HOW TO PROSECUTE ILLEGAL WASTE SHIPMENTS:

The Basel Convention

17-19 September 2013

M. Amélie Taoufiq-Cailliau

Bogor, Indonesia

Table of Contents

BASEL CONVENTION

1. Overview of the Basel Convention
2. Definitions
3. Control procedure
4. Illegal traffic
5. Role of the Secretariat
6. Recent Developments – Synergies
7. Areas for future cooperation

Overview of the Basel Convention

- Adopted on 22 March 1989
- Entered into force on 5 May 1992
- 179 Parties

Overview of the Basel Convention

BASEL CONVENTION

Objective is to protect human health and the environment by:

- **Minimizing** generation of hazardous wastes
- **Treating and disposing** hazardous wastes and other wastes as close as possible to their source of generation in an **environmentally sound manner (ESM)**
- **Reducing transboundary movements (TBM)** of hazardous wastes and other wastes to a minimum consistent with their environmentally sound management and controlling such movements

Overview of the Basel Convention

BASEL CONVENTION

Cornerstones of the TBM control procedure:

1. **Right to restrict/prohibit TBM**
2. **Conditions on TBM**
3. **Prior Informed Consent (PIC)**
4. **Environmentally Sound Management (ESM)**
5. **Illegal traffic and 'take-back' obligation**

Overview of the Basel Convention

BASEL CONVENTION

General rights and obligations of Parties of relevance to the control of TBM (Article 4 of the Convention):

Obligation to take appropriate **legal, administrative and other measures** to implement and enforce the requirements of the Convention, including measures to prevent and punish conduct in contravention to the Convention

Overview of the Basel Convention

BASEL CONVENTION

- Right of Parties **to restrict/prohibit the import** of hazardous or other wastes for disposal
- Obligation **to inform** other Parties of their decision to restrict/prohibit import of hazardous or other wastes
- Obligation by other Parties **to respect** such restrictions/prohibitions
- List of the restrictions/prohibitions imposed under national law in individual Parties: **http://www.basel.int/Countries/ImportExportRestrictions/tabid/1481/Default.aspx**

Overview of the Basel Convention

BASEL CONVENTION

- A Party must not allow exports when it has reason to believe that the wastes in question will **not be managed in an environmentally sound manner**

- Parties are prohibited from exporting wastes falling within the scope of the Convention for disposal within the area **south of 60° South latitude**

- A TBM should not occur with a **non-Party**

- Only **persons authorized or allowed** to transport or dispose of wastes undertake such operations, and wastes subject to a TBM be packaged, labeled and transported in conformity with generally accepted and recognized international rules and standards.

Overview of the Basel Convention

- Parties are under an obligation to take the appropriate measures to ensure that **TBM** of hazardous wastes and other wastes are **only allowed if** one of the three following conditions is met:
  - the State of export does not have the technical capacity and the necessary facilities, capacity or suitable disposal sites in order to dispose of the wastes in question in an environmentally sound manner; or
  - the wastes in question are required as raw material for recycling or recovery industries in the State of import; or
  - the TBM in question is in accordance with other criteria decided by the Parties

Overview of the Basel Convention

Parties are to consider that illegal traffic in hazardous wastes **criminal:**

- Article 4, paragraph 3

- Under **Article 9, paragraph 5,** each Party is required to introduce appropriate national legislation to prevent and punish illegal traffic

Definitions

BASEL CONVENTION

What is ‘waste’?

Article 2, paragraph 1:

“Substances or objects which are **disposed** of or are intended to be disposed of or are required to be disposed of by the provisions of national law”

Definitions

BASEL CONVENTION

What are '**hazardous wastes**'?

- **Article 1, paragraph 1 (a)**:

  " Wastes that belong to any category contained in **Annex I**, unless they do not possess any of the characteristics contained in Annex III."

- **Annex I** is further elaborated in **Annexes VIII and IX** that were adopted at COP-4. Wastes listed in Annex VIII are presumed to be hazardous, while wastes listed in Annex IX are presumed not to be hazardous

- **Annex III** contains the list of hazardous characteristics, such as explosive, corrosive, poisonous or flammable

Definitions

BASEL CONVENTION

What are ‘hazardous wastes’?

Article 1, paragraph 1 (b):

“ Wastes that are not covered under paragraph (a) but are defined as, or are considered to be, hazardous wastes by the domestic legislation of the Party of export, import or transit”

=> For a list of such national definitions, see: http://www.basel.int/Countries/NationalDefinitions/tabid/1480/Default.aspx

Definitions

What are ‘other wastes’?

Article 1, paragraph 2:

“Wastes that belong to any category contained in **Annex II** that are subject to transboundary movement shall be “other wastes” for the purposes of this Convention”

- **Annex II** lists wastes collected from households and residues arising from the incineration of household wastes

Definitions

Wastes not covered by the Convention:

– **Radioactive wastes** subject to other international control systems (Article 1, paragraph 3)

– **Wastes derived from the normal operation of a ship** the discharge of which is covered by another international instrument (Article 1, paragraph 4)

Definitions

BASEL CONVENTION

What is 'disposal'?

Annex IV

a) Section A lists 15 types of operations (coded D1 – D15) that **do not lead to the possibility of resource recovery, recycling, reclamation and direct re-use** (e.g. landfill, incineration and permanent storage) = **final disposal**

Definitions

What is 'disposal'?

Annex IV

b) Section B lists 13 types of operations (coded R1 – R13) that **may lead to resource recovery, recycling, reclamation and direct re-use** (e.g. recycling or reclamation of metals and metal compounds, and used oil re-refining)

Definitions

BASEL CONVENTION

What is ‘transboundary movement’?

Article 2, paragraph 3:

“any movement of hazardous wastes or other wastes

from an area under the national jurisdiction of one State

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

provided at least two States are involved in the movement.”

The Control Procedure

BASEL CONVENTION

Prior Informed Consent

Stage 1	Notification
Stage 2	Consent and issuance of movement document
Stage 3	Transboundary movement
Stage 4	Confirmation of disposal

The Control Procedure

BASEL CONVENTION

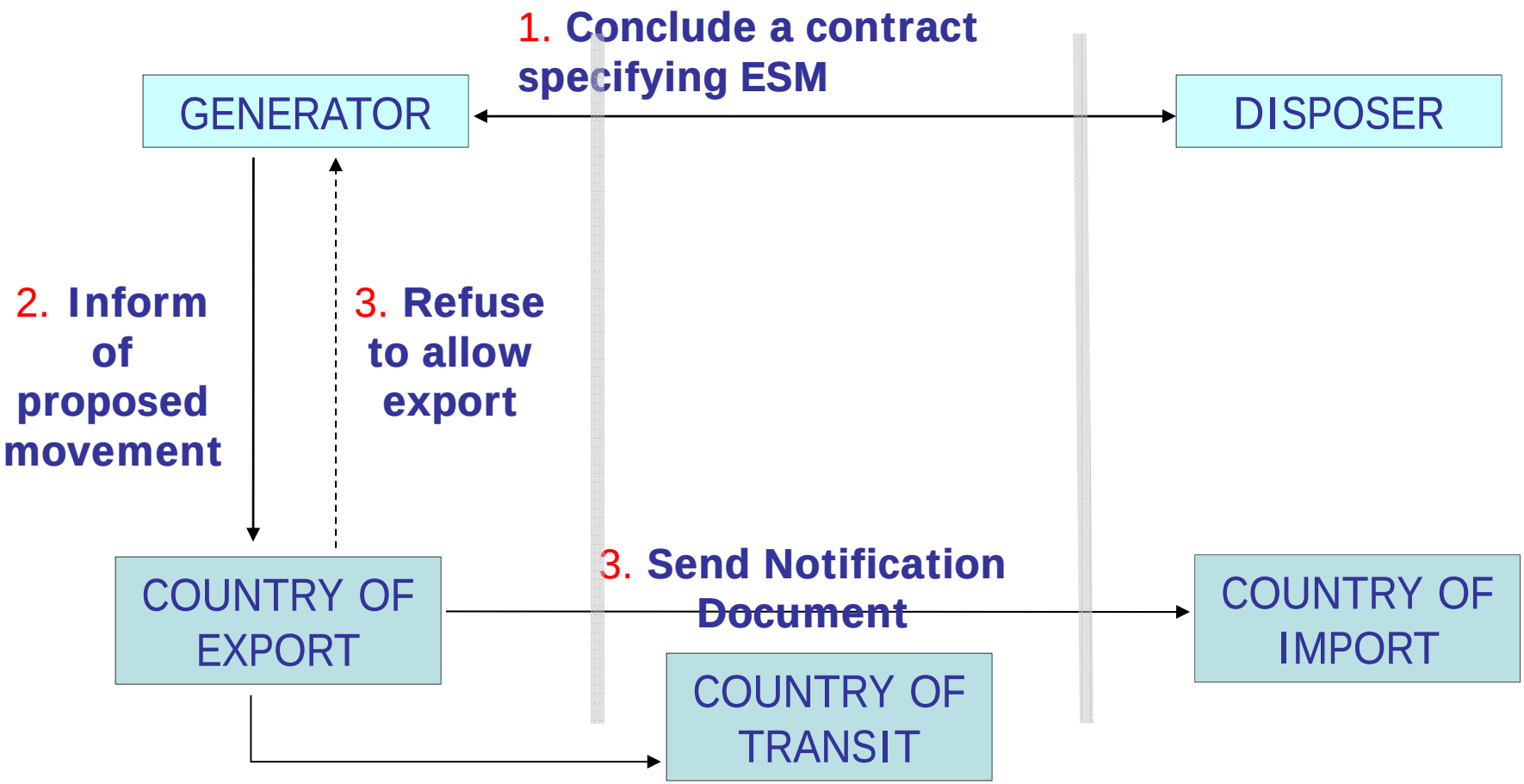
Stage 1 **Notification**

Article 6:

- State of export (or the generator or exporter) to notify in writing, through the channel of the competent authority of the States concerned of any proposed transboundary movement of hazardous wastes or other wastes
- Information to be provided in the notification document: see **Annex V A** and notification document (http://www.basel.int/Procedures/NotificationMovementDocuments/tabid/1327/Default.aspx)

The Control Procedure

Stage 1	**Notification**



The Control Procedure

The State of export is not to allow the generator or exporter to commence the transboundary movement until written confirmation is received that:

- The notifier has received **written consent** of the State of import; and
- The notifier has received from the State of import confirmation of the existence of a **legally binding contract** between the exporter and the disposer specifying environmentally sound management of the waste

The Control Procedure

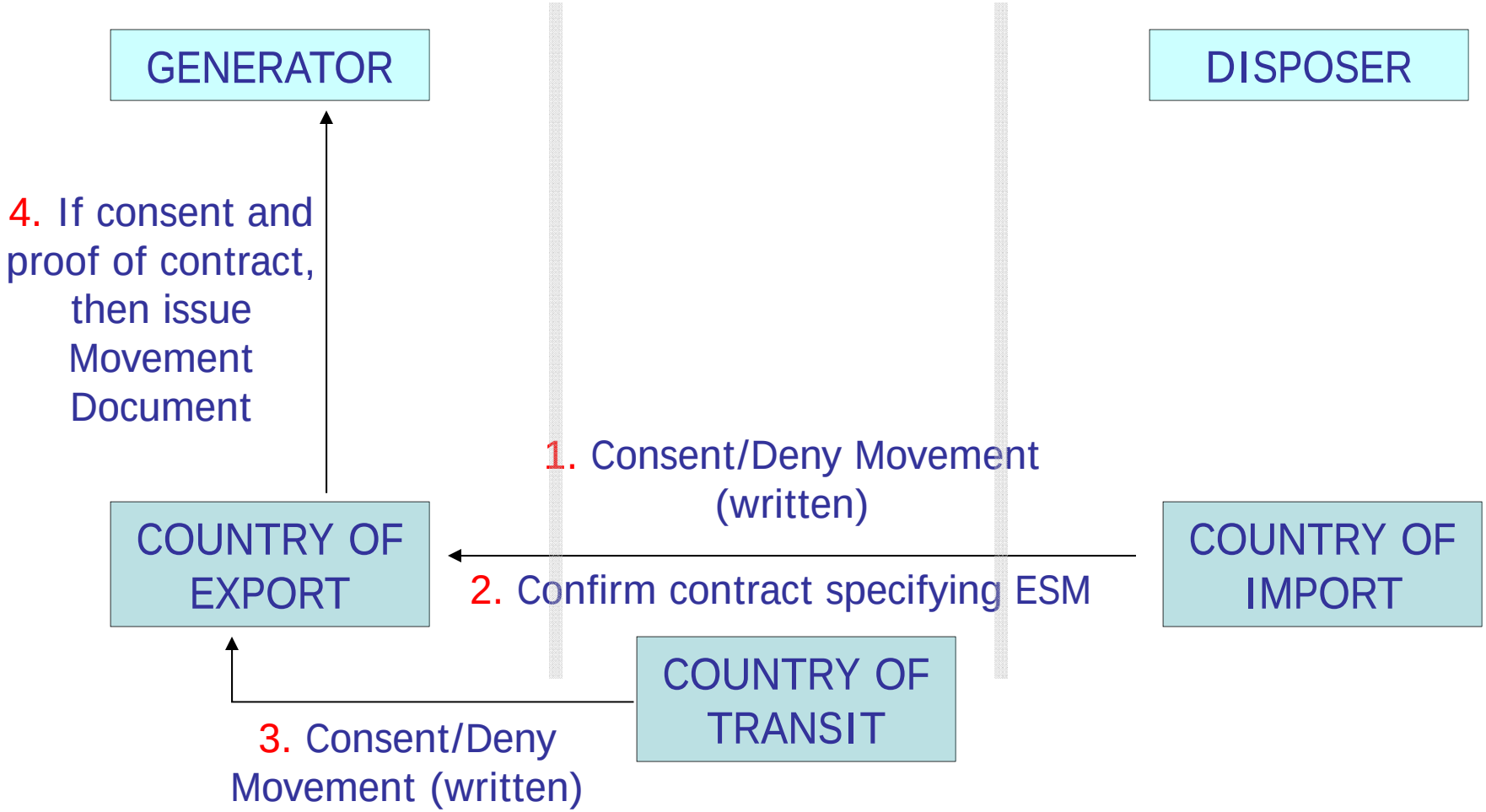
BASEL CONVENTION

Stage 2	**Consent and issuance of the Movement Document**

- If all requirements are met, the **Competent Authority** issues the movement document
- The movement document must **accompany the consignment** at all times
- The movement document provides relevant **information about a particular consignment**, e.g. the carriers, passage through customs offices, receipt and disposal of waste by the disposer
- Information is to be provided in the Movement document? See **Annex V B** and movement document (http://www.basel.int/Procedures/NotificationMovementDocuments/tabid/1327/Default.aspx

The Control Procedure

Stage 2	**Consent and issuance of the Movement Document**



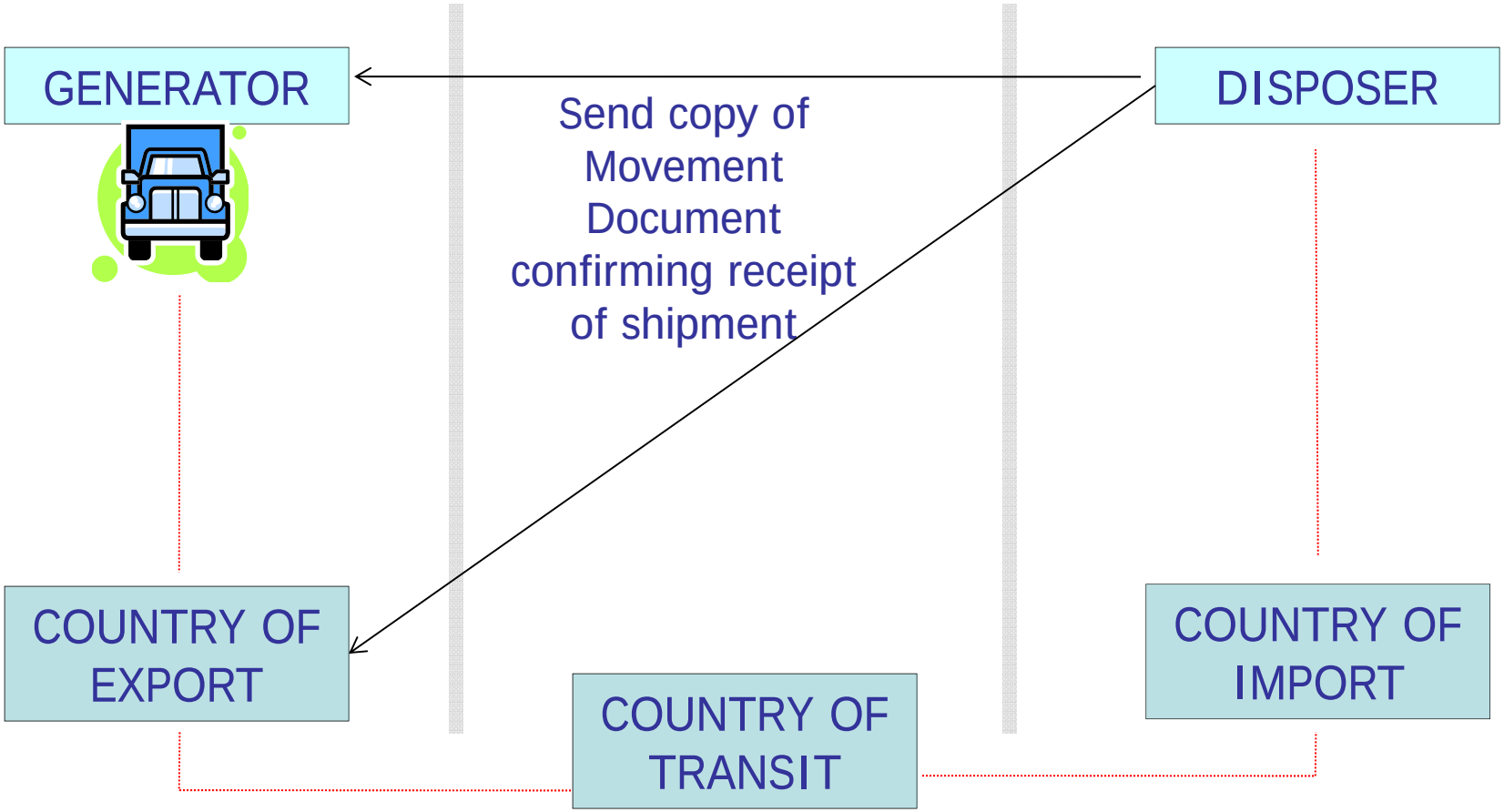
The Control Procedure

- What about the procedures for transit through non-Parties to the Convention?
- Bilateral, multilateral and regional agreements

=>Information in the Notification and Movement documents may be central to the prosecution of a case of illegal traffic

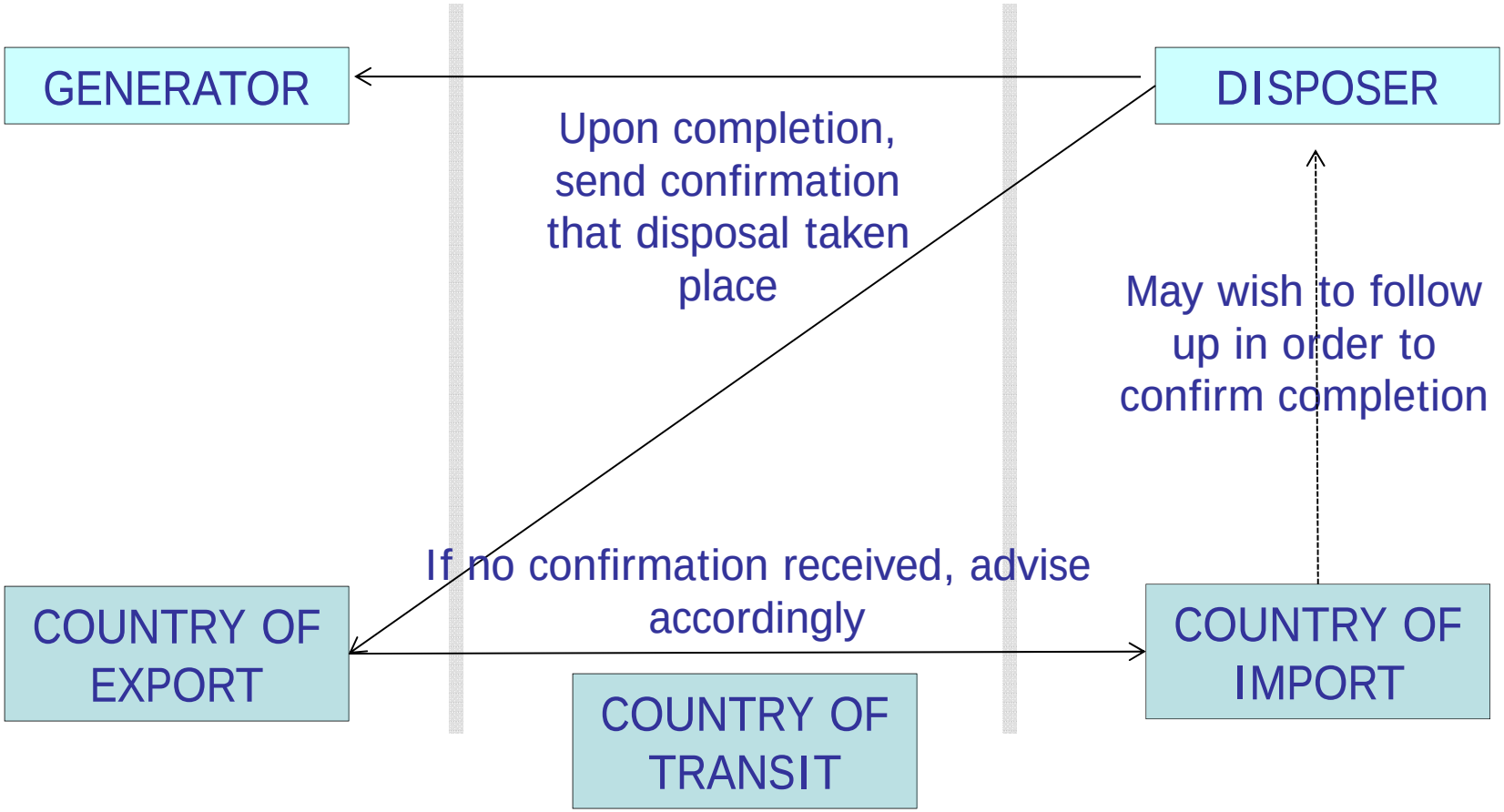
The Control Procedure

Stage 3 **Transboundary movement**



The Control Procedure

Stage 4 **Confirmation of disposal**



Illegal Traffic

BASEL CONVENTION

What is ‘illegal traffic’?

Article 9, paragraph 1:

- Transboundary movement of hazardous wastes or other wastes:
  a) Without notification
  b) Without consent
  c) With consent obtained through falsification, misrepresentation or fraud
  d) That does not conform with documents
  e) Results in deliberate disposal (‘dumping’)

Illegal Traffic

BASEL CONVENTION

What happens when a transboundary movement is deemed 'illegal traffic'?

If it results from the exporter or disposer's conduct:

- **Waste to be taken back** by the exporter or generator; or if impracticable,

or

- **disposed of** in accordance with the Convention,

within 30 days from the time the State of export has been informed about the illegal traffic, or such other period of time as States concerned may agree.

Illegal Traffic

BASEL CONVENTION

What happens when a transboundary movement is deemed ‘illegal traffic’?

If it results from the importer or disposer’s conduct:

the State of import is to ensure disposal in an **environmentally sound manner** by the importer or disposer,

within 30 days from when the illegal traffic has come to the attention of the State of import or such other period of time as States concerned may agree

Illegal Traffic

BASEL CONVENTION

What happens when a transboundary movement is deemed 'illegal traffic'?

If responsibility cannot be assigned to a Party:

Parties concerned shall ensure, through cooperation, that the wastes are disposed of as soon as possible in an **environmentally sound manner** in the State of export or State of import or elsewhere as appropriate

Illegal Traffic

BASEL CONVENTION

What happens when a transboundary movement is deemed 'illegal traffic'?

If responsibility cannot be assigned to a Party:

Parties concerned shall ensure, through cooperation, that the wastes are disposed of as soon as possible in an **environmentally sound manner** in the State of export or State of import or elsewhere as appropriate

Role of the Secretariat

Article 16, paragraph 1:

"(a) To arrange for and service **meetings** of Conference of the Parties and subsidiary bodies;

(b) To **prepare and transmit reports based upon information received** in accordance with Articles 3, 4, 6, 11 and 13 as well as other type of **information**;

(c) To prepare reports on its activities carried out in implementation of its functions under this Convention and present them to the Conference of the Parties;

(d) To ensure the **necessary coordination with relevant international bodies**, and in particular to enter into such administrative and contractual arrangements as may be required for the effective discharge of its function;

(e) To **communicate with focal points and competent authorities** established by the Parties in accordance with Article 5 of this Convention;

(…)

Role of the Secretariat

(…)

(f) To **compile information** (…);

(g) To **receive and convey information** **from and to Parties** (…);

(h) To **provide Parties, upon request, with information** on consultants or consulting firms having the necessary technical competence in the field, which can assist them (…);

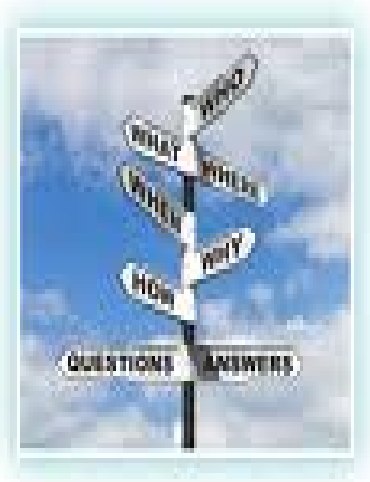
(i) To **assist Parties upon request in their identification of cases of illegal traffic** and to circulate immediately to the Parties concerned any information it has received regarding illegal traffic;

(j) To **co-operate with Parties and with relevant and competent international organizations** and agencies in the provision of experts and equipment for the purpose of rapid assistance to States in the event of an emergency situation;

(…)"

Recent Developments - Synergies

BASEL CONVENTION

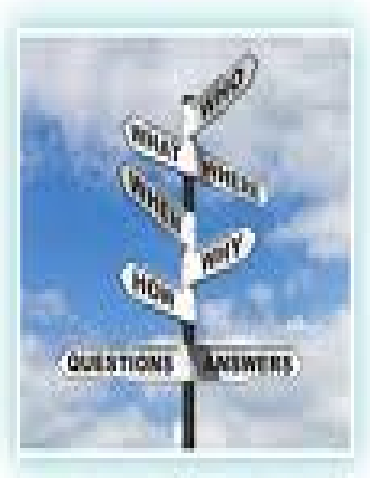


What next?

- Synergies moving forward
- Areas for Synergies

Recent Developments - Synergies

BASEL CONVENTION



•Various multilateral environmental agreements (MEAs) exist with different approaches

•Recent moves to **synergise**, implement a coherent and coordinated international **chemicals and wastes** management strategy

•**Basel, Rotterdam, Stockholm Conventions** + Mercury? - Minamata Conference, October 2013

=> Facilitate implementation of an **international framework** with a uniform strategy

Areas of future cooperation

BASEL CONVENTION

- **Exchange of information**

- **Monitoring**

- **Trainings**

  e.g. "Workshop on prosecution of Illegal Traffic of Hazardous Wastes and Other wastes, Bratislava, Slovak Republicfrom 26 to 27 June 2012 », on which more information is available" at

  http://www.basel.int/Implementation/LegalMatters/IllegalTraffic/Meetings/BratislavaSlovakia26to27June2012/tabid/2758/mctl/ViewDetails/EventModID/8927/EventID/263/xmid/8928/Default.aspx

- **Development of enforcement networks=> mutual assistance, to avoid 'forum shopping'**

- **Public awareness**

Publications

BASEL CONVENTION

For more information, please consult:

- **Basel Convention text:**
http://www.basel.int/TheConvention/Overview/TextoftheConvention/tabid/1275/Default.aspx

- **Leaflet on the control procedure for transboundary movements of hazardous waste:**
http://www.basel.int/TheConvention/Publications/BrochuresLeaflets/tabid/2365/Default.aspx

- **Leaflet on illegal traffic:**
http://www.basel.int/TheConvention/Publications/BrochuresLeaflets/tabid/2365/Default.aspx

- **Instruction manual for prosecutors:**
http://www.basel.int/TheConvention/Publications/GuidanceManuals/tabid/2364/Default.aspx

- **Training manual for customs and other enforcement agencies:**
http://www.basel.int/TheConvention/Publications/TrainingManuals/tabid/2363/Default.aspx

BASEL CONVENTION

THANK YOU!

For more information:

www.basel.int

amelie.taoufiq@brsmeas.org