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INTERGOVERNMENTAL NEGOTIATING COMMITTEE FOR AN
INTERNATIONAL LEGALLY BINDING INSTRUMENT FOR
THE APPLICATION OF THE PRIOR INFORMED CONSENT
PROCEDURE FOR CERTAIN HAZARDOUS CHEMICALS AND
PESTICIDES IN INTERNATIONAL TRADE

Fourth session

Rome, 20-24 October 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 FOURTH SESSION

I. OPENING OF THE SESSION

1. The fourth 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 headquarters of the Food and Agriculture Organization of the United Nations (FAO), Rome, from 20 to 24 October 1997.
2. The session was opened by Ms. Maria Celina de Azevedo Rodrigues (Brazil), Chair of the Committee, at 10.20 a.m. on Monday, 20 October 1997.
3. Opening statements were made by Mr. Howard Hjort, Deputy Director-General of the Food and Agriculture Organization of the United Nations (FAO), speaking on behalf of Mr. Jacques Diouf, Director-General of FAO, and Mr. Michael Metelits, head of the delegation of the United States of America.
4. In his statement, Mr. Hjort welcomed participants to the current session of the INC and reiterated that control of pests was necessary to increase

productivity, but should be done in such a way that it made agriculture more sustainable, supported rural development, and posed no unacceptable risk to human health and the environment. The development of national regulatory programmes represented the first priority of FAO activities in that field. Noting that it was unlikely that the adopted instrument would initially enjoy the same level of geographic coverage as the current voluntary procedure, he said that recommendations were needed on the continuation and nature of the voluntary procedure for the period between the adoption of the convention and its entry into force. Also, questions would arise concerning those chemicals included in the voluntary procedure that might or might not fall under the new convention, as well as those countries participating in the voluntary procedure that might not be Parties to the legally binding instrument.

5. Concerning future secretariat arrangements, he said that the FAO Council at its 111th Session in October 1996 had reiterated that, if the Parties so wished, FAO would participate in the secretariat insofar as it related to pesticides. Further discussions were required on the activities and location of an interim secretariat and on the establishing and functioning of a permanent secretariat. FAO had set aside funding from regular programme resources to continue to meet the costs of the voluntary procedure, and might continue to use those for the current joint servicing arrangement after the adoption of the convention. However, it had to be remembered that the resources of both UNEP and FAO would be insufficient to cover all the secretariat tasks identified in the convention. He suggested that, at the current session, the Committee might wish to make recommendations to the Governing Council of UNEP and to the FAO Conference at its 29th session on the involvement of UNEP and FAO in the interim and full secretariats and on the continuation and amendment of the voluntary procedure. In conclusion, he expressed gratitude for the offers received from the European Community and the Government of the Netherlands to host the two meetings in 1998, and extended FAO's thanks to the United States of America and Norway, who had provided financial resources to help host the current meeting

6. In his statement, Mr. Metelits said that his Government was pleased to help sponsor the current session of the Intergovernmental Negotiating Committee and expressed the hope that the excellent cooperation between FAO and UNEP would continue as the PIC procedure moved from a voluntary to a mandatory regime. Since all countries imported chemicals and most countries – both developing and developed – exported at least some chemicals as well, all shared a common responsibility to ensure that the global use of chemicals avoided unnecessary risks to human health and the environment. Noting that improved access to information would be the greatest benefit of the agreement, he said that, if the instrument served its ultimate function, it would spur countries to develop the means of making decisions based on the considerable information that was already available. The United States and other countries

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had undertaken activities in most regions of the world dealing with pesticides or chemicals management, and those endeavours underscored that the PIC regime played an important, but not lone, role in global chemicals management. The agreement should be a stepping stone toward comprehensive national chemicals management based on national priorities and should become redundant if it worked properly.

7. Also at the opening meeting, the Chair expressed her gratitude, on behalf of the Intergovernmental Negotiating Committee, to the Governments of Norway and the United States of America for providing the necessary financial resources to enable the effective functioning of the session.

8. At the 2nd meeting of the session, on 21 October, the Committee heard a statement by Ms. Elizabeth Dowdeswell, Executive Director of UNEP, who said that the current, fourth session of the Intergovernmental Negotiating Committee marked perhaps the most crucial phase of the process to negotiate a globally binding instrument on PIC. Society's increasing use of and dependence on chemicals had brought unintended side-effects, often with a poignant human dimension. For example, at the World Conference on Breast Cancer in July 1997, scientists had implicated the unregulated use of synthetic chemicals and pesticides in the rising incidence of cancer. She therefore encouraged the Intergovernmental Negotiating Committee to reach decisions swiftly on a binding global regime for PIC and to continue the efforts to ensure an international regime for the safe management of chemicals.

9. In that connection, she noted that UNEP would soon commence negotiations on a convention to address the risks from persistent organic pollutants (POPs), which had been produced or generated as by-products and released into the environment over many years, and which clearly constituted a major global health and environmental hazard. She noted that many of those POPs had been the first to be included in the voluntary PIC procedure, and she was convinced that a legally binding PIC procedure would help reduce the risks from POPs, as well as prevent future chemical and pesticide problems from reaching the magnitude of severity associated with POPs.

10. Noting that the forthcoming session of the Governing Council would endeavour to seek an appropriate decision for the transition from a voluntary PIC procedure under the London Guidelines to a programme fully consistent with the new convention and the wishes of the Parties, she expressed appreciation at the desire of many members of the INC to continue the current secretariat arrangements jointly provided by FAO and UNEP, both in the interim period and, later, on a permanent basis. In conclusion, she expressed profound thanks to the Governments of Norway and the United States for providing the necessary funding for the meeting, and to FAO for its efforts as host.

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II. ORGANIZATIONAL MATTERS

A. Attendance

11. The session was attended by representative of the following Parties: Antigua and Barbuda, Argentina, Australia, Austria, Barbados, Belgium, Benin, Botswana, Brazil, Burkina Faso, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Cuba, Czech Republic, Democratic People's Republic of Korea, Democratic Republic of the Congo, Denmark, Egypt, Ethiopia, European Community, Fiji, Finland, France, Gambia, Germany, Guatemala, Guinea, Honduras, India, Indonesia, Iran (Islamic Republic of), Italy, Jamaica, Japan, Jordan, Kenya, Kuwait, Kyrgyzstan, Latvia, Lesotho, Libyan Arab Jamahariya, Lithuania, Malaysia, Mauritius, Mongolia, Morocco, Namibia, Netherlands, New Zealand, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Republic of Korea, Republic of Moldova, Russian Federation, Senegal, Seychelles, Slovenia, South Africa, Sudan, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, Turkey, Turkmenistan, Uganda, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Uzbekistan, Zimbabwe.

12. The following United Nations bodies and specialized agencies were represented: Secretariat of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, United Nations Institute for Training and Research (UNITAR), World Health Organization (WHO).

13. The following non-governmental organizations were also represented: Chemical Manufacturers Association, Consumers International, European Chemical Council, Global Crop Protection Federation, International Association of Lions Clubs, International Council on Metals and the Environment, International Federation of Pharmaceutical Manufacturers Associations, Pesticides Trust, World Association of Girl Guides and Girl Scouts.

B. Officers

14. The following officers continued to serve in their respective capacities on the Bureau of the Committee:

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

Vice-Chairs: Mr. William Murray (Canada)
Mr. Mohamed El Zarka (Egypt)
Mr. Yuri Kundiev (Ukraine)

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Rapporteur: Mr. Wang Zhijia (China)

15. The Chair thanked Mr. Mohamed Bentaja (Morocco), who had replaced Mr. Mohamed El Zarka at the third session, for his assistance in the smooth running of that session.

C. Adoption of the agenda

16. The Committee adopted the following agenda on the basis of the provisional agenda, which had been circulated as document UNEP/FAO/PIC/INC.4/1:

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 report.
6. Closure of the session.

D. Organization of work

17. At its opening meeting, the Committee decided to continue its work in the plenary, as well as in the two sessional groups that had been established at the second session: 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) and Ms. Liesbeth Lijnzaad (Netherlands). The work of the groups was based on the draft articles contained in annex II to the report of the third session (UNEP/FAO/PIC/INC.3/2).

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

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18. In considering agenda item 3, the Committee had before it the following documentation: a note by the secretariat on interim and transitional arrangements (UNEP/FAO/PIC/INC.4/INF/1), and notes by the secretariat transmitting information on the activities of the World Health Organization (WHO) (UNEP/FAO/PIC/INC.4/INF/2) and the activities of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (UNEP/FAO/PIC/INC.4/INF/3), as well the draft articles for the international legally binding instrument as contained in annex II to the report of the Intergovernmental Negotiating Committee on the work of its third session (UNEP/FAO/PIC/INC.3/2).

Article 5 (Designated national authorities)

19. The representative of a regional economic integration organization expressed reservations about the word "national", which was not appropriate for Parties that were not countries. He suggested that a definition of the term "designated national authorities", covering regional economic integration organizations, should be included under Article 2. The Committee provisionally endorsed the text of paragraphs 1 to 4 of the article without brackets.

Article 5 bis (Informing Parties of regulatory measures)

20. The Committee agreed that Article 5 bis should be deleted.

Article 6 (Banned or severely restricted chemicals)

21. In paragraph 1 (a), the Committee agreed to retain the brackets around "ninety", to bracket "where available" and, in paragraphs 1 (b) and 2, to remove the brackets but to retain the footnote to paragraph 2. In paragraphs 4 and 5, reservations were expressed about the inclusion of the word "relevant" and the introduction of a new link in the information chain - namely, regions - which, one representative said, was inconsistent with the practice in other environmental conventions. It was agreed to bracket the word "relevant", to retain the brackets around the phrase "from [XX] FAO regions" and to add "paragraph 2 of" before "Article 8". With those amendments, the text of the article was provisionally endorsed. It was also suggested that a definition of "final regulatory action" should be developed.

Article 7 ([Acutely] hazardous pesticide formulations)

22. After considering the draft produced by the Legal Drafting Group, the Committee agreed to retain all the brackets, with the exception of those around the word "forthwith" in paragraph 2. With that amendment, the text of the article was provisionally endorsed.

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Article 8 (Listing of chemicals in Annex (ZZZ))

23. There was extensive debate on the decision-making process for the inclusion of a chemical in Annex (ZZZ), both for the subsidiary body and at the Conference of the Parties. Some representatives said that decisions should be only taken by consensus; others believed a three-quarters majority vote sufficed, with provision for the views of the minority, in the case of the subsidiary body, to be conveyed to the Conference of the Parties. Another view was that the subsidiary body would make all efforts to reach consensus and, if such consensus were not possible, then a decision reached by voting. Opinions on the required majority varied between either three fourths or two thirds. Some representatives said that the decision on voting procedure should be left to the Conference of the Parties. The Committee provisionally endorsed the draft article with the addition of a footnote indicating the view expressed by some countries that, in the case of the Conference of the Parties at least, a decision-making rule that was based on anything other than consensus, or a deferral of a decision on the matter to the Conference of the Parties, would mean that a ratification clause for the adoption of annexes would be required.

Article 8 bis (Chemicals in the voluntary procedure)

24. The Committee recognized that decisions on inclusion of chemicals from the voluntary procedure would depend on decisions in relation to interim procedures. The Committee agreed to retain the square brackets throughout the text. The Committee also agreed that the secretariat would prepare, purely for information purposes, a list containing the status of various chemicals within the voluntary PIC procedure, so as to outline the possible future workload. The Committee provisionally endorsed the draft text of the article as it stood.

Article 8 ter (Removal of chemicals from Annex (ZZZ))

25. After considering a draft provided by the Legal Drafting Group, the Committee agreed that the brackets would be retained in paragraph 1. The Chair believed that there should be a harmonization in the language governing the procedures for including and removing chemicals from the annex. It was agreed that the secretariat would include the language of Article 8, paragraph 1, in paragraph 1, and Article 8, paragraph 3, in paragraph 3. The Committee noted that a chemical could be re-evaluated for reasons other than a lack of information, and delegations were requested to consider how to include that concept in the draft provision, for future consideration. In paragraph 2, the brackets were removed around the phrase "at least six months", on the understanding that all time-frames in the Convention would be re-examined at a

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later date to ensure that they would be workable and coherent. With those amendments, the text of the draft article was provisionally endorsed.

Article 12 (Classification, packaging and labelling)

26. There was broad agreement that a customs code would be useful. Most representatives agreed that a specific label for PIC chemicals was not warranted. Concerning requirements in Article 12, paragraph 2, views on the range of chemicals to be included varied widely from PIC chemicals only, to hazardous chemicals in general. Many countries preferred that the provision of datasheets be compulsory, while most countries wished to receive labels and datasheets in their principal languages.

27. Following the discussion, the text was referred to a contact group for further consideration and revision, and the resulting text is found in annex II below.

Article 13 (Information exchange)

28. The Committee agreed that the brackets around the word "ecotoxicological" should be removed throughout Article 13. A number of representatives said that they could accept the use of the word "shall" in paragraph 1 as long as the phrase "shall facilitate" was suitably qualified by the words "as appropriate" to take account of national circumstances and capabilities; however, there was no consensus on the inclusion of the words "as appropriate", and they remained in brackets. Reservations were expressed about the inclusion of a requirement to protect proprietary rights, which some Governments did not have the legal framework to do and which was the subject of much discussion in other forums. Concerning confidentiality, a number of representatives doubted whether their Governments had the legal authority to divulge some of the types of information listed.

29. The Committee agreed to provisionally endorse paragraph 2 with the reinstatement, in square brackets, of the reference to the establishment of internal procedures. Paragraph 3 and its subparagraphs (a)-(e) were provisionally endorsed as they stood subject to the possible addition of further text in the light of continued consultations on the issue. It was agreed that the further items relating to confidentiality would be considered, possibly at other relevant places in the draft Convention text (see the footnote to Article 13 on page 28 below).

Article 14 (Control of trade with non-Parties)

30. One representative expressed a reservation regarding the proposed deletion of draft Article 14, stating that the same provision was included in

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the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal.

Article 15 (Implementation of the Convention)

31. The chapeau in paragraph 1 was amended to provide for the amendment, as well as adoption, of legislation and of administrative actions, and to accommodate the concerns of countries lacking the necessary national infrastructures. All bracketed text was deleted and a reference added to Article 16 in subparagraph (c), to strengthen the application of that Article. In paragraph 2, the deletion of the reference to chemicals handling and accident management was opposed, because of the importance of that issue to many countries. Some representatives felt that the prescriptive nature of the paragraph was inappropriate, as it referred to voluntary procedures, and others felt its concerns would be better addressed in the preamble. As a compromise, it was agreed to replace "agree to" with "should".

32. The Committee agreed to base paragraph 5 on the corresponding provision in Article 4, paragraph 6, of the draft articles as contained in annex to document UNEP/FAO/INC.3/2.

33. The representative of a regional economic integration organization introduced a proposed draft text for a new paragraph, possibly to be added as paragraph 6 of Article 15, to clarify the position of his organization as it pertained to certain provisions of the Convention. He said that he would prepare an explanatory paper on the subject for the next session of the Committee. With those amendments, the draft article was provisionally endorsed.

Article 16 (Technical assistance)

34. Several representatives expressed a preference for a more binding wording in the second sentence, but it was pointed out that the Convention contained no financial provisions. The Committee provisionally endorsed the text of Article 16 without brackets, with the addition of the words "throughout their life-cycle" at the end.

Article 20 (Conference of the Parties)

35. In paragraph 2, the Committee agreed that the period in question should be one year and not six months, and to bracket the phrase "one third" in paragraph 3, pending a decision on the voting arrangements for regional economic integration organizations. In paragraph 4, the phrase "by consensus" was put in brackets and the bracketed terms "by a two-thirds majority" and "by

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a three-fourths majority" inserted. Also, it was agreed to insert in brackets the words "at its first session" after "adopt".

36. With regard to paragraph 6, the Committee agreed that the brackets should be removed from the phrase "as well as any State not party to this Convention," and the second, bracketed sentence deleted, with a footnote to the effect that two countries had reserved their positions. It was also agreed to delete the bracketed phrase "and of the subsidiary body established by Article ___" and, with regard to the phrase "unless at least one-third of the Parties present object", to add a footnote to the effect that four countries had expressed a reservation, favouring the wording "unless a Party objects". With those amendments, the draft article was provisionally endorsed.

Article 20 bis (Secretariat)

37. The Committee agreed that the phrase "particularly in respect of the exchange of information required under it" should be deleted from paragraph 2 (b). It further agreed that the words "these functions" in paragraph 4 should be changed, for the sake of clarity, to "the secretariat functions". Some representatives found paragraph 4 superfluous. It was agreed, as a compromise, that the brackets in the paragraph should be removed, with the bracketed phrase amended to read "should it find that the secretariat mechanism cannot function as intended". With those amendments, the draft article was provisionally endorsed.

Article 21 bis (Amendments to the Convention)

38. The Committee agreed that the voting majority referred to in paragraphs 3 and 4 should be three fourths and not two thirds and the text was amended accordingly with the removal of all brackets. It was noted that the explanation in paragraph 5, of the phrase "Parties present and voting" might be better located under Article 24 (Right to vote), and it was suggested that the advice of the Chair of the Legal Drafting Group should be sought. The representative of a regional economic integration organization indicated that he wished to make a reservation pending further consultations within his organization. With those amendments the draft article was provisionally endorsed.

Article 22 (Adoption and amendment of annexes)

39. The Committee agreed that the annex referred to in paragraphs 2, 4 and 4 bis as Annex (****) was Annex (ZZZ) and amended the text accordingly. The brackets in paragraphs 2, 4 and 4 bis were, however, retained and brackets placed around paragraphs 3 (b) and 4, pending further clarification of the

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status of the annexes. The draft article was provisionally endorsed with those amendments.

Article 23 (Protocols)

40. One delegation questioned the need for the draft article at all, since protocols could be provided through the amendment process. Another felt that it should be retained as it was linked to the final outcome of Article 1. The Committee provisionally endorsed the draft article as it stood, with its brackets.

Article 24 (Right to vote)

41. The Committee agreed to provisionally endorse the Article, subject to the possible inclusion of the explanation of "Parties present and voting", from Article 21 bis, pending consultations on the issue in the Legal Drafting Group.

Article 25 (Signature)

42. Draft article 25 was provisionally endorsed as it stood.

Article 26 (Ratification, acceptance, approval or accession)

43. With reference to paragraph 3 of Article 26, one representative wished to reserve his country's position, pending further legal advice, in the light of discussions at the current session on the role of regional economic integration organizations in the working of the Convention. The Committee agreed to place paragraph 3 in brackets and to add a footnote recording that reservation. With those amendments, the draft article was provisionally endorsed.

Article 27 (Entry into force)

44. The Committee provisionally endorsed Article 27 with the deletion of the option for the Convention to enter into force after the deposit of the twentieth instrument of ratification, acceptance, approval or accession. The remaining option – that of the fiftieth such instrument – was supported by a number of representatives and was retained in square brackets. Some delegations supported the idea that the number of ratifications needed to bring the Convention into force should be based on a percentage of, for example, the number of participants in the voluntary procedure or the number of signatories of the Convention. The view was also expressed that it was premature to take a decision on the modalities for entry into force, since it

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was only at the end of the negotiating process that all options could be properly evaluated.

Article 28 (Reservations)

45. The Committee agreed to insert a footnote to the draft article, to the effect that one representative expressed a reservation and wished to see the phrase "Articles 2, 3, 4, 5, 6, 7, 8, 9, 10, 15, and 16 of" inserted in square brackets after the phrase "No reservations may be made to". With that amendment, the Committee provisionally endorsed the draft article.

Article 29 (Withdrawal)

46. The Committee provisionally endorsed the text of the draft article.

Article 30 (Interim arrangements)

47. Recognizing that the negotiations for a PIC Convention are scheduled to be concluded in the first quarter of 1998, the Intergovernmental Negotiating Committee requested the Executive Director of UNEP and the Director General of FAO, through the Chair, to submit a recommendation to the governing bodies of UNEP in February 1998 and FAO in November 1997, requesting that they:

(a) Consider mandating the involvement of UNEP and FAO in the operation of an Interim Secretariat and the Secretariat to the Convention as set out in the draft Convention text being considered for adoption by the Diplomatic Conference;

(b) Agree to accept any modifications in the voluntary PIC procedure decided upon by the Diplomatic Conference.

48. The Committee also took note of the intention of the Chair to establish at the first meeting of the its next session a contact group to work on how the voluntary PIC procedure would continue during the period between the adoption of the Convention and its entry into force. The contact group would also consider the necessity and modalities of the continuation of the voluntary procedure after the Convention entered into force, given the fact that the Convention might initially cover only a limited number of countries, while the current voluntary procedure involved some 150 States.

Article 31 (Depositary)

49. Draft article 31 was provisionally endorsed without change.

Article 32 (Authentic texts)

50. Draft article 32 was provisionally endorsed without change.

Annex X (Information requirements for notifications made pursuant to Article 6)

51. On the basis of the revised text prepared by the legal drafting group, the Committee agreed that the title of section 1 of Annex X be amended to read "Chemical properties, identification and uses". It was agreed that subparagraph (b) would read "Chemical name according to an internationally recognized nomenclature (for example, International Union of Pure and Applied Chemistry (IUPAC), where such nomenclature exists;", on the understanding that the Chair would seek guidance from the legal drafting group concerning the legal difference between "exists" and "was available". It was agreed that subparagraph (e) would be put in square brackets with a footnote to the effect that one country wanted a clearer definition of the term "classification". With the strong support of a number of representatives, under the new subparagraph (g) the phrase "The physico-chemical, toxicological and ecotoxicological properties of the chemical" was inserted, making the provision of this information mandatory.

52. In section 2, under subparagraph (a), subsection (iv), some representatives said they had prepared substitute text for the language in brackets there. The Committee agreed that their proposals would be examined at a later date, and subsection (iv) would remain bracketed. Concerning subsection (vi), the Committee agreed that the square brackets would be removed from the phrase "and the expected effect of the final regulatory action". Under subparagraph (c), the Committee agreed that the brackets be removed from the phrase "for each use-category and use". Under subparagraph (e), subsection (ii), the Committee agreed to remove the square brackets and amend the text of the last part of the annex. With those amendments, the draft annex was provisionally endorsed.

Annex Y

53. It was agreed to remove the brackets in subparagraph (c) (i), to insert the word "or" between subparagraphs (c) (i) and (ii) and to add a footnote to those subparagraphs, to the effect that they should be reconsidered in the light of the final text of Article 2 on definitions. The brackets were removed from subparagraph (c) (iv) and from paragraph (d). One representative wondered whether the provisions of paragraph (d) might not be more appropriately situated in Annex Z than in Annex Y, while two others reiterated the apprehensions of the developing countries regarding their ability to meet the criteria under Annexes Z and Y, in particular those relating to scientific data.

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54. With those amendments, the text of Annex Y was provisionally endorsed.

Annex Z (Information and criteria for inclusion of [acutely] hazardous pesticide formulations in Annex (ZZZ))

55. In considering the draft text provided by the Legal Drafting Group, the Committee agreed that the brackets would be retained. At the suggestion of one representative, the Committee agreed to include a footnote to the annex, to the effect that it would be necessary to revisit the criteria again, once the scope of the Article 7 pesticides had been defined. With that amendment, the Committee provisionally endorsed the annex.

Annex ZZZ (Chemicals subject to the prior informed consent procedure)

56. It was agreed that, to facilitate the handling of the table, the column on the chemical identity should also contain the Chemical Abstracts Service (CAS) number, if it existed. The middle column was placed in brackets pending the outcome of the discussions of the term "use-category" in relation to Article 2. The Committee then provisionally endorsed the draft annex.

IV. OTHER MATTERS

Electronic dissemination of the report of the Committee

57. It was agreed that when the report had been finalized in all languages, it would be placed on the Internet in English, French and Spanish. Electronic versions would also be available, on request, in the other official languages of the United Nations.

Inter-sessional activities

58. The Committee agreed that, in the inter-sessional period, the Chair should work with the secretariat and the Chairs of the Technical Working Group and the Legal Drafting Group in order to review the current version of the draft articles and produce a restructured text for the next session of the Committee. In addition to the renumbering of the articles, as appropriate, the aim should be a coherently presented and well structured text. An attempt might also be made to remove some of the non-contentious bracketed text, in order to expedite the Committee's work at its fifth session. The secretariat should also endeavour to ensure that the terminology used in the draft was accurate and consistent in all official languages.

Date and place of the fifth session of the Committee

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59. The European Community confirmed that it would be willing to host the fifth session of the Intergovernmental Negotiating Committee in Brussels in January or February 1998. The Committee welcomed the offer of the European Community.

V. ADOPTION OF THE REPORT

60. The present report was adopted on the basis of the draft report contained in document UNEP/FAO/PIC/INC.4/L.1 and Add.1 and 2.

VI. CLOSURE OF THE SESSION

61. The Chair thanked Mr. Reiner Arndt and Mr. Willem Scott, Chair and Rapporteur of the Technical Working Group for their efforts, and noted that the Technical Working Group had successfully concluded its work.

62. After the customary exchange of courtesies, the Chair declared the session closed at 6 p.m. on Friday, 24 October 1997.

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 provisionally endorsed by the plenary: 5, 6, 7, 8, 8 bis, 8 ter, 13, 15, 16, 20, 20 bis, 21 bis, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, Annex X, Annex Y, Annex Z, Annex ZZZ.
2. Articles being considered in plenary: 1, 2, 3, 9, 10, 12, 14, 17, 19 bis, 21, 22 para. 4 bis, 30.
3. Articles under consideration in the Legal Drafting Group: 4, 11, Annex W.
4. Articles still to be considered by the meeting: 18, 19.

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Annex II

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

Article 1

Objective 1/

The objective of this Convention 2/ 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

Definitions 3/

For the purposes of this Convention:

(a) "Chemical" means a substance whether by itself or in a mixture or preparation and whether manufactured or obtained from nature and includes such

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.

a substance in [the following use-categories:] 4/ 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-categories] [for industrial [or consumer] purposes or as a pesticide] have for health or environmental reasons been prohibited by final governmental regulatory action by a Party to this Convention. Included in this are chemicals which have been refused approval for the first time use or withdrawn by industry either from the domestic 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 chemical" means a chemical virtually all use[s] of which within one or more [use-categories] [uses for industrial [or consumer] purposes or as a pesticide] for health or environmental reasons have been prohibited [or a chemical for which a substantial reduction of health or environmental risk, caused by a reduction of use[s] [in one or more use-categories,] has been obtained] by final governmental regulatory action, but for which certain specific uses remain authorized; 5/

(c bis) "[Acutely] Hazardous pesticide formulations" means those pesticide formulations that [are likely to] produce [severe] [acute] health [or environmental] effects through [single or multiple] exposure [over a short period of time]; 6/

(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;

4/ At the fourth session of the Intergovernmental Negotiating Committee, the Technical Working Group considered the following option to avoid the word use-category:

"Chemical" means a substance whether by itself or in a mixture or preparation and whether manufactured or obtained from nature, that is used as an industrial [or consumer] chemical or as a pesticide, but does not include any living organism.

5/ The Technical Working Group was of the opinion that an appropriate term should be found to express a reduction of 80-90 per cent or above in lieu of "virtually all" and "substantial".

6/ One representative requested that the term "acute" or "acutely" should be defined in a separate paragraph.

/...

(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.

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; 7/
- [(d) Chemical weapons and their precursors;]
- (e) Pharmaceuticals, including human and veterinary drugs; 8/
- [(f) Chemicals used as food additives;] 9/
- (g) Chemicals imported for the purpose of research or analysis in quantities not likely to affect human health or the environment; and 10/
- (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. 10/

[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.-4. 11/

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

8/ 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.

9/ 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.

10/ 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.

11/ The Technical Working Group agreed that paragraphs 2-4 should be deleted. The previous text can be found on page 13 of document UNEP/FAO/PIC/INC.3/2.

/...

[5. The Parties shall ensure that measures taken to regulate the chemicals under this Convention do not create unnecessary obstacles to and [are not applied in a manner that would] constitute a means of arbitrary or unjustifiable discrimination or disguised restrictions on international trade [in accordance with the obligations under the World Trade Organization].]

[6.] 12/

Article 5

Designated national authorities

1. Each Party shall designate one or more national 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 6

Banned or severely restricted chemicals

1. (a) Each Party that has adopted a final regulatory action to ban or severely restrict a chemical shall notify the Secretariat in writing of such action through its designated national authority. Such notification shall be made as soon as possible, but not later than [ninety] 13/ days after the date on which the final regulatory action has taken effect and shall include the information required by Annex X[, where available].

12/ Under the discussion of Article 15, the Intergovernmental Negotiating Committee agreed to move the provisions contained in paragraph 6 of Article 4, as contained on page 13 of UNEP/FAO/PIC/INC.3/2, to paragraph 5 of Article 15, with some amendments.

13/ All references (including the case that there is no reference) to deadlines will be revisited once the whole process is defined.

/...

(b) 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 that each Party that has submitted notifications of final regulatory actions under the London Guidelines or the FAO Code of Conduct need not submit new notifications.

2. The Secretariat shall, as soon as possible, and in any event no later than six months after receipt of a notification under paragraph 1, verify whether the notification includes the information required by Annex X. If the notification contains the information required, the Secretariat shall forthwith forward to all Parties a summary of the information received and if the notification does not contain the information required, it shall inform the notifying Party accordingly. 14/

3. The Secretariat shall every six months communicate to the Parties a synopsis of the information received pursuant to paragraph 1 above including information regarding those notifications which do not contain all the information required in Annex X.

4. When the Secretariat has received [X] notification[s] [from [XX] FAO regions] regarding a particular chemical that it has verified meet[s] the requirements of Annex X, it shall forward [it] [them] to the [relevant] subsidiary body 15/ of the Conference of the Parties.

5. The subsidiary body shall review the information provided in such notification[s], and shall consider, in accordance with the criteria set out in Annex Y, whether the chemical should be made subject to the prior informed consent procedure and listed in Annex (ZZZ) 16/ accordingly. The subsidiary body shall make its recommendation to the Conference of the Parties in accordance with paragraph 2 of Article 8.

14/ In the view of the Technical Working Group at the third session of the Intergovernmental Negotiating Committee, specific tasks of the Secretariat should be spelt out in a separate article on the Secretariat, such as follow-up action on incomplete notification.

15/ The Legal Drafting Group noted that at present there is no provision in the Convention establishing a standing subsidiary body for this purpose.

16/ For the sake of precision and consistency, at the fourth session of the Intergovernmental Negotiating Committee, the Legal Drafting Group replaced all references in Articles 7, 8, 8 bis and 9 and Annexes X and Y to chemicals or pesticide formulations subject to, or included in, the prior informed consent procedure by a reference to chemicals or pesticide formulations "listed in Annex (ZZZ)".

/...

Article 7

[Acutely] hazardous pesticide formulations

1. [Any Party] [Any developing country Party or any Party with an economy in transition] experiencing problems caused by an [acutely] hazardous pesticide formulation under conditions of use in its territory, may propose to the Secretariat through its designated national authority, the inclusion of the [acutely] hazardous pesticide formulation in Annex (ZZZ). In developing a proposal, the Party may draw upon technical expertise from any relevant source. The proposal shall include the information required by part 1 of Annex Z.
2. The Secretariat shall, as soon as possible after receipt of a proposal under paragraph 1, verify whether the proposal includes the information required by part 1 of Annex Z. If the proposal contains the information required, the Secretariat shall forthwith forward to all Parties a summary of the information received and if the proposal does not contain the information required, it shall inform the proposing Party accordingly.
3. The Secretariat shall collect the additional information set out in part 2 of Annex Z regarding the proposals forwarded under paragraph 2.
4. When the Secretariat has received [X] proposal[s] regarding a particular [acutely] hazardous pesticide formulation that it has verified meets the requirements of part 1 of Annex Z and has collected the additional information referred to in paragraph 3, it shall forward [it] [them] to the relevant subsidiary body of the Conference of the Parties.
5. The subsidiary body shall consider, in accordance with the criteria set out in part 3 of Annex Z, whether the [acutely] hazardous pesticide formulation should be made subject to the prior informed consent procedure and listed in Annex (ZZZ) accordingly. The subsidiary body shall make its recommendation to the Conference of the Parties in accordance with Article 8.

Article 8

Listing of chemicals in Annex (ZZZ)

1. For each chemical that the subsidiary body has decided to recommend for inclusion in Annex (ZZZ), the subsidiary body shall prepare a draft decision guidance document. The subsidiary body shall endeavour to take decisions by consensus and if it is not possible to reach consensus, it shall take its decisions by a [two-thirds] [three-fourths] majority of members present and voting.

/...

2. The recommendation referred to in paragraph 1 above together with its draft decision guidance document shall be forwarded to the Conference of the Parties. The Conference of the Parties shall decide whether to include the chemical in Annex (ZZZ) and approve the draft decision guidance document. The Conference of the Parties shall [endeavour to] take its decisions by consensus[, and if it is not possible to reach consensus, it shall take its decisions by a three-fourths majority of Parties present and voting]. 17/

3. A decision guidance document approved by the Conference of the Parties shall be circulated forthwith by the Secretariat to all Parties through their designated national authorities.

Article 8 bis

Chemicals in the voluntary procedure

1. Chemicals that have qualified for inclusion in the voluntary prior informed consent procedure and for which decision guidance documents have been circulated under that 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. 18/ 19/

[2. Chemicals that have qualified for inclusion in the voluntary prior informed consent procedure and for which decision guidance documents have not yet been circulated for decision under that 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. 20/

17/ Some delegations expressed the view that, if decision-making was not by consensus, an article on the ratification of annexes would be required.

18/ At the third session of the Intergovernmental Negotiating Committee, the Technical Working Group noted that the nature of the voluntary scheme after the signature of the Convention will be important in deciding on the date in paragraphs 1 and 2 of this Article.

19/ The Legal Drafting Group noted 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 1 to be retained. If the Intergovernmental Negotiating Committee 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.

20/ 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 the first sentence of paragraph 2 to be retained. If the Intergovernmental Negotiating Committee

/...

For these chemicals, decision guidance documents shall be prepared according to the procedure laid down in Article 8 of this Convention.] 21/

[3.] 22/

Article 8 ter

Removal of chemicals from Annex (ZZZ)

1. [If information which was not available at the time of the decision to include a chemical or pesticide formulation in Annex (ZZZ) indicates that its inclusion is no longer justified in accordance with the relevant criteria in Annex Y or Z, the subsidiary body may decide to recommend to the Conference of the Parties the removal of that chemical or pesticide formulation from Annex (ZZZ).] 23/ The subsidiary body shall endeavour to take decisions by consensus and if it is not possible to reach consensus, it shall take its decisions by a [two-thirds] [three-fourths] majority of members present and voting.

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.

21/ The Legal Drafting Group noted that the interim arrangements for the period between the Convention's signature and its entry into force can not be governed by any provision of the Convention since conventions can not have effects until their entry into force. The Legal Drafting Group considers that the most appropriate way of establishing such interim arrangements would be through a resolution of the Diplomatic Conference adopting this Convention. Paragraph 2 of Article 8 bis will need to be reconsidered in the light of a policy decision on the nature of the interim arrangements.

22/ The Legal Drafting Group has moved this paragraph, as contained in Article 8 bis, paragraph 5, of annex II to UNEP/FAO/PIC/INC.3/2, to become paragraph 7 of Article 9, where it is more appropriately located.

23/ The Technical Working Group recognized that criteria by which the subsidiary body will determine whether or not to remove a chemical from Annex (ZZZ) would need to be developed. The Legal Drafting Group noted that the text received from the Technical Working Group also does not contain a mechanism to trigger the removal procedure. Therefore it drafted this language regarding the criteria on the assumption that the Technical Working Group wished to use identical criteria as used for the inclusion of chemicals and pesticide formulations in Annex (ZZZ), and proposed a trigger mechanism. If this assumption is incorrect, guidance should be provided regarding the formulation of criteria and the trigger for the removal procedure.

/...

2. Recommendations to remove a chemical or pesticide formulation from Annex (ZZZ) shall be communicated to the Parties by the Secretariat at least six months before the regular meeting of the Conference of the Parties.

3. The recommendation referred to in paragraph 1 above shall be forwarded to the Conference of the Parties. The Conference of the Parties shall decide whether to remove the chemical or pesticide formulation from Annex (ZZZ). The Conference of the Parties shall [endeavour to] take its decisions by consensus[, and if it is not possible to reach consensus, it shall take its decisions by a three-fourths majority of Parties present and voting]. 17/

[4.] 24/

Article 9

Obligations of importing Parties 25/

1. Each importing Party shall implement [in accordance with its resources and capacity] [in its territory] [pursuant to this article] legislative or administrative measures [as appropriate] to ensure [suitable control] [timely decisions with respect to the import] of chemicals and pesticide formulations in Annex (ZZZ).

2. (a) Each importing Party shall transmit to the Secretariat, as soon as possible but not later than nine months after receiving a decision guidance document referred to in paragraph 3 of Article 8, a response concerning its future importation of the chemical concerned.

(b) The Secretariat shall, at the expiration of this time period, forthwith address to the relevant designated national authority of a Party that has not provided such a response, a written request to do so. Should the importing Party be unable to provide a response, the Secretariat shall, where appropriate, assist it to provide a response within the time period specified in paragraph 3 of Article 10.

3. A response shall consist of either:

24/ Paragraph 3 of Article 8 ter in document UNEP/FAO/PIC/INC.3/2 has been moved by the Legal Drafting Group to Article 22 (Adoption and amendment of annexes).

25/ The Legal Drafting Group reiterates that titles of articles are merely descriptive of the contents of the articles and it has therefore omitted the alternative title of the present article.

/...

- (a) A final decision, pursuant to legislative or administrative measures:
- (i) To consent to importation;
 - (ii) Not to consent to importation; or
 - (iii) To consent to importation only subject to specified conditions [or for specified uses]; or
- (b) An interim response, which may include:
- (i) An interim decision consenting to importation with or without specified conditions, or not consenting to importation during the interim period;
 - (ii) A statement that a final decision is under active consideration;
 - (iii) A request to the Secretariat or to the designated national authority of the Party notifying the final regulatory action for further information;
 - (iv) A request to the Secretariat for assistance in evaluating the chemical or pesticide formulation.

[3 bis. A response under (a) or (b) of paragraph 3 above shall [be related] [apply] to the use-category or categories [specified consistent with column 2 of Annex (ZZZ)].] 26/

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

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

26/ In the opinion of the Technical Working Group, the inclusion of this sentence is conditional upon the text developed in Articles 2 and 6-8 pertaining to use-categories. The Legal Drafting Group noted that the reference to paragraph 2 of Article 8 should now refer to column 2 of Annex ZZZ.

/...

[5. When a Party takes an action that affects the conditions referred to in Article 10, paragraphs 2 (a), (b) and (c), with respect to a chemical, the designated national authority shall inform the Secretariat accordingly. The Secretariat shall make such information available to the Parties. Such an action shall be interpreted as superseding any previous decision the Party has made with respect to the chemical.] 27/

6. Each importing Party shall make its responses made pursuant to paragraph 2 above available to the natural and legal persons concerned under its jurisdiction in accordance with its legislative or administrative measures.

7. Each importing Party shall, upon the date of entry into force of this Convention for it, provide the Secretariat with its responses pursuant to paragraph 2 above with respect to each chemical in Annex (ZZZ). 28/

8. [An importing Party that, pursuant to Article 9, paragraphs 2, 3 and 5, and Article 10, paragraph 2, 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 State as well as its domestically produced chemicals.] 29/

9. The Secretariat shall, at least every six months, inform each Party, through its designated national authorities, of the responses received from importing Parties pursuant to paragraph 2 above, including information describing the legislative or administrative measures on which the decisions are based, if available.

Article 10

Obligations of exporting Parties

27/ The Legal Drafting Group made some editorial changes to the text of this paragraph but needs further guidance on its intended meaning and its relationship to paragraphs 2 and 3 of Article 10.

28/ The Legal Drafting Group noted 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.

29/ 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.

/...

1. Each exporting Party shall:

(a) Implement appropriate legislative or administrative measures to communicate responses forwarded by the Secretariat under paragraph 9 of Article 9 to the natural and legal persons concerned under its jurisdiction;

(b) Take appropriate legislative or administrative measures to ensure compliance by exporters under its jurisdiction with decisions in such responses no later than [ninety] [one hundred and twenty] [one hundred and eighty] days after the date of dispatch by the Secretariat of the response pursuant to paragraph 9 of Article 9;

(c) Advise and assist, upon request [and as appropriate,] designated national authorities in importing Parties:

[(i) In obtaining further information to help importing Parties to take decisions pursuant to paragraph 2 of Article 9 with respect to a chemical in Annex (ZZZ); and

(ii) In strengthening their capacities and capabilities to manage chemicals safely during their life-cycle.]

2. Subject to paragraph 3 below, if in exceptional circumstances an importing Party fails to transmit a response or transmits an interim response that does not contain an interim decision, a Party shall not export the chemical concerned to that importing Party, unless:

(a) It is a pesticide formulation which, at the time of importation, is registered by the competent national authority in the importing Party; or

(b) It is a chemical for which evidence exists that it has previously been used in, or imported into, the territory of the importing Party, and in relation to which no regulatory action to prohibit its use has been taken; or

(c) Explicit consent to the import into the importing Party's territory of that chemical is sought and received by the exporter from the competent national authority of the importing Party. The importing Party shall respond within [] days to such a request.

3. Paragraph 2 above shall apply from [ninety] [one hundred and twenty] [one hundred and eighty] days after the date of dispatch, pursuant to paragraph 9 of Article 9, of the circular immediately following the expiry of the time period laid down in paragraph 2 of Article 9, and shall cease to apply [one hundred and eighty days] [one year] later.

/...

Article 11

Export notification

1. Each exporting Party shall notify when [the first two exports on an annual basis] [the first export on an annual basis] [the first export] occur(s) to each importing Party, of each chemical that is banned or severely restricted in its territory, through its designated national authority to the relevant designated national authority of the importing Party. The first notification shall be given [on a timely basis when] [before] the first export occurs, after it has adopted a final regulatory action to ban or severely restrict the chemical. [An exporting Party would resubmit a notification of export if acknowledgement of receipt has not been received from the importing Party within 30 days.]

2. The export notification shall include the information set out in Annex W.

[2 bis.] 30/

2 ter. The obligation of a Party to notify exports of a chemical banned or severely restricted in its territory to an importing Party shall end when a response of the importing Party has been made according to paragraph 2 of Article 9 and Parties have been informed by the secretariat according to paragraph 9 of Article 9. 31/

3. An updated export notification shall occur after a [major] change concerning [the classification or] the ban or severe restriction of the chemical has been adopted by a final governmental regulatory action. 32/

30/ The Technical Working Group agreed that this paragraph should be deleted. The previous text can be found on page 23 of document UNEP/FAO/PIC/INC.3/2.

31/ At the fourth session of the Intergovernmental Negotiating Committee, the Technical Working Group asked the Legal Drafting Group to propose appropriate text to include the following concept: "An importing Party can, however, as part of its response given in accordance with subparagraph 3 (a) (iii) of Article 9, oblige exporting Parties to provide notification upon export to its territory of a chemical subject to the prior informed consent procedure".

32/ In the Technical Working Group at the third session of the Intergovernmental Negotiating Committee, 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.] 32/

[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 listed in Annex (ZZZ) to this Convention, as appropriate. 33/ [Each Party shall require that, whenever a code has been assigned by the World Customs Organization to a chemical listed in Annex (ZZZ), the shipping document [and/or label] for that chemical bears this code when exported.] 34/

[2. Each Party [should] [shall] require, without prejudice to any requirements of the importing Party, that chemicals [in Annex (ZZZ)] [in Annex (ZZZ) and those banned or severely restricted in their territory] [are considered hazardous in accordance with its internal legislation] 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].] 35/

33/ At the fourth session of the Intergovernmental Negotiating Committee, the contact group on Article 12 set up by the plenary strongly supported this concept, but sought guidance from the legal drafting group as to the best avenue for expressing it (e.g. through a decision of the conference of signatories or the FAO/UNEP governing bodies, through the Secretariat, the Conference of the Parties, or as individual parties to the World Customs Organization).

34/ The contact group is unsure as to whether, when a World Customs Organization code is assigned to a chemical, it would be required that the shipping document for that chemical automatically bear this code. If not, some participants in the contact group believed that such a requirement was necessary.

35/ The contact group could not agree which group of substances would be covered by this paragraph.

/...

3. With respect to the chemicals in paragraph 2, each exporting Party [should] [shall] require that a[n internationally accepted] safety data sheet, setting out the most up-to-date information available, is sent to the importer [with each shipment].

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

Article 13 36/

Information exchange

1. The Parties shall, in accordance with the objectives of this Convention, facilitate[, as appropriate,] through their designated national authority or authorities and relevant international organizations:

(a) The exchange of scientific, technical, economic and legal information concerning the chemicals within the scope of this Convention, including toxicological, ecotoxicological and safety information;

(b) The provision of publicly available information on domestic regulatory actions relevant to the objectives of this Convention.

36/ The contact group pointed out that decisions are required on the following items as to whether they should be included in the list in paragraph 3 or in annexes according to Articles 6, 7, 9, 10 and 11:

(a) The names [and [ranges of] percentages] of chemicals listed in Annex (ZZZ) or banned or severely restricted by the exporting Party that are components of preparations (cf. Annex W and Annex Z);

(b) The names [and [ranges of] percentages] of chemicals listed in Annex (ZZZ) or banned or severely restricted by the exporting Party that are present as impurities in preparations (cf. Annex W and Annex Z);

[(c) The names of impurities of toxicological and ecotoxicological significance in the chemicals listed in Annex (ZZZ) or banned or severely restricted by the exporting Party [and [ranges of] percentages];]

[(d) The name [and address] of the producer and exporter;]

[(e) The country of destination;]

[(f) The name and the address of the importer;]

[(g) The scheduled date of arrival of the chemical.]

/...

2. Each Party receiving information pursuant to this Convention shall take into account the need to protect any [existing proprietary rights, and] confidential 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 information contained in Annexes X and Z, submitted pursuant to Articles 6 and 7, respectively;

(b) The information contained in [material] safety data sheets referred to in Article 12, paragraph 3;

(c) The production and expiration dates of the chemical;

(d) Information on the precautions to be taken, including the category of danger, the nature of the risk and the relevant safety advice;

(e) The summary results of the toxicological and ecotoxicological tests.

[Article 14

Control of trade with non-Parties] 37/

Article 15

Implementation of the Convention

1. Each Party shall take such measures as may be necessary to establish and strengthen its national infrastructures and institutions for the effective implementation of this Convention. These measures may include, as required, the adoption or amendment of national legislation or administrative actions and may also include:

(a) The establishment of national registers and databases, including safety information for chemicals;

37/ The Intergovernmental Negotiating Committee, with the reservation of one representative, agreed that this article should be deleted. The previous text can be found on page 26 of document UNEP/FAO/PIC/INC.3/2.

/...

(b) The encouragement of initiatives by industry; and

(c) The promotion of voluntary agreements, taking into consideration the provisions of Article 16.

2. Each Party shall ensure, to the extent practicable, that the public has appropriate access to information on chemical handling and accident management and on alternatives that are safer for human health and the environment than the chemicals that are listed in Annex (ZZZ) to this Convention. 38/

[3. The Parties should 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.]

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 restricting the right of the Parties to take action more stringently protective of health and the environment than that called for in this Convention, provided that this action is consistent with the provisions of this Convention and is in accordance with international law. 39/

[6. The provisions of the Convention shall not apply to the movements of the chemicals falling within its scope between the member States of a regional economic integration organization which is itself a Party to the Convention and has specific legislation on those chemicals.]

Article 16

Technical assistance

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

39/ 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, paragraph 6, was legally more appropriate. Plenary agreed to move the text of Article 4, paragraph 6, to Article 15, paragraph 5, with amendments.

/...

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 throughout their life-cycle.

[Article 17

Compliance

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] 40/

Article 19

Financial resources and mechanisms

[To be developed]

41/

[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

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

41/ 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.

/...

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 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.
4. The Conference of the Parties shall [by consensus] [by a two thirds majority] [by a three fourths majority] agree upon and adopt [at its first session] 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, 42/

42/ Two representatives reserved their position on this provision.

may be represented at meetings of the Conference of the Parties as observers. 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 as an observer may be admitted unless at least one-third of the Parties present object [unless a Party objects]. ^{43/} 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;
 - (b) To facilitate assistance to the Parties, particularly developing countries and countries with economies in transition, on request, in the implementation of this Convention;
 - (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.

^{43/} Four representatives expressed a reservation, preferring the reading "unless a Party objects".

4. The Conference of the Parties may decide, by a three-fourths majority of the Parties present and voting, to entrust the secretariat functions to one or more other competent international organizations, should it find that the secretariat mechanism cannot function as intended.

Article 21

Settlement of disputes

[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 practicable; 44/ 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

44/ 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.

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) 45/

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. 46/

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. 47/

Article 21 bis

Amendments to the Convention

1. Amendments to this Convention may be proposed by any Party.

45/ A revised alternative 2 proposed by Canada (UNEP/FAO/PIC/INC.4/CRP.4) was referred to the next session of the Intergovernmental Negotiating Committee.

46/ This provision is modeled on Article 2003 of the North American Free Trade Agreement.

47/ 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.

/...

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 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 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.

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 (ZZZ),] 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 (ZZZ),] 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 (ZZZ) to this Convention:

(a) Amendments to Annex (ZZZ) shall be proposed and adopted according to the procedure laid down in Articles 6, 7, 8 and 8 ter;

(b) The decision to amend Annex (ZZZ) in order to [include a chemical in, or] remove a chemical from, that Annex, shall forthwith be communicated to the Parties by the Depositary. The amendments shall enter into force for all Parties on the expiry of [six] months from the date of communication of the amendment by the Depositary, unless another date for entry into force is specified in such decision.] 48/

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

48/ The Legal Drafting Group noted that, although the Technical Working Group provided elements in paragraph 3 of Article 8 ter (UNEP/FAO/PIC/INC.3/2) regarding the entry into force of removal of chemicals from Annex (ZZZ), no elements regarding the entry into force of amendments concerning the inclusion of chemicals were specified in the draft. Since such a provision is necessary, the Legal Drafting Group proposes the above text for Article 22, paragraphs 4 bis (a) and (b).

/...

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.] 49/

Article 27

Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the [fiftieth] 50/ 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 [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.

49/ One representative reserved his country's position on this paragraph, pending further legal consultations.

50/ 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.

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. 51/

Article 29

Withdrawal

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 Depositary.

2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such date as may be specified in the notification of withdrawal.

Article 30

Interim arrangements 52/

Article 31

Depositary

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

51/ One representative expressed a reservation on the article and wished to see the following text: "No reservations may be made to Articles 2, 3, 4, 5, 6, 7, 8, 9, 10, 15 and 16 of this Convention".

52/ The Legal Drafting Group concluded that the text it has suggested for interim arrangements regarding the secretariat (Article 20 bis, footnote number 60 of document UNEP/FAO/PIC/INC.3/2) 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 PIC procedure.

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.

/...

Annex W

Export notifications shall include the following information:

1. The name, address, telephone, telex and fax numbers and e-mail address of the relevant designated national authority:
 - (a) Of the exporting Party; and
 - (b) Of the importing Party.
2. A request for the importing Party to acknowledge receipt of the export notification.
- [3. The expected date of the export to the importing Party.] 53/
4. The name of the banned or severely restricted chemical and a copy of the information specified in Annex X. Where more than one such chemical is included in a product, the information specified in Annex X will be provided for each.
- [5. In the case of a mixture or preparation, the concentration of the banned or severely restricted chemical(s).] 53/
6. The Harmonized System Custom Code for the chemical. 54/
7. A statement indicating the foreseen use category and the foreseen use within the use category, if known, in the importing Party.
8. Information on precautionary measures to reduce exposure and emission of the chemical. [This information may be delivered in the form of a copy of a safety data sheet referred to paragraph 3 of Article 12.]
- [9. Name and address of the importer in the importing Party.] 53/
10. Any additional information that is readily available to the designated national authority of the exporting Party that would be of assistance to the

53/ Some delegations in the Technical Working Group expressed concerns that such information may be confidential business information. This problem could be addressed within the scope of Article 13.

54/ The Technical Working Group suggested that this information be added to Annex X.

/...

designated authority of the importing Party in evaluating the export notification.

Annex X

INFORMATION REQUIREMENTS FOR NOTIFICATIONS MADE PURSUANT TO ARTICLE 6

Notifications shall include:

1. Chemical properties, identification and uses

(a) Common name;

(b) Chemical name according to an internationally recognized nomenclature (for example International Union of Pure and Applied Chemistry (IUPAC)), where such nomenclature exists;

(c) Trade names and names of preparation;

(d) Code numbers: Chemicals Abstract Service (CAS) number and other numbers;

[(e) Information on classification, where the chemical is subject to classification requirements;] 55/

(f) Use categories, including major uses.

(g) The physico-chemical, toxicological and ecotoxicological properties of the chemical.

2. Final regulatory action

(a) Information specific to the final regulatory action:

(i) Summary of the final regulatory action;

(ii) Reference to the regulatory document;

(iii) Date of entry into force of the final regulatory action;

(iv) [Indication of whether the final regulatory action was taken on the basis of a risk/hazard evaluation and, if so, include information on such an evaluation, including a reference to the relevant documentation;]

55/ One representative wished to see a clearer sentence, defining the term "classification".

- (v) Reasons for the final 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 the expected effect of the final regulatory action;
- (b) Use categories where the final regulatory action has been taken:
 - (i) Use(s) controlled, within each use category;
 - (ii) Remaining use(s) that are not controlled;
- (c) Estimation of quantities of the chemical produced, imported and exported for each use category and use, where available;
- (d) An indication of the likely relevance of the final regulatory action to other States and regions, to the extent possible;
- (e) Other relevant information that may cover:
 - (i) Assessment of socio-economic effects of the final regulatory action;
 - (ii) Information on alternatives and their relative risks, where available, which may include:
 - a. Integrated pest management strategies;
 - b. Industrial practices and processes, including cleaner technology.

Annex Y

CRITERIA FOR THE INCLUSION OF BANNED OR SEVERELY RESTRICTED
CHEMICALS IN ANNEX (ZZZ)

In reviewing the notifications forwarded to it by the Secretariat pursuant to paragraph 4 of Article 6, the subsidiary body shall:

(a) Confirm that the final regulatory action has been taken for human health or environmental reasons;

(b) Establish that the final regulatory action has been taken as a consequence of an evaluation of risks[/hazard]. This evaluation shall be based on a review of scientific data in the context of the conditions prevailing in the Party in question. For this purpose, the documentation provided shall demonstrate 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;

(c) Consider whether the final regulatory action provides a sufficiently broad basis to merit inclusion of the chemical in the prior informed consent procedure, by taking into account:

- (i) Whether the final regulatory action led or would be expected to lead to a significant decrease in the volume of the chemical used or the number of uses; 56/ or
- [(ii) Whether the final regulatory action 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 that submitted the notification in question;] 56/
- [(iii) Whether the considerations which led to the final regulatory action being taken are sufficiently applicable in a global context

56/ To be considered in the context of the definitions in Article 2.

to merit inclusion of the chemical in the prior informed consent procedure;]

(iv) Whether there is evidence of ongoing international trade in the chemical;

(d) Note that intentional misuse is not in itself an adequate reason to include a chemical in the prior informed consent procedure.

Annex Z 57/

INFORMATION AND CRITERIA FOR INCLUSION OF [ACUTELY] HAZARDOUS PESTICIDE
FORMULATIONS IN ANNEX (ZZZ)

Part 1. Documentation required from a proposing Party

Proposals submitted pursuant to paragraph 1 of Article 7 shall include adequate documentation containing the following information:

- (a) The pesticide formulation;
- (b) Common and recognized patterns of use of the pesticide formulation in the proposing Party;
- (c) A clear description of each incident related to the problem, including the adverse effect and the way in which the pesticide formulation was used;
- (d) Any regulatory, administrative or other measure taken, or intended to be taken, by the proposing Party in response to such incidents.

Part 2. Information to be collected by the Secretariat

Pursuant to paragraph 3 of Article 7 the Secretariat shall collect relevant information relating to the pesticide formulation, including:

- (a) The physico-chemical, toxicological and ecotoxicological 58/ properties of the pesticide formulation;
- (b) The existence of handling or applicator restrictions in other States;
- (c) Information on incidents related to the pesticide formulation in other States;

57/ The Intergovernmental Negotiating Committee agreed that it could be necessary to revisit the criteria, once the scope of Article 7 had been defined.

58/ In the Technical Working Group, it was noted that the gathering of ecotoxicological information by the Secretariat does not prejudice the decision on the inclusion of the term "environment" in article 2, paragraph (c) bis.

/...

- (d) Information submitted by other Parties, international organizations, non-governmental organizations or other relevant sources, whether national or international;
- (e) Risk and/or hazard assessments, where available;
- (f) Indications of the extent of use of the pesticide formulation, such as the number of registrations, or production or sales volume, if available;
- (g) Other formulations of the pesticide in question, and incidents relating to these formulations, if any;
- (h) Alternative pest control practices;
- (i) Other information which the subsidiary body may identify as relevant.

Part 3. Criteria for inclusion in Annex (ZZZ)

In reviewing the proposals forwarded to it by the Secretariat pursuant to paragraph 5 of Article 7, the subsidiary body shall take into account:

- (a) The reliability of the evidence indicating that the use of the pesticide formulation, in accordance with common or recognized practices within the proposing Party, resulted in the reported incident(s);
- (b) The relevance of such incidents to other States with similar climate, conditions and patterns of use of the pesticide formulation;
- (c) The existence of handling or applicator restrictions involving technology or techniques which may not reasonably or widely be applied in States lacking the infrastructure;
- (d) The significance of reported effects in relation to the level of use of the pesticide formulation; and
- (e) That incidents resulting from intentional misuse are not an adequate basis for including a pesticide formulation in Annex (ZZZ).

/...

Annex ZZZ

CHEMICALS SUBJECT TO THE PRIOR INFORMED CONSENT PROCEDURE

Chemical identity, including the CAS number if it exists	[Use-category on which inclusion in Annex is based]	Date of inclusion in Annex

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); 59/

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.

59/ 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.

/...