

Chair-Rapporteur capacity to Issue Proposals and Convene Friends of the Chair

14 September 2023

During the 8th session of the OEIGWG on TNCs and OBEs, some stakeholders had raised questions in relation to two procedural issues. Such queries were brought up in relation to the capacity of the Chair-Rapporteur to present some alternative proposals on his own initiative as well as to his capacity to establish a mechanism such as the Friends of the Chair (FOCH).

This note has been prepared to provide answers to these two procedural questions, using precedents established by other treaty-making processes, and citing a UN publication reviewing the many methods of multilateral treaty-making employed in the UN and other international organizations and forums.

Regarding the legitimacy of issuing Chair proposals for select articles:

Through a [note verbale dated 7 September 2022](#), the Chair announced his intention to make a [proposal on key articles of the draft legally binding instrument](#), and those contributions were shared on 6 October 2022 along with an explanation of the approach taken in a [note verbale issued the same day](#). During the negotiations of the 8th session, some delegations and organizations raised concerns about the status of these proposals and questioned the Chair's power to develop such a document. Despite the Chair's responses, some have continued to raise questions as to the legitimacy of a Chair of a multilateral treaty-making process proposing alternative versions of text for consideration. To avoid this issue creating further distractions to this process, this response clarifies that this is fairly common practice for Chairs of such processes.

Just as the Chair has had the authority to propose various drafts of the legally binding instrument to be discussed at each session, the Chair has the authority to propose alternative versions of the text or parts of the text for consideration by the working group. This is common practice in multilateral treaty-making processes, particularly where common ground is difficult to obtain on certain provisions (see generally [Review of the Multilateral Treaty-Making Process \(1985\)](#)).

For instance, during the negotiations of the Optional Protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts, to help overcome an impasse in discussions, the Chair shared an alternative text on the draft optional protocol (entitled the "Chairman's Perception") (see [E/CN.4/1998/102](#), para. 15 & Annex II). The alternative text was considered alongside the draft optional protocol during working group negotiations and was formally annexed to the report of the fourth session of the working group. Similarly, during the negotiations of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in an "attempt to build bridges and reach the best compromise achievable," the Chair presented an alternative proposal for the text to be considered alongside multiple other versions of the optional protocol (see [E/CN.4/2002/78](#), paras. 9-12, 44 et seq., Annex I). The Chair's alternative proposal was formally annexed to the report of the

working group's tenth session. In both of these cases, the Chair presented their proposal on their own initiative, without a formal request by the respective working group.

Trying to find compromise, including through proposing alternative versions of text, is precisely what Chairs have done and should be doing in multilateral treaty-making processes.

Regarding the legitimacy of convening the Friends of the Chair:

In his [scenario note on modalities for organizing the 7th session of OEIGWG and the process projected after the 7th session](#), the Chair shared his intention to invite a group of Ambassadors to act as Friends of the Chair (FOCH) to help continue advancing work on the draft text during the intersessional period. The Chair formally recommended this at the end of the 7th session (see [A/HRC/49/65](#), paras. 20(b-d) & 21(d)). During the 8th session, many delegations encouraged the Chair to pursue the FOCH initiative further, and at the end of that session, the Chair recommended specific actions from the FOCH, and the working group concluded that it looked forward to the FOCH consultations ([A/HRC/52/41](#), paras. 17, 25(d-g), 26(d)). In the intersessional period between the 8th and 9th sessions, the Chair and Secretariat shared numerous updates about the plans for the FOCH and their work (e.g., [note verbale of 2 March 2023](#); [letter of 24 March 2023](#); [guidelines for intersessional work](#); [compilation of the outcomes of the FOCH intersessional consultations](#)). The Chair convened the FOCH process in response to repeated calls for more progress to be made during intersessional periods and was encouraged to follow through with these plans by many delegations. Nevertheless, the Chair is aware that some questions have been raised as to the legitimacy of convening such a group in multilateral treaty-making processes. This response clarifies that this frequently occurs in such processes.

Throughout multilateral treaty-making processes, Chairs have great flexibility (just as any delegation or organization participating in the process) as regards the convening of different types of groups for different purposes. These have included drafting committees, informal working groups, regional groups, negotiating groups, expert bodies, and other types of bodies. The composition of these groups can vary greatly, being composed of government representatives, technical experts, the secretariat, civil society representatives, and/or other stakeholders, individually or in combination. Such groups have worked in the intersessional period, as well as during official sessions, to assist with drafting text, reporting back on different positions, finding compromise on issues, building political support, and/or other tasks (see generally [Review of the Multilateral Treaty-Making Process \(1985\)](#)).

For example, during the development of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the Chair decided to convene both a small technical sub-working group to consider certain text, as well as to conduct informal meetings with a limited but representative number of members of the working group during the intersessional period (see [UNEP/WG.190/3](#), p. 1).