



CANADIAN ENVIRONMENTAL LAW ASSOCIATION  
*L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT*

**Fifth Conference of the Parties  
to the  
Stockholm Convention of Persistent Organic Pollutants  
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Geneva, Switzerland**

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## Canadian delegation:

Vincenza Galatone, Environment Canada (Head of delegation); Anne Daniels, Environment Canada (Alternate Head of delegation); Greg Filyk, Environment Canada; Robert Asare-Danso, Pest Management Regulatory Agency; Sunny Uppal (Observer); Fe de Leon, Canadian Environmental Law Association (ENGO representative)

### I. General Matters

The Canadian delegation held its first meeting in the morning of April 25, 2011. The head of delegation welcomed everyone and provided overviews of expectations for the first day of COP5. Unlike previous meetings of the COP, the Canadian delegation to COP5 was smaller in size and representation from the NGO sector, which included a representative from the environmental sector. Given the size of the Canadian delegation, the approach taken to monitor and participate in plenary sessions as well as contact groups was different than at previous COPs. The delegation participant ensured that they followed and reported back to the delegation on key issues.

Generally, the Canadian delegation scheduled its meetings during the breakfast hour at the Epsom Hotel to discuss the day's agenda, and identify the issues of priority, outlining the Canadian delegation's approach and position and the progress made by various contact groups. During these daily meetings the ENGO representative provided the delegation members with updates and views from civil society on specific issues expected to be discussed during plenary or contact group work.

Decisions from the COP4 included the listing of nine new POPs under the Stockholm Convention on POPs; establishing a work programme for several POPs to be conducted by the POPs Review Committee (POPRC); identifying regional centers and furthering commitments for synergies among the three chemical and waste conventions: Basel, Rotterdam and Stockholm conventions. The expectations for COP5 were set high. Decisions in COP5 were expected to focus on the possible listing of the chemical, endosulfan; reviewing recommendations by the POPRC on polybrominated diphenyl ethers (PBDEs) and perfluorooctane sulfonate (PFOS) and its salts; reviewing the financial and technical mechanisms; furthering the efforts on synergies; and clarifying budget matters. In addition, establishing a non-compliance mechanism was identified as a key matter for these negotiations by various Parties, including Canada and observers such the International POPs Elimination Network (IPEN).

## II. Outcome and Highlights from COP5

### 1) *Priority Issues*

Given the scope and range of agenda items identified in the provisional agenda of the Fifth Conference of the Parties (COP5), it was necessary as a member of the Canadian delegation preparing for COP5 to identify and focus on specific issues relevant for effective implementation of the Stockholm Convention on POPs. In order to provide input to the Canadian delegation in a timely manner, I had expressed interest in monitoring and providing commentary on the following issues:

- Progress in establishing a non-compliance mechanism;
- Listing of chemicals under Annex A, B and C, with a focus on;
  - Endosulfan, and

- New POPs workplan on polybrominated diphenyl ethers (PBDEs) and Perfluorooctane Sulfonate (PFOS), its salts and its precursors as recommended by the POPs Review Committee, including:
  - BDEs in waste stream, and
  - Risk reduction of PFOS, its salts and PFOSF; and
- Measures to reduce or eliminate releases
  - In wastes (low POPs content),
  - From intentional production and use (exemptions), and
  - From unintentional production (BAT/BEP).

Although this report aims to focus on the above issues, all agenda items and outcomes emerging from COP5 are of significant interest to CELA as well as other environmental and health public interest organizations in Canada. Making progress on all obligations in the Convention will be essential in the effective implementation of the Stockholm Convention. The following report provides brief overviews on selected key COP decisions and issues, maintaining a focus on the above issues and providing brief commentary on additional issues identified below. Finally, highlights from plenary and side events are also provided below, namely:

- Terms of Reference of POPs Review Committee;
- Synergies among the three primary conventions addressing chemicals: Stockholm Convention on POPs, Rotterdam Convention on Prior Informed Consent (PIC) and Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal;
- Reporting (Article 15);
- Implementation Plans (Article 7); and
- Rules of Procedure.

The commentary below is not exhaustive of all the significant obligations addressed under the Stockholm Convention, in particular on technical and financial mechanisms and budget matters. These key items were discussed in contact groups throughout the conference and other delegation members were better positioned to describe the progress on these issues. Nevertheless, it is important to monitor the advancement of these issues as Parties work towards COP6.

## **2) Resources**

Details of the official report and COP5 decisions are now posted on the Stockholm Convention on Persistent Organic Pollutant web site at: <http://chm.pops.int/>.

Additional summary of discussions on COP5 can be obtained by visiting the Earth Negotiations Bulletin, Published by the International Institute for Sustainable Development (IISD), A Reporting Service for Environment and Development Negotiations online at <http://www.iisd.ca/chemical/pops/cop5/>.

### **3) Highlights and Key Decisions on Priority Issues**

#### **a) Appointment of Jim Willis as Executive Secretary**

The plenary welcomed the appointment of Mr. Jim Willis as the Joint Executive Secretary for the three conventions: Basel Convention on Transboundary Movement of Hazardous Waste and Disposal, Rotterdam Convention on Prior Informed Consent, and Stockholm Convention on Persistent Organic Pollutants. His appointment was considered significant in the efforts to create the synergies required between the three conventions for purposes of promoting efficiencies in the administration and management of three conventions. Mr. Willis' speech began by highlighting the 10<sup>th</sup> anniversary of the Stockholm Convention and its importance for global action on POPs and articulated his commitment towards synergies among the three conventions. Many Parties, including the EU and Switzerland, as well as several observers expressed support for an approach that would provide Mr. Willis the flexibility needed to undertake his new position as Joint Executive Secretary.

Although, Mr. Willis has held the position of Joint Executive Secretary for a brief time, his contributions in the contact groups and plenary of COP5 were significant. His opening speech outlined his vision for COP5, described in detail the tasks required to implement the Stockholm Convention given the economic challenges facing the global community and the importance of promoting efficiencies and coordination through synergies among the other key chemicals agreements. His extensive knowledge and experience working on the three conventions, in particular the Stockholm Convention, benefitted the plenary and contact groups focused on preparing decisions on synergy issues and related financial matters throughout the COP. Furthermore, during the final hours of negotiation, Mr. Willis provided key input and legal language to Parties working on the proposed workplan for new POPs in order to address key concerns expressed by the African Group regarding imports of POPs waste in products and to recognize the existing obligations on waste under the Basel Convention. His proposals facilitated further discussions among the Parties that resulted in a COP5 decision on the new POPs workplan.

Mr. Willis' appointment was supported and welcomed by all Parties. The intersessional work tasked to the secretariat will be critical to the successful implementation of the Stockholm Convention, Basel Convention and Rotterdam Convention in the coming years. Parties and stakeholders will monitor and respond to these reports at future meetings of the COP.

#### **b) Election of President of COP5**

Mr. Karel Blaha (Czech Republic) was elected as President of COP5. However the election of the nine vice presidents, which would make up the Bureau, was delayed after the Rules of Procedure were discussed. A proposal by the EU (CRP 3) was made, and supported by the Parties, to elect the President for COP6 at the conclusion of COP5 to allow the President to work with members of the Bureau leading to COP6.

The President of COP5 worked well with the Secretariat and the Bureau to facilitate the plenary throughout the week.

At the closing of COP5, it was announced that Mr. Osvaldo Alvarez (Chile) was elected as COP6 President. The members of the Bureau were announced and it included Anne Daniel as the representative for Canada. Mr. Blaha (Czech Republic), as COP5 President, remains as a member of the Bureau along with members from Jamaica, Nigeria, Morocco, Iran, Qatar, Serbia, and the EU.

### c) Status in establishing a compliance mechanism under Stockholm Convention on POPs

On the first day of the COP5, an item on compliance was raised in plenary. Given the absence of a decision by Parties to adopt a compliance mechanism at COP4, the Secretariat introduced document UNEP/POPs/COP.5/6, the proposed text negotiated from COP4. There were very few interventions by Parties. The President reiterated the need for full political support for the establishment of a compliance mechanism. To assess the value of establishing a contact group to initiate negotiations on a compliance mechanism, a proposal was made to establish a “Friends of the Facilitator” meeting that was chaired by Barry Reville, Australia. While several Parties, including Chile, Brazil, and Lebanon expressed concern that they have not had the opportunity to discuss the proposal of “Friends of the Facilitator,” an informal discussion took place in the evening of Day 1. The EU, Canada, Switzerland, India, Iran, China, Kenya (for African groups), and Costa Rica (for GRULAC) participated in these discussions.

The facilitator, Mr. Reville, reported to the plenary in Day 2. He indicated that substantial issues and concerns were raised with respect to the establishment of compliance. Substantial issues raised by several Parties including China, India and Indonesia focused on the lack of financial and technical assistance available to effectively implement the obligations of the Convention and to remain in compliance. Furthermore, additional work on the consultative process to review the financial mechanism for chemicals is underway and should inform what level of support may be required. However, many Parties including Canada and the EU, and observers such as the US and NGOs (Center for International Environmental Law) expressed their support for a compliance mechanism. It was proposed that the Chair’s text from COP4 could be considered for further discussion.

No further discussions were undertaken to address a compliance mechanism despite further discussions on the item by the President. However, the President indicated that he proposed to draft a decision that would require intersessional work by the Bureau to address major outstanding issues with an aim that a decision on compliance be adopted at COP6. The draft decision on compliance was introduced for consideration by the President on Thursday afternoon. Interventions by several Parties, such as China and Iran, indicated that they could not commit to adopt a compliance mechanism at COP6. Hence the proposed decision was revised to accommodate China and Iran’s interventions and therefore includes the following text: “with a view to resolve the outstanding issues in a way to facilitate possible adoption of a compliance mechanism.” This revision provides soft text in seeking a decision at COP6.

**Additional Commentary:** Article 17 of the Stockholm Convention, states that:

*The Conference of the Parties shall, as soon as practicable, develop and approve procedures and institutional mechanisms for determining non-compliance with the provisions of this Convention and for the treatment of Parties found to be in non-compliance.*<sup>1</sup>

The absence of a COP decision to establish a mechanism to determine non-compliance is adding to the growing concern among Parties and stakeholders that the lack of progress on this obligation will weaken and undermine the objectives of the Convention. Since COP1, there have been significant challenges in gaining support for a compliance mechanism, in particular by developing countries and countries in

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<sup>1</sup> UNEP. Stockholm Convention on Persistent Organic Pollutants. Accessed at [http://www.pops.int/documents/convtext/convtext\\_en.pdf](http://www.pops.int/documents/convtext/convtext_en.pdf).

economic transition. The data obtained for reporting and preparing the National Implementation Plans (NIPs) from Parties suggest that there are current issues of non-compliance. Based on the current information on the POPs website, 76% of the 173 Parties have submitted NIPs, while only almost 45% of Parties submitted reports in accordance to Article 15 of the Convention.

The participation of Canada as a member of the bureau is welcomed. It is expected that members of the bureau will undertake intersessional work on this matter in preparation for discussions at COP6.

## **d) Listing of chemicals under Annex A, B and C**

### **i. Endosulfan**

Based on the successful addition of 9 POPs to the Stockholm Convention at COP4, the proposed listing of endosulfan under the Stockholm Convention was highly anticipated. The Secretariat introduced the agenda item and the relevant documents (UNEP/COP.5/17) while the chair of the Persistent Organic Pollutants Review Committee (POPRC), Mr. Reiner Arndt (Germany), outlined the work completed by the POPRC and the recommendations submitted to COP5. Mr. Reiner noted in his overview that decisions were based on consensus of all Parties present and voting at POPRC-6.

The COP.5/17 document notes:

By its decision POPRC-6/8 the Persistent Organic Pollutants Review Committee decided to recommend to the Conference of the Parties to the Stockholm Convention on Persistent Organic Pollutants that it should consider listing technical endosulfan, its related isomers and endosulfan sulfate in Annex A to the Convention, with specific exemptions, in accordance with paragraph 9 of Article 8 of the Convention. (UNEP/COP.5/17)

The document also included Annex II, which outlines proposed draft text for consideration by the Parties for listing endosulfan, technical endosulfan and endosulfan sulphate.

The President welcomed comments by Parties. Many interventions were made. Parties including EU, Switzerland, Norway, Japan, Mali, Uganda, Kenya, Uruguay, Argentina, Bolivia, Australia, Brazil, Paraguay, and others expressed support for listing endosulfan under Annex A for elimination because many of the countries have banned or made commitments for the phase out of endosulfan. Some Parties requested the listing to annex A with exemptions focused on crop-pest complexes, while others suggested listing to Annex A without exceptions due to the availability of alternatives to endosulfan. A number of observers, including the US, Saudi Arabia, Pesticide Action Network, Inuit Circumpolar Council and intergovernmental government organizations (IGO) such as Food and Agriculture Organization (FAO) expressed support for listing to Annex A. However, interventions by various Parties also highlighted the need to recognize the financial and technical assistance needed for listing of a new POP, the technical assistance for finding alternatives, and questions raised about the voting procedure in the POPRC. Specifically, China stated its concern about the voting procedures followed by the Committee in proposing its recommendations to COP and the threat to the credibility of the POPRC, while India indicated that alternatives are not available to endosulfan and its concerns with the absence of consensus support within the POPRC voting process. A few observers did not support the listing to Annex A, claiming there was insufficient evidence to list endosulfan to Annex A, or because of the financial challenges that would be faced by small farmers due to the lack of affordable alternatives.

Based on these interventions, the President established a contact group that was chaired by Ms. Hala Saif Al-Ease (Qatar). The work of the contact group began on Tuesday April 26<sup>th</sup>, 2011. In the first meeting of the contact group, the Chair, with assistance from the Secretariat, used the draft text presented in Annex II of the document paper (COP.5/17) to prepare a list of potential exemptions required by countries for use of endosulfan. Uganda, China and India identified a list of registered crop-pest complexes that will be required under the exemption. A few Parties indicated concern for the mandate of the contact group; however, the Secretariat's legal advisor confirmed the mandate. There were also questions about the listing to Annex A with specific inclusions of endosulfan sulphate. The evening meeting resulted in a list of potential exemptions sought by specific Parties.

The Contact group met again on the morning of Wednesday April 27<sup>th</sup>. The group was divided into two subgroups: 1) endosulfan, and 2) new POPs. The group on endosulfan focused their discussion on the listing of endosulfan sulphate to Annex A and the assessment of alternatives to endosulfan. This discussion was followed by a drafting group responsible for preparing a draft decision on the listing of endosulfan, as well as outlining the work programme to address alternatives to endosulfan and new POPs. The descriptions of work on new POPs is provided in Section 5.

The draft decision was presented in CRP.19 with initial discussions on Thursday April 28<sup>th</sup>. Substantial interventions were made by a number of Parties including India, China, Kuwait, Norway, EU and the African groups. Issues raised in these interventions included:

- The need for technical and financial assistance to eliminate endosulfan;
- The fact that Parties seeking financial assistance will have access to funding through the GEF with the listing of endosulfan in the Stockholm Convention;
- The need for identification of safe non-POP alternatives; and
- The concern that the listing of endosulfan should not include endosulfan sulphate, which is a metabolite and not intentionally produced.

A decision was not made until further discussions on the above issues were resolved. CRP.19 was adopted with amendments. Specifically, the decision included listing of technical endosulfan and its isomers in Annex A with exemptions for specific crop-pest complexes.

CRP.20/Rev.1 focused the work programme for endosulfan. This work programme, to be undertaken by the COP, focused on developing and implementing alternatives to endosulfan, as well as inviting Parties and Observers to provide technical and financial assistance.

**Additional Commentary:** The listing of endosulfan in Annex A with specific exemptions is a significant achievement under the Convention. It recognizes the value of the work completed by the POPRC and the global commitment to identifying new POPs and outlining action required to address these POPs. There will be great interest in the listing of endosulfan under the Stockholm Convention and the proposal to list endosulfan under the Rotterdam Convention for Prior Informed Consent at its next COP scheduled for June, 2011 in Geneva, Switzerland. As Parties make progress towards an eventual elimination of endosulfan under the Stockholm Convention, the need to seek prior informed consent under the Rotterdam Convention will be essential, particularly for tracking and promoting the “right to know” in countries that may be destinations for this POP.



**ii. New POPs - Recommendations by the POPRC on work programmes for pentabrominated diphenyl ethers (c-PBDEs) and octabrominated diphenyl ethers (c-OBDEs) and risk reductions on use and production of Perfluorooctane Sulfonate (PFOS), its salts and Perfluorooctane sulfonyl fluoride (PFOSF).**

The POPRC completed its work programme on new POPs at its sixth meeting in October 2010, which focused on the elimination of brominated diphenyl ethers (BDEs) from the waste stream (including recycling process) and risk reduction for the use and production of PFOS, its salts and PFOSF. Document UNEP/COP.5/15 was introduced into plenary on Day 2. The Chair of the POPRC, Mr. Reiner Arndt (Germany), briefly outlined the recommendations by the POPRC.

***BDEs in the waste stream***

Generally, Parties acknowledged the work of the POPRC to complete its task and the recommendations submitted to COP5. However, Parties that made interventions in response to the work of the POPRC during plenary did not provide full support of the recommendations by the POPRC. Rather, it was suggested that the some of recommendations were unclear, but noted that they would be taken into consideration. Some of the key interventions focused on changes to the legal text or to approaches to address waste streams containing BDEs.

- a. Japan sought “to take note...” of the recommendations by the POPRC to allow for careful consideration of these recommendations.
- b. Mexico noted a need for tracking import and export of POP containing products.
- c. Switzerland indicated that any decisions related to waste disposal should be undertaken in cooperation with the Basel Convention.
- d. The EU indicated support for additional work on waste streams that would aim to separate BDE articles from the waste stream, but that additional review of recommendations is needed.
- e. Canada demonstrated support for the interventions made by various Parties to take note of the recommendations of the POPRC. It proposed wording changes to the proposed decision text. It had noted that measures to address the products containing PBDEs that eventually enter the waste stream are under development and further research is required. It also noted that a decision should reflect the flexibility needed by countries to meet their national circumstances.
- f. IPEN urged Parties to implement the POPRC recommendations with particular emphasis on recycling of articles containing PBDEs, placing emphasis on the need to protect vulnerable groups such as workers and communities. The aim of the recommendation was to urge Parties to take necessary steps that would result in the phase-out or prohibit the recycling of POP products so that specific exemptions allowing the recycling of POP waste are deleted. The exemption for PBDEs included in its listing to the Convention that permits recycling of articles containing POP-BDEs could result in products containing POPs, thereby creating on-going exposure to humans from these products.

The POPRC Chair noted that its recommendations were developed so countries that are in the position to take action can do so voluntarily.

Norway made an intervention that focused on the elimination of use of PFOS in open application and gave additional consideration to the POPRC recommendations during plenary.

The President established a contact group on Day 2 to address the recommendations of the POPRC and endosulfan. The contact group was divided into two groups (endosulfan and new POPs). A meeting of the contact group on new POPs took place on Wednesday April 27<sup>th</sup>. The focus of this contact group was to review the recommendations of the POPRC and identify additional work to be undertaken by the POPRC prior to COP6. The discussion on BDEs resulted in a work programme aimed to promote the elimination of BDEs in the waste stream and risk reduction on PFOS and was presented as CRP.21 during the plenary on Thursday April 28<sup>th</sup>, 2011.

Kenya, representing 53 countries from the African group, made a proposal in response to the proposed draft decision in CRP.21 to add text that prevents the export of waste materials containing BDEs to developing countries and countries with economies in transition except for the purposes of environmentally sound disposal. This proposal was supported by a number of Parties that included Fiji, Ghana, Mexico, Bolivia, and Norway. Several Parties, including the EU and Canada, requested time to review the proposal by Kenya. Discussion on this proposal resumed on the final day of COP. Several Parties expressed their concern that the proposal will affect recycling operations and has not considered the Basel Convention. Based on this initial discussion, a compromised proposal was presented by Switzerland and supported by the EU and Australia, which would require the Basel Convention to consider the recommendation for exporting waste containing BDEs and report back to COP6. The African groups were not supportive of this proposal, indicating that the proposal would not be sufficient to prevent the export of waste materials containing POPs to developing countries and countries with economies in transition. The plenary discussion continued late into Friday evening. Several Parties expressed their concerns with the African group's modified proposal because some Parties may not be able to meet the obligations under the provision. Furthermore, Parties, such as the EU, indicated that more understanding on the recycling process involving BDEs was needed. Several Parties, including members of JUSSCANZ which would include Australia and Canada, expressed concern with the proposal's unclear terminology, which required clarification. It was also noted by a few Parties that the final decision on this matter should seek close cooperation with the Basel Convention regarding the management of waste from new POPs. The Joint Executive Secretary, Jim Willis, proposed an amended text that would take into account the concerns expressed by the African group and several developed countries and the obligations set out in Article 6 of the Stockholm Convention and the Basel Convention.

The final decision regarding waste materials containing BDEs encouraged Parties not to export such waste to developing countries and countries with economies in transition while also encouraging Parties to take steps towards this goal. The decision (SC 5/5) also contained legal language that acknowledged the obligations under the Basel Convention regarding the management of waste.

**Additional Commentary:** The final decision represents a stronger provision than what was contained in CRP.21 as it includes language that “encourages Parties not to export waste materials containing BDEs.” However, specific exemptions that permit recycling of waste materials containing BDEs under certain conditions will continue in countries in which these operations exist and could result in the ongoing release and exposure of PBDEs into the environment for years to come. IPEN released a report during COP5 titled, *A survey of PBDEs in recycled carpet padding*, that highlighted the BDE contents in carpet padding samples collected in various countries including Canada, United States, Hungary, and

Nepal.<sup>2</sup> The results of this survey showed significant levels of penta-BDEs and octa-BDEs in 88% of the samples collected. The report summarized the concerns regarding on-going waste management disposal methods that include recycling of waste and articles containing BDEs that will result in the on-going release of POPs. One key recommendation in the IPEN report stated:

COP5 should welcome the recommendations of the POPRC on the elimination of brominated diphenyl ethers from the waste stream; request special consideration by developed country Parties to implement the POPRC recommendations; and request the Secretariat to update COP6 on efforts to eliminate brominated diphenyl ethers from the recycling streams as swiftly as possible.<sup>3</sup>

The IPEN study continues to receive wide media coverage.

The IPEN study on carpet padding provides valuable information for Canada in its future work. In 2010, Canada published a revised risk management strategy which proposed additional measures to manage BDEs. As Canada works towards COP6 and takes steps to develop additional management measures on BDEs at the domestic level, it is suggested that further consideration be given to the recommendations contained in the IPEN report. These recommendations strongly support taking action on recommendations made by the members of the POPRC under the Stockholm Convention. As part of Canada's domestic efforts on these new POPs, Canada should assess additional steps that may be needed to address these recommendations. In so doing, such actions would be expected to make significant progress in protecting the most vulnerable populations, including children, developing fetuses, workers, and indigenous communities from exposure to these POPs.

The COP decision on the work programme for BDEs provides unique and timely opportunities for Canada to make progress under the Stockholm Convention and to focus on the recycling operations involving products containing BDEs. The issue of waste disposal of articles containing toxic chemicals is an emerging matter that has not been a subject of comprehensive public policy discussion in Canada. Canada may want to establish an open and transparent process with the provincial and territorial governments with effective stakeholder engagement to develop an action plan with a goal to prohibit recycling operations of articles containing BDEs. This should include a comprehensive assessment and comparison of current regulations and policy programs in order for provinces and territories to be able to identify the barriers and challenges to make progress on eliminating BDEs under the Convention.

Additional sources of information: IPEN Press Release – May 3, 2011 <http://ipen.org/cop5/wp-content/uploads/2011/05/IPEN-BFR-Exports-PR-3-May-2011.pdf>

### ***Risk reduction of PFOS, its salts and PFOSF***

The POPRC outlined a list of recommendations for consideration by the COP with respect to risk reduction for PFOS, its salts and PFOSF. There were several important interventions from Parties, such as Norway, that sought to have comprehensive discussions on the recommendations proposed by the POPRC. Similarly, observers such as IPEN also urged Parties to implement the recommendations submitted by the POPRC on risk reduction. The contact group established to address endosulfan

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<sup>2</sup>IPEN. A survey of PBDEs in recycled carpet padding . Prepared by Joseph DiGangi, PhD and Jitka Strakova, Dioxin, PCBs, and Wastes Working Group. April 2011. Accessed at <http://ipen.org/cop5/wp-content/uploads/2011/04/POPs-in-recycled-carpet-padding-23-April-2011.pdf>

<sup>3</sup> Ibid., p. 7.

included a subgroup that discussed workplans on BDEs and PFOS, its salts and PFOSF. Their decision requests that the POPRC develop terms of reference for a technical paper focused on identification and assessment of available alternatives to PFOS, its salts and PFOSF, in relation to open applications. Recommendations will be developed for consideration at COP6. Furthermore, their decision requests the Secretariat to commission a technical paper for the eighth meeting of the POPRC with recommendations to be submitted for COP6.

**Additional Commentary:** The on-going work to identify and assess alternatives to PFOS, its precursors, its salts and PFOSF is important in advancing efforts towards elimination of PFOS. Canada is well positioned to contribute to the knowledge gathering information on alternatives outlined in the decision with the regulation *Perfluorooctane Sulfonate and its Salts and Certain Other Compounds Regulations* (SOR/2008-178) under CEPA 1999. The exemptions under this regulation are expected to expire in 2013 and this expiration would provide an opportunity to investigate how facilities met their obligations under the regulations. It is uncertain at this time if the government has identified or received any requests to extend the date for specific exemptions under the PFOS Regulations. In the absence of this information, we urge that Environment Canada and Health Canada provide a status report on implementation efforts under this regulation. Furthermore, we urge Canada to take the necessary steps to establish a consultation with stakeholders regarding the implementation of the PFOS regulations, identification of new tasks required under the New POPs workplans for PFOS, its salts and precursors, and development of Canada's NIP on these substances. Consistent with the scope of the PFOS Regulations, Canada should undertake domestic activities that would seek to achieve the removal of specific exemptions requested under Annex A of the Stockholm Convention for PFOS, its salts and PFOSF by COP6.

## **e) Measures to reduce or eliminate releases of POPs**

### **i.. Wastes (low POPs content)**

This agenda item was discussed Tuesday with interventions by a number of Parties and observers. The plenary discussion focused on the management of POP waste. Japan noted that it has been managing POP containing waste, while other Parties, such as Nepal, highlighted the need for further assistance in building capacity for developing countries. EU, Bangladesh and Norway made interventions to note the role of the Basel Convention in achieving the elimination of waste containing POPs. In this work, EU and IPEN noted that a definition for "low POP content" is needed. Finally, Canada and Indonesia noted that the work of the POPRC should be considered in these efforts.

The decision on this matter was discussed on Friday. Several Parties, including EU, Australia, and Canada made interventions on the draft decision. The final decision (UNEP/POPS/COP.5/CRP.29) included several elements that focused on the activities to be proposed to the Basel Convention and the need to find financial support for developing countries addressing waste under the Convention. Key requirements of the decision invite the Basel Convention to:

- Establish the levels of destruction and irreversible transformation of chemicals to ensure POP characteristics are not exhibited;
- Define low POP content;
- Update the technical guidelines; and
- Prepare or update guidelines for environmentally sound management.

**Additional Commentary:** Several interventions focused on the need to update guidelines used to address waste containing POPs. The issue of low POP content has been a matter that has not been adequately addressed under the Stockholm Convention. However, the COP decision aims to provide a definition through collaboration with Basel experts for consideration at COP6. The values assigned to define low POPs content will be critical for assessing the global progress made to achieve the goals of the Stockholm Convention. Establishing low POP content levels may impact recycling processes that include articles containing POPs as well as operations intended for the environmentally sound management of POP waste.

The IPEN report on testing carpet padding for PBDEs may be relevant for this work. The report calls for elimination of PBDEs in articles by demonstrating the presence of POPs in carpet padding collected from different countries. The report highlighted the presence of PBDEs in 88% of the samples tested. Furthermore, half of the samples contained components of penta-BDEs that exceeded the waste limits established by EU regulations. Input and review by Parties and stakeholders on the definition of low POPs established under the Basel Convention are important elements of the work to be completed by COP6. Canada should ensure that a process is developed to engage Canadian stakeholders on these related matters.

## **ii. Releases from intentional production and use (exemptions)**

This agenda item was addressed in the plenary. Specifically, the interventions presented by various Parties discussed the uses and exemptions for PFOS, PBDEs and lindane. While some Parties discussed the importance of achieving the phase-out of these exemptions as soon as possible, there were also interventions that highlighted the need to review the uses and continuation of exemptions on these chemicals at COP6. Some Parties and IGOs, such as the World Health Organization (WHO), highlighted the need to find resources that will support work on lindane, including the sharing of technical advice regarding the issues associated with the elimination of this POP. IPEN's observations focused on the need for a review process on specific exemptions on new POPs, while the Indigenous Peoples Caucus made an observation expressing their concern about the continuing use of lindane.

Further discussions related to PFOS and PBDEs were addressed by the contact group responsible for addressing endosulfan and the work programme on new POPs. This work was completed on Wednesday April 27<sup>th</sup>, 2011. The Parties reviewed and adopted the decision on this matter on Friday April 29<sup>th</sup>, 2011 (UNEP/POPS/COP.5/CRP.23). The decision identified work to be completed by the Secretariat by COP6, including:

- Draft format for reporting on the progress made for eliminating PFOS, its salts and PFOSF by Parties that use or produce these chemicals;
- a process to enable COP to evaluate the continued need for PFOS, its salts and PFOSF, on the acceptable purposes and to report back to COP6 on these issues;
- for Parties that seek exemptions for POPs, to ensure that efforts to find alternatives for these POPS are done as soon as possible; and
- establish a revised register as appropriate.

The final decision includes several tasks focused on lindane such as work to be completed by WHO in the development of a report and the review of requirements for use of this chemical as a pharmaceutical to control head lice and scabies.

**Additional Commentary:** Canada is well positioned to make progress to remove the specific exemptions requested for PFOS and its salts as well as lindane, in the coming years. The PFOS Regulations under CEPA contains exemptions for specific uses and applications that are in effect until 2013. As this deadline is two years away, ENGOs expect that affected sectors have taken efforts to identify and begin implementation of alternative to PFOS and its salts. Therefore, it is strongly urged that the Canadian government will remove the exemptions in the PFOS regulations so that no new applications of PFOS is permitted in Canada. Furthermore, to complement the scope of the PFOS Regulations, additional consultations and considerations should be given to the issues of importing articles containing PFOS, export activities involving PFOS, its salts and precursors, and management of PFOS stockpiles. These elements are not addressed under the PFOS Regulations and will be relevant in completing commitments made under the New POPs workplan on PFOS and to prepare the foundation for the National Implementation Plan for new POPs.

Similarly, the government of Canada noted that the use of lindane will be phased out over the next five years. We encourage further discussions by the government to establish a workplan that seeks to accelerate the phase out of lindane, with particular focus to engage vulnerable communities across Canada, including communities of low income and indigenous groups, for the purpose of highlighting alternatives to lindane for the control of human headlice and scabies.

### **iii) from unintentional production (BAT/BEP)**

This agenda item was introduced on Wednesday April 27<sup>th</sup>, 2011 and the decision adopted on Friday April 29<sup>th</sup>, 2011. The topic of Best Available Techniques (BAT) and Best Environmental Practices (BEP) generated interventions by several Parties. EU questioned the effectiveness of annual meetings of the BAT/BEP expert group and sought changes to a biennial format. Some Parties emphasized the need for technical and financial capacity to utilize the guidance prepared on BAT/BEP while other Parties highlighted the need for guidelines for new POPs. Several observers, including IPEN and the International Council of Chemical Associations, encouraged Parties to include NGO experts in the Expert roster established for the BAT/BEP work.

The final decision for this matter was adopted on Friday April 29, 2011 (UNEP/POPS/COP.5/CRP.140).

**Additional Commentary:** During the discussion on waste, Canada noted that there should be consideration to coordinate BAT/BEP meetings following meetings of the POPRC. This proposal was not further discussed in the plenary sessions but should be pursued for purposes of creating synergies as well as focusing on work to be completed. The issues facing BAT/BEP could benefit those that participate in the POPRC meetings and there is some synergy between these two, particularly with respect to the scope of work to be undertaken under the Basel Convention on common issues.

### **f) Terms of Reference for POPs Review Committee**

The discussion on POPRC activities occurred on Thursday April 28<sup>th</sup>, 2011. The focus of the discussion was on the amendments proposed for the Terms of Reference of the POPRC. Several Parties made interventions. Canada proposed to remove reference to work to be completed by the POPRC on waste recommendations. This intervention was supported by other Parties.

Another POPRC issue was the process of nominations by regions for experts to the committee. Nominations from countries were received and the names of the experts have been submitted to the Secretariat. The start date on the POPRC for these experts is May 2012.

The COP decision (UNEP/POPS/COP.5/CRP.8) was adopted. It adopted the amendments to the Terms of Reference of the POPRC, and confirmed the list of experts to join the POPRC as of May 2012.

## **g) Synergies**

This agenda item was introduced on Tuesday April 26<sup>th</sup>, 2011 and a contact group that worked closely with the budget contact group was established on the same day. The Joint Executive Secretary, Jim Willis, outlined the areas of focus for this item as well as the relevant document.

The discussions on synergies continued to focus on enhancing cooperation and efficiencies between the three conventions on chemicals and waste and continued to discuss joint managerial functions, joint services, synchronization of budget cycles, joint audits and review arrangements.

In the Plenary, many Parties made interventions that upheld the importance of establishing synergies among the three conventions for the sake of creating cooperation and efficiencies. Other Parties, such as Norway and Switzerland, highlighted the need to provide the new Joint Executive Secretary, Jim Willis, flexibility in his mandate to review and restructure the secretariat in efforts to achieve synergies. In the context of synergies, other matters raised by Parties and observers included:

- the need for funding clearinghouse mechanisms among the three conventions (GRULAC);
- the need to provide estimates for the cost of synergies (Mexico); and
- support for a meeting of the ExCOP for 2013 (US).

In the context of other agenda items, the concept of synergies was repeated and highlighted to provide some additional context that this concept may extend beyond administrative matters. Examples of comments made on synergies were provided during discussions on regional centers, wastes and activities of the POPRC (with reference to waste recommendations deleted in the final decision).

The contact group, chaired by Oswaldo Alvarez (Chile), met from Tuesday to Friday April 29<sup>th</sup>, 2011 to discuss the draft decision prepared by the Secretariat. The Joint Executive Secretary, Jim Willis, was active throughout these discussions. The work of the synergies contact group was coordinated with the contact group on budget. The two contact groups met on Thursday April 28<sup>th</sup>, 2011 to discuss joint managerial functions and budgetary implications.

**Additional Commentary:** While the focus of synergies has been mainly on administrative issues among the three conventions –Basel, Rotterdam and Stockholm– progress made in COP5, with focus on the work programme for the new POPs, suggests that significant issues of implementation on specific obligations under the Stockholm Convention may benefit from enhanced synergies that extend beyond administration. For the purposes of protecting the elements and goals of each of the three conventions, synergies discussions should consider those obligations under the Stockholm Convention that may be affected by synergies. For example, proposals to involve the POPRC in the work related to new POPs including efforts to define ‘low POP content’ and other waste matters, that are expected to be addressed by appropriate bodies of the Basel Convention, should be supported. It is with some disappointment that some Parties supported the deletion of waste related recommendations for the POPRC. The process

under the Basel Convention may benefit significantly from expert knowledge on POPs gained through the POPRC process. Furthermore, participation from the POPRC in these processes may also result in reducing potential duplication of efforts.

Another element of the synergies discussion that has yet to gain support is the inclusion of participation by civil society in conducting the outreach and awareness activities that are to be conducted by the Joint Secretariat. Civil society participation in the decision making processes is lacking. Members of civil society can serve many functions in promoting synergies among the conventions. There are many examples under the implementation of the Stockholm Convention that stress the important role that could be played by civil society to deliver outreach and awareness activities. These functions should be carefully considered by the Parties as further synergies are identified.

## **h) Rules of Procedure**

The agenda item on Rules of Procedure with reference to document UNEP/COP.5/3 was presented on Monday April 25<sup>th</sup>, 2011. The Secretariat highlighted the bracketed text under rule 45(1) of the Rules of Procedure, which refers to reaching agreement on substantive matters by a two-thirds majority vote. The President welcomed Parties to comment on the proposal to remove the brackets on the relevant text. A few Parties expressed interest in deleting brackets, while Austria expressed its interest to keep the brackets. The Parties agreed to review this issue at COP6.

In addition, the EU submitted a proposal (CRP 3) to make changes to Rule 22 – the timing of election of COP President. The EU proposal aimed to seek the election of the Bureau members and the COP President at the conclusion of the COP5. The members of the Bureau would serve until the end of COP6. Chile made an intervention. The President instructed a drafting group to review and amend the EU proposal in a draft decision.

The draft decision was adopted by the Parties on Wednesday April 27<sup>th</sup>, 2011.

## **i) Implementation Plans (Article 7)**

The agenda item on Implementation Plans was introduced by the Secretariat on Monday April 25<sup>th</sup>, 2011 citing relevant COP documents. The issues raised from interventions by Parties focused on the need for guidance in developing and implementing National Implementation Plans (NIPs). Some Parties indicated a need to make revisions to the guidelines, while others noted that no further work was necessary at this time. Norway urged Parties that have yet to submit their NIP to do so and to use NIPs to promote the development and cooperation with other conventions. Several developing countries and countries in economic transition, added the need for additional financial and technical assistance for updating and implementing the NIPs, with some focus on the access to funds to update NIPs through the GEF. Clarification from GEF indicated that Parties would have access to such financial assistance. IPEN noted the important role of civil society in the development and implementation of NIPs as well as the need to support this level of involvement.

A COP decision was adopted by the Parties. It focuses on the need for Parties to submit NIPs, encourages Parties to use the guidelines in the development, review and updates to NIPs as well as in any additional commentary to the Secretariat to improve the guidance. The decision invites Parties that were in a position to provide funds to do so.



**Additional Commentary:** There are a number of Parties that have yet to submit their NIPs. With the addition of nine new POPs to the Convention, Parties will be required to update NIPs to outline activities required to meet additional obligations. Developing countries and countries with economies in transition have identified the need for additional technical and financial assistance with respect to their NIPs. The final decision does not fully address the assistance required by Parties or the need to ensure effective participation by civil society in the development or implementation of NIPs. However, funds available to developing countries and countries with economies in transition through the GEF, provides Parties resources to take the necessary actions to implement the NIPs. The NIPs are important indicators for evaluating the effectiveness of this Convention and it should be ensured that efforts are made to establish synergies between NIP implementation and the implementation of other relevant initiatives and conventions, including the SAICM. For Canada, updating its NIP to address the new POPs and review its efforts on the 12 POPs provides an opportunity to evaluate the need for additional programs and regulatory making commitments aimed to achieve the objectives of the Stockholm Convention.

## **j) Side Events**

There were several side events that were are scheduled throughout COP5. I had the opportunity to attend three of the events, namely:

- 1) New POPs, held on Tuesday April 26, 2011 (mid day)
- 2) Indigenous People, scheduled on Wednesday April 27, 2011 (mid day)
- 3) POPs film: Silent Snow scheduled, on Wednesday April 27, 2011(evening)

These side events were very informative and well organized. Speakers at each event demonstrated their expertise and outlined the importance of the work being undertaken under the Stockholm Convention.

The side event on the New POPs provided a good opportunity to better understand the work of the POPRC which has successfully reviewed a number of chemical candidates for addition to the Stockholm Convention, since its inception from COP1. The side event provided a good overview of the process for the consideration of new POPs and the role played by the experts and observers in developing reports and recommendations submitted to the COP for consideration. The work of the POPRC has been critical to the success experienced by the Stockholm Convention in the past several COPs, most notably COP4 with the announcement of a global commitment by the Parties to add 9 new POPs for elimination under the Stockholm Convention and again in COP5, where a decision to add endosulfan was under consideration. This side event included an excellent cast of speakers that provided opportunities to discuss specific POPs such as endosulfan and the role of finding alternatives to POPs. There was adequate time for dialogue between participants and speakers.

The side event by the indigenous people was welcomed. It has become an essential component of the COP to have speakers representing a group of people that represent communities from around the globe that are directly impacted by the presence and use of POPs. The organizers provided samples of country food and a panel of speakers representing various parts of the globe – from the arctic regions (Canada and the US) to Africa to the US, and elsewhere. These speakers articulated their experience and the challenges facing their communities regarding exposure to toxic chemicals as well as the importance of their voice in the decision making process for these chemicals. The participation and events organized by indigenous participants at the COP are important reminders of the role played by stakeholders in the decision making process. While there are provisions outlined in the obligations of the Stockholm Convention to engage stakeholders in aspects of the implementation process, these events seek to

promote enhanced participation in the decision making process, particularly from communities most affected by exposure to POPs. The indigenous people have stated their interest to follow the process and seek opportunities that would foster engagement with Parties on important matters for decision making.

Finally, the film, Silent Snow was an excellent complement to the side events presented above. It was well attended and well received by the audience. The film was beautifully produced with excellent cinematography and narration. It highlighted the perspectives of three distinct communities that addressed the use and impacts of POPs on their specific communities. These three communities highlighted in the film are agricultural villages in India, Costa Rica and an Arctic village, where the narrator lived with her family. The movie was moving and inspirational. The showing of the film was followed by a very interactive exchange between the film director, the sponsors from Safe Planet Projects and the audience.

### **k) Public Engagement**

Since the first intergovernmental negotiating committee (INC) in 1998 that eventually lead to the successful signing of the Stockholm Convention on Persistent Organic Pollutants in 2001, the Canadian delegation to these negotiations has included representation from various stakeholders including the environmental non-governmental organization community. The continuing commitment by the federal government to include ENGO participation on the Canadian delegation is welcomed and encouraged for future meetings. It continues to provide a unique approach to public engagement on these international matters. In addition to any preparatory meetings coordinated by government to consult with stakeholders, ENGO participation on the Canadian delegation provides an opportunity for government and stakeholders to dialogue and seek input on complex matters to be addressed during the negotiation process.

In addition, the NGO participation on the Canadian delegation creates communication opportunities with environmental organizations and networks from the global community. In the past, the environmental organizations have taken advantage of the opportunity to schedule meetings during the COP to meet with members of the Canadian delegations to share their views on specific items addressed in the agenda of the Conference of the Parties. The Canadian delegation met with stakeholders as requests were made throughout the COP and advance notices were given to the head of the Canadian delegation regarding a public release of NGO reports or positions throughout the week.

The engagement and presence of NGOs at COP5 contributed to the successful adoption of key decisions at the COP5. As intersessional work on various obligations of the Stockholm Convention resumes, NGOs commit to monitor and respond to developments and issues relevant to the successful implementation of the Stockholm Convention on POPs.

For Canada, opportunities should be identified in its workplan leading to COP6 of the Stockholm Convention where consultations and dialogue would include members of civil society on issues relevant to the implementation of the Stockholm Convention. Furthermore, it would be encouraged that the workplan for Canada also include early planning in order to schedule a face to face meeting between the Canadian delegation and civil society at the onset of the next COP so that their views and expectations for the COP meeting may be canvassed.

### III. Concluding Comments

The 10<sup>th</sup> Anniversary marking the adoption of the Stockholm Convention on Persistent Organic Pollutants is a significant milestone for the global community in their effort to reduce and eliminate POPs. Since COP1, key decisions have resulted in creating a strong foundation for the achievement of obligations set out in the Stockholm Convention. They include but are not limited to the following:

- pursuing ongoing discussions that focus on exploring options that address financial resources and mechanisms that will continue to support the implementation activities by developing countries and countries with economies in transition,
- developing implementation plans and reporting mechanisms,
- establishing expert groups to develop guidelines for Best Available Techniques and Best Environmental Practices on POP waste and stockpiles,
- establishing and directing the POPs Review Committee to evaluate potential candidate chemicals,
- establishing regional centers and clearinghouses,
- confirming effectiveness evaluation obligations that include the creation of a global monitoring program and review process; and
- promoting cooperation and coordination of synergies among the Basel, Rotterdam and Stockholm conventions.

The work of the POPs Review Committee (POPRC), most notably, resulted in the successful decisions adopted at COP4 to expand the list of POPs under the Stockholm Convention from 12 to 21. The commitment to promote synergies among the three conventions has focused on administrative matters but also the recent announcement that Jim Willis has been appointed as Joint Executive Secretary for the three conventions.

As a result of COP5, the Convention continues to benefit from the effective work of the POPRC with a decision to add endosulfan to Annex A with specific exemptions targeted for elimination and complete work for COP6 that focus on finding and assessing alternatives for endosulfan and PFOS, its salts, and PFOSF, while also continuing its work to complete the evaluation of risk management options for candidate chemicals (HBCD) for consideration at COP6. Jim Willis, in his new post, was given flexibility in his mandate that was supported by the approved budget to promote a synergy focus on various administrative obligations facing the three conventions. The COP5 decisions also included the establishment of seven regional centers for the purposes of information exchange and fostering technical assistance to countries.

In addition, the ongoing commitments to improve guidelines for Best Available Technology and Best Environmental Practices as it relates to management of POP waste, stockpiles and the efforts to prepare and update of Implementation Plans provide evidence that the implementation of the Convention is progressing. Similarly, various aspects of the Convention implementation including monitoring and effectiveness evaluation are on-going and seek to inform if the Stockholm Convention is successful in reducing POPs in the global environment.

However, several decisions at COP5 also highlight significant challenges facing the Parties to the Stockholm Convention. Most notably is the absence of a commitment to establish a non-compliance mechanism. While an obligation under Article 17 stated that the “The Conference of the Parties, shall, as

soon as practicable, develop and approve procedures and institutional mechanisms...for the treatment of Parties found to be in non-compliance,” there has been no progress by the Parties since COP4 to advance this obligations. Several Parties, including Canada, made attempts to propose the use of the text submitted by the Contact Group Chair from COP4 as a basis for discussion but without success. The COP5 decision will allow the newly elected Bureau to undertake intersessional work on non compliance intended to address contentious issues raised by Parties. Related to the matter of the non-compliance mechanism, many interventions by Parties focused on the need for increased financial and technical assistance for the effective implementation of the Stockholm Convention.

While the above highlight did not include commentary on the budget and financial matters, these issues are significant and were followed carefully by key Canadian delegations. Matters related to financial mechanisms, financial and technical resources and budgets are expected to be a focus of the negotiations at COP6. However, the continuing absence of a non-compliance mechanism will have implications for these discussions and will also weaken the ability of the Convention to create accountability by the Parties to their obligations.

The COP decision regarding the work programme on new POPs and the recycling exemption for articles containing BDEs included in the decision listing BDEs to Annex A of the Convention was the focus of considerable dialogues among the Parties. There were efforts by several developed countries to negotiate a text that meets the obligations under the Basel Convention related to the management of waste. The proposal by the African group, lead by Kenya, to seek the prevention of exports of waste and articles containing PBDEs to developing countries and countries with economies in transition except for the purposes of environmentally sound management of waste created strong opposition by several Parties. While the final decision on this matter represented a compromise between the various Parties, the reaction to the decision by Parties and observers was mixed. For example, NGOs expressed disappointment in the decision as Parties didn't seek an opportunity to adopt recommendations proposed by the POPRC as it relates to the management of waste and articles containing BDEs. Furthermore, there was significant concern that the decision may not be in keeping with the obligations outlined under Article 6(1)(d) of the Convention which states:

- (d) Take appropriate measures so that such wastes, including products and articles upon becoming wastes, are:
    - (i) Handled, collected, transported and stored in an environmentally sound manner;
    - (ii) Disposed of in such a way that the persistent organic pollutant content is destroyed or irreversibly transformed so that they do not exhibit the characteristics of persistent organic pollutants or otherwise disposed of in an environmentally sound manner when destruction or irreversible transformation does not represent the environmentally preferable option or the persistent organic pollutant content is low, taking into account international rules, standards, and guidelines, including those that may be developed pursuant to paragraph 2, and relevant global and regional regimes governing the management of hazardous wastes;
    - (iii) Not permitted to be subjected to disposal operations that may lead to recovery, recycling, reclamation, direct reuse or alternative uses of persistent organic pollutants;
- and

(iv) Not transported across international boundaries without taking into account relevant international rules, standards and guidelines<sup>4</sup>

NGOs will seek to engage on these matters as work continues. Specifically, they will continue to propose and support provisions that aim to prevent processes and management practices that result in the continuing use, production or release of POPs in order to protect human health and the environment. This will include the work that is anticipated to be undertaken by the POPRC on HBCD, short chain chlorinated paraffins and new POPs, as well as EU's announcement that it intends to propose new chemicals candidates for review under the Stockholm Convention at COP6.

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<sup>4</sup> Stockholm Convention on Persistent Organic Pollutants (POPs) as amended in 2009 Text and Annexes. Pg. 13. Accessed at <http://chm.pops.int/Convention/tabid/54/Default.aspx>.