

UNITED
NATIONS

PIC



United Nations
Environment Programme

Food and Agriculture
Organization of the United

Distr.
GENERAL

UNEP/FAO/PIC/INC.3/2
26 June 1997

ORIGINAL: ENGLISH

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

Third session

Geneva, 26-30 May 1997

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 THIRD SESSION

I. OPENING OF THE SESSION

1. The third 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 Geneva International Conference Centre from 26 to 30 May 1997.
2. The session was opened by Ms. Maria Celina de Azevedo Rodrigues (Brazil), Chair of the Committee, at 10 a.m. on Monday, 26 May 1997.
3. Opening statements were made by Mr. Philippe Roch, Director, Federal Office for Environment, Forests and Landscape of Switzerland, Ms. Elizabeth Dowdeswell, Executive Director of the United Nations Environment Programme (UNEP), and Mr. A. Sawadogo, Assistant Director-General, Food and Agriculture Organization of the United Nations (FAO), speaking on behalf of Mr. Jacques Diouf, Director-General of FAO.
4. In his statement, Mr. Roch welcomed participants to Geneva. He drew attention to the high risk represented by chemicals and to the serious lack, at the global level, of legal instruments regulating

chemicals and their implementation and monitoring. That lack could result in unfair competition between companies or countries that took necessary preventive measures and those that did not. He said that the instrument to be negotiated should therefore be a modern one based on information exchange and measures to strengthen the ability of Governments to implement it, bearing in mind the need for technical and financial assistance.

5. He noted that the prior informed consent (PIC) negotiations touched on an important aspect of global discussions on trade and environment. One of the goals of sustainable development was to ensure that free trade and the protection of the environment were mutually supportive. The current negotiations represented a major step towards solving the problems of trade and environment.

6. The negotiations on a PIC instrument were not isolated and other negotiations, organizations and programmes were concurrently working towards a better understanding of the risks of chemicals. After noting the excellent cooperation of UNEP and FAO in the current PIC activities, he further expressed his hope that, given that many of the organizations working on the issue were based in Geneva, due consideration would be given to Geneva as an appropriate site for the secretariat. In conclusion, he wished the meeting every success in its negotiations.

7. In her statement, Ms. Dowdeswell welcomed all participants to the third session and thanked the Swiss Government for its generosity in providing the necessary financial support to enable the meeting to take place. She drew attention to the potential dangers posed by chemicals but added that chemicals were essential for sustainable development.

8. She noted that many of the problems facing the world might have been remedied through the establishment of a safety net - some form of "first line of defence" - to protect against global chemical risks. National Governments had a key role to play in building that first line of defence, through research and assessment programmes and through legislative action. The lack, however, of financial, technological and human resources and legislative and institutional capacity posed a formidable obstacle in most countries.

9. She called for efforts to strengthen the safety net through international law to cover those areas that could not be managed by national programmes alone. Those efforts would be linked to international trade rules, since environmental protection and trade liberalization could be mutually supportive. While an important function in that regard had been performed by the voluntary PIC procedure, she observed, however, that a voluntary programme could not ensure complete effectiveness, hence the need for a legal instrument.

10. She reaffirmed the importance of concluding the global PIC instrument in 1997 and expressed her highest hopes for the successful outcome of the negotiations.

11. On behalf of the Director-General of FAO, Mr. Sawadogo welcomed all participants to the session and reaffirmed his organization's particular interest in the PIC procedure, as many of the chemicals considered under the procedure were pesticides. It was essential to ensure that the compounds most damaging to human health and the environment disappeared from agricultural systems, to be replaced by more benign pesticides applied within the overall context of integrated pest management.

12. Both the FAO Council, at its one hundred and eleventh session in October 1996, and the UNEP Governing Council, at its nineteenth session in January-February 1997, had not reached an agreement on the widening of the mandate of the Intergovernmental Negotiating Committee. Accordingly, the Committee's current mandate would continue.

13. At its one hundred and eleventh session, the FAO Council had supported a possible participation of FAO in the secretariat. The FAO secretariat had reserved regular programme resources to continue to meet the costs of the voluntary procedure and those would be available for the legally binding procedure. The resources available to both organizations would not, however, be sufficient to cover all secretariat tasks identified in the PIC instrument.

14. He noted that the current procedure would continue during the interim period, and possibly beyond for those countries that did not adhere to the PIC instrument. The Intergovernmental Negotiating Committee would have to make recommendations to the UNEP Governing Council and to the FAO Conference on the involvement of UNEP and FAO in the interim and in the full secretariat and on the continuation and amendment of the voluntary procedure. As a consequence, an amended voluntary procedure might need to be instituted, identical to that outlined in the text of the legally binding instrument.

15. At the request of the Chair, the representative of FAO outlined the issues that the FAO secretariat had brought to the attention of the FAO Council at its one hundred and eleventh session. Those included the scope of the PIC instrument, the results of the Government-designated Group of Experts on Further Measures to Reduce the Risks from a Limited Number of Hazardous Chemicals and the secretariat. No consensus had been reached by the FAO Council on scope. While it had recognized that secretariat arrangements would be decided by the Intergovernmental Negotiating Committee and the diplomatic conference, it had, however, supported participation of FAO in the secretariat, as far as that would be related to pesticides. It had also recognized the need for technical assistance in relation to pesticide management in developing countries.

16. The representative of UNEP listed the four decisions relating to chemicals that had been adopted by the UNEP Governing Council at its nineteenth session earlier in 1997, namely, 19/13 A, on development of an international legally binding instrument for the application of the prior informed consent procedure for certain hazardous chemicals and pesticides in international trade; 19/13 B, on further measures to reduce the risks from a limited number of hazardous chemicals; 19/13 C, on international action to protect human health and the environment through measures which would reduce and/or eliminate emissions and discharges of persistent organic pollutants, including the development of an international legally binding instrument; and 19/13 D, on enhanced coherence and efficiency among international activities related to chemicals. The UNEP Governing Council had further reaffirmed its decision 18/12 on the mandate and the conclusion of negotiations in 1997.

II. ORGANIZATIONAL MATTERS

A. Attendance

17. The session was attended by representatives of the following Parties: Albania, Algeria, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Barbados, Belarus, Belgium, Benin, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Cuba, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Ethiopia, European Community, Fiji, Finland, France, Gabon, Gambia, Germany, Ghana, Guinea, Hungary, India, Indonesia, Iran (Islamic Republic of), Israel, Italy, Jamaica, Japan, Jordan, Kyrgyzstan, Latvia, Lesotho, Lithuania, Luxembourg, Malawi, Malaysia, Mali, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Netherlands, New Zealand, Niger, Nigeria, Norway, Oman, Panama, Paraguay, Peru, Philippines, Poland, Republic of Korea, Republic of Moldova, Russian Federation, Rwanda, Senegal, Slovenia, South Africa, Sri Lanka, Sudan, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, Togo, Tunisia, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Uzbekistan, Venezuela, Zambia and Zimbabwe.

18. The following United Nations bodies and specialized agencies were represented: Economic Commission for Europe, International Labour Organization (ILO), United Nations Institute for Training and Research (UNITAR), World Health Organization (WHO) and World Trade Organization (WTO).

19. The following intergovernmental organization was represented: League of Arab States.

20. The following non-governmental organizations were also represented: Centre for International Environmental Law (CIEL), Chemical Manufacturers Association (CMA), Consumers International, European Chemical Industry Council (CEFIC), Global Crop Protection Federation (GCPF), International Council of Chemical Associations (ICCA), International Council on Metals and the Environment (ICME), International Institute for Applied Systems Analysis, Japan Machinery Exporters' Association, Lions Clubs International, Pesticides Trust and World Wide Fund for Nature International (WWF).

B. Officers

21. Following a request by Mr. William Murray (Canada), to be released from his duties as Rapporteur but to remain on the Bureau, it was agreed that Mr. Wang Zhijia (China), Vice-Chairman, would take over as Rapporteur. The remaining officers, elected by the Committee at its first session, served in their respective capacities during the session. In addition, owing to the inability of the representative of the African group to serve on the Bureau for the third session of the Committee, the Committee elected Mr. Mohamed Bentaja (Morocco), the representative of that group, to serve on the Bureau. Mr. G. Karlaganis (Switzerland), as representative of the host Government, served as an ex officio member of the Bureau for the current session.

22. Accordingly, the Bureau for the third session of the Intergovernmental Negotiating Committee was constituted as follows:

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

Vice-Chairs: Mr. William Murray (Canada)
Mr. Mohamed Bentaja (Morocco)
Mr. Yuri Kundiev (Ukraine)

Rapporteur: Mr. Wang Zhijia (China)

23. The Chair thanked Mr. Murray for his excellent work as Rapporteur of the first and second sessions of the Intergovernmental Negotiating Committee.

24. The Chair thanked Mr. Reza Tabatabai (Islamic Republic of Iran), who had replaced Mr. Wang Zhijia at the second session, for his assistance in the smooth running of that session.

C. Adoption of the agenda

25. The Committee adopted the following agenda on the basis of the provisional agenda, which had been circulated as document UNEP/FAO/PIC/INC.3/1:

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

D. Organization of work

26. At its opening meeting, the Committee decided to continue its work in the plenary, as well as the two sessional groups that had been established at the second session of the Intergovernmental Negotiating Committee: a Technical Working Group, under the chairmanship of Mr. Reiner Arndt (Germany), and a Legal Drafting Group, under the chairmanship of Mr. Patrick Szell (United Kingdom).

The work of the groups was based on the texts of the draft articles, contained in annex I of the report of the second session (UNEP/FAO/PIC/INC.2/7).

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

27. In considering agenda item 3, the Committee had before it the following documentation: a note by the secretariat on convention scope and exemptions (UNEP/FAO/PIC/INC.3/INF/1); a note by the secretariat on relationship with other international agreements (UNEP/FAO/PIC/INC.3/INF/2); and a background paper by the secretariat on provisions concerning a secretariat (UNEP/FAO/PIC/INC.3/INF/3), as well as the report of the Intergovernmental Negotiating Committee on the work of its second session, containing the text of draft articles (UNEP/FAO/PIC/INC.2/7, annex D).

28. The main issues raised in discussions in plenary in relation to the draft articles are summarized in paragraphs 29-33 below. The secretariat compiled the draft articles for further consideration by the Committee at its fourth session. The revised draft articles are contained in annex II to the present report.

Article 3 (Scope of the Convention)

29. There was extensive debate on whether the word "acutely" should be retained in paragraph 1 (b) and a proposal was made for changes in wording to that paragraph to include other chemicals in addition to pesticides. There was some discussion on the retention of paragraphs 2 (c), 2 (e), 2 (f), 2 (g) and 2 (h) and on the need further to define the different categories of chemicals to be excluded from the scope of the convention. While many representatives felt that paragraph 2 (d) could be retained, the inclusion of precursors of chemical weapons was questioned as those were sometimes industrial chemicals. Several delegations felt that, if paragraphs 2 (g) and 2 (h) were retained, they should be quantified.

Article 7 [Acutely] hazardous pesticide formulations

30. One delegation believed that the convention should deal with all hazardous chemicals including pesticides and that this would not necessarily involve increased costs or pose problems for developing countries. Many delegations stated their opposition to any expansion of the scope of the article beyond the current scope of the voluntary PIC procedure. Several delegations wished to retain the word "acutely", without brackets. A few delegations wished to see a definition of "acutely" provided by the secretariat.

Article 9 (Obligations of Parties that import chemicals)

31. Some delegations believed that provisions of the article might be inconsistent with those in other international instruments and that additional provisions might be needed. At the same time, one delegation felt that provisions of the article were similar to those in the Uruguay Round instruments and

that those concerns could perhaps be more adequately covered under other articles. Several delegations suggested extensive revisions to the text, with a view, inter alia, to strengthening the prescriptive force of the provisions.

Article 10 (Obligations of Parties that export chemicals)

32. Debate continued on whether the provisions of subparagraph (d) (ii) adequately covered the concerns, in particular, of developing countries and countries with economies in transition or whether those concerns would be more appropriately covered under Article 16. Some delegations suggested that "date of dispatch" should be changed to "date of receipt", as the receiving Party had no control over delivery delays.

Article 19 (Financial resources and mechanisms)

33. A number of options were considered for the provision of financial and technical resources necessary for the functioning of the PIC instrument. The Committee referred the issue to an informal contact group, which produced a paper and presented it to the plenary. The paper is attached as an appendix to annex II of the present report.

IV. OTHER MATTERS

A. Future sessions of the Committee

34. The secretariat informed the meeting about the current financial status of the negotiating process. The European Commission had offered to host the next session of the Intergovernmental Negotiating Committee; the Government of the Netherlands had offered 2.2 million guilders (US\$ 1.1 million at current exchange rates) to cover the costs of the prior informed consent diplomatic conference and, if needed, the preparatory meeting, up to a maximum of five days, as well as for some costs of the interim convention secretariat; and the Government of Norway had offered 2.7 million kroner (US\$ 400,000 at current exchange rates) toward secretariat costs and the travel costs of representatives of developing countries for both the PIC negotiations and the future POPs negotiations.

B. Provisions concerning a secretariat

35. The representative of Switzerland applauded the excellent cooperation between UNEP and FAO and advocated a continuation of that cooperation on a permanent basis. He therefore reiterated the comparative advantages which Geneva offered to a host organization to the future secretariat.

36. In response to a request from one representative, the Chair requested the secretariat to prepare a background paper on the interim arrangements, the transition from the voluntary to the mandatory procedure and the arrangements for the future secretariat, including the evaluation of costs for necessary activities.

V. ADOPTION OF THE REPORT

37. The present report was adopted by the Committee at its closing meeting on Friday, 30 May 1997, on the basis of the draft report, which was circulated as document UNEP/FAO/PIC/INC.3/L.1 and Add.1 and Add.2.

VI. CLOSURE OF THE SESSION

38. At the closing meeting, one delegation, speaking on behalf of the group of Asian and Pacific chemicals-importing countries, stressed the need to ensure that the future PIC instrument promoted the sound management of chemicals and was fully and effectively implemented.

39. One delegation recalled UNEP Governing Council decision 85 (V) of 25 May 1977, which called for the application of the principle of prior informed consent for hazardous chemicals, and hoped that a legally binding PIC instrument would be successfully concluded.

40. The representative of the European Community reaffirmed the Community's support for UNEP Governing Council decision 19/13 A of 7 February 1997, and recalled the Community's offer to host the fourth session of the Intergovernmental Negotiating Committee. Noting that the proposals put forward by the Community at the current session had reflected its concerns regarding the sound management of pesticides and industrial chemicals - in particular, those exported to developing countries - he conveyed the Community's willingness to give further consideration to its proposals, in particular regarding Article 7, on the understanding that other delegations would do likewise.

41. One delegation, speaking on behalf of the African group, thanked the Swiss Government for having hosted the meeting and, drawing attention to the situation of the developing countries in the area of chemicals, called on all participants to give particular attention to the position paper submitted at the session by the African group (UNEP/FAO/PIC/INC/CRP.39).

42. Several delegations conveyed their thanks to the Swiss Government for hosting the meeting, as well as to the Chairs of plenary, the Legal Drafting Group and the Technical Working Group and to the secretariat for their work. One delegation further stressed the importance of producing agreed legal language and expressed an interest in additional interpretation and translation for the Legal Drafting Group.

43. Two delegations requested that efforts should be made to ensure the prompt availability of all documents prepared inter-sessionally.

44. After the customary exchange of courtesies, at 6.30 p.m. on 30 May 1997, the Chair declared the session closed.

Annex I

STATUS OF PROPOSED DRAFT ARTICLES FOR AN INTERNATIONAL LEGALLY
BINDING INSTRUMENT FOR THE APPLICATION OF THE PRIOR INFORMED CONSENT
PROCEDURE FOR CERTAIN HAZARDOUS CHEMICALS
AND PESTICIDES IN INTERNATIONAL TRADE

1. Articles considered by the Technical Working Group, the Legal Drafting Group and noted in plenary: 5, 5 bis, 12, 13, 15 and 16.
2. Articles considered by the Technical Working Group and noted in plenary: 14.
3. Articles considered by the Legal Drafting Group and noted in plenary: 2 (part), 17, 18, 19 bis, 20, 20 bis, 21, 21 bis, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32.
4. Articles considered by the Legal Drafting Group and under consideration in the Technical Working Group: 8 bis.
5. Articles remaining with the Technical Working Group for further consideration: 1, 2 (part), 3, 4, 7, 10 and 11.
6. Articles considered by the Technical Working Group and under consideration by the Legal Drafting Group: 6, 8, 8 ter, 9, Annex X and Annex Y.
7. Articles still being considered by the meeting: 19. (Article 19 was considered by an informal working group. The paper from this group may be found as an appendix to annex II.)

Annex II

TEXT OF THE DRAFT ARTICLES AS REVISED BY THE INTERGOVERNMENTAL
NEGOTIATING COMMITTEE AT ITS SECOND AND THIRD SESSIONS*

Article 1

Objective¹

The objective of this Convention² is to promote shared responsibility and cooperative efforts among Parties in the international trade of certain hazardous chemicals in order to protect the environment and human, animal and plant life and health from potential harm from such chemicals and to contribute to their environmentally sound use, by promoting and facilitating information exchange about the characteristics of certain potentially hazardous chemicals and pesticides in international trade and by providing for a national decision-making process on the future import of these chemicals and the dissemination of these decisions to Contracting Parties.

Article 2

Definitions³

For the purposes of this Convention:

(a) "Chemicals" means a substance whether by itself or in a mixture or preparation and whether manufactured or obtained from nature and include such substances in the following use-categories: pesticidal, industrial or consumer use, but does not include any living organism;

(b) "Banned chemical" means a chemical all uses of which in one or more use-category have for health or environmental reasons, been prohibited by final governmental regulatory action. [Included

* Some slight editing has been carried out to ensure the consistent use of terms such as "human health and the environment", "regulatory action", "chemicals subject to the prior informed consent procedure", "Parties" and "countries".

1/ Alternative texts of this article were offered at the second session of the Intergovernmental Negotiating Committee by the African group, Australia and the European Community.

2/ The term "Convention" is used to denote the international legally binding instrument for the application of the prior informed consent procedure for certain hazardous chemicals and pesticides in international trade, without prejudice to the title or form of the future instrument.

3/ Other terms such as "environment", "health", "chemical products", "designated national authority", "final regulatory action", "hazardous pesticide formulations", etc., may need to be added following negotiation and agreement among Governments on the substantive content of these terms.

in this are pesticides or chemicals which have been refused approval for the first time use or withdrawn by the industry either from the market or from further consideration in the approval process where there is clear evidence that such actions have been taken for health or environmental reasons;]

(c) "Severely restricted chemicals" means a chemical virtually all uses of which within one or more use categories for health or environmental reasons have been prohibited by final government regulatory actions, but for which certain specific uses remain authorized [or for which a significant reduction of health or environmental risk has been obtained by final government regulatory action];

(c bis) "Hazardous pesticide formulations" means those pesticide formulations that are likely to produce severe health [environmental] effects through [limited]⁴ exposure under conditions of use in developing countries or countries in transition;

(d) "International trade" means export or import;

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

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

(g) "Exporting Party" means a Party exporting chemicals under this Convention;

(h) "Importing Party" means a Party importing chemicals under this Convention;

(i) "Prior informed consent" means the principle that international shipment of a chemical that is banned or severely restricted in order to protect human health or the environment should not proceed without the agreement, where such agreement exists, or contrary to the decision of the designated national authority in the participating importing country;

(j) "Prior informed consent procedure" means the procedure for formally obtaining and disseminating the decisions of importing countries as to whether they wish to receive future shipments of chemicals that have been banned or severely restricted;

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

^{4/} In the Technical Working Group at the second session of the Intergovernmental Negotiating Committee, there was substantial discussion on the inclusion of chronic effects: inclusion of the term "limited" would exclude long-term chronic effects and several Governments wished to include this term to exclude such effects.

Article 3

Scope of the Convention

1. This Convention applies to:
 - (a) Banned or severely restricted chemicals; and
 - (b) [Acutely] hazardous pesticide formulations.
2. This Convention does not apply to:
 - (a) Narcotic drugs and psychotropic substances;
 - (b) Radioactive materials;
 - (c) Wastes;⁵
 - [(d) Chemical weapons and their precursors;]
 - (e) Pharmaceuticals, including human and veterinary drugs;⁶
 - [(f) Chemicals used as food additives;]⁷
 - (g) Chemicals imported for the purpose of research or analysis in quantities not likely to affect human health or the environment; and⁸

^{5/} In the Technical Working Group at the second session of the Intergovernmental Negotiating Committee reference to specific conventions was not supported.

^{6/} A large majority of members of the Technical Working Group at the second session of the Intergovernmental Negotiating Committee wanted this item to be exempted; however, a few members reserved their position.

^{7/} At the second session of the Intergovernmental Negotiating Committee, the Technical Working Group deleted chemical contaminants, including pesticide residues; the latter were understood to be excluded as they are not considered to be chemicals.

^{8/} At the second session of the Intergovernmental Negotiating Committee, the Technical Working Group considered that there was a need for clarification on whether these exemptions would conflict with the national regulatory decision taken regarding these chemicals. Some members proposed that there was a need to quantify the exemptions.

(h) Chemicals imported by an individual for his or her own personal use in quantities reasonable for such use and in quantities not likely to affect human health or the environment. 8/

Article 4

General obligations

- [1. The Parties shall, in accordance with this Convention, exchange information on chemicals in international trade with the objective of protecting human health and the environment.]
- [2. The Parties shall, in particular, provide information to other Parties on all final regulatory actions taken to ban or severely restrict chemicals for health and environmental reasons.]
- [3. Parties that import chemicals shall provide information to other Parties on their decisions regarding future imports of chemicals subject to the prior informed consent procedure.]
4. Parties that export chemicals shall take, in accordance with this Convention, such measures, including legislative, administrative and other measures, as may be necessary to ensure that the international shipment of a chemical that is banned or severely restricted in order to protect human health or the environment does not proceed without the prior informed consent of the importing Party.
5. The Parties shall ensure that measures taken to regulate the chemicals under this Convention do not create unnecessary obstacles to, and/or constitute a means of arbitrary or unjustifiable discrimination or disguised restrictions on, international trade.
6. Nothing in this Article shall restrict the right of the Parties to take action more stringently protective of health and the environment than that called for in this Convention.

Article 5

Designated national authorities

1. Each Party shall designate one [or more] national [authority] [authorities] [as appropriate] that shall be authorized to act on its behalf and to perform the administrative functions required by this Convention.
2. Each Party shall [seek to] ensure that its designated national authority or authorities have sufficient resources to perform their tasks effectively.
3. Each Party shall, no later than the date of the entry into force of this Convention for it, notify the name and address of its designated national authority or authorities to the Secretariat. Each Party shall also immediately notify the Secretariat of any subsequent changes.
4. The Secretariat shall forthwith inform the Parties of the notifications it receives under paragraph 3.

[Article 5 bis

Informing Parties of regulatory measures⁹

(At the third session of the Intergovernmental Negotiating Committee, the Technical Working Group recommended the deletion of this article.)]

Article 6

Banned or severely restricted chemicals

1. Each Party that has adopted a final regulatory action to ban or severely restrict a chemical shall notify the Secretariat in writing of such measure through its relevant designated national authority. In order to be considered for inclusion in the prior informed consent procedure the notification shall be in accordance with the provisions set out in Annex X.
2. A notification pursuant to paragraph 1 of this article shall be made as soon as possible, but not later than [ninety]¹⁰ days after the date on which the final regulatory action has taken effect.
3. The Secretariat shall, [as soon as possible] 10/ after receipt of a notification under paragraph 1, verify that the notification complies with the information required in Annex X and if not so, inform the notifying Party accordingly.¹¹
4. The Secretariat shall [forthwith] 10/ communicate a summary of information received pursuant to paragraph 1 and Article 8 bis to the Parties and shall specify in such communication those final regulatory actions it considers meet the requirements of Annex X.¹²

^{9/} Former text of the article: Each Party that has adopted a regulatory measure to ban or severely restrict a chemical shall inform the Secretariat of such measure in writing through its designated national authority or authorities. The notification shall be in accordance with the provisions specified in part I of Annex X. The Secretariat shall forthwith communicate such information to the Parties.

^{10/} All references (including the case that there is no reference) to deadlines will be revisited by the Technical Working Group once the whole process is defined.

^{11/} In the view of the Technical Working Group, specific tasks of the Secretariat should be spelt out in a separate article on the Secretariat, such as follow-up action on incomplete notification.

^{12/} In the Technical Working Group, the European Community reserved its position, depending upon the final text of Annex X.

5. When the Secretariat has received [X] verified notification[s] of final regulatory actions [from [XX] FAO regions], it shall forward the notification[s] to the subsidiary body of the Conference of Parties. The subsidiary body shall review the documentation identified in Annex X, and consider, in accordance with the criteria set out in Annex Y, the chemical for inclusion in the prior informed consent procedure.

Article 7

[Acutely] Hazardous pesticide formulations¹³

1. Any Party¹⁴ experiencing problems with a hazardous pesticide formulation under conditions of use in its territory, [with assistance from] [any relevant international [United Nations] organization]¹⁵ [and any relevant non-governmental organization] may propose to the Secretariat, through its designated national authority or authorities, the inclusion of that hazardous pesticide formulation in the prior informed consent procedure. The proposal shall be in accordance with the provisions set out in part I of Annex (*) to this Convention.

2. The Secretariat shall, as soon as possible 10/ after the receipt of a proposal under paragraph 1, review it in order to identify whether the information it contains is in accordance with the Annex referred to in paragraph 1 of this Article. It shall as necessary seek additional information from appropriate sources, including from the designated national authorities of other Parties, relevant international organizations and relevant non-governmental organizations.

3. When the Secretariat has received [...proposals] [a proposal]¹⁶ regarding a particular hazardous pesticide formulation, and has sufficient information regarding the proposal[s], it shall forward the proposal[s] to [the subsidiary body of the Conference of the Parties]. [The subsidiary body] shall consider the hazardous pesticide formulation for inclusion in the prior informed consent procedure, in accordance with criteria set forth in the Annex referred to in paragraph 1 of this Article.

13/ The term "hazardous pesticide formulations" will be defined in Article 2. The question of [acutely] must also be resolved in Article 2 (Definitions).

14/ The term "any Party" has to be reconsidered after the final definition of "hazardous pesticide formulations" in Article 2 has been accepted.

15/ The Technical Working Group decided to retain the references to the United Nations organizations in brackets. Another suggestions was to replace the last two square brackets concerning the United Nations with: [The United Nations or any of its specialized agencies]. The Legal Drafting Group will require further guidance from the Technical Working Group if it is decided to retain the references to international organizations and/or non-governmental organizations in this article.

16/ In the Technical Working Group at the second session of the Intergovernmental Negotiating Committee, opinions differed as to whether one or more nominations were required to start the procedure. Most participants felt that one nomination was adequate if the quality of the evidence was sufficient.

[Article 8Decision guidance documents and approval of chemicals

1. For each chemical that the subsidiary body has determined [by consensus] [by a¹⁷ vote in accordance with rules of procedure as established by the Conference of the Parties] [in accordance with the rules of procedure established by the Conference of the Parties] is appropriate for inclusion in the prior informed consent procedure, the subsidiary body shall oversee the preparation of a draft decision guidance document.¹⁸

2. A draft decision guidance document that has been approved by the subsidiary body¹⁹ shall be forwarded to the Conference of the Parties together with any recommendation for inclusion of the chemical in the prior informed consent procedure. The Conference of the Parties shall decide [by consensus] [by a ¹⁷/ vote in accordance with rules of procedure as established by the Conference of the Parties] [in accordance with rules of procedure as established by the Conference of the Parties] whether to include the chemical in the prior informed consent procedure and whether to approve the draft decision guidance document.²⁰ Each chemical approved for inclusion in the prior informed consent procedure shall be listed in Annex (ZZZ) to this Convention. [The Annex shall indicate the use category on which the chemical entered the prior informed consent procedure.]

3. After its approval by the Conference of the Parties, the secretariat shall circulate [forthwith] ¹⁰/ each decision guidance document to all Parties through their designated national authorities.

Article 8 bisChemicals in the voluntary procedure

17/ The Technical Working Group requested the Legal Drafting Group to find the wording that implies any type of majority vote, excluding consensus.

18/ According to the opinion of the Technical Working Group, one way forward may be the development of guidance for the operation of the subsidiary body which might include the development of a consensus report that reflects the range of discussion.

19/ Explanatory note by the Technical Working Group: The role of the subsidiary body is to review the information in support of the verified notifications. It will prepare a report that indicates all of the chemicals considered and identifies those considered as candidates for the prior informed consent procedure and for which decision guidance documents have been drafted and forwarded to the Conference of the Parties for their approval and inclusion in the prior informed consent procedure.

20/ The Technical Working Group considers these two actions as one decision.

1. Each Party that has submitted a notification of final regulatory action to ban or severely restrict a chemical under the voluntary procedure laid down in Part II of the London Guidelines for the Exchange of Information on Chemicals in International Trade or Article 9 of the International Code of Conduct on the Distribution and Use of Pesticides prior to the date of entry into force of this Convention for that Party, need not submit a new notification under paragraph 1 of Article 6 in order for that chemical to be considered for inclusion in the prior informed consent procedure, provided that the original notification meets the requirements laid down in Article 6.²¹
2. Each Party that has not participated in the voluntary procedure laid down in Part II of the London Guidelines or Article 9 of the Code of Conduct shall, upon the date of entry into force of this Convention for it, notify the Secretariat, in accordance with paragraph 1 of Article 6, of its final regulatory measures to ban or severely restrict chemicals in effect at that date.²²

21/ The Legal Drafting Group notes that this provision, which is in fact an aspect of the general obligation of Parties to notify their final regulatory actions with respect to banned and severely restricted chemicals, would be more appropriately located in Article 6. The Legal Drafting Group expects to make similar observations with respect to other paragraphs of Article 8 bis, which could be moved to other articles, and will consider this possibility when reviewing the texts of those articles during the following session.

22/ The Legal Drafting Group suggests placing the following paragraphs immediately following paragraph 2 of Article 6, and deleting paragraphs 1 and 2 of Article 8 bis:

"1. Each Party shall, at the date of entry into force of this Convention for it, notify the Secretariat in writing of its final regulatory actions to ban or severely restrict a chemical, in effect at that time, except as provided in paragraph 2. Such notifications, provided they meet the provision set out in paragraph 1 of Article 6, shall be considered for inclusion in the prior informed consent procedure.

"2. Each Party that has submitted notifications of final regulatory actions under the London Guidelines or the Code of Conduct need not submit new notifications under paragraph 1. Notifications submitted under the London Guidelines and the Code of Conduct shall be considered for inclusion in the prior informed consent procedure in accordance with Article 6."

The above proposal is based on the understanding that the notifications referred to in the paragraphs above are intended to be subject to the same treatment as those referred to in paragraph 1 of Article 6. The Legal Drafting Group suggests therefore that these two paragraphs be placed immediately following paragraph 2 of Article 6 so that the notifications referred to in these two paragraphs will also be considered for inclusion in the prior informed consent procedure in accordance with paragraphs 3-5 of Article 6. If this proposal is accepted, some minor drafting changes will have to be made to Article 6 to integrate these two paragraphs.

3. Chemicals²³ for which decision guidance documents have been circulated under the voluntary prior informed consent procedure prior to [the date at which this Convention is opened for signature] [the date of entry into force of this Convention] shall be included in Annex (ZZZ) of this Convention.^{24,25}

[4. Chemicals 23/ for which decision guidance documents have not yet been circulated for decision under the voluntary prior informed consent procedure prior to [the date at which this Convention is opened for signature] [the date of entry into force of this Convention] shall be included in Annex (ZZZ) of this Convention. For these chemicals, the subsidiary body of the Conference of the Parties shall oversee the development of the decision guidance documents according to the procedure laid down in this Convention.]

5. Each Party shall, upon the date of entry into force of this Convention for it, provide the Secretariat with its responses pursuant to paragraph 2 of Article 9 with respect to each chemical on Annex (ZZZ).²⁶

Article 8 ter

Removal of chemicals from the prior informed consent procedure²⁷

1. Upon recommendation of the subsidiary body the Conference of Parties shall decide by [consensus] [by a 17/ vote in accordance with rules of procedure established by the Conference of the

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/ The Technical Working Group states that by "chemicals" is meant those chemicals that have qualified for inclusion in the voluntary prior informed consent procedure.

24/ The Technical Working Group notes that the nature of the voluntary scheme after the signature of this Convention will be important in deciding on the date in paragraphs 3 and 4 of this Article.

25/ The Legal Drafting Group notes that if this Convention contains an Annex (ZZZ) listing the chemicals that are already subject to the voluntary prior informed consent procedure there will be no need for paragraph 3 to be retained. If the Technical Working Group considers that this Convention should include some explanation as to the origin of the list in Annex (ZZZ), the appropriate place for such explanation would be in a preamble.

26/ The Legal Drafting Group notes that this means that each Party will have to submit such responses for all chemicals in Annex (ZZZ), regardless of whether it had already submitted import responses under the London Guidelines and the Code of Conduct.

27/ In the opinion of the Technical Working Group, it is recognized that criteria by which the subsidiary body will determine whether or not to remove a chemical from Annex (ZZZ) will need to be developed.

Parties] [in accordance with the rules of procedure established by the Conference of the Parties] whether to remove a chemical from Annex (ZZZ).

2. Proposals for removal of chemicals from Annex (ZZZ) shall be communicated to the Parties by the secretariat [at least six months] 10/ before the meeting of the Parties at which they are proposed for adoption.

3. The decision on removal of a chemical from Annex (ZZZ), which shall be binding on all Parties, shall [forthwith] 10/ be communicated to the Parties by the Depositary. Unless otherwise provided in the decisions they shall enter into force [on the expiry of the sixth month from the date of the circulation of the communication by the Secretary]. 10/

Article 9

[Obligations of importing Parties]

[Obligations of Parties that participate as importing Parties]

1. Each importing Party shall implement [in accordance with its resources and capacity] [in its territory] [pursuant to this article] legislative and/or administrative measures [as appropriate] to ensure [suitable control] [timely decisions with respect to the import] of chemicals subject to the prior informed consent procedure.

2. Each importing Party shall transmit to the Secretariat, as soon as possible but not later than nine months 10/ after receiving a decision guidance document referred to in Article 8, a response concerning its future importation of the chemical concerned.

3. A response [shall be related to the use categories and] shall consist of either:

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

(i) To consent to importation;²⁸

(ii) Not to consent to importation; or 28/

(iii) To consent to importation only under specified conditions [or for specified uses]; or

(b) An interim response, which may contain a statement consenting to importation with or without specified conditions or prohibiting importation during the interim period. The interim response may also include:

^{28/} Explanatory note of the Technical Working Group to the Legal Drafting Group:

The language needs work by the Legal Drafting Group to make it clear that (i) means to allow importation; and (ii) means not to allow importation.

- (i) A statement that a final decision is under active consideration;
- (ii) A request to the Secretariat or the designated national authority of a Party reporting the final regulatory action for further information; and/or
- (iii) A request to the Secretariat for assistance in evaluating the chemical.

[3 bis.] [A response under (a) or (b) shall [be related] [apply] to the use-category [specified consistent with paragraph 2 of Article 8].]²⁹ 30

[3 ter. Each importing Party [shall] [should] ensure that its decisions with respect to a chemical take into account information outlined in the decision guidance document in the context of its national conditions.]

4. A final decision should be accompanied by information on the legislative and/or administrative measures on which the decision is based [, if available].

29/ In the opinion of the Technical Working Group, the inclusion of this sentence is conditional upon the text developed in Articles 6 to 8 pertaining to use-categories.

30/ Explanatory note in the Technical Working Group from the delegation of the United States of America:

9.3 bis. A response under (a) and (b) shall (apply) to the use category (specified consistent with paragraph 2 of Article 8).

Paragraph 2 of Article 8 provides that when chemicals are included in the prior informed consent procedure, the use category(ies) for which they are included should be specified.

This paragraph indicates that the obligations of importers and exporters with respect to a particular prior informed consent chemical will be applied to the use category (e.g., pesticides, industrial chemicals) identified.

If countries wish to take action under other categories, these would be national decisions similar to any other action.

This position reflects the fact that a prior informed consent decision would be based on the information generated and provided through the prior informed consent procedure with respect to control actions which arise in the context of a particular use category. Some chemicals may be put into the procedure for more than one category.

[5. When a Party takes a unilateral action with respect to a chemical pursuant to paragraph (e) of Article 10 that affects that Party's status with respect to a chemical, the designated national authority must so notify the Secretariat, which shall make such information available to the Parties. Such a unilateral action shall be interpreted as superseding any previous decision the Party has made with respect to the chemical.]

6. Each importing Party shall make its import responses available to all natural and legal persons concerned in its territory in accordance with its legislative and/or administrative measures.

7. [A Party that, pursuant to Article 9, paragraphs 2, 3 and 5, and Article 10, paragraph (e), makes a decision not to consent to importation of a chemical or to consent to its importation only under specified conditions shall, if it has not already done so, simultaneously prohibit or make subject to the same conditions the importation of the chemical concerned from any country as well as its domestically produced chemicals.]³¹

8. The Secretariat shall, at least every six months, inform each Party, through its designated national authority or authorities, of the responses received from importing Parties and decisions communicated therein, including information on the legislative and/or administrative measures on which the decisions are based, if available.

Article 10

Obligations of exporting Parties

Each exporting Party shall:

(a) Implement appropriate legislative and/or administrative measures to communicate importing Party responses to natural and legal persons concerned in its territory;

(b) Abide by the terms of an importing Party's response under paragraph 2 of Article 9 no later than [ninety] [one hundred and twenty] 10/ days after the date of dispatch³² by the Secretariat of the response;

(c) Take appropriate legislative and/or administrative measures to ensure compliance by exporters of chemicals subject to the prior informed consent procedure in its territory³³ with importing Party responses under paragraph 2 of Article 9;

^{31/} In the Technical Working Group it was noted that the paragraph is acceptable from a technical viewpoint, but it remains in brackets so that its trade implications can be reviewed by trade experts.

^{32/} Further consideration should be given to the question whether the reference here should be to the "date of receipt by the importing Party" rather than the "date of dispatch by the Secretariat". "Date of receipt" captures the case that the communication does not reach its intended destination. "Date of dispatch" would ensure that Parties are aware of the precise date on which their obligations commence.

(d) Advise and assist, upon request and as appropriate, designated national authority or authorities in importing Parties:

(i) In obtaining further information relating to decisions with respect to a chemical subject to the prior informed consent procedure; and

(ii) To strengthen their capacities and capabilities to [control imports as well as to manage chemicals safely] [and to implement this Convention].³⁴

(e)³⁵ If an importing Party fails to transmit a response or transmits an interim response that does not address importation within the period specified in paragraph 2 of Article 9, the chemical concerned may only be exported³⁶ if:

(i) It is a pesticide which is registered by the competent national authority in the importing Party; or

(ii) It is a chemical the use or importation of which has been allowed by [the competent national authority] [the designated national authority] of the importing Party; or

(iii) Explicit consent is otherwise extended to the exporter by the competent national authority of the importing Party.

Article 11

Export notification

33/ A few countries expressed the view that consideration should be given to expanding this paragraph to cover other obligations derived from other provisions of this Convention (e.g., Articles 11 and 12).

34/ Some Parties expressed reservations and the wish further to explore the implications of this subparagraph. The point was made that the bracketed text could be too wide in scope. Consideration should be given to: "[and safely manage the imports of chemicals]".

35/ This paragraph was modified and moved from Article 9, paragraph 5.

36/ A few countries expressed a reservation regarding the appropriateness of an exporting Party obligation in the case of a non-response under Article 9, and noted in this regard the distinction between a non-response and an interim response.

1. Each exporting Party [shall] [should] notify [on an annual basis],³⁷ when [the first] [an] export occurs to each importing Party of a chemical that is banned or severely restricted in its territory, this export through its designated national authority to the relevant designated national authority of the importing country[, unless the designated national authority of the importing Party has indicated that it does not wish to receive such]. [Such notification [shall] [should] be given before the first export occurs.]³⁸

2. [The export notification shall include information on the toxicity of the product and the reasons for the ban or severe restriction. The Conference of the Parties shall provide more specific guidance on the subject to the Parties.]³⁹ [The export notification [shall] include the information set out in Annex (**).]⁴⁰⁴¹

[2 bis. Each exporting Party shall transmit annually, through its designated national authority, to the relevant designated national authority of Parties importing from it chemicals referred to in paragraph 1 a compilation summarizing the quantities of the chemicals exported in the previous year.]

3. A supplementary export notification [shall] [should] occur after a major change concerning [the classification of or] the ban or severe restriction of the chemical has been adopted by a final governmental regulatory action.⁴²

37/ In the Technical Working Group, the African group disagreed with notification on an annual basis and favoured a shipment-by-shipment notification.

38/ In the Technical Working Group, the text of 1 bis was deleted. Further consideration should be given to the notion that export notification requirement should no longer apply when a chemical had entered the prior informed consent list and a country's import response had been given. Such an import response could oblige any Party which exported to this country to submit a notification prior to shipment. The Technical Working Group requested the secretariat to report on this for consideration by the Intergovernmental Negotiating Committee at its next session.

39/ In the Technical Working Group, it was noted that information on toxicity could be covered by a material safety data sheet.

40/ The Technical Working Group noted that a formal annex could only be changed by amendment of the Convention.

41/ In the Technical Working Group it was noted that these are alternatives. Annex (**) should contain information such as that in Annex V of the London Guidelines. The UNEP/FAO "Information regarding export" form and Annex W of the European Union proposal UNEP/FAO/PIC/INC.3/CRP.1 shall also be taken into account.

42/ In the Technical Working Group, it was noted that this paragraph is only relevant if in paragraph 1 of Article 11 the options [on an annual basis] or [the first] would be chosen.

[4. For any subsequent export of the same chemical between the same Parties, the exporting country [shall] [should] ensure that the export is accompanied by the reference to the most recent notification.] ^{42/}

[4 bis. In instances in which a regional economic integration organization party to this Convention gives a notice pursuant to paragraph 1, it shall do so with respect to export from each State Party that is a member of such an organization.]

Article 12

Classification, packaging and labelling

1. The Conference of the Parties shall encourage the World Customs Organization to assign specific Harmonized System Customs Codes to the individual chemicals or groups of chemicals that are [subject to the prior informed consent procedure under this Convention] [listed in Annex (ZZZ) to this Convention], as appropriate. [Each Party [should] [shall] ensure that, whenever a code has been assigned to such a chemical, the label on that chemical bears this code when exported.] [Each Party shall [require]⁴³ that any chemical that is [subject to the prior informed consent procedure under this Convention] [listed in Annex (ZZZ) to this Convention] is clearly labelled as such, when exported.]

[2. Each Party [should] [shall], without prejudice to any requirements of the importing Party, ensure that chemicals within the scope of this Convention that are exported from its territory are subject to no less stringent classification, packaging and labelling requirements than they would be subject to if they were destined for use within its own territory.]⁴⁴

3. Each Exporting Party [should] [shall] ensure that a safety data sheet, setting out the most up-to-date information available, is sent to the importer [with each shipment [if required by the importing Party]].

4. The information on the label and on the safety data sheet [should] [shall], as far as practicable, be given in one or more of the principal languages of the importing Party or of the area of intended use.

^{43/} Plenary may wish to consider whether, in the context of this sentence, "require" might be more appropriate than "ensure".

The word "ensure" implies that the Party concerned will guarantee that all steps of the process are carried out either by doing them itself or by ensuring constant supervision over the entire process. The word "require" implies that the Party will take the necessary governmental action to place the obligation on exporters to take all the necessary action.

^{44/} Some countries in the Technical Working Group indicated that they wished to reexamine paragraph 2 of the Article to understand whether they had the legal authority to implement this.

Article 13

Information exchange

1. The Parties [should] [shall]⁴⁵ facilitate, particularly through their designated national authorities and, as appropriate, through international organizations:
 - (a) the exchange of scientific, technical, economic and legal information concerning the chemicals within the scope of this Convention, including toxicological [, ecotoxicological]⁴⁶ and safety information;
 - (b) the provision of publicly available information on domestic regulatory actions.
2. Each Party receiving information pursuant to this Convention shall take into account the need to protect any proprietary rights over, and confidentiality of, the information received and shall establish appropriate internal procedures for this purpose.
3. The following information shall not be regarded as confidential for the purpose of this Convention:
 - (a) The chemical identity of the substance, including its trade name, common name and Chemical Abstract Service (CAS) number;
 - [(b) The names of substances of toxicological [and ecotoxicological] 46/ significance contained in the preparation and their percentages in the preparation;]⁴⁷
 - [(c) The names of impurities of toxicological [and ecotoxicological] 46/ significance in the substances and their quantities;] 47/
 - (d) The name of the producer and exporter;

^{45/} A number of countries in the Technical Working Group indicated that paragraph 1 of the Article should be mandatory. Other countries in that group strongly objected to its mandatory nature. The Legal Drafting Group was requested to clarify the meaning of the words "shall" and "should" as they relate to the mandatory nature of articles. In this respect, it was noted that Article 4.1 carried at present the wording "shall" in relation to information exchange.

^{46/} The word "ecotoxicological" should be added to the text unless a definition of "toxicological" in the Article would include "ecotoxicological".

^{47/} Most countries in the Technical Working Group wish to remove the brackets in subparagraphs 3 (b), 3 (c) and 3 (k). A few, however, reserved their position to be able to determine whether they would have the legal authority to meet these obligations.

- (e) Information on the precautions to be taken, including the category of danger, the nature of the risk and the relevant safety advice;
- (f) Physico-chemical data concerning the substances;
- (g) The summary results of the toxicological [and ecotoxicological] 46/ tests;
- (h) The possible ways of rendering the substance harmless;
- [(i) The information contained in the safety data sheet;]
- (j) The country of destination;
- [(k) The name and the address of the importer;] 47/
- (l) A summary of the regulatory restrictions and the reasons therefor;
- (m) The expiration date of the chemical, where applicable;
- (n) The scheduled date of arrival⁴⁸ of the chemical.

[Article 14

Control of trade with non-Parties⁴⁹

(At the third session of the Intergovernmental Negotiating Committee, the Technical Working Group recommended the deletion of this article.)⁵⁰

Article 15

Implementation of the Convention

1. Each Party shall take such measures as may be necessary to strengthen its existing national infrastructures and institutions for the effective implementation of this Convention. These measures shall

^{48/} The Legal Drafting Group considers it would be preferable if this entry made clear that the information relates to the "scheduled" date of arrival.

^{49/} Former text of the article: Non-Parties that are in compliance with the substantive provisions of this Convention should, as far as the application of trade measures is concerned, be treated on an equal basis with Parties that are in compliance.

^{50/} At the third session of the Intergovernmental Negotiating Committee, one delegation in the Technical Working Group had a reservation about deleting this article.

include, as required, the adoption of national legislation or the amendment of existing legislation [to enable the taking of necessary measures to implement this Convention and, in particular, for the prevention of exports that contravene prior informed consent decisions taken by importing Parties in accordance with this Convention.]⁵¹ [and, in particular, legislation necessary to implement Articles 9 and 10.] In addition, such measures may include:

- (a) The establishment of national registers and databases, including safety information for chemicals;
- (b) The encouragement of initiatives by industry; and
- (c) The promotion of voluntary agreements.

2.⁵² Each Party shall ensure, to the extent practicable, that the public has appropriate access to information [on stockpiles][,] [on chemical handling and accident management] [and]⁵³ on alternatives which are safer for human health and the environment than the chemicals which are [subject to the prior informed consent procedure under this Convention] [listed in Annex (ZZZ) to this Convention].⁵⁴

[3. The Parties agree to promote good management practices for chemicals, taking into account the voluntary standards laid down in the International Code of Conduct on the Distribution and Use of Pesticides of the Food and Agriculture Organization of the United Nations and the Code of Ethics on the International Trade in Chemicals of the United Nations Environment Programme.]⁵⁵

51/ The majority of countries in the Technical Working Group wished to delete this bracketed text because it places special emphasis on only one of many obligations under the Convention.

52/ The majority of countries in the Technical Working Group wished to delete all remaining bracketed text, based on the following considerations: public access to information on safer alternatives is considered essential to the implementation of this Convention; public access to other aspects of chemical management information should be embedded in national legislation. A few countries in that Group supported retaining one or both of the provisions in brackets, to harmonize on an international level public access to such information.

53/ The Legal Drafting Group notes that if the chemicals subject to the prior informed consent procedure are listed in an annex it would be preferable to use the second set of words in square brackets.

54/ The Technical Working Group Chairman noted that this provision might be better included in Article 13.

55/ Many countries in the Technical Working Group objected to the word "agree", which would make the voluntary codes mandatory. They considered it more appropriate to refer to these voluntary instruments in the preamble and to use language supportive of their implementation. Some countries in that group, however, wanted to retain this paragraph in Article 15.

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

[5. Nothing in this Convention shall be interpreted as preventing a Party from imposing additional requirements that are consistent with the provisions of this Convention, and are in accordance with the principles of international law, in order better to protect human health and the environment.]⁵⁶

Article 16

Technical assistance

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

[Article 17

Compliance

The Legal Drafting Group wishes to note, however, that the phrase "agree to promote" creates an obligation merely to promote good management practices and does not make the voluntary standards in the two codes mandatory. If the Intergovernmental Negotiating Committee is worried about retaining "agree to", it could substitute the term "should". It remains a policy matter for the Intergovernmental Negotiating Committee to decide whether this idea is located in this article or in the preamble or, indeed, is excluded altogether.

^{56/} The text is taken from the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal. It was proposed that the text replace Article 4.6. A majority of countries in the Technical Working Group supported the principle of the paragraph. A few countries in that Group rejected the principle.

In response to a question from the Technical Working Group, the Legal Drafting Group expressed the view that this paragraph could be located in either Article 4 or Article 15, but on balance it preferred Article 15. The Legal Drafting Group agreed, however, that the provision must not appear in both articles and considered that the formulation in Article 4.6 was legally more appropriate. Article 4.6, as suitably modified, reads as follows: "Nothing in this Convention shall be interpreted as restricting the right of the Parties to take action more stringently protective of health and the environment than that called for in this Convention."

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

[Article 18

Liability and compensation]⁵⁷

Article 19

Financial resources and mechanisms

[to be developed]⁵⁸

[Article 19 bis

Relationship with other agreements

The provisions of this Convention shall not affect the rights and obligations of any Party deriving from any [existing] international agreement[, except where the exercise of those rights or the performance of those obligations would cause serious damage or threat to human health or the environment].]

Article 20

Conference of the Parties

1. A Conference of the Parties is hereby established.
2. The first meeting of the Conference of the Parties shall be convened by the Executive Director of the United Nations Environment Programme and the Director-General of the Food and Agriculture Organization of the United Nations, acting jointly, not later than [six months] [one year] after the entry into force of this Convention. Thereafter, ordinary meetings of the Conference of the Parties shall be held at regular intervals to be determined by the Conference of the Parties.
3. Extraordinary meetings of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that it is supported by at least one third of the Parties.⁵⁹

^{57/} The Legal Drafting Group considers this question to be one of policy and requests guidance from the plenary.

^{58/} A discussion on financial resources and mechanisms is contained in document UNEP/FAO/PIC/INC.2/4. Elements drafted by an informal contact group established by plenary, for possible inclusion in the article, are contained in the appendix to this annex.

4. The Conference of the Parties shall by consensus agree upon and adopt rules of procedure and financial rules.

5. The Conference of the Parties, as the supreme body of this Convention, shall keep under continuous review and evaluation the effective implementation of this Convention, and, in addition, shall:

(a) Execute the functions assigned to it in this Convention;

(b) Establish such subsidiary bodies as it may consider necessary for the implementation of this Convention;

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

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

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

Article 20 bis

Secretariat

1. A Secretariat is hereby established.

2. The functions of the Secretariat shall be:

(a) To make arrangements for meetings of the Conference of the Parties and its subsidiary bodies and to provide them with services as required;

59/ In the Legal Drafting Group a view was expressed that there will be a need to deal with the issue of the timing of the extraordinary meetings in the rules of procedure of the Conference of the Parties.

(b) To facilitate assistance to the Parties, particularly developing countries and countries with economies in transition, on request, in the implementation of this Convention, particularly in respect of the exchange of information required under it;

(c) To ensure the necessary coordination with the secretariats of other relevant international bodies;

(d) To enter, under the overall guidance of the Conference of the Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions; and

(e) To perform the other secretariat functions specified in this Convention and such other functions as may be determined by the Conference of the Parties.

3. The secretariat functions for this Convention shall be performed jointly by the Executive Director of the United Nations Environment Programme and the Director-General of the Food and Agriculture Organization of the United Nations, subject to such arrangements as shall be agreed between them and approved by the Conference of the Parties.

4. The Conference of the Parties may decide, by a three-fourths majority of the Parties present and voting, to entrust these functions to one or more other competent international organizations [should it find that either the United Nations Environment Programme or the Food and Agriculture Organization of the United Nations has become unable to perform these functions satisfactorily.]⁶⁰

Article 21

Settlement of disputes

^{60/} In the event that it is not possible to decide which organization or organizations should provide the secretariat for the Convention in time for adoption of the Convention, it would be necessary to make provision for the decision to be made at the first meeting of the Conference of the Parties. A paragraph as follows would need to be included in Article 20:

"At its first ordinary meeting, the Conference of the Parties shall designate the secretariat from amongst those existing competent international organizations which have signified their willingness to carry out the secretariat functions under this Convention."

To cover the period between entry into force of the Convention and the first meeting of the Conference of the Parties an article on interim arrangements would be required as follows:

"The secretariat functions referred to in Article 20 bis will be carried out on an interim basis by the Executive Director of the United Nations Environment Programme and the Director-General of the Food and Agriculture Organization of the United Nations, acting jointly, until the completion of the first session of the Conference of the Parties."

[Alternative 1:

1. Parties shall settle any dispute between them concerning the interpretation or application of the Convention through negotiation or other peaceful means of their own choice.
2. When ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a Party which is not a regional economic integration organization may declare in a written instrument submitted to the Depositary that, with respect to any dispute concerning the interpretation or application of the Convention, it [recognizes] [is unable to recognize] one or both of the following means of dispute settlement as compulsory [in relation to any Party accepting the same obligation]:
 - (a) Arbitration in accordance with procedures adopted by the Conference of the Parties in an Annex as soon as practicable⁶¹; and
 - (b) Submission of the dispute to the International Court of Justice.
3. A Party which is a regional economic integration organization may make a declaration with like effect in relation to arbitration in accordance with the procedure referred to in paragraph 2 (a).
4. A declaration made pursuant to paragraph 2 shall remain in force until it expires in accordance with its terms or until three months after written notice of its revocation has been deposited with the Depositary.
5. [The expiry of a declaration, a notice of revocation or] a new [such a] declaration shall not in any way affect proceedings pending before an arbitral tribunal or the International Court of Justice unless the parties to the dispute otherwise agree.
6. If the parties to a dispute [have not accepted] [are not subject to] a common compulsory means of dispute settlement, in accordance with paragraph 2 above, and if they have not been able to settle their dispute within twelve months following notification by one Party to another that a dispute exists between them, the dispute shall be submitted to conciliation at the request of any Party to the dispute in accordance with the procedure adopted by the Conference of the Parties in an annex as soon as practicable.]

[Alternative 2:

(Canadian proposal for settlement of disputes)

⁶¹/ The Legal Drafting Group had wished to develop annexes on arbitration and conciliation during the course of the third session of the Intergovernmental Negotiating Committee, had time permitted. The draft of such annexes will be based on the language of the Convention on Biological Diversity, as set out in the appendix to document UNEP/FAO/PIC/INC.2/3.

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Convention, and shall make every effort through cooperation and consultation to arrive at a mutually satisfactory resolution of any matter that may affect its operation.⁶²
2. Each Party consents to submit to binding arbitration, when requested to do so by a claimant Party pursuant to Annex (***) , any dispute concerning the interpretation or application of this Convention.
3. The Parties may submit to the conciliation commission, pursuant to Annex (***) , any dispute concerning the interpretation or application of this Convention, provided that Parties to the conciliation proceedings agree.
4. This Article shall apply with respect to any protocol under this Convention except as otherwise provided in that protocol.^{63]}

Article 21 bis

Amendments to the Convention

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

^{62/} This provision is modeled on Article 2003 of the North American Free Trade Agreement.

^{63/} This provision is modelled on paragraph 7 of the original draft article on dispute settlement, as contained in document UNEP/FAO/PIC/INC.2/3.

5. For the purposes of this Article, "Parties present and voting" means Parties present and casting an affirmative or negative vote.

Article 22

Adoption and amendment of annexes

1. Annexes to this Convention shall form an integral part thereof and, unless expressly provided otherwise, a reference to this Convention constitutes at the same time a reference to any annexes thereto.

2. Annexes [, other than Annex (****),] shall be restricted to procedural, scientific, technical or administrative matters.

3. The following procedure shall apply to the proposal, adoption and entry into force of additional annexes to this Convention:

(a) Additional annexes shall be proposed and adopted according to the procedure laid down in Article 21 bis, paragraphs 1, 2 and 3;

(b) Any Party that is unable to accept an additional annex shall so notify the Depositary, in writing, within one year from the date of communication of the adoption of the additional annex by the Depositary. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time withdraw a previous notification of non-acceptance in respect of any additional annex and the annexes shall thereupon enter into force for that Party subject to subparagraph (c) below: and

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

4. [Except in the case of Annex (****),] the proposal, adoption and entry into force of amendments to annexes to this Convention shall be subject to the same procedure as for the proposal, adoption and entry into force of additional annexes to the Convention.

[4 bis. The following procedure shall apply to the proposal, adoption and entry into force of amendments to Annex (****) to this Convention:...]]

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

[Article 23

Protocols

1. The Conference of the Parties may at a meeting adopt protocols consistent with the objectives of this Convention. Such protocols shall be proposed and adopted according to the procedure laid down in Article 21 bis, paragraphs 1, 2, and 3.
2. The requirements for the entry into force of any protocol shall be established by that protocol.
3. Only Parties to this Convention may be Parties to a protocol.
4. Decisions under any protocol shall be taken only by the Parties to the protocol concerned.]

Article 24

Right to vote

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

Article 25

Signature

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

Article 26

Ratification, acceptance, approval or accession

1. This Convention shall be subject to ratification, acceptance or approval by States and by regional economic integration organizations. It shall be open for accession by States and by regional economic integration organizations from the date on which the Convention is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.
2. Any regional economic integration organization which becomes Party to this Convention without any of its member States being a Party shall be bound by all the obligations under the Convention. In the case of such organizations, one or more of whose member States is a Party to this Convention, the organization and its member States shall decide on their respective responsibilities for the performance

of their obligations under the Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention concurrently.

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

Article 27

Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the [twentieth] [fiftieth]⁶⁴ instrument of ratification, acceptance, approval or accession.

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

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

Article 28

Reservations

No reservations may be made to this Convention.⁶⁵

Article 29

Withdrawal

^{64/} The Legal Drafting Group suggests that there are various factors that delegations may wish to consider when determining the number of ratifications required to bring the Convention into force, such as: interim arrangements; swift entry into force; the number of participants in the voluntary procedure; and participation of a sufficient number of States involved in a significant share of global chemicals trade.

^{65/} In the Legal Drafting Group, one member requested that this article should be placed in square brackets.

1. At any time after three years from the date on which this Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the Depository.
2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depository of the notification of withdrawal, or on such date as may be specified in the notification of withdrawal.

Article 30

Interim arrangements⁶⁶

Article 31

Depository

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

Article 32

Authentic texts

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

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

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

^{66/} The Legal Drafting Group concluded that the text it has suggested for interim arrangements regarding the secretariat (Article 20 bis) is sufficient provision on this matter. It should, however, review the situation in the light of the contents of any draft decision or resolution concerning transitional arrangements for the voluntary procedure of the London Guidelines for the Exchange of Information on Chemicals in International Trade and the International Code of Conduct on the Distribution and Use of Pesticides proposed for adoption at the diplomatic conference.

Annex X⁶⁷

INFORMATION REQUIREMENTS FOR THE NOTIFICATION OF BANNED OR SEVERELY RESTRICTED CHEMICALS TO BE CONSIDERED FOR INCLUSION IN THE PRIOR INFORMED CONSENT PROCEDURE

Notifications shall include the following information related to the chemical, the regulatory action and its health and environmental basis:

1. Chemical specific and use category information
 - (a) Common name;
 - (b) Chemical name (IUPAC);
 - (c) Trade name(s)/name(s) of preparation; and
 - (d) Code numbers: CAS number/other numbers;
 - (e) Information on classification, if the chemical is subject to classification requirements;
 - (f) Use category/categories, including major uses.
2. Information specific to the regulatory action
 - (a) Use categories where the control has been effected:
 - (i) Use(s) controlled, within each category;
 - (ii) Remaining use(s) that are not controlled;
 - (b) Estimation of quantities produced, imported and exported for [each use category/uses], [the chemical] where available;
 - (c) Regulatory action:
 - (i) Summary of the regulatory action(s);
 - (ii) Reference to regulatory document;

^{67/} In the opinion of the Technical Working Group, Annex X forms the basis for the procedure to be followed by the secretariat in verifying that notifications are in compliance with the provisions of the convention. This procedure may be included in the general guidance for the operation of the secretariat still to be developed.

- (iii) Date(s) of entry into force of the regulatory action;
 - (iv) [Indication of whether the regulatory action was taken on the basis of a risk/hazard evaluation and, if so, at least reference to the relevant documentation;]⁶⁸
 - (v) Reasons for the regulatory action relevant to human health and the environment;
 - (vi) Summary of the hazards and risks presented by the chemical to human health or the environment [and where possible the expected effect of the regulatory action];
- (d) An indication of the likelihood of relevance of the regulatory action to other countries/regions, to the extent possible;
- (e) Any other relevant information which may include:
- (i) Assessment of socio-economic effects of the regulatory action;
 - (ii) Information on alternatives [and their relative risks, where available, which may include:
 - a. Pest management/control strategies;
 - b. Cleaner technology or industrial practices/processes];
 - (iii) [The physico-chemical, [toxicological and ecotoxicological]⁶⁹ properties of the chemical.]

^{68/} In the opinion of the Technical Working Group, new text, based on available proposals, needs to be developed.

^{69/} In the opinion of the Technical Working Group, the brackets reflect the need to define whether toxicological includes ecotoxicological.

[Annex Y

CRITERIA FOR THE INCLUSION OF BANNED OR SEVERELY RESTRICTED
CHEMICALS IN THE PRIOR INFORMED CONSENT PROCEDURE

1. In considering a chemical for inclusion in Annex (ZZZ), the Parties shall determine that the verified notification[s] of [X] Party[ies] meet the following criteria:

(a) Each verified notification has been taken for health or environmental reasons, consistent with this Convention;

(b) Each regulatory action is taken as a consequence of a [national]⁷⁰ evaluation of risks/[hazard]⁷¹ consisting of a review of scientific data, in the context of conditions prevailing in the Party that concluded that a ban or severe restriction was appropriate for adequate protection of human health or the environment. For this purpose, the documentation provided shall show that:

(i) Data have been generated according to scientifically recognized methods [and, if appropriate, test guidelines];

(ii) Data reviews have been performed and documented according to generally recognized scientific principles and procedures;

(iii) The regulatory action was based on a [risk assessment] [risk/hazard evaluation] involving prevailing conditions within the Party taking the action.

2. In further considering whether the regulatory actions provide sufficiently broad basis to merit inclusion in the prior informed consent procedure, the Parties shall consider:

[(a) Whether the final regulatory actions led or would be expected to lead to a significant decrease in the volume of the chemical used or the number of uses;]⁷²

[(b) Whether the final regulatory actions led to an actual reduction of risk or would be expected to result in a significant reduction of risk for human health or the environment of the Party taking the final regulatory action;] 72/

^{70/} The Legal Drafting Group needs to consider whether the term "national" is redundant to the phrase, "in the context of conditions prevailing..." The thought was expressed that a national evaluation is different from the conditions under which the substance was used.

^{71/} The Technical Working Group was of the opinion that "the evaluation of risk should be relevant to the regulatory action."

^{72/} To be considered in the context of the definitions in Article 2.

[(c) Whether the considerations leading to a regulatory action are sufficiently applicable in a global context to merit inclusion in the procedure;]

(d) That there are indications of continuing trade at the international level;

[(e) That [intentional] misuse is not an adequate reason to include a chemical in the prior informed consent procedure.]

[Other annexes

The following annexes are referred to in the draft articles, but have not yet been developed:

- (a) Annex (*): Proposal for the inclusion of [acutely] hazardous pesticide formulations causing problems under conditions of use (referred to in Article 7);
- (b) Annex (ZZZ): Chemicals approved for inclusion in the prior informed consent procedure (referred to in Articles 8, 8 bis, 8 ter, 12, 15 and Annex Y);
- (c) [Annex (**): Information to be included in an export notification] (referred to in Article 11);
- (d) [Annex (***)]: Settlement of disputes] (referred to in Article 21);
- (e) [Annex (****): Refers to annex(es) which might be exempt from the procedure set forth in Article 22] (referred to in Article 22).]

Appendix

ELEMENTS FOR POSSIBLE INCLUSION IN THE TEXT OF ARTICLE 19 (FINANCIAL RESOURCES AND MECHANISMS)

A. Mechanisms for administrative costs

1. The nature of financing mechanisms for administrative purposes will reflect the nature of the administrative structure chosen for the new PIC instrument. Each possible solution brings with it a number of options for financing the associated administrative costs. In certain cases, where assessed financing is permitted by the legally binding instrument that establishes the body, the Convention or its Conference of the Parties could require Parties to make assessed contributions according to an agreed formula.

Option 1: Use the existing financial arrangements of the United Nations Environment Programme and the Food and Agriculture Organization of the United Nations, which implement the current voluntary PIC procedure.

Alternative A: As new elements of work emerge, new costs will arise as a consequence. One way of paying for these added expenses would be to require the existing funding mechanisms of FAO (an assessed budget) and UNEP (a largely voluntarily contributed budget) to meet these new requirements.

Alternative B: As an interim measure, until such time as the Conference of the Parties may decide to establish new administrative arrangements, the existing financial arrangements would continue to be used.

Alternative C: As new elements of work arise, new costs could be met through a new trust fund established for secretariat support purposes.

Alternative D: As new elements of work arise, new administrative costs could be met through a new trust fund established for secretariat support purposes. In addition, this trust fund could be used to meet the costs of technical assistance activities undertaken by the secretariat.

In addition, the existing arrangements may need to be improved.

Option 2: Establish a financial arrangement independent of UNEP and FAO, but linked to the United Nations system. This implies an independent secretariat.

Option 3: Establish a new financial arrangement with a single host organization.

Option 4: Establish a single fund for administrative, technical assistance and financial assistance purposes.

B. Mechanisms for financial and technical assistance

2. The purpose of these mechanisms is to assist developing countries and countries with economies in transition to implement the future PIC instrument. In this regard, the specific needs of countries should be identified and the assistance provided should be coordinated. Needs likely to arise may include capacity-building for:

- (a) Identification of chemicals to be included in the PIC procedure;
- (b) Procedures for notification;
- (c) Consideration of the question of liability;
- (d) Monitoring and helping to combat illegal trade;
- (e) Capacity-building to enable Parties to make decisions based on information provided through the PIC procedure.

3. The following ways of supporting countries can be identified:

- (a) Use of existing bilateral and multilateral mechanisms to mobilize financial resources through existing arrangements;
- (b) Establishment of a new and/or independent mechanism linked with United Nations institutions. Formalized procedures would have to be set up for its operation. The work of existing institutions in the relevant field should be taken into account, and coordination should be ensured.

4. Sources of financial contributions could include contributions from Parties and non-Parties, intergovernmental organizations, non-governmental organizations and the private sector. The provision of contributions might be assessed and/or voluntary. New obligations created under the PIC convention could require enhanced levels of financial support or the provision of new and additional resources.

5. Based on the note by the secretariat on financial resources and mechanisms (UNEP/FAO/PIC/INC.2/4), the following options for such mechanisms can be proposed:

Option 1: Use of existing bilateral and multilateral mechanisms;

Option 2: A multilateral trust fund established by the Parties which integrates existing mechanisms (combination of some elements of options (b) and (d) contained in paragraph 11 of the secretariat's note);⁷³

Option 3: An independent multilateral trust fund with a strong link to the Convention Secretariat (similar to option (b));

Option 4: A trust fund for technical assistance (option (a)) as a less administratively intensive and therefore more cost-effective mechanism.

C. Modality of establishment

6. The following options can be considered:

Option 1: Financial mechanisms established by the provisions of the Convention;

Option 2: Financial mechanisms established by the Conference of the Parties.

^{73/} The options contained in paragraph 11 are as follows:

(a) A trust fund for technical cooperation, established with and administered by an organization hosting the secretariat;

(b) A multilateral trust fund established by the Parties, with its own management body representing the Parties and its own secretariat;

(c) An international entity, with its own governing body and a secretariat for providing technical and financial assistance, which may be entrusted by the a Convention to undertake functions of the financial mechanism;

(d) A mechanism for mobilizing financial resources through existing arrangements.
