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PROCEEDINGS OF THE THEMATIC WORKSHOP ON DEVELOPING AND STRENGTHENING NATIONAL LEGISLATION AND POLICIES FOR THE SOUND MANAGEMENT OF CHEMICALS 22 - 25 JUNE 1999, GENEVA

1. Introduction

1.1 The report of the Third Session of the Conference of the States Parties included the following (subparagraph 19.3 of C-III/4, dated 20 November 1998) with respect to legislation, cooperation and legal assistance:

> "19.3 The Conference took cognisance of the Note by the Director-General on compliance with Article VII: legislation, cooperation and legal assistance (C-III/DG.1/Rev.1, dated 17 November 1998). Article VII requires each State Party to adopt the necessary measures to implement its obligations under the Convention, including enacting penal legislation with respect to prohibited activities, and to inform the Organisation of the legislative and administrative measures taken. As of 10 November 1998, only 33% of States Parties had met this obligation. The Conference urged States Parties: (a) to complete, where necessary, the legislative and administrative measures to implement the Convention in their jurisdictions; (b) to inform the Organisation of such measures taken; and (c) to enhance possibilities of legal assistance among States Parties including through the convening by the OPCW of a seminar on national implementation and legal cooperation."

1.2 In exploring the best possible agenda for a seminar to meet those concerns, it was decided first to address one aspect of national implementation that was hindering some States from enacting their implementing legislation, and second, to turn to the subject of legal cooperation. In the course of workshops on national implementing legislation, the Technical Secretariat had become increasingly aware that a number of Member States were facing difficulties with their legislation because of the problem of overlapping chemicals regimes. Most of the early submissions under Article VII, paragraph 5, of the Chemical Weapons Convention (CWC) consisted of a sectoral approach to legislation, i.e. a comprehensive act to implement the Convention. The resource materials developed by the Secretariat also have followed that approach (the "Legislation Package" is available in the six languages of the Convention). The problem raised by

some Member States is that they were trying to draft legislation to implement several instruments at once, all involving the regulation of chemicals, and those States identified the need for assistance in adopting an integrated approach to avoid conflicts between legislative provisions.

1.3 At the same time, the Secretariat had become aware of activities in precisely that area undertaken by the IFCS,[1] the IOMC[2] and UNITAR[3] in connection with the preparation of national profiles to assess national infrastructures for the management of chemicals. In the course of preparing national profiles, 91% of the countries identified as a top priority the development/strengthening of national legislation and policies for the sound management of chemicals. The diverse challenges related to chemicals legislation included, for example:

(a) overcoming an overly sectoral approach in legislating chemicals (some countries have identified more than 100 laws and decrees addressing chemicals which are often not consistent with each other);

(b) identifying those legislative measures and policy instruments which can result in efficient risk reduction with minimum administrative costs;

(c) designing and/or updating the national legislation in a way that facilitates its implementation, taking into account the existing administrative and technical infrastructure; and

(d) developing a national legislative framework which allows for: (1) the incorporation of international harmonisation efforts, and (2) the implementation of national obligations under the growing number of international legally binding instruments.

1.4 Recognising the value of an integrated approach as an option for States Parties, the Secretariat cooperated in the third of a series of thematic workshops organised by the United Nations Institute for Training and Research (UNITAR) in cooperation with the other participating organisations of the IOMC (the FAO, ILO, OECD, UNEP, UNIDO and WHO), and the Intergovernmental Forum on Chemical Safety (IFCS). This third workshop, entitled the Thematic Workshop on Developing and Strengthening National

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1 The Intergovernmental Forum on Chemical Safety (IFCS) was established by the International Conference on Chemical Safety in Stockholm in 1994. At its first meeting, the IFCS adopted a "Priorities for Action" plan to implement the recommendations of Chapter 19 of Agenda 21 of the 1992 United Nations Conference on Environment and Development (UNCED), and recommended that national profiles should be elaborated to indicate the current capabilities and capacities for the management of chemicals and the specific needs for improvement in this field.

2 The Inter-Organization Programme for the Sound Management of Chemicals (IOMC) was established in 1995 by the FAO, ILO, OECD, UNEP, UNIDO, and WHO, and was joined by UNITAR in 1998. It was designed to serve as a mechanism for coordinating policies and activities pursued by the participating organisations, jointly and separately, in relation to the assessment and management of chemicals. The Secretariat is located at WHO, the administering organisation.

3 In 1996, the United Nations Institute for Training and Research (UNITAR) published, under the auspices of the IOMC, a guidance document entitled "Preparing a National Profile to Assess the National Infrastructure for Management of Chemicals: A Guidance Document". This document has subsequently been an integral part of the programme, assisting developing countries and countries in economic transition to prepare comprehensive national profiles.

Legislation and Policies for the Sound Management of Chemicals, was held in Geneva from 22 to 25 June 1999. It was aimed at government officials with direct responsibility for the development and implementation of national chemicals legislation in developing countries and countries with economies in transition. In addition, representatives from countries with advanced chemicals legislation, non-governmental organisations (i.e. industry, labour, public interest and the academic sector), international/ intergovernmental organisations and development cooperation agencies, participated. The OPCW Secretariat sponsored participants from a number of States Parties to attend the workshop.

1.5 In preparing for the seminar, it was interesting to note from the IOMC documentation that the national coordinating agencies for the preparation of National Profiles have largely been centred in the Ministries of Environment, Health, Labour or Agriculture. This is in contrast to CWC National Authorities, the majority of which have been established in the Ministry of Foreign Affairs; others have been established in the Ministry of Defence, Industry, or elsewhere. In comparing the two lists side by side, it was clear that for a few States Parties the regulatory efforts are possibly being carried out in coordination with efforts under other regimes, but it is not clear whether the responsible officials focusing on different aspects of chemicals management are actually communicating with each other regularly.

1.5 Approximately 90 participants attended the seminar, almost all of them from States Parties to the Chemical Weapons Convention. Of those participants, only 17 are actively involved in the implementation of the Convention: Belarus, Bulgaria, Chile, Croatia, Cuba, Ghana, Islamic Republic of Iran, Kenya, Luxembourg, Micronesia (Federated States of), Republic of Moldova, Saint Lucia, Singapore, Spain, Ukraine, Uzbekistan, and Zimbabwe. The four countries participating in the IOMC pilot programme are OPCW Member States: Argentina, Ghana, Indonesia and Slovenia.

2. Structure of the workshop

2.1 The workshop provided a forum for exchanging experiences and views, with the principal objectives of:

(a) systematically identifying and documenting the problems which countries are facing in developing, implementing and enforcing chemicals legislation and policies;

(b) identifying possible elements of a systematic national strategy, e.g. measures, steps and “best practices” which countries may want to consider with a view to strengthening their national chemicals legislation, including regulatory and administrative aspects;

(c) promoting the development of national chemical safety legislation/regulations which implement, are consistent with, and are complementary to, recognised international agreements and technical standards;

(d) identifying the precise needs of countries for external assistance and/or for additional guidance material; and

(e) determining practical ways in which international organisations and others interested in providing external support could best assist countries in their efforts.

2.2 The workshop agenda was organised as follows: individual speakers presenting the perspective of developing countries, countries with economies in transition, and countries with advanced chemicals management schemes; the perspective of international organisations and of non-governmental organisations. “Lessons learned” working groups focused on the following themes: implementation and enforcement of national legislation and policies for pesticides and for industrial chemicals; sectoral versus framework legislation; and coordinated implementation of international agreements. Country case study simulation exercises were carried out for strengthening national chemicals legislation and policies in the following “typical” types of countries: a developing country with a major agricultural sector; a developing country with a growing industrial and consumer sector; a country with an economy in transition; and a small island state. The exercises concluded with discussions on how countries can be best supported in their efforts to strengthen national legislation and policies, and working groups on the development of practical guidance and training material.

3. Highlights of the discussions

3.1 The majority of participants had a very specialised focus: either pesticides or industrial chemicals, or environmental risk management, or occupational safety, or the Chemical Weapons Convention. The Secretariat’s presentation was useful since many participants were unaware that the Convention concerned more than chemical weapons and actually required regulation of some of the same chemicals the other specialists were concerned with.

3.2 A higher level of communication and interaction between National Authorities and the environmental, health and occupational safety agencies could lead to better awareness of respective responsibilities in the area of chemicals, and could make coordination possible.

3.3 There are cross-cutting issues that concern everyone involved in regulating chemicals. Some of these are: identifying the substances produced; classification, packaging and labelling; national lists of banned or controlled substances; licensing; inspections; statistics on production, consumption and trade; notification and record-keeping; import/export controls and customs effectiveness. Each country is uniquely organised, but nevertheless duplication of roles and mechanisms can be ineffective and wastes money. Communication between ministries and between sectors can be useful to integrate or combine regulation into already existing national structures and mechanisms.

3.4 Integration can cut costs and streamline work. However, integration need not be threatening to established roles: the definition of integration covers a whole range: from better coordination to better mechanisms of control to, in the extreme, centralisation. Also, the speed and intensity of integration is variable. A State might start with one small step and, after seeing success, proceed further from there.

3.5 From one working group emerged the suggestion that it would be helpful to States if the secretariats administering or servicing the various chemicals regimes could work together to identify the linkages between them.

3.6 The working group on framework legislation to cover control of all categories of chemicals was not strongly endorsed. From the discussions in Geneva, it appeared that the concept might be too ambitious for many states and might present some difficulties in itself; if the task became too complex it might not get done at all. One question is whether the Chemical Weapons Convention legislation should fall under a framework law for chemicals as a whole, or a framework law for weapons of mass destruction, since it overlaps with both. Several workshop participants seemed more comfortable with the idea that they would legislate specifically for a particular regime but would have a higher level of coordination at the policy level and might integrate certain aspects of implementation. In some countries some aspects have already been integrated in a single regime: for example, the transport of hazardous substances may already be regulated under one single regime, and customs almost certainly is. Licensing seems to be a problem; one State indicated that when its chemical weapons legislation is in force, one drawback will be that a company that wishes to produce a scheduled chemical will have to obtain three licenses from three different agencies since the chemical will be covered under three regimes.

3.7 The "lessons learned" discussions were very useful: how initiatives were addressed and how obstacles have been overcome. Several States Parties to the CWC already have structural integration in their National Authorities – they already are an inter-ministerial body or will probably formally become one – and national papers were distributed at the workshop reflecting this (e.g. Belarus, Chile, Ghana, Islamic Republic of Iran and Zimbabwe). The Islamic Republic of Iran, for example, in the structure of its National Authority in the Ministry of Foreign Affairs, has alongside its defence and security personnel, chemical safety persons loaned from various other ministries. It also has responsibility for implementing the PIC[4] and eventually the POPs[5] regimes. Other States, such as Cuba and Kenya, are actively pursuing an integrated approach to the management of chemicals, or are active in regional coordination efforts, such as the Baltic and Scandinavian states. Slovenia's national profile, prepared in the IOMC pilot programme, clearly presents the organisation and process of that exercise. Following completion of the profile, Slovenia's parliament recently passed two parallel acts: a basic Chemicals Act and a Chemical Weapons Convention Act. Another State reported that it is close to that process. A non-possessor State which produces only one Schedule 3 chemical, the legislation for the Chemical Weapons Convention had very little priority for the government. However, environmental legislation has a high priority, so the solution was to bring the Chemical Weapons Convention legislation into the fold of environmental legislation in order to obtain the necessary resources to draft the legislation and to attract parliamentary focus to it. In this respect, it was useful to recall

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4 The Prior Informed Consent (PIC) procedure was adopted in Rotterdam in September 1998 in the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemical and Pesticides in International Trade. It has received 61 signatures.

5 International Legally Binding Instrument for Implementing International Action on Certain Persistent Organic Pollutants. Negotiations on POPs began at the initiative of UNEP's Governing Council in 1997.

that one basic provision of Article VII is that "Each State Party, during the implementation of its obligations under [the] Convention, shall assign the highest priority to ensuring the safety of people and to protecting the environment ....". The sound management of chemicals is everyone's vital interest.

4. Future work

4.1 As a result of the working group suggestion, the OPCW Secretariat will be working together with UNEP (the United Nations Environmental Programme), FAO (the Food and Agriculture Organisation), and the future PIC Secretariat for the Rotterdam Convention, to compare checklists[6] of respective treaty obligations to identify the overlaps. If the POPs regime is agreed, it could be merged in also. The Secretariats will then produce a Manual for States showing the overlaps so that in implementing all these different chemicals regimes, States can avoid duplicating structures, roles and mechanisms.

4.2 The final report on the workshop will provide pragmatic and innovative ideas which countries can use in developing strategies to fit their national needs. The Secretariat will distribute the final report to Member States when it is published.

4.3 Based on that report, the Secretariat will refine its checklists and narrative to better assist States Parties in drafting implementing legislation for the Convention, including possibly the option of a framework legislative approach. These additional tools will be incorporated into the Secretariat's current legislation package in order to offer an additional approach to States Parties which request assistance with their legislation.

4.4 The second aspect of the Conference request, i.e. enhancing the possibilities of legal assistance among States Parties (see subparagraph 1.1 above), was not within the scope of the thematic workshop in Geneva. As elaborated in the Note by the Director-General on Compliance with Article VII: Legislation, cooperation and legal assistance (C-III/DG.1/Rev.1, dated 17 November 1998), international cooperation and legal assistance among States Parties in the prosecution of offences could extend to, inter alia, identifying suspects, gathering evidence, interviewing witnesses, transferring prisoners, and extradition. These all fall within the realm of international criminal law and would typically entail international cooperation between the police and the judiciary. The Secretariat is exploring the possibility of co-sponsorship of an international symposium on this theme with the broader participation of universities, research institutes and all branches of government, since it could be interesting and useful to States Parties to view the practical aspects of implementation of Article VII, paragraph 2, in its wider context under international law.

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6 A checklist of general obligations under the Chemical Weapons Convention has been included as an assistance tool in the Secretariat's Legislation Package, and also appears as an annex in OPCW: The Legal Texts.