



For environmental
occupational health
safe and responsible use

TOWARDS AN ESSENTIAL RESPECT OF THE SPIRIT AND THE LETTER OF THE ROTTERDAM CONVENTION

Adopted on September 10, 1998, this international convention expresses the will of the States that ratified it.



Intersessional working group on the process
of listing chemicals in Annex 3 of the Rotterdam Convention:
Position paper of the International Chrysotile Association. (ICA)



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TOWARDS AN ESSENTIAL RESPECT OF THE SPIRIT AND THE LETTER OF THE ROTTERDAM CONVENTION

The following are some of the elements that originally motivated those states.

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...Emphasizing that nothing in this Convention shall be interpreted as implying in any way a change in the rights and obligations of a Party under any existing international agreement applying to chemicals in international trade or to environmental protection... Understanding that the above recital is not intended to create a hierarchy between this Convention and other international agreements...

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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 with products whose potential danger or risk to human health in many cases is not known scientifically.

That is how the fight to end chrysotile became THE mission of the Convention.

Activists have been working for 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; one that the Parties, and the Secretariat in particular, naively agreed to bear.

That is how the fight to end chrysotile became **THE** mission of the Convention. This is not just an anecdote: the former Secretary of the Rotterdam Convention, Jim Willis, committed a Freudian slip at the opening of the COP-6 in 2013, when he commented on the importance of the... chrysotile Convention!

MEANWHILE, AN ENTIRE LAWSUIT INDUSTRY BEGAN SPREADING ITS TENTACLES

(Ref. Asbestos litigation, Professor Lester Brickman 2002, Asbestos litigation has come to consist, mainly, of non-sick people... claiming compensation for non-existent injuries, often testifying according to prepared scripts with perjurious contents, and often supported by specious medical evidence... it is a massively fraudulent enterprise that can rightly take its place among the pantheons of...great American swindles.)

This immoral strategy has never been denounced by the anti-asbestos lobbies. The silence of activists within the WHO, the ILO and the Rotterdam Convention Secretariat in particular is disappointing, if not unacceptable. **Beware of people with a mission!**

TIME FOR A CHANGE OF COURSE

The Convention must cease to be the anti-asbestos convention

Since the COP-7 meeting (2015), it has become essential for the Secretariat to rid itself of this cumbersome burden. To do so, it must quickly take the courageous action that will enable the Rotterdam Convention to get back on the path originally established for it by the member States.

The Convention must cease to be the anti-asbestos convention that it has unfortunately become. Its future depends on it. The member States must retake control of what never should have stopped being **THEIR CONVENTION.**

The representatives of States present at the COP-7 meeting all witnessed the extent to which the Secretariat is poorly organized and misguided, and that its management is biased, in that it is all too obviously geared toward a ban on chrysotile fibre. Australia intervened in extremis to demand a serious change of direction by tabling a work proposal.

To accomplish this, the Secretariat must work openly with all partners on the entire file. The sham consultations cannot be allowed to continue. The file must be analyzed by everyone working together at the same table.

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The Secretariat should take advantage of the branch it is being offered. To do this, in the coming weeks it should create a working committee to review how the Convention really works, and in particular, the process for listing chemicals and/or pesticides. This necessarily implies the establishment of a well-balanced and credible representative committee, as opposed to a group of buddies seeking to avoid all change and to continue their crusade against asbestos. It is high time to rectify the situation.

GOOD QUESTIONS THAT HAVE STILL NOT BEEN ANSWERED

There are a number of questions that must be asked. For example, is it not an aberration to classify minerals as chemicals? While all the banning countries and all the anti-asbestos mouthpieces continue to insist that listing a product does not mean it is banned, how do they explain that the titles of Article 5 and Annex II of the Convention include the words “banned or severely restricted chemicals”?

For example, is it not an aberration to classify minerals as chemicals?

How can they continue with impunity to revisit the listing of a product at COP meeting after COP meeting while member States (the only competent authorities) refuse to reach the consensus required by the provisions that have been clearly established by the Convention itself?

Is it not clearly established that the *Chemical Review Committee* “recommends” and that the Parties “decide”, without being required to provide explanations or justification? Is it reasonable – when discussing the possible inclusion of a substance in Annex III – to accord the same legitimacy to the position of a country that does not produce or does not use that substance as that of a country where the substance is produced or used, generating wealth for its community?

Has it been scientifically demonstrated that chrysotile is primarily responsible for pulmonary diseases and/or mesothelioma when used in a controlled manner, as it is today? Can we allow those lobbying to ban chrysotile to continue to claim that the replacement products on the market are without any risk to health?

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How is it that the Rotterdam Convention Secretariat dared to not even mention the results of its mysterious *Technical Workshop* held on March 30 and 31, 2015, a workshop that was financed by Europe? Why avoid providing the necessary explanations at the COP-7 meeting? What's the secret? There are so many urgent questions that require answers.

THE CONSTRUCTIVE ROLE OF THE ICA

The International Chrysotile Association (ICA) has stepped up its efforts to be heard by the various international organizations. To this day, even a simple acknowledgement of receipt is an insurmountable obstacle for some authorities who continue to reject any communication to the effect that the ICA supports the safe, controlled and responsible use of chrysotile as opposed to a ban. This unprecedented situation must end. It is a question of fairness and respect. The ICA is an organization that defends the legitimate interests of its partners and is proud to promote responsibility and safety in the use of a product, fibre or substance that could potentially pose a risk to human health.

The International Chrysotile Association would like to share its unique expertise on this matter

This is the policy in force in all countries for many products. The most striking example is crystalline Silica (silica), which is subject to a voluntary system of control by employers and trade unions in 28 countries of the European Union. The ICA has asked, is asking and will continue to demand to be heard and to be invited to participate in all discussion forums on chrysotile. The ICA would like to share its unique expertise on this matter anywhere it may be useful, including obviously, in working groups and committees created by the Rotterdam Convention.

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**NECESSARY TOPICS OF DISCUSSION
ON ESSENTIAL CHANGES
TO ENSURE THE OPEN, EFFECTIVE AND
SOUND OPERATIONS AND ADMINISTRATION
OF THE ROTTERDAM CONVENTION.**

CHRYSOTILE VS. CHEMICALS

“Asbestos” is a commercial term that covers several types of natural asbestiform minerals. Is it scientifically and geologically appropriate and beneficial to accept the premise that this natural mineral meets the criteria governing inclusion in Annex III of banned or severely restricted chemicals? When the Parties (member countries) consented to the creation of the Rotterdam Convention, they established the Prior Informed Consent procedure applicable to certain chemicals and pesticides. Is it reasonable to suggest that chrysotile fibre should necessarily be classified among chemicals? Do the spirit and the letter of the Convention truly extend to this type of mineral? Of course, everything is chemical... water and the human body being perfect examples.

Can it really be rational to claim that classifying the natural chrysotile fibre as a chemical respects the requirements and provisions of the Rotterdam Convention?

Minerals are created through sometimes extreme natural crystallization processes, and not through human intervention. Temperatures as high as 700 degrees Celsius and thousands of bars of pressure may be required to form these minerals, which are sometimes preserved for millions of years before humans intervene to extract and process them. This does not make them chemicals in the strict sense of the term.

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To answer this critically important question, the responsible authorities who are experts in the field must seriously examine this issue through an exhaustive and fully transparent analysis that is unencumbered by ulterior motives, prejudice or undue influence. This was rarely the case in the past when it came to chrysotile.

THE CONVENTION RULE FOR INCLUSION ON THE PIC LIST

There are a number of requirements that must be met when countries propose including a product on the PIC list. These requirements include scientific studies to assess and scientifically demonstrate the actual risks and dangers associated with the product. All of this must accompany and support the request, which must never be frivolous. *It makes no sense that countries can return to COP meetings time and again with the same file without the Secretariat requiring new data and/or studies with new science that would justify and allow for reversing a previous decision by the Conference.*

The relentless battle against chrysotile has turned the Rotterdam Conference into an anti-asbestos conference.

The relentless battle against chrysotile over the course of numerous conferences of the parties since the Convention was established has turned the Rotterdam Conference into an anti-asbestos conference. It is essential that no file be brought back for further discussion without scientific justification. A decision taken by the COP should be allowed to stand for at least five years, unless significant scientific discoveries render it necessary to resubmit the file to the Conference of the Parties for review.

DELAYS IN PROVIDING INFORMATION TO MEMBER STATES

The Convention provides that when the Secretariat receives a request from member countries for inclusion of a product, the Secretariat must send all member countries all of the relevant information enabling them to undertake the necessary consultations at home, as well as the scientific and other evaluations so they can develop an informed opinion with a view to reaching a decision at the upcoming conference of the parties.

The Secretariat should send member countries of the Convention all the documents related to the inclusion request at least nine months before the COP meeting

In too many cases, member countries receive the necessary documents and information far too late to be able to conduct a true consultation.

The Secretariat should send member countries of the Convention all the documents related to the inclusion request at least nine months before the COP meeting where the proposal will be discussed and decided upon. That way, every country will be in a position to properly consult all interested stakeholders.

ROLE OF THE CRC TO BE REDEFINED

The CRC does not have the power to accept or refuse; its only role is to make a recommendation.

The Chemical Review Committee (CRC) receives the mandate from the Secretariat to conduct a scientific evaluation, issue an opinion and make a recommendation, which is supposed to be submitted to the member States at the COP. The CRC does not have the power to accept or refuse; its only role is to make a recommendation. Only the parties participating in the COP conference have the power to decide by reaching a consensus, which is essential to any decision on inclusion, as provided for in very specific provisions. As with other international conventions, no agency or individual can oblige a country to officially adopt a position. This power rests exclusively with each participating member country.

THE ROLE, THE MANDATE AND THE LIMITS OF THE CRC

Article 5 – Procedures for banned or severely restricted chemicals

5. When the Secretariat has received at least one notification from each of two Prior Informed Consent regions regarding a particular chemical that it has verified meet the requirements of Annex I, it shall forward them to the Chemical Review Committee. The composition of the Prior Informed Consent regions shall be defined in a decision to be adopted by consensus at the first meeting of the Conference of the Parties.
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.

Annex II

Criteria for listing banned or severely restricted chemicals in Annex III

In reviewing the notifications forwarded by the Secretariat pursuant to paragraph 5 of Article 5, the Chemical Review Committee shall:

- a) Confirm that the final regulatory action has been taken in order to protect human health or the environment;
- b) Establish that the final regulatory action has been taken as a consequence of a risk evaluation. This evaluation shall be based on a review of scientific data in the context of the conditions prevailing in the Party in question. For this purpose, the documentation provided shall demonstrate that:
 - i. Data have been generated according to scientifically recognized methods;
 - ii. Data reviews have been performed and documented according to generally recognized scientific principles and procedures;
 - iii. The final regulatory action was based on a risk evaluation involving prevailing conditions within the Party taking the action;
- c) Consider whether the final regulatory action provides a sufficiently broad basis to merit listing of the chemical in Annex III, by taking into account, etc.

The role of the CRC is perfectly described in the Treaty: Meeting the criteria laid down in the Rotterdam Convention does not automatically mean that the substance must be listed in Annex 3. This fact just triggers the procedure of making a recommendation by the CRC: Drafting the DGD (Decision Guidance Document), submitting this draft to the subsequent CRC for review and, if finally adopted, circulating this as a meeting document to all parties for consideration.

The CRC should never allow itself to be influenced by third parties in its deliberations.

The CRC should be nothing more than a scientific review committee. It reviews the files submitted to it by the Secretariat, and its role should be limited to submitting a recommendation. Furthermore, the CRC should never allow itself to be influenced by third parties in its deliberations. It's a well-known fact that the CRC has often deliberated in the presence of groups representing the international anti-asbestos lobby, among others. This in and of itself poses a problem of credibility. This approach should be reviewed and the committee should take steps to avoid any undue influence, and any potential appearance of influence from organizations or individuals.

It does not have the authority to judge a decision by the COP.

Surprisingly, it has also been observed, particularly at the COP-7 meeting (2015), that several members of the CRC intervened to support the Secretariat, which was constantly butting heads with member States that objected to including chrysotile fibre on the list of products to be banned, i.e., the PIC list. It is not (and should never be) the role nor the duty of members of the CRC to act in such a way, even if that is the wish of the Secretariat. Once the CRC has submitted its recommendation to the Secretariat, as required by the provisions of the Convention, the CRC's work is completed, and it is then duty bound to accept any or no consensus that may be obtained by the member States. It does not have the authority to judge a decision by the COP.

It is therefore imperative that the operations of the CRC, including the conduct, mandate and role of its members, be reviewed in order to properly define its framework and boundaries.

OPERATIONS SHOULD BE REVIEWED QUICKLY

The Convention Secretariat is also really flawed in terms of its operations. The Secretariat has too long accepted the influence of anti-asbestos activists. Numerous breaches of procedure have been observed: in terms of its conduct during COP meetings; in documents reporting on the conferences; during the nebulous technical workshop in March 2015; in the strategies used to prepare for COP meetings; and in the worrisome manoeuvring during plenary sessions of COP conferences. Rather than listening to and accepting the will of the member States with regard to the chrysotile file, it intervenes, influences and at times engages in what could only be called harassment.

The Secretariat must now understand that its mandate is to ensure the operations of the Rotterdam Convention

The Secretariat cannot continue to unduly press for the inclusion of chrysotile in the PIC list. There can be no room for bias or manipulation. Guest speakers are invariably chosen who will lobby for inclusion of chrysotile. The Secretariat must now understand that its mandate is to ensure the operations of the Rotterdam Convention and to see that it is soundly, smoothly and transparently administered, as opposed to scheming with or providing a forum for anti-asbestos activists. The member States provide the funding required to operate the Convention, and the Secretariat should conduct itself accordingly and recognize its duty to be accountable to the member States. The anti-asbestos crusaders and the representatives of this powerful lobby, including those engaged in lawsuits, should not be allowed to influence the administration ad nauseam. In fact, they should be strictly prohibited from doing so.

The Secretariat should act in good faith to implement the decisions taken by the only authority – the member States.

The member States shall insist that the Secretariat get back on the right track immediately. It is high time to intervene. The very future of the Rotterdam Convention depends on it. As with other international conventions, the Secretariat should act in good faith to implement the decisions taken by the only authority – the member States.

The Prior Informed Consent procedure applicable to certain dangerous chemicals and pesticides that are sold internationally must no longer be a tool used by the anti-asbestos crusaders to promote a black list that would include chrysotile natural fibre. Such circumvention of the fundamental objectives of the Rotterdam Convention, which has been going on for a long time, should be denounced in order to allow a return to the principles and fundamental motivations for which the member States created this convention.

2015



The official position taken:

**WORLD HEALTH ORGANIZATION - WORLD HEALTH ASSEMBLY
FINAL RESOLUTIONS – PAGE 86, ITEM 10, 2007**

“WHO will work with Members States to strengthen the capacities of the ministries of health to provide leadership for activities to workers’ health, to formulate and implement policies and action plans, and to stimulate intersectoral collaboration. Its activities will include global campaigns for elimination of asbestos-related diseases; **bearing in mind a differentiated approach to regulating its various forms**; in line with relevant international legal instruments and the latest evidence for effective interventions.”

Furthermore, to find wording about specific needs and conditions in the text of Outline on page 2: *“Countries can use this document according to the specific national and local conditions and available resources.”*

WHA : http://apps.who.int/gb/ebwha/pdf_files/WHA60-REC3/A60_REC3-en.pdf