



**SUMMARY OF THE TENTH SESSION OF THE INTERGOVERNMENTAL NEGOTIATING COMMITTEE FOR AN INTERNATIONAL LEGALLY BINDING INSTRUMENT FOR THE APPLICATION OF THE PRIOR INFORMED CONSENT PROCEDURE FOR CERTAIN HAZARDOUS CHEMICALS AND PESTICIDES IN INTERNATIONAL TRADE:
17-21 NOVEMBER 2003**

The tenth session of the Intergovernmental Negotiating Committee for an International Legally Binding Instrument for the Application of the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (INC-10) was held from 17-21 November 2003, in Geneva. Over 255 participants representing more than 100 governments and a number of intergovernmental, non-governmental organizations and United Nations agencies attended the session.

The prior informed consent (PIC) procedure aims to promote shared responsibility between exporting and importing countries in protecting human health and the environment from the harmful effects of the trade of certain hazardous chemicals. The Rotterdam Convention was adopted in September 1998. To date, the Convention has been signed by 73 States and ratified by 49 States and the European Community. It will enter into force once 50 instruments of ratification by States have been deposited. Until the Convention's first Conference of the Parties (COP), the INC will continue to provide guidance regarding implementation of the PIC Procedure.

Delegates to INC-10 resumed consideration of major issues associated with the implementation of the interim PIC Procedure and preparations for the first Conference of Parties (COP-1). As part of this work, key items on the INC-10 agenda included: activities of the Secretariat and review of the situation as regards extrabudgetary funds; implementation of the interim PIC Procedure, in particular the inclusion of chemicals such as asbestos, DNOC, and dustable powder formulations of benomyl, carbendazim, and thiram; outcomes of the fourth session of the Interim Chemical Review Committee; preparations for COP-1, including the draft rules of procedure, draft financial rules and provisions, settlement of disputes, and non-compliance; issues arising out of the Conference of Plenipotentiaries; and the assignment of Harmonized System customs codes.

While valuable experience has been gained during the interim procedure, INC-10 brought to light several challenges that the Convention will face upon entering into force. Challenges for the future include ensuring that Parties provide import responses, and resolving disagreements on the development of a compliance mechanism. Entry into force of the Convention will provide a valuable test of the information exchange mechanism as a first line of defense against hazardous chemicals.

A BRIEF HISTORY OF THE PRIOR INFORMED CONSENT PROCEDURE

Growth in internationally traded chemicals during the 1960s and 1970s prompted efforts by the international community to safeguard people and the environment from the harmful results of such trade. The development of the International Code of Conduct for the Distribution and Use of Pesticides by the Food and Agriculture Organization (FAO) and the London Guidelines for the Exchange of Information on Chemicals in International Trade by the United Nations Environment Programme (UNEP) received particular attention. Both the Code of Conduct and the London Guidelines include procedures aimed at making information about hazardous chemicals more readily available, thereby permitting

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countries to assess the risks associated with their use. In 1989, both instruments were amended to include a voluntary PIC procedure, managed jointly by FAO and UNEP, to help countries make informed decisions on the import of chemicals that have been banned or severely restricted.

At the United Nations Conference on Environment and Development held in Rio de Janeiro in 1992, delegates adopted Agenda 21, which contains, in Chapter 19, an international strategy for action on chemical safety and called on States to achieve, by the year 2000, full participation in and implementation of the PIC procedure, including possible mandatory applications of the voluntary procedures contained in the amended London Guidelines and the Code of Conduct.

In November 1994, the 107th meeting of the FAO Council agreed that the FAO Secretariat should proceed with the preparation of a draft PIC convention as part of the joint FAO/UNEP programme. In May 1995, the 18th session of the UNEP Governing Council adopted decision 18/12, authorizing the Executive Director to convene, with the FAO, an INC with a mandate to prepare an international legally binding instrument for the application of the PIC procedure.

INC-1: The first session of the INC was held from 11-15 March 1996, in Brussels. INC-1 agreed on the rules of procedure, elected Bureau members, and completed a preliminary review of a draft outline for a future instrument. Delegates also established a working group to identify which chemicals should be included under the instrument.

INC-2: The second session of the INC met from 16-20 September 1996, in Nairobi, and produced a draft convention text.

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

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

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

THE CONFERENCE OF PLENIPOTENTIARIES: The Conference of Plenipotentiaries on the Convention on the PIC Procedure was held from 10-11 September 1998, in Rotterdam, the Netherlands. Ministers and senior officials from nearly 100 countries adopted the Rotterdam Convention, the Final Act of the Conference, and a Resolution on Interim Arrangements. Sixty-one countries signed the Convention and 78 countries signed the Final Act. In line with the new procedures contained in the Convention, the Conference adopted numerous interim arrangements for the continued implementation of the voluntary PIC Procedure. It also invited the INC to: establish an interim subsidiary body to carry out the functions that will be permanently entrusted to a Chemical Review Committee (CRC); define and adopt PIC Regions on an interim basis; adopt, on an interim basis, the procedures for banned or severely restricted chemicals; and decide on the inclusion of additional chemicals under the interim PIC Procedure. Finally, the Conference invited UNEP and FAO to convene further INCs during the period prior to the Convention's entry into force and to oversee the operation of the interim PIC Procedure.

INC-6: INC-6 was held from 12-16 July 1999, in Rome. INC-6 resulted in draft decisions on the definition and provisional adop-

tion of the PIC Regions (Africa, Europe, Asia, Latin America and the Caribbean, Near East, Southwest Pacific, and North America), the establishment of an interim CRC, and the adoption of draft decision guidance documents (DGDs) for chemicals already identified for inclusion.

ICRC-1: The first session of the Interim Chemical Review Committee (ICRC) took place from 21-25 February 2000, in Geneva. The Committee agreed to recommend two chemicals, ethylene dichloride and ethylene oxide, for inclusion in the interim PIC Procedure, and forwarded draft DGDs for those chemicals to INC-7 for consideration.

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

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

INC-8: The eighth session of the INC was held from 8-12 October 2001, in Rome. INC-8 resolved a number of complex questions associated with the discontinuation of the interim PIC Procedure and on the conflict of interest in the ICRC, although some issues, such as treatment of non-Parties after discontinuation of the interim PIC Procedure and composition of the PIC Regions, were deferred for consideration at INC-9.

ICRC-3: The third meeting of the ICRC was held from 17-21 February 2002, in Geneva. The ICRC recommended that monocrotophos, Granox TBC and Spinox T, DNOC, and five forms of asbestos be added to the interim PIC Procedure.

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

INC-9: The ninth session of the INC was held from 30 September to 4 October 2002, in Bonn. Delegates agreed on the inclusion of monocrotophos in the interim PIC Procedure, and to recommendations on the range and description of DNOC, asbestos, and Granox TBC and Spinox T. In preparation for the first COP, INC-9 made progress on the draft financial rules and provisions, procedures for dispute settlement, mechanisms for handling non-compliance, and discontinuation of the interim PIC Procedure.

ICRC-4: The fourth session of the ICRC was held from 3-7 March 2003, in Rome. ICRC-4 completed the DGDs on asbestos, DNOC, and Granox TBC and Spinox T, and addressed new candidate chemicals for inclusion in the interim PIC Procedure, including a review of the notifications of final regulatory actions to ban or severely restrict parathion, tetraethyl lead, tetramethyl lead, and tributyltin. It also addressed issues referred to it from INC-9,



including consistency in the listing of chemicals contained in the interim PIC Procedure, and the guidance to countries on the type of information that should be provided by a notifying country using a risk evaluation from another country in support of their final regulatory action. It reviewed a provisional form for reporting on environmental incidents related to the use of pesticides.

INC-10 REPORT

On Monday, 17 November, Chair Maria Celina de Azevedo Rodrigues (Brazil) welcomed delegates to INC-10 and introduced the opening speakers. In his opening statement, Philippe Roch, State Secretary, Director, Swiss Agency for the Environment, Forests and Landscape, noted that INC-10 might be the last INC prior to the Convention's entry into force. Recognizing the Convention as one of the three pillars of the multilateral system addressing chemicals, he stressed the need for strategic coordination and coherence among multilateral agreements and processes.

Shafqat Kakakhel, UNEP Deputy Executive Director, described the Convention as the "first line" of defense against chemical hazards and a vital part of the international toolkit for protecting human health and the environment from harmful pesticides and chemicals. He also noted the Convention's role in contributing to the WSSD's goal of sound management of chemicals by 2020.

Louise Fresco, FAO Assistant Director-General, highlighted the link between the regulation of international trade in hazardous chemicals and pesticides and the need to increase food production through agricultural intensification. She noted the need for international, national and local action, and for coherent national policies on agriculture, environment, water, and land management.

ORGANIZATIONAL MATTERS: Chair de Azevedo Rodrigues introduced the provisional agenda (UNEP/FAO/PIC/INC.10/1). Canada requested that the INC address cooperation between the World Trade Organization (WTO) and the interim Rotterdam Secretariat. The INC adopted the provisional agenda, as amended. Chair de Azevedo Rodrigues introduced the scenario note (UNEP/FAO/PIC/INC.10/2) and said that the overall goal of INC-10 was to prepare for the Convention's entry into force. Among possible outcomes of INC-10, she highlighted the adoption of the 2004 budget, a decision on inclusion of additional chemicals and pesticides, a draft COP-1 decision on non-compliance, and a mandate to the Secretariat to develop a technical assistance strategy.

Chair de Azevedo Rodrigues continued to serve as INC Chair, assisted by Vice-Chairs Bernard Madé (Canada), Yuri Kundiev (Ukraine), Yue Ruisheng (China), and Zerouali Adelhay (Morocco). Yuri Kundiev also served as the INC-10 Rapporteur.

Throughout INC-10, delegates met in Plenary sessions, as well as in open-ended working groups addressing compliance and financial rules. This report outlines the discussions and outcomes of the meeting based on the INC-10 agenda.

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

The activities of the Secretariat and a review of extrabudgetary funds were taken up in Plenary on Monday and subsequently on Wednesday and Thursday. As a result of delegates' comments and questions, the Secretariat produced a draft decision on the Secretariat's budget for 2004, which was adopted on Thursday.

On Monday, Jim Willis, Joint Executive Secretary for the Interim Secretariat of the Rotterdam Convention (UNEP), presented a report on activities of the Secretariat and review of the situation as regards extrabudgetary funds (UNEP/FAO/PIC/INC.10/3). The European Community (EC) requested that issues regarding implementation and the trust fund, secretariat staffing and the budget be discussed in an open-ended working group. Chile and Cuba highlighted the importance of financing the participation of non-Party developing countries. Willis explained that the increase in expenditure from 2003 to 2004 was largely due to changes in staff costs and workshops.

On Wednesday, delegates discussed the Secretariat's document outlining expenditures and budget projections for 2003 (UNEP/FAO/PIC/INC.10/CRP.9/Rev.1). On the budget for 2003 and 2004 (UNEP/FAO/PIC/INC.10/CRP.10), Jim Willis noted that the footnote for facilitation of implementation and ratification should be bracketed for further consideration.

On Thursday afternoon, Willis introduced the draft decision on the Secretariat's budget for 2004 (UNEP/FAO/PIC/INC.10/CRP.18, which reflects the INC's decision to hold a "mini-INC-11" before COP-1. He proposed revising budget items dealing with facilitation of implementation and ratification, and costs for COP-1 and the "mini-INC-11." Uganda, Morocco and Kenya requested additional financial support for the participation of developing countries at COP-1. Switzerland committed to making funds available to ensure adequate high-level representation at COP-1. On Friday during the closing Plenary, Germany pledged that it would contribute US\$124,000 for INC-11.

Final Decision: INC-10 adopted the 2004 budget (UNEP/FAO/PIC/INC.10/CRP.18), which outlines overall budget details, staffing levels and standard staff costs and calculates the total budget for 2004 as US\$3,565,065.

IMPLEMENTATION OF THE INTERIM PRIOR INFORMED CONSENT PROCEDURE

STATUS OF IMPLEMENTATION: On Monday, Yun Zhou, Interim Secretariat, introduced a document detailing the rate of import responses on various chemicals (UNEP/FAO/PIC/INC.10/4), drawing attention to the relatively low rate of import responses. She reported that the overall response rate for all chemicals subject to the interim PIC procedure was 50%, and that by 31 October 2003, of the 49 ratified Parties, only 14 had provided import responses for all chemicals, while eight Parties had provided no responses at all. She also reported that the Secretariat had received notifications for four candidate chemicals meeting the information requirements of Annex I, and said that notifications have been verified for five additional pesticides (UNEP/FAO/PIC/INC.10/INF/6) to be considered at ICRC-5.

Chair de Azevedo Rodrigues noted that providing responses will be obligatory once the Convention is in force, and requested that delegates explain the constraints they face in this area. The Congo reported they have legal difficulties because they lack a national approval law for chemicals. The Democratic Republic of Congo and Uganda said the correct national authorities in their countries have not received communications from the Secretariat. The Russian Federation urged the elaboration of criteria for including substances in the interim PIC Procedure. Egypt identified limited resources as a problem, while Gambia mentioned poor communication among focal points. Chair de Azevedo Rodrigues requested that countries review the list of DNAs and keep this information updated.



CONFIRMATION OF EXPERTS DESIGNATED FOR

THE ICRC: On Monday, Elena Sobakina, Interim Secretariat, introduced a document containing a draft decision regarding the confirmation of experts designated for the ICRC (UNEP/FAO/PIC/INC.10/5). The Plenary adopted the decision without objection.

Final Decision: The decision (UNEP/FAO/PIC/INC.10/L.1/Add.1) on the confirmation of experts designated for the ICRC formally appoints the ICRC experts for North America and Asia, Lars Juergensen (Canada) for the North American Region, and Aida de Vera Ordas (Philippines) for the Asian Region.

PRESENTATION OF THE REPORT OF ICRC ON THE WORK OF ITS FOURTH SESSION: The report of ICRC-4 (UNEP/FAO/PIC/INC.10/6) was presented in Plenary on Monday by ICRC Chair Reiner Arndt. He highlighted the report's review of the operational procedures of the ICRC and consideration of the inclusion of chemicals in the interim PIC Procedure. Arndt emphasized that the mandate of the ICRC was to review notifications sent by countries with reference to the conditions outlined in Annex II of the Convention, and not to prepare international risk assessments. Regarding the status of analyzing and reviewing notifications for tributyltin, Arndt said that the ICRC had confirmed international trade in tributyltin and had received notifications from the EC and Japan. He noted that the notification and supporting documentation for Japan lacked a risk evaluation under prevailing national conditions, and therefore failed to meet the conditions of Annex II.

Japan noted that tributyltin has been assessed under the International Maritime Organization's International Convention on the Control of Harmful Anti-Fouling Systems on Ships and asked whether this could be used in its notification. On chrysotile asbestos, Arndt noted that ICRC-4 had requested that INC-10 invites the WHO's International Programme on Chemical Safety to undertake an investigation into the chrysotile form of asbestos and potential substitutes. The WHO indicated its willingness to assist with technical work and requested that the INC specify substitutes for investigation.

Final Outcome: The Committee commended ICRC-4 for its work and took note of the report (UNEP/FAO/PIC/INC.10/L.1/Add.1).

INCLUSION OF CHEMICALS IN THE INTERIM PRIOR INFORMED CONSENT PROCEDURE: On Monday, Bill Murray, Interim Secretariat, presented proposed amendments to the introduction to the DGDs, including:

- noting that the definition of chemical is as stated in the Convention under Article 2a (Definitions);
- deleting the reference to two notifications of regulatory action from two regions;
- noting that Parties include regional economic organizations; and proposing that DGDs be communicated to DNAs in accordance with both Articles 7 (Listing of Chemicals in Annex III) and 10 (Obligations in relation to Imports of Chemicals in Annex III).

On Thursday, delegates approved DGDs on DNOC, severely hazardous pesticide formulation, dustable powder formulations of benomyl, carbofuran, and thiram, and a revised DGD on four forms of asbestos prepared by the Secretariat.

DNOC and its salts: On Monday, Niek van der Graaff, Joint Executive Secretary (FAO), introduced the ICRC's communication on DNOC and its salts and the draft DGD (UNEP/FAO/PIC/

INC.10/8). The INC agreed with the ICRC's recommendation to make the chemical DNOC and its salts subject to the interim PIC Procedure, and approved the draft DGD, on Thursday.

Final Decision: The decision on DNOC and its salts (UNEP/FAO/PIC/INC.10/CRP.13) makes the chemical subject to the interim PIC Procedure and approves the DGD on that chemical (UNEP/FAO/PIC/INC.10/8).

Severely hazardous pesticide formulation, dustable powder formulations of benomyl, carbofuran and thiram: On Monday, Joint Executive Secretary van der Graaff introduced the recommendations of ICRC-4 regarding the inclusion of the substances in the interim PIC Procedure and the draft DGD (UNEP/FAO/PIC/INC.10/9). He noted that ICRC-4 had decided that the substances under consideration (Granox TBC and Spinox T) were more accurately referred to as dustable powder formulations containing benomyl at or above 7%, carbofuran at or above 10%, and thiram at or above 15%.

On Tuesday, in response to a question from Argentina on trade in dustable powder formulations of benomyl, carbofuran and thiram, the Pesticide Action Network (PAN) confirmed the existence of informal trade in this formulation in West Africa. Delegates agreed to include the formulation in the interim PIC Procedure and approved the DGD, with the clarification that the listing will only apply to formulations containing a combination of the three substances at specified levels. On Thursday, delegates approved the draft decision on the severely hazardous pesticide formulation. Delegates also approved a revised introduction to the DGD for this substance (UNEP/FAO/PIC/INC.10/CRP.6*).

Final Decision: The decision on the severely hazardous pesticide formulation (UNEP/FAO/PIC/INC.10/CRP.14) makes the chemical subject to the interim PIC Procedure and approves the DGD (UNEP/FAO/PIC/INC.10/9).

Asbestos: On Tuesday, Jim Willis introduced the ICRC's communication on amosite, actinolite, anthophyllite, tremolite and chrysotile forms of asbestos (UNEP/FAO/PIC/INC.10/7). Switzerland, the EU, Chile, Argentina, Norway, the Gambia, and the Congo supported including all five forms of asbestos in the interim PIC Procedure. Canada requested that the decision on chrysotile asbestos be postponed to allow for completion of its national consultations on the issue. The Russian Federation, supported by Ukraine, China, Zimbabwe, India, Indonesia, South Africa, Egypt and Morocco, said available scientific information on chrysotile is insufficient to warrant its inclusion in the interim PIC Procedure. Brazil, Uruguay and Venezuela supported inclusion of the five forms, but suggested a compromise approving four forms of asbestos, while postponing a decision on the listing of chrysotile asbestos. The US, with Australia and New Zealand, supported including all five forms, but did not oppose postponing a decision on chrysotile. Noting that the Convention aims to provide an early warning system for importing countries, WWF International and PAN supported the inclusion of all five forms.

Chair de Azevedo Rodrigues, supported by Executive Secretary Willis, expressed concern that the debate on scientific certainty regarding chrysotile asbestos had "gone beyond" the requirements for listing substances in the interim PIC Procedure. Delegates agreed to incorporate the four forms of asbestos – amosite, actinolite, anthophyllite, and tremolite – in the interim PIC Procedure, and to postpone discussion on the inclusion of chrysotile. Delegates also agreed to a suggestion by Canada to list the four forms individually, preceded by the word asbestos. They requested the Secretariat to modify the DGD to separate these four forms from



chrysotile, and agreed to accept sections referring to the four listed forms and to defer the remaining chapter on chrysotile to the next session. In Plenary on Thursday, delegates considered and adopted a draft decision on the four forms of asbestos and a revised DGD prepared by the Secretariat.

Final Decision: The decision (UNEP/FAO/PIC/INC.10/CRP.12) includes the four forms of asbestos in the interim PIC Procedure and approves the revised DGD on asbestos (UNEP/FAO/PIC/INC.10/CRP.17).

Issues Related to Inclusion of Other Chemicals: The issue of how to include other chemicals, namely tetraethyl lead and tetramethyl lead, and parathion, in the interim PIC Procedure after the entry into force of the Convention was introduced in Plenary on Monday. On Wednesday, the Secretariat produced a draft decision, which was adopted with amendments on Thursday.

Jim Willis introduced the issue in Plenary on Monday, outlining two possible mechanisms for including chemicals in the interim PIC Procedure in the period between the entry into force of the Convention and COP-1. The first option was outlined in a note (UNEP/FAO/PIC/INC.10/10) and envisaged an INC-11 just prior to COP-1, where the chemicals could be added to the interim PIC Procedure; the second entailed circulating DGDs among Parties and forwarding the decision directly to COP-1.

The EC cautioned against a procedure incompatible with the Convention and encouraged consultation with legal experts to determine an appropriate course of action.

On Wednesday, Jim Willis presented a revised draft decision (UNEP/FAO/PIC/INC.10/CRP.5) to Plenary, noting that the DGD on chrysotile asbestos should also be subject to the process outlined in the draft decision. In discussion, the Russian Federation suggested that the DGD on chrysotile be returned to the ICRC to allow additional scientific data to be gathered. New Zealand and Australia said it had been agreed in Plenary on Tuesday that a separate DGD for chrysotile would be produced by the Secretariat, without returning it to the ICRC. Chair de Azevedo Rodrigues confirmed that the DGD would not return to the ICRC, and emphasized that there was no reference to additional studies in Annex II of the Convention. She reminded delegates that the Convention does not take economic and trade considerations into account when listing chemicals in the interim PIC Procedure. Chile expressed concern that chrysotile would be included in the interim PIC Procedure without discussion of the DGD and, with Argentina, questioned whether another INC would be held prior to COP-1. Canada, US and the Russian Federation supported holding another INC.

In light of these discussions, the Secretariat revised the draft decision (UNEP/FAO/PIC/INC.10/CRP.5/Rev.1), and generated an alternative "mini-INC-11" draft decision (UNEP/FAO/PIC/INC.10/CRP.16). Both documents were introduced by Chair de Azevedo Rodrigues for consideration by Plenary on Thursday. The Russian Federation, supported by Ukraine, reiterated his objection to the inclusion of chrysotile asbestos in the draft decisions. Chair de Azevedo Rodrigues, supported by New Zealand, Chile and Brazil, said the validity of the ICRC's work on chrysotile was not an issue. The US noted that under the Resolution on Interim Arrangements, the INC has no authority to decide on the inclusion of chemicals in the interim PIC Procedure once the Convention has entered into force.

Canada, the EC, Cuba, Chile and Argentina supported convening an INC-11 and addressing chrysotile asbestos at the meeting. Switzerland preferred moving directly to COP-1, but said they could agree to an INC-11 if it were held directly before COP-

1. Following informal consultations, the US suggested that INC-11 meet "in the form of a Conference of the Plenipotentiary Parties." The US noted that this Conference could then adopt a resolution authorizing the INC to include additional chemicals to the interim PIC Procedure between the date of the Convention's entry into force and COP-1. The INC agreed to adopt the draft decision on the "mini-INC-11", as amended by the US. The decision was adopted *ad referendum*, with a reservation from China pending consultation with his capital.

Final Decision: In the final decision (UNEP/FAO/PIC/INC.10/CRP.16), INC-10 decides to convene a "mini-INC-11" immediately before COP-1 for the purpose of considering the inclusion of tetraethyl lead, tetramethyl lead and parathion in the interim PIC Procedure. It requests that the Secretariat circulate the relevant DGDs and a proposal to include the chemicals at least six months prior to INC-11. References to the inclusion of chrysotile in the decision remains bracketed.

ISSUES ARISING OUT OF THE FOURTH SESSION OF THE INTERIM CHEMICAL REVIEW COMMITTEE:

Maleic Hydrazide – Status of Implementation of Decision INC-8/3: On Tuesday, delegates considered a note on the status of implementation of decision INC-8/3 on maleic hydrazide (UNEP/FAO/PIC/INC.10/11). Decision INC-8/3 approved the recommendation of the ICRC that maleic hydrazide not be added to the interim PIC Procedure, subject to a commitment from manufacturers to comply with anticipated FAO specifications for the potassium salt of maleic hydrazide. Bill Murray noted that CropLife International had committed to providing, by mid 2004, the analytical method used for the determination of active ingredients and free hydrazine in the potassium salt, required for the FAO's specification.

Drawing attention to a note submitted by the Republic of Korea providing information on maleic hydrazide (UNEP/FAO/PIC/INC.10/CRP.7), Murray noted that the choline salt of maleic hydrazide had been manufactured in Japan and traded with the Republic of Korea, and said the salt is unstable. Japan said that it no longer produces, uses or exports choline salt, and that although base acid stocks remain, these would be disposed. The Republic of Korea said that the choline salt will not be manufactured in or imported to the Republic of Korea.

Final Outcome: Delegates agreed to extend the deadline for compliance with FAO specifications for the potassium salt of maleic hydrazide to the last day of COP-1 (UNEP/FAO/PIC/INC.10/L.1/Add.1).

Possible Inconsistencies in Annex III of the Convention:

The issue of possible inconsistencies within Annex III of the Convention, and inconsistencies between Annex III and DGDs was taken up in Plenary on Tuesday, after the introduction of a Secretariat's note by Jim Willis (UNEP/FAO/PIC/INC.10/12). The Secretariat's note was developed in response to an INC-9 request that the ICRC address inconsistencies in the listing of the chemicals: 2,4,5-T; pentachlorophenol; dinoseb and dinoseb salts; and methyl parathion. The Secretariat produced a draft decision on the issue, incorporating delegates' comments, and Plenary adopted the decision on Thursday.

Final Decision: The decision on inconsistencies within Annex III of the Convention and inconsistencies between Annex III and DGDs (UNEP/FAO/PIC/INC.10/CRP.11) recommends that COP-1 amend the wording of the Annex III listing and chemical descriptions in the DGDs of four chemicals.



Other Issues Arising out of ICRC-4: On Tuesday, Bill Murray introduced an ICRC document which includes information that should be provided by a country using a risk evaluation from another country in support of a notification of final regulatory action (UNEP/FAO/PIC/INC.10/14). He also introduced a document on the preparation of "focused summaries" of risk information in support of notifications (UNEP/FAO/PIC/INC.10/15), and another on other work of the ICRC (UNEP/FAO/PIC/INC.10/16), which described the development of an environmental incident reporting form and a working paper on preparing DGDs. Australia noted that its experience in putting together such a summary had been very valuable, and recommended that in their summaries Parties address all criteria in Annex II, and that they reference information provided to the ICRC.

Final Outcome: Delegates took note of all three papers and called for DNAs to provide focused summaries on a voluntary basis in support of notifications of final regulatory actions (UNEP/FAO/PIC/INC.10/L.1/Add.1).

Achievements by the ICRC: On Tuesday, ICRC Chair Arndt introduced a document reporting on ICRC achievements (UNEP/FAO/PIC/INC.10/13). He emphasized three categories of ICRC work: review of chemicals, development of procedures and policy-related matters. He stressed that the ICRC had gained experience in the process of assessing nominations for the interim PIC Procedure, developed guidelines for generating DGDs, and established guidelines for reporting both health and environmental incidents. He noted that the ICRC will continue its work at ICRC-5 and stressed that its work will provide a valuable model for the permanent CRC, which will take over once the Convention enters into force.

Final Outcome: INC-10 noted the paper, and several delegates expressed appreciation for the work of the ICRC and its Chair (UNEP/FAO/PIC/INC.10/L.1/Add.1).

PREPARATIONS FOR THE CONFERENCE OF THE PARTIES

DRAFT RULES OF PROCEDURE: The draft rules of procedure were discussed in Plenary on Wednesday and Thursday.

On Wednesday, Masa Nagai, Interim Secretariat, introduced the draft rules of procedure (UNEP/FAO/PIC/INC.10/17). The US said that it could accept a majority decision-making process on some issues, but not where a decision may impact the legal obligations of Parties or of a particular Party, or establish a framework under the Convention, particularly with regard to the adoption of non-compliance procedures, the Conciliation Commission, and the terms of reference for the Chemical Review Committee. Australia stressed its support for consensual decision-making. On Thursday, Chair de Azevedo Rodrigues noted the lack of consensus on the draft rules of procedure, and the INC agreed to transmit them to COP-1 for consideration.

Final Outcome: The draft rules of procedure are contained in an annex to the INC-10 report (UNEP/FAO/PIC/INC.10/L.1/Add.1).

DRAFT FINANCIAL RULES AND PROVISIONS: The draft financial rules were considered in Plenary on Wednesday morning, and in the working group on financial rules which met in the afternoon. Following a report to Plenary on Thursday afternoon, the INC adopted a recommendation on this issue.

On Wednesday morning, Masa Nagai introduced the draft financial rules (UNEP/FAO/PIC/INC.10/18). Canada proposed amendments to the draft financial rules (UNEP/FAO/PIC/INC.10/INF.5). The EU introduced its proposal (UNEP/FAO/PIC/INC.10/

CRP.8) to establish a supplementary trust fund for technical assistance, which was supported by Chile, China, the Gambia, Kenya, Morocco, Norway and Uganda, while Japan objected to it. Following the discussion, the Plenary established a working group on financial rules to further consider the issue.

The working group convened on Wednesday afternoon and elected Alistair McGlone (UK) as Chair. In the discussion on the EU proposal, Canada and the US objected to the creation of an additional trust fund, noting that it would inconvenience Parties making non-earmarked contributions, and that an additional trust fund would entail higher costs. Canada suggested that funding technical assistance be specified as a purpose of the trust fund. China, Malaysia, Norway and South Africa supported the EU proposal, while Argentina favored the Canadian compromise. The working group agreed on: separating non-assessed from scale-assessed contributions; limiting the creation of new trust funds to those based on voluntary contributions; and crediting income from contributions not immediately required to the fund that produced it. It agreed to amendments concerning dates of the biennial financial period and the transmission of contributions.

In his report to the Plenary on Thursday, Chair McGlone introduced a revised draft (UNEP/FAO/PIC/INC.10/CRP.19), and the INC agreed to forward the draft to COP-1 for consideration.

Final Outcome: The revised draft financial rules are included in an annex to the INC-10 Report (UNEP/FAO/PIC/INC.10/L.1/Add.1). They contain alternative paragraphs on the number of technical assistance trust funds, and bracketed text on: facilitation; a provision allowing for non-Party contributions to the general fund; and the ceiling of assessed contributions.

SETTLEMENT OF DISPUTES: The issue of settlement of disputes was discussed in Plenary on Wednesday and Friday and in the working group on compliance on Thursday. On Wednesday, Masa Nagai outlined the need for INC-10 to consider a footnote to Article 16 in the draft rules on arbitration in the report of INC-9 (UNEP/FAO/PIC/INC.9/21). Article 16 addresses whether intervening third Parties are bound by final decisions of the Arbitral Tribunal. The footnote records the view of one delegation that such a provision was unique in rules on arbitration for multilateral environmental agreements (MEAs), and that a precedent exists under the International Court of Justice to the effect that a decision of the Court had not been binding on an intervening party.

On Thursday, in the working group, Japan objected to the binding effect on intervening Parties of arbitral decisions, and the group agreed to Japan's suggestion to adopt language identical to that in the draft rules on arbitration of the Stockholm Convention. On Friday, the INC agreed to include the revised Article 16 of the draft rules on arbitration (UNEP/FAO/PIC/INC.10/CRP.21) in its report and to forward the draft rules to COP-1 for consideration.

Final Outcome: In its report, INC forwarded to COP-1 the draft rules on arbitration as annexed to the INC-9 Report and amended by UNEP/FAO/PIC/INC.10/CRP.21.

NON-COMPLIANCE: The issues of compliance and reporting on implementation were addressed in Plenary on Monday and Friday, and were discussed in working group sessions chaired by Alistair McGlone. The working group met on Monday, Tuesday and Thursday. On Friday, the INC agreed to include the amended, bracketed draft decision on procedures and institutional mechanisms for handling cases of non-compliance as an annex to the report of the meeting. It also included the working group's discussion on reporting in the report of the meeting.



Compliance: On Monday, Masa Nagai introduced a document (UNEP/FAO/PIC/INC.10/19), highlighting issues relevant to non-compliance. Working Group Chair McGlone introduced a Chair's draft text on procedures and mechanisms for handling non-compliance (UNEP/FAO/PIC/INC.10/20), noting that the document would be used as the basis for negotiations.

On Wednesday delegates deliberated on the facilitative nature of the Convention and additional measures that may be taken under it. Regarding additional measures that the Convention's Compliance Committee may recommend to the COP, the Netherlands noted that the criteria listed for identifying compliance difficulties allows the Committee flexibility in the choice of measures it could propose. South Africa, the US and others argued that a reference to the COP taking measures in accordance with international law to attain compliance exceeded the facilitative nature of the Convention, and suggested its deletion. Nigeria, Lesotho, the EC and Jamaica supported the inclusion of measures additional to facilitative ones. Egypt and Nigeria opposed issuance of a statement on possible future non-compliance as a measure, while the Netherlands and Germany highlighted the role of prevention in ensuring compliance. Delegates discussed text calling for the suspension of rights and privileges under the Convention, without agreement

Australia, the US and Chile opposed language that would allow a Party other than the one whose compliance is at issue to trigger action, while the EC and the Netherlands favored such a Party-to-Party trigger. Most delegates supported the possibility of triggering by the Secretariat, but expressed a desire to limit the scope of the trigger. Germany noted they are still considering an NGO trigger.

Canada, supported by Japan, the Republic of Korea and the US, highlighted the need to distinguish between Party-related issues, on which information should be submitted by Parties, and systemic issues, where the Compliance Committee may request information from other sources. Nigeria and South Africa noted that developing countries are dependent on external sources of information. The EC said the Secretariat's information filter is sufficient to ensure the quality of information. The working group agreed to text on the facilitation of technical assistance, capacity building and access to financial resources, and on confidentiality of information.

The group revised text on transmission of submissions to the Committee and participation of Parties whose compliance is in question. Differences remained on submissions by Parties other than those whose compliance was at issue and submissions by the Secretariat. The group deferred discussion of the text on Committee officers and quorum until agreement is reached on the composition of the Committee. It was agreed that the frequency of meetings should not be determined in advance. The working group also discussed opening the Compliance Committee to other Parties and to the public where non-compliance of a Party is at hand, without agreement.

On interaction with other MEAs, the Netherlands proposed revised text on communication and exchange of experience with similar types of committees of those other agreements. The working group approved the proposal, with a reservation by Australia.

Canada proposed that the rules of procedure on decision making allow majority decision making where no consensus is reached. The US said it could agree to Canada's proposal if, in such cases, the report and recommendations reflect the views of all Committee members. Australia and Malaysia opposed non-consensual decision making, while Chile suggested separating the decision-making process from the rules of procedure.

On Friday, Chair McGlone reported to Plenary that the working group agreed on a revised draft (UNEP/FAO/PIC/INC.10/CRP.20) to be forwarded to COP-1 to serve as a basis for consideration. The Committee took note of the draft and included it in its report.

Final Outcome: The INC included the revised draft decision on approval of procedures and institutional mechanisms for determining non-compliance with the provisions of the Convention and for treatment of Parties found to be in non-compliance in an annex to the INC-10 report (UNEP/FAO/PIC/INC.10/L.1/Add.1). The revised draft decision contains agreed text alongside alternative wording for unresolved issues, including the composition of the Compliance Committee, triggering of the compliance mechanism, measures to be taken in response to non-compliance, and opening of Committee meetings to Parties and to the public. The draft decision also includes agreed text on the election of members and their replacement, facilitation measures by the Compliance Committee, monitoring, examination of systemic issues of general compliance, reports to the COP, and cooperation with subsidiary bodies of the Convention. Alternative text and brackets remain with regard to membership and quorum, rules of procedure, triggering of Committee action other than by Parties whose compliance is at issue and its consequences, additional measures by the COP, and opening Committee meetings on particular Parties' compliance to other Parties and to the public.

Reporting on Convention Implementation: The draft decision on reporting on the implementation of the Convention, which includes a questionnaire in the appendix (UNEP/FAO/PIC/INC.10/19), was considered in the open-ended working group on compliance on Wednesday and Thursday. On Friday, the Plenary adopted a recommendation on a process to complete the questionnaire.

Final Outcome: In the recommendation, the INC requests the Secretariat to revise the draft decision and invites further comments to be submitted to the Secretariat by the end of January 2004 so that they could be taken into account in the revision (UNEP/FAO/PIC/INC.10/L.1/Add.1).

ISSUES ARISING OUT OF THE CONFERENCE OF PLENIPOTENTIARIES

SUPPORT FOR IMPLEMENTATION: Issues regarding support for implementation regarding the clearing house, technical assistance, and workshops were addressed in Plenary on Wednesday and Thursday. On Friday, the INC adopted a draft decision on technical assistance.

On Wednesday, Sheila Logan, Interim Secretariat, introduced a document on the establishment of an electronic clearing house for information on chemical risk evaluation, additional to that in the DGDs (UNEP/FAO/PIC/INC.10/22). Bill Murray introduced documents containing the results of regional workshops (UNEP/FAO/PIC/INC.10/21) and providing information on ongoing technical assistance (UNEP/FAO/PIC/INC.10/INF/7). The Gambia, supported by Switzerland and Canada, emphasized linking national poverty eradication strategies with the sound management of chemicals, Argentina stressed capacity building, and Morocco highlighted the need for domestic workshops and national strategies and action programmes for chemical safety.

Jim Willis introduced the document on technical assistance needs and opportunities for synergies as the basis for a possible strategic approach to technical assistance (UNEP/FAO/PIC/INC.10/23). He proposed several options for consideration at INC-10 and COP-1, including: building upon UNEP and FAO infrastructure at the regional level; strengthening cooperation with other



chemicals-related MEAs; and requesting COP-1 to consider a technical cooperation trust fund. Venezuela emphasized the relationship between trade and environment, and El Salvador, supported by Argentina, called for assessment of technical assistance and follow-up measures. Ghana highlighted using information communication technologies, and Thailand underscored the need for risk assessment and management and monitoring the impacts of chemicals.

On the proposal for a technical assistance trust fund, Switzerland called for a voluntary fund and South Africa highlighted the need to provide assistance for developing countries to comply with their obligations under the Convention. The EU introduced a draft decision on technical assistance (UNEP/FAO/PIC/INC.10/CRP.15). UNITAR noted several new technical assistance programs and the WHO expressed its willingness to cooperate with the Secretariat on issues such as preventing chemical poisonings.

On Thursday, Chair de Azevedo Rodrigues introduced the draft decision on a strategic approach to technical assistance (UNEP/FAO/PIC/INC.10/CRP.15). Egypt proposed that the draft decision include a request that the Secretariat take decisive steps to combat illegal trade in chemicals, and China suggested including a request for a technical assistance feasibility study. Jamaica proposed that the Secretariat assist with risk assessments, and Uganda emphasized the links between chemicals management and poverty eradication strategies. In the afternoon, Willis introduced the revised draft decision (UNEP/FAO/PIC/INC.10/CRP.15/Rev.1). Iran proposed a reference to the need to upgrade national chemical profiles.

Final Decision: In the decision (UNEP/FAO/PIC/INC.10/CRP.15/Rev.1), the INC, *inter alia*: recalls the targets for chemicals agreed at the WSSD; notes the report by the Secretariat on the lessons learned from past technical assistance to developing countries and countries with economies in transition; and considers that a new strategic approach to technical assistance is required. The decision requests the Secretariat to:

- strengthen cooperation with other chemical related MEAs, bilateral and multilateral development agencies and programmes, and regional organizations;
- conduct a study on the capacity building and technical assistance needs of developing countries;
- facilitate assistance to developing countries and countries with economies in transition in their efforts to combat illegal traffic; and
- develop a proposal for COP-1 on the regional delivery of technical assistance.

The INC also invites the OECD Development Assistance Committee to take into account technical assistance requirements of the Convention in national development strategies, and encourages developing countries to develop and upgrade their national chemicals profiles, and to integrate issues of relevance to the Convention into their national poverty reduction strategies, national strategies for sustainable development or other national development strategies.

ASSIGNMENT OF HARMONIZED SYSTEM CUSTOMS CODES

On Tuesday, Erik Larsson, Interim Secretariat, introduced a document (UNEP/FAO/PIC/INC.10/INF/1) outlining progress on the development of Harmonized System customs codes in cooperation with the World Customs Organization.

Final Outcome: INC-10 took note of the report of the Secretariat on the assignment of specific Harmonized System customs codes and expressed satisfaction at progress in that process (UNEP/FAO/PIC/INC.10/L.1/Add.1).

STATUS OF SIGNATURE AND RATIFICATION OF THE CONVENTION

On Tuesday, Elena Sobakina introduced a document on the status of signature and ratification of the Convention (UNEP/FAO/PIC/INC.10/INF/2). In the discussion, several countries noted their intent to ratify, including Brazil, Japan, Uganda, France, Zambia, Kenya, Australia, Haiti, US, Congo, the Russian Federation, Ecuador, Burundi, Indonesia, Chad, Morocco, Finland, Madagascar and Zimbabwe. Egypt said that its ratification had been held up by the failure to provide key documents in Arabic. Namibia and Iran noted the importance of regional workshops as a driver for ratification, and Ecuador announced that it would ratify the Convention within the next few days.

Final Outcome: INC-10 took note of the information presented by the Secretariat on the status of signature and ratification of the Convention (UNEP/FAO/PIC/INC.10/L.1/Add.1).

OTHER MATTERS

On Thursday, delegates considered the Secretariat's information note on cooperation with the WTO (UNEP/FAO/PIC/INC.10/INF/4). Venezuela expressed concern that the Secretariat's note omitted major issues, particularly with respect to development-related international trade issues. Canada introduced a proposal (UNEP/FAO/PIC/INC.10/CRP.2) for a draft decision directing the interim Secretariat to cooperate with the WTO and seek observer status in the WTO's Committee on Trade and Environment (CTE) in Special Session. He said that after consultations with other delegations, he was willing to delete a paragraph in the decision's preamble describing the purpose of trade-related provisions in the Rotterdam Convention. The EC expressed support for Canada's proposal and welcomed the deletion of the preambular paragraph. Iran noted that the CTE gives observer status only to MEAs already in force. Costa Rica, on behalf of the Group of Latin American and Caribbean Countries, supported by Egypt, suggested that the draft decision be deferred to COP-1 for consideration.

Final Decision: In the decision (UNEP/FAO/PIC/INC.10/CRP.2), the INC agreed to forward the draft decision to COP-1. The decision notes that: UNEP and WTO have developed an informal institutional dialogue over several years; informal dialogue has been taking place more recently between MEAs to enhance synergies; and there is a need to strengthen cooperation between the Convention and the WTO. The decision also requests the interim Secretariat to provide information on the provisions of the Convention to the WTO and encourages governments to apprise their representatives on the Committee on Trade and Environment in Special Session of the WTO of the INC-10 decision (UNEP/FAO/PIC/INC.10/L.1/Add.1).

CLOSING PLENARY

On Friday, 21 November, delegates convened for the closing Plenary and to adopt the report of INC-10 (UNEP/FAO/PIC/INC.10/L.1 and UNEP/FAO/PIC/INC.10/L.1/Add.1). The INC conducted a paragraph-by-paragraph reading of the report, making a number of editorial changes and amendments. Following this, the INC adopted the report of INC-10 by acclamation.



After the consideration of the report several delegates made closing statements, congratulating Chair de Azevedo Rodrigues and the Secretariat for their effectiveness and contributions to the successful outcome of INC-10. Delegates also thanked the Government of Switzerland for hosting INC-10.

Noting that INC-10 was the last major substantive session of the INC, Chair de Azevedo Rodrigues thanked delegates for their constructive contributions, and Joint Executive Secretary Jim Wills commended the number of decisions adopted by delegates. The Gambia, for the African Group, welcomed the recognition of African countries' concerns regarding technical assistance and capacity building, and noted the importance of a separate trust fund for technical assistance. Egypt, for the Arab region, stressed the need to address technical assistance before concluding issues of non-compliance. The EU said it was looking forward to COP-1 and highlighted the Convention's importance to safeguarding human health and the environment from the harmful impacts of certain hazardous pesticides and chemicals.

Chair de Azevedo Rodrigues closed the meeting at 1:20 pm.

A BRIEF ANALYSIS OF INC-10

As INC-10 completed its work, a major change looms on the horizon – the Rotterdam Convention's entry into force. As the prior informed consent procedure moves from a voluntary, interim procedure into a legally-binding one, the negotiations are entering a new phase. The atmosphere at PIC-10 was colored by this imminent change, with participants moving along the path to the first Conference of the Parties (COP-1). It remains to be seen exactly how the new landscape will look, and whether the Rotterdam Convention will fulfill expectations and become more effective than the voluntary, interim PIC Procedure. Substantive questions remain regarding, among other things, the Convention's rules of procedure, compliance regime, and technical assistance mechanisms. Another challenge for the Rotterdam Convention will be the need to establish its place among an emerging and multiplying constellation of international chemicals instruments and institutions.

This analysis considers the implications of this transition, suggests that experience in the interim PIC Procedure provides a valuable foundation for future progress, identifies future challenges, and explores the Convention's role in the wider framework of international chemicals agreements.

EYES TOWARDS COP-1

With several countries eager to become the fiftieth Party and trigger the Convention's entry into force, it is expected that the Convention will reach this milestone in 2004. Discussions at INC-10 demonstrated awareness among delegates that meetings of the COP will be characterized by different participants and different rules. Because the Rotterdam Convention is focused on trade and information-sharing, the roles of Parties and non-Parties are expected to be more distinct than in other MEAs. For example, non-Parties will not be able to provide import responses or notifications of regulatory action to ban or severely restrict chemicals, and will not be able to block the addition of chemicals (e.g. chrysotile asbestos) to the PIC Procedure. The degree to which participants expect the COP to be different was reflected in the discussions about holding a "mini-INC" prior to COP-1. For example, there was concern among some countries that chemicals for which notifi-

cations came from countries likely to be non-Parties at COP-1 could not be added to the PIC Procedure. Holding a "mini-INC" overcomes this obstacle.

As the PIC Procedure progresses from a voluntary regime with many participants to a legally-binding regime with a more limited set of Parties, questions remain about how effective the Convention will be in practice. As countries prepare for this transition, INC-10 indicated that what has been an era of relative cordiality in the PIC regime may be coming to an end. Disagreements over how punitive the compliance mechanism should be and over the inclusion of chrysotile asbestos in the interim PIC Procedure provided a glimpse into more substantive disagreements among Parties over where the Convention is headed in the future. The tone of COP-1 will largely be set by which countries become Parties by that time. There is much uncertainty about whether a number of countries with significant interests in chemicals trade, such as the US, the Russian Federation, and China, will ratify the Convention. On some issues, the non-Party status of vocal opponents could facilitate the COP's decision making; on others, countries may hesitate to commit to further legally-binding obligations.

A SOLID FOUNDATION

The transition to a mandatory regime will have the advantage of building on experience both from a relatively unique interim Procedure, in which countries are implementing the Convention prior to its entry into force, and from voluntary regimes that predate the Convention. During the interim period, a number of chemicals have been added, and countries have taken steps towards implementation of the voluntary PIC procedure. One area to which this experience will contribute significantly is in the work of the Chemicals Review Committee (CRC). At INC-10, a report on the work of the first four sessions of the ICRC in developing procedures, drafting decision guidance documents (DGDs), and responding to requests for technical information was greeted by delegates' accolades.

The role of scientific advisory committees in international regimes has sometimes proven controversial, and it is therefore a promising sign that the PIC subsidiary body received unanimous praise at INC-10. This experience gives the ICRC's successor, the CRC, a significant head start and lends authority to the procedure for listing chemicals. This was reinforced at INC-10, where both the Chair and the Secretariat emphasized that when the ICRC has tabled the information required by Annex II to include a chemical in the PIC Procedure, listing cannot legitimately be delayed by calls for further scientific data.

There is some evidence that the interim PIC Procedure has exhibited the flexibility required to respond to emerging problems and is being taken seriously by those engaged in international chemicals trade. Japan announced at INC-10 that domestic manufacturers of the choline salt of maleic hydrazide would discontinue production and export of this hazardous form, in the context of discussions about a decision not to list maleic hydrazide in the interim Procedure. Furthermore, INC-10 saw the addition to the interim PIC procedure of four forms of asbestos, the chemical DNOC, and the severely hazardous pesticide formulation, dustable powder forms of benomyl, carbofuran and thiram. In the case of the severely hazardous pesticide formulation, the first such formulation to be added to the interim procedure, the Convention moved quickly to respond to reports of pesticide poisonings in Senegal, which came to light with the cooperation of the Pesticide Action Network.



It remains to be seen whether the procedure retains this flexibility and efficiency once the stakes are raised by legally-binding obligations. Both these examples demonstrate the role that non-governmental actors, both environmental NGOs and industry, can have in the implementation and eventual success of the Convention. However, INC-10, like earlier INCs of the Rotterdam Convention, was rather sparsely attended by non-governmental observers. As the COP begins its work, the presence of NGOs will become all the more important.

CHALLENGES TO A SAFER CHEMICALS TRADE

The idea behind negotiating a legally-binding instrument on prior informed consent was that a mandatory regime would be more effective than the voluntary procedure in making international trade in hazardous substances safer. While voluntary implementation of the Convention in the context of the interim PIC Procedure has produced several success stories, the degree of implementation of the legally-binding requirements will determine whether the Convention succeeds in promoting greater chemical safety.

A less successful area has been the low level of import responses provided by Parties. Technical assistance provided by the Secretariat has yielded some success in increasing the number of responses received, but discussion at INC-10 suggested that the problems that developing countries in particular will face in achieving compliance demand more tailored practical assistance reinforced with strong political will. Another challenge is dealing with the growing realization that developing countries are both importers and exporters of hazardous substances, particularly since much of the dangerous trade in chemicals is among developing countries.

Discussions on compliance at INC-10 dealt with the appropriateness of punitive mechanisms for those countries that are found to be in non-compliance, and the ways to engage non-compliant Parties in the process (the "trigger mechanisms"). The COP will need not only to resolve these disagreements, but also to determine whether the mechanisms developed for identifying non-compliance and enforcing penalties will be adequate to deal with the problem of countries' exporting unwanted chemicals to uninformed and unwilling recipients.

Another area to look at will be whether the Convention has enough flexibility to address emerging hazards, given the swift pace at which the international chemicals industry changes. As some NGO representatives pointed out at INC-10, the Convention can act as an early warning instrument to alert importing countries that other states have taken precautionary action. In this way, the Rotterdam Convention can be seen as a first line of defense to prevent the accumulation of obsolete stockpiles of chemicals. The debate during INC-10 on a fifth form of asbestos, chrysotile, revealed reluctance on the part of some countries to add chemicals for which they have significant economic interests. In particular, the Russian Federation questioned the scientific basis of the identified human health impacts of chrysotile asbestos, despite the ICRC already having deemed the notifications to be valid under the Convention's criteria. Several delegates regarded this as a thinly veiled attempt to protect the Russian Federation's economic interest in international trade in the substance.

This conflict between protecting human health and the environment by listing chemicals in the PIC Procedure and protecting economic interests against the possibility of countries responding with trade restrictions is likely to reemerge repeatedly. Although

Parties' acting on their economic interests is not unexpected, such actions go against the purpose of the Convention as an information-sharing mechanism. The procedures of the Convention for listing chemicals do not allow for the consideration of the economic ramifications of listing. With the Russian Federation and some others who blocked progress on chrysotile asbestos unlikely to ratify the Convention before COP-1, a few participants noted that the Convention may progress more smoothly with a smaller set of more committed Parties. Unless delegates find a process to deal with such chemicals, these sorts of disagreements could threaten the effectiveness of the Convention.

There has been much talk about the role that information exchange can play in fulfilling environmental policy goals, and mechanisms for information exchange and dissemination are increasingly common both at national and international levels. The Rotterdam Convention offers one of the first real tests as to whether a formalized procedure built upon information exchange and informed consent can address the very significant problem of the hazardous chemicals trade.

PIC IN THE CONTEXT OF CHEMICALS MANAGEMENT

As both the Rotterdam and Stockholm Conventions count the days until their entry into force, the constellation of international chemicals instruments is becoming more complex. The Rotterdam and Stockholm Conventions will join the Basel Convention as legally-binding instruments controlling the different stages of a chemical's life-cycle. As the Rotterdam and Stockholm Conventions come of age, they must deal with some of the same issues, such as ensuring compliance, managing representation, formalizing rules of procedure and providing technical assistance. One of the advantages of negotiating several stand-alone Conventions on chemical safety has been the relative speed at which substantive requirements could enter into force, since distinct fora with limited mandates has facilitated bargaining among countries.

On the other hand, the international chemicals management conventions, which will have three different yet overlapping sets of Parties, could end up with three different sets of rules and procedures, making it all the more difficult for Parties to participate effectively. There was talk at INC-10 about improving coordination among the different chemicals agreements, as well as with numerous international organizations whose mandates touch on chemicals. This is of particular importance in the area of providing technical assistance. Internationally, discussions on coordination prompted the newly-emerging Strategic Approach to International Chemicals Management (SAICM), which hopes to provide a mechanism for coordination, and to lend direction to the international arena of chemicals management. It remains to be seen, however, what influence the SAICM initiative will have.

While progress was made at INC-10 on listing some chemicals and in settling many of the procedural issues involved in making the transition from a voluntary procedure to a legally binding instrument, several contentious issues emerged that might destabilize the chemistry catalyzing the Convention. Issues raised at INC-10 which are likely to re-emerge in the future involve compliance, the listing of economically-valuable chemicals, and the mechanisms for providing technical assistance. Beyond these specific issues, however, the challenge for the Rotterdam Convention is not only to fulfill its objectives with respect to international trade, but also to work with other conventions, international organizations, and non-governmental actors to address the risks posed by chemicals throughout their life cycles and throughout the world.



THINGS TO LOOK FOR BEFORE COP-1

EU SUSTAINABLE CHEMICALS MANAGEMENT

MEETING: This meeting will take place from 24-25 November 2003, in Brussels, Belgium. It will consider the effects of the REACH Chemicals Policy. For more information, contact: EU Conferences Ltd.; tel: +44-1873-830-724; fax: +44-1873-830-692; e-mail: info@euconferences.com; Internet: <http://www.euconferences.com/frachemical.htm>

24TH SESSION OF THE ECOSOC SUB-COMMITTEE OF EXPERTS ON THE TRANSPORT OF DANGEROUS GOODS: The Sub-Committee will convene from 3-10 December 2003, in Geneva, Switzerland. For more information, contact: UNECE Transport Division; tel: +41-22-917-2401; fax: +41-22-917-0039/89; e-mail: dominique.leger@unece.org; Internet: <http://www.unece.org/trans/danger/danger.htm>

SECOND MEETING OF THE STOCKHOLM CONVENTION EXPERT GROUP ON BAT-BEP: The second meeting of the Expert Group on Best Available Techniques (BAT) and Best Environmental Practices (BEP) is scheduled to meet from 8-12 December 2003, in Villarrica, Chile. For more information, contact: Stockholm Convention Interim Secretariat, UNEP Chemicals Unit; tel: +41-22-917-8191; fax: +41-22-797-3460; e-mail: ssc@chemicals.unep.ch; Internet: http://www.pops.int/documents/meetings/bat_bep/2nd_session/meetdocen.htm

SIXTH SESSION OF THE ECOSOC GLOBAL CLASSIFICATION AND HAZARD COMMUNICATION HARMONIZATION SUB-COMMITTEE: This meeting will take place from 10-12 December 2003, in Geneva, Switzerland. For more information, contact: Mireille Chavet, UNECE Transport Division; tel: +41-22-917-1252; fax: +41-22-917-0039/89; e-mail: mireille.chavet@unece.org; Internet: <http://www.unece.org/trans/danger/danger.htm>

ICRC-5: The fifth session of the Interim Chemical Review Committee is scheduled for 2-6 March 2004, in Geneva, Switzerland. For more information, contact the Joint Interim Secretariat: Niek van der Graaff, FAO; tel: +39-6-5705-3441; fax: +39-6-5705-6347; e-mail: niek.vandergraaff@fao.org; or Jim Willis, UNEP Chemicals; tel: +41-22-917-8111; fax: +41-22-797-3460; e-mail: chemicals@unep.ch; Internet: <http://www.pic.int>

THEMATIC WORKSHOP ON SYNERGIES FOR CAPACITY BUILDING UNDER INTERNATIONAL AGREEMENTS ADDRESSING CHEMICALS AND WASTE MANAGEMENT: Organized by UNITAR in collaboration with several international organizations, this workshop will take place from 1-3 March 2004, in Geneva, Switzerland. For more information, contact: UNITAR Training and Capacity Building Programmes in Chemicals and Waste Management; tel: +41-22-917-1234; fax: +41-22-917-8047; cwm@unitar.org; Internet: <http://www.unitar.org>

EIGHTH SPECIAL SESSION OF THE UNEP GOVERNING COUNCIL/FIFTH GLOBAL MINISTERIAL ENVIRONMENT FORUM: The eighth Special Session of the UNEP Governing Council/Fifth Global Ministerial Environment Forum will take place from 29-31 March 2004, in Seoul, Republic of Korea. For more information, contact: Beverly Miller, Secretary for UNEP Governing Council; tel: +254-2-623431; fax: +254-2-623929; e-mail: beverly.miller@unep.org; Internet: <http://www.unep.org>

THIRD SESSION OF THE OPEN-ENDED WORKING GROUP OF THE BASEL CONVENTION: This meeting will take place from 26-30 April 2004, in Geneva, Switzerland. For

more information, contact: Basel Convention Secretariat; tel: +41-22-917-8218; fax: +41-22-797-3454; e-mail: sbc@unep.ch; Internet: <http://www.basel.int>

25TH SESSION OF THE ECOSOC SUB-COMMITTEE OF EXPERTS ON THE TRANSPORT OF DANGEROUS GOODS: The Sub-Committee will convene from 5-14 July 2004, in Geneva, Switzerland. For more information, contact: UNECE Transport Division; tel: +41-22-917-2401; fax: +41-22-917-0039/89; e-mail: dominique.leger@unece.org; Internet: <http://www.unece.org/trans/danger/danger.htm>

SEVENTH SESSION OF THE ECOSOC GLOBAL CLASSIFICATION AND HAZARD COMMUNICATION HARMONIZATION SUB-COMMITTEE: This meeting will take place from 14-16 July 2004, in Geneva, Switzerland. For more information, contact: Mireille Chavet, UNECE Transport Division; tel: +41-22-917-1252; fax: +41-22-917-0039/89; e-mail: mireille.chavet@unece.org; Internet: <http://www.unece.org/trans/danger/danger.htm>

INTERNATIONAL WORKSHOP ON MANAGEMENT OF HAZARDOUS SUBSTANCES AND GOODS: This workshop, organized by the University of Applied Sciences Basel (FHBB), will be held from 6-17 September 2004, in Muttensz, Switzerland. For more information, contact: Priska Limacher, Course Secretariat; tel: +41-22-467-4560; fax: +41-22-467-4590; e-mail: p.limacher@fhbb.ch; Internet: <http://www.fhbb.ch/umwelt>

29TH SESSION OF THE JOINT MEETING OF THE FAO PANEL OF EXPERTS ON PESTICIDE RESIDUES IN FOOD AND THE ENVIRONMENT AND THE WHO EXPERT GROUP ON PESTICIDE RESIDUES: This meeting is scheduled to be held in September 2004, in Geneva, Switzerland. For more information, contact: Amelia Tejada, FAO; tel: +39-6-5705-4010; fax: +39-6-5705-6347; e-mail: amelia.tejada@fao.org; Internet: <http://www.fao.org/>

ELEVENTH MEETING OF THE INTERGOVERNMENTAL NEGOTIATING COMMITTEE ON THE PRIOR INFORMED CONSENT PROCEDURE (INC-11): INC-11 will tentatively be held on 18 September 2004, in Geneva, Switzerland. For more information, contact the Joint Interim Secretariat: Niek van der Graaff, FAO; tel: +39-6-5705-3441; fax: +39-6-5705-6347; e-mail: Niek.Vandergraaff@fao.org; or Jim Willis, UNEP Chemicals; tel: +41-22-917-8111; fax: +41-22-797-3460; e-mail: chemicals@unep.ch; Internet: <http://www.pic.int>

FIRST CONFERENCE OF THE PARTIES TO THE ROTTERDAM CONVENTION (COP-1): COP-1 is tentatively scheduled for 17-21 November 2003, in Geneva, Switzerland. For more information, contact the Joint Interim Secretariat: Niek van der Graaff, FAO; tel: +39-6-5705-3441; fax: +39-6-5705-6347; e-mail: Niek.Vandergraaff@fao.org; or Jim Willis, UNEP Chemicals; tel: +41-22-917-8111; fax: +41-22-797-3460; e-mail: chemicals@unep.ch; Internet: <http://www.pic.int>