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## REPORT OF THE FOURTH SESSION OF THE INC FOR AN INTERNATIONAL LEGALLY BINDING INSTRUMENT FOR THE APPLICATION OF THE PRIOR INFORMED CONSENT PROCEDURE FOR CERTAIN HAZARDOUS CHEMICALS AND PESTICIDES IN INTERNATIONAL TRADE: 20-24 OCTOBER 1997

The fourth session of the Intergovernmental Negotiating Committee (INC-4) for an International Legally Binding Instrument for the Application of the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade was held from 20-24 October 1997 in Rome. Delegates considered the revised text of draft articles for the instrument, as well as proposals by the US and the European Community, in Plenary, a Technical Working Group and a Legal Drafting Group. Additional negotiating sessions every evening and a number of contact groups were also convened.

Delegates at INC-4 encountered problems similar to those of previous negotiating sessions. Despite some useful contact during the intersessional period, there had not been much change in the positions of the main protagonists since the last meeting. This means that the mandate of the UNEP Governing Council to conclude negotiations by the end of 1997 cannot be fulfilled. An additional negotiating session will be held in early 1998 and the diplomatic conference to adopt the instrument is now scheduled for March or April 1998. The progress on some "secondary" issues in Rome means that the smaller number of difficult issues still to be resolved present a significant, but not insurmountable, challenge.

### A BRIEF HISTORY OF THE PIC NEGOTIATIONS

Growth in internationally traded chemicals during the 1960s and 1970s led to increasing concern over pesticides and industrial chemical use, particularly in developing countries that lacked the expertise or infrastructure to ensure their safe use. This prompted the development of the International Code of Conduct for the Distribution and Use of Pesticides by the FAO and the London Guidelines for the Exchange of Information on Chemicals in International Trade by UNEP. Both the Code of Conduct and the London Guidelines include procedures aimed at making information about hazardous chemicals more readily available, thereby permitting countries to assess the risks associated with their use. In 1989, both instruments were amended to include the Prior Informed Consent (PIC) procedure to help countries make informed decisions on the import of chemicals that have been banned or severely restricted.

The voluntary PIC procedure is designed to:

- help participating countries learn more about the characteristics of potentially hazardous chemicals that may be imported;
- initiate a decision-making process on the future import of these chemicals; and
- facilitate the dissemination of these decisions to other countries.

Managed jointly by the FAO and UNEP, the PIC procedure is a means for formally obtaining and disseminating the decisions of importing countries on whether they wish to receive future shipments of such chemicals. The aim is to promote a shared responsibility between exporting and importing countries in protecting human health and the environment from the harmful effects of certain hazardous chemicals being traded internationally.

When the United Nations Conference on Environment and Development (UNCED) convened in Rio de Janeiro in June 1992, delegates recognized that the use of chemicals is essential to meet social and economic goals, while also acknowledging that a great deal remains to be done to ensure the sound management of chemicals. Chapter 19 of Agenda 21, the programme of action adopted by UNCED, contains an international strategy for action on chemical safety. Paragraph 19.38(b) calls on States to achieve, by the year 2000, the full participation in and implementation of the PIC procedure, including possible mandatory applications of the voluntary procedures contained in the amended London Guidelines and the International Code of Conduct.

In November 1994, the 107th meeting of the FAO Council agreed that the FAO Secretariat should proceed with the preparation of a draft PIC Convention as part of the FAO/UNEP Programme on PIC, in cooperation with other intergovernmental organizations (IGOs) and non-governmental organizations (NGOs). In May 1995, the 18th session of the UNEP Governing Council adopted decision 18/12,

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which authorized the Executive Director to convene, together with the FAO, an intergovernmental negotiating committee with a mandate to prepare an international legally binding instrument for the application of the PIC procedure. A diplomatic conference for the purpose of adopting and signing such an instrument was to be convened in 1997.

**INC-1:** The first session of the INC (INC-1) was held from 11-15 March 1996 in Brussels. More than 194 delegates from 80 governments, the European Commission and a number of specialized agencies, IGOs and NGOs participated. INC-1 agreed on the rules of procedure, elected bureau members and completed a preliminary review of a draft outline for a future instrument. Delegates also established a working group to clarify the groups of chemicals to be included under the instrument.

**INC-2:** The second session of the INC (INC-2), which was held from 16-20 September 1996 in Nairobi, was attended by 220 delegates from 86 governments. INC-2 produced a draft text of the Convention and established a Technical Working Group and a Legal Drafting Group. Delegates agreed that many facets of the instrument required further detailed consideration and noted the need for at least one additional negotiating session before the final session.

**FAO COUNCIL:** The FAO Council, at its 111th meeting held in October 1996, discussed the scope of the mandate for the PIC negotiations. Some members expressed support for a broader framework convention on the management of chemicals, while others suggested that the relevant provisions of the instrument be formulated in a way that could accommodate possible future developments. Some preferred to limit the negotiations to the PIC procedure and establish separate negotiations on persistent organic pollutants (POPs). Lacking consensus, the Council concluded that the present mandate of the INC would continue, and noted that the 19th UNEP Governing Council would consider the issue as well.

**UNEP GOVERNING COUNCIL:** The 19th session of the UNEP Governing Council, held in Nairobi from 27 January - 7 February 1997, adopted decision 19/13, concerning, *inter alia*, the international instrument for the PIC procedure. The Council: confirmed the present mandate of the INC; invited the INC to continue its work, with an aim to conclude negotiations in 1997; recognized that additional elements relating to the PIC procedure are under consideration in the INC; and requested the Executive Director to convene, in 1997, a diplomatic conference for the purpose of adopting and signing an international legally binding instrument.

**INC-3:** The third session of the INC (INC-3) was held from 26-30 May 1997 in Geneva and attended by over 300 delegates from 102 countries. Delegates considered the revised text of draft articles for the instrument, as well as proposals from several delegations. The Technical Working Group and Legal Drafting Group met throughout the week, as did a number of contact groups. Considerable debate centered on the scope of the proposed Convention and many articles remained under discussion.

### REPORT OF INC-4

Chair Maria Celina de Azevedo Rodrigues (Brazil) opened INC-4 on Monday, 20 October 1997, and introduced Howard Hjort, Deputy Director-General of the FAO. Mr. Hjort outlined international efforts to intensify food production, which may require the use of pesticides, but noted that such production should be sustainable and not pose unacceptable risks to human health and the environment. He highlighted the importance of the PIC procedure in this regard, but reminded delegates that the voluntary PIC procedure would need to be combined with the legally binding procedure resulting from these negotiations. He also added that extra budgetary resources would be required if the FAO and UNEP were to assume administrative responsibility for the Convention.

UNEP Executive Director Elizabeth Dowdeswell gave her opening speech on Tuesday, 21 October. She said that this meeting had a vital mandate to adopt swiftly an international legally binding instrument. She reminded delegates of the human dimensions of chemical use and urged them to adopt the precautionary principle. She also recalled that the PIC procedure, an enabling mechanism that balances the risks of chemicals with their benefits, was about sustainability. Finally, she noted that these negotiations must be concluded to allow consideration of other elements on the chemicals agenda such as persistent organic pollutants.

### ORGANIZATIONAL MATTERS

During the opening Plenary, the Chair reminded delegates that the mandate of the Conference was to be achieved "within available financial resources" and "by the end of 1997." She added that another INC would be held at the beginning of 1998, and the Diplomatic Conference would be postponed until March 1998. It was agreed that delegates would continue to meet in a Technical Working Group, chaired by Rainer Arndt (Germany), and a Legal Drafting Group, chaired by Patrick Széll (UK). Work completed by these groups would also be considered in Plenary.

Discussions were based on the revised text of the draft Articles, which were contained in an annex to the report of INC-3 (UNEP/FAO/PIC/INC.3/2). Comments on the draft Articles were submitted by the US (UNEP/FAO/PIC/INC.4/CRP.1), the Eastern European countries (UNEP/FAO/PIC/INC.4/CRP.3) and the European Community (UNEP/FAO/PIC/INC.4/CRP.4). Delegates also had before them:

- a note by the Secretariat on interim and transitional arrangements for the Convention (UNEP/FAO/PIC/INC.4/INF/1);
- a note on the activities of the World Health Organization (UNEP/FAO/PIC/INC.4/INF/2); and
- a note on the activities of the Basel Convention on the Control of Transboundary Hazardous Wastes and their Disposal (UNEP/FAO/PIC/INC.4/INF/3).

The following officers continued to serve as Vice-Chairs at INC-4: Yuri Kundiev (Ukraine); Mohamed El Zarka (Egypt), returning after an absence from INC-3; and William Murray (Canada). Wang Zhijia (China) served as rapporteur.

### NEGOTIATION OF THE DRAFT CONVENTION

Deliberations on the revised text of the draft Articles began on 20 October in the Technical Working Group, the Legal Drafting Group and Plenary. The Technical Working Group frequently convened informal contact groups to discuss difficult issues and report back with revised text for further consideration. Plenary was convened periodically throughout the week to consider the draft Articles emerging from both the Technical Working Group and the Legal Drafting Group. Due to time constraints, not all Articles forwarded to this meeting from INC-3 were considered.

**ARTICLE 1 (Objective):** The revised text of Article 1, which was not discussed at INC-4, states that the objective of this Convention is to promote shared responsibility and cooperative efforts among Parties in the international trade of certain hazardous chemicals in order to protect the environment and human, animal and plant life and health from potential harm. The Convention will also contribute to the environmentally sound use of chemicals by promoting and facilitating information exchange and by providing for national decision-making processes on the future import of these chemicals and the dissemination of these decisions to Parties. In the closing Plenary, the Chair of the Technical Working Group noted that Article 1 would be returned to Plenary at the next session due to some unresolved political issues.

**ARTICLE 2 (Definitions):** On 22 October, the Technical Working Group discussed definitions of chemicals, including those for banned chemicals, severely restricted chemicals and hazardous pesticide



formulations. The Chair explained that previous discussions had expanded the definition of chemicals to include those for consumer use, in addition to pesticidal and industrial uses covered in the London Guidelines. JAPAN objected to the expansion of the scope beyond that of the London Guidelines. The US, supported by CANADA, COLOMBIA and AUSTRALIA, proposed inclusion of consumer use within the category of industrial chemicals. NIGERIA and the EC favored retention of a separate consumer use category, noting concern over chemicals in consumer products in developing countries and the imperative to protect consumers and workers. BRAZIL proposed deleting all three.

On the definition of banned chemicals in 2(b), debate focused on bracketed text including chemicals refused approval for first time use and those voluntarily withdrawn from the market by industry. CANADA suggested deleting the provision for refusal for first time use, as it was redundant. ARGENTINA, supported by the EC, preferred inclusion of the clause, noting that such chemicals could be traded internationally despite national provisions on first time use. AUSTRALIA stated that refusal for first time use might not be a final regulatory action.

In defining severely restricted chemicals in 2(c), JAPAN, supported by the US, NEW ZEALAND, BOTSWANA, SOUTH AFRICA and AUSTRALIA, noted difficulties in assessing a "significant reduction" of risk obtained by regulatory action, and proposed its deletion. The EC favored retaining the text, given the objective of the voluntary system for reducing the number of applications for regulatory action.

On Article 2(c) *bis*, hazardous pesticide formulations, the GAMBIA, supported by COLOMBIA, proposed insertion of "acutely" to be consistent with Article 7 (Acutely Hazardous Pesticide Formulations). ARGENTINA, supported by COLOMBIA, proposed retaining bracketed text referring to hazardous pesticide formulations likely to produce severe "environmental" effects, while deleting reference to "limited" exposure so as to allow for consideration of the long-term chronic effects of such substances.

On 24 October, the Technical Working Group considered a further revision of Article 2 (UNEP/FAO/PIC/INC.4/CRP.22). IRAN and EGYPT supported the inclusion of consumer uses, whereas CANADA preferred this text to remain bracketed. Discussion on Article 2(c) centered around the term use[s]. CANADA, supported by AUSTRALIA and the EC, wanted to retain a restricted definition of use to allow for greater transparency and risk reduction. In the final Plenary, delegates noted that Article 2, as revised by the Technical Working Group, has been forwarded to the Legal Drafting Group.

**ARTICLE 3** (Scope of the Convention): Article 3, detailing what substances the Convention does and does not apply to, was not discussed at INC-4. In the closing Plenary, the Chair of the Technical Working Group noted that Article 3 would be returned to Plenary at the next session due to some unresolved political issues.

**ARTICLE 4** (General Obligations): On 21 October, the Technical Working Group considered Article 4, which deals with the general obligations of Parties. The US, supported by NEW ZEALAND, moved to delete the entire article as it duplicated other articles. The EC, supported by CANADA, noted that it was important to retain Articles 4(5), on avoiding unnecessary obstacles to international trade, and 4(6), allowing Parties to take more stringent action than that called for in the Convention, and suggested that they could be moved to Articles 15 (Implementation of the Convention) and 16 (Technical Assistance). MEXICO felt that all the paragraphs, with the exception of 4(6) should be retained. MOROCCO and IRAN proposed that paragraphs 4(4), requiring exporting Parties to take legislative measures to ensure use of the PIC procedure, and 4(6) become a separate article, as both para-

graphs deal with obligations to protect the environment. The GAMBIA, on behalf of the African Group, stated that they needed more time to study Article 4.

Article 4(5) outlines the obligations in regard to international trade. CANADA, supported by MEXICO, NEW ZEALAND, the REPUBLIC OF KOREA and the EC, noted that this expressed a general obligation relating to the scope of the Convention, whereas Article 9(7) applied only to products on the importing country's PIC list. It was proposed that both provisions be retained. The US noted that this Article was a paraphrase of WTO text and that the "savings clause" in Article 19 *bis* would be a more appropriate substitute. The REPUBLIC OF KOREA, supported by NEW ZEALAND, remarked that this text appears in the text of the Rio Declaration and should not be altered.

On 22 October, the Technical Working Group discussed a revised draft of Article 4(5), which included language on avoiding unnecessary obstacles to international trade. The EC, supported by ETHIOPIA, expressed reservations regarding a proposed direct reference to measures in the Convention needing to be "in accordance with WTO rules," and noted that this language was stronger than that found in the UN Framework Convention on Climate Change. MOROCCO, supported by ARGENTINA, further noted that such a reference could create problems with respect to dispute settlement under the proposed Convention. SYRIA questioned how non-WTO members would then be treated in the legally binding procedure. MEXICO, supported by NEW ZEALAND and CANADA, expressed support for the proposed language noting that a clear reference is better than a partial reference or a paraphrase.

Delegates in the closing Plenary noted that the Technical Working Group had forwarded this Article to Plenary for consideration at the next session.

**ARTICLE 5** (Designated National Authorities): On 22 October, delegates in Plenary considered text on Article 5, regarding designation of national contact points to administer the Convention's functions. Discussion centered around bracketed text on whether there should be one or more designated national authorities (DNAs). The Chair explained that countries may have two or more individuals working on the Convention and suggested, with the support of the US, EC and UKRAINE, reference to "one or more" DNAs. The EC expressed concern that the Article's title stressed "national" authorities, thereby failing to account for regional economic integration organizations party to the Convention, and suggested that this be clarified in Article 2 (Definitions).

**ARTICLE 5 *bis*** (Informing Parties of Regulatory Measures): Article 5 *bis* was deleted as the subject is covered in Article 6.

**ARTICLE 6** (Banned or Severely Restricted Chemicals): Article 6 deals with the process of notification of a control action taken to ban or severely restrict a chemical. On 23 October, delegates in Plenary considered a revised text of Article 6, as submitted by the Legal Drafting Group (UNEP/FAO/PIC/INC.4/CRP.11). Article 6(2) proposes that the Secretariat verify the inclusion of the required information in any notification within six months of its receipt. The US noted that no detailed time period had been included in the previous draft. The Chair responded that the deadline of six months had been submitted by the Secretariat itself.

Articles 6(4) and 6(5) detail the number of notifications required to trigger consideration of a chemical in the PIC procedure. AUSTRALIA proposed that the Secretariat use the experience of notifications in the voluntary procedure to suggest the number of notifications to be required by the Convention. The RUSSIAN FEDERATION, supported by the EC, objected to the inclusion of noti-





fications from regional groupings in the trigger mechanism as being unhelpful. In the final Plenary, delegates noted the work of the Legal Drafting Group on Article 6.

**ARTICLE 7** (Acutely Hazardous Pesticide Formulations): Article 7 provides a process for including hazardous pesticide formulations in the PIC procedure and was considered by the Technical Working Group on 20 October. CANADA stressed that the Article should contain the same notification and information circulation procedures as proposed in Article 6. This suggestion was supported by a number of other delegations, including COLOMBIA, the EC, MEXICO, AUSTRALIA and INDIA.

Regarding the title of the draft Article, the GAMBIA noted that while most African countries initially supported deletion of the term "acutely", it could be retained if clearly defined. JAMAICA supported clarification of "acutely". EGYPT, supported by the EC, BRAZIL, PANAMA, ARGENTINA, the REPUBLIC OF KOREA, INDONESIA and IRAN, proposed deleting the term "acutely" while other delegations, including COLOMBIA, the US, AUSTRALIA, INDIA and CHINA, suggested that it be retained.

Article 7(1) deals with Parties that experience problems with a hazardous pesticide formulation under conditions of use in their territory. COLOMBIA, supported by MEXICO, AUSTRALIA, INDIA, BRAZIL and the US, proposed deleting the bracketed text regarding assistance from relevant international organizations and NGOs for Parties proposing substances to be included in the PIC procedure. ARGENTINA opposed this while other delegations, including PANAMA, INDONESIA and IRAN, suggested deleting only the reference to NGOs. The EC proposed use of a more general wording including all relevant organizations wishing to contribute to the process; the US indicated support for this approach. AUSTRALIA noted that this paragraph was designed to help developing countries and that they should be mentioned explicitly.

On 7(3), inclusion of hazardous pesticide formulations in the PIC procedure, AUSTRALIA asked how many proposals would be necessary to trigger inclusion.

On 21 October, the Technical Working Group returned to Article 7. The EC suggested that one proposal would be sufficient to forward a hazardous pesticide formulation to the subsidiary body of the COP for consideration in the PIC procedure. The US responded that a decision could not be made on the issue until the scope of "[acutely] hazardous pesticide formulations" was clearly defined.

On 24 October, delegates in Plenary considered draft text of Article 7, as revised by the Legal Drafting Group (UNEP/FAO/PIC/INC.4/CRP.6/Rev.1). It was noted that this article would be carried forward to the next session. On information and criteria for inclusion of an [acutely] hazardous pesticide formulation in the PIC procedure (UNEP/FAO/PIC/INC.4/CRP.6/Rev.1/Add.1), the US noted that the article's scope was still under consideration and there could still be changes as to how the criteria would be applied.

**ARTICLE 8** (Decision Guidance Documents and Approval of Chemicals): On 23 October, delegates in Plenary considered draft Article 8, which concerns procedures for approving chemicals in the PIC procedure and the use of decision guidance documents (DGDs). On Article 8(1), the US highlighted the great difference between the procedures in the subsidiary body and the COP. Supported by SENEGAL, the US suggested that in the subsidiary body, Parties should strive for consensus, but otherwise decide by a three-fourths majority. JAMAICA, supported by MEXICO, agreed, but asked that the views of the minority be included in the report to the COP. UKRAINE, supported by NEW ZEALAND and JORDAN, opposed the proposal, claiming that scientific evidence could not be decided by

a vote. CANADA reiterated its demand for adoption by consensus. ZIMBABWE remarked that this issue should not be discussed now, but left to the COP when it adopts its rules of procedure.

On Article 8(2), the debate was also on the voting procedure for inclusion of chemicals by the COP after receipt of the subsidiary body's report. The EC asked that "simultaneously" be substituted for "consequently," so that the DGD and the inclusion of the new chemical could be adopted at the same time. UKRAINE, along with the US, NEW ZEALAND, the GAMBIA, the EC, JORDAN and AUSTRALIA, asked that adoption be by consensus. The US insisted that if the inclusion of new chemicals was not carried out by consensus, the new Annexes would be subject to ratification by the Parties.

**ARTICLE 8 bis** (Chemicals in the Voluntary Procedure): Article 8 bis outlines the relationship between chemicals and DGDs in the voluntary procedure and the Convention. On 24 October, the Plenary considered revised text on this article (UNEP/FAO/PIC/INC.4/CRP.19), which includes bracketed text regarding the dates for which chemicals in the voluntary procedure will be included in the Convention. Two options were the date the Convention is opened for signature or the date of its entry into force. INDONESIA, SUDAN and the EC expressed support for the date when the Convention is opened for signature. The US, supported by COLOMBIA and NIGERIA, suggested that the text remain bracketed because the issue is related to the development of interim and transitional measures. The US further suggested formation of a transitional subsidiary body to review existing chemicals in the voluntary procedure and to formulate DGDs for the binding agreement. For purposes of clarity, GERMANY, supported by SWITZERLAND, proposed that the Secretariat develop a list of chemicals included in the voluntary procedure. The Chair noted that such a list would be strictly for informational purposes and would not be included in the list of chemicals included in the PIC procedure.

**ARTICLE 8 ter** (Removal of Chemicals from the PIC Procedure): On 24 October, delegates in Plenary considered draft text of Article 8 ter on the process for removal of chemicals from the PIC procedure (Annex ZZZ), as revised by the Legal Drafting Group (UNEP/FAO/PIC/INC.4/CRP.18). The article suggests that Parties should strive for consensus on decisions to remove a chemical from the PIC procedure, but failing that, a decision should be taken by either a two-thirds or a three-fourths majority. CANADA noted that this text was somewhat different from the original draft and the Chair noted that there should be some harmonization of procedures for including and removing chemicals from Annex ZZZ. The revised draft was noted by the Plenary.

**ARTICLE 9** (Obligations of Importing Parties): This article includes, *inter alia*, draft obligations that require importing Parties to implement legislative and/or administrative measures, and to transmit decisions on future implementation to the Secretariat. Due to time constraints, Article 9 was not discussed at INC-4 and remains with Plenary for further consideration.

**ARTICLE 10** (Obligations of Exporting Parties): On 20 October, the Technical Working Group discussed Article 10 regarding the specific obligations of exporting Parties under the Convention. Debate started with Article 10(b) on the deadline for an exporting Party to abide by the terms of an importing Party's response, as forwarded by the Secretariat. The EC, supported by the US, recommended a 180-day delay. JAMAICA and the GAMBIA stated that the delay should not exceed 120 days, while COLOMBIA advocated a 90-day limit. Regarding use of date of receipt or dispatch as the starting point, JAMAICA and the GAMBIA supported date of receipt, while



COLOMBIA and the US suggested date of dispatch. The Chair noted that the date of dispatch by the Secretariat would be most consistent, as this would be the same for all Parties.

On Article 10(c), requiring exporters to take measures to ensure compliance with responses, the US, supported by CANADA, asked that the obligations of the exporting Party be limited to the time period mentioned in Article 10(b) and to the national territory of the importing Party.

Debate on Article 10(d), regarding assistance to DNAs in importing countries, was protracted as IRAN and EGYPT requested deletion of assistance "as appropriate" in the chapeau to ensure that such assistance would be obligatory. CANADA, supported by the US, JAPAN and JAMAICA, argued that assistance "as appropriate" ensures that a developed importing country does not ask assistance of a developing exporting country. EGYPT suggested that "upon request" was sufficient in that regard.

BRAZIL, AUSTRALIA and JAPAN requested deletion of Article 10(d)(ii) on strengthening the capacity of DNAs in importing countries. MOROCCO, supported by NIGER, KENYA, EGYPT, BOTSWANA and BURKINA FASO, preferred retaining the paragraph with a reference to Article 16 on technical assistance. The Chair reminded delegates that Article 16 deals with technical assistance, especially for developing countries and those with economies in transition, whereas Article 10 deals more with relations between importing and exporting countries, regardless of their level of development.

NEW ZEALAND, supported by COLOMBIA and the US, expressed concern with Article 10(e), regarding failure of an importing country to respond, as it could exonerate importing countries from their obligation to respond promptly. IRAN and JAMAICA, supported by PANAMA and BRAZIL, stated that deletion of Article 10(e) would create a grave health hazard, and that developing countries may not have the technical capacity to respond promptly in the first place. NEW ZEALAND, supported by JAPAN and the US, recognized the risk highlighted by JAMAICA and suggested that the Secretariat provide assistance to ensure the prompt response of importing Parties.

On 21 October, the Technical Working Group considered revised text on Article 10(e), which specifies possible timelines for importing country responses. AUSTRALIA asked the Secretariat to provide information on the experience of the London Guidelines regarding non-responses by countries. The Secretariat reported that only a few countries can respond within a 90-day period, and only a few more within 120 days, as countries often have no legal basis at the national level to make a decision. NORWAY, SWITZERLAND, and the EC expressed their general support for the proposed text. The US, CANADA, AUSTRALIA, JAPAN, JAMAICA and others favored inclusion of a "sunset clause" to clarify obligations if no response is received. JAMAICA, supported by the GAMBIA, FIJI, the REPUBLIC OF KOREA and MOROCCO, noted that a "sunset clause" should account for differing capacities of countries, and that developing countries that are unable to respond were the primary target for the Convention's provisions. JORDAN noted that a "sunset clause" could provide exporters with legal means to export to countries failing to respond, and supported mechanisms to build legal and technical capacity in such countries. JAPAN stated that importing countries could provide a minimal response, such as continuation of the status quo, and that responding is an issue of responsibility, not technical capacity.

Revised text on Article 10(f) instructs the Secretariat to transmit a written request to an importing country failing to respond to the exporting country's DGD, and, in the event of no response, to assist the importing country in responding. CANADA voiced concern that the type and duration of Secretariat assistance was not specified. SYRIA, supported by MOROCCO, proposed replacing text on Secretariat

assistance to importing countries "where appropriate" with "will do its best" to ensure a high level of assistance. The Chair noted that "where appropriate" reflected concerns over the Secretariat's limited resources.

On 22 October, the Technical Working Group considered revised draft text submitted by a contact group on Articles 10(e) and 10(f). JAMAICA noted agreement in the contact group on the obligation of importing countries to respond to notifications, given sufficient time and assistance. Regarding the specific period of time for the "sunset clause" mentioned in Article 10(f), JAMAICA, supported by JAPAN, NIGERIA, AUSTRALIA, MOROCCO and CANADA, suggested 180 days. The US, supported by the GAMBIA, favored one year, and stressed the need to consider the time frame required by exporting countries to enact appropriate legislation. CANADA noted that market opportunities might disappear after long periods of time. The options of 180 days and one year were bracketed for future review. Article 10 remains to be considered by Plenary.

**ARTICLE 11** (Export Notification): On 20 October, the Technical Working Group considered Article 11, requiring exporting Parties to notify the designated national authority of an importing country when exporting a domestically banned or severely limited chemical. AUSTRALIA noted they had questioned the costs and benefits for an export notification system at INC-3, but added that it would now consider inclusion of such a system. In the discussion over whether exporting countries "shall" or "should" provide export notification for relevant chemicals, JAMAICA, supported by BRAZIL and GUINEA, proposed retaining "shall" to reflect the binding nature of the Convention.

Regarding the frequency of notifications, the GAMBIA, on behalf of the African Group, supported by IRAN, CUBA and ETHIOPIA, proposed that notification be made on a shipment-by-shipment basis. BRAZIL, supported by CUBA, ARGENTINA, URUGUAY and the EC, suggested providing a comprehensive notification for the first shipment and summary notifications for subsequent exports. The EC stressed the need to balance the information needs of importing countries with the administrative burden on exporting countries. JAMAICA, supported by NIGERIA, proposed notification on the first two shipments annually. JAPAN and the REPUBLIC OF KOREA indicated support for notification of the first shipment annually. The REPUBLIC OF KOREA requested that annual notifications contain information on the quantity of chemicals exported over time. NEW ZEALAND and CHILE proposed annual reports covering all shipments for the year. The US and SWITZERLAND supported a single notification, but indicated they could accept reporting the first export annually. The GAMBIA, IRAN, KENYA, the PHILIPPINES, BURKINA FASO, NIGER, THAILAND, PARAGUAY and ARGENTINA proposed that exporting countries be obliged to provide notification of the first export. The EC, supported by the US and CANADA, agreed, provided that the notification period was flexible. BURKINA FASO, COLOMBIA and MOROCCO stressed that notification must occur prior to export to allow for any necessary action by importers and to prevent legal problems for those unable to control such goods after import.

On Article 11(2), information required in the export notification, the EC supported the development of an annex for this information. CANADA said that there should be a clearer articulation of the information to be provided and suggested the use of safety data sheets. CANADA, supported by EGYPT and INDONESIA, noted that the reasons for the ban or severe restriction should also be included. The EC stated that export notification as an exchange of information among authorities is different from the safety data sheets exchanged by importers and exporters.



Article 11(2)*bis*, transmission of information summarizing quantities of exported chemicals, was deleted.

On 11(3), supplementary export notifications, the GAMBIA, on behalf of the African Group, said that the notification should be an "updated" export notification rather than a "supplementary" one. The US, supported by CANADA, said that if annual notifications were agreed upon, then updated export notifications would not be necessary. EGYPT also observed that this paragraph could be deleted if a "shipment-by-shipment" notification procedure was chosen.

The EC proposed deletion of 11(4)*bis*, export notification from a State member of a regional economic integration organization party to the Convention. The US noted that more specific information about the source of a notification could be useful, and AUSTRALIA opposed deletion of the paragraph. COLOMBIA, supported by BRAZIL and CANADA, suggested that this paragraph could give more information to importing countries.

On 22 October, the Technical Working Group considered revised draft text on Article 11(1) that included bracketed language on the number and frequency of required export notifications. The US said that two export notifications annually for each chemical would be a large administrative burden. Considerable debate also centered on the question of whether or not such notification should be given before the first export occurs. Some delegations, such as MOROCCO, JAMAICA and the GAMBIA, strongly supported the idea that notification should always be given before the first export occurs. Others, including MEXICO and the EC, claimed that this would not always be possible. MOROCCO noted that without mandatory notification, there would be uncertainties about liability in the case of an accident.

On 23 October, the Technical Working Group again considered Article 11(1). The AFRICAN GROUP disagreed with the proposal that notification be for the first export on an annual basis and proposed that it be for the first two exports. JAMAICA agreed with the African position, stating that in developing countries the first notification could be lost. The EC and the US reiterated that for management reasons they were not prepared to accept multiple annual export notifications and wanted to see a single notification on an annual basis.

In the closing Plenary, the Chair of the Technical Working Group reported that Article 11 would be forwarded to the Legal Drafting Group for consideration at the next session.

**ARTICLE 12** (Classification, Packaging and Labelling): On 22 October, delegates in Plenary considered Article 12(1), which states that each Party exporting a chemical subject to PIC shall ensure that it is clearly labelled as such. The US noted that most countries already have extensive structures for dealing with customs codes and, supported by CANADA, opposed the use of customs codes on labels. The EC, supported by EGYPT, favored inclusion of customs codes. CHINA noted that users of chemicals may not know what a customs code stands for and, therefore, it is not useful on the label. JAMAICA, supported by the UNITED ARAB EMIRATES and NIGERIA, said that there are countries where customs do not play a role in chemical imports, and therefore a customs code alone is not always useful. The CHEMICAL MANUFACTURERS ASSOCIATION suggested that the customs code be placed on shipping documents rather than the product label.

Article 12(2) states that Parties shall ensure that chemicals exported from their territories are subject to no less stringent requirements than comparable products destined for domestic use. SWITZERLAND suggested that reference could be made to existing harmonized systems for classification, packaging and labelling. The EC, supported by NORWAY, preferred the original language regarding similar treatment for exports and domestic production. CANADA noted potential for confusion if different labelling schemes are used.

On Article 12(3), use of safety data sheets by exporters, ETHIOPIA, SYRIA and INDONESIA suggested that up-to-date safety data sheets be mandatory for exporters.

JAPAN proposed deletion of Article 12(4) on using the language of the importing country on the label and safety data sheets. The GAMBIA, supported by BOTSWANA, proposed retaining the article, because of its experience in receiving shipments of chemicals labelled in languages it could not understand. Delegates agreed to carry forward this discussion to the next session.

**ARTICLE 13** (Information Exchange): On 21 October, delegates in Plenary considered draft Article 13, which outlines: types of information to be exchanged; the need to take into account the protection of proprietary rights; and information not to be regarded as confidential, such as the chemical identity of the substance, information necessary for precautionary measures and the summary results of toxicological and ecotoxicological tests.

On Article 13(1), types of information to be exchanged, CANADA, supported by the US, suggested that this article take into account national legislation on information provision. ZIMBABWE, supported by CHILE, MOROCCO and IRAN, said that the Convention should not be held hostage by concerns over national legislation.

Regarding Article 13(2), protection of proprietary rights, AUSTRALIA, supported by CANADA and EGYPT, expressed concern about the establishment of procedures for the protection of proprietary rights, as it extends the scope of chemicals. The EC preferred to retain this article.

Article 13(3) lists information that is to be regarded as non-confidential. The US suggested that this information should be provided in accordance with national laws. ARGENTINA questioned why references to national legislation should be included in an international convention.

On Article 13(3)(b), names and percentages of substances of toxicological and ecotoxicological significance, CANADA objected to the provision of information about percentages. UKRAINE, supported by EGYPT and URUGUAY, noted that percentage content often determines the danger level of a substance.

On Article 13(3)(d), name of the producer and exporter, the GAMBIA, on behalf of the African Group, suggested that the address of the producer and exporter also be provided.

Regarding information contained in safety data sheets in Article 13(3)(i), AUSTRALIA noted that safety data sheets are already public information and, therefore, do not need to be listed here.

Article 13(3)(k) specifies the name and address of the importer. JAPAN proposed deletion of this information because importers may change to suppliers who do not have national legislation. ARGENTINA and ETHIOPIA disagreed, stating that this information was important to help developing countries control illegal traffic in chemical substances. The EC noted that this information may be included in Annex W on export notification. AUSTRALIA, supported by CHINA and the US, noted that information disclosed among governments is not the same as information made available for public disclosure.

On Article 13(3)(m), expiration dates of chemicals, EGYPT, supported by NIGER and the UNITED ARAB EMIRATES, suggested including dates of production of substances as well as their expiration dates.

On 23 October, delegates in Plenary considered draft text of Article 13, as revised by a contact group (UNEP/FAO/PIC/INC.4/CRP.5/Rev.1). The revised text contains language on information not to be considered confidential such as: information in proposed Annexes X and Z; production and expiration dates of chemicals; and information on precautions to be taken regarding the chemical.





Article 13(2) contains bracketed reference to the protection of existing proprietary rights. The EC supported the inclusion of previous language regarding the need to "establish appropriate internal procedures" for the protection of such rights. PANAMA responded that such language went beyond the mandate of these negotiations. The amended text (UNEP/FAO/PIC/INC.4/CRP.5/Rev.1) was noted in final Plenary.

**ARTICLE 14** (Control of Trade with Non-Parties): On 24 October, delegates in Plenary accepted a provisional proposal to delete this article. ARGENTINA expressed a reservation regarding this proposal.

**ARTICLE 15** (Implementation of the Convention): Article 15 contains draft obligations regarding strengthening of national infrastructures, adoption of national legislation, establishment of national registers and databases, voluntary agreements and initiatives by industry, access to information, good management of pesticides and chemicals, cooperation with other international organizations and additional requirements. On 22 October, delegates in Plenary discussed Article 15. CANADA suggested maintaining a reference to national legislation or administrative actions. ZIMBABWE added that the paragraph should take into account situations where there are no existing infrastructures or institutions by deleting "existing" before national legislation. The GAMBIA suggested that the whole of Article 15 should be brought under Article 4, but the Chair indicated that Article 4 was still under consideration in the Technical Working Group and that some provisions of Article 4 could actually be included in Article 15.

Article 15(3) gave rise to longer debate on whether Parties would "agree" to promote good management practices or "should" promote good management practices for chemicals. INDONESIA, ZIMBABWE, MOROCCO, BENIN and the PHILIPPINES strongly supported the use of "agree," while the US, CANADA and AUSTRALIA suggested this was not necessary. PARAGUAY suggested that "agree" be retained but that "under the terms of the present Convention" be added.

Article 15(5), allowing the imposition of additional requirements consistent with this Convention and international law, was completely bracketed and the US supported an amendment introduced by the EC reproducing an identical provision from the Basel Convention. MOROCCO suggested that a reference to "principles of international law" should be replaced with "rules of international law," and this proposal was accepted. These comments will be reflected in a revised draft article for consideration at the next session.

**ARTICLE 16** (Technical Assistance): On 22 October, the Plenary considered Article 16 which notes, *inter alia*, that Parties shall cooperate in promoting technical assistance to develop capacity to implement the Convention, and that Parties with more advanced chemical management programmes, whether developed or developing countries, should provide such technical assistance. CHINA noted that "Parties with more advanced chemical management programmes" had not been explicitly defined. EGYPT proposed that assistance be provided to manage chemicals "throughout their lifecycle." Delegates provisionally endorsed this article in closing Plenary.

**ARTICLE 17** (Compliance): On 24 October, delegates in Plenary noted that this article, not discussed at INC-4, would require further consideration.

**ARTICLE 18** (Liability and Compensation): This article was not discussed in Rome. Delegates in Plenary noted on 24 October that this article, requiring further work, would be considered at the next session.

**ARTICLE 19** (Financial Resources and Mechanisms): While not discussed at INC-4, delegates in the closing Plenary noted that issues regarding financial resources were complex and would require serious consideration at the next session.

**ARTICLE 19 bis** (Relationship with Other Agreements): Article 19 *bis*, which is bracketed in its entirety, states that the provisions of this Convention shall not affect the rights and obligations of any Party deriving from any [existing] international agreement, [except where the exercise of those rights of performance of those obligations would cause serious damage or threat to human health or the environment]. This article was not discussed at this session and remains with the Plenary for further consideration.

**ARTICLE 20** (Conference of the Parties): On 23 October, the Plenary discussed Article 20, which establishes the COP and addresses issues involving: administration of meetings; voting; implementation of the Convention; and admission/participation of observers.

On Article 20(2), the timing of the first COP, AUSTRALIA proposed that it be held no later than one year after entry into force of the Convention, as this would correspond to other environmental agreements. The Plenary approved this proposal.

On Article 20(3), extraordinary meetings of the COP, AUSTRALIA proposed that the paragraph be bracketed until voting criteria for regional economic integration organizations are established. The Plenary approved this proposal.

Article 20(4) notes that the COP shall by consensus agree upon and adopt rules of procedure and financial rules. ZIMBABWE stated that the COP should address or approve the rules of procedure at its first meeting and, supported by SENEGAL, also stated that a majority vote would be preferable to a vote by consensus, should consensus not be reached. MEXICO disagreed with this proposal, stating that matters of procedure were far too important to be subjected to a majority vote. COLOMBIA also added that the rules of procedure should only be decided by the COP.

On Article 20(6), representation and participation of observers, SYRIA, supported by CHINA and INDONESIA, supported bracketed text that non-Parties be granted observer status at the COPs only if no Party objects. MEXICO, supported by AUSTRALIA, the GAMBIA, SOUTH AFRICA, the US, CANADA and the EC, expressed concern about this proposal and the bracketed text was deleted. SYRIA, INDONESIA and CHINA expressed reservations about this deletion.

**ARTICLE 20 bis** (Secretariat): Article 20 *bis*, outlining the functions of the Secretariat, was discussed by delegates in Plenary on 23 October. On Article 20 *bis*(2)(b), assistance to the Parties, SENEGAL, supported by the GAMBIA and CHAD, suggested that reference should also be made to technical assistance.

On Article 20 *bis*(4), entrusting the functions of the Secretariat to other competent international organizations should UNEP and/or FAO become unable to perform these functions satisfactorily, SENEGAL, supported by CHAD, GUINEA, PANAMA, PARAGUAY and CHILE, stated that there should not be any language in the Convention that cast doubt on UNEP's or the FAO's ability to complete their functions. MEXICO, supported by MOROCCO, SYRIA, the US and IRAN, preferred to keep this language. The US then proposed to amend the bracketed text so that reference is made to the ability to perform functions "as intended" rather than "satisfactorily".

**ARTICLE 21** (Settlement of Disputes): Article 21, not discussed at INC-4, contains two proposals regarding dispute settlement: one containing an option what would, *inter alia*, allow Parties to decide whether they recognize, as a means of dispute settlement, the International Court of Justice or arbitration procedures that will be developed under the Convention; and a second proposal, made by CANADA at the last session, would oblige each Party to consent to binding arbitration when requested to do so by a claimant Party. This article remains with Plenary for further discussion.



**ARTICLE 21 bis** (Amendments to the Convention): Article 21 *bis* states, *inter alia*, that Parties shall make every effort to reach agreement on any proposed amendment to the Convention by consensus. If all efforts at consensus have been exhausted and no agreement is reached, the amendment shall be adopted by a [two-thirds] or [three-fourths] majority. On 24 October, the Chair proposed to Plenary that a three-fourths majority be required; this was accepted.

**ARTICLE 22** (Adoption and Amendment of Annexes): Article 22, not discussed at INC-4, will require further discussion by Plenary.

**ARTICLE 23** (Protocols): This article was not discussed at INC-4, but will be considered in Plenary at INC-5.

**ARTICLE 24** (Right to Vote): Article 24 was not discussed at this session and will be considered by the Plenary at INC-5.

**ARTICLE 25** (Signature): Article 25 leaves final dates on opening for signature without specified dates, and will be taken up by the Plenary at the next session.

**ARTICLE 26** (Ratification, Acceptance, Approval or Accession): On 24 October, Plenary considered Article 26. The US noted the need to clarify the "competence" of regional economic integration organizations with respect to the Convention. Delegates noted this and agreed to carry forward discussions to INC-5.

**ARTICLE 27** (Entry into Force): The Plenary discussed the number of instruments of ratification, acceptance, approval, or accession necessary for the Convention to enter into force. SYRIA, supported by CHINA, SWITZERLAND and INDONESIA, suggested 50 instruments to correspond to the Convention to Combat Desertification. INDIA, supported by NIGERIA and EGYPT, suggested that the number of instruments should be 50 percent of the number of signatories. MOROCCO, supported by the GAMBIA, suggested 75 instruments, reflecting roughly 50 percent of the countries participating in the voluntary PIC procedure. The Chair noted that other major environmental agreements use specific figures, and that percentages are unprecedented in international fora. SWITZERLAND noted that the number of necessary instruments would influence the amount of time necessary for the Convention to enter into force, which would affect interim arrangements between the voluntary and legally binding processes. Delegates agreed to bracket "50" instruments and retain a footnote on factors for future consideration of this figure.

**ARTICLE 28** (Reservations): Article 28 states that no reservations shall be made to the Convention. The US reserved its position on this issue and proposed alternative wording that "no reservations may be made to Articles 2, 3, 4, 5, 6, 7, 8, 9, 10, 15 and 16."

**ARTICLE 29** (Withdrawal): This article was noted by the Plenary, but was not discussed.

**ARTICLE 30** (Interim Arrangements): On October 24, delegates in Plenary considered a note by the Chair on interim and provisional arrangements (UNEP/FAO/PIC/INC.4/CRP.24) that requests consideration from UNEP and the FAO regarding their involvement in an Interim Secretariat. This text was noted in final Plenary.

**ARTICLE 31** (Depositary): Article 31 was not discussed at this session and will be considered at INC-5.

**ARTICLE 32** (Authentic Texts): Article 32 was not discussed at this session and will be considered at INC-5.

**ANNEX W** (Information to be included in an Export Notification): The Technical Working Group discussed draft Annex W, information to be included in an export notification, on 21 October. CANADA explained that the contact group had reviewed and modified the Annex, as contained in the EC paper on export notification. INDONESIA expressed some concern over the confidential business information reservations in paragraphs 3, 5 and 9. The US explained that this notion is difficult to define on a categorical basis and that only information of a proprietary and commercial nature is afforded confi-

dential treatment, not information related to health and safety. ETHIOPIA remarked that importing countries already require this information for non-PIC chemicals. JAMAICA highlighted that paragraph 5 would only apply to inert substances, whereas hazardous chemicals are likely to be active.

CANADA explained that the reference to safety data sheets in item 8 remains bracketed because the negotiators were not sure that this would be the only instrument of notification. NIGERIA remarked that safety data sheets were supposed to accompany exports anyway, but CANADA responded that this was a completely new idea that still required consideration.

On item 9, the Chair, supported by the EC, suggested that the name and address of the importer should be included, as provided in Article 13, so that the exporting country can approach the importer. EGYPT, supported by NIGERIA said that information should also be included on the date of production/expiry and the expected date of the chemical's arrival. JAPAN remarked that reference to the name and address of the importer in Article 13(k) should be deleted, and the Chair agreed that this information should be made available between DNAs and not necessarily to the public. The US reiterated that this could pose problems with confidentiality. Delegates in final Plenary noted that Annex W would now be forwarded to the Legal Drafting Group.

**ANNEX X** (Information Requirements for Notifications Made Pursuant to Article 6): On 22 October, the Plenary discussed draft text on Annex X on information requirements for notifications regarding banned or severely restricted chemicals (UNEP/FAO/PIC/INC.4/CRP.8). The draft notes two categories of information under Section I for inclusion in notifications: identification and uses; and final regulatory action. MEXICO and RUSSIA noted a lack of clarity in the type of classification that could encompass national, UN and other international classification schemes. Some delegations wanted to avoid overly prescriptive language, whereas others wanted more specificity regarding the types of classification schemes to be used. Regarding the use of chemical nomenclatures, CANADA expressed concern over wording including Chemicals Abstract Service (CAS) numbers and International Union of Pure and Applied Chemistry (IUPAC) labeling, as all chemicals are not classified in the latter nomenclature. The Plenary provisionally approved a modification to list chemicals in an "internationally recognized nomenclature."

Regarding provision of information on final regulatory action, MEXICO, supported by EGYPT and JAMAICA, proposed moving bracketed text on "physico-chemical, toxicological, and ecotoxicological properties" into Section I on "Identification and Uses," given their importance and more descriptive nature.

Text on I(2)(a)(iv), regarding final regulatory action based on risk/hazard evaluations, remained bracketed, awaiting further discussion of proposed text by the US and the EC.

**ANNEX Y** (Criteria for the Inclusion of Banned or Severely Restricted Chemicals in the Prior Informed Consent Procedure): On 23 October, the Plenary began its review of Annex Y, which deals with criteria for the inclusion of chemicals in the PIC procedure, as revised by the Legal Drafting Group. On paragraph (b), the US remarked that the remaining brackets over evaluation of risks/hazard were tied to the finalization of item 2(iv) in Annex X, and the issue was not resolved. NIGERIA remarked that the expertise called for in (b) might not be available to developing countries. The GAMBIA added that reference should be made to "shared but differentiated responsibility of developing and developed countries."

PESTICIDES TRUST asked that another annex be added that would refer to pesticides not yet subject to international trade but might be in the future. The Chair remarked that this request would be examined, but that the NGO had failed to gather support among the national delegations and doubted whether this could be addressed now.





**ANNEX Z:** On 21 October, the Technical Working Group began its review of Annex Z, which deals with the inclusion of hazardous pesticide formulations in the PIC procedure. The Annex is divided into three parts: required documentation to include [acutely] hazardous pesticides in the PIC procedure; information to be gathered by the Secretariat; and criteria for use by the subsidiary body in making a recommendation to the COP on whether an [acutely] hazardous pesticide formulation should be included in the PIC procedure.

JAMAICA indicated that the reference to a single incident of pesticide use was not clear enough, and suggested that the text refer to "each incident." SWEDEN asked that the reference to the "credibility" of the information be deleted, and IRAN indicated that the definition of "evidence" was not clear enough. JAMAICA then asked that a further reference to uses that are "common practice in the country of origin" be included in order to avoid misinterpretation. BARBADOS also highlighted the problems some tropical countries have in the application of label instructions, which should not be construed as misuse. The Chair remarked that the proposal by JAMAICA would address this problem.

**ANNEX ZZZ:** On 24 October, delegates in Plenary were also presented with a draft outline of Annex ZZZ (Chemicals Subject to the Prior Informed Consent Procedure) submitted by the Legal Drafting Group (UNEP/FAO/PIC/INC.4/CRP.10). This was noted in closing Plenary and will be forwarded to INC-5 for further consideration.

#### **CLOSING PLENARY**

On the afternoon of 24 October, the Chair convened the final Plenary of INC-4 and invited comments on the draft final report, as contained in documents UNEP/FAO/PIC/INC.4/L.1, Add.1 and Add.2.

CANADA, supported by the GAMBIA, asked if the Secretariat could post the new version of the negotiating text on the Internet within two weeks. He also suggested that the Chair, the Secretariat and the Chairs of the working groups, reorganize the text and draft a Chair's paper, to be distributed in the intersessional period. RUSSIA highlighted the need to harmonize language in the different translations, particularly through the use of the available glossaries.

The Chair responded that she would reorganize the text, review the French and Spanish translations and attempt to remove some of the minor non-controversial brackets to allow the negotiators to concentrate on the most relevant issues.

The Chair of the Technical Working Group reported that the Group had finished its work on Articles 4, 7 with Annex, 10, 11, Annex W and part of Article 2. These articles have been forwarded to the Legal Drafting Group. Articles 1 and 3 are being sent back to the Plenary with no new brackets because the issues that need to be resolved are political ones. He noted that the delegates almost reached a compromise on Article 11 and asked them to reconsider their positions. He then announced that the Technical Working Group had completed its work for the INC and would not be reconvening.

On behalf of the Chair of the Legal Drafting Group, Liesbeth Lijnzaad (Netherlands) reported that the Group was able to present Articles 6, 7, 8, 8*bis*, 9*ter* and Annexes W, X, Z and ZZZ to Plenary. It also concluded its work on Articles 10 and 11 and tried to ensure that the obligations of both importing and exporting countries would be coherent. The Group revised the text for Article 22(4) *bis*, as contained in document UNEP/FAO/PIC/INC.4/CRP.25, and reviewed Article 8.3*ter* for imperfections in the listing system in Annex ZZZ. The Legal Drafting Group tried to ensure that wording in the final Convention will be consistent, understandable and non-ambiguous.

The EC announced that no date had been set for the convening of INC-5 in Brussels, but that 12-16 January 1998 and 16-20 February 1998 were being considered. The GAMBIA, on behalf of the African

Group, took the floor to thank the organizers, sponsors and host country, and remarked that the vulnerability of African countries should not be taken advantage of, but rather that those with the technology and the know-how should "spread the Gospel."

The US said that the final agreement would need to reflect the position of all delegations and that there are no differences between importers and exporters, as all States are both.

The Chair thanked all those who had been involved in the process and remarked that UN negotiations had a tradition of finishing their work in five INCs, and she asked the delegates not to break precedent.

Delegates then adopted the Draft Report of INC-4. The revised draft articles, as amended at this meeting, will be consolidated into a draft text and annexed to the Report for consideration at INC-5. The meeting was adjourned at 6:00 pm on Friday, 24 October 1997.

#### **A BRIEF ANALYSIS OF INC-4**

As was perhaps to be expected, delegates at INC-4 encountered problems similar to those encountered at previous negotiating sessions. According to at least one participant, despite useful contact during the intersessional period between some of the major players, there had not been much change in the positions of the main protagonists since INC-3 last May. This means that the mandate of the UNEP Governing Council to conclude negotiations by the end of 1997 will not be met. With the addition of a negotiating session in early 1998 and the diplomatic conference now scheduled for March or April, negotiators appear to have adopted a two-track approach: attempting to remove brackets from the least contentious provisions, while reserving their final positions on the most difficult issues. The result of this dual approach is that the degree of progress remains unclear. However, without agreement on fundamental issues, such as the requirements for export notification, financial resources and mechanisms, and the definition of "acutely hazardous pesticide formulations," achievement of a balanced, implementable and effective Convention is not yet assured. As one observer noted, leaving so many substantial issues until the "endgame" runs the risk that the clock will run out before final agreement is reached.

**ROUND AND ROUND:** With time constraints and the slow pace of negotiations looming ever larger in the efforts to produce a Convention early next year, several disagreements from previous sessions resurfaced in Rome. Most prominent was the question of the scope of the Convention and the debate on whether the new PIC procedure should apply only to "acutely" hazardous chemicals and pesticides. In that regard, the debate appeared at times to pitch the interests of the developed countries against those of the developing States, more so than in earlier meetings, thereby running the risk of becoming even more divisive. At least one delegate suggested that the entire purpose of the negotiations -- to make the notification and information requirements of the PIC procedure legally binding at the international level -- was often lost in debates over the concerns of exporting countries to avoid administrative obligations. The proposed rules of procedure were also problematic as some States do not want to be bound by an instrument where new chemicals may be added to the PIC procedure without their consent. This is in part an issue of national sovereignty, which some countries seem reluctant to relinquish.

Second, the "inexperience effect" also slowed progress once again. In an attempt to overcome the problem of delegates new to the PIC negotiations, the Secretariat held a briefing session where they presented a flow-chart outlining all the obligations and procedures of the proposed Convention. While clearly a helpful exercise, it perhaps could have been carried out earlier, as some of the delegates were not necessarily well-versed in all the subtleties of hazardous chemical



transport and management and did not always understand all the technicalities that can constrain otherwise well-intentioned political undertakings.

Third, the question of the relationship between WTO obligations and the Convention became even more complicated at this session. In addition to Article 19*bis*, the "GATT-saving clause," additional references were made to placing similar conditions on imported and domestically produced chemicals (Article 9(7)) and proposed wording to ensure that the Convention's provisions are in "accordance with WTO obligations" (Article 4(5)). Many delegates expressed surprise and concern that the wording could allow international trade rules to override the provisions of the Convention, while others simply suggested that some delegations had not been properly briefed on the trade implications of a legally binding PIC procedure. Either way, and with a certain confusion on the relationship between the proposed Convention and other international legal obligations, such an important matter deserves serious consideration during the intersessional period.

**NEW AND ADDITIONAL:** In addition to these continuing challenges, several other difficult issues were prominent at INC-4. For example, some participants appeared less than sympathetic to those delegations that anticipated difficulties with amending national legislation to accommodate the requirements of the Convention. Symptomatic of this debate is the question of confidential business information (CBI). Some delegations argued that, due to their national laws, they cannot reveal information to importers that would be considered privileged commercial information. While this may be construed as a valid point, importers also point out that if some chemicals are classified as hazardous in the country of origin, it is the exporter's duty to provide the importer with as much information as may be necessary to avoid health and environmental hazards. Moreover, it was noted that the meeting's purpose was to achieve an internationally agreed instrument, not one subject to exemptions by individual countries. A failure in the next, and final, stage of these negotiations would be a clear indication that despite pressure from consumers, importing developing countries and growing environmental threats, some delegations might still be content with practices that ultimately remain within the realm of national sovereignty.

Discussions in Rome were also marked by a clear sense of caution. One delegate noted that "nobody wants to give away the store." Of course, such caution runs the risk of crashing headlong into the time constraint of one remaining negotiating session. Often such reticence is moved forward by the presence of vocal environmental NGOs (ENGOs). However, such presence is minimal at the PIC negotiations, and, as admitted by one ENGO observer, is actually decreasing. In addition, the issue of financial resources and mechanisms, only introduced at INC-3, was not formally discussed at this meeting. Likewise, a growing number of representatives have voiced their concerns on the lack of sufficient mechanisms to assist developing countries in meeting their obligations under the new Convention. These concerns may not have been adequately addressed and could well resurface shortly. Failure to address such traditionally contentious topics will undoubtedly place further strain on the already crowded agenda for INC-5.

**TO BRUSSELS...AND BEYOND:** The present difficulties faced by the negotiators are, of course, common in international environmental negotiations: Parties may face a common threat, but concepts of responsibility and equity remain fuzzy. In this case, as in others, the new obligations imposed on both importers and exporters will represent gains for one set of Parties at the expense of the other. Therein lies the difficulty of codifying accepted, but not legally binding, practices. One should not forget, however, that the negotiators are able to draw from two very solid texts -- the FAO Code of Conduct and the London Guidelines -- and benefit from the technical expertise of the FAO and

UNEP. Such expertise on the part of the FAO has proved to be invaluable in international fisheries negotiations and may well be crucial to the successful completion of these negotiations.

Despite remaining problems, delegates at the end of this session could perhaps see the proverbial light at the end of the tunnel. What is clearer now are the small number of difficult issues on which a lot of work is still needed. Delegates can return to their capitals and make a case to their respective governments for flexibility and the need to give in on some issues in order to gain overall through the adoption of a strong, legally binding instrument. Such a precedent would bode well for negotiations on other chemical-related issues, particularly those regarding persistent organic pollutants, which will likely provoke greater interest on the part of NGOs and governments alike.

## THINGS TO LOOK FOR

**PRIOR INFORMED CONSENT:** The fifth session of the INC for the preparation of an international legally binding instrument for the application of a prior informed consent procedure for certain hazardous chemicals in international trade (INC-5) is tentatively scheduled for 12-16 January 1998 in Brussels, Belgium. A diplomatic conference with a short preparatory INC session is envisaged for March or April 1998 in Rotterdam, the Netherlands. For more information contact: UNEP Chemicals (IRPTC); tel: +41 (22) 979-9111; fax: +41 (22) 797-3460; e-mail: IRPTC@unep.ch. Also try <http://www.unep.ch/chemicals>.

**INTERNATIONAL CONFERENCE ON PESTICIDE USE OF DEVELOPING COUNTRIES -- IMPACT ON HEALTH AND ENVIRONMENT:** This meeting, scheduled from 23 February - 1 March 1998 in San José, Costa Rica, will discuss and exchange knowledge about pesticides, their impact on the environment and health, economic issues, regulations, policies and clean technology in developing countries. For information contact Yamileth Astorga, PPUNA, Universidad Nacional, Apdo. 86-3000 Heredia, Costa Rica; tel: +506-277-3584; fax: +506-277-3583; email: ppuna@irazu.una.ac.cr.

**INTERGOVERNMENTAL FORUM ON CHEMICAL SAFETY:** Japan offered to host ISG-3 in Tokyo in late 1998. Brazil will forward its decision to host FORUM III, scheduled for late 2000, to the IFCS as soon as possible. The Plenary also agreed tentatively to hold ISG-4 in 2002. Mexico will host a working group meeting in early 1998 for developing countries to discuss the sound management of chemicals. For information on these meetings, contact the IFCS Secretariat, World Health Organization, CH-1211 Geneva 27, Switzerland; tel: +41 (22) 791-3588; fax: +41 (22) 791-4848; e-mail: ifcs@who.ch.

**BASEL CONVENTION ON THE TRANSBOUNDARY MOVEMENT OF HAZARDOUS WASTES AND THEIR DISPOSAL:** The fourth Conference of the Parties (COP-4) of the Basel Convention has been rescheduled for 23-27 February 1998 in Kuching, Malaysia. For more information, contact the Secretariat of the Basel Convention, Geneva Executive Center, 15 Chemin des Anémones, CH-1219 Geneva, Switzerland; tel: +41 (22) 979-9218; fax: +41 (22) 797-3454; email: sbc@unep.ch. Also try <http://www.unep.ch/basel>.

**WTO COMMITTEE ON TRADE AND ENVIRONMENT:** The CTE will meet from 24-26 November 1997 in Geneva. For information, contact the CTE, Centre William Rappard, 154, rue de Lausanne, CH-1211 Geneva, Switzerland; tel: +41 (22) 739-5111; fax: +41 (22) 739-5458; e-mail: webmaster@wto.org. Also try <http://www.wto.org>.