



**SUMMARY OF THE NINTH SESSION OF THE INTERGOVERNMENTAL NEGOTIATING COMMITTEE FOR AN INTERNATIONAL LEGALLY BINDING INSTRUMENT FOR THE APPLICATION OF THE PRIOR INFORMED CONSENT PROCEDURE FOR CERTAIN HAZARDOUS CHEMICALS AND PESTICIDES IN INTERNATIONAL TRADE:
30 SEPTEMBER – 4 OCTOBER 2002**

The ninth session of the Intergovernmental Negotiating Committee for an International Legally Binding Instrument for the Application of the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (INC-9) was held from 30 September to 4 October 2002 in Bonn, Germany. Over 230 participants representing more than 100 governments, nine intergovernmental and non-governmental organizations, and a number of United Nations agencies attended the session.

The prior informed consent (PIC) procedure aims to promote a shared responsibility between exporting and importing countries in protecting human health and the environment from the harmful effects of certain hazardous chemicals that are traded internationally. A major step in this process was taken in September 1998 with the adoption of the Rotterdam Convention on the PIC Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. To date, the Convention has been signed by 72 States and the European Community, and ratified by 34 States. It will enter into force once 50 instruments of ratification are deposited. Until the Convention's first Conference of the Parties (COP), the Intergovernmental Negotiating Committee (INC) will continue to provide guidance regarding the implementation of the PIC procedure during this interim period.

A key objective at INC-9 was to consider key issues associated with implementation of the interim PIC procedure. As part of this work, delegates addressed various matters raised by the Interim Chemical Review Committee (ICRC), which advises the INC. At INC-9, delegates agreed to the ICRC's recommendation to include the chemical monocrotophos in Annex III to the Rotterdam Convention, which lists chemicals subject to the PIC procedure. Delegates also agreed to recommendations on the range and description of DNOC, asbestos, and Granox TBC and Spinox T.

Another key aim at INC-9 was to continue preparing for the first COP. Delegates made progress on the draft financial rules and provisions, procedures for dispute settlement, mechanisms for handling cases of non-compliance, and discontinuation of the interim PIC procedure.

A BRIEF HISTORY OF THE PRIOR INFORMED CONSENT PROCEDURE

Growth in internationally traded chemicals during the 1960s and 1970s led to increasing concern over pesticides and industrial chemical use, particularly in developing countries that lacked the expertise or infrastructure to ensure their safe use. This prompted the development of the International Code of Conduct for the Distribution and Use of Pesticides by the Food and Agriculture Organization (FAO) and the London Guidelines for the Exchange of Information on Chemicals in International Trade by the United Nations Environment Programme (UNEP). Both the Code of Conduct and the London Guidelines include procedures aimed at making information about hazardous chemicals more readily available, thereby permitting countries to assess the risks associated with their use.

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In 1989, both instruments were amended to include a voluntary PIC procedure to help countries make informed decisions on the import of chemicals that have been banned or severely restricted. Managed jointly by the FAO and UNEP, the voluntary PIC procedure provided a means for formally obtaining and disseminating the decisions of importing countries on whether they wish to receive future shipments of such chemicals. The voluntary PIC procedure was designed to:

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

At the United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro in 1992, delegates recognized that while the use of chemicals is essential to meet social and economic goals, a great deal remains to be done to ensure their sound management. UNCED adopted Agenda 21, which contains, in Chapter 19, an international strategy for action on chemical safety, and called on States to achieve, by the year 2000, the full participation in and implementation of the PIC procedure, including possible mandatory applications of the voluntary procedures contained in the amended London Guidelines and the Code of Conduct. In November 1994, the 107th meeting of the FAO Council agreed that the FAO Secretariat should proceed with the preparation of a draft PIC convention as part of the FAO/UNEP programme in cooperation with other international and non-governmental organizations.

In May 1995, the 18th session of the UNEP Governing Council adopted decision 18/12, authorizing the Executive Director to convene, with the FAO, an Intergovernmental Negotiating Committee (INC) with a mandate to prepare an international legally binding instrument for the application of the PIC procedure.

INC-1: The first session of the INC was held from 11-15 March 1996, in Brussels. With more than 194 delegates from 80 governments and representatives of various specialized agencies, IGOs and NGOs in attendance, INC-1 agreed on the rules of procedure, elected Bureau members and completed a preliminary review of a draft outline for a future instrument. Delegates also established a working group to clarify the chemicals to be included under the instrument.

INC-2: The second session of the INC met from 16-20 September 1996, in Nairobi, and produced a draft text of the convention. Delegates agreed that many aspects of the instrument required further detailed consideration, and noted the need for at least one additional negotiating session before the convention could be completed.

INC-3: INC-3 convened in Geneva from 26-30 May 1997. Delegates considered the revised text of draft articles for the instrument. Debate centered on the scope of the proposed convention.

INC-4: The fourth session of the INC took place from 20-24 October 1997, in Rome, with delegates considering the revised text of draft articles for the instrument.

INC-5: INC-5 was held from 9-14 March 1998, in Brussels. Delegates made progress on a consolidated draft text of articles, and reached agreement on the draft text of the PIC convention and a draft resolution on interim arrangements.

THE DIPLOMATIC CONFERENCE OF PLENIPOTENTIARIES: The Conference of the Plenipotentiaries on the Convention on the PIC Procedure was held from 10-11 September

1998, in Rotterdam. Ministers and senior officials from nearly 100 countries adopted the Rotterdam Convention, the Final Act of the Conference and the resolution on interim arrangements. Sixty-one countries signed the Convention and 78 countries signed the Final Act. The PIC Convention currently covers 32 chemicals, consisting of 22 pesticides, five severely hazardous pesticide formulations and five industrial chemicals. It is expected that more chemicals will be added as the provisions of the Convention are implemented.

The resolution on interim arrangements provides for continued implementation of the voluntary PIC procedure during the interim period, in line with the new procedures contained in the Convention. The resolution invites UNEP and the FAO to convene further INCs during the interim period prior to the Convention's entry into force, to oversee the operation of the interim PIC procedure. Chemicals for which decision guidance documents (DGDs) were circulated during the voluntary procedure are subject to the interim procedure. Those chemicals identified for inclusion, but for which DGDs had not been circulated, are subject to the interim procedure, once adopted by the INC. The resolution invites the INC to: establish an interim subsidiary body to carry out the functions that will be permanently entrusted to a Chemical Review Committee (CRC); define and adopt PIC Regions on an interim basis; adopt, on an interim basis, the procedures for banned or severely restricted chemicals; and decide on the inclusion of any additional chemicals under the interim PIC procedure.

INC-6: INC-6 was held from 12-16 July 1999, in Rome. Delegates from 121 countries addressed arrangements for the interim period, and for the implementation of the interim PIC procedure. INC-6 resulted in draft decisions on the definition and provisional adoption of the PIC Regions (Africa, Europe, Asia, Latin America and the Caribbean, Near East, Southwest Pacific and North America), the establishment of an interim CRC, and the adoption of draft DGDs for chemicals already identified for inclusion.

ICRC-1: The first session of the Interim Chemical Review Committee (ICRC) took place in Geneva from 21-25 February 2000. The Committee, consisting of 29 government-designated experts in chemicals management from the seven PIC regions, agreed to recommend two chemicals – ethylene dichloride and ethylene oxide – for inclusion in the interim PIC procedure, and forwarded draft DGDs for those chemicals to INC-7 for consideration. ICRC-1 also established a number of task groups to work intersessionally on various issues related to the ICRC's operational procedures.

INC-7: The seventh session of the INC was held from 30 October to 3 November 2000, in Geneva. Delegates addressed, *inter alia*: implementation of the interim PIC procedure; issues arising out of the Conference of Plenipotentiaries; and preparations for the COP, such as discontinuation of the interim PIC procedure and financial arrangements. Delegates also adopted DGDs for ethylene dichloride and ethylene oxide, as well as a policy on contaminants within chemicals.

ICRC-2: The second session of the ICRC was held in Rome from 19-23 March 2001. In light of INC-7's adoption of a general policy on contaminants within chemicals, the ICRC considered the DGD on maleic hydrazide. It also addressed: ICRC operational procedures; inclusion of monocrotophos in the interim PIC procedure; and the use of regional workshops to strengthen the links between designated national authorities (DNAs) and the work of the ICRC and the INC. It also forwarded recommendations to the



INC on cooperation and coordination in the submission of notifications of final regulatory actions, and on the inclusion of monocrotophos in the interim PIC procedure.

INC-8: INC-8 was held from 8-12 October 2001, in Rome. The overall goal of INC-8 was to consider the major issues associated with the implementation of the interim PIC procedure, and to prepare for the Convention's entry into force. During the session, delegates discussed: the work of the ICRC; implementation of the interim PIC procedure; and preparation for the COP. INC-8 resolved a number of complex questions associated with discontinuation of the interim PIC procedure and on conflict of interest in the ICRC, although some issues, such as treatment of non-Parties after discontinuation of the interim PIC procedure and composition of the PIC Regions, were deferred for consideration at INC-9.

ICRC-3: The third meeting of the ICRC was held from 17-21 February 2002, in Geneva. The ICRC recommended that three widely-used pesticides and all forms of asbestos remaining outside the PIC procedure be added to the international list of chemicals subject to this procedure.

The three pesticides recommended for the PIC procedure were monocrotophos, Granox TBC and Spinox T, and DNOC. Monocrotophos is used in many developing countries to control insects and spider mites on cotton, citrus fruits, rice, maize and other crops, but threatens the health of farm workers, and is also highly toxic to birds and mammals. Granox TBC and Spinox T are mixtures of fungicides and the highly toxic insecticide Carbofuran, and are used by peanut farmers. DNOC is an insecticide, weed killer and fungicide that is toxic to humans as well as other organisms. The five remaining forms of asbestos – actinolite, anthophyllite, amosite, tremolite and chrysotile - were also recommended for addition to the PIC list.

WSSD: The sound management of chemicals and hazardous waste was addressed at the World Summit on Sustainable Development (WSSD), held in Johannesburg from 26 August to 4 September 2002. Delegates agreed to text in the Johannesburg *Plan of Implementation* supporting entry into force of the Rotterdam Convention by 2003 and the Stockholm Convention on Persistent Organic Pollutants (POPs) by 2004. The *Plan of Implementation* also contains commitments to:

- reduce the significant effects of chemicals and hazardous waste on human health and the environment by 2020;
- encourage countries to implement the new globally harmonized system for the classification and labeling of chemicals, with a view to having the system operational by 2008;
- promote efforts to prevent international illegal trafficking of hazardous chemicals and hazardous waste, as well as damage resulting from the transboundary movement and disposal of hazardous waste; and
- further develop a strategic approach to international chemicals management based on the Bahia Declaration and Priorities for Action beyond 2000 of the Intergovernmental Forum on Chemical Safety (IFCS) by 2005.

INC-9 REPORT

On Monday morning, 30 September, INC Chair Maria Celina de Azevedo Rodrigues (Brazil) welcomed delegates to INC-9 and introduced the opening speakers. On behalf of Jürgen Trittin, German Minister for the Environment, Nature Conservation and Nuclear Safety, Secretary of State Gila Altmann drew delegates' attention to the WSSD goal of minimizing the significant adverse

effects of chemicals and hazardous waste on human health and the environment by 2020, and urged all countries to ratify the Rotterdam Convention. She called on delegates to approve the proposed addition to the interim PIC procedure of the various forms of asbestos, and emphasized the needs of developing countries for assistance in ratifying and implementing the Convention.

Bärbel Dieckmann, Mayor of Bonn, highlighted the February 2002 Agreement between Germany and the UN to establish a UN campus in Bonn, and said the Secretariats for the Rotterdam and Stockholm Conventions would be welcome here.

UNEP Executive Director Klaus Töpfer recommended that INC-9 address the challenges of ratification, capacity building and technical assistance to enable all Parties to comply with PIC procedure requirements, and measurement of the Convention's effectiveness. He called for prompt ratification and suggested that delegates consider a technical assistance strategy. He also recommended that performance indicators be used to provide information to the general public and to monitor, *inter alia*, the number of poisoning incidents, compliance with reporting procedures, and the number of import responses and export notifications. He welcomed adding monocrotophos to the interim PIC procedure, and supported strengthening synergies among chemical conventions and international agencies.

Louise Fresco, FAO Assistant Director-General, stressed that achieving the WSSD poverty and hunger eradication goals requires the sustainable intensification of agriculture. Observing that this is not possible without chemicals, she called for, *inter alia*: actions to ensure the safe and efficient use of chemicals; analysis of risks arising from the uncontrolled use of pesticides; adequate chemical management infrastructure; and regional cooperation between the conventions and agencies. She commended the progress made during the interim process, including workshops, proposals for adding new chemicals and incident report forms.

Arnulf Müller-Helmbrecht, Executive Secretary of the Convention on Migratory Species (CMS), noted that the CMS had just held its seventh Conference of the Parties at this conference center, and endorsed Bonn as host of a new UN campus.

ORGANIZATIONAL MATTERS: INC Chair Rodrigues then introduced, and INC-9 adopted, the provisional agenda (UNEP/FAO/PIC/INC.9/1 and 2). On the Organization of Work, Chair Rodrigues introduced a *Scenario Note* (UNEP/FAO/PIC/INC.9/3) that she had prepared to communicate her plans and expectations for the meeting. She highlighted expected outcomes from INC-9, including: adoption of the 2004 budget; a decision on the future membership and term of office of the ICRC; and conclusion of the discussions on dispute settlement, draft financial rules and provisions, and non-compliance.

Rodrigues continued to serve as INC Chair, assisted by Vice-Chairs Bernard Madé (Canada), Mohamed El-Zarka (Egypt) and Yuri Kundiev (Ukraine), and Rapporteur Wang Zhijia (China). Delegates met in Plenary meetings, as well as in various informal groups and a Working Group on Compliance. This report outlines the discussions and outcomes of the meeting based on the INC-9 agenda.

ACTIVITIES OF THE SECRETARIAT AND REVIEW OF THE SITUATION AS REGARDS EXTRABUDGETARY FUNDS

The activities of the Secretariat, a review of extrabudgetary funds, and various budgetary matters were taken up under this agenda item in Plenary on Monday, 30 September, and subse-



quently in an informal meeting held the following day. As a result of delegates' comments and questions during this informal meeting, the Secretariat produced new and revised documents on its activities and budgetary matters. Following consideration of these documents, INC-9 adopted a number of decisions under this item on Thursday, 3 October.

On Monday, Jim Willis, Joint Executive Secretary for the Interim Secretariat of the Rotterdam Convention (UNEP), introduced this agenda item, presenting a report on the activities of the Secretariat and on its financial requirements (UNEP/FAO/PIC/INC.9/4). He drew attention to key matters taken up in the report, including five nominations of additional designated national authorities (DNAs) and 35 changes to existing DNAs; 48 notifications of final regulatory actions from seven Parties covering 46 chemicals and pesticides; and 145 responses from 23 Parties regarding future imports.

On the proposed core budget for 2004, Willis noted that the proposed budget includes an increase from US\$2.5 million to US\$3.6 million, and identified various activities that the greater financial obligations would cover, including workshops and support for implementation, support for the Secretariat's increased workload, and a 13% support charge paid to UNEP. Explaining the proposed budget increase, Willis noted that if, as expected, entry into force occurs and the first COP takes place in 2004, this would require substantial budgetary growth. He suggested that delegates revisit this issue at INC-10.

Commenting on the report, Nigeria and others highlighted the value of holding workshops. Egypt offered to host a workshop for Arabic-speaking countries, and Malaysia highlighted the need for a workshop in its region. Switzerland noted its financial support for workshops, including an upcoming event in Tehran. Ukraine drew attention to an upcoming workshop in Kiev, and Cuba offered to host activities for supporting implementation of the Convention in Latin America.

Italy indicated its financial support for the PIC process and drew delegates' attention to its offer, with Switzerland, to co-host the PIC and POPs Secretariats. The European Community declared its intention to contribute 100,000 Euros both this year and next. The UK noted its contribution of 80,000 pounds, and Finland indicated that it had already contributed 10,000 Euros. Japan announced its decision to make a voluntary contribution of US\$100,000, and said the draft budget for 2004 should be re-examined at INC-10, when the approximate date of entry into force is more likely to be known.

Germany requested that the costs of hosting INC-9 be reflected in a footnote to the list of financial pledges and contributions in the budget report. Jim Willis explained that such contributions are not usually reported in the list, but suggested that Germany's additional contribution of US\$334,631 be reflected in the report of the meeting. Delegates agreed to this suggestion.

In response to a request by New Zealand and the US for a question-and-answer session on the budget, participants met in an informal meeting on Tuesday, 1 October. In a Plenary session on Thursday, 3 October, Jim Willis introduced a number of documents prepared by the Secretariat, which he said addressed some of the questions and comments raised in Tuesday's informal meeting. These documents included 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 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. Willis also introduced a model budget format for reporting expenditures and future budgets (UNEP/FAO/PIC/INC.9/CRP.8).

Commenting on these documents, several delegates said the model budget format provides useful additional information. China expressed its willingness to host a workshop for the Asia Region, funding permitting, and Switzerland offered to contribute to this.

INC-9 Decision: Based on proposals introduced by New Zealand, INC-9's decision (UNEP/FAO/PIC/INC.9/L.1/Add.1):

- adopts the model format on the understanding that it can be amended later if necessary;
- takes note of the 2004 budget and will revisit it at INC-10;
- establishes an open-ended budget working group early on during INC-10; and,
- requests the Secretariat to discuss with UNEP's Executive Director whether some of the 13% support charge paid to UNEP for administrative overheads might be used to provide additional administrative and financial support to the Secretariat.

INC-9 also adopted a proposal relating to the 2003 budget authorizing the Secretariat to arrange and support workshops that facilitate implementation or ratification, subject to the availability of additional resources.

IMPLEMENTATION OF THE INTERIM PIC PROCEDURE STATUS OF IMPLEMENTATION OF THE INTERIM

PIC PROCEDURE: On Monday, Gerold Wyrwal, Interim Secretariat for the Rotterdam Convention, introduced the report on the status of implementation of the interim PIC procedure (UNEP/FAO/PIC/INC.9/5). He said the report notes that of the 166 countries participating in the interim PIC procedure only 15% have provided all import responses, 25% have failed to provide any responses, while only 48% of countries have submitted responses concerning future imports for all 31 chemicals. He suggested that INC-9 consider the low rate of responses and notifications when discussing non-compliance.

Responding to the report, the European Community noted the limitations of listing responses in the PIC circulars and called on the Secretariat to address the underlying causes that result in the failure of countries to meet obligations under Article 10.3 (obligations in relation to imports of chemicals listed in Annex III). Chile noted linguistic inconsistencies in the PIC circulars and in the text and name of the Convention. Argentina reported that it had submitted a document covering all 31 chemicals and encouraged other countries to follow suit. Cuba called for increased technical assistance to developing countries to honor reporting and notification obligations and stressed the need for chemical risk assessments. Delegates then took note of the report on this matter.

CONFIRMATION OF EXPERTS DESIGNATED FOR

THE ICRC: On Monday, Niek van der Graaf, Joint Executive Secretary for the Interim Secretariat of the Rotterdam Convention (FAO), introduced a paper prepared by the Secretariat on this item (UNEP/FAO/PIC/INC.9/11), which draws attention to the resignation of one North American expert on the ICRC and Canada's nomination of her replacement. The INC accepted the nomination of Rob Ward (Canada) as a replacement.

REPORT OF ICRC-3: On Monday, ICRC Chair Reiner Arndt reported on the work of the ICRC's third session, held in Geneva from 17–21 February 2002. Arndt reviewed the report of the meeting (UNEP/FAO/PIC/INC.9/6) and the various issues it



considered (UNEP/FAO/PIC/INC.9/7), including conflict of interest, the inclusion of maleic hydrazide in the interim PIC procedure, the compatibility of current regulatory practices with the notification requirements, severely hazardous pesticide formulations, and the prioritization of work on old notifications of final regulatory actions to ban or severely restrict a chemical.

The European Community requested that the ICRC re-examine the situation relating to maleic hydrazide, stressing concerns that a manufacturer in Japan was not meeting the requirements set out in the relevant INC-8 decision. Japan responded that documents on compliance would be forwarded to the ICRC by the end of November 2002. Nigeria highlighted the needs of developing countries to obtain information on alternatives to asbestos. Argentina expressed concern that the ICRC was undertaking work on the review of proposals on chemicals without requiring that they be traded. He stated that the objectives of the Convention require ongoing international trade for the PIC procedure to be applied, and suggested that a legal interpretation of these provisions might be necessary. Arndt pointed out that, under Convention Article 6 (Procedures for several hazardous pesticide formulations), ongoing international trade is not a prerequisite to the procedures for severely hazardous pesticide formulations. Chair Rodrigues and Jim Willis suggested that discussion of this matter was not timely, since the ICRC has not yet submitted draft decision guidance documents (DGDs) to the INC regarding applicable chemicals. Chair Rodrigues also stressed that this issue was extensively addressed during the negotiation of the Convention.

INC-9 Outcome: The INC took note of the report of ICRC-3, and requested that the ICRC report to INC-10 on the implementation of the INC-8 decision on maleic hydrazide (UNEP/FAO/PIC/INC.9/L.1).

INCLUSION OF CHEMICALS IN THE INTERIM PIC PROCEDURE: On Tuesday, 1 October, delegates considered the Secretariat's Note on the inclusion of monocrotophos in the interim PIC procedure in the category "pesticide." They supported the ICRC's recommendation for inclusion of the chemical and approved the relevant decision guidance document.

INC-9 Decision: The decision on monocrotophos (UNEP/FAO/PIC/INC.9/CRP.4) makes the chemical subject to the interim PIC procedure and approves the decision guidance document on that chemical, as contained in UNEP/FAO/PIC/INC.9/10, Annex II.

ISSUES ARISING OUT OF ICRC-3: On Tuesday and Wednesday, 1-2 October, delegates discussed matters arising out of ICRC-3, including issues to consider in determining whether a final regulatory action has been taken as a consequence of a risk evaluation (UNEP/FAO/PIC/INC.9/8), and in ensuring the consistency between the scope of regulatory actions and the inclusion of chemicals in the interim PIC procedure (UNEP/FAO/PIC/INC.9/9). On Friday, 4 October, INC-9 approved a number of recommendations and decisions on this item, including recommendations to the ICRC on the listing of DNOC, Granox TBC and Spinox T, and five forms of asbestos.

Establishing whether a final regulatory action has been taken as a consequence of a risk evaluation relevant to the conditions in the notifying country: On Tuesday, 1 October, ICRC Chair Reiner Arndt introduced the ICRC document (UNEP/FAO/PIC/INC.9/8), asking delegates to consider whether preven-

tive regulatory actions on pesticides meet the definition of a ban under Convention Article 2 (definitions). Responding to this, delegates agreed that preventive actions meet the definition of a ban.

Delegates then discussed the relationship between the Annex II criteria and the final regulatory actions on chemicals never used in a country, focusing on whether a country should provide supporting risk evaluations based on conditions prevailing in this country. China recommended that all notifications include a risk evaluation. The US supported the use of risk evaluations and suggested considering the adequacy of supplementary documentation on a case-by-case basis. The European Community stressed that a basic risk evaluation might suffice in some circumstances, highlighting that, under the Stockholm Convention, countries can take preventive actions if a chemical has intrinsically hazardous properties.

ICRC Chair Arndt then asked for the INC's guidance on whether to accept the risk evaluations from neighboring countries with conditions similar or identical to those in the notifying country with respect to pesticide use. Several delegates stressed the need for detailed supplementary documentation, including "bridging" information to demonstrate that the notifying country's conditions are comparable to those in the country that undertook the risk evaluation. The European Community recommended that the sufficiency of this information be judged by the ICRC on a case-by-case basis. The INC also took note of Brazil's concern about creating additional burdens for developing countries.

INC-9 Outcome: On Friday, 4 October, the INC agreed that the definition of "a banned chemical" in Convention Article 2 (definitions) includes preventive regulatory actions taken to protect human health or the environment from chemicals that may not have been proposed for use in the notifying country (UNEP/FAO/PIC/INC.9/L.1).

The INC also agreed that the extent to which notifications and supporting documentation for a final regulatory action to ban a chemical that has never been used in the notifying country meet the criteria in Annex II, be considered on a case-by-case basis.

Regarding provision of the risk notifications, the INC recommended that:

- the notifying country would be expected to provide information on how the risk evaluation from another country is related to conditions prevalent in the notifying country;
- the ICRC determine the sufficiency and acceptability of that information on a case-by-case basis; and,
- the ICRC develop guidelines on the scope of that information to be contained in the supporting documentation by the notifying country, for review by INC-10.

Scope of reported national regulatory actions and inclusion of chemicals in the interim PIC procedure: On Tuesday, 1 October, ICRC Chair Arndt presented the document on ensuring consistency between the scope of reported national regulatory actions and the inclusion of substances not specifically indicated in notifications of final regulatory actions or proposals (UNEP/FAO/PIC/INC.9/9). He highlighted that the ICRC requested the INC's guidance regarding two issues: the inclusion of substances not specifically indicated in the notifications of final regulatory actions or proposals for severely hazardous pesticide formulations in the PIC procedure, and the identification of chemicals to be included in the interim PIC procedure. Delegates addressed these issues in relation to DNOC, Granox TBC and Spinox T, asbestos and monocrotophos.



DNOC: On Tuesday, 1 October, delegates discussed whether only a subset of DNOC products or all products containing DNOC (DNOC and its salts) would be subject to the interim PIC procedure. Several delegates requested that DNOC and all associated salts be subject to the PIC procedure. China suggested that country notifications list all the characteristics of DNOC and its salts. The Russian Federation stated that not all DNOC salts are toxic. INC Chair Rodrigues noted that a decision on that matter will be taken at INC-10.

On the same day, the INC considered the description of DNOC-containing products, if included in the interim PIC procedure. The European Community suggested that, to provide some additional details, the listing could refer to "DNOC and its salts." Switzerland supported listing individual salts and Chemicals Abstract Service (CAS) numbers. The Plenary adjourned without reaching a decision, and resumed the discussion on Wednesday, 2 October, when an agreement was reached.

INC-9 Outcome: On Friday, 4 October, after a brief discussion, the INC agreed on a revised text of the INC-9 report of the meeting (UNEP/FAO/PIC/INC.9/L.1) stating that, in the case of a chemical such as DNOC, it would be listed as "DNOC and its salts, such as ammonium salt, potassium salt and sodium salt," along with the relevant CAS numbers, if included in the interim PIC procedure.

Granox TBC and Spinox T: On Tuesday, 1 October, the INC considered the inclusion of Granox TBC and Spinox T in Annex III to the Convention. Arndt expressed the ICRC's concern over listing a single specific formulation because changes to the specified percentages of any active ingredients could remove the formulation from the scope of the PIC procedure. The ICRC provided the INC with three options: (a) only formulations containing the level of active ingredients identified; (b) formulations containing a combination of active ingredients at the same level or above those in the formulation identified in the proposals; or (c) powdered formulations containing carbofuran at the same level as identified or greater. Delegates expressed support for option (b).

On Wednesday, 2 October, delegates discussed the possible listing of Granox TBC and Spinox T. Canada stressed the importance of clear representation of the formulations and suggested a footnote or an explanatory document to clarify which formulations are covered by the interim PIC procedure.

INC-9 Outcome: On Friday, 4 October, the INC discussed and revised the report outlining its decisions and recommendations on the listing of severely hazardous pesticide formulations (UNEP/FAO/PIC/INC.9/L.1).

The INC agreed that the specific formulation identified in a proposal was the basis for listing a severely hazardous pesticide formulation. It also agreed that formulations containing the active ingredient or ingredients at or above the specified concentrations and in the same formulation type would also be subject to the PIC procedure, if supported by the technical documentation supporting the proposal. The INC further indicated that a footnote to that effect could be added at the bottom of Annex III, or other explanatory guidance could be provided.

For Spinox Granox, INC-9 agreed that, in this particular case, if included in the interim PIC procedure, all powdered formulations containing the active ingredients at or above the specific concentrations would be covered. It also agreed that the listing would explicitly identify the active ingredients (Benomyl Carbofuran and

Thiriam), the appropriate CAS number and formulation type (dust-able powder), with an appropriate footnote or other explanatory guidance.

Asbestos: On Wednesday, 2 October, delegates discussed how to list six forms of asbestos, should the INC decide to list all in the interim PIC procedure (at present, one form, crococolite, is listed). To enable countries take import decisions for the individual forms and reflect their different risk levels, Canada proposed two options: individual entries for the six forms; or keeping the listing of the amphibole forms and chrysotile separate, which would reflect their different risk levels. INC Chair Rodrigues suggested that the possible grouping of the forms of asbestos be examined by the ICRC.

INC-9 Outcome: The INC agreed that the individual forms of asbestos and the relevant CAS numbers should be explicitly identified, if included in the interim PIC procedure (UNEP/FAO/PIC/INC.9/L.1).

Monocrotophos: In addition to the decision to list monocrotophos in Annex III (see the previous section on the Inclusion of Chemicals in the Interim PIC Procedure), delegates also considered monocrotophos under this agenda item, focusing on whether countries would be required to make separate decisions for all forms of monocrotophos. The Gambia, supported by the European Community and Switzerland, recommended an approach whereby "an import response on monocrotophos would, unless stated otherwise, be considered to apply to the specific formulations." Delegates agreed to adopt this recommendation.

INC-9 Outcome: The INC agreed that, with the circulation of the new DGD on monocrotophos, countries would be invited to submit a single decision that would apply to all forms of monocrotophos, including the severely hazardous formulations listed in Annex III (UNEP/FAO/PIC/INC.9/L.1).

EXTENSION OF MANDATE OR NOMINATION OF NEW MEMBERS FOR THE ICRC: On Monday, 30 September, INC Chair Rodrigues informed the Plenary that the terms of office of the experts on the ICRC had expired in July 2002 (UNEP/FAO/PIC/INC.9/12), and suggested two options for addressing this problem: extending the present members' terms of office, or reconstituting the ICRC's membership.

Since the 29 government-designated experts on the ICRC are appointed on the basis of the interim PIC Regions, delegates met in their regional groups on Tuesday, 1 October, to discuss their preferred option for addressing this issue. The Near East, North America, Europe, and Latin America and the Caribbean PIC Regions decided to extend the mandate of their current members to COP-1. The Asia Region agreed to nominate new experts, while delegates from Africa and the Southwest Pacific Regions decided to retain some current members and forward some new nominations.

On Wednesday, 3 October, representatives of the PIC Regions reported their decisions to the Plenary, and Chair Rodrigues requested that government nominations for new experts, as well as their qualifications and conflict of interest forms, be presented as soon as possible. The following day, representatives of the Africa, Asia, and Southwest Pacific Regions reported to Plenary that progress had been made in nominating their new ICRC experts, with the relevant documentation either already submitted or currently being prepared.



INC-9 Decision: On Friday morning, 4 October, INC-9 decided to approve all nominations submitted by regions (UNEP/FAO/PIC/INC.9/CRP.12, Add.1-2 and CRP.13), with the caveat that all the outstanding documentation required for membership to take effect should be received by 15 November 2002.

PREPARATION FOR THE CONFERENCE OF THE PARTIES

DRAFT FINANCIAL RULES AND PROVISIONS: On Thursday, 3 October, 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), which outlines the scope, financial period, budget, Trust Funds, contributions, accounts and auditing, and administrative support costs. He noted that COP-1 is to adopt the financial rules and procedures, and 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 Funds 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.

The EU, supported by Switzerland and Norway, proposed that the Trust Funds be established by UNEP's Executive Director. 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 in February 2002. The US underscored that all contributions must be voluntary and that the UN indicative scale must be understood to relate to voluntary contributions. 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 assessments 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.

On Friday, the INC took note of Canada's proposed amendments (UNEP/FAO/PIC/INC.9/CRP.11), including that the two Convention Secretariat heads shall prepare the budget proposal for the upcoming biennium in US dollars, showing projected income and expenditures, as well as showing the actual income and expenditures for each of the previous biennia. The INC agreed to invite interested Parties to consider the proposal at INC-10.

INC-9 Outcome: In its Plenary session on Friday, INC-9 agreed, in document UNEP/FAO/PIC/INC.9/L.1/Add.1: to consider, at INC-10, a recommendation for the designation of an organization to establish and administer the Trust Funds; to consider the apportionment of expenses at INC-10; and that in addition to developing country Parties, Parties with economies in transition would be also eligible for assistance.

SETTLEMENT OF DISPUTES: On Thursday, 3 October, Masa Nagai, Interim Secretariat, introduced a note from the Secretariat on settlement of disputes (UNEP/FAO/PIC/INC.9/14), which contains the draft rules on arbitration and conciliation agreed at INC-8. Delegates discussed the one issue not resolved at INC-8 concerning the extension of the period for designating arbitral tribunal members, and agreed that a two-month extension is an acceptable compromise. Japan requested further consideration 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-9 Outcome: The INC agreed to a two-month extension period, and the text of the draft rules on the settlement of disputes, with a footnote reflecting Japan's concerns, is attached to the report of the meeting (UNEP/FAO/PIC/INC.9/L.1/Add.1).

NON-COMPLIANCE: The issues of compliance and reporting on implementation were addressed in Plenary on Tuesday, 1 October, and were subsequently discussed in Working Group sessions chaired by Alistair McGlone (UK). The Working Group met on Tuesday afternoon, throughout the day on Wednesday and Thursday, and on Friday morning. On Friday, the INC agreed to include the amended, bracketed draft model of procedures and institutional mechanisms for handling cases of non-compliance as an annex to the report of the meeting. It also included the Working Group's discussion on reporting in the report of the meeting.

Compliance: On Tuesday, Masa Nagai, Interim Secretariat, introduced the document on procedures and institutional mechanisms for handling cases of non-compliance (UNEP/FAO/PIC/INC.9/16). He explained that the document on compliance contained a revised model for handling cases of non-compliance. He recalled the INC-8 decision that the open-ended Working Group formed to address this issue should reconvene at INC-9. Canada said the Group should allow participants to articulate their positions so that a comprehensive negotiating document could be prepared in time for INC-10. Switzerland underscored that the compliance mechanism should be in place by the time the Convention enters into force. The US, supported by Australia, said compliance procedures should be "simple, flexible and facilitative."

The Working Group met on Tuesday afternoon to begin discussions on a draft model of procedures and institutional mechanisms for handling cases of non-compliance. The US underscored that the entire document is bracketed, and suggested postponing the development of the compliance mechanism. Australia recommended approaching the document as an "elements paper" rather than as a negotiating text and, with the US, recommended determining types of non-compliance before establishing tools for compliance. Japan preferred that reporting tools be developed before the compliance mechanism is negotiated. Chair McGlone suggested that both general elements and practical aspects of the mechanism be discussed.

The Working Group then discussed the draft model paragraph by paragraph. On text outlining the objectives, the US objected to a proposal that the compliance committee determine non-compliance and preferred that the committee promote compliance instead. Delegates agreed to delete the paragraph in its entirety. Regarding the establishment of a compliance committee, delegates discussed whether it should be an *ad hoc* body, whether it should be subsidiary to the COP, and how often it should meet.



On Wednesday, delegates were unable to agree on whether the compliance committee should be a subsidiary body to the COP. On the number of members in the compliance committee, some delegates favored two representatives from each of the UN regions, while others preferred two from each of the PIC Regions. Delegates were also unable to reach agreement on whether the committee members should be government-designated experts, Parties, or government representatives and whether they should serve in their individual capacities. Regarding the length of committee members' terms, delegates agreed to use as a model the compliance mechanism from the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, but were unable to reach agreement on the number of consecutive terms that can be served.

Regarding the election of officers to the committee, Brazil and Nigeria supported using language from Rule 30 of the Convention's Rules of Procedure, requiring the rotation of officers and limiting the terms of office to two consecutive terms. Australia and Canada favored deleting the paragraph. On the frequency of committee meetings, several participants stressed the need for frequent meetings, and recommended that they occur in conjunction with the COP and other PIC meetings. Japan and the US stressed the cost implications of holding regular meetings.

On Thursday, delegates addressed 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 the PIC subsidiary bodies, the Group agreed that the COP may direct the committee to work in conjunction with such bodies when their responsibilities overlap.

On the invocation of procedures, delegates agreed to draft new language for consideration by INC-10, based upon relevant text of the Basel 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 procedures for specific cases of non-compliance, paragraphs on self-invocation and third Party invocation remained bracketed. The Netherlands and Germany suggested that triggers by individuals, organizations, and the Secretariat be added. Nigeria recommended that there be distinct triggers for 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.

Regarding the consultative functions of the compliance committee, Canada proposed limiting the information that the committee must consider, while 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.

On non-compliance measures, the US proposed highlighting 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.

On Friday, delegates resumed discussions on the compliance mechanism. The Group considered two new proposals regarding non-compliance measures, and decided to merge the proposals to facilitate further work at INC-10.

Chair McGlone then reported to Plenary on the Group's work over the past week, and that the amended draft model of procedures and institutional mechanisms for handling cases of non-compliance will be contained in an annex to the report of the meeting. At Canada's suggestion, McGlone agreed to prepare a Chair's draft for INC-10, taking into account the work of other fora.

INC-9 Outcome: The amended draft model of procedures and institutional mechanisms for handling cases of non-compliance is contained in an annex to the report of the meeting (UNEP/FAO/PIC/INC.9/L.1/Add.1). The text, which remains heavily bracketed, indicates the Working Group's agreement that, *inter alia*, the compliance committee will be established by the COP, but notes its lack of agreement over whether it will be a subsidiary body to the COP. The membership of the compliance committee is undecided although it is agreed that due consideration shall be given to equitable geographic distribution. The issues of frequency of compliance committee meetings and whether these meetings will be open or closed to other Parties and the public remains undecided. It is agreed that the compliance mechanism shall be implemented without prejudice to Article 20 (dispute settlement).

The Working Group agreed that a Party unable to comply with certain Convention obligations might make a written submission to the Secretariat seeking advice from the compliance committee; however, they could not decide whether the procedures for specific submissions on non-compliance may be initiated by another Party, the compliance committee, individuals or organizations, or the Secretariat. The procedures for general compliance issues also remain unresolved. Several non-compliance measures have been proposed, but none have been adopted including:

- the provision of advice;
- the facilitation of assistance;
- the formulation of a compliance plan, including timelines and targets;
- a formal statement of concern regarding possible future non-compliance;
- determination of non-compliance;
- the issuance of cautions;
- suspending rights and privileges under the Convention; and
- sanctions.

They could not decide whether the non-compliant Party should be advised to take action to rectify any detriment caused by non-compliance, and whether the committee shall monitor the consequences of the action taken to rectify non-compliance. The Working Group agreed that the Secretariat shall provide administrative services for the functioning of the compliance mechanism, including receiving and transmitting information on compliance issues to the compliance committee and the Parties, although it was not decided whether the Secretariat may receive relevant information from the Parties or from all sources.

Reporting on Convention Implementation: On Tuesday, delegates considered the Annex to a Secretariat's Note on reporting (UNEP/FAO/PIC/INC.9/15). On Thursday, the Working Group on Compliance began discussions regarding reporting on implementation, including the draft outline of a possible reporting procedure. The Group agreed that the Annex to the Secretariat's Note was not a negotiating document and, therefore, did not try to refine the text paragraph by paragraph. 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. Most delegates agreed that the procedure should be systematic to ensure that the Secretariat has sufficient information to fulfill its functions. Rather than continuing detailed discussions on the text in the Working Group, Canada recommended that States provide comments to the Secretariat for review at INC-10.

INC-9 Outcome: The outcome of the Working Group's discussions on reporting is contained within the report of the meeting (UNEP/FAO/PIC/INC.9/L.1/Add.1). The report notes that the Working Group considers that the Secretariat should, after COP-1, report to the Parties on: compliance with the Convention; implementation of the Convention; and identification of areas where assistance is required. To enable the Secretariat to prepare such a report, delegates decided that the COP should adopt a decision on reporting, which would reflect, *inter alia*, the need for a simple, voluntary questionnaire to supplement the Convention's other reporting requirements. The Secretariat is invited to prepare a draft COP decision on reporting and the questionnaire for consideration at INC-10.

ASSIGNMENT OF SPECIFIC HARMONIZED SYSTEM CUSTOMS CODES: On Wednesday, Jim Willis introduced a report outlining cooperation between the Secretariat and the World Customs Organization (WCO) to assign specific Harmonized System customs codes to individual chemicals or groups of chemicals listed in Convention Annex III (UNEP/FAO/PIC/INC.9/17). He noted that the Secretariat had submitted a proposal to the WCO on how the current Harmonized System of customs codes could be amended. The European Community welcomed the progress made on this issue, and highlighted the proposal it had developed for consideration by the WCO (UNEP/FAO/PIC/INC.9/CRP.6). The INC noted the information presented on this issue.

DISCONTINUATION OF THE INTERIM PIC PROCEDURE: Issues related to the discontinuation of the interim PIC procedure (UNEP/FAO/PIC/INC.9/18) were taken up in the Plenary session on Tuesday, and were subsequently addressed in an informal group chaired by André Mayne (Australia). The informal group met once to deliberate on the outstanding issues and draft text (UNEP/FAO/PIC/INC.9/CRP.10), which was adopted by the final INC-9 Plenary on Friday.

On Tuesday, Bill Murray, Interim Secretariat of the Rotterdam Convention, identified five issues requiring further consideration:

- the composition of the PIC Regions;
- chemicals subject to interim PIC procedure but not yet listed in Annex III;
- notifications of final regulatory action and proposals for severely hazardous pesticide formulations;
- status of notifications and proposals by Participating States; and
- maintaining the list of Participating States' import responses and the list of contact details.

On the need to resubmit proposals for severely hazardous chemicals, Canada, supported by the European Community and the Gambia, stated that it should not be necessary to resubmit proposals for severely hazardous pesticide formulations, while the US and Venezuela suggested that for the proposals to be carried forward, the proposing Party inform the Secretariat of its wish that the proposal should be considered as having been resubmitted.

On the issue of the status of notifications and proposals submitted by Participating States, Australia, supported by the US, Japan, Hungary and the Gambia, stated that these notifications and proposals are not to be eligible for consideration by the CRC and that it would be inappropriate for them to result in legally-binding obligations on Parties. The European Community and Venezuela underscored that the INC should not create any distinction between proposals submitted by Parties and Participating States in the interim procedure and proposed that these proposals could be forwarded to the CRC for consideration.

On maintaining the list of import responses and the list of contact details, Canada proposed that the lists be made available on the Convention's website so that countries could refer back to the list. The European Community noted its preference to retain the information for a two-year period, after which a decision on the discontinuation of the lists should be taken by the COP. Argentina, supported by Senegal, expressed concern about taking a decision, as the length of the discontinuation process would be determined by the time it takes for the Convention to enter into force. The US proposed a one-time list with a caveat stating that the information would not be updated, which would therefore allow the information to be made available but remove any liability for inaccurate information.

INC-9 Outcome: After the discussions in Plenary on Tuesday, INC-9 agreed to transmit to the COP the two options on the composition of the PIC Regions for further consideration, and decided to support a timeframe of up to nine months from the date of the first COP to provide a response on the DGD for the future import of chemicals subject to the interim PIC procedure but not yet listed in Annex III.

On Friday, the Plenary adopted decisions based on deliberations in the informal working group, as outlined in the annex to the report of the meeting (UNEP/FAO/PIC/INC.9/CRP.15). This included:

- for notifications of final regulatory action and proposals for severely hazardous pesticide formulations, each proposal is deemed, by a COP-1 decision, to be resubmitted for the purposes of the Convention;
- on the status of notifications and proposals by Participating States, actions of non-Parties, including Participating States, cannot result in obligations on Parties following entry into the force of the Convention;
- on actions of non-Parties, the proposals submitted before the Convention's entry into force might initiate a review by the Chemical Review Committee, 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; and
- at the end of the transition period, non-Parties' import responses and the list of national contact points will be retained, but not updated nor circulated by the Secretariat, with a caveat addressing the date of publication, absence of updates and the lack of liability accepted for the use of the information.

ISSUES ARISING OUT OF THE CONFERENCE OF PLENIPOTENTIARIES

SUPPORT FOR IMPLEMENTATION: On Wednesday, Jim Willis, introduced a note by the Secretariat on the need for technical and financial support for Convention implementation (UNEP/FAO/PIC/INC.9/19), stressing the lack of a mechanism for tech-



nical assistance. In the ensuing discussion, the delegates informed about activities related to technical assistance, training, and information exchange, with many stressing the need for synergies between the chemical conventions. Delegates also discussed the opportunities for limited GEF support for Convention activities. To support the mobilization of domestic resources, the Gambia emphasized the importance of linking the Convention to poverty alleviation strategies. Some delegates suggested incorporating requests for assistance in national development plans. The European Community suggested that countries experiencing difficulties in implementation provide the Secretariat with concrete information on their assistance needs.

INC-9 Outcome: In its report of the meeting (UNEP/FAO/PIC/INC.9/L.1/Add.1) adopted on Friday, the INC requests the Secretariat to compile and analyze the results and conclusions of the workshops on the Rotterdam Convention, information received from governments and donor agencies, and information on technical assistance in other forums and related conventions. Based on this information, the Secretariat will prepare a report for INC-10 on technical assistance needs and opportunities for synergies, as the basis for a possible strategic approach to technical assistance.

The INC also agreed to invite the GEF implementing agencies to consider whether there might be appropriate projects relating to one or more GEF focal areas that could have the incremental benefit of strengthening capacities for implementing the Convention. Finally, it agreed to discuss at INC-10 possible approaches that could lead to a "fast start" under Article 16 (technical assistance).

DISPUTE SETTLEMENT, ILLICIT TRAFFICKING AND RESPONSIBILITY AND LIABILITY: On Wednesday, Jim Willis reported to Plenary on obstacles to progress in combating illicit trafficking, highlighting that the Rotterdam Convention has yet to enter into force and that there is a serious lack of financial resources to follow up on this issue. However, he did indicate valuable ongoing cooperation with the WCO, and the planned launch of a WCO-UNEP training programme for customs officers in 2003. INC-9 took note of his oral report (UNEP/FAO/PIC/INC.9/L.1/Add.1), and INC Chair Rodrigues informed delegates that a further progress report on these issues would be delivered at INC-10.

STATUS OF SIGNATURE AND RATIFICATION OF THE CONVENTION

On Wednesday, delegates considered a document explaining the status of signature and ratification of the Convention as of 20 September 2002 (UNEP/FAO/PIC/INC.9/INF/1). INC Chair Rodrigues requested States to brief the INC on the status of their domestic ratification measures. INC-9 took note of statements of intent to ratify by the following delegations: Armenia, Australia, Belgium, Brazil, Burkina Faso, Chad, China, Congo, Côte d'Ivoire, Cuba, Egypt, Ethiopia, France, Ghana, Honduras, Iran, Japan, Malawi, New Zealand, Peru, Philippines, Poland, Qatar, US, Uruguay, Venezuela, Yemen, and Zimbabwe.

OTHER MATTERS

Highlighting its support for the PIC negotiating process, Switzerland confirmed its offer to host INC-10 in Geneva, and its willingness to pay a substantial contribution toward the meeting's costs. The INC took note of this offer.

Delegates also agreed that INC-10 should take place from 17-21 November 2003, and that ICRC-4 should be held from 3-7 March 2003. The INC also expressed its appreciation to the Government of Germany for hosting INC-9.

On other matters, the INC took note of Panama's offer to host a workshop in Latin America to facilitate ratification of the Rotterdam Convention. It also approved a proposal by Argentina that the Secretariat be requested to produce a background paper on linkages and relations between this process and the WTO, and took note of an offer by Argentina to host a workshop on this topic.

CLOSING PLENARY

On Friday, 4 October, delegates convened for the closing Plenary to discuss and adopt the report of the meeting (UNEP/FAO/PIC/INC.9/L.1 and L.1/Add.1). INC-9 adopted the report after considering it paragraph-by-paragraph and making a number of editorial changes and alterations to the content. Following the adoption of the report of the meeting, delegates made closing speeches.

Many countries thanked the German Government and the City of Bonn for hosting INC-9, and congratulated Chair Rodrigues and the Secretariat for their effectiveness and efficiency. India, speaking for the Asia Region, highlighted his confidence that, under the "excellent stewardship" of Chair Rodrigues, the interim procedure would soon lead to the first COP.

Delegates also extended their appreciation to the administrative staff, interpreters, and other support personnel involved in this meeting. Egypt, on behalf of the Near East Region, expressed its gratitude to UNEP and FAO. The Gambia, speaking for the Africa Region, highlighted the value the African countries place on the PIC procedure, noting the Rotterdam Convention's aim of fostering a shared sense of responsibility. She urged all African countries to ratify the Rotterdam, Basel and Stockholm Conventions, and appealed to the international community for its support and assistance. The Russian Federation said INC-9 had provided a further reason to ratify.

Chair Rodrigues thanked the German Government for hosting the meeting, the German and Italian Governments for the receptions held during the week, and the Secretariat, report writers, and other personnel for all their work. Stating that she looked forward to seeing participants again at INC-10, she declared the meeting closed at 1:35 pm.

A BRIEF ANALYSIS OF INC-9

Delegates from over 100 countries met in Bonn for INC-9 to continue their deliberations on issues in preparation for the first Conference of the Parties to the Rotterdam Convention. With less contentious issues on its plate than at previous INCs, the meeting moved forward at a leisurely pace, and participants and the Secretariat carried their work forward in a cooperative and efficient manner. With INC-9 completing the majority of its tasks in preparation for the first Conference of the Parties, the looming question on the minds of many delegates at the meeting's conclusion relates to how the interim PIC procedure will make the jump from a voluntary procedure to a legally binding instrument. This analysis will briefly examine the impact of INC-9 on the PIC's transition from a voluntary procedure toward being a fully-fledged and legally binding multilateral environmental agreement, and its influence on restricting international trade in hazardous chemicals and pesticides.



TRANSITIONAL DYNAMICS

During the interim phase, the PIC is limited to providing information with the sole intent of alerting governments to hazardous pesticides and chemicals, placing significant onus on the importing country to prevent unwanted imports, rather than requiring exporting countries to phase-out the production of hazardous substances and restrict their movement. Whether the first Conference of the Parties will begin to address the root causes of a problem that still allows the trade of banned chemicals and pesticides, without any penalties for violations, remains to be seen. In this regard three sets of issues remain high on the transition agenda.

The first set of issues relates to the timing of the Convention's entry into force. The Convention received a timely boost from the WSSD, with an increase of 16 additional ratifications in the year since INC-8. Only 17 country ratifications are now needed to reach the magical 50 necessary for entry into force. Supporting this recent trend, a further 30 countries attending INC-9 announced their intention to ratify in the coming year. What this means is that, while the WSSD was in itself an important catalyst for Parties to ratify, a far more compelling argument now for ratification is the need for governments to be represented as Parties at the first COP. Only as Parties will they have the opportunity to influence the adoption of the rules, provisions and the compliance mechanism that will characterize the legally-binding phase of implementation. This means entry into force could happen sooner rather than later, as Parties try to make sure that they don't "miss the boat" and lose their position to influence COP-1.

The second set of issues relates to the development of an effective compliance mechanism, able to facilitate compliance and penalize those Parties violating the Convention's provisions. INC-9 provided delegates with an opportunity for a first reading of the negotiating text on the compliance mechanism. The Compliance Group's negotiated text should provide a valuable starting point for further discussions on compliance at INC-10 with some of the more contentious issues including: triggers, compliance committee composition, and non-compliance measures such as sanctions. As in many recent environmental negotiations, country positions are entrenched. Some developed countries, such as Australia and the US, favor a more cautious approach leading to a facilitative, flexible mechanism. The EU, Canada and many developing countries, meanwhile, would clearly prefer early work to establish the details of a stricter regime that, in the words of one observer, "has as many sticks as carrots."

In fact, the cluster of chemical conventions are all working on their compliance mechanisms, although they are at different stages in development: the Basel compliance mechanism should be finalized by COP-6 in December 2002, whereas the POPs compliance mechanism is only being discussed very generally. According to some delegates, the INC should agree to use the Basel Convention's compliance mechanism as a basis for this one, and thereby avoid the frustrations of "reinventing the wheel."

However, some observers have suggested that it may not be these standard compliance issues that should preoccupy COP-1. It is more likely that the slow pace of compliance with the administrative measures for import notifications and reporting, as outlined in Article 10, could provide the first major hiccup in the Convention's learning curve. For example, among those countries that have already ratified the Convention, only 31% are in compliance with the import notifications for all 31 chemicals listed in Annex III, while 15% have not provided any import response at all. The

failure to comply with the notification of import response obligations might not simply be one of a technical or institutional nature, however. In several cases, according to some, those with the access to technical, human and financial capacity are the ones lagging behind on the submissions of import notification, possibly alluding to other, "political reasons" and "vested interests" behind this form of non-compliance.

The third set of issues relates to technical assistance for developing countries. For many of these countries, the slow pace of financial flows to support technical assistance and the building of institutional capacity to comply with the Convention's provisions for the listing of chemicals and the submission of import notifications remains a concern and a glaring gap in the negotiation process. In most cases, developing country governments lack the resources for monitoring, regulating and promoting the safe use of hazardous chemicals and pesticides. Addressing this issue will be critical to ensuring the Convention's overall effectiveness.

In addition to these issues, which are high on the agenda during the transition period, a fourth set of issues may soon emerge, relating to the relationship between the Convention's efforts in the international trade arena and its arguably undefined status vis-à-vis the World Trade Organization. So far, delegates do not appear too enthusiastic to "kick start" this courtship. According to some, this is not actually a pressing issue, as it is clear to them that in the case of the Rotterdam Convention, the WTO is expected to take the lead in resolving trade disputes. Others do not seem so sure that this relationship has been sufficiently defined. Some delegates are now starting to consider the links to the WTO and Doha with a more critical eye, as evidenced by Argentina's request at INC-9 for a background paper on the subject.

COVERING MORE CHEMICALS

The addition of new chemicals to the interim PIC procedure is viewed by some as the most significant outcome of the meeting. The adoption of the ICRC's recommendation to include the severely hazardous pesticide formulation monocrotophos to Annex III of the Convention highlighted the small but significant steps being taken to control the trade of cheap and, in some cases, banned pesticides and chemicals available for use in developing countries. According to one chemical expert, "the monocrotophos decision reconfirms the right to make trade judgments on the basis of how a pesticide is actually used in the field, rather than on the basis of the manufacturer's instructions." The control of the trade and further use of this pesticide will be viewed as a major achievement in the Convention's efforts to provide relief for the hundreds of thousands of farm workers, for whom this chemical continues to pose a serious health risk. In addition to monocrotophos, INC-9 launched a process to add the remaining five forms of asbestos to Annex III by INC-10, adding yet another high-profile chemical for restriction under the regime. INC-10 is also expected to list three more pesticides – Granox TBC and Spinox T and DNOC.

SMALL STEPS IN THE RIGHT DIRECTION

While the Rotterdam Convention has kept a relatively low profile compared to some MEAs and may be overshadowed by the higher profile Stockholm Convention, many see it as a relatively straightforward treaty that nevertheless addresses big issues. In his opening remarks to INC-9, UNEP Executive Director Klaus Töpfer labeled the Convention a "vital part" of the international toolkit for protecting human health and the natural environment from the harmful effects of hazardous chemicals and pesticides, even



suggesting that it will serve as the "first line of defense" against chemical hazards. He challenged the INC and governments to demonstrate to the wider public that the Rotterdam Convention is making a difference to their lives. Supporting this view, some delegates clearly expect that once the Convention enters into force, its provisions, developed and tested through this voluntary phase of "learning by doing," will enable governments to prevent chemicals that they cannot safely manage from entering into their countries.

However, although this transitional phase has so far proceeded smoothly, the next phase – the post COP-1 period – is almost certain to present more challenges. First, many delegates have already realized that once entry into force takes place and the voluntary system becomes mandatory, the stakes will automatically become higher. It may not be long before NGOs and other groups, currently notable for their absence, begin to realize this, too.

Second, while the voluntary phase has dealt with a set of chemicals that most Parties unanimously agree should be restricted, this may change when the Convention becomes legally binding. Once this happens, delegates may well be forced to wrestle with proposals to restrict more high-profile industrial and agricultural chemicals that in some cases are being produced by large, multinational companies. These are sure to be more politically controversial as the financial implications become clearer.

Another challenge, according to several participants, is that in a world where 1500 new chemicals are introduced to the market each year, the Rotterdam Convention will need to speed up the pace of listing chemicals or risk becoming irrelevant. As the relatively smooth transition period draws to a close, these issues are likely to come increasingly to the fore and initiate an even more challenging period for the PIC procedure and the Rotterdam Convention.

THINGS TO LOOK FOR BEFORE INC-10

GLOBAL ENVIRONMENT FACILITY: The GEF Council will meet in Beijing, China, from 14-15 October 2002, to be followed by the second meeting of the GEF Assembly in Beijing from 16-18 October. These meetings will be preceded by NGO consultations on 13 October. For more information, contact: the GEF Secretariat; tel: +1-202-473-0508; fax: +1-202-522-3240/3245; e-mail: secretariatofgef@worldbank.org; Internet: <http://www.gefweb.org>

SUBREGIONAL AWARENESS RAISING WORKSHOP ON THE ROTTERDAM CONVENTION: This workshop is scheduled for 19-23 October 2002, in Tehran, Iran. For more information, contact the Interim Secretariat: Niek van der Graaff, FAO; tel: +39-6-5705-3441; fax: +39-6-5705-6347; e-mail: niek.vandergraaff@fao.org; or Jim Willis, UNEP Chemicals; tel: +41-22-917-8111; e-mail: chemicals@unep.ch; Internet: <http://www.pic.int>

19TH SESSION OF THE FAO PANEL OF EXPERTS ON PESTICIDE SPECIFICATIONS, REGISTRATION REQUIREMENTS, APPLICATION STANDARDS AND PRIOR INFORMED CONSENT: This FAO Panel of Experts will meet from 27-29 October 2002, in Rome, Italy. For more information, contact: Gero Vaagt, FAO; tel: +39-6-5705-5757; fax: +39-6-5705-6347; e-mail: gero.vaagt@fao.org; Internet: <http://www.fao.org/waicent/FaoInfo/Agricult/AGP/AGPP/Pesticid/Events/c.htm>

WORKSHOP TO PROMOTE SUSTAINABLE ALTERNATIVE STRATEGIES TO POP PESTICIDES: This UNEP Workshop is scheduled for 1 November 2002, in Nairobi, Kenya.

For more information, contact: UNEP Chemicals; tel: +41-22-917-8111; fax: +41-22-797-3460; e-mail: chemicals@unep.ch; Internet: <http://irptc.unep.ch/pops>

MONTREAL PROTOCOL MOP-14: The 14th Meeting of the Parties to the Montreal Protocol will be held from 25-29 November 2002, in Rome, Italy. For more information, contact: Ozone Secretariat; tel: +254-2-62-3850 or 62-1234; fax: +254-2-62-3601 or 62-3913; e-mail: michael.graber@unep.org; Internet: <http://www.unep.org/ozone/mop/14mop/14mop.shtml>

SUBREGIONAL AWARENESS RAISING WORKSHOP ON THE ROTTERDAM CONVENTION: This workshop will take place from 25-29 November 2002, in Kiev, Ukraine. For more information, contact the Interim Secretariat: Niek van der Graaff, FAO; tel: +39-6-5705-3441; fax: +39-6-5705-6347; e-mail: niek.vandergraaff@fao.org; or Jim Willis, UNEP Chemicals; tel: +41-22-917-8111; e-mail: chemicals@unep.ch; Internet: <http://www.pic.int>

BASEL CONVENTION COP-6: The sixth Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal will take place from 9-13 December 2002, in Geneva, Switzerland. For more information, contact: Secretariat of the Basel Convention; tel: +41-22-979-8218; fax: +41-22-797-3454; e-mail: sbc@unep.ch; Internet: <http://www.basel.int>

PIC REGIONAL AND SUBREGIONAL WORKSHOPS: A number of regional and subregional workshops to support PIC implementation and ratification are under consideration, which may include meetings hosted by Egypt, China, and Malaysia. For more information, contact: the Interim Secretariat: Niek van der Graaff, FAO; tel: +39-6-5705-3441; fax: +39-6-5705-6347; e-mail: Niek.Vandergraaff@fao.org; or Jim Willis, UNEP Chemicals; tel: +41-22-917-8111; e-mail: chemicals@unep.ch; Internet: <http://www.pic.int>

ICRC-4: The fourth session of the Interim Chemical Review Committee is scheduled for 3-7 March 2003, in Rome, Italy. For more information, contact the Interim Secretariat: Niek van der Graaff, FAO; tel: +39-6-5705-3441; fax: +39-6-5705-6347; e-mail: niek.vandergraaff@fao.org; or Jim Willis, UNEP Chemicals; tel: +41-22-917-8111; e-mail: chemicals@unep.ch; Internet: <http://www.pic.int>

FOURTH SESSION OF THE INTERGOVERNMENTAL FORUM ON CHEMICAL SAFETY (IFCS): FORUM IV is scheduled for 1-7 November 2003, in Bangkok, Thailand. For more information, contact: Judy Stober, IFCS Executive Secretary; tel: +41-22-791-3650; fax: +41-22-791-4875; e-mail: ifcs@who.ch; Internet: <http://www.ifcs.ch>

PIC INC-10: The tenth session of the Intergovernmental Negotiating Committee for an International Legally Binding Instrument for the Application of the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC) is scheduled for 17-21 November 2003, in Geneva, Switzerland. For more information, contact the Interim Secretariat: Niek van der Graaff, FAO; tel: +39-6-5705-3441; fax: +39-6-5705-6347; e-mail: Niek.Vandergraaff@fao.org; or Jim Willis, UNEP Chemicals; tel: +41-22-917-8111; e-mail: chemicals@unep.ch; Internet: <http://www.pic.int>