

TRACK C: TRANSBOUNDARY COMPLIANCE AND ENFORCEMENT

This Track examined a number of environmental issues that require countries to increase their transboundary compliance and enforcement cooperation efforts. The facilitated workshops examined a project to improve cooperation between seaports on monitoring hazardous waste shipments; ways governments and organizations can improve compliance monitoring and enforcement responses against the transboundary movement of environmentally detrimental goods; methods of detecting and responding to vessel pollution; and the importance of developing meaningful ways for countries to cooperate on transboundary water issues.

1C SEAPORT SECURITY NETWORK

Facilitators: Robert Heiss, Environmental Protection Agency, United States

Nancy Isarin, Ambiendura, Portugal

Henk Ruessink, Ministry of Housing, Spatial Planning and the Environment, The Netherlands

Rapporteur: Mark Measer, Environmental Protection Agency, United States

BACKGROUND

The Seaport Security Network was established as an outcome to the 7th International Conference for Environmental Compliance and Enforcement. This network is currently in its planning stages. It will seek to facilitate capacity building and compliance cooperation on issues associated with the trade in environmentally sensitive commodities at seaports. It will focus initially on the transboundary movement of wastes, but could eventually be expanded to other topics such as chemicals and smuggled wildlife.

THE WORKSHOP DISCUSSION

The facilitators outlined the goals of the project as preventing illegal movements of waste by promoting compliance, fostering national and international collaboration, and offering support to field inspectors.

The facilitators noted that three years ago, a project led by the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL) identified a 48% non-compliant rate for exports as part of a targeted inspection effort at specific ports. The facilitators and some participants expressed a concern that similar compliance problems may exist worldwide. Some participants were

concerned that only anecdotal evidence existed on the severity of the global compliance problems, while others expressed concerns that developing countries lack the resources and capacity to identify and deal with non-compliant imports, and that developed countries do not properly track and monitor exports. A lively discussion ensued, during which participants agreed that the issue of exporting and importing non-compliant goods has multiple causes and will require multiple solutions. Further, many participants noted that many of the solutions to these problems lay outside the realm of law enforcement.

THE OUTCOMES

The group proposed a “kick-off” meeting of the INECE Seaport Project to identify strategies and deliverables (e.g. manuals, toolkits) which could improve compliance monitoring and enforcement responses. Participants recommended that the meeting include representatives from exporting and importing countries, that INECE invite the participation of customs agents, and that members of the Seaport Project seek to identify the minimal capacity necessary that developing countries would require to become effective partners.

The group proposed that the facilitators work with interested conference attendees to develop a rough draft of next steps by the conclusion of the 8th International Conference. These next steps may include developing a strategic plan that defines the magnitude of the problem, summarizes existing efforts, and proposes a strategic approach involving not only port inspections, but other techniques and initiatives that could address problems associated with illegal hazardous waste shipments. The next steps document will be posted online at <http://inece.org/seaport>.

2C TRANSBOUNDARY WATER COOPERATION

Facilitators: Maria Comino, Department of Water and Energy, Australia

Alejandro Iza, IUCN Commission of Environmental Law

Laura Yoshii, Environmental Protection Agency, United States

Rapporteur: Meredith Reeves, Earthpace, LLC

BACKGROUND

Water governance can occur at global, basin, national, and local levels. The 1997 Convention on the Protection and Use of Transboundary Watercourses and International Lakes is an example of an international agreement that is intended to strengthen national measures for the protection and management of transboundary surface and ground waters. The World Water Council is an example of an international institution whose purpose is to promote awareness,

build political commitment, trigger action on critical water issues at all levels, and to facilitate sustainable, efficient management and use of water. Examples of regional political efforts to support transboundary water cooperation include: the European Union's 2000 Water Framework Directive, Southern African Development Community (Shared Waters Protocol), United Nations Economic Commission for Europe's 1992 Helsinki Convention. Examples of basin-wide approaches are found in the Mekong, Indus, Senegal, Plata, Amazon, Danube, and Rhine. By far the most common governance approaches are found at the national and local levels.

THE WORKSHOP DISCUSSION

The workshop discussion focused on a number of on-going global activities. The discussions were focused on the level of formalization in the international mechanisms for transboundary water cooperation.

Some critical questions when evaluating international efforts are:

- Is there a formalized legal arrangement in place (convention, treaty, protocol)?
- How is this legal arrangement being implemented?
- What are the constraints for the deficient implementation of these arrangements?
- What can be done to enhance the implementation in terms of public participation, access to decision-making, information, and other mechanisms?
- What is the role of States in facilitating the implementation of the legal arrangements at the basin level? Individually, as well as collectively vis-a-vis other basin States?

What indicators can be used to evaluate the effectiveness of national and sub-national requirements to implement transboundary water agreements?

During the discussion, Meredith Reeves shared the initial outcomes of a pilot water quality legislation survey, developed jointly by INECE, Columbia University's Center for Earth Science Information Network, and the Yale Center for Environmental Law and Policy. Using indicators, the survey asked environmental law professionals in 53 countries to describe the laws, resources, and activities used to assure compliance with water quality and water management requirements.

THE OUTCOMES

One of the outcomes suggested by the workshop participants was the establishment of a collaborative process with the International Union for

Conservation of Nature Environmental Law Programme (IUCN Commission on Environmental Law and IUCN Environmental Law Centre). This partnership could be formalized in a Memorandum of Understanding between INECE and the IUCN Environmental Law Programme.

This initial phase of this collaboration could lead to the establishment of a discussion platform tentatively entitled "Making Water Law Work," which will look at water law and governance implementation at the transboundary level.

3C TRANSBOUNDARY MOVEMENTS OF ENVIRONMENTALLY DETRIMENTAL GOODS

Facilitators: Arwyn Jones, Environment Agency of England and Wales

Walker Smith, Environmental Protection Agency, United States

Cora Steffens, Province North-Brabant, The Netherlands

Rapporteur: Terry Shears, Environment Agency of England and Wales

BACKGROUND

Most countries have government agencies responsible for ensuring that imported products comply with domestic environmental laws. These laws can regulate products from pesticides to motor engines to refrigerants. Critical to any successful monitoring program is understanding and targeting actions based on risk, and developing cooperative mechanisms between public health, environmental, and customs agencies.

THE WORKSHOP DISCUSSION

The group looked at the challenges faced in regulating the international imports and exports of goods. These challenges include:

- The number of stakeholders.
- The volume of exports/imports.
- Difficulty in defining waste versus products.
- Soliciting cooperation between all regulatory authorities.
- Defining the supply chain so that you know where best to intervene.

The group discussed the types of actions currently undertaken to ensure that goods in commerce meet the appropriate environmental standards. These actions

range from traditional enforcement activities to market-based interventions such as processes, standards, and working with suppliers and retailers.

Finally, the group discussed what is needed to undertake other actions, such as how to properly identify risks and underlying problems in order to define the full range of possible activities and interventions.

THE OUTCOMES

Potential future action was discussed. This could include the use of new technology, such as the use of electronic tagging and forensics, to track waste and improving the flow of information by involving other organizations such as IMPEL. There was a question over whether we needed 'real-time' monitoring of movements and a discussion over the possible use of task forces. There should be better alerts between countries and also use of single window technology. There was a need for capacity building, including the level and type. Cultural differences between customs officers and regulators also should be recognized and tackled.

4C ACTIONS AGAINST TRANSBOUNDARY MOVEMENTS OF HAZARDOUS MATERIALS

Facilitators: Gustavo Alanis, Centro Mexicano de Derecho Ambiental, Mexico
Marta Szigeti Bonifert, Regional Environmental Center, Hungary
Mihail Dimovski, Regional Environmental Center for Central and Eastern Europe
Jenny van Houten, Ministry of Housing, Spatial Planning and the Environment, The Netherlands
Peter Murtha, Environmental Protection Agency, United States

Rapporteur: Robert Heiss, Environmental Protection Agency, United States

BACKGROUND

The proper management of hazardous waste is an important human health and environmental issue. Companies that trade waste across borders for disposal and recycling must generally follow reporting, shipping, and record-keeping procedures. Domestic laws and international agreements dictate these procedures. Close compliance and enforcement cooperation between countries is necessary because the incentives to illegally dispose of hazardous waste are often high and because improperly managed hazardous wastes can harm human health and the environment.

THE WORKSHOP DISCUSSION

The facilitators presented the following workshop goals and questions:

- What lessons were learned from the actions taken, including common elements of success, obstacles overcome, and structural limitations that needed to be dealt with?
- What positive steps can be taken to improve the effectiveness of actions in the future?

Key points guiding the discussion were:

- The definition of hazardous material for varies by country.
- There is a need to determine the scope and extent of transboundary movement of hazardous waste to assess the severity of the problem, but this requires adequate data.
- Customs and environmental officials need to agree on the types of information is needed to be shared among international partners for successful prosecution of a case.
- Officials also should assess, to the extent possible, the incentives for exporters to ship illegally rather than to handle the waste domestically.

A number of cases and situations were discussed during this workshop. These included the towing of a vessel contaminated with PCBs and other wastes from France to Turkey for ship scrapping; the illegal dumping of municipal waste from Germany on farms in the Czech Republic and Hungary; the shipment of powdered milk contaminated with radionuclides that moved from the Ukraine to Greece and was denied entry to Macedonia for six months; and the illegal export of hazardous waste from the United States that was claimed to be product to a fictitious purchaser in Nigeria.

THE OUTCOMES

Participants of this workshop recommended that INECE and its partners consider developing one or more of the following products:

1. Universal targeting standards to guide the inspection of containers that may be involved in illegal transboundary shipments.
2. A compendium of relevant penalty policies and examples of fines and penalties collected in various cases, which could be presented in courts to promote the assessment of adequate penalties.

3. A flyer or other promotional material that advocates for naming responsible persons following the successful prosecution of criminal cases involving illegal shipments, and presents other communication strategies that can help limit transboundary movement of hazardous materials.

5C VESSEL POLLUTION

Facilitators: Ross Galbraith, Environment Canada

Stacey Mitchell, United States Department of Justice

Rapporteur: Susan Bromm, Environmental Protection Agency, United States

BACKGROUND

The International Convention for the Prevention of Pollution from Ships (MARPOL) Annex I deals with oil pollution from vessels. Specifically, it mandates that ocean vehicles may not discharge oily water at sea without running it through their pollution prevention equipment and attaining a level of less than 15 parts per million oil. Noncompliance with this requirement appears to be widespread and has resulted in significant, demonstrably adverse environmental impacts. This workshop explored how international cooperation might lead to better detection and enforcement of MARPOL Annex 1 and examined domestic tools and techniques that have been effective in addressing noncompliance.

THE WORKSHOP DISCUSSION

It is estimated that illegal bypass discharges from ocean going vessels result in 90 percent of oil discharges to oceans. A 2002 OECD study estimated that the annual quantity discharged amounts up to eight times the discharge from the Exxon Valdez. Efforts by the US to enforce the requirements reveal that most cases share the common elements of deliberate discharge of tons of oil, intentional bypassing of pollution equipment, and falsification of records/log books.

Stacey Mitchell presented a case study to highlight the importance of international cooperation in the detection and prosecution of violations of MARPOL Annex I. In addition, it was noted that Interpol's Pollution Crimes Working Group has developed an Investigation Manual on Oil Discharges from Vessels. The Manual provides both a basic tool to aid inexperienced inspectors in the inspection and detection process and also offers more sophisticated tools for more experienced inspectors. The manual can be obtained online through a country's Interpol National Central Bureau. Interpol is currently seeking funding for international training to enhance enforcement of MARPOL.

Ross Galbraith discussed Canada's development of a sophisticated satellite radar detection system. Canada built this program on the foundation established by

its ice program. Canada's program, called the Integrated Satellite Tracking of Oil Pollution (ISTOP) is now using a second-generation system – RADARSAT-2 – that is higher tech and provides better resolution imagery. Canadian courts currently require a visual confirmation of the satellite image, but perhaps this won't be necessary as the satellite imagery and chain of custody methodology improve. Canada is now optimistic that with the passage of new domestic legislation, enhanced detection capability using ISTOP and other tools, and an enforcement memorandum of understanding with the Canadian Department of Transportation, combined with Oil Record Book forensics and the Interpol investigation manual, compliance can be greatly improved.

Interpol's analysis showed that worldwide noncompliance was high and that oil pollution was coming from all kinds of vessels. Interpol's strategy is to target fleets with large numbers of vessels. The US is also giving priority to cases that involve multiple violations within a single fleet.

THE OUTCOMES

The workshop resulted in a number of recommendations for INECE:

1. INECE should strengthen its ties with Interpol, who in turn coordinates with the International Maritime Organization.
2. Interpol's Ecomessage – a system for governments to report major environmental crimes -- has been used successfully in many cases, and INECE should continue to promote its use (see <http://inece.org/topics/crimes/>).
3. INECE should look into training inspectors on vessel pollution as part of its train-the-trainers network and should evaluate how best to support Interpol's training efforts.
4. INECE should survey domestic legislation for the implementation of MARPOL Annex I and survey capacity trends for oil pumpout facilities at ports. There is anecdotal information that pumping facilities have closed at some ports. If accurate, this is a troubling trend as it may be indicative of the effects of widespread noncompliance (i.e., pumping stations are not being fully utilized because of illegal at-sea discharges, causing the pumping stations to no longer be financially viable and resulting in their closure.

Excerpt from the Proceedings of the International Network for Environmental Compliance and Enforcement's (INECE) Eighth International Conference, Linking Concepts to Actions: Successful Strategies for Environmental Compliance and Enforcement, held 5-11 April 2008, in Cape Town, South Africa.

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INECE Secretariat
2300 Wisconsin Ave, NW Suite 300B
Washington, DC 20007
inece@inece.org
<http://www.inece.org>