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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

Fifth session

Brussels, 9-14 March 1998

REPORT 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 ON
THE WORK OF ITS FIFTH SESSION

I. OPENING OF THE SESSION

1. The fifth 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 was held at the European Parliament, Brussels, from 9 to 14 March 1998.

2. The session was opened by Ms. Maria Celina de Azevedo Rodrigues (Brazil), Chair of the Committee, at 10.10 a.m. on Monday, 9 March 1998.

3. Opening statements were made by Mr. A. Sawadogo, Assistant Director-General, Agriculture Department, of the Food and Agriculture Organization of the United Nations (FAO), speaking on behalf of Mr. Jacques Diouf, Director-General of FAO, Mr. Jim Willis, Director, Chemicals, United Nations Environment Programme (UNEP), speaking on behalf of Dr. Klaus Töpfer, Executive Director of UNEP, and Mr. J. Currie, Director-General for Environment, Nuclear Safety and Civil Protection of the European Commission, speaking on behalf of Ms. Ritt Bjerregaard, European Commissioner for the Environment.

4. In his statement, Mr. A. Sawadogo said that the enforcement of pesticide control programmes in developing countries was often deficient. The legal instrument currently being developed would help to remedy these

problems. The current voluntary procedure had already contributed to increased awareness of several substances that should disappear from trade, and it was hoped that the recent inclusion of certain highly toxic pesticide formulations would contribute to preventing their use by those who could not handle them safely. He reminded participants that there was no more time or money available for further negotiation sessions and said that the consolidated negotiating text proposed by the Chair represented a good basis for finalizing the instrument.

5. As requested by the Intergovernmental Negotiating Committee, the FAO Conference had discussed the Secretariat and the voluntary procedure. At its last session, the FAO Conference had adopted a decision authorizing FAO, if so desired by the diplomatic conference, to participate in a future secretariat of the convention and to be part of the secretariat that would maintain a voluntary procedure; it also agreed to accept changes to the voluntary procedure, if so decided by the diplomatic conference.

6. He reminded the Committee that developing countries had little technical and financial resources to protect them from the problems of hazardous pesticides. He closed by thanking the European Commission for hosting the present session and for assisting the participation of representatives from developing countries and countries with economies in transition.

7. In his statement, Mr. Willis conveyed Dr. Töpfer's regrets at being unable to attend the current session of the Intergovernmental Negotiating Committee and his wishes for the successful conclusion of the negotiations. He thanked the European Commission for hosting and funding the session and the travel costs of representatives from developing countries and countries with economies in transition. He noted with appreciation the offer of the Government of the Netherlands to host and fully fund the diplomatic conference to adopt the convention. He further reported that the Governments of the Netherlands, Switzerland and the United States of America had made pledges or contributions to UNEP and FAO toward the operating costs of the interim secretariat of the convention. In addition, he noted that the Government of Switzerland had offered to host the first meeting of the Conference of the Parties in Geneva and to meet the costs of that meeting.

8. This represented the Governments' clearly expressed desire for a strong, practical and financially supported mechanism for transition to the legally binding prior informed consent (PIC) procedure.

9. He also reported that UNEP would seek a decision from the special session of the Governing Council authorizing UNEP to participate in a future secretariat of the convention, to be part of the secretariat that would maintain a voluntary procedure and to accept changes to the voluntary procedure, if so decided by the diplomatic conference.

10. Noting the clear evidence of the serious environmental problems resulting from dangerous pesticides and other chemicals, particularly in developing countries, such as persistent organic pollutants, unwanted stocks of pesticides and poisoning by severely hazardous pesticides, he wondered whether the earlier adoption of a legally binding instrument for PIC would have mitigated them. Recalling that neither time nor funding existed for any further meetings of the Committee, he concluded by encouraging participants to find the spirit of compromise that was essential for a successful conclusion of negotiations.

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11. In his statement, Mr. Currie welcomed participants to Brussels on behalf of the European Commission and thanked the European Parliament for hosting the meeting in its new building.

12. Economic and industrial development over the past 50 years had also brought about increased agricultural and industrial use of synthetic chemicals, with potential harmful effects on humans and the environment. In response to those problems, numerous initiatives had been taken at the global level and the European Community was a contracting party to some 35 major international environmental agreements.

13. The European Union had also developed comprehensive legislation on chemicals, including a regulation for the implementation in European law of the UNEP amended London Guidelines for the Exchange of Information on Chemicals in International Trade and the FAO International Code of Conduct on the Distribution and Use of Pesticides. One practical outcome of that regulation had been the EDEXIM database.

14. The European Union believed that the future Convention should integrate the results of experience gained from implementation of the London Guidelines, giving particular attention to protecting of human health and the environment; enhancing the flow of information; ensuring flexible procedures and criteria for implementation of the convention; and taking balanced account of trade considerations.

15. The PIC convention should achieve a balance between the numerous stakeholders – authorities and producers, exporters and importers, developed and developing countries – and should be a cornerstone for sound management of chemicals throughout the world. To that end, he urged participants to reach a successful conclusion of their negotiations by the end of the week.

II. ORGANIZATIONAL MATTERS

A. Attendance

16. The session was attended by representatives of the following Parties: Algeria, Angola, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Barbados, Belarus, Belgium, Benin, Botswana, Brazil, Burkina Faso, Cameroon, Canada, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Cuba, Czech Republic, Democratic Republic of Congo, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, European Community, Finland, France, Gabon, Gambia, Germany, Greece, Guatemala, Hungary, India, Indonesia, Iran (Islamic Republic of), Israel, Italy, Jamaica, Japan, Kenya, Kuwait, Lesotho, Lithuania, Madagascar, Malaysia, Mali, Mexico, Moldova, Mongolia, Morocco, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Panama, Paraguay, Peru, Philippines, Poland, Qatar, Republic of Korea, Romania, Russian Federation, Senegal, Seychelles, Slovakia, Slovenia, South Africa, Sweden, Switzerland, Tajikistan, Thailand, Tunisia, Turkey, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, and Zimbabwe.

17. The following United Nations bodies and specialized agencies were represented: Secretariat of the Convention on Biological Diversity, United

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Nations Institute for Training and Research (UNITAR), and the World Trade Organization (WTO).

18. The following other intergovernmental organizations were represented: African Caribbean Pacific Group (ACPG) and Gulf Cooperation Council (GCC).

19. The following non-governmental organizations were represented: Chemical Manufacturers Association (CMA), Consumers International (CI), European Chemical Industry Council (CEFIC), Foundation for Advancements in Science and Education (FASE), Global Crop Protection Federation (GCPF), Health and Environment Watch (HEW), International Council on Metals and the Environment (ICME), International Federation of Pharmaceutical Manufacturers Association (IFPMA), International Institute for the Sociology of Law (IISL) and The Pesticides Trust.

B. Officers

20. The following officers continued to serve in their respective capacities on the Bureau of the Committee:

Chair: Ms. Maria Celina de Azevedo Rodrigues (Brazil)

Vice-Chairs: Mr. William Murray (Canada)
Mr. Mohamed El Zarka (Egypt)
Mr. Yuri Kundiev (Ukraine)

Rapporteur: Mr. Wang Zhijia (China)

C. Adoption of the agenda

21. The Committee adopted the following agenda on the basis of the provisional agenda, which had been circulated as document UNEP/FAO/PIC/INC.5/1:

1. Opening of the session
2. Organizational matters:
 - (a) Adoption of the agenda;
 - (b) Organization of work.
3. Preparation of an international legally binding instrument for the application of the prior informed consent procedure for certain hazardous chemicals and pesticides in international trade.
4. Other matters.
5. Adoption of the report.
6. Closure of the session.

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D. Organization of work

22. At its opening meeting, the Committee decided to continue its work in plenary and in the Legal Drafting Group that had been established at the second session. Mr. Patrick Széll (United Kingdom) continued to chair the Legal Drafting Group which, it was agreed, would continue to work concurrently with the plenary.

23. The Chair introduced the consolidated negotiating text of the draft articles that had been prepared by the Chair (UNEP/FAO/PIC/INC/5/2), pointing out that the text met the mandate and goals expressed by the Committee at its fourth session. The Committee agreed to use the Chair's draft as the main negotiating text at the fifth session.

24. On the issue of interim arrangements, the Chair proposed, and the Committee agreed, that the Legal Drafting Group should draft a resolution requesting UNEP and FAO to provide the interim secretariat and dealing with issues of changing the current voluntary PIC procedure to a procedure based on the provisions of the convention.

III. PREPARATION OF AN INTERNATIONAL LEGALLY BINDING INSTRUMENT
FOR THE APPLICATION OF THE PRIOR INFORMED CONSENT
PROCEDURE FOR CERTAIN HAZARDOUS CHEMICALS
AND PESTICIDES IN INTERNATIONAL TRADE

25. In considering agenda item 3, the Committee had before it the following documentation: consolidated negotiating text by the Chair of the INC (UNEP/FAO/PIC/INC.5/2); report 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 on the work of its fourth session (UNEP/FAO/PIC/INC.4/2); a note by the secretariat on interim and transitional arrangements (UNEP/FAO/PIC/INC.5/INF/1); a note by the secretariat on the PIC procedure as drafted in the consolidated negotiating text by the Chair of the INC (UNEP/FAO/PIC/INC.5/INF/2); and a note by the secretariat on chemicals in the voluntary PIC procedure (UNEP/FAO/PIC/INC.5/INF/3).

26. The articles as approved by the Committee are contained in appendix I to the present report, and the process of their approval, including any concerns expressed by representatives at the time, is reflected in paragraphs 27 to 87 below.

Preamble

27. The preamble was approved by the Committee on the basis of the text submitted by the Chair, with amendments.

28. Several representatives stated that the preambular paragraphs would not prejudice their respective positions in other international forums and negotiations addressing issues related to environment and trade.

29. One representative had a reservation, preferring instead to spell out the relevant provisions of Agenda 21.

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Article 1 (Objective)

30. Article 1 was approved by the Committee on the basis of the text submitted by the Chair, with amendments.

Article 2 (Definitions)

31. Article 2 was approved by the Committee on the basis of the text submitted by the Chair, with amendments.

32. With regard to the definitions of "Party" and "regional economic integration organization", the European Community, at the request of several representatives, submitted a paper providing detailed information on the "implementation of the PIC Convention in the European Community". It was agreed that the paper should be appended to the report of the Intergovernmental Negotiating Committee on the work of its fifth session (see appendix II below).

33. Some countries indicated that they had wished the definition of severely hazardous pesticide formulations to include long-term effects.

Article 3 (Scope of the Convention)

34. Article 3 was approved by the Committee on the basis of the text submitted by the Chair, with amendments.

35. A number of representatives observed that the current drafting of Article 3 had no implications for the scope or effect of the provisions laid down in Article 13, paragraph 3, and Article 14, subparagraphs 1 (b) and 1 (c).

Article 4 (Designated national authorities)

36. Article 4 was approved by the Committee on the basis of the text submitted by the Chair.

Article 5 (Procedures for banned or severely restricted chemicals)

37. Article 5 was approved by the Committee on the basis of the text submitted by the Chair, with amendments.

38. The Committee agreed that it would be important for the Chemical Review Committee to give priority to those chemicals moving in international trade that were subject to the greatest number of notifications from the most regions.

Article 6 (Procedures for severely hazardous pesticide formulations)

39. Article 6 was approved by the Committee on the basis of the text submitted by the Chair, with amendments.

40. Some representatives expressed a reservation on Article 6, paragraph 1, contending that any country, whether it was categorized as developing or

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developed, is recommended to propose to the secretariat the inclusion of hazardous pesticide formulations in Annex III.

Article 7 (Listing of chemicals in Annex III)

41. Article 7 was approved by the Committee on the basis of the text submitted by the Chair, with amendments.

Article 8 (Chemicals in the voluntary Prior Informed Consent procedure)

42. Article 8 was approved by the Committee on the basis of the text submitted by the Chair, with amendments.

Article 9 (Removal of chemicals from Annex III)

43. The Committee approved the text of Article 9 on the basis of a proposal submitted by the representative of Canada, with amendments.

Article 10 (Obligations in relation to imports of chemicals listed in Annex III)

44. Article 10 was approved by the Committee on the basis of the text submitted by the Chair, with amendments.

45. One representative expressed a reservation on paragraph 2, stating that a developing country might not have the necessary information at its disposal to transmit its response to a decision guidance document to the secretariat and considered that the requirement in the paragraph should be qualified by the words "where possible".

Article 11 (Obligations in relation to exports of chemicals listed in Annex III)

46. Article 11 was approved by the Committee on the basis of the text submitted by the Chair, with amendments.

Article 12 (Export notification)

47. Article 12 was approved by the Committee on the basis of the text submitted by the Chair, with amendments.

48. A number of representatives noted that the wording of paragraph 1 of Article 12 did not state clearly whether the obligation to provide export notifications extended to exports of chemicals in a different category from the one in which the exporting Party imposed a ban or severe restriction. Those representatives noted that, currently, some countries that had adopted export notification systems required notification of all exports of a chemical, while others required notification of exports only in the same category in which the ban or severe restriction had been taken. Representatives confirmed that it was their intent that both systems were consistent with the requirements of paragraph 1 of Article 12.

Article 13 (Information to accompany imported chemicals)

49. Article 13 was approved by the Committee on the basis of the text submitted by the Chair, with amendments.

50. One representative expressed a reservation on paragraph 1 in relation to the term "as appropriate" and stated that that phrase could be misused by a country.

51. One representative expressed concern with reference to paragraphs 2 and 3 of the Article, because of the commercial prerogatives, affecting basic rules of international trade, that could be implicated in those texts.

Article 14 (Information exchange)

52. Article 14 was approved by the Committee on the basis of the text submitted by the Chair, with amendments.

Article 15 (Implementation of the Convention)

53. Article 15 was approved by the Committee on the basis of the text submitted by the Chair, with amendments.

Article 16 (Technical assistance)

54. Article 16 was approved by the Committee on the basis of the text submitted by the Chair, with amendments.

55. A number of representatives expressed a reservation to the effect that they would have wished to strengthen the article by specifying the technical, technological and financial needs of developing countries.

Article 17 (Compliance)

56. Article 17 was approved by the Committee on the basis of the text submitted by the Chair, with amendments.

Article 18 (Relationship with other agreements)

57. Draft Article 18 in the text submitted by the Chair was deleted.

Article 19 (Conference of the Parties)

58. Article 19 was approved by the Committee on the basis of the text submitted by the Chair, with amendments, and was renumbered Article 18.

59. One representative expressed its deep concern regarding the different voting regimes with regard to the adoption of amendments to the Convention and amendments of Annex III. He also stated that annexes were an integral part of the Convention and such discrimination on the voting procedure could lead to a situation whereby a Party might misuse the consensus procedure and block the inclusion in the relevant list of a hazardous chemical considered by other Parties as a chemical subject to the PIC; in such cases, human health and environment could be endangered.

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60. A number of representatives expressed a strong view that the Chemical Review Committee should be open to the participation of observers from Governments, international organizations and relevant non-governmental organizations.

61. The text of paragraph 7 was approved by the Committee with the option of objection by one third of the Parties. Two representatives expressed reservations, one stating that objection by one Party should be preferred, and the other expressing the view that any national body or non-governmental organization of a Contracting Party should not be admitted if that Contracting Party objected.

Article 20 (Secretariat)

62. Article 20 was approved by the Committee on the basis of the text submitted by the Chair and was renumbered Article 19.

Article 21 (Settlement of disputes)

63. Article 21 was approved by the Committee on the basis of the text submitted by the Chair, with amendments, and was renumbered Article 20.

64. A number of representatives expressed concern regarding the failure to include in the Convention a dispute-settlement procedure that was mandatory and resulted in a legally binding and final outcome. While recognizing that Article 21 represents the type of procedure that has traditionally adopted in multilateral environmental agreements, those representatives regretted that time had not permitted the full consideration and development of a more effective dispute-resolution procedure. Those representatives expressed a strong interest in continuing discussions on those issues. One representative expressed the view that nothing in the Convention, in particular Article 21, should be considered a precedent for the future.

65. The Committee adopted the following recommendation to the Diplomatic Conference:

"The Intergovernmental Negotiating Committee recommends that the Diplomatic Conference consider the need to establish a working group for the purpose of developing the annex containing the procedures for the conciliation commission referred to in Article 21, paragraph 6, for the purpose of achieving effective dispute resolution".

Article 22 (Amendments to the Convention)

66. Article 22 was approved by the Committee on the basis of the text submitted by the Chair, with amendments, and was renumbered Article 21.

Article 23 (Adoption and amendment of annexes)

67. Article 23 was approved by the Committee on the basis of the text submitted by the Chair, with amendments, and was renumbered Article 22.

68. One representative expressed regret that it had been decided to omit the subject of protocols.

Article 24 (Right to vote)

69. Article 24 was approved by the Committee on the basis of the text submitted by the Chair, and was renumbered Article 23.

Article 25 (Signature)

70. Article 25 was approved by the Committee on the basis of the text submitted by the Chair and was renumbered Article 24.

Article 26 (Ratification, acceptance, approval or accession)

71. Article 26 was approved by the Committee on the basis of the text submitted by the Chair and was renumbered Article 25.

Article 27 (Entry into force)

72. Article 27 was approved by the Committee on the basis of the text submitted by the Chair and was renumbered Article 26.

Article 28 (Reservations)

73. Article 28 was approved by the Committee on the basis of the text submitted by the Chair and was renumbered Article 27.

74. One representative said that his delegation would have preferred to have draft Article 28 deleted.

Article 29 (Withdrawal)

75. The Article was approved without substantive change and was renumbered Article 28.

Article 30 (Depositary)

76. The Article was approved without change and was renumbered Article 29.

Article 31 (Authentic texts)

77. The Article was approved without change and was renumbered Article 30.

Annex I (Information requirements for notifications made pursuant to Article 5)

78. Annex I was approved by the Committee on the basis of the text submitted by the Chair, with amendments.

79. The Chair observed that, with respect to paragraph 2 (b) (iii), delegates noted that the text contemplated reasonable reporting of available information on relative quantities of the chemicals produced, imported, exported and used for the purpose of helping Parties to determine the significance of the Party's final regulatory action.

80. In the interpretation of this provision, the Intergovernmental Negotiating Committee recognized the difficulty that developing countries and countries with economies in transition might experience in providing and assessing information listed in paragraph 2 (d) (ii) and emphasized the importance of technical assistance as expressed in Article 16. It was also the understanding of the Intergovernmental Negotiating Committee that the provision was not limited to an exclusive list of the other relevant information on alternatives and their related risks. The phrase "integrated pest management" was understood to be a comprehensive methodology that covered chemical, biological, socio-economic and other strategies.

Annex II (Criteria for the listing of banned or severely restricted chemicals in Annex III)

81. Annex II was approved by the Committee on the basis of the text submitted by the Chair, with amendments.

82. The Committee agreed to include the following statement in the report of the session:

"The term "risk evaluation" used in Annex I and Annex II is understood by the Intergovernmental Negotiating Committee to be not a risk assessment, but rather an evaluation of intrinsic toxicological and ecotoxicological properties and actual or expected relevant exposure, including actual incidents and scientific evidence of hazard."

Annex III (Chemicals subject to the Prior Informed Consent procedure)

83. Annex III was approved by the Committee on the basis of the text submitted by the Chair, with amendments.

84. A number of representatives requested that a complete listing of CAS numbers and chemical names should be maintained and made available by the secretariat for all of the chemicals listed in Annex III.

Annex IV (Information and criteria for listing of severely hazardous pesticide formulations in Annex III)

85. Annex IV was approved by the Committee on the basis of the text submitted by the Chair, with amendments.

Annex V (Information requirements for export notifications)

86. Annex V was approved by the Committee on the basis of the text submitted by the Chair, with amendments.

87. The Committee agreed to delete paragraph 2, with reservations expressed on that deletion by one representative.

IV. OTHER MATTERS

Statements relating to the content of the Convention

88. A number of representatives expressed regret at the lack of any discussion at the current session of the issue of illegal trafficking in the context of Article 17, and requested the insertion in the report of the following statement, to be considered by the Diplomatic Conference:

"For the purpose of this Convention, any export of a PIC chemical:

"(a) Without export notification, where such notification is required pursuant to the provisions of this Convention,

"(b) In violation with the regulatory action of the importing country,

"shall be deemed illegal traffic.

"The exporting Party shall ensure that the chemicals in question are taken back by the exporter or, if necessary, by the Party of export itself, within 30 days from the time the Party of export has been informed about the illegal traffic or such other period of time as the Parties concerned may agree."

89. Several representatives also expressed regret at the absence of a provision on a financial mechanism in the Convention.

90. One representative expressed the view that the absence of a provision on liability and compensation in the Convention would not preclude the Conference of the Parties from reverting to that issue at a later date.

91. One representative stated that, in reviewing the text of the draft Convention, his delegation would take into account the possibility of becoming a Party to the Convention in the light of its rights and obligation under other international agreements.

Draft resolution on interim arrangements for submission to the Diplomatic Conference

92. Following the approval of the draft articles, the Committee approved the text of a draft resolution on interim arrangements for submission to the diplomatic conference to be convened for the adoption of the Convention. The text of the draft resolution is to be found in appendix III to the present report.

Offer by the Government of Switzerland

93. The Committee welcomed the offer of the Government of Switzerland to host in Geneva and fully fund the first meeting of the Conference of the Parties to the convention. The representative of Switzerland repeated the offer made by Switzerland at the third meeting of the Intergovernmental Negotiating Committee, in June 1997, to provide a permanent home in Geneva for the part of the Convention Secretariat attached to UNEP and dealing with

chemicals, on the understanding that the part of the Secretariat dealing with pesticides would have its seat in Rome.

Offer by the Government of the Netherlands

94. The Committee welcomed the offer of the Government of the Netherlands to host and fully fund the diplomatic conference for the adoption of the convention in September 1998. The Committee agreed to name the text the "Rotterdam Convention".

Finalization of the text

95. The secretariat reported that, under the guidance of the Chair, it would review the text for minor editorial adjustments, such as correcting typographical errors, adjusting numbering and cross-references, ensuring the accuracy of document citations, and otherwise correcting any unintended errors that might exist in the text. It also noted that it would verify all language versions to prepare equally authentic texts. The secretariat sought the inputs of representatives to assist in the above process by 1 April 1998. That approach was agreed to by the Intergovernmental Negotiating Committee.

V. ADOPTION OF THE REPORT

96. The present report was adopted at the closing meeting of the session, on 14 March 1998, on the basis of the draft report that had been circulated under the symbol UNEP/FAO/PIC/INC.5/L.1.

V. CLOSURE OF THE SESSION

97. After the customary exchange of courtesies, the Chair declared the session closed at 8.35 p.m. on Saturday, 14 March 1998.

Appendix I

DRAFT CONVENTION ON THE PRIOR INFORMED CONSENT PROCEDURE FOR
CERTAIN HAZARDOUS CHEMICALS AND PESTICIDES
IN INTERNATIONAL TRADE

Preamble

The Parties to this Convention,

Aware of the harmful impact on human health and the environment from certain hazardous chemicals and pesticides in international trade,

Recalling the pertinent provisions of the Rio Declaration on Environment and Development and Chapter 19 of Agenda 21 on "Environmentally sound management of toxic chemicals, including prevention of illegal international traffic in toxic and dangerous products",

Mindful of the work undertaken by the United Nations Environment Programme and the Food and Agriculture Organization of the United Nations in the operation of the voluntary Prior Informed Consent procedure, as set out in the Amended London Guidelines for the Exchange of Information on Chemicals in International Trade (hereinafter referred to as "Amended London Guidelines") and the FAO International Code of Conduct on the Distribution and Use of Pesticides (hereinafter referred to as the "International Code of Conduct"),

Taking into account the circumstances and particular requirements of developing countries and countries with economies in transition, in particular the need to strengthen national capabilities and capacities for the management of chemicals, including transfer of technology, providing financial and technical assistance and promoting cooperation among the Parties,

Noting the specific needs of some countries for information on transit movements,

Recognizing that good management practices for chemicals should be promoted in all countries, taking into account, inter alia, the voluntary standards laid down in the International Code of Conduct on the Distribution and Use of Pesticides and the UNEP Code of Ethics on the International Trade in Chemicals,

Desiring to ensure that hazardous chemicals that are exported from their territory are packaged and labelled in a manner that is adequately protective of human health and the environment, consistent with the principles of the Amended London Guidelines and the International Code of Conduct,

The present text has been compiled for the purposes of the present report and is subject to finalization in accordance with the procedure outlined in paragraph 95 above.

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Recognizing that trade and environmental policies should be mutually supportive with a view to achieving sustainable development,

Emphasizing that nothing in this Convention shall be interpreted as implying in any way a change in the rights and obligations of a Party under any existing international agreement applying to chemicals in international trade or to environmental protection,

Understanding that the above recital is not intended to create a hierarchy between this Convention and other international agreements,

Determined to protect human health, including the health of consumers and workers, and the environment against potentially harmful impacts from certain hazardous chemicals and pesticides in international trade,

HAVE AGREED AS FOLLOWS:

Article 1

Objective

The objective of this Convention is to promote shared responsibility and cooperative efforts among Parties in the international trade of certain hazardous chemicals in order to protect human health and the environment from potential harm and to contribute to their environmentally sound use, by facilitating information exchange about their characteristics, by providing for a national decision-making process on their import and export and by disseminating these decisions to Parties.

Article 2

Definitions

For the purposes of this Convention:

(a) "Chemical" means a substance whether by itself or in a mixture or preparation and whether manufactured or obtained from nature, but does not include any living organism. It consists of the following categories: pesticide (including severely hazardous pesticide formulations) and industrial;

(b) "Banned chemical" means a chemical all uses of which within one or more categories have been prohibited by final regulatory action, in order to protect human health or the environment. It includes a chemical that has been refused approval for first-time use or has been withdrawn by industry either from the domestic market or from further consideration in the domestic approval process and where there is clear evidence that such action has been taken in order to protect human health or the environment;

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(c) "Severely restricted chemical" means a chemical virtually all use of which within one or more categories has been prohibited by final regulatory action in order to protect human health or the environment, but for which certain specific uses remain allowed. It includes a chemical that has, for virtually all use, been refused for approval or been withdrawn by industry either from the domestic market or from further consideration in the domestic approval process, and where there is clear evidence that such action has been taken in order to protect human health or the environment;

(d) "Severely hazardous pesticide formulation" means a chemical formulated for pesticidal use that produces severe health or environmental effects observable within a short period of time after single or multiple exposure, under conditions of use.

(e) "Final regulatory action" means an action taken by a Party, which does not require subsequent regulatory action by that Party, the purpose of which is to ban or severely restrict a chemical;

(f) "Export" and "import" mean, in their respective connotations, the movement of a chemical from one Party to another Party, but exclude mere transit operations;

(g) "Party" means a State or regional economic integration organization that has consented to be bound by this Convention and for which the Convention is in force;

(h) "Regional economic integration organization" means an organization constituted by sovereign States of a given region to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to this Convention;

(i) "Chemical Review Committee" means the subsidiary body referred to in paragraph 6 of Article 18.

Article 3

Scope of the Convention

1. This Convention applies to:
 - (a) Banned or severely restricted chemicals; and
 - (b) Severely hazardous pesticide formulations.

The present text has been compiled for the purposes of the present report and is subject to finalization in accordance with the procedure outlined in paragraph 95 above.

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2. This Convention does not apply to:
- (a) Narcotic drugs and psychotropic substances;
 - (b) Radioactive materials;
 - (c) Wastes;
 - (d) Chemical weapons;
 - (e) Pharmaceuticals, including human and veterinary drugs;
 - (f) Chemicals used as food additives;
 - (g) Food;
 - (h) Chemicals in quantities not likely to affect human health or the environment provided they are imported:
 - (i) For the purpose of research or analysis; or
 - (ii) By an individual for his or her own personal use in quantities reasonable for such use.

Article 4

Designated national authorities

1. Each Party shall designate one or more national authorities that shall be authorized to act on its behalf in the performance of the administrative functions required by this Convention.

2. Each Party shall seek to ensure that such authority or authorities have sufficient resources to perform their tasks effectively.

3. Each Party shall, no later than the date of the entry into force of this Convention for it, notify the name and address of such authority or authorities to the Secretariat. It shall forthwith notify the Secretariat of any changes in the name and address of such authority or authorities.

4. The Secretariat shall forthwith inform the Parties of the notifications it receives under paragraph 3.

Article 5

Procedures for banned or severely restricted chemicals

1. Each Party that has adopted a final regulatory action shall notify the Secretariat in writing of such action. Such notification shall be made as soon as possible, but no later than ninety days after the date on

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which the final regulatory action has taken effect, and shall include the information required by Annex I, where available.

2. Each Party shall, at the date of entry into force of this Convention for it, notify the Secretariat in writing of its final regulatory actions in effect at that time, except that each Party that has submitted notifications of final regulatory actions under the Amended London Guidelines or the International Code of Conduct need not resubmit those notifications.

3. The Secretariat shall, as soon as possible, and in any event no later than six months after receipt of a notification under paragraphs 1 and 2, verify whether the notification contains the information required by Annex I. If the notification contains the information required, the Secretariat shall forthwith forward to all Parties a summary of the information received. If the notification does not contain the information required, it shall inform the notifying Party accordingly.

4. The Secretariat shall every six months communicate to the Parties a synopsis of the information received pursuant to paragraphs 1 and 2, including information regarding those notifications which do not contain all the information required by Annex I.

5. When the Secretariat has received at least one notification from each of two Prior Informed Consent regions regarding a particular chemical that it has verified meet the requirements of Annex I, it shall forward them to the Chemical Review Committee. The composition of the Prior Informed Consent regions shall be defined in a decision to be adopted by consensus at the first meeting of the Conference of the Parties.

6. The Chemical Review Committee shall review the information provided in such notifications and, in accordance with the criteria set out in Annex II, recommend to the Conference of the Parties whether the chemical should be made subject to the Prior Informed Consent procedure and, accordingly, be listed in Annex III.

Article 6

Procedures for severely hazardous pesticide formulations

1. Any Party that is a developing country or a country with an economy in transition and that is experiencing problems caused by a severely hazardous pesticide formulation under conditions of use in its territory, may propose to the Secretariat the listing of the severely hazardous pesticide formulation in Annex III. In developing a proposal, the Party may draw upon technical expertise from any relevant source. The proposal shall include the information required by part 1 of Annex IV.

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2. The Secretariat shall, as soon as possible, and in any event no later than six months after receipt of a proposal under paragraph 1, verify whether the proposal includes the information required by part 1 of Annex IV. If the proposal contains the information required, the Secretariat shall forthwith forward to all Parties a summary of the information received. If the proposal does not contain the information required, it shall inform the proposing Party accordingly.

3. The Secretariat shall collect the additional information set out in part 2 of Annex IV regarding the proposals forwarded under paragraph 2.

4. When the requirements of paragraphs 2 and 3 above have been fulfilled with regard to a particular severely hazardous pesticide formulation, the Secretariat shall forward the proposal and the related information to the Chemical Review Committee.

5. The Chemical Review Committee shall review the information provided in the proposal and the additional information collected and, in accordance with the criteria set out in part 3 of Annex IV, recommend to the Conference of the Parties whether the severely hazardous pesticide formulation should be made subject to the Prior Informed Consent procedure and, accordingly, be listed in Annex III.

Article 7

Listing of chemicals in Annex III

1. For each chemical that the Chemical Review Committee has decided to recommend for listing in Annex III, it shall prepare a draft decision guidance document. The decision guidance document should, at a minimum, be based on the information contained in Annex I, or, as the case may be, Annex IV, and include information on uses of the chemical in a category other than the category for which the final regulatory action applies.

2. The recommendation referred to in paragraph 1 together with the draft decision guidance document shall be forwarded to the Conference of the Parties. The Conference of the Parties shall decide whether the chemical should be made subject to the Prior Informed Consent procedure and, accordingly, list the chemical in Annex III and approve the draft decision guidance document.

3. When a decision to add a chemical to Annex III has been taken and the related decision guidance document has been approved by the Conference of the Parties, the Secretariat shall forthwith communicate this information to all Parties.

Article 8

Chemicals in the voluntary Prior Informed Consent procedure

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For any chemical, other than a chemical in Annex III, that has been included in the voluntary Prior Informed Consent procedure before the date of the first meeting of the Conference of the Parties, the Conference of the Parties shall decide at that meeting to include the chemical in Annex III, provided that it is satisfied that all the requirements for listing in that Annex have been fulfilled.

Article 9

Removal of the chemicals from Annex III

1. If a Party submits to the Secretariat information that was not available at the time of the decision to list a chemical in Annex III and that information indicates that its listing may no longer be justified in accordance with the relevant criteria in Annex II or IV, the Secretariat shall forward the information to the Chemical Review Committee.

2. The Chemical Review Committee shall review the information it receives under paragraph 1. For each chemical that the Chemical Review Committee decides, in accordance with the relevant criteria in Annex II or, as the case may be, Annex IV, to recommend for removal from Annex III, it shall prepare a revised draft decision guidance document.

3. A recommendation referred to in paragraph 2 shall be forwarded to the Conference of the Parties and be accompanied by a revised draft decision guidance document. The Conference of the Parties shall decide whether the chemical should be removed from Annex III and to approve the revised draft decision guidance document.

4. When a decision to remove a chemical from Annex III has been taken and the revised decision guidance document has been approved by the Conference of the Parties, the Secretariat shall forthwith communicate this information to all Parties.

Article 10

Obligations in relation to imports of chemicals listed in Annex III

1. Each Party shall implement appropriate legislative or administrative measures to ensure timely decisions with respect to the import of chemicals listed in Annex III.

2. Each Party shall transmit to the Secretariat, as soon as possible but no later than nine months after the date of dispatch of the decision guidance document referred to in paragraph 3 of Article 7, a response concerning the future importation of the chemical concerned. If a Party modifies this response, it shall forthwith submit the revised response to the Secretariat.

3. The Secretariat shall, at the expiration of the time period in paragraph 2, forthwith address to a Party that has not provided such a response, a written request to do so. Should the Party be unable to provide a response, the Secretariat shall, where appropriate, help it to provide a response within the time period specified in the last sentence of paragraph 2 of Article 11.

4. A response under paragraph 2 shall consist of either:

(a) A final decision, pursuant to legislative or administrative measures:

- (i) To consent to importation;
- (ii) Not to consent to importation; or
- (iii) To consent to importation only subject to specified conditions; or

(b) An interim response, which may include:

- (i) An interim decision consenting to importation with or without specified conditions, or not consenting to importation during the interim period;
- (ii) A statement that a final decision is under active consideration;
- (iii) A request to the Secretariat or to the Party that notified the final regulatory action, for further information;
- (iv) A request to the Secretariat for assistance in evaluating the chemical.

5. A response under (a) or (b) of paragraph 4 shall relate to the category or categories specified for the chemical in Annex III.

6. A final decision should be accompanied by a description of any legislative or administrative measures upon which it is based.

7. Each Party shall, no later than the date of entry into force of this Convention for it, transmit to the Secretariat responses with respect to each chemical listed in Annex III. A Party that has provided such responses under the Amended London Guidelines or the International Code of Conduct need not resubmit those responses.

8. Each Party shall make its responses under this Article available to those concerned within its jurisdiction, in accordance with its legislative or administrative measures.

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9. A Party that, pursuant to paragraphs 2 and 4 above, and paragraph 2 of Article 11, takes a decision not to consent to importation of a chemical or to consent to its importation only under specified conditions shall, if it has not already done so, simultaneously prohibit or make subject to the same conditions:

- (a) Importation of the chemical from any source; and
- (b) Domestic production of the chemical for domestic use.

10. Every six months the Secretariat shall inform all Parties of the responses it has received. Such information shall include a description of the legislative or administrative measures on which the decisions have been based, where available. The Secretariat shall, in addition, inform the Parties of any cases of failure to transmit a response.

Article 11

Obligations in relation to exports of chemicals listed in Annex III

1. Each exporting Party shall:

(a) Implement appropriate legislative or administrative measures to communicate the responses forwarded by the Secretariat in accordance with paragraph 10 of Article 10 to those concerned within its jurisdiction;

(b) Take appropriate legislative or administrative measures to ensure that exporters within its jurisdiction comply with decisions in each response no later than six months after the date on which the Secretariat first informs the Parties of such response in accordance with paragraph 10 of Article 10;

(c) Advise and assist importing Parties, upon request and as appropriate:

- (i) To obtain further information to help them to take action in accordance with paragraph 4 of Article 10 and paragraph 2 (c) below; and
- (ii) To strengthen their capacities and capabilities to manage chemicals safely during their life-cycle.

2. Each Party shall ensure that a chemical listed in Annex III is not exported from its territory to any importing Party that in exceptional circumstances has failed to transmit a response or has transmitted an interim response that does not contain an interim decision, unless:

(a) It is a chemical that, at the time of importation, is registered as a chemical in the importing Party; or

(b) It is a chemical for which evidence exists that it has previously been used in, or imported into, the importing Party and in relation to which no regulatory action to prohibit its use has been taken; or

(c) Explicit consent to the importation has been sought and received by the exporter through a designated national authority of the importing Party. The importing Party shall respond to such a request within sixty days and shall promptly notify the Secretariat of its decision.

The obligations of exporting Parties under this paragraph shall apply with effect from the expiration of a period of six months from the date on which the Secretariat first informs the Parties, in accordance with paragraph 10 of Article 10, that a Party has failed to transmit a response or has transmitted an interim response that does not contain an interim decision, and shall apply for one year.

Article 12

Export notification

1. Where a chemical that is banned or severely restricted by a Party is exported from its territory, that Party shall provide an export notification to the importing Party. The export notification shall include the information set out in Annex V.

2. The export notification shall be provided for that chemical prior to the first export following adoption of the corresponding final regulatory action. Thereafter, the export notification shall be provided before the first export in any calendar year. The requirement to notify before export may be waived by the designated national authority of the importing Party.

3. An exporting Party shall provide an updated export notification after it has adopted a final regulatory action that results in a major change concerning the ban or severe restriction of the chemical.

4. The importing Party shall acknowledge receipt of the first export notification received after the adoption of the final regulatory action. If the exporting Party does not receive the acknowledgement within thirty days of the dispatch of the export notification, it shall submit a second notification. The exporting Party shall make reasonable efforts to ensure that the importing Party receives the second notification.

5. The obligations of a Party set out in paragraph 1 shall cease when:

- (a) The chemical has been listed in Annex III;
- (b) The importing Party has provided a response for such chemical to the Secretariat in accordance with paragraph 2 of Article 10; and

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(c) The Secretariat has distributed the response to Parties in accordance with paragraph 10 of Article 10.

Article 13

Information to accompany exported chemicals

1. The Conference of the Parties shall encourage the World Customs Organization to assign specific Harmonized System customs codes to the individual chemicals or groups of chemicals listed in Annex III, as appropriate. Each Party shall require that, whenever a code has been assigned to such a chemical, the shipping document for that chemical bears the code when exported.

2. Without prejudice to any requirements of the importing Party, each Party shall require that both chemicals listed in Annex III and chemicals banned or severely restricted in its territory, when exported, are subject to labelling requirements that ensure adequate availability of information with regard to risks and/or hazards to human health or the environment, taking into account relevant international standards.

3. Without prejudice to any requirements of the importing Party, each Party may require that chemicals subject to environmental or health labelling requirements in its territory, when exported, are subject to labelling requirements that ensure adequate availability of information with regard to risks and/or hazards to human health or the environment, taking into account relevant international standards.

4. With respect to the chemicals referred to in paragraph 2 that are to be used for occupational purposes, each exporting Party shall require that a safety data sheet that follows an internationally recognized format, setting out the most up-to-date information available, is sent to each importer.

5. The information on the label and on the safety data sheet should, as far as practicable, be given in one or more of the official languages of the importing Party.

Article 14

Information exchange

1. Each Party shall, as appropriate and in accordance with the objective of this Convention, facilitate:

(a) The exchange of scientific, technical, economic and legal information concerning the chemicals within the scope of this Convention, including toxicological, ecotoxicological and safety information;

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(b) The provision of publicly available information on domestic regulatory actions relevant to the objectives of this Convention; and

(c) The provision of information to other Parties directly or through the Secretariat on such actions which substantially restrict one or more uses of the chemical, as appropriate.

2. Parties that exchange information pursuant to this Convention, shall protect any confidential information as mutually agreed.

3. The following information shall not be regarded as confidential for the purposes of this Convention:

(a) The information referred to in Annexes I and IV, submitted pursuant to Articles 5 and 6, respectively;

(b) The information contained in safety data sheets referred to in paragraph 4 of Article 13;

(c) The expiry date of the chemical;

(d) Information on precautionary measures, including hazard classification, the nature of the risk and the relevant safety advice; and

(e) The summary results of the toxicological and ecotoxicological tests.

4. The production date shall generally not be considered confidential for the purposes of this Convention.

5. Any Party requiring information on transit movements through its territory of chemicals listed in Annex III may report its need to the Secretariat which shall inform all Parties accordingly.

Article 15

Implementation of the Convention

1. Each Party shall take such measures as may be necessary to establish and strengthen its national infrastructures and institutions for the effective implementation of this Convention. These measures may include, as required, the adoption or amendment of national legislative or administrative measures and may also include:

(a) The establishment of national registers and databases, including safety information for chemicals;

(b) The encouragement of initiatives by industry to promote chemical safety; and

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(c) The promotion of voluntary agreements, taking into consideration the provisions of Article 16.

2. Each Party shall ensure, to the extent practicable, that the public has appropriate access to information on chemical handling and accident management and on alternatives that are safer for human health or the environment than the chemicals listed in Annex III.

3. The Parties agree to cooperate, directly or, where appropriate, through competent international organizations, in the implementation of this Convention at the subregional, regional and global levels.

4. Nothing in this Convention shall be interpreted as restricting the right of the Parties to take action that is more stringently protective of human health and the environment than that called for in this Convention, provided that such action is consistent with the provisions of this Convention and is in accordance with international law.

Article 16

Technical assistance

The Parties shall, taking into account in particular the needs of developing countries and countries with economies in transition, cooperate in promoting technical assistance for the development of the infrastructure and the capacity necessary to manage chemicals to enable implementation of this Convention. Parties with more advanced programmes for regulating chemicals should provide technical assistance, including training to other Parties in developing their infrastructure and capacity to manage chemicals throughout their life-cycle.

Article 17

Compliance

The Conference of the Parties shall, as soon as practicable, develop and approve procedures and institutional mechanisms for determining non-compliance with the provisions of this Convention and for treatment of Parties found to be in non-compliance.

Article 18

Conference of the Parties

1. A Conference of the Parties is hereby established.

2. The first meeting of the Conference of the Parties shall be convened by the Executive Director of the United Nations Environment Programme and the Director-General of the Food and Agriculture Organization of the United Nations, acting jointly, no later than one year after the entry

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into force of this Convention. Thereafter, ordinary meetings of the Conference of the Parties shall be held at regular intervals to be determined by the Conference.

3. Extraordinary meetings of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that it is supported by at least one third of the Parties.

4. The Conference of the Parties shall by consensus agree upon and adopt at its first meeting rules of procedure and financial rules for itself and any subsidiary bodies, as well as financial provisions governing the functioning of the Secretariat.

5. The Conference of the Parties shall keep under continuous review and evaluation the implementation of this Convention. It shall perform the functions assigned to it by the Convention and, to this end, shall:

(a) Establish such subsidiary bodies as it considers necessary for the implementation of the Convention;

(b) Cooperate, where appropriate, with competent international organizations and intergovernmental and non-governmental bodies; and

(c) Consider and undertake any additional action that may be required for the achievement of the objectives of the Convention.

6. The Conference of the Parties shall, at its first meeting, establish a subsidiary body, to be called the Chemical Review Committee, for the purposes of performing the functions assigned to that Committee by this Convention. In this regard:

(a) The members of the Chemical Review Committee shall be appointed by the Conference of the Parties. Membership of the Committee shall consist of a limited number of government designated experts in chemicals management. The members of the Committee shall be appointed on the basis of equitable geographical distribution, including ensuring a balance between developed and developing Parties;

(b) The Conference of the Parties shall decide on the terms of reference, organization and operation of the Committee;

(c) The Committee shall make every effort to make its recommendations by consensus. If all efforts at consensus have been exhausted, and no consensus reached, such recommendation shall, as a last resort, be adopted by a two-thirds majority vote of the members present and voting.

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7. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State not Party to this Convention, may be represented at meetings of the Conference of the Parties as observers. Any body or agency, whether national or international, governmental or non-governmental, qualified in matters covered by the Convention, and which has informed the Secretariat of its wish to be represented at a meeting of the Conference of the Parties as an observer may be admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

Article 19

Secretariat

1. A Secretariat is hereby established.
2. The functions of the Secretariat shall be:
 - (a) To make arrangements for meetings of the Conference of the Parties and its subsidiary bodies and to provide them with services as required;
 - (b) To facilitate assistance to the Parties, particularly developing Parties and Parties with economies in transition, on request, in the implementation of this Convention;
 - (c) To ensure the necessary coordination with the secretariats of other relevant international bodies;
 - (d) To enter, under the overall guidance of the Conference of the Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions; and
 - (e) To perform the other secretariat functions specified in this Convention and such other functions as may be determined by the Conference of the Parties.
3. The secretariat functions for this Convention shall be performed jointly by the Executive Director of UNEP and the Director-General of FAO, subject to such arrangements as shall be agreed between them and approved by the Conference of the Parties.
4. The Conference of the Parties may decide, by a three-fourths majority of the Parties present and voting, to entrust the Secretariat functions to one or more other competent international organizations, should it find that the secretariat is not functioning as intended.

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Article 20

Settlement of disputes

1. Parties shall settle any dispute between them concerning the interpretation or application of the Convention through negotiation or other peaceful means of their own choice.

2. When ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a Party that is not a regional economic integration organization may declare in a written instrument submitted to the Depositary that, with respect to any dispute concerning the interpretation or application of the Convention, it recognizes one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation:

(a) Arbitration in accordance with procedures adopted by the Conference of the Parties in an annex as soon as practicable; and

(b) Submission of the dispute to the International Court of Justice.

3. A Party that is a regional economic integration organization may make a declaration with like effect in relation to arbitration in accordance with the procedure referred to in paragraph 2 (a).

4. A declaration made pursuant to paragraph 2 shall remain in force until it expires in accordance with its terms or until three months after written notice of its revocation has been deposited with the Depositary.

5. The expiry of a declaration, a notice of revocation or a new declaration shall not in any way affect proceedings pending before an arbitral tribunal or the International Court of Justice unless the parties to the dispute otherwise agree.

6. If the parties to a dispute have not accepted the same or any procedure pursuant to paragraph 2, and if they have not been able to settle their dispute within twelve months following notification by one Party to another that a dispute exists between them, the dispute shall be submitted to a conciliation commission at the request of any party to the dispute. The conciliation commission shall render a report with recommendations. Additional procedures relating to the conciliation commission shall be included in an annex adopted by the Conference of the Parties no later than the second meeting of the Conference of the Parties.

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Article 21

Amendments to the Convention

1. Amendments to this Convention may be proposed by any Party.
2. Amendments to this Convention shall be adopted at a meeting of the Conference of the Parties. The text of any proposed amendment shall be communicated to the Parties by the Secretariat at least six months before the meeting at which it is proposed for adoption. The Secretariat shall also communicate proposed amendments to the signatories to this Convention and, for information, to the Depositary.
3. The Parties shall make every effort to reach agreement on any proposed amendment to this Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting.
4. The amendment shall be communicated by the Depositary to all Parties for ratification, acceptance or approval.
5. Ratification, acceptance or approval of an amendment shall be notified to the Depositary in writing. An amendment adopted in accordance with paragraph 3 shall enter into force for the Parties having accepted them on the ninetieth day after the date of deposit of instruments of ratification, acceptance or approval by at least three-fourths of the Parties. Thereafter, the amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits its instrument of ratification, acceptance or approval of the amendment.

Article 22

Adoption and amendment of annexes

1. Annexes to this Convention shall form an integral part thereof and, unless expressly provided otherwise, a reference to this Convention constitutes at the same time a reference to any annexes thereto.
2. Annexes shall be restricted to procedural, scientific, technical or administrative matters.
3. The following procedure shall apply to the proposal, adoption and entry into force of additional annexes to this Convention:
 - (a) Additional annexes shall be proposed and adopted according to the procedure laid down in paragraphs 1, 2 and 3 of Article 21;
 - (b) Any Party that is unable to accept an additional annex shall so notify the Depositary, in writing, within one year from the date of

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communication of the adoption of the additional annex by the Depositary. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time withdraw a previous notification of non-acceptance in respect of any additional annex and the annex shall thereupon enter into force for that Party subject to subparagraph (c) below; and

(c) On the expiry of one year from the date of the communication by the Depositary of the adoption of an additional annex, the annex shall enter into force for all Parties that have not submitted a notification in accordance with the provisions of subparagraph (b) above.

4. Except in the case of Annex III, the proposal, adoption and entry into force of amendments to annexes to this Convention shall be subject to the same procedures as for the proposal, adoption and entry into force of additional annexes to the Convention.

5. The following procedure shall apply to the proposal, adoption and entry into force of amendments to Annex III:

(a) Amendments to Annex III shall be proposed and adopted according to the procedure laid down in Articles 5 to 9 and paragraph 2 of Article 21;

(b) The Conference of the Parties shall take its decisions on adoption by consensus;

(c) A decision to amend Annex III shall forthwith be communicated to the Parties by the Depositary. The amendment shall enter into force for all Parties on a date to be specified in the decision.

6. If an additional annex or an amendment to an annex is related to an amendment to this Convention, the additional annex or amendment shall not enter into force until such time as the amendment to the Convention enters into force.

Article 23

Right to vote

1. Each Party to this Convention shall have one vote, except as provided for in paragraph 2 below.

2. A regional economic integration organization, on matters within its competence, shall exercise its right to vote with a number of votes equal to the number of its member States that are Parties to this Convention. Such an organization shall not exercise its right to vote if any of its member States exercises its right to vote, and vice versa.

3. For the purpose of this Convention, "Parties present and voting" means Parties present and casting an affirmative or negative vote.

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Article 24

Signature

This Convention shall be open for signature at _____ by all States and regional economic integration organizations from ___ to ___, and at the United Nations Headquarters in New York from ___ to ___.

Article 25

Ratification, acceptance, approval or accession

1. This Convention shall be subject to ratification, acceptance or approval by States and by regional economic integration organizations. It shall be open for accession by States and by regional economic integration organizations from the date on which the Convention is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

2. Any regional economic integration organization that becomes a Party to this Convention without any of its member States being a Party shall be bound by all the obligations under the Convention. In the case of such organizations, one or more of whose member States is a Party to this Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention concurrently.

3. In its instrument of ratification, acceptance, approval or accession, a regional economic integration organization shall declare the extent of its competence in respect of the matters governed by this Convention. Any such organization shall also inform the Depositary, who shall in turn inform the Parties, of any relevant modification in the extent of its competence.

Article 26

Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the fiftieth instrument of ratification, acceptance, approval or accession.

2. For each State or regional economic integration organization that ratifies, accepts or approves the Convention or accedes thereto after the deposit of the fiftieth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the date of deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval or accession.

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3. For the purpose of paragraphs 1 and 2, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of that organization.

Article 27

Reservations

No reservations may be made to this Convention.

Article 28

Withdrawal

1. At any time after three years from the date on which this Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the Depositary.

2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.

Article 29

Depositary

The Secretary-General of the United Nations shall be the Depositary of this Convention.

Article 30

Authentic texts

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.

Done at _____ on this __ day of __, one thousand nine hundred and ninety-eight.

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Annex I

INFORMATION REQUIREMENTS FOR NOTIFICATIONS MADE PURSUANT TO ARTICLE 5

Notifications shall include:

1. Properties, identification and uses

- (a) Common name;
- (b) Chemical name according to an internationally recognized nomenclature (for example International Union of Pure and Applied Chemistry (IUPAC)), where such nomenclature exists;
- (c) Trade names and names of preparations;
- (d) Code numbers: Chemicals Abstract Service (CAS) number, Harmonized System customs code and other numbers;
- (e) Information on hazard classification, where the chemical is subject to classification requirements;
- (f) Use or uses of the chemical;
- (g) The physico-chemical, toxicological and ecotoxicological properties.

2. Final regulatory action

- (a) Information specific to the final regulatory action:
 - (i) Summary of the final regulatory action;
 - (ii) Reference to the regulatory document;
 - (iii) Date of entry into force of the final regulatory action;
 - (iv) Indication of whether the final regulatory action was taken on the basis of a risk or hazard evaluation and, if so, include information on such an evaluation, covering a reference to the relevant documentation;
 - (v) Reasons for the final regulatory action relevant to human health, including the health of consumers and workers, or the environment;
 - (vi) Summary of the hazards and risks presented by the chemical to human health, including the health of consumers and workers, or the environment and the expected effect of the final regulatory action;

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(b) Category or categories where the final regulatory action has been taken, and for each category:

- (i) Use or uses prohibited by the final regulatory action;
- (ii) Use or uses that remain allowed;
- (iii) Estimation, where available, of quantities of the chemical produced, imported, exported and used;

(c) An indication, to the extent possible, of the likely relevance of the final regulatory action to other States and regions;

- (d) Other relevant information that may cover:
- (i) Assessment of socio-economic effects of the final regulatory action;
 - (ii) Information on alternatives and their relative risks, where available, such as:
 - Integrated pest management strategies;
 - Industrial practices and processes, including cleaner technology.

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Annex II

CRITERIA FOR THE LISTING OF BANNED OR SEVERELY RESTRICTED CHEMICALS
IN ANNEX III

In reviewing the notifications forwarded by the Secretariat pursuant to paragraph 5 of Article 5, the Chemical Review Committee shall:

(a) Confirm that the final regulatory action has been taken in order to protect human health or the environment;

(b) Establish that the final regulatory action has been taken as a consequence of a risk evaluation. This evaluation shall be based on a review of scientific data in the context of the conditions prevailing in the Party in question. For this purpose, the documentation provided shall demonstrate that:

- (i) Data have been generated according to scientifically recognized methods;
- (ii) Data reviews have been performed and documented according to generally recognized scientific principles and procedures;
- (iii) The final regulatory action was based on a risk evaluation involving prevailing conditions within the Party taking the action.

(c) Consider whether the final regulatory action provides a sufficiently broad basis to merit listing of the chemical in Annex III, by taking into account:

- (i) Whether the final regulatory action led, or would be expected to lead, to a significant decrease in the quantity of the chemical used or the number of its uses;
- (ii) Whether the final regulatory action led to an actual reduction of risk or would be expected to result in a significant reduction of risk for human health or the environment of the Party that submitted the notification;
- (iii) Whether the considerations which led to the final regulatory action being taken are applicable only in a limited geographical area or in other limited circumstances;
- (iv) Whether there is evidence of ongoing international trade in the chemical;

(d) Take into account that intentional misuse is not in itself an adequate reason to list a chemical in Annex III.

The present text has been compiled for the purposes of the present report and is subject to finalization in accordance with the procedure outlined in paragraph 95 above.

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Annex III

CHEMICALS SUBJECT TO THE PRIOR INFORMED CONSENT PROCEDURE

Chemical	Relevant CAS number(s)	Category
2,4,5-T	93-76-5	Pesticide
Aldrin	309-00-2	Pesticide
Captafol	2425-06-1	Pesticide
Chlordane	57-74-9	Pesticide
Chlordimeform	6164-98-3	Pesticide
Chlorobenzilate	510-15-6	Pesticide
DDT	50-29-3	Pesticide
Dieldrin	60-57-1	Pesticide
Dinoseb and dinoseb salts	88-85-7	Pesticide
1,2-dibromoethane (EDB)	106-93-4	Pesticide
Fluoroacetamide	640-19-7	Pesticide
HCH (mixed isomers)	608-73-1	Pesticide
Heptachlor	76-44-8	Pesticide
Hexachlorobenzene	118-74-1	Pesticide
Lindane	58-89-9	Pesticide
Mercury compounds, including inorganic mercury compounds, alkyl mercury compounds and alkyloxyalkyl and aryl mercury compounds		Pesticide
Pentachlorophenol	87-86-5	Pesticide
Monocrotophos (Soluble liquid formulations of the substance which exceed 600 g active ingredient/l)	6923-22-4	Severely hazardous pesticide formulation

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Chemical	Relevant CAS number(s)	Category
Methamidophos (Soluble liquid formulations of the substance which exceed 600 g active ingredient/l)	10265-92-6	Severely hazardous pesticide formulation
Phosphamidon (Soluble liquid formulations of the substance which exceed 1000 g active ingredient/l)	13171-21-6 (mixture, (E)&(Z) isomers) 23783-98-4 ((Z)-isomer) 297-99-4 ((E)-isomer)	Severely hazardous pesticide formulation
Methyl-parathion (certain formulations of parathion methyl emulsifiable concentrates (EC) with 19.5%, 40%, 50%, 60% active ingredient and dusts containing 1.5%, 2% and 3% active ingredient)	298-00-0	Severely hazardous pesticide formulation
Parathion (all formulations - aerosols, dustable powder (DP), emulsifiable concentrate (EC), granules (GR) and wettable powders (WP) - of this substance are included, except capsule suspensions (CS))	56-38-2	Severely hazardous pesticide formulation
Crocidolite	12001-28-4	Industrial
Polybrominated biphenyls (PBB)	59080-40-9 (hexa-) 27858-07-7 (octa-) 13654-09-6 (deca-)	Industrial
Polychlorinated biphenyls (PCB)	1336-36-3	Industrial
Polychlorinated terphenyls (PCT)	61788-33-8	Industrial
Tris (2,3-dibromopropyl) phosphate	126-72-7	Industrial

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Annex IV

INFORMATION AND CRITERIA FOR LISTING OF SEVERELY HAZARDOUS PESTICIDE
FORMULATIONS IN ANNEX III

Part 1. Documentation required from a proposing Party

Proposals submitted pursuant to paragraph 1 of Article 6 shall include adequate documentation containing the following information:

- (a) The name of the hazardous pesticide formulation;
- (b) The name of the active ingredient or ingredients in the formulation;
- (c) Relative amount of each active ingredient or ingredients in the formulation;
- (d) Type of formulation;
- (e) Trade names and names of the producers, if available;
- (f) Common and recognized patterns of use of the formulation within the proposing Party;
- (g) A clear description of incidents related to the problem, including the adverse effects and the way in which the formulation was used;
- (h) Any regulatory, administrative or other measure taken, or intended to be taken, by the proposing Party in response to such incidents.

Part 2. Information to be collected by the Secretariat

Pursuant to paragraph 3 of Article 6, the Secretariat shall collect relevant information relating to the formulation, including:

- (a) The physico-chemical, toxicological and ecotoxicological properties of the formulation;
- (b) The existence of handling or applicator restrictions in other States;
- (c) Information on incidents related to the formulation in other States;
- (d) Information submitted by other Parties, international organizations, non-governmental organizations or other relevant sources, whether national or international;
- (e) Risk and/or hazard evaluations, where available;

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(f) Indications, if available, of the extent of use of the formulation, such as the number of registrations or production or sales quantity;

(g) Other formulations of the pesticide in question, and incidents, if any, relating to these formulations;

(h) Alternative pest-control practices;

(i) Other information which the Chemical Review Committee may identify as relevant.

Part 3. Criteria for listing of severely hazardous pesticide formulations in Annex III

In reviewing the proposals forwarded by the Secretariat pursuant to paragraph 5 of Article 6, the Chemical Review Committee shall take into account:

(a) The reliability of the evidence indicating that use of the formulation, in accordance with common or recognized practices within the proposing Party, resulted in the reported incidents;

(b) The relevance of such incidents to other States with similar climate, conditions and patterns of use of the formulation;

(c) The existence of handling or applicator restrictions involving technology or techniques that may not reasonably or widely be applied in States lacking the necessary infrastructure;

(d) The significance of reported effects in relation to the quantity of the formulation used;

(e) That intentional misuse is not in itself an adequate reason to list a formulation in Annex III.

Annex V

INFORMATION REQUIREMENTS FOR EXPORT NOTIFICATION

1. Export notifications shall contain the following information:

(a) Name and address of the relevant designated national authorities of the exporting Party and the importing Party;

(b) Expected date of export to the importing Party;

(c) Name of the banned or severely restricted chemical and a summary of the information specified in Annex I that is to be provided to the Secretariat in accordance with Article 5. Where more than one such chemical is included in a mixture or preparation, such information shall be provided for each chemical.

(d) A statement indicating, if known, the foreseen category of the chemical and its foreseen use within that category in the importing Party;

(e) Information on precautionary measures to reduce exposure to, and emission of, the chemical;

(f) In the case of a mixture or a preparation, the concentration of the banned or severely restricted chemical or chemicals in question;

(g) Name and address of the importer;

(h) Any additional information that is readily available to the relevant designated national authority of the exporting Party that would be of assistance to the designated national authority of the importing Party.

2. In addition to the information referred to in paragraph 1, the exporting Party shall provide such further information specified in Annex I as may be requested by the importing Party.

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Appendix II

IMPLEMENTATION OF THE PIC CONVENTION IN THE EUROPEAN COMMUNITY

Paper submitted by the European Community

(This document is based on document UNEP/FAO/PIC/INC.5/2 of 15 January 1998)

I. INTRODUCTION

1. In the Convention, there are a number of obligations which are assigned to the Parties, acting as importing and/or exporting Parties.

In accordance with Article 26.2° of the draft text of the Convention, upon ratification, the European Community and its Member States will decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the Community and its Member States will not be entitled to exercise rights under the Convention concurrently. When making such a declaration, the Community will include information on the implementation of the Convention which will take into account the content of this conference paper.

In this context and as provided for in article 27.3° of the Convention, the ratification by the European Community will not count for the purpose of triggering the entry into force of the Convention.

2. During the last session of the International Negotiating Committee (INC.4, Rome, October 1997), the European Community agreed to present a paper providing some information on how it would implement the Convention after ratification. Of main relevance here are the PIC Procedure and the Export Notification.
3. The purpose of this paper is to provide relevant information on this issue.

A simple way to describe the situation from a trade point of view is to consider the Community as one entity with one single area, covering the territory of Member States.

Most of the procedures described in this paper are those already in place under Council Regulation (EEC) n° 2455/92 on the import / export of certain dangerous chemicals, which transposes into Community law the provisions of the London Guidelines, and makes them mandatory for the Community.

II. PIC PROCEDURE

a. Notification of Final Regulatory Actions (Article 5)

4. Final Regulatory Actions affect directly the marketing and use of the substances/preparations covered by the Actions. The Action is taken at European Community level and is fully harmonized under Article 100A of the Treaty establishing the European Community. In a very small number of cases, some Member States have obtained a derogation which allows

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them to impose tighter restrictions in relation to the European Community Action

5. Despite the existence of these few exceptional derogations, the notification of Final Regulatory Actions will be made by the Authority (DNA) designated by the European Community. Where a specific situation occurs in a particular Member State, the notification made by the European Community will include a description of the specific situation in that Member State and specific information on the related derogation. Even in such a case, the notification is a single one made on behalf, and only on behalf, of the organization as such. It will count for 1 (and not 15). Individual Member States will not submit notifications.

b. Import decisions(Article 10)

6. The import decisions under Article 10 will also be taken by the European Community. This means that one decision will be taken for the whole Community.

For the purposes of Article 10.2°, where the European Community is concerned, there will be a single response on the future importation of a chemical in its area as a whole.

As in the case of notification of Final Regulatory Actions, where a specific situation occurs in a particular Member State, the European Community decision forwarded to the Secretariat will reflect this situation and give full details.

c. Obligation in relation to exports of chemicals (Article 11)

7. The obligation to respect the import decisions taken by third countries circulated by the Secretariat of the Convention will be laid down in the European Community legislation implementing the Convention and will therefore be uniformly applicable to all its Member States.

III. EXPORT NOTIFICATION (Article 12)

a. Export Notification from the European Community to non-European Community countries

8. In accordance with Article 12.1° of the Convention, chemicals which are banned or severely restricted within the European Community will be subject to the Export Notification procedure. The whole process of Export Notification will be operated at European Community level. This means that in this context, the term "Export" should be understood as "Export from the area of the European Community", irrespective of the Member State from which the chemical is physically exported outside the European Community area. In practice, each export notification will be made only once for the whole Community and not 15 times (one for each Member State), as foreseen in Article 12.7° of the draft text of the Convention.

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The export notification on behalf of the Community will indicate the Member State which is concerned by the export and will provide it as information under Annex V.1.i.

b. Export Notifications received from non-European Community countries

9. In the same spirit, the European Community should be considered as a single area for the purpose of export notification from Non-European Community countries. Non-European Community countries should therefore address each Export Notification to the Authority designated by the European Community and not to each individual Member State. The Export Notification may name the Member State which is concerned by the import. The information contained in an Export Notification will be forwarded by the Authority designated by the European Community to all Member States.

IV. OTHER PROVISIONS

a. Compliance (Article 17)

10. Compliance with the provisions on the PIC procedure and export notification is to be ensured by the European Community as addressed above.

The elements of a future non-compliance mechanism will be addressed when such a mechanism is to be considered by the Conference of the Parties.

b. Dispute Settlement (Article 21)

11. International responsibility in the context of the dispute settlement mechanism will simply reflect the content of the declaration on competence to be deposited by the European Community upon ratification of the Convention.

c. Right to vote (Article 24)

12. Article 24.2° is a well-established standard provision in international environmental agreements. It should be underlined that the European Community will not exercise its right to vote if any of its Member States exercise its right to vote, and vice versa. Accordingly, there will not be a situation where the European Community will vote for some of its Member States while the other member States vote individually.

d. Subsidiary body (Article 19.5° b))

13. Article 24 on the right to vote does not apply to voting in the Subsidiary Body which is to be composed of individual experts.

Appendix III

DRAFT RESOLUTION ON INTERIM ARRANGEMENTS TO BE SUBMITTED
FOR THE CONSIDERATION OF THE DIPLOMATIC CONFERENCE
FOR THE ADOPTION OF THE PIC CONVENTION

The Conference,

Having adopted the text of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (hereinafter referred to as the "Convention"),

Considering that interim arrangements are required to continue to operate a voluntary procedure for the application of the Prior Informed Consent (PIC) procedure in order to protect human health and the environment from certain hazardous chemicals and pesticides pending the entry into force of the Convention and to prepare for its effective operation once it enters into force,

Taking note of the existing voluntary PIC procedure established by Resolution 6/89 of the Twenty-fifth Session of the Conference of the Food and Agriculture Organization of the United Nations (FAO) and decision 15/30 of the fifteenth session of the Governing Council of the United Nations Environment Programme (UNEP),

Recalling the decisions of the Twenty-ninth Session of the FAO Conference and the fifth special session of the UNEP Governing Council, agreeing to accept changes in the voluntary PIC procedure if so decided by the Diplomatic Conference, provided that costs additional to the implementation of the present voluntary procedure be met through extra-budgetary resources,

I

1. Calls upon States and regional economic integration organizations entitled to do so to consider signing, ratifying, accepting, approving or acceding to the Convention with a view to bringing it into force as soon as possible;

II

2. Decides that the voluntary PIC procedure contained in the Amended London Guidelines for the Exchange of Information on Chemicals in International Trade and in the FAO International Code of Conduct on the Distribution and Use of Pesticides (hereinafter referred to as the "original PIC procedure") is hereby changed to bring it into line with the procedure established by the Convention with effect from the date on which the Convention is opened for signature. The original PIC procedure with these changes is hereinafter referred to as the "interim PIC procedure";

3. Invites the Executive Director of UNEP and the Director-General of FAO to convene such further sessions of the Intergovernmental Negotiating Committee (hereinafter referred to as the "Committee") during the period between the date on which the Convention is opened for signature and the date

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of the opening of the first meeting of the Conference of the Parties as are necessary to oversee the operation of the interim PIC procedure and to prepare for and service the Conference of the Parties until the end of the fiscal year in which the first meeting of the Conference of the Parties takes place;

4. Invites the Committee to establish an interim subsidiary body to discharge the functions entrusted to the subsidiary body to be established under Article 18, paragraph 6, of the Convention;

5. Invites the Intergovernmental Negotiating Committee to develop, based on the FAO regions, the decision referred to in paragraph 5 of Article 5, and to adopt this decision on an interim basis, pending its formal adoption at the first meeting of the Conference of the Parties;

6. Decides that all chemicals in respect of which Decision Guidance Documents have been circulated under the original PIC procedure before the date on which the Convention is opened for signature will be subject to the interim PIC procedure;

7. Decides that all chemicals that have been identified for inclusion in the PIC procedure under the original PIC procedure but for which Decision Guidance Documents have not yet been circulated before the date on which the Convention is opened for signature will become subject to the interim PIC procedure as soon as the relevant Decision Guidance Documents have been adopted by the Committee;

8. Decides that the Committee shall decide, between the date on which the Convention is opened for signature and the date of its entry into force, on the inclusion of any additional chemicals under the interim PIC procedure in accordance with the provisions of Articles 5, 6, 7 and 22 of the Convention;

9. Decides that nominations of designated national authorities, notifications of control actions and import responses made under the original PIC procedure shall remain in effect under the interim PIC procedure unless and until the State or regional economic integration organization concerned notifies the Interim Secretariat in writing that it has decided otherwise;

10. Appeals to States and regional economic integration organizations to participate in and apply in full the interim PIC procedure;

11. Calls on States and regional economic integration organizations to submit notifications of final regulatory action in accordance with the provisions of Articles 5 and 6 of the Convention;

12. Requests the Executive Director of UNEP and the Director-General of FAO to provide secretariat services for the operation of the interim PIC procedure;

13. Decides that the interim PIC procedure shall cease to operate on a date to be specified by the Conference of the Parties at its first meeting;

III

14. Appeals to States and regional economic integration organizations to make voluntary contributions to the trust fund established by UNEP in order to support the interim arrangements and the operation of the Conference of the Parties until the end of the fiscal year in which the first meeting of the Conference of the Parties takes place, and to ensure the full and effective participation of developing countries and countries with economies in transition in the further work of the Committee;

15. Calls on States and regional economic integration organizations with more advanced programmes for regulating chemicals to provide technical assistance, including training, to other States and regional economic integration organizations in developing their infrastructure and capacity to manage chemicals throughout their life-cycle, particularly in view of the urgent need of their participation in effective operation of the Convention once it enters into force.
