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**Conference of the Parties of the
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Persistent Organic Pollutants
First meeting**
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Item 6 (e) of the provisional agenda*

**Matters for consideration or action by the Conference
of the Parties: Terms of reference of the Persistent
Organic Pollutants Review Committee**

Revised and annotated draft terms of reference of the Persistent Organic Pollutants Review Committee^{}**

Note by the Secretariat

1. Paragraph 6 of Article 19 of the Stockholm Convention on Persistent Organic Pollutants states:
“The Conference of the Parties shall, at its first meeting, establish a subsidiary body to be called the Persistent Organic Pollutants Review Committee for the purposes of performing the functions assigned to that Committee by this Convention. In this regard: ... (b) The Conference of the Parties shall decide on the terms of reference, organization and operation of the Committee;...”
2. The Intergovernmental Negotiating Committee for an Internationally Legally Binding Instrument for Implementing International Action on Certain Persistent Organic Pollutants, at its sixth session, established an open-ended contact group with a mandate to consider issues of the terms of reference, operational guidelines and rules of procedure for the Persistent Organic Pollutants Review Committee. The report of the contact group, which is contained in annex V of the report of the session (UNEP/POPS/INC.6/22), was noted by the Intergovernmental Negotiating Committee. The

* UNEP/POPS/COP.1/1.

** Stockholm Convention on Persistent Organic Pollutants, Article 19; Report of the Conference of Plenipotentiaries on the Stockholm Convention (UNEP/POPS/CON4/4), appendix I, resolution 1, paragraph 5; Report of the Intergovernmental Negotiating Committee on the work of its sixth session (UNEP/POPS/INC.6/22), para. 102 and annex; report of the Intergovernmental Negotiating Committee on the work of its seventh session (UNEP/POPS/INC.7/28), para. 92 and annex V.

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Intergovernmental Negotiating Committee "... requested the Secretariat to use the report as the basis to propose a brief description and draft terms of reference for the subsidiary body to review candidate persistent organic pollutants for further consideration of the Committee at its seventh session" (UNEP/POPS/INC.6/22, para. 102).

3. The Secretariat prepared a brief description and draft terms of reference for the Persistent Organic Pollutants Review Committee, contained in document UNEP/POPS/INC.7/11, which were considered by the Intergovernmental Negotiating Committee at its seventh session. The Intergovernmental Negotiating Committee requested the Secretariat, in consultation with the Chair of the Committee's legal drafting group, to develop a revised and annotated version of the draft terms of reference on the basis of views expressed by representatives at the seventh session. The Secretariat was further requested to circulate revised terms of reference to Governments and observers as soon as practicable (UNEP/POPS/INC.7/28, paras. 90, 91).¹

4. In response to the above request, the Secretariat, in consultation with the Chair of the legal drafting group, prepared revised draft terms of reference, and on 17 February 2004, the document was circulated to Governments with an invitation to provide comments to the Secretariat by 30 April 2004.

5. In response to that invitation, fifteen Governments (including one on behalf of a regional economic integration organization and its member States) and three non-governmental organizations submitted comments to the Secretariat. The submissions are contained in document UNEP/POPS/COP.1/INF/10.

6. Based on the comments received, the Secretariat, in consultation with the Chair of the legal drafting group, prepared revised draft terms of reference for consideration and possible adoption by the Conference of the Parties at its first meeting. The draft terms of reference are included in the appendix to the draft decision annexed to the present note. Text underlined and in square brackets indicates a new proposal received under paragraph 5 above that introduces significant new issues.

7. With regard to the issue of equitable regional representation and in response to a request made at the seventh session of the Intergovernmental Negotiating Committee (UNEP/POPS/INC.7/28, para. 83), the Secretariat prepared an overview of the regional distribution of member States of the United Nations General Assembly and of the Food and Agriculture Organization, which is contained in document UNEP/POPS/COP.1/INF/16.

8. With regard to the issue of conflicts of interest, in response to the request of the Intergovernmental Negotiating Committee made at its seventh session (UNEP/POPS/INC.7/28, para. 86), the Secretariat has prepared a review and evaluation of existing approaches to conflicts of interest in similar international instruments and draft rules and procedures for preventing and dealing with conflicts of interest relating to activities of the Persistent Organic Pollutants Review Committee, which are contained in document UNEP/POPS/COP.1/23.

Possible action by the Conference of the Parties

9. The Conference of the Parties may wish to:
- (a) Consider the information provided above;
 - (b) Adopt, with any amendments, the draft decision contained in the annex to the present note and the revised and annotated draft terms of reference appended to it.

¹ The draft terms of reference, as reviewed by the legal drafting group and as amended by the Committee, are contained in annex V of the report of the session (UNEP/POPS/INC.7/28).

Annex

Draft decision for consideration by the Conference of the Parties on the establishment of the Persistent Organic Pollutants Review Committee

The Conference of the Parties,

Recalling that paragraph 6 of Article 19 of the Stockholm Convention on Persistent Organic Pollutants provides that the Conference of the Parties shall, at its first meeting, establish a subsidiary body to be called the Persistent Organic Pollutants Review Committee for the purposes of performing the functions assigned to that Committee by the Convention,

Recalling further that subparagraph (b) of paragraph 6 of Article 19 provides that the Conference of the Parties shall decide on the terms of reference, organization and operation of the Committee,

Noting resolution 5 of the Conference of Plenipotentiaries contained in document UNEP/POPS/CONF/4, in which the Conference invited the Intergovernmental Negotiating Committee for an International Legally Binding Instrument for Implementing International Action on Certain Persistent Organic Pollutants to recommend, for consideration by the Conference of the Parties at its first session, draft rules of procedure, composition and operational guidelines for the functioning of the subsidiary body to be established under paragraph 6 of Article 19 of the Convention,

Considering the work of the open-ended contact group established by the sixth session of the Intergovernmental Negotiating Committee with a mandate to consider issues of the terms of reference, operational guidelines and rules of procedure for the Persistent Organic Pollutants Review Committee,

Further considering the request of the Intergovernmental Negotiating Committee at its seventh session to the Secretariat to develop a revised version of the draft terms of reference for the Persistent Organic Pollutants Review Committee, in consultation with the Chair of the legal drafting group, on the basis of views expressed by representatives at the seventh session of the Intergovernmental Negotiating Committee,

1. *Decides* to establish a subsidiary body to be called the Persistent Organic Pollutants Review Committee for the purposes of performing the functions assigned to that Committee by the Convention;

2. *Decides* to adopt the terms of reference in the appendix to the present decision, specifying the mandate, composition, organization and operation of the Persistent Organic Pollutants Review Committee.

Appendix

Revised and annotated draft terms of reference of the Persistent Organic Pollutants Review Committee

A. Mandate

1. The Persistent Organic Pollutants Review Committee (hereinafter referred to as the “Committee”) is a subsidiary body to the Conference of the Parties of the Stockholm Convention on Persistent Organic Pollutants established in accordance with paragraph 6 of article 19 of the Convention. The Committee shall perform the functions assigned to it by the Convention.

B. Membership

2. The members of the Committee shall be appointed by the Conference of the Parties on the basis of equitable geographical [and gender] distribution² [, taking into account [gender and] the need for a balance between [developed and developing countries][and][different types of expertise[,including in health and the environment;]]].

3. The Committee shall consist of [30-40 members.] [[35][15] members. Each of the five United Nations regions shall be represented by [seven][three] members.][The Committee members shall be distributed among the seven regions of the Food and Agriculture Organization of the United Nations [, taking into account the number of countries within each region]]

4. Members of the Committee shall be government-designated experts in chemical assessment or management [from Parties].

5. When designating experts, [a Party³][the Conference of Parties][Parties within a region] shall have due regard to a balance between different types of expertise [and between genders], and ensure that expertise in health and environment is represented. Parties shall provide curricula vitae, to be submitted to the Conference of the Parties, for the designated experts.

6. At its first meeting, the Conference of the Parties shall appoint half of the members whose appointment expires at the end of the fourth meeting of the Conference of the Parties, and half of the members whose appointment expires at the end of the fifth meeting of the Conference of the Parties.⁴ Members appointed at the fourth and subsequent meetings of the Conference of the Parties shall serve for one term. [Members may be reappointed to serve for [an] additional term[s][but for no more than two consecutive terms].] For the purpose of the present terms of reference, “term” means the period that begins at the end of one ordinary meeting of the Conference of the Parties and ends at the end of the second ordinary meeting of the Conference of the Parties thereafter.⁵ [Vacancies occurring during a term [shall] [may] be filled [by the Party concerned to be confirmed, as appropriate, at] [by] the following session of the Conference of the Parties.][Any vacancy arising during an inter-session period shall be filled in accordance with such procedure as the region concerned may determine and the qualifications of the new member shall be circulated to the Parties to the Convention through the secretariat]⁶.

² When paragraph 3 is resolved, this paragraph may be revisited.

³ The legal drafting group queried how an individual Party is to promote a balance between the different types of expertise, if it nominates only one expert.

⁴ Should the Conference of the Parties decide that the Committee shall consist of an odd number of members, e.g., 35, in paragraph 3, above, then the first sentence of paragraph 6 will need to indicate more specifically how many members are to be appointed for three terms and how many members are to be appointed for four terms.

⁵ According to paragraph 1 of rule 4 of the draft rules of procedure of the Conference of the Parties and its subsidiary bodies, contained in annex III to document UNEP/POPS/INC.6/22, “Unless otherwise decided by the Conference of the Parties, the second and third ordinary meetings of the Conference of the Parties shall be held yearly and, thereafter, ordinary meetings shall be held every two years”.

⁶ This option is based on paragraph 4 of Decision INC -6/2 of the Rotterdam Convention (PIC/(INC/6/7, page 20) referring to the interim Chemicals Review Committee and modified, as appropriate, for the purposes of this Convention.

C. Invited experts

7. The Committee may invite experts who are not members of the Committee to support it in its work. A roster of experts shall be established. Parties may designate [no more than X] experts to that roster, e.g., for areas of expertise or specific substance knowledge [including experts from Parties that are major producers of the chemical[s] to be discussed]⁷.

8. The Committee shall establish and apply criteria [, which shall be approved by the Conference of the Parties,]⁸ for the selection of experts from the roster.

8bis. If specific expertise is not available for a certain issue from amongst the experts on the roster, the Committee may invite other experts in accordance with the criteria referred to in paragraph 8.

D. Other participants⁹

9. The [meetings of the] Committee shall be open to:

- (a) Parties to the Convention [, who may participate without the right to vote];
- (b) Observers in accordance with the rules of procedure.

10. The Committee shall invite Parties that have submitted proposals for listing a chemical in annexes A, B or C of the Convention [and Parties that are major producers [and users] of the chemical] [as observers]¹⁰ to its meetings where the chemical is discussed.

E. Conflict of interest¹¹

11. The Conference of the Parties shall decide on individual cases of conflict of interest concerning members of the Committee.

12. The Committee shall decide on individual cases of conflict of interest concerning experts invited to take part in the work of the Committee.¹²

13. For invited experts from industry and other non-governmental organizations, the Committee shall identify through conflict of interest procedures where any potential conflict of interest lies in order to decide on their participation.

F. Confidentiality of data

14. The Committee shall establish confidentiality arrangements [and/or agreements] as a matter of priority. In handling confidential information and in establishing such arrangements, the Committee shall ensure that paragraph 5 of Article 9 of the Convention is respected.

⁷ This issue was also raised in the discussion of paragraph 10. It should be noted that paragraph 7 is already permissive in that there is no limitation on the designation by a Party.

⁸ The legal drafting group advises that the Conference of the Parties may either, through these terms of reference give the authority to the POPs Review Committee to establish these criteria, or it may retain this decision for itself. The choice between the 2 options is a policy matter as both are legally permissible.

⁹ The legal drafting group advises that there are no rules of procedure for participation under category (a). Any concern about the number of participants needs to be addressed by the INC.

¹⁰ The legal drafting group noted that in the rules of procedure, the term "observers" does not include Parties, and therefore there are no rules of procedure applicable to those invited under this paragraph.

¹¹ The legal drafting group noted that there are no procedures for this decision-making process. According to UNEP/POPS/INC.7/28, paragraph 86, the secretariat was requested to prepare a document that provides a review and evaluation of existing approaches to conflict of interest in similar international instruments and offer draft guidelines for such a procedure under the Stockholm Convention. The secretariat is developing a separate note on this issue for COP-1.

¹² This paragraph includes experts from industry and other non-governmental organizations to the extent that they are already captured under part C. If procedures are developed for cases under this paragraph, then all elements of paragraph 13 are captured in paragraph 12.

G. Officers of the Committee¹³

15. [The Conference of the Parties shall elect [two co-chairs] [the chairperson, and the Committee shall thereafter elect from among its members [a vice-chairperson]] [one vice-chairperson from each of the other United Nations regions]. Elections shall take into account geographical and gender balance among the officers.]

H. Administrative and procedural matters

16. In addition to following the procedures in Article 8 of the Convention, the Committee shall apply, *mutatis mutandis*, the rules of procedure of the Conference of the Parties, unless otherwise provided in these terms of reference.

16 bis. The Committee may establish such arrangements as are necessary to facilitate its work.¹⁴

[16ter. The Committee may establish rules of procedure for the participation of [Party] observers in its deliberations.]

[16quater. The [Chair][chairperson][co-chairs] of the Committee may exercise the right to vote.]¹⁵

I. Work plans

17. The Committee shall work in an efficient and timely manner and shall set priorities on chemicals, having regard to its workload. For each chemical under consideration, the Committee shall establish a work plan with time frames. Work plans shall be flexible and [take into account][determined by] the workload and [by] the need to acquire [sufficient] information from [all] [relevant] stakeholders. The Committee shall submit its work plans to [each ordinary meeting of the Conference of] the Parties [on a regular basis].

J. Meetings¹⁶

18. The Secretariat, in consultation with the officers of the Committee, shall prepare a provisional agenda for each meeting of the Committee. The provisional agenda shall be communicated to all Parties and observers at least six weeks before the opening of the Committee meeting.

19. The Committee should meet [at least][once a year], subject to availability of funds and work requirements. The meetings shall take place between meetings of the Conference of the Parties and be scheduled so that proposals for listing chemicals can go forward to the next meeting of the Conference of the Parties for consideration.

20. Technical documents shall be distributed at least three months in advance of its meetings. Other documents shall be distributed at least six weeks in advance of its meetings.

¹³ The first option of the revised draft of paragraph 15 is consistent with Rule 30 of the draft rules of procedure of the Conference of the Parties, which says the following: "The Chairperson of the Persistent Organic Pollutants Review Committee shall be elected by the Conference of the Parties. Unless the Conference of the Parties decides otherwise, the Chairperson of any other subsidiary body shall be elected by the Conference of the Parties. Each subsidiary body shall elect its own officers other than the Chairperson. The officers of such subsidiary body shall be elected with due regard to the principle of equitable geographical representation and shall not serve for more than two consecutive terms." If two co-chairs are elected, the COP may wish to consider whether Rule 30 should be amended.

¹⁴ Paragraphs 20 and 22 of the Terms of Reference refer to operational procedures; the legal drafting group considered the present paragraph obviated the need for several references.

¹⁵ With the recommended deletion of rule 31 of the draft rules of procedure of the Conference of the Parties, which would have allowed the Chair of a subsidiary body to exercise the right to vote, the Intergovernmental Negotiating Committee may wish to address the issue of whether the Chair shall exercise the right to vote.

¹⁶ The legal drafting group asks whether meetings are intended to be open in accordance with rule 27, paragraph 2 of the draft Rules of procedure of the Conference of the Parties.

21. The Committee shall prepare for its meetings the risk profiles and risk management evaluations required by Article 8 of the Convention. Members of the Committee may lead the preparation of such documents, drawing in the first instance upon existing peer-reviewed material. The nominating Party or Parties may facilitate the process by submitting a proposal for listing of a chemical together with a draft risk profile and a draft risk management evaluation.

22. The Committee may establish *ad hoc* working groups, such as chemical-specific groups, to work during meetings and inter-sessionally. Such groups shall be chaired by at least one member of the Committee and may consist of members of the Committee as well as invited experts [and observers]. The establishment of formal subcommittees should be avoided.

K. Language of meetings

23. The working language of the Committee shall be [English][the six official languages of the United Nations].

L. Recommendations and reports to the Conference of the Parties

24. The Committee shall make recommendations to list chemicals in Annexes A, B and/or C of the Convention to the Conference of the Parties. Any such recommendation from the Committee shall provide reasons as well as [supporting documents on differences for] any dissenting views.

25. The Committee may make recommendations to the Conference of the Parties on these terms of reference, and the organization and operation of the Committee.

26. Decisions, recommendations and meeting reports of the Committee shall be available as meeting documents of the Conference of the Parties in the six official languages of the United Nations. Reports by the Committee shall be publicly available and easily accessible.

M. Budget

27. Financial support, i.e., travel and daily subsistence allowance, shall be made available to Committee members from developing countries and countries with economies in transition for participation in meetings of the Committee according to United Nations practice. The same conditions shall apply, subject to available resources, for invited experts from developing countries and countries with economies in transition.
