

INSTITUTIONAL ARRANGEMENTS AND FINANCIAL RESOURCES (PART VII)

Key recommendations

1. The Conference of the Parties (COP) and the Meeting of the Parties (MOP) should have separate budgets, with ITP-related meetings and activities funded by Parties to the Protocol, rather than by all Parties to the FCTC;
2. Regular sessions of the MOP should not overlap with those of the COP; the MOP should be free to hold regular sessions at some time other than during sessions of the COP (Article 35.2).

Introduction

An important unresolved question for this INB is the exact relationship between the FCTC Conference of the Parties (COP) and the Protocol's Meeting of the Parties (MOP). The only issue on which there appears to be a definitive consensus is that the FCTC Secretariat will also act as Protocol Secretariat.

There are two interrelated issues to consider. One is financing, on which the informal working group did not reach consensus, merely proposing that this session of the INB make a recommendation to COP5. The second issue is the extent to which COP and MOP sessions should be treated as one event. Draft Article 35.2 reads: "...regular sessions of the Meeting of the Parties shall be convened by the Convention Secretariat, in conjunction with¹ regular sessions of the Conference of the Parties". This wording leaves open whether the two sessions should be held simultaneously or back-to-back, but would limit the MOP's ability to choose a different cycle of regular meetings than the COP.

¹ At INB4, the Secretariat was asked to explain the meaning of the expression "in conjunction with". Legal Counsel explained that it "should be understood to mean joined with in a logical manner. The sessions of the Meetings of the Parties might therefore be held in parallel with the sessions of the Conference of the Parties, or immediately before or after those sessions." (Summary records for INB4, p. 122.)

However, several translators of the draft Protocol appear to have understood the term to mean "simultaneously", leading to a discrepancy between the English version and (at least) the French, Spanish and Russian.

Financing: avoid competition for resources between Protocol and Convention; avoid dependence on non-Parties

As the Secretariat noted in its information note to COP4 on the financial implications of the Protocol,² “as a matter of international practice it may be somewhat unusual to allocate to the protocol a portion of the voluntary assessed contributions that a Party to the Convention makes to the WHO FCTC, if that Party is not also a Party to the Protocol”. We would go further: such an arrangement would be absurd and potentially highly problematic. It could mean the Protocol would become financially dependent on countries that have no stake in its success. It could also mean that financing for FCTC administration and implementation would be scaled back unacceptably to pay for Protocol implementation.

On the first point, it is clear that illicit trade in tobacco products is perceived as a more or less significant problem depending on the region or Party. As a result, it is entirely possible that for an extended period, the Protocol will be in force but cover only a minority of FCTC Parties. Particularly during this period, allocating spending between COP and MOP purposes is likely to lead to protracted wrangling, as it is entirely plausible that a substantial portion of the funding for the initial implementation of the Protocol would come from FCTC Parties which have taken the decision not to ratify the Protocol (or to delay ratification).

In FCA’s view, the danger of joint budgeting resulting in underfunding of FCTC administration and implementation work is also significant. As we note in our brief on implementation, capacity building and technical assistance, Protocol implementation is likely to require capacity building in several different areas (e.g. policing, customs, fiscal administration) and involve co-operation with a range of partners. Until thorough scoping of these needs has been conducted, it will be difficult to evaluate the resource implications. Meanwhile, as the Secretariat noted in its summary report to COP4 on global implementation of the FCTC (FCTC/COP/4/14), inadequacy of technical and financial resources is the most frequently cited barrier to FCTC implementation. It is crucial that the needs assessments and resource mobilisation process for the Convention not be slowed down because of budget constraints.

A related advantage of keeping COP and MOP budgets separate is that this increases the chances that national contributions to Protocol implementation will not come out of health ministry tobacco control budgets.

Meeting of Parties and Conference of Parties

The existing draft of Article 35.2 leaves little flexibility with respect to the timing of regular sessions of the MOP to the Protocol. These sessions are to be held “in conjunction” with regular COP sessions which, in accordance with Rule 4 of the Rules of Procedure, are to be held every two years. It is worth noting that earlier drafts of the Protocol included the qualification “wherever possible and desirable”.

² FCTC/COP/4/INF.DOC/1.

The reason for specifying that MOP sessions should be held “in conjunction” with COP sessions is presumably concern about keeping meeting costs as low as possible: if COP and MOP sessions are held back-to-back, they can share certain resources and arrangements (meeting venue, translation and legal staff). Some Parties may also believe that there will be substantial savings in travel costs for delegates.

However, there may also be significant drawbacks to holding MOP sessions “in conjunction” with COP sessions. One is that, for cost reasons, developing countries may not be able to send more than one delegate, which will leave them with the difficult choice between a health ministry official with specialised knowledge of a wide range of tobacco control issues, or an official from some ministry directly involved in the control of illicit trade, who is unlikely to be familiar with the details of smoke-free policies or bans on tobacco advertising, promotion and sponsorship.

In its information note to COP4 on the financial implications of the Protocol, the Secretariat makes the additional assumption that “in conjunction” would actually mean “in parallel”. In this scenario, the MOP session would be held at the same time as the COP, and hence not entail any “interpretation, logistics or in-session costs”.³ Phrased another way, the MOP could actually encroach on COP time and resources.

The idea of holding COP and MOP sessions simultaneously is potentially problematic. First, if an attempt were made to complete both in the time usually allotted for a COP session alone, it is unlikely there would be enough time to deal adequately with both FCTC and ITP implementation. Second, just as some smaller delegations are forced to choose between attending Committee A or Committee B meetings when these are held in parallel, simultaneous COP and MOP sessions might leave smaller countries scrambling to cover multiple meetings. (However, the COP4 information note does assume a separate travel support budget for MOP sessions.)

To deal with these issues, FCA recommends that Article 35.2 be amended as follows:

Thereafter, regular sessions of the Meeting of the Parties shall be convened by the Convention Secretariat, immediately prior to, or after, regular sessions of the Conference of the Parties unless the Meeting of the Parties decides otherwise. Sessions of the Meeting of the Parties may not be held in parallel with sessions of the Conference of the Parties.

3 FCTC/COP/4/INF.DOC./1, p. 9, footnote 2.