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
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

Initiation and Proposal

Preparatory Phase

Negotiations

Adoption

Ratification

Signature

Entry into Force
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
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.

PREPATORY PHASE (Cont)
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.