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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

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Item 4 (b) of the provisional agenda*

IMPLEMENTATION OF THE INTERIM PRIOR INFORMED CONSENT PROCEDURE:
ESTABLISHMENT OF AN INTERIM CHEMICAL REVIEW COMMITTEE

Note by the secretariat

INTRODUCTION

1. In its resolution on interim arrangements, 1/ the Conference of Plenipotentiaries invited the Intergovernmental Negotiating Committee to establish an interim subsidiary body (the "Interim Chemical Review Committee") to discharge the functions entrusted to the Chemical Review Committee to be established by the Conference of Parties at its first meeting, under Article 18, paragraph 6, of the Convention.

2. The present note examines briefly the main issues arising with respect to the establishment of the interim chemical review committee. They flow mainly from paragraph 4 of the resolution on interim arrangements and from article 18 of the Convention. An annotated outline for a decision is provided in the annex to the present note.

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

1/ Contained in annex I of the report of the Conference of Plenipotentiaries on the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO/PIC/CONF/5).

3. Since the existence of an interim chemical review committee is essential to the functioning of the interim prior informed consent (PIC) procedure, the Intergovernmental Negotiating Committee may wish to consider the establishment of this committee as a priority issue at the current session.

I. FUNCTIONS OF THE INTERIM CHEMICAL REVIEW COMMITTEE

4. In its resolution on interim arrangements, the Conference of Plenipotentiaries invited the Committee to establish an interim subsidiary body to discharge the functions entrusted to the subsidiary body to be established under Article 18, paragraph 6, of the Convention.

5. The functions entrusted by the Convention to the Chemical Review Committee are:

(a) To make recommendations on the inclusion of banned or severely restricted chemicals (Article 5, paragraph 6):

"The Chemical Review Committee shall review the information provided in such notifications and, in accordance with the criteria set out in Annex II, recommend to the Conference of the Parties whether the chemical in question should be made subject to the Prior Informed Consent Procedure and, accordingly, be listed in Annex III";

(b) To make recommendations on the inclusion of severely hazardous pesticide formulations (Article 6, paragraph 5):

"The Chemical Review Committee shall review the information provided in the proposal and the additional information collected and, in accordance with the criteria set out in part 3 of Annex IV, recommend to the Conference of the Parties whether the severely hazardous pesticide formulation in question should be made subject to the Prior Informed Consent Procedure and, accordingly, be listed in Annex III";

(c) To prepare draft decision guidance documents for chemicals recommended for inclusion in Annex III (Article 7, paragraph 1):

"For each chemical that the Chemical Review Committee has decided to recommend for listing in Annex III, it shall prepare a draft decision guidance document. The decision guidance document should, at a minimum, be based on the information specified in Annex I, or, as the case may be, Annex IV, and include information on uses of the chemical in a category other than the category for which the final regulatory action applies";

(d) To make recommendations on the removal of chemicals from Annex III and the revision of decision guidance documents (Article 9, paragraph 2):

"The Chemical Review Committee shall review the information it receives under paragraph 1. For each chemical that the Chemical Review Committee decides, in accordance with the relevant criteria in Annex II or, as the case may be, Annex IV, to recommend for removal from Annex III, it shall prepare a revised draft decision guidance document."

II. ESTABLISHING THE INTERIM CHEMICAL REVIEW COMMITTEE

6. Article 18, paragraph 6, of the Convention provides the following guidance to the Conference of Parties with respect to the establishment of the Chemical Review Committee once the Convention enters into force, and the Intergovernmental Negotiating Committee may wish to apply these provisions regarding membership, composition and consensus for the Chemical Review Committee, when establishing the Interim Chemical Review Committee:

"(a) The members of the Chemical Review Committee shall be appointed by the Conference of the Parties. Membership of the Committee shall consist of a limited number of government-designated experts in chemicals management. The members of the Committee shall be appointed on the basis of equitable geographical distribution, including ensuring a balance between developed and developing Parties;

"(b) The Conference of the Parties shall decide on the terms of reference, organization and operation of the Committee;

"(c) The Committee shall make every effort to make its recommendations by consensus. If all efforts at consensus have been exhausted, and no consensus reached, such recommendation shall as a last resort be adopted by a two-thirds majority vote of the members present and voting."

7. Rule 47, paragraph 3, of the rules of procedure for the meetings of the Intergovernmental Negotiating Committee (UNEP/FAO/PIC/INC.1/10, annex I) provides that the rules of procedure also apply to subsidiary organs, subject to such modifications as the Parties may decide upon in the light of proposals by the subsidiary organ concerned.

III. SUGGESTED ACTION BY THE INTERGOVERNMENTAL NEGOTIATING COMMITTEE

8. The Intergovernmental Negotiating Committee may wish, at its sixth session, to establish an interim subsidiary body to discharge the functions entrusted to the subsidiary body to be established under article 18, paragraph 6, of the Convention. An annotated outline for a decision that, together with the rules of procedure, establishes the terms of reference, organization and operation of the interim subsidiary body is provided in the annex to the present note.

AnnexANNOTATED OUTLINE FOR A DECISION ESTABLISHING AN
INTERIM CHEMICAL REVIEW COMMITTEEThe Intergovernmental Negotiating Committee,

Recalling the resolution on interim arrangements adopted by the Conference of Plenipotentiaries on the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, which, in its paragraph 4, invited the Committee to establish an interim subsidiary body to discharge the functions entrusted to the subsidiary body to be established under Article 18, paragraph 6, of the Convention,

Recalling also Article 18, paragraph 6, of the Convention, which provides that the Conference of the Parties shall, at its first meeting, establish a subsidiary body, to be called the Chemical Review Committee, for the purposes of performing the functions assigned to that Committee by this Convention,

1. Decides to establish a subsidiary body, 2/ to be called the Interim Chemical Review Committee, composed of [nn] 3/ members appointed by the Intergovernmental Negotiating Committee on the following basis: 4/ [...]

2. Decides that the interim Chemical Review Committee shall meet for the first time in [...] and every [year] thereafter, approximately six months before each session of the Intergovernmental Negotiating Committee, and that the languages of the meetings shall be [English, French and Spanish]; 5/

2/ Rule 47 of the rules of procedure for meetings of the Intergovernmental Negotiating Committee provides for the Parties to establish subsidiary organs. It also provides that the rules of procedure of subsidiary organs shall be those of the meetings of the Committee, as appropriate, subject to such modifications as the Parties may decide upon in the light of proposals of the subsidiary organs concerned.

3/ Article 18, paragraph 6 (a), provides inter alia, that the Chemical Review Committee shall consist of a "limited number of government-designated experts in chemicals management".

4/ Article 18, paragraph 6 (a), provides, inter alia, that the Chemical Review members of the Committee shall be appointed on the basis of equitable geographical distribution, including ensuring a balance between developed and developing Parties.

5/ The estimated operating costs of the Interim Chemical Review Committee are based on its holding one meeting a year, using three working languages.

/...

3. Decides 6/ that the Interim Chemical Review Committee shall make every effort to make its recommendations by consensus. If all efforts at consensus have been exhausted, and no consensus reached, such recommendation shall as a last resort be adopted by a two-thirds majority vote of the members present and voting;

4. Decides that the Interim Chemical Review Committee, consistent with the provisions of the Convention, particularly its Articles 5, 6, 7 and 9, shall have the following main functions and responsibilities: 7/

(a) Making recommendations on the inclusion of banned and severely restricted chemicals: reviewing the information provided in notifications of final regulatory actions and, in accordance with the criteria set out in Annex II of the Convention, recommending to the Intergovernmental Negotiating Committee 8/ whether the chemical in question should be made subject to the interim PIC procedure; 9/

(b) Making recommendations on the inclusion of severely hazardous pesticide formulations: reviewing the information provided in proposals for the inclusion of a severely hazardous pesticide formulation in the interim PIC procedure and, in accordance with the criteria set out in part 3 of Annex IV of the Convention, recommending to the Intergovernmental Negotiating Committee whether the chemical in question should be made subject to the interim PIC procedure;

(c) Preparing draft decision guidance documents: for each chemical that the Interim Chemical Review Committee has decided to recommend to be made subject to the interim PIC procedure, preparing a draft decision guidance document. The decision guidance document should, as a minimum, be based on the information specified in Annex I of the Convention or, as the case may be, Annex IV, and include information on uses of the chemical in a category other than the category for which the final regulatory action applies;

6/ The text in this paragraph is the same as the relevant provision on consensus in paragraph 6 (c) of Article 18 of the Convention.

7/ The responsibilities described in this part of the decisions are the same as those which the Convention entrusts to the Chemical Review Committee, changed as necessary to reflect the procedure during the interim period.

8/ In its resolution on interim arrangements, the Conference of Plenipotentiaries decided that the Intergovernmental Negotiating Committee shall decide, between the date on which the Convention is opened for signature and the date of its entry into force, 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.

9/ In the resolution on interim arrangements, the Conference of Plenipotentiaries decided to change the voluntary PIC procedure to bring it into line with the procedure established by the Convention. The voluntary PIC procedure with these changes is hereinafter referred to as the "interim PIC procedure".

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(d) Making recommendations on the removal of chemicals from the interim PIC procedure: reviewing information that was not available at the time of the decision to include the chemical under the interim PIC procedure, 10/ that indicates that its inclusion may no longer be justified in accordance with the relevant criteria in Annex II to the Convention or, as the case may be, Annex IV, and recommending to the Intergovernmental Negotiating Committee whether the chemical in question should be removed from the interim PIC procedure. For each chemical that the Interim Chemical Review Committee recommends for removal from the interim PIC procedure, it shall prepare a revised draft decision guidance document.

10/ In accordance with paragraphs 6, 7 and 8 of the resolution on interim arrangements, the chemicals that are subject to the interim PIC procedure are, first, all chemicals for which decision guidance documents have been circulated before the date on which the Convention was opened for signature; second, chemicals that have been identified for inclusion under the original PIC procedure when the Intergovernmental Negotiating Committee has approved the decision guidance documents for those chemicals; and third, chemicals that have been included in the interim PIC procedure by the Intergovernmental Negotiating Committee in accordance with the provisions of the Convention.