



Process for a Multilateral Treaty: Design, Elements, Mechanisms, Actors

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ISSUES COVERED

- How is a treaty different from other international instruments?
- A framework vs. “regular” convention
- The design of a treaty process
- Participants
- Immediate considerations once the treaty is in force

Global Health Instruments under WHO

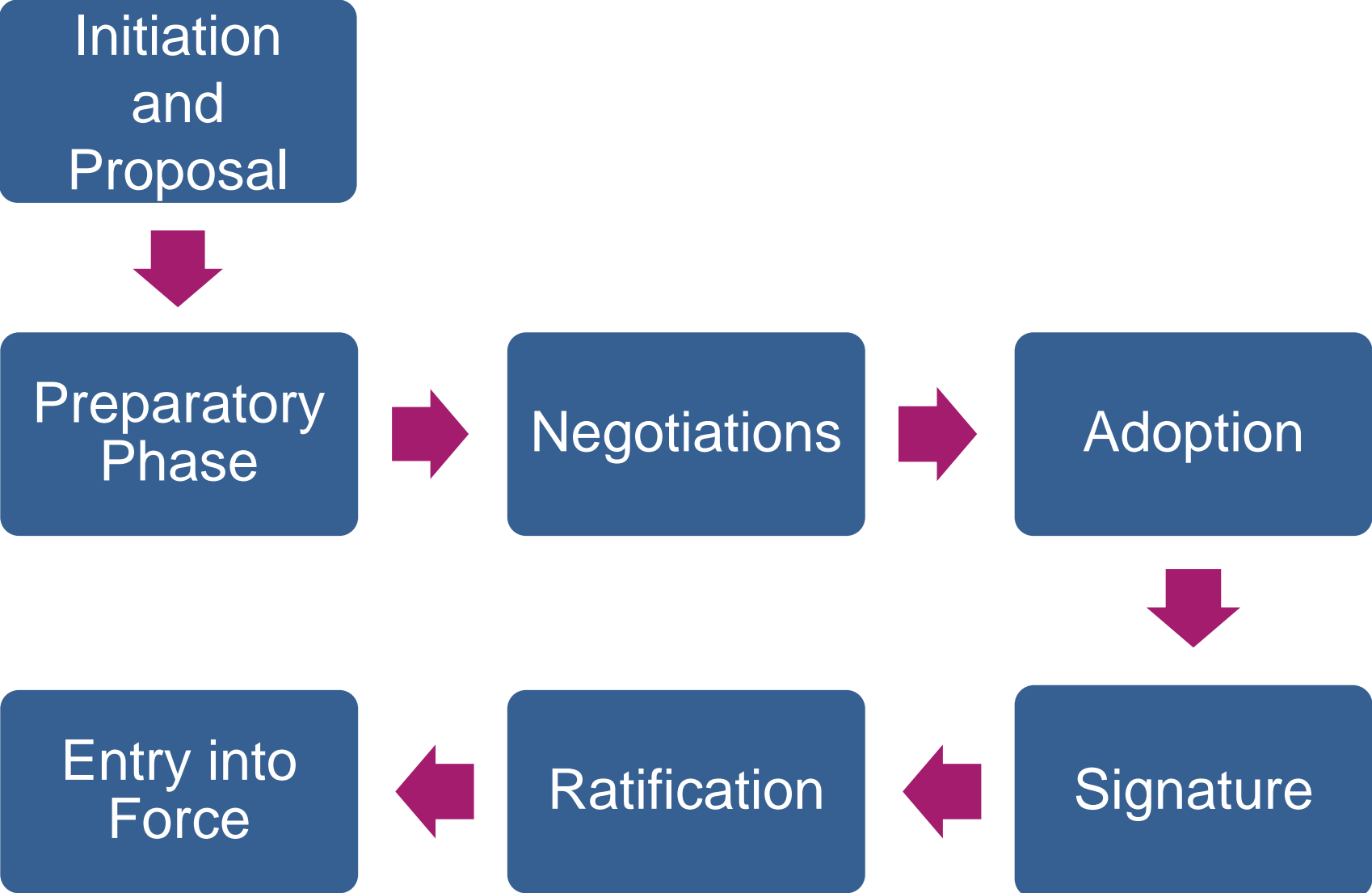
WHO can adopt:

- Recommendations (codes, frameworks, strategies, action plans, resolutions etc)
 - *Article 23 of the WHO Constitution*
- Regulations
 - *Article 21 of the WHO Constitution*
- Conventions and agreements
 - *Article 19 of the WHO Constitution*

A FRAMEWORK VS “REGULAR” CONVENTION

- No difference in legal status → Both are binding and follow similar mechanisms
- Regular conventions aim at critical obligations immediately in place
- Framework conventions establish general obligations in key areas - with further instruments (*protocols, guidelines etc*) to follow for details
- Protocols however take time to negotiate (*unless negotiated simultaneously*) and bring into force
- Misconception that framework conventions would not bind until protocol(s) are adopted → not true

A TREATY PROCESS: GENERAL OUTLINE



PREPARATORY PHASE : *THE ELEMENTS*

- Expert input - *formal, often preceded by informal*
- Intergovernmental mechanism (normally an intergovernmental working group) - *by decision of a relevant governing body*
- Expert input often preceding intergovernmental process but can also continue in parallel

PREPATORY PHASE (*Cont*)

- The Secretariat is often asked to prepare a draft for consideration of the WG based on initial deliberations
- Expected outcome – agreement on draft treaty elements to serve future negotiations
- Draft elements to include both substantive and procedural provisions
- The WG would also propose priority topics for future protocols if a framework convention path is taken

NEGOTIATIONS

- Intergovernmental negotiating body (INB) in one or other form, with a clear mandate to draft and negotiate the treaty
- Normally several sessions of INB, with inter-sessional work in between
- Often a Chair's text as a starting point (*and in critical stages to break deadlock*)
- Often regional consultations before critical negotiating sessions (*normally also during the sessions*)

TREATY PROCESS : *PARTICIPANTS*

- Negotiated by government delegations, normally multisectoral
- Other international agencies often invited to provide input
- Non-governmental organizations:
 - International: *invited as observers to INB (those accredited)*
 - National: *engaged by governments to provide input to in-country preparations*
- Other mechanisms:
 - Civil society alliances
 - Public hearings

ADOPTION, SIGNATURE, RATIFICATION

- **Adoption** by the governing body (*WHA in the case of WHO*)
- **Signature**
 - Stands for general commitment but not yet legal obligation
 - Normally up to one year to sign
- **Ratification:** by a parliamentary act in most legal systems (*or accession, approval, acceptance, formal confirmation - with the same legal effect*)
- It is possible to ratify the treaty even if not previously signed
- **Parties**
 - States
 - Regional economic integration organizations

ENTRY INTO FORCE

- Following a prerequisite number of ratifications
- Takes years but can also be relatively quick (*18 months in FCTC's case*)
- States that already ratified become bound once the treaty is in force (*not before*)
- Thereafter, following each individual ratification

IMMEDIATE CONSIDERATIONS AFTER THE ENTRY INTO FORCE

- Treaty Governing Body (*Conference/Meeting of the Parties*) to meet as soon as practicable
- Often a preparatory mechanism ahead of the first COP
- Treaty Secretariat to be established (*Often an interim secretariat before the permanent one is functional*)
- Timeline and procedures for further instruments and arrangements (*protocols, guidelines, RoP, reporting, financing etc*) discussed as soon as possible.



THANK YOU!

