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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

Ninth session

Bonn, 30 September - 4 October 2002

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 NINTH SESSION

I. OPENING OF THE SESSION

1. The ninth session of the Intergovernmental Negotiating Committee for an International Legally Binding Instrument for the Application of the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade was held at the Bundeshaus Bonn International Congress Centre, Bonn, Germany, from 30 September to 4 October 2002.
2. The session was opened by the Chair, Ms. Maria Celina de Azevedo Rodrigues (Brazil), at 10 a.m. on Monday, 30 September 2002.
3. Opening statements were made by Ms. Gila Altmann, Parliamentary Secretary of State, on behalf of Mr. Jürgen Trittin, Minister of the Environment, Nature Conservation and Nuclear Safety of the Federal Republic of Germany; Ms. Bärbel Dieckmann, Lady Mayor of the City of Bonn; Mr. Klaus Töpfer, Executive Director of UNEP; Ms. Louise Fresco, Assistant Director-General, FAO; and Mr. Arnulf Müller-Helmbrecht, Executive Secretary of the Convention on the Conservation of Migratory Species of Wild Animals (CMS).
4. Ms. Altmann welcomed the participants and recalled that the new environmental and development goals agreed in Johannesburg by the World Summit on Sustainable Development (WSSD) included the target of chemicals being used and produced in ways that would lead to the minimization of significant adverse effects on human health and the environment by 2020. Acknowledging the need, for example, of tropical countries to control vectors for diseases such as malaria and pests such as termites and locusts, she said that permitting some trade in hazardous chemicals was unavoidable, but it was necessary to ensure that such trade was controllable and safe.

5. It would be beneficial for all stakeholders if the Convention entered into force as soon as possible. As an example of uncertainties during the transition period, she recalled that the European chemicals industry had agreed to implement, from 2001, its commitments to register export notifications, but only five notifications had been submitted in the European Community so far in 2002, a tiny percentage of the expected number.

6. Ms. Altmann expressed the hope that monocrotophos and other chemicals, such as asbestos, would be added to the list of substances to be covered by the Convention. Germany had provided a total of €280 million over the previous 15 years for projects to assist developing countries and countries with economies in transition in ratifying and implementing the Convention, and would continue to provide whatever support it could. She urged all participants to work together under the shared responsibility called for in the Convention.

7. Eleven United Nations institutions had moved to Bonn in recent years and another was to arrive in January 2003. The number of United Nations staff in Bonn would soon pass 600. The United Nations Campus to be created around the International Congress Centre would offer ideal conditions for the Secretariats of PIC and the closely linked Stockholm Convention on Persistent Organic Pollutants (POPs), both of which Germany would like to host in Bonn.

8. Ms. Dieckmann welcomed the participants and said that the people of the Federal Republic of Germany, one of the biggest exporters of chemicals, took respect for safety rules when handling hazardous chemicals very seriously. She described the history of the Congress Centre and the planned creation of a United Nations Campus in and around the former buildings of the West German Parliament, to develop Bonn as a place of global dialogue, a centre for environment, health and development and a centre of international cooperation and science. The construction of a second, even larger, congress hall would soon be put into action. That had been laid down in an agreement signed in the presence of the Secretary-General of the United Nations, Mr. Kofi Annan, and the President of the Federal Republic of Germany, Mr. Johannes Rau, in February 2002. She said that suitable offices had been reserved in which the PIC and POPs Secretariats could be united under one roof.

9. Mr. Töpfer welcomed participants to the meeting and expressed appreciation to the Government of Germany for hosting it. He also expressed thanks to the Governments of Canada, Germany, Italy, Madagascar, Norway, Sweden, Switzerland, the United Kingdom and the United States for their financial support to the Convention during 2002. He considered it vitally important for participants to bear in mind three key challenges currently facing the Convention.

10. The first challenge lay in promoting ratification so that the Rotterdam Convention would enter into force at the earliest opportunity. Noting that the Convention had been ratified by 33 States, compared with 16 at the time of the previous Intergovernmental Negotiating Committee the previous year, he considered that the regional workshops on the Convention played a significant role in encouraging countries to ratify. He urged Governments to move quickly so that the Conference of the Parties could hold its first session on the basis of widespread and representative participation.

11. The second key challenge lay in capacity-building. The procedure would only function smoothly if all Parties were able to comply with its requirements. Noting that when the Convention entered into force, Article 16 on technical assistance would become operational, he suggested that there might be consideration of how to make a fast start in providing assistance to developing countries and countries with economies in transition.

12. The third broad challenge lay in how to measure and review the Convention's effectiveness. What kinds of performance indicators would do the job best? He suggested that tools such as monitoring of poisoning incidents around the world, as well as the rate of compliance with the PIC reporting procedure, could be helpful. Such indicators would reassure the public that the Convention was providing concrete and measurable improvement to health and the environment, and that there was widespread compliance.

13. Taking special note that the Interim Chemical Review Committee had recommended the first new candidate for addition to the PIC list, he said that listing of the highly toxic pesticide monocrotophos would be a sure sign that the Convention was functioning as intended. He congratulated all the expert members of the Review Committee and applauded their vital contribution to the Convention. In conclusion, he wished participants every success in their work.

14. Ms. Fresco recalled that the World Summit on Sustainable Development (WSSD) in Johannesburg had served to focus the world's attention on sustainable development. Of the five themes included in the Water, Energy, Health, Agriculture and Biodiversity (WEHAB) initiative, agriculture in particular had been recognized as central to sustainable development, and countries had pledged at the World Food Summit Plus Five and at the Millennium Summit to halve world hunger by 2015. In her view, eradicating hunger was a step towards ensuring that coming generations inherited a peaceful world.

15. By 2030 world food demand would have increased by 60 per cent. Most of the additional demand and production was expected to originate from developing countries. The lion's share of that increased production would have to come from increased yields. Agricultural intensification could not take place without chemical inputs. Yet the increased yields must be achieved sustainably, with minimum negative impacts on the environment.

16. The risks to human health and the environment from pesticides were a particular problem. In many countries, marketing was uncontrolled, protective clothing was unavailable or could not be worn because of the climate; pesticide regulations might be lacking or unenforced; and up to 30 per cent of pesticides sold in developing countries were substandard. Shifts in production towards developing countries and away from the major pesticide companies to manufacturers which did not always have the ability to meet quality, health and safety standards were exacerbating the latter problem. The FAO response included working with farmers to promote integrated pest management (IPM) in order to minimize the use of toxic chemicals.

17. She referred to the need to strengthen cooperation at the national level. She noted the proposal for the inclusion of monocrotophos in the interim PIC procedure and the progress made for other chemicals, in particular DNOC, asbestos and a first hazardous pesticide formulation.

18. She acknowledged the close cooperation which FAO enjoyed with its partners in operating the interim secretariat. That built on the unique experience resident in each organization and was an example of how to make efficient use of resources.

19. She noted that regional workshops had been held in 2002 in Jamaica and Senegal to provide hands-on training in the procedure's key operational elements. Proof of their success would be an increase in the number of import responses from participating countries. She called for additional ratifications of the Convention in the hope that it would come into force in 2003, as called for by WSSD.

20. Mr. Müller-Helmbrecht recalled that CMS also was engaged in the implementation of Agenda 21 and the outcome of WSSD. He highlighted the excellent facilities that had been made available by the Government of the Federal Republic of Germany to the CMS secretariat and CMS-related Agreements co-located in Bonn, and promoted Bonn as host of a new United Nations Campus.

II. ORGANIZATIONAL MATTERS

A. Attendance

21. The session was attended by representatives of the following parties: Algeria, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Bahamas, Bangladesh, Barbados, Belarus, Belgium, Bhutan, Brazil, Bulgaria, Burkina Faso, Burundi, Canada, Chad, Chile, China, Colombia, Congo, Côte d'Ivoire, Cuba, Czech Republic, Democratic Republic of Congo, Denmark, Djibouti, Ecuador, Egypt, Ethiopia, European Community, Finland, France, Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guinea, Honduras,

Hungary, India, Iran (Islamic Republic of), Italy, Jamaica, Japan, Jordan, Kenya, Kyrgyzstan, Lebanon, Lesotho, Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Malawi, Malaysia, Mauritania, Mauritius, Morocco, Nepal, Netherlands, New Zealand, Niger, Nigeria, Norway, Oman, Panama, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Russian Federation, Rwanda, Samoa, Saudi Arabia, Senegal, Singapore, Slovakia, Slovenia, South Africa, Spain, Suriname, Sweden, Switzerland, Syrian Arab Republic, Thailand, Togo, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Yemen, Zambia, Zimbabwe.

22. The following United Nations bodies were represented: United Nations Convention to Combat Desertification and United Nations Information Centre Bonn.

23. The following United Nations specialized agency was represented: World Health Organization.

24. The following intergovernmental organization was represented: Intergovernmental Forum on Chemical Safety.

25. The following non-governmental organizations were represented: Crop Life International, Foundation for Advancements in Science and Education, Global Cooperation Council, Guinée Ecologie, Institut de développement et d'échanges endogènes (Europe), International Council of Chemical Associations, International Council of Environmental Law, Pesticide Action Network (UK).

B. Officers

26. 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

27. The Committee adopted the following agenda on the basis of the provisional agenda (UNEP/FAO/PIC/INC.9/1):

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 third session;
 - (d) Inclusion of chemicals in the interim prior informed consent procedure:
 - Monocrotophos;
 - (e) Issues arising out of the third session of the Interim Chemical Review Committee:
 - (i) Issues to consider in establishing whether a final regulatory action has been taken as a consequence of a risk evaluation relevant to the conditions within the reporting party in line with the criteria in Annex II of the Convention;
 - (ii) Issues to consider in ensuring consistency between the scope of reported national regulatory actions and the inclusion of the chemical in the interim prior informed consent procedure;
 - (f) The Interim Chemical Review Committee – extension of mandate or nomination of new members;
 5. Preparation for the Conference of the Parties:
 - (a) Draft financial rules and provisions;
 - (b) Settlement of disputes;
 - (c) Non-compliance;
 - (d) Assignment of specific Harmonized System customs codes;
 - (e) 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;
 7. Status of signature and ratification of the Convention.
 8. Other matters.
 9. Adoption of the report.
 10. Closure of the meeting.
28. A list of documents before the Committee at its ninth session is contained in annex I to the present report.

D. Organization of work

29. At its opening meeting, the Committee decided, on the basis of the scenario note prepared by the Chair (UNEP/FAO/PIC/INC.9/3), to pursue its work in plenary and to establish open-ended sessional working groups, as necessary.

30. The Committee established an open-ended working group on compliance, chaired by Mr. Alistair McGlone (United Kingdom).

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

31. Introducing the item, the representative of the secretariat drew attention to the documentation prepared on the subject (see annex I) and reported on the work of the secretariat during the period 2001-2002, including support to the implementation of the interim PIC procedure, support to the Intergovernmental Negotiating Committee and the Interim Chemical Review Committee, and facilitation of implementation and ratification. In reporting on the expenditure report for 2001 and the proposed budget for 2004, he noted that they had been reformatted with additional details, in line with the request expressed by the Committee at its eighth session. The increase in the budget for 2004, he explained, was a result of a projected increased workload, the proposed holding of workshops in 2004, and the 13 per cent support costs to the United Nations. He noted that the 2004 budget might be revisited at the next session of the Committee, taking into account the proximity of the entry into force of the Convention and the first meeting of the Conference of the Parties.

32. Making reference to the financial pledges and contributions, he announced that further contributions had been received from Norway for 100,000 Norwegian Kroner, Austria for €15,000, from Madagascar for \$958 and from Switzerland for \$210,000. He added that the Government of Switzerland had offered to host the next session of the Intergovernmental Negotiating Committee and make a financial commitment to that session. Pointing to the decrease in the financial contribution of UNEP for 2002 and 2003, he explained that it was a result of a decision of the twenty-first session of the UNEP Governing Council to decrease the budget to the UNEP Chemicals programme.

33. The Committee expressed appreciation for the documentation and the clear explanation of how the budget had been prepared. The representative of Japan noted his Government's intention to contribute \$100,000 to the Trust Fund in 2002. The representative of the United Kingdom reported that his Government would make a contribution of £80,000 for 2002. The representative of Belgium said that his Government would make a contribution of \$100,000 for 2003. The representative of Finland said that her Government would make a contribution of €10,000 for 2002. The representative of the European Community said that, subject to the appropriate budgetary approvals, a contribution of €100,000 would be made for 2002 and again for 2003.

34. During the course of discussions, a number of countries supported retaining facilitation of implementation and ratification as a high priority. The representatives of Cuba and of Egypt offered to host workshops in their respective regions.

35. The Committee noted the in-kind contribution of €343,000 made by the Government of Germany to cover local costs associated with hosting the current session of the Intergovernmental Negotiating Committee in Bonn.

36. The need for an informal process by which to obtain additional information or clarification from the Secretariat on issues related to the budget was noted. Representatives requested further clarification on a number of items, including the proposed increase in the 2004 budget, financial reporting, and the budget format. The possibility of preparing a 2003-2004 biennium budget in anticipation of budget formats that might be used once the Convention entered into force was also suggested. The Committee agreed to set up a

small informal group to meet with the Secretariat to address and clarify those and any other elements of concern regarding the budget as well as the possibility of establishing a budget committee.

37. The representative of the secretariat reported back to the Committee on the deliberations of the informal budget group. The Committee requested the secretariat to prepare three additional documents during the current session of the Committee to facilitate discussions. Those were a model format for the budget that included figures on amounts spent and projected expenditures to provide an actual financial status at future sessions of the Committee, an update of the table of pledges and contributions in annex I of document UNEP/FAO/PIC/INC.9/4 and a paper providing clarification on the main cost elements contributing to the increase in budget from 2003 to 2004.

38. Introducing the documents, the representative of the secretariat noted that the update of the table of pledges included those made at the current session as well as interest incomes. The budget showed a surplus of \$127,000 for 2001 and \$515,000 for 2002. He clarified that the largest portion of the increase in the budget from 2003 to 2004 was for holding five workshops to facilitate implementation and ratification, as well as for assistance to countries in related projects and query response. He also introduced the model format prepared for the budget.

39. The Committee decided to:

(a) Note the 2004 budget contained in annex IV to the present report and to revisit that budget at the tenth session of the Committee;

(b) Adopt the format for the budget as given in annex V to the present report, noting that it could be modified by the Committee if necessary;

(c) Establish an open-ended budget working group early at the tenth session of the Committee; and

(d) Request the Executive Director of UNEP to consider using a portion of the 13 per cent administrative fee to provide additional support to the secretariat for administrative and financial matters.

40. The Committee requested the secretariat to provide narrative text in future budgets indicating the reasons for any significant increases or decreases.

41. The Committee requested the secretariat to prepare a document on workshops indicating when and where they had been held, where they were projected, the target audiences and costing involved for future sessions of the Committee.

42. The Committee authorized the Secretariat to arrange workshops in 2003, subject to the availability of additional resources, to support implementation and ratification of the Convention.

43. The representative of China offered to host a workshop for the Asia region. The representative of Switzerland welcomed the proposal from China and offered to contribute to holding that workshop.

IV. IMPLEMENTATION OF THE INTERIM PRIOR INFORMED CONSENT PROCEDURE

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

44. Under agenda item 4 (a), the Committee had before it the documentation prepared on the subject (see annex I), comprising a note and an information paper by the secretariat on the status of the implementation of the interim prior informed consent procedure (UNEP/FAO/PIC/INC.9/5, as corrected by UNEP/FAO/PIC/INC.9.20 and UNEP/FAO/PIC/INF.9/INF/7).

45. A representative of the secretariat noted that, as at 30 April 2002, 166 Parties were participating in the interim PIC procedure and had nominated a total of 250 Designated National Authorities.
46. While no trends could be determined on the limited number of notifications received, a slight increase in notifications for new chemicals had been observed and those notifications had been verified as complete. The number of countries submitting notifications appeared to be relatively constant.
47. The secretariat had received notifications that met the information requirements of Annex I of the Convention from at least two interim PIC regions for three candidate chemicals (two pesticides, DNOC and dinoterb; and one industrial chemical, asbestos).
48. For the chemical parathion, two notifications of final regulatory action from two regions had been verified. The representative of the secretariat drew attention to a request for information on production, uses and export of parathion contained in document UNEP/FAO/PIC/INF.9/INF/7 and further requested representatives at the Committee to inform the secretariat of any such information as soon as possible.
49. Two proposals for severely hazardous pesticide formulations were submitted and verified as having met the information requirements of part 1 of Annex IV of the Convention.
50. The overall response rate for importing responses under interim PIC procedure was 48 per cent; 15 per cent of participating countries had provided all import responses, while 25 per cent had failed to provide any responses.
51. The representative of a regional economic integration organization said that the situation in terms of numbers and types of notifications was broadly encouraging, but it was disappointing that a relatively small number of parties appeared to be active in the area. He welcomed a new initiative to publish a list of all notifications verified as complete, which he said might encourage other Parties to notify, and said that the European Community had submitted notifications of Community regulatory action on a number of pesticides.
52. He welcomed the high proportion of notifications being verified as complete. The criteria of Annex II of the Convention might not be met in every case, but that should not deter countries from notifying; perhaps more training was needed, for example at future workshops, to explain the requirements for a chemical to be included in the procedure.
53. He said that the data on import responses confirmed that the problem of non-submission was serious, with few signs of improvement, and the underlying causes needed to be considered. It might be more effective if countries failing to respond received a specific written reminder. A further proposal was that countries that had provided no import responses might be targeted. He also noted that the proposed monitoring over the next 12 months would hopefully show an increase in the number of import responses from countries that had participated in training workshops.
54. The representative of Chile said that his country had met its obligations but recognized the difficulties that some other countries might face, and was organizing a regional meeting concerning the Rotterdam, Stockholm and Basel Conventions.
55. One representative said that the transitional period before the Convention entered into force would serve as a training period and thanked the secretariat for assistance in overcoming difficulties in the operation of the interim PIC procedure through the training provided at the regional workshops. Another representative said that some countries needed technical assistance in order to comply with the procedure.
56. A representative of the secretariat pointed out that addressing specific reminders to countries to meet their reporting commitments would entail additional costs and said that the secretariat would require a clear mandate to undertake the task.

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

57. The Committee, having before it a note by the secretariat (UNEP/FAO/PIC/INC.9/11), considered the retroactive confirmation of the designation of a new expert as a member of the Interim Chemical Review Committee, following the resignation of a previously confirmed member from the North American region. The Government of Canada had designated the expert following consultation with other countries in the region.

58. Decision 9/2 confirming the appointment of Mr. Rob Ward (Canada) to act as a member of the Interim Chemical Review Committee from the North American region, is contained in annex II to the present report.

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

59. In its deliberations on the item, the Committee had before it the documentation prepared on the subject (see annex I). The Chair of the Interim Chemical Review Committee, Mr. Arndt (Germany), introduced the report of the Committee (UNEP/FAO/PIC/INC.9/6). He drew particular attention to the status report on conflict of interest, and the progress report on implementation of the Decision INC-8/3, on maleic hydrazide. Noting that the intersessional work of the Interim Chemical Review Committee in preparing decision guidance documents was being carried out by experts of a limited number of countries, he pointed out that, if the number of substances to be addressed were to increase, it would be necessary for the Review Committee to seek far greater support from the secretariat.

60. The representative of a regional economic integration organization noted with appreciation that the Interim Chemical Review Committee at its third session had accomplished useful work on matters that would serve to further advance the effective functioning of the interim PIC procedure, such as the prioritization of old notifications; the incident report form for severely hazardous pesticide formulations; determination of ongoing trade in chemicals; and common and recognized patterns of use of severely hazardous pesticide formulations.

61. Concerning maleic hydrazide, he was deeply disturbed about the apparent failure of some manufacturers to comply with the condition of paragraph 2 of Decision INC-8/3 whereby they should confirm their commitment to seek and comply with FAO specifications by 1 January 2004. He was particularly concerned to learn that one Japanese manufacturer had been identified as producing the choline salt of maleic hydrazide with a free hydrazine content of more than 1 ppm. That raised serious doubts about the continued validity of Decision INC-8/3 not to include maleic hydrazide in the interim PIC procedure. He proposed that the Interim Chemical Review Committee should be requested to review the situation again at its next meeting, and make appropriate recommendations if the situation had not been adequately resolved.

62. The representative of Japan said that the competent authority in his country had reported that it had measured the hydrazine content of the maleic hydrazide produced by the Japan Hydrazine Company and had found it to be below 1 ppm. The authority was currently preparing a report on that survey and the Government of Japan would submit the results in writing to the secretariat by the end of November 2002.

63. One representative requested that additional information should be made available to countries on the alternatives to asbestos.

64. One representative expressed his profound concern that a Task Group was undertaking work on the review of the proposals on the severely hazardous pesticide formulations Granox TBC and Spinox T when there was no established international trade in the substances. He considered that the international trade requirement was applicable to the totality of the Convention. He believed that the Intergovernmental Negotiating Committee should provide guidance to ensure that the listing of a severely hazardous pesticide

formulation that was not the object of international trade did not constitute a precedent that could deter countries from ratifying the Convention. It was observed that the issue did not require a decision at the current time, since the Interim Chemical Review Committee first needed to prepare draft decision guidance documents, which would have to be submitted to a future meeting of the Intergovernmental Negotiating Committee for approval.

65. The Intergovernmental Negotiating Committee:

(a) Noted with appreciation the report of the Interim Chemical Review Committee on the work of its third session, and expressed thanks to its Chair and to the secretariat;

(b) Requested the Interim Chemical Review Committee to report on the status of implementation of decision INC-8/3 concerning maleic hydrazide to the tenth session of the Intergovernmental Negotiating Committee.

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

Monocrotophos

66. In its deliberations, the Committee had before it the documentation on the subject prepared by the secretariat (see annex I). Introducing the item, the representative of the secretariat noted that the Interim Chemical Review Committee had recommended that the Committee should decide to include monocrotophos and approve the related draft decision guidance document.

67. Decision INC-9/1 is contained in annex II to the present report.

E. Issues arising out of the third session of the Interim Chemical Review Committee:

1. Issues to consider in establishing whether a final regulatory action has been taken as a consequence of a risk evaluation relevant to the conditions within the reporting Party in line with the criteria in Annex II of the Convention

68. In its deliberations, the Committee had before it the documentation on the subject prepared by the secretariat (see annex I). Mr. Arndt, Chair of the Interim Chemical Review Committee, introduced the item. He noted that there were two distinct issues to be considered: whether preventive regulatory actions on pesticides met the definition of a ban under Article 2 and the relationship of such regulatory action to the criteria in Annex II, and the concerns that countries should provide supporting risk evaluations based on conditions prevailing in their country. He requested the Committee to provide guidance to the Interim Chemical Review Committee on how to proceed in such cases.

69. The Committee expressed its appreciation for the documentation. Noting that Article 2 did not exclude preventive action, even if a chemical was not proposed for use in the notifying country, the Committee agreed that the definition of a banned chemical in that article included preventive regulatory actions taken to protect human health or the environment from chemicals that might not have been proposed for use in the notifying country.

70. The Committee agreed that, in the case where a country notified a final regulatory action to ban a chemical that had been refused approval for first-time use or had been withdrawn from further consideration in the domestic approval process in order to protect human health or the environment, the extent to which the notification and supporting documentation were found to meet the criteria in Annex II of the Convention would need to be considered on a case-by-case basis. In the event that a country notified a final regulatory action to ban a chemical that had not been proposed for use in that country, submission of chemical-specific supporting documentation would assist the Interim Chemical Review Committee to establish that the final

regulatory action was taken as a consequence of a risk evaluation of the anticipated or likely uses of the chemical in the notifying country. The Committee agreed that the extent to which notifications and supporting documentation were found to meet the criteria in Annex II of the Convention would need to be considered on a case-by-case basis.

71. The Committee recognized the right of any country to take domestic regulation action regarding use of chemicals and recalled that that action must be notified under the terms of the Convention.

72. The Committee considered the three main scenarios concerning the ability of countries to provide risk evaluations in support of final regulatory actions. It was stressed that, even when hazard or risk evaluation information was taken from another country, supporting documentation would be expected to demonstrate that conditions in that country were similar and comparable to those in the notifying country. The supporting documentation could include “bridging” information on, among others things, a comparison of uses, conditions of use, physical and climatic conditions and risk reduction measures. The level of detail of that information should be sufficient to enable the Interim Chemical Review Committee to judge whether conditions were comparable. Further, the sufficiency and acceptability of that information would have to be determined by the Interim Chemical Review Committee on a case-by-case basis.

73. The Committee noted that, in the absence of documentation detailing how the risk evaluation used from another country related to conditions prevalent in the notifying country, such an action would not be considered as meeting the criteria of Annex II of the Convention.

74. The Committee requested the Interim Chemical Review Committee to develop guidelines on the scope of “bridging” information to be contained in the supporting documentation provided by the notifying country, for review by the Committee at its tenth session.

75. The Committee noted the concern of developing countries with regard to the need to avoid over-burdening developing countries with requirements to provide extensive amounts of information.

2. Issues to consider in ensuring consistency between the scope of reported national regulatory actions and the inclusion of the chemical in the interim prior informed consent procedure

76. The Committee had before it the documentation prepared for the subject (see annex I). Introducing the sub-item, Mr. Arndt, Chair of the Interim Chemical Review Committee, pointed to the inconsistent use of chemical abstract (CAS) numbers and chemical descriptions in Annex III of the Convention. He drew the Committee’s attention to the Review Committee’s request for guidance on ensuring consistency between the scope of reported national regulatory actions and the listing of chemicals in the interim PIC procedure, as set forth in document UNEP/FAO/PIC/INC.9/9.

77. The Committee noted that the scope of the regulatory actions as stated in the notifications submitted in accordance with Article 5 was the basis for listing a given chemical. The Committee agreed that, in the case of a chemical such as DNOC, it would be listed as “DNOC and its salts, such as ammonium salt, potassium salt and sodium salt”, along with the relevant CAS numbers, if included in the interim PIC procedure.

78. The Committee noted that the specific formulation identified in a proposal submitted in accordance with Article 6 was the basis for listing a severely hazardous pesticide formulation. The Committee agreed that formulations containing the active ingredient or ingredients at or above the specified concentrations and in the same formulation type would also be subject to the interim PIC procedure, if supported by the technical documentation supporting the proposal. It was agreed that a footnote to that effect could be added, or some other type of explanatory guidance could be provided.

79. The Committee agreed that in the particular case of Granox TBC and Spinox T, if those formulations were included in the interim PIC procedure, all powdered formulations containing the active ingredients would be covered. The Committee also agreed that the listing could be such that the constituent active ingredients (Benomyl, Carbofuran and Thiram) would be explicitly identified, along with the concentration levels, the appropriate CAS numbers and the formulation type (dustable powder), with an appropriate footnote or other explanatory guidance.

80. A number of countries indicated that they might wish to make individual decisions on imports of the separate forms of asbestos. The Committee agreed that the individual forms of asbestos and the relevant CAS numbers should be explicitly identified, if those forms were included in the interim PIC procedure.

81. The Committee recognized that, as a result of their decision to include monocrotophos in the interim PIC procedure, countries would, in accordance with Article 10, be required to submit separate import decisions for all forms of monocrotophos, as well as for severely hazardous formulations (soluble liquid formulations exceeding 600 grams active ingredient per litre), currently listed in Annex III of the Convention. It noted that such a requirement could lead to confusion on the part of countries.

82. The Committee decided that, with the circulation of the new decision guidance document on monocrotophos, countries would be invited to submit a single decision regarding future imports that would apply to all forms of monocrotophos, including the severely hazardous formulations listed in Annex III of the Convention.

83. The Committee encouraged Parties to be both specific and comprehensive in both their regulatory actions and in their notifications thereof, and in that connection the Committee agreed that the secretariat had the authority to seek further information and clarification of notifications when required.

84. In the light of the discussions, and the concern noted by the Chair of the Interim Chemical Review Committee in his introduction, the secretariat was requested to prepare a “housekeeping” paper, identifying inconsistencies within Annex III of the Convention and inconsistencies between Annex III and decision guidance documents, for consideration and review by the Interim Chemical Review Committee. The report of the Interim Chemical Review Committee would be submitted to the Committee at its tenth session as a basis for preparation of a recommendation to the first Conference of the Parties and further guidance to the operation of the Interim Chemical Review Committee.

F. The Interim Chemical Review Committee – extension of mandate or nomination of new members

85. In its deliberations the Committee had before it the note by the secretariat on confirmation of experts designated for the Interim Chemical Review Committee (UNEP/FAO/PIC/INC.9/11). The Chair invited the Committee to consider two options: to reconstitute the Interim Chemical Review Committee or to extend the mandates of the existing members. Reconstituting the Interim Chemical Review Committee would require regional meetings to choose the countries to be represented, followed by the designations of the experts by the chosen countries and by the presentation of the experts’ qualifications including their conflict of interest forms. Three current experts had not presented their conflict of interest forms, hence the African region would have to propose two new experts and the Asian region one new expert.

86. The regional groups for Europe, Latin America and the Caribbean, the Near East and North America decided to recommend extending the mandates of the experts from their regions until the first meeting of the Conference of the Parties.

87. The Southwest Pacific regional group also recommended extending the mandate of the experts from that region, but noted that the expert from Samoa, Mr. William J. Cable, would no longer be in a position to continue his mandate. In his place, the regional group nominated Mr. Siaosi Matalavea, also from Samoa. The representative of the Southwest Pacific region expressed the appreciation of the region for the work of Mr. Cable in the Interim Chemical Review Committee.

88. The regional group for Africa recommended extending the mandates of the experts from Gambia, Ethiopia, Mauritius, Morocco and South Africa. The expert from Cameroon was replaced by Mr. Jean Moali from the Republic of Congo for the sixth position for the region.

89. The regional group for Asia nominated five new experts from that region: Mr. Mahmood Hasan Khan from Bangladesh; Mr. Halimi B. Mahmud from Malaysia; Mr. Christopher Silviero from the Philippines; Mrs. Kyunghye Choi from the Republic of Korea; and Mrs. Nuansri Tayaputch from Thailand.

90. The Chair of the Committee reminded the meeting that complete documentation, including nominations from Governments and completed conflict of interest forms, had not yet been received by the Committee for all the experts. On an exceptional basis, the Committee agreed to confirm all the experts on the condition that outstanding documents were received by the secretariat by 15 November 2002. Experts who did not meet that condition would not be allowed to participate in intersessional work and in the meetings of the Interim Chemical Review Committee.

91. The Committee decided to approve the nominations submitted by the regions for the composition of the Interim Chemical Review Committee.

92. Decision INC-9/3 on the membership of the Interim Chemical Review Committee is contained in annex II to the present report.

93. The Committee noted that one regional group had indicated its preference for documentation of the Interim Chemical Review Committee to be in all official languages of the United Nations.

V. PREPARATION FOR THE CONFERENCE OF THE PARTIES

94. The Committee agreed that paragraph 1 of Rule 45 of the draft rules of procedure would need to be revisited at a future meeting of the Committee.

A. Draft financial rules and provisions

95. In its consideration of the sub-item, the Committee had before it a note from the secretariat (UNEP/FAO/PIC/INC.9/13) containing the draft financial rules and provisions as considered by the Legal Working Group during the eighth session of the Committee, which had noted that three main issues still needed to be resolved.

1. Designation of an organization to establish and administer Trust Funds

96. The Committee considered three options for the designation of an organization to establish and administer Trust Funds: the Executive Director of UNEP, the Director-General of FAO and the Secretary-General of the United Nations. A number of representatives supported the option that the Trust Fund should be established by the Executive Director of UNEP. One representative specifically opposed having the Trust Fund established by the Secretary-General of the United Nations. Representatives of the secretariat, asked to clarify the prospects of reducing charges for administrative overheads, said that the Governing Council of UNEP had allowed very little flexibility for such reductions but that occasionally some portion of the overhead could be used to meet administrative costs of the secretariat. A reduction of overheads for Funds established by the Director-General of FAO would be subject to negotiation and would probably need approval from the FAO governing bodies.

97. One representative asked for a clearer presentation of the benefits of each of the three options. The Committee agreed to consider at its tenth session a recommendation for the designation of an organization to establish and administer Trust Funds.

2. Eligibility for assistance from the Special Trust Fund

98. On the question of eligibility for assistance from the Special Trust Fund, the Committee agreed that, in addition to developing country Parties, Parties with economies in transition would be eligible for assistance, particularly if the assistance contributed to enabling them to ratify the Convention.

3. Apportionment of expenses

99. On the apportionment of expenses, differing views were expressed as to the basis of contributions. Several representatives supported a maximum contribution of 22 per cent of the total, basing the figure on the current United Nations scale of assessment.¹

100. Some representatives expressed reservations about the use of the United Nations scale of assessment as a firm basis for contributions. Some representatives indicated that all contributions should be voluntary. Some representatives indicated willingness to treat the United Nations scale of assessment as an indicative scale, which could inspire contributions, taking into account the related decision of the seventh special session of the Governing Council of UNEP.

101. The Committee agreed to consider the apportionment of expenses at its tenth session.

102. Also, the Committee took note of a proposal submitted by Canada for amendment of the draft financial rules and provisions and agreed that it would consider the matter further at its tenth session.

B. Settlement of disputes

103. In its consideration of the sub-item, the Committee had before it a note from the secretariat (UNEP/FAO/PIC/INC.9/14) which contained the draft rules on arbitration and draft rules on conciliation as considered by the Legal Working Group and agreed upon by the eighth session of the Committee, with the exception of one issue. In that connection, a representative of the secretariat drew attention to the footnote to article 3 of the draft rules on arbitration which stated that the eighth session of the Committee had left open the question of the time period within which the Secretary-General of the United Nations must designate an arbitrator in the event that one of the parties to the dispute had not appointed an arbitrator within two months.

104. All those who spoke on the subject expressed support for a further two-month period as a satisfactory compromise. The Committee adopted the proposal.

105. One representative drew attention to article 16 of the draft rules on arbitration, which stated that where parties which had an interest of a legal nature in the subject matter of the dispute which might be affected by the decision in the case intervened in proceedings with the consent of the Arbitral Tribunal, as provided in article 10, the decision should be binding on that Party insofar as it related to matters in respect of which that Party had intervened. While noting the existence of similar provisions under the Statute of the International Tribunal for the Law of the Sea, the representative stated that there was a precedent at the International Court of Justice, where intervening third parties were not bound by decisions. He asked that the provision should be further considered at the tenth session of the Committee or at the first Conference of the Parties. The Committee agreed that that view would be noted in a footnote to the draft.

106. The text of the draft rules on the settlement of disputes, as agreed upon by the Committee at its ninth session, is attached as annex VI to the present report.

¹ Should the United Nations scale of assessment be altered before the first meeting of the Conference of the Parties to the Convention, the figure would be adjusted accordingly.

C. Non-compliance

107. Introducing the item, the representative of the secretariat presented two documents on the subject (see annex I) which had been prepared in response to a request made at the eighth session of the Committee on the basis of views expressed by the plenary and the working group as well as comments received in writing from Governments.

108. The Committee stressed the importance of having sound procedures and mechanisms on compliance. Some representatives noted that the compliance mechanism should be simple, flexible and facilitative in nature. The importance of having a non-compliance regime in place as soon as possible was emphasized by some representatives while others said that Article 17 stated that the development of a non-compliance mechanism should be as “soon as practicable” and that it might not be a first priority. Some representatives noted the need to gain experience in order to develop a sound compliance mechanism.

109. The Committee established an open-ended working group to discuss mechanisms and procedures on compliance based on the documentation prepared by the secretariat. It recommended that countries, when providing views and observations, should examine possible practical steps taking into account experience in working with the interim PIC procedure. It agreed that a negotiating document on the subject should be prepared for consideration by the Committee at its tenth session.

110. Reporting to plenary, Mr. Alistair McGlone (United Kingdom), Chair of the working group on compliance, said that the group had examined practical issues regarding the implementation of the Convention and had considered how those should affect drafting of any compliance mechanism. The group had also examined other compliance mechanisms and taken into account lessons learned from their development.

Reporting

111. The working group on compliance had considered the note by the Secretariat on reporting on the Implementation of the Convention (UNEP/FAO/PIC/INC.9/15).

112. The group had welcomed the note as an important and helpful contribution to its discussions on reporting. Some members of the Group wished to submit technical comments. The Secretariat noted comments made during the Group’s deliberations. Further comments were invited by 31 January 2003.

113. The group had observed that the Secretariat’s note was not a document that required to be negotiated, and did not try to refine the note paragraph by paragraph.

114. It was considered that the Secretariat should, after the first meeting of the Conference of the Parties, report to the Parties. The Secretariat’s report should focus, inter alia, on the following three issues:

- (a) Compliance with the Convention, and in that regard the report should provide material that would assist:
 - (i) Any discussions relating to Article 17 mechanisms and procedures; and
 - (ii) The work of any Compliance Committee constituted by the Conference of the Parties under that Article;
- (b) Implementation of the Convention; and
- (c) Identification of areas in which assistance is required.

115. Any such report prepared by the Secretariat should assist the Conference of the Parties to keep under continuous review and evaluation the implementation of the Convention, as required by paragraph 5 of Article 18.

116. In order to enable the Secretariat to prepare such a report, the Conference of the Parties would need to make a decision on reporting. Any such decision would need to reflect the following:

(a) There were already a number of provisions in the Convention that required information to be submitted by Parties to the Secretariat. There was no necessity to modify the application of, or to purport to amend, any of those provisions;

(b) There was a necessity for a questionnaire to invite Parties to supplement the information which Parties were required to submit under the Convention;

(c) Most States considered that there was no case for the imposition, on Parties, of legally binding obligations to supplement those obligations set out in the Convention;

(d) Any questionnaire should be simple, and might be circulated to Parties by e-mail.

117. The Secretariat was invited to prepare, for consideration at the tenth session of the Intergovernmental Negotiating Committee, a draft decision of the first meeting of the Conference of the Parties on reporting and a questionnaire, reflecting the deliberations of the Group.

118. In addition, Parties might wish to consider whether subsidiary or technical bodies may request Parties for further information on areas within their competence.

Compliance

119. The working group on compliance considered compliance issues under Article 17 and, using the draft prepared by the Secretariat and annexed to document UNEP/FAO/PIC/INC.9/16, produced a working draft of procedures and institutional mechanisms for handling cases of non-compliance, as set out in annex VII to the present report. The group wished to consider the draft further at the tenth session of the Intergovernmental Negotiating Committee.

120. The Committee took note of the report of the Chair of the working group on compliance and expressed its appreciation for the work of the group, with particular thanks to the Chair, Mr. McGlone.

121. The Committee agreed to reconvene the working group on compliance at the tenth session of the Committee, at an early stage in its proceedings. It was agreed that the Chair of the working group on compliance would prepare a Chair's draft, taking fully into account latest developments concerning the procedures and institutional mechanisms for handling cases of non-compliance, in order to facilitate discussions.

D. Assignment of specific Harmonized System customs codes

122. A representative of the secretariat drew the attention of the Committee to the documentation under agenda item 5 (d) (see annex I) and underlined the effective cooperation between the secretariat and the secretariat of the World Customs Organization (WCO). The European Community had also submitted a proposal to WCO which was consistent with that of the secretariat. WCO had responded positively to both sets of proposals, which it would take up at the meeting of its Harmonized System Committee from 18 to 29 November 2002. It was strongly emphasized that it was important for Governments represented in WCO to give their broad support to the proposal to assign Harmonized System customs codes to the chemicals and pesticides listed in Annex III of the Convention.

123. Noting that the allocation of Harmonized System codes would significantly facilitate the implementation of the Convention, the Committee welcomed the progress made.

E. Issues related to the discontinuation of the interim prior informed consent procedure

124. A representative of the Secretariat drew the attention of the Committee to the documentation under agenda item 5 (e) (see annex I), and explained that the Working Group established at the eighth session of the Committee had been unable to reach consensus on the following five issues and, in its report (UNEP/FAO/PIC/INC.9/18, annex), had identified options for possible solutions, for the attention of the Committee. The outcome of those deliberations would be the basis for recommendations to the Conference of the Parties or to the governing bodies of FAO and UNEP regarding the discontinuation of the interim PIC procedure.

Composition of the PIC regions

125. The Committee decided to forward the following two options identified by the Working Group (UNEP/FAO/PIC/INC.9/18, paras 16 (a) and (b)) to the first meeting of the Conference of the Parties:

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

(b) That the PIC regions to be adopted at the first 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.”

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

126. Following the discussion, the Committee decided to forward the following proposal, as identified by the Working Group (UNEP/FAO/PIC/INC.9/18, para. 21 (a)), to the first meeting of the Conference of the Parties:

“Parties could be given up to nine months from the date of the first 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 take effect 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.”

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

127. During the discussion, representatives expressed various preferences concerning both options identified by the Working Group (UNEP/FAO/PIC/INC.9/18, paras. 30 (a) and (b)). Informal consultations continued in the group of Friends of the Chair.

Status of notifications and proposals submitted by participating States

128. During the discussion, representatives expressed various preferences concerning both options identified by the Working Group (UNEP/FAO/PIC/INC.9/18, paras. 40 (a) and (b)). Informal consultations continued in the group of Friends of the Chair.

The post-transition period – discontinuation of the interim procedure

129. During the discussion of the options identified by the Working Group (UNEP/FAO/PIC/INC.9/18, paras. 46 (a) and (b)), several representatives considered that it was useful to retain the information on import responses and national contact points, perhaps setting a time limit for its retention and providing a caveat that it was time-specific. It was stressed that the issue was linked to the duration of the transition period, which was still unknown. Informal consultations continued in the group of Friends of the Chair.

130. The Convenor of the group of Friends of the Chair, the representative of Australia, reported to the Committee on the deliberations of the Group on the three outstanding issues and introduced a conference room paper containing its proposals for recommendations to the Conference of the Parties.

131. On the basis of the proposals submitted by the Friends of the Chair, the Committee adopted recommendations to the first meeting of the Conference of the Parties.

132. The recommendations are contained in annex III to the present report.

VI. ISSUES ARISING OUT OF THE CONFERENCE OF PLENIPOTENTIARIES

A. Support for implementation

133. The representative of the secretariat drew the attention of the Committee to the document on the subject (see annex I). He said that, while direct bilateral assistance between countries, as well as through the secretariat, had been available for such things as the holding of regional and subregional workshops, requests for follow-up actions were often not implemented owing to the lack of a mechanism for technical assistance. He added that member organizations of the IOMC were undertaking projects in support of capacity-building that could have benefits for country needs under the Convention and that activities under the Stockholm Convention could be of relevance to the Rotterdam Convention. Joint workshops were already being held for activities related to the Basel Convention, the Montreal Protocol, the Stockholm Convention and the Rotterdam Convention.

134. He pointed to the recent GEF Council proposals to include a new focal area on persistent organic pollutants and to text that could make the incremental costs concerning chemicals management related to GEF focal areas eligible for funding. Those proposals would be decided at the next GEF Assembly, in October 2002. A positive decision could offer opportunities for limited support of Rotterdam Convention activities in countries.

135. Representatives noted that promoting voluntary contributions to the Trust Fund would assist in carrying out activities to implement the Convention, in particular through workshops. Parties experiencing difficulties in implementing the Convention were advised to inform the secretariat, which could also inform potential donors of such needs. Several representatives said that it was important to coordinate action on the various chemicals-related conventions at the global level and at the local level.

136. Concerning the GEF, one representative raised the question of whether GEF funding was available specifically for the Rotterdam Convention. Another representative noted that there would be great demand for GEF funds, and that such GEF funds would have to be allocated solely based on the GEF focal areas, not on the basis of incremental benefits.

137. Many representatives expressed appreciation for the workshops which had been held and noted that countries had elaborated their needs for support in implementing the Convention during those workshops. Representatives informed the Committee about activities related to technical assistance, training and information exchange. The secretariat was encouraged to work closely with secretariats of other multilateral environment agreements to avoid duplication, maintain consistency and ensure efficient use of resources. One information workshop on technical implementation aspects common to chemicals conventions had looked at the overlap of such implementation and recommended round-table discussions of concerned bodies at the local level. It was noted that the Information Exchange Network on Capacity Building for the Sound Management of Chemicals (INFOCAP) could successfully support technical assistance in that area.

138. Several representatives drew attention to the need to link requests to sustainable development priorities and to poverty reduction. It was noted that it was important for developing countries and countries with economies in transition to put requests for assistance in their national development plans.

139. The representative of Japan, recalling his Government's contribution of \$100,000, requested the secretariat to use that funding for activities related to technical cooperation. The representative of France said that her Government would contribute €100,000 to the Rotterdam and Stockholm Conventions and noted that the approximately €50,000 for the Rotterdam Convention would contribute to a future workshop.

(a) The Committee requested the secretariat:

(b) To compile and analyse the results and conclusions of the regional and subregional workshops on the Rotterdam Convention, and to include information received from Governments and donor agencies as well as information on ongoing technical assistance activities in other forums and related conventions that could be of relevance to the Rotterdam Convention; and

(c) To prepare a report for the Committee at its tenth session on technical assistance needs and opportunities for synergies as the basis for a possible strategic approach to technical assistance.

140. The Committee agreed:

(a) To invite the GEF implementing agencies to consider, on the basis of the outcome of the GEF Assembly, whether there might be appropriate projects relating to one or more GEF focal areas that could have the incremental benefit of strengthening the capacity of countries to implement the Rotterdam Convention and, if so, to develop appropriate proposals thereon; and

(b) Based on the report of the secretariat, to discuss, at its tenth session, possible approaches that could lead to a "fast start" under Article 16 once the Convention entered into force.

B. Dispute settlement, illicit trafficking and responsibility and liability

141. A representative of the secretariat gave an oral progress report on the item. The eighth session of the Committee had noted that a working group on compliance had been established to develop compliance guidance, and that it had agreed to take up matters related to chemicals management. However, the work on chemicals had not continued, for a number of reasons. Comparatively, the other Conventions for which guidance was being developed (CITES, the Basel Convention and the Montreal Protocol) were further advanced in their compliance programmes; also, those other Conventions were already in force and dealing with actual illegal acts, while the Rotterdam Convention had not yet entered into force. Financial resources to integrate chemicals management into the project were also lacking. There were no reported incidents of illicit traffic in chemicals of interest to the Rotterdam Convention.

142. There were, however, positive developments in organizing an integrated training programme for customs officers. The secretariat had been asked to participate in that training programme, which would be launched by WCO and UNEP in 2003. It was anticipated that the programme could be highly valuable in identifying and preventing illicit traffic.

143. The Committee took note of the report and requested the secretariat to report on further progress to the Committee at its tenth meeting.

VII. STATUS OF SIGNATURE AND RATIFICATION OF THE CONVENTION

144. 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 (see annex I). Many representatives announced that the process of approval, accession or ratification was progressing favourably and that they hoped shortly to deposit the relevant instruments.

145. The Committee took note of the information presented by the secretariat and called on all prospective Parties to endeavour to accelerate their processes with a view to bringing the Convention into force at the earliest possible date.

VIII. OTHER MATTERS

Tribute to the Government and people of the Federal Republic of Germany

146. On behalf of the Committee, the Chair expressed gratitude to the Government and people of the Federal Republic of Germany for their hospitality and for hosting the meeting and congratulated them on the twelfth anniversary of German reunification, on 3 October 2002.

Tenth session of the Intergovernmental Negotiating Committee

147. The Committee welcomed the offer conveyed by the representative of the Government of Switzerland to host the tenth session of the Intergovernmental Negotiating Committee in Geneva from 17 to 21 November 2003 and to make a significant financial contribution.

Fourth meeting of the Interim Chemical Review Committee

148. The Committee noted the proposed dates and venue of the fourth meeting of the Interim Chemical Review Committee: from 3 to 7 March 2003, in Rome.

Workshops

149. The representatives of Panama and Argentina offered to host workshops for the Latin American and Caribbean region.

World Trade Organization

150. Noting the increasing links on trade issues between the Rotterdam Convention and the work of the World Trade Organization (WTO), the Committee requested the secretariat to prepare a paper detailing the ongoing and planned cooperation with WTO on aspects of the Rotterdam Convention related to international trade.

Amendments to the text of the Convention

151. The representative of the secretariat informed the meeting that, as given in document UNEP/FAO/PIC/INC.9/INF/2, a correction to the text of the Convention had been made by the Depositary.

IX. ADOPTION OF THE REPORT

152. The Committee adopted its report on the basis of the draft report 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 MEETING

153. Following the customary exchange of courtesies, the Chair declared the session closed at 1.30 p.m. on Friday, 4 October 2002.

Annex IList of documents

Agenda item	Subject	Document title	Document
1	Opening of the session		
2	Organizational matters	Provisional agenda	UNEP/FAO/PIC/INC.9/1
	(a) Adoption of the agenda	Annotated provisional agenda	UNEP/FAO/PIC/INC.9/2
	(b) Organization of work	Scenario note for the ninth session of the Intergovernmental Negotiating Committee for an International Legally Binding Instrument for the Application of the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade	UNEP/FAO/PIC/INC.9/3
3	Activities of the secretariat and review of the situation as regards extrabudgetary funds	Activities of the secretariat and review of the situation as regards extrabudgetary funds	UNEP/FAO/PIC/INC.9/4
4	Implementation of the interim prior informed consent procedure	Implementation of the interim prior informed consent procedure	UNEP/FAO/PIC/INC.9/7
	(a) Status of implementation of the interim prior informed consent procedure	Implementation of the interim prior informed consent procedure: status of implementation of the interim prior informed consent procedure	UNEP/FAO/PIC/INC.9/5
		Status of implementation of the interim prior informed consent procedure	UNEP/FAO/PIC/INC.9/INF/7
	(b) Confirmation of experts designated for the Interim Chemical Review Committee	Implementation of the interim prior informed consent procedure: confirmation of experts designated for the Interim Chemical Review Committee	UNEP/FAO/PIC/INC.9/11
	(c) Presentation of the report of the Interim Chemical Review Committee on the work of its third session	Presentation of the report of the Interim Chemical Review Committee on the work of its third session	UNEP/FAO/PIC/INC.9/6
	(d) Inclusion of chemicals in the interim prior informed consent procedure	Inclusion of the chemical monochrotophos, and adoption of its decision guidance document	UNEP/FAO/PIC/INC.9/10 CORRIGENDUM

Agenda item	Subject	Document title	Document
	(e) Issues arising out of the third session of the Interim Chemical Review Committee	<p>Issues to consider in establishing whether a final regulatory action has been taken as a consequence of a risk evaluation relevant to the conditions within the reporting party in line with the criteria of annex II to the Convention</p> <p>Issues to consider in ensuring consistency between the scope of reported national regulatory actions and the inclusion of the chemical in the interim prior informed consent procedure</p> <p>Compatibility of national regulatory practices with the notification requirements of the interim prior informed consent procedure</p>	<p>UNEP/FAO/PIC/INC.9/8</p> <p>UNEP/FAO/PIC/INC.9/9</p> <p>UNEP/FAO/PIC/INC.9/INF/4</p>
	(f) The Interim Chemical Review Committee – extension of mandate or nomination of new members	The Interim Chemical Review Committee – extension of mandate or appointment of new members	UNEP/FAO/PIC/INC.9/12
	(c) and (f)	Status of implementation of decisions INC-8/1 and INC-8/3 taken at the eighth session of the Intergovernmental Negotiating Committee	UNEP/FAO/PIC/INC.9/INF/3
5	<p>Preparation for the Conference of the Parties</p> <p>(a) Draft financial rules and provisions</p> <p>(b) Settlement of disputes</p> <p>(c) Non-compliance</p> <p>(d) Assignment of specific Harmonized System customs codes</p>	<p>Draft financial rules and provisions</p> <p>Settlement of disputes</p> <p>Reporting on the implementation of the Convention</p> <p>Procedures and institutional mechanisms for handling cases of non-compliance</p> <p>Assignment of specific harmonized system customs codes</p>	<p>UNEP/FAO/PIC/INC.9/13</p> <p>UNEP/FAO/PIC/INC.9/14</p> <p>UNEP/FAO/PIC/INC.9/15</p> <p>UNEP/FAO/PIC/INC.9/16</p> <p>UNEP/FAO/PIC/INC.9/17</p>

Agenda item	Subject	Document title	Document
	(e) Issues related to the discontinuation of the interim prior informed consent procedure	Issues associated with the discontinuation of the interim prior informed consent procedure	UNEP/FAO/PIC/INC.9/18
6	Issues arising out of the Conference of Plenipotentiaries		
	(a) Support for Implementation	Support for implementation	UNEP/FAO/PIC/INC.9/19
	(b) Dispute settlement, illicit trafficking and responsibility and liability	-	-
7	Status of signature and ratification of the Convention	Status of signature and ratification of the Convention	UNEP/FAO/PIC/INC.9/INF/1
		General steps to be taken in order to deposit instruments of ratification, acceptance, approval or accession	UNEP/FAO/PIC/INC.9/INF/6
8	Other matters	Corrections to the original English text of the Convention and to the certified true copies	UNEP/FAO/PIC/INC.9/INF/2
		Clustering of multilateral environmental agreements on chemicals and wastes	UNEP/FAO/PIC/INC.9/INF/5
		Consolidated corrigendum	UNEP/FAO/PIC/INC.9/20
		Information Exchange Network on Capacity Building for the Sound Management of Chemicals	UNEP/FAO/PIC/INC.9/INF/8
		List of documents before the Intergovernmental Negotiating Committee at its ninth session	UNEP/FAO/PIC/INC.9/INF/9

Annex II

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 NINTH SESSION, HELD IN BONN, 30 SEPTEMBER-4 OCTOBER 2002

Decision INC-9/1: Monocrotophos

The Intergovernmental Negotiating Committee

Recalling the resolution on interim arrangements of the Conference of Plenipotentiaries on the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, by which the Conference decided that the Committee shall decide, between the date on which the Convention is opened for signature and the date of its entry into force, on the inclusion of any additional chemicals under the interim prior informed consent procedure in accordance with the provisions of Articles 5, 6, 7 and 22 of the Convention,

Noting with appreciation the work of the Interim Chemical Review Committee,

Having considered the recommendations of the Interim Chemical Review Committee on the chemical monocrotophos,

1. Decides to make the chemical monocrotophos subject to the interim prior informed consent procedure;
2. Approves the decision guidance document on the chemical monocrotophos (Annex II of document UNEP/FAO/PIC/INC.9/10).

Decision INC-9/2: 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 Mrs. Janet K. Taylor (Canada) from the Interim Chemical Review Committee,

1. Decides formally to appoint the following expert to act as a member of the Interim Chemical Review Committee from the North-American region:

Mr. Rob Ward (Canada)

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-9/3: Confirmation of experts designated for the Interim Chemical Review Committee

The Intergovernmental Negotiating Committee

1. Decides to formally appoint the 29 experts designated by Governments identified below to act as members of the Interim Chemical Review Committee. The experts marked with an asterisk * are appointed subject to their submission to the secretariat of the required supporting documentation before 15 November 2002:

Africa

Congo, Republic of	Mr. Jean Moali
Ethiopia	Mr. Ammanuel N. Malifu
Gambia	Mrs. Fatoumata Jallow Ndoye
Mauritius	Mr. Ravinandan Sibartie
Morocco	Mr. Mohamed Ammati
South Africa	Mr. Jan Ferdinand Goede

Asia

Bangladesh	Mr. Mahmood Hasan Khan*
Korea, Republic of	Ms. Kyunghee Choi
Malaysia	Mr. Halimi B. Mahmud*
Philippines	Mr. Christopher Silviero*
Thailand	Mrs. Nuansri Tayaputch*

Europe

Finland	Mr. Marc Debois
Germany	Mr. Reiner Arndt
Hungary	Mr. Tamás Kőmives
Netherlands	Mr. Karel A. Gijbertsen
Russian Federation	Mr. Boris Kurlyandski
Switzerland	Mr. Pietro Fontana

Latin America and the Caribbean

Barbados	Ms. Beverly Wood
Brazil	Ms. Sandra de Souza Hacon
Chile	Mr. Julio C. Monreal
Ecuador	Ms. Mercedes Bolaños Granda
El Salvador	Ms. Flor de María Perla de Alfaro

Near East

Egypt	Mr. Mohammed El Zarka
Qatar	Mr. Hassan A. Al-Obaidly
Sudan	Mr. Azhari Omer Abdelbagi

North America

Canada	Mr. Rob Ward
United States of America	Ms. Cathleen Barnes

Southwest Pacific

Australia	Mr. André Clive Mayne
Samoa	Mr. Siaosi Matalavea*

2. Decides that the experts shall serve until the first meeting of the Conference of the Parties.
3. Reaffirms the provisions of decision INC-6/2 as regards the conditions of service of the experts.

Annex IIIIssues related to the discontinuation of the interim PIC procedure

Following its deliberations, the Intergovernmental Negotiating Committee agreed to forward to the first meeting of the Conference of the Parties its draft proposals on the following issues that had not been resolved by the working group on the discontinuation of the proposed PIC procedure (reference is provided to the report of the working group on the discontinuation of the proposed PIC procedure, contained in document UNEP/FAO/PIC/INC.9/18).

1. Composition of the PIC regions (UNEP/FAO/PIC/INC.9/18, paras. 16 (a) and (b))

Two options:

- (a) That the PIC regions to be adopted at the first Conference of the Parties should be based on the geographical distribution of the Parties at that time;
- (b) That the PIC regions to be adopted at the first 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.

2. Chemicals subject to the interim PIC procedure but not yet listed in annex III to the Convention (UNEP/FAO/PIC/INC.9/18, para. 21 (a))

Parties could be given up to nine months from the date of the first 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 take effect 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.

3. Notifications of final regulatory action and proposals for severely hazardous pesticide formulations (UNEP/FAO/PIC/INC.9/18, para. 30)

The Secretariat shall consult with each relevant designated national authority (in writing) concerning their proposals for a severely hazardous pesticide formulation that had been submitted during the interim period. Unless notified otherwise by the relevant designated national authority, each proposal for a severely hazardous pesticide formulation is deemed, by a decision at the first meeting of the Conference of the Parties, to be resubmitted for the purposes of the Convention.

4. Status of notifications and proposals submitted by Participating States (UNEP/FAO/PIC/INC.9/18, para. 40)

It was agreed that the actions of non-Parties (including Participating States) cannot result in obligations on Parties following entry into force of the Convention.

Verified notifications and proposals from Participating States submitted to the Secretariat as at 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 Chemical Review Committee during the transition period.

Two notifications, each from a Party from a different region, would trigger review by the Chemical Review Committee and, if appropriate, development of a decision guidance document and subsequent recommendation to the Conference of the Parties as per Article 5 and in line with Decision INC-7/6.

In the situation where the notifications include one from a Party and another from a Participating State, or two Participating States (included in the above noted PIC Circular), a review by the Chemical Review Committee may be initiated and, if appropriate, a decision guidance document developed. However, any associated recommendation on inclusion, or otherwise, in Annex III may not be forwarded to the Conference of the Parties until the Participating State(s) becomes a Party.

A proposal for a severely hazardous pesticide formulation from a Party would initiate a review by the Chemical Review Committee and, if appropriate, development of a decision guidance document and subsequent recommendation to the Conference of the Parties as per Article 6 and in line with Decision-INC7/6.

A proposal from a Participating State may initiate a review by the Chemical Review Committee and, if appropriate, the development of a decision guidance document. However, any associated recommendation on inclusion, or otherwise, in Annex III may not be forwarded to the Conference of the Parties until the Participating State becomes a Party.

In setting their priorities in reviewing chemicals, the Chemical Review Committee should consider the following:

Priority should be given to chemicals supported by notifications from two Parties and any proposal for a severely hazardous pesticide formulation by a Party.

Where a chemical is supported by a notification or proposal from a Participating State, the likelihood and timeliness of ratification by that Participating State.

It was recognized that the Conference of the Parties will need to approve consideration by the Chemical Review Committee of notifications and proposals from Participating States (with a notification or proposal included in the first Circular distributed after entry into force of the Convention) in order that this function can be undertaken by the Chemical Review Committee during the transition period.

5. The post-transition period – discontinuation of the interim PIC procedure
(UNEP/FAO/PIC/INC.9/18, para. 46)

As of the end of the transition period, import responses and the list of national contact points from non-Parties will be retained, but not updated nor circulated, by the Secretariat. This information will only be retained on the Rotterdam Convention website. It will carry a clear caveat addressing the date of publication, absence of updates and the lack of liability accepted for the use of potentially outdated information etc.

A decision on whether to continue to retain this information, and for how long, should be made by the first meeting of the Conference of the Parties after the end of the transition period.

Annex IVBudget for 2004 as noted by the Committee

Ensure effective functioning of the INC/COP		
	<i>INC11/COPI</i>	
	Conference Services	375,000
	Participants' travel	175,000
	Sub-total	550,000
	<i>ICRC5 in Geneva</i>	
	Conference Services	85,000
	Participants' travel	75,000
	Sub-total	160,000
Facilitation of implementation and ratification		
	Workshops	475,000
	Printed material	43,000
	Web site	10,000
	Sub-total	528,000
Office automation and databases		
	Software/hardware	40,000
	Consultants/sub-contracts	0
	Sub-total	40,000
Core secretariat costs		
	Project personnel	1,276,885
	Consultants	45,000
	Administrative support	408,392
	Official travel	100,000
	Equipment and premises	5,000
	Miscellaneous	15,000
	Sub-total	1,850,277
	Total	3,128,277
	Administrative overheads (13%)	406,676
	TOTAL	3,534,953

Annex V

Budget format adopted by the Committee

		Proposed budget for approval by the Committee
Ensure effective functioning of the INC/COP		
	<i>One meeting of INC/COP</i>	
	Conference Services	
	Participants' travel	
	Sub-total	
	<i>One meeting of ICRC/CRC</i>	
	Conference Services	
	Participants' travel	
	Sub-total	
Facilitation of implementation and ratification		
	Workshops	
	Printed material	
	Web site	
	Sub-total	
Office automation and databases		
	Software/hardware	
	Consultants/sub-contracts	
	Sub-total	
Core secretariat costs		
	Project personnel	
	Consultants	
	Administrative support	
	Official travel	
	Equipment and premises	
	Miscellaneous	
	Sub-total	
Total		
Administrative overheads (13%)		
TOTAL		

Annex VIDraft rules on settlement of disputesDraft rules on arbitration

The arbitration procedure for purposes of paragraph 2 (a) of article 20 of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade 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 shall state the subject matter for arbitration including, 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 written notification of the claimant Party shall be accompanied by 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-month period.
2. If the President of the Arbitral Tribunal has not been designated within two months of the date of the appointment of the second arbitrator, the Secretary-General of the United Nations shall, at the request of a Party, designate the President within a further two-month period.

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 agree otherwise, 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 Arbitral Tribunal.

Article 11

The Arbitral Tribunal may hear and determine counterclaims arising directly out of the subject matter of the dispute.

Article 12

Decisions of the Arbitral Tribunal on both procedure and substance 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 render its decision. Absence of a Party or 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 Arbitral 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 decision 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.]² 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.

² Regarding the binding effect of the decision on the third party intervening in the case, one delegation was of the opinion that such a provision was unique in rules on arbitration for multilateral environment agreements. The representative also expressed his view that a precedent existed under the International Court of Justice to the effect that a decision of the Court had not been binding on a third party intervening in the case.

Annex VII

PROCEDURES AND INSTITUTIONAL MECHANISMS FOR
HANDLING CASES OF NON-COMPLIANCE: A MODEL

Part One

INSTITUTIONAL MECHANISMS

Compliance Committee

1. Alternative 1:

A Compliance Committee is hereby established by the Conference of the Parties.

Alternative 2:

A Compliance Committee is hereby established by the Conference of the Parties as its subsidiary body responsible for the operation of the compliance mechanism.

Functions of the Compliance Committee

2. The Compliance Committee shall undertake the functions as specified in the procedure under Part Two below or compliance functions as decided by the Conference of the Parties.

Membership of the Compliance Committee

3. The Compliance Committee shall consist of [] [two] members [from each of the PIC regions]. They shall be [Parties elected by the Conference of the Parties] [Government-designated] legal and technical experts [, drawn from a list nominated by Parties and] [appointed by the Conference of the Parties] [Government representatives elected at a meeting of the Conference of the Parties] who have expertise and specific qualifications in the subject matter under the Convention [and are to serve in their individual capacity][and are to serve in the best interests of the Convention].

4. In [electing] [appointing] members due consideration shall be given to an equitable geographic distribution [of the seven PIC regions].

5. At the meeting at which this decision is adopted, the Conference of the Parties shall [elect][appoint] half the members, [one from each [PIC] region], for one term, and half the [members], [one from each [PIC] region], for two terms. The Conference of the Parties shall, at each ordinary meeting thereafter, [elect][appoint] for two full terms new members to replace those members whose period of office has expired or is about to expire. Members shall not serve for more than two consecutive terms. For the purpose of this decision, "term" means the period that begins at the end of one ordinary meeting of the Conference of the Parties and ends at the end of the next ordinary meeting of the Conference of the Parties.

Officers of the Compliance Committee

6. [The Compliance Committee shall elect its own officers. The officers shall be elected with due regard to the principle of equitable geographical representation]. [The officers of the Committee shall be determined in accordance with Rule 30 of the rules of procedure of the Conference of the Parties].

Meetings of the Compliance Committee

7. [The Committee shall hold meetings [in conjunction with the meetings of the Conference of the Parties and such other meetings] [as necessary] [normally twice a year].]

8. Alternative 1:

The meetings of the Compliance Committee shall be [open][closed] to other Parties or [and] the public [unless the Committee decides otherwise][unless the Party in question requests otherwise].

Alternative 2:

[[Subject to paragraph 8 bis, the meetings of the Compliance Committee shall be [open][closed] to other Parties or the public [, unless the Committee and the Parties in question agree otherwise].

8 bis. A Party whose compliance is in question has the right to participate in the consideration of the possible specific non-compliance situation undertaken by the Compliance Committee. Such a Party, however, shall not take part in the elaboration and adoption of a recommendation or decision of the Compliance Committee.]

Decision-making in the Compliance Committee

9. [Except as otherwise provided in this mechanism, the rules of procedure for meetings of the Conference of the Parties shall apply, mutatis mutandis, to the decision-making and proceedings of the meetings of the Compliance Committee.]

10. [Ten][Two-thirds of the] members of the Committee shall constitute a quorum.

Public and confidential information

11. [The information managed under the compliance mechanism shall base itself on the principle of openness with confidentiality as an exception.]

12. Subject to Article 14 of the Convention, confidential information [as identified by a Party] shall be treated as such throughout and after the process.

The secretariat

13. The secretariat shall provide administrative services for the functioning of the compliance mechanism, including receiving and transmitting information on compliance issues to the Compliance Committee and the Parties and providing secretarial assistance and documentation.

14. [For carrying out the secretariat role of the Committee,] the secretariat may receive relevant information from [the Parties] [all sources] [in conformity with the provisions of these procedures and mechanisms and the Convention] [in accordance with the rules on handling of such information to be adopted under the compliance mechanism].

Reporting to the Conference of the Parties

15. The Compliance Committee shall submit a report to each ordinary meeting of the Conference of the Parties [as appropriate] presenting:

(a) The work that the Committee has undertaken in fulfilling its functions [concerning facilitation of individual States' compliance] for the information of and/or consideration by the Conference of the Parties;

(b) [Conclusions or recommendations of the Committee concerning compliance issues for consideration [, approval and necessary action] by the Conference of the Parties;]

(c) Its future work programme, including its schedule of expected meetings which it considers necessary for the fulfilment of the work programme, for the consideration and approval of the Conference of the Parties.

16. The report of the meetings of the Committee shall be available to the public.

Relationship with dispute settlement and other provisions of the Convention

17. The compliance mechanism shall be implemented without prejudice to Article 20 of the Convention.

Relationship with [other] subsidiary bodies [of the PIC] or those established under other conventions

18. In the case of issues that overlap with the responsibilities of [other] subsidiary bodies [of the PIC], the Conference of the Parties may direct the Compliance Committee to work in conjunction with such bodies.

19. [Where there is an overlap with the obligations and responsibilities under other multilateral environmental conventions, the Conference of the Parties may request the Compliance Committee to communicate with [relevant][similar type of] bodies of the respective conventions, with a view to pursuing possibilities for synergies and linkages, including through organizational and practical cooperation, and report back to the Conference of the Parties.³]

Part Two

PROCEDURES

[20. Before submitting compliance problems to the Committee, the Parties involved [may][shall] seek to resolve the matter through informal consultations.]

Invocation of the procedures

21. [The procedures for specific submission on non-compliance may be initiated by:]

(a) A Party, which believes that in spite of its best endeavours, it may be unable to comply with certain obligations under the Convention. That Party may make a written submission to the secretariat seeking advice from the Compliance Committee. The submission should include details as to which specific obligations are concerned, and an assessment of the reason why the Party may be unable to meet those obligations. Where possible, substantiating information, or advice where such substantiating information may be found, may be provided. The submission may include suggestions for solutions which the Party considers may be most appropriate to its particular needs;

[(b) A Party, submitting its observations to the Compliance Committee, with corroborating information, on the performance of another Party in the application of the Convention; or]

[(c) The Compliance Committee, in response to a request to it by the Conference of the Parties[, or on the basis of the information [, including national reports,] submitted to it by the secretariat];]

³ A proposal has been made to establish a joint compliance procedure under the Rotterdam Convention and the Basel Convention.

[(d) Individuals or organizations having reservations about a Party's compliance with the obligations under the Convention;]

[(e) The secretariat.]

22. Alternative 1:

[The procedures on general compliance issues may be initiated by:]

(a) The Conference of the Parties, requesting the Compliance Committee to examine and report back on general issues of compliance deemed common to all Parties;

[(b) [The Compliance Committee on the basis of information submitted to it; or]

[(c) The secretariat on the basis of information collected [from all sources] through the implementation of the provisions of the Convention.]

Alternative 2:

[The Compliance Committee, as directed by the Conference of the Parties, may examine systemic issues of general compliance of interest to all Parties where:

(a) The Conference of the Parties makes a request;

(b) The Compliance Committee decides there is a need for an examination and report to the Conference of the Parties on an issue of general non-compliance.]

[Acceptance of submissions]

23. The compliance committee may reject submissions which it considers are:

(a) De minimis;

(b) Manifestly ill-founded.]

[Consultation] [Functions]

24. The Compliance Committee may undertake the following [functions] [actions][, inter alia]:

Alternative 1:

[(a) Consider the observations and relevant information submitted to it [as well as additional information it may gather];]

Alternative 2:

(a) In the carrying out of its functions, the Compliance Committee shall consider only the information placed before it consistent with this Annex by the secretariat, the Conference of the Parties, and Parties except where the Compliance Committee is dealing with an issue of general compliance under paragraph 22, in which case the Committee may consider information obtained following a request made to the secretariat, Parties and other sources provided that in the case of other sources, the request of the Committee has been made through the secretariat;]

(b) Consult with any Party that has initiated the non-compliance procedure and the Party which is the subject of the submission in order to give the latter a chance to respond;]

- [(c) Establish whether the status of non-compliance exists, and if so identify the cause of the non-compliance] [Identify the likely cause(s) of a Party's compliance problems];
- (d) Consult with other bodies under the Convention;
- (e) Request further information from the Party whose compliance is in question;
- [(f) Draw upon outside expertise;]
- [(g) Other functions as assigned by the Conference of the Parties.]

Measures regarding non-compliance

25. Alternative 1 for paragraph 25, (a) and (b):

[The Compliance Committee may adopt measures, including:

- (a) The provision of advice;
- (b) The facilitation of assistance;
- (c) The formulation of a compliance plan, including timelines and targets;
- (d) A formal statement of concern regarding possible future non-compliance;
- (e) A determination of non-compliance.]

(para. 25 (c) will be then new para. 26 and will start with “The Committee may recommend to the Conference of the Parties”...(d-e))

Alternative 2 for paragraph 25:

[Facilitation Procedure

25. The Compliance Committee shall consider any submission made to it in accordance with paragraph 21 (a) with a view to establishing the facts and root causes of the matter of concern and assist in its resolution. As part of this process, the Committee may provide a Party with advice, non-binding recommendations and any further information required to assist the party to develop a program to attain compliance as soon as possible.

Additional Measures

26. If, after undertaking the facilitation procedure in paragraph 25 above and taking into account the cause, type, degree and frequency of compliance difficulties, the Committee considers it necessary to pursue further measures to address a Party's compliance problems, it may recommend to the Conference of the Parties to consider appropriate measures, in accordance with international law, to attain compliance, including the following:

Insert 25 (c, d, e)

27. In the case of repeated or continued non-compliance and where the measures in paragraph [26][27] above have been exhausted, the Compliance Committee may recommend to the Conference of the Parties to consider further appropriate measures, in accordance with international law, including:

- (a) Issuing a caution;
- (b) Other measures to bring a Party back into compliance, including certain forms of sanctions: an indicative list of such other measures is to be established by the Conference of the Parties;
- (c) Issuing a formal statement of concern regarding possible future non-compliance;
- (d) Issuing a determination of non-compliance;
- (e) Suspending rights and privileges under the Convention.^{4]}

Alternative 3 for paragraph 25:

[25. [Where appropriate] the Compliance Committee [, once it has determined that non-compliance exists or will be in existence,] [with the view to facilitating compliance and addressing cases of possible non-compliance,] [may] [shall undertake to]:

- [(a) Advise the Party concerned to take action to rectify any detriment caused by the non-compliance, or rectify the source of possible non-compliance;]
- (b) Assist the Party concerned to develop a programme to attain compliance as soon as possible or to ensure maintenance of compliance. [Such assistance may include: oral advice, written information, or assistance through in-country fact-finding visits upon invitation by the Party[, disposal, clean-up of chemicals]];]
- (c) Where a situation of possible non-compliance has been identified, recommend that the Conference of the Parties take appropriate measures, consistent with international law, to attain compliance, which may including the following:
 - [(i) Advice;]
 - (ii) Provision of appropriate assistance to enable the Party to comply with the obligations; or
 - (iii) Other facilitative incentive measures;

[and , in the case of repeated or continued non-compliance and where the measures (i) to (iii) above have been exhausted:

 - (iv) Issuance of cautions; or
 - (v) Other measures to bring a Party back into compliance, including certain forms of sanctions: an indicative list of such other measures is to be established by the Conference of the Parties].]

⁴ Consideration should be given to whether (a) a list of such rights and privileges should be specified; and (b) a reference should be made to the effect that such suspension must be “consistent with international law” – this can be done in the chapeau, as is now, or attached specifically to such a provision.

Alternative 4 for paragraph 25:

[Facilitation Procedure

Alternative 1 for chapeau of paragraph 25:

[The Compliance Committee shall consider any submission made to it in accordance with paragraph 21 with a view to establishing the facts and root causes of the matter of concern and assisting in its resolution. The Compliance Committee may assist the Party to develop a programme to attain compliance as soon as possible, including:]

Alternative 2 for chapeau of paragraph 25:

[The Committee shall consider any submission made to it in accordance with paragraph 21, with a view to determining the facts and root causes of the matter of concern and assisting in its resolution. As part of this process, the Committee may provide:]

Alternative 3 for chapeau of paragraph 25:

[The Compliance Committee may adopt measures, including:]

- (a) The provision of advice;
- (b) The facilitation of assistance;
- (c) The formulation of a compliance plan, including timelines and targets;
- [(d) A formal statement of concern regarding possible future non-compliance];
- [(e) A declaration of non-compliance.]

Additional Measures

Committee self-trigger for further measures

26. [If, after undertaking the facilitation procedure in paragraph 25 above and taking into account the cause, type, degree and frequency of compliance difficulties, the Committee considers it necessary to pursue further measures to address a Party's compliance problems,] it may also decide to issue to that Party;

- (a) A formal statement of concern regarding possible future non-compliance;
- (b) A declaration of non-compliance.

OR

Committee must go through the Conference of the Parties for all further measures

26. If, after undertaking the facilitation procedure in paragraph 25 above and taking into account the cause, type, degree and frequency of compliance difficulties, the Committee considers it necessary to pursue further measures to address a Party's compliance problems, it may recommend to the Conference of the Parties to consider appropriate measures, in accordance with international law, to attain compliance, including the following:

- (a) Advice;

- (b) Facilitation of appropriate assistance to enable the Party to comply with the obligations; or
- (c) Other facilitative incentive measures;
- (d) A formal statement of concern regarding possible future non-compliance;
- (e) A declaration of non-compliance.

27. [In the case of repeated or continued non-compliance and where the measures [25][26] above have been exhausted], the Compliance Committee may recommend to the Conference of the Parties to consider further appropriate measures, in accordance with international law, including:

- (a) Issuing a caution;
- (b) Other measures to bring a Party back into compliance, including certain forms of sanctions: an indicative list of such other measures is to be established by the Conference of the Parties.]

Alternative:

27. The Compliance Committee may recommend to the Conference of the Parties to consider further appropriate measures, in accordance with international law, to restore compliance, including:

- (a) Issuing a caution;
- (b) Other measures to bring a party back into compliance, including certain forms of sanctions: an indicative list of such other measures is to be established by the Conference of the Parties;]
- (c) Suspending rights and privileges under the Convention.^{5]}

[28. Upon the recommendation of the Compliance Committee, the Conference of the Parties may take appropriate action to address compliance issues raised.]

Monitoring

[29. The Compliance Committee shall monitor the consequences of the action taken to rectify non-compliance or the source of possible non-compliance [with respect to the Party concerned, through its report to the Committee, on remedial action it has taken against benchmarks and according a timeframe agreed between the Party and the Committee].]

Review of the compliance mechanism

30. The Conference of the Parties [may] [shall] [regularly] review the implementation of the compliance mechanism and [shall regularly review] the programme of work of the Compliance Committee.

⁵ Consideration should be given to whether (a) a list of such rights and privileges should be specified; and (b) a reference should be made to the effect that such suspension must be “consistent with international law” – this can be done in the chapeau, as is now, or attached specifically to such a provision.