

ORIGINAL ARTICLE

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# Conferences of the Parties beyond international environmental law: How COPs influence the content and implementation of their parent treaties

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## Abstract

Conferences of the Parties (COPs) are intergovernmental meetings established by treaties to review and promote the implementation of their provisions. The literature on COPs is limited and almost exclusively based on multilateral environmental agreements. The article departs from this scholarship to show that COPs are now present in different areas of international law and to discuss some of the ways in which these bodies influence the conventions that establish them. In particular, it considers how COPs affect the content and the implementation of their parent treaties. The article focuses on the bodies established by four treaties selected as case studies: the WHO Framework Convention on Tobacco Control; the Convention for the Protection and Promotion of the Diversity of Cultural Expressions; the Convention on Cluster Munitions; and the United Nations Convention against Corruption. Based on the examination of the normative decisions adopted by these organs, the article argues that COPs' activities (i) specify and develop the content of their parent treaties by setting procedural and substantive standards that states parties must meet to comply with their obligations; and (ii) support the implementation of their parent treaties by seeking to strengthen their social and political position, facilitating the adoption of measures by states parties. COPs pursue this second goal by building momentum in favour of the implementation of their treaties, stigmatizing their adversaries, and connecting their conventions with established international legal narratives.

**Keywords:** Conferences of the Parties; COPs; treaties; treaty bodies; treaty implementation

## 1. Introduction

This article focuses on a topic that has received little attention in international legal scholarship: the activities of COPs and their implications on their parent treaties. While these bodies are sometimes mentioned in the context of substantive discussions about the issues they address – with climate change being the prime example – there are few comprehensive examinations of their functions and significance in contemporary international law.<sup>1</sup>

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<sup>1</sup>See R. Churchill and G. Ulfstein, 'Autonomous Institutional Arrangements in Multilateral Environmental Agreements: A Little-Noticed Phenomenon in International Law', (2000) 94 *American Journal of International Law* 623; J. Brunnée, 'COPing with Consent: Law-Making Under Multilateral Environmental Agreements', (2002) 15 *Leiden Journal of*

According to the International Law Commission, a COP ‘is a meeting of parties to a treaty for the purpose of reviewing or implementing the treaty, except where they act as members of an organ of an international organization’.<sup>2</sup> Their nature is a contested matter. Churchill and Ulfstein famously categorized them as ‘Autonomous Institutional Arrangements’: entities that sit in between formal international organizations and *ad hoc* diplomatic conferences.<sup>3</sup> COPs are the most important body within their treaty regimes due to their plenary form – every state party is represented – and to the broad powers that their parent treaties grant them.<sup>4</sup> COPs have secretariats that provide administrative support and frequently have subsidiary organs – established directly by the treaty or by the COPs themselves – that assist them with technical matters. The bodies that meet these characteristics are usually called Conferences of the Parties, but sometimes receive other denominations such as Meeting of the States Parties,<sup>5</sup> General Assembly of the States Parties,<sup>6</sup> and Governing Body.<sup>7</sup> In this article, all such bodies are generally referred to as COPs.

COPs are traditionally linked to international environmental law (IEL).<sup>8</sup> This is no surprise considering that they were first established by multilateral environmental agreements adopted in the early 1970s,<sup>9</sup> particularly after the 1972 Stockholm Conference on the Human Environment.<sup>10</sup> The first treaty to use the expression ‘Conference of the Parties’ was the Convention on International Trade of Endangered Species adopted in 1973.<sup>11</sup> This move towards the incorporation of COPs in environmental agreements was later replicated in the treaties adopted after the United Nations Rio Summit in 1992 dealing with biodiversity protection, climate change and desertification.<sup>12</sup> Indeed, the COP established by the United Nations Framework Convention on Climate Change is by far the best-known example.<sup>13</sup> Its last meeting held in Sharm El-Sheikh in November 2022 was widely covered by the media and discussed by politicians and academics.<sup>14</sup>

However, COPs have expanded beyond the environmental field and are now present across multiple areas of international law. Looking at multilateral conventions adopted since the turn

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*International Law* 1; A. Wiersema, ‘The New International Law-Makers? Conferences of the Parties to Multilateral Environmental Agreements’, (2009) 31 *Michigan Journal of International Law* 231; J. Barrett and R. Beckman, *Handbook on Good Treaty Practice* (2020), at 294; G. Ulfstein, ‘Treaty Bodies and Regimes’, in D. Hollis (ed.), *The Oxford Guide to Treaties* (2020), 414.

<sup>2</sup>International Law Commission, Report of the International Law Commission, UN Doc. A/73/10 (2018), at 15, conclusion 11.1.

<sup>3</sup>See Churchill and Ulfstein, *supra* note 1, at 623; However, other authors categorize COPs differently. See, e.g., A. Golia and A. Peters, ‘The Concept of International Organization’, in J. Klabbbers (ed.), *The Cambridge Companion to International Organizations Law* (2022), 25; G. Fernández Arribas, ‘Rethinking International Institutionalisation Through Treaty Organs’, (2020) 17 *International Organizations Law Review* 457.

<sup>4</sup>In terms of their membership, they are different from the committees established by human rights treaties which are formed by experts acting in their personal capacity.

<sup>5</sup>1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 2056 UNTS 211, Art. 11.

<sup>6</sup>2003 Convention for the Safeguarding of Intangible Cultural Heritage, 2368 UNTS 3, Art. 4.

<sup>7</sup>2001 International Treaty on Plant Genetic Resources for Food and Agriculture, 2400 UNTS 303, Art. 19.

<sup>8</sup>For a discussion of the components of this field see M. Young, ‘Fragmentation’, in D. Bodansky, J. Brunnée and E. Hey (eds.), *The Oxford Handbook of International Environmental Law* (2021), 85.

<sup>9</sup>See Churchill and Ulfstein, *supra* note 1, at 628–31; F. Romanin Jacur, ‘The Making of International Environmental Law’, in C. Brölmann and Y. Radi (eds.), *Research Handbook on the Theory and Practice of International Lawmaking* (2016), 419, at 420; M. Fitzmaurice, ‘Law-Making and International Environmental Law: The Legal Character of Decisions of Conferences of the Parties’, in R. Liivoja and J. Petman (eds.), *International Law-Making: Essays in Honour of Jan Klabbbers* (2014), 190, at 191–2.

<sup>10</sup>See Fitzmaurice, *ibid.*, at 191.

<sup>11</sup>1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora, 993 UNTS 243, Art. XI.

<sup>12</sup>See Romanin Jacur, *supra* note 9, at 421.

<sup>13</sup>1992 United Nations Framework Convention on Climate Change, 1771 UNTS 107, Art. 7.

<sup>14</sup>Available at [www.unfccc.int/cop27/](http://www.unfccc.int/cop27/).

of the century it is possible to find at least ten COPs established outside of IEL. In the disarmament field, the Convention on Cluster Munitions,<sup>15</sup> the Arms Trade Treaty,<sup>16</sup> and the Treaty on the Prohibition of Nuclear Weapons established COPs.<sup>17</sup> In the area of international criminal law, similar bodies were created by the Rome Statute of the International Criminal Court,<sup>18</sup> the United Nations Convention against Transnational Organized Crime,<sup>19</sup> and the United Nations Convention against Corruption.<sup>20</sup> In international law relating to cultural heritage, COPs feature in the Convention for the Safeguarding of the Intangible Cultural Heritage<sup>21</sup> and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions.<sup>22</sup> Finally, in the area of treaties related to health, the WHO Framework Convention on Tobacco Control<sup>23</sup> and the International Convention against Doping in Sport also established COPs.<sup>24</sup>

In this context, this article seeks to make a contribution by discussing COPs using novel examples and perspectives. In particular, it attempts to answer the question: how do COPs affect the content and implementation of their parent treaties? To this end, it examines four different COPs, identifying patterns between their activities and the operation of the conventions that establish them. The result is an exploration of some of the functions performed by these bodies and a categorization of the ways in which they impact the life of their parent treaties.

The conventions selected as case studies belong to areas of international law beyond IEL. The objective is to study COPs using a fresh set of data, considering that the existing literature is almost exclusively based on environmental materials.<sup>25</sup> The treaties studied in this article are the WHO Framework Convention on Tobacco Control (FCTC),<sup>26</sup> the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (CDCE),<sup>27</sup> the Convention on Cluster Munitions (CCM),<sup>28</sup> and the United Nations Convention against Corruption (UNCAC).<sup>29</sup> Each of these treaties belong to one of the areas identified above where COPs have been established in the last 20 years. Analysing the work of these bodies in different fields allows us to draw conclusions of a more general character. Furthermore, the COPs established in the case studies stand out as the most active ones in their fields, enabling a better assessment of the impact of their activities on the content and implementation of their parent treaties.

<sup>15</sup>2008 Convention on Cluster Munitions, 2688 UNTS 39 (CCM).

<sup>16</sup>2013 Arms Trade Treaty, 3013 UNTS 1.

<sup>17</sup>2017 Treaty on the Prohibition of Nuclear Weapons, 57 ILM 347.

<sup>18</sup>1998 Rome Statute of the International Criminal Court, 2187 UNTS 90.

<sup>19</sup>2000 United Nations Convention against Transnational Organized Crime, 2225 UNTS 209.

<sup>20</sup>2003 United Nations Convention against Corruption, 2349 UNTS 41 (UNCAC).

<sup>21</sup>2003 Convention for the Safeguarding of Intangible Cultural Heritage, 2368 UNTS 3.

<sup>22</sup>2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2440 UNTS 311 (CDCE).

<sup>23</sup>2003 WHO Framework Convention on Tobacco Control, 2302 UNTS 166 (WHO FCTC).

<sup>24</sup>2005 International Convention against Doping in Sport, 2419 UNTS 201.

<sup>25</sup>See, e.g., Churchill and Ulfstein, *supra* note 1; Brunnée, *supra* note 1; Wiersema, *supra* note 1; Fitzmaurice, *supra* note 9; D. Costelloe and M. Fitzmaurice, 'Lawmaking by Treaty: Conclusion of a Treaty and the Evolution of a Treaty Regime in Practice', in Brölmann and Radi, *supra* note 9, at 111; P. Davies, 'Non-Compliance - A Pivotal or Secondary Function of COP Governance?', in M. Fitzmaurice and D. French (eds.), *International Environmental Law and Governance* (2015), 87; G. Handl, 'International "Lawmaking" by Conferences of the Parties and Other Politically Mandated Bodies', in R. Wolfrum and R. Volker (eds.), *Developments of International Law in Treaty Making* (2010), 127; N. Lavranos, 'Multilateral Environmental Agreements: Who Makes the Binding Decisions', (2002) 11 *European Environmental Law Review* 44; G. Loibl, 'Conferences of Parties and the Modification of Obligations: The Example of International Environmental Agreements', in M. Craven and M. Fitzmaurice (eds.), *Interrogating the Treaty: Essays in the Contemporary Law of Treaties* (2005), 103; T. Staal, 'Exercising or Evading International Public Authority: The Many Face of Environmental Post-Treaty Rules', (2016) 7 *Goettingen Journal of International Law* 9; J. Werksman, 'The Conference of Parties to Environmental Treaties', in J. Werksman (ed.), *Greening International Institutions* (1996), 55.

<sup>26</sup>See WHO FCTC, *supra* note 23.

<sup>27</sup>See CDCE, *supra* note 22.

<sup>28</sup>See CCM, *supra* note 15.

<sup>29</sup>See UNCAC, *supra* note 20.

Of the different tasks that COPs perform, this article focuses on normative activities. This leaves aside other kinds of activities that these entities execute but exceed the scope of the present study.<sup>30</sup> For the purposes of this article, ‘normative activities of COPs’ are those leading to the adoption of any kind of outcome containing instructions about behaviour, directed to all the states parties, with the purpose of establishing how they should comply with the treaty obligations. This broad notion includes formal international legal instruments adopted by COPs, such as protocols and annexes, but more importantly, it also encompasses the wide range of informal outcomes such as resolutions, guidelines, and action plans that COPs produce to pursue their goals. The current literature on environmental COPs deals primarily with the issue of the legal status of these normative outcomes,<sup>31</sup> but engages less with their content, which is precisely what this article focuses on.

Based on the examination of the case studies, the article argues that COPs influence the content and implementation of their parent treaties by adopting informal normative outcomes that (i) set the standards that states parties must meet to comply with their obligations; and (ii) seek to strengthen the social and political position of their treaties, facilitating the adoption of the required measures by states parties. The first strategy is closer to traditional legal methods while the second one escapes classification as a strictly legal activity.

The following sections address the three parts of the argument. Section 2 discusses the normative outcomes adopted by the COPs under examination. This section highlights their informal nature and the preference in the treaties for the adoption of this kind of instrument by COPs. Sections 3 and 4 categorize the specific techniques and strategies used in COP decisions to develop the content and facilitate the implementation of their conventions. Section 3 shows that COP decisions set standards that increase the level of commitments, establish procedural requirements, and determine the scope of the treaty provisions. Section 4 identifies how COP decisions attempt to generate momentum for the implementation of their conventions, stigmatize their opponents, and frame their parent treaties around legitimized and widely-accepted international legal narratives. Finally, Section 5 concludes by underlining the findings of the article and encouraging further research on COPs in light of the significant implications of their activities.

## 2. The normative activities of COPs

COPs engage in a number of activities. Among others, they adopt their own rules of procedure, set up subsidiary bodies, organize states’ reporting duties, address budget-related issues, co-ordinate financial and technical assistance for states parties, and establish mechanisms to monitor compliance with the provisions of the treaty.<sup>32</sup>

This article focuses exclusively on the normative activities of COPs. As mentioned in the introduction, these functions are those leading to the adoption of any kind of outcome containing instructions about behaviour, directed to all the states parties, with the purpose of establishing how they should comply with the treaty obligations. In other words, normative activities are those linked to the power to elaborate on the rights and obligations contained in the treaty. COPs use different means to perform this task, ranging from the adoption of protocols – which are treaties in their own right – to the dissemination of recommendations and best practices. The following section discusses COPs’ normative authority and procedures and identifies relevant examples of normative outcomes adopted in the context of the case studies.

<sup>30</sup>See Section 2, *infra*.

<sup>31</sup>See, e.g., Churchill and Ulfstein, *supra* note 1; Brunnée, *supra* note 1; Wiersema, *supra* note 1; Fitzmaurice, *supra* note 9.

<sup>32</sup>See, e.g., Churchill and Ulfstein, *ibid.*, at 626; Barrett and Beckman, *supra* note 1, at 305–19; Davies, *supra* note 25.

### 2.1 Authority to adopt normative decisions

Given that COPs are organs established by treaties, their powers must come from the text of those conventions. As a result, their ‘authority’ to adopt normative outcomes consists of the empowerment of these bodies by their parent treaties to perform normative activities. The case studies reveal, on one hand, examples of clear delegation of this kind of function and, on the other, scenarios where the empowerment is less specific.

The FCTC is the clearest illustration of a treaty that calls directly for the development of its content through the work of its COP. Article 23.5 states that the COP ‘... may adopt protocols, annexes and amendments to the Convention in accordance with Articles 28, 29 and 33’.<sup>33</sup> In addition, the FCTC calls for the elaboration of the normative content of the treaty through the adoption of ‘guidelines for the implementation of the convention’. Article 5.4, which lays down the general obligations of the parties, establishes that ‘[p]arties shall cooperate in the formulation of proposed measures, procedures and guidelines for the implementation of the Convention and the protocols to which they are parties’.<sup>34</sup> Article 7, related to non-price measures to reduce demand for tobacco, makes reference to Articles 8 to 13 indicating that the COP ‘shall propose appropriate guidelines for the implementation of the provisions of these Articles’.<sup>35</sup> As a result, the FCTC COP is empowered to engage in a particular kind of normative activity – the adoption of guidelines – that differs from the traditional adoption of protocols and annexes, and is requested to perform this function in relation to specific provisions of the treaty.

The CDCE also directly mandates its COP to participate in the normative development of its provisions, albeit in a less specific way than the FCTC. This treaty does not follow the classic model of delegation of legislative powers based on the adoption of protocols and annexes. Instead, the CDCE empowers its treaty bodies to prepare and adopt guidelines. Article 22 authorizes the COP to request and approve the text of the operational guidelines for the implementation of the convention.<sup>36</sup> Article 23 states that the Intergovernmental Committee has the function of preparing and presenting to the COP the text of the operational guidelines for its approval.<sup>37</sup> As a consequence, the authority to adopt guidelines in the CDCE is also clear and direct, but less specific given that it is not linked to particular articles.

In contrast to the FCTC and the CDCE, the conventions on cluster munitions and corruption do not grant their treaty bodies specific powers to adopt normative outcomes. In the context of the UNCAC, the Conference of the States Parties (COSP) is authorized by Article 63 to decide and implement ‘activities, procedures and methods of work’ to accomplish the objectives of the convention. The article provides a list of functions that exemplify this task but none of them can be considered as normative in nature. The COSP is not empowered to adopt protocols, annexes, guidelines, or any other kind of normative decision. It is not mandated to elaborate on the convention’s provisions or to collaborate in their interpretation. The only function contained in Article 63 that could remotely be considered as normative is to make ‘recommendations to improve this Convention and its implementation’.

However, there is one innovation in the UNCAC context in terms of the sources of normative authority. The UN General Assembly resolution that adopted the convention requests the COSP to elaborate on the criminalization of bribery of officials in public international organizations.<sup>38</sup> This is a source of authority that is not found in the other case studies and, as will be discussed later, the COSP has adopted resolutions to respond to this request.<sup>39</sup>

<sup>33</sup>See WHO FCTC, *supra* note 23, Art. 23(5).

<sup>34</sup>*Ibid.*, Art. 5(4).

<sup>35</sup>*Ibid.*, Art. 7.

<sup>36</sup>See CDCE, *supra* note 22, Art. 22(4c).

<sup>37</sup>*Ibid.*, Art 23(6b).

<sup>38</sup>UN Doc. A/RES/58/4 (2003), at 3, para. 6.

<sup>39</sup>See Section 3.2.1, *infra*.

Similar to the UNCAC, the CCM treaty bodies – the Meeting of States Parties (MSP) and the Review Conference – are not explicitly empowered to produce normative outcomes. According to the text of the treaty it is not within the MSP's powers to adopt protocols, annexes, or any other kind of instrument with normative purposes. The authority of the MSP is limited to 'consider and, where necessary, take decisions in respect of any matter with regard to the application or implementation of this Convention'.<sup>40</sup> This weaker formulation of normative authority, as with that in the UNCAC, clearly contrasts with the explicit delegation of normative powers found in the FCTC and CDCE.

## 2.2 Procedures for the adoption of normative decisions

In addition to the kind of authority that COPs are granted to engage in normative activities, it is important to examine the procedures that they use to adopt their outcomes. Such procedures include, in particular, the majority required for the adoption of COP decisions, as well as other requirements necessary for COP resolutions to produce effects on states parties.

The FCTC has different procedures for the adoption of protocols and guidelines. Article 33.5 of the convention establishes that the COP may adopt protocols making every effort to reach an agreement on its text by consensus. If consensus is not possible, protocols can be adopted by a majority of three quarters of the parties present and voting in the meeting. In addition, the article provides that '[a]ny protocol to the Convention shall be binding only on the parties to the protocol in question'.<sup>41</sup> This model, based on consensus plus individual ratification, replicates the procedure to adopt treaties, which should not be a surprise considering that protocols are conventions in their own right.<sup>42</sup>

In contrast, the text of the FCTC does not establish a procedure for adopting guidelines. Rather, it was the COP itself that regulated the matter when it adopted its own Rules of Procedure during its first meeting.<sup>43</sup> Article 50 of this instrument states that, similar to protocols, guidelines can be adopted by consensus or by a three-quarters majority of the parties present and voting, if consensus is impossible to reach.<sup>44</sup> However, in contrast to protocols, guidelines do not need ratification by states. The guidelines, then, produce their effects immediately over all the states parties with no further steps needed.

In the context of the CDCE it was also the COP through its Rules of Procedure which fixed the requirements for the adoption of guidelines. The rules provide that the COP can adopt operational guidelines by a simple majority of the parties present at the meeting, with no additional steps needed for guidelines to take effect.<sup>45</sup> While CDCE guidelines are similar to FCTC guidelines, it is noteworthy that the majority required to adopt the former is lower than for the latter. This might indicate greater interest from the CDCE negotiators in the development of the treaty through guidelines adopted by the COP.

Consistent with their weak formulation of normative authority, the CCM and the UNCAC do not provide any guidance on the procedures that their COPs must follow to adopt decisions. Once again, this issue is regulated by the COPs themselves. The Rules of Procedure that the UNCAC COSP adopted during its first meeting contain the rules for the adoption of all its decisions.<sup>46</sup> This instrument requires states parties to 'make every effort to adopt decisions in the Conference by

<sup>40</sup>See CCM, *supra* note 15, Art. 11.

<sup>41</sup>See WHO FCTC, *supra* note 23, Art. 33(5).

<sup>42</sup>1969 Vienna Convention on the Law of Treaties, 1155 UNTS 311, Arts. 9–17.

<sup>43</sup>Conference of the Parties, WHO Framework Convention on Tobacco Control, Decisions and Ancillary Documents, COP/1/2006/CD (2007), at 4.

<sup>44</sup>*Ibid.*, at 15, Rule 50.

<sup>45</sup>Conference of Parties, Convention on the Protection and Promotion of the Diversity of Cultural Expressions, Resolutions, CE/07/1.CP/CONF/209/Resolutions (2007), at 6, Rule 14.3.

<sup>46</sup>Conference of States Parties, United Nations Convention against Corruption, Report of the Conference of the States Parties to the United Nations Convention against Corruption on its first session, held in Amman from 10 to 14 December 2006, CAC/COSP/2006/12 (2006), at 13.

consensus'.<sup>47</sup> If this threshold cannot be reached, decisions are adopted by vote and the majority needed depends on the nature of the resolution. Substantive decisions require a two-thirds majority, whereas procedural ones need just a simple majority of the states present and voting. If the nature of an issue is not clear, it must be treated as a matter of substance. The situation is not too different in the CCM context. The Rules of Procedure of the MSP demand a two-thirds majority for the adoption of any substantive decisions.<sup>48</sup> The decisions adopted by the UNCAC COSP and the CCM MSP produce their effects immediately on all the states parties with no additional actions needed.

The legal status of COP decisions adopted using consensus or majority vote procedures is one of the main themes in the literature on environmental COPs.<sup>49</sup> The implied powers theory and a 'de facto binding nature' of decisions are some of the alternatives explored by scholars to explain and justify the legal effects of COP resolutions.<sup>50</sup> In practice, it is rare to find examples of treaties which specify the legal character of COP resolutions,<sup>51</sup> and the case studies are no exception to this. It is important to note that the decisions adopted by the COPs under examination in this article were agreed by consensus and that they are considered non-binding. This is often clarified in the text of the resolutions themselves, stating, for example, that it is not their purpose to increase the obligations on states parties.<sup>52</sup> However, this does not mean that COP decisions adopted by consensus are incapable of producing legal effects. The International Law Commission acknowledged the role that COP resolutions can play in the interpretation of the treaties,<sup>53</sup> and there are examples of tribunals considering them for their evidential value.<sup>54</sup>

### 2.3 Examples of normative decisions

The examination of COPs' authority to engage in normative activities, and the procedures that they use to adopt their resolutions, reveal a preference to develop the content of the parent treaties through informal mechanisms that lead to informal outcomes. The practice of the bodies in each of the case studies confirm that this is the way in which COPs participate in the normative development of their parent treaties. This section explores examples of the normative outcomes produced by the COPs studied.

The FCTC is the only one of the case studies which empowers its COP to adopt formal instruments of international law to develop the content of the treaty. The COP has used these powers once so far. The Protocol to Eliminate Illicit Trade in Tobacco Products was adopted by consensus at the fifth session of the COP in 2012 to elaborate on the obligations set out in Article 15 of the convention.<sup>55</sup> The purpose of the protocol is to eliminate all forms of illicit trade of tobacco

<sup>47</sup>Conference of States Parties, United Nations Convention against Corruption, Draft Rules of Procedure for the Conference of the States Parties to the United Nations Convention against Corruption, CAC/COSP/2006/3 (2006) at 17, Rule 56.

<sup>48</sup>Meeting of States Parties, Convention on Cluster Munitions, Draft Rules of Procedure, CCM/MSP/2010/3 (2010), at 4, Rule 14.

<sup>49</sup>See, e.g., Churchill and Ulfstein, *supra* note 1; Brunnée, *supra* note 1; Wiersema, *supra* note 1; Fitzmaurice, *supra* note 9.

<sup>50</sup>See Churchill and Ulfstein, *ibid.*; Brunnée, *ibid.*

<sup>51</sup>For an exception see 1987 Protocol on Substances that Deplete the Ozone Layer, 1522 UNTS 3, Art. 2(9).

<sup>52</sup>Conference of the Parties, WHO Framework Convention on Tobacco Control, Decisions and Ancillary Documents, FCTC/COP/3/REC/1 (2009), at 17; Conference of the Parties, WHO Framework Convention on Tobacco Control, Decisions and Ancillary Documents, FCTC/COP/4/REC/1 (2011), at 8.

<sup>53</sup>International Law Commission, Report of the International Law Commission, UN Doc. A/73/10 (2018), at 82–93.

<sup>54</sup>See, M. Melillo, 'The Legal and Evidential Value of the Guidelines for Implementation of the Framework Convention on Tobacco Control: Recent Developments and Critical Views', (2017) 8 *European Journal of Risk Regulation* 186; M. Melillo, 'Lessons from the WTO Plain Packaging Reports: The Use of the Evidence-Based WHO Framework Convention on Tobacco Control as Evidence in International Litigation', *EJIL:Talk!*, 16 July 2018, available at [www.ejiltalk.org/lessons-from-the-wto-plain-packaging-reports-the-use-of-the-evidence-based-who-framework-convention-on-tobacco-control-as-evidence-in-international-litigation/](http://www.ejiltalk.org/lessons-from-the-wto-plain-packaging-reports-the-use-of-the-evidence-based-who-framework-convention-on-tobacco-control-as-evidence-in-international-litigation/).

<sup>55</sup>2013 Protocol to Eliminate Illicit Trade in Tobacco Products, 52 *ILM* 369.

products,<sup>56</sup> focusing on the control and security of the supply chain. As of January 2023, 66 states are parties to the protocol, which entered into force on 25 September 2018.<sup>57</sup>

However, the most productive normative activity in the FCTC context has been the adoption of guidelines.<sup>58</sup> Since its entry into force in 2005 the COP has adopted eight guidelines relating to the implementation of treaty provisions. In addition, the COP adopted a set of policy options and recommendations on economically sustainable alternatives to tobacco growing (in relation to Articles 17 and 18 of the WHO FCTC).<sup>59</sup>

The structure of the guidelines is similar. They are documents of 10 to 20 pages, organized in numbered paragraphs that deal with different issues relating to the implementation of the provision or provisions that they deal with. In general, these guidelines address the principles underlying the relevant articles of the convention, elaborate on the concepts and expressions used in the treaty, and make recommendations for states to comply with their obligations.

The CDCE COP has also produced several outcomes that receive a specific denomination and deal exhaustively with one provision of the convention: the operational guidelines. This is not a surprise considering that, as mentioned above, the CDCE explicitly empowers the COP to adopt these instruments. Scholars have singled out the operational guidelines as the most important tool for the implementation of the convention.<sup>60</sup>

The CDCE COP has adopted operational guidelines in all its meetings except its first, when it requested the Intergovernmental Committee to start working on them. This continuous adoption of guidelines indicates a dynamic treaty. It might also evidence that putting words on paper is easier when elaborating states' rights (which is what the CDCE mostly contains).<sup>61</sup> The CDCE COP has adopted 14 operational guidelines: 11 article-related and three not article-related. This large number of operational guidelines leaves just Articles 5, 6 and 12 out of the substantive provisions of the CDCE without a COP instrument elaborating upon them.

In terms of their form, the CDCE operational guidelines are shorter than the FCTC guidelines, rarely exceeding seven pages. They include the text of the provision at the beginning of the instrument and then elaborate on its content. Like the FCTC guidelines, this elaboration consists of the enunciation of principles, background information, definitions, and suggestions of what states should do to implement the article at issue.

The cases of the FCTC and the CDCE show that specific forms of the delegation of normative powers lead COPs to adopt resolutions that elaborate on the content of their treaties. A study of the CCM reveals that weak normative powers do not prevent the same thing from happening, although not as often as in the former cases. The CCM does not provide clear normative authority for its treaty body. However, the MSP and the Review Conference have adopted three 'Actions Plans'. This means that the adoption of these instruments can be justified by the power that the CCM grants to the COP to 'take decisions' regarding the application or implementation of the convention. This shows, once again, the informality of the adoption by COPs of resolutions with normative impact.

<sup>56</sup>*Ibid.*, Art. 3.

<sup>57</sup>Available at [www.who.int/fctc/protocol/en/](http://www.who.int/fctc/protocol/en/).

<sup>58</sup>See J. Liberman, 'Four Cops and Counting: Achievements, Underachievements and Looming Challenges in the Early Life of the WHO FCTC Conference of the Parties', (2012) 21(2) *Tobacco Control* 215, at 216–17.

<sup>59</sup>Available at [fctc.who.int/who-fctc/overview/treaty-instruments](http://fctc.who.int/who-fctc/overview/treaty-instruments).

<sup>60</sup>See S. Maus, 'Article 22. Conference of the Parties', in S. von Schorlemer and P-T. Stoll (eds.), *The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions: Explanatory Notes* (2012), 555, at 565.

<sup>61</sup>See, e.g., G. C. Shaffer and M. A. Pollack, 'Hard Vs. Soft Law: Alternatives, Complements, and Antagonists in International Governance', (2009) 94 *Minnesota Law Review* 706, at 771; M. Hahn, 'A Clash of Cultures? The UNESCO Diversity Convention and International Trade Law', (2006) 9 *Journal of International Economic Law* 515, at 534; C. B. Graber, 'The New UNESCO Convention on Cultural Diversity: A Counterbalance to the WTO?', (2006) 9 *Journal of International Economic Law* 553, at 563.



The Vientiane Action Plan was the first one to be adopted by the MSP during its first meeting in 2010.<sup>62</sup> The second was the Dubrovnik Action Plan, adopted five years later during the first Review Conference.<sup>63</sup> Lastly, the Lausanne Action Plan was adopted in the second part of the second Review Conference in 2021.<sup>64</sup> All of these instruments contain an exhaustive elaboration on how states should comply with the CCM.

The Vientiane Action Plan lists 66 ‘actions’ that states are required to perform to comply with the obligations of the treaty. The declared objective of the plan is to ‘ensure effective and timely implementation of the provisions of the CCM following the First Meeting of States Parties’.<sup>65</sup> The 66 actions are organized around the obligations contained in Articles 3 to 9 of the CCM. They do not follow the exact same order, but each group of actions is attached to the different commitments undertaken by the states parties, such as stockpile destruction, clearance of remnants, and victim assistance.

The Dubrovnik and Lausanne Action Plans follow the structure of the Vientiane Action Plan. They organize a group of actions under the main obligations set out in the CCM. Their objective is the same as the Vientiane Action Plan: to support parties in meeting their obligations.<sup>66</sup> Both the Dubrovnik and the Vientiane Action Plans state that some actions ‘are designed as milestones to ensure timely implementation of comprehensive and resource intensive tasks. Others are designed to assist States parties in structuring their response to their commitments under the Convention’.<sup>67</sup> Furthermore, the implementation of the Action Plans is closely monitored. After each of the MSP meetings, a report is released providing an account of the progress made by states parties in the implementation of the current action plan. In addition, the Lausanne Action Plan included a set of indicators to measure the progress made in relation to each of the 50 actions listed in it.<sup>68</sup> This makes clear the expectation that the action plans are followed and implemented by the states parties. The way that the COP sets out the obligations becomes the ‘official’ way for states to comply.

The proliferation of the different outcomes described above raises questions about the reasons why COPs adopt normative instruments and why some COPs produce more normative outcomes than others. These questions emerge out of studying COPs in different areas of international law. In the environmental sphere the evolution of scientific knowledge is what primarily drives the adoption of new instruments, but this element is not equally present in the other fields studied here. Instead, there are other factors that play a larger role in the context of the case studies. The FCTC and CDCE COPs show that clear delegation of normative powers in the parent treaties leads to the adoption of more normative outcomes. Contextual considerations, however, point in different directions. The CCM and the UNCAC deal with issues that are closer to sovereignty and national jurisdiction – namely disarmament and criminal law – and this might explain why their COPs engage less in normative activities that elaborate on the treaties. By contrast, the FCTC and CDCE need to uphold their objectives – reducing tobacco consumption and strengthening states’ rights to protect local cultural expressions – against regimes that can undermine their

<sup>62</sup>Meeting of States Parties, Convention on Cluster Munitions, Final Document, CCM/MSP/2010/5 (2010), Ann. II: Vientiane Action Plan (VAP).

<sup>63</sup>Review Conference, Convention on Cluster Munitions, Final Document, CCM/CONF/2015/7 (2015), Ann. III: Dubrovnik Action Plan (DAP).

<sup>64</sup>Review Conference, Convention on Cluster Munitions, Final report of the Second Review Conference, CCM/CONF/2021/6 (2021), Ann. II: Lausanne Action Plan (LAP).

<sup>65</sup>See VAP, *supra* note 62, at 9, para. 2.

<sup>66</sup>See DAP, *supra* note 63, at 12, para. 6; LAP, *supra* note 64, at 17, para. 4.

<sup>67</sup>See DAP, *ibid.*, at 13, para. 7; VAP, *supra* note 62, at 9, para. 3.

<sup>68</sup>See LAP, *supra* note 64, at 26.

purposes, such as international trade and investment.<sup>69</sup> This could explain why there is a greater incentive to produce instruments that support the goals of those conventions. While the questions raised and the tentative hypotheses offered here exceed the scope of this article, they are preliminary ideas that deserve further exploration.

### 3. COPs developing the content of their parent treaties

The previous section showed that COPs adopt a range of different instruments to elaborate on the provisions of their parent treaties. COPs also provide a forum for states parties to discuss how the conventions should be implemented, and then put these expectations onto paper. This function is generally known as standard-setting. This section examines the substance of COP resolutions to identify the different forms that standard-setting takes in the normative outcomes of COPs.

#### 3.1 The standard-setting function

Standard-setting is a concept frequently used by international lawyers, although its precise meaning is not entirely clear. In the context of the normative activities of COPs, ‘standard-setting’ consists of the adoption of resolutions that guide states towards compliance by specifying the content of the treaty provisions and establishing benchmarks of diligence that states must meet to exercise their rights and discharge their obligations.<sup>70</sup> Through this practice, COPs determine how states are expected to behave under the treaty.<sup>71</sup>

This function is critical to the implementation of the treaties that establish COPs considering that, following the framework convention-protocol model, most of their provisions have open texture.<sup>72</sup> Article 5.3 of the FCTC offers an example of the role that standard-setting plays. This article deals with the relationship between states parties and the tobacco industry, a critical issue for the purposes of the FCTC. This provision is succinct and is placed under the category of general obligations of the parties: ‘In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.’ The text contains little information about the form that the protection of policies from the interests of the tobacco industry should take. Thus, all the specific normative content of this article must be developed by the COP.

<sup>69</sup>For the FCTC see, e.g., T. Voon, ‘Philip Morris v. Uruguay: Implications for Public Health’, (2017) 18 *Journal of World Investment and Trade* 320; T. Voon, ‘Third Strike: The WTO Panel Reports Upholding Australia’s Tobacco Plain Packaging Scheme’, (2019) 20 *The Journal of World Investment & Trade* 146; for the CDCE see note 89 and surrounding text, *infra*.

<sup>70</sup>See, e.g., A. Boyle and C. Chinkin, *The Making of International Law* (2007), at 218; J. Brunnée, ‘The Rule of (Environmental) Law and Complex Problems’, in H. Krieger, G. Nolte and A. Zimmermann (eds.), *The International Rule of Law: Rise or Decline* (2019), 211.

<sup>71</sup>The limits of the standard-setting function are not clear, and they raise important debates that exceed the scope of this article. One of these debates concerns the difference between standard-setting and law-making. If COPs elaborate on the obligations in their parent treaties by adding to or modifying them, they might be actually engaging in a law-making function that they are not empowered to perform. The International Law Commission report on subsequent practice and subsequent agreements in relation to the interpretation of treaties refers to this topic. In particular, conclusion 7 and the commentary to it discuss the matter. See International Law Commission, *supra* note 2, at 14, conclusion 7(3). Also, see, e.g., G. Hafner, ‘Subsequent Agreements and Practice: Between Interpretation, Informal Modification, and Formal Amendment’, in G. Nolte (ed.), *Treaties and Subsequent Practice* (2013), 105; J. Alvarez, ‘Limits of Change by Way of Subsequent Agreements and Practice’, in Nolte, *ibid.*, at 123; I. Buga, *Modification of Treaties by Subsequent Practice* (2018), at 107.

<sup>72</sup>See, e.g., N. Matz-Lück, ‘Framework Conventions as a Regulatory Tool’, (2009) 1 *Goettingen Journal of International Law* 439; Max Planck Encyclopedias of International Law, ‘Framework Agreements’, available at [opil.ouplaw.com/home/MPIL](http://opil.ouplaw.com/home/MPIL).

### 3.2 Standard-setting in the case studies

The following section categorizes the ways in which normative decisions by COPs set standards that establish what states are required to do to comply with their treaty obligations. These categories are: (i) increasing the level of commitment; (ii) establishing procedures and timeframes; and (iii) identifying the meaning of words and expressions in the treaty provisions.

#### 3.2.1 Increasing the level of commitment

In this kind of standard-setting, COP decisions elaborate on a provision of their parent treaty, encouraging states parties to fulfil the obligation in a way that demands from them something that is not contained in the text of the treaty. It is not adding something entirely new, but it is raising the level of commitment expected from the parties.

The UNCAC provides an example. As mentioned before, the UN General Assembly resolution that adopted the convention requested the Conference of the States Parties to address the bribery of officials in international organizations, by making recommendations for action that consider issues such as privileges and immunities, and the jurisdiction and purpose of international organizations.<sup>73</sup> The COSP worked on this request, adopting resolutions 1/7 and 2/5 which encouraged states to criminalize the bribery of foreign public officials and officials in public international organizations. Article 16 of the UNCAC establishes a mandatory obligation to criminalize active forms of bribery and imposes a voluntary requirement to criminalize passive forms of bribery. The COSP, however, did not make this distinction in its resolutions, encouraging states to criminalize all forms – active and passive – of bribery. These COSP resolutions, then, go further than the text of the convention and encourage states to do more than what the obligation under Article 16 strictly requires. There are scholars who regard this as an example of direct addition to the treaty by the COSP.<sup>74</sup>

The guidelines to Article 11 of the FCTC provide another example of standard-setting that raises the expected levels of commitment. Article 11 requires states to adopt measures, within three years after the convention has entered into force, to ensure that ‘each unit packet and package of tobacco products and any outside packaging and labelling of such products also carry a health warning describing the harmful effects of tobacco use’.<sup>75</sup> It adds that these warnings ‘should be 50% or more of the principal display areas but shall be no less than 30% of the principal display areas’. The guidelines acknowledge the text of the article, but also establish that ‘[p]arties should consider using health warnings that cover more than 50% of the principal display areas and aim to cover as much of the principal display areas as possible’.<sup>76</sup> These guidelines suggest that less than 50 per cent does not meet the acceptable standard, implicitly dismissing the minimum of 30 per cent established in the treaty. The evidence gathered by the COP showed that the effectiveness of the health warnings increased when their size increased, and justified this new standard. As a result, states that want to discharge their obligation have two different instructions regarding the minimum acceptable. The FCTC requires the health warnings to take up no-less than 30 per cent of the principal display area, while the guidelines elevate that minimum to 50 per cent.

The implications of this modification to the standards set out in Article 11 have been the subject of litigation. In 2010, tobacco manufacturers Philip Morris and Abal Hermanos brought a case against Uruguay before the International Centre for Settlement of Investment Disputes.<sup>77</sup>

<sup>73</sup>UN Doc. A/RES/58/4 (2003), at 3, para. 6.

<sup>74</sup>See A. Trebilcock, ‘Implications of the UN Convention Against Corruption for International Organizations: Oversight, Due Process, and Immunities Issues’, (2009) 6 *International Organizations Law Review* 513, at 528–9.

<sup>75</sup>See WHO FCTC, *supra* note 23, Art. 11(1b).

<sup>76</sup>Conference of the Parties, WHO Framework Convention on Tobacco Control, Decisions and Ancillary Documents, FCTC/COP/3/REC/1 (2009), at 19, para. 12.

<sup>77</sup>*Philip Morris Brands SÀRL, Philip Morris Products SA and Abal Hermanos SA v. Uruguay*, ICSID Case No. ARB/10/7, Award of 8 July 2016.

The claimants challenged the legality of two anti-tobacco measures adopted by Uruguay, one concerning an increase to 80 per cent in the size of the health warnings featured in cigarettes packages.<sup>78</sup> The Uruguayan government responded to the claimants' arguments by stating that it adopted the measure to implement Article 11 of the FCTC,<sup>79</sup> and that the 80 per cent policy was agreed through a process that took into account the guidelines for the implementation of this provision.<sup>80</sup> Uruguay also claimed that this instrument 'expressly call[s] on States in paragraph 12 to enlarge health warnings above 50 per cent to the maximum size possible',<sup>81</sup> and that this instrument is a 'sound basis to make policy'.<sup>82</sup> In the end, the tribunal had to decide whether the 80 per cent measure was 'entirely lacking in justification or wholly disproportionate'.<sup>83</sup> Its decision, in light of the guidelines and other arguments, was that the Uruguayan policy was 'a reasonable measure adopted in good faith to implement an obligation assumed by the State under the FCTC'.<sup>84</sup>

### 3.2.2 Establishing procedures and timeframes

The second area of standard-setting by COPs is related to procedures. COPs may add substance to the procedural obligations established in their treaties and also set time-frames for the implementation of treaty obligations.

In the CCM context, the action plans list several 'actions' that can be seen as steps that states are required to take in order to comply with the obligations under the treaty. For example, Article 3 of the convention requires states parties to destroy all cluster munition stockpiles under their jurisdiction 'as soon as possible but not later than eight years after the entry into force of this Convention for that State Party'.<sup>85</sup> Elaborating on this obligation, Action 8 of the Vientiane Action Plan provides that states parties will '[e]ndeavour to, within one year of entry into force for that State Party, have a plan in place for the destruction of stocks that includes a timeline and budget and begin physical destruction as soon as possible'. The requirement of elaborating a plan and the one-year timeframe to do it is not present in the text of the CCM. A similar situation arises in relation to Article 4 of the convention and Action 13 of the Vientiane Action Plan. This article requires states parties to clear and destroy cluster munition remnants located in territories under their jurisdiction. As distinct from Article 3 of the convention, Article 4 imposes a requirement that states adopt a plan to fulfil the obligation of clearance and destruction. Action 13 of the Vientiane Action Plan elaborates on this, calling on states to develop and implement of a national clearance plan, adding a timeframe of one year from the entry into force of the treaty to do so. This time limit is only found in the Action Plan and not in the CCM.

The operational guidelines adopted in the context of the CDCE provide additional examples of standard-setting on procedural matters. Article 8 of the CDCE establishes that parties are entitled to determine when special situations threaten cultural expressions within their territories and to adopt measures to protect those expressions. It also demands states parties report to the Intergovernmental Committee on the measures taken, enabling this body to make recommendations. The operational guidelines to Article 8 adopted by the COP elaborate on the conditions that states must meet in their reports to the Committee and require that states clarify the nature of the threat, as for example, cultural, physical, or economic.<sup>86</sup> The operational guidelines also establish

<sup>78</sup>*Ibid.*, para. 9.

<sup>79</sup>*Ibid.*, para. 412.

<sup>80</sup>*Ibid.*, paras. 370, 412.

<sup>81</sup>*Ibid.*, para. 370.

<sup>82</sup>*Ibid.*, para. 371.

<sup>83</sup>*Ibid.*, para. 419.

<sup>84</sup>*Ibid.*, para. 420.

<sup>85</sup>See CCM, *supra* note 15, Art. 3(2).

<sup>86</sup>Conference of Parties, Convention on the Protection and Promotion of the Diversity of Cultural Expressions, Resolutions, CE/09/2.CP/210/Res. (2009), at 20, para. 1.

that states must identify the threat, point out its source, show the vulnerability of the cultural expression, and explain the measures taken, among other requirements.<sup>87</sup>

In the CDCE context, the most relevant example of standard-setting applied to a procedural obligation is the annex to the guidelines to Article 9.<sup>88</sup> This instrument, adopted by the COP, contains the framework for the reports that states parties must submit to UNESCO every four years, noting their actions to protect and promote cultural expressions. The template for the reports is very specific, reflecting the topics that matter most to the goals of the CDCE. States, for example, must inform UNESCO of the measures taken in different areas, such as preferential treatment and sustainable development. They are encouraged to rely on data about economic indicators relating to exports and imports of cultural goods and services and the portion of the country's gross domestic product coming from cultural activities. This illustrates how COPs add substance to the procedures established in their treaties.

### 3.2.3 Identifying the meaning of words and expressions

The third kind of standard-setting identifiable in COP decisions relates to the meaning of the words and expressions used in the treaties. By giving certain content to words and expressions, COPs define the scope of the treaty obligations and provide guidance on what states are expected to do to meet their commitments. Similarly, as the examples in this section reveal, this function contributes to harmonizing the provisions of the parent treaties with those in other regimes and to limiting the discretion of the states parties to unilaterally interpret their obligations.

The CDCE provides good examples. As the literature has extensively discussed, the CDCE is a treaty that aims to push back against international trade policies by reinforcing the states parties' sovereign rights to protect local cultural expressions.<sup>89</sup> The argument is that the protection and promotion of cultural diversity requires putting limitations on trade in cultural goods and services because the rules that regulate exchanges facilitate homogenization. In this context, some operational guidelines to the CDCE articles address trade-related topics and intend to affect the interaction between the CDCE and World Trade Organization (WTO) rules.

'Special and differentiated treatment' is a well-known concept in the context of WTO agreements.<sup>90</sup> Against this, the operational guidelines on Article 16 on preferential treatment for developing countries set out the meaning of the concept of preferential treatment in the CDCE context. The guidelines suggest that, for the purposes of the CDCE, the notion of preferential treatment 'is wider than the narrow trade meaning. It is to be understood as having both a cultural and a trade component'.<sup>91</sup> The guidelines then elaborate on what states are entitled to do under each of these components, with a focus on what falls under the cultural side of the concept.<sup>92</sup> Through this

<sup>87</sup>*Ibid.*, at 20, para. 5.

<sup>88</sup>Conference of Parties, Convention on the Protection and Promotion of the Diversity of Cultural Expressions, Resolutions, DCE/19/7.CP/Res. (2019), at 13.

<sup>89</sup>See, e.g., Graber, *supra* note 61; E. H. Chiang, 'The Unesco Convention on the Protection and Promotion of the Diversity of Cultural Expressions: A Look at the Convention and Its Potential Impact on the American Movie Industry', (2007) 6 *Washington University Global Studies Law Review* 379; Hahn, *supra* note 61; J. Loisen and C. Pauwels, 'Competing Perspectives? WTO and UNESCO on Cultural Diversity in Global Trade', in C. De Beukelaer, M. Pyykkönen and JP. Singh (eds.), *Globalization, Culture, and Development: The UNESCO Convention on Cultural Diversity* (2015), 43; R. Neuwirth, 'The Convention on the Diversity of Cultural Expressions and Its Impact on the "Culture and Trade Debate": A Critical Evaluation After 5 Years', in T. Kono and S. Van Uytsel (eds.), *The UNESCO Convention on the Diversity of Cultural Expressions: A Tale of Fragmentation in International Law* (2012), 227; R. Neuwirth, 'The "Culture and Trade" Paradox Reloaded', in De Beukelaer, Pyykkönen and Singh, *ibid.*, at 91; T. Voon, 'UNESCO and the WTO: A Clash of Cultures?', (2006) 55 *International and Comparative Law Quarterly* 635.

<sup>90</sup>See, P. Van den Bossche and W. Zdouc, *The Law and Policy of the World Trade Organization* (2013), 113.

<sup>91</sup>Conference of Parties, Convention on the Protection and Promotion of the Diversity of Cultural Expressions, Resolutions, CE/09/2.CP/210/Res. (2009), at 35, para. 3(1).

<sup>92</sup>*Ibid.*, at 35–7, paras. 3(3–3(4)).

elaboration of the meaning of a particular concept, the CDCE COP arguably supports some measures that could be in potential violation of WTO norms. This is done in the guidelines by removing some measures from the trade component of the concept of 'preferential treatment' and placing them under the cultural side of the concept. As those measures are placed in the cultural side, states would be allowed and encouraged to adopt them. As a result, the CDCE COP provided a specific meaning to the concept of 'preferential treatment' in order to guide states to take certain measures that otherwise could be considered as prohibited by the WTO rules.<sup>93</sup>

The FCTC regime also provides good examples of a COP setting standards by defining the meaning of words and expressions. Guidelines to Article 8 develop the obligation of states parties to adopt and implement 'effective legislative, executive, administrative and/or other measures, providing for protection from exposure to tobacco smoke in indoor workplaces, public transport, indoor public places and, as appropriate, other public places'.<sup>94</sup> The guidelines indicate that states must be careful with the definitions of some of these words when they legislate and, consequently, elaborate on how they should be understood. Some of the words whose content is oriented by the guidelines are 'public places', 'workplace', and 'public transport'. These are all relevant terms for the definition of the scope of the obligation contained in Article 8 and, while there is room for consideration of specific domestic circumstances, the overall instruction in the guidelines is that states should interpret them as broadly as possible.

#### 4. COPs supporting the implementation of their parent treaties

COPs elaborate on the rights and obligations of states parties through the standard-setting function discussed in the previous section. However, this is not the only way in which these bodies use their normative powers to influence their parent treaties. The examination of the case studies reveals that the normative outcomes produced by COPs also attempt to support the practical implementation of the conventions that establish them. This is an approach that is not present in the literature and highlights how COP decisions use strategies that escape classification as strictly legal methods to reinforce the social and political position of their conventions. This section explores three such strategies.

##### 4.1 Building momentum for the implementation of the treaty

Momentum is defined as a 'driving force, an impetus; continuing vigour resulting from an initial effort or expenditure of energy'.<sup>95</sup> This concept is not frequently used in the study of international law. However, there are, at least, two ways in which momentum can be relevant to treaties. The first, which will not be explored here, relates to the collective political will that needs to form for the adoption of any given convention. The second is linked to the forces that are needed to consolidate treaties once they are adopted, implementing in practice the rights and obligations contained in their provisions. A convention that fails to maintain and renew the spirit that led to its adoption will, most likely, be abandoned in time. In this context, some COP resolutions contribute to creating an environment where it is easier for states to comply with their parent treaty obligations. In addition, if some states are reluctant to comply, COP resolutions provide tools for domestic constituencies and international advocates of the parent treaties to put pressure on those states.

<sup>93</sup>However, the reference to Art. 20 of the CDCE in the guidelines and the limitations that this article places on the impact of the CDCE on previously adopted treaties lead academics to doubt any legal implications of this 'wider' understanding of 'preferential treatment'. See, e.g., Neuwirth (2012), *supra* note 89, at 252.

<sup>94</sup>See WHO FCTC, *supra* note 23, Art. 8.

<sup>95</sup>Oxford English Dictionary Online, available on subscription at [www.oed.com/](http://www.oed.com/), 'Momentum' (def. 6).

In the context of the case studies, there are many examples of COP decisions engaging directly with momentum-building. The momentum that COPs seek to build in each situation is directed towards different objectives. The first of these goals is building momentum for the addition of new parties to the treaty. The CCM MSP, for instance, has used the word ‘momentum’ in relation to the obligation to universalize the convention by encouraging non-party states to join the regime.<sup>96</sup> Official documents indicate the MSP’s concerns about building and maintaining momentum by the addition of new states parties to the convention. Zambia submitted a document to the fourth meeting of the MSP in 2013 calling for the development of new strategies to bring non-parties on board and to keep this issue at the top of priorities ‘in order to sustain the momentum required for States to join the CCM’.<sup>97</sup> At its second and third meetings held in 2011 and 2012, the MSP adopted documents monitoring the implementation of the Vientiane Action Plan and identified as a working point for future meetings the question of how to continue ‘the strong momentum in increasing the number of States Parties . . .’.<sup>98</sup> In preparation for the second Review Conference that held its first part in November 2020 in virtual format, the states of Chile and the Philippines, acting as co-ordinators for the universalization of the convention, submitted a document with a number of recommendations to sustain momentum for adherence to the CCM and identified bureaucratic issues, such as electoral processes and changes in personnel, as the causes for the excessive time taken by signatory states to ratify the convention.<sup>99</sup>

A different kind of momentum sought by COPs in their decisions is directed towards the implementation of the conventions generally. For example, in the CCM context, the Dubrovnik Action Plan explicitly manifests the aim of building momentum for the implementation of the treaty. It states that ‘the actions contained in the Action Plan are not in themselves normative or legal requirements, but designed to *gather momentum*, guide and assist States parties and other relevant actors in the practical implementation of the Convention’.<sup>100</sup>

In the CDCE context, the COP agreed in 2011 on set of operational guidelines entitled ‘Measures to Ensure the Visibility and the Promotion of the Convention’.<sup>101</sup> The adoption of these guidelines had a clear extra-legal purpose: the success of the convention requires visibility and promotion of its objectives. The guidelines contain a list of actions that states parties are encouraged to take to disseminate the message of the CDCE. States parties are called on to inform and mobilize politicians, opinion leaders and civil society members to make the CDCE visible; to foster ‘media campaigns in order to disseminate the principles and the objectives of the Convention’;<sup>102</sup> and to organize activities such as workshops, forums, and seminars about the diversity of cultural expressions.<sup>103</sup> These are all actions that seek to strengthen social and political support for the convention.

Finally, the UNCAC COSP has also sought to generate momentum for the implementation of the treaty. In 2009 this treaty body established the Implementation Review Mechanism (IRM).<sup>104</sup> In words of the United Nations Office for Drugs and Crime – which serves as the UNCAC’s Secretariat – the IRM has encouraged a transformation in the ‘global landscape in the fight against

<sup>96</sup>See CCM, *supra* note 15, Art. 21.

<sup>97</sup>Meeting of States Parties, Convention on Cluster Munitions, Universalization of the Convention, CCM/MSP/2013/WP.3 (2013), at 3, para. 19.

<sup>98</sup>Meeting of States Parties, Convention on Cluster Munitions, Draft Beirut Progress Report, CCM/MSP/2011/WP.5 (2011), at 2 para. 6; Meeting of States Parties, Convention on Cluster Munitions, Oslo Progress Report, CCM/MSP/2012/WP.2 (2012), at 1, para. 4.

<sup>99</sup>Review Conference, Convention on Cluster Munitions, Ways Forward on Universalization of the Convention on Cluster Munitions, CCM/CONF/2020/12 (2020).

<sup>100</sup>See DAP, *supra* note 63, at 12, para. 6 (emphasis added).

<sup>101</sup>Conference of Parties, Convention on the Protection and Promotion of the Diversity of Cultural Expressions, Resolutions, CE/11/3.CP/209/Res. (2011), at 8.

<sup>102</sup>*Ibid.*, at 8, para. 4(4).

<sup>103</sup>*Ibid.*, para. 4.

<sup>104</sup>Available at [www.unodc.org/unodc/en/corruption/implementation-review-mechanism.html](http://www.unodc.org/unodc/en/corruption/implementation-review-mechanism.html).

corruption' through: (i) the creation of 'renewed *momentum* for States to ratify or accede to the Convention'; and (ii) the facilitation of the implementation of the treaty at the national level enabling inter-agency dialogue about the legislative and administrative reforms that need to be done in each country.<sup>105</sup> It is a clear purpose of the IRM system to gather momentum in the implementation of the treaty.

#### 4.2 Stigmatizing adversaries to the treaty

To stigmatize is to 'set a stigma upon; to mark with a sign of disgrace or infamy; to "brand"; esp. to call by a disgraceful or reproachful name; to characterize by a term implying severe censure or condemnation'.<sup>106</sup> Similar to 'momentum', this concept is not frequently used in relation to the study of international law. However, the idea of stigmatizing can be useful to explain some of the methods that COPs use to promote the implementation of their parent treaties. In a nutshell, the strategy consists of attaching a bad reputation to adversaries to the treaty, repeatedly drawing attention to their negative influence and the need to minimize their impact. Depending on the nature of those opponents, treaties can prohibit them or call for the adoption of measures to limit their impact, among other possible strategies. On top of this, COP decisions attempt to build moral and social condemnation of adversaries to the treaty, making it easier for states parties to adopt the measures that ban them or limit their influence.

There are a number of cases where COPs stigmatize opponents of their parent treaties. In the FCTC context the clear adversary is tobacco and the business that surrounds it. In this context, is no surprise that the COP has attempted to stigmatize the tobacco industry. Guidelines to Article 5.3 adopted by the COP in 2008 – which, as mentioned before, build on the obligation to protect public policies from the commercial and other interests of the tobacco industry – provide a good example. The first paragraph of these guidelines quotes a report from the WHO Committee of Experts on Tobacco Industry Documents affirming that tobacco companies have operated for many years with the purpose of undermining policies implemented by governments and the WHO to fight tobacco consumption.<sup>107</sup> Furthermore, the guidelines reinforce the 'need to be alert to any efforts by the tobacco industry to undermine or subvert tobacco control efforts . . .'.<sup>108</sup> These references contribute to the efforts to stigmatize the tobacco industry and its intentions. Likewise, the guidelines reject the 'socially responsible' activities that tobacco companies develop, implying bad faith in their organization.<sup>109</sup>

Guidelines to Articles 9 and 10 dealing with the contents of tobacco, also contain examples of stigmatization of the industry. These guidelines recall that tobacco companies have considered using substances related to energy and vitality – such as caffeine and guarana – in their products,<sup>110</sup> with the aim of making tobacco cigarettes more appealing to young people. These guidelines also state that the 'industry is continuously aiming at making tobacco products more attractive by modifying existing product design features or introducing new ones',<sup>111</sup> building up an image of tobacco industry as one that engages in deceptive activities.

<sup>105</sup>United Nations Office on Drugs and Crime, *State of Implementation of the United Nations Convention Against Corruption* (2017), 269 (emphasis added).

<sup>106</sup>Oxford English Dictionary Online, available on subscription at [www.oed.com/](http://www.oed.com/), 'Stigmatize' (def. 2).

<sup>107</sup>Conference of the Parties, WHO Framework Convention on Tobacco Control, Decisions and Ancillary Documents, FCTC/COP/3/REC/1 (2009), at 4, para. 1.

<sup>108</sup>*Ibid.*, at 4, para. 2.

<sup>109</sup>*Ibid.*, at 10, paras. 26–7.

<sup>110</sup>Conference of the Parties, WHO Framework Convention on Tobacco Control, Decisions and Ancillary Documents, FCTC/COP/4/REC/1 (2011), at 50, para. 3.1.2.2(iv).

<sup>111</sup>Conference of the Parties, WHO Framework Convention on Tobacco Control, Decision: Further Development of the Partial Guidelines for Implementation of Articles 9 and 10 of the WHO FCTC, FCTC/COP7(14) (2016), Ann. II, at 6, para. 3.3.2.2(i).



The COP has also referred to the actions of the tobacco industry in other decisions. In the Seoul Declaration, adopted in 2012, the parties to the COP declared ‘their determination not to allow the tobacco industry interference to slow or prevent the development and implementation of tobacco control measures . . .’.<sup>112</sup> The Punta del Este Declaration, adopted two years before, was even more direct, recording the states parties’ concern ‘regarding actions taken by the tobacco industry that seek to subvert and undermine government policies on tobacco control’.<sup>113</sup> Furthermore, at its eighth meeting, in 2018, the COP adopted a decision to reinforce the protection of tobacco-control policies from the industry’s interests.<sup>114</sup> The COP noted (i) the misleading strategies of the industry, and the use of global philanthropy to ultimately undermine the objectives of the convention; (ii) the exploitation of the vulnerability of tobacco growers by the tobacco industry to create political alliances with them; and (iii) the attempts by the industry to partner with UN agencies. All of these decisions show the COP’s strategy of stigmatizing the tobacco industry as a way to counter attempts by companies to weaken tobacco-control measures.

A similar scenario is found in the CCM context. One of the biggest challenges that the CCM faces is that the major users and producers of cluster munitions are not parties to the treaty. While UN Security Council permanent members France and the UK are among the 110 states parties to the CCM, countries with significant military power such as the United States, Russia, China, India, Pakistan, Israel, and Syria are not parties to the convention. The problem, then, is that, notwithstanding the CCM’s large membership, those seven states hold 85 per cent of the world’s cluster munition stocks,<sup>115</sup> and these weapons continue to be used by non-parties in the conduct of their armed conflicts.<sup>116</sup> As a result, stigmatization of cluster munitions becomes critical to achieving the objectives of the CCM. If significant users and producers of cluster munitions are not willing to join the convention, one way to keep them accountable for their actions is by stigmatizing these weapons. This means building international consensus about the need to abandon them and establishing a moral and political condemnation of those states which use them.<sup>117</sup>

In this context, it is possible to find the words ‘stigmatize’ and ‘stigmatization’ in some MSP official documents. Action 1.3 of the Dubrovnik Action Plan requires states ‘to promote compliance, reinforcing the norms being established by the CCM that stigmatizes cluster munitions . . .’.<sup>118</sup> Action 1.3 then lists a number of activities that states must perform to achieve the purpose of stigmatization, such as discouraging by all possible means the engagement with cluster munitions and ‘calling upon those who continue to use, develop, stockpile and transfer cluster munitions to cease now’.<sup>119</sup> Another example comes from the fifth meeting of the MSP in 2014, where the states parties committed to keep denouncing states that use cluster munitions in order to stigmatize these weapons. States referred to this task as ‘an essential part of ensuring that civilians will no longer suffer the consequences of these weapons and moving us closer to a world free of cluster munitions’.<sup>120</sup> This COP statement demonstrates the importance of the strategy of stigmatizing cluster munitions by the states parties to the CCM.

<sup>112</sup>Conference of the Parties, WHO Framework Convention on Tobacco Control, Seoul Declaration, FCTC/COP/5/DIV/5 (2012), at 42, para. 5.

<sup>113</sup>Conference of the Parties, WHO Framework Convention on Tobacco Control, Decisions and Ancillary Documents, FCTC/COP/4/REC/1 (2011), at 6, para. 2.

<sup>114</sup>Conference of the Parties, WHO Framework Convention on Tobacco Control, Decision, FCTC/COP8(18) (2018).

<sup>115</sup>J. Kierulf, *Disarmament Under International Law* (2017), 203–5.

<sup>116</sup>Cluster Munition Coalition, Cluster Munition Monitor Report 2018 (2018), at 1–2, available at [www.the-monitor.org/media/2907293/Cluster-Munition-Monitor-2018\\_web\\_revised4Sep.pdf](http://www.the-monitor.org/media/2907293/Cluster-Munition-Monitor-2018_web_revised4Sep.pdf).

<sup>117</sup>D. J. Raccuia, ‘The Convention on Cluster Munitions: An Incomplete Solution to the Cluster Munition Problem’, (2011) 44 *Vanderbilt Journal of Transnational Law* 465, at 479–87, 491–2.

<sup>118</sup>See DAP, *supra* note 63, at 14, Action 1.3.

<sup>119</sup>*Ibid.*

<sup>120</sup>Meeting of States Parties, Convention on Cluster Munitions, Final Document, CCM/MSP/2014/6 (2014), at 34, para. 10.

Efforts to stigmatize cluster munitions have several effects. For example, it has led to the adoption of unilateral commitments by non-party states to the convention to limit their use of cluster munitions. The non-party states of Finland, Poland, Romania, and Thailand have adopted this kind of commitment.<sup>121</sup> However, probably the most important effect of the stigmatization of cluster munitions is the pressure it places on states when they publicly engage in discussions concerning these weapons. For example, every year since 2015 the UN General Assembly has approved a resolution upholding the principles and objectives of the CCM. These resolutions take note of several instruments adopted by the MSP – such as the Actions Plans – and urge states outside the Convention to join it.<sup>122</sup> The first resolution adopted in 2015 was supported by 139 states voting in favour, meaning that more than 20 states which are not parties or signatories to the convention were prepared to support the purposes of the Convention. The number of states supporting the resolution has increased almost every year which shows the effects of stigmatization on the attitude of states which are not parties to the CCM but which care about their international reputation.

### 4.3 Connecting the treaty with established international legal narratives

In addition to engaging with momentum-building and stigmatization, COPs promote the implementation of their parent treaties by connecting their content with established international legal discourses. COPs do this by framing the rights and obligations in their parent treaties around international legal narratives that are broadly accepted and internalized. Given that rules which are perceived to be legitimate have greater chances of being implemented and complied with, COPs seek to strengthen the position of their parent treaties by placing them within widely legitimized narratives. ‘Law and literature’ approaches to international law provide insights that help to understand how this works.

One of the main premises of the law and literature approach is that every engagement with international law involves a storytelling exercise.<sup>123</sup> Thus, when COPs adopt outcomes elaborating on the content of their parent treaties, they are telling a story or, more precisely, setting up a narrative around their parent treaties. Narratives provide the background to international legal relations and have the potential to configure our understandings of the whole field.<sup>124</sup> Narratives are built from a particular point of view, identifying the main characters and the roles that they play.<sup>125</sup> In this context, COPs attempt to strengthen their parent treaties’ position by building connections between the treaties and broadly accepted and legitimized narratives of international law, such as human rights or sustainable development. Since these latter narratives are already widely accepted, framing the parent treaties within them seeks to facilitate their acceptance, improving their chances of being implemented by states parties.

The CDCE provides an excellent example of a treaty that builds a narrative in connection with other international legal discourses. In particular, the CDCE situates itself as part of the sustainable development agenda. The preamble of the convention stresses cultural diversity as a necessary condition to accomplish sustainable development, an objective that it is also present in the objectives and the principles of the treaty.<sup>126</sup>

The CDCE COP has elaborated on this connection between cultural diversity and sustainable development. For example, operational guidelines to Article 13 – which affirms that states parties ‘shall endeavor to integrate culture in their development policies at all levels . . .’ –<sup>127</sup> begins with the

<sup>121</sup>See Cluster Muniton Coalition, *supra* note 116, at 21–2.

<sup>122</sup>See UN Doc. A/RES/70/54 (2015); UN Doc. A/RES/71/45 (2016); UN Doc. A/RES/72/54 (2017); UN Doc. A/RES/73/54 (2018); UN Doc. A/RES/74/62 (2019); UN Doc. A/RES/75/62 (2020); UN Doc. A/RES/76/47 (2021).

<sup>123</sup>A. Bianchi, *International Law Theories: An Inquiry into Different Ways of Thinking* (2016), at 291.

<sup>124</sup>*Ibid.*, at 292–3.

<sup>125</sup>*Ibid.*, at 294–5.

<sup>126</sup>See CDCE, *supra* note 22, Arts. 1(f), 2(6).

<sup>127</sup>*Ibid.*, Art. 13.

definition of sustainable development provided by the World Commission on Environment and Development in 1987,<sup>128</sup> and makes reference to the United Nations Development Programme Human Development Report, adopted in 1990, to affirm that culture must be incorporated into all policies, programs and strategies with human development objectives.<sup>129</sup> The guidelines then detail a number of measures that states should take to incorporate culture into development policies, based on the belief that cultural diversity is indispensable for sustainable development.

There are also several references to sustainable development throughout the text of the UNCAC, and a reference to the Johannesburg Declaration on Sustainable Development, adopted in 2002, in the UNGA resolution that adopted the treaty. The COSP, consequently, has made connections between the obligations of the convention and the sustainable development agenda in several of its decisions. A prominent one was made after the adoption by the UNGA in 2015 of the document ‘Transforming Our World: The 2030 Agenda for Sustainable Development’.<sup>130</sup> In relation to this instrument the COSP affirmed that it ‘[r]ecognizes the importance of including the prevention of corruption in the broader development agenda, including through the implementation of Goal 16 and other relevant goals of Transforming our world: the 2030 Agenda for Sustainable Development’.<sup>131</sup> The intention to connect the content of the convention with the wider sustainable development agenda could not be clearer.

Another international legal narrative that is frequently used by COPs to support the implementation of their parent treaties is the human rights discourse. For example, the preamble to the CDCE emphasizes the importance of cultural diversity to the realization of the human rights and fundamental freedoms contained in the Universal Declaration of Human Rights and in other human rights instruments.<sup>132</sup> Consistent with this, the CDCE COP has incorporated a human rights perspective in some of its decisions. The ‘Guidelines on the Implementation of the Convention in the Digital Environment’ state that they are interlinked with the UN Guiding Principles on Businesses and Human Rights, among others.<sup>133</sup> The guidelines also affirm that in the implementation of the treaty in the digital space ‘the same rights that people have offline must also be protected online, in particular freedom of expression . . . in accordance with Articles 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights’.<sup>134</sup>

A similar situation is found in the context of the FCTC. The COP has adopted guidelines that explicitly make connections between the obligations of the treaty and the human rights that those obligations are consistent with. The guidelines to Article 8 link the duty to protect from tobacco smoke to the fundamental human rights to life and to health, and make reference to the Convention on the Rights of the Child,<sup>135</sup> the Convention on the Elimination of All Forms of Discrimination against Women,<sup>136</sup> and the International Covenant on Economic, Social and Cultural Rights,<sup>137</sup> to support this claim.<sup>138</sup> The guidelines to Article 12 place the state’s duty

<sup>128</sup>Conference of the Parties, Convention on the Protection and Promotion of the Diversity of Cultural Expressions, Resolutions, CE/09/2.CP/210/Res. (2009), at 25, para. 1.

<sup>129</sup>*Ibid.*, at 25, para. 5.

<sup>130</sup>UN Doc. A/RES/70/1 (2015).

<sup>131</sup>Conference of States Parties, United Nations Convention against Corruption, Report of the Conference of the States Parties to the United Nations Convention against Corruption on its sixth session, held in St. Petersburg, Russian Federation, from 2 to 6 November 2015, CAC/COSP/2015/10\* (2015), at 24, para. 12.

<sup>132</sup>See CDCE, *supra* note 22, Preamble, para. 5.

<sup>133</sup>Conference of Parties, Convention on the Protection and Promotion of the Diversity of Cultural Expressions, Resolutions, DCE/17/6.CP/Res. (2017), at 7, para. 7.

<sup>134</sup>*Ibid.*, at 8, para. 8.11.

<sup>135</sup>1989 Convention on the Rights of the Child, 1577 UNTS 3.

<sup>136</sup>1980 Convention on the Elimination of All Forms of Discrimination against Women, 1249 UNTS 13.

<sup>137</sup>1966 International Covenant on Economic, Social and Cultural Rights, 993 UNTS 3.

<sup>138</sup>See S. Foster Halabi, ‘The World Health Organization’s Framework Convention on Tobacco Control: An Analysis of Guidelines Adopted by the Conference of the Parties’, (2010) 39 *Georgia Journal of International and Comparative Law* 121, at 148.

to educate people in the dangers of tobacco consumption under the fundamental human rights to life and health in similar terms to the ones used in the guidelines to Article 8, referring to the same human rights treaties and adding the Universal Declaration of Human Rights to the list.<sup>139</sup>

Finally, the CCM MSP has also built on the connection between the CCM and human rights. On victim-assistance, the Vientiane Action Plan specifies the expected CCM interactions with the Convention on the Rights of Persons with Disabilities.<sup>140</sup> Action 23 requires the integration of the victim-assistance provisions of the convention with ‘existing coordination mechanisms, such as coordination systems under the Convention on the Rights of Persons with Disabilities (CRPD) or other relevant Conventions’.<sup>141</sup> The Dubrovnik Action Plan adopted in 2015 elevates as a priority issue the adoption of national legislation to implement the CCM,<sup>142</sup> and it explicitly mentions the UN Security Council, the UN General Assembly, and the Human Rights and Economic and Social Council as fora where states parties should take opportunities to bring non-state parties on board.<sup>143</sup> This example, like the others mentioned in this section, illustrates the COPs’ strategy of linking the parent treaties to powerful international legal narratives to strengthen their position and increase their chances of being implemented by the states parties.

## 5. Conclusions

COPs are present across many different areas of international law. This development and the growing influence of their activities have not received enough attention by scholars. In the existing literature there are few detailed examinations of the functions that COPs perform, let alone a panoramic view of their activities in the different fields where they are established.

This article has sought to analyse COPs in diverse areas other than international environmental law and focus on the substance of their decisions rather than on their legal status. The question at the heart of this article was: how do COP activities affect the content and implementation of their parent treaties? This question assumed that the actions of COPs influence what states must do under the conventions that establish them. Consequently, the article explored the techniques and strategies that COPs use to exercise such influence. In other words, it investigated the role that COPs play in the transition from the text of the parent treaties to the practical implementation of their provisions by states parties.

Based on the analysis of four case studies, the article argued that COPs adopt informal normative outcomes to: (i) specify and develop the content of their parent treaties by setting out the standards that states parties must meet to comply with their obligations; and (ii) support the implementation of their parent treaties by strengthening their social and political position, facilitating the adoption of measures by states parties. Section 2 identified examples of decisions adopted by COPs utilizing their normative functions. It showed that even though COP decisions build on formally adopted conventions, the nature of COP outcomes, and the procedures leading to their adoption, are mostly informal. Sections 3 and 4 categorized the specific ways in which the COPs in the case studies affect the content and implementation of their parent treaties. The mechanisms employed by COPs to elaborate on the content of their conventions include standard-setting relating to substance, procedures, and to the meaning of the words and expressions used in the provisions of the parent treaty. The strategies used by COPs to support the implementation of their conventions involve momentum-building, stigmatizing adversaries, and framing the parent treaties within legitimized and widely-accepted international legal narratives. The first

<sup>139</sup>Conference of the Parties, WHO Framework Convention on Tobacco Control, Decisions and Ancillary Documents, FCTC/COP/4/REC/1 (2011), at 9, para. 3(i).

<sup>140</sup>2007 Convention on the Rights of Persons with Disabilities, 2515 UNTS 3.

<sup>141</sup>See VAP, *supra* note 62, at 12, Action 23.

<sup>142</sup>See DAP, *supra* note 63, at 25, Action 7.1.

<sup>143</sup>*Ibid.*, at 13, Action 1.1.

group of actions are closer to traditional legal methods – such as the process of treaty interpretation – but the second group certainly escapes classification as strictly legal activities.

As demonstrated in this article, COPs have shown that they have potential to affect the content and implementation of their parent treaties in different ways. The broader implications of this finding deserve further examination. This article focused on the influence of COPs normative outcomes within their treaty regimes, but their activities also raise important issues regarding the theory and practice of international law generally. For example, COPs have played a role in the interaction between treaty regimes, a topic that has been studied in the context of fragmentation of international law.<sup>144</sup> Also, the informal nature of the normative decisions made by COPs, together with their increasing influence on formally adopted treaties, provides new insights into the dynamics of international law-making, and could even add something to the discussions about the current trajectory of international law.<sup>145</sup> These and other related issues deserve further research and analysis. It is hoped that this article, and a broader study of COPs across diverse areas of international law, can make a contribution in that direction.

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<sup>144</sup>See, e.g., M. Tehan et al., *The Impact of Climate Change Mitigation on Indigenous and Forest Communities: International, National and Local Law Perspectives on REDD+* (2017), Ch. 2, 3, 10.

<sup>145</sup>See, e.g., N. Krisch, 'The Decay of Consent: International Law in an Age of Global Public Goods', (2014) 108 *American Journal of International Law* 1; J. Pauwelyn, R. Wessel and J. Wouters, 'When Structures Become Shackles: Stagnation and Dynamics in International Lawmaking', (2014) 25 *European Journal of International Law* 733.

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