



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 “[t]he 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 Open-ended Intergovernmental Working Group on the WHO Framework Convention on Tobacco Control for consideration by the Conference of the Parties, in accordance with its mandate.¹ When the first Conference of the Parties opens, the rules of procedure will not have been adopted. Nevertheless, the Conference will need a set of rules of procedure to guide its proceedings until such time as it adopts its own rules of procedure. This incongruence arises with all conventions that set their own rules of procedure rather than use the relevant rules of the parent organization. Precedents indicate two main methods for resolving this situation:

- (a) the Conference of the Parties may decide to apply *mutatis mutandis* the rules of procedure of the organs of the sponsoring organization. In this case, the Rules of Procedure of the World Health Assembly and those of the Executive Board, *mutatis mutandis*, until formal adoption of its own rules of procedure;
- (b) the Conference of the Parties may decide to use provisionally the draft rules of procedure submitted to it by the interim or preparatory body (in this case, the Open-ended Intergovernmental Working Group).

2. The first alternative may be appropriate in particular when the draft rules of procedure for the Conference of the Parties are at such a stage of elaboration that their application is not practicable. This might be the case, for example, if the draft is far from final, 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. The disadvantage, however, is that often the rules of procedure of the governing bodies of the parent organization differ considerably from those of the governing body of the treaty. As a consequence, certain issues may be handled differently during the initial stage, under the rules of procedure of the governing bodies of the organization, and later, after the rules of procedure of the governing body of the treaty have been adopted. 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 final or almost finalized (for example, when there is disagreement on only a few provisions).

¹ Document A/FCTC/COP/1/2, ANNEX, Annex 6.

3. In the case of the draft rules of procedure for the Conference of the Parties to the WHO Framework Convention on Tobacco Control, most of the rules have been agreed by the Intergovernmental Working Group; only a relatively small number of rules require further discussion (text in square brackets in the report of the Working Group¹). As there are also considerable differences between the relevant rules of procedure of WHO's governing bodies and the draft rules of procedure for the Conference of the Parties on several issues, the provisional application of the draft rules of procedure for the Conference would be desirable.

4. If this second alternative were chosen, the draft rules of procedure for the Conference would be provisionally applied, with the exception of those rules not yet agreed (enclosed in square brackets), until such time as the rules of procedure are finalized and adopted by the Conference of the Parties. In the interim, a pragmatic solution would need to be found for dealing with the subject matter of those draft rules needing further discussion. Depending on the issue and the state of elaboration of particular individual rules, the interim secretariat proposes the interim solutions described below for consideration by the Conference.

PROPOSED INTERIM SOLUTIONS FOR DRAFT RULES NEEDING FURTHER DISCUSSION¹

5. Text in draft Rules 7, 29, 30 and 49 was placed in square brackets by the Intergovernmental Working Group because new wording had been proposed on which agreement was not reached. In addition, some draft rules were placed in square brackets for other reasons. In some cases, in particular, at the request of the Working Group, the interim secretariat drafted text after the Working Group's second session. In other cases, draft rules were placed in square brackets because they are contingent on those draft rules on which the Working Group did not agree. The following paragraphs outline all bracketed draft rules and suggest a possible approach for each one, for consideration by the Conference of the Parties.

6. **Rules 2.10, 2.11 and 2.12² (defining the terms “public”, “open” and “restricted” sessions or meetings) and Rules 61 to 64³ (relating to production and distribution of records of meetings).** For this group of draft rules, the Working Group asked the interim secretariat to draft text on the basis of the relevant rules of procedure of the WHO governing bodies on the issues concerned. Accordingly, the text now enclosed in square brackets has been drafted by the interim secretariat and has not been seen by the Working Group. As this text is based on relevant rules of procedure of WHO's governing bodies, the Conference of the Parties, according to the suggestion of the Working Group, may wish provisionally to apply, *mutatis mutandis*, the relevant rules of procedure of the Executive Board as far as draft Rules 2.10 to 2.12 are concerned, and those of the World Health Assembly as far as draft Rules 61 to 64 are concerned, pending consideration and agreement on this text.

7. **Rules 7 and 9 (relating to the provisional agendas for regular sessions of the Conference of the Parties).**⁴ Regarding Rule 7, new text was proposed during the Working Group's discussions on which agreement could not be reached, and which was therefore placed in square brackets. As a

¹ Document A/FCTC/COP/1/2, ANNEX, Annex 6.

² Document A/FCTC/COP/1/2, ANNEX, paragraph 66.

³ Document A/FCTC/COP/1/2, ANNEX, paragraphs 143-144.

⁴ Document A/FCTC/COP/1/2, ANNEX, paragraphs 77 and 79, respectively.

consequence, the last sentence of Rule 9, which relates directly to Rule 7, was also placed in square brackets pending agreement on Rule 7. In light of this situation, the Conference of the Parties may wish provisionally to apply only those parts of Rules 7 and 9 that are not in square brackets.

8. **Rules 27.2 and 31 (relating to the identification of sessions or meetings as “public”, “open” or “restricted”).**¹ These draft rules have been placed in square brackets by the Working Group in order to allow the Conference of the Parties to review their content in light of the outcome of the consideration of Rule 2 which will define these terms (see paragraph 6 above). As Rules 2.10, 2.11 and 2.12 may be based on the relevant rules of procedure of WHO’s governing bodies and as Rules 27.2 and 31 are linked to those Rules, the Conference of the Parties may wish provisionally to apply, mutatis mutandis, the relevant rules of procedure of WHO’s Executive Board relating to public, open and restricted meetings.

9. **Rule 28.2 (relating to the question of whether the chairperson of a subsidiary body may exercise the right to vote).**² This question was not settled by the Working Group. Pending agreement on this rule, the Conference of the Parties may wish provisionally to apply, mutatis mutandis, the relevant rules of procedure of the World Health Assembly on this issue.

10. **Rules 29 and 30³ (relating to the invitation and attendance and participation of observers).** During the Working Group’s discussions, views diverged on the content of these rules, and considerable work remains to be done before they can be agreed. The Conference of the Parties may thus wish provisionally to apply, mutatis mutandis, the relevant rules of procedure of the World Health Assembly on observer participation.

11. **Rule 49⁴ (relating to procedures of decision-making).** The discussion of this draft rule did not agree on the methods of decision-making, and more work will be needed in order to finalize this rule. Following precedents in other treaties on this matter, the Conference of the Parties may wish to decide that all decisions be adopted by consensus pending finalization of Rule 49.

12. Thus, as a pragmatic approach pending the adoption of the rules of procedure, the Conference of the Parties may wish to consider provisionally applying all rules that have been finalized by the Intergovernmental Working Group. For each draft rule enclosed in square brackets it is suggested provisionally to apply either the rule without the bracketed parts or the relevant rules of procedure of WHO’s governing bodies. In each case, the interim secretariat has proposed, for the consideration of the Conference of the Parties, one recommendation regarding which option to apply. With regard to Rule 49, however, it is suggested that the Conference of the Parties adopt its decisions by consensus. 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/COP/1/2, ANNEX, paragraphs 98 and 107, respectively.

² Document A/FCTC/COP/1/2, ANNEX, paragraph 102.

³ Document A/FCTC/COP/1/2, ANNEX, paragraphs 103-106, and Chair’s summary of the discussions on Rules 29 and 30, document A/FCTC/COP/1/2, ANNEX, Annex 4.

⁴ Document A/FCTC/COP/1/2, ANNEX, paragraphs 127-129, and Chair’s summary of the discussions on Rule 49, document A/FCTC/COP/1/2, ANNEX, Annex 5.