



For environmental  
occupational health  
safe and responsible use

# **Rotterdam Convention**

## **COP8 MEETING - 2017**



**When anti-asbestos groups are saying that any asbestos exposure is significant and one fibre kills, they are wrong because there is in fact a permissible and an acceptable level of exposure. When they pretend that chrysotile is responsible for mesothelioma they are wrong and not well informed in this regard, zero risk does not exist.**

# **ROTTERDAM CONVENTION**

## **COP8 MEETING - 2017**

# A CALL FOR REASON

**The following are some of the elements that should motivate the competent authorities at the COP8 meeting 2017.**

Taking into account the circumstances and particular requirements of developing countries and countries with economies in transition, in particular the need to strengthen national capabilities and capacities for the management of chemicals, including transfer of technology, providing financial and technical assistance and promoting cooperation among the Parties.

It is distressing to note that over the recent years the principles of assistance and cooperation among the parties have really been put aside in order to focus to the inclusion of the chrysotile fibres in the PIC list for products to be banned or severely restricted from the market. New informations published and new scientific published studies have been subject to no attention from the BRS Secretariat.

For too long, putting chrysotile on the black list has been the target. One knows that there no such thing as “no risk” and efforts should be made to define what is safe. It is wrong to avoid to take this route.

There are many well-known vested interests supporting this unhealthy crusade. It is imperative to remember that in science every important statement needs a foundation, a robust base and good references. There is no place for propaganda and malicious bias...Well selected articles and/or medical literature leaves to a very doubtful objective. All this is not only maleficence but it is a sort of deception that must be denounced. This silence cannot last longer.

# UNFORTUNATELY THE ROTTERDAM CONVENTION TURNED INTO THE “CHRYSOTILE ASBESTOS” CONVENTION\*

## COP6 meeting 2013

\* On April 28, 2013, in Geneva, during the opening of the 2<sup>nd</sup> simultaneous extraordinary meetings of the COPs to the Basel, Rotterdam and Stockholm Conventions, Mr. Jim Willis then Executive Secretary of the Basel, Rotterdam and Stockholm Conventions, made some opening remarks which included a Freudian slip (although no mention to it appeared in the official records): when referring to the agenda of the COP of the Rotterdam Convention he pronounced the words “**chrysotile convention**”.

## The spirit and letter of the Convention have been undermined, or voluntary forgotten

In light of what has been happening with this convention for several years now, it is clear that its spirit and letter have been undermined, or voluntarily forgotten, by certain people who have done everything to turn it into a powerful instrument to be used by the anti-asbestos lobbies to obtain a global ban on the use of chrysotile fibre.

A number of interests have established an effective approach to promoting the replacement of chrysotile often with products whose potential danger or risk to human health in too many cases is not known scientifically.

# STRATEGIES AND TACTICS OF THE ANTI-ASBESTOS LOBBIES

- Proactively claim moral high ground by accusing proponents of forwarding profit objectives against public health priorities and human rights. Accuse all involved stakeholders, including public relations professionals and legal counsel of immoral behaviour
- Engage in a highly emotional campaign without relying necessary on the factual elements
- Fight the fight on emotions not facts, by ignoring scientific evidence, showcasing victims and their families and invoking the caveat that no risk is acceptable risk
- Mobilize effort coming together over a cause perceived to be urgent
- Bring advocates from international ban asbestos movement into the fray
- Make victims and victims' family visible in the debate (instrumentalization)
- Attack opponents' science
- Promote their position as scientific but without offering real scientific published studies
- Get activists from WHO and/or national medical associations antis to speak out
- Mobilize the political opposition
- Refuse any attempt dialogue on science and nowadays experience
- Cooperate with and influence journalists and medias supporting their crusade

# THAT IS HOW THE FIGHT TO END CHRYSOTILE BECAME THE MISSION OF THE CONVENTION

Activists have been working and welcomed far too long within large international lobbies and organizations to ban the natural fibre known as chrysotile. They launched an invasion of sorts and managed to place a suffocating burden on the authorities of the Rotterdam Convention and the BRS Secretariat naively agreed to bear.

After five frustrated attempts in 11 years where consensus has not been reached (2006, 2008, 2011, 2013 and 2015) the 157 Parties of the Rotterdam Convention on the Prior Informed Consent (PIC) will again discuss on the issue during next COP8 to be held in Geneva (April 24 – May 5, 2017).

The Convention has regrettably been turned into the “Chrysotile asbestos Convention” and a big threat about its future exists. The incapacity to face the anti-asbestos groups and vested interests to list chrysotile asbestos cost what may, is a cause of great concern for those who believe in this crucial Convention.

Biased approaches, meeting documents and deceptive initiatives like so called seminars with no minutes or a bad implementation of the International Working Process of listing chemicals decided by COP7 in 2015, are just examples of a saga of mismanagements that shows the lack of concerns or neutrality of the Secretariat. The future and credibility of the Convention are now endangered. The architect of the Rotterdam Convention is flawed and became over the years a one-product oriented.

**Giving once for all the Rotterdam Convention its genuine mission is an urgent task.**

# THE CRUSADE AGAINST CHRYSTOLE ASBESTOS MUST END

The inclusion of chrysotile to the PIC list of the Rotterdam Convention must continue to raise international concerns and would go beyond the principles of the Convention.

An increasing number of scientists and governmental authorities have voiced concerns about the potential harmful health effects of some industrial substitute fibres and products proposed to replace chrysotile.

The reason is that many substitute fibres or products have not been scientifically evaluated and recognized as less harmful to health than chrysotile. Furthermore, in many instances these substitutes are less durable, are more expensive and very often of lower quality.

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Any approach related to the use of products or fibres presenting a potential health risk must be based on the most recent and pertinent scientific studies and relevant or pertinent literature. It is evident that the burden of such proof now rests with the substitute fibres and alternative products offered and found on the market.

The crusade against chrysotile is above all based on the misrepresentation and selective quotations of published evidence, never taking stock of the recent studies showing the vast differences in health risk between chrysotile and the amphiboles.

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Nevertheless numerous and recent scientific studies show that when chrysotile is mined and handled according to appropriate work practices as nowadays, it does not present an unacceptable level of risk of the health of either workers or the general public.

It is a well-known fact that chrysotile is produced and used particularly in the last few decades with sound and thorough knowledge as to its generic characteristics, health related issues, environmental aspects and its responsible and controlled usage.

Furthermore asbestos and chrysotile fibre types have been well researched and the research papers and scientific studies well documented and published. Refer ILO Code of Practice titled “Safe use of Asbestos” (1984) and WHO’s title “Chrysotile Asbestos” (1998) and many other research papers and in-depth studies by eminent scientists.

When such exhaustive and comprehensive data is already available in tomes to all the parties in hard print or via the internet websites, there is no need to include it in the Rotterdam Convention’s PIC procedure. In other words, there should be no additional need for exchange of information as the information is already available with all the parties – governmental and private.

As regards “*shared responsibility*”, it is a fact that the chrysotile asbestos producers and importers and users (manufacturers of asbestos-containing materials) have already been sharing the responsibility in providing warning labels, dust free packing and transportation and handling with all the care and internationally recommended the most effective controls. Hence, it is unnecessary to include chrysotile in PIC list as “shared responsibility” already exists for many decades in the chrysotile world.



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# THE ENDLESS CRUSADE AGAINST CHRYSOTILE

The ICA has always played a fair and constructive role by denouncing those mismanagements and trying to enter into a frank and substantial exchange with the Secretariat's team and for a good reason: as a qualified stakeholder with a specific expertise about chrysotile, the ICA welcomes and considers as a great opportunity the increasing need of transparency, inclusiveness and dialogue in governing the relationship between the international agencies and the non-State actors.

## NO DIALOGUE

### ON KEY PROCEDURAL ISSUES

The activity of the International Chrysotile Association has been particularly intense since the end of 2014 with a letter sent to the BRS Secretariat claiming that actually no formal decision to discuss about chrysotile had been taken by COP6 ahead of COP7. The Secretariat never clarified the issue and came up with a partial interpretation of the procedural rules governing the composition of items of the COP agenda.

The assertion that "*chrysotile will be put automatically on the agenda for years until its listing*" has been often listened from authoritative sources.

## THE SO CALLED SEMINAR

The exchange continued in February 2015 when ICA noticed by coincidence that the Secretariat of the Rotterdam Convention was organizing a technical seminar on chrysotile to be held in Geneva one month later. ICA sent a strong letter asking to be invited using exactly the same wording the Secretariat was using in the invitations to those actors having a "*particular interest in this chemical*".

ICA and other observers were finally invited. 40 people attended this important seminar officially opened by Mr. Payet, Secretary of the Basel, Rotterdam and Stockholm Conventions. A number of presentations, statements and substantial debates around chrysotile took place during the sessions among representatives from 9 Parties (India, Kyrgyzstan, Russian Federation, South Africa, Thailand, Ukraine, Vietnam and Zimbabwe); UN Agencies (WHO/IARC, ILO); NGOs and experts like ICA's.

During the two-days seminar – **financed by the European Union** – important and lively exchanges took place among the participants on crucial questions like the scientific state-of-the-art on chrysotile asbestos, the current situation in the different chrysotile producing and using countries, the policy of controlled use or the interpretation of the official ILO and WHO policy on chrysotile.

Although it was decided that the Secretariat should circulate among the participants for approval the draft minutes, two years later **(at the date of writing this report, April 2017)**

draft minutes still are pending ... and apart from basic information (participants, program and some pictures) nothing has been published in the website of the Rotterdam Convention nor the intentions of the Secretariat are known about the follow-up of the conclusions of this seminar ... the saga continues.

ICA sent a short letter to the Secretariat after this seminar, on April 18, 2015, recalling the issues debate and referring to the minutes. The BRS Secretariat acknowledged receipt via email and answered: *"We look forward to seeing you at the 2015 COPs"*. No more news to date. Two years later, the situation remains the same...

More letters followed after the summer of 2015 on the work modalities of the Intersessional Working Process (IWP) (see below *The International Working Process IWC*) adopted by means of the decision RC-7/5 of the COP during its seventh session to (QUOTE)

*"(a) review the cases in which the Conference of the Parties was unable to reach consensus on the listing of a chemical by identifying the reasons for and against listing and, based on that another information such as the information set out in documents UNEP/FAO/RC/COP.4/12 and UNEP/FAO/RC/COP.4/13, to develop options for improving the effectiveness of the process"*.

According to the importance of this new development, the ICA wanted and asked basically for a workshop in person to properly discuss the issues at stake. A seminar was finally organized in Riga (July 2016, see below *The smokescreen of the Riga seminar*).

In particular, and to facilitate the dialogue ahead of the IWP, ICA sent to the BRS Secretariat in November 2015 a first position paper entitled **"Towards an essential respect of the spirit and the letter of the Rotterdam Convention"** – a position paper of the International Chrysotile Association (ICA). Given the past experience of evasive answers, if any, ICA took also at that occasion the opportunity to request without further delay a physical meeting with the BRS Secretariat to *"clarify the position of ICA on this important matter"*.

The proposal for a physical meeting was accepted by the BRS Secretariat in December 2015 and the meeting took place in Geneva in May 2016. During this meeting the ICA representatives made their points and addressed their grievances regarding the role of the BRS Secretariat. The latter recommended ICA, after having listened to its arguments, to deploy them during the upcoming seminar in Riga, in July 2016, indicating the IWP was the right forum for that purpose.

# RECALL

For more than 11 years now, numerous countries have objected to the Secretariat's proposal to include chrysotile fibres on the Prior Informed Consent procedure and for cause. They have intervened to reaffirm their support to the principles that subtend to the International Rotterdam Convention but are really preoccupied by some aspects implying such important decision in the future. They have repeated COP after COP that they have always supported a controlled-use approach with chrysotile and indicated also their deep concern that the Secretariat of the Convention has not been interested in and is paying no attention to the differentiation to be addressed to different fibre types. Some asbestos fibre types can be used safely (chrysotile) and many others should not be (amphiboles).

They have also indicated their preoccupation with the inclusion of the chrysotile in the PIC list resulting in the support of the use of replacement products and/or fibres that have not always been submitted to serious and strict scientific evaluation pertaining to their dangerousness for human health and to the possible level of risk that they may present.

Countries that have in the past banned the use of asbestos fibres including chrysotile – supported by a strong anti-asbestos lobby with full knowledge of the BRS Secretariat – have refused systematically to share and discuss this responsible proposal over the years.

Of course, the other fibres which would be excluded from the PIC procedure would be protected from the avalanche of commercial complications imposed on chrysotile. This is blatantly discriminatory and unacceptable, because nothing justifies this twisting of generally accepted market rules.

This position is clearly very much more political than scientific. The fact that the chrysotile industry and its workers did their homework, recognized the hazards, minimized the risks and implemented improved health and safety measures in the workplace is altogether a remarkable achievement, and should not through discrimination have all these efforts nullified.

One realizes that this is another diversionary tactic designed to make people forget that the chrysotile industry has been implementing the responsible use policy for more than 20 years. It is worth to repeat that this natural fibre has unique properties and substitute fibres cannot really fulfil the same role. Moreover, it is an inexpensive, natural product, readily available and very durable, and energy friendly, which makes it a lot more affordable for the poorest countries. **Competing interests have concluded that chrysotile must be destroyed because alternative materials cannot really compete.**

**The inclusion has to be seen as an approach that is arbitrarily and unfairly detrimental to the marketing of chrysotile and is also harmful to the poorest populations, for whom – in urgent need of infrastructures to improve their quality of life – chrysotile fibres are a realistic answer.**

In the chrysotile debate, the agenda has too often been tainted with half-truths and some bad faith. It is high time for competent authorities to react and denounce this shame. The simple truth is this: today, chrysotile is used in high-density products in which the fibre is encapsulated in a resin or in a matrix from where fibres cannot be airborne. Chrysotile is no longer flocked or used in friable products. Plus, there are extremely stringent laws and strict regulations in place, which ensure that this is the case.

No one must longer be deceived by strident, inflammatory statements or sensationalist headlines. It is important to set the record straight and make sure that good common sense is allowed to rule. There must be an end to the confusion and fear-mongering. The world now has relevant studies showing that it is a fact today the safe use of chrysotile is really there in place and this is a fact that should be accepted in good faith by all.

# IF CHRYSOTILE WERE IN PIC LIST

## THE INCLUSION OF CHRYSOTILE DOES NOT FULFIL THE OBJECTIVES OF THE ROTTERDAM CONVENTION.

The fundamental question is whether scientific integrity should outweigh competing or political interests. Moreover, to support listing could undo much of the good work done in promoting the safe and responsible use of chrysotile. As well, it could undermine the support that many customers have provided in their efforts to stem the banning of chrysotile.

For serious consideration is the fact that listing of chrysotile is inconsistent with many domestic legislations and policies as chrysotile is neither banned nor severely restricted in many large countries of the world.

Policies should be based on the best available information and science. The importance of science to proper risk assessment is also acknowledged.

Many countries have made clear their position on the listing of chrysotile under the Rotterdam Convention at Conferences of the Parties held in recent years. The Conference of the Parties is the supreme decision-making body of the Rotterdam Convention.

In the Conference of the Parties (COP8) meeting (2017), there is nothing new added to the scientific chrysotile file which would justify the Assembly to change the position taken on five separate occasions. Everything points to

the contrary. Again, a proposal for inclusion of chrysotile must be refused and strongly rejected by the participants from different countries.

The preoccupations and hopes expressed, against the inclusion of chrysotile on the PIC list, by the competent authorities from many governments during the deliberations of precedent COP meetings must be heard again. There is no new scientific evidence justifying a change in the position taken before, so in 2017, for the same reasons, a proposal for inclusion of chrysotile fibres on the PIC list should be refused. No one should allow themselves to be influenced by the anti-propaganda. Science and facts should talk louder than perceptions and false accusations.

At the heart of the matter lie scientific issues: countries producing and using chrysotile are convinced that it has been scientifically demonstrated since many years that safe use is possible, some countries going even further and claiming an absence of adverse health impacts on their population, despite a near-century of utilization. They also point to the absence of information on substitute products that have been much less studied than chrysotile as to their impact on human health.

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- Being on a so called “Black list” means that chrysotile will experience discrimination in international trade up to ban of import. In order to impose a ban de facto, any country could just refuse to import a substance or to demand additional requirements for shipment of a substance (insurance, packing) which in reality will be very difficult to comply with.
  - The matter of concern is decision making process. How they will make decision and what criteria will they use considering whether or not chrysotile shall be imported.
  - Exporters will face declining volume of shipments on international markets because of these restrictions.
  - Customers facing the bureaucratic difficulties with shipments will be tending to switch to substitute fibres.
  - Due to new requirements to transportation, insurance and other logistic expenses, the chrysotile prices will increase which by itself will be one of the factors for customers to switch to substitutes.
  - Chrysotile in PIC list will be another powerful argument for the anti-asbestos lobby to demand a total ban in importing countries.
  - Discrimination measures for chrysotile will also hit importing countries using chrysotile for building sanitary infrastructure.
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The developing nations are perfectly capable of safely managing the import, transformation and use of chrysotile, probably more than any other industrial product including most asbestos replacements fibre and material. While industrial development contributes to the well-being of society, it has also brought numerous potentially hazardous products, used daily, and which are too often far more dangerous than chrysotile. In order to safely benefit from these products, they have introduced standards and developed technologies and work methods, which constitute what is called “controlled-use”.

# THE INTERSESSIONAL WORKING PROCESS (IWP)

The IWP had been properly launched in October 2015 with a background Note by the BRS Secretariat accompanied by a work plan October 2015-November 2016. The communication of October 26, 2015, from the BRS Secretariat clearly indicated that *“the work will ultimately conclude with the submission of a final proposal to the COP for discussion at its eight meeting in 2017”*.

In February 2016, Australia, as lead country of the IWP, sent to all IWP participants a Thought-starter paper.

One month later, ICA recalled by letter to the BRS Secretariat that some feedback was expected on its advanced position paper about the IWP sent months before (need of scientific update of data supporting listing of chemicals, redefining the role of the Chemical Review Committee, delays in providing information to Parties and the indispensable neutrality of the Secretariat). In its letter dated March 21, 2016, ICA also criticized as “not fit for purpose” the Australian Thought-starter paper and brought up some specific points like, for example, *“the validity of previous notifications as the trigger of the decision-making process of listing”*. Finally, ICA enclosed a new document entitled **“Why Australia cannot be neutral as lead Party of the Intersessional Working Group of the Rotterdam Convention”** (March 2016).

After the physical meeting held in Geneva with the BRS Secretariat in May 2016 and to keep the dialogue focused, ICA decided to recap and to send to the Secretariat, for circulation among Parties and observers, the position of the association regarding the IWP and composed by three documents:

- A new document entitled “Thought-starter paper Intersessional work on the process of listing chemicals in Annex III to the Rotterdam Convention – Summary of the position of the International Chrysotile Association (ICA)”
- The March 2016 document entitled “Why Australia cannot be neutral as lead Party of the Intersessional Working Group of the Rotterdam Convention”,
- The November 2015 document entitled “Towards an essential respect of the spirit and the letter of the Rotterdam Convention”

# WHY AUSTRALIA CANNOT BE NEUTRAL AS LEAD PARTY OF THE INTERSESSIONAL WORKING GROUP OF THE ROTTERDAM CONVENTION

## AUSTRALIA AND ASBESTOS

Australia has a long history on asbestos production and use and nowadays is playing a leadership role in a global campaign for the worldwide ban on asbestos mining and manufacturing. This is reflected in its active interventions in the Conferences of the Parties (COP) at the Rotterdam Convention and in a number of initiatives aimed at promoting the elimination of asbestos around the world, including the creation of an Agency of Eradication of asbestos. The most recent fact that exemplifies the intense participation of the country is related to the decision taken by COP7 in Geneva (May 2015) about creating an Intersessional Working Process to explore how the objectives of the Convention could be achieved and particularly, regarding the issue with the inclusion of future chemicals, that Australia is leading.

Taking into account the above-mentioned points, the lack of neutrality of the leadership must be a cause of concern.

Since the beginning, the process of listing chrysotile was flawed: in February 2005, given that the only valid notification (proposal to list chrysotile) came from Australia, the Chemical Review Committee made a disputable manoeuvre aimed at returning to life the previous notifications made by the EC and Chile three years before.

Further on, the decision-making process has been automatically triggered five times, starting 2006, based on the same proposal and the same Decision Guiding Document both “freezed” back in 2005 and ... five times has been rejected by COPs 3, 4, 5, 6 and 7. From the beginning, Australia has strongly supported the anti-asbestos crusade and now is leading the Intersessional Working Process.

## MASSIVE PRESENCE OF AMPHIBOLES

The long history of mining in the country as dramatically caused that Australia has the highest rate of mesothelioma and related diseases in the world. However, it should not be forgotten that most of the asbestos-related diseases have been caused by the exposures to crocidolite (an amphibole called blue asbestos), which is defined as the most hazardous fibre and responsible for more deaths than any other type of asbestos. Australia has been a country that for many years has produced and exported this blue asbestos.

Refusing to recognize the well-established fact that there is an important difference between fibre types in terms of risk, Australia has neglected no efforts over the previous five COPs to have chrysotile asbestos listed on Annex III, with amphiboles. However, the COP takes its decisions by consensus and the inclusion in the list has not been successful. In spite of this and being coherent with its strategy, Australia will certainly continue to work with key groups and stakeholders to support the listing of chrysotile on Annex III at the next COP8 meeting in 2017.

## TRANSPORT OF DANGEROUS GOODS

A wide range of initiatives has been launched by the Australian authorities; for instance, one of the most relevant Australia's actions refers to the Transport Classification of Chrysotile under UN standards. Australia, during the Committee of Transport of Dangerous Goods and Globally Harmonized System of Classification and Labelling of Chemicals coordinated by the UN Secretariat, held in Geneva on November 2011, pushed for the consideration of all types of asbestos under the chapter covering amphiboles UN2212, notwithstanding that it has been scientifically and geologically demonstrated that they are totally different in terms of their chemical composition as well as for their real risk for human health.

Such frustrated operation means that, if it had succeeded, chrysotile would have been assimilated to the amphibole category of asbestos, whose fibres are, incidentally, already in the PIC list, thus it would have facilitated the inclusion of chrysotile in the Annex III of the Convention.

## THE ASBESTOS SAFETY AND ERADICATION AGENCY

Another evidence of the lack of neutrality of Australia is the establishment of the “Asbestos Safety and Eradication Agency”.

The Asbestos Safety and Eradication Agency was established in Australia on July 1<sup>st</sup>, 2013, to be an independent and neutral group aimed to protect work health and safety, but the Agency has inconsistencies so that doubts may arise about its impartiality.

The agency is a statutory authority that enjoys large prerogatives (it has the power to do *“all things that are necessary to be done for or in connection with the performance of its goals”*) and acts under the highest status (it has *“the privileges and immunities of the Crown in right of the Commonwealth”*.)

The Agency is being favoured by public resources to implement asbestos removal, they even proclaim that *“it is important that all levels of government work together and take an active role in the eradication”* (actually, the word “eradication” in its title speaks by itself about the leitmotiv of this agency).

## INCONSISTENCIES

Although the Agency monitors and implements the National Strategic Plan to increase public awareness of the health risks posed by working with asbestos, it seems to make a false start due to the lack of “reliable data” as the Plan itself acknowledges (“there is currently an absence of reliable data in relation to the precise location and condition of asbestos containing materials”). It is hardly understandable how asbestos can be properly eradicated without previously knowing from where and in which conditions it remains.

## THE CURRENT INTERSESSIONAL WORKING GROUP

Finally, the most recent event should inform that Australia will never stop its battle against asbestos including chrysotile is that, as stated above, it is the leading country supporting the Intersessional Working Group of the Rotterdam Convention. Considering that consensus about including chrysotile was not reached at the last COP7, and by reviewing Australia's trajectory over the years, such a designation bears an absence of neutrality and must be a matter of concerns for all.

It is worth to repeat that Australia has led an anti-asbestos war including chrysotile for many years seeking for a global asbestos ban and making no differentiation between the two forms of asbestos: amphiboles and chrysotile.

The Intersessional Working Group must be run in full neutrality. Having a lead Party that promotes a total asbestos ban does not guarantee a minimum of quality and balanced approach in the debates, particularly, when those debates are being conducted mostly by means of electronic communications through Internet.

The Secretariat of the Convention is endeavoured to look after this neutrality and cannot continuously hide behind meaningful excuses. When the credibility of the Convention is at stake due to the Chrysotile issue (as it is often stated by a number of Parties), the Secretariat must go in the right direction, providing a proper climate of discussion and

finding the right checks and balances. The Intersessional Working Process of listing chemicals in Annex III to the Rotterdam Convention Group cannot just be turned into a process absolutely aiming at enclosing chrysotile ahead of its listing in COP8 (2017).

## DISREGARD AND CONTEMPT AS THE ONLY REACTION

**So far, no one single point raised in letters, position papers and other documents by ICA has been addressed properly by the BRS Secretariat.**

Many people (including the BRS Secretariat itself) could think that this relentless effort from ICA to be properly heard under the right conditions is just led by its mission of promoting and defending the controlled use of the chrysotile fibre by thousands of workers involved in this industry. This is true and exact.

No one should forget that ICA is also showing – during years – a fair commitment towards finding options for a sound future of the Rotterdam Convention. And the reaction from the BRS Secretariat has been so far evasive if not purely inexistent.

Regarding the IWP itself, ICA decided finally to follow the advice from the BRS Secretariat and headed for the seminar in Riga in July 2016 to discuss the different issues.

## THE RIGA SEMINAR

A lot of expectations were put in the Riga seminar since the organization in 3 groups and 4 topical clusters allowed a smooth functioning of the discussions.

36 delegates attended this important seminar officially opened by Mr. Payet, Secretary of the Basel, Rotterdam and Stockholm Conventions. Representatives from 23 countries (Australia, Austria, Belgium, Canada, China, Colombia, European Union, Ghana, India, Iran (Islamic Republic of), Japan, Kenya, Latvia, Malaysia, Nigeria, Norway, Paraguay, Poland, Russian Federation, South Africa, Switzerland, United Kingdom of Great Britain and Northern Ireland and Zambia); NGOs and experts like ICA's.

ICA participated actively in the seminar and draw a positive appraisal since the key questions were discussed and everybody could make his own points and raise his concerns. Discussion was rich and complete and the networking activities allowed bilateral debates.

In August 2016, ICA congratulated the BRS Secretariat for the good brief summary received about the Riga seminar and made some comments on the Annex III (Reports of the breakout group discussions on the four topical clusters) and Annex IV (compilations of proposal and options).

Final comments on the Annex IV (the main part of the Riga report) were sent by ICA in December 2016.

**(However another surprise was waiting...)**

# THE AFRICAN AMENDMENT

OCTOBER 2016:

## THE AFRICAN AMENDMENT

As if the entire ‘chrysotile saga’ around the Rotterdam Convention had not provide enough surprises and distress, there comes the African amendment as the ‘cherry on the cake’ of this so called Intersessional Working Process (IWP).

In October 2016, the International Chrysotile Association noticed that the BRS Secretariat sent a communication to the Parties and signatories of the Rotterdam Convention with a proposal from a number of African countries to amend the decision-taking process to list chemicals in Annex III by deleting sub-article 5 of article 22, that is, to eliminate the consensus role as the only way to do it.

**This unprecedented and dubious manoeuvre aims at shaking the essential component of the Convention (consensus) that endangers its future.**

Firstly, **the irresponsible move breaches the letter and spirit of Decision RC-7/5** adopted by the COP in its seventh session, whereby the lead country and the BRS Secretariat were requested to facilitate the IWP to (QUOTE):

*“(a) review the cases in which the Conference of the Parties was unable to reach consensus on the listing of a chemical by identifying the reasons for and against listing and, based on that another information such as the information set out in documents UNEP/FAO/RC/COP.4/12 and UNEP/FAO/RC/COP.4/13, to develop options for improving the effectiveness of the process”.*

It is worth noting that document *UNEP/FAO/RC/COP.4/13* in its Annex contemplated the amendment as one the options to be considered by the IWP.

By avoiding contemplating the option of this amendment in the framework of the IWP, the African countries have disregarded their obligations, especially those who participate in this process and sent representatives to the Riga seminar in July 2016.

Secondly, the unacceptable move cast **serious doubts about the fairness, transparency and, what is worst, respect towards the other Parties and Observers** participating in the IWP.

Finally, this converts the whole process into a **deceptive smokescreen with a waste of energy and resources** (including the taxpayer’s money to support the Riga seminar).

What purpose had the amount of work carried out during the IWP if the main option was for some strategists to be found outside the process?

### THE REACTION FROM ICA

The International Chrysotile Association had a prompt reaction and sent a strong letter to the BRS Secretariat on October 31, 2016, with copy to all participants in IWP. The letter showed surprise, contempt and provided substantial arguments against the proposed amendment.

### THE ANSWER FROM BRS SECRETARIAT:

AGAIN, EXCUSES, PROCEDURES

AND "COURTESY" !!

Two weeks later, the BRS Secretariat, as usual, took refuge behind the sovereignty of the Parties to act following the procedures of the Convention in a letter sent to ICA. They justified that they had communicated the amendment to the IWP members just "*as a courtesy*" (by incidence, the same day ICA wrote its October 31 letter...). It seems that this super twist to the procedure has been treated by the authorities like an anodyne incident.

## DOES LISTING ENTAIL BANNING

### A CHEMICAL?

The International Chrysotile Association has constantly insisted that the Title of Annex II of the Rotterdam Convention is self-explaining: *Criteria for listing banned or severely restricted chemicals in Annex III.*

**Being in a so called “black list” means that products like chrysotile will experience discrimination in international trade up to ban of import. And this possibly be impure violation of other treaties like WTO, as example.**

In its letter dated October 31, 2016, to the BRS Secretariat, the International Chrysotile Association enclosed a copy of a letter (from one of the African government proposing the current amendment), whereby they consider that chrysotile cannot be imported because (QUOTE)

*“asbestos is listed in Annex III as a banned product”.*

In this case, one could discover that Annex III means what it means for Parties: a ban...even before a substance (chrysotile, by incidence!) is included on it...

The idea that listing in Annex III is what it is: a de facto ban, was largely discussed during the Riga seminar. This perception is confirmed by the 28 EU countries by means of an official answer from the European Commission to a Parliamentary Question. Asked by one Member of the European Parliament about the possibility (QUOTE)

*“to instigating a worldwide campaign to combat the continued use of asbestos. Above all in emerging countries”,*

the European Commission referred to the Rotterdam Convention and made its own interpretation in these terms (QUOTE):

*“Its Annex III lists 5 forms of asbestos (...) according to which their imports and exports can be prohibited by Parties”*

## THE AFRICAN AMENDMENT AND THE IWP: HOW TO DESPERATELY LINK BOTH THINGS

At this stage, it is a well-known secret that the Rotterdam Convention has turned into the 'chrysotile asbestos Convention' showing an unusual single-oriented produce movement with no precedent in the international arena.

The negligence of the BRS Secretariat, the number and quality of mismanagements to list chrysotile cost what may, pose big threats to the future of the Rotterdam Convention.

The last straw happened recently with (again) the attempts to desperately link the African amendment to the IWP Parties (and Observers). Then it became necessary to denounce the new biased report aiming at giving the African amendment the appearance that it was a development directly linked to the discussions held in the IWP. ICA asked the Secretariat to delete the 10<sup>th</sup> paragraph of the Note ref. UNEP/FAO/RC/COP8/16 (advance) since it does not reflect the truth.

Unfortunately, the BRS Secretariat reacted on February 17, hiding itself behind the African countries and thus blessing a flagrant breach of Decision RC-7/5 adopted by the COP in its seventh session. ICA reacted on 1<sup>st</sup> March with a short and strong letter making a wake-up call to the Parties ahead of COP8 and requesting *"to return to the folds of the law by the ways established in the Convention"*.

WHAT ABOUT COP8 SECRETARIAT STRATEGY?  
CAN THE DECISION-TAKING TO LIST CHEMICALS  
BE AMENDED BY VOTING?

**Definitively, no.** No way to vote an amendment to change the only rule of the Convention governed exclusively by consensus.

It will not be surprising that the African amendment will be proposed by the Secretariat under item 5(b) (ii) of the agenda next April, 27 (IWP) and nothing prevents that the Presidency or the Parties asked to consider its adoption.

From the outset, and apart from having a debate that appears difficult given the sensitiveness around the consensus rule, a possible decision during COP8 must be discarded since the rule for decision-taking in this case is governed by articles 21 and 22 whereby the consensus is needed of the Parties present at the eight meeting.

The Rotterdam Convention establishes two methods to amend the dispositions of the Convention, in articles 21.3 and 22.5.b).

The first way to amend or modify a provision of the treaty is the **general procedure**, established in article 21.3 of the Rotterdam Convention. This article describes that amendments must be communicated to all Parties at least six months before the COP meeting, and they shall be adopted by consensus. Despite this, in case all efforts are exhausted, there is an exception leaving the possibility to the parties to adopt the amendment by a three-fourths majority vote of the parties present and voting, **but this does not apply to Annex III.**

**The Convention includes a special way to amend Annex III in article 22.5.b), providing that these decisions are to be taken by consensus, due to the special nature of this issue which basically consists in the inclusion of a product in the Annex list.**

Listing only by consensus is an exception (and very specific) in the Rotterdam Convention. **This is the only provision in the treaty where decisions should be adopted by consensus, without considering voting when consensus is not reached.** The reason for this is clearly that dealing with sensitive and relevant topics, such as the inclusion of products in the list of Annex III, it is of great importance that every Member State agrees with these decisions. The legislator's intent with this provision was to make sure that the core mechanism of the convention – listing under Annex II – was solely based on consensus due to its huge importance and aiming also to respect the terms of the WTO regarding trade discrimination.

SPECIFIC VS GENERAL:

THE BRS SECRETARIAT MUST REFUSES TO PAVE

THE WAY FOR SUCH AN EXCEPTIONAL TWIST...

The Secretariat, in the Annex of document UNEP/FAO/RC/COP.4/13, seems wrongly taking for granted that the process to be followed to amend the *specific* decision-making process for listing should be made through the *general* procedure, that is, through art. 21.3.

Interpretation of international treaties should be made following the rules in article 31 of the Vienna Convention, which establishes the general rule that “*a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose*”.

This means that to interpret provisions of a treaty, terms must be considered not only in a literal and regular sense, but also in harmony with the immediate context and with other provisions in the treaty. Following a teleological interpretation, the provisions must be understood in accordance with the object and purpose of the treaty, in other words, the purpose that the Member States pretended to achieve when they celebrated the agreement.

Considering the object and purpose of the Rotterdam Convention, it is crystal clear that the real nature of the treaty is that important issues related to products listed in Annex III, such as the listing procedure, should only be approved by all Member States consensus. Consequently, **an amendment of the decision-making process to include products in Annex III should always be made by consensus. Otherwise, it would be against the letter and the spirit of the Convention and again the most important basic principle of the Convention as adopted by Member States.**

# CONCLUSIONS

## A WORLD IN DISTRESS

In today's often-distressed world, up to 1.5 billion humans do not have access to potable water and 2.5 billion have no access to basic hygienic infrastructure. In South-East Asia and in Africa alone, diarrhea is responsible for no less than 8.5% and 7.7% of deaths (UNDP Report 2006). This translates into more than 8 million people who die each year including approximately 2 million children. This is no longer poverty, rather it is profound misery.

In this world where we use thousands of products and substances, some of which can be dangerous to human health or potentially fatal or carcinogenic, **instead of demanding a categorical ban, the world has learned to use them by following standardized procedures and measures.** Countless such examples exist, including in Europe, where silica is dangerous and carcinogenic yet used daily and safely.

The Resolution on the Strategic Approach and sound management of chemicals and waste beyond 2020 adopted on October, 1<sup>st</sup> 2015 by the International Conference on Chemicals Management (SAICM) during its 4<sup>th</sup> session, is crystal-clear when noting that projections show (QUOTE)

*“an increase in chemical production and use worldwide, continuing 2020, with the largest increases also occurring in developing countries and countries with economies in transition and that all countries will need to continue **strengthening their capacity for governance, knowledge and information-***

*sharing, and risk reduction required to promote the sound management of chemicals and waste beyond 2020”.*

Today, **countries that use chrysotile fibre represent (as previously noted) 2/3's of humanity.** Many of these countries are in various stages of development and can be classified as emerging countries, which are making great efforts to provide their populations with a better quality of life. To do so, they need high quality, durable products which are affordable and well adapted to local conditions, which include the imperative of job creation.

Prior to banning chrysotile and products that contain chrysotile, a much more expedient approach is to support the responsible and safe use of chrysotile with an emphasis on fostering good work practices. Chrysotile fibre and chrysotile-containing products are uniquely appropriate to the housing and infrastructure needs of developing countries because of their safety, durability, quality and ease of use.

Collectively, **it is important to take stock of the responsibility to ensure that the interests of developing or low income countries are taken into account, before interest groups or lobbies.** This means respecting the right of all countries and in particular lower income ones to make sovereign and responsible decisions without harassment for or contempt by wealthy nations and activists.

It is again worth to recall that the unwarranted inclusion of chrysotile on the PIC list is exactly what some are waiting for to speed up the total

ban crusade and at the same time to implicitly **give a strong boost to the marketing of substitute fibres and alternative products which are too often unregulated and rarely scientifically proven safer and less harmful than chrysotile, products that are much more expensive when available.**

This scheme should never be acceptable by any competent authorities of international organizations nor by any countries including those that have banned the use of chrysotile.

#### SCIENCE ABOVE ALL

**The scientifically well recognized and indisputable substantial difference between amphiboles (like crocidolite for example) and chrysotile, both in terms of chemical and mechanical properties, has never been recalled during the debates** in the five COPs lasting 11 years when consensus has not been reached to list chrysotile in Annex III;

The refusal to bring up this simple fact by the authorities of the Convention is a cause of great concern. Ignoring the scientific debate is leading the Rotterdam Convention to the unbelievable current scenario where one single substance (the chrysotile fiber) is monopolizing the debate but what about the future of the whole Convention!

The crusade against chrysotile is based on malicious misrepresentation and selective quotations of published evidences, never taking stock of the recent studies showing the vast differences in health risk between chrysotile and

the amphiboles and the unacceptable level of risk for human health. Risk is always present from variety of causes so what is an acceptable risk?

Numerous and recent scientific studies show that when chrysotile is mined and handled according to appropriate work practices as nowadays, it does not present an unacceptable level of risk of the health of either workers or the general public. This fact is not a myth nowadays.

**In the Conference of the Parties (COP8) meeting (2017), there is nothing new added to the scientific chrysotile file** which would justify the Assembly to change the position taken on five separate occasions. Everything points to the contrary. Again, a proposal for inclusion of chrysotile **must be refused and strongly rejected** by the participants from different countries. There is no use for any country to continue to play this old broken record based on obsolete scientific updated data submitted many years ago by countries having banned all asbestos fibres.

## AVOID MARKET DISCRIMINATION

Lets' recall that ICA is convinced that being on a so called "Black list" which represents Annex III, means that **chrysotile will experience discrimination in international trade up to a ban of import**. In order to impose a ban de facto, any country could just refuse to import a substance or to demand additional requirements for shipment of a substance (insurance, packing) which in reality will be very difficult to comply with. Discrimination measures for chrysotile will also hit importing countries using chrysotile for building sanitary infrastructure. **Another crucial factor to be considered by participants to the conference of the Rotterdam Convention is not to set rich countries against poor countries in its attempt to reduce as much as possible asbestos related diseases as required by the WHO.**

## FAIR APPROACH

It is important to repeat here that **this Convention has regrettably been turned into the "Chrysotile asbestos Convention" and a big threat about its future exists.**

The incapacity for some authorities to face the anti-asbestos groups or vested interests, as it seems to be, is a cause of great concern for those who believe in the need and in the future of the International Rotterdam Convention.

Biased approaches, lobster trapped strategies and deceptive initiatives like so called meetings or seminars with no minutes and/or a bad implementation of the International Working Process of listing chemicals decided by COP7 in 2015, are examples of a long saga

of mismanagements that shows the **definitive encouragement to ease up on a lack of rigor due to some kind of resignation**. The future and credibility of the Convention are now endangered. The architect of the Rotterdam Convention is flawed and became over the years a one-product oriented.

**Giving the Rotterdam Convention its genuine mission is an urgent task.** The recent events and experiences that have been submitted throughout this document, reveal the questionable role that the BRS Secretariat and some Parties, are taking in this issue. Far from being neutral, this organizational body is acting in a way that may unfortunately benefit some member's interests before others.

Actually, the BRS Secretariat is in charge of looking after the Convention's neutrality, and **it cannot hide behind the fact that the Parties are sovereign even they are wrong or any other excuses**. As the permanent body of the Convention, they must lead the member parties to a neutral, fair and respectful environment for the discussion and decision-making in the process of listing chemicals in Annex III. **What is not acceptable is that the whole Convention as lost its route and forgot its official mandate.** Neutrality and impartiality are essential to its success. Against this background, things must be reconducted to a fair approach to prevent the recurrence of these situations in the future.

## BACK TO THE ESSENTIALS

The principle is that the law must be general - and it must apply equally to all – by serving its original mission of coordination at international level de trade of chemicals trade.

In the COP8 agenda has been again included the discussion about the inclusion of chrysotile fibers in the list of Annex III of the Convention. However, there is no need to keep discussing this when it has been made clear, not only in one, but in five occasions, that there is not consensus about it, as numerous Parties do not agree with this inclusion.

Other alternatives are possible, such as freezing this discussion until new real scientific evidences appear and act accordingly. Trying to ban a product based on its hazard qualities and the possible harm it can cause to human health, should not be acceptable. Real science should guide. COP8 meeting should request to go back to the essential meaning, the basic which is **taking into account the circumstances and particular requirements of the developing countries and countries with economy in transition, in particular the need to strengthen national capabilities and capacities for the management of chemicals including transfer of technology and providing financial and technical assistance in promoting among the Parties the best possible living condition for their people.**

In this line, the amendment proposed by the group of African countries is not only a dangerous unprecedented manoeuvre. It is in fact a move going against the spirit and letter of the Convention. It affects the core of the Convention, trying to change the essence of it, which is the listing of chemicals in Annex III.

With this in mind, a new interpretation becomes urgent, as it is clear that all stakeholders have to move back and come to the understanding on what is the real essence of the Rotterdam Convention.







For environmental  
occupational health  
safe and responsible use