



POPS INC-5 HIGHLIGHTS THURSDAY, 7 DECEMBER 2000

Delegates met in morning and evening Plenary sessions to consider Articles O (Conference of the Parties), K (Financial resources and mechanisms), G (Information exchange), F (Listing of chemicals in Annexes A, B and C), V (Entry into force), W (Reservations), and Annex D (Information requirements and screening criteria). Contact Groups on: Financial Resources and Mechanisms; Byproducts: Prohibition and Restriction; and Wastes also convened during the day.

PLENARY

After updates from the Co-chairs of the Contact Groups on Byproducts and on Prohibition and Restriction, JORDAN introduced a submission on behalf of Arab countries noting, *inter alia*: POPs stockpiles in some Arab countries, disposal of which is subject to financial and technical assistance; and that the precautionary principle should be one of the core articles and foundations of the convention.

CONFERENCE OF THE PARTIES (ARTICLE O): On meetings of the COP, delegates agreed to "regular" intervals, and the paragraph was accepted. On appointment of members to the POPs Review Committee, EGYPT called for reference to CEITs. Delegates briefly discussed brackets around "a limited number of" government-designated experts and "including ensuring a balance between developed and developing countries." The language remains bracketed. Chair Buccini introduced, and delegates accepted, language regarding review of information made available to the Parties by the COP.

FINANCIAL RESOURCES AND MECHANISMS (ARTICLE K): The EU expressed disappointment with the G-77/China proposal (UNEP/POPS/INC.5/CRP.52). He highlighted its omission of: the GEF; support for CEITs; and previously-agreed text. He expressed concern that the GEF's operational programme would be frozen, and stressed further consideration of both the earlier submission by the EU, JUSCANZ members, CEITs, and others (UNEP/POPS/INC.5/CRP.2/Rev.1) and CRP.52 to achieve an effective, realistic and practical outcome. The G-77/CHINA highlighted elements of CRP.52 and underscored that it is neutral,

meets the needs of developing countries and CEITs, and should be the basis for Article K. The CZECH REPUBLIC, POLAND and the RUSSIAN FEDERATION expressed disappointment with exclusion of CEITs from CRP.52. Stating that agreement was possible, CANADA, with others, emphasized that CRP.52 omitted: the GEF; CEITs; a coordinated framework; the Capacity Assistance Network (CAN); and an interim mechanism. NORWAY emphasized that the GEF is being replenished and that, without the GEF, governments cannot contribute funding. The US, with others supporting CRP.2/Rev.1, underscored working with the elements of both proposals to achieve agreement. AUSTRALIA underscored a central GEF role, redressing an imbalance in Party obligations and including CEITs.

Many G-77/CHINA countries spoke in support of their proposal and emphasized that it, *inter alia*: is neutral and balanced; strikes a middle ground; is not new or a change of position; includes the Vevey attributes; borrows from other Conventions; is based on the established principle of common but differentiated responsibilities; and does not exclude existing mechanisms or interim arrangements. They stressed their proposal should be the basis for negotiations. The GEF underscored that his organization must be mentioned in the convention, as it is in the CBD and UNFCCC, if it is to play a role. Chair Buccini agreed to chair a contact group focusing on both proposals and the Chair's text, using the Vevey criteria as background.

INFORMATION EXCHANGE (ARTICLE G): Delegates accepted text stating that Parties that exchange other information pursuant to this convention shall protect any confidential information as mutually agreed. The Article was agreed.

LISTING OF CHEMICALS IN ANNEXES A, B AND C (ARTICLE F): NEW ZEALAND presented text drafted by JUSCANZ members that outlines a process for Parties to follow when listing a new chemical, highlighting the transparent and flexible nature of the process. CHILE supported this text. CANADA, supported by the REPUBLIC OF KOREA, advocated use of the precautionary approach and noted that the precautionary principle is not a substitute for science. Regarding the JUSCANZ text, the

This issue of the *Earth Negotiations Bulletin* © <enb@iisd.org> is written and edited by Richard Campbell <richard@iisd.org>, Jon Hanks <jon.hanks@iisee.lu.se>, Wendy Jackson <wendy@iisd.org>, Jonathan Krueger, Ph.D. <jkrueger@iisd.org> and Leila Mead <leila@iisd.org>. The Digital Editor is Andrei Henry <andrei@iisd.org>. The Editor is Pamela S. Chasek, Ph.D. <pam@iisd.org> and the Director of IISD Reporting Services is Langston James "Kimo" Goree VI <kimo@iisd.org>. The Sustaining Donors of the *Bulletin* are the Netherlands Ministry of Foreign Affairs, the Government of Canada (through CIDA and DFAIT), the United States (through USAID), the Swiss Agency for Environment, Forests and Landscape (SAEFL), the United Kingdom Department for International Development (DFID), the European Commission (DG-ENV) and the Rockefeller Foundation. General Support for the *Bulletin* during 2000 is provided by the German Federal Ministry of Environment (BMU) and the German Federal Ministry of Development Cooperation (BMZ), the Danish Ministry of Foreign Affairs, the Ministry of Environment and the Ministry of Foreign Affairs of Austria, the Ministries of Foreign Affairs and Environment of Norway, the Ministries of Foreign Affairs and Environment of Finland, the Government of Australia, the Ministry of Environment and the Ministry of Foreign Affairs of Sweden and BP Amoco. Logistical assistance and travel support has been provided by the UNEP Chemicals Unit for coverage of this meeting. The *Bulletin* can be contacted by e-mail at <enb@iisd.org> and at tel: +1-212-644-0204; fax: +1-212-644-0206. IISD can be contacted by e-mail at <info@iisd.ca> and at 161 Portage Avenue East, 6th Floor, Winnipeg, Manitoba R3B 0Y4, Canada. The opinions expressed in the *Earth Negotiations Bulletin* are those of the authors and do not necessarily reflect the views of IISD and other funders. Excerpts from the *Earth Negotiations Bulletin* may be used in non-commercial publications only and only with appropriate academic citation. For permission to use this material in commercial publications, contact the Director of IISD Reporting Services. Electronic versions of the *Bulletin* are sent to e-mail distribution lists and can be found on the Linkages WWW server at <http://www.iisd.ca>. The satellite image was taken above Johannesburg ©2000 The Living Earth, Inc. <http://livingearth.com>. For information on the *Earth Negotiations Bulletin*, send e-mail to <enb@iisd.org>.



RUSSIAN FEDERATION, with PAKISTAN, expressed concerns with Secretariat discretion on forwarding proposals to the POPs Review Committee and with use of the precautionary approach.

The EU, supported by the G-77/CHINA and others, emphasized that the precautionary principle is included in international law and said the POPs convention would be devoid of meaning if not constructed around this principle. NORWAY underscored the relevancy of the precautionary principle for this article. ICELAND stressed the importance of precaution in Article F, noting that additional references would not change the efficacy of the instrument. AUSTRALIA noted the EU proposal does not reflect Rio Declaration Principle 15 language, and may be used to dismiss objective analysis and politicize decision making. Advocating inclusion of the precautionary approach in the preamble, the US warned that it should not be a substitute for science-based approaches. BRAZIL supported reference to the precautionary approach, but pointed out that it has not always been invoked for legitimate reasons. CUBA, PANAMA, SWITZERLAND, THAILAND, TOGO and TUNISIA supported the adoption of the precautionary principle in the operative section of the convention. INDONESIA and INDIA preferred an approach based on risk-based scientific research. CANADA ARCTIC RESOURCES COMMITTEE and WWF urged adoption of the precautionary principle within the operative part of the text.

Delegates agreed to lift all brackets referring to “and observers,” as well as the reference to the COP deciding whether to list the chemical in the Annexes. A contact group will be established Friday to address the remaining brackets, particularly those related to the precautionary principle.

Article V (Entry into Force): The Chair sought agreement on reference to the 50th instrument of ratification. The EU proposed reference to the 30th instrument. GERMANY objected to this proposal. The reference remains bracketed.

Article W (Reservations): On the Chair’s proposal to lift brackets, the US suggested that this be addressed once the full content of the convention is known.

Annex D (Information Requirements and Screening Criteria): INDIA supported a half-life in water of six months, and a log Kow value of greater than five. CANADA presented a proposal on behalf of various WEOG members that, *inter alia*, favored a half-life in water of two months and a log Kow value of greater than five, and that requires a proposing Party to provide a statement of concern. This proposal was accepted by all delegates, resulting in clean text for Annex D.

CONTACT GROUPS

FINANCIAL RESOURCES AND MECHANISMS: Delegates agreed to base discussions on the G-77/CHINA proposal. Some delegations expressed concern with the omission of reference to CEITs and the limited reference to SIDS and least developed countries (LDCs). Delegates debated inclusion of language from the Chair’s text stating that each Party undertakes to provide financial support and incentives for national objectives to achieve

the objective of the convention. This language was left bracketed, as many delegations expressed concern that they would end up funding themselves.

On new and additional financial resources from developed countries, a developed country delegation questioned language on “the full cost of enabling activities,” while another noted that the full incremental cost is qualified with “agreed” in the Montreal Protocol and the CBD. On effective implementation, a delegation proposed using language from Article J(1) (technical assistance), with minor modifications. A developing country delegation emphasized common but differentiated responsibilities.

On assistance through other bilateral, regional and multilateral sources, a developed country delegation: supported reference to financial resources on a “grant or concessional basis,” adding “to assist in the implementation” of the convention; called for deletion of “under the sole authority” of the COP; and, opposed by another delegation, proposed text on “existing” international entities. A delegation supported reference to the GEF. A group of countries noted that the CAN and the restructured GEF constitute new mechanisms.

On COP guidance for the mechanism, several delegations highlighted the existence of MOUs between the GEF and the COPs of other Conventions, and questioned the intent of language on monitoring and evaluation. One delegate called for a provision focusing on monitoring and evaluation of programme performance and impact.

One delegate queried whether the proposed CAN’s functions might better be performed by the mechanism. Several developing country delegates indicated openness to this subject to the provisions in their proposal relating to the CAN. On the COP reviewing the mechanism’s effectiveness, one delegate preferred review after an identified milestone rather than after a fixed period. One developing country delegate indicated acceptance of a GEF-based mechanism provided it works effectively. Several delegates noted their commitment to provide new and additional resources, subject to the GEF being the primary mechanism. Delegates agreed that an informal group would meet late in the evening to draw together common positions and elaborate a draft text.

BYPRODUCTS: Delegates continued discussion on the provision and Annex C. The following text summarizes the results as of 11:30 pm. Regarding the chapeau of the provision, delegates agreed to delete “aim to” in reference to taking measures, and to include “each of” in reference to the chemicals, but reached no agreement on “ultimate elimination” or whether to include reference to “total” releases. Regarding substitute and modified processes, no agreement was reached on whether to include a reference to “require, where appropriate.”

On whether to “require” or “promote” BAT, there was a proposal to add reference to best environmental practices (BEP) and delete “and/or other prevention strategies.” Some delegates opposed requiring BEP for new sources, and a proposal to require BAT and promote BEP was put forward. Delegates agreed to “promote” BEP. One developing country reiterated the onerous task of requiring BAT, but could accept “require” on the condition



that Articles J and K included a clear provision on financial assistance for byproduct reduction measures. One country opposed “require.” No agreement was reached. Delegates also linked this discussion to the scope of the definition of BAT, and whether to include the concept of a regulatory approach, as some countries said they could impose release limit values but not specific technologies. Delegates did not agree on how to incorporate this idea into the BAT definition and agreed to forward the issue to the Legal Drafting Group (LDG).

Delegates agreed to text on action plans – which states that they be developed within two years of entry into force, and subsequently implemented – after the concern was raised that development and implementation within two years is unrealistic. Language on regional and subregional action plans and implementation as part of the plan specified in Article E was also agreed. On evaluating current and projected releases, delegates agreed to delete reference to COP guidance, and to include, in a draft resolution on interim arrangements, that guidance on the evaluation of current and projected releases would be considered by the COP.

On Annex C, the Group agreed on the source categories to be included in Part II (waste incinerators; cement kilns; pulp production using elemental chlorine or chemicals generating elemental chlorine for bleaching; and thermal processes in the metallurgical industry), although the issue of separating the list on these sources and other sources remains unresolved, pending whether BAT is required or promoted.

Regarding a definition of “available” with respect to BAT, delegates agreed that techniques be “accessible to the operator” to take into account differing economic and technical realities. Regarding a definition of “new source,” the Group agreed on a one-year time period to take into account sources constructed after entry into force.

Delegates discussed a reformulated Part V (general guidance on BAT and BEP), and further agreed to outline general prevention measures relating to both BAT and BEP. The group agreed to the elements under prevention measures, and to include a proposal stating that when considering construction of new waste facilities, alternatives should also be considered. Regarding BAT release reduction measures, a number of participants expressed concern over references to incineration, stating that releases are not always reduced. However, full discussion on this issue is yet to take place.

Delegates began a debate on measures to consider when determining BEP, but some countries objected to the proposed measures, noting they may not be useful for all countries. The whole list was deleted, and the group agreed to defer to the COP for guidance on BEP.

PROHIBITION AND RESTRICTION: The contact group convened to complete negotiations on outstanding issues, focusing predominantly on Annexes A (Exemption) and B (Restriction). Delegates agreed on a number of changes to Annexes A and B including, *inter alia*: deleting reference to the expiry/review date and the compliance date column, both of which are to be addressed through a register; introducing a general exemption on unintentional trace contaminants; introducing new country-specific

exemptions to accommodate those notified through CRPs submitted to INC-5; replacing the reference in the chapeau to “chemicals” with “quantities of a chemical”; and including reference to the Chemical Abstract Service (CAS) numbers for each chemical. Delegates introduced two bracketed options for an exemption for articles in use.

Delegates failed to agree on the text of the Co-chairs’ proposed article on the registry of country-specific exemptions (CSE) and review process. Reference to Annex B remains bracketed, as does the proposal that all CSEs shall expire five years after entry into force of the convention with respect to a particular chemical for that Party. Two options remain on the possibility for the COP to extend the CSE expiration date, and there is disagreement on the possibility for States seeking accession to be able to register types of CSEs not already listed in Annex A.

Delegates considered an outline of text on the elimination of the use of PCBs in equipment. The text prioritizes actions based on the concentration and volume of PCBs. A number of countries expressed concern with proposed expiry dates. These remain bracketed. A CRP on PCBs will be developed and presented to Plenary.

Delegates accepted revised text on restricted use of DDT that, *inter alia*, provides for the establishment of a DDT registry, and requires Parties using DDT to provide the Secretariat and WHO with DDT-use information every three years.

On new chemicals, delegates agreed that each Party shall take measures to “prevent or regulate” the production and use of new chemicals that exhibit POPs characteristics based on criteria in Annex D, paragraph 1. A proposal to include reference to the precautionary principle was withdrawn after insistence by a JUSCANZ member. Amendments were made to the text on chemicals currently in use to ensure consistency with text on new chemicals.

WASTES: In opening comments regarding reference to the Basel Convention, several delegations indicated the importance of maintaining direct reference to it and its technical guidelines. Another delegation said the technical guidelines were not legally binding and the first priority should be destruction or transformation, not disposal, of POPs wastes. Several delegations noted that work in Basel on POPs wastes will continue while waiting for the POPs convention to enter into force, while others expressed concern that POPs wastes may not be treated as environmentally soundly as they could under Basel. Several delegations also noted the importance of avoiding duplication of work and allocation of resources.

On the chapeau regarding the scope of materials covered, one delegation proposed that wastes in Annex C also be covered. This was agreed. Another delegation proposed that wastes “contaminated” with POPs be included, though other delegations expressed reservations about this. Delegates inserted bracketed text that includes contamination, but “not including unintentional trace contaminants of low or *de minimis* levels.”



On text regarding strategies for identifying products, articles, wastes and stockpiles, a few delegations proposed prioritizing this list, while others opposed. Delegates also discussed whether or not to include a definition of waste, and if so, if it should be the Basel Convention definition. Delegates agreed to discuss this item under text relating to identifying sites contaminated by chemicals. Some delegations requested that Parties not only develop a strategy for identifying, "to the extent possible," stockpiles, but "identifying" stockpiles. Others opposed inclusion of this language. A delegation suggested "to the extent practicable." This was provisionally accepted pending further discussions.

IN THE CORRIDORS

With less than 48 hours remaining to complete negotiations, speculation mounted on the likelihood of reaching full agreement on convention text. While some delegates have expressed satisfaction with the progress made in certain contact groups, and have voiced confidence that useful compromise will be reached on the key sticking point of the precautionary principle, others continue to voice concern on the likelihood of securing agreement on the financial mechanism. Some participants have speculated on the impact of apparent divisions within the G-77/China on the financial mechanism in facilitating resolution on this issue. A number of commentators have suggested that the recent failure of the climate COP-6 in the Netherlands – brought to the attention of delegates by the

display of NGO buttons warning "Don't Repeat the Hague!" – could well be the telling incentive needed to ensure convergence on the remaining contentious issues.

THINGS TO LOOK FOR TODAY

PLENARY: Delegates will reconvene in Plenary at 10:00 am in Ballroom 1 to hear reports from the Contact Groups, the Chair's status report on all draft Articles, and to discuss Article D (Measures to reduce or eliminate releases).

CONTACT GROUPS: The Contact Group on Wastes will meet in Committee Room 4 at 9:00 am, and the Group on Article F in Committee Room 5 at 10:30 am. The informal group on Article K is also expected to reconvene.



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