



**United Nations Environment
Programme**



UNEP



**Food and Agriculture
Organization of the United
Nations**

Distr.
GENERAL

UNEP/FAO/PIC/INC.3/INF/2
22 May 1997

ORIGINAL: ENGLISH

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

Third session
Geneva, 26-30 May 1997

RELATIONSHIP WITH OTHER INTERNATIONAL AGREEMENTS

Note by the secretariat

INTRODUCTION

1. As indicated in the Secretariat's note of 22 December 1995, on the relationship between existing instruments and an international legally binding instrument for the application of the prior informed consent (PIC) procedure for certain hazardous chemicals and pesticides in international trade hereinafter referred to as a PIC instrument (UNEP/FAO/PIC/INC.1/7), discussed at the first session of the Intergovernmental Negotiating Committee in Brussels in March 1996, there appeared to be three distinct types of relationship with other international conventions that may need to be dealt with by the PIC instrument. These would be, first, the interface with international agreements, such as the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, where the need may be to differentiate between materials covered by the regimes of the respective agreements and in effect to exclude materials covered by such conventions from the scope of the PIC instrument. The second type of relationship would be with international agreements such as the International Labour Organization (ILO) Convention Concerning Safety in the Use of Chemicals at Work and the Convention Concerning the Prevention of Major Industrial Accidents, where the need may be to give assurance that the provisions of the PIC instrument will not affect existing rights and obligations under existing agreements. The third type would be the relationship with regional agreements. While the essence of the present convention is to provide for the application of a single unified PIC procedure to trade in PIC chemicals throughout the world, an application that might be endangered by a multiplicity of regional procedures, the Parties may nevertheless consider it necessary to allow for some such agreements to be made on a regional basis, provided that they are consistent with the purposes and objectives of the PIC instrument or entail restrictions that are more stringent than those under the PIC instrument.

I. RELATIONSHIP WITH THE BASEL CONVENTION ON THE CONTROL OF
TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES AND THEIR DISPOSAL

2. The Basel Convention, in its Article 4, paragraph 1 (c), and Article 6 paragraphs 1 to 3, sets up a system of prior written notification for transboundary movements of hazardous wastes and other wastes. The form of, and procedures for, notifications are also set out in the Convention.

3. In order to avoid duplication and overlapping between the Basel Convention and the PIC instrument, it may be appropriate to find ways of defining the scope and application of the PIC instrument to ensure that the hazardous chemicals and pesticides which it covers do not include hazardous wastes already covered by the Basel Convention.

4. This could be done by defining chemicals for the purpose of the PIC instrument as not covering chemicals, including pesticides, that are defined as hazardous wastes under the Basel Convention, as follows:

"(a) 'Chemicals' means a substance whether by itself or in a mixture or preparation and whether manufactured or obtained from nature and include such substances in the following use-categories: pesticidal, industrial or consumer use, but does not include any living organism or chemicals that are defined or characterized as hazardous wastes within the scope of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal."

5. Alternatively, the interface with the Basel Convention could be covered under Article 3 paragraph 2 (c) dealing with the scope of the Convention, by adding the words after subparagraph (c):

"including hazardous wastes falling within the scope of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal."

6. In this context, it is noted that during the discussions on scope at the last session of the Intergovernmental Negotiating Committee, reference in the text to specific conventions was not supported. In the light of this position, possible alternatives would be to make only a generic reference, excluding chemicals that are covered by other existing international agreements, or to set out the precise definition of those chemicals in the body of the PIC convention, using language based on that currently used in the Basel Convention. The former option, however, may be too imprecise, while the latter might leave open the possibility of a gap or overlap in coverage between the PIC and Basel conventions, if the definition used in the Basel Convention is eventually changed.

II. RELATIONSHIP WITH OTHER EXISTING CONVENTIONS

7. As noted above, it may be appropriate to give assurance in the legally binding instrument as to the continuation of rights and obligations under existing conventions, such as the ILO conventions mentioned above. A possible wording could be:

"This Convention shall not alter the rights and obligations of Parties which arise from other agreements compatible with this Convention and

/...

which do not affect the enjoyment by other Parties of their rights or the performance of their obligations under this Convention."

If considered necessary, such existing conventions and agreements could be listed.

III. RELATIONSHIP WITH REGIONAL AGREEMENTS

8. As noted above, the Parties may also consider it necessary to allow for the Parties to enter into regional or subregional agreements regarding PIC procedures, provided that such agreements and any measures adopted thereunder are consistent with the present legally binding instrument. A possible wording could be as follows:

"The Parties may enter into bilateral, regional or sub-regional agreements providing for PIC procedures to be applicable as between the Parties to those agreements, provided that such agreements are consistent with this Convention. Such agreements may provide for more stringent PIC procedures than the procedure established by this Convention. Copies of any such agreements shall be communicated to the Secretariat."
