



## SUMMARY OF THE FIFTH SESSION OF THE INTERGOVERNMENTAL NEGOTIATING COMMITTEE FOR AN INTERNATIONAL LEGALLY BINDING INSTRUMENT FOR IMPLEMENTING INTERNATIONAL ACTION ON CERTAIN PERSISTENT ORGANIC POLLUTANTS: 4-9 DECEMBER 2000

The fifth session of the Intergovernmental Negotiating Committee (INC-5) for an International Legally Binding Instrument for Implementing International Action on Certain Persistent Organic Pollutants (POPs) met from 4-9 December 2000, in Johannesburg, South Africa. Approximately 525 participants from 122 countries, as well as representatives of international organizations and non-governmental organizations (NGOs), participated in INC-5 to complete preparation of an international legally binding instrument for implementing international action on twelve POPs, grouped into three categories: 1) pesticides: aldrin, chlordane, DDT, dieldrin, endrin, heptachlor, mirex and toxaphene; 2) industrial chemicals: hexachlorobenzene (HCB) and polychlorinated biphenyls (PCBs); and 3) unintended byproducts: dioxins and furans.

More than four years after the Intergovernmental Forum on Chemical Safety *ad hoc* Working Group recommended the development of an international agreement to eliminate some of the world's most toxic chemicals, and some two and a half years after INC-1 in Montreal, participants gathered in Johannesburg for the fifth and final round of negotiations for a legally binding POPs Convention. On the negotiating veldt before them lay numerous policy divides, a plethora of lurking brackets and a forecast of heavy work; and hovering above were the storm clouds of the recently failed climate change negotiations. On a positive note, negotiators in South Africa were buoyed up by a strong sense of history. This was their chance to build on the example set by the country's recent democratic transition and harness the potential of negotiation to overcome fundamental differences. In the final analysis, it was a combination of factors that brought success. Persistence, hard work, skilled chairmanship and the threat of failure figured greatest. The final compromises reached by the early hours of Sunday morning produced robust but flexible control measures, strong elements of precaution and a realistic financing solution. Together, these serve as a promising start on the long road towards eliminating persistent organic pollutants.

## A BRIEF HISTORY OF THE POPS NEGOTIATIONS

During the 1960s and 1970s, the use of certain chemicals and pesticides in industry and agriculture increased dramatically. Many of these chemicals are important to modern society, but can also pose a serious threat to human health and the environment. In particular, a certain category of chemicals known as persistent organic pollutants has attracted international attention due to a growing body of scientific evidence indicating that exposure to very low doses of certain POPs can lead to cancer, damage to the central and peripheral nervous systems, diseases of the immune system, reproductive disorders and interference with normal infant and child development. POPs are chemical substances that persist, bioaccumulate and pose a risk of causing adverse effects to human health and the environment. With further evidence of the long-range transport of these substances to regions where they have never been used or produced, and the consequent threats they now pose to the environment worldwide, the international community has called for urgent global action to reduce and eliminate their release into the environment.

Prior to 1992, international action on chemicals primarily involved developing tools for information exchange and risk assessment. For example, in 1985 the FAO established an International Code of Conduct for the Distribution and Use of Pesticides and, in 1987, UNEP created a set of London Guidelines for the Exchange of Information on Chemicals in International Trade. In 1992, the UN Conference on Environment and Development (UNCED) adopted Agenda 21.

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This issue of the *Earth Negotiations Bulletin* © <enb@iisd.org> is written and edited by Richard Campbell <richard@iisd.org>, Jon Hanks <jon.hanks@iiee.lu.se>, Wendy Jackson <wendy@iisd.org>, Jonathan Krueger, Ph.D. <jonathan@iisd.org> and Leila Mead <leila@interport.net>. 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>.



Chapter 19 of Agenda 21, "Environmentally Sound Management of Toxic Chemicals Including Prevention of Illegal International Traffic in Toxic and Dangerous Products," called for the creation of an Inter-governmental Forum on Chemical Safety (IFCS). Agenda 21 also called for the establishment of the Inter-Organization Programme on the Sound Management of Chemicals (IOMC) to promote coordination among international organizations involved in implementing Chapter 19.

In March 1995, the UNEP Governing Council (GC) adopted Decision 18/32 inviting the IOMC, the IFCS and the International Programme on Chemical Safety (IPCS) to initiate an assessment process regarding an initial list of 12 POPs. In response to this invitation, the IFCS convened an *Ad Hoc* Working Group on POPs, which developed a workplan for assessing these substances. The assessments included available information on the chemistry, sources, toxicity, environmental dispersion and socioeconomic impacts of the 12 POPs.

In June 1996, the *Ad Hoc* Working Group convened a meeting of experts in Manila, the Philippines, and concluded that sufficient information existed to demonstrate the need for international action to minimize the risks from the 12 POPs, including a global legally binding instrument. The meeting forwarded a recommendation to the UNEP GC and the World Health Assembly (WHA) that immediate international action be taken. In February 1997, the UNEP GC adopted Decision 19/13C endorsing the conclusions and recommendations of the IFCS. The GC requested that UNEP, together with relevant international organizations, prepare for and convene an intergovernmental negotiating committee (INC) with a mandate to develop, by the end of 2000, an international legally binding instrument for implementing international action, beginning with the 12 specified POPs. The first meeting of the INC was also requested to establish an expert group for the development of science-based criteria and a procedure for identifying additional POPs as candidates for future international action. Also in February 1997, the second meeting of the IFCS decided that the IFCS *Ad Hoc* Working Group would continue to assist in preparations for the negotiations. In May 1997, the WHA endorsed the recommendations of the IFCS and requested that the World Health Organization (WHO) participate actively in negotiations of the international instrument.

**INC-1:** The first session of the Intergovernmental Negotiating Committee (INC-1) was held from 29 June – 3 July 1998, in Montreal, Canada. Delegates from approximately 90 countries, as well as representatives from UN agencies, NGOs, intergovernmental organizations (IGOs) and industry, met with a clear spirit of cooperation, mutual purpose and shared responsibility. INC-1 elected bureau members, considered its programme of work, as well as possible elements for inclusion in an international legally binding instrument, and established the Implementation Aspects Group (IAG) to address technical and financial assistance. INC-1 requested the Secretariat to prepare a document for INC-2 containing material for possible inclusion in an international legally binding instrument based on discussions at INC-1 and government and NGO submissions.

INC-1 also established the Criteria Expert Group (CEG) as an open-ended technical working group mandated to elaborate proposals for science-based criteria, and to develop a procedure for identifying additional POPs as candidates for future international action, to be presented to the INC at or before its fourth session. INC-1 directed the CEG to incorporate criteria pertaining to persistence, bioaccumulation, toxicity and exposure in different regions, taking into account the potential for regional and global transport, including dispersion mechanisms for the atmosphere and the hydrosphere, migratory species and the need to reflect possible influences of marine transport and tropical climates.

**CEG-1:** The first session of the Criteria Expert Group (CEG-1) was held from 26-30 October 1998, in Bangkok, Thailand. Over 100 delegates from approximately 50 countries gathered to consider the CEG's programme of work, including the development of science-based criteria for identifying additional POPs as candidates for future international action. At CEG-1, delegates also considered the development of a procedure for identifying additional POPs, including the information required at different stages of the procedure, and who would nominate, screen and evaluate a substance as a future POPs candidate.

**INC-2:** INC-2 was held from 25-29 January 1999, in Nairobi, Kenya. Discussions among the delegates from over 100 countries were largely based on the Secretariat-prepared outline of an international legally binding instrument. After general discussions on this document, delegates divided into the IAG and the Negotiating Group. The Negotiating Group examined the text of the outline and completed preliminary discussions on: measures to reduce or eliminate releases of POPs into the environment; national implementation plans; information exchange; public information, awareness and education; and research, development and monitoring. The IAG held general discussions on possible capacity-building activities requiring technical and financial assistance. A contact group on annexes also met to begin placing the 12 POPs into annexes for: prohibited production and use; restricted production and use; and chemicals subject to certain release reporting and release reduction or elimination measures.

**CEG-2:** The second session of the Criteria Expert Group (CEG-2) met from 14-18 June 1999, in Vienna, Austria. Approximately 140 participants representing 60 countries attended the meeting to build upon the work of CEG-1 in the development of scientific criteria and a procedure for adding additional POPs to the initial list of 12. The CEG succeeded in completing its work in two rather than three sessions, and proposed a procedure that provides for the establishment of a review committee or committees to apply screening criteria and to prepare a risk profile and risk management evaluation for proposed substances. The CEG submitted its recommendations to INC-3.

**INC-3:** INC-3 met from 6-11 September 1999, in Geneva, Switzerland, and brought together delegates from 120 countries, as well as representatives from UN agencies, NGOs, IGOs and industry. INC-3 adopted the report of the CEG and approved the CEG's recommendations as a basis for further negotiation. In the Negotiating Group, delegates made advances on language for articles on measures to reduce or eliminate releases, national implementation plans, the listing of substances in annexes, and information exchange. In the IAG, delegates continued discussions on technical assistance and financial resources and mechanisms, and many governments and regional groups submitted draft text for these articles.

**INC-4:** INC-4 met from 20-25 March 2000, in Bonn, Germany, and was attended by approximately 500 representatives from 121 countries, IGOs and NGOs. Contentious issues revolved around measures to reduce or eliminate releases, technical assistance, and financial resources and mechanisms. While INC-4 succeeded in drafting articles on technical assistance and financial resources and mechanisms, the text was still heavily bracketed, and developed and developing country positions were divided. Delegates devoted much time to addressing control measures (Article D) and made some headway on elimination language with respect to byproducts. INC-4 also addressed and made progress on articles regarding: national implementation plans; listing of substances; information exchange; public information, awareness and education; and research, development and monitoring. INC-4 did not have time for discussion of the preamble, objective and definitions, and left these articles for consideration at INC-5.



## REPORT OF INC-5

Chair John Buccini (Canada) opened INC-5 on Monday, 4 December 2000, and introduced Rejoice Mabudafhasi, South African Deputy Minister for Environmental Affairs and Tourism. She emphasized the importance of public education and awareness, especially for those exposed to POPs, and called for capacity building, a clear financial mechanism and technical assistance to enable developing countries to fulfill their obligations. She stressed the ultimate goal of elimination, but noted the necessary use of DDT to control malaria.

UNEP Executive Director Klaus Töpfer reiterated that the poorest are suffering most from the effects of POPs. He emphasized timely, adequate, new and additional financial resources, and common but differentiated responsibilities. He acknowledged necessary use of DDT, and said Convention language must stimulate development of alternatives. He highlighted a memorandum of understanding between UNEP and the World Bank on helping to reduce POPs releases into the environment, and a CAD\$20 million contribution to this endeavor from the Canadian government.

Chair Buccini informed delegates that a master list of actions on POPs had been produced (UNEP/POPS/INC.5/INF/5), and said these need to continue and expand. He noted that understanding, cooperation, creativity and a commitment to seek out compromises are necessary to conclude negotiations, and he reiterated the importance of openness, transparency, inclusiveness and accountability in the process.

**INTERSESSIONAL ACTIVITIES:** Jim Willis, UNEP Chemicals, reported on Secretariat intersessional activities and noted that reports had been received from 108 countries, 14 IGOs and eight NGOs on their actions taken to reduce and/or eliminate POPs. He said UNEP had organized eight regional and sub-regional workshops, and was implementing 27 country-based projects on POPs.

The FAO, WHO and World Bank summarized their activities related to monitoring, reducing, replacing and/or eliminating POPs substances. Mohamed El-Ashry, CEO of the Global Environment Facility (GEF), reported that the last GEF Council Meeting had agreed that, should the GEF become the designated financial mechanism for POPs, new and additional financial resources would be made available specifically for this purpose through the third replenishment.

The Canadian Arctic Indigenous Peoples said Arctic people were the world's early warning indicator for POPs. The Global Crop Protection Federation (GCPF) noted its cooperation with the FAO and its work on stockpiles. The Harvard University Center for International Development emphasized high costs of implementation, and called for mandatory legally binding terms for funding to developing countries and a financial mechanism based on grants. Malaria Foundation International called for guaranteed financial assistance in the form of grants.

### ORGANIZATIONAL MATTERS

On Monday, 4 December, the Plenary adopted the agenda for the meeting (UNEP/POPS/INC.5/1). Delegates also agreed to continue with the previously accepted Bureau for INC-5, comprised of: John Buccini (Canada), Maria Cristina Cardenas Fischer (Colombia), Mir Jafar Ghamieh (Iran), Darka Hamel (Croatia), and Ephraim Buti Mathebula (South Africa).

### GENERAL DEBATE

On Monday, many delegations thanked the governments of South Africa and Denmark for sponsoring the meeting and the Secretariat for its intersessional work. Delegates supported using the Chair's draft text (UNEP/POPS/INC.5/5) as the basis for continued negotiations.

Canada stated that the final Convention text should, *inter alia*: be simple and straightforward with clear, unambiguous and practical obligations; be measurable in terms of effectiveness; and result in real action on the ground. Canada and Australia supported use of the precautionary approach in accordance with the Rio Declaration, while avoiding undefined and ambiguous references.

Australia supported, with limited exceptions, international commitments to prohibit or restrict production, use, export and import of intentionally-produced POPs, and supported eliminating byproducts, where feasible, while taking account of technical and socioeconomic realities. France, on behalf of the EU, and supported by Poland, supported reflecting the precautionary principle in the preamble, objective and general obligations of the text. She said the Convention must: explicitly state the objective of halting the production and use of intentionally-produced POPs; address import and export; strictly limit general exemptions; eliminate byproduct POPs in the long term; and provide technical and financial assistance to developing countries and countries with economies in transition (CEITs).

Finland highlighted the October 2000 meeting of the Arctic Council, which stated that completion and early ratification of the POPs Convention is an objective of great importance to all Arctic States. Thailand said proposals for exemptions of DDT should be considered carefully, and that reductions on releases of byproducts depended on the availability of financial and technical assistance.

Japan said the GEF can play an important role in helping developing countries and CEITs fulfill their obligations, as could the development of a capacity assistance network (CAN). The US said an effective treaty will require a strong financial mechanism. He emphasized, *inter alia*, an effective waste regime and a meaningful mechanism for adding new chemicals. He said the instrument is inherently precautionary, opposed renegotiating the precautionary principle as defined by the Rio Declaration, noted their revised position on general exemptions, and supported the goal of ultimate elimination, if expressed in realistic terms.

Tanzania, the Philippines, Iran, Malaysia and Zambia supported reference to the precautionary principle. The Republic of Korea highlighted difficulties in interpreting and applying the principle in certain areas of the Convention. Iran called for a clear definition of the principle, as well as identifying cost implications of its application. South Africa supported applying the principle where it does not compromise public health or sound science. The Russian Federation supported including the principle in the preamble, using the Rio Declaration definition. Colombia proposed inclusion of a new article stating that specific guidelines regarding liability, responsibility and compensation would be developed in the future, and highlighted the example of the Basel Convention Protocol on Liability and Compensation. The Russian Federation opposed including a provision on compensation for losses.

China and Zambia said common but differentiated responsibilities should be reflected in the preamble. The Gambia, Tanzania, Ghana, the Philippines, China, Venezuela and Malaysia supported reduction with the goal of ultimate elimination. Fiji highlighted the need for special treatment of small island developing States (SIDS). South Africa and Tanzania said the phasing out of DDT is contingent upon provision of affordable alternatives.

The Philippines, Venezuela and Malaysia supported a separate funding mechanism. Venezuela called for new and additional resources. South Africa expressed concerns regarding existing financial mechanisms, such as the GEF, and with the lack of a consolidated response from donor countries to the G-77/China position. China stressed new, additional and adequate resources in the form of grants. Zambia called for assurance of technical and financial assistance.



Nigeria, on behalf of the G-77/China, advocated narrowly-tailored exemptions with regard to laboratory research. Nepal opposed exemptions except for scientific research. Zambia supported language reflecting the difficulties in eliminating byproducts. Jamaica and Zambia called for a clear, verifiable and strong treaty in which no Party is unduly overburdened. The Philippines supported involvement of national stakeholders in implementation.

### NEGOTIATION OF THE DRAFT CONVENTION

Following the general debate, delegates began the task of finalizing the convention. Delegates met in Plenary, Contact Groups on Prohibition and Restriction, Byproducts, Wastes, Financial Resources and Mechanisms, and Article F (Listing of Chemicals in Annexes) during the week. The Legal Drafting Group, chaired by Patrick Széll (UK), met throughout INC-5. Plenary considered the draft text of the Convention as well as draft articles emerging from both the Legal Drafting Group and the contact groups.

The following is an article-by-article summary of the negotiations on the draft Convention. The Convention articles will be re-numbered prior to the Diplomatic Conference in Stockholm. *Editor's note: Respecting the confidential nature of some of the contact group negotiations, the Bulletin does not use names of countries and/or groups in parts of this summary.*

**ARTICLE A (Preamble):** On Saturday, 9 December, delegates discussed the preamble in Plenary and agreed on text:

- recognizing that POPs possess toxic properties, resist degradation, bioaccumulate and are transported across international boundaries;
- recalling pertinent provisions of the Rio Declaration and Agenda 21;
- reaffirming that States have the sovereign right to exploit their own resources and the responsibility to ensure their activities do not cause damage to the environment of other States; and
- recognizing the important contribution that the private sector and NGOs can make to achieve the reduction and/or elimination of POPs emissions.

The preamble also contains paragraphs regarding, *inter alia*, health concerns, especially in developing countries, in particular impacts upon women and future generations, and the need for global action on POPs.

Regarding a preambular paragraph acknowledging that the Arctic ecosystems and especially their indigenous people are particularly at risk because of the biomagnification of POPs, and that contamination of their natural foods is a public health issue for them, Canada, supported by the US, suggested modifications referring to "indigenous communities" and "traditional foods." The agreed paragraph reflects these changes.

On text recalling the pertinent provisions of relevant international environmental conventions, especially the Rotterdam and Basel Conventions, Samoa suggested adding language from a proposal of the Pacific island delegations on including regional agreements. Delegates agreed and the paragraph was approved.

Early Saturday evening, delegates accepted a paragraph reaffirming the precautionary approach as set forth in Principle 15 of the Rio Declaration, on which the EU stated a reservation. However, early Sunday morning, Canada presented an alternate text, drafted during informal discussions and supported by members of JUSCANZ, the EU, Switzerland, South Africa, Iceland, Norway, Colombia and Chile. The text acknowledges that precaution underlies the concerns of all Parties to this Convention and is embedded within it. The new formulation was accepted.

A paragraph taking into account the circumstances and particular requirements of developing countries and CEITs was agreed following insertion of a reference to least developed countries, as proposed by the EU and a number of CEITs. They also proposed, and delegates approved, language: encouraging Parties not having regulatory and assessment schemes for pesticides and industrial chemicals to develop such schemes; and recognizing the importance of developing and using environmentally sound alternative processes and chemicals. They also put forward a paragraph reaffirming that the polluter should bear the cost of pollution as set forth in Principle 16 of the Rio Declaration. The US suggested quoting the Rio language *verbatim*, and the paragraph was accepted.

New preambular text suggested by the G-77/China, taking full account of the Programme of Action for the Sustainable Development of SIDS, was accepted by delegates. The G-77/China also suggested new language noting the common but differentiated responsibilities and respective capability of developed and developing country Parties. The US preferred text noting Principle 7 of the Rio Declaration, including its reference to common but differentiated responsibilities. The G-77/China objected. Delegates agreed to the original formulation, adding "as set forth in Principle 7 of the Rio Declaration."

Norway submitted a preambular paragraph underlining the responsibility of manufacturers of POPs for reducing adverse effects caused by their products. The US noted that "responsibility" is too ambiguous. Delegates agreed on text underlining the importance of manufacturers of POPs taking responsibility for reducing adverse effects caused by their products. Delegates accepted another paragraph from Norway stating that Parties are conscious of the need to take measures to prevent adverse effects caused by POPs at all stages of their life cycle.

Australia submitted three new preambular paragraphs – taken from the Rotterdam Convention – regarding: mutually supportive trade and environment policies; rights and obligations of Parties under existing international agreements applying to chemicals; and not creating a hierarchy between the POPs Convention and other international agreements. The EU, supported by Iran, the Republic of Korea and Tunisia, opposed the proposal, noting that the paragraphs were: compromise language at the Rotterdam negotiations; meant to address trade; and create unnecessary ambiguity. The paragraphs were not accepted. However, on Sunday morning a new formulation of the first paragraph, recognizing that this Convention and other international agreements in the fields of trade and environment are mutually supportive, was submitted by JUSCANZ members and the EU, and accepted. Greenpeace, on behalf of the Indigenous Environmental Network, expressed appreciation to the Canadian delegation for their intervention on indigenous communities.

**ARTICLE B (Objective):** In Saturday's Plenary, delegates discussed this article, which states that the objective of the Convention is to protect human health and environment from POPs. Emphasizing the importance of elimination, the EU, supported by the G-77/China, Norway and many other countries, proposed text stating that the objective of this Convention is to eliminate POPs through applying the precautionary principle so as to protect human health and the environment. The US said it would be unproductive to re-engage in discussion of precaution. The EU drew attention to reference to the precautionary principle in the Biosafety Protocol's objective. South Africa, supported by Australia, Thailand and many other countries, expressed support for the Chair's text. Venezuela proposed adding language to the EU proposal on the prevention of the use of new chemical substances. Yemen suggested adding "elimination and reduction of such pollutants" to the Chair's text.

Early Sunday morning, following informal discussions, Canada presented an alternate proposal drafted by members of JUSCANZ and the EU and supported by Chile, Colombia, Switzerland and others.



The Chair's text is maintained, but is preceded by "mindful of the precautionary approach as set forth in Principle 15 of the Rio Declaration." The article was accepted.

**ARTICLE C (Definitions):** On Saturday, delegates discussed Article C in Plenary. Chair Buccini noted the addition to his text of definitions of "Party" and "regional economic integration organization," which were taken from the Rotterdam Convention. The definitions were accepted by delegates. A definition of "Parties present and voting" was also included.

**ARTICLE D (Measures to Reduce or Eliminate Releases):** Article D contains provisions requiring Parties to:

- prohibit and limit the production and use of chemicals listed in Annexes A and B subject to certain general and specific exemptions;
- restrict the import and export of these chemicals;
- prevent and regulate the production and use of newly developed chemicals exhibiting POPs' characteristics;
- reduce the releases derived from anthropogenic sources of Annex C chemicals; and
- adopt measures to manage wastes and stockpiles containing POPs.

During the week, three different contact groups were formed to develop text for Article D and Annexes A, B and C, using the Chair's draft text (UNEP/POPs/INC.5/5) as a basis for discussion. The first contact group, co-chaired by Peter Hinchcliffe (UK) and Luis Almagro (Uruguay), addressed issues relating to prohibition, restriction, import and export, chemicals currently in use, new chemicals, Annexes A and B, general exemptions, and the establishment of a register. This contact group convened each day from Tuesday until Friday. The second contact group, co-chaired by Reiner Arndt (Germany) and William Waissmann (Brazil), addressed the issue of unintentional POPs releases (by-products) and Annex C, and met on Wednesday and Thursday. A third contact group was established to develop text on wastes and stockpiles and met on Thursday, Friday and Saturday, and was co-chaired by Richard Ballhorn (Canada) and Fatoumata Jallow Ndoeye (The Gambia).

At the conclusion of the negotiations delegates approved text on nine separate paragraphs under Article D, as well as text on a new article relating to the establishment of a register of country-specific exemptions.

**Prohibition of the Production and Use of Certain POPs:** This paragraph sets out the requirement to eliminate production and use of Annex A chemicals. In Tuesday's Plenary, the US, the EU, Mali, the Philippines, Canada and Iceland, opposed by Colombia, Chile, Iran, Nigeria, Vanuatu and others, proposed deleting reference to the qualifier stating that prohibition is subject to Parties' capabilities and to the availability of technical and financial assistance. Iran, supported by Pakistan and Malawi, proposed replacing "availability" with "accessibility." China and Kenya supported including both. The qualifier, with the inclusion of reference to "accessibility," remained bracketed throughout the week, and was deleted in the final Plenary as part of a package deal on the financial mechanism.

On text requiring Parties to [prohibit] [or] [take the legal, administrative and other measures necessary to eliminate] production and use, Japan, the US, Australia and others proposed referring only to "legal and administrative measures." Iran and Thailand proposed reference only to "prohibit." Iceland supported: "prohibit or take necessary measures." Colombia, supported by Malaysia, Malawi, Saudi Arabia, and others, proposed replacing "or" with "and". In the contact group that evening, delegates agreed that Parties shall "prohibit and/or take the legal and administrative measures necessary to eliminate the production and use."

On reference to the prohibition of imports and exports, the US, the EU, the Philippines, the Republic of Korea and others opposed including this reference, arguing that it be addressed within a *bis* paragraph. Colombia, Iran, Thailand, Malawi, Lebanon and others advocated retaining the paragraph to the reference to import and export. Nepal and Vanuatu added "stockpiling." Reference to "import, export" remained bracketed throughout the week pending finalization of discussions on a separate paragraph on trade. Delegates agreed to address stockpiles under the paragraph on wastes.

In Plenary on Friday, Colombia, supported by Thailand, called for retention of "import, export" even if addressed in other articles. Canada, supported by Australia, the EU and Mexico, said that a cross-reference to the other paragraphs on import and export was necessary in order to accept this proposal. A compromise, submitted to the final Plenary early on Sunday morning by the US, was accepted.

**Final Text:** The final text requires Parties to prohibit and/or take the legal and administrative measures necessary to eliminate the production and use of Annex A chemicals, and their import and export in accordance with the provisions of the article dealing with import and export. Delegates also agreed to include a US-prepared note in the report of the meeting stating that the contact group acknowledges that banning the sale and distribution of Annex A chemicals, or withdrawing their registration, would satisfy the requirements of this provision. It notes that the contact group encouraged Parties to promote domestic "clean sweep programmes" aimed at collecting small quantities of POPs chemicals remaining with "end-users," for example in the "farmer's barn."

**Import and Export:** In Plenary on Tuesday, delegates examined two alternative *bis* options within the Chair's text on the requirement that Parties ensure that certain POPs are not imported or exported except for environmentally sound [destruction] [disposal]. Delegates were divided on which option to use, as well as on the terms "destruction" or "disposal." The terms remained bracketed through the week, pending agreement on the text related to waste.

In Tuesday's Plenary, Panama, Singapore, the Philippines and Colombia, opposed by Saudi Arabia and Ghana, opposed reference to Parties ensuring certain chemicals are not placed in transit. This was also bracketed. Colombia, opposed by the Philippines, supported reference to the need for prior authorization of the importing country. This was bracketed. Panama, Thailand and Saudi Arabia proposed text referring to the disposal of POPs in accordance with the Basel Convention. Canada noted a proposal on trade with non-Parties would be submitted by a number of countries. Colombia, supported by The Gambia, expressed concern that special requirements for non-Parties may serve as a disincentive to ratification.

In a contact group on Wednesday, delegates agreed to base discussions on a proposal submitted by a number of Western Europe and Others Group (WEOG) and Eastern European countries and Japan, drawing on the *bis* options in the Chair's draft text, and including additional provisions on trade between non-Parties. Some Latin American countries voiced concerns with the proposal's provision on trade with non-Parties, as well as with the qualifier limiting the import obligation to chemicals "with respect to which that Party is bound under the Convention." After failure to make progress, a small informal group was convened. Informal discussions continued throughout the week in an attempt to resolve this issue.

In Plenary on Friday, Ecuador, supported by Brazil, Chile, Colombia and the EU, called for reference to exporting countries requiring prior authorization from the importing country. Colombia suggested text that provides for exporting a chemical "subject to the prior authorization of the importing country." The US, supported by



several countries, noted that the Rotterdam Convention addresses this, and that not all Parties to the Rotterdam Convention will necessarily be Parties to the POPs Convention.

Following a drafting group session, Colombia presented text stating that export of Annex A or B chemicals is "subject to the prior informed consent of the importing party, taking into account the existing international prior informed consent procedures that are in force between the exporting and importing countries." Canada, Chile and the EU supported the proposal. The US said the Rotterdam Convention is not yet in force and, with Japan, pointed out duplication of reference to prior informed consent. Canada suggested replacing "are in force" with "apply as." Iran suggested language on evaluating the continued efficiency and need for the procedure.

In the final Plenary on Sunday morning, the US submitted a compromise proposal reflecting agreement that had been reached in informal discussions with Canada, the EU, and Latin American and Caribbean Group (GRULAC) countries. This proposal lifted brackets on references to Annex B chemicals, and modified the reference requiring exports to be subject to the prior informed consent of the importing party. In response to a concern from Iran, the proposal also transferred the reference in this paragraph to the role of the Conference of the Parties (COP) in evaluating the continued need for the export procedure, to Article O (Conference of the Parties). After agreement on the paragraph relating to waste, it was agreed to include reference to disposal rather than destruction. The EU insisted on cross-reference in this paragraph to the provisions in the paragraph on waste. After debate, Canada accepted this suggestion provided that its concerns were recorded in the meeting report.

**Final Text:** The final text requires Parties to take measures to ensure that Annex A and B chemicals are imported only for the purposes of environmentally sound disposal or for a use permitted in terms of Annexes A and B. Export of Annex A and B chemicals, for which specific production and use exemptions exist, is permitted, taking into account relevant provisions of existing international prior informed consent instruments, only: for the purpose of environmentally sound destruction; to a Party permitted to use that chemical; or, to a State not Party to this Convention, subject to receipt by the importing State of an annual certification which includes a statement of intended use and supporting documentation to demonstrate commitment to protecting the environment and human health, and to complying with the Convention provisions on waste.

In addition to the above provision, delegates also agreed to text on a draft resolution relating to this provision. The resolution, *inter alia*:

- welcomes the work undertaken by the Basel Convention on issues related to the management of POPs wastes, including the initiation of work to prepare technical guidelines for the environmentally sound management of such wastes;
- invites the bodies of the Basel Convention to cooperate closely on the items referred to in the POPs Convention provisions on wastes;
- requests the INC and Secretariat to cooperate closely with the bodies of the Basel Convention; and
- invites the Secretariat of the Basel Convention to report to the INC on issues related to the management of POPs wastes.

**Restriction of the Production and Use of Certain POPs:** As with the paragraph on prohibition, this paragraph retained bracketed reference throughout the week to the qualifier referring to the capabilities of Parties and the availability of technical and financial assistance. In the contact group on Tuesday, delegates agreed to include reference to restricting production and use "in accordance with" Annex B provisions. The agreed provision requires Parties to restrict the production and use of Annex B chemicals in accordance with the provisions in that annex.

**New Chemicals:** At the beginning of the week, the Chair's text on this issue had bracketed references requiring Parties to "take measures to [avoid] [prohibit] [prevent] [regulate] the production [import] [export] and use of newly-developed pesticides or industrial chemicals which exhibit POPs characteristics."

In a contact group on Thursday, delegates agreed that each Party shall take measures to "prevent or regulate" the production and use of new chemicals. A proposal to include reference to the precautionary principle was withdrawn after insistence by a JUSCANZ member. In Plenary on Friday, the G-77/China, supported by Chad, the EU, Senegal and Argentina, proposed that the production and use of new pesticides or industrial chemicals be prevented, with deletion of previously agreed language also referring to regulation. Australia disagreed.

In Friday evening's Plenary, Colombia proposed that for new chemicals, Parties should be required to "regulate with the aim of preventing" their production and use. The G-77/China, stating it had the support of the EU, Australia and Norway, proposed "prevent or regulate." The first proposal was adopted.

**Final Text:** The accepted text states that each Party that has one or more regulatory and assessment schemes for new pesticides or industrial chemicals shall take measures to regulate, with the aim of preventing, the production and use of new pesticides or industrial chemicals that exhibit the characteristics of POPs, taking into consideration the criteria in Annex D (Information Requirements and Screening Criteria).

**Chemicals Currently In Use:** Text relating to chemicals currently in use, which had been developed at INC-4 in Bonn, was not included in the Chair's draft text. In a contact group meeting on Tuesday, delegates agreed to include a paragraph on this issue, stating that Parties "shall, where appropriate," consider Annex D criteria when conducting assessments of pesticides and industrial chemicals. This text was later amended to ensure consistency with the paragraph on new chemicals.

**Final Text:** The final text states each Party with one or more regulatory and assessment schemes for pesticides or industrial chemicals shall, where appropriate, take into consideration, within these schemes, Annex D criteria when conducting assessments of pesticides and industrial chemicals currently in use.

**Byproducts:** This provision addresses the measures to be taken by a Party to reduce or eliminate releases of POPs identified in Annex C. On Tuesday, Plenary began discussions, based on the Chair's text. Bracketed references to Party's capabilities and subject to the availability of technical and financial assistance remained throughout the week, and the reference was deleted after the resolution of Article K (Financial Resources and Mechanisms).

Colombia, the Russian Federation, South Africa, Brazil, Saudi Arabia, Malaysia and others supported the aim of ultimate elimination of releases, where technically and economically feasible. New Zealand, the EU, Norway, the Philippines, The Gambia, the Seychelles, Bangladesh and others supported a goal of ultimate elimination, without any qualifying language. Canada supported qualifying ultimate elimination, while the US said total elimination is not feasible in all situations and called for a realistic and practical formulation. Delegates also discussed, *inter alia*, whether Parties should "aim to" take measures and whether "total" releases should be reduced, but reached no consensus.

On preventing the formation and release of byproducts, many delegates supported the development and use of "substitute" materials, while Canada proposed adding "modified" materials. On best available techniques (BAT) for new sources, there were sharp divisions over whether BAT use should be required or promoted, and both options remained bracketed. The EU and Colombia proposed reference to best environmental practices (BEP) and requiring their use.



Norway advocated defining BAT and the Republic of Korea proposed a definition. Many delegates supported a subparagraph on action plans, but Colombia opposed, emphasizing duplication with Article E (Implementation Plans).

A representative of the Indigenous Environmental Network said dioxin discharges from pulp and paper mills have led to health problems in her community, and called for eliminating these substances. A representative of Port Graham Traditional Village Council noted efforts to ensure the future of their children, culture and traditional resources. On behalf of Greenpeace International, a representative from Mossville Environment Action Now urged the US Government to play a positive role in signing a treaty that will eliminate dioxins.

A contact group was established to consider unintentional releases and Annex C. On Wednesday, the contact group spent most of its time discussing Annex C, but did address the range of interpretations for “total” releases, and whether it refers to, *inter alia*, total global releases, total releases of a country, or total releases from a source. No consensus was reached.

On Thursday, the contact group agreed to delete “aim to” in reference to taking measures. Regarding a definition of “available” with respect to BAT, delegates agreed on language reflecting differing economic and technical realities and that BAT varies from country to country. 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. On BAT use for new sources, one developing country said he could accept requiring BAT use if Article J (Technical Assistance) included a clear provision for release reduction measures, but no agreement was reached. The Group did agree to promote BEP and to delete bracketed reference to “and/or other prevention strategies.” Delegates also linked this discussion to the scope of the BAT definition, and agreed to include the concept of a regulatory approach, since some countries said they could impose release limit values but not specific technologies. Delegates agreed to include a subparagraph on action plans, which should be developed within two years of entry into force and subsequently implemented.

On Friday in Plenary, Co-Chair Arndt introduced the text forwarded by the contact group and noted two bracketed alternative proposals on BAT use for new sources. The EU, with Norway and Nigeria, supported the option requiring BAT use for new sources. The EU drew attention to its proposed amendment to Article J on developing action plans and BAT. Many countries either supported, or said they would accept, the option promoting and, in accordance with its action plan, requiring BAT use with a phasing-in of no more than four years after entry into force. The Russian Federation proposed adding phasing-in “as soon as practicable,” which was accepted. On promoting the use of substitute materials, the US disagreed that these materials should be required where appropriate.

New Zealand, the EU and the Philippines reiterated a goal of ultimate elimination without any qualifying language. Canada supported a goal of ultimate elimination, where feasible. The US agreed, on the condition that the report of the meeting noted that “feasible” includes technical and economic considerations. Australia recalled its initial support for continuing minimization, but could accept “where technically and economically feasible, ultimate elimination.” India, South Africa and China supported this, but no agreement was reached. Delegates revisited, but did not resolve, the issue of “total” releases.

On Saturday, Co-Chair Arndt reported that, in informal consultations, delegates had agreed to: compromise chapeau language stating a goal of continuing minimization and, where feasible, ultimate elimination; and a note in the report of the meeting stating that the term “feasible” includes technical and economic considerations. Australia

and the EU noted reservations and requested that these be reflected in the report of the meeting. On the remaining brackets, the US agreed to requiring, where appropriate, the use of substitute materials.

**Final Text:** The final text states that each Party shall at a minimum take the following measures to reduce the total releases derived from anthropogenic sources of each of the chemicals listed in Annex C, with the goal of their continuing minimization and, where feasible, ultimate elimination:

- Developing an action plan or, where appropriate, a regional or subregional action plan, within two years of the date of entry into force, and subsequently implementing it as part of the plan specified in Article E (Implementation Plans);
- Promoting the application of available, feasible and practical measures that can expeditiously achieve a realistic and meaningful level of release reduction or source elimination;
- Promoting the development and, where the Party deems appropriate, requiring the use of substitute or modified materials, products and processes to prevent the formation and release of chemicals listed in Annex C;
- Promoting and, in accordance with its action plan, requiring BAT use for new sources within source categories which a Party has identified as warranting such action; requiring a phasing-in of BAT for new sources as soon as practicable but no later than four years after entry into force for that Party; and promoting BEP use; and
- Promoting BAT and BEP use for existing sources within source categories identified in the annex and for new sources, which a Party has not addressed under the above measure.

The provision notes that for applying BAT and BEP, Parties should take into consideration the general guidance on prevention and release reduction measures in Annex C, guidelines on BAT, and guidelines on BEP to be adopted by a COP decision. The provision also includes definitions for BAT, techniques, available, best, BEP, and new source. The BAT definition includes a note to indicate that release limit values or performance standards may be used by a Party to fulfill its commitments for BAT under the provision.

**Stockpiles and Wastes:** In Plenary on Wednesday, Canada, supported by Cameroon, the US, Australia, Ghana, the Republic of Korea, Zambia, Malaysia and others, supported reference to the Basel Convention and lifting of all brackets in the Chair’s draft text, pending resolution of discussions on financial assistance. The EU noted its proposal that: POPs wastes should be destroyed or transformed into a non-POP material, and, if not possible, disposed of only in an environmentally sound manner; calls for close cooperation between the POPs and Basel Conventions; specifically mentions POPs-contaminated products; and states POPs wastes should not be recycled. Norway, Belgium and Panama supported EU text stating that not all Basel disposal methods are applicable to POPs.

In a contact group on Thursday, several delegations emphasized the importance of maintaining direct reference to the Basel Convention 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 be under Basel. Several delegations also noted the importance of allocation of resources and avoiding duplication of work. 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, but other delegations opposed.



In the contact group on Friday, delegates agreed that wastes should be handled, collected, transported and stored in an environmentally sound manner, but were strongly divided over measures to be adopted for waste disposal. While delegates agreed that wastes should be disposed of in such a way that the POP content is destroyed, there was disagreement on whether to provide for the POP content to be “permanently transformed so that they do not exhibit the characteristics of POPs.” There was disagreement on the role of the Basel Convention and its guidelines, and on the role of the COP in determining the suitability of alternatives to destruction. Reference to the Basel Convention and the COP was bracketed, as was reference to international rules, standards and guidelines. Delegates also failed to agree on the prohibition of disposal options that may lead to recovery, recycling, reclamation, direct reuse or alternative uses of POPs chemicals. On the development of appropriate strategies for identifying sites contaminated by chemicals in Annexes A and B, bracketed reference was made to Annex C, and there was disagreement whether Parties should “develop” or “endeavor to develop” such strategies.

Early Sunday morning in Plenary, Chair Buccini proposed a compromise package of options on the remaining areas of disagreement. South Africa expressed concern on waste management pending a COP decision, and insisted on reference to the Basel Convention. Plenary was unable to reach agreement, and an informal group was convened at 3:30 am on Sunday. After some debate, Plenary agreed on a compromise set of options. The Legal Drafting Group reported that the text needed improvement to accurately reflect the intention of the negotiators. They proposed alternate text on a sentence regarding the role of the COP and the Basel Convention, which Plenary accepted.

**Final Text:** In the agreed provisions, Parties are required to, *inter alia*:

- develop appropriate strategies for identifying stockpiles, articles in use and wastes consisting of or containing Annex A or B chemicals;
- manage stockpiles in a safe, efficient and environmentally sound manner;
- take appropriate measures so that wastes are handled, collected, transported and stored in an environmentally sound manner; and
- endeavor to develop appropriate strategies for identifying sites contaminated by Annex A, B or C chemicals.

Regarding waste disposal, Parties are required to take appropriate measures so that wastes are disposed of in such a way that the POP content is destroyed or irreversibly transformed. When destruction or irreversible transformation does not represent the environmentally preferable option, or when the POP content is low, Parties may otherwise dispose of POPs-containing wastes in an environmentally sound manner, taking into account international rules, standards and guidelines including those that may be developed by the COP, as well as relevant global and regional regimes governing the management of hazardous wastes. Wastes are not permitted to be subjected to disposal that may lead to recovery, recycling, reclamation, direct reuse or alternative uses of POPs, and wastes may not be transported across international boundaries without taking into account international rules, standards and guidelines.

The COP is required to cooperate closely with the appropriate bodies of the Basel Convention to, *inter alia*: establish levels of destruction and irreversible transformation necessary to ensure that the POPs characteristics are not exhibited; determine what they consider to be the methods that constitute environmentally sound disposal; and work to establish, as appropriate, the concentration levels of Annex A, B and C chemicals in order to define the low POP content necessary to allow methods of disposal other than destruction or permanent transformation.

**Exemptions:** During the week there was extensive discussion on the issue of general exemptions for Annex A and B chemicals. (These discussions are summarized in the review of Annexes A and B.)

In a contact group on Wednesday afternoon, delegates agreed that the text on exemptions should be included as paragraphs within Article D, rather than as a separate article, as proposed in the Chair’s draft text. The provisions regarding general exemptions for unintentional trace contaminants, articles in use, and closed-system, site-limited intermediates, are included in Annex A and B.

**Final Text:** The text states that it is agreed that the provisions in Article D related to elimination, reduction, and import and export, shall not apply to quantities of the chemical used for laboratory scale research or as a reference standard. Any Party taking an exemption in accordance with Annex A or B is required to take appropriate measures to ensure that any production or use is carried out in a manner that prevents or minimizes human exposure or release into the environment.

**ARTICLE E (Implementation Plans):** This article was discussed Wednesday in Plenary and was accepted after a number of countries made amendments. The final text states that Parties shall: develop plans for implementation; transmit this plan to the COP within two years of entry into force; update the plan at regular intervals; endeavor to integrate the plans into national sustainable development strategies; and cooperate with global, regional and subregional organizations and consult national stakeholders.

**ARTICLE F (Listing of Chemicals in Annexes A, B and C):** This article outlines the procedure for identifying new chemicals to be added to Annexes A, B and C, and the criteria to be considered, which are elaborated in Annex D (Information Requirements and Screening Criteria), Annex E (Information Requirements for the Risk Profile), and Annex F (Information on Socioeconomic Considerations). Plenary held an initial debate on Thursday, and a contact group, chaired by Atle Freitheim (Norway), was established and met on Friday, informally throughout the day on Saturday, and into early Sunday morning.

On Thursday in Plenary, delegates discussed the Chair’s draft text of the article. New Zealand presented a JUSCANZ proposal, which deleted bracketed language on taking action despite a lack of scientific certainty and on the precautionary principle, and includes a limited role for the COP. 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 the article, but noted that additional references would not change the instrument’s efficacy. Australia noted that the EU’s proposal to include reference to the precautionary principle and moving a proposal forward despite lack of scientific certainty does not reflect Rio Declaration Principle 15 language, and may be used to dismiss objective analysis and politicize decision-making.

Canada, supported by the Republic of Korea, advocated use of a precautionary approach, noting the precautionary principle is not a substitute for science. Advocating inclusion of a 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. The Gambia, 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 involvement of observers throughout the procedure, and that the COP would decide





whether to list the chemical. A contact group was established to further discuss the article, as well as the concept of the precaution and if and how to refer to it in the Convention.

On Friday, in the contact group, one delegate lamented the low number of developing country participants. Delegates discussed the procedure for identifying new chemicals before engaging in a debate on the precautionary principle. The group discussed the EU proposal to increase the role of the COP at the screening and risk profile stages of the procedure and contentious debate revolved around the proposed appeals process, whereby a Party could appeal to the COP when the POPs Review Committee (POPRC) has decided to set aside a proposal. Delegates agreed to an increased role for the COP, but one country reiterated that it had originally only envisaged a role for the COP in the decision of whether to list the chemical in the annexes. The group debated the scope of the COP's decision-making criteria if the proposal, after being rejected twice by the POPRC, was brought forward. The EU noted that the intent was to inject a new perspective, and that the COP decision should not be based on, but rather take into account, the criteria used by the POPRC. One delegate advocated use of the same criteria, noting the COP was a different body and would be applying judgment in its decision-making.

On direct references to, and implicit language on, precaution, a group of countries supported language that would enable a proposal to proceed despite lack of scientific certainty. One country advocated adding reference to lack of "full" scientific certainty. A group of countries preferred reference to the precautionary principle, while others preferred language on the precautionary approach as set out in Principle 15 of the Rio Declaration. Discussions continued informally.

In Plenary on Sunday, Canada introduced a package proposal on Article F and relevant text in the preamble, the objective and Annex C. Canada noted that the package proposal was supported by the EU, Canada, the US, Japan, Iceland, Norway, New Zealand, Australia, Switzerland, South Africa, Colombia and Chile, and that the package was intended to resolve all issues related to the principle or approach of precaution. He said the procedure includes an appeals process and dispute resolution mechanism for proposals that are set aside, opens up activities to observers, and operationalizes precaution in the article's language. He noted the intensive debate around the issue of appealing to the COP to reconsider proposals. Switzerland said the package was an important step forward as it embedded precaution in a global treaty. Brazil, Iran and the Russian Federation, and Uruguay, on behalf of GRULAC, supported the proposal, and Plenary agreed to the package.

**Final Text:** The final text outlines the procedure for identifying new chemicals to be added to Annexes A, B and/or C. It also outlines an appeals process and dispute resolution mechanism to address POPRC decisions to set aside a proposal. A Party first submits a proposal to the Secretariat. The proposal must contain the information specified in Annex D on screening criteria and the proposal is then forwarded to the POPRC, who examines the proposal and applies the screening criteria in a flexible and transparent manner. If the criteria are met, the proposal moves to the risk profile stage. If the POPRC decides to set aside the proposal, the Party can resubmit its proposal. If the POPRC rejects the proposal a second time, the Party can appeal to the COP for a decision, and the COP would consider the proposal and decide whether to move it forward based on the screening criteria and taking into account the POPRC's evaluation and any additional information provided by Parties and observers.

At the next stage, the POPRC prepares a risk profile in accordance with Annex E if it concludes that the chemical is likely, as a result of its long-range environmental transport, to lead to significant adverse human health and/or environmental effects such that global action is warranted, the proposal proceeds. The text states that lack of full scien-

tific certainty would not prevent the proposal from proceeding. The POPRC then prepares a risk management evaluation, including an analysis of possible control measures in accordance with Annex F.

If the POPRC sets aside the proposal, the Party could request the COP to request the POPRC to invite additional information during a one-year period, and then reconsider the proposal. If the POPRC sets aside the proposal again, the Party has the option of asking the COP itself to decide whether the proposal should move forward. The COP would then decide whether the POPRC should prepare a risk management evaluation, based on the risk profile and taking into account the POPRC's evaluation and any additional information provided by Parties and observers.

Based on the risk profile and the risk management evaluation, the POPRC recommends whether the chemical should be considered by the COP for listing. The COP, taking due account of the recommendations of the POPRC, including any scientific uncertainty, would then decide, in a precautionary manner, whether to list the chemical in Annex A, B and/or C.

**ARTICLE G (Information Exchange):** This article mandates:

- information exchange on the reduction or elimination of the production, use and release of POPs, and information on their alternatives;
- designation of a national focal point;
- establishment of the Secretariat as a clearing-house mechanism; and
- protection of confidential information as mutually agreed between Parties.

On Tuesday, Plenary debated whether each Party should "facilitate" or "undertake" information exchange and whether this should be in a transparent and non-discriminatory manner, or in a manner consistent with the Party's laws, regulations and practices. Japan, the Philippines and others supported "facilitate." The Republic of Korea, Iran and others supported "undertake." The Czech Republic, Bangladesh, Norway, Iran, Pakistan and others supported "transparent and non-discriminatory manner." Saudi Arabia, Argentina and others preferred in a manner "consistent with laws." Some delegations supported retaining both sets of alternatives. Switzerland, supported by many delegations, proposed deleting the alternatives on manner of information exchange and requiring each Party to "facilitate and undertake." The US said "undertake" was only acceptable if "manner consistent with laws" was retained. Chair Buccini suggested and delegates agreed that each Party shall facilitate or undertake information exchange.

Colombia, supported by Brazil and Uruguay and opposed by others, called for deletion of text on protecting confidential information. Regarding information designated non-confidential, the Russian Federation questioned the meaning of human and environmental health and "safety" information, and suggested removal of the word. The Secretariat suggested, and The Gambia and Indonesia supported, text referring to information on the health and safety of humans and the environment. A representative of National Toxics Network said the success of a POPs Convention is based on the free exchange of information.

On Thursday, 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 approved as amended.

**ARTICLE H (Public Information, Awareness and Education):**

On Tuesday, the US, with Colombia, Japan and the Russian Federation, and opposed by the EU and The Gambia, supported text on accordance with national laws and regulations as regards ensuring public access to information. The US, with Colombia, Japan and the Russian Federation, supported text stating each Party shall "encourage"



industry and professional users to promote the provision of information. The EU and The Gambia preferred "ensure." The US, supported by The Gambia and Japan, proposed new text on pollutant release and transfer registers (PRTRs).

On Wednesday, Canada and Thailand supported text on ensuring public access to information in accordance with national laws and regulations. The Gambia suggested this was superfluous. The EU, supported by the Czech Republic, preferred ensuring public access to "public" information. This was agreed. Thailand supported language that each Party shall "ensure" industry and professional users facilitate the provision of information. South Africa and Canada supported "encourage." Delegates agreed, on the understanding that governments may take stronger measures.

Text proposed by the US on developing mechanisms, such as PRTRs, for collecting and disseminating information was supported by Iceland, The Gambia and the Russian Federation, but opposed by South Africa. The text was provisionally agreed without changes. After noting a footnote on relocated text, this article was agreed on Friday.

**Final Text:** The article outlines Party responsibilities with regard to promoting and facilitating: educational and public awareness; public participation; training of workers, scientists, educators and technical and managerial personnel; and use of safety data sheets, reports, mass media and other means of communication in providing this information.

**ARTICLE I (Research, Development and Monitoring):** This article addresses research, development, monitoring and cooperation pertaining to POPs, including support for, *inter alia*, international programmes and international efforts to strengthen national scientific and technical research capabilities. On Wednesday, delegates agreed that Parties shall "encourage and/or undertake" appropriate research, development, monitoring and cooperation pertaining to POPs "and, where relevant, to their alternatives." The Ukraine added candidate POPs. The US advocated specifying socioeconomic "and cultural" impacts. Canada advocated specifying environmental "movement," fate and transformation. Cameroon preferred "transport." Zambia proposed an item on data storage. The Republic of Korea opposed any changes. No consensus was reached.

On specific requirements, The Gambia advocated "national and" international efforts to strengthen, *inter alia*, research capabilities. Delegates agreed. On taking into account concerns and needs of developing countries and CEITs in specified activities, China advocated this be particularly in the field of technical and financial resources. The US, with the EU, but opposed by China and others, preferred addressing this under Articles J (Technical Assistance) and K (Financial Resources and Mechanisms). On making results of certain research and monitoring activities publicly accessible, Cameroon specified research, "development" and monitoring and Bangladesh added "on a timely and regular basis." Delegates agreed. The Gambia proposed a provision on gearing research towards alleviating effects of POPs on reproductive health. This was accepted.

On Friday, on items identified for these activities, delegates lifted brackets on environmental "transport," fate and transformation, and on socioeconomic "and cultural" impacts. Delegates agreed to harmonized methodologies for making inventories of generating sources and analytical techniques for measurement of releases, and to storage and maintenance of information generated from the activity items. Delegates also agreed to take into account the concerns and needs of developing countries and CEITs, particularly in the field of financial and technical resources, as well as agreeing to undertake research work geared towards alleviating the effects of POPs on reproductive health.

On Saturday, Chair Buccini introduced the latest text, highlighting the Legal Drafting Group's note clarifying that "development" does not refer to development of POPs, but to research and development pertaining to POPs. Delegates approved the article, which outlines Party responsibilities regarding research, development, monitoring and cooperation pertaining to POPs on their: sources and releases; presence, levels, and trends in the environment and humans; environmental transport, fate and transformation; effects on human health and the environment; socioeconomic and cultural impacts; release reduction and/or elimination; and methodologies for making inventories. The article further states that Parties shall, within their capabilities:

- support international research programmes;
- strengthen national scientific capabilities in developing countries and CEITs;
- undertake research on the effects of POPs on reproductive health;
- make research and monitoring results public; and
- encourage cooperation with regard to storage and maintenance of information.

**ARTICLE J (Technical Assistance):** Article J provides detail as to how Parties shall provide technical assistance, including, *inter alia*: compiling inventories and release registers; developing and implementing implementation plans; identifying and remediating sites affected by POPs; and promoting programmes on awareness raising and on information.

On Saturday in Plenary, and regarding technical assistance for health issues, the Russian Federation suggested adding a reference to aspects dealing with gender. The G-77/China called for consideration to least developed countries and SIDS. Noting structural problems with the article, the US suggested sending it to the Legal Drafting Group. Delegates agreed, and early Sunday morning, delegates revisited the amended article.

Georgia voiced concerns about the deletion of specific technical assistance activities, and called for deletion of "existing" regional and subregional centers for capacity building. Colombia suggested adding text referring to further guidance on technical assistance activities to be provided by the COP. Iran and the G-77/China expressed reservations with the amended text. The US pointed out that although some text was removed, the obligations of Parties and the intent of the article are clear. The article was approved and, on Chair Buccini's suggestion, will be referred to the Diplomatic Conference for further consideration.

**Final Text:** The article states that Parties recognize that rendering of technical assistance in response to requests from developing countries and CEITs is essential to the successful implementation of the Convention, and that Parties shall cooperate to provide this assistance for capacity building related to implementation. It also establishes, as appropriate, arrangements for the purpose of providing technical assistance and promoting technology transfer. In addition, the article refers to the specific needs and special situation of least developed countries and SIDS with regard to technical assistance.

**ARTICLE J bis (Capacity Assistance Network):** This provision, bracketed in the Chair's text, called on the Secretariat to perform a capacity assistance network function. Delegates discussed this article late Saturday night. Canada expressed support for this provision, but noting Article K has a similar provision, stated that if there were to be extensive discussions on Article J bis, he could accept its deletion and referral of the issue to the Diplomatic Conference for consideration. Delegates agreed to this suggestion and the article was deleted.

**ARTICLE K (Financial Resources and Mechanisms):** On Monday, Chair Buccini initiated discussion on Article K. He outlined financial mechanism attributes identified at an intersectoral meeting in Vevey, Switzerland, in June 2000 (UNEP/POPS/INC.5/4) (the Vevey attributes). The G-77/China called for negotiation of Article K



based on their proposed text and underlined the importance of common but differentiated responsibilities. The EU, supported by the Czech Republic and Norway, advocated a GEF-based mechanism that provides a coordinated framework for adequate and sustained support from a variety of multilateral, regional and bilateral sources to developing countries and CEITs. Antigua and Barbuda called for language regarding least developed countries and SIDS. Switzerland supported a central role for the GEF. The Gambia questioned the degree to which GEF funding would be binding.

Canada called attention to a submission from a number of delegations, including the EU, JUSCANZ members, CEITs and other countries, that identifies the need for a GEF-based mechanism that could provide resources in a timely manner, specifically for POPs, and that could support early action in countries with different needs. With the US, he noted there would also be opportunities for other organizations to provide assistance under the guidance of the COP. Colombia called for responses from developed countries regarding funding commitment questions, and stressed taking heed of past mistakes.

On Tuesday, the G-77/China indicated that the submission by the EU and others was unacceptable since it did not take account of concerns raised by the Group at previous INCs, and did not place obligations on developed countries as in other agreements such as the CBD. On Thursday, the EU expressed disappointment with the G-77/China Article K proposal. He highlighted 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 considering the EU and others' submission with the G-77/China's proposal to achieve an effective, realistic and practical outcome. The G-77/China underscored that their proposal 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 the exclusion of CEITs from the G-77/China proposal. Canada, with others, emphasized that the G-77/China proposal omitted: the GEF; CEITs; a coordinated framework; the CAN; and an interim mechanism. The US, with others, underscored working with 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 if it is to play a role, then the GEF must be mentioned in the Convention, as in the Convention on Biological Diversity (CBD) and the UN Framework Convention on Climate Change.

In the afternoon, an open contact group chaired by John Buccini continued discussions based on the G-77/China proposal. Delegates debated inclusion of Chair's text on each Party undertaking to provide financial support and incentives for national objectives to achieve the objective of the Convention. This language was left bracketed, as many expressed concern that they would end up funding themselves. On new and additional financial resources from developed countries, a developed country 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. 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. A delegate queried whether the proposed CAN's functions might better be performed by the mechanism. Several developing countries indicated openness to this, subject to the provisions in their proposal relating to the CAN. One developing country indicated acceptance of a GEF-based mechanism provided it works effectively. Several noted their commitment to provide new and additional resources, subject to the GEF being the primary mechanism.

An informal group met late on Thursday and throughout Friday and Saturday in an attempt to reconcile the two positions. On Saturday evening, Facilitator Sandea de Wet (South Africa) reported that after difficult negotiations an agreement had been struck by way of a package deal consisting of: Article K; Article K *bis* (Interim Financial Arrangements), which designates the GEF as the interim financial mechanism; and a draft resolution on interim financial arrangements for adoption at the Diplomatic Conference. Agreement on a provision in Article K – on making implementation of developing country Parties' commitments dependent on implementation of developed country Parties' commitments related to financial and technical assistance – was dependent on deletion of the qualifiers in Article D (Measures to Reduce or Eliminate Releases) and Article E (Implementation Plans) on capabilities and availability of financial and technical assistance. A number of CEITs voiced concern regarding the omission of CEITs from the Article K package provision on implementation of commitments being dependent on developed country's meeting their financial commitments. Plenary agreed to note in the report that interests of CEITs have not been fully taken into account.

**Final Text:** In the final agreed text of Article K, each Party undertakes to provide, within its capabilities, financial support and incentives regarding those national activities intended to achieve the Convention's objectives in accordance with its national plans, priorities and programmes. It states that developed country Parties shall provide new and additional financial resources to enable developing country Parties and CEITs to meet the agreed full incremental costs of implementing measures that fulfill their Convention obligations, and other Parties may provide such financial resources on a voluntary basis. It adds that implementation of these commitments shall take into account the need for adequacy, predictability, the timely flow of funds, and burden sharing among contributing Parties. It also provides for financial resources through other bilateral, regional and multilateral sources/channels. It states that: the extent to which developing country Parties will effectively implement their commitments will depend on effective implementation of developed country Party commitments on financial resources, technical assistance and technology transfer; and the overriding developing country Party priorities of sustained economic and social development and poverty eradication will be taken fully into account.

The article further provides that Parties shall take full account of the specific needs and special situation of least developed countries and SIDS, in funding actions. It states that a mechanism for providing financial assistance on a grant or concessional basis to developing country Parties and CEITs shall be accountable to, and function under the authority and guidance of, the COP. The mechanism's operation shall be entrusted to one or more entities, including existing international entities, as decided by the COP, and the mechanism may include other entities providing multilateral, regional and bilateral financial and technical assistance. The article provides that COP-1 shall adopt appropriate guidance for the mechanism and agree with it upon arrangements for this. The article also provides for the COP to review, by its second meeting and regularly thereafter, the mechanism's overall effectiveness, and then take appropriate action if needed to improve effectiveness.



Article K *bis* provides for the GEF to be the principal entity entrusted with operation of the financial mechanism between the Convention's entry into force and COP-1, or until such time as the COP decides otherwise. The GEF should fulfill this function through operational measures related specifically to POPs.

The draft resolution on interim financial arrangements requests:

- the GEF Assembly to consider establishing a new focal area to support the Convention's implementation;
- the GEF Council to implement as soon as possible an Operational Programme for POPs;
- the GEF to report to COP-1 on measures taken to ensure the transparency of the GEF project approval process, as well as simple, flexible and expeditious fund access procedures;
- donors to the GEF Trust Fund to contribute adequate additional financial resources through the third GEF Trust Fund replenishment;
- the interim Secretariat to invite relevant funding institutions to advise how they can support the Convention, and report to COP-1; and
- COP-1 to review the availability of financial resources other than the GEF, and ways to mobilize and channel these in support of the Convention.

**ARTICLE L (Reporting):** On Wednesday, delegates discussed this article on reporting to the COP the measures the Parties have taken to implement the provisions of the Convention and on the effectiveness of such measures. It also specifies that reporting shall be at regular intervals and in a format to be decided by the COP. Noting the similarities between Articles L and E (Implementation Plans), South Africa called for deletion of Article E. Chad suggested that reporting should be at "periodic" intervals. Brazil advised that contents of reports should be a COP decision. The paragraph was approved without amendment.

Chair Buccini outlined a proposal stating that Parties shall provide to the Secretariat: statistical data on chemicals listed in Annexes A and B; a list of States to which Parties are exporting, and from which Parties are importing these chemicals, and the foreseen use of each substance in each State; and copies of certification. Discussions resumed in Plenary on Friday. On providing the Secretariat with statistical data on total quantities of production, import and export of Annex A and B chemicals, Iran, supported by others, proposed deletion of text enumerating this, preferring to leave such detail for the COP. The EU, with the US, preferred retention of the text. After informal consultations, delegates agreed to delete the requirement for Parties to provide the Secretariat with information on the foreseen use of Annex A and B chemicals in each State to which such chemicals are exported and with copies of associated certifications. With these modifications, the article was approved. The final text refers to provision of statistical data and the list of States to the Secretariat, and reporting at periodic intervals.

**ARTICLE L *bis* (Effectiveness Evaluation):** Article L *bis* states that the COP shall evaluate the effectiveness of the Convention either three or four years after its entry into force, and periodically after that at intervals to be decided by the COP. It outlines potential options for facilitation of the evaluation, including development of a harmonized global monitoring programme and establishment of arrangements to provide the COP with monitoring data, taking into account the differences between regions and their capabilities. It states implementation should be on a regional basis, using existing monitoring programmes and mechanisms to the extent possible and promoting harmonization of approaches.

On Wednesday, South Africa called for the article's deletion. The EU, with Japan, proposed deletion of references to "harmonized" global monitoring systems, and suggested "existing." The Russian

Federation noted a harmonized global system should integrate existing regional systems. Pakistan suggested a timeframe of four years to allow time for data collection. Supporting the article, Cameroon expressed concerns about capacity building. Brazil suggested language on "taking into account specific situations."

On Saturday, Canada, supported by the US, presented a formulation of this article, which specifies, *inter alia*: evaluation four years after entry into force; initiation of the establishment of arrangements to provide the COP with comparable monitoring data, taking into account the differences between regions and their capabilities; and implementation on a regional basis, when appropriate, in accordance with their technical and financial capabilities. Delegates accepted this formulation, and the article was approved.

**ARTICLE M (Non-Compliance):** On Wednesday, delegates considered the Chair's draft text, which states that the COP shall develop and approve procedures and institutional mechanisms for determining non-compliance with the provisions of the Convention and for the treatment of Parties found to be in non-compliance. Bangladesh suggested that these procedures and mechanisms should be determined "as soon as practicable." Canada, supported by several delegations, suggested "at the first meeting." Brazil said this would be too ambitious. Delegates agreed to lift the brackets from "as soon as practicable" and the article was accepted.

**ARTICLE N (Settlement of Disputes):** This provision describes the process by which Parties shall settle disputes, including, *inter alia*: use of negotiation or other peaceful means; expiry of written declarations; unsolved disputes; and the role of the conciliation commission. The article was approved on Wednesday, with minor modifications to language on regional economic integration organizations.

**ARTICLE N *bis* (Relationship with Other Agreements):** Article N *bis* of the Chair's draft text stated that the provisions of the Convention shall not affect the rights and obligations of any Party deriving from any existing international agreements. On Sunday morning, delegates agreed to delete this article, since the content is addressed in preambular text.

**ARTICLE O (Conference of the Parties):** On Wednesday, delegates began discussing this article, which establishes the COP, and describes, *inter alia*: the first meeting of the COP and items to be decided at that meeting; extraordinary meetings; functions of the COP; establishment of the POPRC; and representation at the meetings. Regarding POPRC members being appointed on the basis of equitable geographical distribution, delegates discussed brackets around "a limited number of" government-designated experts and "including ensuring a balance between developed and developing countries." Brazil, with Colombia and opposed by the EU, advocated deleting the latter text. Iran, with Pakistan, advocated deleting "a limited number of" government-designated experts, noting this was a COP decision. The US, with Australia and the EU, opposed deletion. On Thursday, Chair Buccini introduced, and delegates accepted, language regarding review of information made available to the Parties by the COP.

On Friday, delegates resumed discussion of the article. Despite US objections, delegates: deleted reference to "a limited number of" government-designated experts and to "ensuring a balance between developed and developing country Parties;" agreed to meetings at "regular" intervals; and accepted a new EU-proposed paragraph on the regular review of all information made available to the Parties. On Saturday, the US introduced, and delegates accepted, relocated text from Article D calling on the COP to consider the effectiveness and continued need for the exemption procedure in the provision relating to the export of Annex A and B chemicals. The article was approved.

**ARTICLE P (Secretariat):** This provision establishes the Secretariat and sets out its functions, including, *inter alia*: making arrangements for meetings of the COP and its subsidiary bodies; facilitating



assistance to Parties in implementing the Convention; ensuring necessary coordination with other relevant secretariats; and performing other functions specified in the Convention. On Saturday, delegates considered an additional paragraph submitted by JUSCANZ members, the EU, several CEITs and other countries, which states that the Secretariat shall prepare and make available to the Parties periodic reports based on information received pursuant to the article on reporting. Delegates approved this proposal and the article was accepted.

**ARTICLE Q (Amendments to the Convention):** Article Q states that amendments may be proposed by any Party. It further specifies, *inter alia*: amendments to the Convention shall be adopted at a COP meeting; Parties shall make every effort to reach agreement on any proposed amendment by consensus; the amendment shall be communicated by the depository to all Parties for ratification, acceptance or approval; and schedules for entry into force of the amendment. Although the article was not discussed, the Final Report (UNEP/POPS/INC.5/L.1/Add.1) notes that it was approved by the INC on the basis of the Chair's text.

**ARTICLE R (Adoption and Amendment of Annexes):** This provision outlines the procedure for proposal, adoption and entry into force of additional annexes to the Convention, and states that, *inter alia*: additional annexes shall be proposed and adopted according to Article Q; any Party that is unable to accept an additional annex shall notify the depository; and the annex shall enter into force for all Parties that have not submitted a notification on the expiry of one year from the date of the communication by the depository.

Three options for amendments to annexes were outlined in the Chair's draft text: opt-out, which states that amendments to annexes shall be subject to the same procedure as additional annexes; opt-in, which is the same as opt-out, except in the case of amendments to add a chemical to Annexes A, B and/or C; and consensus and automaticity, which states that amendments shall be adopted at COP meetings by consensus.

This article was discussed in Plenary on Saturday night. The US said it could not accept opt-out. The EU said it could not accept opt-in. Both delegations supported consensus and automaticity for Annexes D, E and F, which was accepted by all participants. The EU suggested a compromise arrangement, whereby the procedure would be opt-out, but Parties could make a declaration pursuant to Article U and choose the ratification approach. The EU clarified that this approach was based on the model used in the UN Convention to Combat Desertification. Delegates agreed to this arrangement in principle, pending drafting of a formulation by the Legal Drafting Group. Early Sunday morning, the Chair of the Legal Drafting Group outlined the procedure, and the article was agreed with this arrangement.

**ARTICLE R bis (Register of Country-Specific Exemptions):** The article establishes a register with the purpose of identifying Parties that have country-specific exemptions (CSEs) listed in Annexes A and B. The aim of this Register, which will be maintained by the Secretariat and publicly available, is to provide a convenient way of handling CSEs, while ensuring that it is not too easy for CSEs to be granted or to stay in existence.

The proposal to establish a register was first raised in the contact group on Prohibition and Restriction on Wednesday afternoon where the US circulated a non-paper on CSEs for Annex A. The non-paper included options on rules regarding CSEs for countries that accede after entry into force, as well as rules to review, change or terminate CSEs. It proposed the establishment of a separate register that would provide an additional window of time between INC-5 and the Diplomatic Conference, while also avoiding the problem of listing non-Parties to the Convention within the Annex. After informal consultations, the Group agreed on key criteria that would form the basis of text to implement a register-based approach for CSEs. Questions were

raised regarding, *inter alia*, a proposed five-year ceiling for the expiry dates. A small informal group was convened late Wednesday evening and developed draft text establishing a register with equivalent legal effect to Annex A.

In Thursday's Plenary, delegates failed to agree on the text of the Co-Chairs' proposed article on the register of country-specific exemptions (CSE) and review process. Delegates disagreed with the proposal that all CSEs shall expire five years after entry into force of the Convention for the requesting Party, with respect to a particular chemical. Two options were included in the text on the possibility for the COP to extend the CSE expiration date, and there was disagreement on the possibility for States seeking accession to be able to register types of CSEs not already listed in Annex A.

Co-Chair Hinchcliffe reported clear advice from the Legal Drafting Group that the proposed approach for adopting the Register may breach international law. He noted, however, that the Legal Drafting Group could produce a "bare bones" architecture setting up the Register and providing for further elaboration by the COP. On Friday evening in Plenary, Hinchcliffe presented a revised Article on CSEs developed by the Legal Drafting Group that was closer to a final text than originally anticipated. During the Plenary discussions, delegates reached agreement on the expiry date for CSEs, and also agreed on a modified option relating to the role of the COP in extending the expiry date of CSEs.

**Final Text:** The agreed Article R *bis* describes the aim and content of the Register, as well as the procedures for registration and review. Any State, on becoming a Party, may register for one or more types of CSE listed under Annexes A or B, or an acceptable purpose listed in Annex B, with the exception of those relating to PCBs and DDT, by means of a notification in writing to the Secretariat. Unless an earlier date is indicated in the Register, all registrations of CSEs shall expire five years after the date of entry into force of the Convention. The COP is to decide on its review process for the entries in the Register. It may, upon request from the Party concerned, decide to extend the expiry date of a CSE for a period of up to five years. Parties may withdraw an entry from the Register at any time upon written notification to the Secretariat. When there are no longer any Parties registered for a particular type of CSE, no new registrations may be made with respect to it.

**ARTICLE S (Right to Vote):** This article states that each Party shall have one vote, and sets out the voting protocol for regional economic integration organizations. Although the article was not discussed, the Final Report notes that it was approved by the INC on the basis of the Chair's text.

**ARTICLE T (Signature):** Article T sets the location and dates for signature of the Convention, which are not specified. Although the article was not discussed, the Final Report notes that it was approved by the INC on the basis of the Chair's text.

**ARTICLE U (Ratification, Acceptance, Approval or Accession):** On Saturday, the Plenary discussed Article U, which states that the Convention is open for accession by States and regional economic integration organizations (REIOs) once it is closed for signature. Any REIO that becomes a Party to the Convention without any of its member States being Parties shall be bound by its obligations under the Convention, and if any of an REIO's member States are also Parties, the REIO and the member State(s) shall not be entitled to exercise rights under the Convention concurrently. After agreeing that the other provisions in the article were standard, Article U was adopted.

**ARTICLE V (Entry into Force):** On Thursday, Chair Buccini sought agreement from the Plenary that the Convention will enter into force 90 days after the receipt of 50 instruments of ratification, accep-



tance, approval or accession. The EU, opposed by Germany, proposed reference to the 30 instruments. On Friday, delegates agreed to 50 instruments and the article was approved.

**ARTICLE W (Reservations):** On Thursday, Plenary discussed bracketed Article W, which states that no reservations may be made to the Convention. The US suggested, and Plenary agreed, that this article be addressed once the full content of the Convention was known. Early on Sunday morning, the article was approved without modification.

**ARTICLE X (Withdrawal):** This article, containing standard language regarding withdrawal from the Convention, was approved on Saturday.

**ARTICLE Y (Depositary):** On Saturday, delegates adopted this article, which provides that the UN Secretary-General shall be the Depositary of the Convention.

**ARTICLE Z (Authentic Texts):** On Saturday, delegates adopted this article without amendment. It provides that the originals of the Convention in the six official UN languages are equally authentic, and shall be deposited with the UN Secretary-General.

**ANNEX A (Elimination):** Annex A lists POPs chemicals that Parties are prohibited from producing and using, subject to certain general and country-specific exemptions. In Plenary on Tuesday, the US proposed general exemptions relating to unintentional trace contaminants in products and articles in use. He said the US was reconsidering its earlier proposal for exemptions for closed-system intermediates and possession of end-users. Nigeria, Indonesia and Syria supported general exemptions for laboratory-scale research only. In the contact group on Wednesday afternoon, delegates agreed to include a general exemption in the chapeaux of Annexes A and B on unintentional trace elements, but failed to agree on whether to address closed-system site-limited intermediates and articles in use as general or specific exemptions. They agreed that PCBs should be included in Annex A. An informal group was convened to revise a EU proposal aimed at prioritizing actions on the elimination of PCBs. A number of countries expressed concern with proposed expiry dates and these were bracketed.

In Plenary on Thursday, the US clarified that unintentional trace elements was a general exemption, whereas closed-system site-limited intermediates and articles in use were conditional procedures that operate with Party notification. He noted, *inter alia*, that the general exemption for articles in use avoids future amendment of the annex upon cessation of use. Prohibition and Restriction Contact Group Co-Chair Peter Hinchcliffe (UK) explained that a reference to "Registered Parties" under "Party" in the CSE table signified placement in a register of Parties who have submitted CSEs. Switzerland supported the general exemption approach in the chapeau over specific exemptions. Delegates agreed on the general exemption for unintentional trace elements.

Concerned with implications for the paragraph on import and export, the EU specified that articles in use shall not be considered as "a production or use specific exemption" upon the relevant notification. The US accepted this. The US noted its text submission, supported by others, amending the closed-system site-limited intermediates general exemption, and highlighted provision for exemption extensions after 10 years unless the COP decides otherwise. Regarding bracketed text that the COP [decides by consensus] [decides by consensus without the vote of the Party concerned] [decides], the EU and the Russian Federation supported "decides." The EU advocated text on production, use and storage of a closed-system, site-limited intermediate not being considered as a production and use exemption. Chair Buccini reiterated the need to reflect that this exemption did not apply to eight of the intentionally-produced POPs.

In the contact group on Thursday, delegates agreed 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 the Register; introducing new CSEs to accommodate those 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.

In the final Plenary session on Saturday night, delegates resolved differences relating to general exemptions, and agreed to text prohibiting the export or import of equipment containing PCBs, except for the purposes of environmentally sound destruction. Text was also agreed on reporting requirements regarding the elimination of PCBs, and delegates accepted a new subparagraph proposed by Finland requiring the COP to review progress towards the elimination of PCBs at five-year intervals, or, as appropriate, taking into account such reports. Following the establishment of an informal group early on Sunday morning, delegates agreed that reference to "as allowed" in the annex entries on specific exemptions be amended to "as allowed for the Parties listed in the Register."

**Final Text:** The final text of Annex A comprises two parts. Part I is a table of nine chemicals the production and use of which are prohibited in terms of Article D1. Provision is made for specific exemptions relating to the production and defined uses of each of these chemicals. Details on the country for which these specific exemptions apply are included in the Register established under Article R *bis*. In a note to Annex A, a general exemption exists for quantities of a chemical occurring as: unintentional trace contaminants in products and articles; constituents of articles manufactured or already in use; and closed-system site-limited intermediates. Parties are required to notify the Secretariat of articles in use and of closed-system intermediates. The production and use of closed-system intermediates shall cease after a 10-year period unless the Party submits a new notification to the Secretariat, in which case the period will be extended for an additional 10 years, unless the COP decides otherwise.

Part II of the Annex defines prioritized actions to be taken for the elimination of PCB use in equipment by 2025, including identifying, labeling and removing from use equipment containing greater than ten percent of PCBs and volumes greater than five liters. It states that: trade in equipment containing PCBs is prohibited except for the purpose of environmentally sound waste management; Parties are required to make determined efforts designed to lead to environmentally sound waste management of liquids containing PCBs and equipment contaminated with PCBs as soon as possible, but no later than 2028; and various reporting requirements also apply.

**ANNEX B (Restriction):** Annex B lists POPs that Parties are restricted from using and producing, subject to certain general and country-specific production and use exemptions. On Wednesday, delegates agreed in a contact group that DDT should be included in Annex B. On Thursday, delegates agreed on a number of changes to Annexes A and B (described above), and considered a proposal submitted by South Africa and the EU on DDT restrictions. On Friday, delegates accepted revised text on restricted use of DDT based on this submission and on proposals by the US.

**Final Text:** Annex B comprises two parts. Part I consists of a table of POPs chemicals (currently only DDT is listed), the production and use of which is restricted. Provision is made in the table for the "acceptable purpose" for which the production and use of that chemical is permitted. Part I also includes a note – identical to that included in Annex A – on general exemptions for unintentional trace contaminants, articles in use, and closed-system, site-limited intermediates.



Part II of Annex B details the requirements relating to the restricted use of DDT. These include, *inter alia*: notifying the Secretariat; restricting production and/or use for disease vector control in accordance with World Health Organization (WHO) recommendations and guidelines; and providing information every three years to the Secretariat and WHO on the amount used, the condition of such use and its relevance to that Party's disease management strategy. A DDT Register is established listing Parties who have notified the Secretariat of their intention to produce and/or use DDT. Parties are encouraged to develop and implement an action plan with the goal of reducing and ultimately eliminating the use of DDT. The COP, in consultation with the WHO, shall evaluate the continued need for DDT for disease vector control.

**ANNEX C (POPs Subject to the Requirements of Article D, paragraph 3):** This annex is related to the provision on unintentional releases, and elaborates on sources, definitions, general guidance on prevention and reduction measures, and guidelines on BAT and BEP.

On Tuesday, delegates in Plenary discussed the Chair's draft text on Annex C, composed of sections on implementation guidance on release reduction measures, an indicative list of major source categories, and definitions. The Republic of Korea said the list of major source categories was too specific, and called attention to its proposal for Annex C. The EU submitted a proposal for Annex C that distinguishes between major source categories and other source categories, and includes general guidance of release reduction measures, and guidance for BAT and BEP.

On Wednesday, the contact group discussed Annex C and its structure, using the EU-proposed annex as a basis for discussion. On Part II (major source categories), some delegates reiterated that sources listed do not hold the same importance for all countries, and the reference to "major" was deleted. On Part V, addressing general guidance for release reduction measures, delegates agreed to include prevention guidance and a small group was established to further streamline the section.

On Thursday, the contact group discussed a reformulated Part V and agreed to outline general guidance on release reduction and prevention measures relating to BAT and BEP. On BAT release reduction measures, some participants expressed concern over references to incineration, stating that releases are not always reduced. On measures to consider when determining BEP, some countries objected to the proposed measures, noting they may not be useful for all countries. The list was deleted, and the group agreed to defer to the COP for guidance on BEP.

On Friday, in Plenary, it was noted that a reference to incinerators under BAT release reduction measures had been deleted. Delegates agreed to add text to reflect that when considering proposals to construct new facilities or significantly modify existing facilities, priority consideration should be given to alternative processes, techniques and practices that have similar usefulness, but which avoid the formation and release of the chemicals listed in Annex C. Delegates did not agree whether "the principles" or "consideration" of precaution and prevention should be borne in mind in determining BAT, but forwarded Annex C to the Legal Drafting Group.

**Final Text:** Early Sunday morning, delegates agreed that in determining BAT, consideration of precaution and prevention should be borne in mind. Annex C includes the following five sections:

- Part I: A listing of the POPs formed and released unintentionally from anthropogenic sources: dioxins, furans, HCB and PCBs;
- Part II: Source Categories: Industrial source categories that have the potential for comparatively high formation and release (such

as waste incinerators, cement kilns firing hazardous waste, pulp production, and listed thermal processes in the metallurgical industry);

- Part III: Source Categories: A list of thirteen other source categories that may unintentionally produce and release byproduct POPs, including open burning of waste, residential combustion sources, and crematoria;
- Part IV: Definitions for: dioxins and furans, and PCBs; and
- Part V: General guidance on BAT and BEP, which includes subsections on: general prevention measures relating to BAT and BEP; general considerations for BAT and release reduction measures to be considered in determining BAT; and general guidelines on BEP. Under BEP guidance, a note indicates that the COP may develop this guidance.

#### **ANNEX D (Information Requirements and Screening**

**Criteria):** On Thursday, Plenary addressed the remaining bracketed text in Annex D. Regarding the screening criteria of persistence, India supported a half-life in water of six months, and a log Kow value of greater than five. Canada, on behalf of various WEOG members, presented a proposal: supporting a half-life in water of two months and a log Kow value of greater than five; and requiring a Party to provide a statement of concern. This proposal was accepted.

**Final Text:** The annex states that Parties submitting proposals shall identify the chemical and its structure and provide information on the chemical, and its transformation products, where relevant, relating to criteria on persistence, bioaccumulation, potential for long-range environmental transport and adverse effects. The annex also calls on the Party to provide a statement on the reasons for concern, including where possible, a comparison of toxicity or ecotoxicity data with detected or predicted levels of a chemical resulting or anticipated from its long-range environmental transport, and a short statement on the need for global control. It also states that the Party shall, to the extent possible and taking into account its capabilities, provide additional information to support the review of the proposal for the risk profile.

#### **ANNEX E (Information Requirements for the Risk Profile):**

This annex details information required for the risk profile, which further elaborates on, and evaluates, the screening criteria, and includes as far as possible the following types of information:

- sources, including production data, uses and releases;
- hazard assessment for endpoint(s) of concern;
- environmental fate;
- monitoring data;
- exposure in local areas and, in particular, as a result of long-range environmental transport, and including information regarding bioavailability;
- national and international risk evaluation, assessments, or profiles and labeling information and hazard classifications, as available; and
- status of the chemical under international conventions.

#### **ANNEX F (Information on Socioeconomic Considerations):**

This annex provides information on socioeconomic considerations associated with control measures, to be applied as part of a risk management evaluation and to facilitate the COP in its decision on whether to list a chemical. The annex includes an indicative list of considerations including: efficacy and efficiency of control measures in meeting risk reduction goals; alternatives (products and processes); positive and/or negative impacts on society of implementing control measures; waste and disposal implications; access to information and public education; status of control and monitoring capacity; and any national or regional control actions taken.



## CLOSING PLENARY

After meeting all night, the Chair convened the final Plenary of the Intergovernmental Negotiating Committee in the early hours of Sunday morning. He introduced the draft resolution on interim arrangements and the Diplomatic Conference (UNEP/POPS/INC.5/CRP.107). The resolution outlines, *inter alia*: the need to establish an interim subsidiary body; the call to States and REIOs to sign and ratify the Convention so as to bring it into force as soon as possible; the decision that the INC will develop provisional guidance on the evaluation of current and projected releases of Annex C chemicals and on BEP for consideration by the COP; and the appeal to voluntarily participate in and fully apply the provisions of the Convention during the interim period.

The Secretariat explained that an informal group had helped compile many of the draft resolutions and that a number of new resolutions have come forward and some remain heavily bracketed. He said this would prove a challenge for the current meeting to consider, since the important result is to complete the treaty text. He said that while it would have been ideal to have finalized the resolutions this week, they can be addressed at the Diplomatic Conference in Stockholm in various ways. It was proposed that the Secretariat compile all draft resolutions and attach them to the report of the meeting for consideration at the Diplomatic Conference. This was agreed.

The Chair then invited comments on the draft final report, as contained in UNEP/POPS/INC.5/L.1 and Add.1.

Australia noted its initial concerns regarding key aspects of this Convention, but that it is consistent with the precautionary principle as found in the Rio Declaration and sets out a science-based approach for the addition of new chemicals. He said that implementation of the Convention will ensure focus on persistent, bioaccumulative chemicals that travel long distances and pose a serious threat to human health and environment.

Mexico noted its commitment to a regulatory regime for POPs and said it would analyze membership in the new agreement taking into account rights and duties under other international agreements. Sweden invited all delegates to Stockholm for the signing of the Convention.

The Gambia emphasized that it would put all efforts into implementation of the Convention, subject to capabilities. South Africa highlighted the decision to hold Rio+10 in South Africa and emphasized its efforts to achieve sustainable development.

Canada noted the tremendous significance of concluding a global POPs agreement. Colombia, on behalf of GRULAC, emphasized that the Convention is the right path forward. Senegal said today was an important day, particularly for children who are most affected by pesticides and pollutants.

WWF, as a participating member of the International POPs Elimination Network (IPEN), congratulated participants on a sound, workable, effective treaty, that is the first at the global level to address at the source chemicals that are directly toxic to humans.

Many delegations, including Australia, Mexico, the US, China, the G-77/China, the EU, Japan, Iran, Iceland, Papua New Guinea, Croatia, Egypt, and Greenpeace International, thanked the Chair, the Secretariat and the host country for a successful meeting.

The Chair thanked all those who had been involved in the negotiating process for the Convention. Delegates then adopted the draft report of INC-5. The text of the draft Convention will be appended to the report for consideration and signing at the Diplomatic Conference to be held in May 2001, in Stockholm, Sweden. The meeting was adjourned at 8:20 am, Sunday, 10 December 2000.

## A BRIEF ANALYSIS OF INC-5

**THE LONG WALK TO A POPS CONVENTION:** More than four years after the IFCS *ad hoc* Working Group recommended the development of an international agreement to eliminate some of the world's most toxic chemicals, and some two and a half years after INC-1 in Montreal, participants gathered in Johannesburg for the fifth and final round of negotiations for a legally binding POPs Convention. On the negotiating veldt before them lay numerous policy divides, a plethora of lurking brackets and a forecast of heavy work; and hovering above were the storm clouds of the recently failed climate change negotiations. On a positive note, negotiators in South Africa were buoyed up by a strong sense of history. This was their chance to build on the example set by the country's recent democratic transition and harness the potential of negotiation to overcome fundamental differences. Furthermore, with collapse of the climate change negotiations in The Hague fresh in the minds of participants, no one wanted to be held responsible for yet another failure.

Fortifying the negotiators as they set out over the final leg was a superb opening-night reception full of African flair, as well a first-rate meeting facility, which – delegates learned during the week – will serve as the venue for Rio+10 in 2002. In the final analysis, it was a combination of factors that brought success. Persistence, hard work, skilled chairmanship and the threat of failure figured greatest. The final compromises produced robust but flexible control measures, strong elements of precaution and a realistic financing solution. Together, these serve as a promising start on the long road towards eliminating persistent organic pollutants.

**CAN A LEOPARD CHANGE ITS SPOTS?** Many delegations arrived at INC-5 with ostensibly entrenched positions, no more so than on the core issues of funding, precaution and elimination. Watchful NGOs were keen to point out the importance of openness to compromise, especially from the JUSCANZ countries. As is the case when international negotiations go down to the wire, certain delegations did indeed “change their spots” during the course of the week. After strong and seemingly polarized statements on the financial mechanism, the G-77/China and OECD camps reached the safety of a middle ground that seemed more than acceptable to both sides. In the agreed package the OECD countries secured the GEF as the financial mechanism, if initially on an interim basis, which was a non-negotiable element for them. They also secured elements of burden sharing in financing obligations. The G-77/China got the financial mechanism accountability they were seeking, at least in principle, and made the GEF's future role as the mechanism dependent on the COP. At the same time they have the prospect of funding through the interim period and the potential for a new GEF window for POPs, a step that could sow political discord with the Convention to Combat Desertification, which failed in this regard.

More significantly, they successfully imported language from other Conventions, on developed countries providing new and additional financial resources for full incremental costs, for financing on a grant or concessional basis, and on developing countries' implementation of their commitments being dependent on developed country implementation of financial commitments. Financing was the big issue for the G-77/China and, not surprisingly, they expressed great satisfaction with the result. However, as one delegate poignantly observed, it is now up to them to take this result home and begin active work on implementation and national plans.

**BETWEEN IDEALISM AND REALISM: A CAREFUL CAT OR A PRECAUTIONARY LION?** While negotiations on the high profile issue of a funding mechanism dominated the concerns of many during the week, several observers pointed to inclusion of language on the precautionary principle as being a serious stumbling block. Recalling the drawn out debates on this subject during the Cartagena





Protocol negotiations, strong but opposing statements were again heard from the EU and JUSCANZ, the latter being keen to avoid any entrenchment of the precautionary principle in international law. The debate over the precautionary principle played out most notably in discussions regarding the procedure for listing new chemicals. One delegate, aggravated with the rehashing of familiar arguments, said whatever language was agreed would not change one iota the efficacy of the Convention. Frustration with the debate on reference to the precautionary "principle" versus "approach" spilled over into Plenary when one delegate exclaimed, "The name of the cat doesn't matter, as long as it eats mice." To which supporters of the softer "approach" roared: "Make sure the cat is not a lion." No matter how nasty the debate became at times, the package deal agreed to as the sun was rising on Sunday morning sealed the Convention and struck a compromise that many, on both sides of the divide, were pleased with.

A number of environmental NGOs also reacted favorably to the deal struck on text regarding the prohibition and restriction of POPs. One issue that was resolved relatively painlessly was the agreement that Parties shall take measures to "regulate with the aim of preventing" the production and use of new chemicals that exhibit POPs characteristics. Coupled with the compromise text on the precautionary principle, this is seen by some observers as a useful step towards "turning off the tap" of new POPs. A far more contentious issue, and a hangover from INC-4, was language agreeing "where feasible" to the ultimate elimination of releases from anthropogenic sources of Annex C chemicals (most notably dioxins). While this is seen by some NGOs as opening "a slippery slope towards the creation of loopholes" – and was deemed insufficient by the EU who noted a reservation for the conference report – it was seen by others, notably Australia, as unrealistically ambitious. As with much of the Convention text, resolution on this issue appears to be a realistic compromise.

Another visible issue on which a pragmatic compromise was reached between an environmentally ideal solution, and a business-as-usual scenario, was the continued use of DDT. Although many NGOs wanted it to be subject only to elimination, the negotiated compromise permits its continued production and use subject to a number of constraints. These include limiting the use of DDT specifically for disease control, encouraging Parties to develop alternatives, and establishing a process for tracking its use with the goal of ultimate elimination. Nevertheless, some observers may feel that these conditions are too lax particularly since not all of them are mandatory.

While each delegation can find text with which it is not happy, it would be unusual if this were not the case. On balance, most negotiators and observers should feel justifiably pleased with the outcome of the week's deliberations. It remains to be seen of course, whether words will be transformed into action.

**THE FUTURE CHEMICALS LANDSCAPE:** The profile of international chemicals activities has undergone a significant upgrade in the last several years. With the completion of the Rotterdam PIC Convention in 1998 and now a "Stockholm POPs Convention" to be adopted in 2001, the next key challenge is to secure entry into force of both these instruments and, most importantly, ensure their broad and effective implementation. This will require not only strong political will, but commitment of time and resources in the face of competing and higher-profile interests, such as climate change.

More specifically, there may be calls to initiate discussions on the next set of issues on the chemicals agenda. While there is no clear agreement about what it may be, heavy metals and endocrine

disruptors both figure as potential candidates. Others point out, however, that a hiatus from international chemicals negotiations is not only likely, but also welcome, given the intensity of negotiations of the last five years and the desire to focus efforts on ensuring implementation of these new commitments. Whatever the next step, the outcome in Johannesburg marks a significant milestone. The INC has successfully fulfilled its mandate and, as directed, it has done so at the very end of the second millennium. In achieving this, it has set an impressive precedent on the long road ahead towards improving international chemical safety.

## THINGS TO LOOK FOR

### 21ST SESSION OF THE UNEP GOVERNING COUNCIL:

This meeting will be held from 5-9 February 2001, in Nairobi, Kenya. For more information, contact: B.A. Miller, UNEP, Nairobi, Kenya; tel: +254-2-62-3411; fax: +254-2-62-3748; e-mail: millerb@unep.org; Internet: <http://www.unep.org>

### FIFTH CONSULTATION ON THE PREVENTION AND DISPOSAL OF OBSOLETE AND UNWANTED STOCKS OF PESTICIDES:

This meeting is scheduled for 2001 in Rome, Italy. Participants will consider new provisions for the prevention and disposal of obsolete stocks and update/prepare various technical guidelines in support of the FAO Code of Conduct. For more information, contact: Ale Wodageneh, FAO; tel: +39-6-5705-5192; fax: +39-6-5705-6347; e-mail: [A.Wodageneh@fao.org](mailto:A.Wodageneh@fao.org); Internet: <http://www.fao.org/waicent/FaoInfo/Agricult/AGP/AGPP/Pesticid/Events/c.htm>

### MEETING OF THE INTERIM CHEMICAL REVIEW COMMITTEE (ICRC) OF THE ROTTERDAM CONVENTION:

ICRC-2 will meet from 19-23 March 2001, in Rome. For more information, contact: Gerold Wyrwal, FAO; tel: +39-6-5705-2753; fax: +39-6-5705-6347; e-mail: [gerold.wyrwal@fao.org](mailto:gerold.wyrwal@fao.org); or Jim Willis, UNEP Chemicals, Geneva; tel: +41-22-917-8183; fax: +41-22-797-3460; e-mail: [chemicals@unep.ch](mailto:chemicals@unep.ch); Internet: <http://www.pic.int/>

### DIPLOMATIC CONFERENCE ON PERSISTENT ORGANIC POLLUTANTS (DIPCON):

The Diplomatic Conference for the signing of the POPs Convention is scheduled to take place from 22-23 May 2001, in Stockholm, Sweden. For more information, contact: Jim Willis, UNEP; tel: +41-22-917-8183; fax: +41-22-797-3460; e-mail: [chemicals@unep.ch](mailto:chemicals@unep.ch); Internet: <http://irptc.unep.ch/pops/>

**EIGHTH PIC INC MEETING:** The eighth session of the Intergovernmental Negotiating Committee for the Preparation of the Conference of Parties of the Rotterdam Convention for the Application of the PIC Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (INC-8) will be held from 8-12 October 2001, in Rome. For more information, contact: Niek van der Graaff, FAO; tel: +39-6-5705-3441; fax: +39-6-5705-6347; e-mail: [Niek.VanderGraaff@fao.org](mailto:Niek.VanderGraaff@fao.org); or Jim Willis, UNEP Chemicals; tel: +41-22-917-8183; fax: +41-22-797-3460; e-mail: [chemicals@unep.ch](mailto:chemicals@unep.ch); Internet: <http://www.pic.int/>

**FOURTH SESSION OF THE INTERGOVERNMENTAL FORUM ON CHEMICAL SAFETY (IFCS):** FORUM IV is scheduled to be held in Thailand in 2003, with FORUM V taking place in Hungary in late 2005 or 2006. For more information, contact: the IFCS Executive Secretary; tel: +41 (22) 791 3650/4333; fax: +41 (22) 791 4875; e-mail: [ifcs@who.ch](mailto:ifcs@who.ch); Internet: <http://www.who.int/ifcs>