

Satisfaction at Results Achieved

by Marcin Zielinski*

The Ninth Session of the Intergovernmental Negotiating Committee (INC-9) for an International Legally Binding Instrument for the Application of the Prior Informed Consent Procedure (PIC)¹ for Certain Hazardous Chemicals and Pesticides in International Trade took place from 30 September to 4 October 2002 in Bonn, Germany. Over 350 participants representing 120 States, nine intergovernmental and non-governmental organizations, and a number of United Nations agencies attended the session.²

This conference began shortly after the World Summit on Sustainable Development (WSSD) which met from 26 August to 4 September 2002 in Johannesburg, South Africa, and highlighted in its Plan of Implementation, among other issues, the aims in the battle against poisonous chemicals.

Opening plenary

The Chair of the Intergovernmental Negotiating Committee, Maria Celina de Azevedo Rodrigues (Brazil), welcomed delegates and introduced the opening speakers. Gila Altman, Parliamentary State Secretary of the German Ministry for the Environment, Nature Conservation and Nuclear Safety, on behalf of Minister Jürgen Trittin highlighted the importance of Johannesburg's call for ratifying the PIC ("Rotterdam") Convention.

In her speech, FAO Assistant Director-General Louise Fresco also stressed the importance of the message from Johannesburg. She pointed out that the world population's demand for food will rise approximately by 60 per cent over the next thirty years, and for this reason pesticides will increasingly be relied on. It is estimated that pesticides should help ensure a 70 per cent increase in food production. Further, she highlighted the need to educate and train the farmers in poor countries on the safe usage of pesticides and to promote cooperation and coordination at the international and regional levels.

Klaus Töpfer, Executive Director of the United Nations Environment Programme (UNEP), in his statement also stressed the challenge of promoting awareness of the Convention in order to encourage ratification by more Parties and to show people around the world that the Rotterdam Convention will indeed make a difference. He welcomed the fact that within the year 2002 four workshops to help promote the aims of the Convention will or already have taken place. He recommended to take further measures designed at reducing the number of poisoning accidents around the world, including minimisation of pesticide usage, prevention of chemical accidents, and a reduction of abandoned stockpiles. During a press inter-

view, Klaus Töpfer further stated that with the increase of global trade, rich countries also have to take the initiative since poisoned food products from developing countries may also land on their tables. For this reason, developed countries should implement measures to ensure that their domestic businesses should take responsibility for safer food production by not importing poisoned products from developing countries.³

The Mayor of Bonn, Bärbel Dieckmann, invited delegates to consider Bonn as a seat for the future Secretariat.

The main topics for the Committee's consideration in preparing the first Conference of the Parties (COP) were 1) Activities of the secretariat and review of the situation as regards extrabudgetary funds; 2) Implementation of the interim prior informed consent procedure; 3) Preparation for the Conference of the Parties; 4) Issues arising out of the Conference of Plenipotentiaries; 5) Status of signature and ratification of the Convention (UNEP/FAO/PIC/INC.9/2).

The Committee then decided to begin its work in plenary. A separate Working Group on Compliance was established, as well informal contact groups on a number of other issues.

1. Activities of the secretariat and review of the situation as regards extrabudgetary funds

The Committee had before it the note on activities of the Secretariat in the interim period and a review of the situation as regards extrabudgetary funds (UNEP/FAO/PIC/INC.9/4). With regard to implementation of the interim PIC procedure, the Secretariat had received from 1 May 2001 to 30 April 2002 five nominations of additional Designated National Authorities (DNAs) and 36 changes of existing DNAs, 48 notifications of final regulatory action from seven Parties, covering 46 chemicals and pesticides, as well as 145 responses regarding future import from 23 Parties. On the question of implementation and ratification, the most important issue at hand was the preparation of workshops. Two workshops have already taken place: one in Kingston, Jamaica (from 8 to 12 April 2002) and one in Dakar, Senegal (from 10 to 14 June). The next will take place in Teheran, Islamic Republic of Iran (from 19 to 23 October) and in Kiev, Ukraine (from 25 to 29 November).

During the discussion, a number of States stressed the value of workshops. Egypt, Cuba and Panama offered to host such activities, while others, like Switzerland, offered financial support.

Jim Willis, Joint Executive Secretary for the Interim Secretariat of the Rotterdam Convention (UNEP), elabo-

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rated three budgetary documents which contained an updated table of financial pledges and contributions for 2001 and 2002 (UNEP/FAO/PIC/INC.9/CRP.7), model budget format for reporting expenditures and futures budgets (UNEP/FAO/PIC/INC.9/CRP.8) and an explanation of the budget increases between 2003 and 2004 (UNEP/FAO/PIC/INC.9/CRP.9). The increase in expenditure is due mainly to the growing number of workshops that are being organised, the growth in core costs of the Secretariat, investment in office automation and databases (This item is devoted to the establishment and operation of a high-speed data line between Geneva and Rome which is estimated to cost approximately \$82,000(!)), costs of holding INCs and IRCs as well as United Nations Administrative Costs.

The Committee decided to adopt a model budget, with the remark that it can be modified and to take note of the 2004 budget, which will be revisited at the INC-10. It further agreed to establish an open-ended budget working group. The Committee also agreed to request the Executive Director of UNEP, which part of the 13 per cent administrative fee might be used to provide additional support to the Secretariat. The delegates also agreed to extend the financial support for the workshops in the year 2003, which will facilitate implementation and ratification of the Convention.

2. Implementation of the interim PIC procedure

a) Status of Implementation of the interim PIC procedure

Gerold Wyrwal, Interim Secretariat for the Rotterdam Convention, elaborated the report on the status of implementation of the interim PIC procedure (UNEP/FAO/PIC/INC.9.5). He lamented that a great number of participating States did not have the necessary facilities for implementing the interim PIC procedure. After discussion of further proposals to improve the situation, such as technical assistance for developing countries, the delegates decided to take note of the report on this matter.

b) Confirmation of the experts designed for the Interim Chemical Review Committee (ICRC)

The delegates accepted Rob Ward (Canada) as a replacement expert for the North American region of ICRC (UNEP/FAO/PIC/INC.9/11).

c) Presentation of the report of the ICRC

Reiner Arndt, ICRC Chair outlined the report of the ICRC at its third session held at Geneva from 17 to 21 February 2002 (UNEP/FAO/PIC/INC.9.6) and highlighted the problem areas that were under discussion (UNEP/FAO/

PIC/INC.9.7): the inclusion of maleic hydrazide in the interim PIC procedure, the compatibility of current regulatory practices with the notification requirements of the interim PIC procedure, and the prioritisation of work on old notifications of final regulatory actions to ban or severely restrict a chemical.

The delegation from the European Community pointed out that Japan did not reach the standards of the INC-8 decision on maleic hydrazide production. The Japanese delegation replied that the required document will be brought before the ICRC by the end of November 2002. In the ensuing debate to include asbestos in Annex III, the developing countries stressed the importance of receiving the information on alternatives to this substance. The States took note of the document and asked the ICRC to prepare a report on the implementation of the INC-8 decision on maleic hydrazide for the next session (UNEP/FAO/PIC/INC.9/L.1).

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d) Inclusion of chemicals in the interim PIC procedure

The delegates decided, in accordance with information contained in document (UNEP/FAO/PIC/INC.9/10), to include the pesticide monocrotophos in Annex III of the Convention (UNEP/FAO/INC.9/CRP.4).

e) Issues arising out of the third session of the ICRC

The delegates accepted that the definition of a "banned chemical" as stipulated in Article 2 (b) includes chemicals which have been prohibited by "preventive regulatory actions taken to protect human health or the environment from chemicals that may not have been proposed for use in the notifying country (UNEP/FAO/PIC/INC.9/L.1)." ICRC Chair Arndt then considered document UNEP/FAO/PIC/INC.9.9 and stressed delegates the importance of establishing guidelines in two matters: the first dealt with the inclusion of substances not specifically indicated in the notifications of final regulatory actions or proposals for severely hazardous pesticide formulations in the PIC procedure. The second problem pertained to the identification of chemicals to be included in the interim PIC procedure.

Bearing in mind that each year 1,500 new chemicals enter the market, those guidelines would play a significant role in making the Convention more effective. Such aspects were considered in relation to asbestos and four pesticides (DNOC, Granox TBC, Spinox T and monocrotophos). However, delegates were unable to come up with a general formula for handling these cases and thus were forced to draft separate decisions for each chemical substance. On a constructive note, the States decided to add DNOC, Granox TBC, Spinox T and asbestos on the INC-10 to Annex III. ➔



f) The ICRC- extension of mandate or nomination of new members

Issues under consideration were the continuation of the operation of ICRC and the nomination of new members (UNEP/FAO/PIC/INC.9/CRP.12, Add.1-2 and CRP.13). The States decided to continue the work of the experts until the first meeting of the Conference of the Parties and to accept all the candidates of the regional groups. The only condition is that they should submit the required documentation by 15 November 2002.

3. Preparation for the Conference of the Parties

a) Draft financial rules

The document prepared by the Secretariat highlighted the draft financial rules and provisions (UNEP/FAO/PIC/INC.9/13). Erik Larsson of the Interim Secretariat of the Rotterdam Convention stressed the importance of following this since COP-1 will have to adopt the financial regulations. The delegates were split on the issue and asked for more details. This is why they decided to postpone consideration on all budgetary matters until the next session.

b) Settlement of disputes

The delegates had before them a document from the Secretariat (UNEP/FAO/PIC/INC.9.14) which contained the draft rules of arbitration and conciliation agreed at INC-8, and were able to resolve the outstanding issue regarding the extension of the period for designating arbitrators. They adopted and attached the text of the draft rules to the report of the meeting. A footnote was added stating that Japan wished to have elaborated further Article 16 of the draft.

c) Non-compliance

Participants discussed the document (UNEP/FAO/PIC/INC.9/16) prepared by the Secretariat which considered the procedures and institutional mechanisms for handling cases of non-compliance. Delegates conducted their work on this subject mostly in the Working Group setting, which was in fact a continuation from INC-8. The most controversial items of those under discussion included the paragraphs concerning modalities for a prospective committee on compliance and agreeing on the individual steps for ensuring compliance.

The States decided to amend the draft text which was later added as an annex to the final report. The draft is far from complete as delegates were unable to agree whether the prospective compliance committee should be under the purview of the COP or not. Other matters, such as the composition of the committee, the frequency of meetings, as well as general compliance procedures, also remain unresolved.

d) Assignment of specific Harmonised System custom codes

After presentation of the report (UNEP/FAO/PIC/INC.9.17) which elaborated on the possible cooperation between the Secretariat and the World Customs Organi-

sation (WCO), it was agreed to establish a specific Harmonised System of customs codes for chemical substances listed in Annex III. The EC welcomed this development and presented their proposal as contained in UNEP/FAO/PIC/INC.9/CRP.6. Similar to the item above, no decision was taken in this matter, save for taking note of the documents that were presented.

e) Issues related to the discontinuation of the interim PIC procedure

This item and the related document UNEP/FAO/PIC/INC.9.18 was subject to discussion in the plenary as well as in an informal contact group. The delegates agreed to defer the decision about the regional composition to the first COP and to adopt the proposals as contained in UNEP/FAO/PIC/INC.9/CRP.15. This document foresees, among other items, notifications of final regulatory action and proposals for severely hazardous pesticide formulations, various proposals for verifying notifications and the handling of additional chemicals submitted by Participating States.

4. Issues arising out of the Conference of Plenipotentiaries

a) Support for implementation

The Committee decided to request the Secretariat to analyse and compile the results of the regional and subregional workshops and to prepare a report for the next session on the need for technical assistance. The INC also invited the Global Environment Facility (GEF) implementing agencies to deliberate whether there might be appropriate projects relating to GEF focal areas that could have the incremental benefit of strengthening the capacity of implementing the Convention.

b) Dispute settlement and ratification of the Convention

A representative of the Secretariat gave delegates an oral statement on developments in this field. The States took note of this and requested the Secretariat to report on further progress in this area at the next session.

5. Status of signature and ratification of the Convention

The Committee took note of the document UNEP/FAO/PIC/INC.9/INF/1 explaining the status of signature and ratification and called on States, who have not yet done so, to endeavour to accelerate ratification of the Convention. As of 20 September 2002, the Convention had been ratified by 33 States. However, 50 instruments of ratification are necessary for it to enter into force. Delegates decided that INC-10 will be held from 17 to 21 November 2003.

6. The closing plenary

On Friday, 4 October, delegates met for the final session of the meeting. Before the report of the Conference was adopted, the entire document had to be read aloud sentence by sentence and each approved individually (UNEP/FAO/PIC/INC.9/L.1 and L.1/Add.1). In their clos-

ing statements, several delegations expressed their appreciation of the efficient organisation and hospitality of the host government.

7. Summary

There was great satisfaction among the majority of delegates that INC-9 had succeeded in handling the tasks it was entrusted with. The announcements of imminent ratification by close to 30 different States gave rise to the expectation that the Rotterdam Convention might enter into force as early as 2003, just as the WSSD Plan of Implementation called for. On the other hand, a number of other delegates were more cautious in their prediction by stating that the Convention will not enter into the force before 2004. For the time being, the “interim PIC procedure” will continue to be implemented on a voluntary basis. From the perspective of the German government, one of the most interesting questions, namely the seat of the

future Permanent Secretariat, was not touched upon in this session. As in previous meetings, Germany had offered to host the Secretariat to be located in Bonn. There is a competing offer from the Swiss and Italian Governments to continue to host the Secretariat in the same setting as the interim Secretariat which is currently split between Rome and Geneva. This matter will, of course, not be settled until the Convention enters into force and the first Conference of Parties is convened.

Notes

¹ Please see *Environmental Policy and Law* Vol. 29 No. 5 for the last report on PIC.

² This report is based on the official documents, which can be obtained at www.pic.int, on the *Earth Negotiations Bulletin* (www.iisd.ca/linkages/chemical/pic/pic9/) and own observations.

³ Klaus Töpfer: „Das ist eine ethische Unverfrorenheit“, *General-Anzeiger Bonn*, 1.10.2002.

