

INFORMAL NOTE BY THE SMALL GROUP ON INSTITUTIONAL AND PROCEDURAL ACTIVITIES

Institutional and administrative aspects of the relationship between MOP and MOP/MOP

(Decision III/12, paragraph 4(a)(v))

1. Introduction

This informal note has been prepared by the small group on institutional and procedural activities (UK, Germany, the Netherlands), and addresses paragraph 4(a)(v) of Decision III/12. Hence, it sets out the institutional and administrative aspects of the relationship between the MOP of the Espoo Convention and the MOP/MOP of the SEA Protocol. In particular, it sketches three scenarios of how the MOP/MOP can be convened during the MOP, including some of the practical implications.

This note augments the earlier paper by the small group, which addressed the other topics under paragraph 4(a) of Decision III/12.

Please note that the issues are **presented in a summarized form only**, with a view to keeping the document relatively short. A more elaborated explanation will be provided at the upcoming EIA Working Group, by way of an oral presentation. This will also provide an opportunity to ask further questions or to seek clarifications where needed.

2. Article 14.1 (SEA Protocol)

Paragraph 1 of Article 14 of the Protocol contains three important elements¹. First, it introduces the MOP/MOP of the Protocol. Second, it sets out the timing of the first MOP/MOP. Third, it provides that, from the second meeting onwards, the MOP/MOP shall be held in conjunction with meetings of the MOP, unless Parties decide otherwise.

The second element, on the timing of MOP/MOP-1, will not be addressed in this note, as it is dependent on the date of entry into force of the Protocol. Moreover, Article 14.1 is self-explanatory in this regard.

The other two aspects of Article 14.1 are elaborated below.

¹ Article 14.1: "The Meeting of the Parties to the Convention shall serve as the Meeting of the Parties to this Protocol. The first meeting of the Parties to the Convention serving as the Meeting of the Parties to this Protocol shall be convened not later than one year after the date of entry into force of this Protocol, and in conjunction with a meeting of the Parties to the Convention, if a meeting of the latter is scheduled within that period. Subsequent meetings of the Parties to the Convention serving as the Meeting of the Parties to this Protocol shall be held in conjunction with meetings of the Parties to the Convention, unless otherwise decided by the Meeting of the Parties to the Convention serving as the Meeting of the Parties to this Protocol."

3. MOP/MOP

The construction of a MOP/MOP is precededented (in the form of a COP/MOP) in two other multilateral environmental agreements (MEAs) – the Cartagena Protocol on Biosafety and the Kyoto Protocol. As there is no need to reinvent the wheel, the analysis and scenarios contained in this note find their roots in the practice and experiences under those instruments. It falls beyond the scope of this note to go into the history and rationale of the COP/MOP construction under those MEAs. It suffices to recall that the MOP/MOP under the SEA Protocol is **a functionally integrated with, but legally distinct body** from the MOP.

4. Relationship of MOP and MOP/MOP

The scheduling of the meetings of the MOP and the MOP/MOP is the main element of the institutional and administrative relationship between the two bodies. The SEA Protocol provides that the MOP/MOP shall be held **'in conjunction with'** the MOP of the Espoo Convention, unless the Parties decide otherwise. Both the Cartagena Protocol on Biosafety (Article 29.6) and the Kyoto Protocol (Article 13.6) use the same wording. The term 'in conjunction with' would cover three possible scenarios. That is, convening the MOP/MOP

- (a) immediately prior to the MOP;**
- (b) during the MOP; or**
- (c) immediately following the MOP.**

Based on a straightforward interpretation of the wording of Article 14.1 of the Protocol, as well on as several precedents, it should be concluded that each of these three scenarios would be in conformity with the provisions of Article 14.1 of the SEA Protocol.

Scenarios (a) and (c) are straightforward and do not need much explanation. They simply provide for back-to-back meetings, with the earlier meeting being finalised and closed before the other meeting starts. In contrast, scenario (b) requires a more elaborated explanation.

5. MOP/MOP during the MOP

There are basically three ways in which the MOP/MOP can be convened during the MOP. The MOP/MOP could take place parallel (concurrent) with the MOP (see table (i) below). The MOP could also at some point be adjourned, allowing the MOP/MOP to take place, after the closure of which the MOP resumes and finalises its business (see table (ii) below). A third possibility would be to have the opening of both the MOP and the MOP/MOP on the same day, and to allocate segments of the remaining days to the MOP and the MOP/MOP alternatively (see table (iii) below).

Please note that the tables below are merely illustrative, including the duration and time allocation – they are only intended to explain the basic concept of each scenario.

Table (i) – concurrent meetings

Monday	Tuesday	Wednesday	Thursday
MOP	MOP	MOP	MOP
MOP/MOP	MOP/MOP	MOP/MOP	

- We feel it is obvious that it would not be a feasible option to have the MOP and the MOP/MOP run at the same time.

Table (ii) – embedded meeting

Monday	Tuesday	Wednesday	Thursday	Friday
MOP	MOP	MOP/MOP	MOP/MOP	MOP
	adjourns at end of the day		decisions adopted and closure	resumed, decisions adopted and closure

- Precedent: this approach was used for the first COP/MOP of the Biosafety Protocol.
- Advantage: the MOP/MOP continues uninterrupted, and no frequent switches between MOP and MOP/MOP (which also makes the logistics of the seating arrangements less cumbersome).
- Advantage: in taking its final decisions, the MOP is aware of the final decisions taken under the Protocol.
- Advantage (in terms of time and money) for MOP/MOP delegates, as their meeting will not be adjourned. Disadvantage for MOP delegates, as their meeting will be in recess for two days.
- Disadvantage: compared to scenario (iii) less possibility for interaction/functional integration between two bodies, since the MOP does not convene during MOP/MOP.
- Under this scenario, the agendas of the two bodies remain separate.
- This scenario does allow for a certain, but still limited, degree of integration of the two programmes of work.

Table (iii) – sequential meetings

Monday	Tuesday	Wednesday	Thursday	Friday
Morning: MOP opening	Morning: MOP continues	Morning: MOP continues	Morning: MOP continues	MOP decisions and closure
Afternoon: MOP/MOP opening	Afternoon: MOP/MOP continues	Afternoon: MOP/MOP continues	Afternoon: MOP/MOP decisions and closure	

- Precedent: the sequential approach was used by the COP and COP/MOP of the UNFCCC and the Kyoto Protocol.
- Advantage: this scenario provides for the most flexibility and almost fully exploits the possibilities for interaction and functional integration between two bodies.
- Advantage: this scenario would also allow for the possibility of joint sessions of the MOP and the MOP/MOP.² A joint session would allow, *inter alia*, for the full integration of the budgets and programmes of work of both instruments.
- Disadvantage for those representatives which only work on one of the two instrument – their meeting will now last longer as it is spread over more days.
- Disadvantage: less transparent because of switching between two bodies.

6. Suggestion by the small group

For the small group, the preferred scenario would be the one with sequential meetings, as set out in table (iii). In our view, this scenario would best foster efficiency, would maximize the opportunities for coordinating and developing synergies between the work and agendas of the MOP and the MOP/MOP, and would seem to avoid unnecessary overlaps.

² Precedent: During COP-11 (UNFCCC) and COP/MOP-1 (Kyoto Protocol) the bodies held a joint meeting during which a joint high-level segment was convened. Parties to the instruments decided no decisions would be taken during the joint meeting.

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