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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

Ninth session

Bonn, 30 September-4 October 2002

Item 7 of the provisional agenda*

STATUS OF SIGNATURE AND RATIFICATION OF THE CONVENTION

General steps to be taken in order to deposit instruments of ratification, acceptance, approval or accession

I. BACKGROUND

1. To assist countries to take the necessary steps in order to ratify, accept, approve or accede to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, the following checklist has been developed by the secretariat on the basis of a similar list prepared by the interim secretariat of the Stockholm Convention on Persistent Organic Pollutants in cooperation with the Treaty Section of the Office of Legal Affairs of the United Nations. Although the domestic legislative procedures required for accepting a treaty as legally binding vary from country to country, some general steps that may be applicable to a number of countries are listed below. The practice of the United Nations Secretary-General, the depositary of the Rotterdam Convention, relating to the deposit of the instruments of ratification, acceptance, acceptance or accession is also explained below.

II. STEPS

2. Step 1: Prepare analyses and collect documentation. The lead ministry/authority for the Convention (such as the Designated National Authority or ministry involved in negotiating or implementing the Convention) may wish to prepare a cost-benefit analysis of becoming a Party to the Convention, including

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any legislative or administrative actions that will be necessary for its implementation, and to collect all relevant documentation. This information would be shared with those authorities involved in the steps that follow.

3. Step 2: Contact authority for issuing ratification instruments and identify who would sign. The lead ministry/authority would consult with their government authority responsible for drafting ratification instruments for international agreements. This is normally a legal unit within the Ministry of Foreign Affairs. The responsible authority would identify who, at the national level, would as a rule take a decision on or approve ratification/accession of the Convention. The decision or approval would provide the basis for the issuance of an instrument of ratification, acceptance, approval or accession for the Convention. Models of these instruments are included in annexes I and II below. The instrument must be signed by the head of State, head of Government or Minister for Foreign Affairs.

4. Step 3: Identify and undertake processes that lead to endorsement of ratification/accession. The office or administration of supreme national authority entitled to decide on ratification/ accession would be contacted to identify appropriate steps that would lead to the endorsement of ratification/accession. Assuming that there is the political will to proceed, the supreme national authority would indicate the necessary documentation and decision-making processes that would have to be completed before the instrument can be signed and deposited. In addition to obtaining necessary approvals within the administration of the head of State or head of Government, or parliamentary debate, such processes may include passing legislation, a judiciary review, or evaluation at different state levels.

5. Step 4: Determine if any declarations are needed. As part of the above decision-making process, the Government will need to determine whether there is any need to submit declarations with the instrument of ratification, acceptance, approval or accession. A model instrument of declaration is included in annex III.

6. Step 5: Prepare and sign instrument(s). Following the completion of the domestic legislative procedures, where necessary, for the approval of the Convention, the government office responsible for doing so will prepare the instrument of ratification, acceptance, approval or accession and any instruments of declaration. In the practice of many countries, this responsibility belongs to the Ministry of Foreign Affairs. The authority entitled to do so will then sign the instrument(s).

7. Step 6: Lodge instrument(s) with the depositary. An instrument of ratification, acceptance, approval or accession to the Convention becomes effective only when it is deposited with the Secretary-General of the United Nations at United Nations Headquarters in New York. This is customarily done through the Permanent Mission of the relevant State to the United Nations in New York. The date of deposit is normally recorded as that on which the instrument is received at United Nations Headquarters. States are advised to deliver such instruments to the Treaty Section Office of Legal Affairs of the United Nations directly to ensure that the action is promptly processed (contact information provided below). The individual who delivers the instrument of ratification, acceptance, approval or accession does not require full powers. In addition to delivery by hand, instruments may also be mailed or faxed to the Treaty Section. If a State initially faxes an instrument, it must also provide the original as soon as possible thereafter to the Treaty Section. It is also recommended that, where feasible, States provide courtesy translations into English and/or French of instruments in other languages submitted for deposit with the Secretary-General. This facilitates the prompt processing of the relevant actions.

III. SECRETARY-GENERAL'S PRACTICE RELATING TO THE DEPOSIT OF THE INSTRUMENTS OF RATIFICATION, ACCEPTANCE, ACCEPTANCE, ACCESSION AND THE LIKE

8. Ratification, acceptance, approval, accession and the like are the means by which a State establishes its consent to be bound by a treaty on the international plane (Vienna Convention on the Law of Treaties, 1969, article 2 (b)). The common feature of these treaty actions is that the deposit of the relevant instruments with the depositary, in this case the Secretary-General, binds the State concerned under international law. Therefore, the depositary, prior to effecting the deposit of a treaty action, must be satisfied

that a State's intention, as expressed in its instrument, is clear in this respect. Since the Secretary-General is the depositary of over 500 multilateral conventions, the vast majority of which are open to participation by the international community in general, the Secretary-General has had to develop a uniform practice to determine the validity of such instruments, both to safeguard his integrity and to protect the interests of other States parties.

9. The Secretary-General's practice relating to the deposit of instruments of ratification, acceptance, approval, accession and the like is as follows. Such instruments must:

(a) Emanate from and be signed by the head of State, head of Government or Minister for Foreign Affairs or a person exercising, ad interim, the powers of one of the above authorities;

(b) Clearly identify the treaty concerned and the type of action, consistent with the provisions of the treaty, that is, ratification, acceptance, approval, accession, consent to be bound, etc.;

(c) Contain an unambiguous expression of the will of the Government, acting on behalf of the State, to recognize itself as being bound by the treaty concerned and to undertake faithfully to observe and implement its provisions (a simple reference to a domestic statutory provision will be inadequate);

(d) Indicate the title of the signatory. In the case of a person exercising, ad interim, the powers of the head of State, head of Government or Minister for Foreign Affairs, the title must indicate that the person is exercising such powers ad interim. In this respect, the depositary accepts the following formulations: Acting Head of State, Acting Head of Government, Acting Minister for Foreign Affairs, Head of State ad interim, Head of Government ad interim and Minister for Foreign Affairs ad interim;

(e) Indicate the date and place where the instrument was issued;

(f) If required, specify the scope of application of the instrument in accordance with the provisions of the relevant treaty;

(g) If required, contain all mandatory declarations and notifications in accordance with the provisions of the relevant treaty; and

(h) Where reservations are intended, include such reservations since reservations must be signed by the head of State, head of Government or Minister for Foreign Affairs or a person exercising, ad interim, the powers of one of the those authorities.

10. It is noted that, if these requirements are lacking, the instrument in question is unlikely to be accepted in deposit. Further information on the deposit of binding instruments can be obtained from the publications Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties (ST/LEG/7/Rev.1) and the Treaty Handbook published by the Treaty Section of the Office of Legal Affairs. Both publications are also available in the United Nations Treaty Collection on the Internet at the following address: <http://untreaty.un.org>. The Treaty Handbook also contains model instruments.

IV. CONTACT INFORMATION FOR SUBMISSION OF INSTRUMENTS

11. The Treaty Section of the Office of Legal Affairs of the United Nations Secretariat can be contacted as follows:

Treaty Section
Attention: Bradford Smith
Office of Legal Affairs
United Nations
First Avenue and 42nd Street
New York, NY 10017
United States of America
Tel.: +(1-212) 963-5047
Fax: +(1-212) 963-3693
E-mail: treaty@un.org
Web site: <http://untreaty.un.org>

V. CONTACT INFORMATION FOR QUERIES ON THE ROTTERDAM CONVENTION

12. The interim secretariat of the Rotterdam Convention may be contacted at the following locations:

Interim Secretariat for the Rotterdam Convention
UNEP Chemicals
11-13, Chemin des Anémones
CH – 1219 Châtelaine, Geneva
Switzerland

Tel: (+41 22) 917 8184 or 917 8172
Fax: (+41 22) 797 3460
E-mail: pic@unep.ch

Interim Secretariat for the Rotterdam Convention
Plant Protection Service
Plant Production and Protection Division
Food and Agriculture Organization of the United Nations
Viale delle Terme di Caracalla
00100 Rome
Italy

Tel: (+39 06) 57053441
Fax: (+39 06) 57056347
E-mail: pic@fao.org

Annex I

ROTTERDAM CONVENTION - MODEL INSTRUMENT OF RATIFICATION, ACCEPTANCE OR APPROVAL

(To be signed by the head of State, head of Government or Minister for Foreign Affairs)

[RATIFICATION / ACCEPTANCE / APPROVAL]

WHEREAS the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade was adopted at Rotterdam, the Netherlands, on 10 September 1998,

AND WHEREAS the said convention has been signed on behalf of the Government of [name of State] on [date],

NOW THEREFORE I, [name and title of the head of State, head of Government or Minister for Foreign Affairs] declare that the Government of [name of State], having considered the above-mentioned convention, [ratifies, accepts, approves] the same and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF, I have signed this instrument of [ratification, acceptance, approval] at [place] on [date].

[Signature]

Annex II

ROTTERDAM CONVENTION - MODEL INSTRUMENT OF ACCESSION

(To be signed by the head of State, head of Government or Minister for Foreign Affairs)

ACCESSION

WHEREAS the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade was adopted at Rotterdam, the Netherlands, on 10 September 1998,

NOW THEREFORE I, [name and title of the head of State, head of Government or Minister for Foreign Affairs] declare that the Government of [name of State], having considered the above-mentioned convention, accedes to the same and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF, I have signed this instrument of accession at [place] on [date].

[Signature]

Annex III

ROTTERDAM CONVENTION - MODEL INSTRUMENT OF DECLARATION

(To be signed by the head of State, head of Government or Minister for Foreign Affairs)

DECLARATION

I, [name and title of the head of State, head of Government or Minister for Foreign Affairs],

HEREBY DECLARE that the Government of [name of State] makes the following declaration in relation to article(s) [---] of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, adopted at Rotterdam, the Netherlands, on 10 September 1998:

[Substance of reservation / declaration]

IN WITNESS WHEREOF, I have hereunto set my hand and seal.

Done at [place] on [date]
[Signature and title]
