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**Food and Agriculture  
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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

Third session

Geneva, 26-30 May 1997

PROVISIONS CONCERNING A SECRETARIAT

Background paper by the secretariat

I. INTRODUCTION

1. The purpose of this paper is to present to the Intergovernmental Negotiating Committee possible modalities for making secretariat arrangements for 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 convention). In order to ensure the early functioning of the secretariat and its accountability to the Parties of a PIC convention, the convention might set forth articles governing secretariat arrangements.

II. POSSIBLE MODALITIES FOR SECRETARIAT ARRANGEMENTS

A. Establishment of a secretariat

2. If the decision is taken by the Intergovernmental Negotiating Committee to set out provisions governing the establishment of a secretariat of a PIC convention, such provisions should precede any others which might concern the secretariat.

B. Functions of a secretariat

3. The functions of a secretariat of a PIC convention might be categorized as follows:

(a) Administrative functions to assist the Parties in implementing the convention, including the organization of relevant meetings and transmission of information; and

(b) Operational functions to carry out some of the activities under the future PIC procedure and other relevant work assigned to it in order to facilitate the implementation of the convention.

Such secretariat functions might be listed and set out in a separate article and/or specifically in various substantive articles.

C. Institutional arrangements

4. In addition to a provision which generally establishes the secretariat of a PIC convention, other provisions might identify institutional arrangements for providing such a secretariat on a permanent and/or interim basis. Considering the importance of utilizing the best available resources, this might include an institutional linkage to the existing international organizations which are competent in matters of secretariat support to a PIC convention. In this regard, due attention should be given to the institutional support for the operation of the voluntary PIC procedure provided jointly the United Nations Environment Programme (UNEP) and the Food and Agriculture Organization of the United Nations (FAO). 1/

5. Without prejudice to the actual language of an article governing a secretariat, possible options for the institutional arrangements for a secretariat to carry out administrative and operational functions might be outlined as follows:

(a) Option 1: Institutional linkage to a single organization. In circumstances where there is a single organization competent in the field covered by a convention or a recognized lead organization in that field, the convention might establish an institutional linkage to such an organization by designating it to carry out the functions of the secretariat. By utilizing the administrative arrangements of a single organization, the establishment of and administrative support to the secretariat would become relatively simple. In addition to its administrative services, the convention might benefit from the expertise of the organization related to the convention. A number of recent global environmental conventions and other agreements set out such provisions concerning secretariat arrangements. The organizations which organized the negotiating process of the respective

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1/ Further details of the institutional arrangements for the operation of the voluntary PIC procedure may be found in document UNEP/FAO/PIC/INC.1/4. See also paragraphs 5.1, 5.2 and 5.3 of the amended London Guidelines for the Exchange of Information on Chemicals in International Trade and paragraph 9.8.2 of Article 9 of the International Code of Conduct on the Distribution and Use of Pesticides.

conventions/agreements and functioned as their interim secretariats have been normally designated as the permanent secretariats.

(b) Option 2: Institutional linkage with two or more organizations.  
In circumstances where there are two or more organizations with distinctive expertise and competence in the field covered by the convention and their complementary participation is essential, the secretariat of a convention should be institutionally linked to such organizations. While the administrative arrangements under this option would be more complicated than the case where the convention secretariat is administered by a single organization, the organizations concerned would be able to enter into the necessary administrative arrangements. This option has the advantage of being able to combine the distinctive expertise of the organizations and utilize it for the implementation of the convention. As mentioned above, the institutional arrangements for the voluntary PIC procedure is a pertinent example. UNEP and FAO jointly operate the voluntary PIC procedure under the amended London Guidelines for the Exchange of Information on Chemicals in international Trade and the International Code of Conduct on the Distribution and Use of Pesticides and share the operational responsibility. Through a memorandum of understanding, UNEP and FAO have established an institutional linkage for the joint operation of the voluntary PIC procedure. In practice, a similar arrangement could be made for carrying out functions of the secretariat of a PIC convention, which would also provide for the continuity of the regime and ensure smooth transition from the voluntary to the mandatory PIC procedure.

(c) Option 3: No institutional linkage to a particular organization.  
When there is no compelling evidence that substantive services can be provided by existing organizations, it might be necessary to establish a new administrative body or to designate a Government or Governments to carry out the functions of a secretariat, without any institutional linkage to existing organization. Such examples are found in several regional conventions (for example, some regional seas conventions, such as the Convention for the Protection of the Marine Environment of the North-East Atlantic). There is, however, no such precedent among the existing global environmental conventions. While this option allows the Parties of the convention to tailor the organizational structure of the secretariat, it would require additional work and resources for preparing and adopting its own administrative structure, procedures and necessary instruments (for example, staff rules and financial regulations).

#### D. Modalities for practical arrangements

6. Experience in the development of existing global environmental conventions shows that there are various modalities available for designating and making interim arrangements for the secretariat of a convention. Such options include the following:

(a) Designation of the secretariat:

(i) The convention might set out provisions governing either:

a. The designation, on permanent basis, of a specific organization or organizations as the secretariat; or

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- b. The designation, only on an interim basis, of an organization(s) as the secretariat for the period between the entry into force and the first meeting of the Conference of the Parties (or until such time as the permanent secretariat is decided) and deferring such decision to the Conference of the Parties (normally at its first meeting); or
- c. Deferring the decision of the designation of the secretariat to the Conference of the Parties (normally to its first meeting);
- (ii) The designation of the secretariat might be made from among those existing international organizations which have expressed their willingness to carry out secretariat functions. Corresponding to the designation of the secretariat by the convention or its Conference of the Parties, a reciprocal approval by the governing body of the organization is required for accepting such designation. In case two or more organizations are designated, concurrent decisions of their governing bodies to accept the designation would be necessary. Practical administrative arrangements may be made between such organizations in accordance with the overall guidance provided by the convention and its Conference of the Parties. If there is no linkage to existing organizations, the decision on the designation of the secretariat might be made either in the convention or by the Conference of the Parties;
- (b) Interim arrangements:
- (i) Since the convention does not function until its entry into force, interim arrangements could cover the period between its adoption and either its entry into force or the first meeting of the Conference of the Parties. Such interim arrangement might best be made in a resolution of the final act adopted at a conference of plenipotentiaries. The convention may or may not set out provisions concerning the interim secretariat arrangements for the period between its entry into force until the first meeting of the Conference of the Parties. Legally speaking, such provisions have little force, because the convention does not operate until its entry into force and permanent arrangements usually are made at the first meeting of the Conference of the Parties;
- (ii) On an interim basis, necessary activities might be carried out by the organization or organizations that have been requested to do so in a resolution of the final act. Such activities could be guided by an inter-governmental process (for example an ad hoc working group with specific mandate) if it is envisaged also in one of the resolutions of the final act;
- (iii) With no interim arrangements, it would be difficult or impossible for the Conference of the Parties to arrange its work, since no substantive preparatory work would be made available to it.

E. Secretariat arrangements for transition from the  
voluntary to the mandatory PIC procedure

7. Irrespective of decisions on interim and permanent secretariat arrangements for a PIC convention, the voluntary PIC procedure will continuously be operated by UNEP and FAO, unless their governing bodies decide otherwise. If many countries participating in the current voluntary PIC procedure have not ratified or acceded to a PIC convention before the date of its entry into force and as long as such circumstances prevail, it may be possible that the voluntary PIC procedure is operated in parallel to the mandatory procedure under a PIC convention, with amendments to the voluntary procedure, as appropriate, in order to harmonize the two procedures. Necessary transitional arrangements may be set out in a resolution of the conference of plenipotentiaries, together with interim secretariat arrangements. If UNEP and FAO are designated jointly to carry out secretariat functions for the convention, the two organizations may make necessary arrangements to ensure smooth transition from the voluntary to mandatory PIC procedure, subject to approval of their governing bodies.

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