to develop such a mechanism, based on a set of elements already elaborated within the Convention’s framework. These elements, as agreed by the Conference of the Parties, propose a body whose functions should include provision of advice to Parties in areas related to the building and administration of a legal and institutional infrastructure.

127. The relevant areas, as listed in section B.1 (a) of the elements, include some of the principal elements which must be present if the implementation of the Convention, and hence of decision III/1, is to be successful, namely: establishing and strengthening of domestic regulatory regimes; enforcing and implementing laws, including border controls; ensuring the environmentally sound management and disposal of hazardous wastes; training customs and other personnel; procuring technical and financial assistance; and developing the means to eradicate illegal traffic, including investigating, sampling and testing. In addition, countries will be able to consult the body on their individual problems concerning implementation and compliance. The mechanism might also include an element of control and supervision.

128. With the proposed function of strengthening the national capacities needed for implementing the Convention, the establishment and operation of this mechanism has the potential to render considerable assistance to countries in improving their legal and institutional infrastructure required to implement decision III/1. Whether this potential will be developed depends to a large extent on the way in which the mechanism is eventually structured. It will be important that the body operates in an efficient way and gives focused advice for the resolution of specific problems, rather than engaging in general or theoretical discussions. It is presumably with this objective that the Conference of the Parties has agreed that the mechanism be “transparent, cost-effective, preventive in nature, simple, flexible, non-binding and oriented in the direction of helping Parties to implement the provisions of the Basel Convention”. For this, it is important that the group be:

(a) Small, limited in membership (as agreed by the Conference of the Parties);
(b) Composed of experts with hands-on experience in technical and legal issues related to the elaboration and implementation of national law and institutions;
(c) Solution-oriented;
(d) In a position not only to provide information, but also to follow up on advice given, acting on the request of Parties;
(e) In a position to facilitate the exchange of experience and advice between countries, i.e., to act as a clearing-house, with the support of the secretariat.

129. It should not be:
(a) Unduly large and cumbersome, as this would impede flexibility and efficient functioning;
(b) Composed of political appointees with limited or no practical background and experience;
(c) Prone to academic or political discussions with no concrete aim.

2. Different groups of countries

130. As evidenced by the studies for categories 6 and 7, this group of countries often has a legal and institutional infrastructure that is basically sufficient to implement the Basel Convention, and will have less
need for support. Problems that do occur tend to be time-related, as evidenced in the study for category 7 countries: one difficulty is getting responses from other countries through the PIC system. In this case, the country might appeal to the compliance mechanism to draw their attention to the problem. In terms of capacity-building, however, such a mechanism is not likely to add very much for this group.

(b) Developing countries and countries with economies in transition

131. Many countries in this group could in fact benefit from a compliance mechanism if it were built in an appropriate way. It was with this in mind that the Legal Working Group proposed that the mechanism “pay particular attention to the needs of developing countries”. It has to be borne in mind, however, that the mechanism could provide advice on the elaboration and implementation of legislation, but could not substitute the national procedure needed for this purpose.

Conclusion

132. The future mechanism addresses all potential problem areas and could thus be helpful in supporting countries in building their legal and institutional infrastructure.

C. Dispute settlement procedure

133. The dispute settlement procedure (Basel Convention, article 20 and Annex VI) is a tool for resolving conflicts or disagreements between Parties regarding the application of, and compliance with, the Convention. This includes any conflicts that may arise from a Party’s alleged failure to comply with decision III/1. In such cases, if the Parties involved in the conflict are unable to resolve it through negotiation, they may agree to submit their dispute to the International Court of Justice or to arbitration. In this case, they will accept the ruling of these bodies.

134. The dispute settlement procedure is not designed to help countries with the inception and application of the legal and institutional infrastructure necessary to implement decision III/1 at the national level. It can help clarify disagreements that arise between countries in concrete cases of international transactions, e.g., as regards the question whether a substance exported is a hazardous waste according to the Basel Convention, or whether a given transboundary movement has been carried out in contravention of decision III/1 and is therefore illegal.

135. Article 20 of the Basel Convention is a standard clause, which is found in most modern multilateral environmental agreements. In its current form, it has hardly ever been applied to date. Accordingly, there is little basis for the assumption that it can contribute to the implementation of decision III/1 in a specific way. Should the Legal Working Group propose a way to redesign or strengthen the mechanism, on the basis of decision V/17 of the Conference of the Parties, so that it will actually be used by Parties, it would be a helpful tool for clarifying concrete issues related to decision III/1 between countries. This will not, however, eliminate the necessity of designing national legal and institutional infrastructure.

136. In the application of this mechanism, there is no discernible difference between developed countries, developing countries and countries with economies in transition.

Conclusion

137. As a tool to help resolve disagreements between countries, the dispute settlement procedure may be useful, especially if it is redesigned. It is not however designed to assist countries in building a legal and institutional infrastructure and will not be of significant help in this context.

D. Guidance elements for the prevention of illegal traffic

1. General

138. Since transboundary movements of hazardous wastes in contravention of decision III/1 can be considered illegal traffic, national mechanisms to combat such contraventions are the same as those necessary to combat illegal traffic (see chapter I of the present study). In this respect, any type of guidelines
to assist countries in this task will surely be helpful. The draft guidance elements that are under discussion within the framework of the Basel Convention are not as yet sufficiently advanced to provide real assistance, as, to date, only the headings have been determined. These headings cover a large number of elements that will need to be developed, including technical and administrative issues, issues of capacity-building and legal and institutional issues. If it is possible to fill these headings with appropriate content, they are likely to help countries build their infrastructure.

2. Different groups of countries

(a) Developed countries

139. These countries generally have a certain level of legal and institutional infrastructure, even if this is generally not sufficient for the complete control of illegal traffic. There also appears to be quite effective informal cooperation within the main OECD region, as evidenced by the study for category 6 countries.

(b) Developing countries and countries with economies in transition

140. These countries often lack the basic legal and institutional infrastructure to combat illegal traffic, as evidenced by the study for category 1 countries. In this respect, guidelines may be useful insofar as they could help countries to decide where to place the emphasis in tackling the problems.

141. In general, it has to be said that the prevention and punishment of illegal traffic is probably one of the most difficult problems faced by national and international legal and institutional frameworks. Owing to the enormous financial benefit that can be derived from such traffic, it occurs in many forms, and elaborate schemes are devised to circumvent existing legislation. If existing and future legal and institutional mechanisms prove less than effective, this is not entirely due to their shortcomings, but in part also to the complexity of the issue. A major problem encountered in this context is corruption, as evidenced in the country studies for categories 1 and 2.

Conclusion

142. If provided with substantive content, the guidance elements can be of use to countries in developing appropriate legislation and infrastructure. Their usefulness for this purpose should not be overrated, however.

E. Regional and subregional centres for training and technology transfer

143. The aim of establishing regional and subregional centres is training and technology transfer in the area of hazardous waste management (article 14 of the Basel Convention). This is organized on a regional basis in order to take advantage of the similarities of the situations within a certain region, and to make use of the possibility of countries with similar interests benefiting from one another’s experience. Strengthening countries’ capacities with regard to legal and institutional aspects of the implementation of the Convention is one of the main objectives of the centres. It is evident that this extends to the implementation of decision III/1.

144. Those centres that have already commenced operation and offer training courses include the development of national legislation on hazardous wastes management as an important topic. The centres therefore have considerable potential to assist countries in the development of legislation to implement decision III/1. This can easily be integrated into the training programmes, especially since the legal and institutional infrastructure required to implement decision III/1 is the same as the one necessary under the Basel Convention as it stands, as concluded in chapter I above. Training courses could be designed to include issues related to decision III/1. This is in fact planned by the Regional Training Centre for Central and Eastern Europe in Bratislava, in a forthcoming legal and institutional training course.

145. A great advantage of training courses and other activities offered by the regional centres, as compared to other international mechanisms, is the direct contact between the persons responsible for the relevant areas of waste management in different countries of the same region. These persons have the opportunity to discuss specific problems on an individual basis. A useful way to proceed in addressing pertinent problems
in the framework of training courses could be to use the existing legislation and infrastructure of a country with a highly developed framework as a model on which to build other countries’ legislation (as the Regional Training Centre in Bratislava is currently doing with European Union legislation). In the context of Annex VII issues, the present study, including the analysis of the legal and technical framework of selected countries, might also be used as a basis for further work by the centres.

146. Since regional and subregional centres for training and technology transfer are established only for developing and countries with economies in transition, there are no grounds for differentiating between this group and developed countries.

Conclusion

147. Regional training centres can provide an extremely useful framework for assisting countries in developing their legal and institutional framework, and exchanging experience within a given region. One way of accomplishing this is through training courses on these issues, which are already offered by some of the centres.

F. Bilateral assistance mechanisms

148. Although not expressly mentioned in the context of any of the working groups and mechanisms of the Basel Convention, bilateral and multilateral development cooperation programmes offer a very effective method of promoting the elaboration of appropriate legal and institutional infrastructure for the implementation of the Basel Convention, including decision III/1. Unlike mechanisms that are part of a multilateral agreement, development cooperation allows detailed consideration of the specific situation of the recipient country and adaptation of any activities to its particular needs. A combination of participation in multilateral mechanisms (e.g., the regional training centres) and bilateral cooperation, combining the advantages of both, would probably provide the best results.

149. As evidenced by the study for category 1 countries, this potential is not always fully exploited in existing cooperation development programmes. Reportedly, projects are often oriented towards the level of technical and economic development of the donor country rather than that of the recipient country. As they are not adapted to the situation of the recipient country, they aim too high and therefore fail to address the real problems of the country. There appears to be significant potential for improvement in this area.

Conclusion

150. Bilateral assistance mechanisms have the potential to provide support on an individual basis if they are adjusted to the needs and priorities of the recipient country.

IV. CONCLUSIONS

A. Summary of conclusions from the country studies

151. The eight country studies illustrate the diversity of situations that exist in the world with respect to waste management. They also confirm some of the findings of the first phase of the Annex VII study (the report by ERM on part I), namely, that a large number of developing countries do not have a sufficient enforcement infrastructure, even if they have pertinent legislation. Accordingly, even the minimal legal infrastructure that exists is often not enforced. Many developing countries also do not have sufficient disposal and treatment facilities for hazardous wastes. Nevertheless, there are very considerable differences between the various categories of countries that are defined as developing countries under the United Nations listing. The studies for categories 1, 3, and 8 show examples of the existing extremes.

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4 ERM report on phase I, p. 33 ff. See also S. Cointreau, Occupational and Environmental Health Issues of Solid Waste Management: Special Emphasis on Developing Countries (August 2000), pp. 3-7
152. The countries of Central and Eastern Europe are generally characterized by a fairly well developed legal framework but a lack of institutional infrastructure and resources for implementation. This is evidenced by the study for category 5 countries.

153. The studies also show that the official categories of countries tend to become somewhat blurred. In addition to the wide range of situations of countries defined as developing countries, there is also some disparity within OECD, as evidenced by the studies for categories 2, 6 and 7. In some cases, the level of legal and institutional development with regard to waste management is arguably equivalent or higher in certain countries that are not members of OECD than in certain OECD members. The studies for categories 2, 3 and 8 show examples of this. A particular example is the existence of specific legislation on civil liability for damage caused by hazardous wastes, which can be found in the country representing category 5 but not in the country representing category 7.

154. For the purpose of this study, it appears that roughly three levels of institutional and legal development with regard to hazardous waste management can be distinguished among the countries that have been examined, independently of their formal status as developed countries, developing countries or countries with economies in transition or as OECD members or non-members:

(a) High level of legal and institutional development: Comprehensive legal and institutional framework for waste management in the sense that most of the elements identified in chapter I of the present study are present, allowing effective implementation of the Basel Convention and decision III/1 in practice. In the present study, the countries representing categories 6, 7 and possibly 3 are at this level;

(b) Medium level of legal and institutional development: Fairly comprehensive legal framework, including most of the elements identified in chapter I. Comprehensive institutional framework in theory, in the sense that authorities have been designated to fulfil the functions required by law. Difficulties with the implementation in practice, owing to a lack of resources and personnel, organizational shortcomings, and in some cases problems with corruption. In this study, the countries representing categories 2, 5 and 8 are at this level;

(c) Low level of legal and institutional development: Specific waste-related legal and institutional framework only partially developed. Difficulties with implementation and enforcement, owing to a lack of personnel and resources, organizational shortcomings, and in some cases problems with corruption. In this study, the countries representing categories 1 and 4 are at this level.

B. Principles

155. Based on the conclusions and observations of the country studies provided in chapter II above, the following principles can be set out regarding elements of a sound legal and institutional infrastructure:

Principle 1

156. An effective institutional infrastructure composed of authorities with sufficient competence, experience and resources is the key to successful implementation of the Convention, and hence of decision III/1. This is more important in practice than detailed legal regulation addressing every issue. Even the most sophisticated legislation will not ensure effective implementation if it cannot be applied and enforced correctly. The studies for categories 2 and 5 illustrate this. Conversely, an efficient institutional infrastructure can to a certain extent compensate shortcomings of legislation. This is evidenced by the studies for categories 6 and 7, which show that export prohibitions are in general effectively enforced in the respective countries, even though there is no explicit prohibition of export to non-OECD countries.

157. This leads to the following observations:

(a) The fundamental elements of a legal framework, as outlined in chapter I above, must be present, in particular those establishing the institutional framework and defining the responsibilities of the competent authorities, those setting up licensing and permit systems, and those imposing sanctions. Other

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ERM report on phase I, p. 38 ff.
legal elements are not indispensable. By contrast, all elements of the institutional infrastructure are essential;

(b) It is not sufficient for a country to impose a general ban on the import of hazardous wastes through a legal provision to the effect that all imports of hazardous wastes into its territory are prohibited. The study for category 1 countries gives an example of such a general ban. A minimal legal and institutional framework specifying the wastes subject to the ban, determining the means by which it is to be implemented, and providing sanctions for contraventions is essential. The same applies to exports.

**Principle 2**

158. The country studies show that a functioning institutional infrastructure is dependent on a number of essential factors:

(a) Primary factors: Appropriate position of environmental issues on the general political agenda of the country, legal framework conferring the necessary authority on government institutions, sufficient political weight of the responsible ministry and other key authorities, political will of the competent government authorities, sufficient resources, sufficient personnel with the necessary expertise, and absence of corruption. This last point is directly related to the issue of resources: persons with a decent salary and satisfactory working conditions will be less susceptible to corruption;

(b) Contributing factors: these include the existence of sufficient capacities and facilities for waste management, a critical interest on the part of the public and the press, and a certain level of self-control of the industry involved in hazardous waste management;

(c) Corruption: this can effectively prevent the implementation of the legal framework, especially in poorer countries. This presents a significant problem in a number of countries. As the country studies show, this phenomenon is not limited to non-OECD countries.

**Principle 3**

159. Geographical factors also play a significant role in the effectiveness of a legal and institutional infrastructure. The control of traffic in any goods or substances, and hence the prevention of illegal traffic in hazardous wastes, is much more difficult in a large country with very long borders, or in a country consisting of a multitude of islands, than in a small land-locked country where border controls can be exercised more easily. In small countries, control is generally easier also because there are a limited number of actors (generators, exporters, carriers), which are known to the authorities and to one another. In this situation, competition among private actors can lead to the elimination of incompetent operators.

**Principle 4**

160. According to the findings of the ERM report for phase I of the Annex VII study, the most important waste streams in Asia after 1 January 1998 were lead-acid batteries and zinc wastes. Almost 90 per cent of the waste shipments were for recycling or recovery. Countries in Asia and in other regions that have a certain level of industrial and economic development (whether or not they are members of OECD) tend to require certain types of wastes for recycling and reuse purposes. Accordingly, their legislation stipulates an exception to a general import prohibition if the wastes are to be used for this purpose. The studies for categories 2 (OECD member), 3, and 5 (non-OECD members) show examples of such exceptions. Where exceptions of this kind exist, they should be contingent on the ability to ensure environmentally sound management, as in the examples of categories 3 and 5. Only if the corresponding institutional framework exists can pertinent exceptions be implemented without danger to the environment.

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6 ERM report on phase I, pp. 40-43
7 The ERM report on phase I explicitly mentions spent lead-acid batteries, zinc, copper, aluminium and iron slags (p. 43).
Principle 5

161. Formal and informal cooperation among the countries of a region can facilitate implementation of the rules, especially if the factual situations and legal and institutional frameworks of the countries are similar. The study for category 7 provides an example of this.

Principle 6

162. The international mechanisms of the Basel Convention can provide support to countries in building their legal and institutional infrastructure. The importance of the mechanisms for this particular issue varies. The Basel Protocol on Liability and Compensation has the potential to provide a basic framework for all countries, whereas the future compliance mechanism (especially its advisory element), the regional centres for training and technology transfer, and bilateral and multilateral development cooperation programmes are of key importance in addressing problems of developing countries and countries with economies in transition. The mechanisms can only support, never replace the building and implementation of a legal and institutional infrastructure at the national level.

C. Characteristics of countries with efficient legal and institutional frameworks for the implementation of decision III/1

163. Below we list the major factors contributing to successful implementation of the Basel Convention, and hence decision III/1:

1. Legal and institutional factors

- Legislative framework congruent with institutional framework, i.e., frameworks adapted to one another (this is not the case, for example, where there is an extensive complicated legislation but a minimal or non-existent institutional infrastructure);

- Institutional and legal framework adapted to the realities of the country (this is not the case, for example, where national waste management legislation contains an extensive list of wastes many of which are not present in the country. A more simple law addressing wastes that are in fact present would be more adequate in such a case);

- Effective application, supervision and enforcement of legal rules at all levels of government;

- Indispensable elements of legal infrastructure: Permit or licensing system for transactions involving hazardous wastes setting out requirements and conditions that must be met, designation of government authorities to administer the system, customs and enforcement authorities;

- Functioning and effective institutional infrastructure (including absence of corruption).

2. Political, technical and resource-related factors

- Political agenda of the country attaching importance to compliance with international environmental obligations;

- Competent government ministry or agency with sufficient political power to exercise its functions;

- Political will of the competent government agencies and political actors;

- Sufficient personnel with the necessary expertise;

- Sufficient resources;

- Existence of appropriate disposal and treatment facilities for hazardous wastes;
• Existence of laboratories and resources for sampling and testing hazardous wastes;
• Absence of corruption;
• Awareness among important actors in the public and private sectors, and the general population;
• Public interest groups and press who can assume an informal supervisory function;
• Self-control of the industry involved.

Principal source materials

General


• Secretariat of the Basel Convention: document on national enforcement requirements

• “Guidance elements for the detection, prevention and control of illegal traffic in hazardous wastes”, elaborated by the Technical Working Group and the Consultative Sub-Group of Legal and Technical Experts, at their joint meetings in Pretoria in 1998 and Geneva in 1999

• Secretariat of the Basel Convention: note on the prevention and monitoring of illegal traffic in hazardous wastes and other wastes, 12 September 2000 (UNEP/CHW/LWG/2/4)

• Basel Protocol on Liability and Compensation

• “Monitoring the implementation of and compliance with the obligations set out by the Basel Convention”, annex to decision V/16 of the Conference of the Parties

• Secretariat of the Basel Convention: compilation of government responses to the questionnaire on dispute settlement elaborated by the Consultative Sub-Group of Legal and Technical Experts, April 1999

• Web site of the secretariat of the Basel Convention, also providing information on all working groups and regional training centres

• Katharina Kummer, International Management of Hazardous Wastes, Oxford University Press, 1999

Country studies

• Substantive input from persons in charge of managing relevant systems at the national level in different countries

• Web sites of the competent government authorities of various countries


• Secretariat of the Basel Convention: “Reporting and transmission of information under the Basel Convention for the year 1997”


• ERM report on part I of the Annex VII study

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• OECD environmental assessment reports
• UNEP state-of-the-environment reports
• Country statistics published by the World Bank and regional development banks

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