



WHO Framework Convention on Tobacco Control

Conference of the Parties

Intergovernmental Negotiating Body on a
Protocol on Illicit Trade in Tobacco Products
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Officers of the Intergovernmental Negotiating Body on a Protocol on Illicit Trade in Tobacco Products

Note from the Legal Counsel

1. The purpose of this document is to provide legal clarification of the duration of the term of office of the Chairperson and Vice-Chairpersons of the Intergovernmental Negotiating Body on Illicit Trade in Tobacco Products.

BACKGROUND

2. The Negotiating Body was established by the Conference of the Parties at its second session (decision FCTC/COP2(12)); it is a subsidiary body of the Conference of the Parties within the terms of Rule 25 of its Rules of Procedure.

3. Subsidiary bodies of the Conference of the Parties are specifically addressed in Rules 25–28 of its Rules of Procedure. In particular, Rule 28.1 deals with the election and term of office of the Chairperson and other officers of such bodies and provides, *inter alia*, that “Officers shall not serve for more than two consecutive terms”.

4. Rule 28 does not define the word “terms”. Moreover, the applicability of Rule 21 – concerning the election and term of office of the President and Vice-Presidents of the Conference of the Parties – to the officers of subsidiary bodies is excluded by paragraph 3 of Rule 25.¹ The Rules of Procedure of the World Health Assembly and the Executive Board do not provide guidance with respect to the word “terms”, as both refer to “session” to designate the duration of office.

¹ “**Except as provided in Rules 26–28**, these Rules shall apply mutatis mutandis to the proceedings of any subsidiary bodies, subject to any modifications decided by the Conference of the Parties.” (emphasis added).

POSSIBLE INTERPRETATIONS OF THE WORD “TERM”

5. The word “terms” contained in Rule 28.1 of the Rules of Procedure of the Conference of the Parties may be interpreted in two different manners:

- (a) it may be read as synonymous with “session”, and is used in this sense in rules of procedure of other governing bodies within the United Nations system. This interpretation is based on the consideration that intergovernmental bodies manage their work on the basis of distinct sessions, and that also the election of their officers is subject to that framework. This interpretation would be consistent with the approach followed by the Rules of Procedure of the World Health Assembly and the Executive Board; or
- (b) it may be understood to refer to a period of time longer than a session that is contextually appropriate to the purpose and working methods of the subsidiary body concerned, taking into account the intention of the Conference of the Parties as expressed in the decision establishing it (in the case of the Intergovernmental Negotiating Body (decision FCTC/COP2(12)).

6. **According to the interpretation offered under paragraph 5(a)** above, the officers would have to stand for re-election at the subsequent session of the subsidiary body and could only serve for a maximum of two consecutive sessions.

7. As a consequence, officers elected at the first session of the Negotiating Body would be required to stand for re-election at the beginning of its second session and, furthermore, they would be ineligible to continue to serve as officers as from its third session, without an amendment to the Rules of Procedure of the Conference of the Parties.

8. **Following the interpretation provided under paragraph 5(b)**, officers elected at one session would continue to serve for the subsequent sessions of the subsidiary body that are held during such a defined period and would stand for re-election at the session marking the beginning of the second such period. How the period constituting a “term” should be defined would depend, as noted above, on the intention of the Parties as reflected in the formulation of the mandate and method of work of the subsidiary body concerned.

9. The interpretation proposed in paragraph 5(b) seems to reflect best the intention and rationale of the decision establishing the Negotiating Body, which aimed at ensuring a degree of continuity in the direction of the work of the Negotiating Body between ordinary sessions of the Conference of the Parties. Specifically, in paragraph 6 of decision FCTC/COP2(12), the Conference of the Parties requested the Negotiating Body to work on the basis of a chairperson’s text that “will be elaborated after the first session of the intergovernmental negotiating body by its chairperson. ... and submitted to the second session of the intergovernmental negotiating body”. Paragraph 3 of the same decision adds that the Negotiating Body should hold “a second session preferably immediately before the third session of the Conference of the Parties ... and that [it] shall report to the third session of the Conference of the Parties on the progress of its work”. In the view of the Legal Counsel, this indicates that the Conference of the Parties expected the Chairperson to continue to serve in that capacity for at least the first two sessions of the Intergovernmental Negotiating Body, and then presumably long enough to report to the third session of the Conference of the Parties on the progress of its work. The first term of office would then comprise the sessions of the Intergovernmental Negotiating Body held between the second and third sessions of the Conference of the Parties.

10. The second consecutive “term”, consequently, would then refer to the period between the third and fourth sessions of the Conference of the Parties, including the submission of a draft protocol on illicit trade in tobacco products to the fourth session of the Conference of the Parties, as described in paragraph 4 of decision FCTC/COP2(12). Thus, officers elected at the first session of the Intergovernmental Negotiating Body would stand for re-election at the beginning of its session following the third session of the Conference of the Parties (in this case, the third session of the Intergovernmental Negotiating Body). Outgoing officers would continue to exercise their functions until their successors are elected according to normal practice.

ACTION BY THE INTERGOVERNMENTAL NEGOTIATING BODY

11. The Intergovernmental Negotiating Body is invited to consider the item concerning its Officers in light of this document.

12. Furthermore, in the view of the Legal Counsel, the possible differing interpretations of the word “term” in Rule 28 could raise ambiguities or difficulties in specific cases. The Intergovernmental Negotiating Body may therefore wish to recommend that the Conference of the Parties clarify its intentions in adopting the formulation of Rule 28 or that it amend that Rule accordingly.

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