

# CONFERENCE

**Twenty-ninth Session**

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**REPORT ON THE PROGRESS OF NEGOTIATIONS OF AN  
INTERNATIONAL LEGALLY-BINDING INSTRUMENT FOR THE  
APPLICATION OF THE PRIOR INFORMED CONSENT (PIC)  
PROCEDURE FOR CERTAIN HAZARDOUS CHEMICALS AND  
PESTICIDES IN INTERNATIONAL TRADE**

## **NEGOTIATIONS ON A PIC INSTRUMENT**

1. In 1989, the Governing Council of the United Nations Environment Programme (UNEP), by its decision 15/30, and the FAO Conference, by Resolution 6/89, incorporated the Prior Informed Consent (PIC) procedure for Pesticides and other Chemicals that are banned or severely restricted into the “Amended London Guidelines on the Exchange of Information on Chemicals in International Trade” and the “International Code of Conduct on the Distribution and Use of Pesticides” respectively. UNEP and FAO, in accordance with Decision 15/11 and Resolution 6/89, jointly execute the voluntary PIC Procedure.
2. In 1992, the United Nations Conference on Environment and Development (UNCED) in Agenda 21, Chapter 19, made recommendations for the conclusion of a legally-binding instrument on Prior Informed Consent. Paragraph 19.39d states that governments and relevant international organizations with the cooperation of industry “should implement the PIC procedure as soon as possible and, in the light of experience gained, invite relevant international organizations such as UNEP, GATT, FAO, WHO and others in their respective area of competence to consider working expeditiously towards the conclusion of legally-binding instruments”.
3. The International Conference on Chemical Safety (ICCS), Stockholm, April 1994, as well as the Commission on Sustainable Development (CSD) at its Second Session, New York, May 1994, recommended that UNEP, together with FAO and in close cooperation with other international organizations, continue to evaluate and address problems with the implementation of the voluntary PIC procedure and to develop effective legally-binding instruments concerning it.
4. The FAO Council at its Hundred-and-seventh Session in November 1994 discussed the development of a legally-binding instrument on the operation of the PIC procedure. The Council considered the actions required by FAO, in cooperation with UNEP, to conclude a legally-binding instrument. The Council agreed that the Secretariat should proceed with the preparation of a draft legally-binding instrument on the operation of the PIC procedure as part of the joint FAO/UNEP Programme on Prior Informed Consent and in cooperation with other international and non-

governmental organizations concerned. The Council discussed the time frame required to develop a legally-binding instrument. Many Members considered that a draft instrument should be ready for adoption in 1997. The Council agreed that the Organization should seek resources, jointly with UNEP, to finance the process for the preparation and conclusion of the legally-binding instrument. The Council was informed that progress on the instrument would be dependent on the availability of such resources. In the development of the instrument, close cooperation should be maintained with the CSD.

5. To discuss the development of a legally-binding instrument, UNEP, together with FAO, convened an informal consultative meeting of government-designated experts in December 1994. The meeting took note of UNEP's earlier work to prepare elements that might be included in a legally-binding instrument. It identified several major issues that would need to be addressed during negotiations. The meeting recommended that the Executive-Director of UNEP seek a mandate to start negotiations for the development of a PIC Convention during the Eighteenth Regular Session of the Governing Council of UNEP in May 1995, with a view to its conclusion, possibly in 1997, having noted the agreement of the FAO Council at its Hundred-and-seventh Session on the development of such an instrument.

6. In March 1995 the Committee on Agriculture (COAG) at its Thirteenth Session welcomed the initiative designed to develop a legally-binding instrument on PIC and the close collaboration between FAO and UNEP. It indicated that such an instrument should be developed on the basis of the present PIC procedure. Nevertheless, it noted that the present procedure had weaknesses, in particular the selection of pesticides for inclusion in the procedure, while its application was also hindered by infrastructure and/or human resource limitations in developing countries. While encouraging the adherence to the present voluntary procedure, the Committee hoped that experience gained in the present procedure would contribute to the development of the legally binding instrument.

7. The Governing Council of UNEP discussed, at its Eighteenth Session in May 1995, the progress made and action required towards the development of a legally-binding instrument. In Decision GC.18/12, it authorized the Executive Director to prepare for and convene, together with FAO, an intergovernmental negotiating committee (INC/PIC), with a mandate to prepare an international legally-binding instrument for the application of the PIC procedure for certain hazardous chemicals and pesticides in international trade.

8. In line with the guidance provided by their respective governing bodies, UNEP and FAO, at the invitation of the government of Belgium, convened the First Session of the INC/PIC in Brussels, March 1996. More than 181 delegates from 81 governments, 5 inter-governmental organizations and 7 non-governmental organizations attended the first negotiating session.

9. A Second INC met from 16-20 September 1996 at the United Nations Office in Nairobi. The participation was 223 delegates from 87 countries, 5 United Nations Organizations, and 14 non-governmental organizations. A substantial issue discussed at the second INC was the scope of the Convention, i.e. either (a) a broad framework with the possibility of adding protocols later on Persistent Organic Pollutants (POPs), possibly labelling and classification, and other issues related to chemicals management, or (b) a more restricted Convention limited to PIC.

10. The FAO Council at its Hundred-and-eleventh Session in November 1996 discussed the progress of the PIC negotiations. The Council expressed its satisfaction with the progress of the PIC negotiations and the cooperation between the United Nations Environment Programme (UNEP) and FAO in the provision of the Secretariat to the Intergovernmental Negotiating Committee (INC). The Council discussed the scope of the mandate for the negotiations. Some members expressed support for a broader framework Convention on the management of chemicals. Others suggested that the relevant provisions of the Instrument be formulated in a way that could accommodate possible future developments. Yet others preferred to limit the present negotiations to the PIC procedure only and wished to have a separate negotiation on Persistent

Organic Pollutants (POPs). As there was no consensus on this issue, the Council concluded that the present mandate of the INC would continue. It noted that further discussions would take place at the Nineteenth Session of the UNEP Governing Council and that the subject of an integrated mechanism on chemicals management would also be discussed by the International Forum on Chemical Safety at its session in February 1997. Some members suggested that the Export Notification Scheme be included in the instrument.

11. The Council, in particular, **indicated** that the INC should continue focusing its attention on the elaboration of practical and operational procedures to implement the PIC procedure; **recognized** that the Secretariat arrangements for the Instrument would be decided upon by the INC and ultimately by the Diplomatic Conference convened to adopt the Instruments. It, however, supported participation of FAO in the Secretariat, as far as this would be related to pesticides; **recognized** FAO's lead role in technical work in relation to pesticide management and **recommended** that this role be strengthened; **supported** FAO's participation in future discussions and negotiations on POPs and other issues related to pesticide management. Any Secretariat functions in such negotiations should be approved by FAO's Governing Bodies; and **recognized** the need for technical assistance in relation to pesticide management in developing countries.

12. The UNEP Governing Council at its Nineteenth Session in January 1997 took note with appreciation of the progress made by the INC at its second and third sessions. In its decision it:

1. **Confirmed** the present mandate of the Intergovernmental Negotiating Committee as given by the governing council in paragraph 1 of its decision 18/12;
2. **Invited** the INC to continue its work on the international legally binding instrument for the application of the prior informed consent procedure for certain hazardous chemicals and pesticides in international trade, with an aim of concluding negotiations in 1997;
3. **Recognized** that additional elements relating to the prior informed consent procedure are under consideration in the INC;
4. **Requested** the Executive Director to convene, in 1997, together with the Director-General of FAO, a diplomatic conference for the purpose of adopting and signing an international legally binding instrument for the application of the PIC procedure for certain hazardous chemicals in international trade;
5. **Called upon** Governments that are in a position to do so to provide the necessary financial and technical resources to enable the full and effective functioning of the INC, in particular the full and effective participation of developing countries, especially the least developed countries, and of countries with economies in transition that may be interested.

13. A Third INC met 26-30 May 1997 in Geneva, Switzerland. The meeting was hosted by the Swiss Government. Participation was 231 delegates from 102 countries, 6 United Nations organizations, 1 inter-governmental organization, and 10 non-governmental organizations. Extensive debate took place on an article on acutely hazardous pesticide formulations that pose particular handling problems in developing countries. A delegation proposed to widen its scope by incorporating chemicals causing severe health and environmental effects. Another issue that provoked extensive discussion was the number of notifications of control actions on bans and severe restrictions, which are required to start the process of inclusion of a chemical into the PIC procedure.

14. Progress to date has been substantial, although the process has been constrained by the discussions on scope and other issues related to changes and additions to the PIC procedure. Text for most articles of the Convention is available, but further negotiations in plenary as well as in a technical working group are necessary. It is envisaged that two negotiation sessions of one week each are still required before a Diplomatic Conference can adopt the Convention in early 1998. It is now foreseen that a fourth INC will be held in October 1997, just before the Twenty-ninth Session of the FAO Conference.

## **ISSUES TO BE CONSIDERED BY THE CONFERENCE:**

15. The present voluntary PIC procedure will be superseded by the legally-binding procedure in a future Convention. There will be substantial differences between the procedures, the present procedure being less subject to government scrutiny. Furthermore, the legally-binding procedure will only start when the Convention comes into force and then only for the countries that are a party to the Convention. At present some 150 countries participate in the procedure; it is unlikely that the legally binding procedure will initially have the same geographical coverage. The INC will have to make recommendations on the continuation and nature of the voluntary procedure between the adoption of the Convention and its coming into force. Also thought will have to be given to the transition of the voluntary procedure into the legally-binding procedure when the Convention comes into force, in particular with relation to those chemicals included in the voluntary procedure and the relation to non-parties that participate in the voluntary procedure.

16. The fourth INC will also consider Secretariat arrangements in more detail. Several arrangements for the Secretariat may be considered, including an independent Secretariat, a Secretariat with a UN agency or programme, or a continuation of the arrangements in the voluntary procedure and the INC, where the Secretariat is provided jointly by UNEP and FAO. It is the prerogative of the countries negotiating in the INC to decide on the nature of the Secretariat; however, there appears to be some preference for the continuation of the present Secretariat arrangements. At the third INC the following text was drafted (but not yet discussed in plenary):

“The Secretariat functions for this Convention shall be performed jointly by the Executive Director of the United Nations Environment Programme and the Director-General of the Food and Agriculture Organization of the United Nations, subject to such arrangements as shall be agreed between them and approved by the Conference of Parties. And,

The Conference of the Parties may decide, by a three-fourth majority of the parties present and voting, to entrust these functions to one or more other competent international organizations [should it find that either the United Nations Environment Programme or the Food and Agricultural Organization of the United Nations has become unable to perform these functions satisfactorily].”

17. Between the adoption of the Convention and its coming into force, Interim Secretariat arrangements will have to be provided for, including funding for an Interim Secretariat. One donor has already identified funds for the functioning of such an Interim Secretariat. The INC will have to make recommendations on the Interim Secretariat, taking into account the existing Secretariat arrangements for the voluntary procedure and the INC, its recommendations in relation to the implementation of the voluntary procedure and the Secretariat arrangements for the Convention.

18. The Convention will be adopted by a Diplomatic Conference, which will be held after the conclusion of the negotiations. In the resolution adopting the Convention, decisions could be made on the interim procedure and on the Interim Secretariat.

19. The FAO Conference may consider to:

Authorize the participation of the FAO Secretariat in an Interim Secretariat and in a Secretariat to the Convention if so desired during the negotiations and adopted by the Diplomatic Conference, provided that such arrangements are satisfactory to the Director-General and that costs additional to the implementation of the present voluntary procedure be met through extra-budgetary resources.

Agree to accept changes in the voluntary PIC procedure, if so decided by the Diplomatic Conference, provided that costs additional to the implementation of the present voluntary procedure be met through extra-budgetary resources.