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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

Sixth session

Rome, 12-16 July 1999

Items 4-6 of the provisional agenda*

WORK PROGRAMME FOR THE INTERIM PERIOD

Note by the Secretariat

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* UNEP/FAO/PIC/INC.6/1/Rev.1.

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INTRODUCTION

1. The adoption by the Conference of Plenipotentiaries of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, on 10 September 1998, marked the beginning of a process of signature and ratification which will lead to the entry into force of the Convention and the subsequent convening of the first meeting of the Conference of the Parties.
2. The Convention will enter into force on the ninetieth day after the date of deposit of the fiftieth instrument of ratification, acceptance, approval or accession. The first meeting of the Conference of the Parties must be held not later than one year after the date of entry into force of the Convention. In the light of the recent precedents of the United Nations Framework Convention on Climate Change and of the Convention on Biological Diversity, the Rotterdam Convention could enter into force in 2001.
3. In that case, the first meeting of the Conference of the Parties might take place late in 2001 or in 2002. The Committee may wish to take advantage of the interim period to carry out the preparatory work required to ensure both the smooth functioning of the Conference of the Parties, and the implementation of the interim Prior Informed Consent (PIC) procedure in accordance with the resolution on interim arrangements adopted by the Conference of Plenipotentiaries (UNEP/FAO/PIC/CONF/5, annex I, resolution 1).
4. Work in the interim period can thus be divided into the following two main areas:
 - (a) Implementation of the interim PIC procedure;
 - (b) Preparations for the Conference of the Parties.
5. The purpose of the present note is to facilitate discussions at the sixth session of the Committee by providing a brief analysis of the main issues to be addressed during the interim period.

I. IMPLEMENTATION OF THE INTERIM PRIOR INFORMED CONSENT PROCEDURE

A. Definition and provisional adoption of the Prior Informed Consent regions

6. The Secretariat is circulating to the Committee a note on the definition and provisional adoption of the Prior Informed Consent (PIC) regions (UNEP/FAO/PIC/INC.6/5).

B. Establishment of an Interim Chemical Review Committee

7. The Secretariat is also circulating to the Committee a note on the establishment of an Interim Chemical Review Committee (UNEP/FAO/PIC/INC.6/4).

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C. Adoption of decision guidance documents for chemicals already identified

8. The Secretariat is circulating to the Committee a note, together with draft decision guidance documents for six chemicals already identified, for its consideration and possible adoption (UNEP/FAO/PIC/INC.6/6).

D. Inclusion of chemicals in the interim PIC procedure

9. The Conference of Plenipotentiaries further decided that, between the date on which the Convention was opened for signature and the date of its entry into force, the Committee should decide on the inclusion of any additional chemicals under the interim PIC procedure in accordance with the provisions of Articles 5, 6, 7 and 22 of the Convention. It should be noted that, as of the time of the preparation of the present note, no additional chemicals require a decision.

II. PREPARATIONS FOR THE CONFERENCE OF THE PARTIES

10. Before addressing matters of substance, the Conference of the Parties will be required, at its first meeting, to make appropriate decisions on institutional, procedural and legal matters relating to the conduct of its work. Part of this requirement flows from provisions of the Convention which mandate that certain decisions are to be taken at the first meeting. Discussions may also be required with respect to other functions of the Conference of the Parties that need to be addressed at its first meeting or soon thereafter.

11. The following parts of this chapter address matters that will come up at the first meeting of the Conference of the Parties. The Committee will need to discuss how to proceed with these items, as well as with others that it might wish to add to the list, and provide appropriate guidance to the Secretariat.

A. Decisions required at the first meeting of the Conference of the Parties

1. Rules of procedure and financial rules (Article 18) ^{1/}

12. Rules of procedure for the Conference of the Parties and its subsidiary bodies are essential to the functioning of the Conference of the Parties. Thus, it would seem appropriate to initiate discussions on this agenda item at an early stage of the interim period. To facilitate progress on this item, the Secretariat could be invited to prepare a draft, taking into account the rules of procedure of the Intergovernmental Negotiating Committee and drawing on precedents provided by other relevant conventions, to serve as a basis for discussion at the next session of the Committee.

^{1/} All bracketed references to articles are to articles of the Convention.

13. Financial rules govern the mode of financing the activities of the Conference of the Parties and its subsidiary bodies. They may include the sources of funding, such as agreed or voluntary contributions, as well as the scale of such contributions, the process for the review and approval of the programme and budget, and its scope. The Secretariat could be invited to prepare a paper outlining possible options for the financial rules and a draft budget for the first biennium, to serve as a basis for discussion at the next session of the Committee.

2. Secretariat arrangements and financial provisions for the Secretariat (Article 19)

14. The financial provisions for the Secretariat of the Convention (Article 18, paragraph 4) are closely linked to and may well be integrated into the financial rules and the budget for the operation of the Convention. Furthermore, since the Convention provides that the secretariat functions shall be performed jointly by the Executive Director of UNEP and the Director-General of FAO subject to such arrangements as shall be agreed between them and approved by the Conference of the Parties, such arrangements and their financial implications need to be taken into consideration.

3. Definition and adoption of the PIC regions (Article 5)

15. The composition of the PIC regions shall be defined in a decision to be adopted by consensus at the first meeting of the Conference of the Parties. However, as requested in the resolution on interim arrangements, a decision defining the PIC regions would have already been developed and provisionally adopted by the Intergovernmental Negotiating Committee, so the Conference of Parties may wish to formalize this interim decision.

4. Establishment of the Chemical Review Committee (Article 18)

16. The Conference of the Parties shall, at its first meeting, establish the Chemical Review Committee. However, as for the PIC regions referred to above, an Interim Chemical Review Committee will already have been established by the Committee in order to discharge, on an interim basis, the functions entrusted to the Chemical Review Committee. The Conference of the Parties may wish to formalize the existing arrangement.

5. Inclusion of chemicals from the interim PIC procedure (Article 8)

17. The Conference of the Parties shall, at its first meeting, decide on the inclusion in Annex III of the Convention of the chemicals that have been included in the interim PIC procedure during the period between the date on which the Convention was opened for signature (11 September 1998) and the date of its entry into force. The Conference may also wish to approve the decision guidance documents for those chemicals.

6. Discontinuation of the interim PIC procedure (paragraph 13 of the resolution on interim arrangements)

18. The Conference of the Parties shall, at its first meeting, decide that the interim PIC procedure shall cease to operate on a date specified by it. The Committee may wish to consider this issue and may also wish to consider

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issues related to the operation and application of the PIC procedure for States that are not yet party to the Convention at the time of the first meeting of the Conference of the Parties. The Committee may wish to invite the Secretariat to develop an analysis of the issues associated with the discontinuation of the interim PIC procedure for discussion at the next session of the Committee.

B. Functions of the Conference of the Parties in respect of which the Committee may wish to take action

1. Assignment of specific Harmonized System customs codes (Article 13)

19. The Convention provides that the Conference of Parties shall encourage the World Customs Organization to assign specific Harmonized System customs codes to the individual chemicals or groups of chemicals listed in Annex III, as appropriate.

20. The inclusion of commodities in the Harmonized System is a lengthy process. New proposals for inclusion in the third edition of the Harmonized System, due to come into force in January 2002, should have been submitted to the World Customs Organization by the end of December 1997. Proposals of an urgent nature involving items of environmental or social concern submitted after this date could nonetheless be considered, provided they would not require extensive amendments to the Harmonized System or involve lengthy studies.

21. Both the Montreal Protocol on Substances that Deplete the Ozone Layer and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal are working with the World Customs Organization in order to include in the Harmonized System certain types of hazardous wastes and ozone-depleting substances.

22. Considering the relative urgency and the time involved, the Committee may wish to address this issue in the interim period.

2. Adoption of annexes on arbitration and conciliation (Article 20)

23. The Convention provides that Parties shall settle disputes between them on the interpretation or application of the Convention through negotiation or other peaceful means of their own choice. It provides that the Parties may declare in a written instrument whether they recognize compulsory arbitration in accordance with procedures to be adopted by the Conference of the Parties in an annex as soon as practicable.

24. The Convention also provides for a conciliation commission. Additional procedures relating to the conciliation commission shall be included in an annex to be adopted by the Conference of the Parties no later than the second meeting of the Conference.

25. The Committee may wish to consider the need to establish a working group for the purpose of developing such annexes.

C. Other functions of the Conference of the Parties

1. Inclusion of chemicals in Annex III and approval of decision guidance documents (Article 7)

26. One of the main functions of the Conference of the Parties is to decide on the inclusion of chemicals in the PIC procedure and on the approval of the decision guidance documents for those chemicals. Such decisions will be taken by consensus on the basis of a recommendation for inclusion by the Chemical Review Committee and a draft decision guidance document prepared by that same Committee.

2. Removal of chemicals from Annex III and approval of revised decision guidance documents (Article 9)

27. If new information submitted by a Party shows that the listing of a chemical in Annex III is no longer justified, the Chemical Review Committee can decide to recommend to the Conference of the Parties that this chemical be removed from Annex III and to prepare a revised decision guidance document. The Conference of the Parties will then decide whether to remove the chemical from Annex III and whether to approve the revised decision guidance document.

3. Establishment of procedures regarding non-compliance (Article 17)

28. 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 the Convention and for the treatment of Parties found to be in non-compliance.

4. Review and evaluation of implementation (Article 18)

29. Another main function of the Conference of the Parties is to review and evaluate the implementation of the Convention and its institutional arrangements.

5. Establishment of subsidiary bodies (Article 18)

30. The Conference of the Parties shall establish such subsidiary bodies as it considers necessary for the implementation of the Convention.

III. ISSUES ARISING OUT OF THE CONFERENCE OF PLENIPOTENTIARIES

A. Support for implementation

31. During the Conference of Plenipotentiaries, the group of African countries and several other delegations expressed their concern about the technical and financial assistance necessary for the implementation of the Convention, as well as technical and financial assistance during the interim period. It was therefore suggested that, at its next sessions, the Intergovernmental Negotiating Committee should address those questions. The President, in his statement, expressed the view that those issues might be more appropriately dealt with by the Committee prior to the entry into force

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of the Convention and by the Conference of the Parties after the entry into force of the Convention. Some delegates indicated that they would be willing to make financial contributions for the operation of the Secretariat and towards providing technical assistance to promote sustainable chemicals management in the interim period.

32. From 8 to 11 December 1998, the Secretariat convened a regional workshop in Bangkok, hosted by the FAO Regional Office for Asia and the Pacific. The main objectives of the workshop were to help the Designated National Authorities to understand their role and responsibilities in implementing the Convention, thereby helping the countries to implement the Convention in an effective way, and to promote the signature and ratification of the Convention. It also served to assist the overall programme through feedback to the Secretariat and the Committee. The workshop was attended by 28 Designated National Authorities from the region. The Committee may wish to provide guidance to the Secretariat regarding future workshops.

33. The Committee may wish to consider the concerns expressed by the group of African countries and other delegations.

B. Dispute settlement, illicit trafficking and responsibility and liability

34. In a statement made during the Conference of Plenipotentiaries, the group of African countries expressed the view that there was a need to consider issues such as dispute settlement, illicit trafficking and responsibility and liability at an early stage.

35. The President of the Conference of Plenipotentiaries expressed his view that those issues might be more appropriately dealt with by the Committee prior to the entry into force of the Convention and by the Conference of the Parties after the entry into force of the Rotterdam Convention.

36. The Committee may wish to consider the concerns raised in this regard.

C. Location of the Secretariat

37. The Conference of Plenipotentiaries welcomed with appreciation the generous offers to host the Secretariat of the Rotterdam Convention received from Germany and from Italy and Switzerland jointly, but noted that the Convention provides for the Conference of the Parties to approve arrangements agreed between the Director-General of FAO and the Executive Director of UNEP for the joint performance of the functions of the Secretariat of the Convention. It called upon the Director-General of FAO and the Executive Director of UNEP to consider the offers received from Germany and from Italy and Switzerland jointly, as well as any other offers, and to provide a comparative analysis of those offers regarding the physical location of the Secretariat for consideration by the Conference of the Parties at its first meeting, and stated that the preparation of such analyses should be carried out in consultation with the Committee.

38. In order to provide a uniform basis for such an analysis, the Committee may wish to request the Secretariat to compile a tentative list of elements of information which might be requested from interested Governments, for consideration by the Committee at its next session. Such a list could take into consideration the experience of other relevant multilateral environmental agreements.
