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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

Eighth session

Rome, 8-12 October 2001

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 EIGHTH SESSION

I. OPENING OF THE SESSION

1. The eighth 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 Food and Agriculture Organization of the United Nations (FAO), Rome, from 8 to 12 October 2001.
2. The session was opened by Ms. Maria Celina de Azevedo Rodrigues (Brazil), Chair of the Committee, at 10.15 a.m. on Monday, 8 October 2001.
3. Opening statements were made by Mr. David Harcharik, Deputy Director-General of FAO, and Mr. Shafqat Kakakhel, Deputy Executive Director of the United Nations Environment Programme (UNEP).
4. Mr. Harcharik welcomed the participants to Rome on behalf of FAO. He pointed out that the intensification of agricultural production and the march towards globalization presented both opportunities and risks for the agricultural sector, particularly in developing countries, giving rise to immensely complex challenges. Global agreements such as the Rotterdam Convention served to provide a level of control and could

help to mitigate the possible negative effects of globalization. He recalled that it had been at the 1992 United Nations Conference on Environment (Rio Earth Summit) that the drive for a legally binding instrument on the prior informed consent procedure for certain hazardous pesticides and chemicals had gained momentum. The adoption of the Rotterdam Convention, in September 1998, two years ahead of the date specified by the Earth Summit, was a reflection of the growing international concern over the rising dangers to human health and the environment posed by unregulated traffic in hazardous pesticides and industrial chemicals.

5. Mr. Harcharik said it would be a significant achievement if countries could work together to have the Convention enter into force in time for the scheduled follow-up to the Earth Summit, the World Summit on Sustainable Development, to be held in Johannesburg in September 2002. A total of 73 countries had signed the Convention, while to date 16 countries had ratified it. Fifty ratifications were required before the Convention entered into force.

6. He stressed that the Rotterdam Convention was a critical first step in the global process of improving chemical management capacity, in that it helped to draw attention to those substances that caused most harm, disseminating that information and facilitating decision making in the importation of chemicals. There was a need for a parallel dialogue at the national level so that countries could meet the new challenges and opportunities being created. Countries now needed to consider how they could work more effectively, both within their own borders and with their neighbours, to respond to and balance out the changes brought about by the drive for increased agricultural production and possible negative effects of increased globalization on aspects of human health and the environment.

7. Mr. Kakakhel drew attention to the continuing strong cooperation between UNEP and FAO in providing the interim secretariat for the Rotterdam Convention, and noted that the joint activities had now spread to other areas that were equally important to the environmentally sound management of toxic chemicals and pesticides.

8. Recalling the ongoing process of consultations on international environmental governance, he reported that UNEP had recently been called upon to investigate possible approaches to “clustering” the chemicals-related conventions, with a view to enhancing their cooperation effectiveness, and efficiency.

9. He then announced that enough funds had been received to fully cover the expenditures in the approved 2001 budget and thanked donors for the voluntary contributions they had provided.

10. He strongly urged those Governments that had not yet done so, to make every effort to ratify the Convention as soon as possible to ensure that the Convention entered into force in time for the World Summit on Sustainable Development. He also urged Governments with more advanced systems for chemicals management, to provide the assistance needed to ensure the timely ratification and implementation of the Convention by developing countries.

11. Mr. Kakakhel said that the timely notification of bans or severe restrictions was the key to the successful operation of the Convention as a “first line of defence” against chemical hazards and appealed to those Governments that had not yet done so to submit their notifications as soon as possible. He also emphasized the need for all Governments to provide the secretariat with their decision regarding the future import of all chemicals covered by the interim PIC procedure where this had not been done.

II. ORGANIZATIONAL MATTERS

A. Attendance

12. The session was attended by representatives of the following parties: Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Bangladesh, Belarus, Belgium, Benin, Bolivia, Brazil, Bulgaria, Burkina Faso, Burundi, Cameroon, Canada, Chad, Chile, China, Colombia, Congo, Costa Rica, Cuba, Czech Republic, Côte d'Ivoire, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Eritrea, Estonia, Ethiopia, European Community, Finland, France, Gabon, Germany, Ghana, Guatemala, Guinea, Honduras, Hungary, India, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Kyrgyzstan, Lebanon, Lesotho, Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Madagascar, Malawi, Malaysia, Mali, Malta, Mauritania, Mexico, Mongolia, Morocco, Namibia, Nepal, Netherlands, New Zealand, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Russian Federation, Rwanda, Saint Lucia, Samoa, Senegal, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Syrian Arab Republic, Thailand, the former Yugoslav Republic of Macedonia, Togo, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Yugoslavia, Zambia, Zimbabwe.

13. The following non-governmental organizations were represented: Crop Life International, European Chemical Industry Council, Indian Chemical Manufacturers Association, International Association of Ports and Harbours, International Union of Food Agricultural Hotel Restaurant Catering Tobacco and Allied Workers' Association (IUF), Pesticide Action Network (UK) and the International Council of Women.

B. Officers

14. 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. Bernard Madé (Canada)
Mr. Mohamed El-Zarka (Egypt)
Mr. Yuri Kundiev (Ukraine)

Rapporteur: Mr. Wang Zhijia (China)

C. Adoption of the agenda

15. The Committee adopted the following agenda on the basis of the provisional agenda, which had been circulated as document UNEP/FAO/PIC/INC.8/1, subject to the inclusion of a subitem under item 8 (Other matters) on the offer by the Federal Republic of Germany to host the ninth session of the Intergovernmental Negotiating Committee:

1. Opening of the session.
2. Organizational matters:
 - (a) Adoption of the agenda;
 - (b) Organization of work.

3. Activities of the secretariat and review of the situation as regards extrabudgetary funds.
4. Implementation of the interim prior informed consent procedure:
 - (a) Status of implementation of the interim prior informed consent procedure;
 - (b) Confirmation of experts designated for the Interim Chemical Review Committee;
 - (c) Presentation of the report of the Interim Chemical Review Committee on the work of its second session;
 - (d) Adoption of decision guidance documents for already identified chemicals;
 - (e) Contaminants;
 - (f) Issues associated with the operational procedures for the Interim Chemical Review Committee;
 - (g) Inclusion of chemicals in the interim prior informed consent procedure;
 - (h) Analysis of problems frequently encountered by Parties in their preparation of notifications;
 - (i) Submission of notifications of chemicals already subject to the prior informed consent procedure – possible options to reconcile the need for information exchange with available resources;
 - (j) Conflict of interest procedures for the Interim Chemical Review Committee.
5. Preparation for the Conference of the Parties:
 - (a) Draft rules of procedure for the Conference of the Parties;
 - (b) Draft financial rules and provisions;
 - (c) Settlement of disputes;
 - (d) Non-compliance;
 - (e) Assignment of specific Harmonized System customs codes;
 - (f) Issues related to the discontinuation of the interim prior informed consent procedure.
6. Issues arising out of the Conference of Plenipotentiaries:
 - (a) Support for implementation;
 - (b) Dispute settlement, illicit trafficking and responsibility and liability;
 - (c) Location of the secretariat.
7. Status of signature and ratification of the Convention.

8. Other matters.
 9. Adoption of the report.
 10. Closure of the meeting.
16. A list of documents before the Committee at its eighth session is contained in annex VIII to the present report.

D. Organization of work

17. At its opening meeting, the Committee decided, on the basis of the scenario note prepared by the Chair (UNEP/FAO/PIC/INC.8/INF/7), to continue its work in plenary and establish working groups and contact groups as needed. The legal working group would continue its work on the draft rules of procedure and financial rules and provisions for the Conference of the Parties, as well as the issue of settlement of disputes, under the chairmanship of Mr. Patrick Széll (United Kingdom). The Committee also agreed to listen to presentations by countries offering to host the secretariat to the Rotterdam Convention, with a view to identifying any elements of the offers for which clarification would be necessary prior to the first meeting of the Conference of the Parties.

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

18. In its consideration of this item, the Committee had before it a note and information paper on activities of the secretariat and review of the situation as regards extrabudgetary funds (UNEP/FAO/PIC/INC.8/2 and UNEP/FAO/PIC/INC.8/INF/8).

19. The Committee expressed its satisfaction at the quality of the secretariat's documentation and presentation. It requested the secretariat to provide a more detailed and consolidated report on the budget and expenditures in the future. In particular, it was noted that it would be useful if the secretariat could clearly link expenditures to budget lines and provide more details on actual expenditures.

20. With regard to resources, the following additional pledges were also made: European Community – 100,000 euros (approximately \$87,500 covering a contribution for 2002) and Finland – 100,000 Finnish markkaa (approximately \$15,000). The representative of Belgium noted that the amount totalling \$94,000 for its 2000 and 2001 contributions was earmarked for the workshop for French-speaking African countries to be held in Senegal.

21. The Committee noted that workshops had been delayed in 2000 and 2001 due to shortage of funds. The Committee welcomed the announcement by the secretariat that it had joined the secretariats of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal and the Stockholm Convention on Persistent Organic Pollutants, in holding joint awareness-raising workshops for South Pacific small island States, for countries of English-speaking Africa and for parties of ASEAN. The secretariat announced that some in-depth workshops on the Rotterdam Convention were expected to take place in 2002. These included a workshop for French-speaking African countries, to be held in the first quarter of 2002 in Senegal and, if resources allowed, workshops for Central and Eastern European countries, for Caribbean countries and for the Arabic-speaking countries of West Asia. Developed countries were encouraged to organize a workshop to deal with common issues linked to the Convention.

22. As requested at the seventh session of the Intergovernmental Negotiating Committee, the secretariat provided the meeting with a list of priorities for action in the event of any future budget shortfalls. The Committee agreed to place priority number four relating to facilitation of implementation and ratification (including workshops), above priority three relating to secretariat activities linked to preparation for activities to be undertaken after the Convention entered into force.

23. The Committee addressed the issues of renegotiating the budget fee of 13 per cent charged by UNEP, the frequency of meetings and the possible problem of communicating in the six official United Nations languages. The Committee noted that the issue of the support costs fell under the purview of the Governing Council of UNEP as it administered the Trust Fund. It also noted that FAO used the same support cost levels and therefore this matter would also concern FAO. It decided that the current pace of meetings was essential to achieving ratification and implementation goals within a reasonable time period. The Committee invited countries experiencing any language or communications problems to approach the secretariat in order to find the best possible solutions.

24. The Committee approved the budget for 2003 (contained in annex II to the present report).

IV. IMPLEMENTATION OF THE INTERIM PRIOR INFORMED CONSENT PROCEDURE

A. Status of implementation of the interim prior informed consent procedure

25. In its consideration of this subitem, the Committee had before it a note and information paper by the secretariat on the status of implementation of the interim prior informed consent procedure (UNEP/FAO/PIC/INC.8/3 and UNEP/FAO/PIC/INC.8/INF/9). A representative of the secretariat explained that the note reported on the status as of 30 April 2001, by which date 165 Parties had nominated a total of 253 designated national authorities, while 27 States had not yet nominated a designated national authority. With regard to notification of final regulatory action to ban or severely restrict a chemical, 71 notifications had been verified by the secretariat as meeting all the requirements of annex I of the Convention.

26. Listed in table 1 of document UNEP/FAO/PIC/INC.8/INF/9 were three chemicals, DNOC, dinoterb and asbestos, for which two notifications from at least two PIC regions had been verified and found to meet the requirements of annex I of the Convention, and which had been scheduled for review at the third session of the Interim Chemical Review Committee (18-22 February 2002), pending receipt of the supporting documentation. One Party which had provided a verified notification pointed out that the notification was for the amphibole forms of asbestos. In addition two proposals had been received for severely hazardous pesticide formulations, as listed in table 2 of the same document, and had been found to meet the information requirements of annex IV. In line with article 6 of the Convention, countries and other interested parties were requested to provide the information listed in part 2 of annex IV concerning the proposals. In regard to transmittal of responses regarding future import of chemicals subject to the PIC procedure, the response rate had been disappointing.

27. One representative said that the provision of information was particularly important to countries such as his, in which illiterate populations might use the chemicals to eradicate pests for which they were not designed.

28. With regard to chemicals subject to the interim PIC procedure and distribution of decision guidance documents, the representative of the secretariat reported that the PIC Circular contained a list of all the chemicals that were currently subject to the PIC procedure, namely 21 pesticides, five severely hazardous pesticide formulations and five industrial chemicals. The PIC Circular also indicated the date of first dispatch of the corresponding decision guidance document to designated national authorities.

29. The representative of a regional economic integration organization said that while recent trends in regard to notification of regulatory actions had been encouraging, there was some concern about import responses, where there was an overall response rate below 50 per cent. He believed that in cases of failure to transmit a response, it was not enough to list cases of failure to respond in the PIC Circular, but that it would be better if the countries concerned received a specific written reminder and if the secretariat offered assistance in accordance with article 10 (3) of the Convention. He also suggested that the reasons for the low response rate should be analysed as had been done in relation to notifications.

30. The Committee took note of the report of the secretariat and of the progress made in the implementation of the interim PIC procedure.

B. Confirmation of experts designated for the Interim Chemical Review Committee

31. In its consideration of this subitem, the Committee had before it a note by the secretariat containing background information (UNEP/FAO/PIC/INC.8/4).

32. Upon the conclusion of the seventh session of the Intergovernmental Negotiating Committee, one expert, who had been designated by a Government from the South-West Pacific region, and whose designation had been confirmed by decision INC-7/1, had informed the secretariat of his resignation from the Interim Chemical Review Committee. Following this resignation, the secretariat received information on the designation of a new expert from that region, indicating that consultations had been conducted with other members of the region.

33. The Intergovernmental Negotiating Committee, after reviewing the information concerning the qualifications of the expert, formally confirmed the appointment by adopting decision INC-8/2 contained in annex I to the present report.

C. Presentation of the report of the Interim Chemical Review Committee on the work of its second session

34. In its consideration of this subitem, the Committee had before it a note by the secretariat (UNEP/FAO/PIC/INC.8/5), including the report of the second session of the Interim Chemical Review Committee. The Chair of the Interim Chemical Review Committee introduced the report and its sub items.

35. The Committee had considered the draft decision document on maleic hydrazide referred to it by the Intergovernmental Negotiating Committee at its sixth session. The recommendation made by the Interim Chemical Review Committee with regard to maleic hydrazide was contained in annex IV of document UNEP/FAO/PIC/INC.8/5.

36. The Chair of the Interim Chemical Review Committee also summarized the work of the individual task groups established at the first session of the Committee, on format and guidance on submission of notification of final regulatory action; on the incident report form; on formats for decision guidance documents on banned and severely restricted chemicals and severely hazardous pesticide formulations; and on cooperation and coordination in the submission of notifications of final regulatory action.

37. The Committee noted with appreciation the work accomplished by the Interim Chemical Review Committee at its second session and its contribution to the implementation of the interim PIC procedure, as well as to the secretariat's work.

D. Adoption of decision guidance documents for already identified chemicals

38. In its consideration of this subitem, the Committee had before it a note from the secretariat (UNEP/FAO/PIC/INC.8/6) explaining the background to the subitem. The Conference of Plenipotentiaries had decided that all the chemicals that had been identified for inclusion in the prior informed consent procedure for which decision guidance documents had not yet been circulated before the date on which the Convention was opened for signature would become subject to the interim PIC procedure as soon as the relevant decision guidance documents had been adopted by the Intergovernmental Negotiating Committee. That Committee, at its sixth and seventh sessions, had considered the adoption of decision guidance documents for the six chemicals in question, namely binapacryl, bromacil, ethylene dichloride, ethylene oxide, maleic hydrazide and toxaphene, and had resolved the issues raised in relation to all of them except for those relating to maleic hydrazide, which it had referred to the Interim Chemical Review Committee.

39. The Chair of the Interim Chemical Review Committee presented the latter's recommendation on maleic hydrazide, contained in paragraph 8 of document UNEP/FAO/PIC/INC.8/6.

40. The Chair of the Intergovernmental Negotiating Committee drew the attention of the meeting to the proviso that if the manufacturers of maleic hydrazide failed to provide confirmation that the level of free hydrazine was not more than 1 part per million, the matter should be referred back to the Interim Chemical Review Committee, which would then consider what action should be taken. She also reported that it had recently been ascertained that there were manufacturers of maleic hydrazide in one more country than had been originally thought and that therefore any consideration by the Interim Chemical Review Committee should be applicable not only to the four already identified manufacturers but also to the three manufacturers in that country.

41. A number of representatives spoke in favour of the recommendation of the Interim Chemical Review Committee, stressing the importance which they attached to the proviso relating to the confirmation of the level of free hydrazine.

42. One representative stated that the Convention did not cover products which did not enter international trade, being used only domestically. If such products were not exported, in her view, then there was no obligation on that country's manufacturers to provide the confirmation as to the level of free hydrazine.

43. Another representative indicated that the provision of the information by producers of maleic hydrazide was voluntary and that the Convention did not give the Committee a mandate to compel the provision of the information.

44. The Chair of the Interim Chemical Review Committee clarified that all that was required was a simple statement that certain manufacturers in a given country were producing maleic hydrazide, to a certain specification, together with clarification of whether the maleic hydrazide was, or was not, in international trade. Such statements would then be considered by the Interim Chemical Review Committee. The Committee noted that such statements should be provided through the designated national authority of the Party where the production occurred.

45. Decision INC-8/3 on maleic hydrazide and the question of developing a decision guidance document for it is contained in annex I to the present report.

E. Contaminants

46. In its consideration of this subitem, the Committee had before it a note from the secretariat (UNEP/FAO/PIC/INC.8/7), giving the background to the topic. The Committee, by decision INC-7/4, had adopted a general policy to guide the Interim Chemical Review Committee in its consideration of whether to recommend that a pesticide containing a contaminant be made subject to the interim PIC procedure, in line with article 5, paragraph 6 of the Convention.

47. However, at the seventh session of the Intergovernmental Negotiating Committee, one representative had drawn attention to the fact that there had been no consideration of the issue of contaminants in industrial chemicals.

48. The Chair of the Interim Chemical Review Committee reported that, to date, there had been no notification of an industrial chemical that was banned or severely restricted because of contaminants contained in it. He suggested that the Committee should not consider the issue until the first such notification was received. In the period between that notification and the next (a second notification being required under article 5 of the Convention), the Interim Chemical Review Committee could then consider how to proceed.

49. The Committee agreed that waiting until the first such notification, while in no way negating the importance of the issue, was a prudent use of the limited resources of the Interim Chemical Review Committee.

50. One representative pointed out that while FAO provided quality standards for pesticides, there was no corresponding body responsible for the issue of quality standards for industrial chemicals. That would create difficulties for countries, in particular those that did not have advanced analysis facilities.

F. Issues associated with the operational procedures for the Interim Chemical Review Committee

51. In its consideration of this subitem, the Committee had before it a note by the secretariat containing recommendations concerning cooperation and coordination in the submission and notification of final regulatory action, and the use of Chemical Abstract Service (CAS) numbers and precise chemical descriptions in identifying chemicals subject to the interim PIC procedure (UNEP/FAO/PIC/INC.8/7).

52. The Committee recognized that Governments might wish to prioritize chemicals not yet listed in the PIC procedure. It urged those Parties whose notifications of final regulatory action did not satisfy the information requirements of the Convention's annex I, to update and resubmit them, in accordance with the requirements of the interim PIC procedure, wherever this was possible.

53. The Committee called upon designated national authorities and non-governmental organizations to facilitate efforts to delineate the scope of ongoing international trade in certain chemicals to be designated by the Interim Chemical Review Committee upon the conclusion of its efforts to screen and prioritize chemicals subject to previously submitted notifications of final regulatory action.

54. The Committee considered whether countries wishing to present supplementary data in support of old notifications regarding industrial chemicals should be allowed to utilize scientific data that did not exist at the time the relevant regulatory action was taken. Some representatives indicated that no new data should be used while others felt that old notifications could be supplemented even with data generated elsewhere. The Committee recommended that the issue should continue to be examined by the Interim Chemical Review Committee on the basis of specific cases.

55. The Committee requested Governments, when submitting notifications of final regulatory action, to describe all chemicals accurately by chemical name and CAS number.

56. The Committee expressed its appreciation to the Interim Chemicals Review Committee for its excellent work.

G. Inclusion of chemicals in the interim prior informed consent procedure

57. No additional chemicals currently required a decision.

H. Analysis of problems frequently encountered by Parties in their presentation of notifications

58. In its consideration of this subitem, the Committee had before it a note and information paper by the secretariat containing an analysis of the problems frequently encountered by Parties in their preparation of notifications of final regulatory action to ban or severely restrict a chemical (UNEP/FAO/PIC/INC.8/8 and UNEP/FAO/PIC/INC.8/INF/3). As of 30 April 2001, the total number of States that had submitted notifications, under either the original or the interim PIC procedure, had been 56 out of the 165 States participating in the interim PIC procedure, while of the 14 States that had ratified the Convention by 30 April 2001, only five had submitted notifications of final regulatory action.

59. Several representatives stated that the reasons for the low number of notifications had often been that the countries had not taken any regulatory actions, or that the designated national authorities had to confront internal problems of liaising with other authorities and ministries in their countries. Rather than revising the notification form, the provision of guidance, clear instructions and hands-on training to designated national authorities were likely to be of more benefit.

60. The Committee requested the secretariat, in the short term, to further develop the guidance to designated national authorities on submission of notifications, taking into consideration the experience gained by the secretariat, the guidance provided by the Interim Chemical Review Committee and feedback from designated national authorities on their experience; in the long term, to develop a more comprehensive guidance manual for designated national authorities, clearly setting out all the actions required of those authorities in performing their functions in accordance with the Convention, including submission of notifications of final regulatory action. It also requested the secretariat to provide hands-on training to designated national authorities through regional workshops, in completing and submitting notifications.

61. The Committee endorsed the preparation by the Interim Chemical Review Committee of an issue paper on the compatibility of current regulatory practices with the notification requirements of the interim PIC procedure and requested a report on progress to the Intergovernmental Negotiating Committee at its ninth session.

62. The Committee encouraged each Party to ensure that notifications in accordance with article 5 of the Convention were submitted for all regulatory actions currently in effect, having due regard to the decision taken at the seventh session of the Committee that priority should be given to regulatory actions for chemicals not already in the interim PIC procedure. Parties were also encouraged to enable their designated national authorities to perform the functions required by the Convention, by seeking to ensure that they had sufficient resources to perform their tasks effectively, in line with article 4 of the Convention.

63. The Committee noted that difficulties encountered in submitting notifications of final regulatory action were often similar to those relating to the submission of importing country responses, and therefore the actions enumerated above could also apply to those responses.

64. The Committee agreed to continue to assess progress in the submission of notifications at its future sessions and consider additional action should the submission rate not increase.

I. Submission of notifications of chemicals already subject to the prior informed consent procedure - possible options to reconcile the need for information exchange with available resources

65. In its consideration of this subitem, the Committee had before it a note by the secretariat (UNEP/FAO/PIC/INC.8/9). At its seventh session, the Intergovernmental Negotiating Committee had requested the secretariat to prepare a paper for its eighth session, analysing the issue of submissions of notifications of final regulatory action for chemicals that were already subject to the interim PIC procedure and outlining options that would reconcile the need for information exchange with the need to avoid placing excessive reporting burdens on Parties or appraisal burdens on the secretariat.

66. Article 5 of the Convention requires that Parties provide notification for each final regulatory action taken to ban or severely restrict a chemical. When the Convention enters into force for a Party, it has also to notify the secretariat in writing of each final regulatory action in effect at that time. The Convention provides for no exemption, either as to the need to submit such notifications of final regulatory action or as to the content of the notifications, for chemicals already subject to the interim PIC procedure.

67. Notifications submitted since 11 September 1998 covered around 85 different chemicals, of which roughly 25 per cent were already subject to the interim PIC procedure. Any problems or burdens on countries might relate not so much to the fact that a chemical was subject to the interim PIC procedure as to the notification process itself.

68. The Committee considered the three options provided in document UNEP/FAO/PIC/INC.8/9 regarding the possible problems faced by Parties in preparing notifications of final regulatory action for chemicals already subject to the interim prior informed consent procedure.

69. The Committee concluded that Parties should continue to be required to submit full notifications (in line with the information requirements of annex I) for all regulatory actions on chemicals subject to the interim PIC procedure, with both Parties and the secretariat giving priority to the submission and verification of notifications on chemicals not yet included in the interim PIC procedure. That would offer sufficient flexibility, while avoiding unnecessary extra work. The Committee urged Parties to avail themselves of the assistance of the secretariat, and communicate to it any problems that they encountered.

J. Conflict of interest procedures for the Interim Chemical Review Committee

70. In its consideration of this subitem the Committee had before it a note by the secretariat containing a proposed draft disclosure form and procedure, together with a summary of the information on which the proposal was based (UNEP/FAO/PIC/INC.8/10).

71. The secretariat had, before drawing up the proposed form and procedure, been in contact with other secretariats which had bodies similar in function to the Interim Chemical Review Committee, to determine how they handled the issue of conflicts of interest.

72. The Committee decided to establish a working group, chaired by the representative of Colombia, to examine the issue in greater detail.

73. Reporting on the discussions in the working group, the Chair of the group said that it had pursued its work by considering how other international bodies, notably the Montreal Protocol, handled the issue of conflicts of interest. The group considered that Governments had the primary responsibility for avoiding conflicts of interest.

74. Decision INC-8/1 on conflict of interest procedures for the Interim Chemical Review Committee is appended in annex I to the present report.

V. PREPARATION FOR THE CONFERENCE OF THE PARTIES

A. Draft rules of procedure for the Conference of the Parties

75. In its consideration of this subitem, the Committee had before it a note and information paper by the secretariat (UNEP/FAO/PIC/INC.8/11 and UNEP/FAO/PIC/INC.8/INF/2) containing draft rules of procedure for the Conference of the Parties and comments by several Parties on those rules, respectively. The draft rules of procedure contained in document UNEP/FAO/PIC/INC.8/11 represented the text developed by the legal working group at the seventh session of the Committee.

76. A representative of the secretariat explained that the outstanding issues in the rules of procedure were in relation to: rule 4 (Dates of meetings); rule 7 (Participation of other bodies or agencies); rule 22 (Election of officers); rule 36 (Quorum); rule 46 (Majority required); and 51 (Method of voting for general matters).

77. The Committee decided to reconvene the legal working group under the chairmanship of Mr. Patrick Széll (United Kingdom) and requested it to accord priority in its deliberations to the examination and possible resolution of the outstanding issues identified in the draft rules of procedure.

78. Reporting on the discussions in the legal working group, the Chair of the group said that it had reached agreement on five of the six outstanding issues, namely rule 4 (Dates of meetings); rule 7 (Participation of other bodies or agencies); rule 22 (Election of officers); rule 36 (Quorum); and 51 (Method of voting for general matters). The Chair of the group informed the Committee that rule 46 (Majority required) remained under review. In connection with rule 7, the group underscored the importance of timely distribution of meeting documents.

79. The Committee took note of the report and expressed its appreciation for the efforts and results of the working group.

80. The Committee decided to forward to the Conference of the Parties the revised rules of procedure as contained in the conference room paper submitted by the legal working group (UNEP/FAO/PIC/INC.8/CRP.5) and adopted by the Committee, attached as annex III to the present report.

B. Draft financial rules and provisions

81. In its consideration of this subitem, the Committee had before it a note by the secretariat bearing draft financial rules and procedures for the Conference of the Parties, its subsidiary bodies and its secretariat, and a draft budget for the first biennium (UNEP/FAO/PIC/INC.8/12).

82. A representative of a regional economic integration organization informed the Committee that his group had submitted a paper on the draft financial rules and provisions.

83. Some representatives expressed the view that the scope of the Special Trust Fund, referred to in paragraph 9 of the draft financial rules, should be re-examined, and possibly redrafted in line with articles 15 and 16 of the Convention.

84. Another representative said that other options besides the United Nations scale of assessments should be considered for the apportionment of expenses, for example, the scales applied for specialized agencies, or ones in which no maximum or minimum contributions were specified.
85. A number of representatives expressed the view that it was premature to indicate maximum or minimum contributions. The Chair noted that the final decision on this would be taken by the Conference of the Parties.
86. The Committee remitted the draft financial rules and provisions to the legal working group, for its consideration after it had considered rules of procedure and settlement of disputes.
87. Reporting on the discussions in the legal working group, the Chair of the group reported that the group had studied the precedents in multilateral environmental agreements, which had given useful guidance. He pointed out that where matters were not specifically provided for by the proposed rules, the Financial Regulations and Rules of the United Nations would apply.
88. The Committee noted that there were three main issues still to be resolved: whether the various Trust Funds would be established by the Executive Director of UNEP, by the Director-General of FAO or by the Secretary-General of the United Nations; whether Parties with economies in transition should be assisted from the Special Trust Fund, or only developing country Parties; and the maximum possible assessment rate of contributions to the resources. The Chair expressed confidence that those issues could be resolved speedily at the ninth session of the Committee and that the financial rules would be ready for adoption by the first meeting of the Conference of the Parties.
89. One representative from a least developed small island state requested that the provision that no Party should contribute less than 0.01 per cent of the total resources should be re-examined.
90. The Committee decided to re-examine the draft financial rules and provisions at its next session with a focus on the outstanding issues. It also requested the secretariat to prepare a report on possible modalities to establish and manage Trust Funds.

C. Settlement of disputes

91. In its consideration of this item, the Committee had before it a note by the secretariat on settlement of disputes that was the same as that available to the Committee at its seventh session (UNEP/FAO/PIC/INC.8/13). The document was resubmitted for consideration by the Committee because the legal working group had not had time to discuss the issue at the previous meeting.
92. The Committee requested the legal working group to begin work on the issue of settlement of disputes after it had concluded work on rules of procedure.
93. Reporting on the discussion in the working groups, the Chair of the legal working group announced that only one point of the draft arbitration and conciliation procedure remained outstanding: the extension of the time period for designating the members of the arbitral tribunal. Some representatives in the working group had considered the two-month period specified in other multilateral environmental agreements to be too long and to the potential disadvantage of the claimant party in certain cases. Other representatives had been of the view that the two-month period was too short to properly identify arbitrators. There was a view that the Committee's advice would be helpful in determining whether the complexity of issues might affect the period required to identify arbitrators.

94. The Committee decided to place the item of arbitration and conciliation on the agenda of its ninth session, with a focus on the outstanding point referred to above. The text of the draft procedure submitted by the legal working group (UNEP/FAO/PIC/INC.8/CRP.8) and adopted by the Committee is attached as annex V to the present report.

95. The representative of a regional economic integration organization noted that while his organization accepted the result of the working group, it recalled the position it had already expressed at the sixth session of the Intergovernmental Negotiating Committee, that it would have preferred a more compulsory mechanism for dispute settlement.

D. Non-compliance

96. In its consideration of this subitem, the Committee had before it two notes on non-compliance (UNEP/FAO/PIC/INC.8/14 and UNEP/FAO/PIC/INC.8/15), containing model procedures and institutional mechanisms for handling cases of non-compliance and reporting, as requested by the Committee at its seventh session.

97. In its discussion of this issue, the Committee touched on a number of aspects. Several representatives favoured a mechanism that was facilitative and supportive in nature, and therefore able to encourage compliance, rather than a punitive and confrontational one. Other representatives were of the view that in addition to such a facilitative approach sanctions might be an appropriate part of the compliance mechanism in certain circumstances.

98. On the question of submissions on non-compliance to the Compliance Committee proposed in the model, one representative supported the approach of self-invocation outlined in the paper, but did not support invocation by another Party. Some representatives advocated a Party-to-Party approach, whereas other representatives preferred to have an option of enabling a third Party, the secretariat or the Conference of the Parties to trigger the compliance mechanism. It was stressed that the composition of the Compliance Committee should reflect principles of regional equity and a balance between developed and developing countries. One representative called for a balance between importing and exporting countries in the composition of the Compliance Committee. It was also stated that the compliance mechanism should be transparent, simple, practical and easily managed, and that reporting linked to the compliance procedure should not impose an undue burden on countries.

99. The Committee expressed its appreciation for the documents prepared by the secretariat, and decided to deal with the issue of non-compliance in an extended open-ended legal working group, using the above-mentioned documents as a basis for discussion.

100. Reporting on the discussions in the extended open-ended legal working group, the Chair of the group said that, while there was still much work ahead to develop the procedures and institutional mechanisms for handling cases of non-compliance, the group had had fruitful initial discussions on this matter.

101. The working group had taken up the first 19 paragraphs of the draft model procedures and institutional mechanisms for handling cases of non-compliance (UNEP/FAO/PIC/INC.8/14). Diverging views were expressed on the objective and functions of the compliance mechanism: one approach underscored its facilitative nature, while another approach added to it supervising aspects. Some laid emphasis on the importance of independent characteristics of the Compliance Committee, while others stressed the authority of the Conference of the Parties in relation to the objective and functions of the compliance mechanism. The group felt that a relatively small number of members, such as “10” or “15” as indicated in the draft model, would be appropriate for the Compliance Committee, on the understanding that the size of membership needed to be examined.

102. The group noted that the draft model adequately predicted two types of possible members, i.e., independent government-designated experts on the one hand, and government representatives on the other. While there was general support for the notion of equitable geographical distribution of the membership, a balance between developed and developing countries as well as other aspects (such as exporting and importing countries) required further examination. In addition, careful examination would be warranted with regard to frequency of meetings of the Compliance Committee, modalities of the meetings (i.e., open or closed), availability of reports to the public and handling of confidential information. The possible periodicity of reporting might be affected by the periodicity of meetings of the Conference of the Parties, as set forth in its rules of procedure. The group also noted that the relationship with other provisions of the Convention needed to be examined. The Chair of the group pointed out that further in-depth discussions would be required to consider who would trigger the compliance mechanism, what type of consequence should be envisaged, and monitoring and reporting mechanisms which provided the Compliance Committee with basic information. The working group stressed that non-compliance was a broad, complex matter requiring more extensive discussion at the Committee's ninth session.

103. The Committee noted the useful initial debate in the plenary and in the working group and decided to reconvene the working group as a "compliance" working group at the Committee's ninth session. To this end, the Committee requested the secretariat to produce a paper based on the draft model procedures and institutional mechanisms set out in document UNEP/FAO/PIC/INC.8/14, the specific ideas brought forward at the plenary of the Committee's current session, the views expressed by representatives in the working group, and any comments on non-compliance forwarded to the secretariat in writing. The Committee requested its members to forward their written comments to the secretariat by 31 March 2002.

104. It was also agreed that the possible reporting procedure contained in annex II to document UNEP/FAO/PIC/INC.8/15, be subject to a similar process. The Committee requested members to forward their written comments to the secretariat no later than 31 March 2002, so that a paper could be presented at the Committee's ninth session.

105. A representative speaking on behalf of a regional economic integration organization stated that the organization held strongly to the idea of an independent compliance committee, and of having a wide range of balanced "carrot-and-stick" measures to ensure compliance. He also highlighted the international environmental government process that was putting emphasis on compliance issues.

106. The Committee expressed its appreciation for the efforts of the extended open-ended legal working group and its Chair, and congratulated it on paving the way for more substantive discussion on compliance at the Committee's ninth session.

E. Assignment of specific Harmonized System customs codes

107. In its consideration of this subitem, the Committee had before it a note by the secretariat on the assignment of specific Harmonized System customs codes in preparation for the Conference of the Parties (UNEP/FAO/PIC/INC.8/18). The document reflected the secretariat's work with the World Customs Organization (WCO) on the approach and process for assigning Harmonized System customs codes for chemicals listed in annex III of the Convention.

108. The Committee noted that the preparatory process for the next set of amendments to the Harmonized System Nomenclature had already begun. In order for amendments to come into effect by 1 January 2007, as agreed by the Committee at its seventh session, they would have to be recommended by the Harmonized System Committee of WCO to the body's Council, and adopted by the WCO Council by mid-2004. The Committee also noted that both the Harmonized Systems Committee and the Council might have reservations in respectively preparing and adopting the recommendations incorporating the annex III chemicals in the

Harmonized System if the Rotterdam Convention had not entered into force by mid-2004. Failure to meet the deadline could cause the assignment of codes to be further delayed until 2012 or later.

109. It was reported that some countries and a regional economic integration organization were already working on the issue of harmonized customs codes for annex III chemicals at the domestic level and with WCO. The Committee took note that one Party had submitted the customs codes it used for annex III chemicals and invited other countries to do the same. It was also highlighted that the process of incorporating annex III chemicals into the Harmonized System Nomenclature would require the ongoing support of Governments. The matter of capacity-building for customs officers in developing countries was also raised as a complementary aspect of the customs issue.

110. The Committee requested the secretariat to continue to work with the WCO secretariat, and invited countries and regional economic integration organizations already dealing with the issue to share experiences and work with the secretariat in order to provide proposals that would best meet the Convention's needs. The Committee also requested that specific customs codes for the individual chemicals or groups of chemicals listed in annex III be proposed to WCO in time to meet the 2007 deadline for the next set of amendments to the Harmonized System. It was agreed that work in this area be based on table 1 of document UNEP/FAO/PIC/INC.8/18 showing how the existing Harmonized System could be amended but should also include any alternative approaches or views provided to the secretariat by representatives. On the matter of training and capacity-building for customs officers, the Committee endorsed the secretariat's participation in UNEP's programme to train customs officers in areas linked to recent multilateral environmental agreements, including the Rotterdam Convention.

111. The Committee expressed its appreciation for the report and commended the work of secretariat, welcoming the important progress made on the complex issue of Harmonized System customs codes.

F. Issues associated with the discontinuation of the interim prior informed consent procedure

112. In its consideration of this item, the Committee had before it a note by the secretariat setting out options for the issues associated with the discontinuation of the interim PIC procedure and indicating the most feasible solutions (UNEP/FAO/PIC/INC.8/16).

113. The Committee decided to establish a working group, and appointed the representatives of Australia and Sri Lanka as co-chairs. The Committee agreed that the four principles outlined in paragraph 4 of document UNEP/FAO/PIC/INC.8/16 were a sound basis for work and requested the working group to sort the relevant issues into two main categories: those on which consensus had been reached on how to move forward with recommendations to the Conference of the Parties, and issues for which no consensus had been reached, but which had been clarified and could be brought to the consideration of the Committee at its ninth meeting for further discussion.

114. The Committee underlined that its goal in this matter was to present a clear, definite set of options and solutions to the Conference of the Parties to guide the transition from interim PIC procedure to implementation of the Convention.

115. Reporting on the discussions in the working group, the Co-Chair of the group reported that the work of the group had proceeded on the basis of the four principles outlined in paragraph 4 of document UNEP/FAO/PIC/INC.8/16. The group had succeeded in reaching consensus on ten of the issues to be examined. For the remaining five, they had succeeded in clearly delineating options for further consideration.

116. The Committee took note with appreciation of the work of the working group, and agreed to continue its examination of the issue at its ninth session.

VI. ISSUES ARISING OUT OF THE CONFERENCE OF PLENIPOTENTIARIES

A. Support for implementation

117. In its consideration of this subitem, the Committee had before it a note by the secretariat containing information on activities for the facilitation of implementation and ratification (UNEP/FAO/PIC/INC.8/2, part V).

118. The Committee noted that the secretariat, because of a shortfall in funding, had not been able to organize workshops dedicated to the implementation of the Convention. The secretariat had participated in three joint regional workshops with secretariats of the Stockholm Convention and the Basel Convention, thus making use of synergies between those conventions and the Rotterdam Convention. Workshops were planned for 2002 in Senegal and, funds permitting, for Central and Eastern Europe and West Asia. In these workshops the emphasis would be on hands-on experience rather than awareness-raising. In that regard, the Committee took note, with appreciation, of an offer from Ukraine to host the regional workshop for the Central and Eastern European countries.

119. The Committee also took note of the development of advocacy and guidance material and the PIC Web site. These activities had also been delayed due to lack of financial resources.

120. The representative of a regional economic integration organization reported on a pilot project which had involved an exchange of designated national authorities.

121. The representative of Switzerland announced that his Government would explore sponsoring a workshop in the Caribbean in 2002.

B. Dispute settlement, illicit trafficking and responsibility and liability

122. In its consideration of this subitem, the Committee had before it a note by the secretariat containing information on the work of the working group on illegal trafficking under the Inter-Organization Programme for the Sound Management of Chemicals (IOMC) (UNEP/FAO/PIC/INC.8/INF/6).

123. A preliminary meeting to start the work of the IOMC group had been held in Geneva on 27 August 2001. The Committee noted that a second meeting of the IOMC group would be held in December 2001, and that in preparation for that meeting, UNEP would collect information on the work of IOMC members and other relevant organizations dealing with issues related to illicit trafficking and responsibility and liability.

124. The representative of a regional economic integration organization provided information on a network among national authorities in charge of control and enforcement, covering the whole field of chemical substances legislation, which had proved to be a very useful forum for information exchange, and which had also undertaken enforcement projects and monitoring.

125. The Committee took note of the report by the secretariat, and agreed to place the issue on the agenda of the ninth session.

C. Location of the secretariat

126. In its consideration of the item, the Committee had before it a note by the secretariat on the location of the secretariat (UNEP/FAO/PIC/INC.8/17), together with the offers received from Italy and Switzerland jointly (UNEP/FAO/PIC/INC.8/INF.4) and Germany (UNEP/FAO/PIC/INC.8/INF.5).

127. Formal presentations of the offers were made by representatives of Germany and Switzerland and Italy.

128. A number of representatives stressed the importance of ongoing discussions on international environmental governance and its anticipated results, and noted that these should be considered by the Conference of the Parties when it took its decision on the location of the secretariat.

129. The Committee welcomed the detailed information provided, and expressed its appreciation for the offers by the Governments. It took note of both offers and decided to submit them to the Conference of the Parties for a decision on the matter at its first session.

VII. STATUS OF SIGNATURE AND RATIFICATION OF THE CONVENTION

130. In its consideration of the item, the Committee had before it a note by the secretariat on the status of signature and ratification of the Convention (UNEP/FAO/PIC/INC.8/INF/1). Many representatives announced that the process of approval, accession or ratification was progressing favourably in their countries and that they hoped shortly to deposit the relevant instruments.

131. The Committee took note of the information presented and called upon States and regional economic organizations entitled to do so to consider signing and ratifying, accepting or approving the Convention, if they had not yet done so, with a view to bringing it into force as soon as possible.

VIII. OTHER MATTERS

132. The Committee expressed its great appreciation to Mr Patrick Széll. His extensive contributions towards the success of the Rotterdam Convention were enthusiastically noted. Mr. Széll chaired the legal drafting group throughout the negotiations and, following the adoption of the treaty, chaired the legal working group which established the legal provisions for its implementation.

133. The Committee welcomed the offer by the Federal Republic of Germany to organize and host its ninth session in Bonn. The offer included the provision of 1.5 million deutsch marks, which was expected to cover the full cost of the meeting, as shown in the approved budget for 2002, including any additional costs involved in moving the meeting from Geneva to Bonn.

134. The Committee decided that its ninth session would be held from 30 September to 4 October 2002.

135. Representatives of two regional groups drew attention to views expressed in two conference room papers circulated during the meeting (UNEP/FAO/PIC/INC.8/CRP.15 and UNEP/FAO/PIC/INC.8/CRP.16).

IX. ADOPTION OF THE REPORT

136. The Committee adopted its report on the basis of the draft report, contained in documents UNEP/FAO/PIC/INC.8/L.1 and L.1/Add.1 which had been circulated during the meeting, as amended, and on the understanding that finalization of the report would be entrusted to the Rapporteur, working in conjunction with the secretariat.

X. CLOSURE OF THE SESSION

137. Following the customary exchange of courtesies, the Chair declared the session closed at 4.55 p.m. on Friday, 12 October 2001.

Annex I

DECISIONS ADOPTED BY 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 AT ITS EIGHTH SESSION, HELD IN ROME, 8-12 OCTOBER 2001

Decision INC-8/1: Rules and procedures for preventing and dealing with conflicts of interest relating to the activities of the Interim Chemical Review Committee

The Intergovernmental Negotiating Committee

1. Decides that it is essential to safeguard confidence in the integrity of the process of work of the Interim Chemical Review Committee while encouraging experienced and competent persons to accept membership in the Committee by:
 - (a) Establishing an appropriate code of conduct;
 - (b) Establishing clear rules with respect to conflict of interest while and after serving as a member;
 - (c) Minimizing the possibility of conflicts arising between the private interests and public duties of members; and
 - (d) Establishing appropriate procedures for preventing and dealing with conflicts of interest relating to the activities of the Interim Chemical Review Committee.
2. Decides, without prejudice to the obligations incumbent upon the individual members of the Interim Chemical Review Committee as set out in Paragraphs 3 and 4 below, that the Governments have primary responsibility in ensuring compliance with this decision. To this effect, when considering designating experts in chemicals management for appointment by the Intergovernmental Negotiating Committee, the Governments shall exercise due diligence in order to prevent potential or actual situations of conflict of interest.
3. Decides that in carrying out their duties the members of the Interim Chemical Review Committee shall:
 - (a) Perform their official duties and arrange their private affairs in such a manner that public confidence and trust in the integrity, objectivity and impartiality of the Interim Chemical Review Committee are preserved and enhanced;
 - (b) Act in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law of any country;
 - (c) Act in good faith for the best interest of the process;
 - (d) Exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;
 - (e) Not give any preferential treatment to anyone or any interest in any official manner related to the Interim Chemical Review Committee;

- (f) Not solicit or accept gifts, hospitality, or other benefits from persons, groups or organizations having or likely to have dealings with the Interim Chemical Review Committee;
- (g) Not accept transfers of economic benefit, other than customary hospitality, or other benefits of nominal value, unless the transfer is pursuant to an enforceable contract or property right of the member;
- (h) Not step out of their role as a member to assist other entities or persons in their dealings with the Interim Chemical Review Committee where this act would result in preferential treatment to any person or group;
- (i) Not knowingly take advantage of, or benefit from, information that is obtained in the course of their duties and responsibilities as a member of the Interim Chemical Review Committee, and that is not generally available to the public; and
- (j) Not act, after their term of office as a member of the Interim Chemical Review Committee in such a manner as to take improper advantage of their previous office.

4. Decides that to avoid the possibility or appearance that members of the Interim Chemical Review Committee might receive preferential treatment, members shall not seek preferential treatment for themselves or third parties or act as paid intermediaries for third parties in dealings with the Interim Chemical Review Committee.

5. Decides that the members of the Interim Chemical Review Committee shall disclose activities, including business or financial interest, which might call into question their ability to discharge their duties and responsibilities objectively. The members of the Interim Chemical Review Committee must annually disclose their activities. In addition, they must disclose any financing from a company engaged in commercial or industrial activities for their participation in the Interim Chemical Review Committee. To this effect, the Intergovernmental Negotiating Committee adopts the declaration of interests form as set out in the Appendix to this decision for consideration in connection with the designation, appointment and review of the status of experts to the Interim Chemical Review Committee.

6. Decides that in assessing potential or actual situations of conflict of interest the criteria set out in Paragraph 1 of the declaration of interest form should be applied by all concerned in a consistent manner, on a case by case basis, with regard to all relevant circumstances involved in each particular case.

7. Decides to adopt the following procedure for the implementation of the declaration of interests form:

Review process prior to appointment

- (a) When considering designating an expert to the Interim Chemical Review Committee, the Government concerned shall inform the expert that he or she shall be requested by the interim secretariat to fill in a declaration of interests form;
- (b) Prior to the designation of an expert by a Government, or concurrently with the process for that designation, the interim secretariat shall request the expert, through the Government, to fill in a declaration of interests form. The form shall be submitted by the designating Government to the interim secretariat;
- (c) Should the interim secretariat require further clarification as to the suitability of an expert, the interim secretariat shall discuss the matter with the designating Government and the prospective expert, through the Government, as appropriate. Depending on the outcome of these discussions, the interim secretariat may refer the matter to the Bureau of the Intergovernmental Negotiating Committee. The Bureau of the

Intergovernmental Negotiating Committee shall review the matter and make a recommendation to the concerned Government;

(d) Should a Government be in disagreement with a recommendation by the Bureau of the Intergovernmental Negotiating Committee, that Government may request that the matter be considered by the Intergovernmental Negotiating Committee.

Review process after appointment

(e) All appointed experts shall be required to inform the interim secretariat, through the Government that designated them, of any change in the information provided in a declaration of interests form previously submitted;

(f) In the course of the mandate of an expert, should the interim secretariat be of the opinion that a situation of conflict of interest could arise or has arisen, the interim secretariat shall discuss the matter with that expert and, where deemed appropriate, with the designating Government. The Bureau of the Intergovernmental Negotiating Committee may recommend to the Intergovernmental Negotiating Committee the temporary suspension of the participation of the expert in some or in all the activities of the Interim Chemical Review Committee. A decision on the matter shall be taken by the Intergovernmental Negotiating Committee at its next session.

General provisions

(g) Subject to the provisions of this decision, the interim secretariat shall take all necessary measures to safeguard the restricted character of the information provided in the declaration of interests form. To the extent necessary for the implementation of this decision, this information may be provided to the Intergovernmental Negotiating Committee and its Bureau and subsidiary bodies, as deemed appropriate.

(h) Where the objectivity of a particular meeting has been called into question, the Intergovernmental Negotiating Committee shall define the conditions for the disclosure of all relevant information in addition to that which is provided for in paragraph 7 (g) above;

(i) The Intergovernmental Negotiating Committee shall consider any issue that is not covered by the present decision;

(j) The Intergovernmental Negotiating Committee shall keep under review the implementation of the present decision and, not later than five years after its adoption, it will carry out a comprehensive assessment of its implementation with a view to making such amendments thereto as may be required. Should the Conference of Parties meet before this term, it is recommended that this comprehensive assessment be made at its first session.

8. Decides that a declaration of interests form shall be completed by current members of the Interim Chemical Review Committee and submitted by the designating Government to the interim secretariat before the third session of this Committee, due to be held in February 2002. This declaration shall be considered under the provisions of Paragraph 7 (f). Further decides that any designation of new experts to serve in the Interim Chemical Review Committee shall be subject to the relevant provisions of Paragraph 7 of this decision.

AppendixIntergovernmental Negotiating CommitteeInterim Chemical Review CommitteeDeclaration of interests form

Measures need to be taken to ensure that the best possible assessment of scientific evidence is achieved in an independent atmosphere free of either direct or indirect pressures. Thus, to ensure the technical integrity and impartiality of the Interim Chemical Review Committee's work, it is necessary to avoid situations in which financial or other interests might affect the outcome of that work.

Each expert is therefore asked to declare any interests that could constitute a real, potential or apparent conflict of interest, with respect to his/her involvement in the meeting or work, between, on the one hand, commercial entities and the participant personally, and, on the other hand, commercial entities and the administrative unit with which the participant has an employment relationship. "Commercial entity" refers to any company, association (e.g., trade association), organization or any other entity whatsoever, with commercial interests.

1. What is a conflict of interest?

Conflict of interest means that the expert or his/her partner, or the administrative unit with which the expert has an employment relationship, has a financial or other interest that could unduly influence the expert's position with respect to the subject-matter being considered. An apparent conflict of interest exists when an interest would not necessarily influence the expert but could result in the expert's objectivity being questioned by others. A potential conflict of interest exists with an interest which any reasonable person could be uncertain whether or not should be reported.

Different types of financial or other interests, whether personal or with the administrative unit with which the expert has an employment relationship, can be envisaged and the following list, which is not exhaustive, is provided for your guidance. For example, the following types of situations should be declared:

- (a) A current proprietary interest in a substance, technology or process (e.g. ownership of a patent), to be considered in - or otherwise related to the subject matter of - the meeting or work;
- (b) A current financial interest, e.g., shares or bonds, in a commercial entity with an interest in the subject matter of the meeting or work (except share holdings through general mutual funds or similar arrangements where the expert has no control over the selection of shares);
- (c) An employment, consultancy, directorship, or other position during the past four years, whether or not paid, in any commercial entity which has an interest in the subject matter of the meeting or work, or an ongoing negotiation concerning prospective employment or other association with such commercial entity;
- (d) Performance of any paid work or research during the past four years commissioned by a commercial entity with interests in the subject matter of the meetings or work;
- (e) Payment or other support covering a period within the past four years, or an expectation of support for the future, from a commercial entity with an interest in the subject matter of the meetings or work, even if it does not convey any benefit to the expert personally but which benefits his/her position or administrative unit, e.g., a grant or fellowship or other payment, e.g., for the purpose of financing a post or consultancy.

With respect to the above, a commercial interest in a competing substance, technology or process, or an interest in or association with, work for or support by a commercial entity having a direct competitive interest must similarly be disclosed.

2. How to complete this declaration

Please complete this declaration form and submit it to the Designated National Authority for transmission to the interim secretariat. Any financial or other interests that could constitute a real, potential or apparent conflict of interest should be declared: first, with respect to yourself or partner; and, second, with respect to any administrative unit with which you have an employment relationship. Only the name of the commercial entity and the nature of the interest is required to be disclosed, no amounts need to be specified (though they may be, if you consider this information to be relevant to assessing the interest). With respect to points (a) and (b) in the list above, the interest should only be declared if it is current. With respect to points (c), (d) and (e), any interest during the past four years should be declared. If the interest is no longer current, please state the year when it ceased. With respect to point (e), the interest ceases when a financed post or fellowship is no longer occupied, or when support for an activity ceases.

3. Assessment and outcome

The information submitted by you will be used to assess whether the declared interests constitute an appreciable real, potential or apparent conflict of interest in accordance with the provisions of decision INC-8/1.

Information disclosed on this form shall reside within the interim secretariat and shall be made available to the Intergovernmental Negotiating Committee, its Bureau and subsidiary bodies, as deemed appropriate.

4. Declaration

Have you or your partner any financial or other interest in the subject matter of the meeting or work in which you will be involved, which may be considered as constituting a real, potential or apparent conflict of interest?

Yes: No: If yes, please give details in the box below.

Do you have, or have you had during the past four years, an employment or other professional relationship with any entity directly involved in the production, manufacture, distribution or sale of chemicals or pesticides or directly representing the interests of any such entity?

Yes: No: If yes, please give details in the box below.

Type of interest, e.g. patent, shares, employment, association, payment (including details on any compound, work, etc.)	Name of commercial entity	Belongs to you, partner or unit?	Current interest? (or year ceased)

Is there anything else that could affect your objectivity or independence in the meeting or work, or the perception by others of your objectivity and independence?

I hereby declare that the disclosed information is correct and that no other situation of real, potential or apparent conflict of interest is known to me. I undertake to inform you of any change in these circumstances, including if an issue arises during the meeting or work itself.

Signature

Date

Name

Government

I hereby declare that I shall regulate my conduct in accordance with the provisions of paragraphs 3 and 4 of decision INC-8/1 .

Signature

Name

Decision INC-8/2: Confirmation of an expert designated for the Interim Chemical Review Committee

The Intergovernmental Negotiating Committee

Recalling its decision INC-6/2, in which it resolved that the 29 Governments it had identified should formally designate experts for the Interim Chemical Review Committee, and its decision INC-7/1, in which it decided to formally appoint 29 experts designated by Governments to act as members of the Interim Chemical Review Committee,

Noting the resignation of Mr. Ian Coleman (Australia) from the Interim Chemical Review Committee,

1. Decides to formally appoint the following expert to act as a member of the Interim Chemical Review committee from the South-West Pacific region:

Australia Mr. André Clive Mayne;

2. Reaffirms the provisions of decision INC-6/2 as regards the duration and terms of service of the experts, and specifically that all experts shall serve for a period of three years from the date of decision INC-6/2, or until the first session of the Conference of the Parties, whichever shall occur first.

Decision INC-8/3: Maleic hydrazide

The Intergovernmental Negotiating Committee

1. Approves the recommendation of the Interim Chemical Review Committee that maleic hydrazide not become subject to the interim PIC procedure and that a decision guidance document not be developed;

2. Makes subject paragraph 1 to written confirmation to the secretariat from the four identified manufacturers engaged in international trade (Uniroyal Chemical, Drexel Chemical, Fair Products and Otsuka Chemicals) by 1 January 2002 that the level of free hydrazine is not more than 1 part per million and to their commitment to seek and comply with the specifications of the Food and Agriculture Organization of the United Nations for the potassium salt of maleic hydrazide by 1 January 2004;

3. Decides that the present resolution shall not cause prejudice to or set precedent for any future policy on contaminants;

4. Requests relevant designated national authorities to encourage each identified manufacturer to provide written confirmation to the secretariat by 1 January 2002 that the level of free hydrazine is not more than 1 part per million and that it is committed to seek and comply with the specifications of the Food and Agriculture Organization of the United Nations for the potassium salt of maleic hydrazide by 1 January 2004;

5. Requests that confirmations by manufacturers of maleic hydrazide that the level of free hydrazine is not more than 1 part per million be submitted through the relevant designated authority to the secretariat;

6. Requests the Interim Chemical Review Committee to review whether confirmations by the four identified manufacturers of maleic hydrazide that the level of hydrazine is not more than 1 part per million are provided to the secretariat by 1 January 2002, to review the statements and to report to the Intergovernmental Negotiating Committee at its ninth session;

7. Requests designated national authorities to identify additional manufacturers of maleic hydrazide engaged in international trade and submit this information to the secretariat for consideration by the Interim Chemical Review Committee;
8. Encourages the Food and Agriculture Organization of the United Nations to give priority to the preparation of specifications for the potassium salt of maleic hydrazide;
9. Requests designated national authorities in future to provide greater specificity about the chemicals subject to their reported regulatory actions, in order to avoid the necessity of the Interim Chemical Review Committee having to interpret the notifications to determine which chemicals are to be considered;
10. Requests the Interim Chemical Review Committee to follow progress made with regard to the preparation of specifications of the Food and Agriculture Organization of the United Nations for the potassium salt of maleic hydrazide and report to the Intergovernmental Negotiating Committee at its ninth session.

Annex IIAPPROVED BUDGET FOR 2003
(United States dollars)

	Year 2003
One session of the INC/COP in Rome or Geneva	625,000
One session of the ICRC in Rome or Geneva	145,000
Facilitation of implementation and ratification	0
Office automation and databases	40,000
Core secretariat costs	1,355,132
Total	2,165,132
United Nations administrative costs (13%)	281,467
TOTAL	2,446,599

Annex III

DRAFT RULES OF PROCEDURE FOR THE CONFERENCE OF THE PARTIES

I. INTRODUCTION

ScopeRule 1

The present rules of procedure shall apply to any meeting of the Conference of the Parties to the Convention convened in accordance with Article 18 of the Convention.

DefinitionsRule 2

For the purposes of the present rules:

1. "Convention" means the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, adopted at Rotterdam, on 10 September 1998;
2. "Parties" means Parties to the Convention;
3. "Conference of the Parties" means the Conference of the Parties established by Article 18 of the Convention;
4. "Meeting" means any ordinary or extraordinary meeting of the Conference of the Parties convened in accordance with Article 18 of the Convention;
5. "Regional economic integration organization" means an organization defined in Article 2 (h) of the Convention;
6. "President" means the President of the Conference of the Parties elected in accordance with Rule 22, paragraph 1;
7. "Secretariat" means the Secretariat established by Article 19, paragraph 1 of the Convention.
8. "Subsidiary body" means the body established pursuant to Article 18, paragraph 6 of the Convention, as well as any body established pursuant to Article 18, paragraph 5 (a) of the Convention.
9. "Parties present and voting" means Parties present at the meeting in which voting takes place and casting an affirmative or negative vote. Parties abstaining from voting shall be considered as not voting.

II. MEETINGS

Place of meetings

Rule 3

The meetings of the Conference of the Parties shall take place at the seat(s)^{1/} of the Secretariat, unless the Conference of the Parties decides otherwise or other appropriate arrangements are made by the Secretariat in consultation with the Parties.

Dates of meetings

Rule 4

1. Unless otherwise decided by the Conference of the Parties, the second and third ordinary meetings of the Conference of the Parties shall be held yearly and, thereafter, ordinary meetings shall be held every two years.
2. At each ordinary meeting, the Conference of the Parties shall decide on the date and duration of the next ordinary meeting. The Conference of the Parties should endeavour not to hold such meetings at a time that would make the attendance of a significant number of delegations difficult.
3. Extraordinary meetings of the Conference of the Parties shall be held at such times as may be decided either by the Conference of the Parties at an ordinary meeting or at the written request of any Party, provided that, within ninety days of the request being communicated to the Parties by the Secretariat, it is supported by at least one third of the Parties.
4. In the case of an extraordinary meeting held at the written request of a Party, it shall be held not more than ninety days after the date on which the request is supported by at least one third of the Parties in accordance with paragraph 3.

Notification of meetings

Rule 5

The Secretariat shall notify all Parties of the dates and venue of ordinary and extraordinary meetings at least sixty days before the meeting in question is due to commence.

III. OBSERVERS

Participation of United Nations, specialized agencies and non-Parties

Rule 6

1. 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 as observers.

¹ Will depend on the decision regarding the location of the Secretariat.

2. Such observers may, upon invitation of the President, participate without the right to vote in the proceedings of any meeting, unless at least one third of the Parties present at the meeting object.

Participation of other bodies or agencies

Rule 7

1. Any body or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by the Convention and which has informed the Secretariat of its wish to be represented at a meeting as an observer may be so admitted unless at least one third of the Parties present at the meeting object.

2. Such observers may, upon invitation of the President, participate without the right to vote in the proceedings of any meeting in matters of direct concern to the body or agency they represent, unless at least one third of the Parties present at the meeting object.

Notification by Secretariat

Rule 8

The Secretariat shall notify those entitled to be observers and those which have informed the Secretariat of their wish to be represented, pursuant to rules 6 and 7, of the dates and venue of the next meeting.

IV. AGENDA

Preparation of provisional agenda

Rule 9

In agreement with the President, the Secretariat shall prepare the provisional agenda for each meeting.

Items on provisional agenda for ordinary meeting

Rule 10

The provisional agenda for each ordinary meeting shall include, as appropriate:

- (a) Items arising from the articles of the Convention, including those specified in its Article 18;
- (b) Items the inclusion of which has been decided at a previous meeting;
- (c) Items referred to in rule 16;
- (d) The proposed budget as well as all questions pertaining to the accounts and financial arrangements;
- (e) Any item proposed by a Party and received by the Secretariat before the provisional agenda is circulated.

Distribution of provisional agenda

Rule 11

For each ordinary meeting, the provisional agenda, together with supporting documents, shall be distributed in the official languages by the Secretariat to the Parties at least six weeks before the opening of the meeting.

Supplementary items

Rule 12

The Secretariat shall, in agreement with the President, include any item that is proposed by a Party and has been received by the Secretariat after the provisional agenda for an ordinary meeting has been produced, but before the opening of the meeting, in a supplementary provisional agenda.

Addition, deletion, deferment or amendment of items

Rule 13

When adopting the agenda for an ordinary meeting, the Conference of the Parties may decide to add, delete, defer or amend items. Only items that are considered by the Conference of the Parties to be urgent and important may be added to the agenda.

Agenda for extraordinary meeting

Rule 14

The agenda for an extraordinary meeting shall consist only of those items proposed for consideration by the Conference of the Parties at an ordinary meeting or in the request for the holding of the extraordinary meeting. It shall be distributed to the Parties at the same time as the notification of the extraordinary meeting.

Report on administrative and budgetary implications

Rule 15

The Secretariat shall report to the Conference of the Parties on the administrative and budgetary implications of all substantive agenda items submitted to the meeting, before they are considered by it. Unless the Conference of the Parties decides otherwise, no such substantive agenda item shall be considered until at least forty-eight hours after the Conference of the Parties has received a report of the Secretariat on its administrative and budgetary implications.

Incomplete consideration of item

Rule 16

Any item of the agenda of an ordinary meeting, consideration of which has not been completed at the meeting, shall be included automatically in the provisional agenda of the next ordinary meeting, unless otherwise decided by the Conference of the Parties.

V. REPRESENTATION AND CREDENTIALS

Composition of delegation

Rule 17

Each Party participating in a meeting shall be represented by a delegation consisting of a head of delegation and such other accredited representatives, alternate representatives and advisers as it may require.

Alternates and advisers

Rule 18

An alternate representative or an adviser may act as a representative upon designation by the head of delegation.

Submission of credentials

Rule 19

The credentials of representatives as well as the names of alternate representatives and advisers shall be submitted to the Secretariat if possible not later than twenty-four hours after the opening of the meeting. Any later change in the composition of the delegation shall also be submitted to the Secretariat. The credentials shall be issued either by the Head of State or Government or by the Minister of Foreign Affairs or, in the case of a regional economic integration organization, by the competent authority of that organization.

Examination of credentials

Rule 20

The Bureau of any meeting shall examine the credentials and submit its report to the Conference of the Parties.

Provisional participation

Rule 21

Representatives shall be entitled to participate provisionally in the meeting, pending a decision by the Conference of the Parties to accept their credentials.

VI. OFFICERS

Election of officers

Rule 22

1. At the first ordinary meeting of the Conference of the Parties, a President and four Vice-Presidents, one of whom shall act as Rapporteur, shall be elected from among the representatives of the Parties present at the meeting. These officers shall serve as the Bureau of the Conference of the Parties. Each of the United Nations

regional groups shall be represented by one Bureau member. The Bureau shall remain in office until the closure of the second ordinary meeting of the Conference of the Parties, including for any intervening extraordinary meeting.

2. At the second and subsequent ordinary meetings of the Conference of the Parties, the election of officers from among the Parties to serve as the Bureau for the following meeting of the Conference of the Parties shall take place before the end of the meeting. These officers shall commence their term of office at the closure of the meeting and shall serve until the closure of the following ordinary meeting of the Conference of the Parties, including for any intervening extraordinary meeting.

3. The offices of the President and Rapporteur shall normally be subject to rotation among the United Nations regional groups. No elected officer may serve on the Bureau for more than two consecutive terms.

4. The President shall participate in meetings of the Conference of the Parties in that capacity and shall not at the same time exercise the rights of a representative of a Party. The Party concerned shall designate another representative who shall be entitled to represent the Party in the meetings and to exercise the right to vote.

5. The Chairpersons of the Chemical Review Committee and any other subsidiary bodies shall be members ex-officio of the Bureau.

General powers of the President

Rule 23

1. In addition to exercising the powers conferred upon the President elsewhere by the present rules, the President shall declare the opening and closing of the meeting, preside at the meetings, ensure the observance of the present rules, accord the right to speak, put questions to the vote and announce decisions. The President shall rule on points of order and, subject to the present rules, shall have complete control of the proceedings and over the maintenance of order thereat.

2. The President may propose to the Conference of the Parties the closure of the list of speakers, a limitation on the time to be allowed to speakers and on the number of times each representative may speak on a question, the adjournment or the closure of the debate and the suspension or the adjournment of a session.

3. The President, in the exercise of the functions of that office, remains under the authority of the Conference of the Parties.

Acting President

Rule 24

1. The President, if temporarily absent from a meeting or any part thereof, shall designate a Vice-President to act as President. The President so designated shall not at the same time exercise the rights of a representative of a Party.

2. A Vice-President acting as President shall have the powers and duties of the President.

Replacement of an officerRule 25

If an officer of the Bureau resigns or is otherwise unable to complete the assigned term of office or to perform the functions of that office, a representative of the same Party shall be named by the Party concerned to replace the said officer for the remainder of that officer's term.

VII. SUBSIDIARY BODIES

Application of rules to subsidiary bodiesRule 26

Save as provided in rules 28 to 33, the present rules shall apply mutatis mutandis to the proceedings of any subsidiary bodies, subject to any modifications decided by the Conference of the Parties.

Establishment of subsidiary bodiesRule 27

1. The Conference of the Parties may establish, in accordance with Article 18, paragraph 5 (a), such subsidiary bodies, as it considers necessary for the implementation of the Convention, in addition to the subsidiary body established under Article 18, paragraph 6.
2. Meetings of subsidiary bodies shall be held in public unless the Conference of the Parties or the subsidiary body concerned decides otherwise.

Quorum for non open-ended subsidiary bodiesRule 28

In the case of a subsidiary body that is not open-ended, a simple majority of the Parties designated by the Conference of the Parties to participate therein shall constitute a quorum.

Dates of meetingsRule 29

The Conference of the Parties shall decide on the dates of the meetings of the subsidiary bodies, taking note of any proposals to hold such meetings in conjunction with the meetings of the Conference of the Parties.

Election of officers for subsidiary bodiesRule 30

The Chair of the Chemical Review Committee shall be elected by the Conference of the Parties. Unless the Conference of the Parties decides otherwise, the Chair of any other subsidiary body shall be elected by the Conference of the Parties. Each subsidiary body shall elect its own officers other than the Chair. The officers of

such subsidiary bodies shall be elected with due regard to the principle of equitable geographical representation and shall not serve for more than two consecutive terms.

Matters for consideration

Rule 31

Subject to Article 18, paragraph 6 (b), of the Convention, the Conference of the Parties shall determine the matters to be considered by each subsidiary body and the President may, upon the request of the Chair of the subsidiary body concerned, adjust the allocation of work.

VIII. SECRETARIAT

Duties of the heads of the Secretariat

Rule 32

1. The heads of the Secretariat shall jointly exercise the functions of that office in all meetings of the Conference of the Parties and of its subsidiary bodies. Either head of the Secretariat may designate a representative to serve in its place.
2. The heads of the Secretariat shall jointly arrange for the provision of staff and services required by the Conference of the Parties and its subsidiary bodies, within available resources. The heads of the Secretariat shall jointly manage and direct such staff and services and provide appropriate support and advice to the Bureau of the Conference of the Parties and its subsidiary bodies.

Functions of the Secretariat

Rule 33

In addition to the functions specified in the Convention, in particular in article 19, the Secretariat shall, in accordance with the present rules:

- (a) Arrange for interpretation at the meeting;
- (b) Collect, translate, reproduce and distribute the documents of the meeting;
- (c) Publish and distribute the official documents of the meeting;
- (d) Make and arrange for keeping of sound recordings of the meeting; and
- (e) Arrange for the custody and preservation of the documents of the meeting.

IX. CONDUCT OF BUSINESS

SessionsRule 34

Sessions of the Conference of the Parties shall be held in public, unless the Conference of the Parties decides otherwise.

QuorumRule 35

1. The President shall not declare a session of the meeting of the Conference of the Parties open or permit the debate to proceed unless at least one third of the Parties to the Convention are present. The presence of two thirds of the Parties to the Convention shall be required for any decision to be taken.
2. For the purposes of determining a quorum for a decision to be taken on a matter within the competence of a regional economic integration organization, that organization shall be counted to the extent of the number of votes it is entitled to cast in accordance with paragraph 2 of Article 23 of the Convention.

Procedures for speakingRule 36

1. No one may address a meeting without having previously obtained the permission of the President. Subject to rules 38, 39, 40 and 42, the President shall call upon speakers in the order in which they signify their desire to speak. The Secretariat shall maintain a list of speakers. The President may call a speaker to order if the speaker's remarks are not relevant to the subject under discussion.
2. The Conference of the Parties may, on a proposal from the President or from any Party, limit the time allowed to each speaker and the number of times each representative may speak on a question. Before a decision is taken, two representatives may speak in favour of and two against a proposal to set such limits. When the debate is limited and a speaker exceeds the allotted time, the President shall call the speaker to order without delay.

PrecedenceRule 37

The Chair or Rapporteur of a subsidiary body may be accorded precedence for the purpose of explaining the conclusions arrived at by that subsidiary body.

Points of orderRule 38

During the discussion of any matter, a representative may at any time raise a point of order, on which the President shall immediately rule in accordance with the present rules. A representative may appeal against the ruling of the President. The appeal shall be put to the vote immediately and the ruling shall stand unless

overruled by a majority of the Parties present and voting. A representative may not, in raising a point of order, speak on the substance of the matter under discussion.

Decisions on competence

Rule 39

Any motion calling for a decision on the competence of the Conference of the Parties to discuss any matter or to adopt a proposal or an amendment to a proposal submitted to it shall be put to the vote before the matter is discussed or a vote taken on the proposal or amendment in question.

Proposals and amendments to proposals

Rule 40

Proposals and amendments to proposals shall normally be introduced in writing, in one of the official languages, by the Parties and handed to the Secretariat, which shall circulate copies to delegations. As a general rule, no proposal or amendment to proposal shall be discussed or put to the vote at any session unless copies of it have been circulated to delegations not later than the day preceding that session. The President may, however, permit the discussion and consideration of proposals, of amendments to proposals or of procedural motions even though such proposals, amendments to proposals or motions have not been circulated or have been circulated only the same day.

Order of procedural motions

Rule 41

1. Subject to rule 40, the following motions shall have precedence in the order indicated below over all other proposals or motions:

- (a) To suspend the meeting;
- (b) To adjourn the meeting;
- (c) To adjourn the debate on the question under discussion;
- (d) To close the debate on the question under discussion.

2. Permission to speak on a motion falling within (a) to (d) above shall be granted only to the proposer and, in addition, to one speaker in favour of and two against the motion, after which it shall be put immediately to the vote.

Withdrawal of proposals or motions

Rule 42

A proposal or motion may be withdrawn by its proposer at any time before voting on it has begun, provided that the proposal or motion has not been amended. A proposal or motion thus withdrawn may be reintroduced by any other Party.

Reconsideration of proposalsRule 43

When a proposal has been adopted or rejected, it may not be reconsidered at the same meeting, unless the Conference of the Parties, by a two-thirds majority of the Parties present and voting, so decides. Permission to speak on a motion to reconsider shall be accorded only to the mover, to one speaker in favour of and two against the proposal, after which it shall be put immediately to the vote.

X. VOTING

Right to voteRule 44

1. Each Party shall have one vote, except as provided for in paragraph 2.
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 the 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.

Majority requiredRule 45

1. The Parties shall make every effort to reach agreement on all matters of substance by consensus. If all efforts to reach consensus have been exhausted and no agreement has been reached, the decision shall, as a last resort, be taken by a two-thirds majority vote of the Parties present and voting, unless otherwise provided by the Convention, by the financial rules referred to in Article 18, paragraph 4 of the Convention or by the present rules of procedure.²
2. Decisions of the Conference of the Parties on matters of procedure shall be taken by a majority vote of the Parties present and voting.
3. If the question arises whether a matter is one of procedural or substantive nature, the President shall rule on the question. An appeal against this ruling shall be put to the vote immediately and the President's ruling shall stand unless overruled by a majority of the Parties present and voting.
4. If on matters other than elections a vote is equally divided, a second vote shall be taken. If this vote is also equally divided, the proposal shall be regarded as rejected.

² Paragraph 1 of rule 46 remains open and needs to be revisited at PIC/INC-9, because the question of whether all decisions on substance require consensus remains under review by certain delegations.

Rule 46

If two or more proposals relate to the same question, the Conference of the Parties, unless it decides otherwise, shall vote on the proposals in the order in which they have been submitted. The Conference of the Parties may, after each vote on a proposal, decide whether to vote on the next proposal.

Division of proposals and amendments

Rule 47

1. Any representative may request that any part of a proposal or of an amendment to a proposal be voted on separately. The President shall allow the request unless a Party objects. If an objection is made to the request for division, the President shall permit two representatives to speak, one in favour of and the other against the request, after which it shall be put immediately to the vote. The President may limit the time allowed to each speaker.

2. If the request referred to in paragraph 1 is allowed or adopted, those parts of a proposal or of an amendment to a proposal that are approved shall then be put to vote as a whole. If all operative parts of a proposal or amendment have been rejected, the proposal or amendment shall be considered to have been rejected as a whole.

Amendment to a proposal

Rule 48

A motion is considered to be an amendment to a proposal if it merely adds to, deletes from, or revises parts of that proposal. An amendment shall be voted on before the proposal to which it relates is put to the vote, and if the amendment is adopted, the amended proposal shall then be voted on.

Order of voting on amendments to a proposal

Rule 49

If two or more amendments to a proposal are moved, the Conference of the Parties shall first vote on the amendment furthest removed in substance from the original proposal, then on the next amendment furthest removed therefrom, and so on, until all amendments have been put to the vote. The President shall determine the order of voting on the amendments under this rule.

Method of voting for general matters

Rule 50

1. Voting, except for elections, shall normally be by show of hands. A roll call vote shall be taken if so requested by any Party. The roll call shall be taken in the English alphabetical order of the names of the Parties, beginning with the Party whose name is drawn by lot by the President. If at any time, however, a Party requests a secret ballot, that shall be the method of voting on the issue in question.

2. When the Conference of the Parties votes by mechanical means, a non-recorded vote shall replace a vote by show of hands and a recorded vote shall replace a roll call.

3. The vote of each Party participating in a roll call or recorded vote shall be included in the relevant documents of the meeting.

Conduct during votingRule 51

After the President has announced the beginning of voting, no representative shall interrupt the voting except on a point of order in connection with the actual conduct of the voting. The President may permit the Parties to explain their votes, either before or after the voting. The President may limit the time to be allowed for such explanations. The President shall not permit the proposer of a proposal or of an amendment to a proposal to explain his/her vote on his/her own proposal or amendment, except if it has been amended.

XI. ELECTIONS

Method of voting for electionsRule 52

All elections shall be held by secret ballot, unless otherwise decided by the Conference of the Parties.

Absence of majorityRule 53

1. If, when one person or one delegation is to be elected, no candidate obtains in the first ballot a majority of the votes cast by the Parties present and voting, a second ballot restricted to the two candidates obtaining the largest number of votes shall be taken. If in the second ballot the votes are equally divided, the President shall decide between the candidates by drawing lots.
2. In the case of a tie in the first ballot among three or more candidates obtaining the largest number of votes, a second ballot shall be held. If a tie results among more than two candidates, the number shall be reduced to two by lot and the balloting, restricted to them, shall continue in accordance with the procedure set forth in paragraph 1.

Election to two or more elective placesRule 54

1. When two or more elective places are to be filled at one time under the same conditions, those candidates, not exceeding the number of such places, obtaining in the first ballot the largest number of votes and a majority of the votes cast by the Parties present and voting shall be deemed elected.
2. If the number of candidates obtaining such majority is less than the number of persons or delegations to be elected, there shall be additional ballots to fill the remaining places, the voting being restricted to the candidates obtaining the greatest number of votes in the previous ballot, to a number not more than twice the places remaining to be filled, provided that, after the third inconclusive ballot, votes may be cast for any eligible person or delegation.

3. If three such unrestricted ballots are inconclusive, the next three ballots shall be restricted to the candidates who obtained the greatest number of votes in the third of the unrestricted ballots, to a number not more than twice the places remaining to be filled, and the following three ballots thereafter shall be unrestricted, and so on until all the places have been filled.

XII. LANGUAGES AND SOUND RECORDS

Official languages

Rule 55

The official languages of the Conference of the Parties shall be Arabic, Chinese, English, French, Russian and Spanish.

Interpretation

Rule 56

1. Statements made in an official language shall be interpreted into the other official languages.
2. A representative of a Party may speak in a language other than an official language if the Party provides for interpretation into one such official language.

Languages of official documents

Rule 57

Official documents of the meetings shall be drawn up in one of the official languages and translated into the other official languages.

Sound recordings of meetings

Rule 58

Sound recordings of the meetings of the Conference of the Parties, and whenever possible of the subsidiary bodies, shall be kept by the Secretariat, consistent with the practice of the United Nations.

XIII. AMENDMENTS TO RULES OF PROCEDURE

Rule 59

The present rules of procedure may be amended by consensus by the Conference of the Parties.

XIV. OVERRIDING AUTHORITY OF THE CONVENTION

Precedence of Convention

Rule 60

In the event of any conflict between any provision of the present rules and any provision of the Convention, the Convention shall prevail.

XV. MISCELLANEOUS

Underlined headings

Rule 61

The underlined headings of the present rules are for reference purposes only. They shall be disregarded in the interpretation of the rules.

Annex IV

DRAFT FINANCIAL RULES FOR THE CONFERENCE OF THE PARTIES TO THE ROTTERDAM
CONVENTION ON THE PRIOR INFORMED CONSENT PROCEDURE FOR
CERTAIN HAZARDOUS CHEMICALS AND PESTICIDES IN
INTERNATIONAL TRADE, ITS SUBSIDIARY BODIES
AND THE CONVENTION SECRETARIAT

Scope

1. The present rules shall govern the financial administration of the Conference of the Parties to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, its subsidiary bodies and the Convention secretariat. In respect of matters not specifically provided for by the present rules, the Financial Regulations and Rules of the United Nations shall apply.

Financial period

2. The financial period shall be a biennium, of which the first calendar year shall be an even-numbered year.

Budget

3. The head(s) of the Convention secretariat shall prepare the budget proposal for the following biennium and shall dispatch it to all Parties to the Convention at least ninety days before the opening of the meeting of the Conference of the Parties at which the budget is to be adopted.

4. The Conference of the Parties shall consider the budget proposal and adopt a budget by consensus authorizing expenditures, other than those referred to in paragraphs 9 and 10, prior to the commencement of the financial period that it covers.

5. Adoption of the budget by the Conference of the Parties shall constitute authority to the head(s) of the Convention secretariat to incur obligations and make payments for the purposes for which the appropriations were approved and up to the amounts so approved, provided always that, unless specifically authorized by the Conference of the Parties, commitments are covered by related income.

6. The head(s) of the Convention secretariat may make transfers within each of the main appropriation lines of the approved budget. The head(s) of the Convention secretariat may also make transfers between such appropriation lines up to limits that the Conference of the Parties may set as appropriate.

Funds

7. A General Trust Fund for the Convention shall be established by the [Executive Director of the United Nations Environment Programme (UNEP)] [Director-General of the Food and Agriculture Organization of the United Nations (FAO)] and managed by the head(s) of the Convention secretariat. Contributions made pursuant to paragraph 12 (a), (b) and (c), with the exception of the earmarked funds referred to in paragraph 9, shall be credited to this fund. All budget expenditures that are made pursuant to paragraph 5 above shall be charged to the General Trust Fund.

8. Within the General Trust Fund there shall be maintained a working capital reserve at a level to be determined from time to time by the Conference of the Parties by consensus. The purpose of the working capital reserve shall be to ensure continuity of operations in the event of a temporary shortfall of cash. Drawdowns from the working capital reserve shall be restored from contributions as soon as possible.

9. A Special Trust Fund shall be established by the [Executive Director of UNEP] [Director-General of FAO] and managed by the head(s) of the Convention secretariat. This fund shall receive contributions pursuant to paragraphs 12 (b) and (c) that have been earmarked to support the participation of representatives of developing country Parties and Parties with economies in transition in the meetings of the Conference of the Parties and its subsidiary bodies.
10. Subject to the approval of the Conference of the Parties, the [Executive Director of UNEP] [Director-General of FAO] may establish other trust funds, provided that they are consistent with the objectives of the Convention.
11. In the event that the Conference of the Parties decides to terminate a Trust Fund established pursuant to the present rules, it shall so advise the [Executive Director of UNEP] [Director-General of FAO] at least six months before the date of termination so decided. The Conference of the parties shall decide, in consultation with the [Executive Director of UNEP] [Director-General of FAO], on the distribution of any uncommitted balances after all liquidation expenses have been met.

Contributions

12. The resources of the Conference of the Parties shall comprise:
- (a) Contributions made each year by Parties on the basis of an indicative scale adopted by consensus by the Conference of the Parties, and based on such a scale of assessments of the United Nations as may be adopted from time to time by the General Assembly, adjusted so as to ensure that no Party contributes less than 0.01 per cent of the total, that no one contribution exceeds []³ per cent of the total and that no contribution from a least developed country Party exceeds 0.01 per cent of the total;
 - (b) Contributions made by Parties in addition to those made pursuant to paragraph (a), including those made by the Government(s) hosting the Convention secretariat;
 - (c) Contributions from States not Parties to the Convention, as well as governmental, intergovernmental and non-governmental organizations, and other sources;
 - (d) The uncommitted balance of appropriations from previous financial periods;
 - (e) Miscellaneous income.
13. The Conference of the Parties shall, in adopting the indicative scale of contributions referred to in paragraph 12 (a), make adjustments to take account of contributions of Parties which are not members of the United Nations, as well as those regional economic integration organisations that are Parties.
14. In respect of contributions made pursuant to paragraph 12 (a):
- (a) Contributions for each calendar year are due on 1 January of that year;
 - (b) Each Party shall, as far in advance as possible of the date due for the contribution, inform the head(s) of the Convention secretariat of the contribution it intends to make and of the projected timing of that contribution.

³ The Legal Working Group considered that the percentage in these square brackets would be the maximum rate of contribution on the United Nations scale of contribution on the date of the adoption of these rules.

15. Contributions made pursuant to paragraph 12 (b) and (c) shall be used in accordance with such terms and conditions, consistent with the objectives of the Convention and the Financial Regulations and Rules of the United Nations, as may be agreed between the head(s) of the Convention secretariat and the contributor.

16. Contributions made pursuant to paragraph 12 (a) from States and regional economic integration organizations that become Parties to the Convention after the beginning of a financial period shall be made pro rata temporis for the balance of that financial period. Consequential adjustments shall be made at the end of each financial period for other Parties.

17. All contributions shall be paid in United States dollars or the equivalent in a convertible currency into a bank account to be designated by the [Executive Director of UNEP] [Director-General of FAO], in consultation with the head(s) of the Convention secretariat.

18. The head(s) of the Convention secretariat shall acknowledge promptly the receipt of all pledges and contributions and shall inform the Parties, twice a year, of the status of pledges and payments of contributions.

19. Contributions not immediately required shall be invested at the discretion of the [Executive Director of UNEP] [Director-General of FAO], in consultation with the head(s) of the Convention secretariat. The resulting income shall be credited to the appropriate fund.

Accounts and audit

20. The accounts and financial management of all funds governed by the present rules shall be subject to the internal and external audit process of the United Nations.

21. An interim statement of accounts for the first year of the financial period shall be provided to the Conference of the Parties during the second year of the period, and a final audited statement of accounts for the full financial period shall be provided to the Conference of the Parties as soon as possible after the accounts for the financial period are closed.

Administrative support costs

22. The Conference of the Parties shall reimburse [UNEP][FAO] for the services provided to the Conference of the Parties, its subsidiary bodies and the Convention secretariat from the funds referred to in paragraphs 7, 9 and 10 under such terms as may from time to time be agreed upon between the Conference of the Parties and [UNEP][FAO] or, in the absence of such agreement, in accordance with the general policy of the United Nations.

Amendments

23. Any amendment to the present rules shall be adopted by the Conference of the Parties by consensus.

Annex V

DRAFT RULES ON ARBITRATION

The arbitration procedure for purposes of paragraph 2 (a) of Article 20 of the Convention shall be as follows.

Article 1

1. A Party may initiate recourse to arbitration in accordance with Article 20 of the 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. 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.

Article 2

1. In disputes between two parties, an arbitral tribunal shall be established. It shall consist of three members.
2. Each of the parties to the dispute shall appoint an arbitrator 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.
5. 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.

Article 3

1. If one of the parties to the dispute does not appoint an arbitrator within two months of the date on which the respondent party receives the notification of the arbitration, the other party may inform the Secretary-General of the United Nations who shall make the designation within a further two-month⁴ period.

⁴ This time period remains open and needs to be revisited at PIC/INC-9. The principal MEAs specify a two-month period and many delegations would be content to proceed on that basis. Some delegations were of the opinion that this might be too long and work to the disadvantage of the claimant party in certain cases, whilst some other delegations considered that a period of more than two months might be more appropriate given the practical problems in identifying an appropriate arbitrator.

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-month¹ period.

Article 4

The arbitral tribunal shall render its decisions in accordance with the provisions of the 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

A 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.

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 also be binding upon a Party intervening under Article 10 above insofar as it relates to matters in respect of which that Party intervened. 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 those bound by the final decision in accordance with Article 16 above, as regards the interpretation or manner of implementation of that decision, may be submitted by any of them for decision to the arbitral tribunal which rendered it.

Annex VI

DRAFT RULES ON CONCILIATION

The conciliation procedure for purposes of paragraph 6 of Article 20 of the Convention shall be as follows.

Article 1

1. A request by a party to a dispute to establish a conciliation commission in consequence of paragraph 6 of Article 20 shall be addressed in writing to the Secretariat. The Secretariat shall forthwith inform all Parties accordingly.

2. The conciliation 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

In disputes between more than two parties, parties in the same interest shall appoint their members of the commission jointly by agreement.

Article 3

If any appointments by the parties are not made within two months of the date of receipt by the Secretariat of the written request referred to in Article 1, the Secretary-General of the United Nations shall, upon request by a party, make those appointments within a further two-month¹ period.

Article 4

If the President of the conciliation commission has not been chosen within two months of the fourth member of the commission being appointed, the Secretary-General of the United Nations shall, upon request by a party, designate the President within a further two-month¹ period.

Article 5

1. The conciliation commission shall, unless the parties to the dispute otherwise agree, determine its own rules of procedure.

2. The parties and members of the commission are under an obligation to protect the confidentiality of any information they receive in confidence during the proceedings of the commission.

Article 6

The conciliation commission shall take its decisions by a majority vote of its members.

Article 7

The conciliation commission shall render a report with recommendations for resolution of the dispute within twelve months of being established, which the parties shall consider in good faith.

Article 8

Any disagreement as to whether the conciliation commission has competence to consider a matter referred to it shall be decided by the commission.

Article 9

The costs of the Commission shall be borne by the parties to the dispute in shares agreed by them. The Commission shall keep the record of all its costs and shall furnish a final statement thereof to the parties.

Annex VII

REPORT OF THE WORKING GROUP ON DISCONTINUATION

1. The Working Group was co-chaired by Messrs G. Manuweera (Sri Lanka) and A. Mayne (Australia). More than 25 countries and one regional economic integration organisation participated in the meeting.
2. Mr. Mayne opened the session by reminding the Group of the instructions from the Chair that they were to identify those areas where there appeared to be consensus as basis for a recommendation to the Conference of the Parties and those where further discussion was needed. In the latter case the outstanding issues and possible options for resolution were to be identified. He also noted the four themes identified in paragraph 4 of UNEP/FAO/PIC/INC.8/16 as guidance to the work of the Group.
3. The Working Group reviewed document UNEP/FAO/PIC/INC.8/16 and acknowledged the document as a sound analysis of the issues. Based upon this analysis, the Working Group considered each feasible proposal in detail. This report highlights the discussions and identifies the key issues on which agreement was reached and options for those issues on which the Working Group could not reach consensus.

III. MAKING THE TRANSITION – INTERIM PIC TO CONVENTION PIC

A. The Conference of the Parties, the Chemical Review Committee, the Intergovernmental Negotiating Committee and the Interim Chemical Review Committee

4. The resolution on interim arrangements makes no provision for meetings of the Intergovernmental Negotiating Committee and the Interim Chemical Review Committee after the first session of the Conference of the Parties.
5. At its seventh session, the Committee agreed that the Committee itself and the Interim Chemical Review Committee would not meet any more after the first session of the Conference of the Parties, to avoid any operations being carried out parallel to the Convention PIC procedure (UNEP/FAO/PIC/INC.7/15, para. 85).

Basis for a recommendation

- That the Conference of the Parties, once it has established the Chemical Review Committee in pursuance of article 18, paragraph 6 of the Convention, endorse the decision of the Intergovernmental Negotiating Committee at its seventh session that the Interim Chemical Review Committee would not meet any more after the first meeting of the Conference of the Parties.
- That, following the first meeting of the Conference of the Parties, the Executive Director of UNEP and the Director-General of FAO inform the UNEP Governing Council and the FAO Conference, respectively, that the Intergovernmental Negotiating Committee has successfully completed its mandate, as set forth in the resolution on interim arrangements of the Conference of Plenipotentiaries and the corresponding decisions of the UNEP Governing Council and the FAO Conference, and that the first meeting of the Conference of Parties has been held.

B. The composition of PIC regions

6. In line with the resolution on interim arrangements the Committee, in decision INC-6/1, adopted on an interim basis a list of countries known as the “interim PIC regions”, for the purpose of the implementation of the interim arrangements for the application of the PIC procedure, pending the formal adoption, by consensus, of a listing of countries by PIC regions by the Conference of the Parties at its first meeting.

7. At the seventh session of the Intergovernmental Negotiating Committee and in subsequent written comments, it was noted that the seven interim PIC regions had met the needs of the interim PIC procedure and that they should also meet the needs of the Convention PIC procedure. The maintenance of the existing PIC regions would both build on the progress achieved under the interim PIC procedure and facilitate the transition to the Convention PIC procedure. The seven regions also facilitate the identification of candidate chemicals by broadening the possibility of at least one verified notification of final regulatory action from each of two PIC regions, in line with article 5, paragraph 5 of the Convention.

8. The first meeting of the Conference of the Parties will have a minimum of 50 Parties, but it is expected that the number of Parties will continue to increase for the foreseeable future, certainly during the course of the transition period. The importance of this decision should serve as a further incentive for States and regional economic integration organizations to ratify or accede to the Convention, in order to continue to ensure a broad geographical basis for the PIC regions at the first meeting of the Conference of the Parties.

9. It was agreed that the experience gained with the interim PIC regions should be given full consideration in deciding on the PIC regions under the Convention PIC procedure. Some representatives indicated concern that at the time of the first meeting of the Conference of the Parties the distribution of the Parties across the interim PIC regions might not be adequate to satisfy the requirements of article 5 that at least one notification for a particular chemical from each of two PIC regions be submitted before they can be forwarded to the Interim Chemical Review Committee.

Options:

(a) That the PIC regions adopted at the first meeting of the Conference of the Parties should be based on the geographical distribution of the Parties at the time;

(b) That the PIC regions adopted at the first meeting of the Conference of the Parties should be based on the regions used during the interim PIC procedure, pending consideration of the geographical distribution of Parties at that time.

C. The composition of the Interim Chemical Review Committee and the Chemical Review Committee

10. At its sixth session, the Intergovernmental Negotiating Committee decided, in decision INC-6/2, "to establish an interim subsidiary body, to be called the Interim Chemical Review Committee ... on the basis of the interim PIC regions" to fulfil the functions of the Chemical Review Committee to be established by the Conference of the Parties (article 18, para. 6 of the Convention). The Convention makes no provision for the use of PIC regions in the determination of equitable geographical distribution in relation to membership of the Chemical Review Committee.

Basis for a recommendation

- That the PIC regions adopted at the first meeting of the Conference of the Parties could be the basis for identifying the membership of the Chemical Review Committee.

D. Inclusion of chemicals in annex III that were included in the interim PIC procedure before the date of the first meeting of the Conference of the Parties, but are not yet listed in annex III

11. In accordance with article 8 of the Convention, the Conference of the Parties must decide at its first meeting to list these chemicals in annex III, provided that it is satisfied that all the requirements for listing in that annex have been fulfilled.

12. Currently, there are four chemicals - binapacryl, ethylene dichloride, ethylene oxide and toxaphene -that are included in the interim PIC procedure but not listed in annex III. These chemicals were identified on the basis of notifications of control actions submitted by States and regional economic integration organizations participating in the original PIC procedure. Those notifications, which were submitted before the Convention was adopted, do not meet the information requirements of annex I of the Convention and as a result these chemicals do not fulfil all the requirements for listing in annex III.

13. Any additional chemicals that may be added to the interim PIC procedure prior to the first meeting of the Conference of the Parties will have met the requirements of the Convention PIC procedure (paragraph 8 of the resolution on interim arrangements).

Basis for a recommendation

- That all the chemicals included in the interim PIC procedure prior to the entry into force of the convention but not yet listed in annex III, be added to annex III. This recommendation would build on the progress achieved under the interim PIC procedure, facilitate a smooth transition between the interim PIC procedure and the Convention PIC procedure and avoid any discrepancies between the two procedures during the transition period.
- In developing the text of any recommendation to the Conference of the Parties it is important that the following points be made:
 - (a) The solution is based on the assumption that there would be no distinction made among these chemicals regarding whether or not the States and regional economic integration organizations providing the original notifications are Parties to the Convention at the time of the first meeting of the Conference of the Parties, and is independent of the decision that the Conference of the Parties may take concerning distribution and membership of PIC regions;
 - (b) It is clear that the application of the requirements for the inclusion of binapacryl, ethylene dichloride, ethylene oxide and toxaphene, which were subject to a special procedure under the Convention, would not set a precedent for the requirements for inclusion of future chemicals;
 - (c) The decision would apply equally to any additional chemicals that are subject to the interim PIC procedure at the time of the first meeting of the Conference of the Parties and for which a decision guidance document has been approved by the Intergovernmental Negotiating Committee in accordance with article 7, paragraph 2 of the Convention.

E. Obligations in relation to imports of chemicals listed in annex III

Chemicals that are listed in annex III

14. The Convention is clear that each Party shall, no later than the date of entry into force of the Convention for it, transmit import responses for each chemical listed in annex III to the secretariat. It also provides that a Party need not resubmit import responses it has provided under the interim PIC procedure (article 10, paras. 2

and 7). However, the submitted import responses regarding future imports of chemicals subject to the interim PIC procedure, distributed by the secretariat through the semi-annual PIC Circular, will have no status under the Convention PIC procedure unless the Conference of the Parties decides otherwise.

15. Once the Convention enters into force, there will be a period of up to one year before the first meeting of the Conference of the Parties. At present, in accordance with article 10, the secretariat distributes a compilation of all import responses and cases of failure to transmit a response, through the PIC Circular, every six months (June and December).

Basis for a recommendation

- That the first PIC Circular issued following the entry into force of the Convention provide the reference point regarding the status of import responses for chemicals listed in annex III, as of the date of entry into force of the Convention.

Chemicals subject to the interim PIC procedure but not yet listed in annex III

16. For this group of chemicals, the Convention is unclear regarding whether a Party would need to resubmit a response regarding future import for that chemical if it was listed in annex III at a date later than the entry into force of the Convention for that particular Party.

17. As there is agreement that there is no need to resubmit import responses for chemicals listed in annex III the working group agreed that the first PIC Circular issued following the entry into force of the Convention would provide the reference point regarding the status of import responses for this limited number of chemicals for the first meeting of the Conference of the Parties.

Basis for a recommendation

- That the first PIC Circular issued following the entry into force of the Convention provide a reference point regarding the status of import responses for chemicals included in the interim PIC procedure but not listed in annex III, as of the date of entry into force of the Convention.

F. Obligations in relation to exports of chemicals listed in annex III

18. In its deliberations, the Working Group focused on the issue of failure to transmit an import response.

19. In parallel to the situation regarding import responses, there are no provisions in the Convention for the recognition of “cases of failure to transmit a response” that occurred under the interim PIC procedure.

Chemicals that are listed in annex III.

20. The Convention is clear that each Party shall, no later than the date of entry into force of the Convention for it, transmit import responses for each chemical to the secretariat. It also provides that a Party need not resubmit import responses it has provided under the original and interim PIC procedure (article 10, paras. 2 and 7).

Chemicals subject to the interim PIC procedure but not yet listed in annex III

21. States and regional economic integration organizations that are Parties to the Convention at the time of the first meeting of the Conference of the Parties and have failed to transmit a response under the interim PIC procedure for chemicals not yet included in annex III create a potential obstacle for exporting countries in

meeting their obligations. Cases of failure to transmit a response are subject to the provisions of article 11, paragraph 2, which prevent exporting Parties from exporting to the delinquent Party, for a period of one year, unless certain conditions are fulfilled.

22. The problem is one that will be unique to those countries participating at the first meeting of the Conference of the Parties who have not submitted import responses for the chemicals not yet listed in annex III. As a result of the deliberations at the first meeting of the Conference of the Parties these chemicals will enter annex III and countries will then be obliged to provide import responses as per Article 10 paragraph 7.

23. The simplest solution would be to avoid the problem in the first place. This could be achieved if the States and regional economic integration organizations participating in the interim PIC procedure would provide import responses for all the chemicals subject to the interim PIC procedure. All import responses would be included in the first PIC Circular issued following the entry into force of the Convention and be recognized by the first meeting of the Conference of the Parties.

Options

Where import responses have not been provided the following two proposals could be considered:

(a) That Parties could be given up to nine months from the date of the first meeting of the Conference of the Parties to provide a response in line with article 10, paragraph 2. After that period, exporting Party obligations under article 11 would only apply six months after the exporting Party received information from the secretariat under article 10, paragraph 10 that the importing Party had failed to transmit a response (and would then apply for one year);

(b) That the date of the first meeting of the Conference of the Parties could be taken as formal notice of non-response to these Parties (article 10, paragraph 3). Exporting Party obligations under article 11 would only apply six months from this date and would then apply for one year;

(c) In deciding between options 1 and 2, an issue to consider is the fact that under the interim PIC procedure such Parties would have already been formally notified of their failure to provide a response. This has been reported in the PIC Circular and would need to be recognised under the Convention PIC procedure in order to avoid potential confusion with exporters.

G. Notifications of final regulatory action and proposals for severely hazardous pesticide formulations

24. The Convention, in article 5, paragraph 2, clearly states that at the date of entry into force of the Convention, Parties need not resubmit their notifications of final regulatory action if they have been submitted under the Amended London Guidelines or the International Code of Conduct. The Convention is silent, however, regarding proposals for severely hazardous pesticide formulations that may have been submitted in accordance with article 6 under the interim PIC procedure.

25. At present, in accordance with articles 5 and 6, the secretariat, through the PIC Circular, circulates synopses of all verified notifications and summaries of all verified proposals for severely hazardous pesticide formulations submitted during the six-month period between each circular. These notifications and proposals will have no status under the Convention PIC procedure unless the Conference of the Parties decides otherwise. In order to provide a reference point for the first meeting of the Conference of the Parties, the secretariat could include in the first PIC Circular following the entry into force of the Convention a full synopsis of all the notifications submitted under the interim PIC procedure verified to contain all the information required by annex I, as of the date of entry into force for the Convention. Likewise, this circular could also include summaries of all the proposals for severely hazardous pesticide formulations verified to contain all the

information required by part 1 of annex IV submitted to the secretariat as of the date of entry into force of the Convention.

26. This option would parallel the approach taken in the transition from the original PIC procedure to the interim PIC procedure, where a comprehensive summary of all the notifications submitted under the original PIC procedure were published in appendix V of PIC Circular X (December 1999).

27. One representative indicated that, for the sake of legal clarity, there was a need for some recognition of the differing circumstances. In recognition of this technical difference but in the spirit of the principles endorsed by the INC, the representative proposed that an alternative administrative arrangement be considered where the relevant State(s) reintroduce the proposal(s) into the PIC Convention procedure.

28. There was general agreement that, based on the concept of equivalent treatment of notifications and proposals made under articles 5 and 6,

Basis for a recommendation

- That as part of the first PIC Circular issued following the entry into force of the Convention, the secretariat publish a full compilation of summaries of all the proposals for severely hazardous pesticide formulations submitted and verified as complete, and a full synopsis of all the notifications of final regulatory action submitted and verified as complete, as of the date of entry into force of the Convention.
- That the information in this PIC Circular serve as an appropriate reference point for the Conference of the Parties at its first meeting.

Options

On the matter of administrative arrangements, there are two options regarding proposals for severely hazardous pesticide formulations made by Parties:

(a) That the resubmission of any proposals for severely hazardous pesticide formulations made under the interim PIC procedure should not be required;

(b) That in order for a proposal for a severely hazardous pesticide formulation to be carried forward the proposing Party needs to inform the Secretariat of its wish that the proposal be considered resubmitted. When the Convention enters into force for it the Party should send a note to this effect, identifying the proposal and the date of submission.

H. Notifications of final regulatory action and proposals for severely hazardous pesticide formulations submitted by non-Parties that participate in the interim PIC procedure

29. In recognition of the proposal that all the chemicals which are included in the interim PIC procedure be included in annex III at the first meeting of the Conference of the Parties, it was proposed that the underlying notifications or proposals be deemed acceptable regardless of whether or not they came from Parties or non-Parties.

Basis for a recommendation

- That, where notifications and proposals from States and regional economic integration organizations which are not Parties to the Convention at the time of the first meeting of the

Conference of the Parties have contributed to the preparation of decision guidance documents and to decisions to include chemicals in the interim PIC procedure, they would be recognized as an adequate basis for including the chemicals concerned in annex III.

I. Procedures developed by the Intergovernmental Negotiating Committee and the Interim Chemical Review Committee

30. The Intergovernmental Negotiating Committee and the Interim Chemical Review Committee have developed and approved several operational procedures for the implementation of the interim PIC procedure. The Conference of the Parties and the Chemical Review Committee will develop their own operational procedures for the implementation of the Convention PIC procedure; in doing so, they may draw on the operational procedures developed during the interim PIC procedure.

31. The Interim Chemical Review Committee in particular has developed a number of processes aimed at facilitating the processing of notifications and the drafting of decision guidance documents for both banned and severely restricted chemicals and proposals for severely hazardous pesticide formulations. The interim period has also provided an opportunity to develop and implement processes for the submission and verification of notifications of regulatory action and import responses as well as the preparation and distribution of the PIC Circular.

Basis for a recommendation

- That the procedures established for the operation of the interim PIC procedure be adopted for the operation of the Convention PIC procedure, with the understanding that they will continue to evolve as experience is gained in their implementation.

IV. THE TRANSITION PERIOD

32. Drawing upon UNEP/FAO/PIC/INC.8/16, the Working Group noted that the length of the transition period will have a direct impact on the nature of the transitional measures and that a longer transition period could be a disincentive for ratification.

33. While there is a desire to encourage States and regional economic integration organizations to ratify or accede to the Convention, it is recognized that Parties and non-Parties to the Convention cannot continue to have the same rights and privileges for an unlimited time period after entry into force of the Convention.

34. It was recognised further that there will be costs during the transition period associated with the maintenance of the interim PIC procedure, primarily related to the participation of developing countries and countries with economies in transition that are not Parties to the Convention. Other costs would relate to the maintenance and operation of parallel systems for handling information from Parties and non-Parties.

35. Some representatives also drew the attention of the Working Group to their particular capacity-building needs relating to ratification, implementation and compliance. They further indicated that the transition period will introduce additional pressures upon them. They reiterated their call for appropriate capacity-building arrangements to assist them to participate in the Convention PIC procedure in a timely manner.

A. Length of the transition period

36. In considering the issue of the length of transition,

Basis for a recommendation

- That the transition period be limited to two years from the date of entry into force of the Convention.

B. Nature of the transitional measures

37. The Working Group agreed that the transitional measures would define the role and position of non-Parties during the transition period, with the understanding that Parties would enjoy the full benefits associated with the Convention.

Basis for a recommendation

- That the secretariat would maintain two lists that clearly distinguish between Parties to the Convention and those States or regional economic integration organizations which have not yet ratified or acceded to the Convention, but which are participating under the interim PIC procedure. The latter would, for the transition period, be identified as participating States.⁵ All participating States would be treated equally with no distinction between those that had signed the Convention and those that had not;
- That participating States would attend meetings of the Conference of the Parties and the Chemical Review Committee as observers in line with the rules of procedure adopted at the first meeting of the Conference of the Parties;
- That the list of DNAs would include participating States. Participating States would benefit from information exchange activities under article 14 of the Convention, as well as receiving the PIC Circular and decision guidance documents;
- That participating States would receive copies of decision guidance documents for any new chemicals added to annex III during the transition period and would be requested to provide an import response. Import responses from participating States and cases of failure on their part to provide a response would be included in the PIC Circular;
- That both exporting Parties and exporting participating States would be requested to observe the import decisions of participating States and Parties and continue to provide them with export notifications in line with article 12 of the Convention;
- That participating States should be encouraged to provide voluntary contributions to the operation of the Convention;
- That participating States would be eligible for technical assistance for capacity-building in accordance with article 16 of the Convention directed towards enabling them to ratify and implement the Convention.

⁵ Participating States are those States and regional economic integration organizations that are not parties to the Convention during the transition period.

Status of notifications and proposals submitted by participating States

38. The status of individual chemicals and hazardous pesticide formulations and their associated notifications and proposals at various stages of consideration by the Interim Chemical Review Committee, and of new notifications and proposals from participating States during the transition period, is not clear.

39. The working group agreed that in the interest of information exchange, a synopsis of all verified notifications and summaries of all verified proposals submitted by both Parties and participating States as of the date of entry into force of the Convention and during the transition period would be included in the appropriate issues of the PIC Circular.

40. One representative noted that participating States are to be “treated equally with no distinction between those that had signed the Convention”, except in the matter of voting as per the rules of procedure. It was also suggested that consideration could be given to setting priorities among the submitted notifications and proposals.

39. Despite lengthy discussions within the Working Group two differing views remain on how such notifications and proposals could be handled during the transition period:

Options:

(a) Notifications and proposals by participating States under the interim PIC procedure are not eligible for consideration by the Chemical Review Committee under articles 5 to 7 of the Convention. A notification or proposal by a State or regional economic integration organization not party to the Convention cannot be part of the trigger for procedures under the Convention, as set forth in the Convention (e.g. article 5, paragraph 2, article 6, paragraph 1, and article 8). As a practical matter, notifications and proposals submitted by a participating State could be retained on file and be reactivated when it becomes a Party;

(b) Alternatively, there should be no distinction between notifications or proposals from Parties and those from participating States under articles 5 to 7. Submitted notifications and proposals verified by the secretariat to contain all the information required should be forwarded to the Chemical Review Committee for consideration in accordance with established procedures

41. No agreement could be reached on the suggestion that verified notifications and/or proposals from participating States submitted to the Secretariat before the date of entry into force of the Convention and included in the first PIC Circular distributed after the entry into force of the Convention, would remain eligible for consideration by the Interim Chemical Review Committee during the transition period.

42. Some representatives considered it inappropriate for notifications and proposals from Participating States to result in legally binding obligations on Parties.

V. THE POST-TRANSITION PERIOD - DISCONTINUATION OF THE INTERIM PIC PROCEDURE

43. At the conclusion of the transition period, the interim PIC procedure will cease to exist, having been superseded by the Convention PIC procedure. Those states and regional economic integration organizations participated during the interim PIC procedure, that had not become Parties to the Rotterdam Convention shall have no special status, according to the provisions of the Convention and become “non-parties”.

44. As a matter of domestic law or policy, exporting States and regional economic integration organizations may continue to provide export notifications on domestic regulatory actions to ban or severely restrict a chemical or to comply with the import decisions of non-Parties.

45. The Working Group noted the potential costs, especially to the secretariat, associated with these activities or any other activities that might be proposed concerning interactions with non-Parties after the discontinuation of the interim PIC procedure.

46. The Working Group recognized that the non-Parties are not mandated to submit the import responses and concerned about the feasibility of maintaining an accurate list of import responses and/or national contact points, for non-Parties, and potential liability on inaccuracy of import responses.

Options

Considering the given circumstances, the Working Group considered the following two options:

(a) Such import responses [and the list of national contact points] would no longer be maintained or circulated by the secretariat;

(b) The import responses submitted prior to the date of discontinuation [and the list of contact points] would be retained only for a defined period of time after the entry into force of the Convention. The non-Parties would opt out, as they may wish to do so.

Annex VIII

LIST OF DOCUMENTS

UNEP/FAO/PIC/INC.8/1	Provisional agenda
UNEP/FAO/PIC/INC.8/Add.1	Annotated provisional agenda
UNEP/FAO/PIC/INC.8/2 and Corr.1	Activities of the secretariat and review of the situation as regards extrabudgetary funds
UNEP/FAO/PIC/INC.8/3 and Corr.1	Status of implementation of the interim prior informed consent and procedure
UNEP/FAO/PIC/INC.8/4	Confirmation of experts designated for the Interim Chemical Review Committee
UNEP/FAO/PIC/INC.8/5	Report of the Interim Chemical Review Committee on the work of its second session
UNEP/FAO/PIC/INC.8/6	Adoption of decision guidance documents for already identified chemicals
UNEP/FAO/PIC/INC.8/7	Issues arising out of the second session of the Interim Chemical Review Committee
UNEP/FAO/PIC/INC.8/8	Analysis of problems frequently encountered by parties in their preparation of notifications of final regulatory action to ban or severely restrict a chemical
UNEP/FAO/PIC/INC.8/9	Submission of notifications of final regulatory action for chemicals that are already subject to the interim prior informed consent procedure
UNEP/FAO/PIC/INC.8/10	Procedures and forms used to address matters such as conflict of interest, disclosure and recusal in scientific bodies of other organizations and conventions
UNEP/FAO/PIC/INC.8/11	Draft rules of procedure for the Conference of the Parties
UNEP/FAO/PIC/INC.8/12	Draft financial rules and provisions
UNEP/FAO/PIC/INC.8/13	Settlement of disputes
UNEP/FAO/PIC/INC.8/14	Procedures and institutional mechanisms for handling cases of non-compliance
UNEP/FAO/PIC/INC.8/15	Non-compliance
UNEP/FAO/PIC/INC.8/16	Issues associated with the discontinuation of the interim prior informed consent procedure

UNEP/FAO/PIC/INC.8/17	Location of the secretariat
UNEP/FAO/PIC/INC.8/18	Assignment of specific harmonized system customs codes
UNEP/FAO/PIC/INC.8/INF/1	Status of signature and ratification of the Convention
UNEP/FAO/PIC/INC.8/INF/2	Comments and proposals on non-compliance, reporting, discontinuation of the interim PIC procedure, draft rules of procedure of the Conference of the Parties and financial rules
UNEP/FAO/PIC/INC.8/INF/3	Form for notification of final regulatory action to ban or severely restrict a chemical
UNEP/FAO/PIC/INC.8/INF/4	Location of the secretariat
UNEP/FAO/PIC/INC.8/INF/5	Location of the secretariat
UNEP/FAO/PIC/INC.8/INF/6	Dispute settlement, illicit trafficking and responsibility and liability
UNEP/FAO/PIC/INC.8/INF/7	Scenario note for the eighth 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
UNEP/FAO/PIC/INC.8/INF/8	Activities of the secretariat and review of the situation as regards extrabudgetary funds
UNEP/FAO/PIC/INC.8/INF/9	Implementation of the interim prior informed consent procedure
UNEP/FAO/PIC/INC.8/INF/10	Availability of documents
UNEP/FAO/PIC/INC.8/INF/11	Provisional list of participants
