



WORLD HEALTH ORGANIZATION

FIFTY-SIXTH WORLD HEALTH ASSEMBLY
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WHO Framework Convention on Tobacco Control: procedural matters

INTRODUCTION

1. The present document contains basic information concerning the adoption and signature of the WHO Framework Convention on Tobacco Control, and an indication of actions that Member States may wish to consider taking in order to become Parties to the Convention.

ADOPTION OF THE CONVENTION

2. The draft text of the Framework Convention is submitted to the Fifty-sixth World Health Assembly for adoption in accordance with Article 19 of the Constitution.¹ Article 19 reads as follows:

The Health Assembly shall have authority to adopt conventions or agreements with respect to any matter within the competence of the Organization. A two-thirds vote of the Health Assembly shall be required for the adoption of such conventions or agreements, which shall come into force for each Member when accepted by it in accordance with its constitutional processes.

3. As provided for in Article 19 of the Constitution and Rule 72 of the Rules of Procedure of the World Health Assembly, adoption of the Convention requires a two-thirds majority of the Members present and voting. Adoption of the text by consensus automatically fulfils this requirement.

4. The Convention will be adopted by the Health Assembly by means of a resolution to this effect. This is standard practice as regards the adoption of treaties by international organizations. A draft resolution is contained in document A56/8.

5. Adoption of the Convention by the Health Assembly does not require Member States to produce full powers. The credentials to be submitted in accordance with Rule 22 of the Rules of Procedure of the World Health Assembly are sufficient to enable delegations that may exercise the right to vote to participate in the adoption.

6. The text as adopted by the Health Assembly is the text that shall be deposited with the Secretary-General of the United Nations and opened for signature.

¹ Document A56/8, Annex.

DEPOSIT OF THE CONVENTION

7. The Convention shall be deposited with the Secretary-General of the United Nations, in accordance with Article 37 thereof. The necessary contacts have been established with the Treaty Section of the Office of Legal Affairs of the United Nations, which discharges the depositary functions of the Secretary-General.

8. The depositary of an international treaty carries out a number of important functions under customary treaty practice, as codified in Article 77 of the United Nations Convention on the Law of Treaties (Vienna, 1969). In particular, the Depositary shall be responsible for preparing the original text of the Convention in all authentic languages. This is the document that will be opened for signature, and that will remain in the custody of the Depositary. The Treaty Section of the United Nations shall also prepare certified copies of the Convention in all authentic languages, which will be distributed to all States and regional economic integration organizations that may become Parties in accordance with the final clauses of the Convention. Moreover, the Depositary shall receive signatures, together with any instruments, notifications and communications related to the Convention, and shall notify all interested parties accordingly.

SIGNATURE OF THE CONVENTION

9. In accordance with its Article 34, the Convention shall be opened for signature at WHO headquarters from 16 to 22 June 2003, and thereafter at United Nations headquarters (New York) from 30 June 2003 to 29 June 2004.

10. International conventions are sometimes opened for signature immediately after their adoption, especially if they are adopted by a diplomatic conference. In the case of the present Convention, a period of about four weeks shall elapse between adoption and signature. This arrangement has been accepted by the Intergovernmental Negotiating Body at the request of the Treaty Section of the United Nations. The reason for such a request is that the Treaty Section, as noted in the preceding section, is responsible for preparing both the original text of the Convention and certified copies. This operation requires care and time, in particular to avoid errors and inconsistencies between the authentic languages, and must be based on the final version of the text of the Convention. In order to avoid the repetition of recent incidents, which led to the presence of errors in the text of certain treaties and necessitated a long and cumbersome rectification procedure, the Negotiating Body agreed with the recommendation by the Treaty Section not to open the Convention for signature during the Health Assembly and to allow the time necessary for careful preparation of the aforementioned texts.

11. Under international law, the only three authorities that may sign treaties without further formalities are heads of State, heads of government, and ministers of foreign affairs. Any other authority, including ministers other than the minister of foreign affairs, needs to submit full powers in order to sign the Convention. In other words, ministers of health would also need to produce full powers. Full powers must be issued and signed by one of the foregoing three authorities, and must be submitted in advance of the date of signature for purposes of verification. The same requirement applies to regional economic integration organizations. The organ empowered to issue full powers in this case has to be determined by the organization concerned in accordance with its constitutive instrument and relevant rules. Further details concerning the time and venue for the signature of the Convention, the submission of full powers and other formal requirements, will be communicated to States and regional economic integration organizations in good time before the date of opening for signature.

12. The signature of a treaty, such as the present Convention, which is subject to ratification, acceptance, approval, formal confirmation or accession, does not establish the signatory as a contracting party to that treaty and consequently does not make the signatory bound by its provisions. Signature in this case is rather an act expressing political approval of the treaty concerned, and raises an expectation that the signatory will in due course take the appropriate domestic actions to become a contracting party. Signature does, however, produce some limited rights and obligations even before the treaty enters into force. For example, a signatory has the right to receive notifications by the depositary concerning the treaty. Conversely, a signatory is under an obligation to refrain from acts which would defeat the object and purpose of the treaty, until it shall have made its intention clear not to become a party to the treaty (Article 18 of the Convention on the Law of Treaties).

RATIFICATION, ACCEPTANCE, APPROVAL, FORMAL CONFIRMATION OR ACCESSION

13. Pursuant to its Article 35, the Convention is subject to ratification, acceptance, approval or accession by States and to formal confirmation or accession by regional economic integration organizations. The foregoing formulation is in line with standard language that may be found in numerous United Nations conventions.

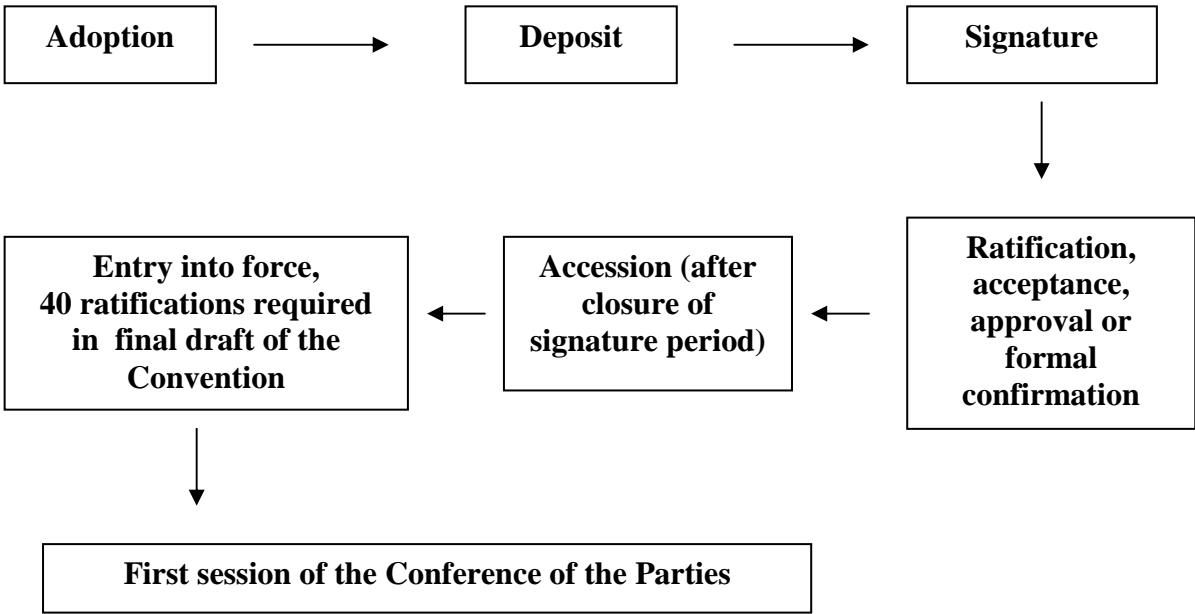
14. Ratification, acceptance and approval are international acts by which States which have already signed the Convention establish on the international plane their consent to be bound by it. It should be noted that some States use the term “ratification” to designate the internal procedure required under their respective constitutional systems to become Contracting Parties to a treaty, for example, authorization by parliament. However, “ratification” as used in the present document refers only to an act performed by a State on the international plane to establish its consent to be bound by a treaty. In the case of the Convention, an instrument of ratification establishes the consent of a State to be bound by the Convention upon its deposit with the Secretary-General of the United Nations. “Acceptance” and “approval” have the same international legal effects as ratification. Signature subject to acceptance or approval was introduced relatively recently into treaty practice, principally in order to provide a government a further opportunity to examine a treaty when it is not necessarily obliged to submit it to a particular constitutional procedure for obtaining ratification.

15. Formal confirmation is the equivalent of ratification for international organizations. This terminology was introduced by the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (1986). Some United Nations conventions require international organizations to express their consent to be bound through acts of formal confirmation, whereas others do not distinguish between States and international organizations in this respect.

16. Accession is equally an international act by which a State or an international organization, which have not signed a treaty, establish on the international plane their consent to be bound by it. The Convention shall, in accordance with its Article 35, be opened for accession from the day after the date on which it is closed for signature, i.e. on 30 June 2004.

17. Instruments of ratification, acceptance, approval, formal confirmation or accession must be submitted to the Depositary (i.e. the Treaty Section of the United Nations) for deposit, as provided for in Article 35, paragraph 1 of the Convention.

18. The steps to be taken by Member States in the period between adoption and entry into force of the Convention are summarized in the figure below.



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