Enforcement of and Compliance with MEAs: The Experiences of CITES, Montreal Protocol and Basel Convention

Volume I

UNEP
United Nations Environment Programme

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United Nations Environment Programme
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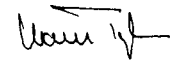
Preface

The international community has in the past three decades developed numerous bilateral and regional and global environmental instruments and whether new environmental conventions should continue to be developed and to what extent has become a matter of concern to Governments. They emphasize on the assessment of the effectiveness of the many environmental conventions already in existence. Substantial work on the assessment of the extent of implementation of existing environmental instruments has been carried out and the process continues. It is becoming clear from such studies that governments have hitherto been enthusiastic to develop new international environmental laws. However, a number of such governments lag behind in the process of ensuring that appropriate legal, institutional and administrative arrangements are also in place at national level to effectively translate those international obligations agreed under specific treaties and to enforce them locally.

In line with its mandate, UNEP, in this first effort, is redirecting its emphasis from the development of new environmental conventions to enforcement at national level and compliance at international level of the existing MEAs so as to ensure their effectiveness. The process has been initiated by focussing on issues related to environmental crime, illegal trade and/or traffic of endangered species or products as well as violations of the provisions of, and starting with only three MEAs, namely, CITES, Basel Convention and Montreal Protocol.

A dedicated group of experts from around the globe participated, in their personal capacities, in a Workshop on Enforcement of and Compliance with MEAs held in Geneva from 12 to 14 July 1999. The Workshop participants discussed these issues at length and made appropriate recommendations on the best mechanisms for ensuring effective enforcement of and compliance with the three MEAs. National reports based on experts' experiences in dealing with these issues were prepared ahead of the meeting and formed the basis of deliberations in the Workshop. The reports, papers and other materials shared among experts during the Workshop provided useful information and data normally difficult to locate in the libraries and/or literature reviews. In view of the richness of information made available by the experts, the Workshop recommended and UNEP agreed to co-ordinate with governments the establishment or designation of enforcement focal/contact points. Experts further requested UNEP to establish a database of enforcement contact points, to be updated regularly, to network, share and exchange data and relevant information on enforcement of and compliance with MEAs.

To keep the momentum and ensure the reports and papers shared at the Workshop are widely disseminated and available, UNEP is presenting all that material in this publication. The Workshop and this resultant compilation is only the beginning of the difficult challenge ahead of us. Implementation focus should, however, go beyond the three MEAs and should extend into a close examination of violations of the provisions in other MEAs as each party to a treaty rededicates its efforts to observe the obligations embodied in such a treaty.
This publication is our first effort, and all those involved in it are commended. We need now to proceed with measures and activities to enable Governments and other stakeholders to fulfill their respective roles in ensuring adherence not only to these three but to existing instruments and those to be concluded in future. The process has just begun but with the support and commitment of every stakeholder, we will surely do and share more.



Dr. Klaus Toepfer
Executive Director
United Nations Environment Programme

Introduction

In accordance with its mandate and long-term Programme for the Development and Periodic Review of Environmental Law for the 1990s developed pursuant to the Governing Council decision 17/25 of May 1993, UNEP has in the past three decades assisted governments to negotiate and adopt over sixteen multilateral and regional agreements in the field of environment. In September 1998, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides (PIC Convention) was adopted. Negotiations are underway for the adoption of a convention on persistent organic pollutants while a biosafety protocol under the 1992 Convention on Biological Diversity would be adopted in May 2000. In view of the enormous environmental problems with which the world community has to grapple, legally binding and non-legally binding instruments will continue to be developed to deal with specific global and regional problems.

In spite of the existence of a growing number of international arrangements, illegal trade, violations of and environmental crimes under, several environmental conventions continue to take place unabated. Environmental crime is not a new concept. "Pirate" whaling, for instance, dates back to the 1950s. Since CITES was adopted in 1973, Interpol has reported that illegal international trade in wildlife estimated at US$ 5 billion annually has flourished. Illegal killing of elephants for their ivory has reduced the African population from 1.5 million to fewer than 500,000 in the last decade, and maybe even less now. The resumption of trade in African elephant products after the 10th Conference of the Parties to CITES put these species in a more precarious situation.

With the proliferation of MEAs, different types of environmental crime have emerged, including illegal traffic in banned chlorofluorocarbons (CFCs) and hazardous wastes. Illegal trade in CFCs and halons is estimated to account up to 30,000 tonnes annually. Means to prevent environmental crimes have to be sought so that the objectives of various MEAs are not persistently undermined. Hence, it is now time for taking concerted action.

Instances of non-compliance with MEAs exist in the developed and developing countries alike. However, the situation in the developing countries and countries with economies in transition is exacerbated by the poor working conditions, limited or lack of resources (human, technical and financial), insufficient information, and lack of co-operation (both nationally and internationally) with national law enforcement agencies. The predicament is worsened by the lack of or limited technically skilled personnel at national level who clearly understand the implications of their countries becoming parties to MEAs.

The required technical capacity, which ought to be complemented by the institutional capability to enforce and ensure compliance with the environmental agreements, is in most cases lacking or limited. The loopholes created by the lack of capacity to enforce and comply with various MEAs continue to encourage illegal trade or traffic in banned species and/or substances and violations of the obligations assumed under the instruments. Furthermore, lack of or limited co-operation and exchange of information, and modalities among national law enforcement agencies and other relevant bodies such as Interpol, World Customs Organizations and MEA secretariats have exacerbated the already precarious situation. For instance, a CITES survey conducted in 1993-4 for 81 Parties indicated that only 12 had completed the full range of measures needed, while 26 had not implemented the minimum necessary domestic measures.

The Group of Eight (G8) Environment Ministers' Meeting held at Leeds Castle in April 1998 recognized both the serious environmental effects of violations of multilateral environmental agreements and the need to combat organized crime in this area. The G8 Environment Ministers thus agreed to provide full support for the broader participation in, and effective implementation of, the existing MEAs (especially the CITES, the Montreal Protocol on Substances that deplete the Ozone Layer, and the agreements dealing with hazardous waste). They also agreed to support mechanisms for exchange of information and for achieving compliance with the identified MEAs.

Consequently, with the support of the G8 countries and financial contribution from the United Kingdom, Canada, Germany, and Japan, UNEP convened in Geneva from 12 to 14 July 1999 a Global Workshop

on Enforcement of and Compliance with MEAs. The workshop principally focused on illegal trade, environmental crime and violations of the provisions of the CITES, Basel Convention and Montreal Protocol on Substances that Deplete the Ozone Layer. About forty-eight experts, from developed and developing countries including countries with economies in transition drawn from law enforcement, customs, prosecution and police participated in the workshop. Officers from UNEP, relevant convention secretariats, namely, CITES, Basel and the Ozone as well as Interpol and World Customs Organization (WCO) participated as resource persons and facilitators in the three working groups established to discuss specific illegal trade and traffic issues pertaining to each of the three conventions. Background papers, which were later synthesized into the main background document for the workshop, were prepared by the officers from the three Convention Secretariats, Interpol and WCO. These papers are in Chapters VI, VII and VIII of the publication.

Experts examined, in each working group, development, causes and extent of illegal trade and attempts to control such criminal activities and violations. Measures which have been effective in combating illegal trade were examined as well as the effectiveness of interagency cooperation both nationally and internationally. The discussions were held on the basis of national reports by participating experts on enforcement of and compliance with the three MEAs prepared ahead of the workshop. The revised samples of national reports presented by regions are in Chapters IX, X and XI divided into specific topics under environmental crime in general; CITES; Ozone Instruments and the Basel Convention.

The experts drew conclusions and recommendations for systematizing future efforts to control the menace and for improved enforcement of and compliance with the three identified MEAs, in particular, at national level. Likewise, recommendations for more effective co-ordination and co-operation between national enforcement authorities and convention secretariats were made as was continuous dialogue and collaboration between different groups of countries and the convention bodies to ensure synergy in handling and/or addressing environmental crimes. Exchange of information on how illegal trade and environmental crimes are dealt with under different regimes and jurisdictions were also debated. The report on the workshop and the recommendations made are contained in Chapter V while the Agenda of the workshop and the list of participating experts are in Chapters XIII and XIV respectively.

To ensure completeness in the discussion of various issues pertaining to illegal trade and violations of the provisions of the three MEAs, the workshop also took cognizant of other initiatives taken by other bodies and relevant papers prepared by some of the experts dealing with the common problems. Such papers and initiatives are in Chapters X and XI. For easy comprehension and reference to the MEAs discussed in the various chapters, relevant texts of the instruments referred to are included in the various sections of the publication. Consequently, texts of the three MEAs and other relevant environmental instruments are in Chapter XII.

We hope the publication will give insight to a whole range of issues raised and inspire the readers to also commit themselves to address violations of the provisions of the MEAs. It is also hoped that readers will be inspired to combat illegal trade and traffic in banned species and/or substances and ensure that governments comply with their international obligations under various MEAs and undertake measures at national level to effectively enforce those international instruments. We hope too that a spirit and culture of public participation will be strengthened and nurtured.

The Pace Set

By
Shafqat Kakakhel
Deputy Executive Director, UNEP

Let me tell you how pleased I am to welcome you all to this important Workshop on Enforcement of and Compliance with Multilateral Environmental Agreements in Geneva today. The Executive Director of UNEP, Dr. Klaus Toepfer has asked to express to you his most sincere apologies for his inability to participate in these proceedings. He has also told me to convey to you his sense of support and commitment to what you intend to achieve during these deliberations.

Our high expectations are focused on this workshop. The United Nations Environment Programme has a special interest and a binding interest in the proper enforcement and compliance with multilateral environmental agreements. This has been in our approved programme and our slow start was on account of lack of funds, a handicap now overcome by the generosity of a number of donors: the United Kingdom, Canada, Germany and Japan for this start. We indeed thank them and those still contemplating supporting us.

UNEP is a home for the international environmental conventions that have been negotiated under its aegis and to whom it provides support. Under Agenda 21, Chapter 38, the UNEP role and mandate are even broader.

Conventions are legally binding mechanisms. They represent the collective will of the international community to legally commit them to protecting the environment. The environmental conventions advance the overall global environmental objectives and goals. It is approximately thirty years, our primary focus has been on the development of international environmental law. Our next important task is to advance and enhance the implementation of agreed international norms and policies, to monitor and foster compliance with environmental principles and international agreements.

Environmental crime is a serious global problem, even though the immediate consequences of the offence may not be obvious. Environmental crimes do have victims. The cumulative costs in environmental damage and the long-range toll in illness, injury, death and extinction of wildlife species, depletion of the ozone layer, pollution of the environment and distortion of economies may be considerable.

At the international level, this phenomenon has two aspects: First, deliberate or inadvertent non-compliance with multilateral environmental agreements by the States party to them. And second, deliberate evasion of environmental laws and regulations by individuals and companies. Where these activities involve movements across national boundaries, they can be defined as "international environmental crime".

As the international framework of environmental law develops and countries increasingly implement national regulations, there are more and more opportunities for making profits by evasion of these new laws. Another reason could be greater public and governmental awareness which has led to more investigation into the issues. There are of course other factors as well that have contributed to this increasingly occurring phenomena.

First, the general trend towards trade liberalization and deregulation. In some cases this has rendered border controls on illegal trade virtually impossible. Second, some regions have so transformed from what they used to be that concomitantly difficulties of environmental law-making and law enforcement have increased. There has been a rise in organized crime, in many countries with economies in transition. Third, the growth of transnational corporations and activities amongst whom regulations are often difficult to enforce.

Let us take the example of the CITES. International trade in animals, plants and their products is estimated to generate an annual turnover well in excess of $20 billion. This includes 40,000 primates, several million animal pelts, several million birds, 10 million reptile skins, 500 million tropical fish, 9-10 million orchids and 7-8 million cacti.

It is believed that a quarter of this trade might be illegal. Interpol estimates indicate that illegal trade in endangered species is likely to be the second largest criminal activity world-wide, after narcotics. Poaching and smuggling of ivory, tiger skins and other body parts, and rhino horns, in particular, threaten the existence of all or some populations of the species in question.

The second example I would like to give you pertains to the compliance with the Montreal Protocol on Substances that Deplete the Ozone Layer. The Protocol has proved to be one of the most successful multilateral environmental agreement yet negotiated. As the production and use of CFCs and halons has been phased out in the industrialized world, black markets and illegal trade have expanded, the main destinations being the US and EU. Precise figures are of course impossible to come by, but government and industry estimates show global totals of 16,000 - 38,000 tonnes in the probable peak year, 1995.

It is likely that CFC smuggling has declined since then. CFCs in general seem to be in shorter supply, as they should be in the absence of illegal material, but illegal trade in halons which are much more powerful ozone depleters than CFCs has probably grown.

The third example is that of the Basel Convention. Illegal trade in waste is difficult to quantify. There is no global estimate of the volumes or sums involved. In one country in 1994, there was a 16% increase in crimes involving toxic waste disposal, compared with a 4% increase in other criminal activities. In 1996, 28,935 offences with an environmental component (73% of the total of such cases) concerned unsafe disposal of waste. In another country in 1998, the value of illegal activities in the field of waste management amounted to about 2 billion Euro. Surely, the seriousness of the problem cannot be overemphasized.

Environmental crime is an important issue that requires our utmost attention. Environmental crimes unlike most "normal" crimes, affect not just individuals but also the environment around us. Second, the issue of environmental crime has so far suffered from the low level of attention it has received outside of the ministries of the environment. It continues to receive low priority amongst enforcement agencies such as the police and customs.

In the wider context, this issue touches on the global framework of environmental protection. Governments have so far, for understandable reasons, devoted most attention to the negotiation of multilateral environmental agreements. The emphasis must now be placed on their effective implementation, both at the state level - the compliance mechanisms and the ground level - enforcement mechanisms.

I would like to sound a word of caution here. Environmental crime is also a serious problem in areas that are not covered by these three multilateral environmental agreements, or indeed by any multilateral environmental agreement at all. I refer especially to illegal logging and illegal fishing.

We in UNEP are pleased that the fight against international environmental crime received a substantial boost after environment ministers from the G8 countries announced a range of measures designed to deter and apprehend traders in banned substances throughout the world. The list includes endangered species, ozone-depleting substances and hazardous wastes.

This neww focus on environmental crime is a welcome move. UNEP has long been an advocate of more resources, better information networks and tougher penalties against the perpetrators of environmental crime. Indeed, we are meeting here to discuss the best modalities of curbing environmental crimes.

It is clear that International organisations, secretariats of the multilateral environmental agreements, environment ministers, and enforcement agencies must learn to work together across a range of environmental issues where the problems and solutions lend themselves to common solutions, rather than dealing with them in a fragmented manner. A systematic approach must be agreed, and a mechanism for regular consultations, exchange information and ideas, set in motion. For us in UNEP, we see this effort leading to a programme in our future environmental law programme for the 1st decade in the new millennium, to be submitted to the 21st session of the Governing Council. To do this effectively, the Executive Director has decided to have a senior level position addressing this matter with immediate effect. The complex issues that you touch on cannot be decided upon on an ad hoc basis any more.

We have much to gain from your perspectives on the subject. This workshop offers us a new opportunity to step out boldly from the cocoons of our disciplines to confront the various aspects of environmental crimes in all their complexity, and furnish cogent and creative solutions which can help governments in their fight against this scourge. We count on your and other governments' support in our deliberate efforts to face the challenges – daunting as they are – that lie ahead of us.

I would like, once again, to welcome you to this Workshop and to wish you an intellectually stimulating discussion in looking at practical ways of fighting the menace we came to address.

Closing Remarks on Behalf of the Government of United Kingdom

By
James Lowen Environment Protection International Department of the Environment, Transport and the Regions
United Kingdom

Mr. Chairman,

Thank you very much.

We are now on Wednesday afternoon at the end of the Workshop. Monday morning the start of the Workshop when I gave a statement on behalf of the two U.K. ministers seems a very long time ago. We have achieved much since then. On Monday morning I spoke for the first time with Nick Carter, a man I have long admired and a man I think who has been tackling wildlife crime and environmental crime in general probably for longer than I actually have been alive. He told me that he wanted to see a meeting like this for many years.

A meeting where individual experts from key agencies both national and international and from across the realm of multilateral environmental agreements are brought together to share information, experience, expertise and best practices. When someone of vast experience tells you that you shut up and listen and when like the U.K. you have put up a lot of resources including money in the initiative being pressed then I can tell you, you are very happy indeed.

More accurately when three days late the successful Workshop ends and ends on such a positive note I can also tell you, you go home absolutely delighted. In the past three days we have heard many wise words and I am sure these will be confessed into astute and effective actions. I think perhaps six key words can well summarize our recommendations of this workshop: commitment, communication, cooperation, contacts, coordination and actions. So in this vein, I would ask you to all do your best indeed, perhaps to commit to cooperate with all your contacts in order to communicate the results and recommendations of the past three days to as wide an audience as possible and then to coordinate your resulting actions.

Now, I think I have the duty to thank the other funders of this workshop, those who made it happen, Canada, Germany and Japan and the other members of the G.8 countries who gave such good kicks to this initiative. I would like to thank the MEAs Secretariat who through their presence, Interpol and the World Customs Organizations for coming along and contributing so effectively and efficiently.

I would like to thank all participants. There must be seventy of us in this room now for having done their utmost to ensure that these three days have been a superb success. I would like to thank the individual Working Groups Chairs and their Rapporteurs that presented so concise recommendations. I would like to thank the Facilitators, Duncan Brack and G. Haymann, for their very effective background papers and contributions throughout the three days. I would like to thank the United Nations Environment Programme, Executive Director for having steered us in our thoughts and contemplations from the outset of the workshop. Finally, I would like all of you to join me in thanking Donald Kaniaru, Elizabeth Mrema, Beatrice Wanjira and the team for having put in what I am sure you will agree was an excellent three days. Thank you Donald, thank you Elizabeth, thank you Beatrice.

Finally, it Came to an End

By
Donald Kaniaru
Acting Director
Division of Environmental Policy Implementation
and
Chief
Legal, Economics and Other Instruments Branch

We have had three very productive days. Earlier we were unsure whether we had time to organize and successfully conclude this Meeting at this time. Time seemed of the essence. Your most generous attendance and participating fully vindicate our faith that the sooner we went into action the better.

We identified common problems and solutions. We have arrived at practical recommendations upon which each of us has to build. This includes our countries and our institutions. On the international side - that is, UNEP, Convention Secretariats and WCO and Interpol - we got unequivocal commitment to work together and maintain the momentum gathered during the three days. Equally each expert goes home armed with a host of wealthy material for your databases; healthy contacts, and clear view of what is desired at national and regional level. For the Lusaka Agreement group this launch is clearly a blessing in disguise. Additional discussions with the three Secretariats, WCO and Interpol and no doubt potential donors is part of that windfall of an opportunity.

We are pooling together invaluable commitment and efforts to coordinate the many initiatives that are afoot - as we heard during this Meeting. Let us not duplicate or compete unproductively. For UNEP the issues of Enforcement and Compliance are firmly on the agenda - now and for the next decade. We will assist governments and stake holders consolidate the implementation process that lagged behind when we, together, evolved soft and binding instruments since the Stockholm Conference close to thirty years ago.Let me repeat that we have laid seeds for a programme that has to be followed through. We have commitment already, but we seek the support, individually and officially, from the experts coming from donor countries. So far U.K., Germany and Canada were forthcoming, and hence this gathering. For the next stages, we ask that you revisit our letters of appeal, and those that will come with the report of this Meeting. We request to join UNEP efforts in this regard as we consolidate your work into Montevideo III; as we translate the resulting report and publication into French, and as desired, possibly into Spanish. As we seek to "sell" your product in other fora that discuss this issue and, as we seek to expand this initiative to cover other multilateral environmental agreements and consolidate overall coordination, consultation and concretization of mutual benefits at national, regional and global levels, we will be expecting your support.

In conclusion, on behalf of the Executive Director, I thank all of you for making this event so successful. Share this message and information of success as the U.K. Ministers underlined. Particular thanks to the Convention Secretariats, WCO, Interpol, the donors, and my UNEP colleagues from Geneva and Nairobi, Resource person Duncan Brack and the Interpreters and technicians for their courtesy and understanding.

Let us keep in touch in our work, and face with courage and determination the tasks and challenges ahead of us.

Report of the Workshop on Enforcement of and Compliance with Multilateral Environmental Agreements (MEAs), Geneva, 12-14 July 1999

INTRODUCTION

1. With the proliferation of multilateral environmental agreement (MEAs), different types of environmental crimes have emerged, including illegal traffic in banned chlorofluorocarbons (CFCs) and hazardous wastes as well as illegal trade in wildlife species. Means to prevent environmental crimes have to be sought so that the objectives of various MEAs are not undermined. The programme of environmental law of UNEP had recognized this critical issue but its implementation was constrained by lack of finances. Recognizing the serious environmental effects of violations of multilateral environmental agreements and the need to combat organized crime in this area, the G8 Environment Ministers' Meeting held in April 1998 at Leeds Castle in UK agreed to provide full support for the effective implementation of the existing MEAs and identified, to start with, three MEAs, namely the CITES, the Montreal Protocol on Substances that Deplete the Ozone Layer and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal.

2. Consequently, with the support of the G8 countries and financial contribution from governments of United Kingdom (U.K.), Canada, Germany and Japan, UNEP convened in Geneva from 12 to 14 July 1999 a workshop on environmental crime principally to address issues related to enforcement of and compliance with the three MEAs.

I ORGANIZATION OF THE WORKSHOP

A. Opening of the Workshop

3. The workshop was opened at 10.00 a.m. on 12 July 1999 by Mr. Shafqat Kakakhel, Deputy Executive Director of UNEP on behalf of Dr. Klaus Töpfer, the Executive Director who had to attend the OAU Summit in Algiers. The workshop was chaired by Mr. Donald Kaniaru, Chief, Legal, Economics and Other Instruments Branch and Acting Director, Division of Environmental Policy Implementation. In his opening address, Mr. Kakakhel underscored the importance of this Workshop as it has been approved and is an integral part of the UNEP Programme. He thanked the donor governments, especially United Kingdom, Canada, Germany and Japan for their financial support which enabled UNEP to organize this Workshop. Given the fact that UNEP had facilitated negotiations of most environmental conventions and the development of environmental law for close to thirty years, it was now time, he emphasized, for the governments to deal with problems of enforcement of and compliance with MEAs to ensure their effective implementation.

4. Environmental crime as a serious global problem was underscored. He narrated the impact of cumulative cost in environmental damage, long-range toll in illness, injury, death, extinction of wildlife species, depletion of ozone layer, pollution of the environment and distortion of economies which can be enormous. He gave statistical examples of the magnitude of illegal trade pertaining to the CITES, the Montreal Protocol and the Basel Convention, thus underlying that environmental crime is an important issue that requires utmost attention during and after the Workshop.

5. He informed experts that the Workshop offers a new opportunity for them to step out bodily from the cocoons of their disciplines to confront the various aspects of environmental crimes in all their complexities, and furnish cogent and creative solutions which will assist governments in their fight against this scourge. He counts on the experts and other governments' support in UNEP's deliberate efforts to face the challenges that lie ahead.

6. Opening remarks were also read by Mr. James Lowen on behalf of Rt. Hon. Michael Meacher

MP, U.K. Minister for the Environment and Rt. Hon. Clare Short MP, U.K. Secretary of State for International Development. They underscored the fact that environmental crime is an international problem. The meeting was informed that U.K. Government has long considered international environmental crime to be a priority for action and that it was an issue of personal concern to the Ministers. It was a major topic of discussion in the G8 Environment Ministers' Meeting which met in U.K. in April 1998 and reiterated in Germany in March this year. Under the U.K. chairmanship, Environment Ministers pledged to support UNEP initiative to help combat environmental crime and assist developing countries to meet their obligations under MEAs.

7. The Ministers emphasized that the fight against environmental crime must be undertaken by effective enforcement. That effective enforcement demands communication and cooperation. It needs information and experience to be shared. It requires a multi-disciplinary approach, where all the players in each country, such as police, enforcement agents, customs, legal staff and policy advisers are brought together domestically and internationally through MEAs Secretariats and other international bodies. They concluded that this Workshop was a rare opportunity for the experts to develop networks on how to combat environmental crime and share information on patterns and extent of illegal trade.

B. Attendance

8. The workshop was attended by forty eight experts. Twenty-seven experts from developing countries and countries with economies in transition and eighteen from developed countries, in their personal capacities from around the globe including three experts representing relevant environmental crime networking institutions.

9. The following Convention Secretariats and organizations also participated in the workshop: CITES, Ozone and Basel; Interpol, World Customs Organization (WCO), Commonwealth, IMPEL, INECE and UNEP.

10. Experts from the following countries attended the workshop: (a) Africa: Kenya, Tanzania, Zambia, South Africa, Nigeria, The Gambia and Senegal; (b) Latin America and the Caribbean: Brazil, Cuba, Chile, Argentina, Mexico, Barbados; (c) Asia and the Pacific: China, United Arab Emirates, India, Malaysia, Republic of Korea and Thailand; (d) Countries with Economies in Transition: Czech, Poland, Ukraine, Estonia and Russian Federation; (d) Western Europe and Others: United Kingdom, Portugal, Germany, Sweden, Netherlands, Denmark, Switzerland, Israel, U.S.A. and Canada.

11. A list of experts is in Annex II.

C. Agenda for the workshop

12. The Agenda used by the experts to guide their deliberations, as amended, is in Annex I.

D. Organization of work

13. The workshop held two sessions each day divided into the plenary sessions, on the 12 July 1999 morning and afternoon and 14 July 1999 morning and afternoon, and two sessions by each of the three working groups, on the 13 July 1999. Agenda item 3 on the role, nature, impact and effectiveness of inter-agency cooperation at national and international level was also discussed in each working group on the 13 July 1999.

II SUBSTANTIVE AGENDA ITEMS

a. Objectives of the Workshop

14. Introducing agenda item 1(b), Mr. Donald Kaniaru made remarks on the specific objectives of the Workshop. In summarizing the process UNEP is undertaking for the preparation of the Periodic Review and Development of Environmental Law (Montevideo Programme III) for the first decade of the new millennium, he informed participants that a chapter on Enforcement of and Compliance with MEAs will be included. In this regard, therefore, experts were expected to address problems they face in the field on the enforcement of and compliance with MEAs focusing on CITES, Basel Convention and the Montreal Protocol.

15. Furthermore, experts were expected to highlight problems relating to policy, procedural and/or legal nature. They were expected to identify solutions for solving the problems faced and helping one another on how best governments will fulfill their obligations under the MEAs. They were to discuss how they expect the MEAs Secretariats, Interpol, WCO, UNEP and other relevant organizations to assist them in this endeavour. Recommendations for improvement on enforcement of and compliance with MEAs were expected including how best the relevant bodies would promote funding for future follow up consultations.

b. Evolution of International Environmental Crimes and Violations of the Provisions of MEAs

16. With regard to agenda item 2(a), Mr. Duncan Brack, UNEP consultant, introduced the background document for the Workshop, in particular, its section 2. It dealt with an overview of the issues on enforcement of and compliance with MEAs. The section covered issues such as common problems, crime and non-compliance, future developments and proposed solutions to address common problems of illegal trade of the relevant MEAs. The Background document, as revised following the conclusion of the Workshop is attached as Annex VI.

17. In considering agenda item 2(b), experts discussed issues raised by Mr. Brack in Section 2 of the background document on the evolution of international environmental crime and violations of the provisions of MEAs. Participants reviewed the definitions of 'compliance' and 'enforcement', and agreed broadly that the concept of compliance dealt with states' obligations under MEAs, and whether they were fulfilling them; whereas enforcement referred to the actions that states undertook within their national territories. The need for clear laws, regulations and responsibilities was stressed, as was the need for enforcement activities to be taken seriously by parties to each instrument. There was also some discussion of whether the data reporting requirements of MEAs should be extended to include estimates of illegal activities, and it was agreed to return to this subject during the working groups. The possibility of international action against individuals and companies known to engage in illegal activity was also raised; some participants felt this would be a valuable development.

18. World-wide trend towards trade liberalisation was highlighted as a contributory factor in the growth of international environmental crime. It was suggested that this subject could usefully be raised in the discussions on trade and environment which will potentially take place during the World Trade Organisation (WTO) 'Millennium Round', due to begin at Seattle in November/December 1999. Several participants raised the issue of exports of domestically prohibited goods and 'technology dumping', and suggested that exporting countries could provide more information on the products in question to the importing countries.

c. Developments, Impacts, and Effectiveness of Measures to Control Illegal Trade

19. Regarding agenda item 4(a), the consultant highlighted the developments, impacts and effectiveness of measures to control illegal trade including nature and magnitude of cooperation with relevant bodies under the CITES, Basel and Ozone Conventions.

20. In the ensuing discussion, participants made detailed consideration of the three MEAs, by analysing some broad common lessons. The three MEA Secretariats presented an overview of their respective subject areas. Participants complimented the initiative of the G8 countries, UNEP and the countries which had provided funding for the workshop, and welcomed the opportunity to share and discuss experiences. Valuable lessons should be learned not only for the three MEAs in question, but for similar problems which may potentially arise in the future in areas such as chemicals or clinical waste. One common theme identified was the need for much greater awareness of the issue – amongst enforcement agencies, ministers and politicians, and the general public. This encompassed training, education and general public awareness raising.

21. The need for clarity of requirements in enforcement was stressed, as was the need for highly practical enforcement measures. It was pointed out that even very simple activities, such as drawing up lists of national enforcement personnel, could have a clear positive benefit. Since it is always difficult to foresee future developments, however, particularly when an MEA is being negotiated (e.g. illegal trade in CFCs was not anticipated when the Montreal Protocol was agreed), there is also a need for a dynamic regime, able to adapt to changing circumstances. It was suggested that when Conferences of the Parties (CoPs) of MEAs meet to discuss progress, enforcement officials should be present and enabled to participate. Interpol reminded participants of their willingness to assist in international co-operation and in facilitating national efforts at enforcement of national laws.

22. Effective enforcement is always needed in MEAs; but it should be remembered that compliance does not only depend on 'sticks' - 'carrots' such as financial, technology transfer and assistance with capacity-building, are also necessary. Data reporting is always a key requirement of MEAs; the accuracy of data reporting, and the verification of the data supplied, were raised as problems, and it was suggested that lessons could be learned from other areas of international law such as agreements on human rights. Lack of data was always a problem; it seems very likely that the extent of international environmental crime is much wider than is currently known. NGOs could

be useful sources of intelligence, but parties themselves needed to devote greater resources to data gathering and reporting officially to MEA Secretariats.

23. It was suggested that the different MEAs could make greater efforts at co-operation with each other in order to avoid unnecessary duplication of efforts. The 1994 Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora (The Lusaka Agreement) was identified as a model of regional co-operation and enforcement in a wide range of activities, with lessons for other regions to replicate. It was stated that ASEAN countries were beginning to co-operate more effectively in the implementation of MEAs, and future developments along these lines were to be encouraged. Enforcement authorities in the European Union (EU) had growing experience in co-operation, and it was suggested that this could be extended to co-operation with the MEA Secretariats as well.

24. The involvement of legitimate businesses was highlighted as an important common issue. Firms that find their legal products threatened or undercut by illegal activities are, almost by definition, a vital source of information on contraband. The possibility of a WTO challenge to a trade measure mandated by an MEA – particularly the Basel Convention – was raised. It was pointed out that the way in which the WTO would treat this issue remains unclear, and therefore this subject could be usefully discussed in the WTO 'Millennium Round'.

d. Illegal Trade in Endangered Species of Wild Fauna and Flora and their Products under CITES

25. In considering agenda item 5(a), the report of the Working Group on CITES was presented, discussed and adopted in the Plenary and is attached as modified in Annex I.

e. Illegal Production of and Trade in Ozone Depleting Substances under the Montreal Protocol

26. In considering agenda item 6(a), the report of the Working Group on the Ozone Depleting Substances was presented, discussed and adopted in the Plenary and is attached as Annex II.

f. Illegal Trade, Transport and Dumping of Hazardous Wastes under the Basel Convention

27. In considering agenda item 7(a), the report of the Working Group on the Basel Convention was presented, discussed and adopted in the Plenary and is attached as Annex III.

g. Other Recommendations

28. Arising from the recommendations of each of the three Working Groups, the following were summarized as common elements in all the three reports presented in the Plenary:-

i. To ensure UNEP takes a leadership role in the area of environmental crime for better and effective co-ordination and co-operation between national enforcement authorities, Convention secretariats, Interpol and WCO by establishing a liaison person/unit at UNEP to facilitate dialogue and build consensus among various regional and MEAs. A senior official has already been appointed to undertake this.
ii. To encourage each party to nominate one enforcement contact for each MEA in their country, and to ensure that these names and contact details are disseminated to all other parties and interested bodies.
iii. To support continuous dialogue and collaboration between different groups of countries and the convention bodies and to promote national and regional enforcement networks to ensure synergy in the ways and means to curb environmental crimes by supporting and sharing seizure information and trade data.
iv. To enhance inter-agency coordination and cooperation in detection, investigation and prevention of illegal trade and traffic.
v. To promote regular exchange of information, training and public awareness programmes to support compliance with MEAs.
vi. To develop guidelines for co-operation at national, regional and global level related to enforcement, compliance and environmental crime.
vii. To develop training manuals on enforcement, compliance and environmental crime.
viii. To support efforts by the Parties to seek technical and financial assistance for projects and activities geared towards implementation, enforcement and compliance with MEAs.
ix. To encourage the Parties to the three conventions to develop and/or strengthen national laws and regulations against illegal trade and traffic under the three MEAs.
x. To involve all stakeholders including NGOs, the private sector and industry in the development of national laws and regulations to enhance enforcement and compliance.
xi. To enhance harmonized periodical reporting of data to MEAs secretariats on legal and illegal trade, where known, and sharing of information on best technologies in application of intelligence systems and electronic

exchange of data to detect and prevent crime.

xii. To review the existing border control measures and, where necessary, strengthen and improve the prevention and detection capacity of customs services at national borders.

xiii. To initiate research to determine the extent, size, magnitude and nature of legal and illegal trade in the three MEAs.

xiv. To encourage and facilitate development and implementation of regional agreements such as the Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora.

III ADOPTION OF THE REPORT

29. The workshop adopted its report at its final session on 14 July 1999.

IV CLOSURE OF THE WORKSHOP

30. Mr. James Lowen, on behalf of the U.K. Minister for the Environment made a closing statement. With the resources the U.K. Government put in to ensure the successful organization and convening of the workshop, he was delighted that the workshop concluded in such a positive note. During the three days of the workshop, he confessed, experts have heard many wise words, shared experiences which will be followed with affirmative and effective actions. Mr. Lowen summarized the workshop recommendations into six key words: commitment, co-operation, communication, contacts, co-ordination and actions. With the recommendations adopted, he requested all experts to commit themselves to co-operate and coordinate their resulting actions with all the contacts made in order to communicate the results and recommendations of the three days workshop widely.

31. Mr. Lowen thanked other funders of the workshop, in particular, Canada, Germany and Japan including the G8 countries who supported and helped push forward the initiative. He also thanked UNEP, the MEAs Secretariats of the CITES, Ozone and Basel Conventions, Interpol and WCO for coming along and contributing so effectively and effeciently. Similar appreciations were extended to all participants, Mr. Brack and others for their contributions throughout the workshop.

32. Mr. Donald Kaniaru, on behalf of the UNEP Executive Director, closed the workshop. In his closing remarks, he confirmed that the three days of the workshop had been productive and common problems and solutions were identified. He underscored that the practical recommendations for countries and institutions to build upon have been made. For UNEP, Convention Secretariats and WCO and Interpol, unequivocal commitment to work together and maintain momentum gathered during the three days was assured. In particular, issues of enforcement and compliance are firmly on the agenda now and for the next decade.

33. With the commitment gathered, he cautioned too that support from donor countries will be required. United Kingdom, Germany, Canada and Japan have, to varying degrees, been forthcoming and hence the three days gathering. Challenging tasks ahead for UNEP, he summarized, include: to consolidate this work into Montevideo III Programme for the next decade and to translate the resulting report and publication into French and possibly into Spanish for wider use and circulation. Others are to sell the workshop product into other fora that discuss similar issues and expand this initiative to cover other MEAs and consolidate coordination, consultation and concretization of mutual benefits at national, regional and global level. To fulfill these challenges, experts from the donor community were requested to revisit UNEP letters of appeal for support.

34. After the customary exchange of courtesies and vote of thanks, the workshop was closed on 14 July 1999 at 17.20 hours.

ANNEX I

REPORT OF THE CITES WORKING GROUP

ILLEGAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA AND THEIR PRODUCTS UNDER CITES

1. The CITES working group held a very broad-ranging and participative discussion, sticking mainly to the structure of the background paper circulated in advance. The points made are listed below under the paper's headings.

(i) Are there other general trends that have contributed to the growth of international environmental crime?

2. The workshop identified a number of general trends in addition to those listed in the paper, including:

a. The growth of demand from fashion,
b. Social and economic issues, such as demand for food,
c. The rising spending power of consumers, increasing the demand for wildlife and wildlife products (causing trade),
d. Trade liberalisation, and
e. The increasing exploitation of loopholes in existing regulations, for example the CITES exemptions for 'non-commercial trade', 'goods in transit', 'pre-convention' and 'captive-bred' specimens.

3. The growth in the reported incidence of environmental crime could also be the result of the success of the enforcement – the more effort put into detection, the more cases are revealed and tackled. (As they say in the Netherlands: 'the more police on the street, the more criminality'.

4. The fight against environmental crime, however, is always in competition with other criminal problems, leading to competing priorities for politicians, justice or law-enforcement agencies. There is always the danger that enforcement of environmental regulations will not be afforded the priority that it should be.

5. One important, and positive trend, lies in the increasing level of regional enforcement activities, including North American Wildlife Enforcement Group (NAWEG), the Lusaka Agreement, and Interpol regional groups. Co-operation will always be easier to realise when a high priority is given to environmental issues. The hope was expressed that workshop participants would take the opportunity to put more efforts into convincing relevant decision-makers of the seriousness of the issue.

(ii) To what extend can workshop participants identify these underlying reasons – and others – as present or absent in their countries and areas of expertise?

6. Working group participants identified a number of key features contributing to the growth of environmental crime:

a. The lack of awareness of environmental issues in general. Though it was felt that this was becoming less of a problem as the rising number of environmental disasters, life threatening pollution, the large-scale disruption of the dynamic balance between man and his natural surroundings, and so on, were increasingly highlighted in the media. There was a particular need, however, for educating national legislatures and working with them on preparing laws and regulations.
b. Lack of political will.
c. Inadequate resources devoted to enforcement (particularly where there are extra-territorial costs).
d. Lack of co-operation between relevant agencies (implying a need for greater information sharing, but ensuring that access is not given to potential offenders).
e. Insufficient research in environmental issues.

(iii) Addressing the issues: crime and non-compliance

7. The working group identified a number of proposals aimed at improving detection and identification:

a. Improved exchange of information on wildlife traders between countries. The creation of an (inter) national register of wildlife traders was suggested, as was national obligatory registration to facilitate the necessary checks and to create a national overview. This could open channels of communication for discussing the problems regarding the wildlife trade

with traders, and make enforcement action more acceptable. (Some practical problems needing to be overcome were identified, including changing identities, how fast the list would become out of date, and so on.).

b. The creation of an international 'watchlist' of likely suspects was also recommended – similar to Interpol wanted notices. (Problems of data-protection, privacy legislation and so on, were discussed).
c. It was brought to the attention of the participants that the national bureaux of CITES (CITES Management Authorities) possess significant expertise and should be involved in enforcement).
d. The creation of a joint database between Interpol, WCO and CITES.
e. Improved custom control measures.
f. The WTO should be informed of these discussions and made aware of the risks of environmental crime benefiting from the liberalisation of commercial trade.
g. Improved profiles of the problem are needed. It is essential to acquire a good insight in the nature and size of the legal and illegal trade and the scale of environmental criminality. This will include the nature and extent of the problem in relation to financial/economic and social damage, general trends, modus operandi, trade routes, networks and markets, relation with other forms of crime, etc. The various sources of data should be made compatible and more internationally accessible.

(iv) Recommendations

8. The Group participants recommended that the international organisations involved in wildlife crime enforcement should produce annually a risk analysis with regard to the aforementioned items, preferably in co-operation with each other. To put it briefly, exchange of information, analyses and co-operation are the pillars on which the enforcement of environmental regulations rest. On information exchange, the working group made the following recommendation:

Desiring an adequate international information structure;
Recognising that illegal wildlife trade is an international activity;
Noting that the International organisations such as CITES, WCO and Interpol must have suitable information networks;
Aware that in many countries as regards wildlife crime no national co-operation between enforcement organisations exists;
Desiring a better process to exchange of CITES-relevant enforcement information;

The CITES working group consequently recommends that:

a. Countries should identify a national law-enforcement point of contact as an international enforcement liaison point on matters involving wildlife crime.
b. Countries that intercept or seize contraband wildlife consignments, detain persons involved with international wildlife crime, or otherwise become involved in incidents of wildlife crime, should always inform the national point of contact in each country implicated in the incident in a timely manner.

(v) Are non-compliance mechanisms effective enough to compel non-complying states to comply with the MEAs?

9. The observation was made that many countries' failure to incorporate CITES regulations in national legislation is still a reason for great concern, as is the non-observance of the regulations. For the CITES Secretariat at this moment it is practically impossible to report all the infractions, to monitor and analyse the poor and incomplete information provided, and so on. CITES reports have stated that many parties still have not implemented CITES 'sufficiently' in their national legislation.

10. To what extent is this relevant to environmental crime? It is difficult to answer this question, for different reasons:

a. Reliable statistical data as regards wildlife crime and causes are largely missing.
b. It is not clear what the concept of 'crime' means in terms of CITES.

11. The working group discussed definitions, and the problems different treatments in national legislation can mean for international communication. For example, in one country, illegal trade may be considered to be an administrative offence, whereas in another illegal trade may be considered as a serious form of crime. Data comparisons from these two countries are almost impossible.

12. It is important to note that CITES is aware of this problem and has started a project to encourage harmonisation of CITES regulation and implementation into national laws. This project also includes the definitions of standards and the establishment of checklists for implementation of CITES.

13. The working group recommended that cases should be treated as criminal cases where they are considered to be criminal in one of the involved countries. Participants were aware that this might conflict with international regulations, but considered that at the very least the possibility should be examined.

14. The non-compliance mechanism of CITES was also discussed. It was considered that the procedures were largely effective in placing pressure on countries in non-compliance, but that they could usefully be applied more strictly. Specific recommendations included:

    a. The cessation of trade with non-complying countries.
    b. A checklist of non-complying countries.
    c. The use of economic instruments to encourage compliance.
    d. Annual and bi-annual reports of CITES should contain information on enforcement.
    e. The CITES secretariat should inform parties about violations (risk analyses, trends and so on).
    f. A concentration on administrative punishments rather than on criminal punishments.

(vi) What lessons can be learned from the uneven success of CITES across different species?

15. Working group participants observed that activities such as breeding in captivity should be promoted in order to improve the effectiveness of CITES. This included more information about breeding results and science, and conditions in which breeding operations are necessary.

(vii) Criminal activities: scale, sources and methods

16. The working group recommended that scientific research should be initiated to determine both the size and the nature of the legal and illegal trade in wildlife and wildlife products. The figures often quoted, of $20 billion a year in total trade, of which 25% is illegal, are not based on objective research. (At some point, some individual or organisation produced this estimate, and – probably because it is the only figure ever produced – it is still regularly cited, though without justification.) The working group realises that the real amount could well be higher.

(viii) What is the relative importance of these different sources? Are there other major sources of demand? Which countries account for the biggest markets?

17. The following points were made:
    a. Fashion is a source of demand.
    b. Demand for scientific experiments is another source.
    c. Demand for food (in developed countries, luxury foods, and in developing countries, for daily livelihood) provides another source.
    d. The key requirement is to identify the end-users: to identify the sources is not enough.
    e. The leaders of the international wildlife crime market can be identified after international analysis, which is still largely lacking at this level.
    f. The availability of the product on the market is important to help reduce demand (breeding in captivity will help to supply consumption and reduce illegal trade).

(ix) Is it possible to estimate rough figures for the chances of evasion and profits?

18. The working group discussed the terms 'organised crime', 'organisational crime' and 'network crime'. The group considered that information was too scarce to be able to reach conclusions about profit levels, and also the chances of evasion – though the lack of adequate national legislation meant that the latter was almost certainly high.

(x) What is the relative importance of these different routes? Are there particular points of entry - e.g. major airports – where controls should be more effectively applied?

19. The following points were made:
    a. Awareness among security staff will help to control illegal trade.
    b. Better information and equipment for custom services (guides, x-ray machines to identify (illegal) objects) and so one, will also help.
    c. Co-operation with veterinary and phytosanitary services would be of value.
    d. Smuggling by diplomats is a significant problem.

(xi) Control: reducing demand

20. The following points were made:
    a. The supply of alternative products is important if reducing demand.
    b. More active involvement of NGOs would be helpful.
    c. The principle of 'sustainable use' is preferable to the cruder concept of 'demand reduction'.
    d. Public awareness campaigns are vital.

(xii) Control: affecting supply

21. The following points were made:
    a. The importance of conservation strategies,

including sustainable utilisation of species, with more effective management.

b. Habitat destruction is a serious problem. Reduction of areas leads to falls in numbers of species. Habitat protection is important and should as much as possible be co-ordinated with enforcement.

(xiii) Control: reducing illegal activities

22. The following points were made:

- At International level:
  a. The establishment of an enforcement committee under the CITES standing committee would be helpful.
  b. Enforcement capacity needs to be strengthened.
  c. The existing corps of enforcement officers can be made more effective without increasing their numbers, but by using existing resources more effectively.
  d. Public awareness campaigns and education are essential.
  e. Socio-economic pressures should not be forgotten.
  f. Regional agreements such as the Lusaka Agreement should be encouraged.
  g. Economic instruments can be helpful in control strategies.

- At National level:

  a. A ban on sales of Appendix I species was not felt to be helpful.
  b. There was no need for additional obligations on carriers such as airlines.
  c. Better co-ordination and communications is crucial to effective control strategies.

ANNEX II

REPORT OF THE OZONE WORKING GROUP

ILLEGAL PRODUCTION OF AND TRADE IN OZONE DEPLETING SUBSTANCES UNDER THE MONTREAL PROTOCOL

(a) Compliance in MEAs

1. Considerable discussion took place distinguishing between compliance by Parties with their international obligations under the Montreal Protocol and compliance by individuals and companies with enforcement of national legislation. It was emphasised that the former includes reporting data on ODS production and consumption, implementing the various decisions of the Parties and the provision of technical and financial assistance to some Parties to ensure compliance.

(b) Co-operation with international organisations

2. The group felt that, in order to address fully the problem of illegal trade in ODS, co-operation between the Parties and international organisations like INTERPOL and WCO should be strengthened. One clear problem relevant to the latter was that both HCFCs and blends containing HCFCs, Carbon tetrachloride, methyl chloroform, and methyl bromide each have only a single customs code assigned. Another is that ODS are also categorised under uses, such as cleaning agents and pesticides, as well as under their pure chemical code, further confusing trade data. Such incorrect classification may amount to technical smuggling. Several other problems were mentioned.

3. The Parties have been co-operating with other international organisations like ICAO and IMO through exchange of relevant information on phase out of ODS. They have also been co-operating with UNDP, UNIDO and World Bank to implement investment projects with this aim in developing countries and countries with economies in transition, whilst UNEP serves as a clearing house for information on technologies and networking among Parties. Co-operation has also been instigated between the Parties to the Montreal Protocol and the Parties to the Basel Convention in addressing the question of handling recycled ODS, which are promoted under the Protocol but are treated as hazardous under the Basel Convention. Similar co-operation is beginning between the Parties to the Montreal Protocol and the Parties to the Climate Change Convention on how to deal with substances which are promoted as alternatives to ODS under the Montreal Protocol but which have a global warming potential.

(c) Enforcement

4. There was strong agreement that the licensing provisions under Article 4B of the Montreal Amendment to the Montreal Protocol would help provide very effective enforcement and allow comparison of shipment information between Parties if implemented correctly. However, some Parties may lack a technical capacity to institute such provisions and may be unaware that the Secretariat can provide administrative and technical help to this end if requested. The group felt that effective enforcement should go together with provision of assistance in developing legislation and regulations to those countries in need of such assistance. Although there is no formal procedure for the Secretariat to help in drafting national regulations, successful assistance has been given in the past. Also, provision of education and training for law enforcement agents, government officials and the business community could be an effective tool to this end.

5. It was generally felt by the group that an exporting party should exercise alertness about quantities of material shipped and the destinations and registration thereof. If trade and licensing data were passed promptly to the Secretariat, illegal shipments could be effectively detected and national authorities informed and co-ordinated. Some participants felt that stopping illegal shipments was not only the responsibility of enforcement authorities in developed countries and that developing countries that are still producing large quantities of ODS can play a vital role in providing information on the destination of such material. It was pointed out that production in developing countries was for meeting basic domestic needs only.

6. It was agreed that lack of information about and registration of stockpiles of ODS has hindered identification of illegal material as have customs regimes such as Inward Processing Relief in Eu-

rope. The group also discussed the fate of seized material. It was made clear that consumption of such material counts against countries' national totals or essential use exemptions under the Protocol.

(d) Environmental Crime

7. It was the opinion of the group that for an offence to qualify as an environmental crime both internationally and nationally it must be provided for in national legislation before it can be applied as an offence. At the international level, an international environmental crime should be transboundary in nature, involving more than one country. At the national level, such an offence must result from a national legislation addressing subject matter of an environmental nature. An environmental crime need not be committed deliberately since failure to discharge obligations provided for in environmental agreements can also result in criminal proceedings depending on the facts surrounding the issue. Some countries distinguish between civil and criminal offences to this end; it was not always necessary to prove intent to damage the environment, simply that an offender meant to perform their actions. This emphasis on national enforcement means that, theoretically, Parties may exist which are meeting their international obligations on paper but, in practice, failing through ineffective national implementation.

8. A distinction was drawn between offences that had impacts on local, regional and global environments and it was felt that punishments should be meted out accordingly. A programme of education of legal officers can address lack of understanding about and the low profile of environmental crime. One participant gave an example of such a successful education programme.

(e) Illegal Traffic

9. Although everybody believed that illegal trade in ODS was a serious problem, accurate figures, by definition, were difficult to come by. Reporting seizure and illegal traffic information to the Secretariat was recommended in this regard. If Parties formally reported seizures of illegal materials then data could be gathered by the Secretariat to this end. One of the weaknesses in the Protocol was the lack of provision for independent verification of data provided to the Secretariat by Parties. Also, the Protocol does not provide for official reception of data collected independently of official Government sources. The group agreed that, in order to effectively control illegal trafficking in ozone depleting substances, co-operation between Parties is very important.

10. One of the major methods of illegal trade was the triangulation of shipments from producers to consumers. An extensive discussion took place as to whose responsibility these shipments are but everyone agreed that closer international co-operation would aid their detection. A distinction was made between Parties' obligations in complying to the letter and with the spirit of the Protocol in this capacity and the need to strengthen parties, ability to control exports as well as imports was recognised. Parties that have solicited co-operation of their industry to control and verify exports as part of an organised scheme were praised.

    Another major method of smuggling was claiming that virgin ODS was recycled. The lack of full registration of recycling facilities and its regular update by Parties and with the Secretariat was a problem for verification of shipments.

(f) Global, Regional Co-operation (INTERPOL, WCO)

11. WCO and INTERPOL emphasised their keen interest in setting-up a formal, permanent channel for information and sought the Secretariat's expertise to aid enforcement and to begin joint customs training programmes. It would also be useful if seizure information was shared. INTERPOL was looking forward to conducting training and producing of joint materials with the Secretariat. Both WCO and INTERPOL expressed the need of having a formal co-operation by way of a Memorandum of Understanding between the Ozone Secretariat and the two agencies to formalise the existing and emerging co-operation in addressing the problem of illegal trade. They cited a similar successful co-operation that has been formalised between WCO and INTERPOL with the Basel Convention and CITES in this effort.

12. The good work of the NGO community in bringing illegal trade issue to the attention of the Parties was commended and has helped focus enforcement efforts. Indeed, great contributions to Montreal process have been made by NGOs even before the smuggling issue. The public and the mass media also have a very important role in educating and raising awareness: publicising enforcement actions may be an effective deterrent procedure. Industry groups have also played an important role in tackling illegal trade because of their vital market information and because of the threat that illegal ODS has posed to legiti-

mate replacements. Some participants urged more transparency in their reporting, whilst others recommended that they be consulted before laws were drawn up and enacted.

(g) Recommendations

13. Parties must have national legislation and regulations in place to support obligations to stem illegal shipments of ODS. The legislation should be sufficient to recognise illegal production, import and export of ODS as an offence punishable under national laws. The laws should license producers, importers and exporters in a manner which secures essential information to track transboundary shipments of ODS and which supports accurate national reporting to the Parties on compliance with production and consumption limitations as per the schedule specified in the Montreal Protocol.

14. Strategies:

    a. Parties should notify the Secretariat where these laws are not in place and seek technical and financial assistance.
    b. Promote exchange of successful legislative schemes and tracking systems among the Parties including prior informed consent of the countries of import and export as well as notification to the Ozone Secretariat as a prerequisite for issuance of export or import permit.

    Support detection of illegal shipments by enforcement officials using existing data submitted by the Parties for this purpose.

15. Strategies:

    a. The Secretariat should continue to analyse country reports to identify for the Parties the levels of production and consumption for each of the substances controlled under the Protocol and provide this information to the Parties.
    b. The Parties should continue submitting to the Secretariat specific reports of import and export of ODS to support analysis of data, identification of discrepancies and verification of the reports.
    c. Parties should be encouraged to submit information on the extent of illegal traffic, in order to assist efforts to control it.

    Establish closer ties with the World Customs Organisation and INTERPOL and secure greater levels of co-operation and support and to share seizure information and trade data.

16. Strategies:

    a. Expand current efforts to co-operate on training and awareness materials with these organisations through a formal Memorandum of Understanding that parallels such agreements that exist with the Basel Convention and CITES.
    b. Promote national enforcement networks and co-operative regional projects through ongoing networks among officials responsible for implementation of the Montreal Protocol, customs and law enforcement and INECE and regional enforcement networks.
    c. Work with WCO to expedite the development of additional and clear coding of ODS to enhance enforcement.

17. Enhance the level of co-operation among the Parties (including their national ozone units, national environmental enforcement and customs officials). Commitment to enforcement and clarify the obligations of the Parties to consider the broadest aspects of obligations for compliance under the Montreal Protocol, including verification of data and co-operative working relationships with industry and NGOs to encourage sharing of information on import and export should be undertaken.

18. Parties are encouraged to establish the necessary regulations to control the import and export of ODS.

19. Enhance communication mechanisms among enforcement officials through identification and maintenance of contacts with police, customs and Parties to facilitate co-operation. The Secretariat may wish to consider appointing an international liaison officer from the enforcement community to this end.

20. Promote information from users and industry on key sources to help track down illegal trade.

21. Advance awareness, training and support for the terms of the Montreal Protocol and implementation.

    Strategies:

    a. Support efforts by the Parties to educate the public, users and producers about the importance of ozone layer protection and steps necessary to control ODS as per the schedule specified in the Montreal Protocol.
    b. Involve all stakeholders including NGOs and industry in development of national laws and

regulations to enhance enforcement of agreed measures.

22. UNEP should take a leadership role in the area of stemming international environmental crime by facilitating the work of national enforcement officers, stimulating continuous dialogue and building consensus among various multilateral and regional environmental agreements that address subject-matters whose implementation have the potential to result in environmental crime.

23. Support efforts by Parties to seek technical and financial assistance for projects and activities to promote non-ODS processes and technologies, particularly among small- and medium-sized businesses.

ANNEX III

REPORT OF THE BASEL WORKING GROUP

ILLEGAL TRADE, TRANSPORT AND DUMPING OF HAZARDOUS WASTES UNDER THE BASEL CONVENTION

(i) Introduction and Objectives of the Working Group

1. The working group reviewed the background paper within the overall purpose of the Basel Convention and the specific purpose of the Working Group to develop a series of proposed measures, from an enforcement and compliance point of view, to be considered in the context of the Workshop as a whole. In this report the Working Group presents recommendations to the Plenary session on actions that can be taken to improve practical implementation of and compliance with the Basel Convention in the short, medium and longer term according to countries' priorities and needs.

2. The Working Group started by recognizing the main aims of the Basel Convention ie: to protect human health and the environment from the adverse effects of the generation and transboundary movements of hazardous waste by:

   a. minimizing generation of hazardous waste,
   b. assisting the development of environmentally sound management of wastes
   c. reducing transboundary movements to a minimum in accordance with a strict control system.

3. Parties to the Convention can achieve compliance with it by undertaking specific actions to implement the articles and subsequent amendments by the Conference of the Parties. Specific action to control illegal traffic is contained in Decision IV/12 adopted at the fourth Conference of the Parties.

4. The Working Group considered that the primary and priority requirement, as a first step, was to encourage non-Parties to become Parties and to ensure that any Party to the Convention has established the necessary national laws to implement it. This would include provision of the appropriate instruments, both legal and administrative, for the control of legal traffic and sanctions to prevent illegal traffic. The Group felt that while not all the recommendations may be directly delivered by the experts in their respective roles as practical enforcers, they can demonstrate what is possible by:

   a. improving the level of cooperation within and between Parties' enforcement and other agencies,
   b. raising awareness through wider reporting and,
   c. seeking to remove the barriers to improvements created by any deficiencies in legislation resources and infrastructure whose responsibility is that of political decision makers.

(ii) Issues - Comments made by experts

5. The experts considered the following issues as the more important factors in relation to enforcement of a particular MEA. Varying enforcement capacities in different countries:
   a. Communication between different agencies within countries.
   b. Communication between agencies and between countries.
   c. Common understanding of the terminologies such as:
      - Environmental enforcement,
      - Environmental crime,
      - Organized crime,
      - Compliance,
      - Enforcement,
   d. Lack of provision of national laws implementing the MEA:-

      - No common classification system for different types of illegal traffic;
      - No common reporting system.

(iii) Specific objectives

   a. Encourage larger participation of countries in the MEAs, including enhanced participation of Parties to these Conventions and cooperation in the enforcement of related laws.
   b. Facilitate effective implementation of MEAs through assistance in establishment of laws mandating systems of reporting, exchange of data, training and capacity building including exchange and access to environmental management system technologies.

(iv) Recommendations

(a) Recommendations for UNEP

1. Enhance activities of UNEP towards ensuring that non Parties to the Convention are as far as possible complying with their provisions and encourage them to become Parties to the Convention.

2. Establish liaison person/unit at UNEP to work with MEA Secretariats, Interpol, WCO and other international mechanisms and initiatives to enhance coordination of enforcement efforts internationally. This would include information about training offered by Parties, international organizations, and others related to the effective enforcement of laws related to hazardous and other wastes.

3. Identify enforcement contacts in each country and inform others about them

   a. Prepare guidelines for cooperation at regional and global level related to compliance and enforcement.
   b. Facilitate easier communication between Parties, using existing international mechanisms and new technologies for the exchange of data.
   c. Facilitate assistance with implementation and compliance efforts where resources are lacking.

4. Enhance transparency of UNEP efforts through public outreach and coordination with NGOs, other international organizations, and those regulated entities which comply with laws governing the import and export of hazardous and other wastes.

(b) Recommended actions for Parties

Share information at local, regional and international levels and:-

1. Encourage collaborative law enforcement projects between countries that share borders, and regionally bring together customs agencies, environmental law enforcement units, police and others for understanding each other's mandate and launch cooperative actions, e.g. information sharing and training courses.

2. Facilitate a common understanding of the scope of the Convention and how that affects enforcement efforts of national controls on waste movement.

3. Support efforts at the WCO and nationally to promote more systematic monitoring of the transboundary movements, including the use of new technologies and electronic data interchange, to improve the ability of nations to enforce laws governing waste shipments.

4. Encourage active involvement and participation of the Parties, NGOs including private sector and environmental NGOs in activities leading towards compliance with MEAs and enforcement of national legislation and prevention of environmental crime.

5. Promote systematic meetings of the Parties of MEAs, NGOs, Interpol, WCO, UNEP Convention Secretariats and other interested bodies, such as IMO, INECE, Council of Europe etc. to further implement the recommendations in this report.

6. Enhance inter-agency coordination and cooperation in detecting, investigation and prevention of illegal traffic.

(c) Additional Specific practical measures to implement the above recommendations:

1. Provision of training in investigations and enforcement techniques adapted to the requirements of the specific country.

2. Provision of liaison contact at MEA Secretariat level should be established to co-ordinate exchange of information, identify training and information.

3. Data collection using defined terminology.

4. Harmonized reporting of data to MEA Secretariat.

5. Formal links to be established between MEAs Secretariats, WCO, Interpol and the Parties' agencies. These links would enable them to (a) share information (b) cooperate on a case by case basis in detection and enforcement.

6. Assessment of the extent and impact of illegal traffic, in particular for developing countries.

7. Sharing of information on best technologies in application of intelligence systems and electronic exchange of data to detect and prevent crime.

8. Development of guidelines and training manuals.

9. Development of guidelines describing types and application of equipment for the detection of environmental crime.

10. Periodical reporting by Parties in regions of environmental crime activities e.g.
    - types
    - trends
    - patterns of movements
    - actors (e.g. companies or individual case studies).

11. Promote Public awareness programme to support compliance with MEAs.

12. Consider need for appropriate national and regional structure to coordinate activities in relation to enforcement of and compliance with MEAs thus enhancing optimal use of scare resources.

13. Review the existing border control measures and, where necessary, strengthen the prevention and detection capability of customs services at national borders.

Enforcement of and Compliance With Multilateral Environmental Agreements (MEAs): An Example of Three MEAs-problems, Issues and Common Solutions[1]

CONTENTS

1. A Background paper prepared, and as revised after, for the UNEP Workshop on Enforcement of and Compliance with Multilateral Agreements (MEAs), held at Geneva, 12-14 July 1999.

1 Introduction

1.1 This paper was written originally to provide background information and a framework for discussion, for the UNEP workshop on enforcement of and compliance with multilateral environmental agreements (MEAs) in Geneva on 12–14 July 1999. The workshop considered in particular questions relating to the Convention on International Trade in Endangered Species (CITES), the Montreal Protocol and the Basel Convention.

1.2 It was rewritten into this form following the workshop's discussions and conclusions. All the individual papers written for the workshop, including national reports and summaries, and papers from international organisations and the three MEA Secretariats, are attached, as are the detailed conclusions of the three working groups which considered each MEA for the middle day of the workshop. It does not replace or completely summarise the wealth of information presented at the workshop. It aims instead to provide a broad overview of the problems and to highlight the key solutions, as identified.

1.3 *Section 2* of the paper provides a brief overview of the development of international environmental crime and evasion of MEAs in recent years. *Sections 3, 4 and 5* look at the problems, and specific solutions, in more detail for each of the three MEAs under discussion: CITES, the Montreal Protocol and the Basel Convention. *Section 6* draws together the possible solutions into a broad framework, and contains recommendations for further action.

2 Overview

2.1 The last three decades have seen the rapid development of the framework of multilateral environment agreements (MEAs). Over 200 already exist, and several more are currently under negotiation. However, as this international framework, and its accompanying national legislation for environmental protection, becomes more widespread and sophisticated, so too do attempts to evade it.

2.2 At an international level, this phenomenon has two aspects:

- Deliberate non-compliance with MEAs by states parties to them. (Non-compliance also often occurs 'accidentally', through a simple failure to implement legislation adequately, without any deliberately evasive intent.)
- Deliberate evasion of environmental laws and regulations by individuals and companies in the pursuit of personal financial benefit – 'environmental crime'. Where these activities involve movements across national boundaries, they can be defined as 'international environmental crime'.

Compliance and enforcement

2.3 An understanding of the terms 'compliance' and 'enforcement' are key to this discussion, yet they are usually used loosely and often interchangeably. For the purposes of this paper, 'compliance' is taken to refer to the position a state is in with regard to its obligations under an MEA: it is either in compliance or not with these requirements. 'Enforcement' is then the set of actions – adopting laws and regulations, monitoring their outcomes, ensuring that they are observed and obeyed, etc. – which a state takes within its national territory to ensure that it is in compliance with the MEA. (In the context of this paper, enforcement actions taken against illegal trade are of particular interest.) 'Compliance' is used in an international context, and 'enforcement' in a national one, though of course national enforcement activities will often benefit substantially from international co-operation and co-ordination. Other, more sophisticated and extensive definitions are available; see in particular work carried out by the International Network for Environmental Compliance and Enforcement (INECE).

2.4 The two aspects of evasion identified above in para 2.2 – non-compliance with MEAs and international environmental crime – can be, but are not necessarily, linked. Several developed countries, for example, experience the illegal import of ozone-depleting substances (ODS) without technically being in non-compliance, as the consumption and production figures reported to their governments by industry, and by governments to UNEP (which, by definition, report legal activities), fall beneath the permitted ceilings. In other cases, non-compliance with an MEA may create the opportunity for environmental crime – as, for example, in the continued production of ODS by the Russian Federation beyond the phase-out deadlines under the Protocol (for reasons recognised and understood by the parties). In yet further cases, it may be that the application of an MEA's non-compliance mechanism, and any sanctions that may flow from that, are necessary to compel a non-complying party to institute effective attempts to control the environmental criminal activities of its nationals.

2.5 Although the workshop mainly focused on ways to improve enforcement activities, the non-compliance procedures of the MEA provide an important mechanism underpinning these activities. This is touched on in more detail under Sections 3, 4 and 5, as well as in the concluding Section 6.

International environmental crime: underlying causes and common problems

2.6 The reported incidence of international environmental crime has undoubtedly been in the increase in recent years, partly because the implementation of new MEAs has provided new opportunities for evasion, and partly because greater public and governmental awareness has led to more investigation into the issues. A range of other relatively recent developments have contributed:

- The general trend towards trade liberalisation and deregulation. In some cases this has rendered border controls impossible (e.g. within the single European market), and in most instances there is a presumption against instituting additional checks and controls.
- The transformation of the Comecon bloc, and the difficulties of environmental law-making and law enforcement, and the rise of organised crime, in many countries with economies in transition. (Political upheavals and disruption, through, for example, civil conflict, also contribute to these problems in countries around the world.)
- The growing involvement of developing countries in MEAs, but – in many of them – a lack of adequate resources to implement their provisions consistently and effectively.
- The growth of transnational corporations and activities amongst whom regulations are often difficult to enforce.

2.7 Common features can be identified behind most instances of international environmental crime:

- Legislation (e.g. national regulations implementing MEAs) may not exist, or it may be incomplete or out of date, and the development of new environmental legislation is usually accorded a lower priority than, e.g., trade rules.
- Lack of awareness of the relevant regulations amongst industry and consumers.
- Increased costs of compliance with the relevant regulations, giving a financial incentive for evasion.
- Penalties may not be provided for or be adequate (e.g. fines may be insufficient to render the activity unprofitable) and may be allocated to inappropriate, or competing, agencies to impose.
- Regulations may differ in their levels of stringency and/or enforcement between different (often neighbouring) countries, providing incentives for illegal trade (e.g. to avoid high compliance costs) and routes for illegal traffic through countries with poor enforcement records.
- Lack of awareness amongst enforcement authorities: customs, police, etc., may not be aware or informed of the problem, and tend to give a higher priority to other areas such as drugs, pornography or arms; judicial authorities may be similarly unaware of the nature and impact of environmental crimes.
- Problems with detection: enforcement agents may not be trained in the issues and in many cases it is difficult to discriminate between legal and illegal products by inspection (in some cases it may be impossible). Long land and sea borders may be difficult, or impossible, to police effectively.
- Resources and technical capability for enforcement are usually inadequate, and vary significantly between countries.
- Information and intelligence is difficult to come by, particularly for cross-border issues; hard data on the extent of the problem is largely lacking and in many cases is not being actively sought.
- Cross-border co-operation, usually essential for effective enforcement, may be lacking.
- Domestic co-operation and multi-disciplinary networks may also be inadequate.
- Transnational operations are difficult to monitor and regulate.
- Compliance with MEAs is very difficult to enforce; MEA secretariats themselves are almost invariably too small and poorly resourced to be able to contribute much.
- 'Free-rider' states, not signatories to the MEAs, often provide sources and routes for illegal trade.

Addressing the issues

2.8 Serious though these problems are, they are at least beginning to be addressed. Some effective enforcement has taken place in several countries, including control of the illegal trade in wildlife and wildlife products (the oldest problem), and of smuggling of ODS. These experiences provide useful lessons to be learned for the control of such activities more widely.

2.9 In recent years, governments have turned increasingly to questions of the *implementation* of MEAs, rather than the earlier focus on their negotiation. Several efforts to improve enforcement activities have been made at an international level:

- G8 summits have, since 1996, called for more effective and better co-ordinated action to combat international environmental crime. The first meeting of the G8 Nations' Lyon Group Law Enforcement Project on Environmental Crime took place in July 1999, aiming to improve information exchange, data analysis and investigative co-operation among law enforcement agencies, regulators and international organisations.
- In 1993, Interpol established a Working Party on Environmental Crime; it now has sub-groups on wildlife crime and hazardous wastes (recently extended to cover other forms of pollution, including ODS). Memoranda of understanding were signed with the CITES Secretariat in October 1998 and with the Basel Convention Secretariat in 1999.
- The World Customs Organisation (WCO) signed memorandums of understandings with the CITES Secretariat in 1996 and with the Basel Convention Secretariat in 1997.
- The 1990s also saw the creation of the International Network for Environmental Compliance and Enforcement (INECE) and the European Network on the Implementation and Enforcement of Environmental Law (IMPEL); a number of other similar networks of enforcement agencies are also being established.
- In 1996, the Africa-wide Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora came into force.

In addition, of course, in July 1999 UNEP organised this workshop, and will subsequently devote more resources to work in this area. These developments are touched on later in Section 6.

2.10 Sections 3, 4 and 5 examine the specific problems and possible solutions in the cases of CITES, the Montreal Protocol and the Basel Convention. Each section is organised as follows:

- Introduction to issue and MEA.
- Sources, methods and scale of criminal activities (where known).
- Existing and potential further means of control:
  - Reducing demand: through educating the market, applying use controls, and developing substitutes.
  - Affecting supply: by encouraging alternative, legal activities in the source countries, and/or by conditional access to resources by regulated international exchange.
  - Controlling illegal activities: suppression of contraband through increasing the chances of detection and punishment.
- Non-compliance procedures of the MEA.

Future developments

2.11 This workshop and paper deal with three of the most important MEAs, but it should be remembered that these are not the only areas of international environmental crime. *Illegal whaling* is a relatively high-profile and well-known issue, but *illegal fishing* (for example, through banned driftnet catches, or fishing outside national quotas or under flags of convenience) is more recent and much more widespread. *Illegal logging and trade in timber* is a very significant problem; it has been estimated that illegal trade in timber may reach a value of about $15 billion per year. *Illegal disposal of radioactive waste* (which is not covered by the Basel Convention) is another problem destined to grow given the numbers of nuclear stations nearing the end of their operating lives and these will need to be carefully monitored.

2.12 With the rapid evolution of MEAs, it can be anticipated that more and more areas will provide opportunities for criminal action in the future. The development of a greenhouse gas emissions trading system at a sub-state level, for instance, is a possible future candidate (and the inclusion of carbon sinks in the Kyoto Protocol means that illegal logging becomes a potential threat to the integrity of the climate change regime). International controls on persistent organic pollutants (POPs Convention) and on genetically modified organisms (Biosafety Protocol), both currently under negotiation, may provide other opportunities for evasion. No doubt there will be many more.

3 CITES

Introduction

3.1 The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) was agreed in Washington in 1973 and came into force in 1975. It currently has 145 parties, and is generally regarded as one of the most successful of the international conservation treaties.

3.2 Endangered species protected under CITES are listed in three appendices:

- Appendix I contain species threatened by extinction that are or could be affected by trade. Commercial trade in these species is banned. Specimens from registered captive breeding or ranching operations and artificially propagated specimens can be traded; licences are required from both the exporting and importing countries before such trade can proceed.
- Appendix II contains species which are not necessarily in danger of extinction but which could become so if trade in them is not strictly regulated. Export licences (based on a 'non-detriment' finding by the national Scientific Authority) only are required for trade in these species.
- Appendix III lists species which individual parties to CITES choose to make subject to regulations and for which the co-operation of other parties is required in controlling trade. Again, export licences, or certificates of origin, are required before the trade is permitted.

Decisions on including species in a particular appendix are taken by the conference of the parties, which meets about every two years. Export and import licences are issued by the national Management Authority (on advice from the national Scientific Authority) appointed by each party. Many CITES parties have in fact adopted stricter domestic measures, for example requiring import permits for all listed species regardless of appendix (e.g. in the EU).

3.3 In some instances, CITES has proved highly effective, including the spotted cats, Nile crocodile, and the African elephant (where rapid population decline stabilised on its listing under Appendix I). Other species, however, remain threatened with extinction; the tiger is the classic example, where widespread illegal trade continues to pose a serious problem. While it is true to say that no species listed under CITES has become extinct since the treaty was signed. However, it should also be noted that almost three times as many species have been transferred from Appendix II to I (187 taxa, i.e. species, sub-species and populations) as have been moved in the other direction (67 taxa).[2] It should be remembered, however, that trade in endangered species is not the most serious threat to their survival: habitat destruction poses a more significant problem. The ability of CITES to list, and thereby protect, species can be seen as an important backstop against the failure of national conservation policies.

Criminal activities: scale, sources and methods

3.4 Total international trade in animals, plants and their products is estimated to generate an annual turnover well in excess of $20 billion, including:

- 40,000 primates
- several million animal pelts
- several million birds
- 10 million reptile skins
- 500 million tropical fish
- 9–10 million orchids
- 7–8 million cacti

It is believed that a quarter of this trade might be unlawful, although this figure (as with all figures in this area) is no more than a guess, and proper research would be extremely valuable.[3] Interpol estimates place illegal trade in endangered species as likely to be the second largest criminal activity world-wide, after narcotics. Poaching and smuggling of ivory, tiger skins and other body parts, and rhino horns, in particular, has threatened the existence of all or some populations of the species in question.

3.5 The illegal trade arises because of the scarcity of the traded products, the lack of substitutes acceptable to consumers and the controls imposed under CITES and national legislation. Sources of demand include:

- Demand for exotic pets and flowers, stuffed animals, clothes and clothing accessories made from skins of endangered species. Also cosmetics, in affluent countries – both for collectors and rich consumers. Changing styles and fashions can often be a major driver.
- Demand for food – luxury foodstuffs in developed countries, and often for basic subsistence in developing countries.
- Demand for ingredients (such as rhino horn) for traditional East Asian medicine.
- Demand for other products for traditional purposes (e.g. ivory for personal *hanko* seals in Japan, rhino horns for dagger handles in the Yemen).
- Demand for scientific specimens (a relatively minor source, but important for primates).

2. OECD Review, 1994.
3. All figures: CITES Secretariat.

3.6 The rate of return on these illegal activities is, as would be expected, high. In many cases it is still relatively easy to acquire the specimen, and the chance of detection is not great. The final price of the smuggled product, on the other hand, can be extremely high – rhino horn for traditional East Asian medicine, for instance, often attracting prices per kilogram in excess of those for heroin or cocaine. The involvement of organised crime is suspected in some cases, from wildlife crime syndicates to the Russian Mafia (who are probably implicated in the highly lucrative illegal trade in caviar, for example) and Chinese Triads.

3.7 There are three main methods of illegal trade:

- Failure to implement CITES controls. Of 81 countries examined in an IUCN study in 1994, only 15 possessed legislation meeting all the requirements for CITES implementation; 27 met none of the requirements.
- Abuse of the controls, including counterfeit documents, fraudulent applications for genuine CITES permits and false declarations to customs officials (helped by the fact that many endangered species are very difficult to distinguish from similar but non-endangered species). The existence of pre-CITES stockpiles (e.g. of ivory) in some countries also complicates control efforts, as does various categories of legal trade (non-commercial, captive-bred, personal effects, etc.). Limited resources, both of money and personnel, and lack of awareness and political will, in many countries mean that enforcement of the legislation that exists is often inadequate.
- Concealment of the specimens in consignments of other goods or in personal effects or diplomatic baggage (which also contributes to a high mortality rate, though even legal trade suffers from this problem).

Control: reducing demand

3.8 Public education in reducing demand for endangered species and their products is one potential route to reducing illegal trade. There are some possibilities here: in comparison with the other MEAs covered in the workshop. CITES, and the protection of endangered species in general (particularly of the 'megafauna' – elephants, rhinos, big cats, etc.) already has a relatively high public profile and support, and greater numbers of NGOs active in the area, both in range states and in consuming states. The largely successful campaign against fur-wearing in many developed countries (though this was largely on grounds of animal welfare rather than species protection) in recent decades, and the general spread of 'ethical' business practices, are further encouraging signs. On the other hand, it is difficult (though not impossible) to reduce demand for products for traditional purposes, particularly, for example, for medicines, and the extinction of the species in question may well occur before this could be achieved. Also, NGOs in particular have tended to focus on the more 'glamorous' angle of non-compliance and crime rather than more basic public information, which can nevertheless reap significant rewards.

Control: affecting supply

3.9 If species can be protected more effectively in the range states, then the danger of extinction from illegal trade becomes accordingly less of a concern. The best examples of this are the rhino, where 'intensive protection zones' have worked effectively, and the African elephant, where successful conservation strategies in southern Africa have increased numbers to the point where they are actually above the carrying capacity of most of the countries in question. Habitat protection policies could often be better co-ordinated with CITES enforcement, particularly where only small numbers of the species are present. For many species, however, habitat protection is a difficult strategy, competing for land and resources with many other priorities. The other major possibility in the area of supply is to increase farming, ranching and captive breeding programmes – 'sustainable use' policies, making market access conditional on good husbandry – increasing the supply of some products, and helping to move the species further away from extinction.

Control: reducing illegal activities

3.10 Given the difficulties of achieving successful demand management and conservation strategies, it seems likely that the control of the illegal trade itself is the appropriate area on which to focus. In most states, this is the area (of the three examined in this workshop) in which enforcement agencies, including wildlife protection, police and customs, and NGOs, have learned to co-operate most effectively, and there is considerable experience in successful operations against illegal traders.

3.11 At an international level, the CITES Secretariat's enforcement assistance staff maintain close links with Interpol and the World Customs Organisation, and intelligence relating to illegal trade is disseminated between the three organisations. They also engage in joint projects, training and help raise awareness of CITES issues

amongst national police and customs personnel. The Interpol Working Party on Environmental Crime was set up in 1993, with a subgroup on wildlife crime, with the aim of improving information exchange and analysis. Two intelligence analysis projects (on live reptiles, and primates) have been undertaken, a Practical Guide on CITES Management Authority – Interpol co-operation published, regional working groups of law enforcement officers have been supported and 'training for trainers' courses on environmental criminal investigations (including wildlife crime) begun. The WCO signed a memorandum of understanding with the CITES Secretariat in 1996, providing for information exchange, co-operation between CITES Management Authorities and customs officials at national level, and training and awareness-raising exercises.

3.12 Nevertheless, there is clearly more that needs to be done. This paragraph lists suggestions that have been made, by various groups and individuals, to improve the enforcement of CITES controls.

At international level:

- More resources devoted to intelligence gathering (the key requirement) and information exchange, including, for example, a joint CITES/Interpol/WCO database and annual risk assessments (perhaps linked into the Significant Trade Review process under CITES). The establishment of an Enforcement Committee (with a permanent staff) under the auspices of the Standing Committee would provide a focus and higher profile for these efforts.
- A concerted effort to research the extent and value of illegal trade – through, for example, further Interpol analysis projects.
- The establishment of regional enforcement networks, as already exist in some areas. For instance, the Lusaka Agreement between six African countries improving information exchange and allowing trans-border movements of enforcement agents, and the North American Wildlife Enforcement Group (NAWEG) of senior enforcement officials from Mexico, the US and Canada, are very positive developments and should be encouraged and adapted to other regions.
- Capacity-building assistance for parties to implement their obligations under CITES (including, in particular, data reporting), and possibly more effective sanctions against parties which fail to do so.
- The creation of an international register of approved wildlife traders, built up from national registers.
- The identification of national law enforcement points of contact in each country, to facilitate international liaison and improve information exchange.

At national level:

- The introduction of domestic legislation to implement CITES obligations.
- The effective implementation of the legislation, including the provision of adequate resources for monitoring and enforcement, and the institution of effective penalties; some international harmonisation of legislation (e.g. criminal penalties, reporting of cases) might be useful.
- The establishment of greater numbers of, and better trained, enforcement officers and units with specialised knowledge of wildlife crime and enforcement, to gather intelligence and co-ordinate action–including improved co-ordination between environment and enforcement agencies, and building links with relevant NGOs (often effective at data collection and intelligence). The South African Endangered Species Protection Unit can be considered as an excellent model in this regard.
- Effective border controls, including further awareness-raising, training and support for customs officers (who make 60% of seizures of illegal shipments) and other staff at major air- and seaports (including in particular veterinary and phytosanitary staff), full designation of ports of entry, and improved co-operation with enforcement agencies in other countries. The extension of the World Customs Organisation's Harmonised System of commodity classification and coding to specific endangered species may also prove of assistance.
- The development and use of forensic and tracking techniques such as DNA fingerprinting and microchip implantation.
- Greater use of recent developments in information technology, such as the Italian computerised permitting system or Heathrow Airport's computerised identification database.
- Public education and awareness-raising campaigns, and, where possible, community participation in the management of the species in their natural habitats.

Non-compliance procedures

3.13 The CITES National Legislation Project analyses the ability of parties to implement the Con-

vention requirements. Information is also provided by TRAFFIC, the joint wildlife trade monitoring programme established by the World-Wide Fund for Nature (WWF) and the World Conservation Union (IUCN) in 1976. The Secretariat provides a report to each conference of the parties highlighting major infractions, including non-compliance by parties, and illegal trade. (Serious cases of infraction can also be brought to the attention of the Standing Committee in between conferences.)

3.14 Based on this information, the conference of the parties, has, in a number of cases, recommended all parties to apply Article XIV(1) of the Convention. The article allows parties to take stricter domestic measures than those provided by the treaty, including complete prohibitions of trade, collectively (albeit temporarily) against the offending countries. This has included the United Arab Emirates in 1985–90, Thailand in 1991–92 and Italy in 1992–93. The procedure has also been used against states not party to the Convention, after persistent refusal to provide 'comparable documents' to CITES licenses; in the case of El Salvador (1986–87) and Equatorial Guinea (1988–92), the ban was lifted after the countries targeted became parties.

3.15 In other cases, countries have come into compliance with, or membership of, CITES after unilateral rather than collective action. Examples include a US ban on wildlife imports from Singapore in September 1986 (Singapore became a party in November 1986) and US unilateral trade sanctions against Taiwan from August 1994 (Taiwan amended its legislation in October 1994 along CITES lines, and the US embargo was lifted in June 1995) – the CITES Standing Committee had recommended stricter domestic measures in September 1993. Similarly, Indonesia's announcement of 'voluntary' export quotas for several endangered species in 1994 may be attributed at least in part to a EU ban on wildlife imports from Indonesia, imposed in 1991 and subsequently lifted in 1995.

4 MONTREAL PROTOCOL

Introduction

4.1 The Montreal Protocol on Substances that Deplete the Ozone Layer was agreed in 1987, as a protocol to the 1985 Vienna Convention on the Protection of the Ozone Layer, and entered into force in 1989. It currently has 168 parties, though subsequent amendments (which dealt with new ozone-depleting substances (ODS), and other new provisions) have as yet fewer ratifications.

4.2 The aim of the treaty is to reduce and eventually eliminate the production and consumption of all categories of ODS, which are specified in four annexes to the treaty. Parties are given a series of target dates by which they are required to reduce production and consumption levels by specified percentages from a reference year. 'Article 5 countries' (developing countries whose production and consumption fall below a set threshold) are given longer phase-out periods. These countries are also eligible for financial support for phase-out projects from the Multilateral Fund (introduced under the 1990 London Amendment to the Protocol; total contributions to the Fund have so far reached about $900 million. Trade restrictions – bans on trade with non-parties in ODS and in products containing ODS – are included in the Protocol to provide an incentive for countries to join and to prevent industrial migration to escape the controls.

4.3 The Protocol has proved to be one of the most successful MEAs yet negotiated. In the first ten years of its existence, phase-out schedules were brought forward on no less than four occasions. Whereas the original Protocol envisaged only a 50% reduction in chlorofluorocarbon (CFC) supply by the end of the century, 100% phase-out was in fact achieved in the industrialised world by the end of 1995. The production and consumption of all categories of ODS is now scheduled to come to an end by 2030 in the industrialised world, and by 2040 in the developing world – and it is possible that these dates may be advanced yet further. All being well, stratospheric ozone levels are projected to recover to pre-industrial concentrations by the middle of the next century.

Criminal activities: scale, sources and methods

4.4 As the production and use of CFCs and halons has been phased out in the industrialised world, black markets and illegal trade have expanded, the main destinations being the US and EU. Shortly after CFC phase-out at the end of 1994, the European market witnessed the overnight appearance of previously unknown brokers offering large volumes of unsourced products. In 1994–95, CFCs were the second most valuable contraband smuggled through Miami (after cocaine). Precise figures are of course impossible to come by, but government and industry esti-

mates show global totals of 16,000 – 38,000 tonnes in the probable peak year, 1995. The higher figure is equivalent to 15% of consumption world-wide, worth more than $0.5 billion.[4] It is likely that CFC smuggling has declined since then (CFCs in general seem to be in shorter supply, as they should be in the absence of illegal material), but illegal trade in halons (which are much more powerful ozone depleters than CFCs) has probably grown. It is possibly that this experience may be repeated when HCFCs near their phase-out date.

4.5 The incentive for illegal use arises not from the higher cost of the ODS alternatives – they have often proved to be cheaper and more effective than the ODS they replaced – but from the cost of adaptation or replacement of the machinery in question, which can be relatively quite high. Since most refrigeration and air-conditioning equipment has relatively long lifetimes, this implies a continued incentive for illegal use in the short- and medium-term. In addition, as the Protocol's phase-out schedules gradually extend to other categories of ODS (e.g. the CFC replacements hydrochlorofluorocarbons, HCFCs), incentives for illegal use could develop in new areas.

4.6 There are two main sources of the material. As noted above, developing countries do not have to phase out CFCs until 2010; the main source of the illegal material now entering the EU appears to be China, and for the US, probably China and Mexico. India is also a possible source for both destinations. Second, the Russian Federation has continued to produce in breach of its commitments, for reasons recognised by the parties – though export controls have recently been tightened, with some effect, and Russian production should cease by the end of 2000. It is also possible that some ODS illegally entering the EU and US may in fact have been legally produced there, exported and then clandestinely re-imported. There is little evidence for the involvement of organised crime; possibly the business is too specialised for this to occur.

4.7 The problem is complicated by the fact that some production and consumption in industrialised countries is still legal: for example, for essential uses and for export to developing countries; recycled material and material released from stockpiles produced before phase-out can also still be legally used. This makes detection of illegal material more difficult, providing an additional manner in which it can be disguised.

4.8 There are four major methods of illegal trade:

- Mislabelling of containers (for example, as HFCs or hydrocarbons or as recycled ODS) and of accompanying documentation; ODS are colourless, odourless gases at room temperature, and chemical analysis is needed to determine precisely what substances are present.
- Concealment of material, for example by constructing cylinders with hidden compartments containing illegal material.
- Disguise: virgin CFCs can be deliberately contaminated, for example with water vapour, to make them appear as recycled material.
- Diversion of material, either imported or in transit, from legal destinations (e.g. for essential uses, or for re-export to developing countries) to the domestic market, with false documentation. The EU procedure for inward processing relief (IPR) – where imports are processed in some way, usually simply being repackaged, and then re-exported – seemed particularly open to abuse.

Mislabelling and diversion are probably the main routes, but all four have been observed at various times in the US, EU and at a point in Asia. A frequent route for illegal shipments is the so-called 'triangulation' of trade, where ODS are produced legally in a developed country, exported to a legal destination, and then re-imported illegally to the original exporter.

Control: reducing demand

4.9 Unlike the other issues dealt with in this workshop, the problem of illegal trade in ODS will, in due course, solve itself, as all ODS-using equipment is eventually replaced by new machinery using replacements – though not, at current rates, before causing substantial damage to the ozone layer. The replacement process can be accelerated, however, by applying use controls in particular sectors, and instituting ODS sales bans, stockpile bans, and/or import bans (for recycled and/or virgin material) in industrialised countries. This implies additional costs to industry as equipment is retired before the end of its working life, but is probably the easiest option to implement and enforce.

4. All figures taken from Duncan Brack,'Tthe Growth and Control of Illegal Trade in ozone-Depleting Substances,' paper for 1997 Taipei International Conference on Ozone Layer Protection, December 1997.

4.10 The issue of 'technology dumping' is worth mentioning here, although it is not an illegal activity. Several developing countries are already experiencing the sale, or transfer, of out-of-date and second-hand ODS-using equipment from developed countries, a process which seems likely to accelerate if use controls are implemented more widely. This is simply a result of the different phase-out schedules of the two groups of countries, but it will, clearly, maintain ODS markets and delay phase-out in developing countries. A number of countries have introduced import restrictions on this equipment as a result.

Control: affecting supply

4.11 Again unlike the other issues dealt with in this workshop, this method of control is feasible and, indeed, is possibly the most cost-effective option. Funding for phase-out of ODS use in Russia is available from the Global Environment Facility (GEF) and also from a World Bank special initiative for production phase-out agreed in 1998; total phase-out should be achieved by the end of 2000. Six developing countries produce CFCs, of which the largest are China (40%) and India (20%); China also accounts for 90% of developing country halon production. The Multilateral Fund has recently agreed a production phase-out plan with China for CFCs (total phase-out by 2010, with specific annual targets for interim years) and agreement with India is expected this year. Other developing country producers may follow, once progress with the big two is observed.

Control: reducing illegal activities

4.12 Enforcement action directed against the illegal trade in ODS was initially slow to develop. The US was the first to take action, and national inter-agency co-operation (involving the Environmental Protection Agency (EPA), Internal Revenue Service (IRS), Customs Service and Departments of Commerce and Justice), concentrating on tracking imports and licences, and on border checks, has proved effective. The existence of the US excise tax on ODS, designed to accelerate phase-out, provided an additional incentive for illegal trade (tax evasion) but also, importantly, helped spur enforcement action. EU authorities were slower to react, with customs agencies in general being disinclined to accept, or to investigate, the scale of the problem. (The absence of border controls within the EU also acts to undercut individual agencies' efforts.) Co-ordination, mainly through an ad hoc working group of the European Commission (comprising representatives of member states' environment departments and customs agencies, and of industry) has now improved.

4.13 At an international level, the Interpol Working Group's sub-group on wastes has recently had its remit extended to cover other forms of environmental pollution, including illegal trade in ODS. WCO and Interpol have both expressed their interest in establishing a formal, permanent channel for communication, information exchange and the development of training materials with the Ozone Secretariat; a memorandum of understanding, as agreed with the CITES and Basel Convention Secretariats, would be helpful.

4.14 Possible means of improving enforcement action against illegal movements of ODS include:

At international level:

- Greater international co-operation between the various enforcement agencies, and between enforcement and environment agencies, building on existing networks such as the US National CFC Enforcement Initiative, the EU working group, Interpol, and the WCO. It would be helpful for the Ozone Secretariat to appoint an international liaison officer for this purpose.
- Further co-operation in particular over intelligence-gathering. NGOs and business can often provide valuable sources of intelligence.
- The development of regional enforcement networks.
- The extension of the WCO's Harmonised System of commodity classification and coding of specific ODS and blends of ODS (the current system covers too wide a range of chemicals within the same code).
- Much closer monitoring of ODS trade. Details of ODS exports already have to be reported to the Ozone Secretariat; this could be extended to imports as well. The 1997 Montreal Amendment to the Montreal Protocol, not yet in force, will require parties to implement a system for licensing imports and exports of all ODS, and should prove helpful – particularly if the licensing systems are harmonised (further capacity-building assistance will be required for developing countries). This could possibly be extended to require transit permits as well. In effect, this is adopting a similar kind of system as CITES and the Basel Convention, and may well prove a model for other, similar, future MEAs. If the illegal trade problem had been anticipated when the Protocol was being ne-

gotiated, these provisions may well have been included from the start.

- Closer monitoring of ODS production. A programme for the identification and monitoring of every ODS production plant worldwide has also been suggested and, given their relatively small number, is probably feasible.

At national level:

- Basic awareness raising exercises, amongst customs, enforcement and judicial authorities, and end users, including training. Co-operation with NGOs and industry in public awareness raising can yield positive results.
- Closer co-ordination and definition of responsibilities between the various enforcement (mainly customs) and environment agencies and departments, including determining responsibilities for training, detection, prosecution, etc.
- The introduction of adequate legislation – including licensing ODS producers and importers, and recognising illegal trade in ODS as an offence – and effective penalties.
- Capacity-building assistance to developing countries to help develop, implement and enforce legislation (much of this work is already carried out by UNEP).
- The development of detection techniques, such as portable analysers for spot checks on cylinder contents.

Non-compliance procedures

4.15 The Implementation Committee, comprising representatives of ten parties elected by the meeting of the parties, considers possible cases of non-compliance with the provisions of the Protocol. The Committee has, so far, mainly covered a range of countries with economies in transition, which have found it impossible to meet their phase-out target dates – and reports its recommendations to the meeting of the parties. The procedure is non-confrontational, conciliatory and co-operative. It aims to encourage and assist parties to come back into compliance, but the possibility of suspension from the Protocol, the withdrawal of financial assistance and the application of trade measures (as to a non-party – see above, 4.2) provides an important underpinning to the procedure. So far, these more drastic measures have not had to be taken, though some non-parties in non-compliance have had trade restrictions imposed on their ability to export the ODS which they should not have been producing. The Montreal Amendment, not yet in force, will require parties not in compliance to ban the export of used, recycled and reclaimed quantities of ODS (except for destruction).

4.16 One general weakness in the regime (and, indeed, in MEAs generally) is the lack of independent verification of the data reported by parties, and the failure to provide officially for reception of data from non-governmental sources. There is also no formal requirement for reporting seizures of illegal material. Greater efforts of accurate data collection and verification – which implies some additional expenditure of resources – would undoubtedly improve the integrity of the regime.

5 BASEL CONVENTION

Introduction

5.1 The newest MEA of the three considered here, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal was agreed in 1989 and came into force in 1992. As of June 1999, the Convention had 123 parties, the major exception being the US (which has signed but not yet ratified). The aim of the Convention is to protect human health and the environment against the adverse effects of the generation, transboundary movement and management of hazardous waste. It does it through minimising generation, assisting developing countries in environmentally sound management of waste, and reducing transboundary movements to a minimum consistent with their environmentally sound and efficient management.

5.2 The Convention's main focus is on trade, the movement of hazardous wastes across national boundaries. Such movements can only take place between parties to the Convention via a prior informed consent procedure involving the states of export, import and transit; each shipment of waste subject to the Convention must be accompanied by a movement document from point of departure to point of disposal. Any party also has the right to prohibit the import of all hazardous wastes into its own territory. Export to and import from non-parties is prohibited except where these movements are subject to another international agreement whose provisions do not derogate from the environmentally sound management of hazardous wastes required by the Basel Convention. (In addition, the so-called 'Ban Amendment', not yet in force, will prohibit all export of hazardous wastes destined for final disposal from Annex VII countries (OECD, EC and Liechtenstein) to non-Annex VII countries.)

Criminal activities: scale, sources and methods

5.3 In common with the other areas of international environmental crime covered in this workshop, illegal trade in waste is difficult to quantify, and there is no global estimate of the volumes or sums involved. A majority of the 50 countries responding to a questionnaire from the Secretariat in October 1997, however, reported cases of illegal trade. There have also been some national studies:

- An Austrian study in 1999 estimates that a maximum of 60% of hazardous wastes generated in Austria are correctly disposed of, the rest being either illegally disposed of or exported, often by organised crime.[5]
- In Germany in 1994, there was a 16% increase in crimes involving toxic waste disposal, compared with a 4% increase in other criminal activities.[6] In 1996, 28,935 offences with an environmental component (73% of the total of such cases) concerned unsafe disposal of waste.[7]
- Monitoring of road freight traffic across the Brenner Pass in 1998, including random checks on lorries entering Italy, showed that waste loads (hazardous and non-hazardous) accounted for 5–10% of total freight movements (most originating in Germany) with highly irregular documentation.
- In Italy in 1998, the value of illegal activities in the field of waste management amounted to about 2 billion euros.[8] Italy is a major destination for waste shipments, particularly from Germany, because of high disposal costs and strict implementation of regulations in the latter. The involvement of Italian organised crime is believed to be extensive.

5.4 Several factors contribute to the illegal trade in waste:

- Increasing costs of disposal in many industrialised countries, as standards are raised and sites become more scarce.
- Low costs of disposal in most developing countries.
- Differences in waste management infrastructure, legislation and regulation.
- The existence of several international and regional legal instruments.
- A lack of a uniform definition of 'waste' (and of 'hazardous').

5.5 Waste shipments are, by definition, difficult to conceal, but not difficult to disguise. Shipments are often mis-declared as non-hazardous, and in some cases hazardous wastes are deliberately mixed in with non-hazardous material. Since, unlike the other cases dealt with in this workshop, there is often no end user – shipments are sometimes simply dumped – there are fewer links in the chain, making detection more difficult. The technical expertise needed to deal with detection may also be lacking, particularly in developing countries. Exporters of waste are often small companies, not the original waste generators, and shipments often change hands several times prior to arrival at their final destination.

Control: reducing demand

5.6 This option has limited application in this case. In some instances, there are no end users for the wastes in question – they are simply dumped; therefore, there is no 'demand' to reduce. In other cases, however, there is effective demand because of the lower costs of disposal in some countries compared to others. A gradual increase in the standards of waste disposal and of enforcement of regulations will help to reduce this cost differential to some extent. However, there will always be other differences – population density, land and labour prices, air quality – which will maintain some level of differential, and the normal operation of the market will then lead to trade. Only far-reaching measures, such as the Ban Amendment, or regional instruments such as the Bamako Convention, will change this state of affairs. The amendment, when ratified, may therefore increase the incentive for illegal trade, though at the same time, by reducing overall volumes, it should make concealment more difficult and detection easier.

Control: affecting supply

5.7 The introduction of clean production and waste minimisation techniques on a wide scale is probably the most effective option available. Although many of these developments will not happen quickly, less sophisticated techniques (e.g. household separation of waste) are available and can have a substantial impact on immediate reduc-

5. See *International Hazardous Wastes Management News* 134 (May 199), p.8.
6. UK Environmental Agency.
7. Federal Environment Agency.
8. Italian Agency for the Protection of the Environment.

tions of waste volumes. Particular types of hazardous waste – e.g. chlorinated solvents – can be targeted for rapid reduction (note the success of the Montreal Protocol). Given the rapid growth in overall volumes of waste, this is an area which undoubtedly requires greater attention.

Control: reducing illegal activities

5.8 The 1997 questionnaire to parties revealed that there was still some way to go in implementing the provisions of the Convention. Two-thirds of the responding parties had enacted national legislation, but less than half had legislation on the prevention and punishment of illegal trade. A majority of respondents had no or inadequate procedures for returning illegal shipments, and non-existent or insufficient inter-ministerial co-ordination aimed at preventing illegal trade. The most frequent enforcement measures applied were border controls, transport controls and sanctions. The main obstacles encountered were a lack of training, facilities for testing and sampling, and a general lack of resources.

5.9 Parties replying to the questionnaire indicated a series of actions which could be taken to improve the situation:

- Further development and updating of national legislation.
- Improved monitoring systems.
- Improved facilities for testing and sampling.
- Better hazard characterisation and hazardous waste identification and classification.
- Training of personnel dealing with hazardous waste, including customs officers, managers, environmental inspectors, police officers, etc.
- Effective enforcement procedures and programmes.

Other possibilities include:

- Enhanced communication between the relevant agencies within and between countries.
- Collaborative law enforcement projects between neighbouring countries, the development of regional enforcement networks, and the preparation of guidelines for co-operation at regional and global levels.
- Information sharing on best practice, and best technologies, in the application of intelligence systems and data exchange.
- Public awareness raising programmes.
- Greater co-ordination with NGOs and the business sector in gathering information.
- More research on the extent and impact of illegal traffic, in particular in developing countries.

5.10 A number of these suggestions have been incorporated in the strategy adopted by the conference of the parties to prevent and monitor illegal traffic. 'Guidance Elements for Detection, Prevention and Control of Illegal Traffic in Hazardous Wastes' were adopted in November 1998, setting out procedures to be followed in detecting and intercepting illegal trade, testing materials, returning them to the exporter and dealing with abandoned waste, and co-operating with authorities both domestically and internationally. The Guidance Elements are currently being further developed.

5.11 The Convention's Secretariat is also a member of the sub-working group on hazardous wastes (now environmental pollution) established by Interpol. Interpol's 'training for trainers' programme on environmental criminal investigations includes waste crime, and the first course (for central and eastern European countries) was run by the Interpol Secretariat in March 1999; the second (for southern African states) will take place in November 1999. The WCO signed a memorandum of understanding with the Basel Convention Secretariat in 1997 and has conducted joint technical meetings and produced training programmes and publications for customs staff. The identification of a liaison contact within the Convention Secretariat could improve international co-ordination of information and enforcement.

Non-compliance procedures

5.12 The non-compliance procedure of the Basel Convention is still in its infancy, dealing so far only with data reporting. If a party believes that another party is in breach of its obligations under the Convention, it is required to inform the Secretariat – but there is then no procedure set out to determine what happens next. If illegal traffic arises because of conduct on the part of an exporter, the state of export is required to take back the material involved.

5.13 The parties to the Convention have recognised the need to develop the non-compliance system further, using the Montreal Protocol as a basic model. Further work to develop a mechanism for monitoring the implementation of and compliance with the Convention's obligations will take place during 2000–01, with a view to adoption at the sixth conference of the parties in 2001. One feature of particular interest, and of possible relevance to other MEAs, is the possible role of

NGOs in the procedure – one case of non-compliance has already been reported to the Secretariat by Greenpeace.

5.14 In contrast to CITES and the Montreal Protocol, the Basel Convention is younger, less developed and has less widespread coverage. One very simple way of improving compliance with the Convention, and of controlling more effectively illegal activities, would be for more countries to sign, ratify and implement it. UNEP should take further steps to encourage more non-parties to accede to the Convention.

6 COMMON SOLUTIONS

6.1 The main message of this workshop is that international environmental crime is a serious and growing problem. Extending the analysis beyond the three MEAs considered here to include other activities, e.g. illegal logging, indicates a possible total value of the order of $20–40 billion a year, about 5–10% of the size of the global drugs trade. Compared to the 'war on drugs', however, the resources and political will devoted to tackling to international environmental crime are minimal – yet the problem threatens every citizen of the world, and undermines several key environmental treaties.

6.2 A core message, worth repeating, therefore, is that political leaders need to recognise the magnitude of the problem and devote the effort and resources required to tackle it effectively. G8 environment ministers' and leaders' summits should maintain their level of awareness of the issue, and pledge additional resources to it. UNEP can and should play a major role in highlighting such issues and co-ordinating international action and its Executive Director is committed to do this.

6.3 Opportunities should also be taken to raise the issue in other international forums and organisations. The UN Commission on Sustainable Development, and in particular the 'Earth Summit + 10' meeting scheduled for 2002 provides an obvious possibility. The forthcoming WTO 'Millennium Round' of trade negotiations also needs to be aware of the topic, and of the value of particular trade restrictions – licensing, MEA enforcement mechanisms, etc. – in controlling illegal trade. Furthermore, this is a matter for regular review by the UNEP Governing Council.

6.4 Looking at of the three MEAs examined in this paper (Sections 3, 4 and 5), many similar proposals for action occur throughout, and there is clearly scope for general action at an international level in following them through. The main sets of potential actions linking all three areas (and others) are listed, in the rest of this section. One common requirement for any enforcement action, however, is full domestic implementation of the MEAs and their requirements, with adequate legislation and penalties for transgressors as well as trained personnel.

Taking a lead in co-operation

6.5 Further cooperation between countries and agencies, at international, regional and national levels, is clearly necessary. This includes:

- Greater co-operation between agencies at the international level, including UNEP and the MEA Secretariats, and other existing networks such as Interpol, the World Customs Organisation, INECE and IMPEL. Intelligence gathering, information exchange, guidance (such as codes of best practice) and training can all be co-ordinated and delivered more effectively at international levels at defined intervals. Formal memoranda of understanding are likely to be helpful.
- The identification and dissemination of single liaison points within all relevant organisations – such as MEA Secretariat enforcement co-ordinators, or national enforcement co-ordinators.
- Involvement of enforcement officials in MEA discussions and negotiations.
- Co-operation with other agencies dealing with international crime, particularly organised crime.
- Encouragement for regional enforcement networks and co-operative agreements such as the Lusaka Agreement and NAWEG, which provides a possible model for other regions and other MEAs.
- Greater co-operation between agencies at national level (building on the successes of, e.g., the US National CFC Enforcement Initiative and 'Operation Cool Breeze' on illegal ODS, or on the UK Partnership for Action against Wildlife Crime (PAW), which includes NGOs). There is a strong case for establishing national environmental crime units or working parties, as recommended by Interpol.
- More efforts to introduce and harmonise (for example, in terms of penalties) relevant legislation.

Identification: tracking and certification

6.6 A recurring theme is the need for greater information, particularly on the movement of illegal

materials. Possible actions include:

- More research and effort in collecting data on the extent of the problem and the routes of illegal trade. The Interpol analyses of wildlife crime could possibly be extended into other areas; and NGOs can frequently be valuable partners in this area.
- Possible extension of the data reporting requirements of MEAs to include estimates of the extent of illegal trade.
- The development of independent verification of data reported under MEAs.
- Extension of the WCO's Harmonised System of classification to cover all relevant items.
- Greater investment in tracking mechanisms, identification of country/factory/area of origin, requirements for export and import licences, preshipment inspections, certification systems, etc. (Possible complications with trade rules and the World Trade Organisation exist here.)
- The establishment of registers of licensed traders.
- The greater use of new technology in tracking movements.

Resources

6.7 Another common theme is the need for more resources, in finance and personnel. G8 summits have proved of value in raising the profile of the issues, but would be of even greater value if they could pledge the provision of extra resources. This includes:

- Identification and adoption of the most cost-effective mix of policies targeted at demand, supply and illegal movements; this will of course vary depending on the MEA, but most of them involve spending more money.
- Co-ordinated financial and technical assistance, with capacity building in developing countries and transition economies. As some cases of environmental crime may involve unpaid taxes or charges, limited investment here will reap financial as well as environmental dividends.
- A higher priority for tackling environmental crime among enforcement agencies, such as police and customs.
- More resources for the monitoring and implementation of MEAs and regional instruments, thereby improving their effectiveness.
- Capacity building and information sharing in drawing up and implementing effective legislation.

Awareness and public education

6.8 Finally, underlying all these actions must be a co-ordinated effort to raise awareness of the issues – a common problem, of course, for environmental policies in general. This includes:

- In particular, raising awareness of the issue amongst key opinion-formers and decision-makers such as ministers.
- More effort behind awareness campaigns, highlighting the problems and possible solutions, amongst enforcement agencies, relevant industry (e.g. ODS end users) and the general public.
- Greater links with business and NGOs, particularly as regards intelligence gathering and public awareness campaigns.

THE THREE MEAs REVIEWED:
CHALLENGES AND OPPORTUNITIES
BY THE CONVENTION SECRETARIATS

1 – CITES BY JOHN SELLAR
2 – OZONE BY GILBERT BANKOBEZA
3 – BASEL BY IWONA RUMMEL-BULSKA AND HELLE HUSUM

Enforcement of and Compliance with the Convention on International Trade in Endangered Species of Wild Fauna and Flora

Prepared by
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Since time immemorial, most dangerous of species, *homo sapiens*, has used animals and plants to his own ends. He has fed upon them, clothed himself with their skins and treated himself with their medicinal properties. Throughout centuries of Man's existence, this exploitation of wild fauna and flora has, in essence, probably changed little.

It was not until perhaps the 1800's that Man began to reflect on the ways that he used the species with which he shares the Earth. Even then, many of the first pieces of legislation adopted by 'developed' nations tended to concentrate on animal welfare issues and were designed simply to punish acts of cruelty. Initial international discussion on what we might now regard as conservation centered on the colonial powers' anxieties that the hunting of 'big game' in African range states was threatened by over-exploitation. Many people would argue that, even today, we still place too much emphasis on what has come to be known as 'megafauna'; elephants, rhino, large cats, etc.

What is not in question, though, is that unregulated trade is now the second greatest threat to endangered species in the world, behind habitat destruction. Interpol estimates that illegal trade in wildlife may well form the second largest criminal activity across the globe, next to narcotics.

Whilst a number of international treaties were concluded, and some even ratified, most environmentalists agree that it was with the signing of a draft convention by 21 countries, in Washington on 3 March 1973, that the first effective steps in wildlife conservation truly began at a global level. Although still known in some parts of the world as the Washington Convention, what entered into force on 1 July 1975 is more properly called the Convention on International Trade in Endangered Species of Wild Fauna and Flora. It is commonly known by its acronym of "CITES".

CITES is widely regarded as one of the most successful of all conservation treaties. The mere fact that now has 145 Parties illustrates the manner in which it has grown and continues to be viewed as relevant. 'Producer' countries appreciate that the import controls of CITES, as well as control at the place of export, offer support to their efforts to combat exploitation of their natural resources by poachers and illicit traders. On the other hand, 'consuming' nations welcome the controls that enable their legitimate dealers to obtain supplies at what should be sustainable levels.

There are a number of misconceptions about CITES. Not the least of these, and widespread amongst law enforcement officers, is that a principal aim of CITES is to ban wildlife trade. Whilst it is certainly true that the Convention recognizes, and seeks to address, the dangers of uncontrolled trade, it should rather be viewed as a regulating mechanism for trade. Indeed, it has been noted at meetings of the Convention that "commercial trade may be beneficial to the conservation of species and ecosystems and/or to the development of local people when carried out at levels that are not detrimental to the survival of the species in question."

A vital element of the Convention is its appendices. The first three list the species controlled by CITES and determine the level of control, whilst the last outlines the form of permits to be used in regulating trade. These appendices will be discussed in much greater detail later but species of conservation concern are, essentially, divided as follows:

- Species threatened with extinction that are or could be affected by trade (Appendix I)
- Species not necessarily in danger of extinction but which could become so if trade in them were not strictly regulated (Appendix II)
- Species which individual Parties to the Convention choose to make subject to regulations and for which the co-operation of other Parties is required in controlling trade (Appendix III).

Trade in animals, plants and their products is estimated to generate an annual turnover well in excess of $20 billion (USD). It is thought that a quarter of the trade might be unlawful.

Every year the trade involves:

- 40,000 primates
- 9 to 10 million orchids
- several million birds
- 10 million reptile skins
- several million animal pelts
- 7 to 8 million cacti
- 500 million tropical fish

For example, in a fifteen-year period France imported frozen legs from almost 2 billion frogs. In one year alone, Turkey exported 45 million snowdrop bulbs.

The Structure of CITES

One of the many successes of CITES has been the way in which the Convention has evolved and adapted to accommodate increasing knowledge on both trade patterns and the population status of species. To understand the workings of the Convention, one must have an appreciation of its administrative structure.

The Parties to the Convention meet once every two years at the Conference as the Parties. There, discussions will take place on transferring, adding or deleting species from the appendices.

Resolutions and Decisions emanating from the Conference will help guide Parties on specific aspects of implementation, enforcement and research. Observers at the meeting include non-Parties, non-governmental organizations, conservationists, technical specialists, hunters, traders and the media but only the Parties vote on proposals.

The Standing Committee, which meets at least twice each year, is the Convention's executive inter-sessional committee that monitors the working of the Convention between Conferences. It is made up of elected representatives from the six major geographical regions of CITES.

The Animals, Plants, Nomenclature and Identification Manual Committees concentrate on more technical issues.

The United Nations Environment Programme administers the CITES Secretariat, based in Geneva. It comprises a small team of about 25 staff from various countries. It is led by a Secretary General and includes technical, scientific and support personnel. The Secretariat does all in its power to gather the most up-to-date and complete information on all questions relating to the scope of the Convention and provides permanent technical support to the Parties. The work of the secretariat is divided into several functional units: Executive Direction and Management; Capacity Building; Convention Interpretation and Servicing; Enforcement Assistance and Scientific Co-ordination.

The Secretariat's Enforcement Assistance staff maintains close links with INTERPOL and the World Customs Organization and intelligence information relating to illicit trafficking of wildlife is shared between the three organizations. They also engage in joint projects, training and helping raise awareness of CITES issues amongst national Police and Customs personnel.

Each Party to the Convention appoints one or more Management Authorities that are responsible for issuing permits and liaising with the Secretariat and other Parties. Management Authorities are often part of a nation's Ministry of Environment, Agriculture or Trade and Commerce. Each Party also designates one or more Scientific Authorities who play a vital role in giving opinions on the application of the Convention and by determining sustainable levels of international trade for species.

Illegal activities

The potential profits deriving from illegal activities illustrate why trade in such activities is attractive to the criminal element. In many ways it replicates the narcotics trades. Drugs and wildlife often originate in 'developing' countries, are collected at relatively little cost, will be smuggled via a chain of couriers and dealers to the developed world, and then retailed to customers and end-users. All along the chain the price of the product increases, with each individual player raking off his percentage.

For instance, it may cost very little to capture an exotic bird somewhere in the Southern Hemisphere, yet there will be customers willing to pay tens of thousands of dollars once it reaches North America or Europe. Rhino horn, used in traditional Asian medicines, may attract prices per kilogram that exceed those of heroin or cocaine.

Shawls made from the wool (called Shahtoosh) of endangered Tibetan Antelopes have been seized in London shops with individual price tags of over £9,000 (GBP).

Intelligence suggests that the Russian Mafia is linked to illegal poaching of sturgeon fish species in the Caspian Sea that are then used to produce caviar. Poor quality and unhygienic fish eggs are also fraudulently traded as high-grade caviar.

Experience has shown that wildlife crime may often be linked to other unlawful activities. Import inspection controls in the United States have revealed ship-

ments of venomous snakes, each of which had condoms filled with narcotics stuffed into them. Although many of the snakes had died during the journey, had the crime not been discovered, the combination of goods offered a healthy profit to those responsible. Even the dead reptiles would not have been wasted since their skins could have been utilized.

Tigers are being brought to the very edge of extinction through poaching. It is also important to acknowledge that many of the methods involved in capturing animals are inhumane, the conditions in which live species are transported and smuggled may often be worse, and that high mortality rates have been observed, both in the legal and illicit trades.

Profits aside, lack of awareness, limited resources, corruption in some nations, poor training and ill-equipped Customs and Police, all combine to make life easier for the wildlife criminal.

Why should CITES interest enforcement officers?

One simple answer to the question is that Police and Customs personnel are not rare breeds that remove their uniforms at the end of each working day in order to retire to some cave in the woods to then be divorced from the rest of society. Of course not, Police and Customs officers share the same concerns as their fellow citizens but, importantly, have the opportunity to actually impact upon conservation in a highly practical manner.

It is vital to remember two essential factors that apply to every international treaty or convention, including CITES. Firstly, conventions, in themselves, are not law. Every country that becomes a party to a treaty will thereafter be required to enact, or adapt, domestic legislation so that the terms of the convention can be implemented within its borders and territories. Due to the specialized nature of wildlife trade, many countries have introduced specific statutes and regulations, whilst others have altered existing laws to take account of the provisions of CITES. The second factor, and perhaps even more important, is that no matter how good one's law might be, it is worthless unless it is enforced.

Customs officers may be regarded as very much in the 'front-line' of that enforcement. It has been estimated that Customs personnel make 60% of all seizures of items in illicit trade. The very nature of their role, their routine inspection activities and their duty posts at air and sea ports mean they are ideally placed and ready for this form of law enforcement. What remains is to equip them with a better understanding of the Convention and its implementation.

Tackling Illicit Trade

Experience has demonstrated that combating illegal trade is far from easy. The acquisition of CITES-listed specimens often takes place in contravention of Parties' domestic legislation and, consequently, in a secretive manner. The next step in the illicit chain, cross-border smuggling, involves a wide variety of modus operandi; including counterfeit documents, fraudulent applications for genuine CITES permits, concealment of specimens in shipments of other goods, false declarations to Customs officials and avoidance of inspection and border controls. The final destination of specimens can often be a 'black' market that operates contrary to consumer States' domestic laws or, particularly in the case of live animals and birds, that may be laundered via apparently bona fide captive breeding operations.

The list of potential methods of avoiding the Convention's controls is almost endless and the ingenuity used by illicit wildlife traders matches anything encountered in other forms of crime.

It is not all bad news, however. The establishment, training and equipping of specialized units to concentrate on wildlife crime has been shown to be extremely effective. A number of Parties to the Convention have taken such initiatives and the subsequent rise in detection of poaching or illicit acquisition of specimens, interceptions of illegal shipments and successful prosecutions have illustrated the success of such moves.

Equally important is the need to exchange information. This is vital where international movement of illegal shipments is taking place. Again, here too, experience has demonstrated that multi-agency and cross-border co-operation has led to a number of highly successful operations.

In ensuring enforcement of and compliance with Multilateral Environmental Agreements, no new wheels need to be invented. The very same methods used to tackle other forms of crime can readily be adapted to assist in implementing CITES. Perhaps we simply all need to ensure that we have the right type of tyres fitted to those wheels and inflated to the correct pressures.

Regional enforcement networks can play an important role and these have successfully been established in parts of Africa and in North America and Europe. The Secretariat is willing and ready to assist in the creation, co-ordination and support to other regions that may be similarly inclined.

The Montreal Protocol on Substances That Deplete The Ozone Layer and Illegal Trade in Ozone-depleting Substances

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I. THE OZONE AGREEMENTS

A. *The Vienna Convention for the Protection of the Ozone Layer, 1985*

1. The Vienna Convention for the Protection of the Ozone Layer was concluded at Vienna on 22 March 1985 as a framework convention intended to address the adverse effects on human health and the environment brought about through the modification of the ozone layer as a result of human activities. Article 2 of the Convention lays out general obligations of the Parties, which are, *inter alia*:

   (a) To co-operate through systematic observations, research and information exchange in order to better understand and assess the effects on human health and the environment from the modification of the ozone layer;

   (b) To adopt legislative or administrative measures and co-operate in harmonizing appropriate policies to control, limit or prevent human activities resulting in ozone modification; and

   (c) To co-operate in the formulation of agreed measures and procedures to implement the Convention, with a view to the adoption of protocols and annexes.

2. Article 8 of the Convention provides for adoption of protocols pursuant to article 2. It was on this basis that the Montreal Protocol on Substances that Deplete the Ozone Layer was concluded in 1987.

B. *The Montreal Protocol on Substances that Deplete the Ozone Layer, 1987*

1. Background

3. The Montreal Protocol on Substances that Deplete the Ozone Layer was concluded in Montreal on 16 September 1987. The overall purpose of the Protocol is to gradually reduce and finally phase out global emissions of all ozone-depleting substances (ODS).

4. Since 1987, the control schedules under the Protocol have been adjusted four times: by the Second Meeting of the Parties (London, 1990); by the Fourth Meeting of the Parties (Copenhagen, 1992); by the Seventh Meeting of the Parties (Vienna, 1995); and by the Ninth Meeting of the Parties (Montreal, 1997). In addition, amendments to the Protocol were adopted by the Second, Fourth and Ninth Meetings of the Parties. In accordance with article 2, paragraph 9 (d), of the Montreal Protocol, adjustments to the Protocol enter into force six months after the date of notification of such adjustments by the Depositary, namely, the Secretary-General of the United Nations. All amendments to the Protocol are subject to ratification by each Party, in the same way as the Convention and the Protocol. As of May 1999, the status of ratification of the Montreal Protocol and its amendments was as follows:

Montreal Protocol	-	168 Parties;
London Amendment	-	129 Parties;
Copenhagen Amendment	-	89 Parties; and
Montreal Amendment	-	13 Parties (not yet in force).

2. Controlled substances

5. There are some 90 substances controlled by the Montreal Protocol, grouped into four annexes, as follows:

Annex A - Group I	-Chlorofluorocarbons (CFCs)
Annex A - Group II	-Halons
Annex B - Group I	- Other fully halogenated CFCs

Annex B - Group II	-	Carbon tetrachloride
Annex B - Group III	-	1,1,1-trichloroethane (methyl chloroform)
Annex C - Group I	-	Hydrochlorofluoro-carbons (HCFCs)
Annex C - Group II	-	Hydrobromofluoro-carbons (HBFCs)
Annex E - Group I	-	Methyl bromide

Annex D contains a list of products containing controlled substances specified in annex A, such as automobile air-conditioning units, domestic and commercial refrigeration, etc.

3. Phase-out schedule of ozone-depleting substances

6. Article 2 of the Protocol provides for a phase-out schedule for each group of controlled substances applicable to developed countries, while article 5, paragraph 8, provides for a phase-out schedule of the same substances for developing countries. The current phase-out schedule of ozone-depleting substances applicable to developed and developing ("Article 5") countries is as reflected in the annex to the present paper.

4. Trade restrictions under Article 4 of the Protocol

7. Article 4 of the Protocol was adopted to deal comprehensively with party/non-party trade in all manifestations of ozone-depleting substances B the chemicals, products containing them, products made with them and technologies to produce or use them. The emergence of illegal trade in ozone-depleting substances especially CFCs in recent years has prompted Parties to decide to license each import and export of controlled substances starting in 2000 according to article 4 B of the Protocol introduced by the 1997 Montreal Amendment. The Protocol, as amended in 1997, also prohibits, under the new article 4 A, any Party that is continuing to produce for domestic consumption (other than for exempted essential uses) any substance after its phase-out date from exporting it in recycled or reclaimed form.

5. Current trade restrictions

8. The current restrictions on trade in ozone-depleting substances (ODS) with non-Parties are as follows:

(a) Annex A substances:

(i) Import from non-Parties banned from January 1990;

(ii) Export to non-Parties banned from January 1993.

(b) Annex B substances: import and export from and/or to non-Parties to the London Amendment banned from August 1993;

(c) Annex C, Group II, substances (HBFCs): import and export from and/or to non-Parties to the Copenhagen Amendment banned from June 1995.;

(d) Annex E substance (methyl bromide): import and export from and/or to non-Parties to the Montreal Amendment will take effect one year after the entry into force of that Amendment;

(e) Annex C, Group I, substances (HCFCs): no trade restrictions as yet.

9. The restrictions on exports of ODS-technologies are as follows:

(a) Parties are discouraged Ato the fullest practicable extent, from exporting technology for producing ODS (excepting HCFCs);

(b) No new subsidies, aid, etc, for export to non-Parties of equipment or technology to make ODS (excepting HCFCs);

(c) An exception is provided for equipment or technology to recycle ODS.

10. The ban for trade in ODS products with non-Parties is as follows:

(a) Import of products (listed in Annex D) containing annex A substances from non-Parties banned from May 1992;

(b) The Fifth Meeting of the Parties, held in 1993, decided that it was not feasible to ban or restrict trade in products made with, but not containing, annex A substances.

(c) The Meeting also decided that products containing annex B and annex C, group I (HCFCs) substances should not be listed for a trade ban with non-Parties.

6. Special situation of developing countries

11. Article 5 of the Protocol refers to the special situation of developing countries. Any developing country whose annual calculated level of consumption of the controlled substances in annex A is less than 0.3 kg per capita and 0.2 kg per capita for substances in annex B on the date of entry into force of the Protocol for it or at any time thereafter until 1 January 1999, may delay its compliance with the phase-out schedule of ozone-depleting substances for a specified number of years beyond the phase-out schedules for Parties not operating under Article 5. At present, there are 115 such Parties, while another 10 are temporarily categorized as operating under article 5 pending receipt of data on consumption of ozone-depleting substances.

7. Data reporting

12. Parties are required to report to the Secretariat statistical data on production and consumption of controlled substances for 1986 (the baseline year for annex A substances), 1989 (the baseline year for annex B and C substances) and 1991 (the baseline year for the annex E substance) within three months of becoming a party to the Montreal Protocol and for every year thereafter. The baselines applicable to developing countries are: production and consumption average of 1995-1997 for annex A substances; production and consumption average of 1998-2000 for annex B substances; 2015 consumption for annex C, group I, substances; and production and consumption average of 1995-1998 for the annex E substance. Data-reporting is important for monitoring compliance with the control measures on ozone-depleting substances. The data reported are analysed by the Secretariat and the conclusions submitted to the Implementation Committee under the Non-Compliance Procedure for the Montreal Protocol and to the Meetings of the Parties.

8. Non-compliance procedure

13. Article 8 of the Protocol provides for Parties to consider and approve procedures and institutional mechanisms for determining non-compliance with the provisions of the Protocol. In 1990, the Parties approved an interim non-compliance procedure for monitoring and enforcing compliance with the Protocol. This interim procedure was refined and approved on a permanent basis in 1992. The procedure is non-confrontational, conciliatory and cooperative in that it encourages and helps Parties that are in breach of their obligations to achieve full compliance with the Protocol. The procedure includes the establishment of an Implementation Committee composed of 10 Parties with a mandate to receive and consider any reports and submissions on non-compliance by any Party to the Protocol and to make recommendations to the Meeting of the Parties. It also includes an indicative list of measures that might be taken by a Meeting of the Parties in respect of non-compliance. These measures are:

(a) Providing appropriate assistance, including assistance for collection and reporting of data, technical assistance, technology transfer, and financial assistance, information transfer and training;

(b) Issuing cautions; and

(c) Suspension, in accordance with rules of international law concerning the suspension of the operation of a treaty.

14. The non-compliance procedure was reviewed by an Ad Hoc Working Group of Legal and Technical established by the Ninth Meeting of the Parties in 1998. The findings and recommendations of the Working Group were submitted to the Tenth Meeting of the Parties in November 1998, where the procedure was slightly modified as a result.

9. Financial Mechanism

15. The Protocol's Financial Mechanism provided under Article 10 includes the establishment of a Multilateral Fund to meet the agreed incremental costs to developing countries of fulfilling their obligations under the Protocol. It was established by the Second Meeting of the Parties, in June 1990, on an interim basis for three years (1991-1993). The purpose of the Fund is to enable Article 5 Parties to implement their commitments under the 1987 Montreal Protocol and its subsequent adjustments and amendments. Non-Article 5 Parties are responsible for financing the Fund, based on the United Nations scale of assessment.

16. Total contributions to the Interim Fund were initially assessed at US$ 160 million for 1991-1993 and later increased to US$ 240 million for the same period. The Fund was made permanent in January 1993 and replenished in an amount of US$ 455 million for an additional three-year period (1993-1996). The third replenishment was approved by the Parties in the amount of US$ 466 million in November 1996 to cover the

period 1997-1999. Negotiations for the fourth replenishment to cover the period 2000-2002 are currently under way, and a decision is expected in December 1999.

10. Structure of the Multilateral Fund

17. The policies and funding levels of the Multilateral Fund are determined by the meetings of the Parties to the Montreal Protocol once in three years. Responsibility for overseeing the operation of the Fund rests with an Executive Committee, which is assisted by the Fund Secretariat. Implementation of the projects funded is effected through four implementing agencies. UNEP acts as Treasurer of the Fund. To date, the Fund has already disbursed a total of US$ 900 million to 110 developing countries for such activities as institutional strengthening, training, project preparation and the implementation of investment projects for ODS phase-out at plant level. More than 2000 projects have already been approved and are expected to result in the phase-out of about 60 per cent of the total consumption of ozone-depleting substances by developing countries.

11. The Implementing Agencies

18. Four international agencies have contractual agreements with the Executive Committee to determine their respective responsibilities in assisting Article 5 countries in preparing country programmes, feasibility studies and project proposals and in providing technical assistance for project development and implementation. The agencies are the United Nations Development Programme (UNDP), the United Nations Environment Programme (UNEP), the United Nations Industrial Development Programme (UNIDO) and the World Bank. UNEP implements non-investment activities and provides the clearing-house functions, while the other agencies focus primarily on transfer of technologies to enterprises in Article 5 countries for purpose of phasing out ODS.

12. The Global Environment Facility (GEF)

19. GEF was established to assist eligible countries on four global environmental issues C ozone-depletion, climate change, biological diversity and international waters. GEF assists projects and activities for phasing-out ozone-depleting substances in Eastern European countries with economies in transition, which are not eligible for assistance from the Multilateral Fund since they are not recognized as developing countries under the Protocol. These countries have experienced many problems in their transition to a market economy and have found it difficult to implement the Protocol. An amount of US$ 110 million has already been approved by GEF to assist these countries to implement the Protocol. The implementing agencies of GEF projects are UNDP, UNEP and the World Bank.

13. Future challenges

20. While the Montreal Protocol has been hailed as success, there are still some challenges to be overcome, including relations with non-parties and curbing illegal trade in ozone depleting substances, which is considered in the next chapter.

II. DEVELOPMENT OF ILLEGAL TRADE

21. Illegal trade in ozone-depleting substances is a phenomenon which started in the mid-1990s in North America and Europe, following the gradual phase out of ozone-depleting substances and the attendant shortage of such substances to service old and existing equipment which are still dependent on them. The mandatory phase-out of production and consumption of ozone-depleting substances by developed countries beginning in 1994 was not matched by a phase out of existing ODS-dependent equipment. The sudden shortage of supplies in the market resulted in a recourse to illegal means for obtaining such supplies, while at the same time alternative substances were expensive.

A. Causes and sources

22. Illegal trade in ozone-depleting substances results from a number of factors that have been rapidly changing in the light of market demands. Demand for chlorofluorocarbons (CFCs) and other ODS in developed countries did not cease with the official phase-out of production and consumption of these substances as provided for under the Protocol. The need for servicing existing CFC-based equipment, such as air-conditioning and refrigeration systems, precipitated a search for CFCs supplies, given that the alternative, ozone-friendly substances newly introduced on the market proved expensive, particularly in the refrigeration and fire-fighting sectors. An additional reason for not moving towards alternative substances is that they have to be adapted or retrofitted into the equipment before they can be used or in some cases the equipment has to be replaced. The combination of diminishing CFC and other ODS supplies and the relative cost of expensive substitutes has over the years contributed

to the growth of illegal trade in ozone-depleting substance. The volume of this trade is now estimated at up to 30,000 tonnes annually. Although most cases of illegal trade have so far involved CFCs and halons, it is anticipated that illegal trade in other controlled substances, such as methyl bromide and HCFCs, will also develop once the final phase-out dates for these substances approach.

23. The Montreal Protocol regime permits continued production and/or consumption of ozone-depleting substances for certain purposes:

(a) For use as feedstock (where the chemicals are completely transformed into other substances) or as process agents (where the ODS are not completely transformed but are not emitted);

(b) For essential-use exemptions agreed by successive Meetings of the Parties. Currently, these include CFCs for use as propellants in metered-dose inhalers for treating asthma, together with small amounts of CFCs for laboratory and analytical uses, and a small volume of halons for fire-fighting purposes in the Russian Federation;

(c) For export to developing countries to meet their "basic domestic needs". The Protocol permits production of up to 15 per cent of the baseline level (1986 production for CFCs and halons) for this purpose;

(d) In the case of methyl bromide, amounts used for quarantine and pre-shipment applications are not counted in the calculation of "consumption" under the Protocol.

24. In addition, ODS produced before the phase-out dates may still be legally sold and consumed in non-Article 5 Parties even after phase-out. These may be available from stockpiles or "banks", or may be recovered from old equipment and recycled.

25. Article 5 of the Protocol provides for developing countries to delay the phase-out of both production and consumption of ODS for a specified number of years. These exemptions, which were well intentioned in the Protocol, have been abused by unscrupulous traders to engage in illegal trade because of the shortage of supplies in developed countries and the easy availability of CFCs and halons elsewhere in developing countries.

B. Methods of illegal trade

26. Since 1992, the Parties to the Montreal Protocol have been encouraging the recycling of ODS as one of the methods to reduce the use of new ODS and its eventual phase out. Since recycled substances are not subject to the controls contained in the Montreal Protocol, apart from the obligation requiring the Parties to report to the Secretariat the quantities traded, it is difficult to distinguish between new and recycled substances. More so, if new substances are deliberately contaminated by, for example, a small amount of water vapour to make them appear as genuine recycled substances. Thus, newly produced ozone-depleting substances may be mislabelled as recycled and traded illegally. In addition:

(a) New CFCs and halons can be mislabelled as legal substances such as HCFCs or hydrocarbons;

(b) Illegal substances can also be hidden by fitting extra containers with legal substances around cylinders full of illegal substances to mislead customs officers taking samples;

(c) Ozone-depleting substances in transit through developed countries to developing countries can be diverted into local markets instead of being re-exported;

(d) Ozone-depleting substances imported for legal purposes, such as use as feedstock or process agents, or for essential-use exemptions can be diverted illegally into local markets.

C. Extent of illegal trade

27. The full extent and volume of illegal trade in ozone-depleting substances may be difficult to determine as hard evidence cannot be obtained in some situations. However, certain pointers in the United States of America, Europe and elsewhere indicate a growing practice in smuggling of ODS.

28. In the United States, for example, almost all automobiles are fitted with mobile air-conditioning systems, a far higher proportion than in Europe. This situation has led not only to a greater demand for refrigerant fluids but also to the growth of a network of small-scale car-servicing and repair operations whose activities may not be easily monitored and regulated according to the relevant legislation. The introduction in the United

States in 1990 of a CFC excise tax at the point of sale created an incentive for illegal trade by way of tax evasion. CFC prices quoted to retailers did not rise in line with the excise-tax increases, an indication of the growing CFC illegal trade.

29. Enforcement action in the United States, involving the Environmental Protection Agency (EPA), the Customs Service, the Internal Revenue Service and the Departments of Commerce and Justice, has been very effective and resulting into prosecution and conviction of criminals.

30. In Europe, evidence of illegal trade in ozone-depleting substances is derived from four factors:

(a) The existence of many refrigeration and air-conditioning systems which need regular servicing and refilling in offices, supermarkets, shops, etc;

(b) The readily availability of CFCs for sale to European companies reported by investigative non-governmental organizations, and of suppliers willing to disguise their products;

(c) The price of CFCs failed to rise in the years following phase-out at the end of 1994 and there has been very little demand for retrofitting except in machinery which uses the blend of CFC-115 and HCFC-22, i.e. R502;

(d) Substances imported into the European Community for repackaging and re-export may end up being sold on the local market.

31. This evidence is supported by reported instances of illegal trade in the Netherlands, Spain and Italy. The sources of the illegal substances have been cited to be the Russian Federation, China and India, but it has also been alleged that some legitimate production in Europe might have been exported and illegally reimported.

32. It is currently estimated that as much as 15 per cent of the global consumption of ozone-depleting substances is accounted for by illegal trade. Although the problem of CFCs and halons will eventually solve itself, it is possible that illegal trade will develop in HCFCs as well and grow.

D. Attempts to control illegal trade

33. Illegal trade in ozone-depleting substances can only be ended through actions to stop supply and demand and to control it.

1. Actions to stop supply

34. The supply of illegal trade in ozone-depleting substances could be stopped by removing the source of such substances. The efforts being taken by Governments in Eastern Europe with assistance from GEF and World Bank for phasing out ODS production represent one effective way of stopping supply. The Multilateral Fund has already agreed to assist China to phase out production of these substances, and a similar agreement with India is expected shortly. Acceleration of the closure of production facilities in the two countries will reduce the market availability of newly produced ozone-depleting substances.

2. Actions to stop demand

35. Demand for illegal ODS may be stopped by encouraging industry to replace ODS-dependent equipment with new technology. Government intervention could accelerate this process by applying use controls to particular sectors such as banning refillable refrigeration systems containing a specified amount of ODS by a certain date. Other measures to stop ODS demand may include banning sale or stockpiling of CFCs and other ODS and banning all imports of recycled ozone-depleting substances.

3. Actions to control illegal trade between the sources and end-use

36. Measures that need to be taken to control the movement of illegal trade between the source and end-use include: raising awareness among customs and enforcement authorities and end-users; close coordination between customs and environmental agencies and departments at the national level by clearly defining responsibilities of each agency; and determining responsibilities for training, detection and prosecution of criminal activities.

37. Increased international cooperation between various enforcement and environment agencies should be enhanced, particularly in intelligence-gathering, by building on existing institutions such as the World Customs Organization and Interpol. Environmental Crime Units could be established by bringing together customs, police and environmental agencies to exchange information. This approach could augment UNEP's activities, which have included the training of customs officers in developing countries.

38. A close monitoring of ODS production and the introduction of a system to license imports and exports of new, used, recycled and reclaimed substances would also stop illegal trade if such a measure was backed by adequate legislation and effective penalties at the domestic level.

E. MEASURES ADOPTED BY PARTIES TO THE MONTREAL PROTOCOL TO PREVENT ILLEGAL TRADE IN OZONE-DEPLETING SUBSTANCES

39. The parties to the Montreal Protocol have adopted a number of decisions which, in addition to the data-reporting requirement under Article 7 of the Protocol, require parties to report data on exports and imports of ozone-depleting substances as follows:

(a) Decision IV/24, paragraph 2, provides for annual reporting to the Secretariat by each Party on the import and export of used and recycled controlled substances;

(b) Decision VI/19, paragraph 4, provides for annual reporting to the Secretariat by each party on reclamation facilities and their capacities;

(c) Decision V/25, as amended by decision VI/14 A, provides for reporting to the Secretariat from 1 January 1995 by parties supplying controlled substances to the parties operating under paragraph 1 of Article 5.

40. If the parties were to report all the above-mentioned information every year in time, it would be possible to identify illegal trade by cross-checking imports with exports and the export of recycled substances with recycling capacity.

41. The Parties have also taken additional measures to control illegal trade in ozone-depleting substances. In 1997, the Ninth Meeting of the Parties decided to require each party to implement an import and export licensing system that would assist in the collection of sufficient information to facilitate compliance with relevant reporting requirements. The licensing system is also intended to assist Parties in the prevention of illegal traffic of controlled substances, including, as appropriate, through notification and/or regular reporting by exporting countries to importing countries and/or by allowing cross-checking of information between exporting and importing countries. A list of contact officers in all contracting Parties to the Protocol is maintained by the Secretariat for the licensing system and is updated regularly.

42. The Protocol was also amended in 1997 to provide that a party still producing ODS in non-compliance with the control schedules under the Protocol should ban the export of used, recycled and reclaimed quantities of that substance, other than for destruction. This new Article 4 A of the Protocol is designed to reduce the amount of ODS exported from countries with economies in transition and mislabelled as recycled substances given that production of new ODS is still occurring in some parties in violation of the Montreal Protocol control schedules.

43. Each of these new trade measures is designed to help deal with the problem of illegal trade. Stringent enforcement of national laws is of course also necessary. As long as there are differentiated phase-out schedules with some trade occurring legally (as opposed to a total ban), the problem of controlling illegal trade could be even more difficult than it is, compared to a total ban.

44. In 1997 and 1998, UNEP, as an implementing agency of the Multilateral Fund, conducted a series of regional training workshops in Africa, West Asia, Latin America and the Caribbean and Eastern Europe. These were trainings for customs officers and officers from ministries of trade and environment responsible for ODS import and export to enable participating countries to set up and implement efficient legal systems to control and monitor their ODS imports and exports. The training workshops have had a positive impact in terms of countries introducing licensing systems and regulations to control the import and export of ozone-depleting substances. Should these regulations be fully implemented and monitored, illegal trade in ODS may be reduced significantly.

F. EFFECTIVENESS OF INTER-AGENCY COOPERATION BOTH AT NATIONAL AND INTERNATIONAL LEVEL TO PREVENT ILLEGAL TRADE

45. The fight against illegal trade in ODS can succeed only if all measures agreed by the Parties to the Montreal Protocol can be fully implemented by each Party. At the national level, it is of crucial importance to have the maximum level of inter-agency cooperation by the relevant government departments, especially those concerned with customs, trade, justice, industry, revenue collection and the environment. These departments should form a Government Investigative Group and carry out vigorous investigations for possible illegal trade. Equally important is maximum publicity and awareness-raising to the targeted groups C importers, exporters, consumers, non-governmental organizations and civil society C on the

dangers of dealing in illegal trade in ozone-depleting substances. Much publicity should be generated by the Governments on the issue of illegal trade in ODS through the media, conferences, speeches and publications. The publicity should clarify what activity is legal or illegal and inform ODS users that illegally imported substances can be of questionable quality and may be confiscated.

46. At the international level, the introduction of a uniform petition system requiring imports of new or used ODS to be approved prior to their shipment into concerned countries could, if implemented, limit illegal trade. The introduction of a rule requiring permission for transhipments of ODS to pass through one country on their way to another country might also be effective.

47. There should be intergovernmental co-operation at the regional and sub-regional levels for the joint training of customs officers, as well as education and public awareness, on illegal trade in ozone-depleting substances, endangered species of wild fauna and flora and hazardous wastes. The same co-operation could be replicated at the national level with the involvement of various Government departments dealing with the control of ozone-depleting substances, trade in wild fauna and flora and movements of hazardous wastes. Such close co-operation will result in a maximum level of capacity-building in the three areas of concern and, at the same time, save financial and material costs. In addition, the three UNEP-administered convention secretariats C on ozone, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) C could agree on modalities for regular exchange of information. Exchange of information could be on training, education and public awareness to complement the separate activities undertaken under the three international agreements to prevent illegal trade.

48. Funds should be made available to developing countries with particular problems to enable them increase their border patrols, enforce legislation, and track production and exports. Funds should also be made available for the purchase of pressure gauges for use by customs officers at major entry ports to identify the contents of containers which may be falsely labelled. In addition, funds should be used for expanding recycling and reclamation of ozone-depleting substances within countries without such infrastructure. Such technology may create incentives to keep and reuse the refrigerants within the country. Recycling and reclamation programmes also reduce the likelihood of refrigerants being vented into the open air.

49. All parties should institute more severe criminal penalties for illegal import and export of ODS. They should also buy the tools and conduct the training necessary to curtail illegal trade. Each Party to the Montreal Protocol could be required to submit a report regarding activity to curtail illegal trade, while sanctions restricting trade in ODS may be imposed on parties that do not submit such reports to the Secretariat in a timely manner.

50. Parties to the Montreal Protocol that are not in compliance with production controls and trade restrictions might not be allowed to export ODS or import ODS from any party to the Protocol.

G. LESSONS AND OUTLOOK FOR FUTURE ATTEMPTS TO CONTROL ILLEGAL TRADE

51. The steps already taken by the parties to the Montreal Protocol to prevent illegal trade in ozone-depleting substances appear to be effective if fully implemented. Inter-agency cooperation both at the national and international levels is important if detection and control of illegal trade has to be achieved. The parties to the Montreal Protocol decided in 1995 to require each exporting party to report the details and destinations of its exports to the Secretariat. Such reporting requirement could also be prescribed for each importing party.

52. The freeze on the production and consumption of CFCs for developing countries begins on 1 July 1999. Thereafter, developed countries can export only up to 15 per cent of their baseline capacity, i.e., about 10,000 tonnes a year to developing countries. Once the reduction measures for developing countries start in the year 2002, the production facilities of developing countries will close gradually, with assistance from the Multilateral Fund. The closure is expected to be complete by 2010.

53. The production facilities of some parties to the Montreal Protocol which should have closed down by 1995 had it not been for technical and economic problems will now close down by 2000 with the help of GEF. This will stop the availability of CFCs from the source.

54. CFC-dependent equipment is being phased out, thereby reducing significantly the need for CFCs. The parties to the Montreal Protocol have also

adopted decisions calling for non-dumping into markets of developing countries of used and obsolete products and equipment that is dependent on ozone-depleting substances and no longer wanted in industrialized countries. The parties have also agreed that each party should adopt measures, including labelling, to regulate the export and import of equipment that depend on ODS.

55. The effective implementation of the import/export licensing system provided for under the Montreal Amendment to the Montreal Protocol, together with strong enforcement measures by Governments, will stop illegal trade in ozone-depleting substances.

56. International environmental crime and its impacts are not restricted to the countries of export and import alone. Their effects are transboundary and increasingly becoming global. Illegal trade in endangered species of wild fauna and flora, and their products, illegal fishing and whaling, logging and trade in timber, and illegal transport and dumping of hazardous wastes are all becoming more transboundary and global problems. They can be combatted only through international political will backed by adequate legislation and strong enforcement mechanisms.

ANNEX

PHASE OUT SCHEDULE OF CONTROLLED SUBSTANCES
APPLICABLE TO NON-ARTICLE 5 PARTIES*

SUBSTANCE	(1) YEAR	(1) CONTROL MEASURE
Annex C, Group I (HCFCs)		Base Level: (a) 2.8% of calculated level of consumption in 1989 of CFCs (b) Calculated level of consumption in 1989 of HCFCs
	1 January 2004	35 per cent consumption reduction
	1 January 2010	65 per cent consumption reduction
	1 January 2015	90 per cent consumption reduction
	1 January 2020	95.5 per cent consumption reduction
	1 January 2030	100 per cent consumption phaseout
Annex E (Methyl Bromide)		Base Level: 1991 production and consumption
	1 January 1995	Freeze production and consumption
	1 January 1999	25 per cent reduction
	1 January 2001	50 per cent reduction
	1 January 2003	70 per cent reduction
	1 January 2005	100 per cent phase out

*Other ozone-depleting substances were phased out on 1 January 1996 except for approved essential uses.

PHASE-OUT SCHEDULE OF CONTROLLED SUBST ANCES APPLICABLE TO AR TICLE 5 P ARTIES

SUBSTANCE	(1) YEAR	(1) CONTROL MEASURE
Annex A, Group I (CFCs)		Base Level: Average of 1995-1997
	1 July 1999	Freeze both production and consumption levels
	1 January 2005	50 per cent reduction
	1 January 2007	85 per cent reduction
	1 January 2010	100 per cent phase out
Annex A, Group II (Halons)		Base Level: Average of 1995-1997
	1 January 2002	Freeze both production and consumption
	1 January 2005	50 per cent reduction
	1 January 2010	100 per cent phase out
Annex B, Group I (Other fully halogenated CFCs)		Base Level: Average of 1998-2000
	1 January 2003	20 per cent reduction
	1 January 2007	85 per cent reduction
	1 January 2010	100 per cent phase out
Annex B, Group II (Carbon Tetrachloride)		Base Level: Average of 1998-2000
	1 Januar y 2005	85 per cent reduction
	1 January 2010	100 per cent phase out
Annex B, Group III (Methyl Chloroform)		Base Level: Average of 1998-2000
	1 January 2003	Freeze both production and consumption
	1 January 2005	30 per cent reduction
	1 January 2010	70 per cent reduction
	1 January 2015	100 per cent phase out
Annex C, Group I (HCFCs)		Base Level: 2015 consumption
	1 January 2016	Freeze consumption
	1 January 2040	100 per cent phase out
Annex E (Methyl Bromide)		Base Level: Average of 1995-1998
	1 January 2002	Freeze both production and consumption
	1 January 2005	20 per cent reduction
	1 January 2015	100 per cent phase out

Enforcement of and Compliance With The Basel Convention on The Control of Transboundary Movements of Hazardous Wastes and Their Disposal

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Introduction

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (the Basel Convention) was adopted unanimously on 22 March 1989 by 1 16 States participating in the Conference of Plenipotentiaries convened by UNEP. The Convention entered into force on 5 May 1992. As of May 1999 the Basel Convention has been ratified by 121 states including the European Economic Community (EC).

The Basel Convention contains a framework method of identification, notification and control of transboundary movements of hazardous wastes. The overall goal of the Basel Convention is to protect human health and the environment against the adverse effects which may result from the generation, transboundary movements and management of hazardous and other wastes. To achieve this a number of interrelated objectives are to be fulfilled:

- Reducing transboundary movements of wastes to a minimum consistent with their environmentally sound and efficient management, and controlling any permitted transboundary movement under the terms of the Convention;
- Minimising the quantity and the hazardousness of wastes generated and ensuring their environmentally sound management including the treatment of these wastes as close as possible to their source of generation;
- Assisting developing countries in environmentally sound management of the hazardous and other wastes they generate.

Enforcement is central to the effective implementation of the Basel Convention. Although it may seem a straightforward activity, it happens to be rather because of its multidimensional requirements.

This paper address some issues relating to enforcement of and compliance with the Basel Convention, in particular strengths and weaknesses, as well as problems and obstacles to improving compliance with the Convention. The paper provides a brief overview of the implementation control, non-compliance procedure and dispute settlement within the Basel Convention. It further address elements on the future work on compliance and relating to illegal traffic.

Key principles of the Basel Convention

The Basel Convention represents a first step in defining the global means to reduce and strictly control the movements of hazardous wastes and to ensure that these wastes are disposed of in an environmentally sound manner. The Basel Convention has set up a very strict control system, based on the prior written consent procedure. The procedure for the notification of transboundary movements of hazardous wastes or other wastes forms the basis of the control system of the Basel Convention. One important condition under the Basel Convention is that the transboundary movements of hazardous wastes can take place only upon prior written notification to the competent authorities of the States of export, import and transit (if appropriate), upon consent from theses authorities permitting the transboundary movement of waste. Furthermore, each shipment of hazardous wastes or other waste shall be accompanied by a movement document from the point at which a transboundary movement begins to the point of disposal.

Further the Basel Convention:

- prohibits the export and import from and to non-Parties to the Convention unless such movement of hazardous wastes is subject to bilateral, multilateral or regional agreements or arrangements whose provisions are not less stringent than those

of the Basel Convention.,

- subject to ratification, Parties listed in Annex VII, namely Parties and other States which are member of the of the OECD, EC, Liechtenstein are to prohibit immediately all transboundary movements of hazardous wastes destined for final disposal to other States. Furthermore, these States should phase out by 31 December 1997 and prohibit as of that date all transboundary movements of hazardous wastes which are destined for recovery, recycling, reclamation, direct reuse or alternative uses. The amendment need to be ratified by three quarters of the Parties (61 Parties) that accepted the decision, in order to come into force. As of December 1998 the Amendment has been ratified by twelve countries and the EC, and therefore not yet come into force.
- requests that hazardous wastes should be disposed of as close as possible to their source of generation and that transboundary movement of hazardous wastes could only be allowed if it is carried out in accordance with the control measures provided by the Convention, which includes prior informed consent for the transboundary movement.
- ensures that each country has the sovereign right to ban the import of hazardous wastes into its territory.

Movements of hazardous wastes carried out in contravention of the provisions of the Basel Convention are to be considered illegal traffic.

Enforcement and compliance mechanisms within the Basel Convention

- Strengths and Weaknesses:

The Basel Convention contains some specific provisions for monitoring and supervision of state parties' implementation of and compliance with obligations arising under it. A number of articles in the Convention obligate Parties to take appropriate measures to implement and enforce its provision, including measures to prevent and punish conduct in contravention of the Convention as well as monitoring measures taken, e.g.:

- Article 13 (Transmission of Information) commits the parties to provide annual reports to the COP on matters bearing directly on transparency with regard to transboundary movements and disposal of hazardous wastes. The report shall contain information on:
- the amount of hazardous wastes and other wastes exported, their category, characteristics, destination, any transit country and disposal method as stated on the response to notification;
- the amount of hazardous wastes and other wastes imported, their category, characteristics, origin, and disposal methods.,
- disposals which did not proceed as intended.,
- efforts to achieve a reduction of the amount of hazardous wastes or other wastes subject to transboundary movement;
- information on the measures adopted by them in implementation of this Convention;

- information on available qualified statistics which have been compiled by them on the effects on human health and the environment of the generation, transportation and
- disposal of hazardous wastes or other wastes;
- accidents occurring during the transboundary movement and disposal of hazardous wastes and other wastes and on the measures undertaken to deal with them;
- disposal options operated within the area of their national jurisdiction.,
- measures undertaken for development of technologies for the reduction and/or elimination of production of hazardous wastes and other wastes; and

- Article 19 (Verification) states that "Any party which has reason to believe that another Party is acting or has acted in breach of its obligations under this Convention, may inform the Secretariat thereof, and in such an event, shall simultaneously and immediately inform, directly or through the Secretariat, the Party against whom the allegations are made. All relevant information should be submitted by the Secretariat to the Parties" There is however no clear statement in the Convention what would be then the role of the Contracting Parties in such cases of verification.

- Article 9 (Illegal Traffic) in the case of illegal traffic as a result of conduct on the part of the exporter, generator, the State of export shall ensure the waste is taken back by the exporter, generator or, if necessary by the State of export itself.

- Article 10 (International co-operation) obligates Parties to co-operate in monitoring the effects of the management of hazardous wastes on human health and the environment.

- Article 4 (General Obligations), para. 13 requests Parties to review periodically the possibilities for the reduction of the amount and/or the pollution potential of hazardous wastes which are subject to the Convention.

- Article 5 (Designation of Competent Authorities and Focal Points) requires the Parties to establish competent authorities and focal points to facilitate implementation of the Convention.

Furthermore, there are some important implementation/compliance control functions entrusted to the Secretariat by the Convention itself (Article 16) and various decisions of the COP. For instance, to act as a clearing-house for information on hazardous waste movements and disposal, to expedite the flow of information among parties, and to assist parties in identifying cases of illegal traffic of waste. The Basel Convention, however, allocates only a facilitating role to the Secretariat as regards compliance control.

In recognising the need for improved implementation/compliance control, the First Meeting of the COP in 1992 established the Open-ended Ad Hoc Committee as a mechanism necessary for the implementation of the Basel Convention. This Open-ended Ad Hoc Committee has been entrusted with a variety of tasks, all relevant to implementation of or compliance with the Basel Convention, e.g. co-ordination of assistance to Parties which may be in breach, to enable them to comply with their obligations under the Convention., examination of reports on illegal traffic received from the Secretariat and other sources in order to monitor and assess all forms of illegal traffic of hazardous wastes.

The Open-ended Ad Hoc Committee executes several different tasks: in respect of some acts as an executive body, of others in a basic advisory or policy-making body. Because the Committee is involved in a broad range of activities, it is not likely to develop the required technical expertise to verify the data submitted by the parties, as well as to evaluate performance of the Parties in relation to their obligations under the Convention.

Since the entry into force of the Convention, controlling compliance and monitoring implementation has become even greater challenge following the adoption of several decisions by the Conference of the Parties (COP). In particular Decision II/12 by the Second Meeting of the COP (the ban of export of hazardous wastes from OECD to non-OECD countries), and by the work of the subsidiary bodies set up to facilitate implementation of the Convention. A number of initiatives have been under review or been approved by the COP that aim at further enhancing transparency with regard to transboundary hazardous waste movements. At global level, for instance, the streamlining of notification and movement documents, the general strengthening of the transmission of information pursuant to Article 13, and improvement of the information management system of the Convention.

The present regime existing under the Basel Convention provides for a significant strengthened reporting system. However such system constitutes only one aspect of a monitoring of implementation and compliance regime, which, to be fully effective would need an institutional framework having the required technical expertise to match the technical complexity of the Basel regime in order to carry it out impartially and objectively. Further more taken together the provisions on information do not, amount to more than a rudimentary international system of compliance control. Specifically, they fall short of establishing the requisite setting for the second phase of compliance control, namely to the review of the information transmitted by the Parties to an institutionalised process of verification. That is why, in response to the adoption by the COP of Decision II/12, it was noted that "[e]ffective implementation of the whole Convention could only be assured with the introduction of an effective system for the monitoring and evaluation of compliance by the Parties with the Convention as the provisions at present contained in Article 19 were not sufficient.".

Refinement of some technical provisions of the Basel Convention are being carried out by the Technical Working Group of the Convention. The process makes it evident that the assessment and evaluation of information reported by State Parties as evidence of compliance with their obligations under the Convention would require a significant degree of technical know-how on the part of those carrying out this monitoring and review functioning. In addition, the more the legal system of the Convention is tight, the need is greater of a strict institutionalised system along lines similar to the existing non-compliance system established as part of the Montreal Protocol on Substances that Deplete the Ozone Layer. This system should only serve as an example and has to be modified in order to take the specificities of the Basel Convention into account.

On this basis it was proposed to the 3rd COP (September 1995) to establish under the Basel Convention a system to further strengthen compliance with its provisions by establishing in the future a special Compliance Committee based mainly on the Montreal Protocol example. The Conference referring again to Article 19 of the Convention on Verification requested the Group of Legal Experts to study all issues related to the establishment of a mechanism for monitoring implementation of and compliance with the Basel convention and its design. The Committee was also requested to report its findings to the fourth meeting of the Conference of the Parties to the Basel Convention.

COP-4 requested the sub-group of legal and Technical Expert to continue its step-by-step approach to examine the relevant issues related to the establishment of a mechanism or procedure for monitoring implementation of and compliance with the Basel

Convention. The examination is with a view to recommending, as soon as practicable, the best way to promote full implementation of the provisions of the Basel Convention. A proposal for establishing a mechanism for monitoring the implementation of and compliance with the obligations set out by the Basel Convention will be considered by the Open-ended Ad Hoc Committee at its forthcoming meeting in June with a view to forward the proposal for adoption for COP-5.

National implementation and enforcement - the position of Parties to the Basel Convention

The Consultative Sub-group of Legal and Technical experts requested the Secretariat of the Basel Convention to "invite Parties and Signatories to provide in 1996 information on what steps Parties and Signatories are taking to implement the provisions of the Basel Convention, difficulties which States could be facing when seeking compliance with the provisions of the Basel Convention, and in particular, how States deal with illegal traffic and how they comply with Articles para. 4 and 6 of the Convention, and areas in which Parties may require assistance or benefit from the sharing of national experiences." As requested by the Consultative Sub-group, the Secretariat drew up a questionnaire, which was circulated to all Parties and observer States in October 1997. The questionnaire encountered considerable feedback. About 50 responses were received.

The survey among Parties to the Basel Convention provided useful information on the level of implementation of the Convention. The progress made in implementation as well as areas where obstacles persist could be identified. Parties also identified key elements where assistance or co-operation would be required for full implementation of the Basel Convention.

Steps taken by Parties to implement the Basel Convention

Almost two thirds of the Parties have enacted a national legislation on the control of transboundary movements and management of hazardous wastes. In most of the countries, which do not yet have such legislation the preparation is under way. Furthermore, the overwhelming majority of countries has designated (a) Competent Authority(ies) and a Focal Point and in most cases the necessary administrative procedures have been established. Nevertheless, in a majority of countries these institutions are still lacking the necessary staff and resources. Only in some countries there are in place adequate administrative systems and the infrastructure for the safe management (collection, sorting, transport, recycling, recovery, disposal) of different hazardous waste streams. In several countries the situation is inadequate, in several others such capacity does not exist.

Prevention of illegal traffic

In more than 50% of the Parties replying to the questionnaire, the legislation on the prevention and punishment of illegal traffic is inadequate or missing. Nevertheless, more than two thirds of the Parties consider illegal traffic being a criminal offence. Furthermore, with a majority of Parties procedures for returning illegal shipments are inadequate of missing. In more than half of the Parties also inter-ministerial co-ordination in preventing and combatting illegal traffic is insufficient or non-existent. The most frequent enforcement measures applied to prevent and combat illegal traffic are the border control, transport control and infliction of sanctions in case of contravention. The main obstacles encountered in the prevention of illegal traffic are the lack of training as well as the lack of facilities for testing and sampling. Also important are the lack of resources, the lack of information, lack of staff and lack of inspections or transport control. A majority of Parties replying to the questionnaire recorded cases of illegal traffic in hazardous wastes.

Compliance with Article 6 ("Transboundary Movements between Parties " of the Basel Convention)

In a majority of Parties there is a national legislation in force, implementing the written notification and consent procedure of the Basel Convention. Furthermore, a majority of Parties uses the recommended notification/movement documents. Many Parties have also set up administrative- instructions for the operating of the control procedure. Nevertheless, many countries have not yet established a system of coverage of transboundary movements of hazardous wastes by insurance, bond of financial guarantees, and in some others such a system is inadequate. Less than half of the Parties have an adequate system in place. The main obstacle encountered in implementing the control procedure for transboundary movements between Parties are the lack of resources, the lack of training, the lack of facilities for testing and sampling, the lack of inspections of transport control, lack of staff and lack of legislation.

Assistance and co-operation

Parties replying to the questionnaire indicated areas in which assistance would be required of where authorities may benefit from the sharing of national experiences as follows:

- Need for further development and updating of national legislation
- Facilities for testing and sampling
- Hazard characterisation and hazardous waste identification

- Training of personnel dealing with hazardous waste (customs officers, managers, environmental inspectors, police officers, etc.)
- Establishing enforcement procedures and programmes
- Developing of a monitoring system
- Developing technical standards in the field of environmentally sound management
- Transfer of appropriate technologies for minimization of generation of HW and for their disposal in an environmentally sound way.

Lesson for the future

What seems to be of special importance in any possible future system of noncompliance under the Basel Convention is the membership in the non-compliance body, in particular the role of NGOs, transparency and access to its proceedings. This is linked to a certain extent, at least in relation to the Basel Convention, to the right to initiate action concerning an alleged violation of agreement.

It has happened within the Basel Convention that alleged violation of the treaty was brought to the attention of the Secretariat by another body than the injured state of another party to the treaty, namely by a NGO (Greenpeace) lead to an amicable solution to the problem. No environmental treaty, however, gives a right to NGOS nor to individuals to initiate proceedings against a Party. In practical terms, however, it could sometimes be easier for another body than the Contracting Party to react to another Party's breach of a treaty obligation. Formalisation of such an approach which exists to a certain extent in practice, could somehow not be easy or welcomed by some Parties. This will be for the Parties who consider themselves the only "sovereign owners" of the treaty Individual complaints, as it exists in various human rights' treaties, may play an important role. For instance, the procedure is already applicable in the European Community through claims in national courts on the provisions of multilateral environmental agreement, provided that the agreement is part of EC law.

This right is limited to the cases in which individuals suffered damages. As far as NGOS are concerned the Basel as well as the Montreal treaties admit NGOS to participate at their meetings as observers, sometimes very active observers This does not, however, give them the formal right to initiate action against a member State in breach of a treaty in question. They can, however, and sometimes they do, trigger the initiation of action through the Secretariat or another Party, by bringing "the case" to the light and "advertising" it to the public. It could, however, be difficult to allow NGOS or/and individuals and other groups to attend the closed meetings of implementation bodies.

As for composition of implementation bodies/committees it was the clear understanding at the time of discussion at the meetings under the Basel Convention that there is a clear preference for these bodies to be composed of the Contracting Parties rather than individuals. While the Montreal Protocol Implementation Committee has a very limited membership (10 countries), the Climate Change Convention's Subsidiary Body for Implementation is open to participation by all Parties (Article 10), as well as is the Open-ended Committee for Implementation of the Basel Convention. However, the Implementation Committee of the Basel Convention was not exactly meant as compliance body, but which was originally established to perform some of the functions of the compliance body (see above). It should be noted that the effectiveness of a body is usually inversely proportional to its size. a smaller body is usually more effective than a committee with unlimited memberships. It seems, however, that in he case of the Basel Convention the larger body approach prevails among Parties as a guarantee of reflection of various countries' interests. It should be emphasised, however, that a large number of members can lead to unnecessary politicalisation of the implementation body which is already the case with some meetings under the Basel Convention. Also unlike the Montreal Protocol the subject of the Basel Convention's possible breaches affects usually two or three countries and the treaty is oriented towards protecting some groups of countries rather than protecting a global commons which is the case of the ozone layer treaty.

In the case of the Basel Convention breaches of compliance would in practice lead to the assessable appearance of a damage. This could, therefore lead to possible liability claims. There fore, in the study related to the Basel Convention compliance system, clear reference was made to the need to link it with the liability and compensation regime being developed under the Basel Convention. In the Basel Convention it would also probably be easier to link the compliance regime with the settlement of dispute regime which in the case of Montreal exists as two independent - but not mutually exclusive - systems. In relation to Basel the dispute settlement could be developed rather as the "second tear" approach to be triggered after the exhaustion of the compliance procedure.

Assisting a State Party which has not fully complied with the provisions of the Protocol instead of "punishing" it, is meant to protect the effectiveness of the legal regime established by the Protocol. It also provides the other State Parties with the belief and expectation that if in the future they would find themselves in the same situation they would be protected rather than incriminated. This also helps getting from the Contracting Parties true reports on the state of

implementation of a treaty which makes the system of achieving global goals of agreement more effective and transparent.

In cases of non-compliance with the Montreal Protocol.an indicative list of measures that n-fight be taken by a meeting of the Parties in respect of non-compliance with the Protocol attached to the Non-Compliance Procedure adopted by the fourth meeting of the Parties to the Montreal Protocol puts. At the top of the list of measures was: "Appropriate assistance, including assistance for the collection and reporting of data, technical assistance, technology transfer and financial assistance, information transfer and training" followed by "issuing cautions" and "suspension of specific rights and privileges under the Protocol".

This approach to non-compliance which could be considered as too 'soft" and unnecessarily "negotiable" is still in the environmental agreements more suitable for achieving the overall goals of environmental treaties and also allows all Parties to a treaty to work towards what could be called "global capacity building process for implementation and effectiveness of environmental regimes".

This softness can, however, create difficulties whiles applying to the cases of illegal traffic and other similar breaches of the provision of treaties which could be results of "malice and greed" rather than results of lack of technical and/or administrative capacity. In such cases, lack of decisions-making power by the Compliance Committee should be also looked at as a serious handicap of a system.

Illegal traffic of hazardous wastes

Illegal traffic of hazardous wastes has become a complex issue partly because of its multifold dimension. It presents a serious danger to human health and environment, especially in developing countries where appropriate treatment and disposal facilities do not exist.

There are numerous causes for the occurrence of illegal traffic:

- Increasing costs of disposal facilities in the industrialised countries, as they are becoming more scarce and the legislation more stringent
- Low cost of disposal facilities in most of the developing countries
- Differences in waste management infrastructure, legislation and regulation
- Debt crisis in some developing countries (seeking international devises in the trade of dangerous wastes)
- High profit margin, complex business set up and possible development of organised crime
- Plurality of international / regional legal instruments
- Lack of uniform definition of "waste", difficulties in characterising "waste"
- Lack of harmonisation in national laws and regulations, incomplete national law and regulation
- Difficulties in assuring the enforcement and the compliance with the provisions of the Basel Convention, especially in developing countries where there is a lack of financial resources and technical capacities.

Extent and cases of illegal traffic of hazardous wastes

The exact extent of illegal traffic cannot be readily established. However recent published national figures may give some indication of the problem of illegal traffic and non environmentally sound disposal of hazardous waste. According to figures published in International Hazardous Wastes Management News (No. 134 May 1999, p. 8) the Austrian Ministry for the Interior's special unit set up to tackle environmental crime (Zentralstell zur Bekampfang der Unweltkriminalitat ZBU)) estimates that a maximum of 60 % hazardous wastes arising in Austria is correctly disposed of. The rest is either illegally disposed of or exported often by organised crime. Of a total of 46.5million tonnes of waste arising in Austria during 1998 around 607,000 tonnes were hazardous - and out of this, the ZBU initially estimates that only 30-60 % was disposed of according to legal requirements.

The production of chemicals and the generation of wastes have increased enormously world-wide. The rapid disappearance of landfill space, the escalation of cost in disposal facilities and the increased stringent legislation and regulation in developed countries lead to the conclusion that the number of illegal exports of hazardous waste must have grown at alarming rates. The volume of illegal traffic in hazardous wastes will continue to grow as the world economy expands and disposal facilities become more scarce and more expensive.

Measures and strategies attempting to monitor and prevent illegal traffic of hazardous wastes

Replying to the still existing problems of illegal traffic in hazardous wastes, COP-4 has given higher priority to the work on the prevention of illegal traffic within the process of implementation of the Basel Convention. It emphasised the need to build up the capacity of States in preventing illegal traffic and solving the environmental damages caused by existing cases. The Conference emphasised the need for further co-op-

eration of the Secretariat on this issue with INTERPOL as well as with World Customs Organisation in particular and with other relevant organisations and conventions.

At one of the recent meeting of the Working Group on crimes related to Environmental Pollution set up by Interpol, it was agreed that there is an urgent need to begin the training module that can be packaged and transferred around the world. It should be a "train the trainers". The first training course of Central and Eastern European countries took place in March 1999 at the Interpol Secretariat in Lyon.

The Parties of the Basel Convention are clearly moving towards implementing means to combat illegal traffic. The Conference of the Parties adopted a strategy to prevent and monitor illegal traffic in hazardous wastes. This strategy contains key elements, such as the need for countries to promulgate or develop stringent national or domestic legislation pertaining to the control of transboundary movements of hazardous wastes. In order to build up the capacity for a comprehensive response the issue of illegal traffic, the strategy's call for regional or sub-regional co-operation should be encouraged and strengthened. Guidance Elements for Detection, Prevention and Control of Illegal Traffic in Hazardous Wastes is being prepared.

THE THREE MEAS AS VIEWED BY SPECIAL AGENCIES

1 – INTERPOL BY JYTTE EKDAHL

2 – WCO BY ERCAN SAKA AND DANIELLE MAIANO

The Work of Interpol in Combating Environmental Crime

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Introduction

Environmental crime is a relatively new challenge for law enforcement agencies world-wide. Although administrative/civil actions are often effective responses to environmental violations, criminal law enforcement is also an essential factor to control it. In some countries, this is the responsibility of the national environmental agency alone or with the involvement of law enforcement agencies, and in other countries the police or other law enforcement agencies are solely responsible for investigating environmental crime.

Interpol has been actively involved in this area since 1993 when the first meeting on environmental crime was organized on the request of some member countries. Though it is not necessarily a priority issue for many law enforcement agencies, the enforcement of Multilateral Environmental Agreements (MEAs) has recently moved up on the political agenda. On the initiative of the G8 Environment Ministers, this workshop has been organized by UNEP to focus on enforcement of and compliance with the MEAs: CITES, the Basel Convention and the Montreal Protocol.

As an international organization without actual enforcement function, the role of Interpol is to co-ordinate and facilitate international co-operation between the law enforcement agencies in the world during their investigation of international criminal cases. In order to understand the role of Interpol, this paper will introduce our Organization, present our activities in combating environmental crime, explain the problems when investigating environmental crime and list some recommendations for enhancing the future international co-operation.

Structure of Interpol

Interpol is the only global police organization with 177 memberships. The purpose of the organization is:

i) to ensure and promote the widest possible mutual assistance between all criminal police authorities, within the limits of the laws existing in the different countries.
ii) to establish and develop all institutions likely to contribute effectively to the prevention and suppression of ordinary law crimes.

It is strictly forbidden for the organization to undertake any intervention or activities of a political, military, religious or racial character, as is clearly stated in the constitution of the organization.

Each member state designates an office, normally a part of national police force, as the Interpol National Central Bureau (NCB). Co-operation is extended through the National Central Bureaus to any government agency concerned with combating ordinary criminal offences. The exchange of information is conducted through the NCBs which monitor the flow of messages.
Contrary to popular belief, Interpol is not made up of international brigades of investigators travelling around the world investigating cases in difference countries. International police co-operation has to depend on co-ordinated action on the part of the member states' police forces, all of which may supply or request information or services on different occasions. This means that the co-operation is based on actions taken by the police forces in the various Member States, operating within their own national boundaries and in accordance with their own national laws.

Experience has shown that three major obstacles impede efficient international police co-operation:

- different structures of national law enforcement often make it very difficult, from the outside, to determine the competent service to deal with a particular matter or to provide information,
- language barriers,
- differences of the legal systems in member countries.

This is why, in each Interpol member country, the task of co-operation is assigned to the above mentioned NCBs.

The General Secretariat is the permanent administrative and technical body through which Interpol speaks. It is situated in Lyon, France and approximately 90 police officers from about 40 countries representing all regions of the world are working in the Liaison and Criminal Intelligence Division.

The General Secretariat implements the decisions taken by the General Assembly, the Executive Committee and other deliberative organs. In order to co-ordinate and facilitate various actions for combating transnational organized crime, the General Secretariat provides the following services to the member states:

i) A criminal intelligence service, which assists member states in identifying, arresting and prosecuting international criminals. The General Secretariat maintains its own criminal data base which contains nominal data of known criminals as well as case summary and properties used in criminal cases. The content of the data base is reliant on the information provided by the member states. Analytical study of certain criminal cases conducted by a team of experts is an integral part of the above-mentioned service.

ii) A liaison function, which facilitates the exchange of information between member states. This occurs either by the numerous meetings/conferences which the General Secretariat hosts or attends, or through the efforts of its liaison officers well-informed both in respect of their subject matters as well as the region they represent.

iii) A number of training courses, both at a regional and international level, designed to assist member states in improving their infrastructures regarding communication and criminal investigation.

iv) A technical support service which has not only developed an independent and secure telecommunication network, but is currently in the process of upgrading the systems in member states, enabling them to send/receive information as quickly and securely as possible. This also includes our Automated Search Facility (ASF) which allows the Interpol NCBs to consult our database automatically and to transfer photo/fingerprints of known criminals via the computer.

The General Secretariat has also developed co-operative relations and collaborated with a number other international organizations. Since 1996 our Organization benefits from observer status in the UN General Assembly and in 1997 a co-operation agreement was signed between UN and ICPO-Interpol. We also have close co-operation with the World Customs Organisation and a Memorandum of Understanding (MOU) with this organization was signed in November 1998.
In October 1998 a MOU was signed between the CITES Secretariat and ICPO-Interpol defining and regulating the exchange of information and each organization invites each other as observers to meetings of common interest that they organize. A MOU was concluded in 1999 with the Secretariat of the Basel Convention as well.

Interpol is always ready to take the advice of other organizations to enhance the international co-operation among law enforcement agencies.

Interpol activities in combating environmental crime

A number of recommendations have been adopted by the Interpol General Assembly to combat international environmental crime, e.g. Resolution no. AGN/62/RES/6 (1993) recommending the Interpol member countries to urge their governments to do their utmost to ensure that measures are taken to control trade in, possession of, and illicit traffic in species of wild fauna and flora.

In 1993 the Interpol Working Party on Environmental Crime was set up. The aim of the Working Party is to identify the various problems that arise in connection with environmental crime investigations and to find possible solutions. The Working Party considered it necessary to sub-divide the group in order to discuss various subjects of environmental crime effectively. One of the subgroups was assigned the subject of illegal transboundary shipments of hazardous waste and another the subject of wildlife crime. The Working Party members met three times in 1993, 1994 and 1995. Since then Interpol has organized 3 International Conferences on Environmental Crime and the next is planned in year 2000. At these meetings/conferences representatives from the World Customs Organisation, the Secretariat of the Basel Convention and the CITES Secretariat always attend as observers and their professional advice and assistance are highly appreciated by the law enforcement community.

As mentioned above, one of the subgroup was assigned the subject of wildlife crime: the Interpol Subgroup on Wildlife Crime (now the Interpol Working Group on Wildlife Crime). The main objective of the group is to contribute to the fight against the illegal trade in endangered species of wild fauna and flora by improving the exchange of information and encouraging the making of international analyses. Upon request of this group, the Interpol Analytical Criminal Intelligence Unit (ACIU) made an analysis project on wildlife crime - Project Noah - concerning

the illegal traffic in live reptiles and ACIU is at this moment finalising Project Primates, a study on the illegal trade in primates.

This Working Group on Wildlife Crime has also revised the Practical Guide on the co-operation between the CITES Management Authorities and ICPO-Interpol which gives practical information on how to co-operate in criminal cases.

The Working Group is now supporting the development of regional working groups on wildlife crime consisting of law enforcement officers involved actively in the fight against wildlife crime.

The subgroup assigned with the subject illegal transboundary shipments of hazardous waste has been re-named the Interpol Working Group on Crimes related to Environmental Pollution and is now also dealing other crimes as well. The group will meet later this year with the objective to improve information exchange on cases related to illegal hazardous waste shipments, illegal dumping, illegal traffic of ODS, and sea pollution and to share experience in investigations related to this kind of crime.

Training:

A basic Interpol Train the Trainer Course on Environmental Criminal Investigations has been designed and developed by a project group consisting of experts from Canada, United States, Germany and the Netherlands. The objective of the course is to give basic training on how to recognize environmental crime and how to carry out environmental crime investigations, focusing also on safety of the public and of investigating officers. The training course will cover the following subjects:

- investigation of illegal activities involving hazardous waste, water pollution and air pollution (initial response, investigative techniques and crime-scene work)
- investigation of illegal trafficking in endangered species of wild flora and fauna (wildlife crime)
- personal protection and equipment available
- international police co-operation
- basic ecology module.

The pilot training course took place in March 1999 with participants from the Eastern and Central European countries and the next training course is planned in November 1999 for the countries in Southern Africa.

ECO-message:

To promote international co-operation in the area of environmental crime, Interpol has developed a message format called the "Eco-message" by which law enforcement agencies report criminal cases and request assistance from other countries via the Interpol NCBs as well as reporting the cases to the General Secretariat. At the General Secretariat the information related to environmental crime is integrated in the ICIS - the Interpol Criminal Intelligence System - a database containing information on criminals and companies involved in criminal activities.

Environmental crime :

There exists no global or commonly accepted definition of environmental crime and it is not easily defined as it covers many different areas. Presently, Interpol is focusing on illegal transboundary shipments of hazardous waste, including radioactive waste, illegal traffic of endangered species of wild fauna and flora and illegal trade in ODS. As there is no central collection of global statistics covering any of these areas, it is very difficult to estimate the size of environmental crime on a global basis.

Interpol General Secretariat depends solely on the cases reported by our member countries, e.g. by using the ECO message. The cases reported to us are only major cases of international interest or cases where international police co-operation is requested.

Shown below is the number of environmental crime cases reported to the Interpol General Secretariat in 1997 and 1998 - only cases detected during these years appear in the statistics.

Environmental crime cases 1997 - 1998 reported to the Interpol General Secretariat:

OFFENCE	1997	1998
FLORA AND FAUNA	66	69
HAZARDOUS WASTE	29	16

As to the illegal traffic of ODS, we have in our database 12 cases reported in the period 1996 - 1998.

Difficulties when investigating international environmental criminal cases:

Through our meetings and conferences as well as daily correspondences with the Member States, we have identified a number of difficulties in smooth international co-operation, among which the following points can be specifically brought to the attention of this forum. These points are to be considered not only by the law enforcement community but also by other governmental agencies concerned.:

i) **Legislation**

Differences in legislation from country to country can be seen as a major obstacle to smooth international co-operation, not only for environmental crime but also for other types of economic and financial crime. Countries are encouraged to adopt legislation which criminalize certain actions, in a coordinated manner.

ii) **Judicial systems**

The difference in criminal justice systems bring a certain difficulty to a practical co-operation. In some countries, the authorities are given a certain competence for investigation and prosecution, while, in other countries, much less.

iii) **Lack of communication between the agencies concerned**

Some countries lack formal co-operation between environmental agencies, the police and customs agencies. There is a need to improve this exchange of information on national level as well as international level.

In this regard, we would like to emphasize that already-existing channels (e.g. the exchange of information through the Interpol channels). should be fully exploited in order to tackle the problem in a more cost-effective manner.

iv) **Lack of central reference or contact point**

Very few countries have a central reference or contact point in relation to environmental crime at national level. This makes structured co-operation more difficult.

Recommendations for improving enforcement of the Environmental Multilateral Agreements:

- Implementation of the MEAs into the legislation of each country party to the Conventions/ Protocols.

- Harmonisation of legislation which is important when investigating international criminal environmental cases.

- The multi-agency approach, both nationally and internationally. The necessity and effectiveness of the multi-agency approach has been recognised by many countries. The Environmental Regularoty Agencies should develop close co-operation with all agencies (e.g. police, customs) involved in the enforcement of the environmental laws to co-ordinate the controls/enforcement measures. Task forces comprising representatives from all agencies involved could be set up and on a case to case basis benefit from the expertise of each agency. On the international level, too, it is important for the international organizations to co-operate and to share experience and knowledge. This multi-agency approach should also result in the improvement of sharing information, intelligence and experience.

- Proactive approach using intelligence and analysis of the crime area to identify risk shipments/routes/companies and criminals and criminal organizations involved in environmental crime for targeted investigation (so called intelligence led policing).

- When conducting investigations, always try to establish the "money flow" involved in the transactions. Bank account information, credit card statements and similar documents will help identify a network of criminals.

- Develop national statistics for environmental crime to assess the size of the illegal cases and the seriousness of the offences.

- Standard for international co-operation should be established.

- Training of enforcement officers (including prosecutors/judges). As you are aware, law enforcement officers are not always familiar with the subject and it is important to raise the awareness of this kind of crime and to teach, e.g. at National Police Academies, the basic knowledge of how to recognize and investigate environmental crime.

Conclusion:

Safeguarding the environment is one of the top priorities for all of us. The key-words in effective enforcement is sharing of information, expertise and co-operation between law enforcement agencies and national environmental management authorities.

Criminals are not impeded by national frontiers. It is important to know that you can co-operate on an international level and request assistance from other countries. The information you have may be the missing link in a criminal investigation in another country. The information you have may also be used in preventing future illegal shipments.

Interpol welcomes the initiative to organize this Workshop on Enforcement of and Compliance with the MEAs and we will support future initiatives in this area.

The Role of Customs Services and World Customs Organization's (WCO) Enforcement Programme to Combat Environmental Crime

Prepared by Ercan Saka
And
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WCO Secretariat

1. ABSTRACT:

The World Customs Organization (established as the Customs Co-operation Council in 1952) is an independent inter-governmental body with world-wide membership (150) whose enforcement mission could be summarized as " to assist its Members in strengthening their enforcement measures through training and technical programmes designed to combat Customs offences" which also include nuclear and other radioactive materials smuggling.

One of the best strategies for an effective fight against environmental crime is to stop their illegal movement at the national border before entering or leaving the country. In line with the national legislation, some Customs Administrations are also authorized to conduct the same job inside the country. From this point, Customs services are unique governmental cross-border control agencies, which are mostly located at national cross-border checking points. In addition to this local advantage, Customs expertise and authority in checking documents, goods, vehicle and passengers deserve special mentioning. It should also be noted that Customs services have great experience on how to combat and respond to transnational crime and criminals. On the other hand, in order to maximize on their experience, they should be furnished with sufficient authority for intelligence, investigation, detection equipment and supported through relevant training programmes.

In line with the request made by Member States, the WCO Secretariat has already developed an enforcement programme on combating environmental crime. This programme is based on awareness raising, development of training materials, designing training programmes, promoting exchange of information and improving co-operation at all levels. The WCO Database, the WCO Regional Intelligence Liaison (RILO) project and WCO bilateral and multilateral co-operative initiatives are three key tools which enable Customs administrations to develop accurate, timely and rapid exchange of information and intelligence.

Within the concept of international co-operation, the WCO signed Memorandum of Understanding (MOU) with the Secretariat for the Convention on international trade in endangered species of wild fauna and flora (CITES) *on 4 July 1996, and* the International Atomic Energy Agency (IAEA) on 13 May 1998 as well as the Secretariat of the Basel Convention (SBC) on 17 November 1997 for further joint initiatives. Both international organizations are now conducting several joint technical meetings, training programmes and producing safety publications for law enforcement agencies.

2. WORLD CUSTOMS ORGANIZATION (WCO):

The World Customs Organization (established as the Customs Co-operation Council (1) in 1952) is an independent, inter-governmental body with worldwide membership, which has reached to 150 Customs Services.

(1) In June 1994, the Council adopted the working name "World Customs Organization (WCO)" for the Customs Co-operation Council, to reflect more clearly the nature of the Organization and its international functions. The Convention establishing the Organization was not amended, so the official name is still "Customs Co-operation Council".)

The WCO's mission is to enhance the effectiveness and efficiency of Customs administrations in the areas of compliance with trade regulations, protection of society and revenue collection, thereby contributing to the economic and social well-being of nations.

In order to fulfil this mission, the WCO:

- Establishes, maintains, supports and promotes international instruments for the harmonization and uniform application of simplified and effective Customs systems and procedures governing the movement of commodities, people and conveyances across Customs frontiers;

- Reinforces Members' efforts to secure compliance with their legislation, in particular by endeavouring to maximize the level and effectiveness of Members' co-operation with each other and with international agencies in order to combat Customs and other transborder offences;

- Assists Members in their efforts to meet the challenges of the modern business environment and adapt to changing circumstances, by promoting communication and co-operation among members and with other international organizations, and by fostering human resource development, improvements in the management and working methods of Customs administrations and the sharing of best practices.

On the basis of an analysis of input from Members, the WCO Enforcement priority has been identified as " Implementation of a comprehensive programme to help members combat Commercial Fraud", which includes the WCO Enforcement Programme on Actions to Combat illicit trafficking in plants, animals, radioactive and hazardous materials.

3. INTERNATIONAL and NATIONAL CONCERNS

The International community has committed itself to deal with this new phenomenon and is in favour of stopping illegal trafficking in these substances at national borders before they leave or enter the country. For this purpose, being in the front line at national borders, Customs is expected to take an active part in the implementation of all-preventive measures or plans drawn up by national institutions. This approach requires governments to pay attention to legal, technical and administrative capabilities of Customs Administrations taking part in controlling international flow of people, vehicle and goods.

The illicit international trade in plants and animals is widely recognized as a form of crime which has expanded considerably in recent years and which frequently compromises the efforts made by certain countries to conserve their fauna and flora.

Addition to that, the international community started to pay special attention to the illegal trafficking in radioactive materials and hazardous materials and their waste due to its kwon hazards to the people, property and environment

Listening to our Members needs and being able to respond to them is of prime importance to the Organization. With this in mind, The WCO Secretariat became aware of our Members' concern not only with traditional Customs offences such as drug trafficking, Intellectual Property Rights offences and tax and duty evasion but also of their concern with particularly environmental problems, such as: nuclear waste, toxic waste and protected species of fauna and flora.

The WCO, as an international Organization, has properly responded the need of Customs Administration all around the world in this respect and launched several initiatives in this respect.

4. THE ROLE OF CUSTOMS SERVICES

Historically and practically, Customs have been seen as a revenue-generating agency through the collection of Customs duties. However, Customs services all around the world are now undertaking three additional tasks: (i) facilitation of international trade and (ii) protection of society and (iii) environmental protection. These additional tasks are non-fiscal functions and require Customs services to strike a balance between facilitation and effective control mechanism that is managed through the application of modern control and enforcement techniques such as information generation, intelligence and risk assessment.

Customs administrations, as a governmental cross-border control agency, have always been carried out a key role in preventing and detecting illicit transboundary movement of hazardous materials and waste as well as endangered species of wild fauna and flora before they leave or enter the country. This role clearly falls into the category and concept of " protection of society".

Customs services have also been one of the crucial agents in designing and implementing any national strategy for combating smuggling activities due to its legal, administrative and technical advantages which can be grouped in eight major categories.

4.1. Location of Customs offices:

Customs services are mostly located at national border check points such as airports, seaports etc. This physical position enables Customs to stop illicit transboundary movement of any substances before leaving or entering the national territory.

4.2. Capability of monitoring international trade:

Customs administrations have all relevant documents and data on national foreign trade in terms of value, quantity, passengers, exporter, importer, and means of transportation, goods and trends in foreign trade. This huge volume of information places them a point where they can support the related law enforcement and administrative agencies and can produce target, operational or strategic intelligence for their own needs.

4.3. Authority for physical checking:

Customs services have the legal power for the physical checking and searching of goods, vehicle and passengers entering or leaving the country. This is the minimum power for Customs services. Only physical checks and monitoring can result in the discovery of smuggled goods including illicit trafficking in plants, animals and hazardous waste.

4.4. Seizure and preliminary investigation power:

Almost all Customs services are legally authorized to detect and seize illicit trafficking in goods and conduct at least the preliminary investigation for smuggling or attempts to smuggle goods. Through this function, they have gained enormous experience and knowledge on investigation techniques as well as establishing internal and external contact points' network in collection of information and intelligence.

4.5. Experience of dealing with crime and criminals:

As a natural result of being one of the governmental control agencies at the frontiers with the task of protection of society, Customs services encounter all kind of cross-border offences. This provides them with a great experience on crime and criminals such as frequently smuggled goods, nationalities mostly involved routes taken, concealment methods employed etc.

4.6. World-wide exchange of information and intelligence network:

Through the WCO's guidance, most Customs administrations around the world are now able to exchange of information and intelligence worldwide on Customs offences including CITES specimens and hazardous waste as well as radioactive materials smuggling. This is usually made through the electronic network created in term of Regional Intelligence Liaison Offices (RILO) project, which now includes more than 100 participating States.

In addition to the bilateral agreements and the Memorandum of Understanding (MOU) applications, most of Customs administrations are contracting parties to one of the WCO legal instruments which creates a legal or administrative base for international exchange of information and intelligence on Customs offences.

4.7. Awareness and training:

Customs services are continuously being informed on the potential smuggling of these substances and their risk to them, society and the environment. Within this concept, most Customs administrations are either holding their own awareness, training programmes and employing necessary detection equipment or participating or conducting regional seminars or courses. The Customs community is clearly aware of the great need and importance of awareness and training activities.

4.8. Employment of risk assessment techniques:

Customs services are advised and encouraged to use targeting and selectivity approach through risk assessment techniques which enables them to asses the probability that goods being processed through Customs control have not been legally entered or declared. This modern enforcement techniques helps Customs services to identify potential or suspected persons, vehicle or goods in advance for further examination. This technique is not only facilitating the international flow of goods but also enabling Customs services to maximize the optimal use of limited resources to detect any kind of fraud including CITES specimen, hazardous waste and radioactive material smuggling.

4.9 Close co-operation with business:

The WCO Secretariat also encourages its Members through its special programme, called ACTION/DEFIS, to sign a MOU with the commercial companies aiming to help protect society from damaging effects of the various forms of illegal trafficking throughout the world.

It lays down the conditions and rules for the co-operation which has been established by providing for communication networks, the development of mutual knowledge by exchanging information, and for awareness campaigns or training programmes etc.

5. THE WCO INITIATIVES:

5.1 The Development and Implementation of Enforcement Programmes on Action to Combat Environmental Crime

5.1.1 WCO Cites Programme

5.1.1. 1. International co-operation:

Indeed, when several organizations work towards a common goal, it is vital for reasons of efficiency that they should work together closely, co-ordinating their activities and especially their funding.

WCO activity in the CITES field has intensified, leading to the signature on 4 July 1996 of a Memorandum of Understanding (MOU) which establishes a legal framework for international co-operation between the two organizations. The MOU provides for controlled information exchange, development of co-operation between Customs and the CITES Management Authority at national level, as well as training and raising awareness within the services concerned. It also lays down the guidelines for a joint work programme that is currently making good headway.

This co-operation is put into practice through the WCO's participation at the main international meetings on illegal trafficking in endangered species of wild fauna and flora:

Although its border control duties make Customs one of the services best placed to verify compliance with CITES regulations, here, as in many other fields, action can only be truly effective in partnership with the other organisations and governmental bodies concerned. Consequently, the WCO Secretariat also co-operates with ICPO/INTERPOL and hence is associated with the work of INTERPOL's Working Sub-Group on the illicit traffic in endangered species. A Memorandum of Understanding was signed between the WCO Secretariat and INTERPOL in October 1998 to reinforce co-operation and information exchange between the two international organizations. The WCO and EC co-operation and exchange of information efforts has already gained significant ground in this respect.

As a new development, the WCO has obtained observer status at the United Nations General Assembly Meeting. It certainly serves as a unique platform to improve the current international co-operation and communication channels in multi-direction.

5.1.1.2 WCO Awareness initiatives:

The WCO is actively tackling the Customs-related aspects of illicit traffic in endangered wildlife.

Since 1996 the WCO has organized a Working Group in Brussels, attended by WCO Members and other regional and international organizations. The Working Group held its third meeting on 14 and 15 January 1999 and CITES, INTERPOL and the European Commission were invited.

The results of these meetings have enabled guidelines to be drafted for the WCO/CITES MOU, which should facilitate without delay the rapprochement of CITES Management Authorities and Customs Administrations at national level. This MOUs is now being drafted on the basis of WCO documents.

The WCO CITES programme also includes action to inform and raise awareness among the services concerned and the general public. An exhibition of CITES specimens, presided over by His Royal Highness Prince Laurent of Belgium, took place on 24 April 1998 at WCO headquarters, during which a brochure entitled "Customs, Wild Fauna and Flora", and put together by both Secretariats, was officially launched and then distributed to our 150 Members.

A Wild Fauna and Flora brochure was put together jointly by the WCO and CITES Secretariats. It clearly explains the WCO's concerns regarding CITES, and bears witness to the close and fruitful co-operation that has already existed for many years between the two Secretariats. This brochure was prepared with the assistance of the Customs Administrations of Belgium, France and the United Kingdom.

5.1.1.3 Classification concerning CITES:

Moreover, it has been decided to make better use of the Customs nomenclature in order to facilitate the implementation of Customs controls in the fields covered by CITES, and to improve their effectiveness. The WCO's Harmonized System Committee has approved the amendment of a few tariff headings for live animals, meat and skins. The Explanatory notes to the Customs nomenclature (Harmonized System for clearance of goods) will have annotations added to indicate which headings may cover CITES species.

In the enforcement area, working priorities have been defined by the Secretariat to enable joint enforcement action programmes to be carried out with the Members.

5.1.1.4 Training and Training Materials

Teaching material for the CITES field is now being finalized, for use by Customs services. It was presented to the Working Group meeting on 14 and 15 January 1999. The teaching material was put together by a group of experts from certain WCO members and two representatives from the CITES Secretariat). It will be available in the second half of 1999.

A first regional training seminar took place in Prague, Czech Republic, from 8 to 10 June 1998. Nine countries of Eastern and central Europe region attended this regional seminar on the international trade in endangered species of fauna and flora.

For financial year 1999/2000, the WCO has drawn up a programme of action on some important themes of current CITES interest (e.g. the new decisions on the trade in ivory) for the regions of North Africa, West Africa and Southern Africa. At the same time, the Secretariat is considering to conduct national seminars for certain countries.

5.1.1.5 WCO database

Furthermore, in order to improve information exchange, the WCO has created a database in autumn 1998 solely for seizures of endangered species of wildlife. The database has been in operation since 1 November 1998, and it already holds more than 1200 cases covering a large number of specimens listed in the Appendices to the Convention. WCO Members can access it. The data will also enable strategic analyses to be prepared for Customs services, for goods such as traditional Asian medicine, elephant ivory, sturgeon, etc. Since the setting up of this database information is now being exchanged between the Secretariats of the WCO, CITES and INTERPOL.

There are plans to incorporate this database into a common, relational database covering all types of Customs offences in the near future and it is hoped that this will be achieved by the end of this year. The database will then become available to Members on the WCO Internet private site but before this happens, questions concerning security - access to Internet and passwords have to be resolved.

5.1.1.6 Exchange of information and Intelligence :

Other practical activities aimed at improving information exchange as well as intelligence have also been undertaken. For example, the publication of CITES Alerts. At the end of last year, the WCO published an alert on an ivory seizure in the Cameroon. Not only was the alert issued to provide Members with details of the seizure, i.e. quantity of ivory seized, the method of concealment used, the itinerary and nationals involved but also to remind Members of the decision made at the Tenth Conference of CITES Parties to transfer the African elephant populations of Botswana, Namibia and Zimbabwe from Appendix I to Appendix II which could have implications for a resumption of the illicit traffic in ivory

More recently, at the beginning of March of this year, an alert was issued on the illegal trafficking of specimens native to Madagascar by Eastern European nationals. Nominal details of the persons involved, were of course, not printed in the alert but we were able to obtain these details and contact, in this case, the relevant authorities. They are currently investigating this affair and have discovered that there is a broad network made up of certain nationals involved in the smuggling of fauna from Madagascar to Europe.

The WCO Regional Intelligence Liaison Offices (RILO) Project is one of the milestones of the WCO Exchange of information and intelligence through Computer-to-Computer Connection among more than 100 Customs services throughout the world. This network includes 10 RILOs. They are located in 1) Cologne, Germany for Western Europe, 2) in Warsaw, Poland for Eastern Europe, 3) in Casablanca, Morocco for North Africa, 4) in Dakar, Senegal for West Africa, 5) in Douala, Cameroon for Central Africa, 6) in Nairobi, Kenya for Eastern and Southern Africa, 7) in Riyadh, Saudi Arabia for the Middle East, 8) in Tokyo, Japan for the Asia and Pacific Region, 9) in San Juan, Puerto Rico for the Caribbean region, 10) in Santiago, Chile for South America. An eleventh RILO is to be established in the United States for the North American region.

The WCO public and private web sites also used as a communication and exchange of information channels not only between WCO and Members but also WCO and the relevant parties such as trade, governmental and non-governmental institutions. The CITES Brochure is also made available through this site.

5.1.1 WCO Nuclear and Hazardous Materials and Waste Programme

Since 1995, the World Customs Organization has invested significant time and energy by launching a special programme to assist its Members throughout the world with the development of a comprehensive action plan to combat radioactive and hazardous material and their waste smuggling.

The objective of this programme is to assist Member administrations to enhance their enforcement capabilities for preventing, detecting and responding to this crime effectively. This programme is basically intended to provide the necessary awareness background for initiatives to ensure HAZARDOUS WASTES AND OZONE DEPLETING SUBSTANCES are securely monitored and controlled so that illicit trafficking of them is inhibited, and that there are process and procedure in place to detect and respond to any attempted illicit trafficking.

In order to attain this overall objective, the WCO action plan is aimed developing the following means.

- Heightening of Awareness
- Development of Training Materials
- Designing of Training Programmes
- Exchange of Information and Development of a Database
- International Co-operation.

5.1.2.1 Awareness activities

The WCO awareness-raising activities could be summarized as follows.

5.1.2.1.1 Meetings

Σ Two seminars on Dangerous and Toxic Products and Nuclear Materials,
- A Working Group on the Identification of Nuclear Materials and Dangerous Goods
- Three IAEA/WCO Technical Committee Meetings,
- Attending the SBC Ad Hoc Committee Meeting,
- Attending the EC relevant meetings

5.1.2.1. 2 WCO Instruments:

- WCO Recommendation concerning Action Against Illicit Cross-Border Movement of Nuclear and Hazardous Material (including their waste)
- Issuing of a progress report on WCO Awareness and Training Programme on Nuclear and Hazardous Material (June 1996),
- WCO Enforcement Publications
- WCO Web site(Public and Private)

5.1. 2.2 Awareness and training material:

At the request of its Members, the WCO has developed a very comprehensive Customs Enforcement Training Module on hazardous material and waste. This training module provides guidelines for Customs trainers to develop their own national training programmes.

This module was prepared in close co-operation with certain Member countries' special contributions. In particular, it has been possible to combine the other relevant institutions and organizations' experience and knowledge with those of the Customs enforcement experts who met at the first and second expert group meetings held in Brussels in 1995 and 1996.

It should be noted that the WCO has received a wide range of awareness and training materials in forms of books, leaflets ,videos and brochures from certain Members and from the relevant international organizations such as UNEP, SBC, INTERPOL, EUROPOL, EC. This materials are distributed to our Members through different channels such as meeting, raining courses, web site etc.

5.1.2.3. Training programmes

The WCO Secretariat has already conducted two regional seminars on radioactive materials and planning to hold similar workshop with the SBC in line with the Memorandum of Understanding signed between two international organizations.

The WCO Secretariat actively participated the UNEP SBC training initiatives for Eastern and Central Europe region and express its willingness to conduct joint training courses or support any initiatives which involves Customs Services or Customs input.

5.1.2.4. Exchange of information and development of a database

Timely, comprehensive and rapid exchange of information and intelligence is the principal element of effective global preventive efforts concerning illicit transboundary movement of hazardous substances.

With a view to assisting its Members, the WCO Secretariat has proceeded in two directions:

(i) Co-operation at national level: Customs services are continuously encouraged to improve co-operation with the national enforcement agencies, environmental agencies and authorities as well as with the relevant business.

(ii) Development of a database: The WCO Secretariat has developed a separate database for radioactive and hazardous material smuggling at the WCO HQ with the support of Members and international organizations concerned. As of June 99, the total number of confirmed smuggling cases is around 350. However, there are a few significant cases relevant to the hazardous waste smuggling.

The basic aim of this database is to enable Customs services to make their own information analysis and produce strategic, operational and tactical intelligence for their own needs, such as regional and international trends, modus operandi employed by smugglers, routes commonly used, etc. All WCO Members have access this database directly or RILO regional network system.

Within this concept, the regular exchange of seizure data among the WCO, the IAEA, INTERPOL, SBC deserves special mention.

5.1.2. 5. International co-operation

One of the pillars of the WCO programme is to co-operate with the international organizations concerned to ensure the broadest communication channels for timely and accurate exchange of information, close co-operation and finally harmonization of actions to be taken at the international level in this arena. The SBC, IAEA, ICPO/INTERPOL, EUROPOL, EC, and the UN specialized bodies are particularly covered. However, please let me highlight the co-operation between the WCO and the SBC, which deserves specific mention due to the progress, made by the relevant initiatives.

This close co-operation was reached a point where a Memorandum of Understanding (MOU) between the WCO and SBC was signed aiming at establishing an administrative base for effective co-operation and developing joint projects with a view to enhancing international efforts to combat environmental crime.

6. RESULT

Due to their location at national borders as a governmental cross-border control agency, It is widely accepted that Customs Services around the world have a role to play in preventing and detecting illegal trade in all kind of goods including endangered species , ozone depleted substances and hazardous waste

This role can be maximized through raising awareness, employment of risk assessment techniques and the deployment of detection equipment and through Customs becoming an integral part of the national preventive strategy or action plan.

It is therefore very important to invite Member countries to consider exploring and using Customs services in combating environmental crime.

To prevent and detect the illegal movement of endangered species and hazardous waste in illicit trafficking at the national borders before they enter or leave the country is always interpreted not only as protection of an individual country's own environment and society but also protection of our future.

However, the following questions are left open for further consideration;

- The illicit trafficking of endangered species and illegal transportation of ozone depleted substances and hazardous wastes needs to be clearly identified as a crime with proper penalties by each national legislation
- Employment of basic detection equipment
- The necessity of timely, accurate exchange of information and intelligence
- Co-operation with relevant bodies including trade/industry
- To design joint awareness/training courses for Customs and law enforcement agencies

As one of the participants of this workshop, the WCO hope this event will help all parties concerned to;

- assess the dimension of the problem we face,
- understand the technical difficulties we encounter,
- promote co-operation among the parties concerned,
- improve the exchange of information and intelligence we seek.
- public awareness through various channels such as media, conference etc.

THE MEAS THROUGH PRACTICAL EXPERIENCE: CONSTRAINTS, OPPORTUNITIES AND WAY AHEAD

1. GENERAL – Environmental Crime

2. CITES:
   - (i) Africa
     - (a) Regional – Lusaka Agreement
     - (b) National
   - (ii) Asia
   - (iii) Latin America and The Caribbean
   - (iv) Eastern Europe
   - (v) Western Europe and others

3. OZONE INSTRUMENTS:
   - (i) Africa
   - (ii) Asia
   - (iii) Latin America and The Caribbean
   - (iv) Eastern Europe
   - (v) Western Europe and others

4. BASEL CONVENTION:
   - (i) Africa
   - (ii) Asia
   - (iii) Latin America and The Caribbean
   - (iv) Eastern Europe
   - (v) Western Europe and others

ENVIRONMENTAL CRIME IN GENERAL

Implementing Multilateral Environmental Agreements (MEAs): The Nigerian Experience

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1. BACKGROUND

Situated in the West African sub-region, Nigeria extends over an area of 923,773 square kilometers and lies between latitudes 4°N and 14°N and longitudes 2° 2' and 14° 30' East. By virtue of its spatial extent the country encompasses various climatic regimes and physio-graphical units representing a wide variety of ecological zones such as rainforest Guinea savanna, Sudan savanna and Sahelian vegetation. The country shares its eastern boundary with the Cameroon Republic, its northern boundary with Niger and Chad Republics and for the greater part, its western boundary with Benin Republic. In the South, it lies along a vast coastline to the Atlantic Ocean spanning about 883 kilometers long.

The population of Nigeria is estimated to be over 100 million people with an average annual population growth rate of about 2.5%. Nigeria is a developing country with petroleum as the mainstay of its economy, representing about 90% of the country's export earnings. Nigeria operates a Federal system of government comprising three tiers of government namely: Federal, State and Local Governments. International and national matters of the country are handled by the Federal Government, while local matters are handled by the States with the participation of the Local Government Council (or County).

2. SOME GLOBAL ENVIRONMENTAL PROBLEMS

As a result of human activities and unsustainable exploitation of natural resources, mankind is today facing several environmental problems which include air pollution; water pollution; trans-boundary movement of toxic hazardous wastes; desertification; deforestation; industrial pollution; global warming; ozone depletion; coastal and soil erosion; loss of biodiversity, etc. As a member of the global community, Nigeria has her share of these environmental problems.

3. MULTILATERAL ENVIRONMENTAL AGREEMENTS/INSTRUMENTS:

The need to find solutions to the numerous environmental problems led to the emergence of several Conventions and Protocols on Environment. During the period starting from the Stockholm UN Conference on the Human Environment of 1972, which led to the establishment of UNEP, to the UNCED in 1992 and beyond, several Multilateral Environmental Agreements have emerged towards addressing the global environmental problems enumerated earlier. It is gratifying to note that since its establishment, UNEP has been in the vanguard of development of series of MEAs. Its role at the COPs and in rendering assistance to national governments in respect of development of national policies and legislation for the implementation of the MEAs is commendable. Nigeria has benefited from such technical assistance from UNEP. Some of the relevant MEAs to which Nigeria is a Party include the following:

- Convention on International Trade in Endangered Species of Fauna and Flora (CITES),1973;
- Basel Convention on Transboundary Movement of Hazardous Substances, 1989;
- Vienna Convention on the Protection of the Ozone Layer, 1985; and
- Montreal Protocol on the Phase-Out of Ozone Depleting Substance, 1987

4. THE TREND IN INTERNATIONAL ENVIRONMENTAL CRIME.

Implementation of some of the Multilateral Environmental Agreements at the national level, especially those that are non-self executory, requires the enactment of national Laws. The contravention of some of these MEAs usually involves elements of transboundary activities. It is from this type of non-compliance with the MEAs that the term "International Environmental Crimes" evolved. In the course of implementing the MEAs, experiences of the Parties differ from coun-

try to country and even on regional basis. Relevant to Nigeria are the following problems arising from the implementation of the MEAs listed above:

a) Dumping of Toxic Hazardous Wastes and Chemicals

The act of indiscriminate dumping of toxic hazardous wastes into the marine and terrestrial ecosystems has been internationally adjudged as a heinous crime. This is because hazardous waste has adverse effect on humans, animals, plants and other living organisms including the ecosystems. In the year 1988, Nigeria experienced an unfortunate incident of dumping of 4,000 tons of about 4,000 tons of toxic hazardous wastes into the port town of Koko in the Niger Delta area of Nigeria. The land and underground water were contaminated and the Government channeled a lot of resources into the clean-up and remediation exercise. It is in this regard that the issue of trans-boundary movement of toxic hazardous wastes and chemicals is of serious concern to Nigeria. Also of serious concern is the issue of dumping of expired chemicals including pesticides into the country under various guises.

b) Illegal Trade in Endangered Species of Fauna and Flora

The problem of illegal trade in specimen or trophies of some endangered species of animals such as parrots, monkeys, crocodiles, elephant, etc listed in the Schedule to the Endangered Species Decree and the Appendices to CITES has been of serious concern to Nigeria. The trend was exacerbated by tourists who come into the country and sometimes collude with nationals to smuggle these endangered species out of the country without CITES permit

c) Ozone Depletion

In view of the phase-out of Ozone Depleting Substances (ODS) in the developed countries, there is a tendency of increased importation of the ODS and ODS based equipment from developed (Article 2) countries into the developing (Article 5) countries Although ODS is not currently banned in Nigeria, it is envisaged that uncontrolled importation of the substances may overshoot the ODS consumption level in the country beyond the permissible level in the Country Programme for Phase-out of ODS in Nigeria.

5. SOME NATIONAL EFFORTS TOWARDS IMPLEMENTATION OF MULTILATERAL ENVIRONMENTAL AGREEMENTS

A summary of some major efforts of Government Federal Republic of Nigeria in the area of environmental protection especially relevant to implementation of Multilateral Environmental Agreements include the following:

a) Establishment of Federal Environmental Protection Agency (FEPA)

The establishment of the Federal Environmental Protection Agency (FEPA) vide Decree N0 58 of 1988 as amended by Decree N0 59 of 1992 and further amended by Decree 14 of 1999 is a reflection of the commitment of the Federal Government of Nigeria towards environmental protection. FEPA has the statutory and overall responsibilities for protection and development of the environment and biodiversity conservation and sustainable development of Nigeria's natural resources in general.

In addition, FEPA has enforcement powers including powers to, without warrant, inspect, search, take samples, perform tests, seize items and arrest. At the international level, FEPA participates in the negotiation of MEAs and attends the COPs. FEPA is the designated Management Authority for the implementation of CITES in Nigeria and it is also primarily charged with the enforcement and compliance monitoring aspects of the Basel Convention and the Montreal Protocol. Towards achieving the goal of effective environmental law enforcement, FEPA established the Training Centre on Environmental Enforcement in Nigeria. The Centre has qualified and experienced officers that offer training in specific skills in environmental law enforcement through practical field experience.

b) Formulation of National Policy on Environment

In 1989, the Federal Government of Nigeria formulated the National Policy on Environment to serve as the overall policy guide for government and private sector actions. The thrust of the policy is to achieve sustainable development in Nigeria and, in particular, to secure a quality of environment adequate for good health and well being. One very unique feature of the Policy is the provision for cooperation with other countries, international organizations and agencies to achieve optimal use of trans-boundary natural resources and effective prevention or abatement of trans-boundary environmental pollution. The Policy has just been recently revised to promote inter-sectoral linkages within the context of sustainable development

c) Promulgation of National Laws and Regulations on Environmental Protection in Nigeria

Every country has its own unique legal system, laws and culture. Legislative competence on National Environmental regulations falls within the responsibility of the Federal Government, with the Federal Environmental Protection Agency (FEPA) as the apex enforce-

ment agency. The following are examples of some national Laws on environment relevant in this context.

i) Federal Environmental Protection Agency Decree 58 of 1988 (as amended)

Among the several national laws and regulations on the protection of the environment and conservation of natural resources in Nigeria, the Federal Environmental Protection Agency Decree 59 of 1992 as amended by Decree 14 of 1999 represents the framework law on environment in Nigeria.

ii) Harmful Wastes (Special Criminal Provisions, etc) Decree N0 42 of 1988

The incident of dumping of toxic hazardous wastes into the country led to the promulgation of the Harmful Wastes (Special Criminal Provisions) Decree 42 of 1988. Section 1 of the Decree makes it a crime punishable with life imprisonment without any option of fine for any person, who, without lawful authority carries, deposits, dumps, transports, imports, sells or negotiates for sale, buys or otherwise deals in any harmful wastes.

iii) Endangered Species (Control of International Trade and Traffic) Act,

As part of the legal and institutional arrangements for the implementation of this CITES, the Federal Government of Nigeria promulgated the Endangered Species (Control of International Trade and Traffic) Act Cap 108, Laws of Federation of Nigeria (LFN) otherwise referred to Decree 11 of 1985. The Act comprising 9 Sections covers international trade in most of the endangered species of wild animals listed in the Appendices of CITES. Section 1 (1) absolutely prohibits the hunting or capture of or trade in, the animal species specified in the First Schedule to the Act. Section 1 (2) requires the possession of a license issued pursuant to the Act for carrying out of the aforementioned activities.

d) Institutional Framework for Implementation of the Montreal Protocol

As part of the strategies for the implementation of the Montreal Protocol, Nigeria has since set up the National Ozone Office and the National Ozone Advisory Committee. A Country Programme on the Phase-out of ODS in Nigeria has been prepared by the National Ozone Office in FEPA and has been submitted to the Ozone Secretariat. The Country Programme provides data on the consumption level over time and is projected toward the phase-out deadline for the country. Nigeria has benefited from the Multilateral Fund in meeting the incremental cost of retrofitting the facilities and equipment for production of non-ODS based equipment. Projects under which Nigeria benefited are in the Refrigerator & Air-conditioning, and the Foam subsectors. In respect of control of trade in ODS, FEPA in accordance with the provisions of its enabling Law, is in the process of putting in place a permitting system which will ensure control of the importation of ODS and ODS based equipment as from 1st July, 1999. This measure is aimed at monitoring the consumption level in accordance with the estimate per year in the Country Programme.

e) Establishment of Chemical Tracking System Hazardous Wastes and the Dump Watch Network.

Since the first experience of the illegal dumping of hazardous wastes in Nigeria in 1988, there have been several attempts by Nigerian businessmen and foreign waste merchants in industrialized countries to ship toxic wastes and chemicals into the country through various means. Between 1992 and 1993, fifty incidents were reported in Nigeria, while in 1994 and 1995 about fifteen toxic waste alerts were reported by the Dump Watch Network. Of these, twelve were purported requests by alleged Nigerian businessmen, while three were deliberate efforts by foreign companies to dump toxic wastes and toxic chemicals as raw materials under false labeling. Polychlorinated Biphenyl (PCB) was being labeled as vegetable oil and Polyvinyl Chloride as artificial raisin.

In 1997, enforcement officials at the Lagos Port intercepted an embarrassingly large shipment of hazardous wastes purportedly labeled as organic manure. Much publicity was given to the incident by the media to create greater awareness among the populace on the danger of importation of toxic and hazardous chemicals into the country, under various disguises and camouflage.

FEPA's strategy of tracking chemicals and recycled waste consignments which do not fulfill the Prior Informed Consent (PIC) procedure has been effective to a large extent in preventing the importation of banned chemicals into the country. In 1994 alone, FEPA was able to intercept 97,676 metric tons of hazardous wastes. In all these cases, and in every other case since then, the consignments were promptly returned to the countries of origin.

Whenever an alert is received on an intention to import toxic waste into the country, the Federal Environmental Protection Agency (FEPA), immediately puts its chemical tracking inspectors on alert at the ports. The information is immediately disseminated to all border posts throughout the nation, thereby

putting all governmental agencies such as the State Security Services (SSS), Customs Services, Nigerian Ports Plc., The Police, etc on the alert. Follow-up investigations are carried out based on all available information. Such follow up action may include the involvement of the Nigerian Police Force and the national INTERPOL Bureau. Perhaps the reasons for the increase in such incidents in Nigeria include:

(a) the economic down turn in the country, which is compelling industrialists to seek for cheaper secondary raw materials and goods.
(b) low level of environmental awareness on the part of existing enforcement agencies, especially the police, and bottlenecks in the enforcement of regulations, and (c) porous borders with neighbouring countries.

6. INTERNATIONAL COOPERATION AND VIABLE PARTNERSHIPS FOR COMBATING ENVIRONMENTAL CRIME.

With the firm conviction that no nation is an island, Nigeria has been collaborating with various international agencies and Governments in combating environmental crimes such as the illegal trans-boundary movement of hazardous wastes and illegal trade in endangered species. Essentially, Nigeria has been committed to her cooperation and collaboration with the international organizations including the Convention Secretariats, INTERPOL, UNDP, UNEP, the World Bank, etc. especially in the area of information exchange, capacity building and institutional strengthening for environmental protection especially in the implementation of the MEAs.

7. THE ROLE OF THE POLICE IN ENVIRONMENTAL LAW ENFORCEMENT

In general, the Police have potentially large human resources that can be effectively utilized for environmental enforcement especially as there are usually many more police officers than environmental inspectors and they are widely distributed. However, the exact role that Police can play in environmental enforcement varies from one country to another depending on the legal systems and prevailing circumstances. In Nigeria at the moment, the police are yet to be fully involved in environmental enforcement. This is largely due to inadequate training on environmental enforcement in the police departments.

8. CONCLUSION AND RECOMMENDATIONS.

Until recently, environmental crimes were not viewed seriously as being important as traditional crimes. A change of attitudes by the transboundary merchants of deadly hazardous wastes and those engaged in trafficking of endangered species of animals and plants can be achieved through the pursuit of vigorous environmental awareness and enforcement. It is therefore, important to ensure that environmental law enforcement officers including the police are best equipped and trained to handle the highly technical procedures that must be followed to develop environmental cases.

International cooperation among the Parties to the various Conventions and as between the convention secretariats and the Parties especially in sharing of information, is becoming increasingly important, particularly in areas such as hazardous waste dumping and trade in endangered species. It is also important that countries share information on companies that routinely violate environmental laws and move to operate in countries with less stringent enforcement especially as the criminals are becoming more and more sophisticated in their approaches.

There is no doubt that nations of the world including Nigeria have taken very serious and concerted efforts at addressing critical issues of environmental problems facing humankind. At the international level, several multilateral environmental instruments have been negotiated and ratified. National policies and legislation have been promulgated to serve as deterrents to bad environmental practices. To achieve the desired objectives of the laws, effective enforcement machinery is imperative. Since the environmental crimes discussed so far, are trans-boundary in nature, the involvement of Networking Organisations such as INTERPOL and the World Customs Organisation in combating the crimes cannot be overemphasized. All nations of the world should cooperate to fight environmental crimes especially as the environment is our future and the protection of the environment or Mother Earth is a joint responsibility towards securing our future.

Some Proposed Requirements to Enforce Multilateral Environmental Agreements (MEAs)

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1. Mandatory Enforcement Officer Participation in Negotiating Enforcement of MEAs

1.1 Many law enforcement officers recognise some decisions by CITES Conferences of the Parties, necessary in theory, are unrealistic in practice. A main reason for this is an absence of professional law enforcement officers from most delegations. To consider the Basel Convention, Montreal, CITES or other MEAs can be enforced without the guidance of professional law enforcement officers fails to recognise that in all countries criminals, like the poor, are always with us. Indeed, the introduction of conventions attracts criminal opportunism.

1.2 Experience shows motives for violating MEAs are similar to other crime committed for money. MEAs lacking adequate provisions for compliance and enforcement need review to ensure provisions for law enforcement receive priority equal with that given to administration and science. An MEA stating what needs to be done is of small use if without practical means to enforce it. It is necessary for Conferences of Parties to conventions to ensure an enforcement agent is included in their delegations.

2. Law Enforcement Requirements to Protect Lawful Trade and Limit Lawless Trade

2.1 A prime necessity for law enforcement officers to fight illegal trade in ozone depleting substances, hazardous wastes and protected species is to identify suspected offenders. The magnet for criminals is the existence of profitable markets, as shown by Interpol's 1990/94 Project Noah criminal intelligence analysis. Excessive market demands identified by Interpol provide breeding conditions for organised crime, diplomatic smuggling and corruption that flourish where financial and human resources render effective law enforcement impossible.

2.2 In 1983, Israel's CITES delegation and the present writer proposed the establishment of a Register of Wildlife Traders, to be compiled in co-operation with Management Authorities of each Party state. Opposed by conservation and trade NGOs and delegations without law enforcement experience, the proposal was rejected as "impossible".

2.3 To achieve the aims of MEAs and protect lawful trade interests deriving their livelihood in international markets by adequate policing should be an initial step. If parties to MEAs are serious in giving high priority to, and directing appropriate resources to law enforcement, it is proposed that to protect legitimate free trade from lawless trade, registers of traders in hazardous wastes, ozone-depleting substances and wild fauna and flora be established to facilitate the work of law enforcement agencies. The risk that international organised crime otherwise may dominate and control these trades unlawfully already is visible.

2.4 For compliance with law and to prevent chaos, to regulate millions of vehicles on national and international roads, identification by registration is both possible and essential to order. To identify millions of people by passports is possible. It is equally possible and no restriction to lawful free trade to register traders in hazardous wastes, ozone depleting substances and wild fauna and flora to monitor for compliance with relevant MEAs.

3. Adaptation and Development of Existing Law Complementary to MEA Purposes

3.1 In 1998, a UK Court of Appeals granted an application by a convicted criminal for the return of 103 seized rhino horns valued at about US$4 million for which he and accomplices were arrested and prosecuted in 1996. Why the Court so decided is unsure. However lawful, it violated the object of CITES. In fact, the legal hiatus is now

closed. Yet the case is salutary and significant. As the horns were imports possibly of South African and other African origin, co-operation with their law enforcement agencies may have prevented failure in this case. It is sure international crime cannot be investigated adequately by national law enforcement as recognised by the Lusaka Agreement. International co-operation is no less necessary for successful court action in support of law enforcement.

3.2 In 1990, the United Kingdom (UK) introduced the Criminal Justice (International Co-operation) Act to enable the UK to co-operate with other countries in criminal proceedings and investigations. The Act enables UK to join with other countries in implementing the Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; and to provide for the seizure, detention and forfeiture of drug trafficking money imported or exported in cash.

3.3 In 1993, a closely similar Zambian Act No. 19 was approved by Parliament as the Mutual Legal Assistance in Criminal Matters Act. In Statutory Instrument No. 95 of 1996 there appears The Mutual Legal Assistance in Criminal Matters (Specified States) Order. This specifies the Act applied to 55 Commonwealth States in Africa, the Americas, Asia and Europe. This is equivalent to some 37% of the Parties to CITES.

3.4 Notwithstanding the aims of this Act, as defined, there appears to be no *prima facie* reason why they cannot be extended appropriately to include criminal proceedings and investigations of offences against the Basel, Montreal and CITES Conventions.

3.5 On careful study of the Act, law enforcement agencies and their legal advisors of non-Commonwealth countries may conclude such legislation, perhaps appropriately amended, would enable their agencies to co-operate to enforce MEAs. If assistance by Interpol, the World Customs Organisation (WCO) and the International Maritime Organisation (IMO) is desirable, the required legal instrument may be negotiated in co-operation with the United Nations Environment Programme.

4. Proposed co-operation between MEAs and World Trade Organisation (WTO)

4.1 As Basel, Montreal and CITES conventions' requirements are not, subject to scientific opinion, issues for debate, but compliance by law enforcement include:

a) National and international law enforcement agencies must be present when the relationship between MEA requirements and WTO rules are clarified; and

b) Law enforcement agency requirements to limit environmental crime to sustainable levels to protect lawful trade receive human and financial resources needed for the task.

International Environmental Crime: Situation in The Netherlands

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Introduction

The Environmental Crime Unit of the National Criminal Intelligence Service (CRI) is a national police-organization, part of the National Police Agency and also the NCB of Interpol in the Netherlands. The main-objective of the CRI is to advance the combating of crime both in the Netherlands and abroad. To leave no doubt, the CRI has no executive powers!!! The CRI has an environmental unit since 1991. The main objective of this Unit is to supply investigation expertise and strategic crime analysis on environmental crime to the police and judicial authorities. Just as all the other Units of the CRI these activities are mainly focussed at combating serious forms of crime and at policy-making.

The care for our environment and the suppression of environmental crime are issues, which are and will have to be given increasing consideration. In view of the many publications, it is fair to say that our environment is still in a sorry state and there are still too many people and companies not taking any notice of environmental regulations. The question that regularly comes up is whether the police - national and international - (should) play a part in enforcing the environmental regulations. A number of ideas on the phenomenon of environmental crime will be discussed. Firstly, a short historical overview as regards environmental problems in general and then an outline of the situation in The Netherlands will be given. This will be followed by an outline of what is meant by the term 'serious environmental crime' and restricting the discussion on that terminology.

A distinction between two 'markets' regarding environmental crime is made:

1) The waste material market (incl Basel Convention and Montreal Protocol)
2) The wildlife market (incl CITES).

Subsequently, focus on the market mechanism governing serious environmental crime and the breeding ground of this category of crime will be assessed. After that, issues dealing with suppression, cooperation and the collection of information will be evaluated. Lastly, the question of whether and how serious environmental crime can be tackled will be answered.

First some historical pieces of information

The subject environment is still a young shoot at the tree of legislation. In fact is this surprising, because environmental crime exists almost as from the period that the anthropoid became the name "human". After the first period of evolution or as you prefer after the Creation, the humankind became more and more - what they called - cultivated and started to act as they were the only living creatures on the world. Century after century the human tried to affect the Creation. This was the beginning of the gradual destruction of worlds nature or environment. After the first interventions the world's environment began slowly to crumble.

Environmental attempts have a very long history.

The first signals of environmental crime are recorded in the Bible, the acid rain problem goes back to the Ancient Rome when the Romans forged and casted iron. And a long time later - in the Middle Ages - the British Government prohibited the burning of some sorts of coals for the reason of air pollution.

In The Netherlands the first environmental law was brought out in the previous century. This was mainly a regulation to protect the people living in the surrounding of a factory against some inconvenience (the Nuisance Act). After World War II the industrialization and the chemical industry came up and with this the increasing pollution of the soil, water and air and other forms of environmental damaging such as noise nuisance and damaging of the ozone layer. These problems were only considered as serious problems when they became more and more visible. The first environmental regulations arose after the devastating water and air pollution? For example, the water of the

Rhine was in the 60-ties not any longer transparent, showed all the colors of the rainbow, smelled like a stink-bomb and could not longer give hospitality to the animals and plants, the Rhine was dying. Roughly the same problems became visible after air-pollution. The woods near the industrial areas were dying, the people and livestock got ill. These indescribable situations were just like the script of an unbelievable disaster film of Steven Spielberg.

The Netherlands

The Netherlands is, due to her geographical position and soil structure, vulnerable to environmental pollution. It lies in the delta of three major European rivers, the Rhine, the Meuse and the Scheldt, which bring in pollution from Switzerland, Germany, France and Belgium. This not only threatens drinking water supplies, about one third of which are dependent on surface waters, but also creates problems with dredging sludge from rivers and ports, which is heavily polluted with deposits of heavy metals and other substances.

Air pollution too, will not restrict itself to national borders. Some 60% of the acid rain in The Netherlands originates from abroad. On the other hand many of the acid rain emissions in The Netherlands are deposited in our neighbor countries. There are also problems on a global scale such as the damage to the ozone layer and the greenhouse effect. In short there is no country in the world that can solve environmental problems on its own. Only some problems can be solved at a national level, others have to be tackled together with neighboring countries or on a continental or intercontinental scale.

At the beginning of the sixties, the environment became in The Netherlands a topic of considerable social interest. Breaches of anti-pollution norms were increasingly seen as violations of essential behavioral standards. The Dutch Government tried to combat this constant threat of our environment with an increasing number of environmental laws aimed at protecting the environment. Dozens of laws, regulations, directives and so on were implemented in our country. There was a proliferation of legislation, for every problem the government created legislation.

A consequence of developing and implementing legislation is of course the necessity to supervise and to enforce this. Most of the legislation was so technical and complicated that these only could be enforced by a small group of special trained policemen or technical enforcement officers. After a decade it was clear that the quality of the environmental legislation was unsatisfactory and also that partly due to this the enforcement was not taken into account to governments satisfaction. Also for this reason it took a long time for the police became interested in the environmental issue.

However, after a lot of new environmental disasters in the seventies, literal and figurative the polluted ground came to the surface. After drawing up an inventory in The Netherlands about 2000 waste dumping places were discovered. Almost all these dumping places could be considered as time bombs. Although most of these places have been cleaned or isolated from the adjoining environment, financial implication to the government was hundreds of millions of guilders.

About twenty huge soil pollution discoveries - sometimes with the result that whole residential areas must be evacuated - resulted again into the development and implementation of regulations and legislation governing the environment, such as the Waste Act, the Chemical Waste Act and the Soil Protection Act. In that period an increasing interest in criminal law enforcement could be observed and this led the police-department to a reorientation concerning the enforcement of the anti-pollution regulations. More and more the subject "environment" and "environmental crime" became a part of the elementary course for police officers. For the main part these courses have the intention to develop their sensory perceptions for unusual environmental situations.

Police Policy in The Netherlands

In 1990 the Dutch Coordinating Police Council drew up a policy plan entitled "Preservation or Waste". It pointed out several duties for the police departments in the field of the environmental protection. This policy plan strived for the goal that all police officers should have an adequate environmental training by 1996 and that at least 4% of all the police activities should be spend to enforce the environment. The primary task of the police - described in this plan - was to investigate, distinguishing between minor, medium and major or serious environmental crime.

This is an important distinction when it comes to the question which police officer should be primarily responsible for combating the specific type of environmental crime. Secondly it is a police-duty to support municipal, provincial and national authorities in performing their administrative tasks. This may be done by lending assistance, by pointing out relevant situations (acting as their eyes and ears), advice about licenses with their view to their controllability and by taking down and passing on complaints about environmental conditions. A number of conditions were met in order to implement the policies mentioned before.

Serious environmental crime

Characteristic features

Making use of the definition which, in the Netherlands, is mostly given to serious environmental crime in order to put it in perspective. According to this definition, serious environmental crime has the following features:

1. Recurrent and systematic infringement of the environmental legislation and other legal provisions (e.g. in the field of general criminal law) strongly linked with fraud.
2. Organized activities, mostly company related.
3. Mostly there is distribution at supra-regional level and international branches.
4. The objective is to make substantial financial profits.
5. Widespread, often irreparable damage is done to the environment and it is a public health hazard.

On the basis of the aforementioned, serious environmental crime can, in practice, be distinguished into three forms, namely:

1. Organized environmental crime
2. Corporate crime
3. Network crime

"Organized environmental crime" is referred to cases where a group of legal entities or persons commit environmental crimes on a large scale according to a certain pattern.

"Corporate crime" is found in companies which, beside legal activities, carry out illegal activities. Companies have sometimes been doing business in a legal way for a long time, and this enables them to conceal the illegal activities they are engaged in. Often these two activities are interwoven.

"Network crime" in cases where many individuals commit each important parts of the total form of environmental crime on a large scale according to different patterns. This form is usual found in the narcotic crime scene but also in the wildlife crime scene. The most important characteristics of wildlife crime are namely its size and the many global movements it involves. At the national and international level there are hundreds of contacts between dealers, wildlife brokers, suppliers, couriers, smugglers, buyers, collectors, and numerous others who are involved in the illegal trade of endangered species of wild flora and fauna.

A similarity between organized, corporate and network-crime is that they all are aimed at making financial profits.

A second division can be made into types of environmental crimes, namely:

1) off-yard crimes environmental crimes committed outside a company or company site.
2) corporate crime environmental crimes committed within a company or corporation.
3) substance crime fraud in the field of waste products and substances hazardous to the environment.
4) facade crime environmental crimes committed behind the legal facades of so-called policy instruments (memorandum of understanding, certificate, etc.).
5) network crime undesired influencing of the government policy by lobbying.

The aforementioned distinctions have mainly been developed with respect to the waste product market, but, on the whole, they are also applicable to cross border, illegal trade in endangered species of wildlife. The greatest difference may be the fact that the issue of waste and the corresponding criminality is now given serious consideration, whereas the trade in, for instance, monkeys, parrots and orchids, is still something that is not quite given serious attention. I have experienced that it is only a matter of emphasis. Once the fact sinks in that this trade seriously affects our ecosystem, one will take the matter more seriously.

The breeding ground of serious environmental crimes

Waste

Like in other countries, the Netherlands waste processing capacity has been insufficient to deal with the waste that is produced. A large offer would result in a low price in a normal market environment. However, this is not how things go in the waste processing market. Having waste is a problem, which one can solve with money. Money flows in the same direction as the waste substance, contrary to normal trade, whereby the two flows go in opposite directions.

The question of how to dispose of waste and how much waste processing capacity is available forms an area of tension. It is the breeding ground for environmental crimes, for companies will try and dispose of their waste products against the lowest possible costs, thus minimizing production costs. There is, for instance, the choice between:

1) illegal dumping of waste, which is inexpensive and
2) having waste incinerated, which is an expensive solution.

Then there is the possibility of illegally mixing dangerous waste with a large quantity of normal industrial waste. The financial profits that can be made often lead to criminal behaviour, from fiddling with waste to downright tampering with waste and consequently to serious environmental crime.

Wildlife

The market situation for trade in species of wildlife is more normal, although partly illegal. A large demand and a small offer determine prices. It is well possible to compare this trade with the one in drugs, although the degree and size of organizations involved in the former trade are much smaller than in the latter. Contributing factor to this trade is the desire in countries in the Western Hemisphere to possess (exotic) animals and plants. In spite of penalization, protected species of animals are at large scale caught, transported and traded.

Organization degree and scale

Although tackling serious environmental crime has only recently begun, I dare say that in terms of crime very exceptionally a link can be made to organized crime, such as there is in international drugs trafficking. The aforementioned corporate crime and network crime, whereby government policies and officials are affected in an undesirable manner by crimes, such as corruption and fraud, which are being perpetrated at large scale. However, experience in the USA has taught us that the waste brokerage market is very vulnerable and susceptible to organized crime. We will have to be monitoring the situation closely.

Role of the authorities

It is a characteristic feature of serious environmental crime that the administrative authorities are always implicated in the legal activities of the suspect companies, for mostly a license is required. This applies to both the waste brokerage market and the wildlife market. However, the role of the authorities is clearest with regard to the waste brokerage market. The authorities are both legislators, issuer of licenses, provider of grants, and supervisor. Because of the high costs that go with environmental protection measures it is lucrative to influence the authorities so that they mitigate and/or adjust the rules, regulations and policy lines. Moreover, the current policy is for the authorities not to interfere less in society, by introducing more self-regulating policy instruments. Here, too, lurks a danger, for the authorities may leave too much space to the social forces connected to the waste brokerage market, which can lead to loss of control on the part of the authorities.

2. The suspension of serious environmental crime

Cooperation and assistance

Most countries have services that have their own responsibility for the administrative enforcement of environmental laws, so as to assist with the execution of the police tasks with respect to the CITES and waste brokerage market. In this case, both markets are targeted, namely the waste brokerage market and the wildlife market. It is of importance to the police to establish contacts and seek cooperation with these services, for they have relevant information and expertise, which can be used to get an insight into actual problems. At local level in the Netherlands, a platform has been created where these services and the police can meet and try to reach agreements to harmonize matters.

The information position

In order to get a better insight into serious environmental crime, police thought in the early Nineties that on the basis of their expertise they had to systematically gather information in their respective regions. It also became clear that the traditional police investigation methods used for the other orthodox types of crimes, such as hold-ups, currency counterfeiting and drugs trafficking were not suitable. These methods were unfavourable to improve the insight into serious environmental crime, which is strongly interwoven with the upper world, the legal segment of a company. Motives of information providers from the underworld do not or do hardly apply to witnesses and informers from the upper world.

This implied that information must be collected using a different strategy and a different appearance both in a literal and figurative sense. In order to enhance knowledge and experience of the police in the Netherlands, a CID pilot project was started towards the end of 1991. Unfortunately this project was suspended because of a lack of interest of the police. At this moment only a few regions have special environmental - CID detectives.

International developments

International environmental crime surrounding the waste brokerage market manifests itself in the following manner:

- **Waste product tourism**

  Waste from an EU member state is illegally transported from one European country to another. Such connections are often found to be part of a large-scale international environmental crime network.

- **Dumping waste within and outside Europe**

  a) As a result of the abolishment of checks within the European Union, it is possible to dump waste illegally in any given country in the EU, once a cargo of waste has passed the outer border control. This leads to a second form of international environmental crime, namely the dumping of waste at random places in a country in Europe, the waste proceeding from a country outside Europe.

  b) Dutch waste (but also waste from other EU countries) is transported to countries where care for the environment is not given much attention, e.g. countries in Africa, Asia and eastern European countries.

- ***The trade in endangered species of flora and fauna is by definition international***

Internationally, exchange of information on international environmental crimes is still underdeveloped. Differences in legislation and enforcement hamper effectively dealing with this form of criminality. The incentive to the would-be offenders is still small taking into account the financial profits that are made.

In recent years a number of international meetings and seminars have been organized with the purpose of appointing permanent contact points in the various countries, exchanging information and experiences, and transferring knowledge. An Interpol working group has developed an international training program on environmental crime and the pilot in March 1999 was successful.

Final remarks

General

Taking into consideration the entire area of serious environmental crime, the question is how to get a better grip on it and particularly how to get a better picture of the real situation. Regional investigations and studies have been, and are being conducted in the Netherlands into the degree to which this form of crime occurs and to what degree the self-regulating market paves the way to crime. This also applies to the wildlife market, although there is no self-regulating mechanism here. Combining the insights and, generally speaking, exchanging information is a requirement for good cooperation.

Offence and offender

One of the principles of CID work is linking the offence to the offender(s). In the case of a hold-up or a robbery, the offence is clearly visible. The problem is to find out who did it. The matter is different where present-day environmental crimes are committed, as a result of company activity or otherwise.

More or less public dumping of waste on a large scale is a thing of the past. Nowadays, all sorts of facades are employed and illegal and legal activities are mixed so as to conceal offences as well as possible. A preliminary investigation in order to ascertain an offence requires a substantial investment of resources. Extensive investigations (into companies) are to be made to prove offences and establish the identity of the offenders). In view of the current situation, the police will not always set the priority in favor of investigations into this form of fraud.

National approach

A specific problem requires a specific approach. A number of people involved in the field of enforcing environmental legislation have grown into experts in recent years, as a result of their practical experience. We find these experts in the national supportive specialist services rather than in the police forces themselves. Professionals, whereby their task is not limited to interrogating and drawing up of complicated police reports, can only effectively combat corporate environmental crime. Expertise is required to be able to know what the offender is up to and is able to do.

If in the long run it becomes clear that the regional police do not have the expertise to deal with serious environmental crime, a national approach will be required, in order to create and ensure a level of expertise. Besides, information must be coordinated at national level to be able to work effectively. A database must be created to link environment related company data to information from supervising and enforcement authorities. This would be a milestone in the suppression of environmental crime.

A first step has been made in the Netherlands where a multi-disciplinary team has become operational. It stimulates the suppression of environmental crime at national level and transfers the knowledge it gains to the regional police forces. Moreover, structural cooperation has been established by the bodies engaged in the combating of the illegal trade in species of wildlife.

International approach

A number of conditions should be met to reach good international cooperation, namely:

a) Appointment of central contact points in each country;
b) Transformation of these contact points to an active network;
c) Preparedness to share information and to establish information centers;
d) Preparedness to exchange experiences;
e) Willingness to provide mutual support .

A number of countries or central organizations should be nominated as pioneers to see to it that initiatives are developed and carried through. This has a resemblance with the early days of narcotic crime suppression, traffic in women and lately child pornography in which little knowledge about it is known and international cooperation and support is sought. This quest for support, which is heard internationally, is the driving force behind international meetings.

In conclusion

The information discussed above give an insight into the nature and extent of serious environmental crime in general, which is so hard to fathom, the problems connected with it and the chances of combatting it.

Appendix I

List of criminal investigations as regards serious forms of environmental crime 1995-1998

Starting in:	1995	1996	1997	1998
Waste	20	63	61	44
SDO/CFC	1	1	3	1
CITES	6	5	8	4
Others	5	14	18	14
TOTAL	32	83	90	63

Sweden Fighting Environmental Crime More Effectively

Prepared by
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THE ASSIGNMENT

In the objectives and guidelines for measures to combat financial crime that were issued to all authorities in 1998, the Government commissioned the Office of the Prosecutor-General to draw up a general proposal for procedures for investigating all types of crime against the environment.

According to the directive, one starting point for this work should be that the Financial Crime Authority should play a central role when it comes to investigating crimes against the environment. This is the starting point for discussing which authority or authorities should be responsible for investigations into various kinds of environmental crime, co-ordination, competence, collaboration between crime-investigation authorities and inspection authorities as well as international work within the field.

The assignment was to be carried out in consultation with other authorities concerned, especially the National Police Board, the Swedish Coast Guard, the Board of Customs and the National Environmental Protection Agency. Also the Oil Spillage Investigation (K 1995:05, dir. 1996:82), county administrative boards and local authorities were to be given the opportunity of reporting their experience and views.

THE WORK

The Office of the Prosecutor-General has appointed a working party under the leadership of the Director of the Public Prosecution Authority, Krister Waern to carry out the investigation work. The group also includes Chief District Prosecutor Björn Blomqvist as expert and acting Head of Division Barbro Jönsson as secretary. The Planning Director at the secretariat of the Office of the Prosecutor-General, Ulf Arvidsson, has participated in the activities of the working party, mainly since Krister Waern, owing to newly acquired duties, has been obliged to limit his participation in the investigation work. Work has been carried on under the active supervision of Prosecutor-General Klas Bergenstrand.

In order to obtain a picture of the way in which environmental cases are dealt with by the public prosecution authority and at the inspection authorities, a number of questions were sent to the country's public prosecution authorities, county administrative boards and local authorities in the form of a questionnaire. At the same time the National Police Board (RPS) distributed a questionnaire to all police districts. In May three interviews took place with representatives of the police, public prosecution authority, coast guard, customs, National Laboratory of Forensic Science (SKL), the central inspection authorities, county administrative boards, local authorities, universities and some voluntary organisations.

Consultation has taken place with representatives of the National Police Board, the Swedish Coast Guard, the Board of Customs, the National Environmental Protection Agency and the National Chemicals Inspectorate as well as the Oil Spillage Investigation. When the draft report was issued, the National Police Board stated that they were dubious about the proposals on how fighting of environmental crime should be organised within the police authority and they therefore wish to submit the proposals to all the police authorities in the country as well as the National Criminal Police. After that the board will be willing to give their final views. These views will be attached to the report.

The situation in Norway, Germany and Holland has been studied on the spot. Representatives of the working party took part in Interpol's third international conference on environmental crime.

OBSERVATIONS OF THE CURRENT SITUATION

According to the questionnaire responses, Sweden's local authorities and county administrative boards have reported 439 infringements of environmental legislation in 1996 and 1997. In addition to this there are reports of infringements from the National Chemicals Inspectorate, the general public, the police themselves, etc. Even taking this into account as well as the

fact that certain information may also have been neglected when the questionnaires were filled in, the total number of crimes reported is not particularly great. They are estimated to number 350 a year.

Even though the basis for assessment is very unreliable for various reasons, the number of reports may be expected to increase. In fact many inspection authorities have stated in their responses that they for various reasons have not made reports in all cases where breach of environmental legislation was suspected. With the new legislation and improved collaboration between inspection authorities and crime investigation authorities this may be expected to change. A cautious assessment merely of the effect of a change in attitude of the inspection authorities who at present desist from making reports in certain cases indicates an increase of around 50% in the number of reports.

One predominant opinion in the questionnaire responses and in connection with interviews has been that representatives of the crime investigation authorities and inspection authorities do no "speak the same language". This has often led to unnecessary misunderstandings and has sometimes led to decisions being made on the basis of inadequate information on both sides and sometimes also without the material really having been understood. In principle there has been complete unanimity in the questionnaire responses and in connection with interviews that the authorities must co-operate closely, and that this co-operation must take place at operative level and include joint training.

All those questioned have expressed a wish for specialisation within the public prosecution and police authorities and that officials should have time earmarked for dealing with environmental cases.

MEASURES TAKEN

During the summer it has already been possible to draw certain conclusions about how environmental objectives can be handled in a more rational way and how crime-fighting could be improved even in the short term. For this reason, the Office of the Prosecutor-General issued on 9 July 1998 general advice and guidelines for handling matters concerning breach of environmental legislation for protection of the external environment.

These guidelines mean that preliminary investigation concerning crimes that carry a prison sentence with application of p. 2.4 RÅFS 1997:12 should be led by a public prosecutor, that within each public prosecution authority, all environmental cases should be handled by one or more public prosecutors with special competence for such cases, that the public prosecutors should be assisted by policemen with an equivalent competence and that within each public prosecution authority area there should be at least one body at operative level for collaboration, planning and consultation between public prosecutor, police and inspection authorities concerning the handling of environmental cases.

The general advice focuses on the interpretation of the term "minor crimes" and means that the area of minor crime should be much narrower than that developed by legal practice. The penalty-free area will be restricted to phenomena with a very low penalty value and where it seems almost shocking to take legal proceedings. This attitude should lead to more strict application of the rules by the police and public prosecution authority, and also to the inspection authorities not failing to report environmental crimes to the police and public prosecutor.

Finally an obligation will be introduced for the public prosecutor to inform immediately the legal unit at the secretariat of the Office of the Prosecutor-General of cases and investigations in progress that might be of value for a guiding decision from the Supreme Court as regards the term "minor crime".

REFLECTIONS AND PROPOSALS

As from 1 January 1999 the Environmental Code comes into force. The aim of the code is to promote a sustainable trend that means that current and future generations will be guaranteed a safe and healthy environment. In order to achieve this goal all links in the chain of the environmental code (objectives, consideration, permission, inspection, reconsideration, penalty for infringement) must work efficiently. It is up to the legal system to make sure that the last link in the chain, penalty, really is a realistic final resort when all other ways of protecting the environment have failed. It is equally important that the risk of legal repercussions - punishment, forfeiture, company fines, environmental sanction charges - should be so much of a deterrent that infringement never takes place.

There is greater potential for achieving the latter objective within the sphere of environmental crime than when it comes to crime in general. The field is not too extensive today. Fighting and punishing environmental crime has strong support in the public legal conscience. Experience to date has also shown that an environmental crime is not really committed to harm the environment and most infringements of environmental regulations take place for the sake of reducing costs, increasing profits or just having to make a difficult journey to get rid of hazardous waste.

Thus the committing of a crime is often preceded by a calculation where the cost of punishment is balanced against the benefit of breaking the rules. This kind of criminal has proved to be more sensitive to public opinion in general and to legal repercussions in particular. The sanctions of criminal law thus have a major role to play in the protection of our environment. There is thus reason to make ambitious investments in resources and commitment to a repressively oriented and thus classically motivated method of fighting environmental crime despite the fact that the number of crimes reported per year has not been particularly large to date.

Even though the public prosecution authority and the police have already taken several steps towards fighting environmental crime more effectively, more needs to be done. The working party therefore makes the following reflections and submits the following proposals for achieving more efficient fighting of environmental crime.

DEFINING BOUNDARIES WITH OTHER AREAS

- Environmental crime is defined as infringement of the regulations in the Environmental Code and the law (1980:424) on measures against pollution from ships as well as associated ordinances and instructions.

SOME LEGAL NOTES ON MORE EFFICIENT FIGHTING OF ENVIRONMENTAL CRIME

- The penalty index for infringement of environmental legislation should be raised.

- Certain forms of negligent infringement of the Environmental Code should also be regarded as being of so serious nature that there may be reason to pass a detention sentence even if this is not justified merely on the basis of the punishment value or the criminal record of the defendant.

ORGANISATION

- Handling cases of environmental crime should be a task for all authorities within the public prosecution organisation and the police authorities throughout the country. In this way the work may be given a vital local base and provide the right conditions for close co-operation between the crime fighting bodies and the inspection authorities.

- Environmental cases should be handled by a limited number of public prosecutors and policemen with special competence. Special positions for environmental prosecutors should therefore be instituted. Equivalent specialist positions should be instituted within the police force.

- The resources set aside by the Government for fighting environmental crime should be earmarked for activities of this nature.

- It is up to the public prosecution authorities and the police authorities and where appropriate the coast guard to work out jointly the detailed procedure for dealing with cases of environmental crime.
- A special unit at the Financial Crime Authority - EBM-M - should be instituted with the task of supporting the local operation for fighting environmental crime. The unit should be in charge of competence development, planning, analysis, evaluation and follow-up of the operation as well as consultation with environmental authorities etc. at central level. The unit should have the capacity to deal with cases in special circumstances.

- EBM-M should have special funds at its disposal so that it can assist in various ways in connection with investigations within the country, mainly by financing technical and ecological expertise.

- EBM-M should have national authority in operative handling of environmental cases.

- The Office of the Prosecutor-General will decide which cases should be dealt with at EBM-M.

- At EBM-M there should be public prosecutors, policemen and environmental experts.

- Personnel from the intelligence unit of the National Criminal Police and liaison officers from the inspection authorities should be attached to EBM-M.

CONSULTATION AND CO-OPERATION

- Co-operation at local level should be developed. The groups for planning and consultation formed within the public prosecution district are the fora for co-operation. At the same time the legal system's role in relation to the inspection bodies should be laid down.

- Co-operation in the groups should focus on creating good working conditions in the individual cases, finding forms for fast, efficient and regular exchange of information, drawing up a strategic vulnerability analysis for the individual area of work as well as being a forum for initiative and planning of joint actions.

- The composition of the groups may vary between

different parts of the country depending on the kind of crime that may arise locally.

- Co-operation at central level should take place within the framework of the Financial Council which should therefore be renamed the Financial and Environmental Council.

A FEW NOTES ON INSPECTION ACTIVITIES

- The Office of the Prosecutor-General intends to take up issues concerning development of methods for inspection work and the drawing up of common inspection policy in the central co-operation group and within the framework of the joint training that may be arranged.

INTERNATIONAL WORK

- International co-operation on fighting environmental crime is being developed in individual investigations and in general respects.

- The possibility of Sweden holding a Nordic conference on environmental crime and such conferences becoming a regular event will be investigated.

- Organised co-operation against environmental crime in the countries around the Baltic will commence.

TRAINING AND COMPETENCE DEVELOPMENT

- Training and competence development should take place jointly as far as possible for the police, public prosecution authority, the inspection authorities and other authorities concerned.

- Training on environmental crime should be included in the basic training of both policemen and public prosecutors.

- Environmental issues should be upgraded and given more space in basic training than they are today.

- It should be considered whether issues concerning environmental crime should be included in the basic training of customs, coast guard and rescue services.

- There should be a special advanced course for officials dealing with environmental investigations.

- The special course for officials dealing with environmental investigations may in principle be the same for both police and public prosecutors.

- The course should be open to persons from other authorities that may come into contact with investigations of environmental crime, in the first place perhaps the customs and coast guard, but also the rescue services and inspection authorities.

- The issue of a central advanced course for the inspection operations, which is at least partly integrated with the course for public prosecutors and police, should be further investigated.

- EBM-M should be responsible for training on environmental issues as far as the public prosecution authority is concerned, through the College for Public Prosecutors.

- Regular competence development should to a large extent take place locally and regionally.

- Environmental public prosecutors and environmental investigators should be given the opportunity of meeting regularly and discussing common issues.

CONTROL AND FOLLOW-UP

- A system for control and follow-up based on the results reported by the police and the public prosecution authority should be instituted.

- The system should be taken into use as from 1 January 2000.

- Pending the introduction of the definitive system, a simpler, temporary system will be introduced as from 1 January 1999.

COSTS

- The costs for the public prosecution organisation are estimated to amount to an annual SEK 10 m.

- The costs for the police are estimated to amount to an annual SEK 16 m.

- The costs for the Financial Crime Authority are estimated to amount to an annual SEK 5 m.

- For the initial build-up of competence for the public prosecutors and the police, a lump sum of around SEK 5 m is required.

IMPLEMENTATION

- The new organisation for fighting environmental crime should be ready to start operation on 1 July 1999.

CITES:

(I) AFRICA

The Lusaka Agreement Task Force for Co-operative Enforcement Operations Directes at Illegal Trade in Wild Fauna and Flora

Prepared by
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Opening the First African Wildlife Law Enforcement Officers Conference in Lusaka in, December 1992, Lieutenant General C.S. Tembo, then Minister of Tourism, now Zambia's Vice-President, asked the twenty-five police, army, customs and wildlife law enforcement officers of eight African countries, and officials of Interpol, CITES Secretariat, US Fish & Wildlife Service, and London University lawyers. *"Do wildlife criminal networks and syndicates co-operate among themselves better to break the law than we co-operate to keep it? If so, what specific problems frustrate co-operation between us and how do we overcome them ?"*

The unanimous response of the enforcement officers, after analysing their problems, was to adopt and develop ideas for an agreement proposed by a South African Police delegate. After discussion these were framed overnight into a formal draft agreement by John. D. Gavitt, then CITES Enforcement Officer. After debate and amendment it was approved unanimously, and submitted to General Tembo as the main Conference recommendation.

A week later General Tembo approved the draft agreement and that a small working group of a Kenyan, Zambian and CITES Enforcement Officer should continue work on the agreement to prepare for a June 1993 meeting, in which UN Environment Programme (UNEP) legal experts participated. The following month, at UNEP's Meeting on African and Asian Rhinoceros Conservation, the countries that drafted the Lusaka Agreement secured the support of the meeting for a resolution asking UNEP to co-ordinate formal negotiations.

By August, UNEP Executive Director had informed General Tempo that UNEP would assist as requested and asked for his co-ordinator to set up UNEP's Co-ordinating Secretariat for the Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora. The Secretariat began in December 1993. Nine months later in September 1994, Ministers of six African states signed the Agreement in Lusaka.

Lusaka Agreement Article 2 states its object. This is to reduce illegal trade in wild fauna and flora by establishing a Task Force. The means and method are to set up three bodies:

(i) a **Governing Council** comprising a Minister or alternate from each Party State to decide general policies; consider and approve Task Force appointments; review implementation of the Agreement; initiate additional action needed in the light of experience; and consider and adopt amendments necessary to achieve the Agreement's purposes (Article 7);

(ii) a **Task Force** of law enforcement agents from each of the Parties approved by the Governing Council. One agent, qualified to standards set by the Expert Group, approved by the Governing Council, to be Task Force Director. The Force has legal personality and capacity in each Party State to facilitate co-operative investigations and intelligence on illegal wildlife trade (Article 5);

(iii) a **National Bureau** of a government entity in each Party State to provide to and receive from the Task Force information on illegal trade; and to co-ordinate with the Task Force on investigations involving illegal trade in wild fauna and flora (Article 6).

This Agreement, originated by enforcement agents for enforcement agents, guided negotiations by diplomats, legal advisors and UNEP international legal experts, can be adapted to combat international illegal trade in ozone harmful cfcs and hazardous wastes.

When the fourth Party state notified the Depository, the UN Secretary-General of its ratification in October 1996, the Agreement entered into force in December 1996. As required by Article 7.3, the Governing Council of the Parties held their First Meeting

three months later. At this, they approved Task Force Operational Rules and Procedures, and Governing Council Rules of Procedure, Staff Rules, and Financial Rules developed by an Expert Group working with UNEP. Due to lack of human and financial resources, the Council deferred setting up the Task Force but accepted the Kenya Government offer to establish the Task Force Seat or Headquarters at Kenya Wildlife Service, Nairobi. This lack of resources, ubiquitous among enforcement agencies as Interpol has noted, delayed the start of the Task Force until 1st June 1999.

Unfortunately, due to official, commercial and some NGO interests there has been wide- spread dis-information as to the nature and purposes of the Lusaka Agreement. Such resistance to law enforcement developments may be expected, however, from some fearful for their interests. Instead of reading this simple eleven page Agreement for themselves, many have accepted hearsay falsehoods the Agreement was motivated by concern for only elephants. As anyone who reads the Agreement may see for themselves, this is a lie. No plant or animal species is mentioned. A counter-balance to the hearsay propaganda is the unanimous endorsement of the Agreement by 36 police representatives at Interpol's 1996 Sub-group Wildlife Crime meeting.

Most delegates were aware that wildlife and other environmental issues often are attended by publicity campaigns favouring either conservation or commercial interests. At times, such interests are equally emotive, partisan, and skilled in arts of political lobbying. Commercial whaling and elephant ivory issues illustrate this well. However, as Lusaka Agreement spokesmen point out, whether international trade in these or other wildlife products, plant or animal, are banned or controlled on paper, experience shows such paper decisions are irrelevant without means to enforce them by law in "developing" or "developed" countries.

Crime became international in the late 19th century. Not till 1914 was the First International Criminal Police Congress initiated by Prince Albert of Monaco. The Lusaka Agreement, first of its kind, is part of the law enforcement process adapting to international wildlife crime of which Interpol and the World Customs Union are part. Yet official responses invariably are slow. As an illegal dealer said of CITES to one of the authors in 1973, "*Bureaucrats and scientists are no problem. It'll be 25 to 30 years before trade gets difficult. By then I'll retire.*"

Scientific and technical managers of wildlife, ozone harmful substances and movements of hazardous wastes naturally have their place. Yet scientists and managers are now shown to be inappropriate to deal with wilful avoidance, subversion and violation of environmental law. The fact is criminals, like the poor, everywhere are always with us. While there is profit in international illegal trade in wildlife species, CFCs or hazardous wastes there are, and will be, those who regardless of consequences, either opportunistically or systematically violate the law for money. They can be dealt with only by law enforcement agencies supported by an informed strong majority public opinion that such criminals threaten their interests.

People in "developed" and "developing" countries need to know their part in international environmental crime. Example: it is a popular belief in "developed" countries that the main illegal wildlife trade problem is in "developing" countries. Not minimising the responsibility of "developing" countries such as Lusaka Agreement members and others, a 1996 Interpol wildlife crime analysis suggests rich "developed" country markets also are a grave issue :

> "*The main problems met by law enforcement agencies to fight this traffic are* **Excessive demands** from the USA, Europe, particularly the EU, and Asia; **Highly organised criminal groups** are involved in the illegal trade of species as low penalties offer a good alternative to traffic in other illegal substances; **Diplomatic smuggling, corruption and inadequate financial and human resources** to enable effective enforcement in some countries."

There is little evidence one country or region is more culpable than others for wildlife crime.. Poor wildlife range states cannot control it; rich consumer states show they cannot, or do not. The Lusaka Agreement provides a partnership basis for specific co-operative action on the realistic aim of limiting international wildlife crime to biologically sustainable levels. For the Agreement, co-operation with "developed" and "developing" countries alike is vital.

At present, the Lusaka Agreement Task Force is in the early development phase, but initial intelligence suggests that in coming months the Task Force may be able to demonstrate its value despite continued disinformation by interests groups which see their interests threatened by it. Yet when all has been said, one cannot quarrel with results. The priority of the Task Force is to produce them. The difficulties are here to test our worth. Fortunately, what is clear is that Interpol welcomes the opportunity to develop co-operation with the Task Force. At the other end of the scale, enforcement officers of countries unable to join the Agreement for economic reasons are willing to help informally.

In response to the welcome commitment to combat environmental crime by G-8 and European Union Min-

isters of the Environment and their Heads of State, the Task Force is equally committed to co-operation with law enforcement institutions. Our approach is pragmatic. We recognise that at this stage, those of an equally practical frame of mind may see the Lusaka Agreement as a useful prototype in need of testing, development and refinement. We are ready to respond to this approach so as to co-operate to achieve the sustainable development of the Basel Convention, Montreal Protocol and CITES.

A final explanatory note: Lusaka Agreement Governing Council rules of procedure for its meetings states that meetings are not open to NGO's. UNEP, among others, have expressed concern in respect to this. The reasons are practical. One cannot discuss planned or impending operations to combat wildlife or any other form of crime in public. Nor, without in some cases violating lawful human rights, or destroying the chances of successful prosecutions, can impending cases be discussed publicly. Nor is it proper to discuss suspect cases in public without risks of undermining enquiries and sensitive inter-governmental relations. However, Task Force rules also provide for strict accountability, and the setting aside of time for sessions to state publicly through NGO's and the media what the Task Force is doing. Indeed, where possible, the Task Force will welcome independent press and TV journalists to report Task Force operations. Such public sessions will be of vital importance. Inevitably, there will be need to meet criticisms, explain why 100% success is difficult, and respond to various sensitivities and customary suspicions of law enforcement operations.. Which in democratic states is both right and necessary, as much to prevent abuses of law as to achieve public co-operation indispensable to protect the environment from crime.

We trust that from this Workshop, as from the December 1992 conference that led to the Lusaka Agreement, practical action emerges helpful to the men and women doing the difficult, often unpopular job of law enforcement. For this it will receive the co-operation of the Lusaka Agreement Task Force.

Enforcement of and Compliance with CITES in Kenya

Prepared by
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Lusaka Agreement Task Force

The Republic of Kenya is a party to a number of Multilateral Environmental Agreements. These include the Convention on International Trade in Endangered Species of Fauna and Flora (Washington Convention, 1973) CITES, the Convention on Transborder Movement of Hazardous Waste, the Convention on Substances which Deplete Ozone layer and Convention on Biological Diversity (RIO de Janeiro, 1992). Regionally Kenya is also a party to the African Convention on the Conservation of Nature and Natural Resources (Algeria, 1968) and more recently the Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora.

These agreements are diverse in their respective primary focus, however there is commonality in so far as they generically aim at attaining lawful control or regulation to protect and conserve the environment. These are ideals, which are desirable but difficult to achieve. Kenya, as expected of all parties, has endeavored to put in place the appropriate legal and administrative structure to fulfil her obligations under these conventions, treaties and agreements.

One of the well known and well documented of the conventions is CITES. While the country's law dealing with wild fauna and flora dates back to 1930's, following the adoption of the CITES. Kenya reviewed its wildlife policy in 1975 with the Parliament deliberating and adopting a Wildlife Policy Paper. Subsequently in 1976 a new wildlife Act Chapter 376 Laws of Kenya was enacted with the aim of amongst other things consolidating the various pieces of laws governing wildlife conservation and management while at the same time legislating for the implementations of CITES provisions. The legislation also provided for amalgamation of various wildlife management entities, resulting in formation of a Wildlife Conservation and Management Department (WCMD) responsible for *inter alia,* licensing, protection and compliance generally.

In 1990 further restructuring of the WCMD was undertaken and a semi-autonomous state corporation, the Kenya Wildlife Service (KWS) was formed. The creation of KWS was probably a major reform in wildlife management sector with major ramification for wildlife law enforcement. This phase of change brought about creation of an enforcement wing with fairly wide policing powers within protected areas and outside where monitoring and enforcement of law is required.

Now, almost nine years after the major legal and institutional reforms there is sufficient evidence of success of the applied measures. These included proactive anti-poaching activities within the national parks and reserves system through such techniques as high profile foot, vehicle and aerial patrols targeting poachers and covert operations focusing on more sophisticated urban based wild fauna trophy dealers. Significant achievement has been noted on both the urban and rural front with notable sustained declines in poaching and illegal dealing. Whilst quantifying effect of the enforcement activities are difficult to measure as well as controversial, major arrests of poachers and illegal traders and recoveries of weapons and raw, semi processed, processed products, and derivatives are an indicators of success of the efforts.

Since foreign nationals with the collusion of Kenyans have over the years perpetrated most wildlife crime, we have found it necessary to co-operate with other countries in the African region and beyond in various aspects of wildlife crime prevention and detection operations. Some of the collaborative enforcement activities included the 1997 seizure of ivory in Kenya and later Zambia resulting in closure of an embassy in Lusaka. More recently Kenya Wildlife Service seized an assortment of wildlife products which included ivory, rhino horn, giraffe bones etc, purported to be Maasai traditional artifacts in a joint operation with the United States Fish and Wildlife Service. During the execution of a series of investigations, courts granted search warrants in February 1999, in which about 3,000 items made from durable wildlife parts weighing over 500kgs were recovered and seven suspects arrested.

In recognition of the transfrontier nature of wildlife crime, some countries of the African region came together in 1992 to negotiate and adopt a regional enforcement agreement. This agreement is known as Lusaka Agreement on Co-operative Enforcement

Operations Directed at Illegal Trade in Wild Fauna and Flora. It fully recognizes the provisions of the conventions highlighted above and further aims at facilitating the enforcement of the respective parties' municipal laws governing the wild fauna and flora conservation, and management activities. A side effect to be noted is that the Agreement's implementation benefits lawful trade interests.

The Lusaka Agreement, which came into force in December 1996, provides for the formation of a permanent Task Force to act as its Secretariat and further facilitates the effective and efficient implementation of the Agreement. This Task Force started its operation at it is seat in Nairobi Kenya on 1st June 1999. Considering the goodwill shown by the parties, the Lusaka Agreement is set to achieve its objectives which can be defined as making wildlife trade sustainable.

Generally, any convention, treaty, agreement or even national legislation effectiveness is largely dependent upon level of enforcement. The experience in several parts of Africa is that there are not sufficient enforcement capacities. This is due to the fact that most of the countries are currently undergoing political and economic transformation hence there is general decline in public sector resources for wildlife enforcement. Due to widespread poverty, more and more people are turning to wild fauna and flora for subsistence in an unregulated and unsustainable manner. While international communities continue to urge concern for a certain few species, other species are now being faced with over exploitation. Subject to the approval of relevant governments, the Lusaka Agreement Task Force would endeavor to give attention to this looming threats to the "less fortunate species" (or marginal species).

In conclusion, it reiterated that in most countries of African region the problem is not the lack of adequate domestication of multilateral environmental agreements. Rather, the issue is enforcement or the lack of it.

Many countries are faced with social disorder and insecurity issues due to widespread poverty. The urgent need by the Government to fulfil obligations such as provision of medical facilities, schools, preservation of public order and security means wildlife security almost certainly cannot feature as high priority issue as realized by G8 Environment Ministers in their meeting in April 1998.

There is, therefore, need to explore ways and means of addressing the wildlife law enforcement difficulties experienced in developing countries and those whose economies are in transition and are unable to undertake any significant intervention measures necessary to regulate and monitor wildlife exploitation activities and enforce the law. The needy countries require support in areas of relevant training, provision of basic equipment and generally improved working conditions. In addition to the technical assistance there is urgent need to critically explore the prospects of environmental law enforcement agencies, both regionally and internationally, to work together. The scope of the co-operation should not be limited to workshops, conferences and seminars but also sharing of information and intelligence with the aim of identifying and measuring the extents of environmental crime and responding in a well co-ordinated and purposeful manner, including joint operations where and when necessary. Therefore, implementable resolutions which takes into account special needs of various regions and countries are required.

At the three days Workshop of African Law enforcement in 1992, Zambian Vice-President General Tembo opened it by asking. "Do wildlife criminals co-operate better among themselves to break the law than our countries co-operate to keep the law? If so, what specific problems frustrate co-operation between us, and how do we overcome them?" Our response was the first draft of the Lusaka Agreement, with the help of UNEP, CITES, Interpol, US Fish & Wildlife Service and University of London Environmental lawyers.

With the high priority and resources the G8 and European Union countries are committed to support the environmental law enforcement, the Workshop on Enforcement of and Compliance with Multilateral Environmental Agreements should successfully produce practical results for law enforcement.

Enforcement of and Compliance with CITES in Tanzania

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1. INTRODUCTION

Tanzania has a number of principal legislation for regulating trade and subsequent removals of fauna and flora within and outside the country functioning of factories which produce chemicals and disposal of by-products (see appendix A). For purposes of implementing CITES, the Government of Tanzania is placing special emphasis on control of CITES export documents to minimize illegal use of fauna and flora. There is also internal ban on trade for species whose populations are threatened (see Appendix B).

Tanzania is Party to several multilateral environmental conventions and agreements (MEAs). These include, CITES, the Montreal Protocol on substances which deplete the Ozone Layer (April 1993), Basil Convention dealing with transboundary hazardous wastes (April 1993) and the Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora. Despite the existence of such good national legislation, international conventions and agreements, the country has experienced serious effects of illegal trade on her major wildlife species, particularly the Black Rhinoceros, the African Elephant, the Shoe-Bill Stork, Ebony Tree, Green Sea Turtle, just to mention a few.

This paper will highlight some of the serious environmental crimes recorded in Tanzania in the recent past, actions taken by the government and proposals for the future to minimize crimes through illegal trade and transportation of fauna and flora, ozone depleting materials and hazardous wastes.

2. IMPACTS ON INTERNATIONAL ENVIRONMENTAL CRIMES

Major environmental crimes recorded in Tanzania in the recent past involved illegal trade in elephant ivory, leopard skins, rhinoceros horns, ebony wood planks, young chimpanzee and leopard tortoises. Both smuggling and use of fake export certificates and markings have been principal methods of illegal trade in fauna and flora. Lack of proper mechanisms for thorough inspection and knowledge of inspectors and law enforcement officers at borders/custom check-points have enabled criminals to move illegal contrabands across the international boundaries.

Statistics show that between 1960 and 1970, the elephant population in Tanzania was estimated at 370,000 animals. These animals together with Black Rhinoceros roamed freely all over the country's wilderness. This number was reduced to 44,000 animals in 1988 estimates while the rhinos were reduced to just a few hundreds and can only be seen openly in very few highly protected National Parks and Game Reserves. The main cause for the decline of the elephant population was illegal trade in ivory.

For example in 1985 a metal container labeled "BEESWAX" which was shipped from Dar-es-Salaam Port and cleared under fake certificates, was discovered to contain 9 tons of ivory and intercepted at Antwerp, Belgium. In 1986, 4-tons of ivory left Tanga Port in a metal container labeled "WHAT FLOUR" and was intercepted at Mombasa Port, Kenya by customs officials.

Several diplomats have been intercepted in Tanzania carrying illegal large quantities of ivory under the pretext of personal effects other than ivory. In 1996 two ivory consignments weighing 1,933.8 kgs and 3,073.2 kgs. labeled "Diplomatic Personal Effects" were intercepted by the Tanzania Security Officials at the Dar-es-Salaam International Airport destined for a foreign country.

3. EFFORTS BY THE GOVERNMENT TO CONTROL INTERNATIONAL ENVIRONMENTAL CRIMES

The government has enacted a number of legislation and regulations for regulating trade of animal and plants and their by-products. Major enforcement operations have been conducted to back-up day-to-day inspections, patrols and awareness programmes.

For example, in 1989/91 a joint wildlife/military/judiciary operation which involved 2,200 officers was instituted to check and arrest wildlife criminals in all wildlife protected areas. Many illegally owned firearms,

ivory and other animal specimens were recovered and many culprits were arrested and prosecuted before courts of laws.

Through these enforcement practices, including stiff penalties to defaulters, environmental crimes have been reduced to the extent that there is good sign (indicators) of growing animal populations. The elephant population estimates in 1998 counts show that Tanzania has 110,000 plus elephants. Similarly, the rhinoceros population has been reported to be improving.

The newly introduced policies (1998) under the Ministry of Natural Resources for conservation of wildlife, forests, fisheries, beekeeping and tourism will ensure that the existing legislation need to be revised and improved in order to give better protection to our trees and animals.

4. CONCLUSION AND RECOMMENDATIONS

In Tanzania, we believe that the survival of our wildlife is a matter of grave concern to all of us. The wild creatures amid the wild places they inhabit are not only important as a source of wonder and inspiration but are an integral part of our natural resources and of our future livelihood and well-being. We need to protect our environments from all destructive means especially illegal trade on fauna and flora. However, despite all these efforts and commitments by Tanzania, poachers and 8 traffickers illegally export animal and plant specimens beyond our national borders.

While national efforts to control environmental crimes are being undertaken it is recommended that international community co-operate in fighting transboundary and environmental crimes. It is important states co-operate through international conventions and agreements to control environmental crimes for the well-being of the world.

Efforts should be put on to education, general environmental awareness, crime control, exchange of information, exchange knowledge and technical support.

APPENDIX "A"

LIST OF PRINCIPAL LEGISLATION IN FORCE FOR REGULATION/PROTECTION OF FAUNA & FLORA

1. Wildlife Conservation Act. No. 12 of 1974
2. Wildlife Conservation Act. (amendment) No. 21 of 1978
3. The Forest Ordinance Chapter 389 of 1957
4. The Fisheries Act No. 6 of 1970
5. Health Laws (Disposal of Wastes)
6. Factory Laws (Installation & Inspection)
7. Economic & organized Crime Control Act No. 13 of 1984

APPENDIX "B"

LIST OF ENDANGERED ANIMALS & PLANTS OF TANZANIA

1. Black Rhinoceros - Diceros bicornis
2. African Elephant (Loxodanta africana)
3. Leopard (Panthera pardus)
4. Cheetah (Acinony & jubatus)
5. Chimpanzee (Pan trogldytes)
6. Slender Nosed Crocodile (Grocodylus cataphractus)
7. Whale Headed Stork (Balaenicipatidae)
8. Green Sea Turtle (Chelonia mydas)
9. Ebony Tree (Black Wood - Dalbergia melaxylon)

Enforcement and Compliance with CITES in Zambia

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1. ILLEGAL TRADE IN ENDANGERED SPECIES

Zambia is landlocked, bordered by eight other countries. Five were involved in liberation wars for 30 years, with disastrous results for Zambia's wildlife. Zambia was a haven for guerrillas and refugees from the five countries as well as a sixth, South Africa. This resulted in social instability, proliferation of firearms and increased subsistence and commercial poaching for ivory rhino horn and other trophies, as well as large quantities of game meat for local markets.

Criminals from Asia, the America and Europe, as well as Zambia criminals, profited from this instability. In 1962, Zambia was home to over 3,500 rhinos and 250,000 elephants. Today, a relict population of perhaps 20 rhinos and under 25,000 elephants survive. This catastrophic decline is due to poaching and smuggling of rhino horn and elephant ivory by Mafia-style wildlife crime syndicates and networks, robbing African people of their natural resources.

Current Zambian elephant figures suggest the threats may be increasing due to CITES CoP 10 decision to down-list elephant populations of three of Zambia's neighbouring states, Botswana, Namibia and Zimbabwe.

The tourism industry in Zambia is wildlife based, with great economic potential. The economy which earlier was based on copper exports has declined drastically. Economically, the current position emphasizes Zambia's need for investments in tourist industry developments. Now, tourism is being privatized to meet international management standards, increase employment, maximize its potentials and contribute to the improvement of the national economy.

There is growing concern on indications of serious bird and reptile smuggling from Zambia. Numbers of suspects are believed to be smuggling rare birds and reptiles from Zambia for international markets, especially through South Africa.

2. EFFORTS TO CONTROL ILLEGAL TRADE IN ENDANGERED SPECIES AND/OR THEIR PRODUCTS

Zambia has taken local and international measures to combat illegal trade, particularly in endangered species. This has been done as follows:

2.1 Establishment of the Intelligence and Investigation Unit (IIU)

It was finally recognized that day to day foot patrols and setting up roadblocks without intelligence information is an ineffective way to combat poaching and illegal trade. In 1995, the Intelligence and Investigation Unit was established. The Unit enjoys material and financial support from the David Shepherd Conservation Foundation. The Unit also functions as Zambia's National Bureau under the Lusaka Agreement on Co-operative Enforcement Operations Directed at illegal Trade in Wild Fauna and Flora (1994).

The David Shepherd Conservation Foundation has provided, with other support, a vehicle to the Unit and has funded the training of Wildlife Police Officers at Zambia Police Service Training College.

The successful results achieved by the Unit appear in **Appendix 1,** which shows the numbers of arrests since the Unit began work. It merits note that due to lack of human and financial resources, a common national and international problem identified by INTERPOL in 1996, IIU personnel have numbered from four to a maximum eight men and women.

3. Community Based Wildlife/Natural Resource Management Programme

In 1993 Zambia began to involve rural communities in the management of natural resources in protected wildlife areas. These communities play a direct role in the conservation of wildlife, and share in the benefits of doing this through the profits that accrue as

the result from licensed safari hunting. This has motivated the development of a situation where some local communities have made it difficult for urban people to selfishly and unsustainably exploit the wildlife of these communally protected areas.

Social amenities such as schools, rural health centres and bridges have been either repaired or constructed through profits from communal participation in these programmes.

3.1 Zambia wildlife policy recently has been reviewed with the aim of improving management standards. The Department of National Parks and Wildlife is soon to be autonomous, and will be in the position to channel its income into conservation. The new organization will be known as the Zambia Wildlife Authority (ZAWA). The employment conditions for ZAWA personnel are expected to improve from those existing at present thereby encouraging the development of higher morale.

4. Multilateral Environment Agreements (Wild Fauna and Flora)

4.1 To improve and develop management standards and control trade, especially in endangered species, Zambia is Party to a number of international agreements and institutions. These include the Convention on International Trade of Endangered Species of Wild Fauna and Flora (CITES, the Biodiversity Convention, the Ramsar Convention and the International Police Organization (INTEPOL) Sub-group Wildlife Crime. Zambia also is the current President of the Governing Council of the Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora initiated in Zambia in December 1992.

4.2 Under the terms of the Lusaka Agreement, Zambia has carried out successful joint operations with the South African Police Endangered Species Protection Unit in Zambia. Joint undercover operations resulted in a number of culprits being brought to book and the recovery of illegal trophies. Some of these cases attracted the five years mandatory jail sentence, i.e. those involving rhino horn and elephant ivory.

As provided for by the Agreements, there is developing a close exchange of intelligence information among the Parties. As the result of one such information sharing, a syndicate consisting of diplomats involved in smuggling elephant ivory was destroyed. The ivory was shipped as "used personal effects". The embassy of the diplomats in question is now closed in Zambia.

5. Conclusions & Recommendations on Enforcement of and Compliance with CITES

5.1 The future for Zambia's endangered species of fauna and flora and threatened biodiversity, like that of other countries, can be secured only by speedy efforts to reduce illegal international trade in wild animals and plants to sustainable levels. Investigations are needed to judge what, if any significant illegal trace in environmentally harmful substances may occur. The illegal trade problem with wildlife was recognized by the Government of Zambia that took the initial steps that led to the adoption of the Lusaka Agreement.

If initial investigations reveal evidence of significant international or regional illegal trade in CFCs and other harmful compounds, if resources are available, the brief of the Lusaka Agreement may be extended to combat the problem. Unfortunately, the Agreement has been misinterpreted both officially and by some international conservation organizations, despite the distribution of copies to delegates at the 1994 and 1996 CITES Conference of the Parties. With copies distributed to delegates at the Workshop, such fears and misunderstandings may be removed in the interests of combating international environmental crime.

5.2 There is no prospect of reducing international illegal trade in wild plants and animals without more effective regional co-operation on lay enforcement by the Parties to CITES and with the experienced help of INTERPOL and the World Customs Union (WCU). From an African perspective, this is the object of the Lusaka Agreement whose potential is to help to control illegal trade in substances of concern to the Montreal and Basel conventions deserves consideration.

5.3 The Lusaka Agreement Task Force of law enforcement officers was launched on 1 June 1999. The commitments to law enforcement by G-8 and European Union Ministers in April 1998, endorsed by their Heads of state, show their aims are identical with those of the Lusaka Agreement which is as important to them as to us.

APPENDIX 1

Zambia NPWS/IIU Operations - 1 January to 31 December 1995

Intelligence and Investigations Unit (IIU)

On Zambia's signature of the Lusaka Agreement on Co-operative Enforcement Operations Directed At Illegal Trade in Wild Fauna and Flora in September 1994, the IIU was established to function as Zambia's National Bureau under the Agreement.

After selection and training of Wildlife Police Officers (WPO), and recruitment of an experienced Wildlife Police Warden to command the Unit, it commenced operations in September 1995. Its operational methods are those of plain clothes police. Initially small, the Unit is still in process of development and personnel increases.

Results of IIU Operations - 1 September to 31 December 1995

1.	Arrests**	90
2.	Prosecutions**	60
3.	Cases adjourned, withdrawn, pending	24
4.	Fined	15
5.	Prison sentences	20

** Arrests and Prosecutions include single individuals, pairs and groups of persons sometimes jointly charged and prosecuted.

Cases Analysis

Leopard skins	4 cases
Game meat	35 cases
Rhino horn	2 cases
Hippo ivory	3 cases
Firearms & ammunition (illegal imports)	5 cases
Firearms & ammunition (illegal possession)	8 cases
Cheetah skin	1 case
Elephant ivory	2 cases

An ivory offense won the severest sentence (5+3 years hard labour); most offenders in elephant, rhino and leopard cases receive, on conviction, 5 years hard labour.

Seven foreign nations convicted of illegal firearms and hunting offenses were fined and their vehicles, firearms and ammunition confiscated.

Zambia NPWS/IIU Operations - 1 January to 31 December 1996

1.	Arrests	92
2.	Prosecutions+++	54
3.	Acquitted	3
4.	Adjourned	4
5.	Withdrawn	2
6.	Fined	15
7.	Prison Sentences	22
8.	Pending	8

+++ Arrests and prosecutions include single persons, pairs or groups of people sometimes jointly charged and prosecuted.

Cases Analysis

Leopard skins	4**
Game meat	29
Elephant ivory	8*** ++
Crocodile skins	4
Illegal Possession (firearms & ammn)	8
Hippo ivory	1

** includes 7 leopards, 2 Serval, 1 genet

**** One case involved smuggling wild dog & honey badger pelts

++ One case led to investigations into diplomatic smuggling reported in 1997

A majority of cases result from routing police-style investigations into what may be defined as "internal" smugglers, i.e. smugglers of items to foreign nationals, Zambian dealers or markets within Zambia; and "external" smugglers, i.e. Zambians and foreign nationals smuggling live birds and animals, wildlife parts of products through or from the country. Arrests may occur from road blocks; informants; interrogation of suspects and persons charged with offenses.

Honorary Wildlife Police Officer co-operation is effective and much valued.

Zambia NPWS/IIU Operation - 1 January to 31 December 1997

1.	Arrests	92
2.	Prosecutions +++	46
3.	Pending #	16
4.	Withdrawn	1
5.	Acquitted	1
6.	Suspended sentences	4
7.	Prison sentences	18
8.	Discharge	1
9.	Conditional discharge	1
10.	Fines	6

+++ Arrests and prosecutions include single persons, pairs and groups of people sometimes jointly charged and persecuted/

Case Analysis

Leopard skins	1 case *
Python skin	2 cases **
Elephant ivory****	7 cases (2 cases January/Feb. 25 tusks) (5 cases August/Dec. 47 tusks)
Game meat	18 cases (some including illegal possession of other trophies and/or illegal possession of firearms and ammunition)
Illegal possession (firearms & ammn	8 cases
Hippo ivory	2 cases
Crocodile skins	1 case
Rhino horn	2 cases (one case involving fake rhino horn)
Setting wire snares	3 cases
Warthog tushes	1 case

** seized from foreign nationals
**** four cases involved further seizure from foreign diplomats, one seizure with co-operation of Kenya Wildlife Service, Kenya National Bureau under the Lusaka Agreement.
# includes the case of 549 carved ivory pieces seized by Netherlands Customs shipped from Zambia by a foreign national now under investigation by IIU in co-optation with Interpol Sub-group Wildlife Crime. Though shipped from Zambia, the origin(s) of the ivory have not been determined yet (para. 8.2 refers).

Also included are four cases of smuggling by foreign diplomats. This involved whole tusks cut into 60 pieces to conceal them in luggage, weighing a total 563 kgs.

Results of Zambia NPWS/IIU Operation - 1 January to 31 December 1998/99

1.	Arrests	66
2.	Prosecutions+++	32
3.	Pending #	14
4.	Withdrawn	0
5.	Acquitted	10
6.	Suspended sentences	0
7.	Prison sentences	9
8.	Discharge	0
9.	Fines	23

+++ Arrests and prosecutions include individuals and groups arrested and prosecuted

Case Analysis

Leopard skins	1 case
Lion skin	1 case
Elephant ivory	3 cases (1 case: 22 tusks involving arrests of policemen) (1 case of 32 seized ivory bangles) (1** case of a Greek Orthodox priest smuggling carvings from Congo Democratic Republic) Game meat 55 cases (some including illegal possession of other trophies and/or illegal possession of firearms and ammunition)
Illegal possession of firearms & ammn	5 cases
Crocodile skin	1 case (involving a Greek Orthodox Priest noted above; details passed to Interpol)

** seized from foreign national

7. Investigations 1999

In February 1999 investigations have led to the seizure of 30 firearms and a quantity of ammunition. So far, 21 suspects are in custody or on remand. 8 were arrested with 74 pieces of dried elephant meat. 1 with 7 elephant tusks; 3 with a leopard skin; and 1 with illegal possessed firearms.

The official system of payments to informers subject to securing the conviction of suspects has lost the use of valuable informers over delays in getting funds to pay them. Limited funds reduced operations to those shown. Appreciation is due to David Shepherd Conservation Foundation for sustaining much of IIU's operations and helping Prosecutors to travel to court to conduct IIU cases.

Evidence from investigations yet incomplete indicate changes of method in ivory smuggling. A symptom appears in one of the above ivory cases. Good IIU relations with the Inspector General of Police have led to all the recoveries. The problems still exist with corruption of individual policemen bribed to collude with ivory smugglers and commercial poachers, sometimes using police vehicles. Such cases are as disturbing as one in 1997 involving a Sate Security Service official convicted in 1997. But in these cases, the Police and State Agencies themselves co-operate with IIU to enforce the law. The issue needs seeing in the context of police corruption from which no known police service is free.

Enforcement of and Compliance with the CITES (Illegal Trade and Violations)

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INTRODUCTION

The Gambia is a Party to a number of Multilateral Environmental Agreements (MEAs), amongst which are the Convention on International Trade in Endangered Species (CITES), the Montreal Protocol on Substances that Deplete the Ozone Layer, the Basel Convention on the Transboundary Movement of Hazardous Wastes and their Disposal. These international environmental treaties were ratified in 1977, 1990 and 1998 respectively. The Department of Parks and Wildlife Management (DPWM) is the lead government institution for the purpose of implementing the CITES convention, while the competent authority and focal point for the Montreal Protocol and the Basel Convention is the National Environment Agency (NEA).

DEVELOPMENT AND EXTENT OF ILLEGAL TRADE

Wildlife resources including avifauna, form an important component of the country's biotic assets from both ecological and economic viewpoints. However, illegal trade (local and international) in wildlife is not well developed in The Gambia compared to some African States whose wildlife endowments are more exotic and have a much higher value in the international market. With regard to importation of wildlife, given The Gambia's economic situation, its citizenry cannot afford the luxury of importing exotic wildlife, trophies or other valuables obtained from wildlife. However, due to the booming tourism industry, there is some limited trade in animal parts at the artisanal level, eg. Snakes and crocodiles, and turtle shells. In rare cases, visitors having in their possession certain species of parrots, with the intention of illegally exporting them have been intercepted by security officials at the airport, and wildlife officials alerted. A biodiversity/wildlife policy and legislation study is in final draft. It was conducted under the auspices of the Agriculture and Natural Resources (ANR) working group which has its Secretariat at the NEA, identified drought experienced since the 70s, and increasing population pressure as the major threats to biological diversity in The Gambia. Illegal trade in endangered species was not reported to be a threat to biological diversity, similarly, invasion by evasive alien species has not yet been reported to be a major threat to biodiversity in The Gambia.

PREVENTION, MONITORING AND CONTROL OF ILLEGAL TRAFFIC

Legal Framework

National Environment Management Act (NEMA): This Act which was enacted in 1994, established the National Environment Agency (NEA). The Act empowers the Agency inter alia to identify, and classify materials, processes and wastes that are dangerous to human or animal health and the environment, and in consultation with the lead department (DPWM), to prohibit or restrict any trade or traffic in any component of biological diversity. The Act also empowers the National Environment Management Council (NEMC) to make regulations for the management of such materials, processes and wastes. It also controls, prohibits or restricts the manufacture or use of substances that deplete the ozone layer identified in accordance with the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer. Furthermore, the Act empowers the NEMC to make regulations and prescribe guidelines regarding access to the genetic resources of the Gambia.

The Wildlife Conservation Act: This Act was enacted in 1977 to provide for the conservation and rational management of wildlife in The Gambia. This Act prohibits the import and export of wild animals or their parts into or from the Gambia without a valid permit issued by the Director of Parks and Wildlife Management. Violation of these provisions is punishable by a fine or a term of imprisonment. The Act also provides authorized officers with enforcement powers. Officers have the powers to stop, inspect, search, seize and arrest without a warrant, any person suspected of committing an offence under the Act. The Act also empowers the Minister to make regulations to better implement the provisions of the Act. Enforcement of this act has been very weak and the biodiversity/wildlife policy and legislation study has proposed a biodiversity and wildlife bill, 1999 which addresses community participation in wildlife management and which inte-

grates the concerns of other sectoral policies and aims to facilitate the implementation of international treaties such as CBD, CITES, CMS and Ramsar.

Technical Capacities and Capabilities to detect illegal traffic:

Although the present Wildlife Act empowers officers to monitor and control illegal traffic in wildlife, the Department has serious manpower shortages. There is currently a heavy reliance on overseas volunteers whose services are available for only two years. This manpower shortage has seriously hindered the implementation of strategies and the enforcement of the Wildlife Act and international treaties. In spite of these constraints, efforts have been made by the Department's Education Centre to sensitize the general public on issues of wildlife conservation. Recently, a "back to the wild" campaign for parrots and primates was launched and an amnesty period granted enthusiasts to take domesticated parrots to the Department for rehabilitation prior to returning them to their natural habitat. The campaign was highly publicized and has been acclaimed a success. Officials of the Department also embark on confiscation of artefacts and crafts work made from wildlife parts. Security officials are also sensitized on illegal trade issues, and officials of the Department are alerted should illegal traffic be detected.

There is some level of awareness on these MEAs, but there is still need for more interventions in awareness creation, so that people can better understand their importance and be committed to the cause of environmental protection and undertake voluntary initiatives in promoting the ideals of these MEAs.

CONCLUSIONS AND RECOMMENDATIONS:

Illegal trade in endangered species and illegal transport and dumping of ODS and hazardous wastes albeit not highly developed in The Gambia, should be regarded as an imminent threat given that it is a developing country and the necessary legislation are not yet in place, and administrative procedures are yet to be instituted to support enforcement and compliance. The Gambia also lacks, financial and technical capacities to effectively monitor and detect illegal trade and dumping. Consequently, it is very vulnerable to illegal traffic of such wastes by unscrupulous persons or States.

To ensure effective enforcement of and promote compliance with MEAs, capacity needs to be built in relevant national institutions. The Environment and Public Health Inspectors, DPWM officials, the Police, Customs and Port Officials require training in the Identification and /or detection of endangered wildlife species, hazardous wastes and ODS.

Administrative procedures, enforcement & compliance promotion mechanisms need to be developed and implemented for effective detection and prevention of illegal traffic. Development of intelligence capacities is also crucial to the success of enforcement programmes. There is a need to carry out inventories and develop information systems to monitor Endangered species, ODS and hazardous wastes.

Enforcement of and compliance with MEAs need better interagency coordination at national and international levels. Joint implementation of the national obligations under different MEAs ensures that the use of scarce resources is optimised and synergies among the relevant conventions are harmonised at national level and international levels.

Public awareness and information dissemination promotes appreciation of the benefits of MEAs and ensures effective public participation in promoting enforcement of and compliance with MEAs. Exchange of information and technical co-operation between and within countries is critical to the success of enforcement and compliance programmes. Developing country parties require assistance in enforcing laws, procurement of technical and financial assistance from external sources and establishing and developing means of detecting and eradicating illegal traffic, including investigating, identifying, sampling and testing.

CITES:

(II) ASIA

Wildlife Crime Prevention in the People's Republic of China

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Environmental crime coming to be a more and more significant case of common concern in the international community. Conservation of the environment for sustainable development has become a pressing and arduous task for all countries and aroused widespread concern throughout the world. The appealing of the international community for conservation of the environment and the wild fauna and flora resources in particular to the endangered species has coming to be intensified increasingly.

China is one of the countries that have the largest variety of wild fauna and flora. It has a long history of wild fauna and flora development and utilization, and enjoys exceptional cultural advantage in the field of wildlife captive breeding (animals) or artificial propagation (plants), medical application and domestication. For thousands of years, the Chinese people, by unceasingly deepening their understanding of the nature of wildlife, and mastering the experience and knowledge accumulated through the ages, have created a unique system of Chinese medical science. This has made important contribution to the science of health in China and in the world. Meanwhile, the Chinese people have long realized the significance of preventing wildlife from extinction. Since ancient time, they have been setting up institutions for the purpose of domesticating wild animals and propagating wild plants to secure sources of medicinal raw materials and from this a systematic cultural tradition paying equal attention to protection and utilization has been gradually established.

However, along with the political and economic development started in 1978, all kinds of environmental crime, especially the crime that endangers wildlife, have taken advantage of the situation to step in, and the single illegal trade has grown into a complex international crime. The traditional consuming structure, social origin, economic impulse and composite elements have also become complicated.

While China, as the largest developing country of the world, continuously and steadily add its efforts to the conservation of wildlife and their habitats. To prevent and combat wildlife crime, many laws, rules, regulations, measures and some administrative documents have been promulgated and subsequently come into force to regulate concerning problems faced by wildlife authorities, in the meantime, China has also signed on to over two dozen international environmental treaties in rapid succession. Among of them are the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, 1981) and the Wild Animal Protection Law (WAPL, 1989). Others include a Circular Order Promulgated by the State Council on Prohibition of Trade in Rhinoceros Horn and Tiger Bone (1993), and the Protocol on the Conservation of the Tiger Between the Government of the China and India (1995) most related with international wildlife crime prevention. In realising the serious situation faced by the cause of wildlife conservation, the competent wildlife administration and law-enforcement organs like the public security organs and the Customs Office attach great attention to it. They work closely together to deal with wildlife crime and have substantially deflated the swollen arrogance of the criminal offenders.

I. CASE ANALYSIS AND SCALE ASSESSMENT

China is huge country both in territory and population, and also in its plenty of wildlife resources, but development in general and administrative level is still lower than most of developed countries. Thus serious limited capability on data collection and feed-back activities which would be otherwise taken to suppress the crime. Therefore, it is too hard to estimate the scale of illegal wildlife trade, poaching of wild animals and indiscriminate digging out of wild plants at national level. Following, I would like to analysis some major and sensitive wildlife cases which had taken place in China for recent years, so that we can have clearer understanding of the lost caused by these crime and their potential threats to our living environment and to our strategy of sustainable development:

1. Tiger Bone and Rhino Horn

Tigers and rhinoceros are wild animals on the verge of extinction in the world. On May 29, 1993, the Chinese State Council issued an Circular Order on the Prohibition of Trade in Rhinoceros Horn and Tiger Bone, Which banned by official order all trade in tiger bone, rhinoceros horn and their products. The circular order also ordered that all the obtained tiger bone, rhinoceros horns and the prepared traditional Chinese medicines containing such elements be sealed off. The pharmaceutical criteria for use of them is therefore cancelled, thus, illegalized all tiger bone and rhino horn related production. The decision making is difficult for the State Council, but even at the loss of 2.1 billion RMB (300 million USD), the Government of China still took such an initiative. The effort is of international importance to prohibit domestic trade of tiger bone and rhino horn in any way iterated above, the great initiative have led the neighbour country and territories to conducted similar actions.

To up-grade the public awareness towards the circular order and make it to be understood easily, powerful Chinese mass media such as China's Central Television (CCTV), China's Central People's Broadcasting Radio, People's Daily, China Daily etc., make their endeavour to interpret provisions and remind each Chinese to observe and fulfil their obligations, so as to gain the support of the society and the masses as a whole. The survival of wild population of the tiger and rhino should be considered at top priority, other than any motives base on economy, medical and cultural interests, is the firmly standpoint of China.

The Spring Festival of 1994, Chinese Traditional Lunar Calendar New Year's Day, is so heavy to spend in some groups of Chinese who are aware of the importance tiger bone and rhino horn both as precious natural resources, effective medicinal products and the symbol of wildlife conservation world wide. Few examples to illustrates the situation.

Just before the Spring Festival of 1994 coming, the cases related with tiger bone and rhino horn took place. Firstly, few people illegally carry and sell genuine and false tiger bone in Harbin -the capital of Heilongjiang province. Through the efforts of local enforcement officer under the direction of Law Enforcement Inspection Team, about 50 kgs of tiger bone were confiscated and wrongdoer had also been punished accordingly. In January of 1994, all seizures were openly destroyed by burning while guarded by several representatives. Secondly, basing on a clue from Environmental Investigation Agency (EIA), a investigation to the case of fraudulent selling of rhino horns in Wuchuan county of Guangdong province conducted. Major criminal - Lin Chengjie, former general manager of Chinese Herb Medicine Company of Wuchuan County, unsealed the stockpile which have been registered by government authority and attempt selling them to bastardly merchants[1], as they claim to pay for these raw rhino horn at several times of former market value. Lin was defeated by its avaricious to money and went into jail. All total about 230 kgs rhino horn of illegal holding revealed by the case was openly burnt in Zhanjiang City of Guangdong province. It is not only caused several millions of economy loss but also exerted gloomy pressure to Chinese who are highly aware of economy status and developing stages of China today.

The state ownership medicines productive factories are former major consuming body of tiger bone and rhino horn. Upon on the date of circular order come into force, the copies of the order have been place on the table of directors of these factories. All stocks of tiger bone and rhino horn and their derivatives have been registered, sealed and kept in selected warehouses with safeguards across China. Commonly, it is believed that there are no reason taking high risk to purchase tiger bone or rhino horn with high price and produce, sell it illegally, but only can get the same market profit with alternative medicines which contain substitutes of tiger bone and rhino horn. The continuing monitoring records of the case related with tiger and rhino is showing the same imagination, immediately after the Circular order come into force, quiet a lot of cases took place, such as illegal carriage or transport etc.. Through years of interpretation and public education, the case related with tiger and rhino have almost lost its significance to alert wildlife protector. This has been proved upon data collected submit to the Tiger Mission orgainzed by the standing committee of CITES which visited China just one month ago.

Findings:

The public and civil society joined the government efforts in the inspection and implementation of the relevant provisions of relevant laws and regulations. Thus would prevent wildlife crime effectively. A more specific plan at short or long terms of reference of activities stated above would be favourable needed in order to remind public on their obligations and rights.

[1] Two illegal so-called merchants from Environmental Investigation Agency who have not notice to and obtain prior approval from the Ministry of Public Security, they lured Lin Chengjie with incredible high price. The Court of Zhanjiang City has delivered its subpoena to them and did not get response either from themselves or EIA.

When the public is aware of the laws and regulations and understand them and implement and enforcement officer put in place, efficiency on the wildlife conservation would be facilitated. In particular, the prevention or restriction over the exploitation of wildlife resources and relevant violation to the laws, regulations, rulers and international Convention.

2. *Falcon Smuggling*

China is one of the main countries with falcon distribution. Being energetic, soldierly in bearing, bellicose and easy to train, falcons are good assistants to hunters. Hunters have treasured falcon. The middle east countries, which are rich in oil resources and affluent and relatively poor in biological resources, have a tradition of hunting falcons. Numerous people there are rich enough to afford the related expenses, and for this reason, these countries have become the main areas for the importation and consumption of falcon and its relatives. In these areas, a well-trained falcon can be sold at 20,000 or 30,000 US dollars. Colossal profits induce illegal elements from various countries to come to falcon distribution areas to organise the border residents to poach, transport and smuggle the falcons out of the border. Sometimes the illegal elements inside and outside gang up with each other and commit organised smuggling crimes.

"Wandering Falcons of Beijing Want a home", entitle of the article at the top of first page of Chinese Forestry Daily. It describes the situation faced by relevant authorities and some institutions at the last two months of 1994. A series of smuggling cases were found and 38 individual of falcons were seized in three times, 31 live individuals were then released into wild at Kalamaili Nature Reserve of Xinjiang Autonomous Region. Through efforts made by CCTV, the release ceremony was presented to all Chinese by its powerful TV network as an good and important news. Following to this start, other 44 falcons confiscated by the Customs. Additional information of falcon smuggling should be also counted. In the major distribution area of these falcons, namely Xinjiang autonomous region, Qinghai and Gansu provinces, several thousands of criminals related with falcon smuggling have been arrested, most of them are foreigners[2]. Forestry public security organs and local wildlife administrative organs, mobilized large manpower budget to deal with the falcon confiscated and repatriate the foreign criminals. From the year of 1994 to 1998, more than two thousands of falcon have been seized, but the trends is very clear, the cases of falcon smuggling is going down.

Before the exactly answer will be given, please first review what the requirement of CITES apply to those falcons? Why doesn't China make a special program provide some falcons officially, in order to satisfy the market demands and meanwhile raising some funds for the cause of Wildlife Conservation.

FINDING:

Comparing with tiger and rhino issue, the role of China in this case is just opposite, one is former major consumer state, the other is major range state. Therefore, the tactics or focal points should be different although with the same policy - strengthening law enforcement. Giving to the status of Saker falcon, most wanted species by the smuggler, is not as endangered as tiger and rhino. Launching a special program to regulate CITES appendices II falcon species would be best choice to meet variety of interests. For instance: over-exploration on falcon species can be avoided under the unify, technical and official leadership in the process of falcon capture; taking legal export specimen as powerful tool combat with smuggler to occupy limited market etc. Taking example of excellent success of sport hunting achieved across the world, executing the falcon management program would be of similar success. Besides effectively falcon smuggling prevention, there is still much to be desired on the fund raising, rescuing and releasing seized, confiscated or injured specimen, up-grade the level of local people's life and eventually increasing public awareness on wildlife conservation and increasing their positivity toward laws implementation.

In the 1998, the competent wildlife administrative authority jointly with police force and Customs officer enhance their co-operative enforcement activities in one side and adjusted trade administration policy. They openly requested interested countries to cooperate with Chinese ornithology institute, thus not only satisfy the cultural or tradition interests of those countries, but also benefit to ornithological research in China, and at last, the falcon smuggling case is decreased as the result of this kind of adaptive policy.

3. *Tibetan Antelope*

Tibetan Antelope, a rare and endangered endemic species of Qinghai-Tibetan Plateau of China has been seriously threatened since the late 1980s due to the increasing illegal trade of Tibetan Antelope Products (Shattosh) in some western developed countries and ineffective punishment thereof. Chinese Law enforcement agencies concerned have made their effort to

[2] Most of them are believed to be citizen of Pakistan. Upon opinion delivered by diplomat from Beijing embassy of Pakistan, some of these criminal are consisted of refuge of Afghanistan.

crack down on poaching for Tibetan Antelope but have got little achievements due to the reason that the habitat of Tibetan Antelope are mainly distributed in remote and desolate areas, which make it extremely difficult for cracking down on poaching. The decimation of Tibetan Antelope has aroused serious concern at both national and international levels, and the conservation of the species have come to be major topics of relevant wildlife conservation meetings.

To effectively protect Tibetan Antelope resources, further crack down on its poaching and illegal trade is needed. The Chinese Government has to stop poaching and smuggling of Tibetan Antelope and other endangered species or their products. The State Forestry Administration of China coordinates several public awareness campaign and combat activities to crack down on poaching and illegal trade in China. It strengthens international cooperation on law enforcement, taking use of any potential channel to develop public education program with clear target of wildlife protection and trying to greatly improve the worrying situation of Tibetan Antelope protection in a short time. Through the years of striking, several thousands of skins, skulls of the species have been seized and several hundreds of criminals have been punished. May be statistics of updated anti-poaching action will illustrate the battle between law-enforcement officer and criminals.

An action plan named "Action—Kekexili No. 1", was carried out to crack down on poaching for Tibetan Antelope. The crackdown involved 170 policemen organized by local Forestry Public Security Bureau of Qinghai, Xinjiang and Tibet provinces and autonomous regions, covering the areas of Kekexili, Mt. Arjin and Qiangtang area, and cost 600 thousands RMB yuan (about 73,000 USD). Through the concerted effort of the forestry policemen and all the people participated, poachers of Tibetan Antelope were heavily attacked and remarkable results had been achieved. Through this action, 17 groups of poachers and 66 criminals were caught (1 shot to death and one injured), 1658 skins and 545 skulls of Tibetan Antelope were confiscated in total, and 18 vehicles, 14 guns of various forms and 12,000 bullets were took over. Recently an investigation team working in the distribution area of Tibetan Antelope collided with poacher groups. Though the result is still not yet available, it seems that may be only if the species extinct, the battle between police and poacher will be ceased.

FINDING:

Similarly, taking the example of tiger and rhino issue, although Chinese government is confident on its capability in control medicinal use of existing stock and specimens continue to be produced by captive breeding facilities. The Government needs to cooperate with international community and to give the time of some major range states to establish their effective law-enforcement system, Chinese government commit trade prohibition related with tiger bone and rhino horn in any sense at gigantic economical lose. The issue of Tibetan Antelope is just opposite, the species mainly distribute in remote areas, harsh natural conditions make it more difficult to enforce the law and regulation there, even lived there can be regarded as great challenge. Therefore, producing countries, consumer countries of shattosh should do their best to undercover concerning cases, strengthen its enforcement pressure and strictly prohibit any use of the species. That will provide some opportunity for Chinese authorities to improve the situation there and give more hope for the species to recover in future.

According to the latest information, Chinese government is discussing with CITES Secretariat to co-organize an international workshop on the conservation of Tibetan Antelope. Representatives from competent administrative departments and law enforcement agencies in producing countries and consumer countries concerned will be invited to discuss how to strengthen effective international cooperation on law enforcement issues among relevant countries. They will exchange information, work out a common strategy to combat such a serious crime, and summarize experiences and lessons obtained by all the countries base their law enforcement experiences. The workshop is to call on all the consumer countries or regions to strengthen its law enforcement and public education program, to control and at last to wipe out all illegal trade of Tibetan Antelope products.

II. GENERAL COUNTERMEASURES BEING USED

Facing all those problems, the wildlife administrative authority of China really had been weighed down with individual cases. Manpower has been mobilized to deal with all those illegal activities, such as smuggling, poaching and illegal catching, transporting or producing. The Government is improving the public understanding of the understanding of the provisions of relevant laws, regulations and international conventions. It will promote administrative structure and to up-grade or to accumulate necessary experience to construct more effective enforcement network. Although wildlife protection staff are very active and willing to combat wildlife crime, a large amount of cases make them no time to consider the cause and reason in fully detail, therefore, they can only make them into troubles day by day.

In realizing the importance to escape from present ridiculous situation and to avoid risk of further dete-

rioration of wildlife crime. Chinese government take opportunity of Customs monitoring system improving, request CITES management authority of China contribute their knowledge to break-down all wildlife products conform with Harmonized Commodity Description and Coding System. Although the fruit of the cooperation does not appear mature enough to be a model of the world, it does reflect the policy of Chinese Government. Putting the crime prevention before the enforcement, this measure has been and would continue to be approved as right decision.

III. RECOMMENDATIONS

1. High-tech employed to achieve the goal of prevention and effective enforcement:

Just like above mentioned HS coding system, a computer based huge monitoring network have created very positive change on violation cases of wildlife laws and regulation. However, only take a break down list with sign of CITES does not enough to implement CITES provisions effective. Some developed countries are developing some software used for species identification and give some basic information of major traded wildlife products. This kind high-tech law-enforcement assistant would be of international significance. Only if this kind of high-tech being employed in our monitoring and enforcement system, the goal set by concerning laws and regulations, and even multilateral Environmental Agreements can be achieved.

2. Establishing Domestic Wildlife Law Enforcement Coordinating Committee:

Although the recommendations focus on domestic issues, actually the aim of the committee is still at international level. Base experiences almost all of us, any achievement can be reached should have its domestic base. In any country which are not only rely their wildlife resources, wildlife crime have long been neglected as the economy value and frequently enter to trade can not compare with other significant commodity. In most countries, the wildlife authority can only rely their own efforts to combat wildlife crime, other powerful law-enforcement agencies can not be used at all. Thus provide offender's plenty of opportunities to violate concerning regulations and step by step to destroy our living environment. Therefore, taking similar advise from ICPO-interpol working group on wildlife crime, any county should establish their own domestic coordinating committee to facilitate information exchanging, unify cooperative combat actions. To support case study and organize necessary training seminar etc. Thus would not benefit to their own country, but definitely also contribute to the cooperation between CITES, WCO and ICPO-interpol with common base of control illegal trade of wild fauna and flora.

3. Continuing to promote legal system and intensify publicity activities:

The big problem can not be overcome by law-enforcement officer, is the legal environment. With reference of out-dated laws and regulations, no matter how hard work by the law-enforcement officer, the state or country can not be down-listed upon their bad records. Several times of frustration experienced in law-enforcement would bring very negative impact to our society. Sometimes, we have to say that it is not the offender destroying our living environment, but the bureaucracy within our basic framework which including law-enforcement and administration.

However, the bureaucracy can not be rooted-out, and not be avoided as it is part of nature of human-being. What we can do is to intensify publicity activities, to make public more concern about wildlife and their own living environment, thus will urge people in different stages share various view of points as they like. In some degrees, I believe that although the multilateral environmental agreements have not been fully enforced and effectively implemented, the purpose of them have been delivered to the public, and public will make them step by step into the mind of macro-environment of society. That the real significance of these agreements. I am fully convinced that intensify publicity activities to promote public awareness and make social atmosphere direct to beneficial sides of updating laws and regulations according the real demand. Anyway, no matter how serious attitude we have on those environmental crimes, we still need to bear such a concept in mind, not go too far away from the reality, not go to extremely stage, as the experience shown that will produce negative impact on what we want to have.

One word for conclusion, to be more scientific and thoughtful will help us to protect our environment and our precious wildlife resources. Prevention is always better than punishment.

1. In general, the cases of wildlife crime are decreased, as the system of law-enforcement has been established and publicity activities have generally achieved the goals. Public awareness has been promoted in recent years.

2. Significant cases is increasing, it does not means that scale of significant cases of wildlife crime have lost its control. As large amount of these cases are based mass report, it means that the publicity work make them more concern about their living environment and wildlife resources.

3. Major Related Species of concerning cases is only listed for reference, it both does not complete and does not reflect volume base their listing sequence.

Appendix - Table on Cases of Wildlife Crime in China (1995-1998)

Year	Wildlife Cases	Solved Cases	Significant Cases	Major Related Species
1995	21,190	21,079	35	Tiger, Monitor Lizard, Wild Birds, Serow, Giant Panda, Snake, Tibetan Antelope, Pangolin, Asian Elephant, Asiatic Black Bear, Musk Deer
1996	17,990	17,860	55	Tibetan Antelope, Saker Falcon, Giant Panda, Black Kite, Golden Monkey, Asian Elephant, Pangolin, Asiatic Black Bear, Tiger, Insects, Macaca, Wild birds, live snake
1997	6,416	6,341	40	Deer, Tiger, Giant Panda, Golden Monkey, Asian Elephant, Tibeten Antelope, Saker Falcon
1998	5080	4,973	300	African Elephant, Tibetan Antelope, Pangolin, Golden Monkey, Tiger, Giant Panda, Asiatic Black Bear, Tiger, Macaca, Wildbirds, Python
	Decrease	Decrease	Increase	

Enforcement of CITES in China Shahtoosh Shawls and the Death of Tibetan Antelopes: Case Study

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Legal Framework:

—— 1979, the Criminal Law stipulations on illegal hunting of protected animals

—— 1980, the CITES was ratified by the Chinese Parliament

—— 1987, the Law on the Protection of Wild Animals, and Implementing Regulations

—— 1988, Catalogue of the Endangered Wild animals

—— 1993, Decision to prohibit the trade in the rhino horn and tiger bone. Consequently the traditional Chinese medicine suffered a lose of over 2 billions RMB Yuan.

—— 1995, Regulations on the Natural Reserves for wild animals (927; 7.64%)

—— 1996, amended Criminal Law and made illegal hunting, trade and smuggling of protected animals and their products subject to more severe penalty which include death penalty. It took effect in 1997.

Enforcement Actions:

—— Enforcement force
60,000 forestry administrative personal at grass-roots level
37,000 forestry stations, with 150,000
46,000 forestry security officers
10,000 policemen

—— Inspection Actions — regular or irregular

—— Destroy the animal products: Example
230 km rhino horn in Guangdong and
50 km tiger bone in Harbin
370 antelope skins to be smuggled were destroyed in Qinghai

—— Criminal enforcement
According to statistics compiled by the former Ministry of Forestry in 1995,
53,000 cases were investigated
87,000 violators were punished according to the Chinese Law
13 death sentences were executed for illegal hunting of Giant Panda, and etc.
More than 10 life imprisonment
Hundreds of prisoners imprisoned for certain period of time in jail.

Latest Enforcement Action:

Case Study on the Tibetan Antelopes

—— Shaptoosh shawls, a luxurious fashion made of the pure Tibetan hides for wealthy women in the western fashion market. Each shawl is:

- 1-3 metres long,
- 1-1.5 metres wide
- A shawl weighs 100 grams only —— also called as "Ring Shawls".
- 3-5 Tibetan antelopes have to be killed to make a shahtoosh shawl
- Price: up to US$30,000 - 40,000 per piece of such a shawl

—— Poaching done in China, and process in the neighbouring countries and regions.

According to media report (China Daily May 17, 1999)

- 100,000 workers are engaged in the production and trading of these shawls, with an annual output value reaching US$160 millions.
- Most of the shawls are sold in Western Europe.

—— Hoh Xil National Natural Reserve, a remote "no-men area" in the west part of China, is home to the animal with a population of 80,000

—— More than 20,000 were killed annually to maintain the current shahtoosh production overseas.

—— IMPACT: decrease of the antelopes, which is now less than 10% of the number a century ago.

—— Direct reason for the death of antelopes: illegal hunting for profits
—— Root reason: existence of a market for Shahtoosh shawls in the West
—— Coordinated cracking down on the illegal hunting of the antelopes

Since 1990, over 100 cases were investigated, 17,000 pieces of the antelopes skins, and 1,000 kg pure antelopes hides, 153 vehicles were confiscated, over 3,000 criminals arrested.

No. 1: Action of 1999, from April to May in Hoh Xil,

Achievements:

17 illegal hunting groups were destroyed.
66 illegal hunters were traced down.
1 illegal hunter was killed, 2 wounded.
18 vehicles, 14 guns, 12,000 bullets, and
1,658 antelopes skins were confiscated.

Victory without Cheers

A deputy country mayor, Soinam Targyai, was killed by the illegal hunters when he tried to stop their hunting in 1992.

Two years later, Jagba Doje, Soinam Targyai's brother-in-law took up his weapon to guard the antelopes.

On 15 May 1999, Police Captain Duan Qinghao, a Division Director in the Chinese Forestry Administration sacrificed his young life for protecting the antelopes in Xinjiang during tracking of the hunters. Both Mr. Duan and his wife died at only 36 years old for the animal.

Before my departure, I visited my classmate's widow, Mr. Duan's wife presented his picture to me, and she entrusted me to express her call for the coordinated cracking down on the illegal hunting and the illegal trade in the lovely animals in this international forum.

TheTibetan antelope is beautiful, and Mr. Duan's life is also beautiful.

Let's save all the beautiful lives on the earth, jointly.

Implementation of CITES in Korea

Prepapred by
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1. INTRODUCTION:

Korea acceded to CITES in July 1993 in order to participate in international efforts to protect endangered species of wild fauna and flora. Since then, Korea has made efforts to implement CITES by amending national legislation to comply with the obligations under the Convention and by strengthening national enforcement efforts. The task is not an easy one, as there is considerable demand in the domestic market for animal products, particularly for bear and tiger parts. The sale, storage, and display of medicines made from tiger bone and its derivatives are strictly prohibited by the amended Pharmaceutical Affairs Act. In June 1996, the Government destroyed more than 793 kilograms of tiger bone and over 10 million capsules containing tiger medicine seized from a medical trading company. Ministry of Environment hosted in 1995 a workshop, in co-operation with TRAFFIC (Trade Records Analysis of Flora and Fauna in Commerce) for East Asia. The workshop's objectives were to improve the effectiveness of CITES implementation by addressing such issues as the use of oriental medicine, the protection of endangered wildlife, and the control of illegal trade through more stringent customs inspections.

2. LEGISLATIVE MEASURES:

Relevant government agencies, such as the Ministry of Environment and the Ministry of Health and Welfare are closely related to the prevention of illegal trade in endangered species and the conservation of natural habitats. The Ministry of Environment acts as a focal point for international communication concerning the implementation of CITES. In Korea, CITES is implemented through three national laws: the Natural Environment Conservation Law, the Wildlife Bird/Mammal Protection and Game Law, and the Pharmaceutical Affairs Law. Provisions in these laws include legal procedures for controlling trade in wild fauna and flora.

3. PUBLIC AWARENESS BUILDING:

The comprehensive training and education of the staff in charge of CITES-related matters is carried out as an important means of effectively enforcing CITES. The background and recent on-going issues regarding CITES are lectured on during the global environment educational program, a regular course organized by the National Institute of Environmental Research. The Ministry of Environment also carried out

Table 1: Protection of Wild Fauna and Flora from International Trade

Authorities	Legal base	Protected species
	Natural Environment Conservation Act	Reptiles, amphibians, Insects, plants, aquatic life (fish, whales, etc.)
Ministry of Environment	Wildlife Bird/Mammal Protection and Game Law	Birds and mammals
Ministry of Health and Welfare	Pharmaceutical Affairs Law	Plants and animals (used for pharmaceutical products)

training programmes at a total of 40 organizations, including the Association for Environment Conservation, research institutes, and public and private enterprises. The courses cover both general and very specific CITES issues. The Korean government has also undertaken the following measures to promote public awareness of CITES:

- The establishment of two wildlife exhibition booths at Kimpo International Airport in '94 and '98;
- The distribution of stickers to be affixed to the front doors of oriental medicine shops notifying customers that rhino horn, tiger bone, and their derivatives are not sold;
- The organization of two international seminars in March 1995 and in June 1999 in conjunction with TRAFFIC East Asia;
- The CITES management authorities in Korea created a pamphlet written in Korean, Chinese, and English, and distributed it to a total number of 490 organizations, including agencies and domestic and international airports in Korea;
- The media has been stirring up strong interest in and concern for the protection of wildlife through television and newspaper articles. The government is also in close cooperation with the CITES Secretariat, other CITES parties, and related NGOs.

As illustrated above, a wide range of institutional and legislative measures and public awareness campaigns for the enforcement of the convention have been carried out. Korea will continue to cooperate with Interpol, NGOs, the media, and international organizations in order to ensure the eradication of the illegal trade in endangered species and their derivatives.

4. PROTECTION OF WILD FAUNA AND FLORA:

The Ministry of Environment also implements many measures to protect wildlife. To maintain the natural balance of our ecosystems and to prevent fauna and flora from becoming extinct, the Ministry has designated 43 species as endangered wild fauna and flora and 151 species as protected wild fauna and flora under the Natural Environment Conservation Act. The hunting and capture of these species is strictly prohibited. In addition, the MOE has designated collective wildlife habitats as protected areas such as Ecosystem Preservation Areas, national parks and wild fauna protection areas. Under the Wildlife Bird/Mammal Protection and Game Act, 95 families of birds and 72 families of mammals are designated for protection, and 757 sites totalling 134,243ha are designated as bird and mammal protection areas. In addition, 136 fauna and 58 flora species have been protected under the Natural Environment Conservation Act.

Under the Cultural Property Protection Act, 135 species of plants, birds and mammals are designated and protected as natural monuments. The indiscriminate import and release of alien species, such as snakes, turtles, and frogs, often adversely affect the local natural ecosystem. Therefore, their introduction to Korea is strictly regulated in accordance with the stipulations of the Natural Environment Conservation Act.

In cases where species of wildlife (including their processed parts) identified in the Appendices of CITES are traded, a government certificate is required for customs clearance. 145 countries have thus far acceded to CITES guidelines. Korea applied for accession on July 9, 1993, and the convention went into full effect on October 7, 1993. Since then, Korea has been actively involved in various international activities to protect wild fauna and flora.

Table 2: Endangered Species in Korea

		Critically endangered species		Endangered species	
Animals	Mammals	37 species	10	99 species	7
	Birds		13		46
	Amphibians/Reptiles		1		4
	Fishes		5		7
	Insects		5		14
	Invertebrates		3		21
Plants		6	52		
Total		194 species			

Implementation of CITES in Thailand

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Before or even after the ratification of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in 1983, Thailand has faced problems of illegal trade of wild animals and products thereof whether in or apart from the list in CITES. This is because the East believe that some parts of animals' organs are tonics.

In April 1991, Thailand was penalized by trade ban on wild animals and products thereof by CITES Parties, so called "Trade Ban". The reason was that Thai law at that time covered only indigenous wild animals not animals which have their origin outside Thailand as required by CITES. The ban resulted in billions of loss. According to the ban, Wild Animal Reservation and Protection Act of 1992 was introduced to provide measures related to trading, importing, exporting, transitory movement of wild animals listed under CITES. Consequently, the Secretariat announced the revocation of "Trade Ban" in April 1992. The 1992 Act implements CITES. In particular, section 24 which provides that "The importation, exportation and transitory movement of wild animals and carcass thereof, which require accompanying permit in accordance with the Convention on International Trade in Endangered Species of Wild Fauna and Flora, are permissible only with permission by the Director-General".

The application for and granting of the permission shall be pursued under the standard, procedure and conditions stated in the Ministerial Regulation. Apart from permit system, wild animal check-point is also used to control the trade. Section 27 of the said Act empowers the Minister of Agriculture and Cooperatives to issue notification in the Government Gazette to establish Wild Animal cheek-point. In this regard, the Minister has established 49 wild animal check-points in 28 provinces.

The Statistic Report on Violation of Wild Animal Protection and Reservation Act of 1992 by CITES Office (Thailand) reveals that in 1997 seven alleged offenders were caught whereas there were only four offenders in 1998. The difference in number of animal seized in 1997 is also evident if compared with those in 1998. For example, in 1997, 4,118 of reptiles and 4,171 amphibians were seized by the officials at check-points whereas none of those animals was seized in 1998.

In conclusion, being one of the CITES' parties provides Thailand great benefit in conserving and protecting wild fauna and flora. This comes from the development of more stringent legislation in compliance with CITES requirement coupled with effective enforcement of government agency concerned.

CITES

(III) LATIN AMERICA AND THE CARRIBEAN

An Overview on the Brazilian Federal Police Activities on Environmental Law Enforcement of CITES

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This short report provides an overview of the environmental problems in Brazil - with a special focus on wildlife matters, giving an outline concerning today's Brazilian Federal Police activities in this area. Brazil is a huge nation encompassing almost half of the South America area - with its 8,500.000 square/ kilometers, it is the 5th largest country in the world. Brazil has also the 6th largest population of the planet: 160 million people. The Brazilian rain forest covers more than half of the north area of South America and has the largest hydric forestall complex of the world, containing one fifth of the planet's fresh water.

Brazil is a country that shelters an enormous variety of species of animals and plants. The number of the World Wildlife Fund show Brazil as a golden medal champion in terms of biodiversity, with 517 species of amphibians, 1622 species of birds, 467 species of reptiles and 524 species of mammals. Two years ago, other three species of primates were found by a Brazilian biologist in the Amazon region. Now Brazil has 76 species of primates, almost one third of the total 250 species known in the world. For these reasons, during the last few years, Brazilian wildlife became an easy target of interest to museums, breeders, traders and private collectors all over the world.

A TREASURE FOR BIOMEDICINE AND PHARMACOLOGY

The questions related to the biodiversity and biotechnology are the most complex issues concerning the environment. Today the great scientists' concern is based on tropical forests, which still remain in regions of the Amazon, Africa, New Guinea and Borneo. Occupying an area bigger than the European continent, these humid tropical forests shelter forty percent of our planet's fauna and flora. The biggest area of tropical forest in the world is located in Brazil. It deserves a special consideration since this tropical rain forest area is a treasure for biomedicine and pharmacology - specifically the Amazon region - which consists an incommensurable and still non explored genetic patrimony, including plants, fungus and animals. This fountain of genes is certainly a very significant resource for humanity's welfare in the coming future.

The forest shelters potential resources for biomedical and pharmaceutical researches, where scientists hope to find out the cure for several evils such as AIDS, Alzheimers, Parkinsons and even cancer. According to the Systematics Agenda 2.000, a publication sponsored by the American Museum of Natural History, catalogues all forms of life of our planet and indicate that there are 10 millions of species still unknown. This affirmation shows that we are fighting against the sad risk of destroying what we do not even know yet, as well as destroying the hopes for the present and future generations.

THE FIRST STEPS TO SOLVE A BIG PROBLEM

Unfortunately, according to the environmental investigations Agency (EIA) reports, the smuggling of wildlife runs several billions dollars per years. Brazil, with its enormous natural resources, is undoubtedly one of the most plundered by this profitable criminal activity. According to the estimation of the Brazilian Environmental National Council, 12 million wild animals are taken away from our forests and 30% of them (3.6 million) are destined overseas.

However, this tragic picture is about to end: The Brazilian Federal Police Department, in co-operation with the National Bureau of Interpol/Brasilia, is implementing a project for combating crimes against the environment. The proposal will launch the Federal Police into investigative activity. It will aim specifically at the repression of criminals and criminal organizations that deal with the illicit traffic of endangered species, as well as other crimes committed against the environment in general.

The programme's first phase will be implemented through the establishment of a co-operation treaty between the Brazilian Environmental Institute -

IBAMA - and the Brazilian Federal police, a rough draft has already been prepared. The Interpol - Brasilia Office, following orientation from the Sub-group on Wildlife Crime created a Work Group destined only to research and investigate crimes against environment. This Work Group is responsible for the elaboration of an information analysis system and a database for environmental crimes involving Brazilian connections. Currently, there are Federal Policy agents at Interpol Brasilia assigned just to run the ongoing environmental cases, with a special focus on wildlife crime issues.

Environmental problems require further effective response from the Brazilian authorities. Wildlife Crime in our country is an issue that we must deal as a police matter, and at this time we are doing the first steps to solve these problems. The Brazilian Federal Police has already initiated a process to create an Environmental Service that will work under the umbrella of the Treasury Police Division called "Policia Fazendaria".

We are carrying out three large operations in co-operation with the Brazilian Environmental Agency IBAMA, in order to trace the main areas and connections of wildlife smuggling in the country.

The operation will be divided into three different phases:

First Phase	-	Area Recognition
Second Phase	-	Operational Data Research
Third Phase	-	The Repressive Action

These three operations were called "Operaçáo Papagaio" Operaçáo Beija-Flor", and "Operaçáo Sagui", which respectively means "Parrot Operation" (which also includes macaws and parakets), "Hummingbird Operation" (which also includes turtles and other reptiles), and "Primates Operation" (which also includes small capuchin, monkeys, sakis and the small mammals). Finally, a programme that will cover the whole Brazilian territory in dealing with wildlife crime networks is being planned.

The country is attempting to develop a special " master investigation" targeting on the smuggling of highly endangered species of Brazilian Fauna, in particular investigation on the trade of the blue lear macaw (anodorhynchus leari). Federal courts are already involved in deciding cases on poaching, transporting, frauding CITES documentation, corrupting health authorities from Brazil.

Currently, the blue Icar Macaws can only be found in a very short area located between the states of Pernambuco and Bahia (northeast of Brazil), and Brazilian zoologists believe that no more than a small group of 160 individuals can be found in the nature. The Brazilian Federal Police efforts in conducting an effective investigation on the network of those criminals will surely decrease this awful activity and probably save the anodorhynchus leari from total extinction.

Another approach the new unit deals with is what we call the "Asiatic Threat". It is known that Asiatic woodworkers invested, during the last two years, approximately half billion U.S. dollars in the Amazon. Their unlawful activities are causing an enormous environmental impact in the region. The choice of the Amazon is due to the wood potential and the cheap labour costs, as well as the lack of inspection activities. According to the Brazilian Environmental Agency, the timber harvesting in the state of Amazon will be in the next one year, five times larger than it is nowadays.

The NGO "Amazon Man and Environment Institute - IMAZON" reports that 89% of the timber extracted from the Amazon is taken illegally. 10% of the extraction is taken legally but on a predatory way, and only 1% is taken on a legal and non-predatory manner. Also according to the research at issue, 35% of the extracted timber is sold; 22% turns into coal and 43% turns into garbage. The Federal Police Department and other Brazilian authorities are dealing with this problem effectively.

The Federal Police and IBAMA are planning an operation that will have as its target ten foreign lumbering companies operating in the region. Eight of them bought areas in the states of Amazonas and Para that together have almost the size of Belgium. AMAPLAC, of the Malay Group WTK, intends to explore 369,000 cubic meters per year, more than half of what is nowadays extracted in the Amazonas State. In order to deal with such a threat, IBAMA will create eight mobile stations to inspect, instruct and educate people who live in the forests, by providing them with alternatives to the illegal timber extraction. The agents assigned to work at such stations will cover remote areas that have not yet been covered by the 186 offices that the Agency maintains within the 3.2 million square kilometers of the Amazon forest. These agents will identify deforested areas (giving fines and seizing the timber that is illegally extracted.

ENVIRONMENTAL EDUCATION, THE ONLY ONE WAY OUT

There is no doubt that environmental education is the most important mechanism to solve this problem. Unfortunately, we have to admit that no operation or task force will fight this threat effectively as the public participation and awareness would do. It is absolutely

necessary that environmental leaders build the future by ensuring that the whole society participate, involving a deeply intertwined web of political, economic and media interests. Only through education, we will ensure a better future realizing that today's decisions will benefit or impact our children in 20 years. With changing spirit, Brazilian schools and Universities are beginning to include environmental subjects in their syllabuses.

LOOKING FOR FUNDING AND COOPERATION

The new duty will surely bring victories and great realization to the Federal Police Department, which will play an extremely important role for the societies all over the planet. This attribution will certainly very well place the Brazilian Federal police, which actions will safeguard several resources still ignored by the common man of these days.

The criminals who traffic in wildlife had detonated a time bomb in other words, we are facing a countdown to the extinction of thousand of species. We found ourselves in a turning point, fighting a war that once lost will be lost forever. We won't have a second chance.

Like many other new police initiative, the Unit is with limited human and financial resources. The Brazilian Federal Police and its Interpol - Brasilia NCB are initiating programmes and projects that will provide the necessary external funding to allow them to effectively accomplish their goals. 80% of wildlife are located in developing countries like Brazil.

The wildlife and environment protection is a global responsibility. The Brazilian Federal Police are already known worldwide for their work in drug enforcement activities, mainly in co-operation with other agencies. Global co-operation and high level professionalism will certainly be the key to effecting change in the near future in the protection of wildlife. Our goal is to save one of the richest natural reserves of the planet, which has a unique role for the present and future generations of human beings in general. To ensure success, Brazilian Federal Police will appreciate support in training, equipment, exchange of information and knowledge.

Illegal Trade and Violations of the Provisions of Convention on International Trade in Endangered Species of Fauna and Flora (CITES)

Prepared by
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1. THE EXTENT OF ILLEGAL TRADE OF ENDANGERED SPECIES IN BARBADOS:

Barbados ratified the Convention on International Trade in Endangered Species of Fauna and Flora (CITES) in March 1993. In trying to implement the CITES convention, Barbados has found many difficulties in trying to prevent illegal shipments from entering the island. This is primarily due to the fact that those species being shipped to Barbados are from nearby Caribbean territories and many of these shipments do not enter through designated ports. This is particularly so in the case of reptiles and Conch. In addition, when shipments are received through designated ports they often escape the Customs Officials as they are not trained in the identification of CITES specimens and are not very sensitive to the potential impacts of illegal trade in fauna and flora. In some cases though, some of the specimens are very well concealed in luggage and among shipments of other goods and may escape the Customs Officials even when they know what to look for.

Further to the above, the existence of illegal trade is supported by data from monthly inspection of pet shops, zoos, herbaria etc. These checks turn up specimens of the following species not found in the wild in Barbados and for which no valid CITES Permits have been issued: Red-tailed Boas (*Boa constrictor constrictor*), Green Iguanas (*Iguana iguana*); Venus Fly Traps (*Dionaea muscipula*); Queen Conch (*Strombus gigas*). When approached, the business houses argue that the specimens were bred/ propagated locally. The existence of pre-Convention specimens means that in some instances this argument is a valid one. It is also factual that breeding stock exist and locally bred reptiles are available.

The Venus Fly Trap is often brought into Barbados hidden in hand luggage or within shipments and deliberately misidentified. A number of legal shipments also enter Barbados and then are redistributed. It is therefore difficult to identify illegal specimens once they are on the market. In addition, specimens of Queen Conch are often brought into Barbados from St. Lucia hidden among shipments of bananas and mangoes. Two shipments of approximately (30) specimens each have been seized within the past (18) months. Having no real conch fishery in Barbados, and given that Queen Conch in Barbados is often found in deep waters, it is highly likely that most specimens sold in Barbados originate outside of the country. A large number of locals offer specimens for sale to visitors who take them back home as souvenirs. However, to date, seizures of CITES specimens originating in Barbados have been reported only in Germany and the United Kingdom.

In the absence of legislation on Alien/Exotic Species there is no legal recourse when such species are encountered. Fortunately these are found in very small numbers - one or two per month. Occasionally feral snakes and iguanas are caught in Barbados, these are usually placed with reputable, qualified caretakers or humanely destroyed. It should be noted that there were some (47) legal export and (122) legal import shipments in 1996 and a further (28) legal export and (148) legal import shipments in 1997, representing over 100,000 specimens in total. Imports consisted of mainly orchids for commercial use. Exports were dominated by specimens of the Vervet Monkey (*Cericopithecus aethiops sabaeus*) used for bio-medical purposes, mainly vaccine production. (Barbados monkeys are responsible for the production of 75% of the world's polio vaccine).

2. EFFORTS MADE TO CONTROL CRIMINAL ACTIVITY IN BARBADOS:

In Barbados, two bodies work together to implement the CITES convention, the CITES Management authority and the CITES Scientific Authority. The Man-

agement Authority and Convention Focal Point in Barbados is the Environment Division, now with the Ministry of Environment, Energy & Natural Resources (MEE). The Scientific authority comprises scientists from a number of governmental and non-governmental agencies the Fisheries Division. Veterinary Services, and Entomology Division from the Ministry of Agriculture and Rural Development (MARD); the Coastal Zone Management Unit and Environmental Unit from the Ministry of Environment and Natural Resources (MEE); the University of the West Indies and the Bellairs Research Institute of McGill University. The Scientific Authority lends technical support to the Management Authority and the Environment Division acts as the Secretariat for the Scientific Authority.

Up until 1997 trade in CITES listed species was facilitated through the issue of "in lieu of letters". In December 1997 the Barbados CITES Permit was introduced, making it easier to control illegal trade as the current permit is difficult to forge - it contains a watermark of the Coat-of-arms of Barbados. This security is further reinforced as only three officers have the authority to sign and issue permits - samples of these signatures are lodged with the Convention Secretariat. In addition permits also have to be validated by the MARD and the Customs Department. Furthermore, there exist a dual permitting system in Barbados where a CITES permit must be accompanied by a valid Veterinary Health Certificate as issued by the Veterinary Services Department of the MARD. Note too that the CITES Management Authority of Cuba are involved in an ex-situ conservation programme for the Cuban Iguana (*Cyclura nublia nublia*).

In 1997 the CITES Management Authority held a workshop geared towards educating personnel involved in the administration of the CITES system in Barbados. The workshop also gathered information on how the system can be improved. Since then, attempts have been made to educate and inform visitors and locals about the obligations under CITES but this has met with limited success to date.

Government's Solicitor General's (SG's) Chambers is currently drafting CITES specific legislation for Barbados. The current system is administered under the Miscellaneous Controls Act (cap.329) and is regulatory only. It is expected that the CITES specific legislation will be in place by the Year 2000. In the meantime, seizures are made periodically, generally not more than two a year. To date most of these have consisted of shipments of stuffed Spectacled Caimans (*Caiman crocodylus crocodylus*) originating in Guyana.

3. CONCLUSION AND RECOMMENDATIONS:

There are a number of actions which can be taken and a number of initiatives are currently underway.

1. CITES Specific Legislation need to be put in place as a matter of urgency - This initiative is already underway.

2. Alien/Exotic Species and Local Species Management Legislation also needs to be put in place - This initiative is also underway and is in draft with the SG's Chamber, in addition an alien/Exotic Species Emergency Response Committee has been established.

3. Public Awareness and Education is necessary - Public Awareness materials are produced by the MEE but funding to facilitate the production of more materials is an issue.

4. Training Programmes - Training programmes to sensitize traders, administrators and enforcers would be useful however currently the MEE's budget does not facilitate this.

5. Both the Draft CITES legislation and Draft Alien/Exotic Species Legislation recommend the registering of local faunal specimens and owners and the establishment of a list of registered traders.

It will always be difficult to control illegal trade. However, with the passing of the above mentioned legislation, and with the development of education programmes, the situation should improve. Barbados will continue to try to improve the CITES Management System and welcomes the opportunity to work with others in this regard.

Enforcement of and Compliance with the Convention on International Trade in Endangered Species of Wild Fauna and Flora

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I. INTRODUCTION

In Chile, environmental problems gained prominence on the public agenda at the beginning of the decade, fundamentally as a reaction to the environmental requirements of foreign markets. Over time, however, environmental action was also stimulated by a domestic demand for a better quality of life. Environmental awareness began to grow because the problem of the environment reached a critical point. It was in this context that the Environmental Framework Law (March 1994) came into being, with its provisions for both prevention and remediation (environmental impact assessments, environmental standards, cleanup plans, etc.) For developing countries, the question of sustainable development is a challenge that can no longer be ignored. Recently, such countries have begun to define environmental policies, which include entering into international agreements together with other countries, developed, developing, and undeveloped. The developed countries started on this road in the 1970s; the developing countries, both actors and victims, became aware of environmental problems in the 1980s. An interesting proposition would be to define "environmental crime" such that it takes into account the relationship between the perpetrator of the crime (organized crime, unethical businesses, corrupt or ignorant government employees) and its victim, who will often be unidentified, anonymous and both psychologically and geographically distant, and will sometimes even feel unaffected by the crime (the destruction of a native forest may not be "felt" by a city dweller.)

The victim of ecological crime is affected or harmed in a psycho-socio-economic context that encompasses both the victim and his or her surroundings. Thus, a victim might be part of the local community, as happens when a river is polluted through the dumping of waste or toxic waste; or the regional community, as in the case of the construction of a dam; or the national and international communities, as happens with the destruction of the ozone layer and the greenhouse effect.

In Chile, there exist certain traditional offenses, such as the burning of forests, the exploitation of protected marine resources, and violations of the Hunting Law, which specifies that "one must prove the origin or proper acquisition of exotic animals belonging to a species or subspecies listed in Appendices I, II or III of the Convention on the International Trade in Endangered Species of Flora and Fauna (CITES)", and that "one who wrongfully traffics in such species is punishable by imprisonment for a medium or a maximum term."

II. REVIEW OF THE IMPACT OF ILLICIT ACTIONS AGAINST THE FLORA AND FAUNA OF CHILE

It is shocking to observe the number of investigations carried out since January of 1997 that have revealed the introduction, possession or trafficking in exotic and wild native species protected by the Hunting Law, CITES or CMS, in spite of awareness on the part of merchants and the general public of the penalties applicable to persons who engage in such activity, as well as the risks to human health presented by the acquisition of specimens improperly introduced into the country. This phenomenon is due, it is believed, to a growing "ecofashion", greater availability via the internet and mail order outlets and to an increasing demand attributable, perhaps, to images seen on foreign and local television, in which public figures, be they from show business, sports or high society in general, show off their "exotic", beautiful and attractive pets.

Proof of the foregoing assertions can be seen in Table 1, Trade and possession, which sets forth statistics for the period January 1997 - March 1999 regarding the number of animals confiscated for violation of the Hunting Law, and also includes species listed in Appendix I of CITES.

Further adding to the problem are circuses, whose ready means of transit between countries, together with the lack of knowledge of fauna on the part of those charged with controlling international borders,

Table 1: Trade and possession

Species		Quantity
Birds	Black-mecked swan (Cygnus melancorrhyuphus)	2
	Chilean flamingos (Phoenicopterus chilensis	15
	Parrots (Ara sp., Amazona sp., Aratinga sp., Brogoteris sp., Forpus sp., Myopsitta monachus, etc.)	350
	Ñandú (Pterocnemia pennata)	2
	Passeriformes (Catemenia analis, Paroaria coronata, Sporophila sp., Padda oryzivora, etc.)	100
Mammals	Monkeys (Cebus apella, Cebus albifrons, Saimiri Sciureus, Aheles paniscus, Alouatta caraya and Lagothrix lagothrichia)	50
	Pudu (Pudu pudu)	1
	Mountain lion (Puma concolor)	1
Reptiles	Boas (Boa constrictor)	
	Iguanas (Iguanas sp.)	57
	Giant anacondas and boas (Eunectes marinus, Boa constrictor occidentalis)	119
	Land turtles (Chelonoides sp.)	14
	Monitor lizard (Varanus sp.)	1

Table 2: Circuses

Species	Quantity
Kanagaroo	2
Asian elephant	1
Lion	41
Paraguayan parrot	1
Spider monkey	5
Wooly monkey	2
Cai monkey	9
Andean spectacled bear	2
Grizzly bear	7
American monkey (Ateles hybridus)	12
Mountain lion	2
Tiger	7

has in many cases allowed them to import and sell animals utilizing the documents of other animals that are old, dead or even of another species. One must add to this the fact that Chilean circuses are family operations that exchange their acts, including their animals, without properly documenting these exchanges. This makes tracing the animals difficult, as there is no reliable system of marking or identification of individual specimens. In Table 2, Circuses, one can observe some examples of animals found in the spring of 1998 at various circuses with irregularities in their documentation.

Regarding flora, there exist no clear statistics of violations of CITES, with the exception of cactuses. Nevertheless, the country relies on rigorous plant health controls, which impede the import of vegetable products, to protect against the risks posed by agro-silvo-pastoral activities.

III. ATTEMPTS TO CONTROL ILLEGAL

HUNTING AND THE ILLICIT INTRODUCTION OF AND TRADE IN ENDANGERED WILD SPECIES OF FLORA AND FAUNA

Given that Chile is a country divided into administrative regions, the impact of the illegal trade in flora and fauna varies considerably from region to region. The border crossings with Peru and Chile are in the extreme north, in Regions I and II. There, the authorities regularly find animals or animal and plant by-products protected by CITES or some other international agreement or national law, which they immediately confiscate without resort to judicial proceedings. This demonstrates a complete lack of concern on the part of the traffickers and their persistence in evading all existing obstacles. The traffickers' attitude is attributable to the commercial value of the flora and fauna in which they trade, which rises proportionally as one nears the greater population centres of the central area of the country. Attempts have been made to train border control officers, mainly those of the Agriculture and Livestock Service, to recognize and manage exotic protected flora and fauna. Once these flora and fauna enter the country, their trade is more difficult to control.

Another important protective measure is the countrywide regulation of the importation of any plant or animal product through the sworn declaration form, by which any person entering the country has to declare on oath whether or not he or she is carrying animal or vegetable products or by-products. The making of a false statement on such a declaration is punishable by a fine and imprisonment.

The greatest incidence of violations of CITES occurs in the metropolitan region and capital of the country, owing to those areas' greater population and consequent greater demand for exotic species, principally those from the Amazon.

In response to this situation, the CITES regional administrative authority for wild land animals under the Office of the Agriculture and Livestock Service for the Metropolitan Region, has implemented a comprehensive training program for its volunteer hunting inspectors. It has strengthened coordination with the police and has enhanced efforts to educate the community regarding the harm to natural populations arising from excessive harvesting and hunting and the potential risk to human health.

In this regard, links have been established with universities, museums, local police units, governmental bodies such as the National Customs Service and environmental protection non-governmental organizations in order to improve the ability t detect illicit traffic in flora and fauna and to rescue the greatest possible number of illegally traded specimens. Furthermore, new animal rescue and rehabilitation centres have been established, including a Primate Rehabilitation Centre.

IV. CONCLUSIONS AND RECOMMENDATIONS

From the foregoing, one can draw the following principal conclusions that reflect the existing situation:

1. The demand for exotic species and the illicit traffic and commerce in endangered species are increasing. It is worth mentioning in this context that, according to a study conducted by scholars at a major national university, the amount of money spent in the capital last year on pets, legal and illegal, apparently exceeded that spent on phonographic recordings.

2. There exist in Chile legal tools with which to combat the traffic and commerce in wild endangered species. There is, however, an urgent need for capacity-building within the CITES administrative authorities, the police, the courts, the customs authorities and other relevant bodies, in order to promote improved coordination and effectiveness in both the detection and elimination of this illicit industry, as well as in the punishment of those responsible.

On the basis of the example set by the Office of the Agriculture and Livestock Service for the Metropolitan Region and the voluntary hunting inspectors working in that region, efforts must be made to promote inter-institutional cooperation to combat illicit acts which affect the protection of endangered species.

To the foregoing one can add a small group of new environmental offenses being defined in proposed legislation modelled after laws governing the illicit traffic in and elimination of hazardous wastes. This effort is still far from establishing a full-fledged environmental penal code. In this context, the Scientific and Technical Unit of the Chilean Investigating Police, which is staffed by civilians and is highly specialized, is in the forefront of the defense and protection of the environment, an issue which has been the subject of many articles in our publications. The Chilean Investigating Police has also been active in the international arena. In 1994, it organized the "First International Workshop on Environmental Crimes", sponsored by the General Secretariat of Interpol. The police have created an Environmental Crimes Unit, which is devoted to reviewing, analysing, advising and inter and intra-institutional training within its area of specialization. The great majority of environmental offenses in Chile are administrative offenses usually punishable only by a fine or an injunction of the of-

fending activity, and not by imprisonment. This means that perpetrators of environmental crimes run only a financial risk, and often means as well that the Chilean Investigating Police lack the juridical means for a full investigation of the facts and for their submission of the judicial authorities. The administrative authority handles the case, and naturally the results it reaches differ from those that would be reached by a scientific-police investigation. Fortunately, as discussed above, the situation in the country is changing, not just in the letter of the law, but also in its enforcement.

With respect to conventions, compliance is sometimes made difficult for various reasons that affect both OECD and non-OECD countries. Taking as an example the illicit traffic in and dumping of hazardous waste, ever more stringent regulations mean that it costs the producers of hazardous waste more and more to dispose of these wastes in their own countries. It thus becomes cheaper for the producers to export their wastes to (i.e., dump them in) developing countries, a situation made possible by the liberalization of international trade (in June, negotiations will begin between the European Union and Mercosur). Let us take as an example the Basel Convention. Although there has been progress over the years, there are certain definitions, such as the one for hazardous waste, that still pose conceptual difficulties due to differing national legal frameworks.

Furthermore, it is not always clear which methodology of chemical analysis is to be utilized to define a waste as a hazardous substance. Although illegal traffic is defined in Article 9, paragraph 1, of the Convention, the listing of wastes is not always clear. It would seem that the amendments to the Convention explain the rationale for the listings in the light of the use of cleaner technologies for treatment, on the one hand. On the other hand, and advances in scientific knowledge, which allow for a better understanding of mutagenesis, carcinogenesis and toxicity of some substances through molecular biology. One difficulty, however, arises in article 9, paragraph 5, which states that "each Party shall introduce appropriate national/domestic legislation to prohibit and punish illegal traffic." Knowledge on this subject is sometimes limited, and the authorities charged with enforcing the Convention do not keep up with developments affecting the Convention that occur during the periods between meetings of the Conference of the Parties. Sometimes Governments do not cooperate adequately (Chile has a free zone, through which a large volume of chemical substances circulate), and at other times they impose punishments only of an administrative or economic nature, levying fines that are ridiculously small given the capital involved. Also, the relevant authorities sometimes lack adequate human and financial resources to perform their duties, and sometimes exporters and importers are unscrupulous.

Where specific results are concerned, at the 1993 general meeting of the Interpol member States, two resolutions were adopted, as requested and proposed by us, which are of great importance for police forces. One concerns environmental crimes and the other illicit traffic in wildlife species, and they encouraged all members of the organization to promote, in every country, the establishment of a department or section to investigate and gather statistics and environmental crimes and proposed that the General Secretariat of Interpol should act as focal point for those efforts. In fact, the Secretariat, together with the Working Group on Environmental Crimes has created the "Eco-report", a blue-print for a system of exchanging information on environmental issues. This mechanism has proved difficult to use in practice. Many of the activities carried out by the Chilean Investigating Police have been reported to the Interpol offices of the countries involved.

Thanks to this exchange mechanism, CIP was able to detain a ship carrying a full load of hazardous wastes. It also detained an organization in a neighboring country that contravened CITES. It is important to make this information readily available so that each country can familiarize itself with the modus operandi, usual paths, etc. of traffickers and criminal organizations.

As usual, the problems are inadequate information, knowledge, training, education, and technical advice. All these should be actively enhanced both internationally and domestically.

With respect to CFCs and other ozone-depleting substances (Montreal Protocol, 1987), as far back as 1992 the World Meteorological Organization reported dangerously high levels of depletion of the ozone layer in the Antarctic and the south of Chile and Argentina. In some cases, those levels were 50 per cent below normal. Some researchers estimate that every time there is a 1 per cent reduction in the atmospheric ozone layer, there is a 5 per cent increase of the risk of skin cancer, with this risk increasing to 16 per cent in children.

The "Programme for the Protection of the Ozone Layer," established in Chile and implemented through National Commission for the Environment (CONAMA), has made an effort to institutionalize the use of the "Ozone seal" (for products that contain no ozone-depleting substances), and has promoted subsidies to help defray the cost of retrofitting technology, as well as other advocacy and training activities. Methyl bromide, a substance used in fruit fumigation

(Chile is a big exporter of fruit), has been recycled since 1996, in collaboration with the private sector. Despite a 6-7 per cent growth rate for the national economy, Chile has achieved a freeze on consumption of ozone-depleting substances. There is uncertainty, however, as to whether this consumption will decrease in the next millennium, in view of the absence of subsidies and more specific legislation.

One of many possible proposals would be to establish active agreements with non-governmental organizations, which could provide useful information on illicit traffic. For purposes of coordination, the national police forces linked to Interpol could be placed in charge of investigating illicit traffic, so that the Interpol General Secretariat could have at its disposal the information gathered and interact with UNEP and the secretariats of the relevant conventions.

International Environmental Crime and its impact on CITES in Cuba

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ILLEGAL TRAFFIC IN ENDANGERED SPECIES:

Since 1990 when Cuba became a party to CITES, several cases have been reported by the custom service, regarding intents to introduce or take out of the country, without following laid down regulations, species subject to international control. On attempts to take out of the country, the more frequent infractions have been associated with turtles (18 cases in 1997), black coral (5 cases in 1997) and to the Cuban crocodile (20 cases in that proper year). All those cases were detected and solved by the custom service. Upon analyzing the causes of these infractions it was concluded that it is a trade carried out mostly by isolated persons and there are no verified evidences of existing criminal associations organized for this purpose.

Besides the defficiences in the legal regulation system, the following have been identified as causes of these infractions:-

(i) lack of information and little knowledge by many of the transgressors of the fact that they were infringing the law.

(ii) the fact that the articles that they intended to take out of the country were previously acquired in an official shop, where owners or sellers are not aware of the rules on limitation of exportation.

(iii) the increase (specially since 1994) in the number of individual sellers, most of them unauthorized. This situation is aggravated by the increase of international tourism.

MEASURES ADOPTED TO CONTROL ILLEGAL ACTIVITIES:

Agreement 2973 of December 15, 1995 of the Executive Committee of the Cabinets, designated the Ministry of Science, Technology and Environment as the administrative and scientific authority to be in charge of the responsibilities derived from Article IX of the CITES. Under Resolution No. 29 of March 14 1996, the Ministry of Science, Technology and Environment designated the Inspection Centre as its administrative authority, to grant permissions, certifications and all kind of authorizations required for the importation, exportation, or introduction from the sea of species of flora and fauna protected by the CITES.

This Resolution also designated the institutes that play the role of scientific authorities to carry out the pertinent analysis and make opinions and reports. Another Resolutions established particular regulations regarding black coral.

In September 21, 1996, CITMA made a general regulation for the application of CITES, that include the determination of the ports and airports to use as points of embarkation and re-embarkation, the requisites for the transportation and the applicable regulations for nursery centres. For infraction cases, the Resolution establishes seizures and return to the country of origin requirement of seized specimens.

Other legislation are also applicable, although not designed specifically for CITES. For instance, the penal code has sanctions of imprisonment for up to three years for contraband. On the other hand, the Customs Service-Decree Law No. 162 of 1996 and its complementary body - Decree No. 207 of 1996 - established fines and seizures for the species that are imported or exported contrary to the legislation in force.

MAIN CONSTRAINTS IN THE NATIONAL APPLICATION OF CITES:

(i) The main limitations regarding the national applications for CITES can be identified as lack of materials and financial resources as well as the required infrastructure, necessary for an adequate follow up and control of these obligations.

(ii) There is lack of effective systems of information that allow the adoption of rapid and effective actions and preventive character and maintain at the same time an effective information base to the citizens. To these, among other factors is associated with the insufficiencies in education and environmental awareness.

(iii) The regulations on responsibility are not sufficiently clear and strict. A Decree-Law on admin-

istrative penalties with effective enforcement measures still awaits approval. Consequently, civil and penal laws continue being basically the traditional hence not adequate or effective to deal with these emergent issues.

(iv) Equally scarce is the use of economic instruments. Even the international framework is limited, although CITES provides a frame regarding endangered species, is out of such frame all that refers to biological diversity in general and in particular all those matters related with illegal trade of genetic resources is kept out. Even at international level there is no effective compulsory mechanism.

(v) On the other hand, conflicts among several international environmental agreements exists. For instance, the potential contradictions between multilateral environmental agreements and World Trade Organization's agreements.

CONCLUSIONS AND RECOMMENDATIONS:

Compliance with responsibilities derived from the CITES at the national level require an effective cooperation of the international community, particularly from the developed countries, according with the Principle 7 of the Rio Declaration. Without a strong international commitment, national efforts will be seriously limited. Compliance control must be mixed with compliance assistance. Consequently, national regimes must be reinforced. This must occur on a harmonious way, combining the administrative, civil and penal systems.

Taking into account that the fundamental idea is preventive and not coactive the responsibility regime must be approximately combined with preventive measures including declaration and reporting obligations. Violation of laws does not necessarily reflect an intention to commit an offence but sometimes ignorance and lack of culture and knowledge regarding those issues. In this sense, all actions that tend to reinforce information and citizen awareness and public participation must be involved and built.

The use of economic instruments strengthened and/or introduced to complement the command and control measures. At the international level, the existing mechanisms must be reviewed as they have a decisive influence on the performance at national level.

More studies and efforts must be dedicated on the clarification of the relations and potential conflicts among the multilateral environmental agreemental and the World Trade Organization's agreements. In this regard, the practice established by Cuba since 1996 of a "Committee of Trade and Environment" for the coordination of the commercial and environmental policies, seems to be a good way in the search of a national coherence.

Implementation of and Compliance With CITES in Colombia

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For this Convention, the country has developed the necessary mechanisms to carry out the stipulated requirements of this instrument to regulate trade in endangered species of flora and fauna. For Colombia in particular, that trade has focused on the following species:

1. The cayman "babilla" (hides and parts)
2. Iguana
3. Boa
4. The lizard "lobo pollero"
5. The "pala" snail
6. Orchids and cactus.

The animal species are obtained exclusively from a system of breeding in captivity, with the exception of the "pala" snail, which is obtained from the natural environment through offtake quotas. As far as species of flora are concerned, these are obtained by artificial propagation.

The exports of babillas amounted to 600,000 hides on average per year, while the iguana, boa and lobo pollero supplied the luxury market exclusively. The exportation of cactus is sporadic, while that of orchids amounts to some 20,000 specimens annually.

According to the review carried out by the CITES Secretariat of existing national legislation, it was confirmed that the legal framework for complying with the commitments entered into in the Convention was adequate.

Through the Ministry of Environment, the country has acquired an appropriate procedure for the issuing of CITES permits, and is promoting the establishment of a committee made up of senior administrative and police officials, including INTERPOL, to be able to monitor the entry and outflow of species of flora and fauna.

PROBLEMS RELATED TO ILLEGAL TRADE:

1. To discover the magnitude of the illegal trade in wildlife has been a costly exercise, given the complexity of the problem. Information on illegal trade has almost exclusively been limited to publications by large communications media, which unfortunately in most cases are inaccurate and sensationalist.

   In view of this problem, for some years we have been gathering information about confiscations by environmental authorities and from the registries of bodies responsible for the protection and recovery of specimens, so as to arrive at a reliable diagnosis of the real magnitude of illegal traffic. Despite the foregoing, access to and dissemination of this information have proved to be difficult.

2. There are gaps in the area of scientific research that make it difficult to determine clearly the status of conservation of wildlife populations.

3. Frontier controls are complicated due to the distances and geographic configurations involved, which make it difficult to establish adequate control of crimes to do with wildlife.

4. Other problems are related to the statistical data of the World Conservation Monitoring Centre (WCMC), which receives information about CITES permits issued by States Parties and on export performance. Since not all the permits are utilized within the same period for which WCMC produces statistics, there is distortion in the information, so that adequate information is not available globally on trade in those species, or such information only becomes available two years after the report is published.

CONCLUSIONS:

1. The country needs to develop monitoring and follow-up systems on the status of endangered species of flora and fauna.

2. The capacity of its senior administrative and police officials must be strengthened, to develop more efficient control with wider coverage over the territory.

3. Capacity-building of its scientists is needed, so as to obtain more adequate information on the potential for commercial exploitation of species.

4. International co-operation must evidently take on a fundamental role in the foregoing, as many other countries, particularly more developed countries, possess a greater capacity in those areas, as well as greater support through training and other facilities.

CITES

(IV) EASTERN EUROPE

Enforcement of and Compliance with CITES in the Czech Republic

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1. INTRODUCTION:

The "CITES" (act nr. 16/1997) implements the CITES in the Czech and adds some internal rules to enable effective enforcement. The most important obligation is the registration of Appendix I and II specimens, with exception of species broadly bred in captivity, given in a special negative list. The living specimens required to be registered must be unexchangeable marked or identified as such. In addition to the CITES convention, import permit is required also for Appendix II species, and export permit or re-export certificate for all three appendices is necessary. The enforcement of CITES is under the Czech Environmental Inspectorate, but district offices, customs, veterinary and phytosanitary services also participate in their implementation. The details are given in separate part below.

Unfortunately, the Czech republic still lacks relevant section in penal code to punish CITES violators. The environmental crime is stated only in a general sense, and mostly related to internal matters. Transboundary movements are not implemented, so the criminal enforcement is possible in indirect sense only, using e.g. the tax offences.

2. DEVELOPMENT OF THE LEGAL SITUATION:

The Czech republic acceded CITES as a former part of Czechoslovakia in 1992. The agreement was primarily implemented by national act on the nature and landscape protection (nr. 114/1992). This was very general, and the tools for the CITES enforcement were limited. Generally, it provided the requirement to prove origin of the individual during the check, but the procedures were not specified. The custom service was not involved. The bodies, responsible for the enforcement of CITES are faced with a lot of problems, and confiscation occurred rarely (see table 1). Many of them were even not successful. After 4 years, the Czech government decided to develop a new law to implement CITES convention. This law, as shown in previous part, was adopted in 1997 (act nr. 16/1997), including the necessary decree, which specifies the appendices and some procedural questions.

The new law fully implements CITES, and adds some new regulations and tools for enforcement to ensure effective control in the Czech republic. The new law provides the following:

- new, clear definitions (e.g. bred in capacity individuals);
- principal ban on the commercial use of the appendix I specimens;
- involving customs, veterinary and phytosanitary services into checking process;
- clear definition of procedures in permitting;
- obligatory registration of the most of the species from the appendices I and II of CITES (excluding the species commonly bred in captivity, given by a negative list);
- obligatory marking or at least other unexchangeable identification of the specimen;
- new set of the sanctions, including the quite high fines (up to 2 millions CZK);
- new definition of the seizure procedure;
- new definition and status of the rescue centers for confiscated specimens, and finally
- amendment of the former law nr. 114/1992 to enable more effective control of the origin of the specimens.

3. INSTITUTIONAL ARRANGEMENTS:

The act 16/1997 gives a new competencies in CITES enforcement to several state authorities, and enables quite large-scale cooperation within the Czech republic. In the permitting process, the substantial role is played by the Ministry of Environment (which is designated as the management authority), and Czech agency for the nature and landscape protection (designated as the scientific authority). Registration is a task of more than 70 district offices and about 30 other bodies (administrations of the protected landscape areas and larger cities). Compulsory marking or other identification of the specimens registered is obligation of the owner, the animal health and welfare is controlled by veterinary services.

The control responsibilities are divided. The main controlling body, acting in a whole Czech territory, is

the Czech Environmental Inspectorate. Controlling competencies are also given to the registration offices. The first-contact border control is done by customs, supported by state veterinary and state phytosanitary services. CEI and the registration offices have also the competency to sanctions, namely fines. The fines are different for the physical bodies (lower, up to 200 000.- CZK) and the companies (up to CZK 2 million). CEI and registration offices also may confiscate the specimens, imported or exported not in compliance with the law and the CITES, or the specimens, where the owner is unable to prove a legal origin.

4. TRAINING AND SPECIAL SUPPORT FOR THE ENFORCEMENT:

CITES matters are always complicated, and require specialised expertise, experience and knowledge. The training activities are, therefore, of special importance. The inspectors of CEI established special units at all of the 10 regional offices. The members of the units are regularly trained in enforcement skills. The main issues dealt with or taught are:

- the detailed knowledge of the legislation;
- identification of the document fraud, document checks;
- manipulation with living specimens;
- personal safety;
- determination skills.

Major training programme occurs once a year, and several (4-6) short meetings occur every year to exchange information and new skills learned. The inspectorate also produces regularly supportive materials, i.e. identification manuals, identification sheets, collected information on modus operandi etc. A comprehensive database with the collected information (e.g. from news, journals and other mass media, from pet-shops etc.) is available. The inspectorate also prepares the list of the national contacts, useful in enforcement process: determination specialists, NGOs, ZOOs, stations for handicapped animals etc. Selected inspectors are also sent to attend international training courses.

CEI organizes several training courses per year also for the custom officers. Generally, it is a basic 3-day course followed by more detailed short training courses in the regions. For that purpose, CEI in close cooperation with the Czech Ministry of Environment prepared a training video-tape. Twice a year, ministry organizes the meeting of the registration office representatives, where the information is also exchanged and some methodological aspects are discussed. In addition to the regular training activities enumerated above, several ad-hoc training programmes are held occur at the regional and local level.

5. ALERT SYSTEM:

Since CITES issues occur any time of the day or night, week-ends and holidays, it was impossible to organize the enforcement activities just in the working hours. Even if the custom service is functioning 24-hours per day, the expert support from the side of the CEI was evident from the first days of the CITES implementation.

Czech Environmental Inspectorate, as a specialized controlling and enforcement authority with a nationwide competencies established a special alert system, which is capable to support the customs, or any other state authority in the CITES matters. The system includes (1) so-called steering center (which is the directorate of CEI), and (2) coordination centers (in two largest towns, Prague and Brno). The centers are reachable 24 hours a day, and all year-round. The direct connection by the mobile phone is possible 18 hours daily (6am - midnight), in the night time, there is a possibility to use fax or recorder.

The inspectors are able to reach any place of the territory of the Czech republic in 8 hours after the message received, at the latest (usually within 3-4 hours). The alert system has direct contacts to other regions. Inspectors in service are competent to check, to start the fine-imposing process, and to seize the illegally exported/imported or owned specimens either. The centers are equipped with necessary equipment to be able to control the shipments and to transport confiscated specimens to the rescue centers. Transboundary coordination and exchange of information is carried out by the steering center in Prague, which also may communicate (as the coordination centers do), with customs operation center.

6. SOME RESULTS:

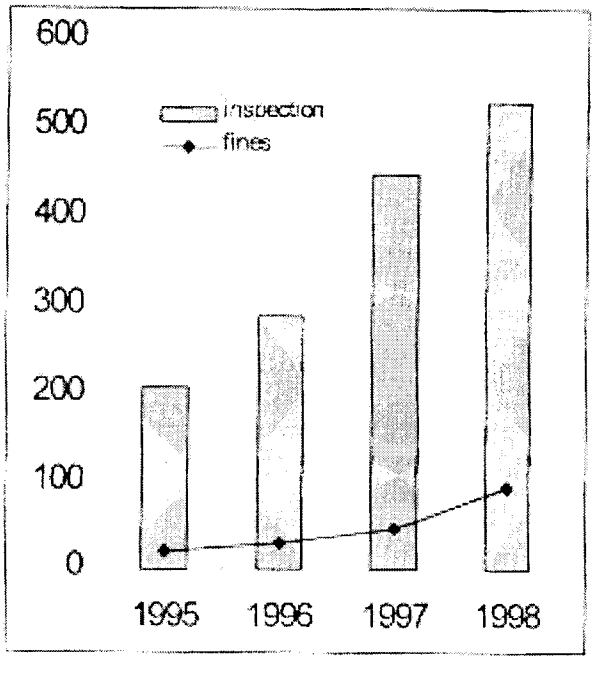
The two years experience with the implementation of the new act nr. 16/1997 show that, it is an efficient tool for the CITES requirements enforcement. As presented in table and pictures, the effectivity of the enforcement is considerably enhanced. Numbers of the cases are rising every year, even if the number of enforcement staff is not growing. The amount of confiscated specimens is also rising dramatically as a result many new problems to solve occur. The closer cooperation with customs showed good results. The level of the special knowledge of the custom officers is enhanced, at the places with frequent problems. The most effective cooperation was established at the Prague international airport. The common interest and need for close cooperation led the Inspectorate, ministry of environment and the Customs to sign an agreement on cooperation and exchange of information, which enable to create a national CITES-enforcement network.

Table 1: Overview of the seizures of the CITES items in the Czech republic (1995-1999), Based on the Acts nr. 114/1992 and 16/1997

	number of seizures based on		number of seized individuals
	Act 114/92	Act 16/97	
1995	0	0	0
1996	2	0	7
1997	1	7	853
1998	29	29	1929
1999*	27	46	4948
TOTAL	59	82	7737

**1999 figures, only the results for first half of the year are given.*

Fig.1: Development of the number of inspections and number of fines imposed by CEI in CITES enforcement in the Czech republic (1995-1998)



The effectivity of the enforcement was enhanced considerably also due to the participation of the Czech authorities in international cooperation. Information, obtained by eco-messages or by direct contact with neighbouring countries (mostly Germany), enabled to stop several serious smuggling activities.

7. PROBLEMS FACED:

Even if the experience with CITES enforcement in Czech republic is quite short, some general remarks on the main problems can be made groups, namely: The problems could be divided in more specific groups, namely:

- identification of the most significant items in illegal trade;
- identification of the main routes of illegal trade;
- approaches for different modus operandi used;
- "day-after" problems: how to manage the confiscated items; and
- enforcement capacity of the authorities, its financial background.

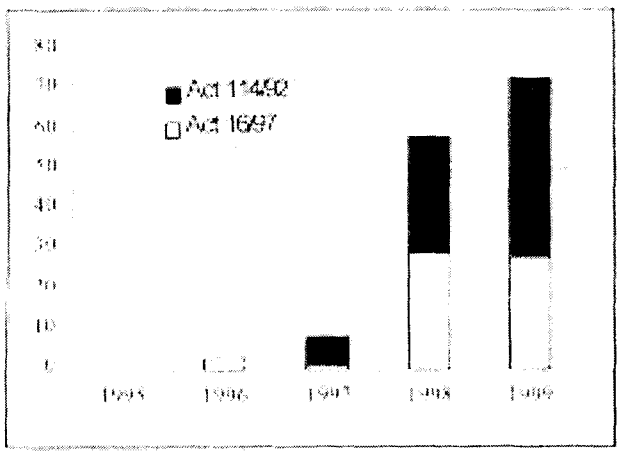
From the data collected, the main issue in the Czech republic is probably the illegal reptile trade, especially the trade with land-tortoises. Many species, including the mostly endangered ones (i.e. from the genera Geochelone, Pyxis and Testudo), are available on illegal market in the Czech republic. Reptiles create usually more than one third of all confiscated specimens. The main imports are from the Mediterranean area, former Soviet Union and other eastern countries (Poland, Slovakia, Ukraine, former Yugoslavia), and finally, from the Southern Africa and Madagascar.

Other important species in trade are the parrots (Australia, South-East Asia, South America, Africa), birds of prey (Eastern Europe), parts and products (mainly reptile leather, hunting trophies, but rising also is the illegal trade with corals and shells).

Most of the cases of confiscation occurred at the import to the Czech republic, usually at the Prague airport. CEI observe the increasing number of the cases of the smuggling by use of the personal cars (mostly reptiles) and by regular post mailing (small parcels with succulent plants, cacti, cacti seeds, but also land tortoises and other reptiles). To combat this manner of smuggling, good cooperation with the post customs services is absolutely essential. In the period of last two years CEI has found also a very specific way of illegal import: several small "one-men" travel agencies are organizing so-called "collecting trips" to the habitat countries, e.g. to northern Africa or Mexico. Amounts of the imported living plant and animals, if considered per person, is not very high, but if put together it could be thousands of the individuals per one trip. If those trips are repeated two times a year, the overall number of illegally imported items could be great.

The amount of confiscated items create the problem with placing the living animals and storing the parts and products. After confiscation, the items become state property under evidence, on which specific rules does apply. It is a substantial problem, how to deal with those items, especially with larger amounts of the living animals, as e.g. lizards or Mediterranean tortoises. The Czech authorities are trying to find some acceptable solutions, including the repatriation or at least transfer to the special centers for that purpose (such as the "Carapax" in Italy). Some parts of the

Fig. 2: Increase in the number of CEI cases with seizure of CITES items after the adoption of new act nr. 16/1997 and amendment of the act nr. 114/1992 in 1997.



confiscated animals were also sold-out in internal market.

With increasing amount of the cases to solve, the question of the human resources and finance support arises. It seems also important, to set priorities to solve and avoid the overloading of the enforcement capacities by less important, so-called "tourist-cases". On the other hand, distinguishing between typical "tourist" case with some kind of souvenirs from the cases of organised item-by-item imports by many persons could be a problem.

8. CONCLUSION:

The new law nr. 16/1997 enabled the Czech authorities to increase effectivity of the enforcement of CITES agreement considerably (see Fig. 2). The registration and marking of the specimens not only in transboundary shipments, but also in internal market, could be an effective enforcement instrument. Particular attention must be paid to new ways of illegal transport. International cooperation and information exchange is very important in this respect.

CITES:

(v) WESTERN EUROPE AND OTHERS

Enforcement of CITES in The Netherlands

Prepared by
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INTRODUCTION

The last decades it has become more and more apparent that issues regarding the environment, which we are confronted with every day, all have their origin in the large-scale disruption of the dynamic balance between man and his natural surroundings. Essential ecological processes and cycles of nature are still being disrupted by human activities at all thinkable levels, local, national and international; pollution, exhaustion, damage. Careless waste disposal is one of the most important causes of the disruption, but deforestation, erosion, and changes in the water balance and soil hydrology also lead to irreparable damage. The size and nature of the disruption of the environmental balance is now in such a state that we can no longer rely on the regenerative powers of nature.

A first-rate quality environment is an essential condition for the health of human beings, animals, and plants, but also or lasting social and economic developments. The damage to the environment should be reduced to acceptable levels, and irreparable pollution and disruption should be avoided. Biotopes of flora and fauna, and species in certain areas must be protected. Protective measures (in accordance with the stand-still principle and world-wide attention) must be taken in order to safeguard the structure of existing eco-systems.

The disappearance of unique species should be the concern of anyone who cares about life on earth, now and in the future. It will be clear that environmental issues should not just be the concern of those countries that are particularly confronted with them, but also of the countries that are indirectly responsible for the problems as a consequence of their behaviour.

Since the beginning of the nineties the number of protective measures and activities within the framework of the fight against environmental crime have increased considerably in the Netherlands. Therefore it may be somewhat of a surprise that only in 1991 was the first large-scale criminal inquiry into the trafficking in endangered species initiated and carried out. After that it still was not very easy to get a new criminal inquiry into the illegal trade in exotic species started; both law enforcement agencies and the public prosecution service obviously gave priority to other cases.

As a result, 1994 saw the start of the CITES project, in which the police, the public prosecution, the customs service, the general inspection service, the Royal Gendarmerie, and the Environmental Crime Unit of the CRI cooperate. CITES' main aim is the fight against the illegal trade of endangered species of flora and fauna in and from the Netherlands.

During the time of the project, the following goals were strived for:

- obtaining an insight into the role played by Dutch wildlife traders in the international illegal wildlife trade and their possible relation with other forms of crime
- developing and enhancing expertise as regards environmental law enforcement through phenomenon investigations.
- Improving the quality of the cooperation between police, AID, and other relevant agencies that are involved in the detection of crimes and violations of environmental laws.
- Improving the dissemination of information through:

    1) advice on the building and structuring of existing registration and information systems for environmental law enforcement.

    2) linking-up with national and international law enforcement systems and information systems of other agencies, in as far as these are relevant to the enforcement of environmental law.

    3) setting up a help desk supportive of authorities involved in criminal proceedings related to environmental crime, and those involved in phenomenon investigations.

- Increasing the willingness of the police and other law enforcement agencies to include information on illegal wildlife trade cases in wanted indices, and increasing the number of CID reports on this form of crime.

- Supporting the authorities by providing the administrative organs mentioned in environmental legislation with advice so that they can take administrative or other (preventive) measures.

On 1 January 1999, after current cases had been handed over to the participating organisations, CITES ended its activities. Almost all of the goals had been realised in four years. I shall not go into details regarding our successes, however tempting this may be. For your information though, I shall give an overview of the bottlenecks we encountered, and the most important recommendations. For those of you who are interested in the evaluation report the Dutch version is now available; in a few months there will also be a version in English.

AWARENESS

Police and customs officers need to have special training in order to be able to tackle CITES issues adequately. We recommend the appointment of CITES contracts at law enforcement agencies so that these can occupy themselves with the gathering and dissemination of information, and the tracing of crimes.

LICENSING

a) Agreements between the CITES bureau and law enforcement agencies as regards the dissemination of information.

   A proper agreement is developed with the CITES bureau with regards to the way relevant data are dealt with. In this way, if there is any conflict between the interests of CITES clients and/or the interests of law enforcement agencies that are conducting investigations against these clients because they are seen as suspects could be avoided.

b) Making use of the expertise of the CITES MA

   It is also recommended that the relevance of CITES be examined before investigations are started. The future scanning group should have the expertise to do this.

c) It appears that the current system of licences has some serious defaults. It is relatively easy to commit fraud within the present system. In order to counterattack this, it is suggested that :

   1. A license be given for each animal. Should this not be practical, a license should be given per species. In case a license has been issued for a large number of animals, the CITES bureau must split this later.

   2. Fees be introduced for licenses and certificates. In order to limit the work of the CITES bureau, fees should be introduced for licenses. The applicant must also be asked to make a down payment. The new system is meant to prevent people from holding on to large numbers of "old" licenses. The down payment is returned as soon as the license has been used and returned to the CITES bureau.

   3. Information be exchanged between the CITES bureau and law enforcement agencies. As soon as CITES bureau employees doubt the correctness of an application, they must inform the Reporting desk. An investigation showed that a trader who claims to have bred large numbers of animals, and applies for licenses for them, is given the licenses whereas there are serious doubts whether it is at all possible to breed such numbers.

   4. Licenses be issued faster. Despite the fact that the CITES bureau is quite occupied with issuing license, the employees should try to issue licences faster. During an investigation it appeared that traders sometimes provide one another with photocopies because the licences they applied for "take so long"

      The judicial authorities would benefit from a faster service as the costs involved in the housing of seized animals are paid by the Ministry of Justice.

   5. The validity of licences be checked. Has a document been issued for the import, export or transit of TCM in conformity with the conditions listed in the legislation on endangered exotic species, e.g. regulations or the CITES treaty? Check with both Dutch and foreign agencies issuing licences.

CHECKS AND EXAMINATIONS

a) Gearing of activities

   The checks performed at traders' must be geared, so that these occur simultaneously. Later the outcome of these checks (of licences and registration of sales) must be compared. This will make it possible to "follow" a licence or an animal. A trader will have to be able to clarify any problems and not be given a chance and the time to arrange matters (as is apparently the case now).

b) Border checks

The presence of qualified personnel at Schiphol Airport/Amsterdam, the most important port where species are imported, is preferred over the present situation where officers are just on call.

c) Improving the quality of checks

All shipments must be checked and species counted. It is evident that shipments often contain more or fewer animas than is stated on the licence, which facilitates fraud.

d) International cooperation

As the afore-mentioned investigation showed that traders avoid Schiphol Airport as much as possible and opt for airports with fewer or no checks, international cooperation with foreign investigation services and exchange of data are called for.

e) Checks of parcels

Parcels from so-called risk countries (production and transit) must be checked.

f) Improvement of checks of documents

CITES documents must be checked ad double-checked with the Interpol/WCO/CITES secretariat. It is of great importance that information on seizures be passe don to the CITES secretariat in Geneva as soon as possible, and to the CITES management authorities in the country of origin. Please note that the request for information is preferably made through Interpol or WCO, as the CITES channels are not the most suitable for the exchange of this kind of information.

TRACING AND DETECTING CRIMES

a) As environmental organisations keep a watchful eye, and lawyers will always try to show that evidence has lawfully been obtained, it is important to pay extra care when starting an investigation.

b) In order to conduct a successful investigation, a multi-disciplinary team is a precondition. In case of large-scale investigations, cooperation among police, customs service, and the special law enforcement units is recommended. The first will be able to provide their know-how and experiences gained in the detection of crimes and record keeping, the other two can share their knowledge with regard to particular issues and determination in this field.

c) Know-how and experience (spin-off)

The investigation obviously resulted in know-how and experience. Many data were made available to the CRI. Contrary to the separate project structure chosen earlier, it is now suggested that connection be sought with the Serious Environmental Crime Core Team.

d) Distinction between roles, in particular the prevention of double functions.

There is always the risk of officers having prior knowledge, which makes it difficult for them to act neutrally when participating in an invetigation. A distinction must always be made between those who investigate and those who perform checks. The way information has been gathered must be admissible before the court.

e) When a project is started, it is recommended that agreements or other contracts which facilitate the exchange of information with other Special Investigation Agencies should be used.

DETERMINATION

a) Know-how in the field of determination is available

Specialist knowledge is needed in order to be able to recognise and certain species of flora and fauna or parts thereof and determine whether these are listed in the CITES appendices.

RULES AND REGULATIONS

a) Introduction of a safety-net article

A safety-net article will name the animals which are protected in their country of origin and may not be exported, but which are not included in CITES in the Netherlands.

b) International component

A request has been made to the CITES bureau for the inclusion in CITES of the species which are frequently smuggled, but are currently only protected in the legislation of their country of origin.

c) International cooperation and legal assistance

The trade in species is international by nature. It is apparent that the current treaties as regards mutual legal assistance do not include the BUDEP

legislation, and that there are no treaties with the countries where the animals in question come from. Therefore, international discussions will have to lead to adaptations of the treaties with new countries.

d) Issuing licences

Despite the issuing of one licence per animal and the obligation for a new owner to apply for a licence himself, it will always be possible to commit fraud, for example through using someone else's licence. The latter should be made punishable under law.

Trade

a) National registration of traders

National obligatory registration is recommended for those involved in the trade of exotic, and perhaps also indigenous species. In order to perform the necessary checks, a national overview is needed. Frequent checks as regards obligatory registration are currently lacking.

b) Discussion with traders

In the Netherlands there are currently no discussions between traders, national, and international environmental organisations. In other European countries, where these discussions are held, they have proven very successful. The dissemination of information will often make repressive action more acceptable.

FINALLY, SOME GENERAL REMARKS.

Despite international treaties on the protection of flora and fauna, illegal trade in endangered species still takes place at a very large scale. Environmental organisations blame the limitations of the Washington Treaty for this, as well as *the problems surrounding CITES*:

- the complicated nature of the procedures that have to be followed;
- the extensive appendices;
- the poor implementation of CITES in many member states' national legislations;
- the wide variety of documents;
- the enormous differences that exist between law enforcement agencies;
- the fact that it is difficult to see whether rules and regulations which result from the Treaty are observed;
- the fact that biological and trading data are incomplete and that regulation is not always based on correct and complete information;
- the fact that certain imports and exports are permitted creates loopholes, which the illegal trade knows how to make use of, for example "non commercial trade", "goods in transit", "pre-conventional", "bred in captivity";
- not all countries have joined CITES; these so-called free-riders sometimes deliberately undermine the CITES regulations and are misused by illegal traders;
- for member states it is sometimes difficult to implement or observe CITES regulations; 40% of the member states, for example, do not draw up the prescribed annual report, or present incomplete data, which results in big differences between import and export figures.

Despite the fact that the Washington Treaty has laid down a proper administrative process, problems frequently arise because several member states explain or implement the rules in their own way. Sometimes the organisation as regards administrative and criminal law enforcement are rather poor, both at the national and international level. Often the authorities in these countries work on an ad-hoc basis, thus creating possibilities wild-life criminals know how to make use of.

In order to be able to adequately fight against the illegal trade in endangered exotic species, all member states will have to create one national database. Knowledge is power and union is strength. Nice slogans, I'm sure, but not just that; I am convinced that gathering and analysis of information and cooperation are the pillars on which the enforcement of CITES regulations rests.

Enforcement of and Compliance With CITES in Israel

Prepared by
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In Israel, the application of Multilateral Environmental Agreements has had a generally beneficial impact on the protection of nature and the environment. Legal prohibitions against the abuse of nature and the environment have served to halt the activities of most persons and businesses that once had been engaged in those injurious activities. There remain, however, a minority who persist in flouting the laws that society has adopted to protect the planet we live on and the many natural treasures that share the planet with us.

In environmental law enforcement dealing with CITES, Israel has had its share of smugglers, illegal dealers and others who seek personal profit from criminal trafficking in protected wildlife. We have seized live chimpanzees and parrots, elephant ivory and rhinoceros horn pills, and other contraband. We continue to pursue the objectives of the treaties that the *Knesset,* the national parliament, has ratified.

There are, however, a number of new initiatives that might have taken in our enforcement of CITES, as well as the efforts of our colleagues in other countries, might be enhanced. The more pressing ones are:

1) Sanctions. Over the years, CITES has imposed sanctions against various Parties that we remiss in their administration and enforcement of the Convention. For the most part, these sanctions involved recommendations to CITES Parties that they should decline from honouring CITES permits either to or from the sanctioned Party thereby effectively interrupting CITES trade. For the most part, such sanctions have resulted in rapid and substantive improvements. If CITES can impose sanction on countries, why not extend the concept to individuals and businesses that have significant records of serious violations?

   In June 1999, the CITES Management Authority of Israel received an application to import a number of CITES-listed animals from a business in the United States. An inquiry into the *bona fides* of the American exporter revealed that this company has a record of 34 investigations and 51 convictions for CITES violations, including several criminal convictions, during the past decade. U.S. law cannot prevent this business from continuing trade in CITES-listed specimens, even though the record suggests it is extremely likely that there will be more violations of CITES in the future.

   It would be useful for CITES to use its authority to recommend that CITES permits to or from this and similar businesses not be honored by Parties to the Convention. Imposing sanctioning on individuals and businesses that persistently violate CITES will make it more difficult for them to continue conducting illegal business.

   To enable such sanctions to be effective, CITES would best create a dossier listing individuals and businesses concerned with a history of repeated convictions for violation of the Convention. The dossier should provide public domain information such as the name of the business, principal officers, addresses and other data, including details of former convictions for violations of the Convention. The dossier could then be circulated to Parties, and amended from time to time so that it might reflect new information. Individuals and businesses that persistently violate the Convention should be precluded from trade in Convention-listed specimens.

2) Watch List: There are some businesses that are not "persistent violators" of the Convention, but which from time to time have various irregularities with their imports and exports. These businesses present a special challenge, and it is important for Management Authorities to be aware of who they are, so special precautions can be taken. Special precautions in this regard might mean extending extra care in scrutinizing documents, or assuring a skilled inspector is available for the physical inspection of the shipment.

It would be useful for CITES Management Authorities who seek to reduce the number and severity of irregularities to exchange information that identifies those persons and businesses who pose a special risk. Thus, CITES might consider requesting that the Secretariat maintain a list of persons and individuals who have been convicted of various infractions. Such list should be circulated to Management Authorities so they can use it to increase their vigilance.

Watch lists are presently used by few Parties to the Convention. But such lists are usually built upon national experience, and suffer from the lack of international coordination. If Parties can share information concerning where the greatest risks lie, there is increased prospect that such risks can be reduced.

3) Identification of, and assistance to, problem Parties: There are perhaps a dozen countries around the world that have been particularly difficult in terms of enforcement of CITES. The Convention's Secretariat should make a special effort to identify these countries, and work with them to rectify their most serious problems.

Identifying these countries is relatively simple. Referring to the World Customs Organizations database, the Secretariat can access information identifying those countries which have had their illegal wildlife exports most frequently seized. Most of the significant seizures around the world were exported from a relative handful of countries that are identified with relative ease. Efforts must be made to persuade these countries that there is a pressing need for them to gain control of the situation and vigorously suppress the significant flows of illegal wildlife exiting their ports.

4) Reporting seizures: More effective steps need to be taken to assure that seizures are reported to both the CITES Secretariat and the CITES Management Authorities of Parties affected by that seizure. Certainly, it is in the interest of effective law enforcement that Parties of export be notified rapidly and with full details when illegal wildlife shipments are seized by authorities in either transit or importing countries. Timely and detailed information concerning the seizure can assist the exporting country in initiating an investigation that may result in a successful prosecution.

Similarly, timely and detailed information about seizures should be provided to intended Parties of import if a consignment is detained before arrival in that country. Where practicable, contraband shipments should be followed by law enforcement authorities to their ultimate destinations so that as many criminals as possible can be identified and prosecuted.

It is also important to encourage Parties to file Ecomessages via their national Interpol NCB. Ecomessages provide information that is important to Interpol's database on wildlife crime. The greater the amount and accuracy of the information, the better criminality. Also, it is important to recall that, when a Party submits an Ecomessage, it is immediately screened against Interpol's database and if there is a link between the information on that Ecomessage, and information elsewhere in the database, the submitting Party will be quickly advised. Such additional information can be extremely useful in investigating and prosecuting cases of wildlife crime.

5) International cooperation: Today, most wildlife trafficking is conducted by organized transnational criminal networks. Therefore, cooperative international law enforcement effort is essential.

The Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora is promising and pioneering initiative in this direction, and deserves major support from countries and institutions interested in suppressing wildlife crime. The concept of a multi-national task force, with transnational authority, opens a new avenue with many possibilities to suppress wildlife crime. This concept should be emulated on other continents, especially those with major habitats for commercially valuable wildlife.

In addition to the Lusaka Agreement, thought should also be given to creation of multi-national cooperative agreements that involve the participation of both producer and consumer countries - even if they happen to be on different continents. In Israel, there is hardly any CITES trade - whether legal or illegal - with our immediate neighbors. Rather, the flow of legal and contraband wildlife is from Western Europe, North America and Southeast Asia. For Israel, cooperative agreements with these areas would be most beneficial.

6) Politically sensitive places: The earth has a number of politically sensitive places where questions of sovereignty, politics, nationalism and other concerns tend to overshadow the administration and enforcement of multilateral environmental agreements. A few examples will suffice.

With the transfer of various lands to the administration of the Palestinian Authority, Israel's nature protection authorities have received persistent reports of significantly intensified hunting, use of mist-nets to catch migratory birds, hunting and trapping inside nature reserves, and similar abuses. From an international perspective, reports of trafficking in CITES-protected species, particularly at the newly-opened Gaza International Airport, are alarming. Any Israeli efforts to suggest the Palestinian Authority exercise controls to check these abuses invariably dismissed as meddling in Palestinian internal affairs." Informal discussions have been conducted with law enforcement authorities of third countries, with hopes they might bring some influence to bear, have been unfruitful.

Taiwan's exclusion from various international fora undermines international cooperation, including the enforcement of multilateral environmental agreements. Some months ago, Taiwan authorities caught a man trying to enter Chiang Kai-Shek International Airport with 303 live reptiles. As far as the Taiwanese were concerned, the man was a first time offender, and he was released on bail pending a court appearance. The man subsequently jumped bail and escaped the country. Had the Taiwanese been able to interrogate an Interpol data base, they would have found the man was known as a notorious smuggler with links to criminal organizations that specialize in trafficking in protected wildlife.

Exchange of information is vital to law enforcement efforts aimed at suppressing international environmental crime. Certain places, such as the Palestinian Authority's jurisdictions and Taiwan, are examples of politically sensitive areas that have become attractive to wildlife smugglers. The places are attractive because the smugglers are aware the local authorities either are not interested in enforcement, or are incapable of participating in the routine structured exchange of law enforcement information.

Innovative approaches that satisfy political sensitivities, but nevertheless provide the opportunity of accomplishing the job at hand - enforcing multilateral environmental agreements - are urgently needed.

7) Training: CITES Training is also politically sensitive. It shouldn't be, but it is. To date, Israel has never benefited from any CITES training. There was a "regional" CITES training program in Cairo last winter, and Israel submitted a request to the CITES Secretariat to participate. But there was not invitation. Many other countries in the region, both Parties and non-Parties were invited and did participate. Israel has also requested to participate at various CITES training programs in Europe and Asia. But there has never been a single invitation to such training through the two decades of Israel's ratification of CITES.

The net result of this situation is that Israel has had to devise its own enforcement mechanisms, strategies and tactics without the benefit of the mainstream training in this regard. Israel is up to date with payment of contributions to CITES. Israel administers and enforces the Convention to the best of its ability. It is therefore absolutely unfair for CITES to ignore the training needs of Israel.

8) Transparency: The United Nations General Assembly itself, in debating and voting upon the most sensitive and volatile issues of the century, conducts all of its activities in the full light of public scrutiny. There are no secret votes at the United Nations. It is inappropriate for CITES to be any less transparent. Secret voting creates a loss of transparency that produces a loss of accountability, which in turn has implications for enforcement.

The Preamble to CITES clearly states that "peoples and States are and should be the best protectors of their own wild fauna and flora." This principle is being increasingly eroded. At a meeting of the Conference of the Parties "peoples," as distinguished from "States," are represented by various observer non-government organizations who by the terms of Article XI.7 "shall have the right to participate but not to vote." The phrase "right to participate" is written into the text of the Convention. But at the most recent meeting of the Conference of the Parties, qualified and credentialed observers were effectively precluded from participation. They were disfranchised. They were denied a right guaranteed to them by the treaty itself.

"Lack of time" was cited as the reason for violating the Convention by refusing observer participation. This is an unjustifiable excuse in itself. Furthermore, at the end of the meeting, the then-Secretary-General congratulated the meeting as being the first in the history of CITES to finish all its work on schedule without having to call extra sessions in the evening. The meeting never fell behind its schedule. Lack of time was not an issue.

There were other violations. For example, the Rules of Procedure say that when the ruling of a

chairman is challenged by a point of order, the question at hand should be put to a vote. But despite points of order from more than ten Parties on one particular issue, there was no vote on the chairman's decision, and the chairman simply continued with his own agenda. Secret votes, suppression of rights guaranteed by the treaty, manipulation of the Rules of Procedure, and similar irregularities are damaging to the Convention and the wildlife it was created to protect.

The Charter of the United Nations seeks to "establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained." A key to improved enforcement of CITES lies in the restoration of the Convention's integrity, its ability to abide by its own rules, and its ability to regain and maintain a high standard of transparency and accountability. Once these fundamental requirements are achieved, and respect for the Convention's authority is restored, enforcement of the Convention's provisions will be enhanced greatly.

Enforcement of and Compliance with CITES in Portugal

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1. INTRODUCTION:

The Inspectorate General for Environment of Portugal has no knowledge of organised criminal activity in Portugal in the area of environmental crimes. The statistical information on criminal activities in Portugal does not include a specific classification for the environmental crimes, therefore making it virtually impossible to supply the requested information on the matter.

The EU, as a single market, imposing free movement of goods and individuals between member states, eliminated international trade within its boundaries. As a consequence, transboundary movements between member states of the EU are not subject to any customs control. There is no government publication about the nature and extent of environmental crimes in Portugal.

2. LEGAL STRUCTURE:

In force since 1995, the Portuguese Criminal Code (Decree Law nº 48/95, dated 15th March) comprises the definition of three different environmental crimes, one concerning the protection of nature (article 278º), the other two (articles 279º and 280º) preventing pollution. It should be noted, tough, that article 280º gives only an indirect protection to the environment.

Criminal investigation of environmental crimes is exclusively performed and controlled by the public prosecutor. However, under Portuguese law it is possible for those suffering damages as a result of acts contrary to the environmental interests - either individual or collective - to bring actions into the Courts, to the attention of the Public prosecutor and even to intervene as assistants to the prosecutor (Code of Administrative Procedure article 53º - 1991 and Law 83./95, of 31st August - popular action). The criminal penalties stipulated in the Portuguese Criminal Code for environmental crimes consist of either imprisonment or a fine. Environmental crimes are submitted to the common Courts, as there are no special Courts to rule on environmental offences.

Specialist training of judicial authorities in environmental violations is currently under development. Environmental violations must be considered as a new type of criminal offence in the Portuguese criminal framework, therefore without relevant history of its compliance. On the other hand, the moral blame of this kind of offences in Portugal and the public awareness of the harmful consequences of environmental crimes are not felt as being very high. Nevertheless, it must be said that the younger generations in Portugal are becoming increasingly aware of the environmental concerns.

Under Portuguese law, a criminal penalty (condemnation) can only be applied to individuals, not to collective entities. As the imposition of a criminal sanction upon the directors of companies held responsible for environmental crimes requires hard evidence of their personal and direct responsibility for such crimes, such condemnations are virtually inexistent in Portugal. Hence, it is by applying a kind of "Administrative Criminal Law" that the enforcement of environmental rules and principles is commonly made in Portugal, these proceedings leading to the imposition of administrative sanctions, subsequently to the investigation and ruling carried out by administrative authorities. These administrative sanctions having no criminal nature, but they can be imposed upon collective entities, even when there is no proven responsibility of any specific individual for the violation.

The imposition of these administrative sanctions is now fairly frequent in Portugal and has brought an increased efficiency in terms of environmental protection and enforcement of environmental law, when compared to the criminal law. These administrative sanctions are mostly monetary sanctions, although there are also some complementary penalties, such as transgressor's belongings being seized, the transgressor's subsidies being retained and license to operate being suspended. It must be noted that the enforcement of this kind of "Administrative Criminal Law" is made in accordance with the principles of Criminal law, the latter being subsidiary applicable. Also the

administrative sanctions ruled can always be questioned before a Common Court, as in a sort of appeal.

3. IMPLEMENTATION OF CITES:

The Portuguese Government approved the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) for ratification under the Decree-Law number 50/80, dated 23rd July 1980. Beyond the International Law obligations resulting from this multilateral agreement, Portugal is due to comply with and enforce the more restrictive rules of the EC Regulation 3626/82 dated 3rd December 1982, concerning the trade in endangered species into and out of the EU. This EU Regulation is enforced in Portugal under the rules of Decree Law number 114/90 dated 5th April 1990 currently pending alteration in order to comply with EC Regulations 338 and 939 of 1997.

In accordance with Decree Law 114/90, the scientific authority is *Institute for the Conservation of Nature* (Instituto de Conservação da Natureza, ICN), which is also the administrative body in charge of all legal proceedings against the transgressors of CITES. Apart from monetary sanctions, ICN can also determine complementary penalties, such as the forbiddance of the issuance of any licences or certifications the transgressor may apply for, the seizure of all specimen involved in such violation or the imposition of their return back to the country of origin. ICN also performs the surveillance, in co-operation with several other authorities particularly the Customs authorities, but also Forests, Economical Inspection, Agricultural and Police authorities.

As a result of the ongoing alteration to the legal framework, the Inspectorate General for Environment of Portugal is likely to be granted the powers to perform the surveillance of CITES violations. On the other hand, the strongest violations to the CITES Convention are likely to become criminal offences and the applicable fines will probably increase significantly.

Currently, in Portugal there is no knowledge of any violations to the applicable rules concerning trade in endangered species that could be considered as a criminal offence. However, ICN records an average of one hundred administrative proceedings per year, mostly related to illegal import of turtles, ivory, reptile skin and parrots from African countries.

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OZONE:

(i) AFRICA

Illegal Movements and Trade in Restricted Products: The Case of Senegal

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1. INTRODUCTION:

The developing countries in their overwhelming majority fully adhere to the spirit of international Conventions in the field of the environment and they increasingly participate in the implementation of these Conventions.

In the present report, it is nevertheless necessary to note that, despite their goodwill and efforts to meet their obligations, it has to be admitted that internal difficulties remain, which constitute major obstacles to the effective implementation of the relevant provisions set out in the Conventions. The main difficulties include:

- the lack of adequate institutional and legal frameworks,
- the lack of coordination between the institutions concerned (which frequently results in a conflict of jurisdictions),
- the weakness of technical capacity and human resources, and
- people's embryonic sensitivity to the natural and human environment.

It is also proper to mention that some of the responsibilities laid are different upon the bodies in charge of running the Conventions be it developed countries or private sector operators, even though all of them are involved in the implementation of the agreements in one way or another. There is a disparate of efforts in respect of the programmes (identical or with the same aims) undertaken by different bodies which does not ensure the best results. In developed countries, strict and often very coercive instruments are put in place to ensure integrated protection of the local environment. On the other hand, a certain slackness is evident in regard to control over products, equipment, wastes, etc. which are intended for export to developing countries, in complete disregard of existing agreements. Some private sector operators, whether from the north or the south, prefer easy profits at the expense of quality (of both products and the environment), which leads them to enter into and carry out deals that in many cases violate international agreements.

This report is a contribution to the global evaluation of the impacts of a piecemeal implementation and of violations of international agreements on the environment, in particluar, the implementation of the Montreal Protocol on the Depletion of the Ozone Layer in Senegal. A description of the measures undertaken nationally and regionally is made. It is also provides issues to be considered for better implementation of the Conventions, the concerns of the developing countries.

2. INSTITUTIONAL AND REGULATORY FRAMEWORK FOR ENVIRONMENTAL MANAGEMENT IN SENEGAL:

Relevant international agreements:

Senegal has signed and ratified:

- 1991 Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa.
- 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal.
- 1985 Vienna Convention for the Protection of the Ozone Layer.
- 1987 Montreal Protocol on the Substances that Deplete the Ozone Layer.
- 1992 United Nations Framework Convention on Climate Change.
- 1992 Convention on Biological Diversity.
- 1971 Ramsar Convention.

National legislation:

Senegal has a number of legislative laws and regulations that deal with environmental management. These include

- Decree 74-338: removal and dump sites for household wastes.
- Act 81-13 of 4 March 1981: Water Code.
- Act 83-05: Environment Code.
- Act 83-71 of 5 July 1983: Hygiene Code.

- Act 88-06 of 26 April 1988: Mining Code and its implementation decree 89-907.
- Act 96-07 of 22 March 1996 on the transfer of powers and the implementation decree 96-1134.

There are shortcomings in the implementation of these laws, because of various factors:

- The lack of implementation decrees.
- The lack of human and financial resources.
- Many sectoral laws.

Institutional framework:-

Several ministerial departments are involved in the management of the environment in general, and of hazardous or controlled products and wastes in particular. These include:

- The Ministry of Environment and Nature Protection
- The Home Affairs Ministry (local communities).
- The Ministry of Agriculture.
- The Ministry of Health.
- The Ministry of Water.

At this level, there is also a notable lack of co-ordination between the various structures, which brings about conflicts about jurisdiction and the duplication of efforts in the implementation of environmental protection programmes in general.

3. IMPLEMENTATION OF THE MONTREAL PROTOCOL AND PROBLEMS FACED:

The implementation of the Montreal Protocol in Senegal has a certain dynamism not found in the case of the other Conventions, very likely because of the establishment of an Ozone Office (see below), exclusively responsible for the implementation of decisions adopted by the Conferences of the Parties. In recent times in Senegal, there has been a massive importation of second-hand refrigeration units and plant (compressors, air conditioners, refrigerators, etc.) and refrigerants (CFC refrigerants). This situation followed on the rapid implementation of decisions to replace ozone-depleting substances (ODS) with products less harmful to or not affecting the ozone layer.

Most developed countries quickly undertook CFC substitution programmes, to the point where old equipments were relegated to the status of "problem waste" in their countries. On the other hand, these equipments constitutes a windfall for the populations of developing countries because of their low cost, especially in comparison with CFC-free equipments.

This situation prevails in most poor countries. However, with the exhaustion of reserve stocks of CFCs, developing countries will encounter operational difficulties in satisfying refrigeration and air conditioning requirements, without counting on the need to manage properly this "unusable equipment", in many cases containing dangerous chemicals.

4. MEASURES TAKEN TO ADDRESS THESE PROBLEMS:

For the efficient implementation of the Montreal Protocol provisions, Senegal, as a non-annex 1 country (developing country), has set up an Ozone Office with the help of funding from the Multilateral Fund, responsible for the implementation of decisions adopted by the Conferences of the Parties. Some specific programmes are in place. Among these include:

- The training of refrigeration professionals (industrial workers, repairers and other private operators, NGOs, etc.;
- Information/public awareness;
- CFC recovery and recycling projects;
- Investment projects for major industrial CFC users.

In regard to the importation of second-hand equipment, a draft decree regulating such activities has been circulated in the various and relevant departments in the country for review and comments. Its adoption would ensure significant lessening of the problem of massive refrigeration equipment importation.

5. ISSUES FOR CONSIDERATION:

The multiplicity of international conventions in the area of the environment is certainly justified by the need to find an appropriate framework to address environmental issues of a global nature. Nevertheless, with a concern for optimization, there is room for a re-study of those conventions in their practical aspects, and to review where needed the possibilities of "fusing" those that have a common denominator. The objective would be to achieve economies of resources and scale and make them more operational.

For their part, the developed countries should pay greater attention to commercial operations that target developing countries, which lack means of verification and control of the conformity of products or wastes imported to the standards or rules acceptable to all the parties concerned. They should consequently take strict measures against all physical or corporate persons responsible for such dealings that do not respect the environment, as would be the case if their own countries were involved. The famous slogan of,

"the Earth, a Planet Village", would take on a real meaning if such measures were applied.

In regard to developing countries, their core efforts should be focused on the strengthening of the human and technical capacities of the structures and bodies responsible for the implementation of environmental policies and conventions. It is evident that in a context of depleted financial resources, and above all of redeployment of development aid towards "different horizons", the capacity for adaptation by states facing the situations described above is the best gauge of durable resolution to the problems.

Lastly, the sensitization of the general public in the developing countries and the dissemination of information can be an effective means of reducing illegal movements through a greater participation by the people in environmental management in general.

Enforcement of and Compliance with The Montreal Protocol (Illegal Trade and Violations)

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INTRODUCTION

The Gambia is a Party to a number of Multilateral Environmental Agreements (MEAs), amongst which are the Convention on International Trade in Endangered Species (CITES), the Montreal Protocol on Substances that Deplete the Ozone Layer, the Basel Convention on the Transboundary Movement of Hazardous Wastes and their Disposal. These international environmental treaties were ratified in 1977, 1990 and 1998 respectively. The Department of Parks and Wildlife Management (DPWM) is the lead government institution for the purpose of implementing the CITES convention, while the competent authority and focal point for the Montreal Protocol and the Basel Convention is the National Environment Agency (NEA).

DEVELOPMENT AND EXTENT OF ILLEGAL TRADE

The Gambia does not manufacture or produce ODS based appliances or ODS, but imports these to meet its domestic demand. Presently, there is increasing concern regarding the "dumping" of second hand R12 based refrigerators, air- conditioners and car AC-compressors, mostly imported from Europe. HFC134a based products are also being imported, however in the domestic and the automobile sectors, there is the possibility that untrained service technicians may frequently change HFC134a based compressors with CFC 12 because of the higher price, low availability and stringent servicing procedures and equipment required for servicing HFC 134. This could lead to continuity in the demand for CFC 12, leading to its illegal importation.

However, the national phase-out dates for the different controlled substances stipulated in the final draft of the ODS regulations are yet to become effective. In this regard, illegal transport and dumping of ODS has not become an issue as yet. Notwithstanding, effective monitoring and enforcement mechanisms need to be instituted now to prevent and punish future illegal acts.

PREVENTION, MONITORING AND CONTROL OF ILLEGAL TRAFFIC

Legal Framework

National Environment Management Act (NEMA): This Act which was enacted in 1994, established the National Environment Agency (NEA). The Act empowers the Agency inter alia to identify, and classify materials, processes and wastes that are dangerous to human or animal health and the environment, and in consultation with the lead department (DPWM), to prohibit or restrict any trade or traffic in any component of biological diversity. The Act also empowers the National Environment Management Council (NEMC) to make regulations for the management of such materials, processes and wastes. It also controls, prohibits or restricts the manufacture or use of substances that deplete the ozone layer identified in accordance with the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer. Furthermore, the Act empowers the NEMC to make regulations and prescribe guidelines regarding access to the genetic resources of the Gambia.

Ozone Depleting Substances regulations 1999: These regulations are made under NEMA and are in final draft and will control the import, sale and distribution of a controlled substance or a product or machinery containing a controlled substance. These regulations require that service workshops be registered and obtain certificates prior to operating, and that only trained technicians be allowed to operate. Other requirements relate to the labelling of equipment and products and the submission of reports in relation to any dealings in controlled substances. The regulations prohibit the importation of controlled substances without a valid import permit. Further, the regulations makes provisions for incentives on ozone friendly products and punishes non-compliance by a fine or imprisonment term.

Technical Capacities and Capabilities to detect illegal traffic:

Although pieces of legislation have been drafted to support the implementation of the Montreal Protocol and Basel Convention, these are yet to be passed. Even when passed, administrative procedures, enforcement and compliance promotion mechanisms would need to be instituted for effective implementation. Presently, the Gambia lacks trained personnel and technical infrastructure to adequately prevent and detect illegal traffic in hazardous wastes and ODS. The NEA Inspectorate is grossly understaffed and has not had any training in the identification and classification of hazardous wastes and ODS. Likewise, the Public Health Inspectorate, Customs and Port Officials also lack training in these areas. Local laboratories are ill-equipped to analyse difficult waste streams.

There is some level of awareness on these MEAs, but there is still need for more interventions in awareness creation, so that people can better understand their importance and be committed to the cause of environmental protection and undertake voluntary initiatives in promoting the ideals of these MEAs.

CONCLUSIONS AND RECOMMENDATIONS:

Illegal trade in endangered species and illegal transport and dumping of ODS and hazardous wastes albeit not highly developed in The Gambia, should be regarded as an imminent threat given that it is a developing country and the necessary legislation are not yet in place, and administrative procedures are yet to be instituted to support enforcement and compliance. The Gambia also lacks, financial and technical capacities to effectively monitor and detect illegal trade and dumping. Consequently, it is very vulnerable to illegal traffic of such wastes by unscrupulous persons or States.

To ensure effective enforcement of and promote compliance with MEAs, capacity needs to be built in relevant national institutions. The Environment and Public Health Inspectors, DPWM officials, the Police, Customs and Port Officials require training in the Identification and /or detection of endangered wildlife species, hazardous wastes and ODS.

Administrative procedures, enforcement & compliance promotion mechanisms need to be developed and implemented for effective detection and prevention of illegal traffic. Development of intelligence capacities is also crucial to the success of enforcement programmes. There is a need to carry out inventories and develop information systems to monitor endangered species, ODS and hazardous wastes. In relation to ODS, It is imperative that the servicing workshops in the formal sector are provided with the required servicing equipment and training as soon as possible. In addition, policy action to make HFC 134a more competitive may be required.

Enforcement of and compliance with MEAs need better interagency coordination at national and international levels. Joint implementation of the national obligations under different MEAs ensures that the use of scarce resources is optimised and synergies among the relevant conventions are harmonised at national level and international levels.

Public awareness and information dissemination promotes appreciation of the benefits of MEAs and ensures effective public participation in promoting enforcement of and compliance with MEAs. Exchange of information and technical co-operation between and within countries is critical to the success of enforcement and compliance programmes. Developing country parties require assistance in enforcing laws, procurement of technical and financial assistance from external sources and establishing and developing means of detecting and eradicating illegal traffic, including investigating, identifying, sampling and testing.

OZONE:

(ii) ASIA

Implementation of the Montreal Protocol in Thailand

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Thailand has ratified to Montreal Protocol on Substances that Deplete the Ozone Layer-Adjustments and Amendment done at Copenhagen-on 1995 and it has become effective for Thailand since February 1996. Therefore, Thailand has to develop necessary measures to ensure compliance with the Protocol. For that reason, the industries which consume the controlled substance such as the industries manufacturing air condition and refrigerator must reduce and stop using the substances that deplete the ozone layer. Those industries have to use the alternative substances in manufacturing process in order to comply with the protocol.

Department of Industrial Works, Ministry of Industry has set up the plan to reduce and ban the use of controlled substances as follows;

Substance	Year of Abolition
CFC 11,12 in new product	1998
CFC 11,12 in repairing and refilling the product	2010
CFC 113,114,115	1998
Halon 1211 in extinguisher	1994
Halon 1301 in new extinguisher system	1995
Halon 1211,1301 in refilling the extinguisher	1998
Methyl chloroform	1998

In 1997, there are 2 notifications which are promulgated in accordance with the Factory Act of 1992 : the notification of Ministry of Industry restricting the use of CFC in the production process of household refrigerator and the notification of Ministry of Industry prohibiting the establishment or enlargement of the factory using CFC in the canning industry.

Generally, the industries usually comply with the provision regulating measures to protect the ozone layer. This is because those industries must rely on the world market. Therefore, the industries are required to meet the precautionary measures in order to export their products to other countries that are the parties of the Montreal Protocol.

In 1998, the records showed that Thailand exported window or wall types air condition valued 13,000,093,675 bath. Moreover, we exported the refrigerator, household type and coupressic-type, valued 5,983,323,187 bath. Regarding the high export values of such industry, it will be the trade mechanism bringing about the adaptation of Thailand's industry to comply with Montreal Protocol for further trade benefits.

Implementation of The Montreal Protocol in Korea

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In 1992, Korea ratified the Montreal Protocol. As a «developing country» (i. e. an Article 5 country), and in 1991 it enacted a law to limit the production and use of CFCs, introducing strict quotas on all producers and importers of ozone-depleting substances in conjunction with incentives to promote recycling of CFCs and halons. In accordance with the Act of Control on the Production of Specified Substances for the Protection of the Ozone Layer, enacted in 1991, a fund has been established to support the development of related technologies and material substitutes.

Korean production of CFC 11 and 12 was 1,405 tonnes in 1986, increased to 8,249 tonnes in 1989, and reached 9,746 tonnes in 1995. In 1993 and again in 1995, the total production allowed for CFC 11, 12 and 113-115 was 20,000 tonnes, and the allowable consumption amount was about 13 300 tonnes. In contrast, net imports of CFC 11, 12 and 113-115, which had reached 10,924 tonnes in 1989, fell to about 1,238 tonnes in 1994 and 1,253 tonnes in 1995. Korean industry is gradually reducing its use of CFCs in non-essential applications, such as a coolant in refrigerators and air conditioners, and a degreaser fluid in electronics. Korean manufacturers produce and sell CFC-free refrigerators, but no ban on new equipment containing CFCs is yet foreseen. Korea's non-essential use of CFCs is in line with the Montreal Protocol, which allows a grace period until mid-1999 for developing countries. Korea stated in 1994 that it would no longer use the Trust Fund of the protocol's Multilateral Fund so that the fund could be devoted to the benefit of other developing countries.

Korea took strict measures to lower its CFC consumption, which fell from 0.62 Kg per capita in 1992 to less than 0.3 Kg per capita in 1993. This rapid decrease did not create serious problems in Korean industry. But the additional expense involved is said to have reached USD1 billion, largely for the switch from CFCs to HCFCs and HFCs. Eager to participate in the worldwide effort to save the ozone layer, Korea is promoting the retrieval and recycling of CFCs and is encouraging the use of substitutes. It has announced its intention to ban production and use of CFCs before 2005. Attitudes in Korean industry concerning the phase-out of CFCs are very diverse. Some large corporations, such as Samsung, rapidly reduced their use of CFCs to almost zero by the end of 1996, while others plan to discontinue such use by 2000. Smaller firms are likely to reduce their use of CFCs more slowly, in line with the current commitment of Korea in the framework of the Montreal Protocol. In 1986-94, halons were produced in Korea; none were imported. Total production and use is steady at 300 to 400 tonnes a year.

Implementation of the Montreal Protocol on Substances that Deplete the Ozone Layer in Malaysia

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1. INTRODUCTION:

Malaysia is a non-manufacturer of Ozone Depleting Substances (ODS) and imports ODSs mainly from USA, UK, Germany, Japan and China. The Government has adopted a multi-pronged approach to reduce and eventually phase out the consumption of CFCs and Halons in the country. Malaysia acceded to both the 1985 Vienna Convention on the Protection of the Ozone Layer and the 1987 Montreal Protocol on Substances that Deplete the Ozone layer on 29 August 1989. Subsequently, Malaysia ratified the London amendment (1990) on 5 August 1993 and Copenhagen Amendment (1992) on 3 November 1993.

In 1998, the total import of ODS was 2,654.47 MT and the per capita consumption was 0.12 kg. This indicates significant decrease in consumption compared to 0.15 kg per capita in 1997 and 0.29 kg in 1989, when the ODS reduction was initiated. The refrigeration and air-condition sectors are the major consumers of ODSs.

2. POLICIES AND STRATEGIES TO PHASE OUT ODS:

Following ratification of the Protocol, Malaysia prepared its ODS Country Programme (CP) in 1991 which was approved by EXCOM in 1992. Under the CP and National Action Plan, the Government with the cooperation of industries formulated detailed plans to phaseout CFCs and Halons by year 2000 which include legal, administrative, voluntary measures, financial and technical assistance and phase-out investment projects. Some key components of control measures are summarised in Appendix 1.

As the action plans were formulated by the government and the industries through joint consultations, bureaucratic delays and industry resistance were avoided. A National Steering Committee (NSC) was established to formulate strategies and provide policy guidance. Various ODS Technical Committees, ODS Industrial Working Groups and Ad Hoc Committee were set up by the NSC. Among the strategies adopted are as follows:

- Discourage further investments relating to the production and use of CFCs and Halon;
- Encourage existing industries to develop and use substitutes and to change their ODS-dependent processes as soon as possible;
- Promote voluntary compliance on reduction phase-out before Protocol target dates;
- Monitor the use of ODS through regular surveys;
- Participate in international meetings to exchange information and experiences;
- Promote joint public awareness campaigns for importers, suppliers and users of ODSs; and
- ODS phase-out Projects and Activities.

3. TRADE IN OZONE DEPLETING SUBSTANCES:

The importation of ODSs is controlled under the Custom Duty (Amendment) (No.35) Order 1989 and a licensing quota system (AP System) by the Ministry of International Trade and Industry. Only licensed importers are allowed to import CFCs and Halon. The AP System has been in place since April 1994 with import reduction between 15-20% each year to meet the freeze level in 1999 (3215 MT) and reduction of 50% by 2005 as set by the Montreal Protocol.

However, the quota set is slightly higher than projected consumption to ensure that supply is sufficient for the country's basic domestic needs. So far, there has been no reported case of illegal trade or smuggling of ODSs. This could be due to the fact that there is sufficient supply for domestic consumption and the active promotion to convert to non-CFC processes and technologies.

Malaysia still imports products containing CFCs such as used cars fitted with R12 air-condition systems, refrigeration systems such as commercial refrigerators and chillers. Due to domestic demand and the existing capability of local manufacturers to produce non-CFC products, Malaysia has not yet imposed a total ban on products containing CFCs. However, to meet the 1999 freeze level, administrative measures and incentives have been introduced to discourage import of CFCs products and to avoid dumping of technologies:

i. Control import of CFCs by using Application Permit System (AP System);
ii. Increase import duty on CFCs from 2% to 10%;
iii. Abolish import duty on R134a and minimum import duty imposed on HCFCs;
iv. Increase import duty on refrigerators containing CFCs;
v. Decrease import duty on components of equipment and raw materials for manufacturing non CFC refrigerators from 30% to 10%;
vi. Establish CFC-free Labeling Scheme; and
vii. Introduce certification of ozone-friendly products.

4. LAW ENFORCEMENT:

The Environmental Quality (Prohibition on the use of CFCs and Other Gases as Propellants and Blowing Agent) Order 1993 which entered into force in June 1994, prohibits the use of any controlled substances in any manufacturing process, trade or industry of aerosol and foam. To date a number of foam and aerosol industries that existed before July 1995 are still using CFCs in their production. These industries are allowed to continue using CFCs in view of the fact that they are awaiting financial assistance from Multilateral Fund for conversion. However, industries established after July 1995 are not eligible for funding and have been notified to convert to non-CFC technology at their own expense.

Since 1990, an Administrative Order by the Fire and Rescue Department was introduced to ban new installations using Halon fire protection system. This resulted in zero import of halon since 1996. In June 1999, the Environmental Quality (Refrigerant Management) Regulations 1999 and Environmental Quality (Halon Management) Regulations 1999 were gazetted and will enter into force on 1 January 2000. These regulations ban new installation of CFC refrigeration systems and halon fire protection systems as well as venting of CFC refrigerant and halon. The regulations also prohibit export of CFCs refrigerants and halon as well as replenishment of the system once the halon has been discharged. A CFC recycling and recovery centre specifically for refrigeration systems and Halon Bank for decommissioned halon fire protection system have been established. The Halon Bank was established in 1995 under the supervision of the Fire and Rescue Department and the Department of Environment with the objectives of preventing discharge of halon and to collect halon for critical users in the future.

5. CONCLUSION:

Despite the competing priorities arising from the need to contribute towards global ODS reduction and the protection of the atmospheric ozone layer and that of maintaining environmental sustainability in socio-economic development and industrial growth, Malaysia has managed to meet both demands successfully. The «Malaysian Incorporated Concept» promotes and enhances partnership between Government and the Private Sector for the common goals of sustainable economic development and growth. We have not had any major issues with regard to the implementation of the Montreal Protocol.

APPENDIX 1

MALAYSIA: SUMMARY OF CONTROL MEASURES TO IMPLEMENT THE MONTREAL PROTOCOL

14 December 1989	**The Custom Duty (Amendment) (No.35) Order 1989** To monitor the import and use of CFC and halon (Annex A and B)
6 June 1990	**Administrative Order by the Fire Service Department** To prohibit use in new installation
8 December 1992	**Administrative Order by Malaysia Industry Development Authority** To prohibit use of CFC (Annex A) in new investment in manufacturing sector (new industries using CFCs).
30 December 1993	**Environmental Quality (Prohibition on the use of CFCs and other gases as Propellants or Blowing Agents) Order 1993** To prohibit use of CFC (Annex A) in aerosol and foam sector.
7 April 1994	**Application Permit System (AP) by MITI** To control import of CFCs (Annex A and B) by licensing system and quota set to reduce import and trade with non-parties.
May 1994	**Guidelines on control Measures for the Protection of Ozone Layer** This guidelines establishes a mechanism for the management of ODS, to reduce consumption of ODSS and minimize emission into environment
17 November 1994	**The Custom Duty (amendment) (No.35) Order 1989 (Under Schedule II, Custom Act)** To monitor import and use of ODSs in Annex C (HCFC) and Annex E (Methyl Bromide) as well as trade with non-parties.
January 1995	**Guidelines for Pre qualifying and Selection Criteria for Acceptable Alternatives of ODS in Malaysia** General requirements for endorsement of acceptable substitute to be included in the Significant New Alternative List (SNAL).
August 1995	**Training Manual for MAC Recycling/Service Workshop Operators** Operation manual to handle MAC recycling machine
December 1995	**Malaysia Country Program Up-date to Phase out ODS under the Montreal Protocol on Substances that Deplete the Ozone Layer** Guidelines of Malaysian Government's strategies and frame work to implement the Montreal Protocol.
1996	**Non ODS Technology Checklist** Brief guidelines/compilation of non-ODS Technology used in Malaysia
May 1999	**Environmental Quality (Halon Management) Regulations 1999** To prohibit use of halon in new installation and to monitor the existing system and critical users.
May 1999	**Environmental Quality (Refrigerant Management) Regulations 1999** To prohibit use of CFC in new installation of refrigeration system and encourage recycling and recovery.

India's Enforcement of and Compliance with the Montreal Protocol on Substances That Deplete the Ozone Layer

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1. In the early 1970s, scientists discovered that emissions of some human-made chemicals could deplete the ozone layer. The most common of these are the chlorofluorocarbons (CFCs), halons, hydrochlorofluorocarbons (HCFCs) and methyl bromide used in refrigeration, air-conditioning, fire-fighting, metal-cleaning, foam-blowing, soil fumigation and so on. The result would be more UV-B radiation reaching the Earth's surface, more skin cancers and cataracts, reduced plant and animal productivity, poorer air quality, damage to plastics and an impact on climate.

2. Observations of the atmosphere have proved that ozone was being depleted at a rate of about 5 per cent a decade over the middle and higher latitudes of the Earth. An "ozone hole" appeared annually over the Antarctic.

3. Alarmed by these discoveries, the United Nations Environment Programme (UNEP) initiated scientific assessments in 1976 and, as certainty grew, started intergovernmental negotiations to take action to protect the ozone layer. As a result, the Governments of the world agreed first on the Vienna Convention for the Protection of the Ozone Layer, in 1985, and then on the Montreal Protocol on Substances that Deplete the Ozone Layer, on 16th September, 1987.

4. The main objective of the Montreal Protocol is to protect the thin layer of ozone in the stratosphere, located between 10 and 50 kilometers above the Earth, that absorbs all but a small fraction of the harmful ultraviolet radiation (UV-B) emanating from the Sun and protects all life on Earth.

5. The Convention laid down a general commitment to protect the ozone layer. The Protocol, which was strengthened on four subsequent occasions, obligates all parties to phase out the ozone-depleting substances according to the specified timetable.

6. The developing countries are given a grace period of 10 years to phaseout production and consumption of Ozone Depleting Substances (ODS). In 1991 the parties to the Protocol established a Multilateral Fund, subscribed to by the industrialized countries, to meet the increased costs of developing countries and promote the transfer of alternative substances and technologies.

7. As a result of the Protocol, the total consumption of CFCs has fallen by more than 80 per cent since 1986. The consumption of CFCs, carbon tetrachloride, methyl chloroform and hydrobromofluorocarbons (HBFCs) was completely phased out by developed countries in 1996, except for a consumption of around 15,000 tons for essential uses approved by the parties.

Implementation

8. India acceded to the Montreal Protocol on 17.9.92. India's per capita consumption of Ozone Depleting Substances is at present less than 3 grams and did not cross 20 gms between 1995-97 as against 300 gms permitted under the Protocol. India is self sufficient in production of chlorofluoro carbons (CFCs). India commonly produces and uses seven of the 20 substances controlled under the Montreal Protocol. These are CFC-11, CFC-12, CFC-113, Halon-1211, Halon-1301, CCl_4 and methyl chloroform.

9. A detailed India Country Programme for phaseout of Ozone Depleting Substances (ODS) was prepared in 1993 to ensure the phaseout of ODS according to the national, industrial development strategy. The strategy was without undue burden to the consumers and the industry and for accessing the Protocol's Financial Mechanism in accordance with the requirements stipulated in the Montreal Protocol. The main objectives of the Country Programme have been to minimize economic dislocation as a result of conversion to

non-ODS technology, maximize indigenous production, give preference to one time replacement, emphasize decentralised management and minimize obsolescence.

10. The MOEF has also established an Empowered Steering Committee, which is supported by three Standing Committees, and responsible for the implementation of the Montreal Protocol provisions, review of various policy and implementation options, project approvals and project monitoring.

PRESENT STATUS OF ODS PRODUCTION, EXPORT & IMPORT

Production

11. India commonly produces and uses seven controlled substances such as CFC-11, CFC-12, CFC-113, Halon-1211, Halon-1301, Carbon Tetrachloride and Methyl Chloroform. India is self-sufficient in the production of CFC but in the case of Carbon Tetrachloride, Methyl Chloroform and Halon-1301 even though the technology exists, the production is supplemented with imports to meet the total domestic demand.

Consumption

12. These substances are used in the manufacturing of refrigeration, air-conditioners, foam, aerosol, in cleaning of electronic items, as process agents and in fire extinguishers. The base level consumption (the average of 1995-1997) of CFCs & Halon.

Export of ODS

13. India exports CFC-11, CFC-12, Halon-1211, CTC & HCFC-22 to other Article-5 countries for meeting their domestic needs.

Import of ODS

14. India imports mainly CFC-113, Halon-1211, Halon-1301, CTC & HCFC-141b to meet their domestic needs.

STEP TAKEN SO FAR

15. **ODS Production Phaseout:** India has prepared a CFC Production Sector phaseout plan for India which proposes a phaseout strategy and action plan that will allow India to control production effectively and to meet the phaseout target to which country has committed.

ODS Consumption Phaseout: India had been submitting project for conversion to non ODS technology in various sector in order to meet the freeze level of 1.7.99 and subsequent targets as specified in the Protocol.

COMPLIANCE\OBLIGATIONS

16. First obligation is freeze in consumption and production of CFCs starting on 1.7.99.

    Ban in ODS trade with non Parties.

    Reporting of ODS production, export & import Data under Article-7

IMPACT OF ILLEGAL PRODUCTION AND TRADE IN ODS UNDER THE MONTREAL PROTOCOL THAT DEPLETE THE OZONE LAYER

17. Illegal production and trade would lead to non-compliance with the above obligations under the protocol.

Production:

18. At present that is no restriction on production of ODS up to the level of the average production of 1995-97 level. India has proposed for gradual reduction of production of CFC and to completely phaseout by 2010. Production records are submitted with the Ozone Cell regularly which are scrutinized & co-related with the export data, available with the office of DGFT. This is an effective mechanism to ensure the annual levels of production.

Import and Export:

19. All ODS are regulated through a well formulated licensing system.

MEASURES TAKEN TO CONTROL TRADE IN ODS

20. There are still some problems and challenges to be faced, including the illegal trade in CFCs. The parties to the Protocol are very concerned about this problem and have decided that each party should have a licensing system to import or export CFCs and other chemicals that destroy the ozone layer.

21. In accordance with the Decision VII/9 (Exhibit-1) of the Meeting of Parties to the Montreal Protocol, India has taken the following steps to regulate the trade of ODS in India.

Trade in ODS with non-Party countries has been banned.

Enterprises receiving ODS phaseout grant are obliged to provide information regarding ODS consumption through concerned financial institutions.

Harmonized classification of Commodity codes consistent with the international system has been introduced.

Annexure A & B substances were brought under the ambit of licensing for purpose of both export and import. Export of these substances for non-Article-5 countries were also banned. All exports of CFCs for non-Article-5 countries shall have the label "New Products CFCs".

Comprehensive draft regulations on ODS phaseout (under Environment Protection Act, 1996) have been published in the Gazette of India.

LICENSING PROCEDURE

22. The VII Meeting of the Parties at Geneva in December 1995 recommended (Decision VII/9) to establish licensing system to regulate and monitor International trade of ODS. Article 4-B (Exhibit-2) of the Protocol mandated schedules for establishment of licensing system for all Parties. The scope of licensing system was further broadened to cover all ODS in Annex A, B, C and E and in all forms (new, used, recycled & reclaimed).

23. Accordingly the Ozone Cell, MOEF initiated the introduction of licensing for import and export of ODS. The licensing system was formulated by the Directorate General of Foreign Trade in the Ministry of Commerce, Government of India in consultation with the Ozone Cell. The Directorate General of Foreign Trade is the nodal agency responsible for formulating and implementing export and import policy. The licensing system finally came into force from June 1996.

24. The objectives of the licensing system are to regulate the import and export of ODS in accordance with the Montreal Protocol. The design and implementation of the licensing system takes into account the following:

To regulate the production and consumption of controlled substances as given in Article-2.

To regulate the trade in controlled substances with non-Parties as per Article-4.

To regulate the trade among Article-5 countries-dumping.

To authenticate data reporting under Article-7.

Licensing system in India for export of ODS:

25. **Regulations:** All ODS under Annexure A and Annexure B of the Montreal Protocol are covered by the export licensing system. Export is permitted only against an Export License. A basic condition of the license is that export is permitted only to Parties operating under Article-5. A list of the regulations is given in Exhibit 3.

Implementation mechanism:

32. Exhibit 4 gives highlights of the operation of the system. A bulk export license for a specified quality of CFC-11/CFC-12 is issued to each producer on request. This license is on a calendar year basis. The bulk quantity specified in the license is being based on the respective quantity exported by that producer in the previous calendar year, subject to Protocol Controls.

32. The quantity of CFC-11/CFC-12 exported in each consignment is entered into a passbook meant for the purpose.

32. If an exporter exhausts the quantity mentioned in the bulk license, and applies for a license to export additional quantity of CFC-11/CFC-12, the DGFT may consider the application and allow additional exports as appropriate on the recommendation of Ministry of Environment & Forests.

32. The simplified procedure for issuing license apply only for CFC-11 & CFC-12 and not for other ODS mentioned in Annexure A and B of the Montreal Protocol. Exceptionally, exports of CTC by traders are being considered based on the import order on hand basis subject to Protocol control.

32. Each container/ cylinder/ drum etc. of CFCs being exported will be correctly labeled as 'New Produced CFC's'. The quantity and ITC (HS) code of CFC being exported will also be mentioned correctly.

32. Each exporter shall send a copy of relevant export document to the MOEF (Ozone Cell) prior to each shipment. The relevant document will be

one which provides name and address of importer, name, quantity, price of ODS etc. This is addition to maintenance and quarterly authentication of passbook related to bulk license.

LICENSING SYSTEM FOR IMPORT OF ODS

32. **Regulations:** All ODS under Annex A, Annex B and Group 1 of Annex C of the Montreal Protocol are covered by the import licensing system. Import is permitted only against an Import License. Only actual users are eligible to receive this license. License for Traders are also considered on the basis of actual demand of small and tiny enterprises. Only imports from Parties are eligible under the license. A list of the regulations is given in Exhibit 5.

IMPLEMENTATION MECHANISM:

33. Exhibit 6 gives the highlight of the operation of the system. Not more than ninety percent of one year's requirement at a time be allowed to be imported by actual industrial users, subject to the quantity being minimum importable. This assessment can either be done based on past data or on reasonable estimate of future requirements as provided by the importing enterprise.

34. The enterprises which are in the business of trade in these substances may also be allowed imports of not more than ninety percent of one year's requirement at a time. Estimates are based on either past imports or reasonable estimate of quantities importer hopes to be able to meet the demand of actual industrial users in one year.

35. Import may be allowed on first come first served basis and will also be subject to overall Montreal Protocol limits on consumption of such substances, wherever applicable.

MONITORING MECHANISM:

36. In accordance with the license regulations, the importer has to submit annual report on imports to the Ozone Cell. This provides data to the Ozone Cell for monitoring the imports of ODS into India and reporting to the Ozone Secretariat.

OZONE DEPLETING SUBSTANCES (REGULATION) RULES:

37. In accordance with the National Strategy for ODS phase-out the Ministry of Environment and Forests, Govt. of India, have framed comprehensive draft rules, covering various aspects of production, sale consumption export, import etc. of ODS.

Some of the important provisions of the draft ODS Rules, are as follows:

ODS PRODUCERS

- Compulsory to register with MOEF
- Restriction on production levels as per "base level" and reductions specified
- Ban on creating new capacity or expansion of capacity
- Export restricted to countries who are signatory to Montreal Protocol
- Quantity produced in excess of maximum allowable consumption for the respective years, if any, to be for export purposes only

Manufacturers of ODS based Products (ODS Users)

- Ban on capacity expansion or setting up new facility for production of ODS based equipment
- Compulsory registration
- Declaration, in prescribed format, to be the seller, at the time of purchase of ODS

Sellers, Exporters, Importers, Stockiest etc.

- Exporters & importers need to register with designated authorities
- No sales to persons/ organizations which have not intimated the Govt. of India about use of ODS based equipment, including compressor without license

General

- Compulsory registration for reclamation and destruction of ODS
- All registrations will be valid for specified periods, after which they are to be renewed with the same authority
- Every person who produces, uses, imports, imports, sells stocks reclaims destroys ODS has to maintain records and file reports as specified
- Every person who has received technical and/or financial assistance from any international agency of financial assistance from Govt. of India including duty concessions/exemptions, to maintain records and file reports as specified.

38. The draft ODS Rules provide specific dates/time frame for the above provisions to be effective with respect to the date these rules come into force, as well the designated authorities for registration &licensing, specific formats to be used for maintaining records and filing reports.

CONCLUSION:

39. The adoption of licensing system in India is a successful attempt to control illegal trade.

EXHIBIT –1
DECISION VII/9: BASIC DOMESTIC NEEDS

PARAGRAPH 3. That in order to prevent oversupply of dumping of ozone-depleting substances, all parties importing and exporting ozone-depleting substances should monitor and regulate this trade by means of import and export licenses.

PARAGRAPH 4: that in addition to the reporting required under article 7 of the protocol, exporting parties should export to the Ozone Secretariat by 30 September each year on the types, quantities and destinations of their exports of ozone-depleting substances during the previous year.

PARAGRAPH 8(A): To incorporate appropriately into the protocol by the ninth meeting of the parties a licensing system, including a ban on unlicensed imports and exports.

EXHIBIT –2
ARTICLE 4B: LICENSING

1. Each Party shall, by 1January 2000 or within three months of the date of entry into force of 11-11S Article for it, whenever is the later, establish and implement a system for licensing the import and export of new, used, recycled and reclaimed controlled substances in Annexes A, B, C and E.

2. Notwithstanding Paragraph 1 of this Article, any Party operating under Paragraph 1 of Article 5 which decides it is not in a position to establish and implement a system for licensing the import and export of controlled substances in Annexes C and E, may delay taking those actions until 1 january 2005 and 1 january 2002, respectively.

3. Each Party shall, within three months of the date of introducing its licensing system, report to the Secretariat on the establishment and operation of that system.

4. The Secretariat shall periodically prepare and circulate to all parties a list of the parties that have reported to it on their licensing systems; and shall forward this information to the implementation committee for consideration and appropriate recommendations to the Parties.

EXHIBIT – 3
DECISION IX/8: LICENSING SYSTEM

1. That the licensing system to be established by each party should:

   (a) Assist collection of sufficient information to facilitate parties' compliance with relevant reporting requirements under article 7 of the protocol and decisions of the parties; and

   (b) Assist parties in the prevention of illegal traffic of controlled substances, including, as appropriate, through notification and/or regular reporting by exporting countries to importing countries and/or by allowing cross-checking of information between exporting and importing countries.

2. To facilitate the efficient notification and/or reporting and/or cross-checking of information, each party should inform the secretariat by 31 january 1998 of the name and contact details of the officer to whom such information and requests should be directed. the secretariat shall prepare, update and circulate to all parties a full list of these contact details.

3. That the secretariat and implementing agencies should take steps to assist parties in the design and implementation of appropriate national licensing systems.

4. That parties operating under article 5 may require assistance in the development, establishment and operation of such a licensing system and, noting that the multilateral fund has provided some funding for sucH-a activities, that the multilateral fund should provide appropriate additional funding for this purpose.

EXHIBIT – 4
LICENSING SYSTEM FOR ODS EXPORT

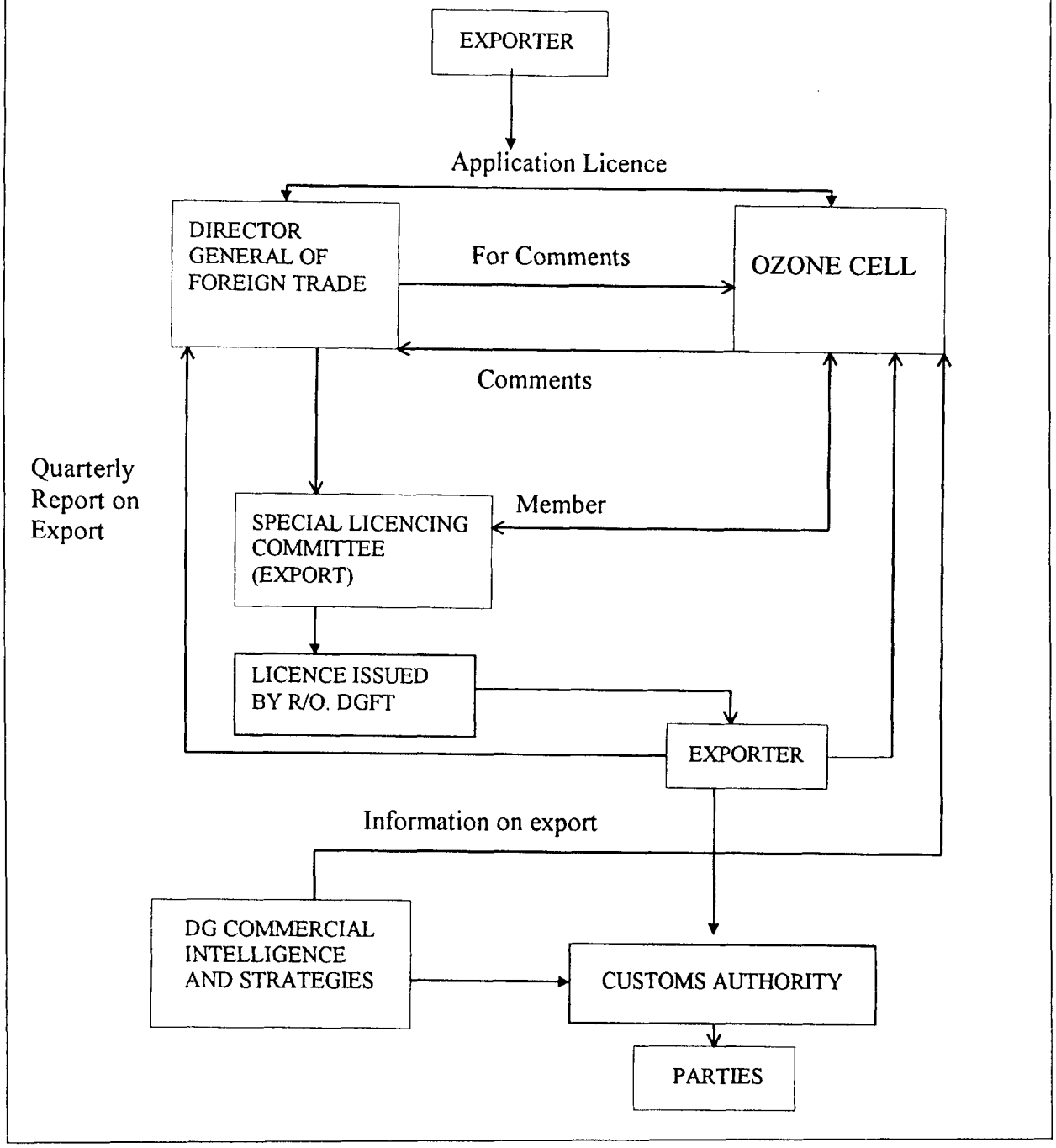
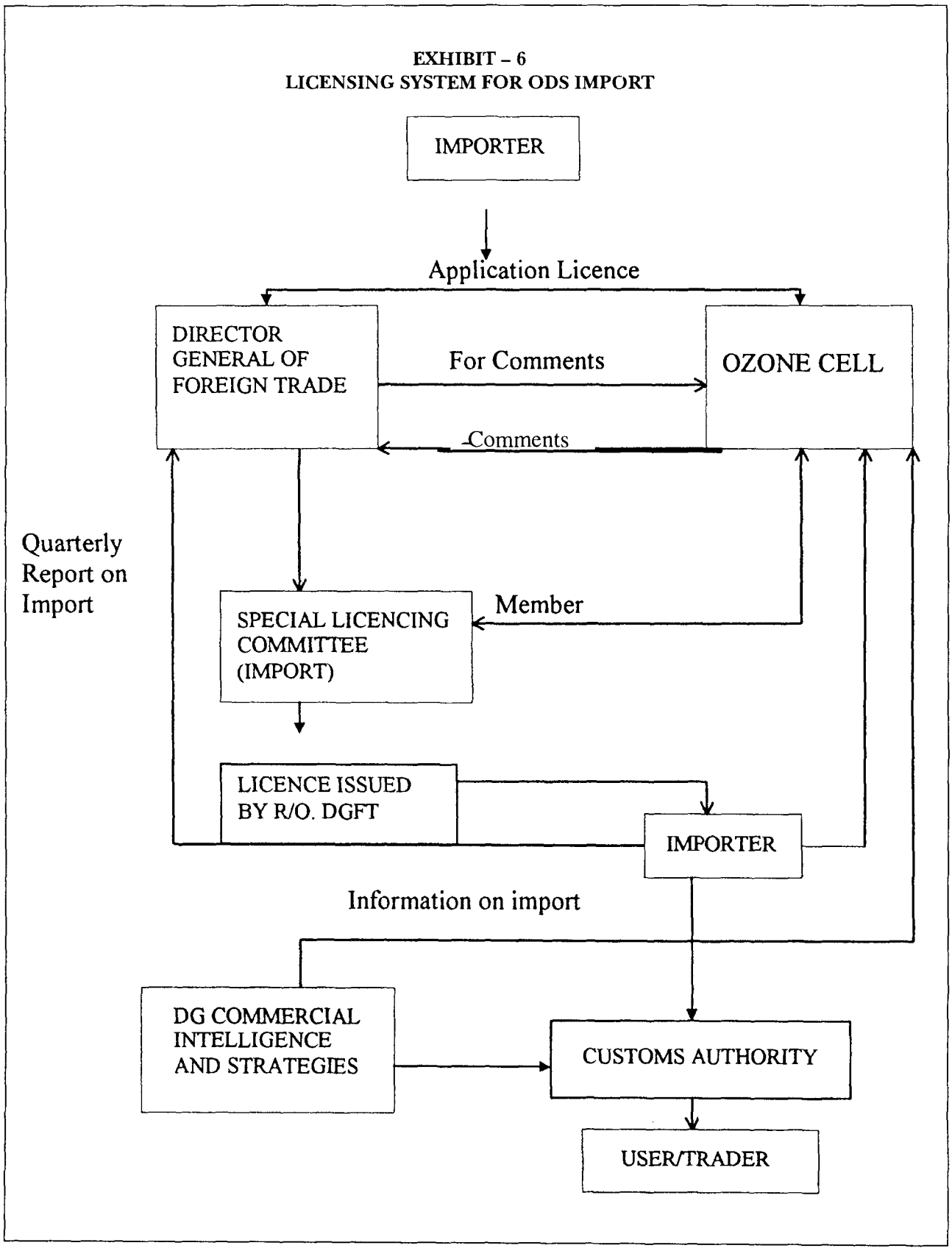


EXHIBIT-5
REGULATIONS OF THE ODS IMPORT LICENSING SYSTEM IN INDIA

1. This applies to all ods in annexes a and b and group 1 of annex c.
2. Import is permitted only against an import license.
3. Import is permitted only from parties.
4. Each package of import must be marked with the appropriate customs code and quantity of product.
5. Annual reports must be submitted to the ozone cell giving data on imports.

EXHIBIT – 6
LICENSING SYSTEM FOR ODS IMPORT



Implementation of the Montreal Protocol in China

Prepared by
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A. INSTITUTIONAL ARRANGEMENT:

—— 1991, a leading group for the implementation of the Montreal Protocol was formed with National Environmental Protection Agency (NEPA), now State Environmental Protection Administration (SEPA), as the Chair. It is composed of 18 concerned departments at the central government.

—— 1992, NEPA established a Clearing House and an ODS Project Office.

B. IMPLEMENTATION STRATEGIES:

—— 1991, the Montreal Protocol was ratified;

—— 1992, the National Programme for the Gradual Phasing out of ODS was approved by the Chinese Government

—— China has been committed to phase out the production and consumption of ODS by the year 2005, which is 5 years earlier than the deadline, on the precondition of additional financial assistance and adequate technology.

—— 1995, strategies were formulated for the phasing out of ODS in 8 related industrial sectors, including:

- Aerosol;
- Foamed plastics;
- Cleaning solvents;
- Fire extinguisher;
- Refrigerator;
- Industrial and commercial refrigeration;
- Automobile air-conditioning;
- Chemical industry.

—— In 1997, certain administrative measures were taken:

- An overall ban of use of CFC was imposed in the Aerosol sector 6
- A quote and production permit scheme was initiated for the use of halons in fire extinguisher.
- A prohibition was made to ban the construction of any new facility which plans to produce or to use ODS.
- On June 2, 1999, SEPA imposed a quota and permit on the produciton of all the CFCs in the chemical industry.

—— National quota
—— Annual quota for individual manufacturing facility.

C. TRADE RELATED PROBLEMS IN ODS IN CHINA:

—— Current Trends in Foreign Direct Investment, FDI, to China related to ODS

According to a study (by Ye in 1997): From 1985 to 1994, 957 foreign founded enterprises (FFEs) were found still dealing with the production and consumption of ODS, especially to the consumption of ODS.

MAJOR FINDINGS:

- The study shows that the growth rate of FDI in industries related to production and consumption of ODS is quite high, especially in solvents, refrigeration/air conditioning, and foamed industries.
- The majority of FDI flows to the coast regions of China, Guangdong, 1/4;
- The investors come from 25 countries, among them 20 from OECD countries and new industrial countries and regions;
- Japan, U.S., and the Netherlands are the major investors in the production and consumption of ODS in China.

Recommendations:

- Coordination between SEPA and other relevant organs including the industry; and
- Inclusion in the foreign investment direction.

—— Clarification on the Export from China

- Some Chinese companies did transact some ODS materials abroad. But it is only the act of the enterprises.
- According to our investigation, the main responsibility lays in the foreign side, the foreign businessmen and the inspectors in foreign customs.
- The Chinese Government and its concerned department are serious about the obligation under the Montreal Protocol. As a developing country, the Government authorities do not support any transaction in ODS.
- Before the proposed regulations on the control of ODS was promulgated, such transaction in ODS by the Chinese enterprises were not regarded as illegal.
- The license scheme for the produciton of ODS has been initiated, and with attention to the EIA's undercover investigation, China is drafting the relevant regulations the control of import and export of ODS.
- For the closure of certain production faciliteis related to ODS in developing countries including China, the Multilateral Fund should increase its support, in terms of both the application procedure and review time.

OZONE:

(iii) LATIN AMERICA AND THE CARIBBEAN

Illegal Trade and Violations of the Provisions of the Montreal Protocol on Substances that Deplete the Ozone Layer

Prepared by
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1. THE EXTENT OF ILLEGAL TRADE OF OZONE DEPLETING SUBSTANCES (ODSS) IN BARBADOS:

Barbados ratified the Vienna Convention and the Montreal Protocol in 1992. In addressing the problems associated with the global use of ozone depleting substances, developed countries ceased production of Chlorofluorocarbons (CFCs) since January 1996 and defined reduction in use and phase out schedules in respect of other ODSs (such as Hydrochlorofluorocarbons, or HCFCs) to be effected by the year 2015. These schedules undergo annual review at international meetings to ensure the greatest effectiveness in addressing Ozone layer depletion. Like other developing countries, however, Barbados has a grace period of ten (10) years beyond the relevant phase out allocations for the developed countries. This sets the deadline for the phase out in the use of CFCs to the year 2010. There are however other obligations which must be met by the year 2010, the first of which is the 1999 CFC Freeze. The CFC Freeze takes effect July 1999 and at that date, developing countries will be frozen at the average level of consumption (production and/or importation) reported for the years 1995 - 1997. There are also reductions schedules set governing ODSs in general which the developing countries are obligated to meet over the next ten (10) years.

In this respect therefore, the issue that Barbados currently faces is not one of illegal trade but one of ensuring that its obligations under the Vienna Convention and the Montreal Protocol are met within the grace period allowed. At the end of the grace period, illegal trade and illegal use of ozone depleting substances will have to be monitored and the two agreements enforced. In the mean time however, Barbados must guard itself against becoming a dumping ground for ozone depleting substances despite the need to maintain stock piles of parts for equipment already on the island.

2. EFFORTS MADE TO CONTROL CRIMINAL ACTIVITY IN BARBADOS:

To date, through United Nations Environment Programme (UNEP), the United Nations Industrial Development Organisation (UNIDO), and with the financial assistance of the Multilateral Fund, Barbados has benefited from funds to the tune of US$400,000 in three (3) programme areas:

1. Execution of a Barbados Country Programme (1993-94) (US$10,000)
2. Execution of an Institutional Strengthening Project (1995-98) (US$112,000)
3. Execution of a CFC Recovery, Recycling and Training in Refrigeration Project (1997-98) (US$167,000)

In addition, the Government of Barbados has established a steering committee to provide policy advice and technical support to the above mentioned efforts.

3. CONCLUSION AND RECOMMENDATIONS:

The following summarizes the steering Committee's recommendations to the Government:-

1. the licensing of certified technicians;
2. the listing of approved companies to trade in CFCs;
3. a ban on the importation of fully assembled equipment utilizing CFCs;
4. the introduction of a levy on the importation of all CFCs;
5. the granting of a tax rebate to companies retrofitting their cooling systems to use ozone friendly technology,
6. the importation of ozone friendly equipment duty free;
7. the importation of all CFC mobile air conditioning units free of gases;
8. the storage of all spent CFCs in a designated lo-

cation prior to disposal off-island;

9. the emptying of end of life equipment of all CFCs before disposal at the landfill;
10. the collaboration with all sectors to assist in their preparation for the phase out and to affect the phase out of CFC;
11. the education of the general public;
12. the drafting of legislation to provide for
    (a) licensing of users of CFCs;
    (b) the banning of CFC using equipment in 1999;
    (c) importation of only non-CFC Mobile air-conditioners,
    (d) the clearance of end-of-life white goods of all CFCs prior to disposal.

There will soon be a schedule outlining when the above provisions will be implemented.

Enforcement of and Compliance with Montreal Protocol: Mexico's Experience

Prepared by
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1. BACKGROUND:

Over the years, Mexico has shown outstanding performance towards the implementation of the Montreal Protocol on Substances that Deplete the Ozone Layer of 1987. Mexico was one of the first countries in sign the Protocol in 1987 and ratified it in 1988.

Mexico endorses its commitment to protect the ozone layer. Mexico was one of the first article 5 countries to present an accelerated phase out schedule in 1992. The official phase out date for developed countries was the year 2000. Mexico adopted that limit in its national strategic plan. For the Ministry of Environment, the Montreal Protocol is one of the environmental priority issues at national level and receives special attention within the operation of the Ministry.

The Government of Mexico is committed to carry out the most efficient and dynamic regulations with the sectors involved in the use of Ozone Depleting Substances (ODS). The industry welcomed the approach by the Government based on voluntary agreements in which the industry and private sector had wide participation.

2. REGULATIONS:

The control of the ODS substances is based mainly in the restriction of production and imports up to a limit established in the Official National Reduction Program (Annex I). The producers and importers of ODS substances receive official permits each year up to the limit established in the National Program, and each period the limits are reduced. No enterprise in the country could import or produce ODS without appropriate authorization from the Ministry of Environment.

In addition to the bulk of ODS controls on import and production operations, Mexico has established an official standards that bans the production and imports of domestic and commercial refrigeration equipments. These standards aims at ensuring that there is no continuos growth of installed ODS equipment, that will require sooner or latter CFCs for service.

3. PROGRESS MADE:

The base line consumption of CFCs in Mexico for 1989 was 14,538 metric tones. By 1998, the consumption in the country had been reduced to 3,565 tones of CFCs and Halons. This represents the elimination of almost 11,000 tones.

Mexico received support from the Montreal Protocol's Multilateral Fund which enabled it to eliminate CFCs and Halons up to 3,322 tones. The industrial sector has been reconverted its equipment as follows:

- Domestic Refrigeration, OEM 100 %
- Aerosols (non MDIs) 100 %
- Commercial Refrigeration 85 %
- Polyurethane 75 %
- OEMs MACs 100 %
- Solvents 80%

4. ILLEGAL TRADE OF ODS:

The problem of illegal trade in ODS was first detected in 1996. Before this date there been no cases of known illegal trade. This was probably due to the exiting supply of ODS to the industry and the accessible price of around 3-5 dollars per kilogram, close to the then prevailing international price.

As the result of the restrictive measures imposed by the Ministry of Environment after 1996, availability of CFCs in the country was limited and the price of ODS shoot up to 8-10 dollars per kilogram. Consequently, illegal trade in CFCs began as it was no longer cheaper to obtain the material.

In 1996 and 1997 estimated quantities of illegal products were estimated at almost 500-800 tones per year. To deal with the problem, the Government established a special multi-ministerial task force. This group had represented from the ministries of Treasury, Commerce, Environment and Justice Department. Special field operations were carried out mainly in 1998. CFCs smuggling was made a federal crime. Some smugglers were arrested and those responsible were charged with multiple crimes, such as environmental harm activities, administrative sanctions and taxation fines. The

process received adequate press and media coverage which assisted to create public awareness among the populations.

By 1998, the illegal trade in CFCs was estimated to be well below 100 tones, and the first half of 1999, figures already indicate to be less than 10 tones most of which were carrying improper legal documents.

5. FUTURE ACTION TO FURTHER CONTROL ILLEGAL TRADE:

To further reduce the risks of illegal trade, the Ministry of Environment is currently developing new standards which will incorporate all ODS importing and producing sectors to restrict them from using the banned substances. The new standards will require these sectors to invest more efforts and funds in the crime prevention. It is hoped that with these innovative approaches, the consumers would detract from using CFCs, thus closing the market for illegal products which will have no commercial value and consequently, making it unattractive to smugglers.

To avoid disruptions to those sectors that would not be able to convert to new technologies due to lack of alternatives or support for its conversion, the Ministry of Environment will issue prescribed permits so as to control emerging needs of some producers. In this way, black markets would be curtailed and ensure that the products will be used properly, until the producers are able to adapt to new technologies.

6. BARRIERS:

(i) Controls in the region:-

Poor control mechanisms on imports of ODS substances in some Latin American countries has created environment for illegal materials to circulate freely. This has created illegal trade to Mexico, USA and Canada.

(ii) Regional Price of CFCs:-

The average price of CFCs in the Central, South America and the Caribbean varies between 2-4 dollars per kilogram, making these countries inappropriate for illegal trade since there are no profits. The picture is different in Mexico where the average price of CFCs is estimated at 15-20 dollars per kilogram and in the US can reach 40 dollars per kilogram, making this country a profitable ground for illegal trade smugglers.

(iii) Art. 2 Production:

There is still production of CFCs in excess from Art. 2 countries that easily gets into developing country markets. Probably the price is still so low that they can be shipped directly to black markets.

(iv) Lack of end users Projects:

Mexico has identified as one of the main barriers to combat illegal trade to be the resistance in the Multilateral Fund Executive Committee to approve a different line of projects, directed at the elimination of the use of ODS for final users such as supermarkets and refrigeration facilities. One of the main findings of the experience in Mexico is that if this sector is not attended properly and on time, short and mid term Montreal Protocol controls will be at serious risk. It will create a possibility of enlarging the operations of illegal trade since the service operations increase when it gets to small users that are an easy target for smugglers. Such a project will be important to mitigate demand in developing countries. However, such activities should always be endorsed with strict regulations to avoid any conversion back to CFCs.

(v) Additional support for control of ODS substances:

Additional funding support is needed for the customs system for not only training but also provisions of equipment to detect illegal material. It is hoped that the Montreal Protocol Fund would be available for use to fulfill this objective.

(vi) Art. 2 demand (USA):

As long as demand for CFCs exist, illegal trade in those substances will continue.

(vii) Wrong approximation to control of illegal trade:

The activities related to the control of illegal trade must be carefully designed to avoid profit increment, since the cost of illegal material changes proportionally to the risks taken by the smugglers. Consequently, if penalties, like fines and jail sentences that are applied to trade in illegal material are higher, then higher will be the risks and hence the profits for smugglers. The right strategy must be to enforce the development of controlled markets and/or curtail demand so as to deter smugglers to engage in the illegal trade.

ANNEX I OFFICIAL NATIONAL REDUCTION PROGRAM	
SUBSTANCE	CONTROLS
CFC-11 CFC-12 CFC-13 CFC-113 CFC-114 CFC-115	1993 FREEZE AT 1989 LEVEL 1994 REDUCE 20 % 1995 REDUCE 40 % 1996 REDUCE 60 % 1997 REDUCE 70 % 1998 REDUCE 80 %
HALON-1211 HALON-1301	1999 REDUCE 85 % 2000 REDUCE 90 %
CARBON TETRACLORIDE	10 % IS RESERVED FOR MEDICAL ESSENTIAL USES AND BASIC DOMESTIC NEEDS, PRIOR JUSTIFICATION OF THE NOMINATING COMPANY.
1,1,1 TRICLORETHANE (MCF)	1995 FREEZE AT 1994 LEVEL 1996 REDUCE 20 % 1997 REDUCE 30 % 1998 REDUCE 40 % 1999 REDUCE 45 % 2000 REDUCE 90 %
HCFCs	2016 FREEZE AT 2015 LEVEL 2040 PHASE OUT
METHYL BROMIDE	2002 FREEZE AT (AV. 95-98) 2005 REDUCE 20 % 2015 PHASE OUT

International Environmental Crime and its Impact on the Montreal Protocol in Cuba

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TRADE IN OZONE DEPLETING SUBSTANCES:

As a developing country and consequently subject to Article 5 of the Montreal Protocol on Substances that Deplete the ozone Layer (Hereinafter the Montreal Protocol), it was not until July 1999 that Cuba began to introduce regulatory measures to control trade in ozone depleting substances. Consequently, trade did not exist until recently.

MEASURES ADOPTED TO CONTROL ILLEGAL TRADE:

These measures include:-

(i) a Resolution by CITMA that establishes an environmental license regime for the importation of ozone-depleting substances and the means and equipment that use such substances (beginning for the 1 July with chlorofluorcarbons).
(ii) a Resolution by the Foreign Trade Ministry that reduces to three the number of authorized entities to import chloroflourcarbons.
(iii) a Resolution by the Internal Trade Ministry that will act as balance body for chloroflourcarbons importation, deciding the quotas to import by the authorized entities under the basis of the general amount informed by CITMA.

MAIN CONSTRAINTS IN THE NATIONAL APPLICATION OF THE MONTREAL PROTOCOL:

(ii) The main limitations regarding the national applications for the Montreal Protocol can be identified as lack of materials and financial resources as well as the required infrastructure, necessary for an adequate follow up and control of these obligations.
(ii) There is lack of effective systems of information that allow the adoption of rapid and effective actions and preventive character and maintain at the same time an effective information base to the citizens. To these, among other factors is associated with the insufficiencies in education and environmental awareness.
(iii) The regulations on responsibility are not sufficiently clear and strict. A Decree-Law on administrative penalties with effective enforcement measures still awaits approval. Consequently, civil and penal laws continue being basically the traditional hence not adequate or effective to deal with these emergent issues.
(iv) Equally scarce is the use of economic instruments in the national legislation to induce industries to comply with the Protocol and to produce ozone friendly substances.
(v) On the other hand, conflicts among several international environmental agreements exists. For instance, the potential contradictions between multilateral environmental agreements and World Trade Organization's agreements.

CONCLUSIONS AND RECOMMENDATIONS:

Compliance with responsibilities derived from the Montreal Protocol at the national level require an effective cooperation of the international community, particularly from the developed countries, according with the Principle 7 of the Rio Declaration. Without a strong international commitment, national efforts will be seriously limited. Compliance control must be mixed with compliance assistance. Consequently, national regimes must be reinforced. This must occur on a harmonious way, combining the administrative, civil and penal systems.

Taking into account that the fundamental idea is preventive and not coactive the responsibility regime must be approximately combined with preventive measures including declaration and reporting obligations. Violation of laws does not necessarily reflect an intention to commit an offence but sometimes ignorance and lack of culture and knowledge regarding those issues. In this sense, all actions that tend to reinforce information and citizen awareness and public participation must be involved and built.

The use of economic instruments strengthened and/or introduced to complement the command and control measures. At the international level, the existing mechanisms must be reviewed as they have a decisive influence on the performance at national level.

More studies and efforts must be dedicated on the clarification of the relations and potential conflicts among the multilateral environmental agreemental and the World Trade Organization's agreements. In this regard, the practice established by Cuba since 1996 of a "Committee of Trade and Environment" for the coordination of the commercial and environmental policies, seems to be a good way in the search of a national coherence.

Implementation of the Montreal Protocol in Colombia

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In connection with this instrument, the country has undertaken industrial retrofitting projects in the domestic refrigeration sector to eliminate the use of chlorofluorocarbons (CFCs) and provisionally replace these with hydrochlorofluorocarbons (HCFCs).

The Ministry of Environment issued Order No. 528 of 1997, banning the production of domestic refrigerators, freezers and refrigerator-freezers that contain CFCs or require them for their production or operation, and placing restrictions on the importation of CFCs.

Besides this, the Ministry of Environment is coordinating with the Department of Customs and Excise the establishment of a system of import controls on trade in ozone-depleting substances as set out in the Protocol, in accordance with a decision taken by the Parties in their ninth meeting in Montreal.

PROBLEMS RELATED TO ILLEGAL TRADE:

Since the use of CFCs is still permitted for service and maintenance uses and for the industrial and commercial refrigeration sector, whose companies are next in line to be covered by retrofitting projects with support from the Protocol, no problems of illegal trade in CFCs has been detected.

With respect to another controlled substance, methyl bromide, whose use is banned by Order No. 02152 of 1996 issued by the Ministry of Public Health, information has been received about its illegal entry into the country, although it has not been possible to verify this.

Illegal trade may be encouraged by the effectiveness of methyl bromide in the control of banana pests, and because of date there is no alternative that is economically and technically viable for that use. Consequently, banana producers prefer to use this substance to avoid losses of product as far as possible.

CONCLUSIONS:

1. As in the case of CITES and the Basel Convention the training of officials responsible for the monitoring and supervision of the entry of ozone-depleting substances is fundamental.

2. Export control on the part of producing countries is a vital factor in the supply of substances that might be used in illegal trade.

3. Measures such as those taken by the Parties to the Montreal Protocol for the control of illegal trade in ozone-depleting substances should be replicated in other convention, and in fact the process of unifying International Customs Codes is already under way.

Implementation of the Montreal Protocol in Argentina

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A. LEGAL FRAMEWORK:

Laws enacted include:

- National Constitution (Art. 41 & 43)
- 22.415 - Customs Law
- 24.449 - Traffic Law
- 23.724 - Ratification of the Vienna Convention
- 23.778 - Approves the Montreal Protocol
- 24.167 - Approves the London Amendment
- 24.168 - Approves the Copenhagen Amendment
- 24.040 - Chemical Compounds. It regulates the application of restrictions of the ODS consumption
- 24.898 - Public Information on UV Radiation Intensity.

Decrees:

- 3489/58 - Register of the Importation and Trade of Therapeutic Vegetable Products
- 831/93 - Ozone Unit Formation

Regulations:

- 62/98 - Halon Group Formation (SRNyDS)
- 440/98 - Handbook Procedure for the Phytosanitary Product (SAPYa)
- 20/96 - Regulates the waste present in products treated with Methyl Bromide (SAPyA)
- 195/97 - Regulates the transportation of hazardous goods by carway
- 110/97 - Regulates that the transportation of hazardous goods must be done by authorised international drivers.

Regulating norms in preparation:

- Halon Final Disposal
- Ozone Layer Measuring - Public Information
- ODS Import - Expert Licensing
- Consultative groups formation

B. PREVENTION AND PROTECTION MEASURES TO COMBAT THE ILLEGAL TRADE IN ODS:

We have carried out two workshops with the government areas involved in the subject. The target was mainly to set up a program to carry out the final action plan on the control and Surveillance of ODS in Latin America. The discussion included:

- Kind of goods, this is raw material or manufactured product
- Geographic source - regional framework
- Regulatory Framework (banning, previous intervention)
- Customs Codes – Alternatives
- Solvent Mixture
- Temporary Importation

Free-Port: a special control is required because the goods are not technically registered and can stay at the port for 5 years.

C. INTELLIGENT CONTROL OF IMPORTATION AND EXPORTATION (ASSOCIATED WITH SENSITIVE TECHNIQUE):

Customs control office depends on Strategic Control as consultative organization, in charge of:

- Determination of critical points of control.
- Set up prevention and control measurement and determination of criteria to follow up.
- Monitoring of critical point and corrective measurement.
- Register.

D. DETECTION SHEET:

- Control of Critical Point (CCP), it is a procedure that allows for the prevention or control measures.

- Criteria, limitation and characterisation of the legislation, through regulations, procedure manual .

- Monitoring of CCP.

E. NECESSARY STEPS:

- Observation: quality of product
- In case of doubt the regulation must be consulted. It is necessary to train Customs officers.
- Detection: identification of specific compound sending sample to a laboratory
- Notification: tot he competent authority
- Identification: depending on the case detected certain steps follow up
- Permanent revision: in case of change of procedures, demographic or legislation.

F. ILLEGAL TRADE:

- The critical point is the arrival of goods
- Arrival - placing in market-place - follow up

G. INTERVENTION SHEET:

- Document and physical control of warehouse
- Detection result:
  - No: normal Customs procedure
  - Yes: analysis and consultation with the competent authorities.

It is important to know the origin of goods, send them to a controlled and safety zone, stock them temporarily and safely. In this step it is necessary the intervention of the Criminal Court. The procedure after detection will be set up in the Ozone Unit Procedures Handbook.

H. CUSTOMS CONTROL - LEGAL FRAMEWORK:

- Set up control mechanisms in 1999.
- Moment of intervention of the competent organisation. Document or physical revision.
- Term of retention of goods.
- Implementing international standards to take gases sample in warehouse.
- Implementing norms for the packaging/containers regarding kind of goods (in order to avoid documents smuggling).
- Customs Codes have to be set up for refrigerator containers - refrigeration gases – (there is smuggling of CFC through containers).
- To use high security documents to avoid their falsification.
- Limit up to three points of entrance for controlled substance by Montreal Protocol.
- Intervention Procedure Manual for joint operation between different control organisation.

I. ACTION TAKEN:

- Forms are agreed with government areas for implementing Previous Authorization to import and export OD and equipment that contain them.
- Set up preventive measures as confiscation of materials and description of them.
- Interchange legislation with border countries, including draft laws before their enactment.

J. CASE STUDIES:

- Perception of the entry of deteriorated or expired cylinders containing CFCs (produced in the 0's0; If the cylinder is not apt for use, it could be considered scrap metal.
- Covered entry of bromophenols and chlorophenols as pure substances detected through a procedure documented in the 5th workshop of the South American ODS officers network (Buenos Aires, June 1998).
- Alteration of the expiration date (labelling) in origin.
- Change of the name of the substance in the original documents in accordance with allowed substances.
- Alteration of additional documentation (e.g. data sheet) to swindle controls.
- Donations as the vehicle for illegal traffic of products with close expiration date.

OZONE:

(iv) EASTERN EUROPE

Uncontrolled Trade Paves The Way to Illegal Trade

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INTRODUCTION:

Worldwide illegal trade in ozone depleting substances (hereinafter ODS) continues to undermine the achievements of the Montreal Protocol. CFCs and halons have been illegally supplied to North America and Europe in spite of the fact that many people have been already fined, jailed or penalised for smuggling ODS[1].

The issue of illegal trade in ODS in countries with economies in transition (hereinafter CEIT) is also becoming a serious threat to the success of the Montreal Protocol, as noted by the statements of Parties at the Ninth Meting of the Parties in September 1997. Many representatives at the Ninth Meeting of the Parties "referred to the dangers of the illegal trade in CFCs which threatened to undo many of the achievements of the Protocol so far. Together with licensing systems, accurate and reliable data reporting was also essential to defeat the illegal trade."[2] Illegal trade is occurring because there are inadequate control systems and policies and lack of enforcement of these measures. The Parties thus agreed in September 1997 to Decision IX/8 on Licensing System that calls for each Party to establish an ODS import and export licensing system to control trade in ODS. CEIT countries also have to comply with this decision as well as Decision IX/9 on Control of Export of Products and Equipment Whose Continuing Functioning Relies on Annex A and Annex B Substances.

In this context I would like to focus on the situation with trade in ODS in Ukraine. In the meantime some conclusions and recommendations applicable to other CEIT countries will be drawn.

Ukraine as well as several other non-Article 5(1) countries with economies in transition are still allowed to consume ODS for non-essential uses[3]. Formally, at present time such countries are in a state of non-compliance with the Montreal Protocol because they continue to consume ODS after the phase-out date for developed countries of 1 January 1996. Some countries continue to conduct trade in ODS with both Parties and non-Parties to the Protocol. Non-compliance with the Montreal Protocol by CEIT countries poses a serious problem, since the success of the Protocol depends on the compliance by all countries with the Protocol control measures. In cases of these CEIT countries that are not able to follow the Montreal Protocol phase-out schedule specific decisions by the Meetings of the Parties establish a legal framework of the phase-out activity[4].

The economic and political transition in CEITs has resulted in severe difficulties in ratifying and subsequently complying with the Montreal Protocol and its Amendments. Obstacles include a lack of funding and institutional capacity in countries to undertake projects, inadequate information and training on the Montreal Protocol and technical alternatives, communication difficulties due to telecommunications and language barriers, and lack of familiarity with working within the international environmental protection system. Several CEIT country officials in fact believe that the risk of continued non-compliance beyond the year 2000 if phase-out actions are not co-ordinated through a regional initiative and if they do not receive the necessary information, support and training they require.

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1 A Crime Against Nature. The World-wide Illegal Trade in Ozone Depleting Substances. A Second Report by the Environmental Investigation Agency, 1998.

2 Report of the Ninth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer, UNEP/OzL.Pro.9/12, September 1997.

3 Those are Azerbaijan, Belarus, Estonia, Latvia, Lithuania, Kazakhstan, the Russian Federation, Turkmenistan and Uzbekistan. Several CEIT such as Croatia, Georgia, Moldova, Romania and Slovenia are classified as Article 5(1) Parties.

4 E. g. Decisions X/20 to X/28.

UKRAINE'S EXPERIENCE IN ODS TRADE CONTROL:

Ukraine had to stop consumption of ODS since 1996, however it was not able to do that because of economic difficulties. The 7th Meeting of the Parties (1995) considered the situation in Ukraine and decided the following: to let Ukraine consume ODS beyond 1st January 1996 provided the country does all its best to phase out ODS in its territory as promptly as possible, the international community, in its turn, provides a financial support for implementation of the Country Programme of ODS Phase-out (hereinafter CP). In October 1996 the Ukrainian government approved this programme. On 15 September 1998 the Grant Agreement between Ukraine and the World Bank acting as an implementing agency to the GEF was signed (ratified on 5 March 1999). Ukraine shall phase out ODS in its territory by the year 2002.

The Ministry for Environmental Protection and Nuclear Safety (hereinafter MEP) is the main governmental body in charge of implementation of the Montreal Protocol in Ukraine. Apart from the main office located in Kyiv, the capital of Ukraine, the Ministry operates 24 regional branches, 2 city branches (Kyiv and Sevastopol), the State Committee on Natural Resources and Environmental Safety of the Republic of Crimea, the Main State Environmental Inspection and Environmental Inspections on the Black and Azov Seas, respectively. The local authorities of the Ministry are in charge of enforcement of environmental legislation on the base level.

Intersectoral co-ordination is provided by the Interagency Commission on Implementation of the Montreal Protocol established by a Decree of the Cabinet of Ministers of Ukraine in 1995. The Deputy Minister for Environmental Protection and Nuclear Safety of Ukraine heads the Commission and serves as a National Co-ordinator to the Montreal Protocol. Day-to-day work on the Montreal Protocol control and implementation is executed by the Division of the Montreal Protocol (Ozone Office) which was established in late 1996. This division, in parallel, serves as the Secretariat to the National Co-ordinator. Each regional branch of the Ministry nominated an officer in charge for the Montreal Protocol implementation in the local level. Besides there are Environmental Inspection Units on customs check points that execute primary control of imported commodities which are subject to environmental regulation.

First attempts to create a clear picture of ODS market in Ukraine were taken by the MEP in 1995 in preparing the first version of the CP. Originally it was supposed that there should be no reasons for businesses to distort data on ODS (mostly CFCs) consumption and trade. As well as supposedly no incentives should be for illegal imports. This approach was based on two assumptions: first, that the ODS import in Ukraine was not prohibited, and, second, that historically Ukraine imported a lion's share of ODS from the Russian Federation. At that time cheap CFCs produced by the Russian plants were widely accessible within the whole region of CEIT countries. CFCs made in the Russian Federation might be bought for less than US$ 1 per kilogram, often in credit, often via barter[5] schemes. As a result the street price of CFC-12 was nearly US$ 1.5.

In the context of the said a primary data collection was performed mostly on the basis of voluntary communications by the enterprises and companies which were covered by official statistics. When the consolidated data were compared with independent expert assessments and the ODS export figures from the Russian Federation to Ukraine many discrepancies were discovered. After all it was found that many businesses did distort data on ODS imports, some enterprises reported a zero consumption. The reasons were mostly commercial by nature. Many companies tried to reduce their real turnovers to escape taxation. As well as when using barter schemes the companies hid as much commodities as they could. There also were other reasons such as a poor statistics or book-keeping, or the lack of enforcement on the local level. In justice the businesses were not concerned with environmental liability because there was no relevant regulation in Ukraine for the moment.

There were several ways of uncontrolled penetration of ODS in the territory of Ukraine. Some businesses preferred to negotiate with customs officers, others used mislabelling, etc. I should repeat that that time there were no restrictions on ODS import. As well as I should say again that there were no environmental reasons for such behaviour, mostly commercial. But it is important that such ways could be used to import controlled substances illegally. In 1996 it became absolutely clear that the first thing to be done would be establishing a reliable monitoring system of ODS traffic in the country.

To that end the Ozone Office worked in several directions. First, all regional offices of the MEP were ordered to register all ODS users, to include them in a central data bank and to regularly request them to report the ODS consumption. (This task has been sig-

[5] Barter means exchange in goods in avoiding transferring monies from the buyer's bank account to the seller's bank account. Since barter often allows to escape taxation such schemes are widely used in the former Soviet Union countries. See also relevant reports by the World Bank.

nificantly facilitated since 1999, because now any business dealing with ODS has to obtain a license pursuant to Decree of the Cabinet of Ministers of Ukraine of 17 August 1998 No. 1287). Second, the Ozone Office started establishing direct contacts with main ODS traders (in 1998 a voluntary agreement on co-operation between the MEP and All-Ukrainian Association of the Users of Refrigerants was signed), and finally, the MEP officially approached the Customs Service of Ukraine to obtain data on import/export of ODS.

It may be concluded that by the beginning of 1998 there were at least 3 information channels organised that provided the Ozone Office with data on ODS transportation in the territory of Ukraine as follows:

1) the central customs office — provides consolidated data on ODS import/export in Ukraine;
2) regional offices of the MEP — provide data on ODS consumption by each end-user[6];
3) trade companies — provide data on ODS imports and sales.

Such a system allowed to crosscheck the information obtained from different sources and, as a result, to obtain reliable data.

However the most important action is certainly establishing the system of licensing import/export of ODS. The basic requirement on establishing the system was included in the CP adopted in October 1996. Since then the Ozone Office started elaborating relevant regulations. The set of measures also included such as building capacities in the basic level, strengthening co-operation with concerned governmental institutions and the business sector, raising public awareness of the problem of ODS phase-out.

Legally the system of licensing import/export of ODS and products relaying on them was established by Decree of the Cabinet of Ministers of Ukraine of 30 March 1998 No. 373 on Licensing Import and Export of ODS and Products Containing Them amended by the Decree of the Cabinet of Ministers of Ukraine of 2 October 1998 No. 1586. The system meets at least three main needs:

1) it implements Decisions IX/8 and IX/9 of MOP-9;
2) it satisfies the provision of the CP on establishing control on ODS imported for domestic purposes, and
3) it forms a good basis for collecting data on ODS consumption to be annually reported to the Secretariat.

In addition, since the licensing requirements affect business interests of many businesses it results in significant raising public awareness of the problem of phasing ODS out and substituting them by the ozone safe substances.

The Decree bans any unlicensed import or export of ODS and products containing them. An importer (exporter) who wishes to import (export) such a commodity has to obtain a license by the Ministry of International Economic Relations and Trade of Ukraine. The license may be issued only upon the approval by the MEP.

In accordance with the Decree a potential importer (exporter) first of all has to apply to the MEP or its regional office. The application for a license must specify the quantity of ODS, the country of origin, the commercial name, the customs codes, the nature of the substance (virgin, recovered, reclaimed), the intended use of purpose of the chemical and the place and date of importation if known. In the case of positive decision by the environmental authority the applicant receives two signed and stamped original copies of the approval (photocopies are not valid). He leaves the first one with the Ministry of International Economic Relations and Trade, the second copy is withdrawn by the environmental officer on the border[7] during the customs clearance. The environmental officer indicates the real amount of ODS imported (exported), sings and stamps it and sends it to the Ozone Office. At the same time the officer registers this information in his working journal.

The Decree also establishes the requirement of licensing export and import of products that may contain ODS. The list of such products is appended to the Decree and includes the groups of products suspected to contain ODS in accordance with Annex D to the Montreal Protocol. If the products contain ODS, the supplier has to receive a license following the procedure described in the Decree.

ODS re-export is prohibited. This provision is enforced by means of not issuing approvals by the MEP to re-export such substances.

[6] Each year the regional authorities of the Ministry request information on use of ODS by end-users. The information includes the name of user, the end-use category, the quantity supplied and the name of supplier. Besides, these data must include the consumption of ODS planned for next year. The data obtained in such a way are collected and generalised by the Ozone Office that allows keeping a national database, assessing geographic and sectoral distribution of the consumption, etc.

[7] However many countries do not have environmental inspections on the border.

To sum up it may be said that there is a reliable system of monitoring of ODS trade in the territory of Ukraine and illegal trade with ODS should be very difficult. However some problems and possible loopholes still remain and are to be considered in the next chapter.

PROBLEMS AND SHORTCOMINGS:

Let me not discuss such things as import/export of recycled, reclaimed and re-used controlled substances, essential uses nominations, process agents, feedstock, inward processing relief, etc. in application to CEIT countries. These issues as potential loopholes in the Montreal Protocol are discussed permanently. I would like to focus on the problems resulting from the specificity of the transitional countries.

A significant problem that is typical for many CEIT countries is unreliability of the control on the border. As it was mentioned above many businesses were able to negotiate with customs officers and to obtain various indulgences. From the 1 January 2000 Ukraine imposes a 100% import duty on CFC-12, in parallel the import duty on ozone safe substitutes will become zero. Actually this measure is applied to create economic incentives for a rapid ODS phase-out. However, at the same time an economic incentive for smuggling CFC-12 is automatically created. In such a situation a special attention should be paid to the control on the border. But environmental authorities are not able to control customs services. Another obstacle is that they are still lacking appropriate testing equipment to control chemicals.

There is one more loophole that seemingly might arise only in transitional countries. As usual small quantities of ODS which are transported over the border in non-commercial situations may be easily escaped from the proper control. Especially if the carrier uses mislabelled containers. Some ozone officers have unofficially complained that because of the prices for CFCs are very different in neighbouring countries and the borders are transparent it becomes financially profitable for technicians to purchase CFCs abroad in a neighbouring country and to transport them in private cars themselves as things for personal or household uses. Nobody knows how much CFCs are transported in such a manner, but it certainly does not promote implementation of the Montreal Protocol.

Referring to the situation in the CEIT region as a whole I should say that all countries have reported that they faced difficulties in enforcing existing and introducing new regulations on ODS imports/exports. Partially because of these difficulties the existing control system cannot assure reliable control of ODS traffic. Reportedly the difficulties have mainly resulted from the following reasons:

- Insufficient capacity of Ozone Offices;
- Improper control on the border;
- Lack of equipment to test ODS and their ozone safe substitutes on the border;
- Problems resulted from the absence of detailed customs codes for ODS, mixture, and goods that may contain ODS;
- Insufficient co-ordination with customs authorities;
- Insufficient co-ordination among Ozone Offices within the region.

LESSON LEARNED, CONCLUSIONS AND RECOMMENDATIONS:

Some lessons may be learned from the analysis of Ukraine's experience as well as experience of different countries in the CEIT region:

- it is very important to establish a reliable national system of monitoring of ODS transportation and consumption as early as possible. Ideally, it should be done before elaboration of the CP. However, as usual, this crucial component is included into the CP's institutional strengthening project. Such an approach is not effective;
- it is necessary to carefully plan introduction of environmental charges on ODS. Early actions may create economic incentives for illegal trade;
- **it is important to develop co-operation with the business sector. Establishing sustainable relationship with the biggest ODS suppliers/consumers or their business associations may be very helpful. Voluntary agreements between them and governments may be signed. It is worth noting that the companies promoting ozone safe substances and technologies are able to serve as effective supervisors in the market.**

The following conclusions can be drawn:

- In Ukraine and other CEIT countries there exist opportunities and economic incentives for illegal trade in ODS. Such trade seems to take place in the region, but there are no official communications by countries about the registered cases of illegal trade;
- However the illegal activity may be minimised if a comprehensive multilevel system of monitoring of ODS transportation and consumption is created before introduction of strict ODS phase-out measures. Uncontrolled trade paves the way to illegal trade!
- In this context it is very important to establish national ODS import/export licensing systems pursuant to Decision IX/8 as promptly as possible.

Further measures may directly or indirectly reduce the scope of illegal trade:

- Strengthening National Ozone Units (hereinafter NOUs)

  This measure will improve not only control of ODS import/export but also effectiveness of all NOU general functioning. Some improvements may be definitely achieved if at least one additional officer within NOUs were appointed and properly trained to maintain the ODS licensing system. In parallel an officer in charge should be appointed and trained within the central customs office.

- Improving co-ordination between environmental and customs authorities

  Co-ordination with central customs authorities may be improved by means of providing them with detailed instructive documents regarding the control of ODS and ozone safe substances. Customs officers at each port of entry should be provided with information regarding a contact person whom they may call for further inquiry at the NOU or the authority in charge for the border environmental control. Establishing good information exchange between environmental and customs authorities is very critical. It should be noted that the task of customs officers would be facilitated if the more detailed customs codes were developed and introduced in a national level.

- Improving the control on the border

  The control on the border is executed more effectively where the customs services work hand in hand with the environmental inspectors on the border. The latter must have appropriate equipment or at least the power to conduct a chemical analysis of the substances imported. It may be very useful in a conflict situation when the customs officer suspects illegal traffic of ODS. Customs officers at each port of entry should be provided with detailed instructions, which should include the lists of ODS and their ozone safe substitutes, goods and equipment that may contain ODS or are designed for use of ODS, companies that can trade ODS as well as those that have violated the regulations on ODS import/export, pictures of containers for various types of ODS, the descriptions of typical situations in which illegal transport of ODS may be suspected, etc. These instructive materials must be upgraded on a regular basis.

- Nominating a limited number of ports of entry which the import/export of ODS is permitted through

These ports should be staffed with trained officers and equipped with testing devices.

- Establishing obligatory labelling of containers and products and equipment containing ODS as well as sanctions for ignoring this requirement.

- Establishing import quotas on ODS

Such quotas may be very flexible for the first year. However a strategy of gradual limitation of the consolidated national quota should be adopted. ODS suppliers and consumers must be clearly informed about this strategy.

- Imposing fees for permits on import/export and charges for imported ODS

  Introduction of considerable charges for ODS will prevent re-export and stimulate companies to recycle ODS within the country. In addition it will help to stimulate the activity of customs service and to involve in the issue additional controlling bodies such as tax authorities who will be interested in raising tax revenues.

- **Establishing serious sanctions for illegal import of ODS**

  NOUs should assure that sanctions applied against illegal trade in ODS would be made well known to the mass media. This can send important signals to the importers on the risks involved in illegal import.

- Establishing good working liaisons among NOUs within the region for information exchange and training

This measure would allow informing each other about the situation with ODS transportation that may result in a violation of the Montreal Protocol and carrying out adequate control measures to prevent the violation. Establishing an ongoing information exchange procedure, preferably via Internet, will also allow cross-checking of import-export activity in the target sector within the region. It would be extremely useful to invite all officers in charge to participate in 2-3 day regional workshops to be conducted at least once a year in one of the countries belonging to the CEIT region.

Problem of Illegal Trade in Ozone Depleting Substances and Means to Solve it: Poland's Approach

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1. LEGAL STATUS OF POLAND WITH REGARD TO OZONE TREATIES.

Poland acceeded to the Vienna Convention for the Protection of Ozone Layer and to the Montreal Protocol on substances that Deplete the Ozone Layer (MP) in 1990 and to the London and Copenhagen Amendments to the MP in 1996. Poland, as many other Countries with economies in transition (CEITs), is treated under the MP as developed (or so called "Article 2" or "non-Article 5") country what means that it receives no special privileges with regard to the MP provisions.

2. COMPLIANCE OF POLAND WITH THE MP PROVISIONS.

Poland does not produce ozone depleting substances (ODS) except for carbon tetrachloride (CTC)[1]. Polish industry relies then exclusively on imports of ODS what means that any international or domestic regulation dealing with ODS imports would have a significant impact on Polish economy.

Nevertheless, based on the official data submitted to the Ozone Secretariat, Poland (unlike many other CEITs) has been in full compliance[2] with the MP phaseout schedules since 1994, i.e. since the first ODS (halons) phaseout schedule had started under the MP. This encouraging result has been achieved mostly due to the great effort of Polish industry, but it was also the effect of early implementation of necesssary substantial legislation dealing with ODS import/export permits.

3. IMPLEMENTATION OF LEGISLATION DEALING WITH ODS IN POLAND.

1992 - tax on ODS emissions (present tax on CFCs - US$ 30 per kg, HCFCs - US$ 0.25per kg)
1992 - ban on certificates for new halon equipment
1992 - ban on using halons on new ships (extended in 1994 on CFC-12 and R-502 - a blend of CFC-11 and HCFC-22)
1994 - mandatory permits for import/export of CFCs and halons (extended in 1996 on all ODS)
1994 - ban on trade in ODS with non-Parties to the MP
1994 - ban on imports of products and equipment containing selected ODS from non-Parties to the MP
1997 - CFCs wastes are treated as hazardous wastes
1997 - a number of products and equipment that contain specific ODS (CFCs, HCFCs, halons) is banned on the market

The substantial law which includes ODS management and the most important regulations concerning ODS which are based on this law are presented in Fig.1.

4. EXISTING SYSTEM OF MONITORING AND CONTROL OF TRADE IN ODS IN POLAND.

The scheme which shows the functioning of the existing system of monitoring and control of trade in ODS

[1] In the period of 1996-97 production of CTC in Poland had been allowed only for the uses exempted by the MP and since then it has been stopped.
[2] Only in 1995 the consumption of CFCs exceeded the MP limit by just few %, and in 1996 there was similar surplus of CTC consumption. The reason was that few hudred tonnes of CFCs were used in 1995 for the production of medical aerosols which then (since 1996) has been exempted from the phaseout requirements as "essential use".

in Poland is presented in Fig.2. As it can be noticed from this scheme, the key role in this system is played by the Ozone Layer Protection Unit (OLPU) which is a small task force located in the Industrial Chemistry Research Institute in Warsaw. The role of OLPU is not only to give professional recommendations to the ODS import/export permits (permits are officially issued by the Ministry of Economy) but also to monitor ODS consumption, help the industry in ODS phaseout, initiate, prepare and revise the legislation dealing with ODS, raise public awareness on ozone layer protection issues[3].

5. PROBLEMS IN MONITORING AND CONTROL OF TRADE IN ODS.

The list of problems which are commonly faced in monitoring and control of trade in ODS in practice is presented and further elaborated below.

a) complexity and lack of clear definition of customs codes for most of the ODS
b) difficulties in practical identification of ODS on the border
c) number of exemptions under the MP that have to be treated in a special way
d) lack of internationally accepted system of labeling of ODS and ODS-containing products and equipment
e) difficulties in differentiation between ODS-containing mixtures and ODS-containing products

Ad a)
Only few single ODS have their own HS (Harmonised System) customs codes. These are: major CFCs, major halons, CTC, methyl chloroform (MCF) and methyl bromide (MB). For other ODS, and specifically mixtures containing ODS, the customs codes either deal with not just one, but a whole group of ODS (HCFCs, HBFCs, other CFCs, mixtures containing CFCs) or cover a whole "bag" of substances including ODS (mixtures containing HCFCs, HBFCs, halons, CTC, MCF or MB). Moreover, some of the mixtures containing ODS may be given a customs code related to their use. This provision is sometimes incorrectly applied also to "pure" ODS (eg. MB containing small amount of chloropicrin added as odourizer, which is often improperly coded as insecticide, pesticide or desinfectant though it should be coded as pure MB according to the rules of WCO). This all creates confusion and leads to a real mess in coding of ODS, what is an ideal situation for development of illegal trade activities. Implementation of Decision X/18 of the Parties to the MP may improve this situation.

Ad b)
Most of the ODS are difficult to identify on the border since they are non-odour gases or low-boiling liquids at R.T. (CFCs, HCFCs). Their chemical names look very similar to the customs officer (eg. chlorofluorocarbons - CFCs vs. hydrochlorofluorocarbons – HCFCs) and, furthermore, they are quite often imported/exported under trade names only. Therefore, cheating of the customs officers by the importers/exporters is quite easy. The only effective way to track them and differentiate between them is to equip customs officers with portable ODS identifiers which are now available on the market.

Ad c)
There are exemptions under the MP for which special treatment with regard to monitoring and control is needed. Good example may be the ODS used for laboratory and analytical purposes which should be of specified purity and are allowed to be traded only in the containers of specified capacity and especially labeled. It is quite difficult for a customs officer to check on the border whether these requirements have been met.

Ad d)
No internationally accepted system of labeling of ODS or/and ODS-containing products and equipment exists at present. The manufacturers rather use to label the products and equipment which does not contain particular ODS (eg. "CFCs-free", "PKW-frei", "ozone friendly", etc.) but even there no common labeling system has been established so far. Lack of labeling of ODS-containing products makes it very difficult (or even impossible) for the customs officer to check whether the product contains ODS or not. This is especially important for old R&AC equipment that may likely contain CFCs.

Ad e)
In the MP (Annex D) the list of products containing ODS is given. The "pre-polymers" that are mentioned on that list are, in fact, mixtures of CFCs or HCFCs with polyols which are used as intermediate products for making polyurethane foams. The term "pre-polymers" has never been clearly defined and therefore some other mixtures containing ODS may be easily imported or exported uner this "umbrella" name, and thus may be out of any control since products containing ODS are not covered by the MP provisions.

[3] However, as OLPU is financed by the Ministry of Economy and Ministry of Environmental Protection on a contract basis, (i.e. no continuity of financing is assured) its activity concentrates only on well defined tasks.

6. VARIOUS WAYS OF ILLEGAL TRADE IN ODS.

Illegal trade in ODS which is now widespread globally, is the result of strict measures imposed on ODS by the Parties to the MP. It is undoubtly much facilitated by the lack of solution to the problems in monitoring and control of ODS presented in Section 5 above.

Generally, it seems that the illegal trade in ODS may be classified into the following categories:

a) importing/exporting without licence/permit but using correct customs code ("properly registered illegal trade")
b) using wrong or misleading customs codes, often combined with mislabeling ("falsely registered illegal trade")
c) smuggling ("non-registered illegal trade")

Below, these categories of illegal trade in ODS will be further elaborated and some examples will be shown based on the experience we have had in Poland.

Ad a)
Importing/exportig without licence/permit (or more than specified in a licence/permit) may be called "properly registered illegal trade" since the shipments are oficially cleared by the customs officers on the border, all necessary customs duties and other fees and taxes are paid, and the import/export is recorded by the customs office and then sent to the statistics office for official registration. Such illegal, but oficially registered trade is posible because some customs officers are either corrupted or not clever enough check whether the importer/exporter is in a posession of licence/permit. It may be easily discovered by comparing statistical data with feedback from importers/exporters on use of licences/permits. In Poland we have experienced this kind of illegal trade with CFCs, HCFCs, MCF and CTC, though the quantities involved were rather low.

Ad b)
Playing with customs codes by the dishonest producers, exporters and importeres is fairly simple exercise in trade in ODS because of the the reasons given in Section 5a above. Such illegal activity may be called "falsely registered illegal trade" since, just as for the "properly registered illegal trade" described above under (a), the shipments are officially cleared by customs officers on the border, all necessary customs duties and other fees and taxes are paid, and import/export is recorded by the customs office and then sent to the statistics office for official registration. The only difference is that here the customs officer cannot intervene because either the customs code falsely assigned to the substance which is being shipped is not on the list of codes which require licences/permits, or it is on the list and the licence/permit is in the posession of importer/exporter. The point is that in both cases the actual substance imported/exported is not the same substance which is shown on the label (in the former case), or both on the label and in the permit (in the latter case). In Poland we have observed this kind of illegal activity and we can estimate that up to 10-20 tons of ODS per year may be imported this way.

Obviously, other ways of executing this kind of illegal trade may be considered. One is correct labeling (i.e. the correct ODS name is put on the label and in customs documentation) but in the same time assigning the misleading customs code to the ODS being shipped. Such misleading coding is often posible just because the customs officers have difficulties with assigning correct customs codes to the ODS having difficult, and often very similar, chemical names. Based on our experience this way of illegal trade is used to ship:

a) CFCs instead of HCFCs for which the original permit has been given (eg. dichlorodifluoromethane – CFC-12 instead of chlorodifluoromethane – HCFC-22).
b) 1,1,1-trichloroethane (MCF) instead of 1,1,2-trichloroethylene (called also 1,1,2-trichloroethene), a non-ODS for which no permit is required.
c) mixtures containing CFCs instead of mixtures containing HCFCs for which the original permit has been given.

The level of such imports is not high in Poland, though it is thought that up to 10 tons of ODS per year may be shipped this was illegally through the border.

Second variation of "falsely registered illegal trade" is more complex to be explained and less complex to be executed. This is taking advantage of the fact that several ODS are applied for uses which have their own customs codes under HS. Then, according to the HS provisions, unless the ODS is not a pure substance, but it is contained in a mixture, and its use has its own customs code, this "use-related"code[4] may be applied. This HS provision may be used properly, i.e. the mixture that contains specific ODS is coded properly acording to its use (eg. mixtures of MB and chloropicrin containing high levels of chloropicrin may be legally coded as pesticide), or improperly (eg. MB con-

[4] Additional requirement is that if the particular mixture has its own code which number is lower than the number of "use-related" code, then the "use-related" code should not be applied.

taining ca. 2% chloropicrin added as odourizer is considered "pure MB" undr HS provisions and then should be coded as pure MB, though it may be used as pesticide. This second variation of "falsely registered illegal trade" is very dangerous since it allows for shipments of ODS without any control (there are no specific ODS uses controlled under the MP). In recent years in Poland we have been facing this kind of illegal activity with regard to MB.

Ad c)
Smuggling (or "non-registered illegal trade") defined here as shipments avoiding any customs clearance is the illegal activity that is very difficult to spot, and also to curb, unless the customs officers are smart enough to look for it. Smuggling of ODS to the countries where they have been officially phased out has recently become quite popular. The reason is not only high black market price of the phased out ODS, but also that in smuggling, in contrast to the other ways of illegal trade described earlier in this paper, no customs duties and other fees or taxes are paid. The most popular ways of smuggling ODS, specifically CFCs, are:

- hiding the containers with ODS behind the other containers which are transported legally (this way is used by the big smugglers).
- filling with ODS the containers which are normally used for other gases (eg. the fuel gas tank in the car).

It is very difficult to estimate the quantities of ODS illegally traded by ordinary smuggling unless the illegal shipments are spotted. The estimation may only be based on the observation of the ODS market. We believe that smuggling is not a very severe problem in Poland, but still up to 50 tons of ODS (mostly CFC-12) may be shipped each year through the border this way.

7. MEANS TO CURB ILLEGAL TRADE IN ODS – INTERNATIONAL AND DOMESTIC APPROACH.

When the problems in monitoring and control of trade in ODS (see Section 5) and the possible ways of illegal trade in ODS (see Section 6) are analysed, it appears obvious that two types of approach may (and should) be undertaken to curb this illegal trade activity. One is the international approach which may constitute of :

- undertaking the relevant decisions by the Parties to the MP and careful observation of implementation of such decisions. Here, the decisions that have already been undertaken by the Parties are :
  a) Decision IX/8 – exporting country notifies importing country of the authorized exports.
  b) Decision VII/32 and Ix/9 – labeling requirement for products and equipment containing ODS of Annexes A and B to the MP and whose functioning relies on these ODS.

  Decision IX/18 – request for the Ozone Secretariat to consult the WCO on the possible introduction of separate customs codes for HCFCs and HCFCs-containing mixtures, and to seek confirmation of the WCO of improper coding of MB containing 2% chloropicrin

- undertaking special measures by the WTO and/or WCO. Such measures, if undertaken, could have great positive impact on curbing the illegal trade in ODS. The problem here is that both WTO and WCO are not environmentally-oriented organisations and they deal with different kind of problems.

  Nevertheless, allowance given by WTO for the free trade with recovered ODS which would be otherwise treated as wastes) and draft recommendation of recent WCO meeting for using separate codes for HCFCs and some mixtures containing ODS are examples of goodwill of these institutions with regard to environmental issues.

- undertaking other actions that have impact on international trade in ODS. Good example of such action is recent decision of the Government of Russian Federation to stop production of CFCs since 1 July 2000. Another example is the proposal of EC (contained in the new draft EC regulation concerning ODS) to ban all uses of CFCs except for those approved by the MP, specifically to ban the re-use of CFCs recovered from the R&AC equipment.

The second kind of approach that may (and should) be undrtaken to curb illegal trade in ODS is a "domestic" one that will be described here baseed on the experience we have had in Poland.

As it has already been shown in Sections 3 and 4, Poland brings much attention not only to establishing the regulations needed to curb illegal trade, but also to the implementation of these regulations in practice. However, we have found that the existing regulations used to control trade in ODS described in Section 4 are not enough, and then we are palnning to introduce additional measures (of both legislative and technical/institutional nature) in order to help Polish authorities to deal with the problem of illegal trade in ODS.

Additional measures of legislative nature

Here, Poland intends to follow mostly EU new legislation[5], i.e. the following new regulations are planned to be introduced *inter alia* after the new "ODS Management Act" is established:

a) ban on placing on the market of ODS imported/exported or produced without permit (mandatory certificates of origin).
b) mandatory recovery of ODS from the existing equipment.
c) special penalties for those who break the law concerning ODS, including severe penalties for smuggling of ODS or importing/exporting or producing without the permit.
d) provision for introducing the ministerial regulation requiring mandatory labeling (stamping) of ODS\containers after they have been cleared on the border

Moreover, high product fee will be imposed on the imported used R&AC equipment containing ODS.

Additional measures of technical/institutional nature

a) yearly reviews of customs statistics data on imports/exports of ODS vs. permits issued/recommendations for permits given/feedback from importyers/exporters on using the permits.
b) organisation of meetings of the authorities dealing with imports/exports of ODS, i.e. : Ministry of Economy, Ministry of Environmental Protection, Ozone Layer Protection Unit, Main Customs Office, Main Statistics Office, State Inspectorate for Environmental Protection.
c) organisation of workshops for customs officers.
d) initiating public awareness raising campaign (PARC) on ODS.
e) equipping customs officers on the border with special ODS identifiers (some have been already purchased using funds provided by the GEF through the World Bank in the framework of the "Poland's ODS\Phaseout Project".

We strongly believe that introducing of all those measures will result in diminishing (and eventually total stoppage) of the illegal trade in ODS in Poland supposing that the relevant international level measures (described earlier in this paper) will also be imposed.

[5] Except for the ban on using recovered CFCs in R&AC equipment which cannot be introduced simply because we have just started to build up the 3R (Recovery, Recycling, Reclaim) nationwide network for CFCs.

OZONE:

(v) WESTERN EUROPE AND OTHERS

United States Enforcement Efforts Against the Smuggling of Ozone Depleting Substances

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I. SUMMARY

Over the last five years, ten of thousands of tons of an ozone depleting substance known as CFC-12 or "Freon" have been illegally smuggled into our country. In 1994 and 1995, this compound, which is widely used as a refrigerant in car air conditioners, commanded United States black market prices that outpaced those in the illegal narcotics trade. United States law enforcement became aware of this developing black market in late 1993, and established a nationwide effort to prevent its proliferation. The nationwide effort has been very successful leading to criminal convictions of over eighty (82) individuals and seven (7) corporations, and more important, to a decline in illegal imports. The success had been due largely to the collective efforts of our law enforcement agents, prosecutors and environmental regulators. We have also received significant support from officials with other states including Canada, Mexico, England, Germany and the Netherlands. We are pleased with our successes, but remain vigilant about the continuing illegal trade, and look forward to building new partnerships to combat this problem.

II. IMPACT OF BLACK MARKET CFC SMUGGLING

The environmental and economic impact of CFC smuggling into the United States is difficult to quantify; however, certain conclusions can be drawn. First, our criminal investigations uncovered tens of thousands of tons of CFC-12 and other ozone depleting substances entering the United States illegally. The vast majority of this product entered our domestic commerce before it could be seized. As this illegal product is used, some will be released into the atmosphere and will cause an increase in ozone depletion. How much of an increase is not easily quantified, but ozone depletion will be increased.

Second, the flood of low cost black market CFC-12 has made it more attractive for consumers for use in servicing older air-conditioning systems, particularly automobile systems designed before the U.S. January 1, 1996, CFC-12 ban. Companies that spent considerable time and money developing ozone friendly replacement products for CFC-12 have been at a competitive disadvantage because of the availability of low cost black market product. These companies lose money each time black market CFC-12 is sold instead of their replacement product. Further, each CFC-12 sale leads to a one time irreversible increase is CFC-12 use. While recent evidence suggests that the replacement products have finally taken hold in the United States, their acceptance was delayed by the availability of black market CFC-12. The replacement products acceptance will be critical in the years to come as approximately 80 million vehicles with CFC-12 based air conditioning systems remain in use in the United States.

Finally, each time a thirty (30) pound cylinder of black market CFC-12 is sold, the United States loses approximately $210 in unpaid excise taxes. Over a hundred millions dollars in tax revenue have been lost from this illegal trade. All of the above facts establish that the illegal trade in ozone depleting substances has adversely impact our environment and economy.

III. MEASURES TO CONTROL SMUGGLING

The United States Congress amended the Clean Air Act of 1990 to implement its obligations under the Montreal Protocol. The amendments established two methods to phase out CFCs: a consumption allowance and an excise tax. First, EPA established and administered a "consumption allowance" schedule that limited the amount of CFCs produced or imported each year. Second, Congress imposed an excise tax per pound of CFCs sold or used in the United States. This tax increased each year and currently exceeds US$6 per pound. The phase out ultimately led to a partial ban on the most destructive CFCs on January 1, 1996. After January 1, 1996, recycled products could still be imported but the importer was required to file a petition identifying the original source of the recycled product with the EPA and receive prior approval.

Violators of the CFC ban are prosecuted under the criminal provisions of the Clean Air Act, and may be sentenced to up to five years in prison for each count and subject to heavy fines. In addition, they may be prosecuted criminally for violating U.S. Customs laws, tax laws, the money laundering statute, and for mail fraud and wire fraud.

IV. EARLY ENFORCEMENT MEASURES- A LUCKY COINCIDENCE

In October 1993, a U.S. Customs Inspector, who worked at Port Everglades, Florida, took her car in for servicing. When she received the bill, she noticed that the cost of recharging her car air conditioner had risen considerably. She spoke to her mechanic about the sudden increase. He, in turn, explained how the price of CFCs was rising because certain CFCs were being phased out. He explained EPA's requirement of consumption allowances for imports and the excise taxes triggered by the first use or sale of imported CFCs.

About two weeks later, the Customs inspector was checking a series of shipments from Great Britain when she noticed that there were two containers entering the United States that contained about 1,800 30-pound cylinders of R-12. Recalling her mechanic's explanation, she checked with EPA to confirm that the shipment was being made with the necessary consumption allowance. When she learned that it was not, she seized the containers and notified a U.S. Custom's criminal investigator, who in turn contacted a criminal agent with the EPA. The inspector's quick thinking led to a criminal case that culminated in jail sentences and fines for the smuggling conspirators. This was the beginning of operation *Cool Breeze* in Miami which involved additional agents from Customs and the EPA, along with the Internal Revenue Service, the Tax Division of the Department of Justice, and the United States Attorney's Office in Miami.

The criminal agents and the prosecutor quickly recognized that Florida was not the only port of entry being used by the smugglers. They notified other Customs and EPA criminal agents and the Environmental Crimes Section of the Justice Department of their growing pool of information concerning CFC smuggling and the variety of methods by which the CFCs were illegally entering the United States.

V. CFC INTER-AGENCY WORKING GROUP

In response to the above, the Environmental Crimes Section brought together analysts from Customs and EPA to determine if the comparison of Customs' import declarations and EPA records indicating who had lawful authority to possess CFC-12 could assist in focusing enforcement efforts. The analyses revealed twelve geographic areas with a significant number of suspicious imports. This information was provided to federal prosecutors, Customs, EPA, FBI, and IRS investigators from those geographic areas. The Crimes Section, in consultation with the other agencies also developed a training manual that provided guidance on investigating and prosecuting CFC smuggling operations.

After the initial training session held in November, 1995, the attendees saw a need to continue meeting to share information about developing case law and regulatory changes; to share information about subjects operating in multiple districts; to coordinate cooperation with foreign law enforcement in transboundary criminal prosecutions. Particularly because it is a nationwide black market, the Working Group has enabled participating districts to share information in a timely manner.

This coordination effort has met with repeated success. As of May 31, 1999, eighty nine (89) defendants including eighty two (82) individuals and seven (7) corporations have been charged with crimes related to CFC smuggling. Of those charged, (86) have either entered guilty pleas or been convicted after a jury trial. In the last eighteen months, over twenty defendants have either entered guilty pleas or been sentenced as a result of their illegal activity. In total, these defendants have received over 47 years of incarceration and paid more than $68 million in fines and restitution to the federal government. The Working Group continues to meet quarterly, and includes prosecutors and criminal investigators from most major U.S. ports, as well as those in Canada and some European countries.

VI. EXAMPLES OF SMUGGLING SCHEMES

To date, the Working Group has identified the following smuggling schemes. The methods used to smuggle CFCs into the country have become more sophisticated over time in response to the aggressive prosecution action by law enforcement officials.

- *Fraudulent transhipments*: CFCs have been shipped into the United States marked as destined for transport to another country. Under Customs laws, these items are not considered to have "entered" the United States. Smugglers then secretly remove the CFCs from shipping containers, replace them with other items for transport out of the country, and the CFCs slip out the back door and onto the black market. Some of the *Cool Breeze* defendants used this scheme, bribing the operator of a customs-licensed facility to assist in preparing the paperwork to show that the contain-

ers were being shipped to Mexico. A recent trend has been for smugglers to tranship CFCs from Europe or Mexico to a Caribbean island nation and then into the United States.

- *Claiming that "virgin" CFCs were "recycled":* Some smugglers falsely represented to EPA that their material was recycled when in fact it was "virgin." The smugglers usually have the cooperation of the producer of the virgin CFCs who provide false certification indicating that the product is recycled or reclaimed.

- *Mislabeling* CFCs: Smugglers have imported CFCs by mislabeling their shipments as a different product. For example, they may identify the product on the shipping manifest as one of the allowed substances, such as HCFC, or they may even repaint and re-label the cylinders. To detect this, customs inspectors must open the containers and in some cases test the contents of the cylinders - a very time consuming and personnel-intensive task.

- *Smuggling CFCs in compressors or other equipment:* Some smugglers have been illegally importing CFCs by filling compressors or other refrigeration equipment with CFCs, usually way beyond their intended limit, then importing the equipment and removing the CFCs for separate sale on the black market. The equipment can be recycled and used over and over again to smuggle CFCs.

- *Traditional "smuggling":* the traditional smuggling in an automobile, on ones person, or in a small boat also has been found along the border with Mexico and the Florida coast. These have been as small as several canisters to as large as full containers.

The most recent of the above methods employed are those involving false certification of reclamation or recycling, and transhipments to the Caribbean. These have proven to be especially difficult to investigate and prosecute because a significant amount of the documentation and other evid ence is located in Article 5 countries, which either have yet not set in place the necessary customs controls or have not been effective in providing the information sought by law enforcement officials.

VII. CONCLUSION

The Montreal Protocol is only successful if each country commits to the phase out of ozone depleting substances. Part of that commitment requires legislation and enforcement tools to insure domestic compliance. In the United States, our Clean Air Act and our Customs and Tax laws provide effective legislation against smuggling activity. Our network of environmental regulators, law enforcement and prosecutors insures that the legislation is properly enforced. Our arrests and convictions are tangible proof of the country's commitment. United States has been successful in enforcing these laws for the following reasons:

- Quick response to a few early cases that indicated a broader pattern of criminality.
- Prompt sharing of data among law enforcement and environmental regulatory agencies.
- Regular and complete communication among all egencies involved in the initiative.

As we continue in these efforts, we realize that smuggling is international in scope and will require cooperation from other states. We hope to use this meeting as a vehicle to foster greater understanding and cooperation among the participating states.

Enforcement of and Compliance with Montreal Protocol in the Netherlands

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1. INTRODUCTION:

In the Netherlands there is already for quite some time experience with enforcement of the national law based on Montreal Protocol on Substances that Deplete the Ozone Layer.

The Inspectorate for the Environment is responsible for the enforcement and coordinates the work being done in this matter by for example Customs and other enforcing authorities.

2. IMPACTS OF INTERNATIONAL ENVIRONMENTAL CRIME ON OZONE DEPLETING SUBSTANCES:

In the past three years it has become obvious that both illegal production and smuggle of CFC's exist (Council regulation EC 3093/94).

(a) Smuggle of CFC's:

An analysis has been made by a privately financed organisation about the role of the Rotterdam harbour. CFC's are produced in China and transported through Rotterdam to a third world country. But this often is only what is presented on the transport papers. In reality the CFC's do not go to third world countries but to the US especially for air-conditioning purposes in older cars. Quantities of hundreds of tons have been intercepted by the Dutch authorities (Inspectorate for the Environment and Customs) and have been burned in an environmentally friendly way to dispose of the material.

However, often it is not possible to take steps because it can't be proved that the CFC's are going to be used in an illegal way. Some cases of possible smuggle are still under investigation where there is cooperation with the US/EPA and some countries in the EU. It is clear that from this work there will come suggestions on how to improve national and international legislation and agreements to see that only proper use will be allowed.

(b) Illegal production of CFC's:

Investigations are going on where there may be illegal production within one of the countries of the EU. In this case there will be cooperation not only within the EU but also with the EPA. This has to do with possible fraud in relation to rules of the European Commission.

3. ACTIONS TO IMPROVE COMPLIANCE OZONE DEPLETING SUBSTANCES:

In the early nineties the Netherlands installed a CFC-commission comprising authorities, industry and environmental groups. This commission made proposals on how to deal with the necessary efforts coming from the Montreal Protocol and also proposed that a specific enforcement team should be set up to check compliance.

This CFC-team of about 15 inspectors was trained and started its work in 1993 as part of the Enforcement groups of the Inspectorate for the Environment. First step was to draw up inspection procedures, how to inspect and act on non-compliance. As part of the work a standard list of tariffs for violations was published in the Dutch Governmental Bulletin. In 1997 the work was evaluated. The conclusions were that for many aspects compliance had gone up to near 100%, for example in the use of foams (which used CFC's but now no more), the use of CFC's as solvents and the use of CFC's for cleaning and defatting purposes. Concerns where there still for smuggle and for cooling and freezing. The work on CFC's is now continued in these specific fields.

To promote the enforcement on a European level there is a very recent proposal to start a European enforcement project. Since 1994 there have been a number of positive experiences in EU enforcement projects for directives and regulations for new chemicals, risks of existing chemicals, scrap metal contaminated with radioactivity, genetic modified organisms and for cadmium. Reports from these projects are

delivered widely over Europe, often using IMPEL and Health and Safety channels and recently also the USA and Canada have been informed. Parliament is informed every year about the progress in compliance.

4. CONCLUSIONS AND RECOMMENDATIONS:

1) An international approach, cooperation, is absolutely necessary because of the continuous growing economic scale of production and waste control and the worldwide international trade.

2) Enforcement projects such as the EU-projects for new and existing chemicals held to ensure a better quality and level of enforcement in international regions. Therefore such projects should be promoted.

3) International combat of environmental crime requires a "Green Interpol". This should be investigated and elaborated by UNEP and Interpol in combination with the G-8 initiative.

4) The feasibility should be studied of a Treaty on Environmental Crime.

5) Rapid and confidential means of exchange of information must be available in the near future to ensure good cooperation.

6) INECE should include the results of the UNEP and G-8 initiatives to cooperate for environmental enforcement and the combat of environmental crime to promote regional networks.

Enforcement of and Compliance with the Montreal Protocol in Portugal

Prepared by
Ana Paula Nunes
And
Antonio Leonés Dantas
Ministério do Ambiente, Portugal

1. INTRODUCTION:

The Inspectorate General for Environment of Portugal has no knowledge of organised criminal activity in Portugal in the area of environmental crimes.The statistical information on criminal activities in Portugal does not include a specific classification for the environmental crimes, therefore making it virtually impossible to supply the requested information on the matter.

The EU, as a single market, imposing free movement of goods and individuals between member states, eliminated international trade within its boundaries. As a consequence, transboundary movements between member states of the EU are not subject to any customs control. There is no government publication about the nature and extent of environmental crimes in Portugal.

2. LEGAL STRUCTURE:

In force since 1995, the Portuguese Criminal Code (Decree Law nº 48/95, dated 15th March) comprises the definition of three different environmental crimes, one concerning the protection of nature (article 278º), the other two (articles 279º and 280º) preventing pollution. It should be noted, tough, that article 280º gives only an indirect protection to the environment.

Criminal investigation of environmental crimes is exclusively performed and controlled by the public prosecutor. However, under Portuguese law it is possible for those suffering damages as a result of acts contrary to the environmental interests - either individual or collective - to bring actions into the Courts, to the attention of the Public prosecutor and even to intervene as assistants to the prosecutor (Code of Administrative Procedure article 53º - 1991 and Law 83./95, of 31st August - popular action). The criminal penalties stipulated in the Portuguese Criminal Code for environmental crimes consist of either imprisonment or a fine. Environmental crimes are submitted to the common Courts, as there are no special Courts to rule on environmental offences.

Specialist training of judicial authorities in environmental violations is currently under development. Environmental violations must be considered as a new type of criminal offence in the Portuguese criminal framework, therefore without relevant history of its compliance. On the other hand, the moral blame of this kind of offences in Portugal and the public awareness of the harmful consequences of environmental crimes are not felt as being very high. Nevertheless, it must be said that the younger generations in Portugal are becoming increasingly aware of the environmental concerns.

Under Portuguese law, a criminal penalty (condemnation) can only be applied to individuals, not to collective entities. As the imposition of a criminal sanction upon the directors of companies held responsible for environmental crimes requires hard evidence of their personal and direct responsibility for such crimes, such condemnations are virtually inexistent in Portugal. Hence, it is by applying a kind of "Administrative Criminal Law" that the enforcement of environmental rules and principles is commonly made in Portugal, these proceedings leading to the imposition of administrative sanctions, subsequently to the investigation and ruling carried out by administrative authorities. These administrative sanctions having no criminal nature, but they can be imposed upon collective entities, even when there is no proven responsibility of any specific individual for the violation.

The imposition of these administrative sanctions is now fairly frequent in Portugal and has brought an increased efficiency in terms of environmental protection and enforcement of environmental law, when compared to the criminal law. These administrative sanctions are mostly monetary sanctions, although there are also some complementary penalties, such as transgressor's belongings being seized, the transgressor's subsidies being retained and license to operate being suspended. It must be noted that the enforcement of this kind of "Administrative Criminal

Law" is made in accordance with the principles of Criminal law, the latter being subsidiary applicable. Also the administrative sanctions ruled can always be questioned before a Common Court, as in a sort of appeal.

3. IMPLEMENTATION OF THE MONTREAL PROTOCOL:

Portugal is a party to the Vienna Convention and ratified the Montreal Protocol about the substances that deplete the ozone (Decree n^{o} 20/80, dated 30th July 1980) as well as the London and Copenhagen amendments. Portugal also complies with the very strict rules of EU Regulation 3039/94 of the 15th January concerning the production and trade of such substances, by informing the Commission, on a regular basis, of all relevant data necessary to the enforcement of such rules. The European Commission then sends comprehensive reports to the Ozone Secretariat on the production, import and export of each one of these substances. Portugal is not a producer of such substances, the control of their import being the responsibility of the Customs authorities.

The entity responsible in Portugal for the enforcement of both the Montreal protocol and the EU Regulation 3039/94 is the General Directorate for Environment (Direcção-Geral do Ambiente, DGA); which address is:

Rua da Murgueira - Zambujal Apartado 7585
Alfragide 2720 Amadora
Tel: 01 4728200
Fax: 01 4719075

BASEL CONVENTION

(I) AFRICA

Illegal Movements of Hazardous and other Wastes: the Case of Senegal

Prepaped by
Ibrahima Sow
Directorate of the Environment in Senegal

1. INTRODUCTION:

The developing countries in their overwhelming majority fully adhere to the spirit of international Conventions in the field of the environment and they increasingly participate in the implementation of these Conventions.

In the present report, it is nevertheless necessary to note that, despite their goodwill and efforts to meet their obligations, it has to be admitted that internal difficulties remain, which constitute major obstacles to the effective implementation of the relevant provisions set out in the Conventions. The main difficulties include:

- the lack of adequate institutional and legal frameworks,
- the lack of coordination between the institutions concerned (which frequently results in a conflict of jurisdictions),
- the weakness of technical capacity and human resources, and
- people's embryonic sensitivity to the natural and human environment.

It is also proper to mention that some of the responsibilities laid are different upon the bodies in charge of running the Conventions be it developed countries or private sector operators, even though all of them are involved in the implementation of the agreements in one way or another. There is a disparate of efforts in respect of the programmes (identical or with the same aims) undertaken by different bodies which does not ensure the best results. In developed countries, strict and often very coercive instruments are put in place to ensure integrated protection of the local environment. On the other hand, a certain slackness is evident in regard to control over products, equipment, wastes, etc. which are intended for export to developing countries, in complete disregard of existing agreements. Some private sector operators, whether from the north or the south, prefer easy profits at the expense of quality (of both products and the environment), which leads them to enter into and carry out deals that in many cases violate international agreements.

This report is a contribution to the global evaluation of the impacts of a piecemeal implementation and of violations of international agreements on the environment, in particular, the implementation of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal in Senegal. A summary description of the measures undertaken nationally and regionally is made. It is also provides issues to be considered for better implementation of the Conventions, the concerns of the developing countries.

2. INSTITUTIONAL AND REGULATORY FRAMEWORK FOR ENVIRONMENTAL MANAGEMENT IN SENEGAL:

Relevant international agreements:

Senegal has signed and ratified:

- 1991 Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa.
- 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal.
- 1985 Vienna Convention for the Protection of the Ozone Layer.
- 1987 Montreal Protocol on the Substances that Deplete the Ozone Layer.
- 1992 United Nations Framework Convention on Climate Change.
- 1992 Convention on Biological Diversity.
- 1971 Ramsar Convention.

National legislation:

Senegal has a number of legislative laws and regulations that deal with environmental management. These include

- Decree 74-338: removal and dump sites for household wastes.

- Act 81-13 of 4 March 1981: Water Code.
- Act 83-05: Environment Code.
- Act 83-71 of 5 July 1983: Hygiene Code.
- Act 88-06 of 26 April 1988: Mining Code and its implementation decree 89-907.
- Act 96-07 of 22 March 1996 on the transfer of powers and the implementation decree 96-1134.

There are shortcomings in the implementation of these laws, because of various factors:

- The lack of implementation decrees.
- The lack of human and financial resources.
- Many sectoral laws.

Institutional framework:

Several ministerial departments are involved in the management of the environment in general, and of hazardous or controlled products and wastes in particular. These include:

- The Ministry of Environment and Nature Protection.
- The Home Affairs Ministry (local communities).
- The Ministry of Agriculture.
- The Ministry of Health.
- The Ministry of Water.

At this level, there is also a notable lack of co-ordination between the various structures, which brings about conflicts about jurisdiction and the duplication of efforts in the implementation of environmental protection programmes in general.

3. IMPLEMENTATION OF THE BASEL CONVENTION AND PROBLEMS FACED:

The objective of the Basel Convention is to promote environmentally sound management of hazardous wastes, including:

- The disposal of hazardous and other wastes as close as possible to where they are produced and the prevention of illegal traffic;
- The banning of the transfer of hazardous wastes to countries lacking the legal, administrative and technical capacities to manage them and dispose of them in an environmentally sound manner;
- Helping developing countries and countries with economies in transition to put in place environmentally sound management of the wastes they produce.

Ten years after the adoption of this Convention, it must be acknowledged that the implementation of its provisions has ensured a considerable reduction in the movements of hazardous wastes from developed countries to developing countries. Two major problems persist, however, the poor management of locally produced wastes and the importation of wastes not covered by the Convention (used tyres, etc...).

In Senegal, no evaluation has so far been made of illegal movements of hazardous wastes within the country. No case of illegal traffic has been reported, however.

At a sub-regional level, movements of hazardous wastes have been recorded. One case was that of used oils. In fact, since 1983 Senegal has had one used oil treatment plant. Some neighbouring countries send used oil wastes by road without taking any special precautions. Furthermore, the notification procedures set out by the Basel Convention are totally ignored or simply neglected by the various actors (export and import companies, etc.). Lack of administrative resources to monitor strict adherence to those provisions is yet another problem faced by the country.

As part of the assistance to developing countries against locust plagues, Senegal, like most Sahelian countries affected by these plagues, receives major aid in the form of pesticides. Many of these products have not been used. Such products, not properly kept, have become obsolete and are beginning to cause serious harm to the environment (causing pollution in soils, water and human beings). Traffic in these chemical products is not regulated, and banned organochlorides (DDT, etc.) are frequently found on sale in markets or in neighbourhoods in the hands of itinerant salesmen, thus exposing the population and domestic animals to the risks associated with the use of such chemicals.

The case of dangerous wastes and chemicals:

- Used tyres: with a short useful life, after use these wastes are burned in the open or simply dumped in open areas, where they become the source of mosquito breeding, leading to the prevalence of malaria in the surrounding areas.
- Inferior quality food products: food products (for example, chicken legs) are exported to developing countries from developed countries: the recent discovery of poultry contaminated by dioxin is of serious concern to the authorities and the population of these countries, lacking any means of control.
- Used vehicles of every vintage: the exportation of these vehicles into developing countries is comparable to a transfer of pollution (vehicles with a high rate of emission of pollutant gases).

4. MEASURES TAKEN TO ADDRESS THESE PROBLEMS:

At the national level, Senegal is currently preparing a national management plan for hazardous wastes. That plan will set out all the necessary stages for the treatment of locally produced wastes. These would include institutional and regulatory framework, treatment procedures, training/awareness-raising, identification of actors, financing, mechanism for follow-up and evaluation. It should also be stressed that the strengthening of frontier controls and co-operation with neighbouring countries will be crucial.

At the regional level, Senegal hosts the sub-regional training and technology transfer centre for the environmental management of hazardous wastes. The centre is still not operational, but its objective is to develop the capacity of countries focused on the sound management of hazardous wastes. This centre should also play a prominent role in the control of illegal traffic in hazardous wastes (rapid identification and characterization of hazardous wastes transported in the sub-region, transmission of information, etc.

5. ISSUES FOR CONSIDERATION:

The multiplicity of international conventions in the area of the environment is certainly justified by the need to find an appropriate framework to address environmental issues of a global nature. Nevertheless, with a concern for optimization, there is room for a re-study of those conventions in their practical aspects, and to review where needed the possibilities of "fusing" those that have a common denominator. The objective would be to achieve economies of resources and scale and make them more operational.

For their part, the developed countries should pay greater attention to commercial operations that target developing countries, which lack means of verification and control of the conformity of products or wastes imported to the standards or rules acceptable to all the parties concerned. They should consequently take strict measures against all physical or corporate persons responsible for such dealings that do not respect the environment, as would be the case if their own countries were involved. The famous slogan of, "the Earth, a Planet Village", would take on a real meaning if such measures were applied.

In regard to developing countries, their core efforts should be focused on the strengthening of the human and technical capacities of the structures and bodies responsible for the implementation of environmental policies and conventions. It is evident that in a context of depleted financial resources, and above all of redeployment of development aid towards "different horizons", the capacity for adaptation by states facing the situations described above is the best gauge of durable resolution to the problems.

Lastly, the sensitization of the general public in the developing countries and the dissemination of information can be an effective means of reducing illegal movements through a greater participation by the people in environmental management in general.

Enforcement of and Compliance with the Basel Convention (Illegal Trade and Violations)

Prepared by
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INTRODUCTION

The Gambia is a Party to a number of Multilateral Environmental Agreements (MEAs), amongst which are the Convention on International Trade in Endangered Species (CITES), the Montreal Protocol on Substances that Deplete the Ozone Layer, the Basel Convention on the Transboundary Movement of Hazardous Wastes and their Disposal. These international environmental treaties were ratified in 1977, 1990 and 1998 respectively. The Department of Parks and Wildlife Management (DPWM) is the lead government institution for the purpose of implementing the CITES convention, while the competent authority and focal point for the Montreal Protocol and the Basel Convention is the National Environment Agency (NEA).

DEVELOPMENT AND EXTENT OF ILLEGAL TRADE

Industrialisation in the Gambia is quite low and a waste situation survey conducted in 1995/1996 revealed that apart from clinical and obsolete pesticides, hazardous waste generation is comparatively low. With technical assistance from the Basel Secretariat, a preliminary inventory of hazardous wastes will be conducted in June/July 1999 in order to ascertain the status of hazardous wastes in the country. Regarding illegal transport and dumping of hazardous wastes in the Gambia, there are no reported or confirmed cases. In the past however, proposals have been received from foreign individuals and companies to either directly dump hazardous wastes or indirectly under the guise of recycling and recovery operations. All proposals received were strongly rejected by government as it was reasoned that if there were no problems associated with such wastes and their utilization was as attractive as was being proffered, the countries that generate these wastes would use them appropriately. It is worth stating however that no proposals have been received over the past two years but this has awoken authorities to the fact that, without an effective monitoring system in place, illegal transport and dumping could go on undetected.

PREVENTION, MONITORING AND CONTROL OF ILLEGAL TRAFFIC

Legal Framework

National Environment Management Act (NEMA): This Act which was enacted in 1994, established the National Environment Agency (NEA). The Act empowers the Agency inter alia to identify, and classify materials, processes and wastes that are dangerous to human or animal health and the environment, and in consultation with the lead department (DPWM), to prohibit or restrict any trade or traffic in any component of biological diversity. The Act also empowers the National Environment Management Council (NEMC) to make regulations for the management of such materials, processes and wastes. It also controls, prohibits or restricts the manufacture or use of substances that deplete the ozone layer identified in accordance with the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer. Furthermore, the Act empowers the NEMC to make regulations and prescribe guidelines regarding access to the genetic resources of the Gambia.

Environmental Protection, Prevention of Dumping Act: In the Gambia, efforts to safeguard against illegal waste dumping led to the enactment of this Act in June 1988. This Act makes illegal the dumping of waste unto land within the Gambia or into waters under the jurisdiction of The Gambia. This Act was however found to be inadequate in many respects, and in a recent waste legislation study, it was recommended that it should be repealed.

Development of National Waste Legislation: Between February and May 1999, a comprehensive study on all waste related legislation in The Gambia was conducted. This study was followed by the drafting of a national waste legislation that takes into account international agreements relevant to waste and more specifically the Basel and Bamako Conventions. Regulations under NEMA, on Environmental Quality Stand-

ards and Industrial discharge permitting are in final draft. These regulations also address waste producer permitting.

Technical Capacities and Capabilities to detect illegal traffic:

Although pieces of legislation have been drafted to support the implementation of the Montreal Protocol and Basel Convention, these are yet to be passed. Even when passed, administrative procedures, enforcement and compliance promotion mechanisms would need to be instituted for effective implementation. Presently, the Gambia lacks trained personnel and technical infrastructure to adequately prevent and detect illegal traffic in hazardous wastes and ODS. The NEA Inspectorate is grossly understaffed and has not had any training in the identification and classification of hazardous wastes and ODS. Likewise, the Public Health Inspectorate, Customs and Port Officials also lack training in these areas. Local laboratories are ill-equipped to analyze difficult waste streams.

There is some level of awareness on these MEAs, but there is still need for more interventions in awareness creation, so that people can better understand their importance and be committed to the cause of environmental protection and undertake voluntary initiatives in promoting the ideals of these MEAs.

CONCLUSIONS AND RECOMMENDATIONS:

Illegal trade in endangered species and illegal transport and dumping of ODS and hazardous wastes albeit not highly developed in The Gambia, should be regarded as an imminent threat given that it is a developing country and the necessary legislation are not yet in place, and administrative procedures are yet to be instituted to support enforcement and compliance. The Gambia also lack, financial and technical capacities to effectively monitor and detect illegal trade and dumping. Consequently, it is very vulnerable to illegal traffic of such wastes by unscrupulous persons or States.

To ensure effective enforcement of and promote compliance with MEAs, capacity needs to be built in relevant national institutions. The Environment and Public Health Inspectors, DPWM officials, the Police, Customs and Port Officials require training in the Identification and /or detection of endangered wildlife species, hazardous wastes and ODS.

Administrative procedures, enforcement & compliance promotion mechanisms need to be developed and implemented for effective detection and prevention of illegal traffic. Development of intelligence capacities is also crucial to the success of enforcement programmes. There is a need to carry out inventories and develop information systems to monitor endangered species, ODS and hazardous wastes. Access to technologies for waste minimisation and environmentally sound Management of hazardous wastes is also required. There is a need for adequate Laboratory infrastructure and trained staff for the analysis of different waste streams.

Enforcement of and compliance with MEAs need better interagency coordination at national and international levels. Joint implementation of the national obligations under different MEAs ensures that the use of scarce resources is optimised and synergies among the relevant conventions are harmonised at national level and international levels.

Public awareness and information dissemination promotes appreciation of the benefits of MEAs and ensures effective public participation in promoting enforcement of and compliance with MEAs. Exchange of information and technical co-operation between and within countries is critical to the success of enforcement and compliance programmes. Developing country parties require assistance in enforcing laws, procurement of technical and financial assistance from external sources and establishing and developing means of detecting and eradicating illegal traffic, including investigating, identifying, sampling and testing.

BASEL CONVENTION:

(II) ASIA

Implementation of The Basel Convention in Thailand

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Thailand has ratified to Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal on November 1997 and it has become effective since February 1998. A national Environment Board has assigned Department of Industrial Works, Ministry of Industry and Pollution Control Department, Ministry of Science, Technology and Environment to work as the Competent Authority and Focal Point.

Before Thailand has signed Basel Convention, the problems of illegal shipment to Bangkok Port occurred frequently: more than 100,000 tons of chemicals have been shipped from other countries since 1978. It is suspected that these chemicals were shipped to Thailand for disposal purposes since there was no consignee. These unwanted chemicals created problems to the relevant authorities which have to dispose them with limited available proper treatment facilities.

In March 2, 1991, the cargo of hazardous goods at Bangkok Port was fired and brought about the big tragedy. Many people were dead, suffered and lost of property in that event. It can be said that the damage to health and environment caused by hazardous substances is an incentive for Thailand to prohibit the transboundary movements of hazardous wastes and substances to our territory.

In 1992, Hazardous Substance Act was legislated for the purpose of controlling the production, importation, exportation, trading and having in possession of hazardous substance. Hazardous substances listed under the Act are the same hazardous wastes listed in Annex I to the Basel Convention. Recently, hazardous wastes listed in Annex VIII of Basel Convention are proposed to the Department of Industrial Works to be listed as hazardous substances in the Act.

As mentioned above, Thailand has strong intention to observe Basel Convention obligation. In addition, the Pollution Control Department has set document system to control transportation, movement and disposal of hazardous wastes (Manifest System) in order to ensure that hazardous waste is managed in environmentally sound way.

From the records of Department of Industrial Works, Thailand has imported and exported the hazardous wastes from foreign countries as follows;

With regard to the exportation of the said hazardous wastes, parties to Basel Convention who import such wastes are, for example, United Kingdom and France for PCBs, Canada for sludges resulting from electronic industries and Belgium for mercury waste.

Export	
1996	95 tons of waste PCBs and substances contaminated with PCBs.
1998	76 tons of sludges resulting from electronic industries.
1999	2.8 tons of non-metallic mercury waste and 11.3 tons mercury contaminated waste.
Import	None. Because Thailand does not allow the hazardous waste to be imported for the purpose of recovery and final disposal.

It is not denied that Thailand accrues benefits for being a party to Basel Convention. For instance, Thailand acquires exports of hazardous waste from those parties which possess environmental sound technology and capability to tackle with hazardous wastes. However, problem of illegal movement of hazardous waste in Thailand should not be ignored since disastrous outcome may occur from such waste.

Implementation of the Basel Convention in Korea

Prepared by
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Ministry of Environment
Republic of Korea

The total amount of the waste generation in Korea had been dropping gradually until 1993, when it began to increase again. Entering into the 1990s, the generation of municipal waste has been steadily decreasing while industrial waste has been on a steep rise. With 1993 as a turning point, the volume of industrial waste generated, including hazardous waste, began to exceed the volume of municipal waste.

In order to regulate the import of hazardous wastes for the purpose of disposal and to prevent environmental pollution that could arise in the process of recycling imported wastes, the import of wastes has been restricted since July 1987. As of 1994, 28 hazardous wastes, including those containing PCBs, were banned from import and 58 others were subject to specific regulations. Restrictions for 118 items under the Basel Convention were put in place in January 1995. Importers and exporters of hazardous waste must obtain permits from the Ministry of Trade, Industry and Energy, which has to consult first with the MOE. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal came into effect in May 1992.

In Korea, the Act Relating to the Transboundary Movement of Wastes and their Disposal was enacted on December 8, 1992 to accommodate the provisions of the Basel Convention. Korea acceded to the Basel Convention in February 1994.

A total of 19,722 tons of wastes was imported in 1996. A look at the import of wastes revealed that 11,224 tons of waste rubber, 6,625 tons of waste synthetic resin, 1,419 tons of scrap batteries, and 456 tons of other materials were imported for recycling. A total of 390,513 tons of wastes was exported in 1996: 201,578 tons of iron and steel slag, 179,498 tons of scale, 6,705 tons of other metallic wastes, 1,552 tons of synthetic resin, and 1,180 tons of rubber scraps.

Since July 1998, Korea has prohibited the export of hazardous wastes to non-OECD countries that do not have sufficient capability to treat the hazardous wastes properly, in accordance with the basic purpose of Basel Convention and Ban Amendment.

Implementation of The Basel Convention on Control of Transboundary Movements of Hazardous Wastes and their Disposal in Malaysia

Prepared by
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Aminah Ali
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Ministry of Science, Technology and Environment, Malaysia

1. INTRODUCTION:

Malaysia became a Party to the Basel Convention in October 1993. The Department of Environment has been entrusted with the responsibility of leading the implementation of the Basel Convention in Malaysia. Policies and legislations have been promulgated to put into effect restrictions on the movements of hazardous wastes in and out of the country. In addition, programmes have been implemented with the co-operation of other relevant government agencies, industry groups and NGOs to promote and ensure environmentally sound management of hazardous wastes within the country, thereby complementing the objectives of the Basel Convention, which inter alia, addresses the need to protect countries against illegal importation and to strengthen the capacity of all States to adequately manage their hazardous wastes.

2. POLICIES AND STRATEGIES IN IMPLEMENTATION:

Since 1989, a National Steering Committee (NSC) for the implementation of the Basel Convention in Malaysia has been established to coordinate, promote and ensure fulfillment of Malaysia's obligations under the Convention. Representatives to the NSC are government agencies and industrial groups. A Technical Working Group has been formed to deal with waste definitions and categorisation.

3. LAW ENFORCEMENT:

The principal legislative instrument to control the management of hazardous wastes in Malaysia is the Environmental Quality (Scheduled Wastes) Regulations 1989 which have been enforced since May 1989. These regulations control the generation, transport and disposal of wastes through a notification and licensing system for waste handling. A total of 58 categories of scheduled wastes from specific and non-specific sources are subjected to the provisions of the Basel Convention. The Environmental Quality Act 1974 was amended in 1996 to include specific and more stringent provisions on the export, import and transit of wastes. Penalties for illegal trafficking have been increased to RM 500,000.

To further support the implementation of the Convention, the following Orders were formulated under the Customs Act 1967:

i. Customs (Prohibition of Export) (Amendment) (No.2) Order 1993;
   Customs (Prohibition of Export) Order 1998
ii. Customs (Prohibition of Import) (Amendment) (No.3) Order 1993;
   Customs (Prohibition of Import) Order 1998

These Orders came into effect on 12 August 1993 and 1 June 1998 and are enforced by the Royal Customs and Excise Department in coordination with the Department of Environment. The import or export of hazardous wastes is prohibited unless prior written approval is obtained from the Director-General of the Department of Environment, who is the designated competent authority and focal point for Malaysia.

Specific guidelines have been prepared to assist those involved in the handling of such wastes.

- Guidelines for the import, export and storage of Scheduled Wastes 1995;
- Notification and Control Procedure for Movement of Wastes between Malaysia and Singapore, 1995;
- Guidelines for Selection and Monitoring of Landfill Sites for Scheduled Wastes, 1985;
- Management and Disposal of Wastes from Downstream and Upstream Petroleum Industries, 1994;

- Guidelines on Disposal of Asbestos Wastes (revised) 1995.

In Malaysia, importation of wastes is allowed (after a thorough examination) if such wastes are needed as raw materials and internal sources are not available. Waste generators are allowed to export wastes for recycling, treatment or final disposal provided prior written approvals are obtained from the competent authority of the importing state. However since 18 December 1985, export is no longer allowed other than for recovery purposes and special treatment. An integrated waste treatment and disposal facility become operational in December 1997.

3. ISSUES RELATED TO ILLEGAL TRANSPORT AND DUMPING OF HAZARDOUS WASTES:

- Differences in national and international definition of "wastes" and "hazardous wastes".
- Absence of hazardous waste legislations in some developing countries.
- Metal scraps and plastic wastes destined for recycling containing heavy metals or contaminated by hazardous.
- Convention does not apply to radioactive wastes or to wastes derived from normal operations of ships.
- Illegal transport and disposal of oily sludge from tanker cleaning activities.
- Slow progress in finalization of a Protocol on Liability and Compensation for damages due to transboundary movements of wastes. Resistance to the setting up of Emergency and Compensation Funds for purpose of compensation for damages.
- Slow establishment of Regional Centres for Training and Technology Transfer.
- Slow progress in the harmonisation of listing and classification of hazardous wastes.
- No harmonised Customs Code for export and import of hazardous wastes to assist in enforcement.

4. CONCLUSIONS:

There are still a number of weaknesses and inadequacies under the Basel Convention, but despite that, it has served to provide a systematic, workable and regulated regime to control the transboundary movement of wastes and illegal dumping. It has also given the impetus for developing countries to build or upgrade treatment and disposal facilities for hazardous wastes and to depend less on facilities elsewhere. Coordination and cooperation between enforcement agencies, nationally and internationally, need to be strengthened to deter illegal trafficking.

Implementation of The Basel Convention in China

Prepared by
Bie Tao
Department of Policy and Law
State Environmental Protection Administration in China

A. INSTITUTIONAL ARRANGEMENT:

—— NEPA, National Environmental Protection Agency, since 1988
—— SEPA, State Environmental Protection Administration, since 1998
—— the General Administration of Customs
—— the China Commodity Inspection Bureau, CCIB
—— MOFTEC, and
—— the State Administration of Commerce and Industries.

B. LEGISLATIVE FRAMEWORK:

—— 1991, Basel Convention was ratified:
—— 1995, the Solid Waste Law,
Art. 24: Prohibition of dumping and disposal
Art. 25: Restriction recycling
Art. 66, 67 and 68:
Penalty *Order to ship back
*Fine up to 1 million
*Criminal liability for smuggling

—— 1996, Interim Provisions on the Import of Waste Materials
*Environmental Risk Assessment for Imported Waste
*Import/Export Authorization
*Application and Review procedure
*Pre-shipment inspection
*Compulsory inspection at port

—— 1996, List of Waste That can be Used as Raw Materials and Are Restricted in Importation by the State
*10 Categories,
*under each category, tens of specific wastes,
*such as waste and scrap of paper and paperboard

—— 1996, Environmental Control Standards for Imported Scrap Materials
*Waste animal bone as raw material
*Slag as raw material
*Scrap wood and wood products as raw material
*Scrap paper and paperboard as raw material
*Scrap cotton and cloth as raw material
*Iron and steel scraps
*Non ferrous metal scraps
*Scrap motor
*Waste electronic line and cable
*Metal and electronic appliance scraps
*Scrapping ships and floating facilities
*Plastic scrap as raw material

—— Amended Criminal Law, take effective in 1997
Art.339: illegal import, 10 years imprison-ment or above, and fine
Art.155: smuggling, maximum death penalty.

C. VIOLATION AND ENFORCEMENT ACTIONS:

—— 1993, 1288 tons of waste chemicals in the name of "other fuel oil", which was taken back in 1994. (From an Asian country)
Contract: 200,000 tons of such waste chemicals.

—— 1994, 70 sets of waste PSBs transformers exported from US was found in Xiamen, which was returned back in 1995.

—— 1995, an American citizen William Ping Chen, smuggled 238 tons of waste containing hazardous waste into Shanghai, after investigation, 10 year in jail and a fine of 500,000 RMB Yuan.

—— 1996, cases of illegal import of waste found in Beijing, shanghai, Xinjiang, Tianjing and Qingdao, and over 200 ships which were loaded with foreign waste were refused entry into China.

—— 1998, a Chinese paper mill director in suburban Beijing (Pinggu County) was sentenced 3 years and fined 100,000 for illegal import of waste paper containing large volume of hazardous waste.

So far, the trend of illegal import of waste has been effectively taken under control in China.

BASEL CONVENTION:

(iii) LATIN AMERICA AND THE CARIBBEAN

Illegal Trade And Violations of the Provisions of Agreements Dealing With Transboundary Hazardous Wastes

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1. THE EXTENT OF ILLEGAL TRADE OF HAZARDOUS WASTES IN BARBADOS:

Barbados acceded to the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal in August, 1995. Despite the time that has elapsed, the level of illegal activity is unknown. So far, the Environment Division has received no reports of attempts to smuggle wastes into the island. However, it should be noted that there are highly sophisticated ways of trading wastes to an unsuspecting country. For instance, expired goods or banned from use in one country might be falsely labeled or given false certification and sold to another ignorant party. Monitoring this type of hazardous waste trade is exceedingly difficult. In addition, there are even more ingenious ways of disguising wastes to encourage countries, usually developing countries, to accept them. To date, no such attempts to import these disguised waste into Barbados have been made.

Regarding the export of wastes, the Barbados authorities are experiencing some difficulties, in particular, tracing exports of wastes as defined by the Basel Convention. Companies in Barbados can, in the absence of the relevant national legislation, ship waste to companies overseas without a permit or without reporting to any government agency.

2. EFFORTS MADE TO CONTROL CRIMINAL ACTIVITY IN BARBADOS:

Unfortunately, Barbados has not achieved much in the implementation of the requirements of the Basel Convention. This is, in large part, due to the fact that the Ministry of Environment though the Focal Point for the Basel Convention is still in the process of building vital links between those agencies which can actually effect change. However, a major step towards monitoring the movement of hazardous wastes through Barbados' ports will likely be made with the completion of the national Solid Waste Management Legislation, which will be enhanced when the draft National Basel Legislation is finalized.

Appropriate training of Customs officials still lies with Caribbean Industrial Research Institute (CARIRI), the Basel Sub-regional Centre in Trinidad; and the urgent need for this activity was reemphasized by Caribbean Customs officers at the Basel Regional Meeting in Uruguay, March 22 to 26, 1999. At present, every effort is being made to arrange for the training of these officials to recognize even the most basic of signs for illegal movement of wastes.

3. CONCLUSION AND RECOMMENDATIONS:

The efforts currently being made under the Basel Convention represents a significant step towards the effective regulation, handling & transportation of hazardous wastes across frontiers. Because of the limited capabilities of the developing countries to manage hazardous and other wastes, and trade in these types of wastes between large producers of waste, usually the industrialized nations, and the smaller, less developed countries, illegal traffic continue to take place.

The integration of Basel legislation into national legislation can greatly improve the implementation of the Basel Convention. However, procedures to assist in preventing, identifying and managing illegal traffic, achieving compatibility among the different international/regional systems dealing with the control of transboundary movements of wastes should be sought. Furthermore, capacity building of relevant institutions and training of customs officials at the (Sub) Regional Training Centres and public awareness programmes will all act as useful tools in encouraging and ensuring that there is appropriate movement and handling of hazardous wastes around the globe.

International Environmental Crime and its Impact on Basel Convention in Cuba

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ILLEGAL TRANSPORT AND DUMPING OF DANGEROUS WASTES:

There are no cases reported in Cuba of illegal international transportation of dangerous wastes. The archipelago condition and the control exercised by the government on maritime transportation and entrance, and on commercial activities, constitute elements that contribute to the efficacy of the control.

However, the situation is different with regard to international disposal of wastes where the introduction of regulatory mechanisms began only in 1996, while economic reasons and the lack of the required infrastructure, conditioned an insufficient control over those wastes. Although without accurate statistics, it could be presumed that the disposal of dangerous wastes does not always take place in accordance with the established legal requirements.

MEASURES ADOPTED TO CONTROL ILLEGAL ACTIVITIES:

By Agreement No. 2772 of July 2, 1994, Executive Committee of the Cabinet, upon approving and subject to ratification of the Basel Convention designated the Ministry of Science, Technology and Environment as the Competent Authority and Contact Point of the Cuban Republic on compliance of Articles 5 of the Convention.

By Resolution No.15 dated February 13, 1996 adopted by the Ministry of Science Technology and Environment regulated the exercise of the functions of National Authority and Contact Point of the Basel Convention. The sound management of the environment of transboundary movements of wastes were established and strengthen the national regulatory framework.

With the establishment of the above-mentioned resolution a procedure on information and previous consent, i.e., Article 6 of the Convention is complied with. At the same time on defining a group of requirements for the national management including a permit for different operations, sufficies as a suitable measure for the requirements of Article 3 of the Convention.

Other related ministerial resolutions, regarding the state of environmental inspection and the environmental impact assessment complement this legal framework through evaluation, assessment and monitoring actions.

The creation of the National Group of Dangerous Wastes formed by prestigious and experienced specialists of all the institutes generating such wastes, as well as of the responsible organizations for environmental protection and health strengthen the institutional framework in this area. More recently, the Law of the Environment of July 11, 1997 designates and confirms the departments of the Ministry of Science, Technology and the Environment dealing with the management of hazardous wastes. It also provides that importation of dangerous wastes requires authorization of this governmental body, and that illegal traffic will be sanctioned in accordance with the legislation in force.

MAIN CONSTRAINTS IN THE NATIONAL APPLICATION OF BASEL CONVENTION:

(i) The main limitations regarding the national applications for Basel Convention can be identified as lack of materials and financial resources as well as the required infrastructure, necessary for an adequate follow up and control of these obligations. In the case of dangerous wastes, the situation is more serious due to the complexities and costs involved in its elimination, clean up and final disposal.

(ii) There is lack of effective systems of information that allow the adoption of rapid and effective actions and preventive character and maintain at the same time an effective information base to the citizens. To these, among other factors is associated with the insufficiencies in education and environmental awareness.

(iii) The regulations on responsibility are not sufficiently clear and strict. A Decree-Law on administrative penalties with effective enforcement measures still awaits approval. Consequently, civil and penal laws continue being basically the tra-

ditional hence not adequate or effective to deal with these emergent issues.

(iv) Equally scarce is the use of economic instruments in the national legislation to induce industries to comply with waste disposal management.

(v) On the other hand, conflicts among several international environmental agreements exists. For instance, the potential contradictions between multilateral environmental agreements and World Trade Organization's agreements.

CONCLUSIONS AND RECOMMENDATIONS:

Compliance with responsibilities derived from the Basel Convention at the national level require an effective cooperation of the international community, particularly from the developed countries, according with the Principle 7 of the Rio Declaration. Without a strong international commitment, national efforts will be seriously limited. Compliance control must be mixed with compliance assistance. Consequently, national regimes must be reinforced. This must occur on a harmonious way, combining the administrative, civil and penal systems.

Taking into account that the fundamental idea is preventive and not coactive the responsibility regime must be approximately combined with preventive measures including declaration and reporting obligations. Violation of laws does not necessarily reflect an intention to commit an offence but sometimes ignorance and lack of culture and knowledge regarding those issues. In this sense, all actions that tend to reinforce information and citizen awareness and public participation must be involved and built.

The use of economic instruments strengthened and/or introduced to complement the command and control measures. At the international level, the existing mechanisms must be reviewed as they have a decisive influence on the performance at national level.

More studies and efforts must be dedicated on the clarification of the relations and potential conflicts among the multilateral environmental agreements and the World Trade Organization's agreements. In this regard, the practice established by Cuba since 1996 of a "Committee of Trade and Environment" for the coordination of the commercial and environmental policies, seems to be a good way in the search of a national coherence.

Implementation of the Basel Convention in Colombia

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This Convention entered into force for Colombia in March 1997, which means that progress in its implementation in the country is still at an early stage, although preliminary steps have been taken, such as the "Diagnosis of Hazardous Wastes as a First Step towards Action and Proposal of a Preliminary List of Hazardous Wastes for Colombia", as well as the "National Regulations for Hospital Wastes".

Act 430 of 1998 established environmental prohibitions in reference to hazardous wastes. It aims at regulating all issues relating to the introduction of hazardous wastes of any kind into the country, as established by the Basel Convention and annexes thereto. It also provides responsibility for the integrated handling of such wastes generated in the country and in the processes of production, management and handling of those wastes. The Act also regulates the infrastructure required by the Customs, Export Processing Zones and Ports authorities, so as to provide for the technical and scientific detection of any introduction of such wastes.

PROBLEMS RELATED TO ILLEGAL TRADE:

1. Except for some specific cases in which the illegal entry of hazardous wastes was known or in which international information was available about the approach of a cargo of hazardous wastes into Colombian territorial waters, the country does not actually have the necessary mechanisms to detect such illegal entry.

2. In the present circumstances, the country is extremely vulnerable to the illegal entry of hazardous wastes, since the Department of Customs and Excise (DIAN) does not have the technical or logistic capacity to implement monitoring and control systems.

CONCLUSIONS:

1. Colombia must try to enlist the exchange and benefit of experience from the authorities of other countries that are responsible for the implementation of the Convention, in order to establish co-ordination strategies with those authorities (Customs, external trade and ministries of environment).

2. The development of regulations under the Convention should continue, by determining responsibilities for implementation and the necessary Customs controls for its operation. The regulations must study which movements are necessary and are being carried out, as well as provisions for monitoring and supervision, and the limits to the quantities of substances imported. It is proposed that the used by the Ozone Technical Unit in connection with the Montreal Protocol on Substances that Deplete the Ozone Layer could be utilized.

3. In an international context, efforts need to be made to resolve one of the snags detected by the Convention Secretariat, relating to the difficulty of correlating the Harmonized Commodity Description System used by the Customs in countries with the list produced by the Convention.

4. The country needs to carry out the following actions in relation to the Convention:

   (a) Public opinion awareness-raising campaigns and capacity-building for officials of the entities responsible for carrying out inspection and monitoring of the transboundary transport of hazardous wastes;
   (b) To integrate the management of hazardous wastes with that of ordinary wastes;
   (c) To develop economic instruments to involve industry and motivate the minimization of waste generation, and to map out plans for handling wastes.

5. The foregoing implies the investment of sizeable resources, however, which the country is not fully capacitated to do, and therefore international cooperation must play a fundamental part in its support for the management of hazardous wastes in developing countries.

Implementaton of the Basel Convention in Argentina

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A. LEGAL FRAMEWORK:

Laws enacted include:

- National Constitution (Art. 41 & 43)
- 22.415 - Customs Law
- 24.449 - Traffic Law
- 23.922 - Ratification of the Basel Convention
- 24.051 - Hazardous Waste
- 24.898 - Public Information on UV Radiation Intensity.

Decrees:

- 3489/58 - Register of the Importation and Trade of Therapeutic Vegetable Products
- 181/92 - Hazardous Waste Import – Ban
- 831/93 – Regulates the Law 24.051

Regulations:

- 1742/93 - Regulates the competence of Customs Office to ban the entrance of hazardous waste
- 440/98 - Handbook Procedure for the Phytosanitary Product (SAPYa)
- 20/96 - Regulates the waste present in products treated with Methyl Bromide (SAPyA)
- 195/97 - Regulates the transportation of hazardous goods by carway
- 110/97 - Regulates that the transportation of hazardous goods must be done by authorised international drivers.

B. INTELLIGENT CONTROL OF IMPORTATION AND EXPORTATION (ASSOCIATED WITH SENSITIVE TECHNIQUE):

Customs control office depends on Strategic Control as consultative organization, in charge of:

- Identification of the hazardousness and evaluation of its seriousness and associated risks.
- Determination of critical points of control.
- Set up prevention and control measurement and determination of criteria to follow up.
- Monitoring of critical point and corrective measurement.
- Register.

C. DETECTION SHEET:

- Hazard (defined by the regulatory framework) Seriousness level (hazard level) Risk (probability of hazard)
- Control of Critical Point (CCP), it is a procedure that allows for the prevention or control measures.
- Criteria, limitation and characterisation of the legislation, through regulations, procedure manual.
- Monitoring of CCP.

D. NECESSARY STEPS:

- Observation: quality of product
- In case of doubt the regulation must be consulted. It is necessary to train Customs officers.
- Detection: identification of specific compound sending sample to a laboratory
- Notification: tot he competent authority
- Identification: depending on the case detected certain steps follow up
- Permanent revision: in case of change of procedures, demographic or legislation.

E. Illegal trade:

- The critical point is the arrival of goods
- Arrival - placing in market-place - follow up

F. CUSTOMS CONTROL - LEGAL FRAMEWORK:

- Set up control mechanisms in 1999.
- Moment of intervention of the competent organisation. Document or physical revision.
- Term of retention of goods.
- Implementing international standards to take gases sample in warehouse.
- Implementing norms for the packaging/containers regarding kind of goods (in order to avoid

documents smuggling).

- To use high security documents to avoid their falsification.
- Intervention Procedure Manual for joint operation between different control organisation.

G. TRANSBOUNDARY HAZARDOUS WASTE:

The National Constitution bans the entrance of hazardous waste to the country. For the application of the Decree 181/92, the prohibition of transboundary hazardous waste includes the free port and special Customs areas as well.
For the application of the Law 24.051, Hazardous Waste, generators or operators - exporters of hazardous waste must have an Annual Environmental Certificate after their registration in the Hazardous Waste Register, and must have a Manifest in order to carry the waste. To date, only two companies are registered as operators-exporters of hazardous waste classified as Y-10. A third company started the registration steps to operate with hazardous waste classified as Y-10 and Y-4.

The ratification of the Basel Convention by Law 23.922 includes:

- Authorization of importation of hazardous waste to the environmental authority of the Importation State, required by the environmental authority of Exportation State.
- Notification to the traffic country involved.
- Report to the Basel Convention Secretariat and the Foreign Ministry on transboundary movement.
- Authorization of National Resources and Sustainable Development Secretariat to the waste movement.
- Operator/Exporter has to submit the Final Disposal Certificate issued by the foreign trader.

H. EXPORTATION TO COUNTRIES:

Since 1995 Argentina has exported 1,071 ton of hazardous wastes (PCBs, Y10) to France and United Kingdom. In 1997, 213 ton of pesticides (Y4) were exported by the Generator to his branch located in Germany.

Regarding the Hazardous Waste Register, 23 exportations of hazardous waste were carried out since 1995 up to January 1999.

In 1997, Argentina improved, through mechanisms of control of Basel convention, the final disposal of PCBs.

I. REPORTS ON ILLEGAL COMMERCE:

- Expired goods: herbicides, pesticides, insecticides, medical products, photo developers; and second quality paint.
- Food in bad conditions. The Iguazu Customs office, detected an import of chicken in bad conditions and the import was rejected (1985).
- Expired vaccines: The import was rejected.
- The entry of Sewerage Waste from France in 1991 (from this event, the 1st legal norm for the import of Hazardous Waste was created. Decree 181/92 - and was the spark for creation of the Law for Hazardous Wastes (Law 24051/92 - Regulating Decree 831/93) after 4 years of Parliamentary discussion.

J. CASE STUDIES:

- Auto-denunciation from a multinational company of buried pesticide. In 1997 they exported it to their plant in Europe for the final disposal.
- Alteration of the expiration date (labelling) in origin.
- Change of the name of the substance in the original documents in accordance with allowed substances.
- Alteration of additional documentation (e.g. data sheet) to swindle controls.
- Donations as the vehicle for illegal traffic of products with close expiration date.

BASEL

(IV) EASTERN EUROPE

Enforcement of and Compliance with the Basel Convention in the Russian Federation

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1. Since the Basel Convention entered into force (1995), Russian Federation carried into effect the prohibition on import of hazardous wastes for the purpose of disposal and incineration and partial prohibition on hazardous wastes import and transit for any other purposes. However, in 1995-1997 there were attempts to import various hazardous chemicals (falling under the regulation of the Basel Convention) for the purpose of recycling.

   - For instance, one of the Austrian firms has introduced and applied in Orlovskaya Oblast non-ferrous metals recycling technology which had been banned abroad as environmentally dangerous. Besides, the firm made attempts to organize disposal of generated wastes in violation of Russia's laws and to import from Austria 40 tons non-ferrous metals slags for disposal in Orlovskaya oblast.

   - 1000 tons raw cobalt have been imported from France to Orenburg oblast for recycling under the contract with France's firm. But the raw materials did not satisfy the requirement of the contract since it contained toxic admixtures: (cadmium, thallium, lead, arsenic, etc.). Recycling of such raw materials with the existing equipment would damaged the environment essentially. It was specified in customs declarations that load was a raw material and declared and classified as industrial wastes imported without license (illegally). The load was arrested and the permission withdrawn.

   - Austrian firm intended to export to Dneprodzerzhinsk city (Nizhny-Novgorod oblast) the chemical wastes of foreign enterprises to avoid recycling in Austria (on account of financing the construction of the facilities for industrial chemical wastes disposal).

   - During mentioned period there were occurrences of import of copper-containing concentrates from Chilean, Portuguese and Indonesian deposits. Recycling of that concentrates in these countries has been banned for high content of carcinogens or high costs of liquidation environmental damage or high fees for pollution. Taking into account that detailed investigation of above incidences were not carried out, the company's names and other details on mentioned events are not referred.

   - Great attention must be paid to improve further scientific research activity in the frame of international agreements on environmentally sound methods for recycling the most toxic wastes.

2. Being the Party to the Basel Convention, Russia follows strictly the requirements imposed on transboundary movement of hazardous wastes. The attempts to import of hazardous wastes to the territory of the Russian Federation for the purpose of disposal were stopped already at the stage of scrutinizing documents submitted to obtain permission for transboundary movements of hazardous wastes.

   - Expert examination allows to reveal masked form of the import of wastes for final disposal (that events, when it is indicated in customs documents that purpose of import of wastes is recuperation but indeed the purpose is - disposal.

   - In several cases the applications for permission of import of hazardous wastes to the Russian Federation for the purpose of recuperation have been rejected.

   - For example, in 1997 in accordance with the Government Resolution 26.02.96 No.168 "On Approval of the Provision on Licensing of Activities in the Field of Environmental Protection" the State Committee of the Russian Federation for Environmental Protection considered 284 applications for permission on transboundary movements of wastes

to the Russian Federation. Out of which 18 applications were rejected (it was reflected in our national report to the SBC for 1997)

- It is necessary to note that in the Russian Federation, financial resources, experienced personnel are extremely not sufficient for carrying out expert operation with applications for importing the wastes. The surveillance of customs points also is not sufficient. It brings to reducing of expert operation effectiveness.

3. THE RUSSIAN FEDERATION LEGISLATION AT THE FEDERAL/REGIONAL/LOCAL LEVELS REGARDING TO THE IMPLEMENTATION OF THE BASEL CONVENTION.

The control of compliance with the requirements on transboundary movements of hazardous wastes in the territory of the Russian Federation is carried out in accordance with the Basel Convention provisions and on the basis of the agreed and approved lists of wastes that are subject to obligatory state checking and regulation.

Being the Party to the Basel Convention, the Russian Federation took upon oneself the obligations to fulfil its requirements and Decisions. After the ratification of the Basel Convention one of the primary tasks was to harmonize national legislation on waste management with the Convention's provisions.

In recent years the Russian Federation, in particular the State Committee of the Russian Federation on Environmental Protection, has carried out the activities to develop legal framework in the field of wastes management. So, the Russian Federation State Duma passed the Federal Law "On Wastes of Production and Consumption" (of 26.06.98 No.89-03). Simultaneously, the State Committee of the Russian Federation on Environmental Protection has developed a system of legal-regulatory acts to ensure environmentally sound management of wastes.

The following documents have been developed, approved and registered by the Ministry of Justice of the Russian Federation:

- The Federal Wastes Classification Catalogue (approved by the Order of Protection of 27.11.97 No.527 "On the Federal Wastes Classification Catalogue");

- The Procedure to issue and cancel permissions for transboundary/transit movements of hazardous wastes (approved by the Order of the State Committee of the Russian Federation on Environmental Protection No.788 of 31.12.98)

- A number of documents including "Provision on Procedure of Control and Monitoring of Transboundary Movements of Wastes" has been developed and agreed upon with the Ministry of Health, The State Customs Committee and State Technical Surveillance Committee of Russia.

The list of national legislation (Laws, Government Resolutions and Regulations) is presented in the Table 1.

The above mentioned in Table 1 documents regulate all activities related to wastes management (that is generation, collection, storage, recycling, transportation and disposal of wastes of production and consumption). These documents regulates relations between legislative and executive bodies; between users of natural resources (juridical person, physical person, foreign legal and physical person) and state agencies specially established for environment protection.

In compliance with these documents enterprises must submit annually to the Territorial Environmental Committees their limits for wastes disposal agreed upon with the Sanitary-Epidemiological Surveillance for its approval and adoption. In these documents special focus is placed on specialized enterprises/facilities dealing namely with wastes disposal.

4. DAMAGE COMPENSATION MECHANISMS IN THE LEGISLATION OF THE RUSSIAN FEDERATION.

The problems of setting responsibility and evaluation of damage to the environment, compensation of environmental damage resulting (among others) from illegal movement of wastes are reflected in the first draft of "Provision about procedure of control and supervision over the transboundary movements of wastes" (still under the development). This Draft stipulates administrative methods of punishment as sort of responsibility of partners of transboundary movements of wastes.

Illegal traffic, insurance, financial guarantees and responsibility limits - are in the process of discussion.

The Russian Federation recognizes as necessary finalization of the development of the Protocol on liability and compensation to the Basel Convention in the nearest future.

Environmental standards/criteria to be met by the hazardous wastes and other wastes generators to reduce and/or eliminate generation of hazardous wastes and other wastes

I. Federal Laws
1. "On Wastes of Production and Consumption" (of 26.06.98 No.89-03)
2. "On Ecological Expertise" (of 15.04.98 No.174-03 - new edition)
3. "On Safe Handling of Pesticides and Agrochemicals" (of 19.07.97 No.109-03)

II. Resolutions of the RF Government
1. "On approving of Regulations on the Ministry of Health Protection of Russian Federation" (of 03.06.97 No.659).
2. "On Enforcement of Regulations on the State Committee of Russian Federation or Environmental Protection" (of 26.05.97 No.643)
3. "On Enforcement of Rules for Services of Exporting Solid and Liquid Municipal Wastes" (of 10.02.97 No.155).
4. "On Regulations on Licensing for Separate Types of Activities in the Field of Environmental Protection" (of 26.02.96 No.168)
5. "On Federal Target Program "Wastes" (of 13.09.96 No.1098)
6. "On State regulation and control over transboundary movements of hazardous waste (of 01.07.96 No.766).
7. "On Charges for Waste Water Discharge and Pollutants into Sewerage Systems of Inhabiting points (of 31.10.95 No.1310)
8. "On Top-Priority Measures for Fulfilling Federal Law "On Ratification of Basel Convention on Control over Transboundary Movements of Hazardous Waste and Waste Disposal" (of 01.07.95 No.670).

III. Regulations of Goskomekologiya
1. On the Experiment in Sverdlovsk and Perm Oblast's on working of the mechanism of forming Federal Waste Classifier. Order of Goskomekologiya of Russia DD 20.03.98 No.160
2. Order of taking charges and use of charges for issuing permits for transboundary movement of hazardous waste. Order of Goskomekologiya of Russia DD 04.03.98 No.127. Registered in Ministry of Justice of Russia 08.04.98 No.1505
3. On Federal Waste Classifier. Order of Goskomekologiya of Russia DD 27.11.97 No.527. Registered in MinJust of Russia 29.112.97 No.1445.
4. Order of the State Committee of the Russian Federation on Environmental Protection of 27.11.97 No.527 On a Federal Wastes Classification Catalogue
5. On denomination of basic rates of pollution charges. Letter of Goskomekologiya of Russia DD 20.11.97 No.05-14/29-3621
6. On indexation of environmental pollution charges for 1998. Letter of the State Environmental Committee of Russia DD 20.11.97 No.01-14/29-3620
7. On organization of work for licensing of separate types of activities in the field of environmental Protection. Order of Goskomekologiya DD 15.03.96 No.97.
8. On charges for waste disposal, Letter of Goskomekologiya DD 10.01.97 No.14-07/32.
9. On approval of Regulations on the order of issue and annulment of permits for transboundary movements of hazardous waste in Russian Federation Order of Goskomekologiya DD 20.08.96 No.372.
10. On state regulation and control over transboundary movements of hazardous waste. Order of Goskomekologiya DD 25.07.96 No.342
11. On order of carrying out works for licensing of separate types of activities in the field of Environmental protection. Order of Goskomekologiya DD 18.06.96 No.282.
12. On order of carrying out works for licensing of separate types of activities in the field of Environmental protection. Order of Goskomekologiya DD 18.06.96 No.282.

Enforcement of and Compliance with the Basel Convention in the Czech Republic

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Czech Republic acceded to the Basel Convention in 1991. The Convention is implemented in the country by Act nr. 125/1997 as amended by 167/1998. Act 125/1997 (on waste) generally forbids import of waste for disposal into Czech Republic. Waste is splitted into three categories, which are listed in so-called red, yellow and green list. The waste, listed in red list, could be imported, exported or transited only with permission and permit from the Ministry of Environment. The waste listed in yellow list could be imported from the prior informed consent and waste from the green list is considered free merchandize.

The main controlling competent authority import and export of waste is customs. CEI has also rights to control internal movements and use of the waste. Based on the customs office information, CEI has imposed from the time the new waste act was in power, 15 fines. As in many other countries, one of the largest problems in enforcement of this law is the right classification of the materials crossing border, especially in large containers. The time and capacities for the checking the transported materials are also limiting.

BASEL CONVENTION:

(V) WESTERN EUROPE AND OTHERS

Enforcement of and Compliance with the Basel Convention in the Netherlands

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1. INTRODUCTION:

In the Netherlands there is already for quite some time experience with enforcement of the national law based on agreements dealing with transboundary hazardous wastes.

The Inspectorate for the Environment is responsible for the enforcement and coordinates the work being done in this matter by for example Customs and other enforcing authorities.

2. IMPACT OF INTERNATIONAL ENVIRONMENTAL CRIME TRANSBOUNDARY HAZARDOUS WASTE:

The enforcement of the European Union directive on the transport of hazardous waste (EC Council regulation 259/93) is being done by the Inspectorate for the Environment together with Customs and Police.

There have been quite a number of cases where there were violations of the regulation. A big case concerned plastic waste that was left in enormous quantities in unacceptable and unexpected places like abandoned farmsteads and so on. Together with the German authorities this case was eventually solved in a satisfactory way. However it is often the case that companies are going bankrupt and government has to clean up the business. Therefore there is an intensive cooperation and exchange of information about transport of hazardous waste not only nationally but also on EU-wide.

Under IMPEL (the general EU-network for implementation and enforcement of environmental law) there is specific network called TFS (transfrontier shipment of waste) dealing with all aspects of enforcement and compliance and preventing and controlling environmental crime for hazardous waste. In this network the EU-countries and Norway work together. Environmental inspectors, police and customs cooperate in projects like the Ports projects (specific waste streams in some major harbours like Rotterdam and Hamburg), the Danube project (waste streams between Austria and Germany on the river Danube) and so on. The TFS group has a permanent secretariat in Spain and the Netherlands and is chaired by the Netherlands.

3. ACTIONS TO IMPROVE COMPLIANCE WITH TRANSBOUNDARY HAZARDOUS WASTES:

Customs, police and Inspectorate for the Environment inspect thousands of transports each year. There is a standard procedure describing in detail how to inspect and how to take steps like prosecution under penal law or administrative law. Each year there is a special transport control week, often together with inspecting authorities from neighbouring countries.
The TFS-network under IMPEL is described above. This network deals with a lot of work to improve the quality of enforcement all over Europe. Also it gives suggestions for possible adaptations for the directive to the Commission from a point of view of enforcability. Information is also exchanged with the Waste focal point under the European environmental agency (EEA) in Copenhagen.

European wide parliamentarians are concerned about the possible violations in the field of transboundary hazardous waste, often on a large scale, and often resulting in serious damage to the health of people and damage to the environment in third world countries.

4. CONCLUSIONS AND RECOMMENDATIONS:

1) An international approach, cooperation, is absolutely necessary because of the continuous growing economic scale of production and waste control and the world-wide international trade.

2) Enforcement projects such as the EU-projects for new and existing chemicals held to ensure a better quality and level of enforcement in international regions. Therefore such projects should be promoted.

3) International combat of environmental crime requires a "Green Interpol". This should be investigated and elaborated by UNEP and Interpol in combination with the G-8 initiative.

4) The feasibility should be studied of a Treaty on Environmental Crime.

5) Rapid and confidential means of exchange of information must be available in the near future to ensure good cooperation.

6) INECE should include the results of the UNEP and G-8 initiatives to cooperate for environmental enforcement and the combat of environmental crime to promote regional networks.

Enforcement of and Compliance with the Basel Convention in Portugal

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1. INTRODUCTION:

The Inspectorate General for Environment of Portugal has no knowledge of organised criminal activity in Portugal in the area of environmental crimes.The statistical information on criminal activities in Portugal does not include a specific classification for the environmental crimes, therefore making it virtually impossible to supply the requested information on the matter.

The EU, as a single market, imposing free movement of goods and individuals between member states, eliminated international trade within its boundaries. As a consequence, transboundary movements between member states of the EU are not subject to any customs control. There is no government publication about the nature and extent of environmental crimes in Portugal.

2. LEGAL STRUCTURE:

In force since 1995, the Portuguese Criminal Code (Decree Law nº 48/95, dated 15th March) comprises the definition of three different environmental crimes, one concerning the protection of nature (article 278º), the other two (articles 279º and 280º) preventing pollution. It should be noted, tough, that article 280º gives only an indirect protection to the environment.

Criminal investigation of environmental crimes is exclusively performed and controlled by the public prosecutor. However, under Portuguese law it is possible for those suffering damages as a result of acts contrary to the environmental interests - either individual or collective - to bring actions into the Courts, to the attention of the Public prosecutor and even to intervene as assistants to the prosecutor (Code of Administrative Procedure article 53º - 1991 and Law 83./95, of 31st August - popular action). The criminal penalties stipulated in the Portuguese Criminal Code for environmental crimes consist of either imprisonment or a fine. Environmental crimes are submitted to the common Courts, as there are no special Courts to rule on environmental offences.

Specialist training of judicial authorities in environmental violations is currently under development. Environmental violations must be considered as a new type of criminal offence in the Portuguese criminal framework, therefore without relevant history of its compliance. On the other hand, the moral blame of this kind of offences in Portugal and the public awareness of the harmful consequences of environmental crimes are not felt as being very high. Nevertheless, it must be said that the younger generations in Portugal are becoming increasingly aware of the environmental concerns.

Under Portuguese law, a criminal penalty (condemnation) can only be applied to individuals, not to collective entities. As the imposition of a criminal sanction upon the directors of companies held responsible for environmental crimes requires hard evidence of their personal and direct responsibility for such crimes, such condemnations are virtually inexistent in Portugal. Hence, it is by applying a kind of "Administrative Criminal Law" that the enforcement of environmental rules and principles is commonly made in Portugal, these proceedings leading to the imposition of administrative sanctions, subsequently to the investigation and ruling carried out by administrative authorities. These administrative sanctions having no criminal nature, but they can be imposed upon collective entities, even when there is no proven responsibility of any specific individual for the violation.

The imposition of these administrative sanctions is now fairly frequent in Portugal and has brought an increased efficiency in terms of environmental protection and enforcement of environmental law, when compared to the criminal law. These administrative sanctions are mostly monetary sanctions, although there are also some complementary penalties, such as transgressor's belongings being seized, the transgressor's subsidies being retained and license to operate being suspended. It must be noted that the enforcement of this kind of "Administrative Criminal Law" is made in accordance with the principles of Criminal law, the latter being subsidiary applicable. Also the administrative sanctions ruled can always be

questioned before a Common Court, as in a sort of appeal.

3. IMPLEMENTATION OF THE BASEL CONVENTION:

The Basel Convention on Transboundary Movements of Hazardous Wastes and Disposal has been approved for ratification by Portugal under Decree Law nº 37/93, dated 20th October 1993. Beyond the obligations resulting from the Basel Convention, Portugal also complies with the very strict discipline of EU Regulation 259/93. This EU Regulation is enforced in Portugal under the rules of Decree Law nº 296/95, dated 17th September. The authority responsible in Portugal for the enforcement of the Basel Convention and the said EU Regulation is a new administrative body, the *Institute for the Wastes* (Instituto dos Resíduos, INR).

In accordance with Decree Law nº 296/95, all proceedings necessary to the enforcement of the respective rules, as well as the subsequent application of the monetary sanctions are to be taken by the *institute for the Wastes* (INR) and the maritime authority in the area of their jurisdiction. Apart from monetary sanctions, the violation of the said rules can also determine the imposition on the transgressors of complementary penalties. For example, the seizure of objects they used for the perpetration, the interdiction of their activities, their exclusion form any public benefits or subsidies, the closure of the respective offices and the forbiddance of the issuance of any licences or certificates they may apply for, and others.

In Portugal we have no knowledge of crimes related to the Transboundary Movements of Hazardous Wastes, although it would be possible to report two cases involving illegal import of wastes.

The first one refers to a company called *"Gruning"* which, back in 1995, illegally imported wastes from another company with the same name and belonging to the same owner, operating in Germany. This case was settled through the application of the rules of European Union Regulation 259/93, the competent German authority having started the notification procedures towards the re-export of the wastes as set out in the Regulation. One administrative procedure has been started against the company responsible for the illegal import of the wastes.

The second case has to do with the Portuguese company, *Metalimex, SA* that imported wastes from another company in Switzerland for the purposes of their recovery. As *Metalimex* had no licence for this kind of activity, the wastes were deposited in their property until they were re-exported on the basis of the agreement between Portugal and Switzerland.

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AGENDA

WORKSHOP ON ENFORCEMENT OF AND COMPLIANCE WITH MULTILATERAL ENVIRONMENTAL AGREEMENTS (MEAs) GENEVA, 12-14 JULY 1999

AGENDA

SESSION 1: 12 JULY 1999 MORNING

1. (a) Opening remarks

   (i) By Mr. Shafqat Kakakhel, UNEP Deputy Executive Director on behalf of Mr. Klaus Töpfer, UNEP Executive Director.
   (ii) By Mr. James Lowen on behalf of Hon. Mr. Michael Meacher, United Kingdom Minister for the Environment and Ms. Clare Short, United Kingdom Secretary of State for International Development.

   (b) Remarks on the objectives of the workshop

   - By Mr. Donald Kaniaru, Acting Director, UNEP Division of Environmental Policy Implementation.

SESSION 2:

2. (a) Evolution of international environ mental crime and violations of the provisions of MEAs.

   - By Mr. Duncan Brack, UNEP Consultant

   (b) Discussion

3. (a) Role, nature, impact and effectiveness of inter-agency cooperation at national and international level.

   Remarks by:

   (i) By Ms. Jytte Ekdahl, Interpol
   (ii) By Mr. Ercan Saka, World Customs Organization (WCO)
   (iii) By Ms. Iwona Rummel-Bulska, Basel Convention Secretariat
   (iv) By Mr. Gilbert Bankobeza, Ozone Secretariat
   (v) By Mr. John Sellar, CITES Secretariat

   (b) Discussion

SESSION 3: 12 JULY 1999 AFTERNOON & 13 JULY 1999 MORNING & AFTERNOON

4. (a) To examine developments, impacts, and effectiveness of measures to control illegal trade including nature and magnitude of cooperation with relevant bodies under CITES, Basel and Ozone related conventions, including inter-agency cooperation.

   - By Mr. Duncan Brack, UNEP Consultant

   (b) Discussion

WORKING GROUP I - CITES

5. (a) Illegal trade in endangered species of wild fauna and flora and their products under Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), including inter-agency cooperation.

   Facilitator: Mr. John Sellar, CITES Secretariat
   Remarks by: Participating Experts

   (b) Discussion

WORKING GROUP II - MONTREAL PROTOCOL

6. (a) Illegal production of and trade in Ozone depleting substances under the Montreal Protocol on substances that Deplete the Ozone Layer, including inter-agency cooperation.

   Facilitator: Mr. Gilbert Bankobeza, Ozone Secretariat
   Remarks by: Participating Experts

   (b) Discussion

WORKING GROUP III - BASEL CONVENTION

7. (a) Illegal trade, transport and dumping of hazardous wastes under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, including inter-agency cooperation.

   Facilitator: Ms. Iwona Rummel-Bulska, Basel Convention Secretariat
   Remarks by: Participating Experts

   (b) Discussion

SESSION 4: 14 JULY 1999 MORNING

8. (a) Presentation of the Reports from the three MEAs Working Groups

   (b) Discussion

GENERAL DISCUSSION AND RECOMMENDATIONS

9. (a) Common trends, experiences, lessons learned and recommendations for better enforcement of and compliance with the three MEAs.

   Facilitator: Mr. Duncan Brack, UNEP Consultant
   Remarks by:

   (i) Mr. John Sellar, CITES Secretariat
   (ii) Mr. Gilbert Bankobeza, Ozone Secretariat
   (iii) Ms. Iwona Rummel-Bulska, Basel Convention Secretariat
   (iv) Ms. Jytte Ekdahl, Interpol
   (v) Mr. Ercan Saka, WCO

   (b) Discussion

SESSION 5: 14 JULY 1999 AFTERNOON

SUMMARY AND CLOSURE

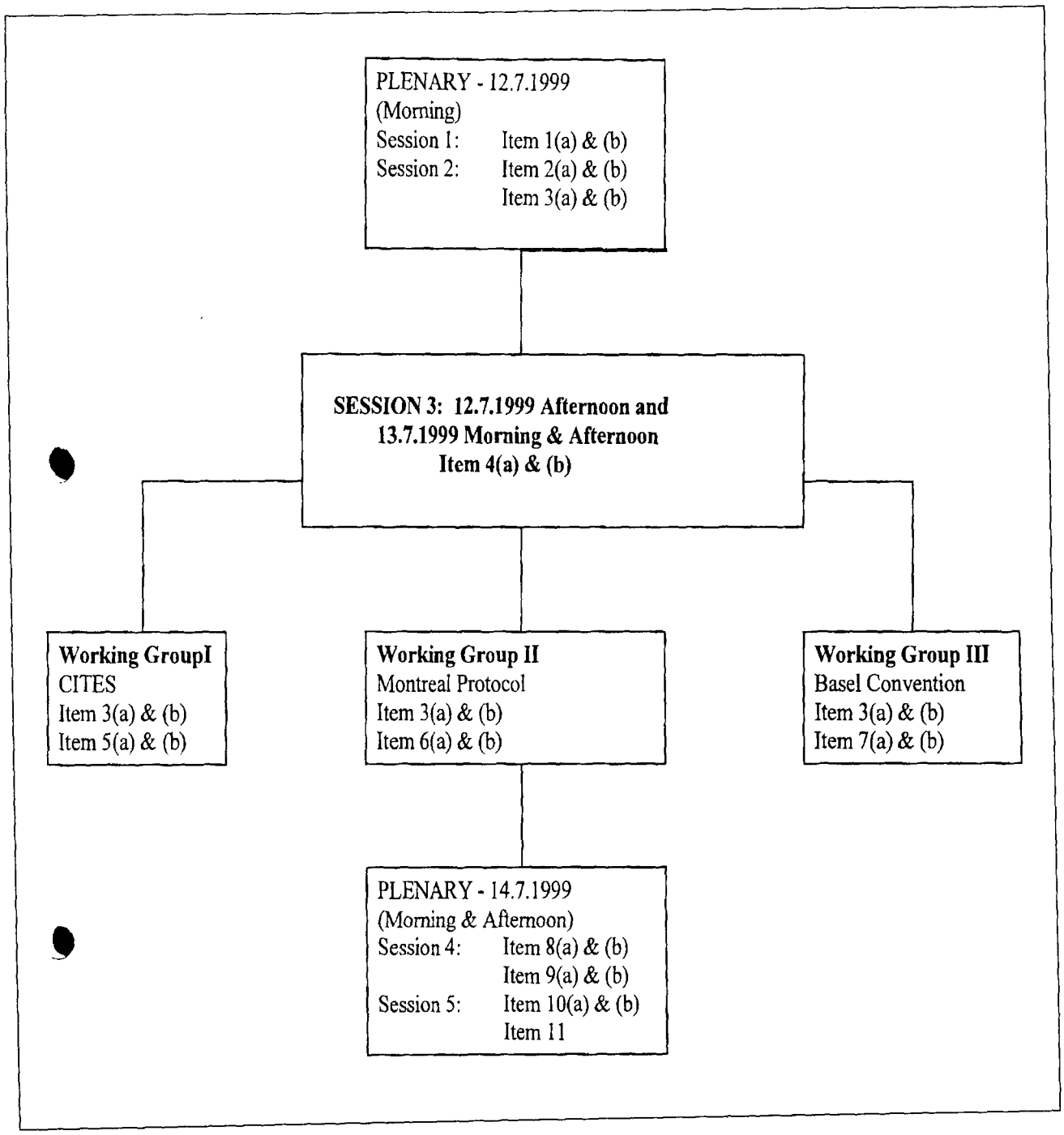
10. (a) Summary of the issues, recommendations and strategies for the future

    Facilitator: Mr. Duncan Brack, UNEP Consultant

    (b) Discussion

11. Closing remarks by Mr. Donald Kaniaru, Acting Director, UNEP Division of Environmental Policy Implementation.

ORGANIZATION OF WORK, 12-14 JULY 1999



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