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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

Seventh session

Geneva, 30 October – 3 November 2000

Item 5 (c) of the provisional agenda\*

PREPARATION FOR THE CONFERENCE OF THE PARTIES

Settlement of disputes

Note by the secretariat

1. In its article 20, paragraph 2 (a), the Rotterdam Convention provides for the adoption by the Conference of the Parties of an annex concerning the arbitration procedures. In addition, article 20, paragraph 6, stipulates that an annex on procedures relating to a conciliation commission will be adopted by the Conference of the Parties no later than the second meeting of the Conference.
2. The Committee, at its sixth session, requested the secretariat to submit to its seventh session, documentation on the issue of arbitration and conciliation annexes. Consequently, the secretariat reviewed the relevant provisions contained in or developed under the following multilateral environmental conventions:
  - (a) The Vienna Convention for the Protection of the Ozone Layer;
  - (b) The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal;
  - (c) The Convention on Biological Diversity.

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3. Furthermore, the relevant provisions of the following instruments were examined:
  - (a) The 1982 United Nations Convention on the Law of the Sea;
  - (b) The 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972;
  - (c) The 1899 Convention for the Pacific Settlement of International Disputes;
  - (d) The 1907 Convention for the Pacific Settlement of International Disputes;
  - (e) The 1992 Optional Rules for Arbitrating Disputes between Two States of the Permanent Court of Arbitration;
  - (f) The 1996 Optional Conciliation Rules of the Permanent Court of Arbitration;
  - (g) The 1976 Arbitration Rules of the United Nations Commission on International Trade Law;
  - (h) The 1980 Conciliation Rules of the United Nations Commission on International Trade Law.
4. The examination of the above-mentioned instruments shows that similar principles and rules have been used to identify the procedures for arbitration and conciliation, although certain diversities exist in respect of the extent to which options are available and details of procedures are elaborated.
5. The draft arbitration and conciliation annex to the Rotterdam Convention is presented in the annex to this note.
6. Part 1 of the draft annex entitled "Arbitration" is modeled on part 1 of annex II to the Convention on Biological Diversity. Similar sets of provisions will be found also in the arbitration procedure under article 11, paragraph 3(a) of the Vienna Convention for the Protection of the Ozone Layer <sup>1/</sup> and annex VI to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. Certain changes were made to the original model taking into account the more recent instruments referred to above, in particular concerning the commencement of the arbitral process.
7. Part 2 of the draft annex entitled "Conciliation" is modeled on part 2 of annex II to the Convention on Biological Diversity. It is noted that the original model follows the principles, rules and procedures commonly found in other instruments, such as annex V - entitled "Conciliation" - to the United Nations Convention on the Law of the Sea, and presents them in a concise manner.
8. Consideration should be given to what extent the procedures should be elaborated in the annex and, if so identified in the annex, what should be set out in more detailed rules of procedure to be agreed upon by an arbitral tribunal or a conciliation commission.

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<sup>1/</sup> Adopted at the first meeting of the Conference of the Parties in its decision VII.

## PROPOSED DRAFT ANNEX

## Part 1

## ARBITRATION

Article 1

1. Any party may initiate recourse to arbitration pursuant to Article 20 of this Convention by written notification addressed to the other party to the dispute. The notification shall be accompanied by a statement of the claim, together with any supporting documents, and state the subject-matter of arbitration and include, in particular, the articles of the Convention, the interpretation or application of which are at issue.
2. Arbitral proceedings shall be deemed to commence on the date on which the notification of arbitration is received by the respondent party.
3. If the parties do not agree on the subject-matter of the dispute before the President of the arbitral tribunal is designated, the arbitral tribunal shall determine the subject-matter.
4. The claimant party shall notify the Secretariat that the parties are referring a dispute to arbitration pursuant to Article 20. The notification shall be accompanied by the written notification of the claimant party, the statement of claim and the supporting documents referred to in paragraph 1 above. The Secretariat shall forward the information thus received to all Parties to this Convention.

Article 2

1. In disputes between two parties, the arbitral tribunal 2/ shall consist of three members. 3/
2. Each of the parties to the dispute shall appoint an arbitrator 4/ and the two arbitrators so appointed shall designate by common agreement the third arbitrator who shall be the President of the tribunal. The President of the tribunal shall not be a national of one of the parties to the dispute, nor have his or her usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.
3. In disputes between more than two parties, parties in the same interest shall appoint one arbitrator jointly by agreement.
4. Any vacancy shall be filled in the manner prescribed for the initial appointment.

Article 3

1. If one of the parties to the dispute does not appoint an arbitrator within two months of the date of receipt of the request, the other party may inform the Secretary-General of the United Nations who shall make the designation within a further two-month period.

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2/ Consideration may be given as to whether there should be a provision governing the establishment of an arbitral tribunal to deal with the arbitration proceedings in question.

3/ Consideration may be given to the need for setting out an optional number of arbitrator(s), for example a single arbitrator, in addition to three arbitrators, and if so, the corresponding procedure for the different number of arbitrator(s).

4/ The need for the time-frame for the appointment of an arbitrator may be considered.

2. If the President of the arbitral tribunal has not been designated within two months of the date of the appointment of the second arbitrator, the Secretary-General of the United Nations shall, at the request of a party, designate the President within a further two-month period. 5/

Article 4

The arbitral tribunal shall render its decisions in accordance with the provisions of this Convention and international law.

Article 5

Unless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own rules of procedure.

Article 6

The arbitral tribunal may, at the request of one of the parties, recommend essential interim measures of protection.

Article 7

The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:

- (a) Provide it with all relevant documents, information and facilities; and
- (b) Enable it, when necessary, to call witnesses or experts and receive their evidence.

Article 8

The parties and the arbitrators are under an obligation to protect the confidentiality of any information they receive in confidence during the proceedings of the arbitral tribunal.

Article 9

Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the costs of the tribunal shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its costs, and shall furnish a final statement thereof to the parties.

Article 10

Any Party that has an interest of a legal nature in the subject-matter of the dispute which may be affected by the decision in the case, may intervene in the proceedings with the consent of the tribunal.

Article 11

The tribunal may hear and determine counterclaims arising directly out of the subject-matter of the dispute.

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5/ The adequacy of those time-frames may be considered.

### Article 12

Decisions both on procedure and substance of the arbitral tribunal shall be taken by a majority vote of its members.

### Article 13

1. If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to make its award. Absence of a party or a failure of a party to defend its case shall not constitute a bar to the proceedings.
2. Before rendering its final decision, the arbitral tribunal must satisfy itself that the claim is well founded in fact and law.

### Article 14

The tribunal shall render its final decision within five months of the date on which it is fully constituted unless it finds it necessary to extend the time-limit for a period which should not exceed five more months.

### Article 15

The final decision of the arbitral tribunal shall be confined to the subject-matter of the dispute and shall state the reasons on which it is based. It shall contain the names of the members who have participated and the date of the final decision. Any member of the tribunal may attach a separate or dissenting opinion to the final decision.

### Article 16

The award shall be binding on the parties to the dispute. It shall be without appeal unless the parties to the dispute have agreed in advance to an appellate procedure.

### Article 17

Any controversy which may arise between the parties to the dispute as regards the interpretation or manner of implementation of the final decision may be submitted by either party for decision to the arbitral tribunal which rendered it.

Part 2

CONCILIATION 6/

Article 1

A conciliation commission shall be created upon the request of one of the parties to the dispute. Subject to Article 2, paragraph 2 below, the Commission shall, unless the parties otherwise agree, be composed of five members, two appointed by each Party concerned and a President chosen jointly by those members.

Article 2

1. In disputes between more than two parties, parties in the same interest shall appoint their members of the commission jointly by agreement.
2. Where two or more parties have separate interests or there is a disagreement as to whether they are of the same interest, they shall appoint their members separately.

Article 3

If any appointments by the parties are not made within two months of the date of the request to create a conciliation commission, the Secretary-General of the United Nations shall, if asked to do so by the party that made the request, make those appointments within a further two-month period.

Article 4

If a President of the conciliation commission has not been chosen within two months of the last of the members of the commission being appointed, the Secretary-General of the United Nations shall, if asked to do so by a party, designate a President within a further two-month period.

Article 5

The conciliation commission shall take its decisions by majority vote of its members. It shall, unless the parties to the dispute otherwise agree, determine its own procedure. It shall render a proposal for resolution of the dispute, which the parties shall consider in good faith.

Article 6

A disagreement as to whether the conciliation commission has competence shall be decided by the commission.

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6/ In addition to the provisions presented in this part, certain provisions might be set out, for example on the costs of the conciliation proceedings.