



WORLD HEALTH ORGANIZATION

CONFERENCE OF THE PARTIES TO THE
WHO FRAMEWORK CONVENTION
ON TOBACCO CONTROL

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Provisional agenda item 1.4

Provisional rules of procedure

Note by the interim secretariat

1. Article 23.3 of the WHO Framework Convention on Tobacco Control states that “the Conference of the Parties shall adopt by consensus its Rules of Procedure at its first session”. Draft rules of procedure have been prepared by the Intergovernmental Working Group for consideration by the Conference of the Parties, in accordance with its mandate.¹ At the time of the opening of the first Conference of the Parties, the rules of procedure will not yet have been adopted. Nevertheless, there will be a need for a set of rules of procedure to guide the proceedings of the Conference of the Parties until such time as the Rules of Procedure have been formally adopted. This is a situation arising under all conventions that provide for their own rules of procedure rather than use the relevant rules of the parent organization. Precedents show that there are essentially two methods for addressing this situation:

- (a) the Conference of the Parties can decide to apply *mutatis mutandis* the rules of procedure of the plenary organ of the sponsoring organization (in this case, the Rules of Procedure of the World Health Assembly) until formal adoption of its own rules of procedure; or
- (b) the Conference of the Parties can decide to use provisionally the draft rules of procedure as submitted to it by the interim or preparatory body (in this case, the Intergovernmental Working Group).

2. The first alternative can be appropriate in particular if the draft rules of procedure for the Conference of the Parties are at a stage of elaboration where their application is not practicable. This might be the case, for example, if the draft is far from being finalized, or if it contains a significant number of rules on which agreement has not been reached. This approach provides the advantage of a complete, accepted set of rules that can be readily applied. However, the disadvantage is that there are often considerable differences between the Rules of Procedure of the governing body of the parent organization and those of the governing body of the treaty. This means that certain issues will be handled in one way during the initial stage, under the rules of procedure of the governing body of the

¹ Document A/FCTC/IGWG/2/7, Annex 6.

organization, and in another way after the Rules of Procedure of the governing body of the treaty have been formally adopted.

3. The second alternative does not have this disadvantage, as it ensures the application of one set of rules of procedure from the start. It can thus be appropriate if the draft rules of procedure of the governing body of the treaty are in final or near-final form, for example if there is disagreement only on a limited number of provisions. In the case of the draft rules of procedure for the Conference of the Parties, there are three issues where consensus has not been reached by the Intergovernmental Working Group, namely, the agenda items for regular sessions of the Conference of the Parties (draft Rule 7);¹ the participation of observers in the proceedings (draft Rules 29 and 30);² and the modalities of decision-making (draft Rule 49).³

4. As there is considerable difference between the Rules of Procedure of the World Health Assembly and the draft rules of procedure of the Conference of the Parties on a number of issues, the provisional application of the draft rules of procedure for the Conference would appear preferable. If this alternative were chosen, the Rules of Procedure would be applied with the exception of those rules on which agreement has not yet been reached, until such time as the Rules of Procedure are finalized and formally adopted. In the interim, a pragmatic solution would need to be found for addressing the subject matters of the draft rules on which there has as yet been no consensus. In this respect, the following options could be considered:

- (a) **agenda items for the regular sessions of the Conference of the Parties (draft Rule 7):** it could be decided to apply provisionally only those parts of Rule 7 that are not in square brackets;
- (b) **participation of observers (draft Rules 29 and 30):** it could be agreed to apply provisionally the Rules of Procedure of the World Health Assembly on observer participation *mutatis mutandis*; and
- (c) **decision-making (draft Rule 49):** it could be decided that all decisions be accepted by consensus pending finalization of Rule 49.

5. In order to expedite the finalization of the rules of procedure, the Conference of the Parties may wish to establish immediately a legal working group to which it would entrust the work on the rules of procedure.

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¹ Document A/FCTC/IGWG/2/7, paragraph 77.

² Document A/FCTC/IGWG/2/7, paragraphs 103-106, and Chair's summary of the discussions on Rules 29 and 30 in Annex 4.

³ Document A/FCTC/IGWG/2/7, paragraphs 127-129, and Chair's summary of the discussions on Rule 49 in Annex 5.