



# Book - Unit 2 - The three pillars of the Basel Convention

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Site: UNITED NATIONS INFORMATION PORTAL ON MULTILATERAL ENVIRONMENTAL AGREEMENTS

Course: Introductory Course to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal and Regional Instruments on Hazardous Wastes

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# 1. Minimization of the generation of hazardous wastes and other wastes

In the Preamble of the Convention, Parties are mindful that the most effective way of protecting human health and the environment from the dangers posed by such wastes is the reduction of their generation to a minimum in terms of quantity and/or hazard potential. Article 4(2)(a) of the Convention requires each Party to take the appropriate measures to ensure that the generation of hazardous and other wastes within it is reduced to a minimum, taking into account social, technological and economic aspects.

At its tenth meeting, held in Cartagena, Colombia, from 17 to 21 October 2011, the Conference of the Parties adopted the Cartagena Declaration on the Prevention, Minimization and Recovery of Hazardous Wastes and Other Wastes. Under paragraph 1 of the Cartagena Declaration, parties are committed to enhancing the active promotion and implementation of more efficient strategies to achieve prevention and minimization of the generation of hazardous wastes and other wastes and their disposal.

In accordance with Article 13(3) of the Convention, Parties have the obligation to share information on measures undertaken for development of technologies for the reduction and/or elimination of production of hazardous and other wastes. Such measures may include cleaner production methods.

## 2. Strict Control of Transboundary Movements of Hazardous Wastes and Other Wastes

Under the Basel Convention, a transboundary movement (TBM) means any movement of hazardous wastes or other wastes:

- from an area under the national jurisdiction of one State
- to or through an area under the national jurisdiction of another State, or to or through an area not under the national jurisdiction of any State,

provided at least two States are involved in the movement.

Parties are under an obligation to take the appropriate measures to ensure that TBM of hazardous wastes and other wastes are only allowed if one of the three following conditions is met:

- the State of export does not have the technical capacity and the necessary facilities, capacity or suitable disposal sites in order to dispose of the wastes in question in an “environmentally sound manner”; or
- the wastes in question are required as raw material for recycling or recovery industries in the State of import; or
- the TBM in question is in accordance with other criteria decided by the Parties (such criteria will normally be found in the decisions adopted by the Conference of the Parties).

In all cases, the Convention requires that the standard of “environmentally sound management” (ESM) of hazardous wastes or other wastes is met. ESM means taking all practicable steps to ensure that hazardous wastes or other wastes are managed in a manner which will protect human health and the environment against the adverse effects which may result from such wastes.

## Restrictions

In addition to these conditions, the Basel Convention specifies instances in which Parties may restrict TBM and instances in which Parties must restrict TBM.

Such restrictions may apply to the export or to the import of hazardous wastes and other wastes. The Convention further clarifies the consequences of such restrictions. Specifically:

- Parties have the right to prohibit totally or partially the import of hazardous wastes or other wastes into their jurisdiction for disposal.
- If a Party restricts or prohibits the import of hazardous wastes or other wastes, other Parties must respect this restriction or prohibition
- A Party must not allow exports to a State when it has reason to believe that the wastes in question will not be managed in an environmentally sound manner
- Parties may decide to limit or ban the export of hazardous wastes or other wastes to other Parties
- Parties are prohibited from exporting wastes falling within the scope of the Convention for disposal within the area south of 60° South latitude
- A TBM should not occur with a non-Party
- TBM can take place through transit States that are not Parties to the Convention.

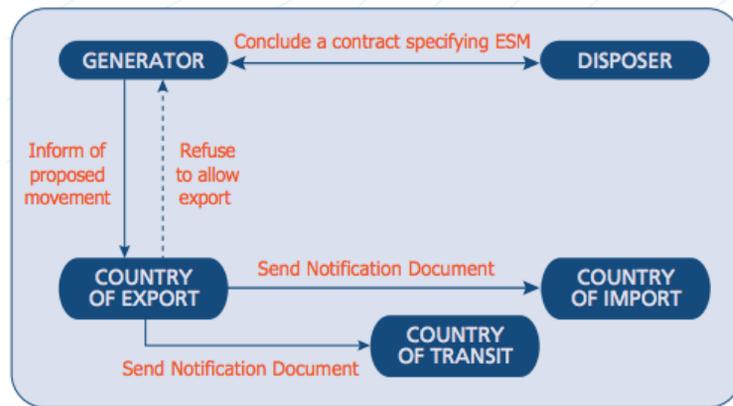
The Basel Convention also requires that only persons authorized or allowed to transport or dispose of wastes undertake such operations, and that wastes subject to a TBM be packaged, labelled and transported in conformity with generally accepted and recognized international rules and standards

## Procedures for transboundary movements

The Basel Convention contains a detailed Prior Informed Consent (PIC) procedure with strict requirements for TBM of hazardous wastes and other wastes. The procedures form the heart of the Basel Convention control system and are based on four key stages.

## Stage 1: Notification

The purpose of stage 1 is for the exporter to properly inform the importer of a proposed transboundary movement of hazardous wastes or other wastes.



The exporter/generator of the wastes must inform the Competent Authority (CA) of the State of export of a proposed shipment of hazardous or other wastes. Before the shipment can be allowed to start the generator and the disposer conclude a contract for the disposal of the waste. Under the Convention this contract must ensure that the disposal is conducted in an environmentally sound manner.

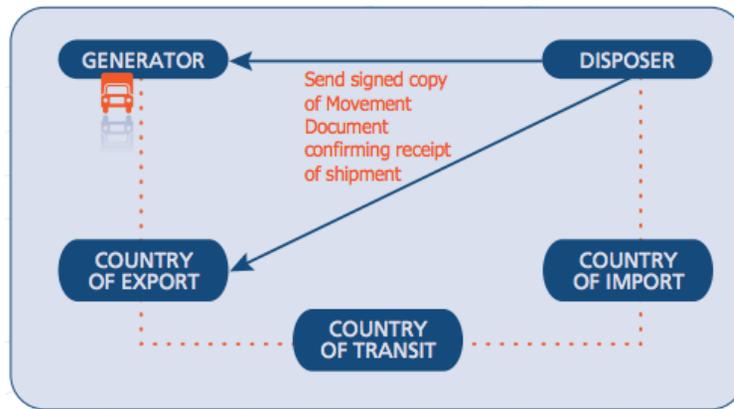
The CA of the State of export assesses the information received from the exporter/generator and may refuse to allow the export. Such a decision is perfectly in order with the spirit of the Convention.

If the CA of the State of export has no objection to the export, it informs - or requires the generator/exporter to inform - the CA of the States concerned (State of import and State(s) of transit) of the proposed movement of hazardous wastes or other wastes by means of a “notification document”. The purpose of the notification is to provide the CA of the countries concerned with detailed, accurate and complete information on the waste itself, on the proposed disposal operation and other details relating to the proposed shipment. This document must contain the information specified in Annex V A of the Convention, and must be in a language that is acceptable to the State of import and State(s) of transit.



### Stage 3: Transboundary movement

Stage 3 illustrates the various steps that need to be followed once the transboundary movement has been initiated and until the wastes have been received by the disposer.



The movement document provides relevant information on a particular consignment, for example, on all carriers of the consignment, which customs officers it has to pass through, the type of waste and how it is packaged. It should also provide accurate information on the authorizations by the CAs for the proposed movements of wastes.

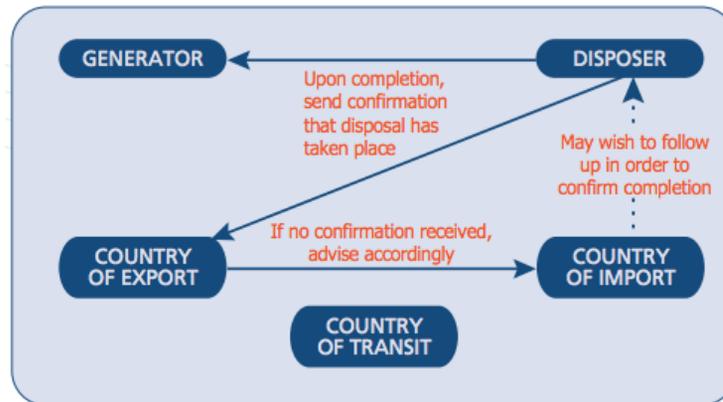
The Conference of the Parties has recommended that the duly completed notification should always accompany the Movement document.

Most countries accept a copy of the duly completed and fully authorized notification to be enclosed with the movement document. However, some countries require that an original notification, stamped and signed by the CA, shall always accompany the movement document.

#### Stage 4: Confirmation of disposal

The purpose of stage 4, the final stage in the TBM procedure, is for the generator and country of export to receive confirmation that the wastes moved across borders have been disposed of by the disposer as planned and in an environmentally sound manner.

The Convention requires a confirmation from the disposer when the disposal has taken place, according to the terms of the contract, as specified in the notification document. If the CA of the country of export has not received the confirmation that disposal has been completed, it must inform the CA of the country of import accordingly.



# The Ban Amendment

The “Ban Amendment” provides for the prohibition by each Party included in the proposed new Annex VII (Parties and other States which are members of the OECD, EC, Liechtenstein) of all transboundary movements to States not included in Annex VII of hazardous wastes covered by the Convention that are intended for final disposal, and of all transboundary movements to States not included in Annex VII of hazardous wastes covered by paragraph 1 (a) of Article 1 of the Convention that are destined for reuse, recycling or recovery operations.

The Ban Amendment was originally adopted as a decision of the second meeting of the Conference of the Parties in March 1994. At that time, some felt that the Ban Amendment was a way to address challenges faced by developing countries and countries with economies in transition in controlling imports of hazardous they were unable to manage in an environmentally sound manner but continued to receive. At the next meeting (COP-3) in 1995, Parties adopted a further decision III/1 as an amendment to the Convention (the “Ban Amendment”).

## The Country-led Initiative

For some years after, there were differing views among Parties about the interpretation of the provision on amendments to the Convention, with many considering it to be ambiguous. After several meetings without agreement in this regard, the President of the ninth meeting of the Conference of the Parties issued a Statement on the possible way forward on the Ban Amendment. In this statement, the President called on Parties to create enabling conditions, through among other measures, country-led initiatives conducive to the attainment of the objectives of the Amendment. Based on the statement of the President of COP 9, Indonesia and Switzerland announced their readiness to organize a “Country-led Initiative” (CLI).

At its tenth meeting, the Conference of the Parties adopted decision BC-10/3 on the Indonesian-Swiss country-led initiative to improve the effectiveness of the Basel Convention. Section A of this decision addresses the entry into force of the Ban Amendment and agreed an interpretation of Article 17(5) of the Basel Convention on amendments to the Convention: the amendment will enter into force once it has been accepted by three-fourths of those parties that were parties at the time of the adoption of the amendment. As at 1 March 2015, the amendment had yet to enter into force.

## Illegal traffic in hazardous wastes and other wastes

The Convention also sets out two provisions dealing with transboundary movements that either do not proceed as intended, or result in illegal traffic. Under article 8, where a movement of wastes undertaken with the consent of the States concerned cannot be completed in accordance with the terms of the contract, the State of export has to ensure that the wastes in question are taken back into the State of export if alternative arrangements cannot be made for their disposal disposed of in an environmentally sound manner. In such situations, the State of export and any Party of transit have the obligation not to oppose, hinder or prevent the return of the wastes.

Article 9, on the other hand, refers to illegal traffic, namely transboundary movements of hazardous and other wastes that are not undertaken in accordance with specific requirements of the Convention. "Illegal traffic" is defined by the Convention as movements of covered wastes that are undertaken without notification; without the required consents of the States concerned (export and any transit); with consents obtained from states concerned through falsification, misrepresentation or fraud; do not conform in a material way with the required documents; or that result in deliberate dumping of wastes in contravention of the Convention and general principles of international law.

As provided for in article 4 (4), Parties to the Convention consider that illegal traffic in hazardous wastes or other wastes is "criminal". Article 9 also provides for the consequences of illegal traffic and requires each Party to introduce appropriate national legislation to prevent and punish illegal traffic in hazardous and other wastes.

### 3. Environmentally Sound Management of Hazardous Wastes and Other Wastes

In order to protect human health and the environment from their adverse impacts, the Basel Convention aims to ensure the environmentally sound management of hazardous and other wastes. Article 2 defines environmentally sound management of hazardous and other wastes to mean "...taking all practicable steps to ensure that hazardous wastes and/or other wastes are managed in a manner which will protect human health and the environment against the adverse effects which may result from such wastes". The Convention is based on a life cycle approach as "management" is defined as including the collection, transport and disposal of hazardous wastes and other wastes, including after-care of disposal sites.

It is widely acknowledged that "environmentally sound management" (ESM) is understood and implemented differently by parties in the context of the Convention. While implementation of the Convention requires application of its provisions in a consistent manner, countries as well as facilities may have different ways of applying ESM as they face different realities. In addition, ESM of wastes cannot be guaranteed within the confines of waste management or generator facilities without effective legal systems, government oversight and other infrastructure to protect the occupational safety and health of workers, communities and the environment. In the absence of such effective systems and infrastructure, ESM may not be readily available in some countries and facilities.

A Framework for ESM of hazardous wastes and other wastes was developed and approved by the tenth meeting of the Conference of the Parties in 2011 to identify what countries should do at the national level and collectively as parties to the Convention to address the challenges of implementing ESM of wastes in a systematic and comprehensive manner.

## Main Provisions

The main provision of the Convention setting out specific obligations associated with the environmentally sound management of hazardous wastes and other wastes is Article 4. For instance, Article 4 (2) (b) requires each party to take the appropriate measures to ensure the availability of adequate disposal facilities for the environmentally sound management of hazardous wastes and other wastes located, to the extent possible, within it, while Article 4 (2) (c) requires each Party to ensure that persons involved in the management of wastes within it, such as waste generators, collectors, carriers, dealers, brokers and disposers, take all necessary steps to prevent waste pollution resulting from such management.

This can require, for example, that proper packaging materials be used to avoid leakage of liquid or other wastes and that wastes be treated before disposal to eliminate their hazardous nature. Article 4 (2) (c) further requires each Party to ensure that persons involved in waste management take steps to minimize the consequences of any waste pollution that occurs. For example, one way of reducing the impacts of waste pollution is to develop and implement pollution emergency plans to be followed in the event of pollution incidents.

Furthermore, Article 4 (7) requires each Party to prohibit all persons under its national jurisdiction from transporting or disposing of hazardous wastes and other wastes unless authorized or allowed to perform these operations

The concrete meaning of “ESM” for a variety of waste streams and disposal operations has been largely given through the development of technical guidelines adopted by the Conference of the Parties, as provided for in Article 4 (8) of the Convention.