

Latest developments regarding the European Union's asbestos policy

As you may know, in February 2007 the European Commission called for a global ban of asbestos.

This is the first time that a call for a "global ban" was written in an EU official document. The good news is that January 15, 2008, the **European Parliament** – contrary to previous calls for a global ban made by French and Belgian Parliaments and some activists who are working for the ILO and WHO – **did not endorse the European Commission recommendation.**

Instead, it asked for measures related to asbestos in place in the EU remain unchanged without further ado:

"The European Parliament considers that the health problems related to exposure to asbestos are well known and that the European regulation on asbestos is adequate; underlines the fact that asbestos-initiated diseases in Europe are forecasted to be very high for many years ahead; therefore calls on the Commission to organise a hearing on how to tackle the huge OHS problems related to existing asbestos in buildings and other constructions such as ships, trains and machinery; also calls on Member States to draw up national action plans on phasing-out asbestos, including obligations to map asbestos in buildings and provide for the safe removal of asbestos;"

(Point 36 of the Resolution of 15 January 2008 of the European Parliament on the Communication from the European Commission "Improving quality and productivity at work: Community Strategy 2007-2012 on health and safety at work.")

There have been three positive recent elements in the EU policy on asbestos:

1. The extension of the use of chrysotile in diaphragms for electrolysis in the EU;
2. Chrysotile—as a natural occurring substance—must not be registered under REACH, the new EU legislation on chemicals; and,
3. The European Parliament did not endorse the proposal from the European Commission to ask for a global ban.



EDITORIAL – ILO ASBESTOS RESOLUTION OF JUNE 2006

THE INTERNATIONAL LABOUR OFFICE WANTS IT BOTH WAYS

Introduction:

At this juncture, it seems altogether appropriate to publish a review of events and varying positions expressed by the International Labour Office (the Office) and the opposing positions of other interested parties since the Asbestos Resolution was adopted by the International Labour Conference on June 14, 2006.

Of special note will be the varying positions taken by the International Labour Office in its attempt to justify and defend an action that was clearly taken in violation of generally acceptable procedural rules governing the International Labour Organization (ILO) and in the absence of any scientific material, technical or social information, as to the issue the Resolution deals with.

The Resolution, notwithstanding contrary provisions of ILO's Asbestos Convention 162, calls for the "elimination of the future use of asbestos" as the most effective means to protect workers from asbestos exposure and to prevent future asbestos-related diseases, and for the Office to promote these assertions. And, further, the Resolution wrongly states that Convention 162 "should not be used to provide a justification for, or endorsement of, the continued use of asbestos."

The Resolution is currently being used by representatives of the Office and ban asbestos groups as an authoritative basis for banning asbestos worldwide.

Below is provided unequivocal and unmistakable evidence that demonstrates the International Labour Office wants it both ways, i.e. to defend and promote the ill-advised and baseless Asbestos Resolution while, at the same time, acknowledge that the Resolution does not in any way "amend, revise, abrogate or otherwise override Convention 162."

Interventions to and Response from the Office:

In October 2006, both the Chrysotile Institute and International Chrysotile Association submitted comprehensive letters to the Director General, International Labour Organization, questioning the procedure followed in adoption of the Resolution and detailing the following flaws in the process:

The procedure followed to adopt the Resolution is tainted with irregularities. In particular, in the absence of any serious background work, the International Labour Conference could not rely on any substantial scientific, technical or social data in its debates on the Resolution. Furthermore, in violation of the ILO Constitution and of the Standing Orders of the International Labour Conference, the Resolution was debated and carried even though it was not included as an agenda item for the Conference 95th Session; the agenda did not even call for a general asbestos debate. Thus, the Resolution was drafted, discussed and adopted hastily and in violation of applicable procedures. Consequently, it lacks any and all validity and credibility.

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The Resolution is not, by its very nature, binding upon the ILO or its members. It does not amend in any way the June 24, 1986 Convention #162 on Safety in the Use of Asbestos (the Convention), nor does it provide binding rules or guidelines with respect to its interpretation. Indeed, in the absence of any valid consent from the ILO and from the Convention's signatories, it cannot be deemed amended by the Resolution; since the ILO has not contemplated and enacted any revision of the Convention, it remains in full force and effect and binding upon its signatories. Moreover, its interpretation is not affected by the Resolution since the Resolution does not emanate from the only body which is empowered to construe ILO Conventions, namely the International Court of Justice. As a result, even if one disregards the lack of validity and credibility, the Resolution does not legally impact the Convention in any manner; it remains fully valid and enforceable.

By letters dated January 29, 2007 and February 5, 2007, to the Chrysotile Institute and International Chrysotile Association respectively, the Office responds with an account on how the Resolution was introduced and ultimately adopted by the International Labour Conference. Noteworthy in the replies is their statement, **"The Resolution does not amend, revise, abrogate or otherwise override Convention No. 162, which is to be given effect by the ILO Member States that have ratified it. Convention No. 162 is among those identified by the ILO Governing Body for promotion as an up-to-date instrument."**

In a letter dated November 11, 2006, from the ILO Governing Body to the Director General, International Labour Organization, clarification was requested of the status of the Resolution concerning asbestos, adopted by the International Labour Conference at its 95th Session, vis-à-vis the Asbestos Convention, 1986 (No. 162), "taking into account that, constitutionally, Conventions prevail over any other type of instrument." It was explained that this clarification was being sought in relation to the opinion of the Group regarding an apparent contradiction between the Resolution and the Convention.

The Office responds to the ILO Governing Body in a letter of December 7, 2006. Excerpts from this letter are quoted below:

- .. In the hierarchy of norms within the Organization, Conventions and resolutions are not on the same plane. In short a Convention is a treaty which is binding upon the parties to it and which falls within the purview of the ILO supervisory machinery.**
- .. A resolution may, depending upon its scope and content, have various effects, but it is not a treaty. For this reason, a resolution cannot "override" the provisions of a Convention in force.**
- .. The statement in paragraph 1 (b) of the resolution concerning the possible use of a reference to the Convention does not change the terms of the Convention or its legal effects.**

(Note: The above statement is critical in the Office's attempt to explain away a key provision of the Convention. Paragraph 1 (b) of the resolution states: "the Asbestos Convention 1986 (No. 162) should not be used to provide justification for, or endorsement of, the continued use of asbestos." However, the Convention ONLY prohibits the continued use of crocidolite and makes no reference to any restrictions on the continued use of chrysotile.)

Conclusion:

The above review leaves no doubt that, while the International Labour Office goes to extraordinary lengths to defend and promote the flawed and defective Asbestos Resolution of 2006, it, in the same breath, also affirms the full and overriding force of Asbestos Convention 1986 (No. 162). Thus, the Office insists on having it both ways.

But, let the truth and evidence speak for themselves. The safe use principle for chrysotile fibres was incorporated over 20 years ago in an internationally adopted ILO Convention and that remains current today. This cannot be denied nor refuted.

International conference on chrysotile, Mexico City, December 13, 2007

CHRYSOTILE: SAFE-USE TODAY

Wrap-up:

Mr. Luis Cejudo, President of the conference, gave the warmest welcome to delegates from Belgium, Bolivia, Brazil, Canada, Colombia, Cuba, Ecuador, El Salvador, India, Iran, Kazakhstan, Mexico, Peru, Poland, Russia, Switzerland, United Arab Emirates, United Kingdom, United States of America and Zimbabwe. Mexican authorities opened the event, mentioning among others, that it is important to have the most recent scientific information and a responsible industry that uses such a venue to exchange on their experiences and knowledge gained to prevent health and safety risks.

In the course of this conference, presentations were made relating the experience of workers of the chrysotile industries in Latin America (Mexico: Sr. Edgar Ascuaga; Brazil: Mr. Adilson Santana and Mr. Emilio Alves Ferreira) and from Russia (Mr. Andrey Kholzakov). All these presentations reflected the rising awareness of the chrysotile workers for their jobs and for the safety associated with their work, and their realization that, as major stakeholders, they must take part in the continued fight for a fair and scientifically-based treatment of chrysotile.

A senior officer from the Department of Natural Resources Canada, Mr. Patrick Chevalier, made a very

detailed presentation to explain the recent history and the various and often complex procedures pertaining to the Rotterdam Convention. He also commented on the possible implications, should chrysotile be included in PIC list of the Rotterdam Convention.

Dr. David Bernstein showed how vigilance must be a major concern with regard to the constant inside work of some people within the WHO and the ILO who are still propagating the obsolete paradigm that "all asbestos fiber types are carcinogenic and therefore must be banned." He showed the flagrant disagreement between the Resolution by the International Labour Conference of May 2006, which called for the total elimination of future uses of asbestos, including chrysotile, and the final 60th World Health Assembly (WHA) of May 2007 resolution which, while endorsing a "global campaign for the elimination of asbestos-related diseases", added that this campaign must be conducted... "bearing in mind a differentiated approach to regulating its various forms".

This inconsistency must be resolved using all means available, explained Mr. Emiliano Alonso (Belgium), including repeated and consistent pressure from governments to the Director General (Dr. Margaret Chan) of the WHO.





Dr. Robert Nolan (New York) demonstrated the importance and value of constantly updating the scientific data, an important step in evaluating the true health risks associated with chrysotile and the amphiboles. Dr. John Hoskins (U.K.) provided a brilliant review of the safety issues associated with the manufacture and modern use of chrysotile-cement, and the incomparable value of chrysotile-cement, especially in those regions and countries where the need for affordable, adapted and efficient construction materials is so obvious.

Prof. John Bridle (U.K.) described what can and does happen when unjustified legal pursuits result in tremendous costs to individuals and society generally, as greed outweighs obvious common sense in some countries where fear-mongering, fed by alarmists, appear to replace the true facts.

Listening to the conference speakers, I was reminded of a paper that I published some 23 years ago in the journal *Environmental Health Perspectives* (1984; 57: 333-347). As an introduction to my paper, I quoted from Thomas Khun, the author of a landmark book entitled «*The Structure of Scientific Revolutions*», who called for a paradigm shift.

As I mentioned in my paper, Khun argues that scientists in any field and any time possess a set of shared beliefs about the world, and for that time, the set constitutes the dominant paradigm. Studies are carried out strictly within the boundaries of those beliefs and small steps toward progress are made. An old but excellent example is the Ptolemaic view of the universe, which held until the sixteenth century that the earth is at the center of the universe, with the moon, sun, planets and stars revolving around it. Not until Copernicus and Kepler found that the formulas and models worked more easily when the sun replaced the earth as the center of it all did an instance of paradigm shift begin.

But after a paradigm shift begins, progress is made, although fraught with tensions. Some people get angry, even when new discoveries pour in to support the new belief system. The important point in each instance of a paradigm shift is that the old «rationality» is eventually replaced with a new, different and more useful one.

These were my thoughts in 1984, when I wrote this paper on the «Stanton's paradigm», or more precisely the «Stanton's hypothesis», and on the need to

revisit these widely held views, which in particular did not take into much consideration the physicochemical properties of fibers, the importance of which has been so elegantly explained over the last ten years and demonstrated by scientists like one of our speakers, Dr. David Bernstein. His brilliant experiments demonstrated why there must be an undeniable and unchallenged recognition of the fact that chrysotile is so different from the amphibole varieties of asbestos, and of the consequent conclusion that chrysotile can be used safely and must be treated accordingly in all matters of regulatory controls.



But, in a way, I was not overly confident in 1984 that progress in terms of a paradigm shift would take place overnight. Indeed, I was reminded of Viscount Bolingbroke, the British philosopher and parliamentarian who wrote back in the sixteenth century: «...*Plain truths will influence half a score of men in a nation, or an age, while mysteries will lead millions by the nose*».

Today, I am more optimistic. Very recently, in a position paper by the American Council on Science and Health published last October, the American Council held the view that chrysotile must be treated differently from the amphiboles, based on the more recent scientific evidence. The position paper indeed was calling literally for a paradigm shift, in these words:

«The challenge today is whether regulatory agencies will utilize current scientific knowledge even though it will necessitate a paradigm shift in long-held views on asbestos exposure and its implications for human health »

ASBESTOS EXPOSURE: HOW RISKY IS IT? October 2007
A position paper of the American Council on Science and Health
Ruth Kava, Ph.D., R.D.

www.acsh.org or www.HealthFactsFears.com

So here it is. This paradigm shift must take place. And because that shift will not take place without its expected tensions, especially from those who are dedicated to ban all varieties of asbestos, including chrysotile, some of whom have already infiltrated organizations such as the WHO and the ILO, and also from those who stand to gain from such a ban. For these reasons alone, there must be in the chrysotile industry an equal dedication to fight against the unscientifically justified ban of chrysotile asbestos. Action must be taken promptly at the highest levels of individual government authorities, and also at the main centers where the general population is listening (the WHO and the ILO), in order to make this paradigm shift happen. The progress of the chrysotile industry and the necessity of developing countries for safe, affordable, solutions to fill their crying needs are at stake.

Jacques Dunnigan, Ph.D.
Conference Co-chairman

EACH WORD HAS ITS IMPORTANCE

In a letter the WHO addressed to the Director of the Bureau of Occupational and Environmental Diseases in Thailand, dated September 20, 2006, Dr Anders Nordstrom, then Acting Director-General states:

“There is no safe threshold level of exposure.” **FALSE**

What all epidemiologists in the world say, including WHO official documents:

“A threshold level of exposure has not been established.” Which is vastly different.

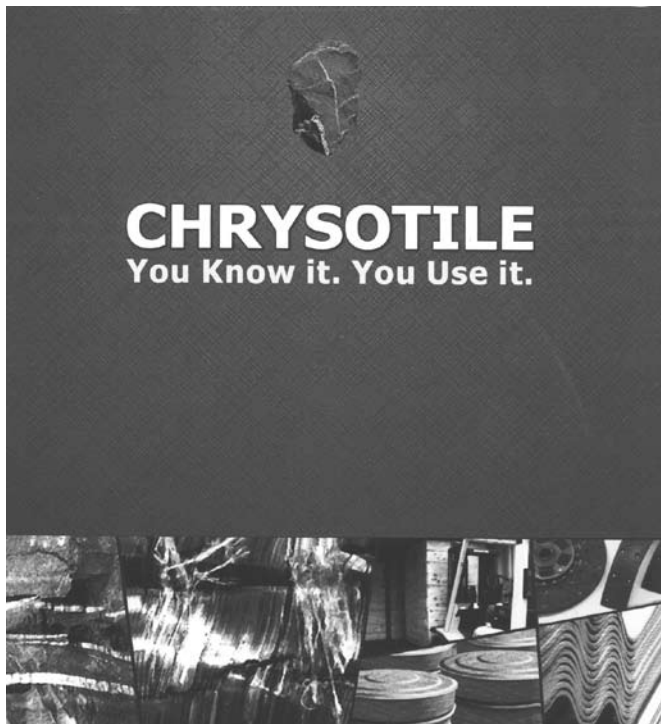
If epidemiologically one cannot establish where the threshold level is, this does not mean that there is none. It simply means that the epidemiological approach, because of its limits, cannot establish the level.

FROM BRAZIL

‘CRISOTILA BRASIL’ OR THE BRAZILIAN CHRYSOTILE INSTITUTE

The Brazilian Chrysotile Institute, also known as ‘Crisotila Brasil’, is an Organization of the Civil Society and Public Interest (OCSPI), with headquarters in the city of Goiânia-GO, Brasil. It is a tripartite entity, which is composed of: workers, entrepreneurs and

government agencies joined together in favour of the controlled-use of chrysotile in Brazil and around the world. The tripartite formation ensures the legitimacy of Crisotila Brasil in defending and working for the promotion of chrysotile in the Brazilian society and also in world discussions about the mineral.



Representing more than 90% of the companies producing chrysotile in Brazil, Crisotila Brasil today is fully structured in terms of administrative and technical assessment for the development of strategic communications to disseminate relevant information on the use of this natural resource in a responsible, conscientious and sustainable manner.

As part of the strategy to disseminate information and to work more closely with chrysotile producing and using countries worldwide, information materials have been developed and interventions undertaken by the Brazilian Chrysotile Institute and the CNTA – Comissão Nacional dos Trabalhadores dos Amiantos (National Commission of Asbestos Workers), in the defense of chrysotile workers’ rights.

CNTA fights for the controlled use chrysotile, caring for the protection of the health and life of the workers from Brazil and around the world.

Created on June 23, 1988, CNTA is an organization of workers in the chrysotile mines and chrysotile cement industries, defending the controlled and responsible use of this mineral. CNTA has the support of the 15 Federations of Workers in civil construction (equivalent to 85 % of the trade unions of the sector), making CNTA the legitimate representative of this working segment in Brazil.

Additional information about chrysotile and our institute can be found on our web site (www.crisotilabrasil.org.br) which is translated in three languages (English, Portuguese and Spanish).

Rubens Relá, Filho
President and Senior Counsellor

Marina Julia de Aquino
Executive President

