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**Eighth Teleconference of the Bureau of the  
International Conference on Chemicals Management for its fifth session**  
19 May 2021 from 14:00 – 16:30 CET

## **Legal opinion on the mandate of SAICM and the need for procedural, organizational and administrative decisions in advance of ICCM5**

### **Note by the Secretariat**

1. Following the seventh ICCM5 Bureau teleconference held on 24 March 2021, the Secretariat sent the following questions to the UNEP legal counsel, Mr. Stadler Tregrove:
  - Whether SAICM automatically ends in 2020 based on the ICCM4 resolutions.
  - What procedural, organizational and administrative decisions would be needed to continue with the intersessional process as well as the operations of the SAICM Secretariat? This would include the continuation of the intersessional process agreed upon at ICCM4 and adding an additional Open-Ended Working Group meeting.
2. The legal opinion is presented in Annex 1 to this present note.

## Annex 1

As far as the first question is concerned, please refer to the attached legal opinion that addresses the status of SAICM. In accordance with that legal opinion, while implementation of SAICM is overseen by the International Conference on Chemicals Management (ICCM), the ICCM does not have the mandate to decide on SAICM's status or end its activities.

Resolution 1/5 of the United Nations Environment Assembly welcomed the important contribution of the Strategic Approach in facilitating action by all relevant stakeholders towards the sound management of chemicals and waste, emphasized the need for continued and strengthened multisectoral and multi-stakeholder involvement and recognized that the need to prevent or minimize the significant adverse effects from chemicals and hazardous wastes on human health and the environment would continue to provide a strong basis for sound chemicals and waste management **beyond 2020**.

In addition, ICCM Decision IV/1 entitled, "Implementation towards the achievement of the 2020 goal" in its preambular paragraph recalled the outcome document, "The future we want," from Rio+20, which states: "We reaffirm our aim to achieve, by 2020, the sound management of chemicals throughout their life cycle and of hazardous waste in ways that lead to minimization of significant adverse effects on human health and the environment, as set out in the Johannesburg Plan of Implementation". Operative paragraphs 1 and 2 states as follows: "*Endorses* the overall orientation and guidance for achieving the 2020 goal of sound management of chemicals as a voluntary tool that will assist in the prioritization of efforts for the sound management of chemicals and waste as a contribution to the overall implementation of the Strategic Approach" and "*Confirms* its intent to focus continued implementation of the Strategic Approach, through its stakeholders, including the six core activity areas contained in the overall orientation and guidance in support of achieving the objectives of the Overarching Policy Strategy".

While the achievement "of the 2020 goal" is expressly referenced in Decision IV/1, the activities requested from the Secretariat are for the consideration of the Conference at its 5th session. No specific date is mentioned. Thus, paragraphs 18 and 20 of Decision IV/1 state as follows: "Requests the secretariat to develop a third progress report including achievements, strengths and weaknesses for the period 2014–2016 and an analysis of the 20 indicators of progress for consideration by the Open-ended Working Group at its third meeting, and also directs the Open-ended Working Group to consider the need for a report for the period 2017–2019 **for consideration by the Conference at its fifth session**"; and "requests the secretariat to report on progress in the implementation of the overall orientation and guidance **at the fifth session of the Conference** and to submit an interim report to the Open-ended Working Group at its third meeting". (Emphasis added).

Consequently, SAICM does not end, based upon ICCM 4 resolutions and reporting is due at the fifth session of ICCM, without any specific date being set.

As far as the second question is concerned, you have asked what procedural, organizational and administrative decisions would be needed to continue with the intersessional process as well as the operations of the SAICM Secretariat. This would include the continuation of the intersessional process agreed upon at ICCM4 and adding an additional Open-Ended Working Group meeting.

Decision IV/4, entitled "The Strategic Approach and sound management of chemicals and waste beyond 2020" in paragraph 1, requests the secretariat, subject to the availability of resources, to contract an independent evaluation of the Strategic Approach. By paragraph 2 of that same Decision, ICCM decided "to initiate an intersessional process to prepare recommendations regarding the Strategic Approach and the sound management of chemicals and waste beyond 2020". ICCM also decided that the intersessional process should include, in principle, two meetings before the third meeting of the Open-ended Working Group and one meeting between the third meeting of the Open-ended Working Group and the fifth session of the International Conference on Chemicals Management and that it may also work by correspondence and/or by electronic means" and directed

“the Open-ended Working Group to consider the need to call an additional meeting of the intersessional process before the fifth session of the International Conference on Chemicals Management.”

In the first instance, reporting is to the fifth session of ICCM, whenever that is – again, no date has been set out in the ICCM Decision. Under this Decision, the Open-ended Working Group has the authority to consider the need to call an additional meeting of the intersessional process before the fifth session, i.e. in addition to the three meetings mentioned in the Decision. If additional meetings are needed, then a decision via silent procedure is required.

By Decision IV/5, entitled “activities of the secretariat and budget”, ICCM decided to hold a third meeting of the Open-ended Working Group in advance of the fifth session of the Conference and decided that it may be held in 2018 or early 2019. The reference to 2018 and 2019 should be seen as guidance, in the light of the phrase, “may be held”. In this connection, it is important to recall Decision II/6: on the establishment of the Open-Ended Working Group, which decided that the Open-ended Working Group shall meet once, in the year prior to the sessions of the Conference. Thus, if there is a need for a fourth meeting of the Open-ended Working Group, then a decision by silence procedure would also be needed.

As far as correspondence and/or by electronic means is concerned, this is a method of working that is used by treaty bodies and as you point out, allows for the possibility of working outside the framework of formal meetings. This has traditionally allowed participants to communicate informally usually be emailed to share views, prepare draft decisions and achieve consensus. It may be advisable for the inter-sessional process to explore this method of working before seeking another formal meeting. In any event, should another meeting of the inter-sessional process be needed, then it would be advisable for its members to make such a recommendation. Thus, the ICCM5 President should preferably act based upon the recommendation of the inter-sessional process, that can also be expressed by its Co-Chairs or Bureau.

Regards,  
Stadler

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