BAN’s Commentary on CLI Explanatory Note and Draft Decision

24 January 2011

Prepared by Basel Action Network

A. General Comments

BAN wishes to state at the outset that it greatly appreciates the work of the CLI and its participants. Great hope lies in the success of this process to fulfil the Indonesian President’s statement to the Parties at COP IX and his wish shared by so many to expedite the entry into force of the Ban Amendment. BAN concurs then with this overarching goal. Nevertheless some serious misstatements and false conclusions are prominent in the two CLI documents, which if they remain unaddressed can cause dangerous conclusions and possibly encourage inappropriate activities later. For these reasons we feel compelled to offer the following commentary to address these concerns.

1. Incorrect and dangerously limited rationale for Basel Ban cited

BAN’s strongest objection to the work of the CLI to date is the reductionist and revisionist notion that the only reason for the Basel Ban Amendment is the "protection of vulnerable countries." The history and actual text of decision III/1 indicate very strongly that the amendment exists for multiple reasons. It has long been recognized and discussed that the Amendment provides downstream protective benefits to importing countries and at the same time provides upstream benefits to all countries by incentivizing more efficient and appropriate minimization of waste generation by internalizing costs.

The original text of the Basel Ban (Decision III/1) cited the following as the reason:

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

It must be recognized that this rationale states that it is the transboundary movement (particularly that which goes to developing countries) itself that constitutes a high risk of not being ESM. It implies therefore that it is the TBM that is the ESM problem (not just the harm
from improper technology in a facility once the TBM takes place) and the risk to ESM is not limited to developing countries, but is a risk to all countries and includes the harm to all of us by allowing cost externalities via export to weaker economies (e.g. developing countries), rather than minimizing hazardous waste generation and solving the problem at the source (e.g. developed countries). ESM has always included the notion of minimizing waste generation as well as best management practices for waste that cannot be avoided. Thus, the rationale for the ban has always encompassed far more than simply preventing harm to vulnerable countries.

The extreme danger of the reductionist view as promoted by the CLI documents is that it creates a mythological and false picture of a world where Annex VII countries are the ones that can properly manage wastes and non-Annex VII countries cannot and thus the remedy for this is to provide technology to properly manage the waste. In other words the victims of cost externalization are blamed for the global problem and the remedy is seen as being downstream (e.g. end-of-pipe solution). This is very dangerous because in fact it is the Annex VII countries that have been creating the vast majority of the world’s hazardous waste to date and have not taken their responsibility to solve the problem by a) reducing their waste generation at source and b) not internalizing the significant costs of its management but rather externalizing it via export.

Once generated, hazardous waste creates risk and harm in all regions of the world. In richer countries they have the ability to mitigate the harm by the expenditure of resources. But all experts agree that the ultimate solution is to not produce hazardous waste in the first place and to internalize the costs not through expenditure but more efficient waste prevention measures and green design at source. Rather the true distinction between Annex VII and non-Annex VII is based on economic grounds to prevent the most egregious waste management cost externalization made possible via trade.

The Decision III/1 explanation also highlights the overarching obligation of the Convention for all countries to minimize ALL transboundary movement and has simply singled out those countries with the most resources (Annex VII) should be the ones to accomplish that obligation the first in the course of time. If the rationale for the Ban Amendment is simply framed as protecting the poor vulnerable developing countries because they are weak, this ignores the source of the problem and implies that the problem is located downstream and thus that is where the problem is to be solved. Nothing could be further from the truth. We are all vulnerable to hazardous waste and the answer can never be solving the problem downstream, but preventing it at source.

For this same reason BAN objects to the use of the word vulnerable in most instances as we are all vulnerable to hazardous waste once produced. Its just that in richer countries they can, by vast and often inappropriate (compared to waste minimization methods) expenditure of resources mitigate and contain the hazard.

BAN objects strongly to the CLI documents and in particular the Draft Decision in regard to the dangerous and revisionary language that frames the rationale for the Basel Ban Amendment erroneously and a limited way. We have provided track changes text in part B to address these concerns.

2. Document fails to accept and note the obligations of the Convention to minimize the generation of hazardous waste and its transboundary movement

The CLI documents strangely act as if the only concerns of the Basel Convention are ESM of existing hazardous waste and the Basel Ban. The Basel Ban is an outgrowth of these
fundamental obligations and so the fact that they are not mentioned at all except in the annexed text of the Ban Amendment itself is not well understood. Unfortunately while ESM should rightfully include waste prevention in its definition, it is not understood this way by many. Far too many consider ESM to only be about what takes place in a recycling or disposal facility. Therefore it is very important to not leave out the overarching obligation to minimize the generation of hazardous waste – an obligation placed on all countries.

Of utmost importance is the reiteration of the obligation of all states to minimize transboundary movements of waste. The Basel Ban is the first step in fulfilling that obligation starting with the most egregious cost externalization and unsustainable form of hazardous waste trade.

BAN has seen a need to insert into these documents these obligations without which, one might conclude that hazardous waste trade is fine as long as it goes to state-of-art facilities anywhere in the world. Such a view is a throw-back to a time even before the Basel Convention was drafted.

3. Fixed time approach adoption the correct response for COP X to avoid vote

BAN has long argued strongly for the interpretation of Article 17 paragraph 5 being interpreted as some form of the “fixed time” approach. To argue for a “present time” approach would doom the possibility for the Ban Amendment to become into force when it is needed most (now and twenty years into the future). Already we have wasted precious years since its adoption in 1995. Fortunately it has been a success in any event due to the preponderance of responsible countries (33 of the 41 Annex VII countries) having already placed it into national law. Due to the uncontrolled daily exports of post consumer wastes such as electronics and ships, the ban is needed now more than ever in history. It is unlikely that Parties, particularly those in developing countries that have patiently awaited the fruition of this Amendment promise, will accept any more delays. Clearly to avoid a vote by the Parties on this important issue in Cartagena, the fixed time approach must be agreed to.

However, BAN takes issue with the Explanatory Note that makes the case that its entry into force would be somewhat symbolic or useful in sending a political message but otherwise inconsequential. The assumption in this statement rests on the notion that once it becomes international law, then those that have not acceded to it would remain unpersuaded to join the international community in implementing it. Rather, we believe that the eight hold-out countries (Australia, Canada, Israel, Japan, Mexico, New Zealand, South Korea, United States) that have not ratified the Ban Amendment will very likely ratify it once it enters into force. Further we believe that some of the above countries, even if they do not immediately take the step of ratifying the Amendment will rapidly improve their enforcement of exports that would violate the ban were it in force for them based on the ban’s legal significance in light of the sovereign right of states (Article 4, para. 1) to ban the import of hazardous waste and all other states to recognize that right. Once in force it will be very clear that those non-Annex VII countries that have ratified the ban are exercising this sovereign right and any country exporting to them will be in violation of the Convention.

B. Suggested Amendments to CLI Documents

Please find BAN’s comments and track changes inserted into the document below.
Indonesian-Swiss Country-Led Initiative (CLI) to improve the effectiveness of the Basel Convention

Explanatory note

Introduction

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

The Ban Amendment (Annex I) has been identified as an important instrument to:

a) protect potentially exploited countries against adverse effects of exports of hazardous wastes from developed countries,

b) prevent the externalization of costs, risks and harm by generators and exporters of wastes in developed countries to developing countries which creates economic disincentives for the more appropriate and efficient upstream internalization of costs through green design, waste prevention and environmentally sound management at source,

c) prevent globally the environmental injustice of disproportionately burdening populations with global loads of pollutants simply due to their economic status.

There are many good reasons the amendment should enter into force, the primary ones highlighted above. The Basel Ban Amendment addresses the most egregious examples of global cost externalities; it divides the Parties to the Basel Convention into two groups, the first of which comprises of OECD and EU member countries as well as Liechtenstein (Annex VII); the second, all other countries (non-Annex VII). The Amendment prohibits movements of hazardous wastes from the first group of Parties who have ratified the Amendment or who have acceded to the Convention after amendment, to the second group. This includes movement for any sort of disposal, whether final disposal or recycling/recovery.

Although the ban was adopted as a decision at the second meeting of the Conference of the Parties in 1994 and subsequently adopted as an amendment to the Convention at the third meeting 15 years ago (1995), it still has not entered into force despite having achieved 69 ratifications to date.

There are two possible approaches to furthering the objectives of the Ban Amendment as requested by the President’s statement: a) to find a possible way forward to ensure entry into force of the Ban Amendment and;

1. Annex to Decision IX/26: President’s statement on the possible way forward on the Ban Amendment
The CLI identified a number of measures that could be brought forward to assist the first group of Parties – those who lack the resources or institutional capacity to propose and implement legislative or regulatory instruments to implement the Ban Amendment, or have insufficient in waste management.

The CLI process

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

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

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

This document reflects the outcome of the third meeting, which takes the form of a draft omnibus decision, composed of seven sections to be presented for consideration by the tenth meeting of the Conference of the Parties. This draft decision shall be subject to consultation and discussion, at first between participants in the CLI process but then opening up to all Parties and interested stakeholders.

The draft omnibus decision emanating from the third meeting deals with both the approaches to meeting the objectives of the Ban Amendment: expediting ratification of the Ban Amendment; and other ways of meeting the ban’s objectives.

Promoting entry into force

At the time of drafting this Explanatory Note, 6 Parties have ratified the Amendment. Depending on how the Convention’s provision on entry into force of amendments is interpreted, the Ban Amendment may therefore still require ratification by a number of Parties before it enters into force.

There are different reasons why some Parties have not as yet ratified the Ban Amendment. Some countries find it difficult to implement the necessary legislation or other measures necessary to ratify the amendment. Some Annex VII countries lack the necessary facilities for recycling certain wastes in their own country and find that an effective and efficient solution, consistent with the proximity principle, is to have the waste treated in environmentally sound facilities in nearby non-Annex VII countries. Some non-Annex VII countries rely on such imports as important sources of raw materials. Others have simply not prioritized its ratification. In any case, the Basel Convention obliges parties to minimize the transboundary movement of hazardous wastes and to establish national self-sufficiency in waste management.

The CLI concluded that both of these approaches are needed.

Comment: Again, all of the key reasons must be listed otherwise the entire thrust of this document is based on a false foundation which will lead to serious misunderstanding of proper solutions in next steps.

Comment: It is vital to discuss openly the issue of cost externalization because at the core this is the driver for the international trade in wastes.

Comment: It is incorrect to state that meetings that exclude people intentionally are transparent. Rather what is correct is that the outcomes were transparent. BAN is still very unhappy that we as an with persons on staff with the historic perspective, having been integral to drafting the Ban Amendment and have written extensively about it, its importance and impacts were not organization that was allowed to participate in the analysis of its meaning and impacts.

Comment: Sometimes the meetings are not in a position, as countries are "not in a position" already implies more than can be known. It implies that there is a "good reason for not ratifying when in fact the reason may be simply inertia or their being more pressing problems. Better to not pretend why. Many is likewise a loaded word. One person's "many" is another person's "few". Better to just state the facts without subjective comment.

Comment: Better to remove the number. Many is a subjective term and not a transparent. Rather what is correct is that the parties that were invited to discuss the issue in a pragmatic way, without taking a political stance. Chatham House rules prevailed, so that participants could speak frankly without attribution.

Comment: Again, all of the key reasons must be listed otherwise the entire thrust of this document is based on a false foundation which will lead to serious misunderstanding of proper solutions in next steps.

Comment: It is rather remarkable that the minimization of transboundary movement through national self-sufficiency in waste...
simply not prioritized it. For some countries on the other hand, it was recognised that they might be remain opposed to ratifying the Amendment even if it should enter into force.

It is important, as the objective of the CLI is to expedite and encourage entry into force of the Ban Amendment, to interpret the provisions of paragraph 5 of Article 17 of the Convention in a way that requires the minimum number of additional ratifications to this Amendment. Considering that the Parties to the Convention have the ultimate power to agree on the interpretation of the Convention, the CLI has proposed adopting a ‘fixed-time’ approach for amendments to the Convention to enter into force. This approach would use the number of parties to the Convention at the time that the Amendment was adopted as the basis for entry into force.

The CLI considered the consequences of entry into force of the Amendment. Regardless of whether the Amendment was in force or not, Annex VII countries that have ratified the Amendment can commit themselves to not export hazardous wastes to non-Annex VII countries. In fact 33 of the 41 Annex VII countries that have already ratified the Amendment have also adopted legislation in line with the terms of the ban and are thus already implementing it. In the event that the 8 Annex VII countries that have not ratified as yet wished to continue to not ratify the Amendment, they would not be bound by it once it entered into force, provided they were a Party to the Convention prior to its entry into force.

Following entry into force of the amendment, non-Annex VII countries that have ratified the agreement will be expected not to receive any hazardous wastes from Annex VII countries whether or not that have ratified the Amendment. As indicated, in the light of the current policy of Annex VII countries that have ratified the Amendment to implement the ban already before its entry into force, the entry into force of the Amendment would primarily formalise internationally the current situation. Ratification of the ban would not affect imports from non-Annex VII countries. Therefore, to secure wider protection the countries would have to take active steps, e.g. via import bans in national legislation to prohibit imports from non-Annex VII countries, as provided by the Convention.

It was concluded that while entry into force of the Amendment would send a powerful political signal, it may not necessarily result in significant changes in waste flows, volumes and patterns currently. However, it is possible that entry into force would encourage more widespread acceptance by all countries including the 8 Annex VII countries that have so far not ratified and thus have not put the ban into their national legislation. Further it could be foreseen that even if the remaining 8 countries chose to continue to not ratify, they may nevertheless see fit to ensure greater enforcement if the ban were in strict legal force globally.

If this is the case the reduction in volumes of Annex VII to non-Annex VII waste trade could be significant. The legal situation is visualised in the graphic below.
Other measures

Even when the fixed time approach is applied, the Ban Amendment will not enter into force immediately as ratifications of ¾ of those Parties present at the time of adoption has yet to be achieved.

Further, while the Basel Ban Amendment perhaps addresses the most egregious forms of cost externalization and exploitation, it does not address all of the possibilities of unsustainable waste trade. The entry into force of the Ban Amendment thus should be viewed as a partial solution to protect potentially exploited countries, and ensure cost internalization through waste prevention at source. Other measures are necessary to further its objective.

Broader measures are also important because the world has changed considerably over the last 15 years since the adoption of the Ban Amendment. Generation of hazardous wastes is increasingly a problem in developing countries. Transboundary movements of hazardous
wastes from non-Annex VII countries to other non-Annex VII countries and treatment of domestically-generated hazardous wastes are therefore increasingly relevant. Further, illegal traffic of hazardous wastes and in particular, post-consumer waste is an increasing problem. Many of these issues can not be addressed by the entry into force of the Ban Amendment alone.

For these reasons, the CLI has considered other ways of furthering the objectives of the Ban Amendment - the protection of potentially exploited countries, the prevention of cost externalization to the detriment of fostering a minimization of waste generation, and redressing the possible disproportionate burdening of developing countries from global waste arisings. It has made recommendations about improving the ways hazardous wastes are dealt with, through the promotion of a framework of requirements for environmentally sound management (ESM)\(^2\), recommendations about legal clarity and combating illegal traffic, recommendations for action at regional level and ways of assisting countries to build upon and utilise their rights to prohibit the import of hazardous wastes, from whatever source. The CLI also recognised that financing, expertise and technology would have to be found for such initiatives, and has proposed methods for raising awareness of the Convention’s work and forging links with other initiatives.

The CLI’s recommendations

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

The following elements were identified:

- **Addressing the entry into force of the Amendment**

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

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

- **Development of a Framework of Requirements for Environmentally Sound Management**

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

- **Providing further legal clarity**

\(^2\) ESM – environmentally sound management: taking all practicable steps to ensure that hazardous wastes or other wastes are managed in a manner which will protect human health and the environment from the adverse effects which may result from such wastes.
CLI participants have identified a number of areas where the wording of the Convention, or its on-the-ground interpretation, is not clear or differs between countries. The CLI is recommending that work be undertaken within the Basel Convention Committee for Administering the Mechanism for Promoting Implementation and Compliance to provide additional clarity in this respect.

- **Recognising the important role of the Basel Convention Regional Centres**

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

- **Combating illegal traffic more effectively**

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

- **Assisting potentially exploited countries to prohibit the import of hazardous wastes**

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

- **Building Capacity**

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

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

**Next steps**

Comments by Parties and other stakeholders on the draft omnibus decision and on this explanatory note are invited by the end of January 2011. Both papers will then be revised and distributed more widely. Further opportunities for consultation and review are planned to be exploited at the 26th Session of the UNEP Governing Council Global Ministerial...
Environment Forum in February 2011 and at the second meeting of the Expanded Bureau of the ninth meeting of the Conference of the Parties to the Basel Convention in March 2011. The final paper, to serve as a working document for the tenth meeting of the Conference of the Parties, will be elaborated in July 2011. Thereafter, Permanent Missions of Parties and non-governmental organisations will be consulted through consultative and information meetings in September 2011 and early October 2011. The tenth meeting of the COP is tentatively scheduled for 17-21 October 2011 in Cartagena de Indios, Colombia.

Consideration will also be given to the possibility of attracting co-sponsorship for the paper by the countries of the participants in the CLI process. A significant number of participants co-sponsoring the document would lend considerable weight to its recommendations, but a smaller number might send the opposite signal and in this case Indonesia and Switzerland would present the paper.
Annex 1: The Ban Amendment

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

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

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

b) Insertion of a new Article 4A reading:

“1. Each Party listed in Annex VII shall prohibit all transboundary movements of hazardous wastes which are destined for operations according to Annex IV A, to States not listed in Annex VII.

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

c) Introduce a new Annex VII reading:

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

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

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

Proposal prepared by Indonesia and Switzerland

Introduction

1. By its decision IX/26, the Conference of the Parties to the Basel Convention acknowledged the “President’s statement on the possible way forward on the Ban Amendment” set out in the annex thereto and invited Parties to take that proposed way forward into consideration wherever possible.
2. In his statement, the President sought to launch a process to reaffirm the Amendment’s objectives and to explore means by which they might be achieved. The President called upon all Parties to create enabling conditions, through, among other measures, country-led initiatives conducive to the attainment of those objectives. The President stated that, “such country-led initiatives will serve to contribute to gathering momentum to encourage ratification of the Amendment and to expedite its entry into force.”

3. Based on that statement, the Governments of Indonesia and Switzerland announced their readiness to organize a country-led initiative to discuss, in an informal and dynamic manner, views from various sides on a way forward to ensure that the transboundary movements of hazardous wastes, especially to developing countries and countries with economies in transition, constitute an environmentally sound management of hazardous wastes, as required by the Basel Convention.

The process

4. Three physical meetings, supported by the Basel Convention Secretariat and consultants, have taken place as part of the Indonesian-Swiss Country Led Initiative (the ‘CLI’). The first took place from 15 to 17 June 2009 in Bali, Indonesia, the second from 12 to 15 January 2010 in Wildhaus, Switzerland, and the third from 24 to 28 September 2010 in Hilterfingen, Switzerland. The outcome of the first two meetings was presented to the seventh session of OEWG on 10-14 May 2010 (UNEP/CHW/OEWG/7/7 and UNEP/CHW/OEWG/7/INF/8).

5. The documentation and outcomes of meetings under the CLI were circulated to Parties and other stakeholders by e-mail and through the Basel Convention website. All Parties and stakeholders were afforded the opportunity to comment on the issues to be discussed and a number of stakeholders that were not directly involved in the CLI provided valuable input to the process.

6. The first meeting considered the available statistics on the transboundary movements of waste and discussed the possible reasons why transboundary movement takes place to countries where environmentally sound management cannot be assured. This led to the preparation of an analysis of these reasons.

7. The second meeting considered further this analysis of possible reasons for the transboundary movement of hazardous wastes where environmentally sound management could not be ensured, and also considered a paper on the impacts on human health and the environment of transboundary movements of hazardous wastes. In light of these discussions the meeting developed a list of possible elements for a way forward.

8. The third meeting focused on the preparation of concrete proposals for recommendations for consideration by the Conference of the Parties. A more detailed paper describing the background to these recommendations is set out in an explanatory note that is distributed together with the present document.

General considerations
9. The entry into force of the Ban Amendment is a matter of political importance. Obstacles to its entry into force and ways of addressing those obstacles were considered and draft recommendations prepared for transmission to the Conference of the Parties. It was noted that Parties are not obliged to ratify the ban.

10. Consideration of some data on waste flows and on health effects indicated that movements between non-Annex VII countries continue to increase based on demand from both sides and illegal movements and management of hazardous waste arising within non-Annex VII countries are cause for concern. It was also noted that to this day a great deal of toxic waste (e.g. e-waste) traffic that is presently illegal or would be made illegal with entry into force of the Amendment continues. The former would not be addressed by the Ban Amendment but the latter would be.

11. Therefore, a number of the recommendations arising from the CLI process deal with ways of addressing these issues and improving standards of waste management practices, enhancing efforts for combating illegal traffic, helping vulnerable countries to protect themselves against unwanted imports, and clarifying certain aspects of the implementation of the Basel Convention, and providing economic incentives for more efficient and appropriate upstream management and especially prevention of hazardous waste generation.

Proposed action

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

The Conference of the Parties

1. Addressing the entry into force of the Ban Amendment

Recalling the basis for the Basel Ban Amendment, that the transboundary movements of hazardous wastes, especially to developing countries, have a high risk of not constituting an environmentally sound management of hazardous wastes as required by the Convention;

Understanding that the export of hazardous wastes from developed to developing countries is likely to exploit communities and environments in developing countries; externalize costs and risks of waste management and therefore provide disincentives to applying such costs more appropriately upstream by the waste generators to prevent and properly manage such wastes; and disproportionately burdening peoples and environments in developing countries.

Noting that the amendment to the Basel Convention adopted by decision III/1 of the Conference of the Parties is one way of meeting these challenges but that other ways exist to address the challenges responsibly, (e.g. national or international initiatives to apply extended producer responsibility policies, green de-sign initiatives to prevent the use of toxics in products and processes, as well as through stringent application of the existing Basel obligations and enforcement of them;
Bearing in mind decision VIII/30 of the Conference of the Parties emphasising that the Parties to the Convention have the ultimate power to agree on the interpretation of the Convention,

Stressing the need for the Parties to agree on an interpretation of paragraph 5 of Article 17 of the Basel Convention as an important step in the development of the Convention, without which the capacity of the Parties to amend the Convention for any reason would be inhibited,

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

   Specific actions, such as the Nordic Initiative, to assist Parties facing legal and technical difficulties in ratifying the Ban Amendment;

   Regional meetings;

   Country-specific studies of the implications of ratification and entry into force.

2. Resolves, without prejudice to any other multilateral environmental agreement, that the meaning of paragraph 5 of Article 17 of the Basel Convention be interpreted so as to mean that the acceptance of three-fourths of the Parties at the time of the adoption of the amendment is required for the coming into force of such amendment.

3. Notes, that such an interpretation of paragraph 5 of Article 17 does not compel any Party to ratify an amendment.

2. Developing standards and guidelines for ESM and prevention of hazardous wastes and their Transboundary Movement

Reaffirming that the fundamental obligations of the Convention include ensuring that the generation of hazardous wastes and other wastes is reduced to a minimum taking into account social, technological and economic aspects; that the transboundary movement of hazardous and other wastes is reduced to the minimum consistent with the environmentally sound and efficient management of such wastes; and is conducted in a manner which will protect human health and the environment against the adverse effects which may result from such movement;

Recognising that the generation of hazardous wastes has continued to increase globally, and that transboundary movements of hazardous and other wastes has still not been reduced to a minimum while harm to human health and the environment is still being caused throughout the world by such hazardous waste and inadequate waste management procedures;

Acknowledging the existing activities undertaken by Parties and others to ensure that the generation of hazardous and other wastes and the transboundary movements of
such wastes are reduced to a minimum; as well as those activities to promote environmentally sound management of hazardous wastes and other wastes that do exist, including the development of technical guidelines, national legislation, reference documentation and other guidance, whilst also acknowledging that further dissemination of these activities is necessary;

Stressing the continuous need of Parties to have access to sufficient information to minimize the generation of hazardous and other wastes and their movement as well as to ensure that hazardous waste and other wastes to be exported are managed in an environmentally sound manner;

Considering that a more systematic and comprehensive effort is needed to identify requirements for the minimization of waste generation and its movement as well as its environmentally sound waste management, and to encourage their adoption,

1. Invites the Secretariat to disseminate information it receives on existing activities undertaken by Parties and other stakeholders to ensure the environmentally sound management of hazardous wastes and other wastes; and to minimize the generation and movement of such wastes;

2. Decides to complete the development of a framework of requirements for the environmentally sound management of hazardous wastes and other wastes and their minimization at source as well as the minimization of their transboundary movement;

3. Requests the Secretariat in close cooperation with the Parties to elaborate, based on the elements listed in Annex I, a draft framework of requirements for the environmentally sound management of hazardous wastes and other wastes, including waste minimization and reductions in transboundary movements, that can be implemented and enforced through various tools or instruments, which shall include the following elements:
   - categories of requirements;
   - the availability and appropriateness of existing tools;
   - gaps and priority areas for action for the Convention;
   - ways in which this ESM framework and its elements might be linked to the issue of transboundary movement of hazardous waste;

4. Decides to mandate an expert technical group established by regional balance to undertake work to further develop the framework, taking into account the categories of requirements, tools and instruments and measures listed above, and to submit the framework to the eleventh meeting of the Conference of the Parties for its consideration and possible adoption.

Annex I

Elements for the environmentally sound management of hazardous wastes and other wastes, the minimization of their transboundary movement and generation that can be implemented and enforced through tools or instruments for implementation and enforcement;
In developing the framework of requirements for the environmentally sound management of hazardous wastes and other wastes, the Secretariat shall take into account the following elements:

- National infrastructure and capacity to maintain and enforce optimal environmental management and occupational health and safety both inside facilities and externally, including worker rights, and access to information and legal redress of damage;

- Assurances in place that costs will not be externalized, and if the waste is imported that such imports are not driven by cost externalization.

- Assurances that any population will not be disproportionately burdened by environmental risk or negative impacts simply due to economic, political, social or other status:
  - Occupational health and safety requirements (e.g. regarding safety, health, liability, emergency response)
  - Facility related requirements (e.g. regarding construction and infrastructure)
  - Waste related requirements (e.g. collection, sorting, pre-treatment, treatment, storage, downstream management)
  - Emission related requirements (e.g. emission limit values to air, water, and soil)
  - Organizational requirements (e.g. valid licence/permit, monitoring, record keeping, information to be provided to authorities, aftercare, insurance, management abilities/training level environmental management systems)

- Regulatory and enforcement infrastructure and requirements (consistency/complementarity)

**Tools and instruments implementing these requirements may include the following:**

- Legislation;

- Infrastructure to empower workers and communities rights and access to information;

- Standards and certifications that include Basel Convention obligations;

- Policies;

- Codes of good practice.

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

- Certification of standards that include Basel obligations;
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Licences and permits regularly validated;

Compliance promotion of regulations (e.g. training, awareness raising);

Regular inspections and controls;

Mechanism to take measures in case of non-compliance.

3. Providing further legal clarity

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

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

1. Requests the Open-Ended Working Group, assisted by technical experts as appropriate:

- to recommend to the COP, the definitions and interpretation of a list of terms related to the implementation of the Convention be elaborated, including:
  - waste / non-waste;
  - hazardous waste / non-hazardous waste;
  - re-use;
  - full functionality
  - direct re-use;
  - refurbishment;
  - second hand goods
  - used goods.

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

2. Requests the Open Ended Working Group, assisted by legal and technical experts as appropriate and taking account other initiatives such as PACE, to consider specific arrangements that can be applied to used and end of life goods:

- to require take-back obligations to be put on the importers of such goods;
- to clarify the status of ‘charitable donations’;
- to evaluate and propose a definition of when used goods become waste.
3. Requests the Open-Ended Working Group to submit the results of its work to the eleventh session of the Conference of the Parties for its consideration and possible adoption;

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

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

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

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

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

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

i. Convening regional meetings to encourage and assist Parties in their ratification of the Ban Amendment or national measures to prohibit imports;

ii. Promulgating guidance and standards of ESM, minimizing waste generation and the minimization of transboundary movement through their training, assistance and awareness raising activities;

iii. Developing a program and deploying activities to bring actors together, to provide training and to coordinate joint actions to minimize the transboundary movement of hazardous and other wastes and to combat illegal traffic, with support of the SBC and other stakeholders as appropriate;

iv. Consulting the Parties within their regions and to identify the real needs of developed and developing countries and countries with economies in transition and the difficulties that they face with minimizing waste generation, transboundary movements of wastes and other wastes, including near-end-of-life second hand goods. y. Taking action to secure political and public engagement with the obligations and objectives of the Convention;

v. Seeking further collaboration with other agencies, NGOs and the private sector;

vi. Seeking out and mobilising relevant expertise in other relevant international and regional organisations.

5. **Combating illegal traffic more effectively**
Recognising that illegal traffic in wastes, especially hazardous wastes, constitutes one of the main challenges to be addressed by the Parties to the Basel Convention in order to prevent harm to human health and the environment;

Realizing that there is a great need to implement the Basel Convention into national law in order to provide for legal application at the national level in all countries;

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

Recognising that coordinated action between various national and international government and non-governmental entities including customs, police, courts and environmental agencies, and environmental NGOs would be the most effective way to improve effectiveness in preventing and combating illegal traffic.

1. Requests the Secretariat to build on and enhance existing actions to stimulate cooperation between existing networks of enforcement agencies including INECE, Interpol, Europol, IMPEL-network of Europe, the Asian Network, and the green customs initiative and with NGOs involved in combating illegal traffic;

2. Requests the Secretariat to stimulate the formation of new networks as appropriate, in particular with other enforcement organisations or in regions where such networks currently do not exist;

3. Invites the Secretariat to further strengthen its collaboration with WCO to ensure the appropriate creation and harmonisation of customs codes for traded wastes;

4. Requests the Secretariat to collect and disseminate examples of best practice in enforcement as well as practical arrangements, such as on procedures for repatriation of wastes in case of detected illegal traffic;

5. Requests the BCRCs with support of the Secretariat and other stakeholders as appropriate to develop a program and to deploy activities to bring actors to-gether, provide training and to coordinate joint actions in this field.

6. Invites Parties and other stakeholders to report to the Secretariat on cases of illegal traffic keeping in mind, using the form for confirmed cases of illegal traffic, as adopted by decision IV/12 of the Conference of the Parties, and in-vites the Secretariat to explore ways of making better use of the information to guide the decision-making of the Conference of the Parties;

7. Requests the Open Ended Working Group to oversee the activities to be undertaken to prevent and combat illegal traffic more effectively and report on the progress to the Conference of the Parties at its eleventh meeting.

6. Assisting vulnerable countries to minimize the generation and transboundary movement of wastes, Ratify the Amendment, and to prohibit the import and export of hazardous wastes

Recognising that Parties have the right to prohibit the import or export of hazardous wastes or other wastes and to define additional wastes as hazardous in accordance with Article 3; paragraph 1 of Article 4 and paragraph 2 of Article 13 of the Basel Convention;
Noting that there remain obstacles to the full use of these provisions by Parties who would wish to be protected or served by them;

Realizing that far too many countries have not translated the obligations of the Basel Convention into national law:

1. Requests BCRCs to consult the Parties within their regions and to identify the real needs of such countries and the difficulties that they face;
2. Requests SBC to facilitate and encourage greater use of the Basel Convention model legislation for the development or revision of national legislative and other measures for the prohibition of imports of hazardous wastes and further encourages Parties to make use of this model legislation;
3. Requests the Secretariat to develop and disseminate material for use through the BCRCs for the purpose of raising awareness of these provisions in their regions;
4. Encourages Parties to develop and update national lists of prohibited hazardous wastes and to transmit them to the Secretariat in accordance with Article 3 of the Convention;
5. Encourages the Secretariat to continue to adopt a pro-active approach with regard to the collection of the information required under paragraph 1 of Article 4 and paragraph 2 of Article 13, especially the lists of prohibited wastes, and to disseminate such lists electronically to Parties at 6-month intervals;
6. Requests the Secretariat to assist Parties in the mechanics as well as the benefits of ratifying the Basel Ban Amendment and to develop national legislation and other measures to protect themselves from unwanted imports of wastes;
7. Requests the Secretariat to assist Parties towards a better understanding of the relationship between trade and the environment as relating to the transboundary movements of wastes, including the concept of cost externalization through exportation.

7. Building Capacity

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

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

1. Encourages Parties to endeavour to ensure that the management of waste is considered in the preparation and implementation of development strategies and that waste management is recognized as part of meeting the Millennium Development Goals regarding environmental sustainability;
2. Encourages the Secretariat to forge links with high-profile initiatives such as climate change and human health, in particular taking into account resolution.
WHA.63.25 adopted by the WHO General Assembly, and to continue to explore the possibilities to use the synergy process and SAICM for these purposes;

3. Encourages the BCRCs to specify and quantify the needs for capacity building for different Parties, including capacity needed to improve of national reporting to monitor implementation;

4. Encourages the Secretariat, the BCRCs and Parties to take action to secure political and public engagement with the work of the Convention;

5. To that end, invites WHO to initiate a study into the impact on human health of failures to manage wastes in an environmentally sound manner, and to utilise the result of that study to demonstrate the importance of the Convention's work;

6. Encourages the Secretariat to continue to exercise its advocacy role to promote and stimulate the inclusion of hazardous waste issues and implementation into other international and UN organisations’ work programs;

7. Encourages the Secretariat, the BCRCs and Parties to seek further collaboration with other agencies, NGOs and the private sector;

8. Encourages the Secretariat and the BCRCs to seek out and mobilise relevant expertise in other international and regional organisations;