

Meeting of the Bureau of the Ad hoc open-ended working group on a science-policy panel to contribute further to the sound management of chemicals and waste and to prevent pollution
Tuesday, 03 October 2023
15:00 – 17:30 (EAT; GMT + 3)
Online meeting

Agenda item 3 Organization of intersessional work leading up to OEWG 2.

Background document: Organization of work of the ad hoc open-ended working group

I. Introduction

1. This note outlines possible working arrangements under the ad hoc open-ended working group (OEWG) and some of the key considerations related to them.

II. Working Arrangements

2. The **plenary** of the OEWG is the main body which ultimately agrees on any outcomes, processes and arrangements of the negotiations process. It operates in a single setting, is supported by interpretation in the six official languages of the United Nations and is open to participation by observers in accordance with the rules of procedure of the United Nations Environment Assembly that apply to its work as a subsidiary body of the Assembly, in accordance with rule 63 of the rules. In many intergovernmental processes the plenary is also webcast live to ensure that the process is transparent and those not in a position to attend are able to follow the main steps. However, webcast should not be confused with hybrid meetings where participants are given the opportunity to participate online. The resumed session of the OEWG that occurred in February 2023 in Bangkok, was an in-person only meeting where participants were expected to be physically present. It is expected that all future OEWG meetings will be in-person only.

3. The plenary of the OEWG is guided by the UNEA resolution 5/8 entitled, ‘Science-policy panel to contribute further to the sound management of chemicals and waste and to prevent pollution’ which established the OEWG and its mandate.

4. The rules of procedure of UNEA as well as United Nations practices apply to the work of the OEWG. However, it is also important to recall that the practices of multilateral environmental agreements can also inform its work. To facilitate its work, the OEWG may choose to establish working arrangements like Working Groups, Contact Groups, Steering Groups or informal consultations with defined mandates. The OEWG in plenary can determine the nature of the arrangements it establishes, their mandates, the lengths of such mandates and what modalities of work would apply to them. In doing so, the OEWG can be informed by the practice in other intergovernmental forums, some general features of which are set out below. It should also take into account some generally-applicable rules of the United Nations (e.g. the types of bodies that can be supported by interpretation and/or translation).

5. It would be important, that, once in place, the arrangements are applied consistently to ensure clarity and predictability of the process. Most working arrangements are also “open-ended”, meaning that they are open to all States and regional economic integration organizations. The participation of stakeholders is also discussed below.

6. Set out below is a discussion of subsidiary bodies/processes/meetings that can be convened in accordance with United Nations practice as well as the practice of multilateral environment agreements (MEAs).

7. In the first instance, an **Open Ended Ad-Hoc Working Groups can be established by the governing body** as a subsidiary body under which negotiations on matters of significant political consideration takes place (e.g. negotiations on treaty amendments or protocols).¹ Such Working Groups are more permanent in nature in that they are usually established by the plenary for a period spanning several sessions of that plenary.² Their mandates are defined at the time of establishment.

8. In this particular process, it is understandable that the terminology can be confusing and that the OEWG may not necessarily wish to establish Working Groups as subsidiary bodies, as they carry the same name as the OEWG itself.

9. In some processes **Working Groups** spanning several plenary sessions, can also meet inter-sessionally between sessions of their parent body if the workload demands. In such Working Groups, political level discussions and discussions on the process usually happen in a plenary setting supported with interpretation. They then establish more technical negotiations groups, like Contact Groups on informal consultations, focused on negotiations and drafting on specific issues or streams of issues.

10. Working Groups as subsidiary bodies can adopt conclusions and recommendations but are not usually decision-making bodies and any substantive outcome of their work ultimately serves as the input to the work of the parent body. Outcomes of their work that is forwarded to the parent body are usually expected to be agreed by all States. Voting is thus rare. If an agreement cannot be reached on some matters, any outstanding issues should be clearly indicated when forwarding to the parent body for consideration, such as bracketed text.

11. **Steering Groups** can be more informal. There can be high level steering groups that are internal to the United Nations and that consist of senior Secretariat officials only. There can also be inter-governmental steering groups. They can include all States but can also be bodies of limited membership. They can include in their membership, United Nations officials, UN agencies and stakeholders. Thus, a more diverse membership. Mandates of steering committees are very wide ranging and can be policy orientated but also very technical where steering committees perform a technical oversight function.

12. **Contact Groups** are often more technical in nature with a more narrowly defined mandate. They can be established by plenaries or by Open-Ended Working Groups and forward any outcomes of their work to their respective parent body. The Contact Group modality was used, for example, as the main negotiating modality

¹ See e.g. Decision II/5 of the Conference of the Parties to the Convention on Biological Diversity on Consideration of the Need for and Modalities of a Protocol for the Safe Transfer, Handling and Use of Living Modified Organisms ([UNEP/CBD/COP/DEC/II/5](#)) (1995-2000); [Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol](#) (2005-2012); Decision 1/CP.17 of the Conference of the Parties to the United Nations framework Convention on Climate Change establishing the Ad Hoc Working Group on the Durban Platform for Enhanced Action ([FCCC/CP/2011/9/Add.1](#)).(2011-2015).² The Open-ended Working Group established by [decision 1/5](#) of the Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer at its first session has a standing mandate to prepare draft proposals for any amendments to the Protocol which would be needed.

² The Open-ended Working Group established by [decision 1/5](#) of the Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer at its first session has a standing mandate to prepare draft proposals for any amendments to the Protocol which would be needed.

under the INC developing the Minamata Convention, supplemented by other modalities, such as drafting groups.³ Contact Groups were also among the main working modalities of the INC developing the Stockholm Convention.⁴

13. Unlike Working Groups, Contact Groups are usually set up for the duration of one session (although there is nothing to prevent the OEWG to set up more long-running Contact Groups), are somewhat more technical in nature and are not supported by interpretation. If established for one session, they can be re-established at the next session with the same or a modified mandate. There can be more than two Groups established for each session, however, scheduling should take into account the participation capacity of smaller delegations. Contact Groups held in a round table setting usually allow for more effective and direct negotiations and text drafting than a plenary setting of a Working Group.

14. It is essential that Working Groups or Contact Groups are as inclusive as possible and open to participation by all States and regional economic integration organizations. Participation by observers in meetings of Working or Contact Groups is strongly desirable for the transparency of the process.

15. Irrespective of the name the OEWG assigns to any formal arrangements it establishes to work on sub-sets of issues, it may wish to consider the form and function of such Groups which may need to be more akin to what is traditionally called a Contact Group (see above). This likely would allow for the more effective use of time available. Establishing Working Groups akin to those usually established by treaty governing bodies (i.e. multi-session political level negotiating bodies working through plenaries) may lead to some duplication of the plenary level work).

Decision-making

16. Steering Groups, Working Groups and Contact Groups as subsidiary bodies are not generally speaking regarded as decision-making bodies. Working Groups and Steering Groups can adopt recommendations and conclusions for review by their plenaries and in some cases have even adopted decisions. However, it is always with the understanding that outcomes serve as input to the work of the parent body and outcomes that are not agreed can be forwarded to the plenary as bracketed text.

17. Thus, any outcomes of their work being forwarded to the parent body are usually expected to be agreed by all States (or, if an agreement cannot be reached on some matters, any outstanding issues should be clearly indicated when forwarding to the parent body for consideration). Presiding Officers of Working or Contact Group, therefore, usually gavel the agreed output being forwarded to signify this common agreement.

18. Contact Groups rarely negotiate draft decisions or recommendations, however, they can negotiate text that is considered by the plenary. Reporting to plenary usually consists of a report from the Chair or Co-Chairs of Contact Groups.

Presiding officers

19. Presiding Officers of Working/Contact/Steering Groups (usually two presiding officers per group, with one from developed and one from developing countries) are appointed by the body establishing the Group, work

³ See e.g. Report of the intergovernmental negotiating committee to prepare a global legally binding instrument on mercury on the work of its fourth session ([UNEP\(DTIE\)/Hg/INC.4/8](#)) at para 16.

⁴ See e.g. Report of the Intergovernmental Negotiating Committee for an International Legally-Binding Instrument for Implementing International Action on Certain Persistent Organic Pollutants on the work of its first session ([UNEP/POPS/INC.1/7](#)) at para 40 and 46.

under the guidance of the body's presiding officer(s) and the overall guidance of the Bureau and report to the parent body. Regular coordination meetings with the presiding officer of the parent body and among the presiding officers of the Groups are very useful to provide for consistency and minimize overlaps, gaps and duplications. In some processes, they also participate ex-officio in the meetings of the Bureau of the process as part of the extended Bureau.⁵ This allows for better coordination and transparency of the process.

Capturing progress

20. Because Working Groups are usually considered ad-hoc or standing subsidiary bodies that meet in plenary and whose mandate spans several sessions, they produce session reports which also serve to inform the governing body establishing them and all Parties under the treaty of the progress in their work.

21. Unlike Working Groups, Contact Groups do not usually produce their own reports but rather capture the status of their work in iterations of draft text. These iterations can be captured in iterations of drafts posted on the website after each meeting of the Contact Group. Depending on the mandate of the Contact Group its outputs may take the form of a draft text that the plenary will consider and take forward or of draft procedural conclusions that the plenary will consider for inclusion in the session report.

22. Outputs of the Contact Group which have reached certain level of maturity and are being forwarded to the plenary for consideration can be presented as a document for distribution. Where outputs are intermediary and the Group expects to continue to work on them following further guidance from the plenary, the outputs may be posted "as are" on the website and drawn to the attention of the plenary with a request for further guidance on how to proceed. In such case, the plenary has the discretion to decide e.g. whether the document coming out of the Contact Group would form the basis for the continued discussion at the next session, without formally annexing them to its report.

Informal consultations

23. The plenary, Working or Contact Groups can decide to delegate particular elements of work to **informal consultations**. Informal consultations can be initiated by either the presiding officers of the parent body or by one or more delegations. They provide space for open and informal exchange of views and can help find a commonly acceptable solution or produce draft text. They can be facilitated by the Presiding Officers of the parent body, by one or more delegates appointed by the parent body or they can decide on their own facilitators. Informal consultations are not supported by interpretation. While wide participation should be encouraged, not all delegations might be able to participate in the informal meetings. Any outputs of such consultations should, therefore, be presented for consideration by the parent body to ensure fairness, inclusiveness and transparency of the process.

24. In addition, any State or regional integration organization can propose to facilitate an informal discussion/consultations with interested delegations on a particular issue and request that meeting space be made available for this and all delegations notified through the secretariat (self-organized Member States consultations).

25. Informal consultations should be open-ended (open to all States and regional economic integration organizations); accountable to the body establishing them; not be a decision-making body; have a very specific mandate with an end delivery deadline; be timebound and not run beyond the length of the session of the parent body at which they are established. When consultations are Member-States proposed or led, it is less usual for the presiding officers of the parent body to attend and such meetings are normally not attended/supported by the Secretariat.

⁵ This was the case in the context of the Mercury INC.

Friends of the Chair/Chair's informal consultations

24. The Chair or Co-Chairs may also establish, with the agreement of Member States or under his or her own responsibility, smaller group settings, like the Chair's informal consultations or “**friends of the Chair**” to hold consultations with Member States on key issues. The Chair/Co-Chairs may also consult bilaterally with regional or negotiating groups as she/he deems appropriate while striving to ensure the overall transparency and inclusiveness of the process (e.g. the Chair can propose to meet the main negotiating groups in a bilateral setting prior to the opening of the session to hear their core positions, views and concerns so as to better plan the session).

25. The Chair/Co-Chairs preside over such meetings. In some cases, the Chair may delegate the task to facilitate such meetings on his or her behalf to a Bureau member or to a senior representative of a Member State. The scope of participation is normally defined by the Chair. In defining such scope, the Chair should strive to ensure as inclusive and transparent consultations process as possible. As such meetings are informal, no interpretation is provided.

Observers

26. **Observers** attend plenary meetings under the same rules of procedure and modalities of participation that are applied to the governing body that established them, which would in this case be the UNEA rules of procedure. They usually can attend meetings held in a Working Group or Contact Group or Steering Group like setting, subject to availability of space in the meeting room. However, it is important to have clarity, preferably when a Group is being established, as to whether they can speak at such meetings. Observer participation in informal consultations is usually at the discretion of the participating States. In complex processes like the UNFCCC where many negotiations take place in informal groups the Subsidiary Body for implementation particularly encouraged keeping informal group meetings open to observers. State-led informal consultations, however, are usually limited to States and regional economic integration organizations only.

Other working modalities

Drafting Group(s)

To make efficient use of time, negotiations sometimes resort to establishing small **drafting groups** which meeting back-to-back or in parallel with the main open-ended negotiations. Such drafting groups, in which a small number of Member State delegates (observing regional balance and representation) focus their attention on ensuring that policy choices made in larger groups are accurately captured in the draft text.⁶

Legal Group

Some processes establish a special **Legal Group** to elaborate, in particular, the final provisions or any other legal matters of the future legally binding instrument.⁷ Such Legal Groups are usually established by the plenary as open-ended Contact Groups composed of legal experts from delegations. Legal Groups are sometimes established towards the end of the first half of the negotiations. Legal Groups may be open to observers and are not supported by interpretation. Its presiding officers are appointed by the plenary.

⁶ Mercury INC-4 and INC-5 availed of the drafting group working modality, as did the Ad-Hoc Working Group on the HFC Amendment to the Montreal Protocol during its last session in Kigali (2016).

⁷ E.g. Legal Group established under the Ad-Hoc Working group on the Kyoto Protocol (2010-2011).

“Commas Committee”

A Commas Committee can be established by the plenary towards the end of the negotiations process when the draft of a future instrument is sufficiently stable to do a “legal scrub” (i.e. review of consistency and legal clarity of the text) of the treat text as it is being finalized. Unlike the open-ended Legal Contact Group, the Commas Committee benefits from a small number of legal experts from the delegations, while ensuring balanced regional representation. In technical treaties, the Commas Committee may also include one or more technical experts who can provide necessary clarifications during review.⁸ To ensure the effectiveness of its work, the composition of the Committee is usually limited to 10-15 experts. The editorial changes proposed by the Committee are communicated to all Member States before the text is put forward for consideration and adoption.

The Committee is usually established at the last negotiating session, its presiding officers appointed by the plenary and it is not supported by interpretation.

The Commas Committee determines how many meetings it should hold depending on the status of the draft text. Participation is usually limited to experts from Member States delegations and the supporting secretariat staff. If the Committee is in the position to review several authentic language versions of the text, it is important that members include experts who are native speakers of those languages.

Participation in the Commas Committee is limited to the designated experts from Member States and the Secretariat staff.

⁸ UNECE Protocol on Pollutant Release and Transfer Registers, Commas Committee established by the Working Group on the PRTR Protocol (2002). The Legal Group established under the INC on Mercury reviewed parts of text during several sessions of the INC (2012-2013).