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**COMMISSION STAFF WORKING DOCUMENT**

**Participation of the European Community in negotiations at the eighth meeting of the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal**

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#### 1. INTRODUCTION

1. Under the auspices of the United Nations Environment Programme (UNEP), negotiations for a Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal were concluded in 1988. The Convention was adopted on 22 March 1989 and entered into force on 5 May 1992. By its Decision 1993/98/EEC of 1 February 1993<sup>1</sup> the Council approved the Convention, on behalf of the European Community. In addition to the Community, the 25 Member States as well as the Acceding Countries, Bulgaria and Romania, and the Candidate Countries, Turkey and Croatia, are Parties to the Convention.
2. The Convention provides a framework for controlling the movements of hazardous wastes across international frontiers. Its regulatory system is based on: requirements of prior informed consent by states of export, import and transit for shipments of hazardous waste; agreed criteria for environmentally sound management of waste, the aim to protect human health and the environment by minimizing hazardous waste production whenever possible; prohibition of exports to Non Parties; and the duty of an exporting state to re-import where the export has been done in non-compliance with the provisions of the Convention.
3. Annex VIII to the Convention lists hazardous wastes and Annex II lists other wastes whose transboundary movements must be controlled by the Parties in accordance with the procedures laid down in the Convention. Annex IX lists wastes that are not defined as hazardous waste in the framework of the Convention
4. By Decision III/1 of 22 September 1995 the Third meeting of the Conference of the Parties adopted an Amendment to the Basel Convention (Ban Amendment). The Amendment bans **hazardous waste** exports for final disposal and recycling from Annex VII countries (Basel Convention Parties that are members of the OECD, EC and Liechtenstein) to non-Annex VII countries (all other Parties to the Convention). The amendment has not entered into force yet since the necessary number of ratifications has not been reached.

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<sup>1</sup> OJ L 039, 16.02.1993, p.1-2

5. The Community has implemented the Convention, including the Ban Amendment, through Council Regulation (EEC) No 259/1993 of 1 February 1993<sup>2</sup> on the supervision and control of shipments of waste, into and out of the European Community. This Regulation has four annexes listing wastes subject to specific control procedures and partial or full export bans.
6. On 10 December 1999 a Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Waste and their Disposal was adopted. Entry into force depends on the ratification by 20 Parties. The Community has not ratified the Protocol and the Commission is still assessing the possibility of doing so.
7. The eighth bi-annual meeting of the Conference of the Parties (COP 8) of the Basel Convention will take place from 27 November to 1 December 2006 in Nairobi, Kenya. On the basis of the provisional agenda now available under <http://www.basel.int/meetings/cop/cop8/docs/01e-adv.pdf> the following points will be amongst the most important to be discussed:
  - Approval of Draft Technical Guidelines for the environmentally sound management of POPs waste (OEWG-V/12)
  - Globally harmonized forms for the notification and movement documents
  - Ban Amendment
  - Environmentally sound management of ship dismantling (OEWG-V/8)
  - Co-operation and synergies with the Rotterdam and Stockholm Conventions and the Strategic Approach to International Chemicals Management (OEWG-V/6)
  - Strategic Plan for the Implementation of the Basel Convention to 2010 (follow up to COP 7 and decision OEWG-V/1)
  - Resource mobilization and sustainable financing, (OEWG-V/4-5)
  - Financial matters (budget and work programme) (OEWG-V/14)
8. The recent incident in Ivory Coast demonstrated the grave implications illegal waste shipments have in developing countries. Hazardous waste was unloaded from the vessel 'Probo Koala' and dumped at several sites around Abidjan resulting in the loss of several lives and thousands injured or affected. The incident highlights the importance of effective implementation of the Basel Convention, including the Ban Amendment, and the EU waste shipment regulation. Joint enforcement operations at several EU sea ports show a high rate of illegal waste shipments to developing countries. There

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<sup>2</sup> OJ L 30, 6.2.1993, p. 1; to be replaced by the new Regulation (EC) No 1013/2006 of the European Parliament and of the Council (OJ L 190, 12.7.2006, p. 1) as from 12 July 2007.

remains an urgent need to increase and improve inspections at EU ports to properly implement the export ban on hazardous waste.

9. The Basel Convention welcomed the IMO initiative towards the development of a legally binding instrument for the safe and environmentally sound recycling of ships and encouraged its Parties to actively contribute to the drafting process. Stringent international standards for ship dismantling are needed, having regard in particular to the standards defined by the EU waste shipment regulation which classifies certain ships destined for dismantling as hazardous waste. Ships will continue to fall under the EU waste shipment regulation at least as long as there is no internationally binding legal instrument which, while addressing any special characteristics of ships, guarantees an equivalent level of control and enforceability. Until the draft IMO Convention addresses in full these concerns, ships cannot be taken out of the Basel Convention for the sake of avoiding duplication of regulatory instruments.

## **2. PROPOSED APPROACH TO COP 8**

1. The aim of the Community's participation should be to ensure that the Conference of the Parties encourages compliance with the- transboundary shipment requirements by all Parties and promotes the full implementation of the Basel Convention especially in developing countries, where progress to date has often been inadequate. The Community should also seek to promote the better functioning of the Secretariat in order that it can play its role in implementation. It should be ensured that any COP decisions adopted are consistent with relevant Community legislation and with Community positions within other international organisations and in compliance with international Conventions to which the Community is a Contracting Party
2. The negotiating position on various issues has been the subject of initial discussion in the Council Working Party for International Environmental Issues addressing COP 8. Building on this agreed basis, the purpose of this document is to contribute to further developing the negotiating position for COP 8 in the forthcoming sessions of the Working Party. A summary of the main issues is set out in the Annex to this document. Once the papers for COP 8 are available, a more detailed position paper may be elaborated, if appropriate, through close cooperation between the Presidency, the Commission and the Member States.

## ANNEX

The objectives of the Community concerning the main issues on the agenda of the eighth meeting of the Conference of the Parties (COP 8) to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, should be as follows:

1. Approval of draft Technical Guidelines for the environmentally sound management of POPs waste (OEWG-V/12)

The Community should support the adoption of a Decision along the lines proposed by OEWG 5 (see OEWG-V/12)<sup>3</sup>. The proposal includes an amendment of the General Technical Guidelines and the Technical Guidelines on PCB, PCT and PBB.<sup>4</sup> The amendments are acceptable and their substance is already covered by Community legislation.

Further amendments must be scrutinized with regard to their consequences for the Acquis Communautaire. This is the case for a proposal to add the technologies "waste-to-gas conversion" and "thermal and metallurgical production of metals" to the destruction and irreversible transformation methods and related disposal operations listed in section IV.G.2 of the General Technical Guidelines. Thermal and metallurgical production of metals appears not always to comply with the emission concentration limit of 0.1 ng TEQ/Nm laid down in the definition "levels of destruction" specified in the Convention's General Technical Guidelines. Further evidence of compliance with this emission limit will have to be made available.

2. Globally harmonized forms for the notification and movement documents

To welcome the initiative to present globally harmonized forms for the notification and movement documents and to support their adoption. In order to assure the use of correct and unambiguous globally harmonized forms for the notification and movement documents and to take account of necessary technical clarifications stemming from the amended EU Waste Shipment Regulation, an inter-sessional working group will present the results of their work at COP8 as revised versions of the forms for adoption. If there is a positive COP 8 decision the annex of the revised Waste Shipment Regulation would probably have to be adapted in Comitology, depending on the contents of the changes. If Parties seek to oppose adaptations to the current forms, the Community should argue that unambiguous and clear forms are an essential prerequisite for the efficient control of transboundary movement of hazardous waste.

3. Entry into Force of Amendment III/1 (Ban Amendment)

– *Background:* This amendment to the Basel Convention has been ratified by the EC and implemented at EU level by the Waste Shipment Regulation and the EC should support the entry into force of Amendment III/1, 11 years after its adoption.

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<sup>3</sup> see <http://www.basel.int/meetings/oewg/oewg5/docs/05e-repfin.pdf>, decision OEWG-V/12

<sup>4</sup> See <http://www.basel.int/meetings/oewg/oewg5/docs/i24e.pdf> and <http://www.basel.int/meetings/oewg/oewg5/docs/i24c1e.pdf>

- Entry into force is governed by Article 17 of the Convention. The UN Legal Service interprets Basel Art. 17 as requiring ratification of the amendment by  $\frac{3}{4}$  of the total number of Parties to the Convention calculated at the time of deposit of each instrument of acceptance of an amendment (the current time approach). This would currently mean that 126 out of 186 Parties have to take action for the ban to enter into force.
- However, in accordance with international law, Parties to the Convention remain sovereign on this issue and are empowered to agree on the interpretation of Art. 17 through a COP decision.
- *Position:* The Community should seek a COP decision encouraging ratification and supporting an interpretation of Article 17 that is more favourable to the early entry into force of the amendment.
- This could be done by a decision by Parties confirming to the Depository of the Convention that Art. 17 should be interpreted to mean that entry into force of an amendment requires the ratifications of  $\frac{3}{4}$  of those States who adopted the relevant COP decision. This would clarify the current uncertainty and give those supporting entry into force of Amendment III/1 a stable target to aim at; i.e.  $\frac{3}{4}$  of the 82 States which were Parties to the Convention on 22 September 1995 and present at the COP. Thus ratification by 62 of those 82 would be needed for the entry into force of the amendment. Currently only 43 Parties who were present in 1995 have ratified, while the total number of ratifications (including by more recent Parties) stands at 62. In making the case, the Community can recall that this same 'fixed time approach' interpretation is applied regarding the entry into force of the Gaborone amendment to CITES.
- Some have argued that the Amendment has already entered into force since 62 ratifications have been achieved. There is no legal basis for supporting this interpretation. It would ignore the fact that 19 of those 62 ratifications come from states that were not Parties or not present in 1995 and would mix up the justification for the current time approach with the basis of the fixed time approach.
- As a first step to accelerating entry into force, the Community and the Member States should lobby relevant Parties in advance of COP 8. It would also be helpful if the three remaining Member States who were present when the Ban Amendment was adopted, could ratify it.

#### 4. End-of-life ships

##### a. Ship dismantling

###### *Background:*

In 2002, COP 6 adopted Technical Guidelines for the Environmentally Sound Management of the Full and Partial Dismantling of Ships (Decision VI/24). Two years later, COP 7 invited the International Maritime Organisation (IMO) to continue considering the establishment in its regulations of mandatory requirements, including a reporting system for ships destined for dismantling, that would ensure **an**

**equivalent level of control** as established under the Basel Convention. Besides, the IMO should continue work aimed at the establishment of mandatory requirements to ensure the environmentally sound management of ship dismantling, which might include pre-decontamination within its scope (see Decision VII/26).

In its Resolution A.981(24) of 1 December 2005, the IMO Assembly requested the Marine Environment Protection Committee of the IMO (MEPC) to develop a new legally-binding instrument on ship recycling that would provide regulations for the design, construction, operation and preparation of ships, the operation of ship recycling facilities in a safe and environmentally sound manner, and the establishment of an appropriate enforcement mechanism for ship recycling (certification/reporting requirements). A first draft of a Convention for the Safe and Environmentally Sound Recycling of Ships was submitted by Norway, discussed at the MEPC 54 meeting in March 2006 and further developed by a subsequent Correspondence Group of the IMO. The draft includes rules on the design, construction, operation and maintenance of ships, requirements for ship recycling facilities and reporting requirements. To some extent, for instance with regard to workers' safety and health in recycling facilities and in relation to reporting requirements for the shipment of waste, the draft Convention touches on matters regulated in Community law.

The Joint ILO/IMO/Basel Convention Working Group on Ship Scrapping (JWG) met for two sessions in February and December 2005 to compare the work programmes and the relevant technical guidelines of the three organisations, and to discuss joint technical cooperation activities as well as a coordinated approach to all relevant aspects of ship scrapping. Whether there should be a third meeting of the JWG, which might be hosted by the ILO, is currently a matter of discussion.

The International Labour Office has recently expressed serious concerns that the occupational safety and health matters within the ILO mandate have not been adequately taken into account in the development of a Ship Recycling Convention by the IMO and has requested a more coordinated approach within the UN system.

OEWG 5, in its Decision OEWG-V/8, welcomed the steps taken toward the development of a legally binding instrument for the safe and environmentally sound recycling of ships and encouraged Basel Convention Parties to organise internal coordination and participate actively in the drafting process. Furthermore, Parties and other stakeholders were invited to provide information in particular on a) technical cooperation activities, b) short and medium term measures addressing the potentially harmful consequences of ship dismantling, and c) pre-cleaning and decontamination of ships (the last two items by 30 June 2006).

As a compromise after intensive and controversial discussion, the OEWG invited Parties and others to provide their assessments of the level of control and enforcement established by the Basel Convention, in its entirety, and to make comparisons with the expected level of control and enforcement to be provided by the draft IMO instrument on ship recycling in its entirety. No date was set for this exercise.

An expert workshop on ship dismantling will be organised by the European Maritime Safety Agency (EMSA) on 21-22 September in Lisbon. The second day of this

workshop will be reserved for a discussion between government experts, mainly from the Member States and the Commission, and focus on an EU approach to the problem of ship dismantling and in particular the issues of environmentally sound management and "equivalent level of control".

*Position.*

The common position on ship dismantling should be based on the previous declarations the Council has made on this issue. The Council conclusions of 24 June 2005 invited the IMO to establish mandatory requirements for a ship reporting system that ensure an equivalent level of control as established under the Basel Convention. Furthermore, the Council invited the IMO to develop this reporting system within the shortest possible time period, taking into account the principle of prior informed consent and including, inter alia, a contract, a ship recycling plan, a green passport and a single list of the on-board hazardous materials.

On 17 May 2006, in the context of the adoption of the new Waste Shipment Regulation, the Council issued a statement that the Member States would use their best endeavours to increase capacity for ship dismantling in the EU and do their utmost to ensure that good progress is made in the international negotiations to establish mandatory requirements at the global level on ship dismantling.

With regard to the "equivalent level of control", the Community has to develop a common position, since the requested comparison between the level of control and enforcement under the Basel Convention and under the draft IMO Convention implies also an interpretation of the EC Waste Shipment Regulation as the Community legislation by which the Basel Convention is implemented.

The Community should work towards a COP decision summarising in concrete terms the Basel Convention elements that need to be integrated in the envisaged IMO Ship Recycling Convention. This decision should focus in particular on the necessary standard of environmentally sound management (ESM) in ship dismantling and the "equivalent level of control" in relation to the control system of the Basel Convention.

With regard to ESM, it is necessary to emphasise the importance of the existing Technical Guidelines for the Environmentally Sound Management of the Full and Partial Dismantling of Ships adopted by COP 6 of the Basel Convention in 2002. Apart from this, the note on the concept of ESM submitted by the UK to the Joint Working Group on Ship Scrapping and other fora should be supported, and the UK encouraged to phrase this submission in a way that it can be integrated in the text of the IMO legal instrument. On top of this, the Community should make a clear statement that the current method of "beaching" ships should be phased out, as it can never be environmentally sound and safe for workers.

Equivalent level of control: The EU should carry out a common assessment of the level of control and enforcement established by the Basel Convention, in its entirety, and of the expected level of control and enforcement to be provided by the draft IMO instrument on ship recycling in its entirety.



In substance, this assessment should emphasise that written notification of a planned shipment by the state of export and prior informed consent of the states of import and transit are key elements of the control system under the Basel Convention. In comparison to this, the latest draft of the envisaged IMO convention (as of 7 July 2006) contains an obligation of the shipowner to notify in writing the flag state administration of his intention to recycle a ship, and the obligation of the ship recycling facility to report to its competent authority(ies) on the planned start of the ship recycling, as well as on the completion of the recycling. The "statement of completion" shall then be copied to the flag state administration. A requirement for state-to-state notification of an intended ship dismantling is not foreseen, however. On the other hand, the draft legal instrument contains detailed provisions on surveys for ships and an "International Ready for Recycling Certificate", as well as, for instance, requirements for the authorization of ship recycling facilities and for a Recycling Facility Management Plan. As a possible compliance mechanism for the Parties, the draft convention proposes as one of two alternatives an auditing scheme under IMO rules.

Concluding from this, the Community should, while acknowledging the importance of effective authorization and audit systems, also point out that state-to-state notification and the prior informed approval of a planned ship dismantling by the recycling state are necessary elements of an "equivalent" control system.

Interim measures: The EU should reach a common position on the need for interim measures to improve the standard of ship dismantling for the time until entry into force of a new international regime. This common view should be made known to the COP and indication given on the intended measures, in addition to information which has been already supplied to the Basel Convention Secretariat (e.g. by the UK). The measures should include a commitment that at least the government-owned vessels of Member States will be dismantled in compliance with the rules of the Basel Convention and the EC Waste Shipment Regulation. At the COP, the Community should also recall the Council statement of 17 May 2006, by which Member States will use their best endeavours to increase capacity for ship dismantling in the EU. In this context, the Community should inform the COP that an EU-wide strategy is being developed as an EU contribution to a better management of ship dismantling worldwide.

Third Joint Working Group meeting: The Community should work towards a common position in support of a COP decision on the necessity of a third meeting of the ILO/IMO/Basel Convention Joint Working Group on Ship Scrapping. Against the background of increasing concerns especially of the ILO regarding possible IMO interference in the mandates of other UN organisations, the usefulness of such a third meeting should be pointed out.

b. Abandonment of ships:

Background: In its [Decision VII/27](#) on the abandonment of ships, COP 7 requested Parties to provide information regarding the abandonment of ships for the Open-ended Working Group. OEWG 4 developed a questionnaire to facilitate the preparation and analysis of information submitted and, in [Decision OEWG-IV/6](#), invited responses from Parties, other States, ship owners and other stakeholders. Information was submitted by 13 countries, among them Estonia, Greece and Poland,

to the OEWG and the Joint ILO/IMO/Basel Working Group on Ship Scrapping. In both fora the issue was discussed only briefly. OEWG 5 requested the Basel Convention Secretariat to review and analyse the information received and to identify key issues for proposals on how to address cases of such abandonment for consideration by COP 8.

*Position:* The Community should declare its readiness to discuss abandonment of ships with the countries concerned and seek practical solutions to the problem. It would seem appropriate for the discussion to take place in the IMO.

## 5. Co-operation and synergies

*Background:* Following agreement at the 2002 UNEP Governing Council on the creation of a UNEP chemicals and wastes cluster as a first step in the reform of *international* environmental governance and the subsequent decisions at WSSD and the 2005 World Summit on strengthening environmental governance, the EU has supported moves to increase synergies between the Stockholm, Rotterdam and Basel Conventions. More recently the EU recognised the need to include the Strategic Approach to International Chemicals Management in moves towards greater synergy. There is also a need to consider the relationship between the Secretariats, who are accountable to the respective Conferences of the Parties, and UNEP's Chemicals Office which is co-located with the Secretariat staff in Geneva but is answerable to the Executive Director of UNEP and ultimately the Governing Council and the UN General Assembly.

Stockholm COP 1, Rotterdam COP 2 and OEWG 4 all took decisions supporting the prospect of greater synergies and asking for joint work by the Secretariats to be presented in 2006 when all three Conventions have COPs. At OEWG 5, the Basel Secretariat submitted a separate paper alongside work done by the PIC and POPs joint Secretariat and UNEP Chemicals. It became apparent that the 3 Secretariats and UNEP Chemicals had somewhat different views on exactly what synergies should entail. As a result OEWG 5 took a procedural decision remitting substantive discussion to COP 8, asking the Basel Secretariat to transmit their document to the other two COPs and asking Parties to submit comments and proposals based on that paper by 31 July so that views could be compiled and presented to COP.

At Stockholm COP 2, held 3 weeks after the OEWG, the controversy over synergies continued and it proved impossible to take a definitive decision. Those, like the EU, who support synergies in principle but want to ensure the concept covers the appropriate aspects of joint programmes and Secretariat staffing while respecting the autonomy of the individual COPs, realised that the Parties of all three COPs needed to be brought more actively into the process, which had primarily involved so far the Secretariats and UNEP staff. Thus, on the basis of an EU draft, Stockholm COP 2 adopted Decision SC-2/15 establishing a Joint Working Group of Parties, inviting both *Rotterdam* COP 3 and Basel COP 8 to endorse this approach and asking the President of the Stockholm COP to provide a paper for the Group's work. A first draft of this paper is likely to be ready for consideration before Rotterdam COP 3 in October 2006.

The EU Presidency is also working on a draft position to be adopted by the EU for all three *Conventions* which will be discussed by a joint group of EU experts.

*Position:* The Community should seek to give practical shape to the general support for synergies endorsed by the EU and the UN in the 2005 World Summit Outcome. This requires support for the proposed Joint Working Group in both Rotterdam COP 3 and Basel COP 8 and a jointly defined, united EU position of substance in the Group's work which is likely to start in early 2007 and culminate in decisions in the next round of COPs in 2008 and 2009. Thus the EC position for Basel COP 8 should be largely procedural. Concrete proposals (eg for rationalising administrative staff positions in order expand the Secretariats' joint capacity for appropriate technical assistance) will only be required for the first meeting of the Joint Working Group.

The Community should also ensure that the views expressed by the EU in the 2006 COPs are *also* carried through to the 24<sup>th</sup> session of the General Council of UNEP in February 2007.

## 6. Strategic plan for the Implementation of the Basel Convention to 2010

*Background:* To mark the 10<sup>th</sup> anniversary of the Convention in 1999, Ministers adopted the Basel Declaration at COP 5. This emphasised the wider objectives set out in Article 4.2 of the Convention; namely waste prevention and the environmentally sound management of both hazardous and non-hazardous waste rather than simply the trans-boundary movement that is highlighted in the title of the agreement. A Strategic Plan to implement the Declaration in developing countries, covering the period to 2010, was adopted at COP 6. While the Declaration and the Strategic Plan are laudable in terms of their technical content, they seem to have had limited input from aid practitioners. The BC Coordinating and Regional Centres (BCRCs) set up to implement much of the technical assistance and technology transfer required by the Plan *must* meet certain criteria and be accepted *by* the COP as BC affiliates, but are required to be self-sufficient in terms of operational funding and are not guaranteed any financing through the voluntary Technical Assistance Trust Fund. As a result, the functioning of most of the 15 existing Centres are not living up to the expectations of developing country Parties. Moreover, the Plan gives an unrealistically large implementing role to the Secretariat and does not really explore the role of International Financing Institutions or even mention bilateral donors. Thus developing countries in particular have been disappointed with the rate of implementation of the Plan, while other Parties are increasingly concerned that the limited staff resources of the Secretariat are being used to help the Centres prepare projects that have little prospect of funding rather than for traditional tasks.

The Secretariat produced a draft COP decision for OEWG 5 dealing with a few points of detail about the structure of the Strategic Plan, seeking increased financial support for implementation of the Plan and requesting the BCRCs to work in synergy with the Stockholm and Rotterdam Conventions as well as the Montreal Protocol. The draft decision also calls on the Secretariat to report to COP 9 on developments and obstacles to support the implementation of the Plan. Due to pressure of other business, the draft was barely discussed by the OEWG and is being forwarded unchanged to COP 8 for substantive debate.

*Position:* The Community should work with Member States to ensure that the EU has aid experts available in Nairobi to start on a package of reform that would inject some realism into the debates on the Strategic Plan, Resource Mobilisation and Sustainable Financing, all of which are interlinked (see below). It would be helpful if

the EU Presidency could follow the practice established for the preparation of the PIC and POPs COPs and institute an expert group to work on preparations by email during the autumn.

The Community should seek a decision at COP 8 that concentrates on realistic expectations for implementation and seeks to remove the current obstacles. This will require greater recognition that the Strategic Plan must be linked to the Millennium Development Goals (a perfectly possible objective) if it is to be attractive to conventional aid donors.

The Community should be prepared to work with the Secretariat in the run-up to COP 9 to ensure that the study on obstacles to implementation can lead to feasible and effective *decisions*. In particular COP 9 should be used to reconsider the timetable for implementation of the Strategic Plan, which is running well behind schedule. Ideally this would be done at COP 8. While it may be possible to make some progress by limiting the size of the approved projects list adopted for the Technical Assistance Trust Fund in the COP 8 budget decision, the need to resolve synergies, resource mobilisation, sustainable financing and a difficult budget negotiation in November makes it unrealistic to tackle reform of the Strategic Plan in depth as well.

In this *context* the Community should encourage discussion of the Basel Strategic Plan in the Joint Working Group on synergies (see above). However, the Community should be cautious about the Basel Secretariat's suggestion that the BCRCs seek regional synergies with the Montreal Protocol at this stage. While this might be of great benefit in the long term, there are real legal difficulties which would complicate the already delicate current debate on synergies.

## 7. Resource mobilization and sustainable financing

*Background:* These are separate but related issues and concern the financing of the Strategic Plan.

At COP 7, the developing countries accepted the EU's demand that all Parties should contribute to the basic running costs of the Convention (see below) on condition that developed countries made efforts to increase substantially their contributions to the voluntary Technical Assistance Trust Fund (see para.136 of the report of COP 7). The same COP also noted in the budget decision that the BCRCs had presented business plans totalling \$18 million over the 2005-06 biennium; in effect accepting these projects as potential calls on the voluntary Fund *which* usually attracts contributions of a little over \$1 million a biennium. The call on developed countries to do more was formalised at OEWG 4 in decision IV/15 which also contained a long list of potential domestic and international funding sources. That decision also welcomed the recruitment of a resource mobilisation officer and tasked the Secretariat with preparing a report for COP 8 on further resource mobilisation actions. Some countries wanted to adopt further recommendations on resource mobilisation at OEWG 5, but the meeting adopted a purely procedural decision drawing attention to the COP 8 debate.

Also at COP 7, some developing countries promoted the idea that the Global Environmental *Facility*, which provides funding for meeting the incremental costs of

global environmental benefits in certain specified sectors (focal areas) should become formally associated with Basel as the Financial Mechanism of the Convention. At present projects to support Basel can be financed from the GEF funds allocated to international waters or, in the case of POPs wastes, the Stockholm Convention but there is no focal area specifically for Basel. Some countries saw an extension of the GEF's role as essential for sustainable financing of implementation and noted that Basel had not received much support from traditional aid sources. At COP 7 it was agreed that the Secretariat should undertake a study of the legal and institutional implications of a formal role for the GEF. This study was presented to OEWG 4 and confirmed that making the GEF **the** Financial Mechanism for Basel (in line with the relationship between UNFCCC, CBD, POPs and GEF) would require an amendment to the Convention, while asking GEF to be **a** Financial Mechanism (in line with the position for the Desertification Convention) would not.

The study was debated at length at both OEWG 4 and 5 and the draft decision forwarded to COP 8 contains 3 options: a long-term option for creating a Basel focal area in the GEF while still leaving GEF as **a** Financial Mechanism; a medium option simply to make the GEF **a** Financial Mechanism; and a third option based on better use of the status quo. Since OEWG 5, the GEF replenishment negotiations have been completed and the GEF Assembly has been held, neither of which considered a closer relationship with Basel. Thus the creation of a focal area or greater dedicated GEF funding for Basel could not be put into practice until the next Assembly in 2010. *I would prefer to retain this.*

*Position:* The Community should support a realistic decision on resource mobilisation that looks at domestic resources as well development aid. The need to tie Basel into the Millennium Development Goals, which are the universally agreed aid priority, should be emphasised. The Community should draw attention to the SAICM Quick Start Programme, a modest dedicated fund relevant to chemical waste streams that could be used by developing countries to explore the scope for generating resources for environmentally sound waste management through charges based on the polluter pays principle. As noted above, the Community should seek a decision on priorities in the context of the Technical Assistance trust fund so that the required amount noted in the budget decision bears some relation to the likely level of contributions.

## 8. Budget and staffing

*Background:* It is clear that COP 8 will have a difficult budget discussion. At COP 7 it became apparent that the practice of previous COPs of basing budget decisions on outdated unit cost figures and relying on the surplus on the operational budget built up in the early years of the Convention to balance the books was no longer viable. The COP 7 decision was based on realistic costings and drew down the last \$1.6 million from the previous surplus to help finance the 2005-06 core budget. Since this amount was equal to about 25% of the biennium budget, a rise in contributions of that magnitude over the next two years will be required simply to stand still. At OEWG 5 a group of countries including some who have significant arrears in their contributions for the period up to 2004 and have not paid their subscription for the current biennium, expressed a clear wish for contributions to be maintained at 2005–06 levels in 2007–08. This might imply significant staff cuts, unless major savings could be found.

While it is difficult to be certain until the OEWG 5 budget papers are updated for the COP, the *three* possible options for savings that were discussed at the OEWG are likely to remain on the table. These are

- a COP decision to cut the Working Capital Reserve from the current 15% to 8.3%. This would run contrary to recent advice from the central UN budget managers;
- a cut in the 13% Programme Support Costs to about 8%. This depends on a UN wide decision due in the summer;
- fewer meetings either by postponing COP 9 for one year and having a triennial budget or by having only one OEWG, probably in 2007, before COP 9 in 2008.

*Position:* The Community should support a realistic budget that can be afforded by all *Parties* and which is line with UN good practice. For that reason the EC should not support a cut in the Working Capital Reserve and should seek to include in the budget decision the paragraphs on clearing arrears that are in brackets in the draft adopted by OEWG 5.

The Community should be prepared to accept only one OEWG but should not accept the delay of COP 9 to 2009. Doing so would complicate the budgeting system which runs on the standard 2 year UN cycle. It would also delay the possibility of taking important COP decisions that could reform the Strategic Plan and help to mobilise resources. By postponing COP 9 to late 2009 would also complicate the synergies debate. It is true that not holding one OEWG would make the up-dating of technical guidance more difficult, but implementation of *guidance* in most Parties ie developing countries is hampered by the lack of resources. Thus for them the priority needs to be on implementation, while the industrialised countries can up-date guidance for themselves through the EU or OECD. The decision to cut one OEWG in 2008–09 need not imply that the 2? OEWG model could not be restored in future.

#### 9. Work Programme of the Open-ended Working Group until COP 9

*Background:* Traditionally this item has been treated separately from the budget debate.

*Position:* The Community should ensure coherent positions on the budget and the OEWG work programme. In particular the work programme should be capable of fitting into the number of meetings decided on in the budget context and *should* not require unaffordable Secretariat input.