

Focused Comparative Research on Participation Modalities at the UNFCITC

Prepared by the Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) for the fifth session of the Intergovernmental Negotiating Committee on the United Nations Framework Convention on International Tax Cooperation

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I: Terms

Conference of the Parties (COP)

Conference of the States Parties (CoSP)

United Nations Framework Convention on International Tax Cooperation (UNFCITC)

II: Initial Research

UN Framework Convention on Climate Change (UNFCCC)

- **Conference of the Parties (COP)**
- Treaty provision: Article 7(6)

https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf

- “The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State member thereof or observers thereto not Party to the Convention, may be represented at sessions of the Conference of the Parties as observers. Any body or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by the Convention, and which has informed the secretariat of its wish to be represented at a session of the Conference of the Parties as an observer, may be so admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the Rules of Procedure adopted by the Conference of the Parties.”
- Rules of Procedure: <https://unfccc.int/documents/65780>
- Summary: Any qualified national or international, governmental or non-governmental body or agency may be admitted as an observer unless at least one third of the Parties present object. Admission and participation are subject to the COP’s Rules of Procedure. Under the draft Rules of Procedure and established practice, admitted observers may attend sessions and, upon invitation of the President, participate without voting in proceedings concerning matters of direct concern to them. The draft Rules have been applied by the COP and its subsidiary bodies, except for draft Rule 42 on voting.

WHO Framework Convention on Tobacco Control (WHO FCTC)

- **Conference of the Parties (COP)**
- Treaty provision: Article 23
<https://iris.who.int/server/api/core/bitstreams/264104b3-241a-4e48-88f9-aa7120779ffc/content>
 - 1. A Conference of the Parties is hereby established. The first session of the Conference shall be convened by the World Health Organization not later than one year after the entry into force of this Convention. The

Conference will determine the venue and timing of subsequent regular sessions at its first session.

- 2. Extraordinary sessions of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to them by the Secretariat of the Convention, it is supported by at least one-third of the Parties.
- 3. The Conference of the Parties shall adopt by consensus its Rules of Procedure at its first session.
- 4. The Conference of the Parties shall by consensus adopt financial rules for itself as well as governing the funding of any subsidiary bodies it may establish as well as financial provisions governing the functioning of the Secretariat. At each ordinary session, it shall adopt a budget for the financial period until the next ordinary session.
- 5. The Conference of the Parties shall keep under regular review the implementation of the Convention and take the decisions necessary to promote its effective implementation and may adopt protocols, annexes and amendments to the Convention, in accordance with Articles 28, 29 and 33. Towards this end, it shall: (a) promote and facilitate the exchange of information pursuant to Articles 20 and 21; (b) promote and guide the development and periodic refinement of comparable methodologies for research and the collection of data, in addition to those provided for in Article 20, relevant to the implementation of the Convention; (c) promote, as appropriate, the development, implementation and evaluation of strategies, plans, and programmes, as well as policies, legislation and other measures; (d) consider reports submitted by the Parties in accordance with Article 21 and adopt regular reports on the implementation of the Convention; (e) promote and facilitate the mobilization of financial resources for the implementation of the Convention in accordance with

Article 26; (f) establish such subsidiary bodies as are necessary to achieve the objective of the Convention; (g) request, where appropriate, the services and cooperation of, and information provided by, competent and relevant organizations and bodies of the United Nations system and other international and regional intergovernmental organizations and nongovernmental organizations and bodies as a means of strengthening the implementation of the Convention; and (h) consider other action, as appropriate, for the achievement of the objective of the Convention in the light of experience gained in its implementation.

- 6. The Conference of the Parties shall establish the criteria for the participation of observers at its proceedings.
- Relevant Rules of Procedure
<https://fctc.who.int/resources/publications/m/item/rules-of-procedureof-the-conferenceof-the-parties?utm>
- Rule 29
 - 1. Any Member State of WHO which is not a Party to the Convention, any Associate Member of WHO, or any other State which is not a Party to the Convention but which is a Member of the United Nations, or its specialized agencies or of the International Atomic Energy Agency, and any regional economic integration organization, as defined in Article 1(b) of the Convention, which is not a Party to the Convention, may attend the public or open sessions of the Conference of the Parties or meetings of its subsidiary bodies as an observer.
 - 2. Observers under this Rule may participate without the right to vote in the public or open meetings of the Conference of the Parties and its subsidiary bodies and may speak only after the Parties. Regional economic integration organizations may speak only on matters within their competency.

- Rule 30

- 1. Any international intergovernmental organization may apply, in accordance with its internal rules, to the Secretariat for observer status, which may be granted by the Conference of the Parties, based on the report from the Secretariat, taking into account the 17th and 18th preambular paragraphs as well as Article 5.3 of the Convention. Such applications, duly endorsed by the governing body of the organization concerned, should be submitted to the Secretariat not later than ninety days before the opening of the session.
- 2. Observers under this Rule may participate without the right to vote in public or open meetings of the Conference of the Parties and its subsidiary bodies and may speak after the observers referred to in Rule 29.

- Rule 31

- 1. Nongovernmental organizations which participated in the Intergovernmental Negotiating body on the WHO Framework Convention on Tobacco Control and in the Open-ended Intergovernmental Working Group on the WHO Framework Convention on Tobacco Control are accredited as observers to the Conference of the Parties.
- 2. Other international and regional nongovernmental organizations whose aims and activities are in conformity with the spirit, purpose and principles of the Convention, may apply for observer status, which may be granted by the Conference of the Parties, based on the report of the Secretariat, and taking into account the 17th and 18th preambular paragraphs as well as Article 5.3 of the Convention. Such applications should be submitted to the Secretariat not later than ninety days before the opening of the session.
- 3. The Conference of the Parties shall review the accreditation of

each nongovernmental organization at any of its regular sessions and thus determine the desirability of maintaining its observer status.

- 4. Observers under this Rule may participate without the right to vote in public or open meetings of the Conference of the Parties and of its subsidiary bodies and may speak after the observers referred to in Rules 29 and 30
- Summary: Article 23 establishes the Conference of the Parties and authorizes it to adopt Rules of Procedure and establish subsidiary bodies. The detailed participation framework is contained in Rules 29–31, which regulate NGO admission, participation in COP meetings, and participation in subsidiary bodies. This convention illustrates how a framework convention can combine a brief treaty clause with detailed procedural protections.

United Nations Convention against Corruption (UNCAC)

- **Conference of the States Parties (CoSP)**
- Treaty provision: Article 63 (Conference of the States Parties to the Convention)
[https://www.unodc.org/documents/brussels/UN Convention Against Corruption.pdf](https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf)
 - 1. A Conference of the States Parties to the Convention is hereby established to improve the capacity of and cooperation between States Parties to achieve the objectives set forth in this Convention and to promote and review its implementation.
 - 2. The Secretary-General of the United Nations shall convene the Conference of the States Parties not later than one year following the entry into force of this Convention. Thereafter, regular meetings of the Conference of the States Parties shall be held in accordance with the Rules of Procedure adopted by the Conference.
 - 3. The Conference of the States Parties shall adopt Rules of Procedure and

rules governing the functioning of the activities set forth in this article, including rules concerning the admission and participation of observers, and the payment of expenses incurred in carrying out those activities.

- 4. The Conference of the States Parties shall agree upon activities, procedures and methods of work to achieve the objectives set forth in paragraph 1 of this article, including:
 - a) Facilitating activities by States Parties under articles 60 and 62 and chapters II to V of this Convention, including by encouraging the mobilization of voluntary contributions;
 - (b) Facilitating the exchange of information among States Parties on patterns and trends in corruption and on successful practices for preventing and combating it and for the return of proceeds of crime, through, inter alia, the publication of relevant information as mentioned in this article;
 - (c) Cooperating with relevant international and regional organizations and mechanisms and non-governmental organizations;
 - (d) Making appropriate use of relevant information produced by other international and regional mechanisms for combating and preventing corruption in order to avoid unnecessary duplication of work;
 - (e) Reviewing periodically the implementation of this Convention by its States Parties;
 - (f) Making recommendations to improve this Convention and its implementation;
 - (g) Taking note of the technical assistance requirements of States Parties with regard to the implementation of this Convention and recommending any action it may deem necessary in that respect.
- 5. For the purpose of paragraph 4 of this article, the Conference of the

States Parties shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the States Parties.

- 6. Each State Party shall provide the Conference of the States Parties with information on its programmes, plans and practices, as well as on legislative and administrative measures to implement this Convention, as required by the Conference of the States Parties. The Conference of the States Parties shall examine the most effective way of receiving and acting upon information, including, inter alia, information received from States Parties and from competent international organizations. Inputs received from relevant non-governmental organizations duly accredited in accordance with procedures to be decided upon by the Conference of the States Parties may also be considered.
- 7. Pursuant to paragraphs 4 to 6 of this article, the Conference of the States Parties shall establish, if it deems it necessary, any appropriate mechanism or body to assist in the effective implementation of the Convention.
- Relevant Rules of Procedure
[https://www.unodc.org/documents/corruption/Publications/MainPublications/Rule
sOfProcedure/07-80230_Ebook.pdf](https://www.unodc.org/documents/corruption/Publications/MainPublications/Rule%20sOfProcedure/07-80230_Ebook.pdf)
- Rule 17: Participation of non-governmental organizations
 - 1. Relevant non-governmental organizations having consultative status with the Economic and Social Council may apply to the bureau for observer status, which should be accorded unless otherwise decided by the Conference.
 - 2. Other relevant non-governmental organizations may also apply to the bureau for observer status. The secretariat shall circulate as a document a list of such organizations with sufficient information at

least thirty days prior to the Conference. If there is no objection to a non-governmental organization, observer status should be accorded unless otherwise decided by the Conference. If there is an objection, the matter will be referred to the Conference for a decision.

- 3. Without taking part in the adoption of decisions on substantive and procedural matters, whether by consensus or by vote, at the Conference, such non-governmental organizations may:
 - (a) Attend plenary meetings of the Conference;
 - (b) Upon the invitation of the President and subject to the approval of the Conference, make oral statements or provide written reports at such meetings through a limited number of representatives on questions relating to their activities; and
 - (c) Receive the documents of the Conference
- Summary: Article 63 establishes several treaty-level foundations for civil society participation. It requires the Conference to adopt rules concerning the admission and participation of observers, calls for cooperation with non-governmental organizations, and expressly permits the consideration of inputs from duly accredited NGOs. The Rules of Procedure provide the more detailed framework governing accreditation, attendance, access to documents, and opportunities to make written or oral contributions. UNCAC therefore combines treaty-level recognition of participation with procedurally defined modalities.

Limited: United Nations Convention against Transnational Organized Crime (UNTOC) vs. United Nations Convention Against Corruption (UNCAC)

- UNTOC uses "Conference of the Parties" (COP), while UNCAC uses "Conference of the States Parties" (CoSP); it appears that there is little *legal significance/distinction* between the two formulations. Practical differences arise from the treaty provisions/rules themselves, not the terminology.

III: Comparative Table

ISSUE	UNFCCC	WHO FCTC	UNCAC	INSIGHTS FOR UNFCITC
Participation Model	Treaty-level observer-admission framework, supplemented by procedural rules and established participation practice.	Treaty-level mandate to establish observer-participation criteria, supplemented by detailed Rules of Procedure.	Treaty-level foundations for stakeholder participation, including a requirement to adopt rules on admission and participation, cooperation with non-governmental organizations and consideration of accredited NGO inputs, supplemented by detailed Rules of Procedure.	At least the basic entitlement of qualified civil society organizations to participate should appear in the Convention itself; detailed modalities can be left to Rules of Procedure.
Treaty Provision	Article 7(6) expressly permits qualified national or international, governmental or non-governmental bodies to be admitted as observers unless at least one-third of Parties present object. Admission and participation remain subject to the COP's Rules of Procedure.	Article 23 establishes the Conference of the Parties. Article 23(6) requires the Conference of the Parties to establish criteria for the participation of observers, while Article 23(5)(g) authorizes the Conference to request the cooperation of, and information from, competent organizations, including nongovernmental organizations. Detailed rules	Article 63 establishes the Conference of the States Parties and authorizes it to seek and use information supplied by relevant international mechanisms and governmental and non-governmental organizations. It does not itself establish a general entitlement for NGOs to attend CoSP sessions, although it expressly	UNFCITC provision could combine two elements: express recognition of stakeholder participation and express authority for the Conference to receive information and expertise from those stakeholders.

		governing observer admission and participation are contained in Rules 29–31.	provides for consideration of inputs from accredited NGOs and requires the adoption of rules concerning observer participation.	
Principal procedural rules	Draft Rules 6–8 , which have been applied in practice: Rules 6 and 7 govern observer admission and participation without voting rights; Rule 8 requires notification of eligible observers.	Rules 29–31: Rule 29 addresses States and regional economic integration organizations; Rule 30 addresses intergovernmental organizations; Rule 31 addresses international and regional NGOs, including accreditation and review of observer status.	Rules 16 and 17 govern intergovernmental and NGO observers; Rule 40 addresses public and closed meetings. Other provisions govern documents, statements and the application of the Rules to subsidiary bodies.	The Convention need not contain accreditation deadlines, document limits or speaking procedures. Those operational matters can be addressed in the Rules of Procedure.
Treaty vs. Rules	The treaty expressly recognizes observer participation (Art. 7(6)); Rules of Procedure govern accreditation and modalities.	The treaty establishes the Conference of the Parties and requires it to establish criteria for observer participation (Art. 23(6)). Rules 29–31 establish detailed procedures governing accreditation and participation.	Article 63 establishes the Conference of the States Parties, requires the adoption of rules concerning observer participation, and permits consideration of inputs from accredited NGOs. The Rules of Procedure provide the detailed framework	The strongest model combines treaty-level recognition with procedural flexibility. The comparator conventions suggest that basic participation rights may be recognized in the Convention, while operational modalities are delegated to the Rules of Procedure.

			governing accreditation and participation.	
Admission of civil society organizations	Qualified governmental or non-governmental bodies may be admitted unless one-third of Parties present object. The COP formally admits eligible applicants following review.	Qualified international and regional NGOs whose aims and activities conform with the Convention may apply for observer status. Accreditation is granted by the COP and may subsequently be reviewed.	NGOs with ECOSOC consultative status may apply under one procedure; other relevant NGOs may also apply but are subject to notification and possible objection by States Parties.	The preferred UNFCITC proposal may use a presumption of admission subject to a defined objection threshold. The compact fallback may leave accreditation procedures to the Rules of Procedure, provided that the Convention requires those procedures to be transparent and to enable meaningful participation.
Strengths	Provides a clear legal basis for civil society participation and strong institutional legitimacy.	Provides a treaty-level mandate for observer-participation criteria while preserving procedural flexibility through detailed Rules.	Provides a direct and politically relevant textual precedent for requiring participation rules and considering accredited NGO inputs, while preserving flexibility over procedural modalities.	The Convention should provide enough legal certainty to guarantee meaningful participation while preserving flexibility over procedural details.
Weaknesses	Some operational details depend on Rules of Procedure and established practice rather than the treaty	Participation remains tied to observer status and procedural implementation.	Participation is less secure because it depends largely on procedural decisions and can be modified	Reliance solely on Rules of Procedure may leave participation vulnerable to future political

	itself.		more easily.	decisions.
Drafting Implication	Supports a robust Article 13 recognizing qualified civil society organizations and other relevant stakeholders as participants in Conference meetings.	Supports a treaty clause establishing participation, with detailed accreditation and participation procedures delegated to the Rules of Procedure.	Supports a more limited clause authorizing the Conference to establish participation arrangements through its Rules of Procedure.	These precedents support a two-tier approach: a preferred full treaty-level guarantee and a compact hybrid fallback. UNCAC provides the minimum textual benchmark that should be preserved under either option.

IV: Consolidated Conclusions

1. There is no inherent legal distinction between a Conference of the Parties (COP) and a Conference of the States Parties (CoSP). The powers of the governing body and the scope of stakeholder participation depend on the substantive provisions of the Convention and the rules of procedure adopted pursuant to it. The use of COP may nevertheless carry political and institutional significance in the UNFCITC context, particularly because it is the terminology used in the Terms of Reference.
2. The principal distinction among the comparator conventions concerns where participation guarantees are legally located. The UNFCCC establishes a treaty-level admission framework; the WHO FCTC combines a treaty-level mandate with detailed procedural rules; and UNCAC establishes several treaty-level foundations for participation while leaving the modalities largely to its rules of procedure.
3. The strongest and most adaptable model combines a minimum treaty-level guarantee of stakeholder participation with procedural flexibility concerning accreditation and modalities. Operational matters such as application deadlines, speaking order, document circulation and accreditation review may be addressed

through the rules of procedure.

4. Observer status should not be treated as synonymous with passive attendance. The Convention or its rules of procedure should specify the substantive opportunities attached to participation, including access to open meetings and non-confidential documents, written and oral contributions, and the provision of information and expertise.
5. UNCAC Article 63 is particularly relevant because Article 13 of the UNFCITC Zero Draft appears to draw substantially on it while omitting its references to rules concerning admission and participation and to inputs from accredited non-governmental organizations. UNCAC should therefore be treated as the minimum textual benchmark rather than as a separate preferred model.
6. The comparative findings support a two-tier advocacy approach:
 - (a) a preferred full treaty-level guarantee, using the COP terminology reflected in the Terms of Reference and including a treaty-level admission mechanism and substantive participation opportunities; and
 - (b) a compact or hybrid fallback retaining the CoSP terminology while requiring meaningful participation through the Convention and leaving detailed modalities to the rules of procedure.

V. UNFCITC - Specific Implications

Three considerations specific to the UNFCITC process reinforce the comparative findings above.

First, the Terms of Reference use the term “Conference of the Parties”, although there is no inherent legal consequence attached to choosing COP rather than CoSP.

Second, the negotiating process already provides opportunities for stakeholder participation, including accreditation, written inputs and multistakeholder engagement.

The institutional arrangements established under the Convention should preserve and build upon, rather than narrow, these practices.

Third, Article 13 of the Zero Draft appears to draw substantially on Article 63 of UNCAC but omits its express references to rules on admission and participation and to information submitted by accredited NGOs. UNCAC therefore provides a particularly direct minimum textual benchmark for the proposed amendments.

VI: UNFCITC Draft Treaty Language on Stakeholder Participation - Rationale and Language Proposals

Based on the comparative findings and conclusions set out above, GI-ESCR has developed two proposed approaches: a preferred full treaty-level guarantee and a compact or hybrid fallback. **The rationale and proposed treaty language are contained in the separate document entitled [UNFCITC Draft Treaty Language on Stakeholder Participation - Rationale and Language Proposals](#).**

VII: For reference: Existing Treaty Language Articles 13 and 14

Article 13

Conference of the States Parties to the Convention

1. A Conference of the States Parties to the Convention is hereby established to achieve the objectives set forth in this Convention and to promote and review its implementation.
2. The Secretary-General of the United Nations shall convene the Conference of the States Parties not later than one year following the entry into force of this Convention.

Thereafter, regular meetings of the Conference shall be held in accordance with the Rules of Procedure adopted by the Conference.

3. The Conference of the States Parties shall adopt Rules of Procedure and rules governing the activities set forth in this article.

4. The Conference of the States Parties shall facilitate the implementation of this Convention by the States Parties. In particular, it shall:

(a) Facilitate the exchange of information on legal, policy and technological developments pertaining to international tax cooperation;

(b) Take into consideration the work of other relevant forums in the area of international tax cooperation;

(c) Review periodically the implementation of this Convention by its States Parties in accordance with Article [16] of this Convention;

(d) Elaborate and adopt supplementary protocols to this Convention on the basis of article [20] of this Convention; and

(e) Consider the technical assistance and capacity-building requirements of States Parties regarding the implementation of this Convention and recommend any action it may deem necessary in that respect.

5. The Conference of the States Parties shall examine the most effective way of receiving and acting upon information, including, inter alia, information received from States Parties in accordance with Article [15] and from competent international organizations.

Article 14

Subsidiary Bodies

1. A subsidiary body for implementation is hereby established to assist the Conference of the States Parties in the effective implementation of the Framework Convention and its protocols. This body shall be open to participation by all States Parties and shall comprise

government representatives who are technical experts on matters within the scope of the Framework Convention. The subsidiary body for implementation shall report regularly to the Conference of the States Parties on all aspects of its work. No later than [2035] and then every five years thereafter, the subsidiary body for implementation will recommend to the Conference of the States Parties such actions as it considers necessary to ensure implementation of this Convention.

2. The Conference of the States Parties shall also establish, if it deems it necessary, additional mechanisms or bodies, including technical working groups, to assist in the effective implementation of the Framework Convention and its protocols. Such mechanisms or bodies may report directly to the Conference of the States Parties or to the subsidiary body for implementation as directed by the Conference of the States Parties. They may be temporary to perform specific tasks or research particular topics or standing bodies to provide ongoing advice to the Conference of the States Parties.

3. The Conference of the States Parties shall determine the Rules of Procedure for the mechanisms and bodies established pursuant to paragraph 2 of this Article. In determining the composition of standing bodies, the Conference of the States Parties shall ensure equitable geographical representation.