



PIC INC-9 HIGHLIGHTS THURSDAY, 3 OCTOBER 2002

Delegates met in a morning Plenary to hear reports from Wednesday's meetings of the Compliance Working Group and the PIC Regions. The INC then considered agenda items on draft financial rules and provisions, settlement of disputes, and the budget. The Compliance Working Group continued to meet throughout the day.

PLENARY

REPORTS FROM GROUP MEETINGS: Compliance

Working Group: Compliance Group Chair McGlone reported that while the negotiations were proceeding in a positive atmosphere, several significant issues remained unresolved. INC Chair Rodrigues requested the Group to reconvene and report back to Plenary on Friday morning.

Regional Groups: Representatives of the Africa, Asia, and Southwest Pacific PIC Regions reported progress in nominating their new ICRC experts, with the relevant documentation either already submitted or currently being prepared.

DRAFT FINANCIAL RULES AND PROVISIONS: Erik Larsson, Interim Secretariat of the Rotterdam Convention, introduced the Secretariat's document on the draft financial rules and provisions (UNEP/FAO/PIC/INC.9/13), noting that COP-1 is to adopt the financial rules and procedures. He indicated that outstanding issues for consideration at INC-9 include: whether the various Trust Funds would be established by the UNEP Executive Director, the FAO Director General, or the UN Secretary-General; whether the Trust Fund should provide support to Parties with economies in transition or only developing countries; and what the maximum contribution as a percentage of the total contributions should be.

DENMARK, on behalf of the EU, and supported by SWITZERLAND and NORWAY, proposed that the Trust Funds be established by UNEP's Executive Director. The US requested the Secretariat to explain the differences between the overhead costs of UNEP's and FAO's managed Trust Funds. JAPAN requested that the paragraph be bracketed, while CANADA requested the Secretariat to produce a table to clarify the major differences between the FAO and UNEP managed funds.

On the inclusion of Parties with economies in transition, CANADA, JAPAN, NORWAY and the EU supported the option to include these Parties as recipients of the Trust Funds.

Regarding the assessment of the maximum contribution, the EU, supported by JAPAN, NORWAY, COLOMBIA and CANADA, proposed using the 22% maximum scale of contributions adopted by the UN. ARGENTINA requested a footnote referencing the decision on the indicative scale of contributions adopted at the Third Global Ministerial Environment Forum/Seventh Special Session of the UNEP Governing Council. The US underscored that all contributions must be voluntary and that the UN indicative scale must be understood to relate to a voluntary contri-

bution. BRAZIL, supported by CHINA, opposed referencing the UN indicative scale, and noted that the UN General Assembly at its 55th Session had decided that the indicative scale of assessment does not apply to all UN bodies.

Summarizing the discussion, INC Chair Rodrigues noted agreement on the inclusion of Parties with economies in transition as Trust Fund recipients, and proposed leaving the remaining issues open until INC-10.

SETTLEMENT OF DISPUTES: Delegates considered the text of draft rules on arbitration (UNEP/FAO/PIC/INC.9/14, Annex I), with a focus on the extension of the period for designating arbitral tribunal members. Delegates agreed to a two-month extension. JAPAN requested revision of Article 16 of the draft rules, which stipulates that the tribunal's decisions shall be binding upon third parties involved in the dispute settlement, noting that this provision might prevent them from intervening. INC agreed to transmit the draft rules to the COP, including a footnote reflecting Japan's concerns.

DISCONTINUATION OF THE INTERIM PIC PROCEDURE: André Mayne (Australia), who chaired the informal group on discontinuation, reported the group's recommendations (UNEP/FAO/PIC/INC.9/CRP.10). On resubmitting proposals, he noted the group's recommendation that the Secretariat consult relevant designated national authorities (DNAs) concerning their proposals for severely hazardous pesticide formulations submitted during the interim period. Unless notified otherwise by the relevant DNA, each proposal would be deemed, by a COP-1 decision, to be resubmitted for the purposes of the Convention.

On non-Parties' import responses and the list of national contact points, Mayne said the group had recommended that, at the end of the transition period, this information be retained on the website, but not updated or circulated by the Secretariat. The group had also proposed that the first COP after the end of the transition period decide whether to continue retaining this information, and for how long.

On actions of non-Parties, the group identified priorities in reviewing chemicals, and suggested procedures for dealing with Participating States' notifications and proposals. The group suggested that the proposals submitted following the Convention's entry into force might initiate a review by the Chemical Review Committee (CRC), but that any recommendations on inclusion, or otherwise, in Annex III may not be forwarded to the COP until the Participating State becomes a Party. The group also recognized that the COP would need to approve consideration by the CRC of notifications and proposals from non-Parties. With minor textual changes, the INC approved the text of the recommendation to COP-1.

ACTIVITIES OF THE SECRETARIAT AND REVIEW OF EXTRABUDGETARY FUNDS: Jim Willis, Joint Executive Secretary of the Interim Secretariat, introduced an updated table of financial pledges and contributions for 2001 and 2002 (UNEP/FAO/PIC/INC.9/CRP.7), and an explanation of budget increases

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between 2003 and 2004 (UNEP/FAO/PIC/INC.9/CRP.9), which he indicated was due in part to planned workshops and growing core Secretariat costs. He also introduced a model budget format for reporting expenditures and future budgets (UNEP/FAO/PIC/INC.9/CRP.8).

Several delegates noted that the model budget format provides useful additional information. CHINA expressed its willingness to host a workshop for the Asia Region, funding permitting, and SWITZERLAND highlighted that workshops are an effective tool for supporting implementation.

Delegates agreed to proposals by NEW ZEALAND that INC-9 should: approve the model format on the understanding that it can be amended later if necessary; take note of the 2004 budget and revisit it at INC-10; establish an open-ended budget working group early on during INC-10; and request the Secretariat to discuss with UNEP whether some of the 13% support charge paid to UNEP for administrative overheads might be used to fund a dedicated financial officer.

Delegates also agreed to a proposal relating to the 2003 budget authorizing the Secretariat to support workshops facilitating implementation or ratification, subject to the availability of additional resources.

COMPLIANCE WORKING GROUP

The Compliance Working Group discussed the Secretariat's Note on reporting on Convention implementation (UNEP/FAO/PIC/INC.9/15), including an Annex containing a draft outline of a possible reporting procedure. The Secretariat noted that the draft reporting outline involves a shift in responsibilities from the Parties to the Secretariat, and focuses on the compilation of information by the Secretariat. The EU and others underscored that reporting should form the basis of the compliance mechanism and, with AUSTRALIA, BRAZIL and the US, stressed that the procedure should not create new obligations for Parties. LESOTHO, AUSTRALIA and NIGERIA called for simple reporting procedures. Delegates agreed in principle that there should be two components to the procedure: reporting pursuant to obligations; and using voluntary questionnaires to determine compliance-related needs.

Regarding the voluntary component, CANADA observed that the COP may enlarge the scope of future reporting obligations based on its power to review Convention implementation. He said Parties must be "expected" to report so that it is not perceived to be just voluntary, but a regular and detailed activity. Most delegates agreed that the procedure should be systematic to ensure that the Secretariat has sufficient information to fulfill its functions. The US expressed concerns about overburdening the Secretariat with requirements to collect information. AUSTRALIA suggested that subsidiary bodies be permitted to request information needed to fulfill their functions.

Chair McGlone suggested that the Secretariat's Note should be the basis for discussing issues relating to the reporting procedure, while indicating that it was not a negotiating text. Rather than having detailed discussions on the text in the Working Group, CANADA recommended that States provide comments to the Secretariat for review at INC-10.

Delegates then addressed procedures and institutional mechanisms for handling cases of non-compliance (UNEP/FAO/PIC/INC.9/16). On the relationship between the compliance mechanism and dispute settlement, delegates agreed that the compliance mechanism shall be implemented without prejudice to Article 20 (dispute settlement).

Regarding the committee's relationship with PIC subsidiary bodies, the Group agreed that the COP may direct the committee to work in conjunction with such bodies when their responsibilities overlap. In cases where the obligations and responsibilities of the committee overlap with those of relevant bodies of other environmental conventions, the NETHERLANDS agreed that the COP

may request the committee to communicate with those bodies and report back to the COP. The US proposed deleting the paragraph, and the text remains bracketed.

On the invocation of procedures, delegates agreed to draft new language for consideration by INC-10, based upon relevant text of the Basel Convention. AUSTRALIA, supported by the US, warned of the risks of relying on the Basel Convention and losing sight of the distinct policy choices and issues under the Rotterdam Convention. JAPAN proposed, and AUSTRALIA opposed, that before submitting compliance problems to the committee, the Parties involved shall seek to resolve the matter through informal consultations.

Regarding the invocation of procedures for specific cases of non-compliance, paragraphs on self-invocation and third Party invocation remained bracketed. BRAZIL requested that the compliance committee trigger procedure be clarified. The NETHERLANDS, supported by GERMANY, suggested that triggers by individuals, organizations, and the Secretariat be added. NIGERIA recommended that there be distinct triggers from the compliance committee and the COP; however, IRAN and others argued that the committee should only be able to trigger the procedures under the authority of the COP.

On the invocation of procedures for general compliance issues, the US, supported by JAPAN, questioned why this procedure should be differentiated from that for specific cases of non-compliance and requested that the chapeau be bracketed. CANADA proposed defining "general compliance" as "systemic issues of general compliance of interest to all parties." AUSTRALIA, supported by the NETHERLANDS, said the compliance committee should have powers to refer submissions elsewhere and to refuse submissions.

Regarding the consultation functions of the compliance committee, CANADA proposed limiting the information that the committee must consider, while IRAN recommended deleting the provisions on what information is to be considered by the committee. The NETHERLANDS said the powers of the committee should be expanded to include, *inter alia*, the authority to consult with other PIC bodies and to draw on external expertise. AUSTRALIA, JAPAN and the US argued that the committee's consultative powers remain defined.

On non-compliance measures, the US proposed underscoring the role of the compliance committee in promoting or facilitating compliance. AUSTRALIA and others stressed the need to distinguish between facilitative and other measures, and proposed using Basel Convention text on compliance as a model. JAPAN expressed concern about the compliance committee advising the non-compliant Party to rectify "detriment" caused by non-compliance. The paragraph on non-compliance measures remains heavily bracketed.

IN THE CORRIDORS

Many delegates seemed in a buoyant mood Thursday, with observers jokingly suggesting that an early end to the day's Plenary, signs of progress in the Compliance Group, and an evening function had proved an "irresistible combination." In spite of the lengthy Compliance Group gatherings, at least one participant said he was "pleasantly surprised" that a positive start had been made on setting out and discussing countries' positions. Although this issue is one that will probably be on the agenda for some time to come, another delegate hoped that the open and friendly atmosphere generated in discussions at INC-9 would bode well for future negotiations.

THINGS TO LOOK FOR TODAY

PLENARY: Plenary will convene at 10:00 am and is expected to conclude INC-9's work, taking up outstanding agenda items and approving its report of the session, by early afternoon.

COMPLIANCE GROUP: The Compliance Working Group will meet at 9:00 am in Room A/C, and is expected to conclude its work by 11:00 am.