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**Conference of the Parties to the Basel Convention
on the Control of Transboundary Movements of
Hazardous Wastes and Their Disposal
Ninth meeting
Bali, 23–27 June 2008**

Item 7 (i) of the provisional agenda*

**Implementation of the decisions adopted by the Conference of the Parties
at its eighth meeting: legal matters**

Implementation of decision V/32 on enlargement of the scope of the Trust Fund to Assist Developing and Other Countries in Need of Assistance in the Implementation of the Basel Convention

Note by the Secretariat

I. Introduction

1. By its decision V/32, the Conference of the Parties established an emergency assistance mechanism to assist Parties that are developing countries or countries with economies in transition in cases of emergency and compensation for damage resulting from incidents arising from transboundary movements of hazardous and other waste and their disposal. By its decision VIII/10, the Conference of the Parties mandated the Open-ended Working Group to review the implementation of decision V/32 and provide guidance to the Secretariat on steps to be taken. By its decision OEWG-VI/14, the Open-ended Working Group requested the Secretariat, among other things, to transmit any lessons learned on any case for emergency assistance to assist the consideration of the Conference of the Parties in the context of a review of the implementation of decision V/32.

II. Implementation

2. As requested by decision OEWG-VI/14, the Secretariat has identified lessons learned from its experience in providing emergency assistance. These relate to the expediency of the procedures under the mechanism, the adequacy of resources available for use under the mechanism and cooperation with other international organizations and agencies in responding to an emergency situation.

3. The Secretariat revised the draft standard form for requests for assistance under decision V/32 based on comments received in response to decision OEWG-VI/14. The revised draft standard form is set out in the annex to the draft decision for consideration by the Conference of the Parties.

* UNEP/CHW.9/1.

4. Annex I¹ to the present note contains detailed information on the implementation of the above decisions. Completed questionnaires submitted pursuant to decision OEWG-VI/14, providing information on incidents as defined under paragraph 2 (h) of article 2 of the Protocol on Liability and Compensation from Damage Resulting from Transboundary Movements of Hazardous Wastes and their Disposal, are set out in document UNEP/CHW.9/INF/26.

III. Proposed action

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

The Conference of the Parties

1. *Requests* the Open-ended Working Group to review the implementation of decision V/32 and to develop recommendations addressing the expediency of the procedures under the mechanism, the adequacy of resources available for use under the mechanism and cooperation with other international organizations and agencies in responding to an emergency situation and to transmit those recommendations to the of the Conference of the Parties for consideration at its tenth meeting;
2. *Adopts* the standard form for requests for assistance under decision V/32 set out in the annex to the present decision;
3. *Requests* the Secretariat to place the standard form for requests, in all six official United Nations languages, on the Basel Convention website;
4. *Urges* Parties to provide contributions to the Technical Cooperation Trust Fund to support the activities referred to in parts 1 and 3 of the Interim Guidelines for the Implementation of Decision V/32, Enlargement of the scope of the Technical Cooperation Trust Fund.²

Annex to decision IX/...

Revised draft standard form for request for emergency assistance from the Technical Cooperation Trust Fund by developing and other countries in need of assistance

DETAILS OF THE STATE REQUESTING ASSISTANCE	
Name of country requesting assistance:	
Name and address of requesting authority including details of the Basel Convention focal point and a contact point for this request: <i>(Please include full name, address, telephone and fax numbers and e-mail address)</i>	
Name and contact points of any other United Nations organizations or other bodies contacted in connection with this incident:	

¹ For reasons of economy, the annex is made available in English only and has not been formally edited.

² Set out in the annex to document UNEP/CHW.6/40.

TECHNICAL DETAILS OF THE INCIDENT AND THOSE INVOLVED	
<p>Date and location of the incident:</p> <p><i>(Please attach a map and/or other means of identifying where the incident occurred, and/or sketch of the incident or other material e.g., photographs of the pollution or damage caused)</i></p>	
<p>Information that defines the material involved as waste (e.g., especially where there is no accompanying documentation stating as such with the shipment):</p>	
<p>Specific details on the incident including:</p> <ul style="list-style-type: none"> (i) a description of how the incident occurred and who was involved; (ii) when it was discovered and by whom; (iii) whether the waste involved had been subject to a written consent under the Basel Convention notification procedure; (iv) any data from samples taken. 	
<p>Description of hazardous wastes or other wastes involved (name, origin, physical form, major constituents, typical contaminants, volume/quantity, waste code) and how it was packaged and labelled³:</p> <p><i>(Please supply photographs)</i></p>	
<p>Type and extent of damage that has occurred and is likely to occur (e.g., dilution factors, dispersion problems, rate of spread:</p> <p><i>(If trajectory models are used please give brief details)</i></p>	
<p>Names and roles of other States involved in the transboundary movements in question (e.g., state of origin, transit or destination) and the names of relevant competent authorities:</p> <p><i>(Please include full name, address, telephone and fax numbers and e-mail address)</i></p>	

Names and addresses of persons involved in the transboundary movements in question (e.g., exporter, importer, notifier, carrier, disposer): <i>(Please include full name, address, telephone and fax numbers and e-mail address)</i>	
Names and addresses of insurers ⁴ , if any: <i>(Please include full name, address, telephone and fax numbers and e-mail address)</i>	
ACTIONS REQUIRED TO BE UNDERTAKEN FOR WHICH ASSISTANCE IS REQUESTED	
Measures taken in response to the incident:	
Requests for assistance from other countries involved in the incident:	
Any legal or other relevant information, for example if there is an ongoing investigation into illegal traffic in respect of the incident that may include gathering or use of this information as evidence:	
Preventive measures that are necessary to mitigate damage:	
Breakdown of costs for the preventive and other measures:	
Type of emergency assistance required, such as financial assistance, materials, equipment, expertise or other resources (it would help to indicate priority and timing):	

Signed:

Position (e.g., Director, Minister, etc.):

On behalf of (Government name) :

Date:

Please submit this request to:

UNEP-SBC

15, chemin des Anémones

1219 Châtelaine (Geneva)

Switzerland

Tel : + 41 22 917 82 18

Fax : + 41 22 797 34 54

Email : sbc@unep.ch

Annex I

Detailed report on implementation of decisions V/32 and OEWG-VI/14

1. By its decision VIII/10, the eighth meeting of the Conference of the Parties mandated the Open-ended Working Group to review the implementation of decision V/32 and provide guidance to the Secretariat on steps to be taken, which may include the development of a strategic plan to strengthen the capacity of countries to respond to emergencies and the transmittal of a questionnaire regarding incidents as defined under paragraph 2(h) of article 2 of the Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and their Disposal.
2. At its sixth session, the Open-ended Working Group adopted decision OEWG-VI/14 which invited Parties to submit responses to a questionnaire seeking information regarding incidents as defined under article 2, paragraph 2 (h) of the Protocol on Liability and Compensation from Damage Resulting from Transboundary Movements of Hazardous Wastes and their Disposal. The responses to the questionnaire received by the Secretariat from Parties have been compiled and are contained in document UNEP/CHW.9/INF/26.
3. By the same decision the sixth session of the Open-ended Working Group invited Parties to provide comments and suggestions on the draft form for requests for assistance under decision V/32. The Secretariat revised the draft form for requests for assistance on the basis of comments received from Paraguay, Trinidad and Tobago and the United Kingdom. The revised draft is set out in the annex to the draft decision submitted for consideration by the Parties.
4. The Open-ended Working Group also invited Parties to provide comments and suggestions to the Secretariat on steps to be taken to review the implementation of decision V/32. No comments were received from Parties in response to this invitation.
5. In transmitting the comments and suggestions on steps to be taken to review the implementation of decision V/32, the Secretariat was requested by the Open-ended Working Group to transmit its lessons learned on any case for emergency assistance, such as that of Côte d'Ivoire, including on the adequacy of technical and financial assistance which may be provided under decision V/32. The Secretariat's report on lessons learned from its experience in utilising the emergency assistance mechanism established by decision V/32 of the fifth meeting of the Conference of the Parties, and the corresponding guidelines thereon adopted by decision VI/14 of the sixth meeting of the Conference of the Parties ("the interim guidelines") is set forth in section B below.

A. Background

6. By its decision V/32, the Conference of the Parties decided to enlarge the scope of the Technical Cooperation Trust Fund of the Basel Convention to assist the Contracting Parties which are developing countries or countries with economies in transition in cases of emergency and compensation for damages resulting from incidents arising from transboundary movements of hazardous wastes and other wastes and their disposal ("V/32 mechanism"). The scope of the Technical Cooperation Trust Fund was accordingly enlarged to:
 - (i) assist Parties which are developing countries or countries with economies in transition in case of an incident occurring during a transboundary movement of hazardous wastes or other wastes, so as to:
 - a. estimate the magnitude of damage occurred or damage that may occur and the measures needed to prevent damage;
 - b. to take appropriate emergency measures to prevent or mitigate the damage;
 - c. to help find those Parties and other entities in a position to give the assistance needed;
 - (ii) provide compensation for damage to and reinstatement of the environment to Parties which are developing countries or countries with economies in transition, where damage occurs that is covered by the Liability and Compensation Protocol ("the Protocol"), up to the limits provided for in the Protocol, where such compensation and reinstatement is not adequate under the Protocol (only to be operational once the Protocol enters into force); and

- (iii) assist a Party which is a developing county or country with an economy in transition in developing its capacity-building and transfer of technology and in putting in place measures to prevent accidents and damage to the environment caused by the transboundary movement of hazardous wastes and other wastes and their disposal.

7. The interim guidelines provide for a series of procedures through which emergency assistance can be sought by Parties and, following which, emergency assistance can be rendered.

B. Lessons learned

8. The V/32 mechanism has only been triggered once to provide assistance to Côte d'Ivoire following an incident which involved the dumping of hazardous materials in September 2006. Accordingly, the Secretariat's experience in administering the V/32 mechanism is limited to the purposes identified in paragraph 7(i) above, to which Part I of the interim guidelines relates.

9. The request for assistance from Côte d'Ivoire related to the dumping of hazardous substances at several sites around the district of Abidjan on 18 and 19 August 2006. The Government of Côte d'Ivoire issued a general request for assistance to the Secretariat on 30 August 2006. Following consultations with the Secretariat on the procedures set forth in the interim guidelines, the Government of Côte d'Ivoire issued a formal request for assistance on 25 September 2006.

10. The Secretariat consulted the Expanded Bureau in accordance with the existing procedures. The third meeting of the Expanded Bureau of the seventh meeting of the Conference of the Parties, which happened to be meeting on 6 to 7 October 2006, supported the provision of emergency assistance to Côte d'Ivoire under decision V/32, to the extent that the matter fell within the scope of the Basel Convention. To this end, a rapid assessment mission under the emergency mechanism was carried out from 20 November to 1 December 2006.

11. The Secretariat's experiences in administering the V/32 mechanism may be clustered as follows:

- (i) the expediency of the procedures under the mechanism;
- (ii) the adequacy of resources available for use under the mechanism; and
- (iii) cooperation with other international organizations and agencies in responding to an emergency situation.

(i) Expediency of the procedures under the mechanism

12. Prior to requesting emergency assistance, the interim guidelines provides for the requesting Party to first;

- (i) try to solve the problems with its own means;
- (ii) take measures under the national system for emergency assistance in response to incidents, where such a system exists. If these measures are not sufficient the request for assistance may be made. The request must supply information specified in the guidelines.

13. The Secretariat found that it took time for the requesting authority to source the relevant information which needs to be included in a request for assistance before it can be properly considered. The information required to be submitted by the requesting authority includes such details as, the description of hazardous wastes or other wastes involved, names of states involved in the transboundary movement, and the type and extent of damage that occurred or is likely to occur. While the interim guidelines provides for such information to be supplied in so far as it is known by the requesting authority, the Secretariat found that a number of weeks passed before a formal request for assistance that met the requirements under the interim guidelines was received.

14. The Executive Secretary is required to consult with the Expanded Bureau and contributors to the Technical Cooperation Trust Fund in determining a response to the request for assistance.

15. The Secretariat found that its ability to promptly respond to the request for assistance submitted by Côte d'Ivoire was limited by the need to first consult with the Expanded Bureau and relevant donors. In the case of the request for the Côte d'Ivoire, the Expanded Bureau was able respond fairly rapidly to this request. This was, however, largely due to the fact that the Expanded Bureau happened to have a meeting scheduled in the weeks following the receipt of the request. The Secretariat found that many of the contributors were prompt to respond to consultations with the Executive Secretary so as to enable these contributions to be released to support the emergency assistance activities.

16. It is noted, however, that the emergency assistance envisaged by the V/32 mechanism includes (i) a rapid assessment to estimate the magnitude of damage that has occurred or damage that may occur and the measures needed to mitigate and prevent (further damage); (ii) emergency measures to prevent or mitigate the damage; (iii) broker activities to help find those Parties and other entities in a position to give the assistance needed. The emergency assistance activities envisaged thus need to be put in place very soon after the occurrence of the incident, in order to effectively respond to, prevent, and mitigate, any damage which has been caused. However, two months elapsed between the incident and the mission. The Secretariat considers this resulted from the procedures established by the interim guidelines. Accordingly, the outcome of the mission's findings were applied to develop medium to long-term recommendations to prevent future such emergency situations by, for example, improving the capacity of Côte d'Ivoire to respond to similar incidents.

Lessons learned:

17. Accordingly, the procedures set forth in the interim guidelines for the submission of requests for assistance, and the consultations to be undertaken by the Secretariat in acceding to such a request, are not flexible in nature and they prevent the rapid emergency assistance activities which appear to have been intended by the interim guidelines.

(ii) Adequacy of resources available for use under the mechanism

18. As of 9 April 2008, a total sum of USD 302,080 was available in the Technical Cooperation Trust Fund ("the Fund") for use under the V/32 mechanism. Such funds are derived from contributions provided by eight donor countries.

19. Under the financial rules set forth in the interim guidelines, the Executive Secretary may apply no more than 30 per cent of the amount of funds available in the Fund at any given time to a single case. The Fund should have a reserve of 30 per cent for the next possible case and 10 per cent should never be used, except with express approval of the Expanded Bureau. On this basis, and on the basis of the funds currently available in the Fund, an amount of USD 90,624 can be applied to a single case.

Lessons learned:

20. The amount of funds which are available for use thus determines the scale by which emergency assistance can be rendered. The emergency assistance mission that was conducted in Côte d'Ivoire was modest in nature, in light of the funds available at the time. More comprehensive and responsive assistance to prevent and mitigate the short-term effects of the incident would have required resources beyond that which was available in the Fund for this case, noting the potential magnitude of emergency response activities to address a incident involving hazardous wastes.

21. It is noted that the interim guidelines provide for the Expanded Bureau to waive the limits on payments in respect of each incident in exceptional circumstances. However, the interim guidelines do not specify the criteria for an "exceptional circumstance".

(iii) Cooperation with other international organizations and agencies in responding to an emergency situation

22. Under the interim guidelines, the Secretariat is to undertake broker activities which would include: helping find those Parties and other entities in a position to give the assistance needed; to act as a broker between the country that is the victim of an incident and potential donors (financial or in-kind); to maintain a list of and establish contact with entities, such as other international organizations involved in the field of emergency response, research institutions, private companies, non-governmental organizations or public institutions, with expertise in the relevant fields of emergency response; and to encourage and facilitate, bilateral or multilateral assistance arrangements among and between Parties.

23. The interim guidelines further note the role to be played by the UNEP/OCHA Environment Unit. The interim guidelines recalls the mandate of UNEP/OCHA which is to improve the international response to environmental emergencies by serving as a clearing-house for information and a switchboard for disaster notification, and alerting and acting as a broker between affected donor countries. The interim guidelines thus provide that the Secretariat should use the services provided by the Joint UNEP/OCHA Environment Unit in offering its emergency assistance.

24. In respect of the emergency assistance offered to Côte d'Ivoire, the Secretariat enjoyed close and effective cooperation with the UNEP/OCHA Environment Unit. In particular, the Secretariat and the UNEP/OCHA Environment Unit exchanged information so as to avoid duplication and to ensure that each entity was kept informed of the activities of the other. The Secretariat found that the UNEP/OCHA Environment Unit was better equipped to offer rapid emergency response to the incident, as it had greater field presence and operational structures. The Secretariat, on the other hand, had the technical expertise necessary to address the hazardous materials in question.

25. It is noted that other international organizations were also providing emergency assistance in response to the incident, within the remits of their particular competence, e.g. health implications of the incident.

26. Given the limited resources by which the Secretariat was able to offer rapid emergency assistance in response to this incident, the Secretariat sought to provide support to the emergency response operations of other international organizations and entities, in addition to the technical assistance mission which it undertook in November-December 2006.

Lessons learned:

27. The Secretariat found that it was possible to cooperate positively with other international organizations in responding to emergency situations. However, extensive information exchange is necessary to coordinate activities so as to ensure there is no duplication of efforts. Furthermore, the Secretariat found that cooperating with other international organizations served to alleviate the limitations placed on the V/32 mechanism due to the lack of resources and lengthy procedures to be followed before emergency assistance can be rendered.
