CONFERENCE OF THE PARTIES TO THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL

First session

GENEVA, 6–17 FEBRUARY 2006

SUMMARY RECORDS OF COMMITTEES
REPORTS OF COMMITTEES
PREFACE

This section of the proceedings of the First session of the Conference of the Parties to the WHO Framework Convention on Tobacco Control contains the summary records of the meetings of Committees A and B.

The text contains corrections received up to 30 June 2006, the cut-off date announced in the provisional version, and the records are thus regarded as final.
CONTENTS

PART I
SUMMARY RECORDS
OF
COMMITTEE MEETINGS

COMMITTEE A

First meeting

Opening of the Committee

Second meeting

1. Opening remarks
2. Organization of work
3. Matters identified in the Convention for action by the Conference of the Parties at its first session
   Review of existing and potential sources and mechanisms of assistance
   (Article 26 Financial resources, paragraph 5)

Third meeting

1. Matters identified in the Convention for action by the Conference of the Parties at its first session (continued)
   Review of existing and potential sources and mechanisms of assistance
   (Article 26 Financial resources, paragraph 5) (continued)
2. Additional matters identified in the Convention for consideration by the Conference of the Parties
   Reporting (Article 21 Reporting and exchange of information)

Fourth meeting

Additional matters identified in the Convention for consideration by the Conference of the Parties (continued)
   Reporting (Article 21 Reporting and exchange of information) (continued)
   Elaboration of guidelines for implementation of Article 7 (Non-price measures to reduce the demand for tobacco) and Article 9 (Regulation of the contents of tobacco products)
Fifth meeting

Additional matters identified in the Convention for consideration by the Conference of the Parties (continued)

Reporting (Article 21 Reporting and exchange of information) (continued) 20
Elaboration of guidelines for implementation of Article 7 (Non-price measures to reduce the demand for tobacco) and Article 9 (Regulation of the contents of tobacco products) (continued) 20
Elaboration of protocols 21

Sixth meeting

Additional matters identified in the Convention for consideration by the Conference of the Parties (continued)

Elaboration of guidelines for implementation of Article 7 (Non-price measures to reduce the demand for tobacco) and Article 9 (Regulation of the contents of tobacco products) (continued) 26

Seventh meeting

Additional matters identified in the Convention for consideration by the Conference of the Parties (continued)

Elaboration of guidelines for implementation of Article 7 (Non-price measures to reduce the demand for tobacco) and Article 9 (Regulation of the contents of tobacco products) (continued) 30

Eighth meeting

1. Matters identified in the Convention for action by the Conference of the Parties at its first session (continued)

Review of existing and potential sources and mechanisms of assistance (Article 26 Financial resources, paragraph 5) (continued) 34

2. Additional matters identified in the Convention for consideration by the Conference of the Parties (continued)

Elaboration of guidelines for implementation of Article 7 (Non-price measures to reduce the demand for tobacco) and Article 9 (Regulation of the contents of tobacco products) (continued) 40

Ninth meeting

Additional matters identified in the Convention for consideration by the Conference of the Parties (continued)

Elaboration of guidelines for implementation of Article 7 (Non-price measures to reduce the demand for tobacco) and Article 9 (Regulation of the contents of tobacco products) (continued) 44

Reporting (Article 21 Reporting and exchange of information) (continued) 44

Elaboration of protocols (Article 13 Tobacco advertising, promotion and sponsorship, paragraph 8) and Article 33 (Protocols) (continued) 48
Tenth meeting

1. Additional matters identified in the Convention for consideration by the Conference of the Parties (continued)
   Elaboration of guidelines for implementation of Article 7 (Non-price measures to reduce the demand for tobacco) and Article 9 (Regulation of the contents of tobacco products) (continued) ............................................. 52

2. Matters identified in the Convention for action by the conference of the Parties at its first session (continued)
   Review of existing and potential sources and mechanisms of assistance (Article 26 Financial resources, paragraph 5) (continued) .................................................. 63

Eleventh meeting

Matters identified in the Convention for action by the Conference of the Parties at its first session (continued)
   Review of existing and potential sources and mechanisms of assistance (Article 26 Financial resources, paragraph 5) (continued) .................................................. 68

Twelfth meeting

1. Matters identified in the Convention for action by the Conference of the Parties at its first session (continued)
   Review of existing and potential sources and mechanisms of assistance (Article 26 Financial resources, paragraph 5) (continued) ............................................. 76

2. Additional matters identified in the Convention for consideration by the Conference of the Parties (continued)
   Elaboration of protocols (continued) ............................................................................. 80

Thirteenth meeting

Additional matters identified in the Convention for consideration by the Conference of the Parties (continued)
   Elaboration of protocols (continued) ............................................................................. 82
   Elaboration of guidelines for implementation of Article 7 (Non-price measures to reduce the demand for tobacco) and Article 9 (Regulation of the contents of tobacco products) (continued) .................................................. 83
   Reporting (Article 21 Reporting and exchange of information) (continued) ............. 86

Fourteenth meeting

1. First report of Committee A ................................................................................................. 100

2. Additional matters identified in the Convention for consideration by the Conference of the Parties (continued)
   Elaboration of guidelines for implementation of Article 7 (Non-price measures to reduce the demand for tobacco) and Article 9 (Regulation of the contents of tobacco products) (continued) .................................................. 100
   Elaboration of protocols (continued) ............................................................................. 112

3. Consideration of a programme of work for the Conference of the Parties .................. 114

4. Additional matters identified in the Convention for consideration by the Conference of the Parties (resumed)
   Reporting (Article 21 Reporting and exchange of information) (continued) ............. 117
Fifteenth meeting

1. Additional matters identified in the Convention for consideration by the Conference of the Parties (continued)
   Reporting (Article 21 Reporting and exchange of information) (continued) .................. 119
2. Consideration of a programme of work for the Conference of the Parties (continued) ........ 120
3. Additional matters identified in the Convention for consideration by the Conference of the Parties (resumed)
   Elaboration of protocols (continued) .................................................................................. 122

Sixteenth meeting

1. Reports of Committee A ........................................................................................................ 125
2. Closure of the session ........................................................................................................... 125

COMMITTEE B

First meeting

Opening of the Committee ..................................................................................................... 127

Second meeting

Matters identified in the Convention for action by the Conference of the Parties at its first session
   Adoption of the Rules of Procedure for the Conference of the Parties
   (Article 23 Conference of the Parties, paragraph 3) ........................................................ 128
     • Rules 61 and 62 .............................................................................................................. 128
     • Rule 63 ...................................................................................................................... 130
     • Rule 64 ...................................................................................................................... 131
     • Rules 2(10), 2(11) and 2(12) ..................................................................................... 131

Third meeting

Matters identified in the Convention for action by the Conference of the Parties at its first session (continued)
   Adoption of the Rules of Procedure for the Conference of the Parties
   (Article 23 Conference of the Parties, paragraph 3) (continued)
     • Rules 2(10), 2(11) and 2(12) (continued) .................................................................... 135
     • Rules 27(2) and 31 ..................................................................................................... 136
     • Rule 28(2) ............................................................................................................... 139

Fourth meeting

Matters identified in the Convention for action by the Conference of the Parties at its first session (continued)
   Adoption of the Rules of Procedure for the Conference of the Parties
   (Article 23 Conference of the Parties, paragraph 3) (continued)
     • Rules 2(10), 2(11), 27(2), 31 and 61 to 64 (continued) .............................................. 142
     • Rule 28(2) (continued) ............................................................................................... 144
     • Rule 7(a), [(e)], (f) and [(g)] ...................................................................................... 145
Fifth meeting

1. Matters identified in the Convention for action by the Conference of the Parties at its first session (continued)
   Adoption of the Rules of Procedure for the Conference of the Parties
   (Article 23 Conference of the Parties, paragraph 3) (continued)
   • Rule 7 (continued) .............................................................. 149
   • Rule 9 .................................................................................. 150
2. Organization of work
   • Rules 29 and 30 .................................................................. 153

Sixth meeting

1. Organization of work (continued)
   • Rules 29 and 30 .................................................................. 155
2. Matters identified in the Convention for action by the Conference of the Parties at its first session (continued)
   Adoption of the Rules of Procedure for the Conference of the Parties
   (Article 23 Conference of the Parties, paragraph 3) (continued)
   • Rule 7 (continued) .............................................................. 155
   • Rule 9 (continued) ................................................................ 156
   • Rules 29 and 30 (resumed) .................................................. 156

Seventh meeting

Matters identified in the Convention for action by the Conference of the Parties at its first session (continued)
Adoption of the Rules of Procedure for the Conference of the Parties
(Article 23 Conference of the Parties, paragraph 3) (continued)
• Rule 30 .............................................................................. 161
• Rule 30bis ........................................................................... 163

Eighth meeting

Matters identified in the Convention for action by the Conference of the Parties at its first session (continued)
Adoption of the Rules of Procedure for the Conference of the Parties
(Article 23 Conference of the Parties, paragraph 3) (continued)
• Rules 29 and 30 (continued) .................................................. 167
• Rule 30bis (continued) .......................................................... 169
• Rule 49 ................................................................................ 170
Designation of the permanent secretariat and arrangement for its functioning
(Article 24 Secretariat, paragraph 1) ........................................... 172

Ninth meeting

1. Organization of work .............................................................. 176
2. Matters identified in the Convention for action by the Conference of the Parties at its first session (continued)
   Designation of the permanent secretariat and arrangements for its functioning
   (Article 24 Secretariat, paragraph 1) (continued) ...................... 176
Tenth meeting

Matters identified in the Convention for action by the Conference of the Parties at its first session (continued)

Adoption of the Rules of Procedure for the Conference of the Parties (Article 23 Conference of the Parties, paragraph 3) (continued)
- Rules 30bis (31) (continued) ................................................................. 182
- Rule 49 (50) (continued) ........................................................................... 183

Designation of the permanent secretariat and arrangements for its functioning (Article 24 Secretariat, paragraph 1) (continued) ................................. 185

Adoption of financial rules for the Conference of the Parties, and financial provisions governing the functioning of the secretariat (Article 23 Conference of the parties, paragraph 4, and Article 24 Secretariat) ........................................ 186

Adoption of the budget for the first financial period (Article 23 Conference of the parties, paragraph 4) ................................................................. 186

Adoption of the Rules of Procedure for the Conference of the Parties (Article 23 Conference of the Parties, paragraph 3) (resumed)
- Rule 49 (50) (resumed) .............................................................................. 188

Eleventh meeting

1. First report of Committee B ........................................................................ 192
2. Matters identified in the Convention for action by the Conference of the Parties at its first session (continued)
   Designation of the permanent secretariat and arrangements for its functioning (Article 24 Secretariat, paragraph 1) (continued) .................... 192

Twelfth meeting

Matters identified in the Convention for action by the Conference of the Parties at its first session (continued)
Designation of the permanent secretariat and arrangements for its functioning (Article 24 Secretariat, paragraph 1) (continued) .................... 197

Thirteenth meeting

Matters identified in the Convention for action by the Conference of the Parties at its first session (continued)
Designation of the permanent secretariat and arrangements for its functioning (Article 24 Secretariat, paragraph 1) (continued) .................... 207
Adoption of the budget for the first financial period (Article 23 Conference of the Parties, paragraph 4) (continued) ................................. 209

Fourteenth meeting

Matters identified in the Convention for action by the Conference of the Parties at its first session (continued)
Adoption of the budget for the first financial period (Article 23 Conference of the Parties, paragraph 4) (continued) ................................. 211

Fifteenth meeting

1. Draft second and third reports of Committee B ........................................ 217
2. Closure ........................................................................................................ 218
PART II

REPORTS OF THE COMMITTEES

Credentials........................................................................................................................................ 221
Committee A.................................................................................................................................... 222
Committee B.................................................................................................................................... 224
PART I

SUMMARY RECORDS
OF
COMMITTEE MEETINGS
COMMITTEE A

FIRST MEETING

Tuesday, 7 February 2006, at 17:45

Acting Chair: Mr D. AITKEN (WHO Secretariat)

OPENING OF THE COMMITTEE

The ACTING CHAIR declared open the first meeting of Committee A.

Election of Officers

The ACTING CHAIR announced that Dr K.S. Reddy (India) had been nominated for the post of Chair of Committee A.

Decision: Committee A elected Dr K.S. Reddy (India) as Chair.¹

The ACTING CHAIR announced that Mr E. Corcoran (Ireland) and Dr C.T.O. Otto (Palau) had been nominated for the two posts of Vice-Chair.

Decision: Committee A elected Mr E. Corcoran (Ireland) and Dr C.T.O. Otto (Palau) as Vice-Chairs.¹

The meeting rose at 17:50.

¹ Decision FCTC/COP1(3).
SECOND MEETING
Wednesday, 8 February 2006, at 10:10

Chair: Dr K.S. REDDY (India)

1. OPENING REMARKS

The CHAIR said that tobacco had claimed more lives in the twentieth century than wars, and was expected to claim 1000 million in the twenty-first, more than all the major causes of death combined. The Framework Convention on Tobacco Control offered a beacon of hope as a potent instrument for changing the scenario of global health by preventing many of these.

2. ORGANIZATION OF WORK

The CHAIR suggested that for each of these items the interim secretariat give an initial presentation and that representatives make general statements. The Committee would then focus on specific issues and identify the best methods for reaching consensus.

In the absence of objections, he would take it that the Committee approved that approach.

It was so decided.

3. MATTERS IDENTIFIED IN THE CONVENTION FOR ACTION BY THE CONFERENCE OF THE PARTIES AT ITS FIRST SESSION: Item 4 of the Agenda

Review of existing and potential sources and mechanisms of assistance (Article 26 Financial resources, paragraph 5): Item 4.5 of the Agenda (Document A/FCTC/COP/1/4)

Dr KUMMER (WHO Secretariat) gave an illustrated presentation of the conclusions of the review of existing and potential sources and mechanisms of assistance.

In response to a question by Ms HEFFORD (Australia) as to why some countries had not replied to the questionnaire, she said that personal communications had been established with recipients and there had been extensive follow up. The questionnaire had been refined progressively in the light of comments received. The response rate had been good, largely because of the direct contacts made.

Replying to questions from Dr LEE Kah Choon (Malaysia), she said that no analysis had yet been made for the operational cost of the three models identified, since details of the kind of financial mechanism needed had yet to be decided. Although the models were very different, with some operating on a budget of several million dollars and others on a much smaller budget, it would be entirely possible to create a hybrid of the three: in fact, among the 20 funding mechanisms examined, some spanned more than one category.

In response to questions by Dr NGABA (Central African Republic) and Ms ALI HIGO (Djibouti) as to what would be the optimal mechanism for assistance, she said that the Secretariat could not advise on that point: it was for the Conference to decide. A fund administered by WHO
would require less infrastructure than a financial mechanism specifically set up for the Framework Convention or an independent mechanism, since the latter two would require the setting up of an executive body to administer them. As the study had shown, a wide range of solutions had been put in practice by various institutions, and there was no ideal arrangement.

Ms EMMERLING (European Community) noted that the presentation had referred to three funding options, none of which was in-country. However, paragraph 149 of the review stated that the development of in-country financial mechanisms was essential in order to implement sustainable taxation policies. The Committee should examine in-country financing.

Dr FRANTA (Austria), Dr AL-MUTAWAA (United Arab Emirates) and Mr SIMONEN (Finland) supported that suggestion.

Dr KUMMER (WHO Secretariat) explained that in-country financing and the three options described were not mutually exclusive: both would be discussed. Replying to questions from Mrs THYAGRAJAN (India) and Ms MAYSHAR (Israel) about whether funds raised by a funding mechanism of the Conference of the Parties would be distributed only to Parties, she said that it was customary practice for the funding mechanism of an international instrument to distribute funds only to Parties, since only they paid voluntary assessed contributions. However, she was aware of no legal impediment to opening access to the fund to States non-Parties as an encouragement to them to accede to the Convention.

Responding to questions from Ms HEFFORD (Australia) and Mr MUTOMB MUJING (Democratic Republic of the Congo), she said that financial mechanisms and technical assistance would be considered. As to whether donors would be able to set conditions in exchange for their support, few conditions applied to the operation of independent financial mechanisms: it was the model that allowed for the greatest freedom of manoeuvre.

In reply to questions by Mr PAVLOVIC (Chile) and Dr NGABA (Central African Republic), she said that none of the mechanisms reviewed in the study actually focused on tobacco control activities, so it was difficult to say which of them worked best in any particular area.

Dr AL-SHAAR (Qatar) suggested that some of the funding provided by Member States to WHO through their annual contributions could be allocated to tobacco control activities. It might be useful to carry out a study on the financial needs of countries within a region, where economic conditions were often similar, as opposed to making comparisons between regions.

Mr KIDDLE (New Zealand) said that perhaps the combined budgets of the Tobacco Free Initiative, the Framework Convention and existing bilateral and regional flows of funding might be adequate, at least initially, to meet the needs of developing countries.

Dr KUMMER (WHO Secretariat), in reply to a question from Ms SHORT (Cook Islands), pointed out that the mandate for the study had been to investigate available resources and mechanisms, not to carry out a needs assessment. It would be interesting, however, to look at the requirements of recipient countries in order to obtain a full picture. The Conference of the Parties had to determine whether to carry out further studies.

Professor AKOSA (Ghana), speaking on behalf of the Contracting Parties to the Convention in the WHO African Region, said that the tobacco control measures required to comply with the Framework Convention would impose serious financial burdens on developing countries and countries with economies in transition. Funding earmarked specifically for such measures seemed to be the solution, and the study had shown that the international donor community could provide significant resources. He suggested the establishment, under the auspices of the Conference of the Parties, of a fund dedicated to tobacco control. Funding should be based on assessed contributions and could be
channelled through the WHO’s Tobacco Free Initiative. Existing bilateral and multilateral sources of funding could be earmarked for tobacco control.

Dr KASHIWAGI (Japan) stated that the review had shown that there were already sufficient resources in donor countries to assist developing countries in tobacco control activities: the task was to raise awareness so that those resources could be effectively tapped.

Mr AFAAL (Maldives), speaking on behalf of the Parties to the Convention in the WHO South-East Asia Region, expressed regret that the study had failed either to indicate whether existing funding would suffice or to identify countries that should receive funding. A fund directly accountable to the Conference of the Parties should be established after an assessment of needs. WHO’s Tobacco Free Initiative could continue to further the general interests of tobacco control, whereas the fund would strengthen implementation of the Framework Convention.

Ms HEFFORD (Australia) said that her country already played a major role in donating technical aid and assistance but could not support the establishment of a new fund without a clear understanding of how it would operate, what its goals would be and the likely costs of meeting developing countries’ requirements in the area of tobacco control. However, if the fund was to be voluntary, rather than based on assessed contributions, she would have no objection to it.

Mr KIDDLE (New Zealand) said that countries requiring assistance should incorporate a needs assessment into their national development strategies and make their needs clear to donor countries. Existing resources should be carefully analysed as New Zealand could not agree to any new funds based on mandatory assessed contributions.

Mr CHOINIERE (Canada) said that the study gave no clear response to the question posed in Article 26.5(d) of the Convention as to whether existing funding mechanisms were adequate. A needs assessment might be a preliminary step.

Ms CAVALCANTE (Brazil), supported by Dr BIANCO (Uruguay), said the Conference of the Parties must define a clear programme and identify the exact needs for any new financing mechanism. Options for mobilizing funds could be investigated later.

Mr BLOOM (Framework Convention Alliance), speaking at the invitation of the CHAIR, supported the proposal by Maldives. Any financial mechanism should be driven by country needs and avoid the distortions of excessive donor control. Consideration should be given to funding by governments and also by nongovernmental organizations.

Mr VON KESSEL (Observer, Switzerland)\(^1\) said that many funding sources already existed, but information was lacking on the assistance needs of developing countries. Decisions on new funding should be deferred until the next session of the Conference of the Parties.

Professor AKOSA (Ghana) said that to postpone consideration of funding mechanisms would merely allow tobacco companies to continue sabotaging the efforts of developing countries to implement the Framework Convention. If action was postponed the difficulties might become insurmountable.

\(^1\) Participating by virtue of Rule 47 of the Rules of Procedure of the World Health Assembly whose provisional application was agreed on by the Conference of the Parties in decision FCTC/COP1(5).
Mr BAZARCHYAN (Armenia), speaking also on behalf of Georgia, Dr SIDIBE (Mali), Mr JANG Chun Sik (Democratic People’s Republic of Korea), Mr MBAYE (Senegal), Dr ANIBUEZE (Nigeria), Dr NZEYIMANA (Rwanda), Ms ALI HIGO (Djibouti) and Mr DEANE (Barbados) supported that view.

Ms CAVALCANTE (Brazil) drew attention to Article 23.5(f) of the Framework Convention, which stated that the Conference of the Parties could establish any subsidiary body that it deemed necessary. In view of the urgent need to create a fund, Brazil proposed setting up such a body in order to determine actual needs.

Dr HATAI CHITANONDH (Thailand) reaffirmed the need for a dedicated fund, as suggested by Maldives, which would operate exactly like a national tax earmarked specifically for tobacco control.

Mr CHOINIERE (Canada) said that tobacco control activities were needed urgently in developing countries and countries with economies in transition. Canada was considering various proposals in that regard but was anxious to avoid duplication of effort. As suggested by Brazil, the Committee should consider the various approaches.

Dr BALIQ (Islamic Republic of Iran) said that the discussion resembled an attempt to urge victims of crime to think of ways of addressing losses caused by criminals who enjoyed impunity. It should not be lost from sight that the activities envisaged under the Framework Convention were on behalf of victims of tobacco consumption.

Mr MUTOMB MUJING (Democratic Republic of the Congo) said that, although the needs of developing countries and countries with economies in transition had not yet been quantified, they existed and were well known. He supported the establishment of a fund at the current session, since that would not preclude the development of partnerships between States.

Mr CASO GONZÁLEZ (Mexico) urged that a working group should be set up in order to propose guidelines for the fund envisaged. Once those guidelines had been determined, a fund could be established at the current session.

Mr KIDDLE (New Zealand) pointed out that the Conference needed to take decisions on the basis of adequate information which to date did not indicate whether all existing funding sources were being fully utilized. Accordingly the Conference was not able to determine whether there was a need to enhance existing mechanisms or to establish new ones.

Ms HEFFORD (Australia) supported that view. Obtaining further information should not be an obstacle to the continued pledging of funds and technical support as part of an ongoing commitment to tobacco control.

Dr SOMATUNGE (Sri Lanka) said that the establishment of a funding mechanism must not be postponed. The Conference of the Parties was obliged to fulfil certain provisions of the Framework Convention within a specific time frame, and a year had already elapsed since the latter’s adoption.

Mr RUIZ LUGO (Observer, Bolivarian Republic of Venezuela) said that the Conference of the Parties had to take a strong stand when dealing with the consequences of massive tobacco use and the

---

1 Participating by virtue of Rule 47 of the Rules of Procedure of the World Health Assembly, whose provisional application was agreed on by the Conference of the Parties in decision FCTC/COP1(5).
aggressive campaigns of tobacco companies. A decision should be made at the current session to finance a programme of work that gave priority to developing countries and countries with economies in transition. A combination of models envisaged under the Convention and an independent mechanism should be approved. The secretariat to be established should have experience in mobilizing financial resources, and WHO should exercise flexibility with regard to financing options.

Mr VON KESSEL (Observer, Switzerland) said that, if at the current session more information could be obtained on assistance needs, progress could be made.

Ms NYAGURA (Observer, Zimbabwe) said that the review showed that the bilateral and multilateral assistance on tobacco control already available tended to be channelled to certain countries and did not benefit all those in need. She endorsed the statement by Ghana, and appealed to the Committee to establish the fund first and work out the modalities later.

Dr KASHIWAGI (Japan) supported the comments made by Australia, Canada and New Zealand. A wide range of sources existed for supporting developing countries in implementing tobacco control activities, and the secretariat should monitor the status of assistance given to such countries. According to Article 21.1(c) of the Convention, reports submitted by Contracting Parties on their implementation of the Convention should include information on financial assistance provided. Those reports could be used as a database for assessing future needs.

Mr EDWARDS (Marshall Islands) and Dr LEWIS-FULLER (Jamaica) supported the call that early attention be given to setting up a funding mechanism and warned that the momentum for implementation of tobacco control activities must not be lost.

The meeting rose at 13:00.

---

1 Participating by virtue of Rule 47 of the Rules of Procedure of the World Health Assembly, whose provisional application was agreed on by the Conference of the Parties in decision FCTC/COP1(5).
THIRD MEETING
Wednesday, 8 February 2006, at 15:00

Chair: Dr K.S. REDDY (India)
later: Dr C.T.O. OTTO (Palau)

1. MATTERS IDENTIFIED IN THE CONVENTION FOR ACTION BY THE
   CONFERENCE OF THE PARTIES AT ITS FIRST SESSION: Item 4 of the Agenda
   (continued)

Review of existing and potential sources and mechanisms of assistance (Article 26 Financial
resources, paragraph 5): Item 4.5 of the Agenda (continued) (Document A/FCTC/COP/1/4)

Ms HU Meiqi (China) said that, in order to implement the Convention, a fund to strengthen cooperation between countries and WHO’s Secretariat should be quickly established in line with the consensus.

Ms SHORT (Cook Islands), speaking on behalf of the Pacific island countries, supported Ghana’s plea at the previous meeting for the funding process to be launched promptly, so that Pacific island and other developing countries could gain access to the funds rapidly and not wait for the next Conference of the Parties.

Professor AKOSA (Ghana) said that all signatories of the Framework Convention were aware of the additional financial implications. Systems could work in parallel: the Tobacco Free Initiative could go on operating and evidence collected while the dedicated fund started functioning so that developing countries and countries with economies in transition could move forward. Otherwise, the Framework Convention would remain a dead letter in the face of commercial offensives by tobacco multinationals.

Ms ALI-HIGO (Djibouti) agreed with Ghana that the creation of a fund did not preclude the continued use of other forms of financing or cooperation among States, particularly in order to counter pressures from the tobacco industry. A mix of the three financing models should be considered.

Mrs THYAGRAJAN (India) supported Ghana’s appeal to establish a financial mechanism in order to support developing countries as soon as possible. Contributions should be routed through a dedicated fund.

Ms JOHN (Framework Convention Alliance on Tobacco Control), speaking at the invitation of the CHAIR, endorsed the view that, in view of tobacco industry pressures, decisions on the financial mechanisms should be taken and acted on without further delay.

The CHAIR said that, the general discussion having being completed, the Committee must gather more information on strengthening existing funding channels and the possible setting up of a special, dedicated fund. The two options were not mutually exclusive. Another point concerned the prioritization of tobacco control within domestic agendas. Brazil had suggested establishing a subsidiary body in order to monitor the situation between sessions of the Conference of the Parties.

A group of donor countries to be headed by Canada and New Zealand could convene as an informal working group in order to produce a strategy paper on strengthening existing mechanisms for
technical and financial assistance including methods such as national taxation. Ghana and Brazil could take the lead in preparing a strategy paper on the best model for a funding mechanism. Once those two papers were available, the Committee could consider how to combine all the elements into a common paper for submission to the plenary.

Mr KIDDLE (New Zealand) said that, with its delegation soon to be depleted, his country could not take the lead in such a process.

Mr CHOINIERE (Canada) suggested that only one group should be set up to sketch out the work needed and what action could be left to a subsidiary body.

Mr ALCÁZAR (Brazil) said that his delegation’s proposal was for a subsidiary body functioning somewhat like an executive board. Setting up a fund presupposed preparing a programme of work in order to establish what was to be financed. The subsidiary body could examine such matters and submit conclusions to the Conference of the Parties.

The CHAIR said that the proposal would have to be considered by the plenary. He agreed that, ideally, one informal working group should look at both existing and additional channels of funding, but two separate positions had been expressed and each required more exploration independently: first, existing channels sufficed, although they might need to be expanded or made more accessible for developing countries; and secondly, was that the channels were not clearly identifiable, the fund flow was insufficient and a dedicated fund was therefore needed. It would consequently be useful to have two papers, one specifying what could be done with existing channels and the other explaining how a dedicated fund might operate. The informal working group could then try to merge the two documents.

Professor AKOSA (Ghana) said that his country would assist in any way to advance the financial mechanism.

Mr CHOINIERE (Canada) expressed reservations and requested time to consult with other delegations before undertaking the preparation of a strategy paper.

The CHAIR said that such a paper need not be detailed; it would suffice to establish principles whereby existing mechanisms could be strengthened, access barriers removed, and fund flows assessed in relation to the stated needs of developing countries.

Mr KIDDLE (New Zealand) said that it was precisely the lack of data on such needs that would hamper the work envisaged. How much money was being sought by developing countries in order to help them meet their obligations under the Convention? If they could give a proper assessment, the Committee would be able to determine whether existing mechanisms were adequate and if not, how they could be remedied. The necessary needs analysis could perhaps be done by the secretariat.

Mrs SEDLMEIER (Austria), speaking on behalf of the European Community, suggested the aims of the whole exercise should be defined before undertaking a needs assessment.

Mr CHOINIERE (Canada) said that the broad principles had already been set out in the review by the Secretariat. The key was to outline a mechanism for the future and the working groups could be most helpful in defining the context.

Mr CASO GONZÁLEZ (Mexico) suggested that a third group be established in order to identify the main activities to be financed, such as publicity campaigns, technical research on product contents,
statistical consumption surveys, training of specialized staff, development of legal machinery to inhibit supply and reduce demand, and clinics and other facilities for stopping smoking.

In reply to a question from the CHAIR, he said that he would gladly head such a group.

Mr ALCÁZAR (Brazil) and Mr CHOINIERE (Canada) endorsed the proposal.

The CHAIR commended the proposal but said that, because each State was obliged to meet all the requirements in the Framework Convention, the activities to be canvassed were already listed in the Convention. Only their future evolution needed to be charted and mechanisms for technical and financial assistance detailed.

Summarizing the discussion on existing and potential sources and mechanisms of assistance, he said that Ghana would head a group that would prepare a paper on how to use a fund that would assist countries to implement the Convention. Canada would organize informal discussions in order to judge whether a strategy paper on strengthening existing mechanisms could be drafted. Mexico would head a group that would identify priority activities.

In reply to questions by Mr SIMONEN (Finland) and Mr PAVLOVIC (Chile), he confirmed that the group headed by Canada would cover tobacco taxation and was open to donors and all others interested in existing mechanisms. The group headed by Ghana was open to all countries that saw a need for new financial mechanisms.

The CHAIR took it that the Committee wished to establish three informal working groups to look at specific facets of existing and potential sources and mechanisms of assistance.

It was so agreed.

(For continuation of the discussion, see summary record of the eighth meeting, section 1.)

Dr Otto took the Chair.

2. ADDITIONAL MATTERS IDENTIFIED IN THE CONVENTION FOR CONSIDERATION BY THE CONFERENCE OF THE PARTIES: Item 5 of the Agenda

Reporting (Article 21 Reporting and exchange of information): Item 5.1 of the Agenda (Document A/FCTC/COP/1/INF.DOC./2)

Dr KUMMER (WHO Secretariat) gave an illustrated presentation of the note by the Secretariat on reporting and exchange of information in accordance with Article 21 of the Framework Convention.

Dr BETTCHER (WHO Secretariat), replying to questions from Mr CHOINIERE (Canada) and Ms HEFFORD (Australia), said that, after consultation with the Bureau of the Intergovernmental Working Group, it had been decided that a document should be produced simply for information purposes, as a discussion aid for the Conference of the Parties. Should the draft questionnaire therein be found useful, it could be tested by the Contracting Parties whose reports would be due first and, on the basis of their detailed comments, revised at the second session of the Conference. It was not known how much work would be required in order to complete the draft questionnaire.

With respect to possible mechanisms for reviewing the reports of Contracting Parties, the document cited the precedent of establishing a subsidiary body, but that had not been discussed by the Intergovernmental Working Group and was not made explicit in the treaty itself.
Dr KUMMER (WHO Secretariat) referred to paragraph 12 of the document, which described the secretariat’s responsibilities as including the compilation and synthesis of information received from countries and the development of such guidance tools as country fact sheets. All secretariats of the multilateral agreements studied had databases that countries could access either directly or through the secretariats themselves. Specific information tools were consequently provided for use by the Parties. Judging from Annex 2 to the document, which described reporting systems under other conventions, completing a questionnaire would take time.

Responding to questions by Dr TORRES LAO (Peru) and Ms MAFUBELU (South Africa), she said that the questionnaire could be modified in order to keep it up to date with changing circumstances, such as improvements in national legislation. A section on country feedback had been included for that very purpose, and the Conference of the Parties could also ask countries to review the questionnaire periodically. She said that the need to keep the questionnaire relatively simple had to be set against the need for detailed information in some areas. Yes/no questions were therefore interspersed with multiple-choice questions, depending on the subject.

As to whether precedents existed under other international instruments for the establishment of an independent expert group, instead of a subsidiary body, to evaluate and comment on country reports, she knew of none. Under most multilateral conventions, it was for the executive body to evaluate reports, and if another group was established, it operated under the authority of the executive body, not as an outside operation.

Dr BETTCHER (WHO Secretariat), referring to how detailed the responses ought to be, said that a sliding scale be used there must be parameters for each category, and that comparability between the reports of Contracting Parties must be ensured. WHO could play a role in standardizing the tools to be used in collecting comparable data on tobacco control measures; the report provided an overview of such tools. In preparing a pilot questionnaire, consideration should be given to which quantitative indicators were practical and on which point advice from countries would be welcome.

Replying to questions by Dr BIANCO (Uruguay) and Dr NGABA (Central African Republic), he said that reporting would help Parties to implement the Convention and to identify constraints and areas where countries needed to strengthen capacity in order to meet their obligations. The Secretariat intended to work with Parties in order to determine the levels of reporting detail.

Dr KUMMER (WHO Secretariat) said that, although the Convention did not specify the purpose of reporting, the provision of information should promote implementation of the Convention but also elaborate responses if it became clear that countries could not implement certain provisions.

In reply to a question by Mrs THYAGRAJAN (India), she said that the questionnaire did indeed cover items not expressly stated in Article 21 of the Convention. The reasoning was that, if Parties chose to confine the questions to what had to be reported under Article 21, it would be easier to remove some questions than to include new ones. It might be useful for reports to contain additional information, but that was for countries, not the secretariat, to decide.

Dr BETTCHER (WHO Secretariat) added that the Convention set out a range of obligations, from the implementation of a measure within a certain time limit to the encouragement of Parties to take particular measures. When finalizing the questionnaire on the basis of the initial proposal before them, Parties might feel it useful to provide general information on the status of tobacco control globally.

Ms HEFFORD (Australia) said that the Committee seemingly needed to refine the draft questionnaire, determine the frequency of reporting, establish methods for publishing reports, designate an appropriate level of analysis for reports, and identify indicators that countries should use in order to measure progress towards a tobacco-free world. A few countries, including her own, could perhaps work on those areas in the few days ahead.
Dr KASHIWAGI (Japan) supported that proposal and Mr CHOINIERE (Canada) and Dr FRANTA (Austria) volunteered to join Australia in working on those areas.

Dr KUMMER (WHO Secretariat) said that the list of areas for work suggested by Australia was excellent. The adoption of a decision to pilot the questionnaire for reporting in 2006 or 2007 might be added, on the understanding that countries could make suggestions and that the second session of the Conference of the Parties would look into ways of refining the questionnaire.

Ms ALI HIGO (Djibouti) suggested the inclusion in the questionnaire of a column that might be entitled “implementation in progress”. Should a subsidiary body be set up, it could examine all the comments and qualitative responses with a view to defining procedures in order to assist countries facing real problems in implementing specific measures.

Mr MOKGWEETSINYANA (Botswana) asked whether there was any feedback mechanism for individual Parties.

Dr KIENENE (Kiribati), referring to the need for confidentiality in reporting and exchange of information as stipulated in Article 21.4, asked whether any thought had been given to how confidentiality could be maintained if information was shared among a large number of Contracting Parties.

Professor AKOSA (Ghana) said that the extensive reporting requirements made funding even more important. It was essential that all Parties could meet their formidable obligations.

Dr KUMMER (WHO Secretariat) recalled that the primary goal of reporting was to provide the Conference of the Parties with a basis for evaluating implementation of the Convention. No feedback mechanism or procedure for individual countries to receive specialized information was envisaged, although such information could be requested. Information provided under the reporting system would normally be made available to all. Confidentiality was a requirement under Article 21.4 of the Convention, but in practice different degrees of confidentiality could be instituted. For example, some information could be classed as not for publication or dissemination via the Internet, or Parties might agree to submit information anonymously.

Dr BETTCHER (WHO Secretariat) added that the issue of confidentiality had been mentioned in some of the interpretative declarations made by Contracting Parties when depositing their instruments of ratification.

Dr FRANTA (Austria) asked which of the indicators mentioned in the section of the draft questionnaire entitled “Data” were already available.

Dr BETTCHER (WHO Secretariat) said that, as the information requested was extensive, the Secretariat would make it available later, together with any other technical assistance that might be required.

Mr RUIZ LUGO (Observer, Bolivarian Republic of Venezuela) asked how long the secretariat would need to examine the information it received in order to help countries envisage a timetable for preparing reports and requesting assistance. Although not yet a Contracting Party, Venezuela was already in a position to submit a report. Would such a report be accepted or rejected?

---

1 Participating by virtue of Rule 47 of the Rules of Procedure of the World Health Assembly, whose provisional application was agreed on by the Conference of the Parties in decision FCTC/COP1(5).
Dr KUMMER (WHO Secretariat) replied that the secretariat had not yet undertaken the exercise, but expected that it could take from three to six months.

Mr BLOOM (Framework Convention Alliance), speaking at the invitation of the CHAIR, said that the Conference of the Parties should establish a body of experts to receive, evaluate and provide feedback on country reports, thereby promoting robust, evidence-based implementation of the Convention. The Conference should likewise ensure that all reports and evaluations thereof were made public and that civil society reports were given a place in the review process. The reporting requirements should be sufficient to afford meaningful accountability without being so irksome as to discourage timely completion of reports.

The meeting rose at 17:55.
FOURTH MEETING

Thursday, 9 February 2006, at 10:10

Chair: Dr K.S. REDDY (India)

ADDITIONAL MATTERS IDENTIFIED IN THE CONVENTION FOR CONSIDERATION BY THE CONFERENCE OF THE PARTIES: Item 5 of the Agenda (continued)

Reporting (Article 21 Reporting and exchange of information): Item 5.1 of the Agenda (continued)
(Document A/FCTC/COP/1/INF.DOC./2)

Mr CHOINIERE (Canada), responding to the Chair’s request of the previous day concerning the strengthening of existing funding mechanisms, said that consideration had been given as to how those could be brought into force and the consultative process would continue, with reporting targeted for the following day.

Dr TAO Jin (China) stressed the importance of establishing a reporting system at the current session in order to assist the Conference of the Parties in monitoring implementation of the Convention in a clear format that would facilitate analysis, although it was important to avoid classifying States in any way. States should be able to use any one of the six official languages in their reports. Discussion was needed on how to respect and comply with Contracting Parties’ laws and regulations on confidentiality and privacy. Specific measures to protect exchanges of confidential information were required. She asked for clarification on how the reports were to be evaluated.

Ms SHORT (Cook Islands), recalling Article 24.3(c) of the Framework Convention setting out the secretariat functions in providing support to the Parties, and noting paragraph 60 of the information document under consideration, said that the Pacific island countries would expect substantial assistance in meeting their reporting requirements.

Dr KUMMER (WHO Secretariat) said that assistance in that respect was being planned.

Dr MOCHIZUKI-KOBAYASHI (Director, Tobacco Free Initiative) said that data collection and management would be supported for non-Parties as well as Parties.

Mrs SEDLMEIER (Austria), speaking on behalf of the European Community and its Member States, emphasized the importance of reporting as an instrument for implementation, monitoring, raising and building capacity. The Parties should not be overburdened with requests for information. The draft format for reporting indicated that all the data requested could be provided. The lines of division between sections 3 and 4 should be clarified, and it would also be useful in section 4 to distinguish between mandatory and voluntary requirements. The order in Article 21 of the Convention should be followed in section 4 of the questionnaire. Section 5 was too detailed and the proposed format might not indicate the assistance that was required and available. The focus should be on clear, simple and comparable indicators.

Mr SANO (Federated States of Micronesia) endorsed the comments of the previous speaker. He emphasized the importance of clear indicators of performance evaluation. An understanding should be
obtained of how the tobacco industry was behaving in different countries, with special reference to advertising and attempts to undermine countries’ pursuance of the Framework Convention.

The role of the secretariat in reporting was unclear. It should be explicitly stated that countries must be given ample opportunity to review and endorse their reports before they were submitted to the Conference of the Parties.

In reply to a question from Dr AL-SHAAR (Qatar) about the provision by the secretariat of technical assistance for reporting, Dr KUMMER (WHO Secretariat) drew attention to Article 24.3(c) of the Framework Convention, which provided the legal basis for the Convention’s secretariat to assist Parties, particularly developing country Parties and Parties with economies in transition, in compiling and communicating information.

Dr BETTCHER (WHO Secretariat) added that document A/FCTC/COP/1/5 outlined proposed mechanisms for supporting Parties in meeting the reporting requirements. It also included a proposed matrix of cooperation between a permanent secretariat and WHO’s Secretariat, particularly the Tobacco Free Initiative, in order to provide technical assistance for reporting.

Ms MAYSHAR (Israel) endorsed the views expressed by the representative of Austria on the need for realistic levels of reporting. The first report should notably concentrate on smoking rates, tax rates and legislation. Subsequent reports could detail a wider range of points.

Ms LINDBAK (Norway) favoured a basic reporting system with a more limited set of indicators which could be expanded over time by the Conference of the Parties and its secretariat.

The CHAIR said that there appeared to be general agreement that the reporting format for the initial years should be clear and concise and initially include the core indicators. Those might be considered by the working group led by Australia and might be expanded over time.

Mr CHOINIERE (Canada) emphasized the need for consistent reporting. For example, section 2 on data referred to tobacco use and percentage of smokers. Smoking, however, was only one of the four categories of tobacco use. Furthermore, some countries did not have daily rates for smoking, only weekly rates.

The CHAIR suggested that further consideration of the item should be deferred pending consultations.

It was so agreed.

(For continuation of the discussion, see summary record of the fifth meeting.)

Elaboration of guidelines for implementation of Article 7 (Non-price measures to reduce the demand for tobacco) and Article 9 (Regulation of the contents of tobacco products): Item 5.2 of the Agenda (Document A/FCTC/COP/1/INF.DOC./3)

Dr BETTCHER (WHO Secretariat) gave a visual presentation to introduce the section of document A/FCTC/COP/1/INF.DOC./3 on elaboration of guidelines. He recalled that the WHO Framework Convention on Tobacco Control had requested the Conference of the Parties to consider the elaboration of guidelines for the implementation of the Treaty, without setting time limits. The guidelines were to be non-binding and would be adopted by the Conference of the Parties; they were intended to assist countries in dealing with particularly complex points. Under Article 7 of the Framework Convention, guidelines were to be proposed. Article 9 dealt with regulation of the contents of tobacco products. At present there was no international standard for product testing that met international public health concerns. The WHO Study Group on Tobacco Product Regulation had
concluded that the existing testing standards were unacceptable in their present form for evaluating the constituents of tobacco products. If guidelines on testing cigarettes and other tobacco products using machine testing were adopted, that would be only a first step. Consideration should also be given to guidelines and standards relating to biomarkers of exposure, and in the longer term to biomarkers of toxicity. The information document had been designed to facilitate preliminary discussion and paragraph 8 set out particular steps that might be considered in the elaboration of the guidelines. The discussions might lead to a programme of work following the first session of the Conference of the Parties.

Mr CHOINIERE (Canada) said that he saw the future guidelines as a non-binding instrument for assistance in implementing Treaty provisions. However, discussions with different Parties and members of civil society had shown interpretations to differ. He asked whether guidelines could be seen as a benchmark document against which Parties could be ranked or rated.

Dr KUMMER (WHO Secretariat) said that it was important to distinguish at the outset the legal status of guidelines from their political significance. Legally speaking, guidelines were a non-binding, “soft law” instrument, intended for use in implementing the Convention at national level. Their recommendations could assist countries in adopting their own standards. They did not create obligations for States but were designed to help them technically. How the guidelines could be viewed politically was a different matter and difficult to quantify. She emphasized the difference between the legal status of the guidelines, their intent and the possible implications for the image of a country following its decision whether or not to apply them.

In reply to Mr MUTOMB MUJING (Democratic Republic of the Congo), she said that guidelines implemented nationally and internationally must be consistent with the Framework Convention. The Conference of the Parties was unlikely to adopt guidelines not in conformity with that instrument.

Ms EMMERLING (European Community) said that the work on guidelines should follow criteria and focus on such issues as global value added, efficiency and need. Would the guidelines focus on maximum or minimum requirements?

Dr BETTCHER (WHO Secretariat) said that, although the Framework Convention set a basic minimum level, some of its provisions such as Articles 11 and 13 established specific requirements well beyond a minimum requirement, making the instrument both distinctive and positive in regard to public health. The guidelines themselves provided an aid to countries in implementing particular provisions. They would be of particular value in connection with Article 9, which had been left very general as the negotiators had felt the existing standards to be defective, from a public health perspective. The Secretariat considered that the negotiators had intended the Conference of the Parties to be more specific, by conducting technical discussions and involving the necessary science in evaluating the guidelines that would be given to the Parties in order to facilitate the testing of tobacco products.

Mr CASO GONZÁLEZ (Mexico) said that guidelines should be seen as providing direction, advice and suggestions. They were a non-binding tool to assist countries in achieving a specific objective and could not go against the spirit of the Framework Convention. Each country should be free to decide which guidelines to follow.

Dr BETTCHER (WHO Secretariat) observed that over the years Member States had looked to WHO for technical guidelines on issues ranging from recommendations prepared by technical departments to more formal types of instruments such as codes of practice.

Dr HATAI CHITANONDH (Thailand) said that the main purpose of Articles 9, 10 and 11 was harm reduction. Yet people had been fooled by the tobacco industry for more than two decades and,
rather than focusing on tar, nicotine and carbon monoxide, he suggested that more attention should be directed to emission products and to toxic and carcinogenic agents.

Dr BETTCHER (WHO Secretariat) said that the WHO Study Group on Tobacco Product Regulation saw harm reduction as a long-term goal. The guidelines being recommended as a first step would not yet provide for comparability of the toxicity of tobacco products. The next step for the Study Group was to draw up a recommendation on biomarkers of exposure in order to provide a technical mechanism for comparing the exposures to different tobacco products. There was a need to proceed gradually and cautiously: the public health community did not want to repeat the “light and mild” dilemma, where the regulatory guidelines and testing methods had been manipulated to mislead the public.

The CHAIR said that many of the guidelines were clearly technical and intended to facilitate implementation of Treaty provisions. Guidelines elaborated and approved by the Conference of the Parties would also need periodic revision. He asked which body would be responsible for the revision and how often it would be undertaken.

Dr BETTCHER (WHO Secretariat) replied that it was the responsibility of the Conference of the Parties to give guidance on the periodicity of review; the mechanism for that review might then be incorporated in the technical guidelines. The Conference of the Parties would also identify the type of technical assistance required. One reason why Article 9 had not gone further was that it was one of the sections of the Treaty affected by scientific uncertainty. WHO had attempted to fill that void with the best public health evidence available to date, by separating that evidence informing potential new guidelines from the evidence and views of the tobacco industry which had driven the process so far.

Dr KUMMER (WHO Secretariat) said that, in other cases where guidelines were to be elaborated, a subsidiary body had been established to deal with and be responsible for reviewing the guidelines. Such a body was usually established not at the outset but after several years’ existence of the Conference.

In reply to Mr CHOINIÈRE (Canada), she explained that a subsidiary body was one of several options that could be discussed; it was one mechanism used with other conventions, but the Conference of the Parties was free to proceed as it saw fit.

Dr BETTCHER (WHO Secretariat) added that the Secretariat would prepare a short paper on the other options that might facilitate discussion of the programme of work.

Dr MURASHIGE (Japan) requested further clarification as to the exact nature of the guidelines.

Dr KUMMER (WHO Secretariat) reiterated her previous statements adding that the guidelines should provide precise indicators and details of measures to be taken under Articles 7 and 8 to 13 of the Framework Convention.

Dr BETTCHER (WHO Secretariat) added that guidelines could in practice be very specific; as they were non-binding they did not alter the legal status of the treaty.

Dr FARIAS (Peru) emphasized how important it was for the present session of the Conference of the Parties to elaborate the guidelines, because States, including his own, were engaged in preparing legislation in connection with Articles 8 to 11. With respect to Article 8 on protection from exposure to tobacco smoke, some States were preparing legislation providing for protection in all workplaces, while others were providing smoking areas. The guidelines would aid consistency.

Dr KUMMER (WHO Secretariat) recognized the problem mentioned by the previous speaker. Unfortunately, it would be unrealistic to expect the Conference of the Parties to have drawn up a full
set of guidelines by the end of its first session. It would be more likely to consider the modalities for the adoption of the guidelines, to decide on the content and the topics to be elaborated, and to determine how, by whom and by when they should be evaluated.

Dr KIENENE (Kiribati) looked forward to the information to be prepared by the Secretariat about the subsidiary body.

The CHAIR, referring to the concern of the representative of Peru that guidelines might be developed too late to be incorporated in national legislation, suggested that, since the guidelines dealt primarily with technical components, the national legislation being developed might indicate the area of action and the specific requirement. The rules to be proposed periodically would elaborate the technical components of the requirements. It would thereby be possible for the rules relating to a particular law to be amended without further amendment of the legislation. The guidelines, as both proposed and updated by the Conference of the Parties, could then be reflected in national law and related administrative measures. In terms of the specific mandate, the Framework Convention did not specify a meeting at which the Conference of the Parties was to propose the guidelines. It was the Conference’s current responsibility to identify mechanisms for fulfilment of its mandate. In its discussions, the Committee should focus on the body to do the work once the Conference ended, the resources to be used, the time limits and the reporting mechanisms.

Mr CASO GONZÁLEZ (Mexico) suggested that it would be preferable to take agenda items 5.2 and 5.3 together. It would be useful to know which of the Articles 8 to 13 required guidelines and which called for protocols.

The CHAIR agreed that it was important to distinguish between a protocol, which was a negotiated instrument and would become binding, and guidelines, which would continue to be non-binding. Article 13.8 referred specifically to consideration of the elaboration of a protocol. The guidelines were relevant to all the other components of Article 13, as they were to the articles preceding Article 8.

Dr BETTCHER (WHO Secretariat) observed that the information to be provided by the Secretariat on the body to take the discussions further would not be of relevance to the elaboration of guidelines alone; the Conference of the Parties might also wish to establish a body to provide information on the possible technical elements of a protocol.

(For continuation of the discussion, see summary record of the fifth meeting.)

The meeting rose at 12:00.
FIFTH MEETING
Thursday, 9 February 2006, at 15:10
Chair: Mr E. CORCORAN (Ireland)

ADDITIONAL MATTERS IDENTIFIED IN THE CONVENTION FOR CONSIDERATION BY THE CONFERENCE OF THE PARTIES: Item 5 of the Agenda (continued)

Reporting (Article 21 Reporting and exchange of information): Item 5.1 of the Agenda (Document A/FCTC/COP/1/INF.DOC./2) (continued from the fourth meeting)

The CHAIR invited the facilitators of the informal working groups to report on the outcome of their latest meetings.

Ms HEFFORD (Australia) said that in her working group agreement had been reached on some broad areas of principle such as the idea of graduated reporting. The points discussed included time lines, frequency, and the level of material to be incorporated in reports. Consideration had also been given to the formulation of guidelines and support mechanisms for developing economies.

Mr CASO GONZÁLEZ (Mexico) said that the objective of the working group had been clearly defined and agreed upon by all present, namely to elaborate a proposal for a comprehensive tobacco-control programme that could be subject to financing. Progress would improve if interpretation could be provided.

Professor AKOSA (Ghana) reported that his group requested a further meeting.

The CHAIR said that any overlap in work undertaken by the groups coordinated by Canada, Ghana and Mexico would be examined once the groups had submitted their output to the Committee.

Mr CHOINIÈRE (Canada) said that already a draft document had been distributed and the consultative process was continuing.

(For continuation of the discussion, see summary record of the seventh meeting.)

Elaboration of guidelines for implementation of Article 7 (Non-price measures to reduce the demand for tobacco) and Article 9 (Regulation of the contents of tobacco products): Item 5.2 of the Agenda (Document A/FCTC/COP/1/INF.DOC./3) (continued from the fourth meeting)

Ms EMMERLING (European Community) said that the working groups would be considering working methods and the timing for guidelines relating to Articles 8 to 13. The European Community remained in favour of a limited set of guidelines and their prioritization.

Dr BETTCHER (WHO Secretariat) said that the Secretariat was finalizing a document on the different informal groups or subsidiary bodies used in the context of other conventions and it might be incorporated into a possible programme of work.
Dr BIANCO (Uruguay) pointed out that many developing countries lacked the capabilities to implement Article 14, and this could affect implementation of other articles. He suggested a document might be prepared or a project initiated in order to provide support for such countries.

Dr KUMMER (WHO Secretariat) explained that, with regard to Articles 7 to 13, the Framework Convention provided that the guidelines were to be proposed by the Conference of the Parties. Article 14 required the Parties themselves to elaborate such guidelines; it did not provide for the Conference to adopt the guidelines and did not expressly mandate support to countries. For that reason Article 14 had not been included in the agenda. Whether anything further should be elaborated to assist countries in implementing Article 14 or any other article was open to discussion.

Mr CHOINIERE (Canada) said that it was not realistic to expect the Conference of the Parties to adopt guidelines by the end of its first session. He supported the suggestion by the European Community to prioritize the guidelines. Efforts might be focused on articles considered easier to implement or covering areas in which a sufficient number of countries had acquired knowledge and experience. Article 8, dealing with measures to protect against exposure to tobacco smoke and Article 11, on packaging and labelling, might be considered at an early stage.

Dr BLOOMFIELD (New Zealand), endorsing those comments, added that it would be useful to start not only in areas where there was experience and knowledge but also good evidence that strategies in these areas were likely to make a difference.

Ms EMMERLING (European Community) said that guidelines relating to Article 9 should be the first priority.

Ms CAVALCANTE (Brazil), supported by Dr BIANCO (Uruguay) said that, in view of the tobacco industry’s strategies to prevent the implementation of tobacco control policies, consideration should be given to the elaboration of guidelines relating to Article 5.3, highlighting best practices in the relationship between governments and the tobacco industry.

Mr BLOOM (International Union against Cancer), speaking at the invitation of the CHAIR and also on behalf of the International Non Governmental Coalition against Tobacco, said that priority should be given to guidelines on Article 8 as many countries were not aware what compliance in that area would entail. In that connection some thought should be given to what might be done for such countries between sessions of the Conference of the Parties. He favoured the drafting of guidelines between the first and second sessions of the Conference of the Parties, and he urged the Parties to adopt a more ambitious approach. He endorsed the comments of Uruguay concerning the lack of guidance in implementing Article 14. Guidelines or a best practice document relating to Article 5.3 would be invaluable.

(For continuation of the discussion, see summary record of the sixth meeting.)

Elaboration of protocols: Item 5.3 of the Agenda (Document A/FCTC/COP/1/INF.DOC./3)

Dr KUMMER (WHO Secretariat) introducing the item said that the Conference of the Parties was required under Article 13.8 of the Framework Convention to consider the elaboration of a protocol on cross-border advertising, promotion and sponsorship, on which technical work had already been commissioned, and, under Article 33, protocols on other topics. Protocols could be proposed by any Party, group or subsidiary body. Although the Conference had no time limit for such tasks and no set priorities, it needed, at its first session, to discuss the matters set out in paragraph 14 of the document.
Mr MUTOMB MUJING (Democratic Republic of the Congo), speaking on behalf of the Parties in the WHO African Region, said that the Conference of the Parties should prioritize the drafting of essential protocols, for example on cross-border advertising. That might help to end illicit trade which should be the subject of a second protocol, also covering smuggling and counterfeiting of tobacco products. Technical input from WHO would be essential for the elaboration of all protocols, and a negotiating body should be established for each one.

Mr CASO GONZÁLEZ (Mexico) said that labelling and illicit trade in tobacco products should be the subjects of future protocols. The first session of the Conference of the Parties should try to establish a deadline for the implementation of Article 13.8. With regard to cross-border issues, tobacco advertising should be seen as a product in itself, export of which, without the prior consent of the recipient country, might have the same legal consequences as smuggling. Cross-border advertising should comply with the legislation in force in the recipient country. Any country receiving advertising material that contravened its own laws should have recourse to formal mechanisms which might be specified in the protocol, in order to obtain the assistance of the country of origin. Such arrangements should cover all forms of advertising disseminated by any means including telephone, and all advertising material should carry the name of the persons or body responsible and the place of dispatch to facilitate effective bilateral, regional and multinational measures.

The CHAIR said that the Conference of the Parties should not lose sight of the fact that smuggling was linked to organized crime and the financing of terrorism. The preparation and negotiation of protocol would take time and prioritization of the protocols would be useful.

Ms EMMERLING (European Community), speaking on behalf of the States Parties in the European Union and the Community, endorsed the proposal to elaborate a protocol on cross-border advertising, promotion and sponsorship. It was the only protocol mentioned explicitly in the Framework Convention and would provide the necessary international support for the European Union’s efforts to ban such advertising. A protocol on illicit trade was needed urgently, since such trade undermined taxation policies, which together with price measures, represented, according to the World Bank, the most effective protocol for tobacco control. Illicit trade could not be dealt with effectively at the national level alone; international cooperation was essential.

Mrs THYAGRAJAN (India) endorsed the view of the Parties in the WHO African and European regions. A protocol on cross-border advertising should be given priority in order to protect the interests of countries that had imposed a ban on all tobacco advertising. Illicit trade should be the subject of a second protocol.

Mr MOKGWEETSINYANA (Botswana) said that cross-border advertising should be tackled first. He asked whether countries should postpone legislation in the relevant area until the protocols had been elaborated, and how any inconsistencies between the regional legislation and the provisions of the protocol would be dealt with.

Dr KUMMER (WHO Secretariat) said that any relevant national legislation would be taken into account in negotiating a new treaty or protocol. However, a country wishing to become a party to the protocol must be able to comply with its provisions; any national legislation not in conformity with the protocol would have to be amended.

Mr SOLOMON (Office of the Legal Counsel) added that, while countries were required to bring their domestic legislation into line with international obligations, there was some flexibility in Article 33, in that it provided that the entry into force requirements of any protocol would be established by that instrument, allowing for the possibility of an adjustment period to enable countries to bring their national law into conformity with the international instrument. Such concerns would be dealt with during the negotiations.
Mr MOKGWEETSINYANA (Botswana) advised that it would be unfortunate for countries in the process of preparing legislation to have to amend it in the future.

Mr ALCÁZAR (Brazil) agreed with previous speakers that protocols were needed on cross-border advertising and illicit trade and should be tackled simultaneously.

Mr YANG Hongfeng (China) agreed that protocols related to cross-border advertising and illicit trade were needed, with the latter foremost. The negotiating process should not be rushed and Parties should be made to modify their domestic legislation where necessary.

Mr CHONIERE (Canada) emphasized the practical difficulties associated with the elaboration of a protocol on cross-border advertising, promotion and sponsorship. As many countries as possible should ratify the Framework Convention and put in place the elements described in Article 13. Unfortunately, however, even when the protocol had received wide-scale acceptance, the problem would persist, owing to the lack of regulation in States non-Parties. The recent seminar on cross-border advertising had highlighted how few concrete measures could be included in a protocol. He suggested further discussion and commissioning of further work on that and illicit trade issues before embarking on the lengthy and expensive negotiating process.

The CHAIR observed that Canada’s proposed mechanism might be outside the mandate given to the Conference of the Parties by the Framework Convention.

Responding to a question by Dr LEE Kah Choon (Malaysia), Dr KUMMER (WHO Secretariat) said that a Party to the Convention would not automatically become Party to a protocol; it would have to go through the same procedure that it had followed for the Convention itself. It could choose not to ratify, accept, approve, formally, confirm or accede to the protocol. Withdrawal would only be possible if the protocol contained withdrawal provisions.

The CHAIR, responding to a further question by Dr LEE Kah Choon (Malaysia), said that some countries had certain constitutional provisions on freedom of expression that they were unable to set aside, irrespective of their commitment to the Framework Convention, and the Convention had made provision for that eventuality.

Dr WAQATAKIREWA (Fiji), speaking on behalf of Pacific island States Parties, said that the Pacific island States were still affected by cross-border advertising and would welcome a protocol. Nonetheless, the growing problem of illicit trade should be given priority.

Dr LEWIS-FULLER (Jamaica) favoured protocols initially on cross-border advertising and illicit trade. Guidelines or a protocol on dealing with promotional material that could be influenced by the tobacco industry would also be useful. All the protocols should be dealt with simultaneously by individual subsidiary bodies of experts supported by the secretariat with specific time frames for submission of drafts to the Conference of the Parties.

Dr FARIAS (Peru) endorsed the proposal to elaborate protocols on cross-border advertising, promotion and sponsorship, and on illicit trade. Would a protocol on cross-border advertising also involve a national ban on advertising, promotion and sponsorship?

Dr HATAI CHITANONDH (Thailand) said that the complexities of cross-border advertising should have priority over illicit trade, given the omnipresence of the media and the generation of tobacco advertising in States non-Parties.

Dr ASSOGBA (Benin) said that the elaboration of a protocol on cross-border advertising needed to be accompanied by action to eliminate sponsorship by the tobacco industry. One possible
mechanism at the local level would be to provide financial support to the community radio stations that were springing up throughout Africa, almost all of them dependent on tobacco or alcohol advertising, in exchange for health-promotion messages or health warnings. Tobacco sponsorship of major sports events could only be tackled at the global level. Illicit trade could undoubtedly be cut by inter-country mechanisms with special focus on States whose borders were difficult to control.

Mr DEANE (Barbados) supported a protocol on cross-border advertising. However, some States with significant international trade were not Parties to the Framework Convention. He asked whether Article 33.4 might undermine the effect of any protocol.

Mr SOLOMON (Office of the Legal Counsel) said that, although protocols were international instruments governed by international law and, as such, constituted treaties, it was generally correct that they were only available for ratification or approval by Parties to the framework protocol. The Convention on the Rights of the Child and its Optional Protocol on the involvement of children in armed conflict was a recent example of States not Parties to the parent protocol becoming Parties to a protocol. In drafting Article 33.4, however, the negotiating States had made a conscious choice that States non-Parties could not ratify a protocol, and that decision could cause difficulties in respect of cross-border advertising.

Dr BIANCO (Uruguay) said that Uruguay was in favour of protocols on illicit trade and on cross-border advertising, and was ready to consider others. He supported Canada’s suggestion for further work before moving to the negotiation stage.

Mr EDWARDS (Marshall Islands) endorsed the comments made on behalf of the European Union and the proposal to elaborate protocols aimed at a comprehensive ban on tobacco advertising and on illicit trade.

Mr PAVLOVIC (Chile) supported the broad consensus on the two main points but gave priority to a combined protocol on cross-border and national advertising. He asked about the time frame and the resources required for entry into force of a new protocol. The far-reaching problems of illicit trade in tobacco would require agreements at the global level.

Dr BETTCHER (WHO Secretariat) said that the discussions on the entry into force of provisions would be central to preparatory and finalization stages of one or more protocols. It would be possible to have the same threshold for entry into force that had been used for the Framework Convention. That, however, was a decision for the negotiating Parties.

The CHAIR recalled that the Framework Convention had taken six rounds of formal negotiations; a protocol was likely to take fewer but to have significant intervals between rounds to allow countries to consider their positions.

Ms MAYSHAR (Israel) favoured the early elaboration of a protocol on cross-border advertising and on illicit trade. If necessary, priority should be given to a protocol on illicit trade because of its potential for effectiveness and for facilitating tax increases, which the World Bank had determined to be the simplest most effective step in tobacco control.

Mr TSUJI (Japan) said that Japan had recently tightened its cross-border regulations by revising the guidelines on advertising and promotion of tobacco products, including the abolition of Formula 1 sponsorship by the end of 2006, and a ban in principle on tobacco advertising on radio and television. Illicit trade in tobacco products was not a serious concern in Japan, but he recognized the problems in western countries where tobacco prices were high. Japan would prefer solutions derived from existing mechanisms but it would not block a consensus and would work towards an effective and balanced protocol.
Dr ELSUBAI (Sudan) said that, although Sudan supported the proposals for protocols on illicit trade and cross-border advertising, he questioned whether there was more rapid and effective way to proceed.

Dr AL-LAWATI (Oman) said that, as the discussion, ratification and implementation of any protocol would require a huge effort and extensive financial resources, he supported Canada’s suggestion for further preliminary work prior to any decisions on protocols.

Mr BLOOM (International Union against Cancer), speaking at the invitation of the CHAIR, and also on behalf of the Framework Convention Alliance on Tobacco Control, said that illicit trade undermined also the effectiveness of a high tax strategy. The Alliance had proposed several measures that might be included in a protocol, such as provisions to prevent money laundering, a tracing and tracking system, record keeping, strict liability and criminalization. He urged the Conference of the Parties to expedite the elaboration of a protocol at its first present session.

(For continuation of the discussion, see summary record of the ninth meeting.)

The meeting rose at 17:15.
SIXTH MEETING
Friday, 10 February 2006, at 10:15

Chair: Dr K.S. REDDY (India)

ADDITIONAL MATTERS IDENTIFIED IN THE CONVENTION FOR CONSIDERATION BY THE CONFERENCE OF THE PARTIES: Item 5 of the Agenda (continued)

Elaboration of guidelines for implementation of Article 7 (Non-price measures to reduce the demand for tobacco) and Article 9 (Regulation of the contents of tobacco products): Item 5.2 of the Agenda (Documents A/FCTC/COP/1/INF.DOC./3 and A/FCTC/COP/1/INF.DOC./6) (continued from the fifth meeting)

The CHAIR recalled that under Article 7 the Parties were required to adopt measures to implement their obligations pursuant to Articles 8 to 13, and that the Conference had to propose appropriate guidelines for that purpose. The task of elaborating the guidelines would be carried out after the Conference. Five possible ways of mandating different entities to elaborate guidelines were described in the note prepared by the interim secretariat (document A/FCTC/COP/1/INF.DOC./6).

Dr KUMMER (WHO Secretariat) said that the five approaches would be valid for elaborating both guidelines and protocols to the Convention. They were based on the practices adopted for intersessional work on other treaties, and were listed in ascending order of complexity and cost. They were not intended to be mutually exclusive, and the examples given were cited by way of illustration only. The choice of approach would depend on the specific task to be accomplished: for example, under the second approach, Chairs and Vice-Chairs of committees could form part of an expanded Bureau, or the outgoing Bureau could join with the incoming one. If it was decided that the guidelines must be finalized within a timeframe of, for example, three years, then it would be best to adopt the fourth approach (establishment of a subsidiary body).

Mr SIMONEN (Finland) said that a number of guidelines had already been established within the framework of WHO’s Tobacco Free Initiative, and there should be no need to draft duplicate ones. The drafting process should not take as long as three years.

Dr BETTCHER (WHO Secretariat) said that the Secretariat had worked, for example, in the WHO Study Group on Tobacco Product Regulation for several years on the regulation of tobacco products, on tobacco product testing and smoking cessation, and also with the International Development Research Centre on policy recommendations relating to gender and tobacco use. However, the Conference would have to approve the use of existing guidelines and policy recommendations for the purposes of Articles 7 to 13.

Dr SIDIBE (Mali) asked about the financial implications of the various approaches.

Dr KUMMER (WHO Secretariat) said that the first approach would not require any meetings, although it might be necessary to hire consultants. The second, under which the Bureau or an expanded Bureau would hold meetings or teleconferences and could communicate by email, would rely heavily on the secretariat for the practical work. That would also be true of the third approach, whereby a small group of experts would meet occasionally but without full meeting facilities. With the fourth approach, the establishment of a subsidiary body, there would be a need for financial resources,
to be determined in the light of the budget. The cost would depend on the number of meetings required, perhaps only one between two sessions of the Conference of the Parties. The subsidiary body could meet immediately before or immediately after the Conference. Its members would have the same facilities, services and travel costs as delegates to the Conference. The fifth approach might become necessary in time, once the workload increased and separate subsidiary bodies were needed to deal with technical and legal matters such as dispute settlement. In that case, the arrangements for meetings would be the same as for the fourth approach.

Dr BETTCHER (WHO Secretariat) said that resource implications would be examined under agenda item 6. The fourth and fifth approaches would require extensive resources.

Mr CHOINIERE (Canada) suggested appointing a committee of the Conference in order to work with the group of experts proposed in the third approach.

Dr KUMMER (WHO Secretariat) said that another approach would be to appoint as “friends of the Chair” a group of interested parties in order to examine specific points.

Mrs SEDLMEIER (Austria), speaking on behalf of the European Union and its Member States, said that a work plan had to be decided before any particular approach could be chosen. She asked whether an informal group of experts from the regions could be appointed, in line with the third approach, as had been done for the revision of the International Health Regulations.

Dr BETTCHER (WHO Secretariat) said that that would be feasible. The Rules of Procedure of the World Health Organization contained mechanisms to provide both scientific expertise and regional representation.

Dr AL-LAWATI (Oman) suggested that the first, second and third approaches should be combined. The secretariat could elaborate protocols or work with the Bureau, in order to elaborate them further and the work could be continued by a group of experts.

Dr DA COSTA E SILVA (Brazil) said that it was important to provide an effective follow-up mechanism to the work of the Conference. The intersessional period should not be too long. It would be more cost-effective to hold meetings of intersessional bodies in association with Health Assemblies or sessions of WHO regional committees. Work could also be carried out at diplomatic missions in Geneva. She suggested adopting the first and second approaches and establishing informal groups of experts to deal with technical issues.

Mr MUTOMB MUJING (Democratic Republic of the Congo) pointed out that protocols to the Convention, such as the two already proposed on illicit trade and advertising, would take much longer to prepare than guidelines, and would call for the appointment of negotiating groups. As implementation on the Convention was urgent, a limit of two years should be set for finalization of the guidelines.

Dr ASSOGBA (Benin) supported that view. He would prefer the second approach, which would have the advantage of ensuring that all the regions were represented.

Dr TORRES LAO (Peru) agreed with Oman that it would be best to combine approaches: for instance, under the first approach the secretariat could prepare drafts, and benefit from a group of experts and the participation of diplomatic missions in Geneva.

Dr BLOOMFIELD (New Zealand) emphasized that the guidelines were non-binding and intended only to assist the Parties. He favoured the first approach, which would enable the secretariat
to take the lead by drawing upon available evidence, country-level expertise and the work of WHO’s Tobacco Free Initiative. Flexible arrangements were the key to obtaining relevant expertise.

Mr MALOBOKA (Namibia) noted that the third approach would involve a group of experts, and that developing countries were lacking in expertise.

Mr CASO GONZÁLEZ (Mexico) pointed out that if the guidelines were to be timely and legally valid an expert group would be essential.

Mrs HU Meiqi (China) was opposed to the setting up of a new mechanism. A combination of the first and second approaches would save time and money.

Mr O’DUFAIGH (Ireland) pointed out that the guidelines would later be replaced by protocols. Guidelines were not appropriate in dealing with cross-border advertising and illicit trade.

Dr KUMMER (WHO Secretariat) agreed. In certain other forums, the content of guidelines had been recast in legally binding form and had become protocols or free-standing conventions.

Ms LINDBAK (Norway) said that there was no need to devise guidelines from scratch. Existing practice could be drawn on such as those prepared by the WHO Study Group on Tobacco Product Regulation. For speed and efficiency, the first, second and third approaches should be combined. She agreed with the representative of Ireland that guidelines could later be reworked into protocols.

Dr BIANCO (Uruguay) prioritized a plan of work and an effective intersessional mechanism in order to rapidly achieve the objectives.

Ms EMMERLING (European Community) said that priority should be given to guidelines covering areas in which international cooperation would be of real added value, such as testing and measurement. Cost-sharing was an important factor in that context.

Mr SAMO (Federated States of Micronesia) favoured the first approach, for the reasons given by New Zealand.

Ms MAYSHAR (Israel) said that it would be useful to have a list of the guidelines already prepared by the Tobacco Free Initiative and those that were under preparation. For the purpose of drafting protocols, she considered the third approach would be most appropriate.

Dr MURASHIGE (Japan) supported the first approach. It was important to make use of the technical support from the Tobacco Free Initiative.

Mr SIMONEN (Finland) said that the only guidelines needed were for the control of tobacco products, which most (States) Parties were unable to effect on their own. He agreed with the priorities of the representative of the European Community.

Dr KIENENE (Kiribati) said that it was urgent to set a time frame for the intersessional meetings, and important not prolong them beyond the second Conference of the Parties.

Mr CASO GONZÁLEZ (Mexico) favoured the first approach, under which the secretariat would prepare a compilation of existing guidelines, which would subsequently be elaborated further by an expert group.
Ms DE HOZ (Observer, Argentina)\(^1\) said that priority should be given to the elaboration of guidelines on tobacco advertising, promotion and sponsorship, and on illicit trade. The approach adopted should be simplified for financial reasons.

Ms ASSUNTA (Framework Convention Alliance on Tobacco Control) speaking at the invitation of the CHAIR, reminded the Committee of the extensive expertise possessed by civil society in the elaboration of guidelines. The nongovernmental community would be glad to provide advice and to identify experts.

The CHAIR said that, with a view to elaborating timely guidelines with minimal financial outlay, a set of sample templates had been prepared showing the options for each subject area covered by Articles 8 to 13. There was undoubtedly sufficient expertise within the Tobacco Free Initiative, through the WHO Study Group on Tobacco Product Regulation, to deal with the matters covered in Articles 9 and 10. The templates would shortly be made available as a conference paper.

The templates were shown on screen to the Committee.

Mr CHOINIERE (Canada) suggested that the templates should continue to be available on screen while the informal working groups proceeded with their discussions.

It was so decided.

The meeting rose at 11:55.

---

\(^1\) Participating by virtue of Rule 47 of the Rules of Procedure of the World Health Assembly whose provisional application was agreed on by the Conference of the Parties in decision FCTC/COP1(5).
SEVENTH MEETING

Friday, 10 February 2006, at 15:05

Chairman: Dr K.S. REDDY (India)

ADDITIONAL MATTERS IDENTIFIED IN THE CONVENTION FOR CONSIDERATION BY THE CONFERENCE OF THE PARTIES: Item 5 of the Agenda (continued)

Elaboration of guidelines for implementation of Article 7 (Non-price measures to reduce the demand for tobacco) and Article 9 (Regulation of the contents of tobacco products) Item 5.2 of the Agenda (Document A/FCTC/COP/1/INF.DOC./3) (continued)

Ms EMMERLING (European Community) said that the template shown to the Committee that morning covered only procedures for drafting the guidelines. The Committee should discuss what guidelines it wanted before examining working methods. The template should also cover objectives’ priorities, why guidelines were needed, and existing work that could be expanded. She also asked what was meant by “implementing entity”.

The CHAIR said that the template would be expanded to cover the areas mentioned. The implementing entity was the agency to which the Conference would entrust the task of guidelines preparation. It might ask the permanent secretariat, or draw on existing expertise such as WHO’s Tobacco Free Initiative or might set up a subsidiary body. In any event, the permanent secretariat would retain ultimate responsibility.

Mr CHOINIÈRE (Canada) supported the views expressed by the representative of the European Community. The roles of the Parties and the facilitators in the process should be clarified at the outset.

Dr KUMMER (WHO Secretariat) said that the assumption was that the permanent secretariat would remain responsible for administering the work, in order to ensure that it was pursued within the framework of the Convention. If the Parties were to take on a role in elaborating the guidelines they should do so in association with the secretariat.

Dr BETTCHER (WHO Secretariat) said that it was important for the Conference to clarify as specifically as possible the roles of the permanent secretariat and WHO’s Tobacco Free Initiative. In preparing the work plan, it should define the type of technical assistance needed and indicate where it would come from.

Mr ALCÁZAR (Brazil) sought clarification on the Committee’s decision-making process as the Conference’s rules of procedure had not yet been adopted. According to the rules of procedure of WHO’s governing bodies, documents on which a decision was to be taken had to be made available in all six languages, 48 hours in advance.

The CHAIR suggested that for each of the items considered the Committee should produce a report for the plenary and record any consensus reached and any differences of opinion.

Mr CASO GONZÁLEZ (Mexico) suggested that the Committee could also indicate whether any of the guidelines should be identified as appropriate for future protocols.
The CHAIR said that decisions on whether certain guidelines should be reformed as protocols would be made at a later stage. The Committee’s task was to consider the template in the light of Articles 8 to 13, and to decide at its next meeting which of the subject areas listed required guidelines and which should have priority. The template would be available in the form of a document in all languages of the Conference by the following Monday.

Mr ALCÁZAR (Brazil) asked whether the Committee had to decide on the establishment of a fund, on the desirability of protocols on specific subjects, and on whether there were other relevant points. If so, it would need to take those decisions in accordance with internationally recognized procedures, such as the adoption of resolutions.

The CHAIR said that at the current stage the Committee would be submitting its conclusions to the plenary in the form of recommendations.

Mr SOLOMON (Office of the Legal Counsel) recalled that the decision taken in plenary had been to apply provisionally those draft rules of procedure that were not bracketed. Draft rule 32 required proposals to be made available 24 hours in advance. The Committee’s decisions would have to be taken by consensus until the rules of procedure had been adopted by the plenary.

(For continuation of the discussion, see summary record of the eighth meeting, section 2.)

**Reporting (Article 21 Reporting and exchange of information):** Item 5.1 of the Agenda (Document A/FCTC/COP/1/INF.DOC./2) (continued from the fifth meeting)

Ms HEFFORD (Australia) said that the working group convened by the delegations of Australia and Canada had discussed the need for objective reporting procedures. Reporting should provide an opportunity for Parties to share experience and to learn from developments at country and regional levels. The working group favoured a graduated reporting arrangement calling for a relatively limited data to begin with, followed by more substantive staggered reporting. Reports would be required within the first two years following ratification of the Convention, and subsequently at three-year intervals. They would help to identify areas where countries needed assistance, either financial or technical, and which countries could provide it. WHO’s Secretariat would help countries, especially developing countries, to identify data on health and smoking prevalence. It would also provide feedback by suggesting useful areas of work for individual countries. Countries should be able to report in their own languages, and WHO’s Secretariat would provide translations, where necessary, of national or regional interest. It would be asked to consider publishing an annual analysis of the reports. The working group strongly emphasized that the reports should not be used to compare countries in a kind of “league table”, but rather to highlight achievements.

Mr HAZLEWOOD (Canada) said that the group had agreed that initially only core data would be required, in order to facilitate reporting. The Secretariat would ask States to expand the demographic data in order to obtain an age-specific picture of prevalence rates. The Secretariat would also prepare a checklist on legislation and strategies to curb smoking in force in the States concerned.

Dr AL-LAWATI (Oman), recalling the suggestion that the Secretariat should select material for translation from the reports, said that States should submit their reports in one of the six languages used by WHO, and translations could then be made by other Parties as required. As for excluding “league tables” or any kind of comparison between Parties, it would actually benefit for countries to see what progress their neighbours had made, perhaps best achieved by publishing the reports on the Internet.
Mrs THYAGRAJAN (India) supported the graduated reporting arrangement proposed. However, States should be asked to report only in compliance with specific obligations set out in the Convention.

Dr LEWIS-FULLER (Jamaica) said that, in order to ensure comparability, Parties needed to be clear to what extent they could make use of databases created by earlier surveys, notably the Global Youth Tobacco Survey.

Dr MOCHIZUKI-KOBAYASHI (WHO Secretariat) said that WHO’s Secretariat was currently collecting and putting together existing tobacco-related databases. There were many gaps to fill, in terms of both quantity and quality, before the data could be standardized. The situation in each State Party would be analysed and country profiles drafted. That would also support the countries themselves in developing their own information systems.

Mr BLOOMFIELD (New Zealand) asked whether the data obtained by the Secretariat to date were readily available to States Parties and what specific yardstick was to be used for making comparisons between States?

Dr MOCHIZUKI-KOBAYASHI (WHO Secretariat) said that the available data on prevalence were limited and confined to some 70 countries. The existing surveys had been made in different years and their accuracy was untested. Tobacco consumption had been surveyed and data compiled by some other organizations, including FAO and the World Bank.

Mr PAVLOVIC (Chile) said that it was difficult to make comparisons between countries: for example, in some countries contraband supplies accounted for 30% to 40% of the market whereas in others the problem of contraband was under control. The reports should not be used to judge States for their shortcomings, but rather as a means of enabling the international community to assist them. He asked when the initial reports should be submitted.

The CHAIR recalled that the objective of the Convention was to provide a framework for control in order to take measures “to be implemented by the Parties at the national, regional and international levels in order to reduce continually and substantially the prevalence of tobacco use and exposure to tobacco smoke”. For that purpose, information was needed about levels of tobacco use and exposure. Without being judgmental, the reporting system should enable Parties to track their own progress in reducing those levels.

Dr BETTCHER (WHO Secretariat) said that, under Article 21.2 of the Convention, the Conference would determine the frequency and format of reports. Up to 70 Parties were expected to submit their initial reports in 2007, depending on the date on which the instrument of ratification had been deposited. After that, reports would be presented according to a cycle determined by the Conference, in line with its sessions. On the question of standardized reporting formats, under Article 20.2 Parties were required to integrate their own data into the regional and global health surveillance programmes, so that data were comparable.

The CHAIR suggested that a small working group should be set up to devise a simple pro forma questionnaire as a basis for initial reports.

Ms HEFFORD (Australia) said that the working group on reporting had already begun to draft such a questionnaire. She would welcome assistance from other members of the Committee.
The CHAIR suggested that work should continue over the weekend on drafting the questionnaire. Discussions would also continue on a draft recommendation for the plan of work. Guidelines would be developed in the format approved by the Committee, on the basis of the documents to be made available on Monday 13 February. As for protocols to the Convention, there had been consensus on giving priority to two subjects, cross-border advertising and illicit trade, and a recommendation would be prepared to that effect.

It was so decided.

(For continuation of the discussion, see summary record of the ninth meeting.)

The meeting rose at 16:55.
EIGHTH MEETING

Monday, 13 February 2006, at 10:15

Chair: Dr K.S. REDDY (India)

1. MATTERS IDENTIFIED IN THE CONVENTION FOR ACTION BY THE CONFERENCE OF THE PARTIES AT ITS FIRST SESSION: Item 4 of the Agenda (continued)

Review of existing and potential sources and mechanisms of assistance (Article 26 Financial resources, paragraph 5): Item 4.5 of the Agenda (Document A/FCTC/COP/1/4) (continued from the third meeting, section 1)

The CHAIR announced that Cambodia and Togo, having become Parties to the Framework Convention on Tobacco Control, were able to participate fully in the Committee’s deliberations.

He introduced his paper on financial resources, noting that the draft decision on financial resources and mechanisms incorporated elements of the position papers provided by the informal groups convened by Canada, Ghana and Mexico, and which read:

The Conference of the Parties reviewed the report prepared by the interim secretariat on existing mechanisms for providing international technical or financial assistance to developing countries and countries with economies in transition (also collectively referred to as low- and middle-income countries), for implementation of activities related to the WHO Framework Convention on Tobacco Control. This report (document FCTC/COP/1/4) was prepared in pursuance of the directive contained in Article 26.5(d) of the Convention and provided information on the level of financial assistance provided to low- and middle-income countries, during the past five years, by developed countries, multilateral organizations and international financial institutions and also indicated the current and future funding opportunities offered through these channels.

It was found that, at present, the exact level and nature of support offered to developing countries for tobacco control is difficult to assess and it is therefore unclear whether there is sufficient funding to meet the needs of various countries as they begin to implement the Convention. The barriers to this are:

- the amount of resources required and the timing of when the resources are required are unknown;
- financing for tobacco control is partly dependent on countries requesting support in this area and partly on their accessing donors whose funding programmes include support for activities related to tobacco control.

Most donor countries stated that their Overseas Development Assistance (ODA) programmes allowed for tobacco control activities, but that in their experience it was not a priority item in the requests for aid. The impasse arose because donor countries do not want to dictate aid priorities, and those countries most affected by the emerging tobacco epidemic previously did not identify this issue as one of their priorities. The question of the adequacy of existing funding could not be answered even after a year of the secretariat’s research.

Multilateral funding through WHO plays a part through comprehensive programming for tobacco control. At WHO, the budget of the Tobacco Free Initiative (TFI) was increased by an additional US$ 9 million, in the biennium 2006-2007, for a total allocation of US$ 29 193 000 during that period. This budget was provided (with a funding base of both voluntary and assessed contributions) with the understanding that 75% of this would go to countries or regions in need of...
assistance. The budget report of the TFI should transparently demonstrate whether the funds are being spent in developing countries Parties to the Convention and how these funds are being used for the implementation of the Convention in these countries.

The report also shows that while international financial institutions may provide funding for health-related programmes, only the World Bank indicated a readiness to support programmes related to tobacco control. Several international nongovernmental organizations have reported that their funds are utilized for providing technical assistance and for supporting research and advocacy-related activities in low- and middle-income countries. The level of such resource flows could not be precisely estimated.

A country-level needs assessment was considered important for identifying the specific needs of each country, with respect to the implementation of the Convention and the level of international assistance required to supplement the national resources available for that purpose.

The ratification of the Convention by many low- and middle-income countries is likely to increase the demand for technical and financial assistance, which would be required by such States Parties for performing several activities intended to meet their treaty obligations. Tobacco control programmes in these countries would need to be substantially scaled-up to enable them to be fully compliant with the Convention. This would demand a higher level of resource mobilization and allocation for supporting tobacco control programmes. While such Parties would need to accurately identify and explicitly state their needs related to assistance for tobacco control, the anticipation of increased demand over time necessitates the identification of appropriate mechanisms to meet that demand. Apart from generating additional national resources through higher taxes, such measures would also involve strengthening of the existing mechanisms of international assistance, to increase resource flows, as well as the establishment of a voluntary global fund which would help to generate dedicated funding for tobacco control programmes in low- and middle-income countries.

The Conference of the Parties also identified a need for the secretariat to maintain a database on financial and technical assistance, detailing the nature and level of international assistance sought by and provided to low- and middle-income countries, by various categories of development partners. The database established by the interim secretariat for gathering information contained in its report on this subject, to the first session of the Conference of the Parties, may be modified to regularly update information on the assistance requested by and provided to each of the States Parties belonging to the group of low- and middle-income countries, through each of the existing mechanisms for such international assistance. Since this information is gathered for the purpose of assisting the implementation of the Convention, the information must be specific to those low- and middle-income countries who are Parties to the Convention. Proposed format for reporting on each request made to any development partner, by a low- or middle-income State Party, as well as a format for reporting by each of the development partners, on any request received from a low- or middle-income State Party, are appended (Annexures A and B). This information may be gathered by the secretariat annually and the detailed analyses of resource flows and levels of assistance sought and provided should be presented to the Conference of the Parties, with summative as well as disaggregated data for each recipient and each donor.

Draft Conference of the Parties’ decision
Financial resources and mechanisms

The Conference of the Parties,

Recognizing the urgent need for assistance to developing countries and countries with economies in transition to enable them to implement the WHO Framework Convention on Tobacco Control, particularly in the areas of research, tobacco use, prevention of tobacco uptake, cessation of tobacco consumption, and combating diseases derived from tobacco consumption;

Recognizing also that the level and nature of dedicated funds for tobacco control implementation activities is very difficult to assess, since the amount of resources required and the time when resources are required is currently unknown, existing funding arrangements are in many countries already tied up to other health programmes, and the provision of resources is contingent on
countries actively requesting support in this area and finding donors willing to provide assistance to tobacco control programmes;

Considering that the mobilization of funding therefore requires detailed needs assessment at country level;

Considering also that Article 26.5(b) of the Convention requires the secretariat to advise developing countries Parties and Parties with economies in transition, upon request, on available sources of funding to facilitate the implementation of their obligations under the Convention;

Considering that Article 26.5(d) requests the Conference of the Parties to review existing and financial mechanisms, and to consider measures to enhance existing mechanisms or establish voluntary global fund or other appropriate financial mechanisms to channel additional financial resources, as per need, to developing countries Parties and Parties with economies in transition, to assist them in meeting the objectives of the Convention;

Taking into account the study conducted by the interim secretariat on financial mechanisms and resources in accordance with Article 26.5(c), which calls upon the Conference of the Parties to review existing and potential sources and mechanisms of assistance based on a study conducted by the secretariat and other relevant information and the database established by the interim secretariat on that basis;

Considering that mainstreaming tobacco control into such mechanisms as country strategies is a medium- to long-term objective, and that there is a need for a mechanism to meet immediate objectives and needs;

Considering that Article 6 of the Convention requires Parties to adopt measures in relation to their taxation policies,

DECIDES:

(1) to call upon the World Health Assembly to give full political support to the prioritization of tobacco control at the international level;
(2) to invite the United Nations Secretary-General to provide a report to the United Nations Economic and Social Council, with the aim of adoption of a resolution on tobacco control by the Economic and Social Council;
(3) to invite the United Nations Task Force on Tobacco Control to provide to the Conference of the Parties at its second session a report on their activities and possible relevance to increasing accessibility to funding for tobacco control, and an outline of their work in intensifying the United Nations response to tobacco control;
(4) to call upon all international organizations to highlight tobacco control as a priority, and to acknowledge its important role in the achievement of the Millennium Development Goals, especially those related to poverty reduction, gender empowerment, reduction of child mortality, environmental sustainability and global partnership for development;
(5) to call upon developed countries Parties to identify the implementation of tobacco control as a funding priority, in line with their obligations under the Convention, and to provide financial support to developing countries Parties and Parties with economies in transition for this purpose;
(6) to call upon international organizations, international financial institutions and other donors to identify the implementation of tobacco control as a funding priority, and to provide financial support to developing countries Parties and Parties with economies in transition for this purpose, including technical assistance and advice in the area of tax reform to enable them to meet their obligations related to the Convention;
(7) to call upon developing countries Parties and Parties with economies in transition to identify the implementation of tobacco control as a national developmental priority, and to communicate this to development partners;
(8) to strongly encourage developing countries Parties and Parties with economies in transition to consider the adoption of tax measures in accordance with Article 6 in order to
mobilize national resources for supporting tobacco control programmes and also reduce tobacco consumption through a price mechanism;

(9) to request the secretariat to further develop and continuously update the database on available funding established in the course of the study carried out for the Conference of the Parties at its first session, taking into account the country reports to the Conference of the Parties on these items, and to make it available to Parties to assist them in identifying sources of funding;

(10) to strongly encourage developing countries Parties and Parties with economies in transition to conduct needs assessments in the light of their total obligations related to the implementation of all provisions of the Convention;

(11) to request the secretariat to assist developing countries Parties and Parties with economies in transition, upon request, with the conduct of needs assessments, to advise them on existing funding, and to provide information to donors on the needs identified;

(12) to request the secretariat to accept project proposals from developing countries Parties and Parties with economies in transition related to the implementation of the Convention and recommending or directing these proposals to likely funding sources;

(13) to request the secretariat to establish and support a mechanism for promoting South to South cooperation in the exchange of scientific, technical and legal expertise, as relevant to the implementation of the Convention;

(14) to establish/consider the establishment of a voluntary global fund for the provision of support to developing countries Parties and Parties with economies in transition in the implementation of the Convention, in accordance with the principles set out in Annexure C;

(15) to request the secretariat to consider a mechanism for launching a fund-raising campaign for mobilizing contributions to the voluntary global fund.

ANNEXURE A

Suggested format for reporting\(^1\) by Parties from low- and middle-income countries on levels of technical and/or financial assistance requested and received by them for implementing activities related to the WHO Framework Convention on Tobacco Control.

(1) Reporting State Party:

(2) Period covered in the report:

(3) Nature of technical/financial assistance sought from a bilateral/multilateral donor agency or an international organization/international financial institution for activities related to the implementation of the Convention:

(4) Country/organization from whom the above assistance was sought:

(5) Time at which the request for assistance was made:

\(^1\) This reporting component will be incorporated into the reporting format being developed under agenda item 5.1.
(6) Status of the above request for technical/financial assistance:

(a) assistance provided {  }
(b) assistance not provided {  }
(c) assistance still under consideration {  }

If the response to item 6 is (a), please provide full details of the nature and level of assistance provided.

____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________

ANNEXURE B

Suggested reporting format¹ for donor countries, international organizations and international financing institutions on the nature and level of technical and/or financial assistance provided to low- and middle-income countries.

(1) Country/organization:

(2) Period of reporting:

(3) Country from which the request has been received:

(4) Nature of assistance requested (in the area of tobacco control):

(5) Decision made on the request:

(a) accepted {  }
(b) not accepted {  }
(c) under consideration {  }

If the answer to item 5 is (a), please provide further details on the nature and level of assistance provided.

____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________

¹ This reporting component will be incorporated into the reporting format being developed under agenda item 5.1.
ANNEXURE C

Guidelines for the establishment of a Global Voluntary Fund for the WHO Framework Convention on Tobacco Control

Purpose

The fund will be dedicated to tobacco control implementation activities. Contributions to the fund will be voluntary; at a later stage, voluntary assessed contributions could be considered. It should be managed by the Conference of the Parties secretariat under WHO financial rules and regulations.

Disbursement of funds

Funds shall be made available to developing countries Parties and Parties with economies in transition, based on requests/proposals from such Parties. Funds below an agreed threshold will be disbursed by the Conference of the Parties secretariat. Beyond that threshold, disbursement will be by an agreed competent body.

Guiding principles

(1) The financial mechanism should have a strong role and capacity to mobilize and attract funds from potential donors.

(2) The financial mechanism should be designed in such a way that it can attract resources from different donors (State Parties, States not Parties, non-State entities except the tobacco industry and its affiliates).

(3) The financial mechanism must be supported by a clear Conference of the Parties agenda or workplan, with a clear definition of objectives, and goals for the medium and long term. There must be a defined assessment of resource and technical support needs to meet these goals.

(4) The financial mechanism needs to have the support of a well-established system of reporting and monitoring, in order to follow the achievements of the goals established by the Conference of the Parties agenda.

(5) The financial mechanism needs the support of a strong and efficient Conference of the Parties secretariat that includes among its functions supporting Conference of the Parties/financial mechanisms in mobilizing donors, attracting and administering funds. In this regard the Conference of the Parties secretariat profile should include skills to fulfill these functions. The financial mechanism should include a public relations function for maintaining a bridge between potential donors and the potential recipients of financial assistance.

(6) The financial mechanism should be able to act as an incentive for countries to include tobacco control when setting the goals of their national development agenda.

This fund does not exclude any other financing mechanisms for supporting activities related to tobacco implementation.

DR AMANKWA (Ghana) requested that Annexure C should be incorporated in the draft decision for adoption by the Conference. The importance of a dedicated fund for implementing the Framework Convention could not be overemphasized. Tobacco control activities had to be stepped up; the longer they were delayed, the harder it would become to challenge the tobacco industry. The economies of developing-country Parties or Parties with economies in transition were already
overburdened. The problem was the shortage or absence of funding for tobacco control activities. Hence the urgent need for those two categories of countries to gain easy access to funding.

Mr MALOBOKA (Namibia) and Dr ANIBUEZE (Nigeria) endorsed those remarks.

(For continuation of the discussion, see summary record of the tenth meeting, section 2.)

2. ADDITIONAL MATTERS IDENTIFIED IN THE CONVENTION FOR CONSIDERATION BY THE CONFERENCE OF THE PARTIES: Item 5 of the Agenda (continued)

Elaboration of guidelines for implementation of Article 7 (Non-price measures to reduce the demand for tobacco) and Article 9 (Regulation of the contents of tobacco products): Item 5.2 of the Agenda (Document A/FCTC/COP/1/INF.DOC./3) (continued from the seventh meeting)

The CHAIR recalled that the Conference of the Parties would have to prepare guidelines on Articles 8 to 13 of the Convention. A format, or template, for such guidelines had been devised by an informal working group.

Dr OTTO (Palau), speaking as Vice-Chair and chair of the informal working group, made a visual presentation of a format or template that might be used for drawing up guidelines on each of the points dealt with in Articles 8 to 13. The proposed format contained sections on objectives and rationale, definitions of elements of the guidelines, value added, existing work that could be expanded, implementing entities, prospective facilitators, partners or reviewers, resource implications and time limits.

Mrs SEDLMEIER (Austria) said that the preparation of guidelines under Articles 9 and 10, on product regulation, should be given priority. Guidelines under Article 8 would be less useful since WHO’s policy recommendations existed on second-hand smoke and smoke-free environments.

The CHAIR cited Articles 7 and 9, which clearly stated that the Conference of the Parties would propose guidelines for implementing Articles 8 to 13 and for measuring and regulating the contents of tobacco products. However, it did not need to prepare guidelines in each area; it could decide to endorse existing ones.

Mr O’TOOLE (Ireland) said that the sample guidelines were an excellent basis for progress. Recounting the experience gained from the smoking ban in Ireland, he said that in March 2004 almost all enclosed workplaces in Ireland, including bars and restaurants, had become smoke-free. The measure had worked exceptionally well, with wide support coming even from smokers, and compliance was very high. The basis for the ban had been recognition that second-hand smoke was a cause of cancer, heart disease and respiratory problems; employees needed protection from exposure to second-hand smoke just as from other workplace hazards; current ventilation technology was ineffective in removing health risks. Legislative measures to protect workers were therefore required. Ireland’s experience had shown the ban to be both popular and effective. Should the Conference decide to proceed with a guideline regarding Article 8, his country would be willing to act as a facilitator.

Dr BLOOMFIELD (New Zealand) agreed with the Chair that, even where guidelines already existed, the Conference of the Parties needed to endorse them or modify them slightly. While the Austrian proposal had rightly stressed the importance of elaborating guidelines under Articles 9 and 10, his country offered support in taking forward work on guidelines under Article 8. Relevant
experience could be quickly gathered and made available to countries for use in achieving a smoke-free environment.

Dr AL-LAWATI (Oman) said that the Convention’s most important provisions were to be found in Article 13 on advertising and Article 8 on protection against passive smoking. He agreed that the Conference of the Parties should first draw up guidelines on Article 8.

Dr RATTE (France) offered her country’s partnership in preparing guidelines under Article 8. Although the goal of protection from exposure to tobacco smoke had yet to be attained, France could contribute its experience of the campaign for the sake of a suitable degree of protection.

Ms CAVALCANTE (Brazil) said that the Committee should consider increasing the number of articles that could be dealt with by guidelines. She agreed on the urgency of preparing guidelines on matters covered in Articles 8, 9 and 10, but other obligations not covered by Article 7 should also be considered with a view to guidelines. For example, Uruguay had raised the possibility of guidelines under Article 14.1, on tobacco dependence and cessation of tobacco use. In addition, guidelines based on best practices for government relations with the tobacco industry should be drawn up in line with Article 5.3. The monitoring of tobacco industry strategies carried out by WHO had revealed some aimed at undermining not only tobacco control policies but also implementation of the Framework Convention. Such material could be systematized in order to provide guidelines that would protect tobacco control policies.

Mr SIMONEN (Finland), supporting the Austrian proposal to concentrate on a few guidelines, said that in Finland smoking had been banned in public indoor premises since 1976 and workplaces had been smoke-free since 1995. Second-hand or environmental tobacco smoke had been classified as a carcinogen. Having pioneered work in that area, Finland would like to contribute to guidelines on protection from environmental tobacco smoke and considered that the subject should be added to the section of the template on definition of elements of the guidelines.

Ms LINDBAK (Norway) said that, while a comprehensive set of guidelines could be elaborated, the specific guidelines needed by each Party would vary, depending on how advanced its tobacco control programme was. Developing smoke-free policies was one area where guidelines could be very helpful. It would be useful to show the advantages and drawbacks of the various approaches, for example with respect to ventilation and total and partial bans. Based on existing documentation and experience, guidelines could be drawn up for adoption at the second session of the Conference of the Parties.

Guidelines would also be useful for tobacco product regulation, a complex area requiring true international cooperation and standards and unlikely to be completed before the second session of the Conference of the Parties. Norway was nevertheless ready to help draw up guidelines on tobacco product regulation.

Dr BIANCO (Uruguay) offered to share the experience of Uruguay, as a developing country, in creating smoke-free areas. Although he had earlier proposed the preparation of guidelines under Article 14, the remarks by Brazil had persuaded him that priority should go to guidelines under Article 5.3. It would be impossible to draw up all the guidelines before the next Conference of the Parties, and the tobacco industry was known to be doing everything possible to obstruct implementation of the Framework Convention and of tobacco control measures.

Mr DEANE (Barbados) said that guidelines would provide uniformity with respect to national legislation and administrative and other actions. He supported Brazil’s proposal concerning the preparation of guidelines under Articles 5.3 and 14 and agreed with Uruguay on priority for Article 5.3. Since the tobacco industry was likely to counter the entry into force of the Framework
Convention, the Conference of the Parties should come up with clear indications on how to thwart such action.

Ms LINDBLOM (Sweden) supported the European Community position that priorities must be established for the various guidelines. Sweden had experience with guidelines for a smoke-free environment and would be willing to help in that and other areas, subject to prioritization of the work and available time.

Dr TORRES LAO (Peru) agreed with Brazil and Uruguay on the importance of broad guidelines, particularly for Article 5.3. Articles 5.1 and 5.2 required the forming and financing of a national coordinating mechanism, as the basis for all the programmes required of countries by the Framework Convention. A guideline on the subject would be useful since developing countries would find it difficult to proceed without support.

Dr QASEM (Jordan) said that his country had been one of the first, in 1971, to ban smoking in public places and on public transport. The modest results were due to lack of experience and technical know-how. Guidelines under Article 8 were urgently needed.

Professor KINDE-GAZARD (Benin), speaking as her country’s Minister of Public Health, noted that the money spent by developing countries on treating tobacco-related diseases would be better used for development purposes. She supported the proposal by Brazil concerning Article 5.3.

Ms MAYSHAR (Israel) observed that guidelines on protection from second-hand smoke were particularly important in order to support the introduction of national measures.

Mr CASO GONZÁLEZ (Mexico) said that, with the rapid offensive of the tobacco industry, the Conference should work on more than one guideline at a time and Mexico would help in that work. He stressed the importance of the valuable contributions from civil society.

Ms ALI HIGO (Djibouti) endorsed the comments by Peru about the need for broad guidelines in order to support implementation by developing countries. Collaboration in staving off the influence of the tobacco industry was of the utmost importance. The main concern was Article 5.3, as Brazil had pointed out, but it would also be useful to start work on guidelines for a protocol on cross-border advertising.

Dr TAO Jin (China) said that it was desirable for the guidelines to be finalized for submission to the second session of the Conference of the Parties. China, with its 350 million smokers, was particularly concerned about the implementation of Article 8 on protection from passive smoking. Guidelines to prohibit the use of tobacco in public places must be prepared and applied before the 2008 Olympic Games in order to give China a smoke-free public environment, thereby reducing the effects of passive smoking.

Dr NGABA (Central African Republic) strongly supporting the statement by the Minister of Public Health of Benin, which emphasized the tobacco industry’s interference in national health policy in African countries, said that his country looked to France’s lead in devising national guidelines in order to promote tobacco control and prevent the harmful effects of tobacco.

Ms SHORT (Cook Islands) expressed the support of the Pacific island countries for guidelines on Articles 8 to 13, with priority to go to Article 8. The idea of guidelines under Article 14 also deserved support.

Ms LYNN (Corporate Accountability International), speaking at the invitation of the CHAIR, and also on behalf of Network for Accountability of Tobacco Transnationals, said that the
organizations involved strongly supported the suggestion by Brazil and Uruguay that guidelines should be drawn up for implementation of Article 5.3. Those could include how to define commercial and other vested interests and what could be done to prevent action by the tobacco industry from undermining health policy. The organizations offered their assistance in the endeavour, including model legislation. On Article 13, in addition to dealing with cross-border advertising, guidelines should help a Party determine whether its constitution permitted a comprehensive ban on advertising, promotion and sponsorship. Should constitutional limits apply, guidelines could help Parties take the fullest advantage of provisions.

Mr BLANKE (Framework Convention Alliance), speaking at the invitation of the CHAIR, said that the template for elaboration of guidelines under Article 8 suggested that ventilation and filtration systems should not be endorsed as a solution to smoke exposure. Since scientific evidence was extremely clear, he urged that the ventilation and filtration be rejected outright as an alternative to smoke-free environments.

His organization appreciated the suggestion by Mexico regarding civil society. The global nongovernmental community had extensive experience, through successful application of laws at national and subnational levels, in the areas cited in the template under definition of elements of the guidelines. A new grouping of nongovernmental organizations, the Partnership for a Smoke-Free World of the International Union Against Cancer, was ready to assist in order to channel expertise on effective implementation of Article 8.

The meeting rose at 11:55.
NINTH MEETING
Monday, 13 February 2006, at 16:10

Chair: Dr K.S. REDDY (India)

ADDITIONAL MATTERS IDENTIFIED IN THE CONVENTION FOR CONSIDERATION BY THE CONFERENCE OF THE PARTIES: Item 5 of the Agenda (continued)

Elaboration of guidelines for implementation of Article 7 (Non-price measures to reduce the demand for tobacco) and Article 9 (Regulation of the contents of tobacco products): Item 5.2 of the Agenda (Document A/FCTC/COP/1/INF.DOC./3) (continued)

The CHAIR invited the chair of the informal working group on guidelines to report on the progress made.

Dr OTTO (Palau), speaking as Vice-Chair and chair of the working group, reported that it had been agreed that the best course was to deal first with Articles 8 and 9, particularly Article 9, on regulation of the contents of tobacco products, in order to complete that matter before setting priorities for future work on Articles 10 to 13.

In reply to Dr AL-LAWATI (Oman) he confirmed that, while the specific mandate was to develop guidelines under Articles 7 and 9, the points covered in Article 5.3 would also be dealt with.

(For continuation of the discussion, see summary record of the tenth meeting, section 1.)

Reporting (Article 21 Reporting and exchange of information) (Document A/FCTC/COP/1/INF.DOC./2) (continued from the seventh meeting)

The CHAIR introduced the outcome of informal consultations facilitated by Australia and Canada, which read:

SCOPE

This paper outlines a proposed approach to reporting by Parties to the Conference of the Parties on progress in implementing the WHO Framework Convention on Tobacco Control. It covers broadly the first five years and it is expected that this will be reviewed by the Conference of the Parties prior to 2010.

Article 21
Reporting and exchange of information

1. Each Party shall submit to the Conference of the Parties, through the Secretariat, periodic reports on its implementation of this Convention, which should include the following:
   (a) information on legislative, executive, administrative or other measures taken to implement the Convention;
   (b) information, as appropriate, on any constraints or barriers encountered in its implementation of the Convention, and on the measures taken to overcome these barriers;
   (c) information, as appropriate, on financial and technical assistance provided or received for tobacco control activities;
(d) information on surveillance and research as specified in Article 20; and
(e) information specified in Articles 6.3, 13.2, 13.3, 13.4(d), 15.5 and 19.2.

2. The frequency and format of such reports by all Parties shall be determined by the Conference of the Parties. Each Party shall make its initial report within two years of the entry into force of the Convention for that Party.

3. The Conference of the Parties, pursuant to Articles 22 and 26, shall consider arrangements to assist developing country Parties and Parties with economies in transition, at their request, in meeting their obligations under this Article.

4. The reporting and exchange of information under the Convention shall be subject to national law regarding confidentiality and privacy. The Parties shall protect, as mutually agreed, any confidential information that is exchanged.

OBJECTIVE

Our objective in reporting is to enable Parties to understand and learn from each others’ experience in implementing the WHO Framework Convention on Tobacco Control by providing details of the progress being made by member countries in implementation.

The Parties’ reports will form the basis of reports on the implementation of the Convention consistent with Article 23.5(d).

GRADUATED REPORTING ARRANGEMENTS

It is suggested that reporting arrangements be graduated with the first report covering core items of data, legislation, taxation, and funding for implementation activities with more complex questions or more detail included in later reports. To facilitate this, questions could be clustered into three groups.

FREQUENCY AND TIMING OF REPORTS

It is proposed that Parties report initially two years after ratifying the Convention as required by the WHO Framework Convention on Tobacco Control, and then in every subsequent three years as follows:
- Parties report against all Group 1 questions within two years of entry into force of the Convention for that Party. This would form the minimum reporting arrangements. Parties may also report against Group 2 and Group 3 questions if they wish to do so.
- Parties report against all Group 1 and Group 2 questions within five years of entry into force of the Convention for that Party. This would form the minimum reporting requirements. Parties may also report against Group 3 questions if they wish to do so.
- Parties report against all Group 1, Group 2 and Group 3 questions within eight years of entry into force of the Convention for that country.

These reports will be complemented by Parties’ annual country implementation plans.

This process will allow reports to be received by the Secretariat incrementally, rather than have all Parties’ reports due at the same time.

In preparing reports, Parties should be mindful of the opportunities for shared learning and, where appropriate, should include examples of best practice or e-mail contact details for someone who would be able to provide further information on an aspect of implementation.
CRITERIA FOR PRIORITIZING QUESTIONS

If this were agreed, the questions could be grouped in three groupings using the following criteria. (NOTE: This section requires more work.)

Questions should be included in Group 1 if:

- the Convention requires Parties to implement the matter in the first two years; or
- these relate to core data requirements on smoking prevalence rates, taxation arrangements for that Party, and legislation implemented on … .

Questions should be included in Group 2 if:

- the Convention requires Parties to implement the matter in the first four years; or
- these relate specifically to tobacco related disease and mortality; or
- … .

Questions should be included in Group 3 if:

- the Convention requires Parties to implement the matter in the first five years; or
- these relate to Parties’ national plans, strategies and programmes on tobacco control; or
- these relate to research; or
- … .

ASSISTANCE TO DEVELOPING ECONOMY COUNTRIES AND COUNTRIES WITH ECONOMIES IN TRANSITION

(NOTE: This section will require review when other work on funding arrangements has progressed further.)

In this section of the report, Parties should report on:

- their ability to provide assistance, both financial and technical, in the case of donor countries, as well as assistance already provided; or
- their assessed areas of need and the extent to which these are or are not being met, and estimates of assistance, both technical and financial required to enable them to move to the next reporting group, in the case of developing economies and economies in transition. This could also include any constraints or barriers to implementation as well as the assistance already received/provided.

In addition, the Secretariat should consider, in particular, this section of Parties’ reports and operate as a clearinghouse seeking to assist countries to match available skills and resources with identified needs. In the first instance, the Secretariat should seek to manage this process within regions, to allow more efficient operation and greater understanding within regions.

EXISTING SURVEILLANCE DATA AND RESEARCH

The Secretariat should use its more detailed knowledge and understanding of existing data sets including the following WHO and Tobacco Free Initiative data:

- WHO/United States Centers for Disease Control and Prevention (CDC) Global Youth Tobacco Survey
- WHO/United States CDC Global School Personnel Survey
- WHO/United States CDC Global Health Professional Survey
- World Health Survey
- WHO Mortality Database
- The Regional Database on Tobacco Control
- WHO STEPwise
• and any others to provide to countries with developing economies and countries with economies in transition, core data items to be used in completing country reports. This will ensure that these countries benefit from work already done and will also help to ensure consistency in reporting.

TRANSLATION

Parties will provide reports in one of the six designated languages and shall not expect the Secretariat to provide translations. However, it is expected that the Secretariat, in considering the reports, will make available summaries or analysis of reports which focus on significant achievements or areas where information sharing could be valuable.

FEEDBACK ARRANGEMENTS

To facilitate access to examples of best practice in specific areas of tobacco control, it is proposed that all Parties’ reports are to be available on a web site and arranged under the headings – Two Year Reports, Five Year Reports and Eight Year Reports to enable Parties to understand the progress being made internationally in implementing the WHO Framework Convention on Tobacco Control. It is expected that this web site will allow access by non-ratifying countries which may be seeking information to allow them to take effective steps in tobacco control. This is consistent with the objective to learn from each others’ experience.

It is expected that the Secretariat will prepare some feedback for Parties to be provided informally. This feedback will allow Parties to reflect on their implementation arrangements. It is further expected that the Secretariat will provide an analysis of the progress being made internationally in implementation of the Convention. Such an analytical report should be provided annually commencing in 2007 and should seek to:

• reflect international and regional progress;
• highlight significant achievements; and
• reflect the spirit of shared learning.

It is further suggested that existing WHO regional group meetings provide an opportunity to share learning and obtain feedback from other Parties on their progress in implementing the WHO Framework Convention on Tobacco Control.

FUTURE DIRECTIONS

It is further proposed that an independent assessment of the reporting arrangements be undertaken in 2009 with the matter to be further considered by the Conference of the Parties in 2010.

Ms HEFFORD (Australia), speaking as chair of the informal working group on reporting, said that the group had made a few amendments in order to simplify the format for initial reports. The new format used a checklist system in order to obtain information on specific subjects such as taxation, legislation and national strategic plans. It aimed, in particular, to improve comparisons between reports and to reduce translation time.

In response to questions and comments by Mr MALOBOKA (Namibia), Dr AL-LAWATI (Oman) and Dr ZAIN (Malaysia), she explained that the phrase “graduated reporting arrangements” referred to the reports that must be submitted within two, five and eight years of the entry into force of the Convention. Groups 1, 2 and 3 of questions corresponded to that frequency of reporting. All the questions in the conference paper fell into Group 1. There were two categories: core questions, answers to which were mandatory under the Convention, and optional questions, seeking information that was not statutorily required but which enabled countries to outline their achievements in specific
areas. The idea was to make reporting arrangements a learning process, to let countries benefit from what others had done in order to implement the Convention. The working group wanted delegations’ views on the new format, applicable to initial reports, before extending it to questions for reports to be submitted after five and eight years, respectively, of the Convention’s entry into force.

Dr BIANCO (Uruguay), referring to the section entitled “Objective”, said that it was unclear whether the reporting procedure would be used to evaluate the degree of compliance by countries with the Convention and, if not, who or what would be responsible for doing so.

Dr KUMMER (WHO Secretariat) said that country reporting was intended to enable the Conference of the Parties to monitor progress in individual countries. As currently structured, the Convention comprised no formal mechanism for reacting to non-compliance with reporting obligations. In such a situation, the Conference of the Parties could only recommend that countries comply with their obligations. Its role was confined to considering reports, proposing assistance to countries on how to improve their compliance, and making information available for that purpose.

Mr CASO GONZÁLEZ (Mexico) drew attention to Article 23.5(d), which gave the Conference of the Parties the specific function of considering reports by Parties and adopting reports on implementation of the Convention. He saw such reporting not as the outcome of a competition for prizes, but as a gauge of progress by tobacco control programmes.

(For continuation of the discussion, see summary record of the thirteenth meeting.)

Elaboration of protocols: Article 13 (Tobacco advertising, promotion and sponsorship, paragraph 8) and Article 33 (Protocols): Item 5.3 of the Agenda (Document A/FCTC/COP/1/INF.DOC./3 (continued from the fifth meeting)

The CHAIR, inviting the Committee to resume consideration of agenda item 5.3, said that, although the requirement that relevant documentation be issued 24 hours in advance had not been met, the item could be discussed initially and decisions adopted later. The Committee could take that action under Rule 42 of the provisional Rules of Procedure drawn up by the Intergovernmental Working Group. In the absence of any objections he would assume that the Committee wished to do so.

It was so agreed.

The CHAIR introduced his paper on protocols. He suggested two priority areas for protocol elaboration: prohibition of cross-border advertising, promotion and sponsorship; and prohibition of illicit trade. The Committee might consider, with a view to submission to plenary, five options for the operative part of a draft decision, reading:

The Conference of the Parties reviewed the need to develop protocols in one or more areas of tobacco control as relevant to the objectives of the WHO Framework Convention on Tobacco Control. It recognized that protocols, unlike guidelines, will be binding on those Parties to the Convention that decide, in line with their national arrangements, to become Parties to any protocol.

The Conference of the Parties identified two areas of high priority for consideration as subject areas for protocol development: (a) the prohibition of cross-border advertising, promotion and sponsorship; and (b) the prohibition of illicit trade. It recognized that the development of a protocol would require the establishment of a subsidiary body, and that the timing of such a decision by the Conference of the Parties requires careful consideration of whether the key elements to be included into such a protocol were clearly identified.
Draft Conference of the Parties’ decision

The Conference of the Parties,
Taking into account Article 13.8 and Article 33 of the Convention;
Taking into account also the need to further develop the obligations set out in Article 15 in an internationally binding legal instrument;
Recognizing that international collaboration for a comprehensive ban of cross-border advertising, promotion and sponsorship is an important area of tobacco control;
Recognizing also that international collaboration for the prohibition of illicit trade is an important area of tobacco control;

DECIDES:

(Option 1)

(1) to establish a subsidiary body with the mandate to elaborate, for its consideration, a protocol setting out appropriate measures that require international collaboration for a comprehensive ban on cross-border advertising, promotion and sponsorship, as set out in Article 13.8 and in accordance with the terms of reference contained in the Annex to this decision;¹
(2) requests the secretariat to make the necessary arrangements, including budgetary arrangements, for the subsidiary body to meet as soon as possible.

or

(Option 2)

Requests the secretariat to prepare a report identifying the key elements which need to be integrated into a future protocol setting out appropriate measures that require international collaboration for a comprehensive ban on cross-border advertising, promotion and sponsorship, in accordance with Article 13.8, taking into account the work of entities competent in the matter, for consideration by the Conference of the Parties at its second session.

or

(Option 3)

(1) to establish a subsidiary body mandated to elaborate, for its consideration, a protocol on illicit trade, on the basis of Article 15, and in accordance with the Terms of Reference contained in the Annex to this decision;¹
(2) requests the secretariat to make the necessary arrangements, including budgetary arrangements, for the subsidiary body to meet as soon as possible.

or

¹ The terms of reference will need to be elaborated in the event that this option is chosen.
(Option 4)

Requests the secretariat to prepare a report identifying the key elements which need to be integrated into a future protocol on illicit trade, on the basis of Article 15, taking into account the work of entities competent in the matter, for consideration by the Conference of the Parties at its second session.

or

(Option 5)

Requests the secretariat to prepare a report identifying:
(a) the key elements which need to be integrated into a future protocol on illicit trade, on the basis of Article 15;
(b) the key elements which need to be integrated into a future protocol setting out appropriate measures that require international collaboration for a comprehensive ban on cross-border advertising, promotion and sponsorship, in accordance with Article 13.8;

for consideration by the Conference of the Parties at its second session, taking into account relevant work carried out by entities competent in the matter.

In response to a comment by Dr GUISA CRUZ (Mexico), he acknowledged that the reference to “prohibition of illicit trade” was a tautology, as illicit trade was by definition prohibited; a better formulation would be “control of illicit trade”.

Ms MAYSHAR (Israel) suggested combining options 2 and 3. The discussion on illicit trade had shown that information to be contained in a protocol was fairly well advanced, and a subsidiary body could be set up to work on the subject immediately. Further work was required in order to establish the content of a protocol on cross-border advertising, for consideration at the second session of the Conference of the Parties.

Ms EMMERLING (European Community) said that the Community had already signalled its interest in examining cross-border advertising and illicit trade simultaneously, and would support any decision to promote working methods for that purpose. However, why had a proposal made to establish an informal group of four experts from each region not been included in the Chair’s paper? The European Community was not yet in a position to state its preferences on the various options.

Mr ALCÁZAR (Brazil) said that protocols on both subjects were important, but if one had to come first, he would prefer the third option, on illicit trade, on the understanding that the Secretariat provided the necessary support.

Dr ELSUBAI (Sudan) suggested establishing a single subsidiary body for work on both protocols, since the desirability of moving ahead with them had been generally acknowledged.

Dr KUMMER (WHO Secretariat) said that there was no legal impediment to the negotiation of two protocols by a single body, but availability of resources had to be taken into account. The question was whether the two subjects were closely enough related for one group to take them on together, coupled with practical considerations of the scheduling and accommodation of meetings. Even if both were negotiated and adopted simultaneously, she said in reply to a question by the CHAIR, countries could choose to become Parties to a single protocol. The adoption would most probably take place at an extraordinary session of the Conference of the Parties, since the protocols were binding legal instruments.
Mr SOLOMON (Office of the Legal Counsel) recalled that Protocols 1 and 2 to the Geneva Conventions of 1949 had been adopted by a single body. Adopting a protocol was equivalent to adopting a treaty and was subject to domestic approval processes. One reason for separate protocols was that some might be easier to ratify by States than others.

Dr LEWIS-FULLER (Jamaica) said that, in the informal working group on guidelines, the idea of separate subsidiary bodies to look at different protocols had been seen as an efficient approach. One body could certainly deal with two separate instruments, but different technical skills might be required for each. Many countries had already formulated domestic legislation to reflect the Framework Convention and its protocols and guidelines. The protocols were needed without delay, but, by the time they were finished, they might well be inoperative for want of updating.

Mr CHOINIERE (Canada) asked what were the financial implications of preparing a report, as proposed under the fifth option, and of establishing subsidiary bodies under the second and third options.

Dr BLOOMFIELD (New Zealand) said that, at present, the resources and effort involved in protocol development must be weighed against other possible activities in order to assist all countries in implementation. His country was undecided about which subject ought to be a priority for protocol development. The Convention specifically noted that consideration should be given to the elaboration of a protocol on cross-border advertising, yet there was broader support for one on illicit trade. He requested more information on the likely cost of producing a protocol and asked whether interim steps could be taken before embarking on such a laborious process.

The CHAIR said that a secretariat, even if it was established at the current session, could not be immediately functional. It might accordingly be better, especially for a protocol on illicit trade, to do some preliminary work with a view to producing drafts for consideration at the second session of the Conference, with the help of a properly established secretariat.

Mr GOU Haibo (China) said that protocols both on cross-border advertising and on illicit trade were important for achieving the goals of the Convention. However, since not enough information was available for work to start on both protocols simultaneously, China favoured the third or fourth options, and of the two areas for protocol elaboration, illicit trade should be prioritized.

Mr CHOINIERE (Canada), replying to a question by the CHAIR about the possible addition to option 5 of a new subparagraph (c) on the budgetary requirements for negotiating a protocol, observed that option 5 dealt only with reports, and that if subsidiary bodies were to be considered a new paragraph (3) could perhaps be added under options 1 and 3.

Ms EMMERLING (European Community), supported by Dr BIANCO (Uruguay) and Mr CASO GONZÁLEZ (Mexico), suggested a further option to establish informal groups of experts in order to prepare the two protocols, as discussed earlier.

Mr JOOSSENS (Framework Convention Alliance) said that significant preparatory work was needed before formal negotiations on a protocol on illicit trade. The Conference of the Parties should request the secretariat to facilitate negotiation and to report on progress at the second session. Examples of such work might include expert reports, case studies and consultations.

(For continuation of the discussion, see summary record of the twelfth meeting, section 2.)

The meeting rose at 17:45.
TENTH MEETING

Tuesday, 14 February 2006, at 10:20

Chair: Dr K.S. REDDY (India)

1. ADDITIONAL MATTERS IDENTIFIED IN THE CONVENTION FOR CONSIDERATION BY THE CONFERENCE OF THE PARTIES: Item 5 of the Agenda (continued)

Elaboration of guidelines for implementation of Article 7 (Non-price measures to reduce the demand for tobacco) and Article 9 (Regulation of the contents of tobacco products): Item 5.2 of the Agenda (Documents A/FCTC/COP/1/INF.DOC./3 and A/FCTC/COP/1/INF.DOC./6) (continued from the ninth meeting)

The CHAIR announced that Guatemala had become a Party to the WHO Framework Convention on Tobacco Control.

He drew attention to a draft decision on elaboration of guidelines for implementation of Articles 7 and 9, which read:

The Conference of the Parties,

Considering Articles 7 and 9 of the WHO Framework Convention on Tobacco Control (FCTC), which require the Conference of the Parties (COP) to propose guidelines on the implementation of the provisions of Articles 8 to 13 at the national level;

Recognizing the assistance that such guidelines may provide to Parties in the development and implementation of policies and programmes related to the non-price measures for tobacco control that are set out in Articles 8 to 13;

Desiring to promote the availability of information on best practices for tobacco control to all Parties for their use, as appropriate, in the context of elaboration and implementation of their national laws and in accordance with national circumstances;

DECIDES:

(1) to adopt the templates for the elaboration of guidelines on Articles 8 and 9, as they appear in the Annex to this decision;
(2) to consider the templates for the elaboration of guidelines on Articles 10 to 13 as a basis for the elaboration of guidelines for these articles;
(3) to request the Secretariat, on the basis of the templates, to initiate the development of guidelines on:
   1. Article 8
   2. Articles 9 and 10
   3. Article 11
   4. Article 12
   5. Article 13
(4) to accord highest priority to Article 8, and to Articles 9 and 10, guidelines related to which are to be developed prior to the second session of the Conference of the Parties; the guidelines related to Articles 9 and 10 are to be developed in three phases, namely testing, regulation and disclosure;
to adopt the following criteria for prioritization of the work related to the guidelines with respect to Articles 11 to 13:

1. **Request from Parties:** there is an expressed need for the guidelines to assist Parties in implementing the FCTC.
2. **Existing work on the topic:** there is relevant existing work, e.g. Tobacco Free Initiative (TFI) guidelines, so guidelines can be developed more quickly and efficiently.
3. **International value added:** international guidelines may be a prerequisite for Parties to implement some obligations, while involving a number of Parties allows expertise and costs to be shared.
4. **Potential impact of the measure covered by the guidelines:** measures are known to be effective at reducing the impact of tobacco.
5. **Ease of implementation:** this includes cost of implementation.
6. **Willingness of Parties to lead:** Parties have volunteered as key facilitators, partners or reviewers.
7. **Outcome measurability:** this is relevant to reporting (Article 21) and the potential to measure and analyse data.
8. **Contribution to maintaining momentum in implementing the FCTC:** this is particularly important in the early stages of implementation.
9. **Cost of guidelines development:** guidelines should be developed efficiently.
10. **International cooperation and cost sharing** are essential to effectively implement the elements of the guidelines.

(6) to request the Secretariat to utilize these criteria in preparing a workplan for the elaboration of guidelines on the relevant articles, for consideration by the COP at its second session.

**ANNEX 1**

**SAMPLE WORKPLAN FOR THE DEVELOPMENT OF GUIDELINES ON PROTECTION FROM EXPOSURE TO TOBACCO SMOKE**

<table>
<thead>
<tr>
<th>Subject</th>
<th>Article 8: Protection from exposure to tobacco smoke</th>
</tr>
</thead>
<tbody>
<tr>
<td>CONTENTS:</td>
<td></td>
</tr>
</tbody>
</table>
| Objectives and rationale    | Rationale: Parties recognize that scientific evidence has unequivocally established that exposure to tobacco smoke causes death, disease and disability.  
Objective: Protection from exposure to tobacco smoke in indoor workplaces, public transport, indoor public places and other public places. From a public health perspective, no “safe” levels of second-hand smoke exist. Therefore engineering approaches (e.g. ventilation and/or filtration systems) as measures to protect non-smokers from the risks associated with exposure to second-hand smoke should not be endorsed. Ventilation and Indoor Air Quality (IAQ) standards at the national and international level that steer away from source control (i.e. smoke free environments) into ventilation alternatives should be discouraged. |
2. Scope and coverage of policies for protection from exposure to tobacco smoke
3. Recommendations for implementation and enforcement of the legislative and administrative measures
4. Recommendations for monitoring and evaluation of legislative and administrative measures
5. Classification of second-hand smoke as a carcinogen |
| Needs/value-added | 1. Provide uniformity in tobacco control measures and activities
2. International cooperation and information sharing of the best practices and lessons learnt
3. Having an international guideline from the COP of the WHO FCTC will facilitate the application/implementation |
| Existing work to build on | Published by TFI:
1. WHO TFI with the WHO Collaborating Centre on tobacco control (Johns Hopkins University) organized an expert consultation in this area in November 2005. WHO Policy recommendations on second-hand smoke and smoke-free environments will be published based on this consultation.
2. The AMRO/PAHO TFI has a project entitled “Smoke free Americas” initiative is dedicated to raising awareness of the harm caused by second-hand tobacco smoke, and supporting efforts to achieve more smoke-free environments in the Americas.
3. WHO TFI has published best practices in the area of second-hand tobacco smoke as part of its series “Success stories and lessons learnt”.

**Examples of legislation in certain countries**
1. Ireland: Act on banning smoking in public places
2. New Zealand: “The smoke is clearing – anniversary report 2005” by the New Zealand Ministry of Health
4. Sweden: National Tobacco Law
5. Uruguay: Decree 268/05 on banning smoking in all public places

**PROCESS:**
- **Implementing entity (mandated by the Conference of the Parties)**: TFI or the permanent secretariat
- **Parties who offer to act as key facilitators* either via resource mobilization or technical work**: Ireland, New Zealand, Sweden, Brazil
- **Other Parties who (might) offer to partner in the development of guidelines**: Norway, France, Finland, Brazil, Fiji, Vanuatu, Djibouti, Uruguay
- **Parties who offer to act as reviewers (in addition to the usual peer experts)**: Norway, Palau, Marshall Islands, Finland
Resource implications

If the implementing entity is TFI, then TFI would need an additional budget.

If the Secretariat is the implementing entity, then the COP would need to give the Secretariat the necessary resources.

In both cases, additional budget would be needed to ensure that developing country delegates are able to participate.

Time frame:

<table>
<thead>
<tr>
<th>Phase</th>
<th>Date/Time Frame</th>
</tr>
</thead>
<tbody>
<tr>
<td>for guideline development</td>
<td>1 or 2 meetings necessary</td>
</tr>
<tr>
<td>for review</td>
<td>1 September 2006</td>
</tr>
<tr>
<td>for submission to the Bureau</td>
<td>60 days before COP2</td>
</tr>
<tr>
<td>for circulation to the Conference</td>
<td>30 days before 1st day of COP2</td>
</tr>
</tbody>
</table>

ANNEX 2

ARTICLE 9: PRODUCT REGULATION

<table>
<thead>
<tr>
<th>Subject</th>
<th>Guidelines for the implementation of Articles 9 and 10 on the regulation of the contents of tobacco products and of tobacco product disclosures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>The overall purpose of guidelines for the implementation of the provisions in Articles 9 and 10 is to assist Parties in strengthening the regulation of the content of tobacco products.</td>
</tr>
<tr>
<td></td>
<td>The elaboration of these guidelines involves 3 phases: 1st phase – the development of a guideline for the testing and measuring of the contents and emissions of tobacco products; 2nd phase – the development of a guideline for the regulation of the contents and emissions of tobacco products; and, 3rd phase – the development of a guideline on the disclosure requirement under Article 10. This paper addresses the first phase.</td>
</tr>
</tbody>
</table>

CONTENTS:

| Rationale        | • The testing and measuring of the contents and emissions of tobacco products serve as the basis for the regulation |
| Objective        | • To provide guidelines for testing and measuring the contents and emissions of tobacco products |
### Clear definition of elements of guidelines

- Address testing and measuring of tobacco contents and smoke emissions from a public health perspective
- Start with cigarettes (because most commonly used tobacco product)
- Focus on a selected set of especially harmful substances or smoke emissions
- Include criteria to assess the toxicity, addictiveness and attractiveness of these substances and/or products
- Study the design features of these products
- A recommendation on further work in order to continue to inform Contracting Parties on how best to adopt new strategies of tobacco product regulation as new scientific evidence is obtained and as new or modified products are introduced into the market

### Needs/value-added

- Guidelines assist national authorities in implementing this article and thus facilitate regulatory control over tobacco
- Leads to the establishment of an independent set of data and testing and measurement methods on tobacco products and their emissions from a public health angle in the medium and long term
- International cooperation in this area leads to sharing of costs and expertise (value added of international cooperation)

### Existing work to build on

Base guidelines on the work already done by the WHO Study Group on Tobacco Product Regulation (TobReg) and TFI (WHO/TFI shall specify in a paper what they can already deliver and continue to work on this subject)

### PROCESS:

**Implementing entity (mandated by the Conference of the Parties)**

Permanent secretariat to initiate its work with TFI/TobReg (and for TobReg to develop the guidelines for review, approval and adoption by the COP) – under the guidance of Contracting Parties identified as key facilitator(s).

**Parties who offer to act as key facilitators**

Norway, Canada and the European Community

**Other Parties who offer to partner in the development of guidelines**

Brazil, Jordan, Netherlands, Denmark

**Parties who offer to act as reviewers (in addition to the usual peer experts)**

Jamaica, [Australia]

**Resource implications**

Permanent secretariat in consultation with WHO/TFI will consider the workplan and budget implications

### Time frame:

**for guideline development**

For the next COP draft guidelines or progress report should be presented on the basis of a WHO/TFI paper about the work they have done so far.

**for review**

At least 60 days prior to submission to the Bureau

**for submission to the Bureau**

At least 90 days prior to the first day of the COP

**for circulation to the Conference of the Parties**

Minimum of 30 days prior to the first day of the COP
**ANNEX 3**

**SAMPLE WORKPLAN FOR THE DEVELOPMENT OF GUIDELINES ON PACKAGING AND LABELLING OF TOBACCO PRODUCTS**

<table>
<thead>
<tr>
<th>Subject</th>
<th>Article 11: Packaging and labelling of tobacco products</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>CONTENTS:</strong></td>
<td></td>
</tr>
</tbody>
</table>
| Objectives and rationale | The tobacco industry thrives by disseminating misleading information regarding social acceptability and health effects of their product. In order to curb the epidemic of tobacco use, consumers need to be well informed of the consequences of product use.  
To provide consumers with better quality information based on human testing of tobacco products and avoid conveying the impression that the product provides a relative health benefit. |
| Clear definition of elements of guidelines | The tobacco product packaging and labels should bear information on:  
- health warnings  
- informative smoking cessation messages  
- statements about toxic emissions or constituents  
- adverse economic information  
- official language(s) of the country  
- size of the packaging label  
- use of graphic warnings |
| Needs/value-added | • Information sharing on international best practices  
• Strengthen measures and legislation |
| Existing work to build on | Existing resources include:  
- Papers and non-papers commissioned by WHO  
Government, intergovernmental organizations, nongovernmental organizations and other publications including WHO papers and non-papers |
| **PROCESS:** | |
| Implementing entity (mandated by the Conference of the Parties) | Option 1 – For the permanent secretariat to be mandated to take this role.  
Option 2 – For TFI to continue its work with TobReg for TobReg to develop the guidelines for review, approval and adoption by the COP.  
Option 3 – Establishment of an informal group of experts on tobacco product testing and research, design, addiction, harm reduction, and regulation. |
| Parties who offer to act as key facilitators (either via resource mobilization or technical work) | Canada, Brazil |
| Other Parties who (might) offer to partner in the development of guidelines | Thailand, European Community, Australia, Singapore |
Parties who offer to act as reviewers (in addition to the usual peer review by experts)

New Zealand

Resource implications

Option 1 – the COP would have to budget for this or mobilize funds through one or more facilitator Party (from above list).

Option 2 – TFI could be positioned to assist countries to expand capacity, but TFI would require further funding from donor countries if more than one meeting were to be convened.

Option 3 – The COP would have to budget for this or mobilize funds some other way.

In all three cases, additional budget would be needed to ensure that developing country delegates are able to participate.

Time frame:

<table>
<thead>
<tr>
<th>Subject</th>
<th>Article 13: Regulating cross-border advertising</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject</td>
<td>CONTENTS:</td>
</tr>
<tr>
<td>Objectives and rationale</td>
<td>Objectives:</td>
</tr>
<tr>
<td></td>
<td>• To assist Parties in curbing/regulating cross-border advertising.</td>
</tr>
<tr>
<td></td>
<td>Rationale:</td>
</tr>
<tr>
<td></td>
<td>• It has been well documented that tobacco advertising, including cross-border advertising, encourages non-smokers to begin smoking, and discourages smokers from quitting.</td>
</tr>
<tr>
<td></td>
<td>• Therefore, any ban on cross-border advertising would likely have a measurable effect on reducing tobacco consumption, thus reducing morbidity and mortality and increasing quality of life.</td>
</tr>
<tr>
<td></td>
<td>• Furthermore, bans on domestic advertising can well be undermined by the effects of cross-border advertising, eliminating cross-border advertising can thus strengthen domestic anti-ad measures.</td>
</tr>
<tr>
<td></td>
<td>• States have a mandate to consider the elaboration of a cross-border advertising protocol as defined by Article 13(8) of the FCTC.</td>
</tr>
</tbody>
</table>
## Clear definition of elements of guidelines

- Develop clear, agreed-upon definition of cross-border advertising, potentially based on existing best practices.
  - Definition should include not only traditional media-based forms of advertising (television, radio, print, sports sponsorship) but emergent vehicles as well (satellite-based media, film, Internet). Attention should also be paid to tobacco-labelled consumer goods, such as toys and clothing.
- Collaborate in several capacities on several levels, including:
  - International cooperation on research into cross-border advertising methods and effects. Potential regulatory measures should be researched as well, as mandated by Article 13(6).
- Collaborate on effective dissemination of above information.
  - Collaborate with global, regional and domestic organizations involved in trade, media, advertising and marketing.
  - Cooperation on the development of filtering technologies to regulate media-based advertising, including the Internet.
- Describe elements comprehensively banning all forms of cross-border advertising for inclusion in a potential protocol.
- Require Parties to act on extra-jurisdictional complaints regarding advertising activities emanating from their own jurisdictions.
- Define which domestic entities could be identified as the potential subjects of cross-border advertising bans.

## Needs/value-added

### Needs:

- Further research into cross-border advertising methods and effects, as well as potential regulatory measures.
- Collaboration on above research and information sharing.
- Consider the elaboration of a protocol setting out appropriate measures that require international collaboration for a comprehensive ban on cross-border advertising, pursuant to Article 13(8).

### Value-Added:

- Bans on cross-border advertising will reduce tobacco uptake and use, thus reducing morbidity and mortality and increasing quality of life.
- Bans on cross-border advertising will strengthen domestic anti-ad measures.
- The trans-national nature of the problem will encourage further cooperation between concerned States and organizations.

## Existing work to build on

- Existing resources include:
  - Papers and non-papers commissioned by WHO.
  - Government, IGO, NGO and other publications, including WHO papers and non-papers.
  - 2003 European Community tobacco advertising directive.
  - Existing laws or practices concerning cross-border regulation of other activities, such as pornography, of the Internet, and of movies.
  - Results of the 2000 WHO Conference on Global Tobacco Control Law, including the publication “Tobacco Advertising & Promotion: The Need for a Coordinated Global Response”.

---

1 The subject matter and scope of which relates to “the advertising of tobacco products and their promotion:

(a) in the press and other printed publications;
## PROCESS:

| Implementing entity (mandated by the Conference of the Parties) | Option 1 – For the permanent secretariat to be mandated to take this role.  
Option 2 – Acting in its capacity as a technical adviser, for TFI to expand upon this role and address cross-border advertising.  
Option 3 – Establishment of an informal group of experts on cross-border advertising. |
|---|---|
| Parties who offer to act as key facilitators  
*either via resource mobilization or technical work* | European Community (based on the 2003 tobacco advertising directive),  
India (regarding regulation of smoking in cinema), Sweden (could provide assistance based on success in *Konsumentombudsmannen v Gourmet International Products*, ECJ 2001, arguing that cross-border advertising bans were justified on public health grounds). |
| Other Parties who (might) offer to partner in the development of guidelines | Malaysia |
| Parties who offer to act as reviewers (in addition to the usual peer experts) | European Community |
| Resource implications | These guidelines have the potential to be resource intensive (in terms of money, expertise, and responding to industry-engendered challenges) on a scale comparable to that demanded by the guidelines relating to Articles 8-12. Additional budget would be needed to ensure that developing country delegates are able to participate. |
| **Time frame:** |  |
| *for guideline development* | Although TFI and the TobReg’s work in this area could serve as the basis for guidelines development, it is still foreseen that any group mandated to develop the guideline would need to meet 2 to 3 times prior to COP2. |
| *for review* | At least 60 days prior to submission to the Bureau |
| *for submission to the Bureau* | At least 90 days prior to the first day of the COP |
| *for circulation to the Conference of the Parties* | Minimum of 30 days prior to the first day of the COP |

(b) in radio broadcasting;  
(c) in information society services; and  
(d) through tobacco related sponsorship, including the free distribution of tobacco products.”
## ANNEX 5

### SAMPLE WORKPLAN FOR THE DEVELOPMENT OF GUIDELINES:

**EDUCATION, COMMUNICATION, TRAINING AND PUBLIC AWARENESS**

<table>
<thead>
<tr>
<th>Subject</th>
<th>Article 12: Education, communication, training and public awareness</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>CONTENTS:</strong></td>
<td></td>
</tr>
</tbody>
</table>
| Objectives and rationale | Rationale: Parties recognize the need to promote and strengthen public awareness of tobacco control issues, using all available communication tools, as appropriate.  
Objective: Successful implementation of tobacco control measures requires public awareness/education on tobacco control issues. Therefore, Parties shall promote broad access to effective and comprehensive public awareness programmes on health risks of tobacco use and exposure to tobacco smoke; benefits of cessation of tobacco use, adverse consequences of tobacco production and consumption, and importance of legislative and other tobacco control measures. Similarly, professionals, volunteers and office bearers working in areas that are particularly relevant for tobacco control, such as health planners and health professionals, community workers, media professionals, legislators, customs and police officials, need appropriate training on tobacco control. |
| Clear definition of elements of guidelines | 1. Specify essential components of and strategies for effective and comprehensive public awareness programmes on:  
   a. Health risks of tobacco use and exposure to tobacco smoke  
   b. Benefits of cessation of tobacco use  
   c. Adverse consequences of tobacco production and consumption  
   d. Importance of WHO FCTC provisions, to support implementation  
2. Recommendations on training and/or sensitization and awareness programmes on tobacco control, addressed to various professional groups, as enlisted in Article 12(d).  
3. Recommendations for allocation of human resources and health systems planning to enable health professionals and other groups to promote education, communication and public awareness on tobacco control.  
4. Specify strategies for providing public access to information on tobacco industry activities in the country. |
| Needs/value-added | 1. Provide uniformity in tobacco control measures and activities  
2. International cooperation and information sharing of the best practices and lessons learnt |
| Existing work to build on | WHO TFI:  
2. Tools for advancing tobacco control in the 21st century: Success stories and lessons learnt |

4. Tobacco industry and corporate responsibility: An inherent contradiction. WHO, 2004

5. Tobacco industry documents: What they are, what they tell us and how to search them. A practical manual (second edition) WHO, 2004

6. The development of Phillip Morris’ position on environmental tobacco smoke for its website. WHO, 2004

**PROCESS:**

| Implementing entity (mandated by the Conference of the Parties) | Option 1 – For the permanent secretariat to be mandated to take this role.  
| | Option 2 – Acting in its capacity as a technical adviser, for TFI to build upon this role.  
| | Option 3 – Permanent secretariat and TFI to establish an informal group of experts to advise Parties.  
| Parties who offer to act as key facilitators  
*either via resource mobilization or technical work | Ireland  
| Other Parties who (might) offer to partner in the development of guidelines | Thailand, Egypt, India  
| Parties who offer to act as reviewers (in addition to the usual peer experts) |  
| Resource implications | If the permanent secretariat is the implementing entity, then the COP should give the secretariat the necessary resources  
| | If the implementing entity is TFI, then TFI would need an additional budget  
| **Time frame:** |  
| for guideline development | One meeting necessary  
| for review | At least 60 days prior to submission to the Bureau  
| for submission to the Bureau | At least 90 days prior to the first day of the COP  
| for circulation to the Conference of the Parties | Minimum of 30 days prior to the first day of the COP

Dr OTTO (Palau), speaking as chair of the informal working group on guidelines, said that the group had completed the sample work plan for the elaboration of guidelines on Articles 8, 9 and 10, annexed to the draft decision, and was ready for consideration by the Committee. Further work was needed on Articles 11, 12 and 13 based on priorities yet to be established and on Articles 5.3 and 14. In the elaboration of the guidelines, the participation and expertise of nongovernmental organizations should be acknowledged.

(For continuation of the discussion, see summary record of the thirteenth meeting.)
2. MATTERS IDENTIFIED IN THE CONVENTION FOR ACTION BY THE
CONFERENCE OF THE PARTIES AT ITS FIRST SESSION: Item 4 of the Agenda
(continued)

Review of existing and potential sources and mechanisms of assistance (Article 26 Financial
resources, paragraph 5): Item 4.5 of the Agenda (Document A/FCTC/COP/1/4) (continued from the
eighth meeting, section 1)

The CHAIR invited the Committee to continue consideration of his paper on financial resources
and mechanisms.

Dr KUMMER (WHO Secretariat), responding to a request for clarification from Dr TAO Jin
(China), said that the introductory part of the Chair’s paper outlined the points the working groups had
considered. The second part, entitled “Draft Conference of the Parties’ decision”, was a proposal from
the Chair, based on contributions from the three working groups, for a decision to be submitted to the
plenary. The words “international organizations” in paragraph (4) meant organizations active at
international level, notably those of the United Nations system, which could provide political support,
or funding, or give a higher priority to tobacco control.

The CHAIR, responding to a request for clarification from Mr ALCÁZAR (Brazil), said that the
draft decision proposed measures for ensuring that tobacco control programmes were advanced
globally, especially in developing countries and countries with economies in transition. Such measures
included enhancing existing funding and establishing a new mechanism in order to initiate control
programmes in countries that needed them most.

In the third paragraph of the introductory text, the second sentence should be amended with the
insertion: “while stating the request for financial assistance” after “previously did not identify this
issue as one of their priorities”.

Dr SIDIBE (Mali), referring to the phrase “donor countries do not want to dictate aid priorities”,
said that there could be no dictating of priorities. Countries that had ratified the Convention had to
implement it and all should help one another.

The CHAIR said that the introductory text would be amended accordingly. He invited the
Committee to consider the draft decision itself.

Ms HU Meiqi (China) pointed out that the title should be amended to read “Financial resources
and mechanisms of assistance”.

It was so agreed.

Dr MAGISTRIS (Austria), speaking on behalf of the European Union, suggested that in the first
preambular paragraph the phrase “in order to enable them to implement” be replaced by “in order to
support them in their implementation”.

Mr ADLIDE (Australia) proposed the addition of the phrase “and taxation and financing
options” at the end of the paragraph.

Dr SIDIBE (Mali) suggested that, instead of highlighting the case of developing countries and
countries with economies in transition, the paragraph should affirm the need for all countries to work
together towards implementation.

Mr CASO GONZÁLEZ (Mexico), supported by Mr ALCÁZAR (Brazil), noted that paragraphs (10) and (11) of the draft decision made specific reference to the areas of priority
determined by the working group that he had chaired. The first preambular paragraph should therefore
be amended accordingly.

Dr SIDIBE (Mali), referring to the second preambular paragraph, said that he could not accept
that the provision of resources was contingent on countries actively requesting support. That was
contrary to the spirit of Article 26.5(a), which emphasized the importance of assisting Parties in
meeting their obligations. All Parties to the Convention were under an obligation to implement it and
were entitled to assistance in so doing, whether or not a request was made.

In response to a comment by Ms KONGSVIK (Norway), the CHAIR suggested the addition, at
the end of that text, of the words “that are Parties to the Convention.” He further suggested that the
Committee revert to consideration of the first preambular paragraph at a later stage.

It was so agreed.

Mr ALCÁZAR (Brazil) suggested that for greater clarity the second preambular paragraph
should be divided into three, since it contained three different ideas. The second idea, that existing
funding arrangements were often already tied to health programmes, should be highlighted. He
accordingly proposed that the second preambular paragraph should read: “Recognizing that existing
funding arrangements are in many countries already tied up to other health programmes”, that the third
preambular paragraph should read “Recognizing also that the level and nature of dedicated funds for
tobacco control implementation activities is very difficult to assess, since the amount of resources
required and the time when resources are required is currently unknown” and that the
fourth preambular paragraph should read “Recognizing that the provision of resources is contingent on
countries actively requesting support in this area and finding donors willing to provide assistance to
tobacco control programmes.”

Dr LEWIS-FULLER (Jamaica) agreed to split the preambular paragraph, but emphasized the
need to resolve the uncertainties about resources required.

Dr NGABA (Central African Republic) proposed that, after the fourth preambular paragraph, in
order to harmonize with paragraph (7), an additional preambular paragraph should be added, to read
“Considering that in some developing countries and countries with economies in transition, tobacco
control programmes are not a national development priority”.

Ms ALI HIGO (Djibouti) proposed that the new third preambular paragraph should read
“Recognizing also that the level and nature of dedicated funds for tobacco control implementation
activities must be assessed once the amount of resources required is known.”

Ms ST LAWRENCE (Canada) pointed out that the assessment had already been made; it
formed the key findings of the study by the Secretariat on which the draft decision was based.

Following further drafting suggestions, the CHAIR suggested that the text proposed by Djibouti
be revised to read: “Recognizing also that the level and nature of dedicated funds for tobacco control
implementation activities is very difficult to assess, since the amount of resources required and the
time when resources are required is currently unknown, and recognizing that these needs require better
assessment;” and that the second preambular paragraph be broken into three separate paragraphs, with
the order to be determined later.

It was so agreed.
In response to comments by Dr SIDIBE (Mali) and Ms ST LAWRENCE (Canada), the CHAIR suggested that the sequence of the fifth to eighth [former third to fifth] preambular paragraphs should be reordered in order to correspond to the subparagraphs of Article 26.5 of the Convention.

It was so agreed.

The second to eighth preambular paragraphs, as amended, were approved.

Ms KONGSVIK (Norway) said that in the tenth [former seventh] preambular paragraph, the words “for a mechanism” should be deleted, as the subject was better dealt with in an operative paragraph that came later.

In response to comments by Dr SIDIBE (Mali) and Ms ALI HIGO (Djibouti), she pointed out that there was no obligation under Article 26.5(d) to establish a new mechanism: other options were open, including the enhancing of existing mechanisms.

The CHAIR suggested a compromise whereby the words “for a mechanism” would be replaced by “to utilize all appropriate mechanisms”.

The tenth preambular paragraph, as amended, was approved.

Ms MAYSHAR (Israel) said that the eleventh [former eighth] preambular paragraph overstated Article 6 of the Convention, which did not require, but rather encouraged, Parties to adopt measures in relation to taxation policies. The word “requires” should accordingly be replaced by “encourages”.

Dr BLOOMFIELD (New Zealand) suggested that in order to be consistent with the wording of Article 6, the phrase “measures in relation to their taxation policies” should be replaced by “price and tax measures to reduce the demand for tobacco”.

The eleventh preambular paragraph, as amended, was approved.

The CHAIR, inviting the Committee to revert to the second [former first] preambular paragraph, read out the following new version, incorporating amendments proposed earlier by Austria, on behalf of the European Union, and Australia: “Recognizing the urgent need for assistance to developing countries and countries with economies in transition, and to support them in their implementation of the WHO Framework Convention on Tobacco Control, particularly in the areas of research related to tobacco use, prevention of tobacco uptake, cessation of tobacco consumption, combating diseases derived from tobacco consumption and taxation and financing options.” He suggested the inclusion, at the end of the paragraph, of the phrase “as per stated need”.

Mr AFAAL (Maldives) suggested that the words “developing countries and countries with economies in transition” be replaced by “developing country Parties and Parties with economies in transition”, to bring the text into line with the wording of the Convention.

Mr CASO GONZÁLEZ (Mexico) said that the priority areas of advocacy and capacity building for tobacco control should also be mentioned.

Mr ALCÁZAR (Brazil), supported by Ms ALI HIGO (Djibouti), proposed that the rapidly growing list of specific areas be replaced by a simple reference to Article 22 of the Convention, which encompassed all of them.

Dr AL-LAWATI (Oman), supported by Dr BLOOMFIELD (New Zealand) and Mr ADLIDE (Australia), said that even with such a reference, the paragraph was unsatisfactory, as it limited the
areas of potential assistance. He would prefer deletion of the last part of the paragraph, beginning “particularly in the areas of …”.

The CHAIR suggested that the Committee approve the following wording, as proposed by Oman, for the second [former first] paragraph: “Recognizing the urgent need for assistance to developing country Parties and Parties with economies in transition to support them in their implementation of the WHO Framework Convention on Tobacco Control.”

**The second preambular paragraph, as amended, was approved.**

The CHAIR invited the Committee to consider the operative paragraphs.

Mr ALCÁZAR (Brazil), referring to paragraph (1), proposed the addition of the words “funding of” after “prioritization of”, since the draft decision concerned financial resources for tobacco control.

Dr MAGISTRIS (Austria), speaking on behalf of the European Union and supported by Dr KAWAI (Japan), proposed the insertion of the words “national and” before “international level”. He could not support the proposals to insert a reference to funding, as that was not the subject of that particular paragraph.

Dr LEWIS-FULLER (Jamaica), supported by Mr ADLIDE (Australia) and Mr DEANE (Barbados), endorsed the proposal to refer to tobacco control at both national and international levels. The draft decision should cover prioritization of all aspects of tobacco control, which would encompass funding as well as political and other forms of support.

Dr TORRES LAO (Peru), Ms KONGSVIK (Norway) and Mr CASO GONZÁLEZ (Mexico) thought that the paragraph was acceptable as it stood.

Dr SIDIBE (Mali) and Ms ALI HIGO (Djibouti) favoured a reference to funding.

Dr ELSUBAI (Sudan) proposed the use of the word “resources”, which had a broader connotation than “funding”.

The CHAIR said that the intent of the draft decision was to urge the Health Assembly to play a stronger advocacy role for resource mobilization in order to support tobacco control activities at the national and international levels. He suggested the following formulation: “to call upon the World Health Assembly to give full support to the prioritization of resource mobilization for tobacco control at the national and international levels”.

**Paragraph (1), as amended, was approved.**

Dr MAGISTRIS (Austria), speaking on behalf of the European Union, said that she had some reservations as to that wording but would not oppose the adoption of the paragraph.

The CHAIR invited the Committee to consider paragraph (2).

Mr ALCÁZAR (Brazil) proposed the insertion of the words “funding for” before “tobacco control”.

Mr ADLIDE (Australia) said that the words “resource mobilization for”, as used in paragraph (1), would be preferable.
In response to a comment by Dr SIDIBE (Mali), the CHAIR suggested the following wording for paragraph (2): “to invite the United Nations Secretary-General to provide a report to the United Nations Economic and Social Council, with the aim of adoption of a resolution on tobacco control and related resource mobilization by the Economic and Social Council;”.

**Paragraph (2), as amended, was approved.**

The CHAIR invited the Committee to consider paragraph (3).

Dr ASSOGBA (Benin) said that the paragraph seemed to imply that the Conference of the Parties had abdicated its responsibilities in relation to mobilizing resources for tobacco control, since it was inviting the United Nations Task Force on Tobacco Control to report on that subject at its second session.

Mr AITKEN (WHO Secretariat) explained that the Task Force had been formally established by a resolution of the Economic and Social Council some years earlier, and had been given new impetus with the start of negotiations on the Framework Convention. WHO led the Task Force, which consisted of about 17 United Nations organizations and two other agencies. Its purpose was not to usurp the work of individual Member States or of bodies such as the Conference of the Parties, but to serve as a mechanism for coordination among organizations of the United Nations system.

The CHAIR added that the Task Force reflected the Economic and Social Council’s appreciation of the magnitude of the tobacco problem and of the need to provide a coordinated global response to it. The Task Force was synergizing the efforts of many organizations in the United Nations system, and paragraph (3) aimed to encourage its advocacy work and to enhance resource allocation for tobacco control within the expanded forum of the entire United Nations family.

**Paragraph (3) was approved.**

The CHAIR invited the Committee to consider paragraph (4).

Ms KONGSVIK (Norway) said that the words “all international organizations” implied that even bodies such as IAEA, whose work had nothing to do with tobacco control, should highlight it as a priority. The words “where relevant” should be inserted after “organizations”. The idea that tobacco control had an “important role” in achieving the Millennium Development Goals was likewise problematic and the word “important” should accordingly be deleted.

Mr MUTOMB MUJING (Democratic Republic of the Congo) said that all organizations, including IAEA, needed to deal with tobacco control, at the very least by protecting their workers from passive smoking.

Dr LEWIS-FULLER (Jamaica) agreed with Norway that it would be difficult for WHO to impose its own perspective on tobacco control on every organization in the United Nations system. Rather than highlighting tobacco control as a priority, organizations might be asked to support tobacco control measures.

The CHAIR said that the intent of the text was to call on other international actors to play a larger role in tobacco control. He therefore suggested the following wording for the first part of the paragraph, on the understanding that the discussion would be pursued at the Committee’s next meeting: “to call upon all international and regional organizations to support activities related to tobacco control and to acknowledge its role in the achievement of the Millennium Development Goals…”.

**The meeting rose at 13:05.**
ELEVENTH MEETING
Tuesday, 14 February 2006, at 15:10
Chair: Dr K.S. REDDY (India)

MATTERS IDENTIFIED IN THE CONVENTION FOR ACTION BY THE CONFERENCE OF THE PARTIES AT ITS FIRST SESSION: Item 4 of the Agenda (continued)

Review of existing and potential sources and mechanisms of assistance (Article 26 Financial resources, paragraph 5): Item 4.5 of the Agenda (continued)

Dr MURASHIGE (Japan), referring to paragraph (5) of the draft decision on financial resources and mechanisms of assistance, suggested that “call upon” should be replaced by “encourage”. It could also be indicated that the obligations were under Article 5.6 of the Convention.

Ms KONGSVIK (Norway) said that the beginning of the paragraph should be amended in order to read: “to encourage developed country Parties to assist developing country Parties in their implementation of tobacco control, in line with…….”. The words “technical and” should be inserted before “financial support”, and “through bilateral, regional, international or non-governmental channels” added at the end of the paragraph. The phrase “as a funding priority” should be deleted.

In response to a request for clarification from Mr DEANE (Barbados) regarding the phrase “in line with their obligations under the Convention”, the CHAIR said that reference to the Convention had been included in order to indicate that countries would require technical as well as financial assistance in meeting their various obligations under the Convention, and that such assistance would become available from other Parties through the various channels outlined.

Ms KONGSVIK (Norway) said that the language used in paragraph (5), referring to developed country Parties, and paragraph (8), which concerned developing country Parties, should be consistent. She could accept either “to call upon” or “to strongly encourage”.

Dr BLOOMFIELD (New Zealand) said that he would be uncomfortable “calling upon” international bodies, if the Parties themselves were only being “encouraged”. Reference to Article 5.6 might actually weaken the text, since obligations to provide assistance featured in other articles of the Convention. He would therefore prefer the original wording “obligations under the Convention”.

The CHAIR said that the Framework Convention, in Article 26.3, strongly exhorted Parties to assume their obligations. It might therefore be preferable to retain the words “to call upon” at the beginning of the paragraph. He suggested that “to call upon” should be used throughout the operative part of the decision when the Parties themselves were being addressed; the words “to strongly encourage” should be used when the reference was to other organizations.

Dr MURASHIGE (Japan) said that she could accept the Chair’s suggestion.

It was so agreed.

Dr SIDIBE (Mali) said that he would prefer the original wording; the phrase “to assist developing country Parties” suggested by Norway should be deleted. Developed country Parties not
only had an obligation towards developing country Parties; they should not lose sight of their own obligations under the Convention in terms of national policies and strategies.

Mr ALCÁZAR (Brazil) endorsed those comments.

Ms KONGSVIK (Norway) expressed disagreement with the suggestion made by Mali, because the Conference of the Parties could not impose on any individual Party to the Convention a particular policy for its national funding priorities.

Dr BLOOMFIELD (New Zealand) said that the original text as proposed incorporated two ideas: first, the need for developed countries to prioritize funding in order to implement the Convention in their own jurisdictions; secondly, the need for those Parties to provide developing countries with technical and financial support. The first idea appeared to have been lost in the revised wording suggested.

The CHAIR said that, although the principle that all countries should prioritize tobacco control as a funding priority applied universally to developed and developing countries alike, the paragraph should be seen in the context of Article 26.5(d) relating to mechanisms for channelling additional financial resources to developing countries and countries with economies in transition. To simplify the text, he suggested that the paragraph be amended to read “to call upon developed country Parties, in accordance with their obligations under the Convention, to provide technical and financial support to developing country Parties and Parties with economies in transition for this purpose, through bilateral, regional, international or nongovernmental channels”.

Seeing no objection, he took it that the wording he had suggested was acceptable.

**Paragraph (5), as amended, was approved.**

Dr NZEYIMANA (Rwanda), referring to paragraph (6), said that the words “regional and subregional” should be inserted before “organizations” and “financial institutions”. Reference to advice “in the area of tax reform” was too restrictive, and it would be better to say “in the areas defined in Article 22 of the Framework Convention”.

Ms KONGSVIK (Norway) said that, as some international organizations lacked a mandate to fund tobacco control, the word “relevant” should be inserted before “international”. She also suggested that “a funding priority” should be replaced by “eligible for funding”.

Dr ASSOGBA (Benin) suggested that “donors” should be replaced by “partners in development”.

Dr KUMMER (WHO Secretariat), in response to a request for clarification from Dr SIDIBE (Mali), said that paragraph (6) related to Article 6 of the Framework Convention, it being indeed intended to support countries in their efforts to implement that Article, i.e. to reduce the demand for tobacco through price and tax measures.

The CHAIR said that, in the light of the comments made, the paragraph might be amended to read: “to strongly encourage relevant international, regional and subregional organizations, international financial institutions and other partners in development to identify the implementation of tobacco control as eligible for financial support, technical assistance, and advice in the area of tax reform, which can be provided to developing country Parties and Parties with economies in transition”.

Dr ASSOGBA (Benin) observed that paragraph (8) was also linked to Article 6 of the Convention.
In response to a comment from Dr SIDIBE (Mali) that the text should refer to the need for Parties to meet their obligations under the Convention, the CHAIR suggested that the phrase “to help them meet their obligations related to the Convention” should be added at the end after “in transition”.

Dr BLOOMFIELD (New Zealand) agreed that “advice in the area of tax reform” was too broad; it would be better to say “advice in the area of tax measures in order to reduce the demand for tobacco”. Furthermore, the words “the implementation of” before “tobacco control” should be deleted.

**Paragraph (6), as amended, was approved.**

In response to a comment from Dr ASSOGBA (Benin) that paragraph (7) merely repeated the ideas set out in the preceding two paragraphs and should be deleted, the CHAIR pointed out that paragraphs (5) and (6) called upon developed country Parties and international organizations respectively; paragraph (7) addressed developing country Parties and Parties with economies in transition.

In response to an observation from Dr SIDIBE (Mali) that “to identify” was too vague a term and did not place any obligation on the countries concerned, the CHAIR suggested that “to designate” might be more appropriate.

Dr LEWIS-FULLER (Jamaica) said that she had misgivings about the text as it stood. Why were only the developing country Parties and Parties with economies in transition being called upon to identify tobacco control as a national development priority, and to communicate that to development partners? Should that request not also apply to the developed country Parties?

The CHAIR said that, although all countries needed to designate tobacco control as a priority, the developing countries would be carrying out measures through their development partners. Some observations in the interim secretariat’s study\(^1\) suggested that some developed countries had encountered difficulties regarding assistance to developing countries as no specific request to that end had been received or the matter had not been indicated as a national development priority. Paragraph (7) was intended to remove any ambiguity in that respect.

In response to a comment by Dr ELSUBAI (Sudan) on how easy it would be for developing countries, given their problems, to make tobacco control one of their main priorities, the CHAIR said that in becoming Parties to the Framework Convention countries had recognized the importance of tobacco control. As the Convention called upon countries to recognize tobacco control as an important area linked to development, it should not be too difficult for countries to make it one of their priorities for national development.

Dr MAGISTRIS (Austria), speaking on behalf of the Contracting Parties in the European Community, suggested the addition of “and a long-term policy” after “a national developmental priority”.

Dr NGABA (Central African Republic) endorsed the comments of Mali. Since it would be more appropriate to reflect the idea that tobacco control featured among other priorities for developing countries, he suggested that “a national developmental priority” be replaced by “one of the national developmental priorities”.

---

\(^1\) Document A/FCTC/IGWG/2/4 Rev.1.
Dr TORRES LAO (Peru) said that the paragraph as it currently stood implied that tobacco control was to be a national priority for the developing countries only. Tobacco control should be a national priority for the developed countries as well, including those not having signed the Convention. He requested clarification of “to communicate this to development partners”, which could be construed as other regional and international organizations.

The CHAIR said that, even though all Parties to the Convention had an obligation to develop tobacco control policies and programmes and to identify them as national priorities, a paragraph was needed in order to ensure that the prioritization process was communicated to other development partners. The paragraph should be seen not in the overall context of the Convention but in the specific context of Article 26.5(d), relating to assistance to developing country Parties and Parties with economies in transition.

Mr DEANE (Barbados) said that paragraph (7), as it stood, did not provide a strong enough link to the nature of the information being communicated and the reason for its communication. The paragraph was closely linked to paragraph (10) on needs assessment in the light of the total obligations of developing country Parties. Paragraph (7) might be amended to read: “to call upon developing country Parties and Parties with economies in transition to make the implementation of tobacco control a national developmental priority in the light of the needs assessment and in keeping with their total obligations under the Convention, and to communicate this information to development partners”.

Dr BLOOMFIELD (New Zealand) sought clarification regarding the amendment put forward by Austria. As paragraph (7) referred to Parties to the Convention, it might be preferable to make the implementation of the Convention a long-term development priority, rather than “the implementation of tobacco control”.

Dr LEWIS-FULLER (Jamaica) reiterated that both developing and developed countries would have to identify tobacco control as a priority in order to gain access to the necessary resources. The text might be amended to read: “to call upon all country Parties to identify the implementation of the Convention as a national developmental priority, and to communicate this to development partners and funding entities with which they may have some association”.

Ms KONGSVIK (Norway) said that she was unclear about the intent of the text. Was tobacco control to become a national development priority for developed and developing countries alike? Norway was already implementing all the provisions of the Convention and it would be difficult for tobacco control to become more of a national priority for her country.

The CHAIR said that the text was intended to ensure that virtually every country regarded tobacco control as an ongoing development priority for as long as the threat of tobacco existed. This remained important even for countries which had made significant advances in tobacco control.

Ms MAYSHAR (Israel) said that developing countries were being called upon to make tobacco control and implementation of the Convention a priority. In that case, it should also be a priority for donor countries to provide funding.

The CHAIR observed that the wording suggested by Jamaica made implementation a national priority for all countries.

In response to a comment from Dr ZHANG Bin (China), the CHAIR said that the country concerned could accord priority and choose any development partner it wished.
Mr CASO GONZÁLEZ (Mexico) welcomed the comments by the representative of Jamaica and said that the words “long-term” might be incorporated in the wording she had suggested.

Dr MAGISTRIS (Austria), speaking on behalf of the Contracting Parties in the European Community, endorsed the views expressed by Norway; it would be difficult to put tobacco control on the development agenda of the Community’s Member States. The new wording suggested did not reflect the original intent.

Mr NOVRUZOV (Azerbaijan) suggested that the text be amended to read “as one of the development priorities”.

The CHAIR recalling the comments of Barbados that paragraphs (7) and (10) were linked, suggested that paragraph (7) be replaced by paragraph (10) and read: “to call upon developing country Parties and Parties with economies in transition to conduct needs assessments in the light of their total obligations related to the implementation of all provisions of the Convention and to communicate their prioritized needs to development partners.” That would avoid any discussion of national development priorities.

Dr BLOOMFIELD (New Zealand) and Dr LEWIS-FULLER (Jamaica) supported that suggestion.

Paragraph (7), as amended, was approved.

Mr ALCÁZAR (Brazil), referring to paragraph (8), observed that Article 6 of the Convention made no reference to the mobilization of national resources for supporting tobacco control programmes. The words following “Article 6” should therefore be deleted.

Mr AFAAL (Maldives) supported that suggestion. In addition, “to consider the adoption of” should be replaced by “to adopt”, and “price and” should be inserted before “tax measures” to make the text consistent with Article 6.

Dr SIDIBE (Mali) agreed that “to adopt” was stronger than “to consider the adoption of” and more likely to result in the mobilization of resources.

Mr ZHAO Baidong (China) proposed deleting paragraph (8) since Article 6 of the Convention made it clear that price and tax measures were matters for national authorities.

The CHAIR said that the rationale of paragraph (8) was that financial resources could be supplemented through increased mobilization of national resources as a result of price and tax measures.

Mr ALCÁZAR (Brazil) endorsed the suggestion of China and further proposed deleting the last preambular paragraph. As there was no direct link between taxation increases and resources for health programmes, that paragraph and paragraph (8) were unnecessary.

Mr NOVRUZOV (Azerbaijan) endorsed the suggestions made by China and Brazil.

Dr SIDIBE (Mali) said that tax measures were a means of reducing tobacco consumption, and every State was entitled to set its taxation rates in accordance with its health objectives. Steps to increase taxation could help some developing countries finance a number of tobacco control measures.
The CHAIR said that how taxation revenues were spent was a decision for national policy-makers alone. It might therefore be appropriate to delete paragraph (8) and the last preambular paragraph, as suggested by China and Brazil.

Mr ADLIDE (Australia) said that paragraph (8) related to funding mechanisms, not to the question of the pricing and taxation of tobacco products, and he would support deleting the present text. However, the draft decision should reflect the need for developing countries and countries with economies in transition to be able to sustain the funding for tobacco control measures, and the role of in-country financial mechanisms in that regard.

Dr MAGISTRIS (Austria), speaking on behalf of the States Parties in the European Community, supported those comments.

The CHAIR suggested that, in the light of the discussion, the last preambular paragraph might be amended to read national: “Considering that these mechanisms of international assistance will supplement increased resource mobilization by developing country Parties and Parties with economies in transition”.

It was so agreed.

The CHAIR invited the delegates of Australia and Austria to consult informally with a view to formulating an acceptable text for paragraph (8).

Following the informal consultations, Dr MAGISTRIS (Austria) said that the paragraph might be replaced by: “to call upon developing country Parties and Parties with economies in transition in order to work on the development of sustainable in-country financing mechanisms for tobacco control”.

Paragraph (8), as amended, was approved.

The CHAIR, referring to paragraph (9), suggested that “utilizing the reporting format suggested in Annexures A and B” be added at the end of the paragraph.

Dr LEWIS-FULLER (Jamaica) suggested that the paragraph be further amended by adding “and other resources” after “sources of funding”.

Paragraph (9), as amended, was approved.

The CHAIR noted that paragraph (10) had been incorporated into paragraph (7). The paragraphs would be renumbered accordingly in the revised draft decision.

It was so agreed.

The CHAIR suggested that paragraph (11) be amended by replacing “existing funding” with “existing mechanisms of funding and technical assistance”; “donors” should be replaced by “development partners”.

In reply to a question by Ms KONGSVIK (Norway), the CHAIR said that the action requested was a designated function of the secretariat, as provided for in Article 26.5(b) of the Framework Convention.

Paragraph (11), as amended, was approved.
Dr MAGISTRIS (Austria), speaking on behalf of the States Parties in the European Community and referring to paragraph (12), suggested that “accept” be replaced by “receive”, and that “recommending or” be deleted.

Dr BLOOMFIELD (New Zealand) suggested that “likely” be replaced by “potential”.

**Paragraph (12), as amended, was approved.**

Ms KONGSVIK (Norway), referring to paragraph (13), questioned the need for a mechanism since the secretariat could promote cooperation between developing countries. Accordingly, she would suggest that “establish and support a mechanism for promoting” be replaced by “promote”.

**Paragraph (13), as amended, was approved.**

Mr ADLIDE (Australia), referring to paragraph (14), said that the work done by the interim secretariat clearly showed that the needs of developing countries and countries with economies in transition, while they existed, had yet to be determined in any detail. Furthermore, the priority given by those countries to assist activities under the Convention was far from clear. Many traditional donors, including Australia, had recently made political commitments to greater official development assistance. Rather than the willingness of developed countries to provide resources to developing countries and countries with economies in transition, what was needed was effective aid that was demand-driven and aligned with the recipient country’s priorities and systems. There was concern that the plethora of vertical funding mechanisms for international assistance might have led to distortion and duplication in already pressurised health systems in developing countries. There was also concern that the proliferation of specialist bodies and funds might burden international health structures. The Conference should therefore be wary of setting up any new stand-alone funding mechanism as proposed in paragraphs (14) and (15), and Australia would propose their deletion.

Dr ANIBUEZE (Nigeria) said that the point, on which he had seen a consensus, was central to the Committee’s work; the paragraph might simply be amended with “to establish a voluntary global fund”.

Dr MAGISTRIS (Austria) supported the views expressed by Australia; not enough information was available about existing funding sources, and it would be premature to establish a fund. Effort should focus on improving information and networking.

Dr SIDIBE (Mali) said that, in identifying needs, the developing countries would learn from the experience of countries that had made progress in tobacco control which, if it became a national priority, would require fairly prompt action. Funding for the programmes concerned must be assured and specific. While a decision on a fund seemed premature, the option remained open. The funding mechanisms might be considered further, but ruling out such a fund because other mechanisms existed was too narrow a view.

Mr MUTOMB MUJING (Democratic Republic of the Congo) said that the establishment of a fund as provided for in paragraph (14), was essential. Financial support was needed for a strong Convention, and clear decisions on funding should be put forward by the Conference. The words “consider the establishment of” should be deleted.

Mr KAWAI (Japan) endorsed the position of Australia, adding that existing mechanisms should be used to avoid duplication, at least pending more information.

Mr AFAAL (Maldives), speaking on behalf of the States Parties in the WHO South-East Asia Region, emphasized the need for a fund to be established in order to assist developing country Parties
and Parties with economies in transition in implementing the Convention. The operative paragraph should therefore be retained, and the words “consider the establishment of” deleted.

The CHAIR, summarizing the discussions, said that some donor countries had expressed the view that the existing mechanisms should be developed and tested further; an additional mechanism should be set up only if existing mechanisms failed to provide enough assistance. Some developing countries had stated that the required levels of resource flows had not yet been reached and wondered whether they would be achieved. Continued postponement of consideration of an independent financial mechanism might affect tobacco control programmes in those countries. The term “voluntary global fund” appeared to cause some misgivings. Annexure C, however, indicated that the goal was a fund operated and administered by the secretariat of the Conference of the Parties for the purpose of tobacco control in order to provide targeted assistance to the countries in greatest need. The fund should therefore be seen not as an independent global fund but as a fund of the Conference of the Parties. To meet the concerns expressed, he suggested that “voluntary global fund” should be replaced by “tobacco control fund”. If that suggested amendment was not acceptable, the Committee might wish to establish a negotiating group to consider the matter further.

Dr ANIBUEZE (Nigeria), Dr BIANCO (Uruguay), Dr TORRES LAO (Peru) and Dr NGABA (Central African Republic) supported the Chair’s proposal.

Ms KONGSVIK (Norway) said that the establishment of a new fund was premature for want of any clear idea of funding requirements. Moreover, a new mechanism would not automatically attract funds. Tobacco control was a question not of large sums of money but essentially of political will, and of an appropriate legislative and administrative framework. The budget for WHO’s tobacco control activities had been increased for 2006-2007, she noted, and WHO itself served as a channel for allocating resources. The text should refer to existing mechanisms and the potential to explore them further.

The CHAIR said that the funding increase for WHO was a victory for tobacco control globally. However, the budget increase was for the Tobacco Free Initiative, not for the secretariat of the Conference of the Parties, and would flow to States non-Parties as well as to Parties to the Convention. The question was whether the secretariat would have sufficient funds for its own purposes and for its activities on behalf of the Conference of the Parties.

Dr KIENENE (Kiribati), speaking on behalf of the States Parties in the Western Pacific Region, recalled that in earlier discussions, the need for more information had been emphasized, in particular the time frame anticipated for establishing any fund. Since tobacco was becoming a health priority in the Pacific island countries, he welcomed the assistance those countries had received from bilateral sources in implementing strategies. He would support the Chair’s amendment.

The CHAIR suggested that all interested countries should join an informal discussion group to be led by Norway and Brazil.

It was so agreed.

The meeting rose at 18:15.
TWELFTH MEETING

Wednesday, 15 February 2006, at 10:15

Chair: Dr K.S. REDDY (India)

1. MATTERS IDENTIFIED IN THE CONVENTION FOR ACTION BY THE CONFERENCE OF THE PARTIES AT ITS FIRST SESSION: Item 4 of the Agenda (continued)

Review of existing and potential sources and mechanisms of assistance (Article 26 Financial resources, paragraph 5): Item 4.5 of the Agenda (continued)

The CHAIR first commended highly the recent passing of legislation banning smoking in bars, restaurants and private clubs in the United Kingdom of Great Britain and Northern Ireland. He then drew attention to the revised draft decision on financial resources and mechanisms of assistance, which read:¹

The Conference of the Parties,

Recognizing the urgent need for all Contracting Parties to support each other to ensure that the Framework Convention is implemented to the maximum level in all countries that are Parties to the Convention;

Recognizing the urgent need for assistance to developing country Parties and Parties with economies in transition to support them in their implementation of the WHO Framework Convention on Tobacco Control;

Recognizing also that the level and nature of dedicated funds for tobacco control implementation activities have been difficult to assess, since the amount of resources required and the time when resources are required is currently unknown, and recognizing that these needs require better assessment;

Considering that the mobilization of funding requires detailed needs assessment at country level;

Recognizing also that the provision of resources is contingent on countries actively requesting support in this area and finding donors willing to provide assistance to tobacco control programmes;

Recognizing that existing funding arrangements are in many countries already tied up to other health programmes;

Considering also that Article 26.5(b) of the Convention requires the secretariat to advise developing country Parties and Parties with economies in transition, upon request, on available sources of funding to facilitate the implementation of their obligations under the Convention;

Considering that Article 26.5(c) requests the Conference of the Parties at its first session to review existing and potential sources and mechanisms of assistance based on a study conducted by the secretariat and other relevant information, and consider their adequacy;

Considering that Article 26.5(d) requests the Conference of the Parties to take into account the results of the study in determining the necessity to enhance existing mechanisms or to establish a voluntary global fund or other appropriate financial mechanisms to channel additional financial

¹ Annexures A, B and C are not reproduced here; see summary record of the eighth meeting, section 1, for the texts.
resources, as needed, to developing country Parties and Parties with economies in transition, to assist them in meeting the objectives of the Convention;

Considering that mainstreaming tobacco control into such mechanisms as country strategies is a medium- to long-term objective, and that there is a need to utilize all appropriate mechanisms to meet immediate objectives and needs;

Considering that these mechanisms of international assistance will supplement increased national resource mobilization by developing country Parties and Parties with economies in transition,

DECIDES:

(1) to call upon the World Health Assembly to give full support to the prioritization of resource mobilization for tobacco control at the national and international levels;
(2) to invite the United Nations Secretary-General to provide a report to the United Nations Economic and Social Council, with the aim of adoption of a resolution, on tobacco control and related resource mobilization, by the Economic and Social Council;
(3) to invite the United Nations Task Force on Tobacco Control to provide to the Conference of the Parties, at its second session, a report on their activities and possible relevance to increasing accessibility to funding for tobacco control, and an outline of their work in intensifying the United Nations response to tobacco control;
(4) to strongly encourage all international and regional organizations to support activities related to tobacco control and to acknowledge its role in the achievement of the Millennium Development Goals, especially those related to poverty reduction, gender empowerment, reduction of child mortality, environmental sustainability and global partnership for development;
(5) to call upon developed country Parties in accordance with their obligations under the Convention, to provide technical and financial support to developing country Parties and Parties with economies in transition for this purpose, through bilateral, regional, international or nongovernmental channels;
(6) to strongly encourage relevant international, regional and subregional organizations, international financial institutions and other partners in development to identify tobacco control as eligible for financial support, technical assistance, and advice in the area of tax measures to reduce the demand for tobacco, which can be provided to developing country Parties and Parties with economies in transition, to help them meet their obligations related to the Convention;
(7) to call upon developing country Parties and Parties with economies in transition to conduct needs assessments in the light of their total obligations related to the implementation of all provisions of the Convention and to communicate their prioritized needs to development partners;
(8) to call upon developing country Parties and Parties with economies in transition to work on the development of sustainable in-country financing mechanisms for tobacco control;
(9) to request the secretariat to further develop and continuously update the database on available funding established in the course of the study carried out for the Conference of the Parties at its first session, taking into account the country reports to the Conference of the Parties on these items, and to make it available to Parties to assist them in identifying sources of funding and other resources, utilizing the reporting format suggested in Annexures A and B;
(10) to request the secretariat to assist developing country Parties and Parties with economies in transition, upon request, with the conduct of needs assessments, to advise them on existing mechanisms of funding and technical assistance, and to provide information to development partners on the needs identified;
(11) to request the secretariat to receive project proposals from developing country Parties and Parties with economies in transition, related to the implementation of the Convention, and directing these proposals to potential funding sources;
(12) to request the secretariat to promote South to South cooperation in the exchange of scientific, technical and legal expertise, as relevant to the implementation of the Convention;
(13) to urge developed countries, international financial institutions, international organizations and other donors to channel specific resources, based on requests, to developing country Parties and Parties with economies in transition for the implementation of the Convention, without which full implementation of the Convention will not be achieved;
(14) to request the secretariat to launch an awareness-raising campaign among potential donors to mobilize financial and technical support for developing country Parties and Parties with economies in transition, to assist them in implementing the Convention.

Paragraphs (1)-(12) had been amended in the course of the Committee’s previous meeting. The text elaborated by the informal working group led by Norway and Brazil appeared to have broad support and had been included as paragraphs (13) and (14).

In response to a question from Dr SIDIBE (Mali), he said that the French version of the text would be aligned with the English. The preamble could be reviewed following discussion of the proposed new formulations.

Mr AFAAL (Maldives) said that the States Parties in the WHO South-East Asia Region supported the new wording proposed for paragraphs (13) and (14).

Following a comment by Mr CASO GONZÁLEZ (Mexico) that the phrase “without which full implementation of the Convention will not be achieved” in paragraph (13) was too drastic and not entirely in accordance with reality, the CHAIR suggested that the wording be amended to read “without which full implementation of the Convention may be difficult to achieve”.

Mr CONCHA (Chile), speaking on behalf of States Parties in the WHO Region of the Americas, expressed support for the new wording proposed for paragraphs (13) and (14), and noted that, as a consequence reformulation of Annexure C would be necessary.

Dr MAGISTRIS (Austria), speaking on behalf of the European Union, welcomed the proposed text. In paragraph (13) the word “specific” before “resources” should be replaced by “appropriate” in order to indicate that there would be no earmarking of resources for a particular area. Annexure C might be deleted as there would be no reference to it in the text.

In reply to a suggestion from Mr MALOBOKA (Namibia) on behalf of the States Parties in the WHO African Region, the CHAIR pointed out that it would serve no purpose to add “to tobacco control activities” after “specific resources” because it was clear that tobacco control activities were implied.

Dr ASSOGBA (Benin) suggested that “donors” should be replaced with “development partners” in line with the wording used in other paragraphs.

It was so agreed.

In reply to a suggestion from Dr AL-SHAAR (Qatar), the CHAIR said that paragraphs (13) and (14) should be kept separate as they each involved a different activity.

Dr ANIBUEZE (Nigeria) said that his delegation could not accept the word “appropriate”, which failed to convey the meaning of specific or targeted resources.

Dr BLOOMFIELD (New Zealand) supported an amendment to the text to read: “...to channel resources, based on specific requests...”.

Dr LEWIS-FULLER (Jamaica) endorsed that suggestion.
The CHAIR said that, in the absence of any objection, he would take it that the amendment suggested by New Zealand was acceptable.

**It was so agreed.**

The CHAIR said that only those annexures referred to in the text would be included in the decision of the Conference of the Parties. The output of the three informal working groups should become part of the WHO Secretariat’s record for future use if necessary.

**It was so agreed.**

The CHAIR said that, in the absence of any objection, he would take it that the text of operative paragraph (14) was acceptable. In the interests of consistency, “donors” would be replaced by “development partners”.

**It was so agreed.**

Following a suggestion from Mr KAWAI (Japan) regarding Annexures A and B, the CHAIR pointed out that the reporting component relating to the two annexures was to be incorporated into the reporting format being developed under agenda item 5.1. However, the reporting system being developed under agenda item 5.1 only applied to Parties to the Convention. Annexure A was therefore relevant to that agenda item; Annexure B would be used by the secretariat in a modified format in order to obtain the necessary information from various development partners.

Dr SIDIBE (Mali) said that the text of the first preambular paragraph still gave the impression that Parties were being divided into two groups: the rich countries, and the poorer countries requiring funding. Parties should unite to ensure the uniform implementation of the Convention in all countries. Deletion of the words “to the maximum level” would encourage greater flexibility.

Ms KONGSVIK (Norway) said that the points made by Mali were extremely valid. However, they might be made in a decision-making context other than financial resources.

Dr LEWIS-FULLER (Jamaica) shared some concerns that the Parties were being divided into donors and recipients, which was not in the spirit of the Convention, and she supported the views expressed by Mali. The Parties constituted one body, with one goal, and not one set of countries directing resources to another set. Not only financial resources were required for full implementation of the Convention. Paragraph (8) might be amended to reflect the need to assist developing countries and countries with economies in transition in implementing sustainable measures.

The CHAIR pointed out that paragraph (8) dealt with sustainable in-country financing mechanisms, which were a matter for the Parties themselves, not for international development partners. There were specific points in the draft decision relating to the developed countries only.

Ms KONGSVIK (Norway) said that in order to engage in development cooperation her country needed a commitment on the part of the recipient countries concerned to undertake some independent action in order to achieve a goal.

Dr AL-MUTAWAA (United Arab Emirates) endorsed the views expressed by Mali and Jamaica, and stressed the need to maintain a spirit of partnership among all the Parties. During the discussions, it had indeed seemed that Parties had been divided into two groups, donors and recipients, and that only financial resources were important, whereas technical support, expertise and knowledge were also invaluable.
Following a discussion in which Dr SIDIBE (Mali), Mr MUTOMB MUJING (Democratic Republic of the Congo), and the CHAIR participated, Dr BLOOMFIELD (New Zealand) suggested that the first preambular paragraph should be amended to read: “Recognizing the urgent need for all Contracting Parties to implement the Convention to the maximum level”.

The CHAIR said that, in the absence of any objection, he would take it that the draft decision on financial resources and mechanisms of assistance, as amended, was approved.

The draft decision, as amended, was approved.¹

2. ADDITIONAL MATTERS IDENTIFIED IN THE CONVENTION FOR CONSIDERATION BY THE CONFERENCE OF THE PARTIES: Item 5 of the Agenda (continued)

Elaboration of protocols: Item 5.3 of the Agenda (continued from the ninth meeting)

The CHAIR invited the Committee to continue its consideration of the elaboration of protocols.

Ms EMMERLING (European Community) said that the Contracting Parties in the European Union had drafted another option for the operative part of the relevant draft Conference of the Parties decision, which read:

DECIDES:

(1) to ask the Secretariat to invite the WHO regions to nominate up to four experts per region to prepare a first draft for a protocol on illicit trade, as well as a group of four experts per WHO region to prepare a first draft for a protocol on cross-border advertising, promotion and sponsorship taking into account the work of entities competent in the matter. If the two expert groups cannot yet come up with first drafts for the two protocols for negotiation by the second Conference of the Parties, they should at least deliver a progress report at that date.

(2) the Conference of the Parties requests the Secretariat to make the necessary arrangements, including budgetary arrangements, for the expert groups to meet as soon as possible.

The approach used had been successful in the negotiations for the revision of the International Health Regulations. The European Community would actively share its considerable experience in the area.

The CHAIR recalled that the elaboration of protocols on illicit trade and on cross-border advertising had been considered as high-priority tasks. The question was whether to establish subsidiary bodies to undertake the negotiations, or groups of experts, who would identify key elements or work with the secretariat in order to draft the protocols for consideration by the second session of the Conference of the Parties. The second Conference of the Parties would then decide whether to initiate the negotiating process for those protocols.

Following a request for clarification from Mr CHOINIERE (Canada), Ms EMMERLING (European Community) explained that, as the approach was led by experts, experts from States non-Parties might be involved.

¹ Transmitted to the Conference of the Parties in the Committee’s first report and adopted as decision FCTC/COP1(13).
Mr MUTOMB MUJING (Democratic Republic of the Congo), speaking on behalf of the States Parties in the WHO African Region, supported the establishment of two groups of experts, drawn from each WHO Region and dealing with advertising and illicit trade respectively. The groups should work in parallel under the direction of the Bureau of the Conference of the Parties and report back to the Conference at its next session.

Mr ALCÁZAR (Brazil) welcomed the European Community’s proposal. The experts could be nominated by the States themselves rather than by WHO regional offices.

Mr CHOINIÈRE (Canada) suggested the group of experts could identify key elements for possible integration into a protocol, rather than prepare the first draft of the protocol itself.

Dr RAJALA (European Community) favoured a process based on evidence provided by experts, with a view to creating a balanced draft prior to the negotiations.

Mr CASO GONZÁLEZ (Mexico) welcomed the option proposed by the European Community.

The CHAIR requested the States Parties in the European Community to draft a new text taking into account the concerns expressed for consideration by the Committee at its next meeting.

The meeting rose at 12:00.
THIRTEENTH MEETING

Wednesday, 15 February 2006, at 15:00

Chair: Dr K.S. REDDY (India)
later: Dr C.T.O. OTTO (Palau)

ADDITIONAL MATTERS IDENTIFIED IN THE CONVENTION FOR CONSIDERATION BY THE CONFERENCE OF THE PARTIES: Item 5 of the Agenda (continued)

Elaboration of protocols: Item 5.3 of the Agenda (Document A/FCTC/COP/1/INF.DOC./3) (continued)

The CHAIR drew attention to the draft Conference of the Parties’ decision on elaboration of protocols that had been introduced in the ninth meeting.

Dr RAJALA (European Community) said that the option that the Community had put forward had been amended in order to take into account the views expressed at the previous meeting of the Committee. The Bureau was being given a central role in the nominating process, and Parties from WHO regions would also be consulted. WHO would be making a key contribution to the work.

Dr BETTCHER (WHO Secretariat) said that WHO’s Tobacco Free Initiative had been working on the problem of illicit trade for some time. A memorandum of understanding had recently been signed with the World Customs Organization, and WHO had been participating in its technical work. Since the adoption of the Framework Convention, WHO had also been furthering its collaboration with other agencies and organizations, such as the European Anti-Fraud Office, EUROPOL and INTERPOL. Illicit trade was one of the areas examined by the United Nations ad hoc Interagency Task Force on Tobacco on which WHO was playing a lead role. Assistance with regard to the problem of advertising was also ongoing. The binding directive on cross-border advertising being implemented by the European Community might provide a useful contribution to the elaboration of a protocol.

The CHAIR read out the first part of new text for option 6 proposed by the European Community:

“to ask the Secretariat, under the direction of the Bureau:

to invite each WHO Region, in consultation with the Parties from their Region, to nominate up to four experts per Region to prepare a first draft for a protocol on illicit trade, as well as a group of up to four experts per WHO Region to prepare a first draft for a protocol on cross-border advertising, promotion and sponsorship, taking into account the work of entities competent in the matter. If the two expert groups cannot yet come up with the first drafts for the two protocols for negotiation by the second Conference of the Parties, they should at least deliver a progress report at that date, setting out the scope, the main elements and the structure of the future protocols;

to make the necessary arrangements, including budgetary arrangements, for the expert groups to meet as soon as possible”.

He asked whether it was intended that the Bureau member representing a particular Region, or the relevant WHO Regional Office, would be involved in the consultation process and the nomination of experts.
Dr RAJALA (European Community) said that in practice the regional offices would consult the Parties. The Bureau would then verify that Parties had been consulted in an appropriate manner. In order to obtain the highest possible levels of expertise, it would be useful to nominate experts with specialist knowledge in different areas.

The CHAIR suggested that in order to avoid ambiguity the text might be amended to read “to invite each WHO Regional Office…”.

Mr CHOINIERE (Canada) expressed support in principle for the approach proposed. However, Canada had some difficulty with the idea that draft protocols should be prepared by a group of experts. The group of experts might identify the key elements for a protocol, but any draft should be sanctioned by the Bureau. He would also prefer the second sentence to read “… for consideration by the second Conference of the Parties” because negotiation would require a mandate, for which a subsidiary body would have to be set up.

Mr AFAAL (Maldives), speaking on behalf of the Parties in the WHO South-East Asia Region, and Dr WAQATAKIREWA (Fiji), speaking on behalf of the Pacific island States, expressed support for the revised text proposed by the European Community.

Mr MUTOMB MUJING (Democratic Republic of the Congo), speaking on behalf of the Parties in the WHO African Region, suggested that, in the interests of clarity, it should be stated that only experts from States Parties could be nominated. It might also be advisable to indicate that the work undertaken by the experts would be followed up at the next session of the Conference of the Parties.

The CHAIR said that, as each WHO Regional Office was to consult with Parties from its Region, the selection of experts was likely to be limited to experts from those States.

He suggested that Canada, Maldives and the European Community should draft a text for subsequent consideration by the Committee, incorporating the points made.

It was so agreed.

(For continuation of the discussion, see summary record of the fourteenth meeting, section 2.)

Elaboration of guidelines for implementation of Article 7 (Non-price measures to reduce the demand for tobacco) and Article 9 (Regulation of the contents of tobacco products): Item 5.2 of the Agenda (Document A/FCTC/1/INF.DOC./3) (continued from the tenth meeting, section 1)

The CHAIR invited consideration of the draft Conference of the Parties’ decision relating to the elaboration of guidelines which had been introduced in the tenth meeting.

Dr Otto took the Chair.

The CHAIR said that, because the informal working group had only been able to finalize the framework for the development of guidelines relating to Article 8, contained in Annex 1, and to the first part of Article 9 contained in Annex 2, it recommended that the Committee consider the templates relating to those two articles.

In reply to a question from Mrs SEDLMEIER (Austria), he said that the Conference had been mandated to elaborate guidelines relating to Article 13 but whether those guidelines would be used as a basis for a protocol had not been discussed in the informal group.

In the absence of any objection, he took it that the preamble was acceptable.

It was so agreed.
Ms EMMERLING (European Community) suggested that in paragraph (2) the words “to consider” should be replaced by “to take note of”.

It was so agreed.

In response to a comment from Ms CAVALCANTE (Brazil), the CHAIR said that paragraph (3) would be amended to cover to Articles 5.3 and 14. Paragraph (5) would be amended to read “Articles 9 to 13”.

Dr BLOOMFIELD (New Zealand), supported by Mrs SEDLMEIER (Austria), said that there were different expectations of the results to be achieved in elaboration of guidelines for Article 8 and the first part of Article 9 by the second session of the Conference of the Parties. He suggested that paragraphs (3) and (4) be combined to eliminate any confusion.

Following a discussion in which Dr BLOOMFIELD (New Zealand), Mr CHOINIERE (Canada), Ms EMMERLING (European Community), Ms LINDBAK (Norway) and Dr LEWIS-FULLER (Jamaica) took part, the CHAIR invited the representatives of New Zealand and the European Community to consult informally.

Dr BLOOMFIELD (New Zealand) said that the proposed new text for paragraph (3), developed in consultation with the European Community, would read as follows: “to accord the highest priority to guidelines on Article 8 and the first phase of Article 9, and to request the Secretariat to initiate work on these guidelines, on the basis of the templates, and to present draft guidelines to the second Conference of the Parties, if possible, or progress reports”.

The CHAIR, noting that there were no comments, took it that the proposed text was acceptable.

It was so agreed.

In response to a request for clarification by Dr MURASHIGE (Japan) on the criterion “willingness of Parties to lead” in paragraph (5)(1), the CHAIR explained that work on the guidelines might be prioritized if countries were willing to assist. There was no deadline by which Parties had to volunteer their services in that regard.

Ms MAYSHAR (Israel) suggested that, after the closure of the Conference of the Parties, countries could be sent information and asked whether they wished to be involved in future work on templates.

Ms EMMERLING (European Community), referring to paragraph (6), said that it was too ambitious to ask the secretariat to prepare a workplan when templates for some of the articles had not even been discussed.

The CHAIR, in reply to a question from Dr SIDIBE (Mali), confirmed that reference to regional representation would be included in the section relating to the implementing entity in the template for Article 8.

Mrs SEDLMEIER (Austria), supported by Mr DEVINE (Ireland), suggested that in the template the objective could be defined as: “and there is conclusive evidence that engineering approaches do not protect against exposure to tobacco smoke” were added at the end of the second sentence.
Dr BLOOMFIELD (New Zealand), supported by Dr LEWIS-FULLER (Jamaica), suggested the objective: “to provide guidelines for protection from exposure to tobacco smoke”. The existing text concerning the objective, as amended by Austria, could be added to the text relating to the rationale.

**It was so agreed.**

Mrs SEDLMEIER (Austria), speaking on behalf of the Contracting Parties in the European Union, said that, under the section headed “Process” in the template relating to Article 8, Finland should be deleted from the list of Parties offering to act as reviewers since it had also offered to partner in the elaboration of guidelines.

Ms LINDBAK (Norway) said that her country should be deleted from the list of Parties that offered to partner in the elaboration of guidelines as it was already listed as a reviewer.

Ms NOGUEIRA GUEBEL (Brazil) said that Brazil should be deleted from the list of Parties offering to act as key facilitators in the template for Article 8, as it intended to act as partner in the elaboration of guidelines.

Ms MAYSHAR (Israel) suggested that in the introduction to the template relating to Article 9 the following lines should be added after the second sentence: “Two additional phases regarding the development of a guideline for the regulation of the contents and emissions of tobacco products and a phase regarding the development of a guideline on the disclosure requirement under Article 10. This paper addresses the first phase. The order of the second and third phases shall be considered by COP2.”

Following an observation by Dr LEWIS-FULLER (Jamaica) on the need to change the title of the draft decision in order to reflect the inclusion of Articles 5.3 and 14, the CHAIR suggested that the title should be amended to read: “Elaboration of guidelines for implementation of the Convention”.

**It was so agreed.**

In response to a request for clarification from Ms HU Meiqi (China), the CHAIR explained that the actual modalities for partnering had not yet been discussed, but it was envisaged that the Parties concerned would meet in person in order to elaborate the guidelines; and that the review process could be undertaken by e-mail.

Dr MURASHIGE (Japan) said that the text relating to the time frame for guideline preparation in the template relating to Article 8 would be brought into line with that in the template relating to Article 9. The title of Annex 1 would be amended to read “Annex 1: Article 8: Protection from exposure to tobacco smoke”. The other annexes would follow that format although the templates for Articles 10-13 would remain as samples.

Ms LINDBAK (Norway), referring to the entry for “implementing entity” under the section “Process” in the template relating to Article 9, said that the bracketed text should be deleted. It was not for the Conference of the Parties to decide that the WHO Study Group on Tobacco Product Regulation would elaborate guidelines.

**It was so agreed.**

Dr MURASHIGE (Japan) suggested that in the template relating to Article 8, the implementing entity should be amended to read “Permanent secretariat, in consultation with TFI.”

**It was so agreed.**
The CHAIR, responding to a question from Mrs SEDLMEIER (Austria), as to whether Romania, which would soon become a Party, would be able to participate in the process, said that if countries had become Parties by the time work had started they would be able to take part.

Following comments from Dr MURASHIGE (Japan) and Ms MAYSHAR (Israel), he suggested that the words “in consultation with competent international bodies” should be added to the entry for implementing entity in the template relating to Article 9.

It was so agreed.

Representatives of the following Parties offered to act as partners in the elaboration of the guidelines: China, Articles 8-13; Finland, Article 9: Mexico, all relevant articles; Uruguay, Article 11; Chile, Hungary, Peru, Article 12; Thailand, Article 13; Jamaica offered to act as reviewer for Article 8.

Ms EMMERLING (European Community) asked for confirmation that work was to be initiated on Articles 8 and 9 only. All the other templates would be noted, but not negotiated or amended at the present stage.

The CHAIR said that Parties should communicate to the secretariat their interest in participating in the process concerning the templates for Articles 10-13.

Dr MURASHIGE (Japan) suggested that work being undertaken in collaboration with the International Organization for Standardization should be included as part of existing work to build on in connection with Article 9. In the section on time frame for guideline elaboration, “next COP” should be replaced with “second COP”.

The CHAIR, thanking Japan for those suggestions, said that the Committee had completed its consideration of the draft decision on elaboration of guidelines for implementation of the Convention.

(For approval of the draft decision, see summary record of the fourteenth meeting, section 2.)

**Reporting (Article 21 Reporting and exchange of information)**: Item 5.1 of the Agenda (Document A/FCTC/COP/1/INF.DOC./2) (continued from the ninth meeting)

The CHAIR drew attention to the revised outcome of the informal consultations facilitated by Australia and Canada, which read:

**SCOPE**

This paper outlines a proposed approach to reporting by Parties to the Conference of the Parties on progress in implementing the WHO Framework Convention on Tobacco Control. It covers broadly the first five years and it is expected that this will be reviewed by the Conference of the Parties prior to 2010.

**Article 21**

*Reporting and exchange of information*

1. Each Party shall submit to the Conference of the Parties, through the Secretariat, periodic reports on its implementation of this Convention, which should include the following:
   (a) information on legislative, executive, administrative or other measures taken to implement the Convention;
   (b) information, as appropriate, on any constraints or barriers encountered in its implementation of the Convention, and on the measures taken to overcome these barriers;
(c) information, as appropriate, on financial and technical assistance provided or received for tobacco control activities;
(d) information on surveillance and research as specified in Article 20; and
(e) information specified in Articles 6.3, 13.2, 13.3, 13.4(d), 15.5 and 19.2.

2. The frequency and format of such reports by all Parties shall be determined by the Conference of the Parties. Each Party shall make its initial report within two years of the entry into force of the Convention for that Party.

3. The Conference of the Parties, pursuant to Articles 22 and 26, shall consider arrangements to assist Parties, at their request, in meeting their obligations under this Article.

4. The reporting and exchange of information under the Convention shall be subject to national law regarding confidentiality and privacy. The Parties shall protect, as mutually agreed, any confidential information that is exchanged.

OBJECTIVE

Our objective in reporting is to enable Parties to understand and learn from each others’ experience in implementing the WHO Framework Convention on Tobacco Control by providing details of the progress being made by member countries in implementation.

The Parties’ reports will form the basis of reports on the implementation of the Convention consistent with Article 23.5(d).

GRADUATED REPORTING ARRANGEMENTS

It is suggested that reporting arrangements be graduated with the first report covering core items of data, legislation, taxation, and funding for implementation activities with more complex questions or more detail included in later reports. To facilitate this, questions could be clustered into three groups.

FREQUENCY AND TIMING OF REPORTS

It is proposed that Parties report initially two years after ratifying the Convention as required by the WHO Framework Convention on Tobacco Control, and then in every subsequent three years as follows:
• Parties report against all core Group 1 questions within two years of entry into force of the Convention for that Party. This would form the minimum reporting arrangements. Parties may also report against selected optional questions if they wish to do so. (See Annex.)
• Parties report against all Group 2 questions within five years of entry into force of the Convention for that Party. This would form the minimum reporting requirements. Parties may also report against selected optional questions if they wish to do so. (Yet to be determined.)
• Parties report against all Group 3 questions within eight years of entry into force of the Convention for that country. (Yet to be determined.)

These reports will be complemented by Parties’ annual country implementation plans.

This process will allow reports to be received by the Secretariat incrementally, rather than have all Parties’ reports due at the same time.
In preparing reports, Parties should be mindful of the opportunities for shared learning and, where appropriate, should include examples of best practice or e-mail contact details for someone who would be able to provide further information on an aspect of implementation.

ASSISTANCE TO DEVELOPING ECONOMY COUNTRIES AND COUNTRIES WITH ECONOMIES IN TRANSITION

(NOTE: This section will require review when other work on funding arrangements has progressed further.)

In this section of the report, Parties should report on:

- their ability to provide assistance, both financial and technical, in the case of donor countries, as well as assistance already provided; or
- their assessed areas of need and the extent to which these are or are not being met, and estimates of assistance, both technical and financial required to enable them to move to the next reporting group, in the case of developing economies and economies in transition. This could also include any constraints or barriers to implementation as well as the assistance already received/provided.

In addition, the Secretariat should consider, in particular, this section of Parties’ reports and operate as a clearinghouse seeking to facilitate coordination of available skills and resources with identified needs. In the first instance, the Secretariat should seek to manage this process within regions, to allow more efficient operation and greater understanding within regions.

EXISTING SURVEILLANCE DATA AND RESEARCH

The Secretariat should use its more detailed knowledge and understanding of existing data sets including the following WHO and Tobacco Free Initiative data:

- WHO/United States Centers for Disease Control and Prevention (CDC) Global Youth Tobacco Survey
- WHO/United States CDC Global School Personnel Survey
- WHO/United States CDC Global Health Professional Survey
- World Health Survey
- WHO Mortality Database
- The Regional Database on Tobacco Control
- WHO STEPwise

and any others to provide to Parties core data items to be used in completing country reports. This will ensure that these countries benefit from work already done and will also help to ensure consistency in reporting.

TRANSLATION

Parties will provide reports in one of the six designated languages, English or French is preferred if available, and shall not expect the Secretariat to provide translations. However, it is expected that the Secretariat, in considering the reports, will make available summaries or analysis of reports which focus on significant achievements or areas where information sharing could be valuable.

FEEDBACK ARRANGEMENTS

To facilitate access to examples of best practice in specific areas of tobacco control, it is proposed that all Parties’ reports are to be available on a web site and arranged under the headings – Two Year Reports, Five Year Reports and Eight Year Reports to enable Parties to
understand the progress being made internationally in implementing the WHO Framework Convention on Tobacco Control. It is expected that this web site will allow access by non-ratifying countries which may be seeking information to allow them to take effective steps in tobacco control. This is consistent with the objective to learn from each others’ experience.

It is expected that the Secretariat will prepare some feedback to Parties if requested, to be provided informally. It is further expected that the Secretariat will provide an analysis of the progress being made internationally in implementation of the Convention. Such a summary should be provided annually commencing in 2007 and should seek to:

- reflect international and regional progress;
- highlight significant achievements; and
- reflect the spirit of shared learning.

It is further suggested that existing WHO regional group meetings provide an opportunity to share learning and obtain feedback from other Parties on their progress in implementing the WHO Framework Convention on Tobacco Control.

FUTURE DIRECTIONS

It is further proposed that an independent assessment of the reporting arrangements be undertaken in 2009 with the matter to be further considered by the Conference of the Parties in 2010.

ANNEX

DRAFT REPORTING INSTRUMENT

1. Origin of the report

<table>
<thead>
<tr>
<th>(a) Name of Contracting Party</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(b) Information on National Contact/Focal Point</td>
<td></td>
</tr>
<tr>
<td>Name and title of contact officer</td>
<td></td>
</tr>
<tr>
<td>Mailing address</td>
<td></td>
</tr>
<tr>
<td>Telephone number</td>
<td></td>
</tr>
<tr>
<td>Fax number</td>
<td></td>
</tr>
<tr>
<td>E-mail</td>
<td></td>
</tr>
<tr>
<td>(c) Information on contact officer submitting the national report if different from the above</td>
<td></td>
</tr>
<tr>
<td>Name and title of contact officer</td>
<td></td>
</tr>
<tr>
<td>Mailing address</td>
<td></td>
</tr>
<tr>
<td>Telephone number</td>
<td></td>
</tr>
<tr>
<td>Fax number</td>
<td></td>
</tr>
<tr>
<td>E-mail</td>
<td></td>
</tr>
</tbody>
</table>
(d) Signature of the officer responsible for submitting report

<table>
<thead>
<tr>
<th>Name and title of officer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full name of the institution</td>
</tr>
<tr>
<td>Mailing address</td>
</tr>
<tr>
<td>Telephone number</td>
</tr>
<tr>
<td>Fax number</td>
</tr>
<tr>
<td>E-mail</td>
</tr>
<tr>
<td>Web page</td>
</tr>
</tbody>
</table>

(e) Period reported

(f) Date the report was submitted

2. Demographics

(a) Age:

<table>
<thead>
<tr>
<th>Age groups (15-65 years)</th>
<th>Percentage of total population</th>
</tr>
</thead>
</table>

(b) Ethnicity (optional):

| Name of ethnic group | Percentage of total population |

3. Tobacco use

i. Prevalence (ref. Article 19.2)

(a) Smoking tobacco:

<table>
<thead>
<tr>
<th>Age group</th>
<th>Tobacco products included</th>
<th>Year of data (latest available)</th>
<th>Prevalence (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Men</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Daily smokers</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Occasional smokers¹</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Women</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Daily smokers</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Occasional smokers¹</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

¹ Definitions to be provided by the Parties.
### Total

<table>
<thead>
<tr>
<th>Daily smokers</th>
<th>Occasional smokers$^1$</th>
</tr>
</thead>
</table>

(b) Smokeless tobacco, including snuff and chewing tobacco (optional):

<table>
<thead>
<tr>
<th>Age group</th>
<th>Tobacco products included</th>
<th>Year of data (latest available)</th>
<th>Prevalence (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Men</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Daily users</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Occasional users$^1$</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Women</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Daily users</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Occasional users$^1$</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Daily users</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Occasional users$^1$</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(c) If prevalence data is appropriate and available for ethnic groups, please provide.

### ii. Supply

(a) Licit supply of tobacco (ref. Article 19.2)

<table>
<thead>
<tr>
<th>Year (latest available)</th>
<th>Domestic production</th>
<th>Exports</th>
<th>Imports</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note: licit supply = domestic production + (imports - exports)

(b) Seizures of illicit tobacco (ref. Article 15.5)

<table>
<thead>
<tr>
<th>Year (latest available)</th>
<th>Cigarettes</th>
<th>Other tobacco products (optional; please specify product)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Quantity seized         |            |                                                        |
| (specify unit; e.g. millions of pieces) |            |                                                        |

$^1$ Definitions to be provided by the Parties.
(c) What percentage of total tobacco supply do you estimate to be illicit, or smuggled? (Ref. Article 15.5)

4. Taxation

(a) Please provide your country's rates of taxation for tobacco products for all levels of government, and be as specific as possible (specify the type of tax: excise, VAT or sales, import duties). (Ref. Article 6.3)

(b) Please attach the relevant legislation, in any available language. (Ref. Article 6.3) (Please provide legislation in one of the six preferred languages, if available.)

(c) Please provide retail prices for the most popular brand of domestic and imported tobacco products, and the relevant year. (Ref. Article 6)

5. Legislation

i. Core questions

Please check yes or no. For affirmative answers, you are asked to attach a brief summary and the relevant legislation. (Please provide legislation in one of the six preferred languages, if available.)

<table>
<thead>
<tr>
<th>Article</th>
<th>Has your country adopted and implemented legislative, executive, administrative and/or other measures on:</th>
<th>Yes (please attach a brief summary and relevant legislation)</th>
<th>No</th>
</tr>
</thead>
</table>

Price and tax measures

6.2(b) Prohibiting or restricting sales to and/or importations by international travellers of tax- and duty-free tobacco products?

Protection from exposure to tobacco smoke

- in indoor workplaces?
  - government buildings
  - health care facilities
  - educational facilities
  - private workplaces

Full/Partial/None
<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>8.2</td>
<td>in public transport?</td>
</tr>
<tr>
<td>8.2</td>
<td>in indoor public places?</td>
</tr>
<tr>
<td></td>
<td>- cultural facilities</td>
</tr>
<tr>
<td></td>
<td>- bars and night clubs</td>
</tr>
<tr>
<td></td>
<td>- restaurants</td>
</tr>
<tr>
<td></td>
<td>- other</td>
</tr>
</tbody>
</table>

**Regulation of tobacco product disclosures**

| 10 | Requiring manufacturers and importers of tobacco products to disclose to governmental authorities information about contents and emissions? |

**Illicit trade in tobacco products**

| 15.2(a) | Requiring marking of packaging to assist in determining the origin of the product? |
| 15.2(a) | Requiring marking of packaging to assist in determining whether the product is legally for sale on the domestic market? |
| 15.3 | Requiring that marking is in legible form and/or appear in its principal language or languages? |
| 15.4(b) | Enacting or strengthening legislation against illicit trade in tobacco products? |
| 15.4(e) | Enabling the confiscation of proceeds derived from the illicit trade? |
| 15.7 | Licensing or other actions to control or regulate production and distribution? |

**Sales to and by minors**

| 16.1 | Prohibiting the sales of tobacco products to minors? |
| 16.2 | Prohibiting or promoting the prohibition of the distribution of free tobacco products to the public and especially minors? |
| 16.3 | Prohibiting the sale of cigarettes individually or in small packets? |
| 16.6 | Providing for penalties against sellers and distributors? |
| 16.7 | Prohibiting the sales of tobacco products by minors? |

**Liability**

| 19.1 | Dealing with criminal and civil liability, including compensation where appropriate? |
ii. **Optional questions** (Responses to these questions are not required for Group 1 reports.)

<table>
<thead>
<tr>
<th>Article</th>
<th>Has your country adopted and implemented legislative, executive, administrative and/or other measures on:</th>
<th>Yes (please attach a brief summary and relevant legislation)</th>
<th>No</th>
</tr>
</thead>
</table>

**Regulation of the contents of tobacco products**

<table>
<thead>
<tr>
<th>9</th>
<th>Testing and measuring the contents of tobacco products?</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>Testing and measuring the emissions of tobacco products?</td>
</tr>
<tr>
<td>9</td>
<td>Regulating the contents of tobacco products?</td>
</tr>
<tr>
<td>9</td>
<td>Regulating the emissions of tobacco products?</td>
</tr>
</tbody>
</table>

**Packaging and labelling of tobacco products**

| 11.1(a) | Requiring that packaging and labelling do not promote a product by any means that are false or misleading? |
| 11.1(b) | Requiring that packaging and labelling also carry health warnings describing the harmful effects of tobacco use? |
| 11.2 | Requiring that packaging and labelling contains information on relevant constituents and emissions of tobacco products? |
| 11.3 | Requiring that the warnings and other textual information appear on each unit package, and on any outside packaging and labelling in your principal language or languages? |
| 11.1(b)(i) | Ensuring that the health warnings are approved by the competent national authority? |
| 11.1(b)(ii) | Ensuring that the health warnings are rotating? |
| 11.1(b)(iii) | Ensuring that the health warnings are large, clear, visible and legible? |
| 11.1(b)(iv) | Ensuring that the health warnings occupy no less than 30% of the principal display areas? |
| 11.1(b)(iv) | Ensuring that the health warnings occupy 50% or more of the principal display areas? |
| 11.1(b)(v) | Ensuring that the health warnings are in the form of, or include, pictures or pictograms? |

---

1 Please provide these documents in one of the six preferred languages.
### Tobacco advertising and sponsorship

<table>
<thead>
<tr>
<th>13.2</th>
<th>Instituting a comprehensive ban of all tobacco advertising, promotion and sponsorship?</th>
</tr>
</thead>
<tbody>
<tr>
<td>13.2</td>
<td>Does the ban include a comprehensive ban on cross-border advertising, promotion and sponsorship originating from its territory?</td>
</tr>
<tr>
<td>13.3</td>
<td>If your country is not in a position to undertake a comprehensive ban due to its constitution or constitutional principles, has your country applied restrictions on all tobacco advertising, promotion and sponsorship?</td>
</tr>
<tr>
<td>13.3</td>
<td>Restricting or instituting a comprehensive ban on cross-border advertising, promotion and sponsorship originating from its territory?</td>
</tr>
<tr>
<td>13.4(a)</td>
<td>Prohibiting all forms of tobacco advertising, promotion and sponsorship that promote a tobacco product by any means that are false or misleading?</td>
</tr>
<tr>
<td>13.4(b)</td>
<td>Requiring that health or other appropriate warnings or messages accompany all tobacco advertising and promotion and sponsorship?</td>
</tr>
<tr>
<td>13.4(c)</td>
<td>Restricting the use of direct or indirect incentives that encourage the purchase of tobacco products by the public?</td>
</tr>
<tr>
<td>13.4(d)</td>
<td>Requiring the disclosure to relevant governmental authorities of expenditures by the tobacco industry on advertising, promotion and sponsorship not yet prohibited?</td>
</tr>
<tr>
<td>13.4(e)</td>
<td>Restricting tobacco advertising, promotion and sponsorship on radio, television, print media and other media, such as the Internet?</td>
</tr>
<tr>
<td>13.4(f)</td>
<td>Prohibiting or restricting tobacco sponsorship of international events, activities and/or participants therein?</td>
</tr>
</tbody>
</table>

If you have any additional legislation not covered in Questions 5.i and 5.ii, you may provide additional details here:

---

6. **Plans and programmes**

   i. **Core questions**

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes (please attach the relevant text)</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Has your country developed and implemented comprehensive multisectoral national tobacco control strategies, plans and programmes?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If no, have some partial strategies, plans and programmes been developed and implemented?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

---

1 Please provide these documents in one of the six preferred languages, if possible.
If you responded yes to either of the first two questions, which of the following do these strategies, plans and programmes cover? **Please check, and provide a brief summary.** (Please provide the summary in one of the six preferred languages.)

<table>
<thead>
<tr>
<th>General obligations</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.2(a)</td>
</tr>
<tr>
<td>5.3</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Education, communication, training and public awareness</th>
</tr>
</thead>
<tbody>
<tr>
<td>12(a)</td>
</tr>
<tr>
<td>12(b)</td>
</tr>
<tr>
<td>12(c)</td>
</tr>
<tr>
<td>12(d)</td>
</tr>
<tr>
<td>12(e)</td>
</tr>
<tr>
<td>12(f)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Demand reduction measures concerning tobacco dependence and cessation</th>
</tr>
</thead>
<tbody>
<tr>
<td>14.1</td>
</tr>
<tr>
<td>14.2(a)</td>
</tr>
<tr>
<td>14.2(b)</td>
</tr>
<tr>
<td>14.2(c)</td>
</tr>
<tr>
<td>14.2(d)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Provision of support for economically viable alternative activities</th>
</tr>
</thead>
<tbody>
<tr>
<td>17</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Protection of the environment and the health of persons</th>
</tr>
</thead>
<tbody>
<tr>
<td>18</td>
</tr>
</tbody>
</table>
### Research, surveillance and exchange of information

<table>
<thead>
<tr>
<th>20.1(a)</th>
<th>Research that addresses the determinants and consequences of tobacco consumption and exposure to tobacco smoke as well as research for identification of alternative crops?</th>
</tr>
</thead>
<tbody>
<tr>
<td>20.1(b)</td>
<td>Training and support for all those engaged in tobacco control activities, including research, implementation and evaluation?</td>
</tr>
<tr>
<td>20.2</td>
<td>Programmes for national, regional and global surveillance of the magnitude, patterns, determinants and consequences of tobacco consumption and exposure to tobacco smoke?</td>
</tr>
<tr>
<td>20.3(a)</td>
<td>A national system for epidemiological surveillance of tobacco consumption and related social, economic and health indicators?</td>
</tr>
<tr>
<td>20.4</td>
<td>The exchange of publicly available scientific, technical, socioeconomic, commercial and legal information, as well as information regarding practices of the tobacco industry and the cultivation of tobacco?</td>
</tr>
<tr>
<td>20.4(a)</td>
<td>An updated database of laws and regulations on tobacco control, and information about their enforcement, as well as pertinent jurisprudence?</td>
</tr>
<tr>
<td>20.4(b)</td>
<td>Updated data from national surveillance programmes?</td>
</tr>
</tbody>
</table>

### ii. Optional questions

| 15.4(c) | All confiscated manufacturing equipment, counterfeit and contraband cigarettes and other tobacco products are destroyed, using environmentally-friendly methods, or disposed of in accordance with national law? |

### 7. Technical and financial assistance

The goal of this section is to assist the Secretariat in facilitating the coordination of available skills and resources with identified needs.

Has your country either provided or received financial or technical assistance (be it through unilateral, bilateral, regional, subregional or other multilateral channels, or relevant regional and international intergovernmental organizations and financial and development institutions) for the development and strengthening of multisectoral comprehensive tobacco control programmes of developing country Parties and Parties with economies in transition in any of the following areas:

<table>
<thead>
<tr>
<th>provision</th>
<th>Assistance provided (please give details below)</th>
<th>Assistance received (please give details below)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>☐ Yes / ☐ No</td>
<td>☐ Yes / ☐ No</td>
</tr>
<tr>
<td>Development, transfer and acquisition of technology, knowledge, skills, capacity and expertise related to tobacco control? <em>(Article 22.1(a))</em></td>
<td>☐ Yes / ☐ No</td>
<td>☐ Yes / ☐ No</td>
</tr>
<tr>
<td>Provision of technical, scientific, legal and other expertise to establish and strengthen national tobacco control strategies, plans and programmes? <em>(Article 22.1(b))</em></td>
<td>☐ Yes / ☐ No</td>
<td>☐ Yes / ☐ No</td>
</tr>
<tr>
<td>Appropriate training or sensitization programmes for appropriate personnel in accordance with Article 12? <em>(Article 22.1(c))</em></td>
<td>☐ Yes / ☐ No</td>
<td>☐ Yes / ☐ No</td>
</tr>
<tr>
<td>Provision of the necessary material, equipment and supplies, as well as logistical support, for tobacco control strategies, plans and programmes? <em>(Article 22.1(d))</em></td>
<td>☐ Yes / ☐ No</td>
<td>☐ Yes / ☐ No</td>
</tr>
</tbody>
</table>
Identification of methods for tobacco control, including comprehensive treatment of nicotine addiction? *(Article 22.1(e))* □ Yes / □ No □ Yes / □ No

Promotion of research to increase the affordability of comprehensive treatment of nicotine addiction? *(Article 22.1(f))* □ Yes / □ No □ Yes / □ No

Other. Specify:

Additional details:

Pursuant to Article 21.3, has your country either provided or received financial or technical assistance to support developing country Parties and Parties with economies in transition in meeting reporting obligations?

<table>
<thead>
<tr>
<th>Assistance provided</th>
<th>□ Yes / □ No (please give details below)</th>
<th>Assistance received</th>
<th>□ Yes / □ No (please give details below)</th>
</tr>
</thead>
</table>

Additional details:

Has your country identified any specific gaps between the resources available and the needs assessed, for the financial and technical assistance provided or received?

□ Yes (please give details below) □ No

Additional details:

8. Priorities for implementation of the WHO Framework Convention on Tobacco Control

What are the priority areas for implementation of the WHO Framework Convention on Tobacco Control in your jurisdiction?

9. Additional comments

Please provide any relevant information not covered elsewhere that you feel is important.
10. Questionnaire feedback

(a) Please provide feedback for improvement of the Group 1 questionnaire.

(b) Please provide input for the future development of the Group 2 questionnaire.

Ms HEFFORD (Australia) said that she hoped that the Committee would support the approach set out in the document.

Mr AFAAL (Maldives), speaking on behalf of the States Parties in the WHO South-East Asia Region, commended the delegations of Australia and Canada on their excellent work. The graduated reporting arrangements and the frequency and timing of reports were acceptable, as was the simple and user-friendly draft reporting instrument. The secretariat should be requested to give countries some feedback on the information obtained in order to prepare the second Conference of the Parties, and the mechanism used should enable feedback to be made available on-line or through regional offices and not only upon request.

Dr LEWIS-FULLER (Jamaica) suggested the addition of new wording to the first paragraph of the section headed “Objective”: “and to track the progress of implementation of the Framework Convention on Tobacco Control nationally and globally”.

Dr ZAIN (Malaysia) endorsed the views expressed by the representative of Maldives; a formal feedback mechanism would be very helpful to implementing agencies. In section 3 of the draft reporting instrument relating to prevalence of tobacco use, it would be better to use the terms “male” and “female” than “men” and “women”.

Dr AMANKWA (Ghana) suggested that, in section 6 of the questionnaire (Plans and programmes), paragraph 12 (a) should be divided into two subparagraphs, to read: (i) “Broad access to comprehensive prevention as well as educational and public awareness programmes for very young children on the high health risks”; (ii) “Broad access to comprehensive educational and public awareness programmes for adults on the health risks”.

Mrs SEDLMEIER (Austria) said that under the heading “translation”, it would be preferable not to refer to specific languages. In section 3(i) of the draft reporting instrument, prevalence of tobacco use, the specific age group targeted could be indicated although not all Member States in the European Union had data available on daily smokers as opposed to occasional smokers. Prevalence data on smoking behaviour for young people would be helpful and she suggested the addition of a subparagraph (d), reading ‘If prevalence data is available for young people, please provide’. In paragraph 4(a) “your country’s rates of taxation” should be replaced by “your rates of taxation”. She agreed that a distinction should be made in paragraph 12(a) between programmes for adults and programmes for young people.

(For continuation of the discussion, see summary record of the fourteenth meeting, section 4.)

The meeting rose at 18:10.
FOURTEENTH MEETING
Thursday, 16 February 2006, at 10:20

Chair: Dr C.T.O. OTTO (Palau)

1. FIRST REPORT OF COMMITTEE A (Document A/FCTC/COP/1/8) (Draft)

The CHAIR invited the Committee to consider its first report, which contained a recommended draft decision for the Conference of the Parties on financial resources and mechanisms of assistance.

Mr CHOINIERE (Canada) spoke of his concern that annexures A and B might unnecessarily duplicate the reporting requirements of the Convention.

The CHAIR drew attention to the footnote, which explained that reporting on technical and/or financial assistance would be incorporated in the reporting format being formulated under agenda item 5.1.

Dr SIDIBE (Mali), supported by Dr BLOOMFIELD (New Zealand), suggested including the Annexures in the Chair’s report rather than in the report of the Committee to the plenary.

The CHAIR invited the Committee to agree to that suggestion and to delete in paragraph (9) the words: “utilizing the reporting format suggested in annexures A and B”.

The report, as amended, was adopted.¹

2. ADDITIONAL MATTERS IDENTIFIED IN THE CONVENTION FOR CONSIDERATION BY THE CONFERENCE OF THE PARTIES (Item 5 of the Agenda (continued))

Elaboration of guidelines for implementation of Article 7 (Non-price measures to reduce the demand for tobacco) and Article 9 (Regulation of the contents of tobacco products): Item 5.2 of the Agenda (Document A/FCTC/COP/1/INF.DOC./3) (continued from the thirteenth meeting)

The CHAIR drew attention to a revised draft decision on the elaboration of guidelines for Articles 7 and 9, reading:

The Conference of the Parties,
Considering Articles 7 and 9 of the WHO Framework Convention on Tobacco Control (FCTC), which require the Conference of the Parties (COP) to propose guidelines on the implementation of the provisions of Articles 8 to 13 at the national level;

¹ See page 222.
Recognizing the assistance that such guidelines may provide to Parties in the development and implementation of policies and programmes related to the non-price measures for tobacco control that are set out in Articles 8 to 13;

Desiring to promote the availability of information on best practices for tobacco control to all Parties for their use, as appropriate, in the context of elaboration and implementation of their national laws and in accordance with national circumstances;

Desiring to achieve maximum effectiveness and efficiency in the elaboration and development of guidelines, and recognizing the role that relevant intergovernmental and nongovernmental organizations could have in this task because of the broad areas of expertise they have in these issues;

DECIDES:

(1) to adopt the templates for the elaboration of guidelines on Articles 8 and 9, as they appear in the Annex to this decision;
(2) to take note of the templates for the elaboration of guidelines on Articles 9 phases 2 and 3, and Articles 10 to 13 as a basis for the elaboration of guidelines for these articles;
(3) to accord the highest priority to guidelines on Article 8 and the first phase of Article 9, and to request the secretariat to initiate work on these guidelines, on the basis of the templates, and to present draft guidelines to the second Conference of the Parties, if possible, or progress reports;
(4) to adopt the following criteria for prioritization of the work related to the guidelines with respect to Articles 9 to 13 which are mandated specifically by the Framework Convention and Articles 5.3 and 14, which have been requested by several Parties:
   1. Request from Parties: there is an expressed need for the guidelines to assist Parties in implementing the FCTC.
   2. Existing work on the topic: there is relevant existing work, e.g. Tobacco Free Initiative (TFI) guidelines, so guidelines can be developed more quickly and efficiently.
   3. International value added: international guidelines may be of particular assistance to Parties to implement some obligations, while involving a number of Parties allows expertise and costs to be shared.
   4. Potential impact of the measure covered by the guidelines: measures are known to be effective at reducing the impact of tobacco.
   5. Ease of implementation: this includes cost of implementation.
   6. Willingness of Parties to lead: Parties have volunteered as key facilitators, partners or reviewers.
   7. Outcome measurability: this is relevant to reporting (Article 21) and the potential to measure and analyse data.
   8. Contribution to maintaining momentum in implementing the FCTC: this is particularly important in the early stages of implementation.
   9. Cost of guidelines development: guidelines should be developed efficiently.
   10. International cooperation and cost sharing are essential to effectively implement the elements of the guidelines.
(5) to request the secretariat to utilize these criteria in preparing a workplan for the elaboration of guidelines on the relevant articles, for consideration by the COP at its second session.
(6) to invite the relevant intergovernmental and nongovernmental organizations with specific expertise in the guideline matters to actively participate and contribute to the further elaboration and development of the guidelines, as per request from the secretariat.
## ANNEX 1:

### ARTICLE 8: PROTECTION FROM EXPOSURE TO TOBACCO SMOKE

<table>
<thead>
<tr>
<th>Subject</th>
<th>Article 8: Protection from exposure to tobacco smoke</th>
</tr>
</thead>
<tbody>
<tr>
<td>CONTENTS:</td>
<td></td>
</tr>
<tr>
<td>Objectives and rationale</td>
<td>Rationale: Parties recognize that scientific evidence has unequivocally established that exposure to tobacco smoke causes death, disease and disability. Protection from exposure to tobacco smoke in indoor workplaces, public transport, indoor public places and other public places is required. From a public health perspective, no “safe” levels of second-hand smoke exist. And there is conclusive evidence that engineering approaches do not protect against exposure to tobacco smoke. Objective: To provide guidelines for protection from exposure to tobacco smoke.</td>
</tr>
</tbody>
</table>
2. Scope and coverage of policies for protection from exposure to tobacco smoke  
3. Recommendations for implementation and enforcement of the legislative and administrative measures  
4. Recommendations for monitoring and evaluation of legislative and administrative measures  
5. Classification of second-hand smoke as a carcinogen |
| Needs/value-added                            | 1. Provide uniformity in tobacco control measures and activities  
2. International cooperation and information sharing of the best practices and lessons learnt  
3. Having an international guideline from the COP of the WHO FCTC will facilitate the application/implementation |
| Existing work to build on                    | Published by TFI:                                  |
|                                             | 1. WHO TFI with the WHO collaborating centre on tobacco control (Johns Hopkins University) organized an expert consultation in this area in November 2005. WHO policy recommendations on second-hand smoke and smoke-free environments will be published based on this consultation.  
2. The AMRO/PAHO TFI has a project entitled “Smoke free Americas”. This initiative is dedicated to raising awareness of the harm caused by second-hand tobacco smoke, and supporting efforts to achieve more smoke-free environments in the Americas.  
3. WHO TFI has published best practices in the area of second-hand tobacco smoke as part of its series “Success stories and lessons learnt”.  
Examples of legislation in certain countries  
1. Ireland: Act on banning smoking in public places  
2. New Zealand: Smokefree Environments Act, 1990  
4. Sweden: National Tobacco Law  
5. Uruguay: Decree 268/05 on banning smoking in all public places  


## PROCESS:

<table>
<thead>
<tr>
<th>Implementing entity (mandated by the Conference of the Parties)</th>
<th>Permanent secretariat, in consultation with TFI and with the assistance of the Parties willing to participate to ensure regional representation.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parties who offer to act as key facilitators (either via resource mobilization or technical work)</td>
<td>Ireland, New Zealand</td>
</tr>
<tr>
<td>Other Parties who offer to partner in the development of guidelines</td>
<td>Sweden, France, Finland, Germany, Brazil, Fiji, Vanuatu, Djibouti, Uruguay, China, Jamaica, Mexico, Hungary</td>
</tr>
<tr>
<td>Parties who offer to act as reviewers (in addition to the usual peer experts)</td>
<td>Norway, Palau, Marshall Islands</td>
</tr>
<tr>
<td>Resource implications</td>
<td>If the implementing entity is TFI, then TFI would need an additional budget. If the secretariat is the implementing entity, then the COP would need to give the secretariat the necessary resources. In both cases, additional budget would be needed to ensure that developing country delegates are able to participate.</td>
</tr>
</tbody>
</table>

### Time frame:

<table>
<thead>
<tr>
<th>for guideline development</th>
<th>One or two meetings necessary</th>
</tr>
</thead>
<tbody>
<tr>
<td>For the second COP draft guidelines or progress report, as appropriate, should be presented on the work undertaken so far.</td>
<td></td>
</tr>
<tr>
<td>for review</td>
<td>1 September 2006</td>
</tr>
<tr>
<td>for submission to the Bureau</td>
<td>60 days before COP2</td>
</tr>
<tr>
<td>for circulation to the Conference of the Parties</td>
<td>30 days before first day of COP2</td>
</tr>
</tbody>
</table>

## ANNEX 2:

### ARTICLE 9: PRODUCT REGULATION

<table>
<thead>
<tr>
<th>Subject</th>
<th>Guidelines for the implementation of Articles 9 and 10 on the regulation of the contents of tobacco products and of tobacco product disclosures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>The overall purpose of guidelines for the implementation of the provisions in Articles 9 and 10 is to assist Parties in strengthening the regulation of the content of tobacco products. The elaboration of these guidelines involves three phases: first phase – the development of a guideline for the testing and measuring of the contents and emissions of tobacco products; phases two and three – to address regulations and/or disclosure (Article 10). The order of the second and third phases shall be considered by COP2.</td>
</tr>
</tbody>
</table>
## CONTENTS:

<table>
<thead>
<tr>
<th>Rationale</th>
<th>The testing and measuring of the contents and emissions of tobacco products serve as the basis for the regulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Objective</td>
<td>To provide guidelines for testing and measuring the contents and emissions of tobacco products</td>
</tr>
<tr>
<td>Clear definition of elements of guidelines</td>
<td>Address testing and measuring of tobacco contents and smoke emissions from a public health perspective</td>
</tr>
<tr>
<td></td>
<td>Start with cigarettes (because most commonly used tobacco product)</td>
</tr>
<tr>
<td></td>
<td>Focus on a selected set of especially harmful substances or smoke emissions</td>
</tr>
<tr>
<td></td>
<td>Include criteria to assess the toxicity, addictiveness and attractiveness of these substances and/or products</td>
</tr>
<tr>
<td></td>
<td>Study the design features of these products</td>
</tr>
<tr>
<td></td>
<td>A recommendation on further work in order to continue to inform Contracting Parties on how best to adopt new strategies of tobacco product regulation as new scientific evidence is obtained and as new or modified products are introduced into the market</td>
</tr>
<tr>
<td>Needs/value-added</td>
<td>Guidelines assist national authorities in implementing this article and thus facilitate regulatory control over tobacco</td>
</tr>
<tr>
<td></td>
<td>Leads to the establishment of an independent set of data and testing and measurement methods on tobacco products and their emissions from a public health angle in the medium and long term</td>
</tr>
<tr>
<td></td>
<td>International cooperation in this area leads to sharing of costs and expertise (value added of international cooperation)</td>
</tr>
<tr>
<td>Existing work to build on</td>
<td>Base guidelines on the work already done by the WHO Study Group on Tobacco Product Regulation (TobReg) and TFI (WHO/TFI shall specify in a paper what they can already deliver and continue to work on this subject).</td>
</tr>
</tbody>
</table>

## PROCESS:

<table>
<thead>
<tr>
<th>Implementing entity (mandated by the Conference of the Parties)</th>
<th>Permanent secretariat to initiate its work with TFI/TobReg in consultation with competent international bodies, as necessary – under the guidance of Contracting Parties identified as key facilitator(s).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parties who offer to act as key facilitators</td>
<td>Norway, Canada and the European Community</td>
</tr>
<tr>
<td>Other Parties who offer to partner in the development of guidelines</td>
<td>Brazil, Jordan, Netherlands, Denmark, Finland, China, Mexico, Hungary</td>
</tr>
<tr>
<td>Parties who offer to act as reviewers (in addition to the usual peer experts)</td>
<td>Jamaica, Australia</td>
</tr>
<tr>
<td>Resource implications</td>
<td>Permanent secretariat in consultation with WHO/TFI will consider the workplan and budget implications</td>
</tr>
</tbody>
</table>

### Time frame:

<table>
<thead>
<tr>
<th>for guideline development</th>
<th>For the second COP a progress report should be presented on the work undertaken so far.</th>
</tr>
</thead>
<tbody>
<tr>
<td>for review</td>
<td>At least 60 days prior to submission to the Bureau</td>
</tr>
</tbody>
</table>
ANNEX 3

SAMPLE WORKPLAN FOR THE DEVELOPMENT OF GUIDELINES ON PACKAGING AND LABELLING OF TOBACCO PRODUCTS

<table>
<thead>
<tr>
<th>Subject</th>
<th>Article 11: Packaging and labelling of tobacco products</th>
</tr>
</thead>
<tbody>
<tr>
<td>CONTENTS:</td>
<td></td>
</tr>
<tr>
<td>Objectives and rationale</td>
<td>The tobacco industry thrives by disseminating misleading information regarding social acceptability and health effects of their product. In order to curb the epidemic of tobacco use, consumers need to be well informed of the consequences of product use. To provide consumers with better quality information based on human testing of tobacco products and avoid conveying the impression that the product provides a relative health benefit.</td>
</tr>
<tr>
<td>Clear definition of elements of guidelines</td>
<td>The tobacco product packaging and labels should bear information on: • health warnings • informative smoking cessation messages • statements about toxic emissions or constituents • adverse economic information • official language(s) of the country • size of the packaging label • use of graphic warnings</td>
</tr>
<tr>
<td>Needs/value-added</td>
<td>• Information sharing on international best practices • Strengthen measures and legislation</td>
</tr>
<tr>
<td>Existing work to build on</td>
<td>Existing resources include: • Papers and non-papers commissioned by WHO • Government, intergovernmental organizations, nongovernmental organizations and other publications including WHO papers and non-papers</td>
</tr>
<tr>
<td>PROCESS:</td>
<td></td>
</tr>
</tbody>
</table>
Other Parties who offer to partner in the development of guidelines

| Thailand, European Community, Australia, Singapore, Uruguay, Mexico, China, Hungary, Peru |

Parties who offer to act as reviewers (in addition to the usual peer review by experts)

| New Zealand |

Resource implications

| Option 1 – the COP would have to budget for this or mobilize funds through one or more facilitator Party (from above list). Option 2 – TFI could be positioned to assist countries to expand capacity, but TFI would require further funding from donor countries if more than one meeting were to be convened. Option 3 – the COP would have to budget for this or mobilize funds some other way. In all three cases, additional budget would be needed to ensure that developing country delegates are able to participate. |

Time frame:

<table>
<thead>
<tr>
<th>for guideline development</th>
<th>One or two meetings necessary</th>
</tr>
</thead>
<tbody>
<tr>
<td>for review</td>
<td>1 September 2006</td>
</tr>
<tr>
<td>for submission to the Bureau</td>
<td>60 days before the COP2</td>
</tr>
<tr>
<td>for circulation to the Conference of the Parties</td>
<td>30 days before first day of COP2</td>
</tr>
</tbody>
</table>

ANNEX 4

SAMPLE WORKPLAN FOR THE DEVELOPMENT OF GUIDELINES ON REGULATING CROSS-BORDER ADVERTISING

<table>
<thead>
<tr>
<th>Subject</th>
<th>Article 13: Regulating cross-border advertising</th>
</tr>
</thead>
</table>

CONTENTS:

Objectives and rationale

| Objectives: |
| To assist Parties in curbing/regulating cross-border advertising. |

Rationale:

- It has been well documented that tobacco advertising, including cross-border advertising, encourages non-smokers to begin smoking, and discourages smokers from quitting.
  - Under this template, the term “cross-border advertising” refers to cross-border advertising, promotion and sponsorship.
- Therefore, any ban on cross-border advertising would likely have a measurable effect on reducing tobacco consumption, thus reducing morbidity and mortality and increasing quality of life.
Furthermore, bans on domestic advertising can well be undermined by the effects of cross-border advertising, eliminating cross-border advertising can thus strengthen domestic anti-ad measures. States have a mandate to consider the elaboration of a cross-border advertising protocol as defined by Article 13(8) of the FCTC.

<table>
<thead>
<tr>
<th>Clear definition of elements of guidelines</th>
<th>Needs/value-added</th>
</tr>
</thead>
</table>
| • Develop clear, agreed-upon definition of cross-border advertising, potentially based on existing best practices.  
  o Definition should include not only traditional media-based forms of advertising (television, radio, print, sports sponsorship) but emergent vehicles as well (satellite-based media, film, Internet). Attention should also be paid to tobacco-labelled consumer goods, such as toys and clothing.  
  • Collaborate in several capacities on several levels, including:  
    o International cooperation on research into cross-border advertising methods and effects. Potential regulatory measures should be researched as well, as mandated by Article 13(6).  
  • Collaborate on effective dissemination of above information.  
    o Collaborate with global, regional and domestic organizations involved in trade, media, advertising and marketing.  
    o Cooperation on the development of filtering technologies to regulate media-based advertising, including the Internet.  
  • Describe elements comprehensively banning all forms of cross-border advertising for inclusion in a potential protocol.  
  • Require Parties to act on extra-jurisdictional complaints regarding advertising activities emanating from their own jurisdictions.  
  • Define which domestic entities could be identified as the potential subjects of cross-border advertising bans. | • Further research into cross-border advertising methods and effects, as well as potential regulatory measures.  
  • Collaboration on above research and information sharing.  
  • Consider the elaboration of a protocol setting out appropriate measures that require international collaboration for a comprehensive ban on cross-border advertising, pursuant to Article 13(8).  
  **Value-added:**  
  • Bans on cross-border advertising will reduce tobacco uptake and use, thus reducing morbidity and mortality and increasing quality of life.  
  • Bans on cross-border advertising will strengthen domestic anti-ad measures.  
  The transnational nature of the problem will encourage further cooperation between concerned States and organizations. |

<table>
<thead>
<tr>
<th>Needs/value-added</th>
<th>Existing work to build on</th>
</tr>
</thead>
</table>
| • Further research into cross-border advertising methods and effects, as well as potential regulatory measures.  
  • Collaboration on above research and information sharing.  
  • Consider the elaboration of a protocol setting out appropriate measures that require international collaboration for a comprehensive ban on cross-border advertising, pursuant to Article 13(8).  
  **Value-added:**  
  • Bans on cross-border advertising will reduce tobacco uptake and use, thus reducing morbidity and mortality and increasing quality of life.  
  • Bans on cross-border advertising will strengthen domestic anti-ad measures.  
  The transnational nature of the problem will encourage further cooperation between concerned States and organizations. | • Existing resources include:  
  o Papers and non-papers commissioned by WHO.  
  o Government, intergovernmental organizations, nongovernmental organizations and other publications, including WHO papers and non-papers. |
The subject matter and scope of which relates to “the advertising of tobacco products and their promotion:

(a) in the press and other printed publications;
(b) in radio broadcasting;
(c) in information society services; and
(d) through tobacco related sponsorship, including the free distribution of tobacco products”.

---

<table>
<thead>
<tr>
<th>PROCESS:</th>
</tr>
</thead>
</table>
| **Implementing entity (mandated by the Conference of the Parties)** | Option 1 – For the permanent secretariat to be mandated to take this role.  
Option 2 – Acting in its capacity as a technical adviser, for TFI to expand upon this role and address cross-border advertising.  
Option 3 – Establishment of an informal group of experts on cross-border advertising. |
| **Parties who offer to act as key facilitators (either via resource mobilization or technical work)** | European Community (based on the 2003 tobacco advertising directive), India (regarding regulation of smoking in cinemas), Sweden (could provide assistance based on success in *Konsumentombudsmannen v Gourmet International Products*, ECJ 2001, arguing that cross-border advertising bans were justified on public health grounds). |
| **Other Parties who offer to partner in the development of guidelines** | Malaysia, Thailand, China, Mexico, Hungary |
| **Parties who offer to act as reviewers (in addition to the usual peer experts)** | European Community |
| **Resource implications** | These guidelines have the potential to be resource intensive (in terms of money, expertise, and responding to industry-engendered challenges) on a scale comparable to that demanded by the guidelines relating to Articles 8-12. Additional budget would be needed to ensure that developing country delegates are able to participate. |

---

<table>
<thead>
<tr>
<th>Time frame:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>for guideline development</strong></td>
</tr>
<tr>
<td><strong>for review</strong></td>
</tr>
<tr>
<td><strong>for submission to the Bureau</strong></td>
</tr>
<tr>
<td><strong>for circulation to the Conference of the Parties</strong></td>
</tr>
</tbody>
</table>
ANNEX 5

SAMPLE WORKPLAN FOR THE DEVELOPMENT OF GUIDELINES:
EDUCATION, COMMUNICATION, TRAINING AND PUBLIC AWARENESS

<table>
<thead>
<tr>
<th>Subject</th>
<th>Article 12: Education, communication, training and public awareness</th>
</tr>
</thead>
<tbody>
<tr>
<td>CONTENTS:</td>
<td></td>
</tr>
<tr>
<td>Objectives and rationale</td>
<td>Rationale: Parties recognize the need to promote and strengthen public awareness of tobacco control issues, using all available communication tools, as appropriate. Objective: Successful implementation of tobacco control measures requires public awareness/education on tobacco control issues. Therefore, Parties shall promote broad access to effective and comprehensive public awareness programmes on health risks of tobacco use and exposure to tobacco smoke; benefits of cessation of tobacco use, adverse consequences of tobacco production and consumption, and importance of legislative and other tobacco control measures. Similarly, professionals, volunteers and office bearers working in areas that are particularly relevant for tobacco control, such as health planners and health professionals, community workers, media professionals, legislators, customs and police officials, need appropriate training on tobacco control.</td>
</tr>
<tr>
<td>Clear definition of elements of guidelines</td>
<td>1. Specify essential components of and strategies for effective and comprehensive public awareness programmes on: (a) Health risks of tobacco use and exposure to tobacco smoke (b) Benefits of cessation of tobacco use (c) Adverse consequences of tobacco production and consumption (d) Importance of WHO FCTC provisions, to support implementation. Recommendations on training and/or sensitization and awareness programmes on tobacco control, addressed to various professional groups, as enlisted in Article 12(d). 2. Recommendations for allocation of human resources and health systems planning to enable health professionals and other groups to promote education, communication and public awareness on tobacco control. 3. Specify strategies for providing public access to information on tobacco industry activities in the country</td>
</tr>
<tr>
<td>Needs/value-added</td>
<td>1. Provide uniformity in tobacco control measures and activities 2. International cooperation and information sharing of the best practices and lessons learnt</td>
</tr>
</tbody>
</table>


**PROCESS:**

<table>
<thead>
<tr>
<th>Implementing entity (mandated by the Conference of the Parties)</th>
<th>Option 1 – For the permanent secretariat to be mandated to take this role. Option 2 – Acting in its capacity as a technical adviser, for TFI to build upon this role. Option 3 – permanent secretariat and TFI to establish an informal group of experts to advise Parties.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parties who offer to act as key facilitators (either via resource mobilization or technical work)</td>
<td>Ireland</td>
</tr>
<tr>
<td>Other Parties who offer to partner in the development of guidelines</td>
<td>Thailand, Egypt, India, Hungary, Estonia, China, Mexico, Peru, Chile</td>
</tr>
<tr>
<td>Parties who offer to act as reviewers (in addition to the usual peer experts)</td>
<td>Australia</td>
</tr>
<tr>
<td>Resource implications</td>
<td>If the permanent secretariat is the implementing entity, then the COP should give the secretariat the necessary resources If the implementing entity is TFI, then TFI would need an additional budget</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Time frame:</th>
</tr>
</thead>
<tbody>
<tr>
<td>for guideline development</td>
</tr>
<tr>
<td>for review</td>
</tr>
<tr>
<td>for submission to the Bureau</td>
</tr>
<tr>
<td>for circulation to the Conference of the Parties</td>
</tr>
</tbody>
</table>

The CHAIR proposed the addition of a further preambular paragraph to the draft decision: “Recognizing also the need to address issues related to Article 5.3 and Article 14”.

Ms EMMERLING (European Community) said that, for the sake of consistency with the wording of paragraph (3), the time frame in Annex 2 should specify the presentation of draft guidelines in addition to a progress report.
Ms TSUJISAKA (Japan) said that Annex 3 should be omitted and included only in the Chair's report, because it had not been fully discussed and should not at present form the basis for guidelines on packaging and labelling of tobacco products.

Mrs SEDLMEIER (Austria) said that contributions from States which had signed but not yet ratified the Convention should be used since they included some with special expertise in the matters covered in Articles 8 to 13.

The CHAIR said that references to “Parties”, as in the words in Annex 1 “with the assistance of the Parties willing to participate to ensure regional representation” and in the phrase in Annex 2 “under the guidance of Contracting Parties identified as key facilitators” necessarily meant countries having ratified the Convention.

In response to a comment by Dr NZEYIMANA (Rwanda), he suggested that paragraph (2) be reworded to indicate that the templates should be treated as examples, rather than as a basis, for elaborating guidelines. Annexes 3 to 5 of the document, it would be noted, had not yet been discussed by the Committee.

Dr MURASHIGE (Japan) said that the “existing work to build on” in connection with Article 9 should include mention of the ongoing work in the relevant committee of the International Organization for Standardization (ISO), the Committee on Tobacco Product Regulation.

Ms VESTAL (WHO Secretariat) explained that tobacco product regulation through the ISO Committee 126 was an industry-dominated process and did not adequately reflect public health concerns. The WHO Study Group on Tobacco Product Regulation and WHO’s Tobacco Free Initiative both considered that it would be better to keep clear of the ISO process. The Conference had authority, under Article 9 of the Convention, to create its own international standards for tobacco product testing.

Dr MURASHIGE (Japan) said that new guidelines on product regulation should nevertheless draw upon the existing collaboration between WHO and ISO.

Dr BLOOMFIELD (New Zealand) spoke against including a specific reference to ISO.

The CHAIR said that ISO could be considered one of the “competent international bodies” referred to in connection with the implementing entity for Article 9.

Dr SIDIBE (Mali), speaking on behalf of the Parties in the WHO African Region, said that his group of countries would wish to take part in elaborating the guidelines.

The CHAIR invited the Committee to consider the amended draft decision.

The draft decision, as amended, was approved.¹

Mr Corcoran took the Chair.

¹Transmitted to the Conference of the Parties in the Committee’s first report and adopted as decision FCTC/COP1(15).
Elaboration of protocols: Item 5.3 of the Agenda (continued from the thirteenth meeting)

The CHAIR drew attention to a revised draft decision on the elaboration of protocols, reading:

The Conference of the Parties,
Taking into account Article 13.8 and Article 33 of the Convention;
Taking into account also the need to further develop the obligations set out in Article 15 in an internationally binding legal instrument;
Recognizing that international collaboration for a comprehensive ban on cross-border advertising, promotion and sponsorship is an important area of tobacco control;
Recognizing also that international collaboration for the control of illicit trade is an important area of tobacco control;

DECIDES:

(Option 1)

(1) to establish a subsidiary body with the mandate to elaborate, for its consideration, a protocol setting out appropriate measures that require international collaboration for a comprehensive ban on cross-border advertising, promotion and sponsorship, as set out in Article 13.8 and in accordance with the terms of reference contained in the Annex to this decision;¹
(2) requests the secretariat to make the necessary arrangements, including budgetary arrangements, for the subsidiary body to meet as soon as possible.

or

(Option 2)

Requests the secretariat to prepare a report identifying the key elements which need to be integrated into a future protocol setting out appropriate measures that require international collaboration for a comprehensive ban on cross-border advertising, promotion and sponsorship, in accordance with Article 13.8, taking into account the work of entities competent in the matter, for consideration by the Conference of the Parties at its second session.

or

(Option 3)

(1) to establish a subsidiary body mandated to elaborate, for its consideration, a protocol on illicit trade, on the basis of Article 15, and in accordance with the terms of reference contained in the Annex to this decision;¹
(2) requests the secretariat to make the necessary arrangements, including budgetary arrangements, for the subsidiary body to meet as soon as possible.

or

¹ The terms of reference will need to be elaborated in the event that this option is chosen.
(Option 4)

Requests the secretariat to prepare a report identifying the key elements which need to be integrated into a future protocol on illicit trade, on the basis of Article 15, taking into account the work of entities competent in the matter, for consideration by the Conference of the Parties at its second session.

or

(Option 5)

Requests the secretariat to prepare a report identifying:

(a) the key elements which need to be integrated into a future protocol on illicit trade, on the basis of Article 15;
(b) the key elements which need to be integrated into a future protocol setting out appropriate measures that require international collaboration for a comprehensive ban on cross-border advertising, promotion and sponsorship, in accordance with Article 13.8;
(c) for consideration by the Conference of the Parties at its second session, taking into account relevant work carried out by entities competent in the matter.

(Option 6)

(1) to ask the secretariat, under the direction of the Bureau:

(a) to invite each WHO region, in consultation with the Parties from their region, to nominate up to four experts per region to prepare a template for a protocol on illicit trade, on the basis of Article 15 of the Convention;
(b) to invite each WHO region, in consultation with the Parties from their region, to nominate up to four experts per region to prepare a template for a protocol on cross-border advertising, promotion and sponsorship, on the basis of Article 13.8 of the Convention, taking into account the work of entities competent in the matter;
(c) if the two expert groups cannot yet come up with complete templates for consideration by the Conference of the Parties at its second session, they should at least prepare a progress report, setting out the scope, the main elements and the structure of the future protocols;
(d) if the Bureau judges one or both of the templates to be sufficiently well advanced, the Bureau will transform one or both of them into draft protocols and present them to the Conference of the Parties at its second session. Otherwise, the Bureau will present one or two progress reports of the expert groups;

(2) to request the secretariat to make the necessary arrangements, including budgetary arrangements, for the expert groups to meet as soon as possible.

The CHAIR recalled that, of the six options for the operative part of the draft decision, the Committee had previously expressed a preference for Option 6.

Ms EMMERLING (European Community) said that the phrase “taking into account the work of entities competent in the matter” in paragraph (1)(b) of Option 6 was intended to refer to the procedure outlined in both of the subparagraphs (a) and (b).

Mr CONCHA (Chile), speaking on behalf of the Parties in the WHO Region of the Americas, expressed his agreement.
The CHAIR said that the text would be reworded accordingly.

Ms LINDBAK (Norway) said that the inherent uncertainties made subparagraph (d) redundant.

Mr AFAAL (Maldives), speaking on behalf of Parties in the WHO South-East Asia Region, and Mr MUTOMB MUJING (Democratic Republic of the Congo) endorsed Option 6 as amended.

Mr CASO GONZÁLEZ (Mexico) objected to the phrase “prohibition of illicit trade” in the second introductory paragraph. Any illicit trade was of necessity prohibited.

Dr AL-LAWATI (Oman) asked whether the discussions in the WHO regions under Option 6 would have to start afresh.

Dr RAJALA (European Community) said that the work on illicit trade and on cross-border advertising would be based on existing work by the expert groups.

Dr AL-LAWATI (Oman) said that he would welcome some reference to the existing work.

Mr CHOINIERE (Canada) said that such a reference could be placed in subparagraph (a). As to subparagraph (d), a review mechanism was needed, under the guidance of the Bureau, before draft protocols were submitted to the Conference of the Parties.

The CHAIR asked the representative of Norway whether, in that light, she would be willing to retain subparagraph (d).

Ms LINDBAK (Norway) replied that she would.

The CHAIR invited the Committee to approve the choice of Option 6 for the operative part of the draft decision.

It was so agreed.

(For approval of the draft decision, see summary record of the fifteenth meeting, section 3.)

3. CONSIDERATION OF A PROGRAMME OF WORK FOR THE CONFERENCE OF THE PARTIES: Item 6 of the Agenda

Ms GUEBEL (Brazil) introduced a proposed decision prepared by the delegations of Brazil and Mexico, reading:

The Conference of the Parties,
Taking into account Articles 17, 20, 1(b), 22.1(b) and 26.3 of the Convention;
Recognizing the need to promote economically viable alternatives for tobacco workers, growers and, as the case may be, individual sellers;
Recalling the importance of research and scientific assessments that address the determinants and consequences of tobacco consumption and exposure to tobacco smoke, as well as research for identification of alternative crops;
Underlying [sic] the need to promote cooperation in the scientific, technical and legal fields in order to assist tobacco workers in the development of appropriate economically and legally viable alternative livelihoods in an economically viable manner and to assist tobacco growers in shifting agricultural production to alternative crops in an economically viable manner;
Considering that hundreds of thousands of families, particularly in developing countries, are devoted to tobacco agriculture and that, in a medium to long term, with the reduction of the demand for tobacco products, their livelihood will be affected and measures will be needed to support diversification in the context of sustainable development;

Noting the important work being undertaken under the umbrella of the United Nations Task Force on Tobacco Control, and specially the broad range of agencies that have recognized expertise in this area, including FAO, the World Bank, UNDP, and UNEP, among others,

DECIDES:

(1) to establish an ad hoc study group open to interested Parties with the objective of:
   (a) assessing the current status of existing economically viable alternatives for tobacco workers, growers and, as the case may be, individual sellers at country level;
   (b) recommending to the Conference of the Parties mechanisms to assess the impact over time of the implementation of the Convention on tobacco workers, growers and, as the case may be, individual sellers’ livelihoods including financial implications;
   (c) studying effective policies to support them for the transitional period, addressing crop diversification research initiatives;
   (d) recommending cost-effective diversification initiatives;

(2) to mandate the study group to cooperate in its work with the United Nations Ad Hoc Task Force on Tobacco Control;

(3) to request the Secretariat to consult with interested Parties in order to identify a possible host to hold, in cooperation with the Secretariat, before the end of 2006, the first meeting of the study group;

(4) to mandate the study group to submit a report to the second session of the Conference of the Parties on the results of the discussions of its first meeting.

She explained that the proposed decision drew attention to the likely impact of the Convention, when implemented, on the social sectors whose livelihoods depended on tobacco growing. The Convention itself, in Articles 17, 20, 22 and 26, recognized the need for economically viable alternatives for the hundreds of thousands of families in developing countries who would be affected in the medium to long term by a reduced demand for tobacco.

Dr BIANCO (Uruguay), supporting the representative of Brazil, suggested that the Committee decide to “recommend to the Conference of the Parties mechanisms to evaluate the impact of the Convention over time on the livelihoods of tobacco workers, farmers and small traders, especially the financial repercussions, and the impact of the practices of the tobacco industry on the production chain and on the working conditions and socioeconomic situation of tobacco growers”.

The CHAIR invited the delegations of Brazil and Uruguay to work together to draft a recommendation along those lines.

Dr RAJALA (European Community) said that, during the negotiations for the Convention, it had been pointed out that crop-specific rural development policies were a rarity. The Conference should therefore consider how it could best work with FAO and the United Nations Task Force on Tobacco Control in order to promote crop diversification, taking full account of work already under way in that respect.

Mr CONCHA (Chile), speaking on behalf of the Parties in the WHO Region of the Americas, supported the proposal for a special study group, provided that the associated costs were kept down and interested parties could take part. He proposed amending the wording suggested by the representative of Brazil, to call for “the establishment of a special study group open to the Parties and including interested observer States”.

Dr SIDIBE (Mali), speaking on behalf of the Parties in the WHO African Region, supported the proposal. His group of countries was anxious to be kept informed of the measures to be taken and the bodies that would be involved. Tobacco growing was a form of subsistence agriculture, and the growers must be helped to combat the poverty which blocked all other opportunities.

Mr ZHAO Bin (China) also supported the proposal. Too little research had been done into the potential impact of the Convention on tobacco growers.

Dr ELSUBAI (Sudan) supported the proposal. Tobacco cultivation was an important source of revenue in his country, and growers must be helped to diversify.

Mr AFAAL (Maldives), speaking on behalf of the Parties in the WHO South-East Asia Region, endorsed the initiative as capable of addressing a genuine need in his Region.

Mr CHOINIÈRE (Canada) observed that the membership and funding of the study group, and the arrangements for its meetings would have to be specified.

Mr KIDDLE (New Zealand), observing that FAO and the nongovernmental organization community had done some work on crop diversification, expressed the hope that the group would draw on the existing literature on the subject. The financial implications and the arrangements for interested parties to participate must be clarified.

Ms GUEBEL (Brazil) welcomed the suggestions and promised to incorporate them in the proposal. The costs of the study group could be reduced by holding meetings in parallel with sessions of the Conference of the Parties.

Dr BELLO DE KEMPER (Observer, Dominican Republic) said that the WHO Region of the Americas had a significant tobacco growing sector, and for the sake of the growers it was important that observer countries be able to participate.

Ms DE HOZ (Observer, Argentina) expressed her agreement.

Mr CASO GONZÁLEZ (Mexico) supported the proposal and the suggestion that meetings be held in parallel with sessions of the Conference. The text of the proposal should perhaps name a host country for an initial meeting of the study group.

The CHAIR suggested that the delegation of Brazil be invited to lead a working group to produce a consensus text of the proposal. In reply to a query by Ms TSUJISAKA (Japan), he confirmed that no decision would be taken on the proposal pending full consultation with other delegations.

It was so agreed.

Mr AITKEN (WHO Secretariat) specified that the cost of the Committee’s decisions so far had been estimated at US$ 8 million. The Secretariat would update its estimates so that Committee B could be kept informed.

The meeting was suspended at 11:45 and resumed at 12:10.

1 Participating by virtue of Rule 29 of the Rules of Procedure of the Conference of the Parties to the WHO Framework Convention on Tobacco Control.
(For continuation of the discussion, see summary record of the fifteenth meeting, section 2.)

4. ADDITIONAL MATTERS IDENTIFIED IN THE CONVENTION FOR CONSIDERATION BY THE CONFERENCE OF THE PARTIES: Item 5 of the Agenda (resumed)

Reporting (Article 21 Reporting and exchange of information): Item 5.1 of the Agenda (continued from the thirteenth meeting)

Ms HEFFORD (Australia) said that the informal working group had taken account of the comments made in the Committee for the previous day. Wherever possible, the guidelines on reporting followed the language used in the Convention.

In reply to questions by Dr LEWIS-FULLER (Jamaica) and Dr ZAIN (Malaysia), she explained that, in order to ensure progress both globally and regionally in implementing the Convention, the Conference would at each of its sessions expect to consider a compilation of all the reports received during the preceding 12 months. Article 21 of the Convention required Parties to make their initial reports within two years of becoming bound by it, and it was being proposed that they report subsequently at three-year intervals, basing their reports on the questions set out in the draft reporting instrument.

Turning to question 3, on tobacco use, she said that it had been decided to include data on smoking rates among young people. Adult smokers would be classified according to 10-year age groups: 25 to 34, 35 to 44, etc.

Mr SIMONEN (Finland) said that “young people” should mean those under 18.

Mrs ALI HIGO (Djibouti) queried the term “ethnic groups” in table 3(c).

Ms HEFFORD (Australia) said that the provision of ethnic group data would be optional.

Dr ZHANG Bin (China) asked how many years the report data would cover.

The CHAIR said that no data sets would be immediately available for the initial reports, but for subsequent reports countries would be able to use the data they had since collected, which would then cover two or three years.

Ms HEFFORD (Australia) said that the working group had been aware that many countries regularly collected household or census data of particular kinds. Once countries had made their initial reports, they would not be asked to repeat information already supplied, but merely to update figures, such as those for smoking prevalence.

Mrs SEDLMEIER (Austria) said that tobacco advertising, promotion and sponsorship, treated as a separate matter in Article 13 of the Convention, ought to feature as a core question in the reporting instrument.

Ms HEFFORD (Australia) said that the working group had carefully distinguished between core questions and optional information. Only measures binding under the Convention were included in the core questions.

Mr CASO GONZÁLEZ (Mexico) said that the question on illicit trade in tobacco products should distinguish between unlawful products and products which, though lawful in themselves, were marketed illegally.
Ms HEFFORD (Australia) welcomed that suggestion.

The meeting rose at 13:05.
1. ADDITIONAL MATTERS IDENTIFIED IN THE CONVENTION FOR CONSIDERATION BY THE CONFERENCE OF THE PARTIES: Item 5 of the Agenda (continued)

Reporting (Article 21 Reporting and exchange of information): Item 5.1 of the Agenda (continued)

Ms HEFFORD (Australia) introduced the changes made to the draft reporting instrument in the light of observations made at the Committee’s previous meeting (the amended instrument being subsequently annexed to draft fourth report of Committee A).¹

The CHAIR, in reply to a query by Dr KAWAI (Japan), confirmed that entries in section 1(d) of the Reporting Instrument (Signature of the officer responsible for submitting report) would be optional.

Ms HEFFORD (Australia), in reply to comments by Dr ZAIN (Malaysia), said that the optional questions were expected to form the core of the second and third reports, by when they would cease to be optional. In the two years following ratification, the Convention did not require Parties to fulfil those requirements. However, countries choosing to report on them in their initial reports could provide useful examples of what they had done, for the benefit of others. Feedback to reports would be provided in a non-confrontational way, hopefully through regional meetings where country reports could be shared. There was no need for panels of experts to supply feedback from headquarters.

The CHAIR read out the draft decision on reporting and exchange of information, as amended:²

The Conference of the Parties,

Considering Article 21.1 of the WHO Framework Convention on Tobacco Control, which requires Parties to submit periodic reports on specified issues to the Conference of the Parties;

Considering also that Article 21.2 mandates the Conference of the Parties to determine the frequency and format of the reports, and requires each Party to make its initial report within two years of the entry into force of the Convention for that Party;

Mindful that in accordance with Article 21.2, a number of Parties will be required to submit their initial reports prior to the second meeting of the Conference of the Parties;

Considering that national reporting should, in light of limited experience and resources, not be unduly burdensome;

Considering also that national reports should enable Parties to benefit from each other’s experience through an effective feedback mechanism,
DECIDES:

(1) to provisionally adopt the format for the submission of national reports as set out in the Annex, pending further consideration at its next session;
(2) to require national reports to be submitted in a graduated/progressive manner, as set out in the format contained in the Annex;
(3) to request those Parties that are required to submit their initial report in 2007, under the provision of Article 21.2, to use the provisional format in completing their initial reports;
(4) to define three groups of issues on which national reports must be submitted, as specified in the Annex;
(5) to request each Party to submit its initial report on Group 1, and optional questions if desired, within two years of entry into force for it;
(6) to elaborate formats for Groups 2 and 3 at its second session;
(7) to request each Party to submit its second report on Group 2 within five years of entry into force for it;
(8) to request each Party to submit its third report on Group 3 within eight years of entry into force for it;
(9) to conduct an independent assessment of the reporting arrangements in 2009;
(10) to further consider the matter of reporting in 2010.

Ms HEFFORD (Australia), commenting on paragraph (3), said that some countries, including her own, would be required to submit initial reports in 2006. In 2009 an independent assessment of the reporting arrangements would be made.

Dr KUMMER (WHO Secretariat) explained that the countries that had been first to ratify the Convention, during 2005, would be submitting their initial reports in early 2007.

Mrs ALI HIGO (Djibouti) suggested inserting an asterisk and a footnote to indicate which questions in the Reporting Instrument were optional. Those relating to ethnicity must be optional.

Dr OTTO (Palau) suggested that the optional questions could be placed in square brackets.

The CHAIR invited the Committee to consider the additional drafting changes already made to the proposed approach to reporting by Parties to the Convention.

The draft decision, as amended, was approved.¹

2. CONSIDERATION OF A PROGRAMME OF WORK FOR THE CONFERENCE OF THE PARTIES: Item 6 of the Agenda (continued from the fourteenth meeting, section 3)

Dr DA COSTA E SILVA (Brazil) said that interested delegations had discussed informally possible changes to the draft Conference decision. Unresolved points included where the first meeting of the study group would be held and how it would be financed. Should the host country be unable to cover the costs, the meeting could be held in conjunction with the second Conference of the Parties. A further concern raised had been the need for FAO and the World Bank to work with the study group.

¹ Transmitted to the Conference of the Parties in the Committee’s fourth report and adopted as decision FCTC/COP1(14).
The CHAIR drew attention to an amended draft decision on the establishment of a study group on alternative crops, reading:

The Conference of the Parties,
Taking into account Articles 17, 20.1(a), 22.1(b) and 26.3 of the Convention;
Recognizing the need to promote, as appropriate, economically viable alternatives for tobacco workers, growers and, as the case may be, individual sellers;
Recalling the importance of research and scientific assessments that address the determinants and consequences of tobacco consumption and exposure to tobacco smoke, as well as research for identification of economically viable alternatives;
Considering that hundreds of thousands of families, particularly in developing countries, are engaged in tobacco agriculture and that, in a medium to long term, there is likely to be a reduction in demand for tobacco products;
Underlying the need to promote, as appropriate, cooperation in the scientific, technical and legal fields in order to develop policies for appropriate economically and legally viable alternative livelihoods for tobacco workers and tobacco growers;
Noting the important work being undertaken under the umbrella of the United Nations Ad Hoc Inter-Agency Task Force on Tobacco Control, and specially the broad range of agencies that have recognized expertise in this area, including FAO, the World Bank, UNDP, UNEP, among others,

DECIDES:

(1) to establish an ad hoc study group open to interested Parties to the Convention with the objective of:
   (a) summarizing the uptake of existing economically viable alternatives for tobacco workers, growers and, as the case may be, individual sellers;
   (b) recommending to the Conference of the Parties mechanisms to assess the impact over time of the tobacco companies practices;
   (c) report on initiatives that are being taken at national level in accordance with Article 17;
   (d) recommending cost-effective diversification initiatives;
(2) to mandate the study group to work closely with competent international organizations, in particular FAO and the World Bank and to cooperate in its work with the United Nations Ad Hoc Inter-Agency Task Force on Tobacco Control;
(3) to request the secretariat to consult with interested Parties in order to identify a possible host to hold and finance, in cooperation with the secretariat, before the end of 2006, the first meeting of the study group; if this proves not to be possible, to request that the meeting be held in conjunction with the Conference of the Parties at its second session;
(4) to mandate the study group to submit a report to the second session of the Conference of the Parties on the results of the discussions of its first meeting.

Mr CASO GONZÁLEZ (Mexico) said that, subject to his Government’s formal consent, his country would be willing to host the first meeting of the study group.

The CHAIR, expressing gratitude for that offer, invited the Committee to agree to the amended text of the draft decision.

The draft decision was approved.¹

¹ Transmitted to the Conference of the Parties in the Committee’s fifth report and adopted as decision FCTC/COP1(17).
3. ADDITIONAL MATTERS IDENTIFIED IN THE CONVENTION FOR CONSIDERATION BY THE CONFERENCE OF THE PARTIES: Item 5 of the Agenda (resumed)

Elaboration of protocols: (Item 5.3 of the Agenda) (continued from the fourteenth meeting, section 2)

Mr KIDDLE (New Zealand), referring to Option 6, said that paragraphs 1(a) and 1(b) would authorize the Bureau, in the light of templates prepared by experts from the regions, to draft two new international instruments: the protocols on illicit trade and on cross-border advertising, promotion and sponsorship. However, those were complex matters within the purview of the WTO and not for the Bureau to decide. He therefore proposed deleting, in paragraph 1(d), the words “transform one or both of them into draft protocols and”, so that the Bureau would simply present the templates to the Conference of the Parties. That would enable all the Parties to make the decision, in consultation with trade lawyers.

Dr AL-MUTAWAA (United Arab Emirates), speaking on behalf of the Parties in the WHO Eastern Mediterranean Region, expressed concern about the proposal to nominate “up to four experts per region”, which might result in a geographical imbalance. What would the time frame be for the appointment of experts? He would prefer to delete the words “under the direction of the Bureau”.

Ms LINDBAK (Norway), Mr SAWERS (Australia) and Mr AFAAL (Maldives), the latter speaking on behalf of the Parties in the WHO South-East Asia Region, supported the amendment proposed by the representative of New Zealand.

Mr MUTOMB MUJING (Democratic Republic of the Congo) asked for the text proposed for deletion to be bracketed, so that the Parties in the WHO African Region could consider the proposed amendment.

Dr AL-LAWATI (Oman) sought clarification of the procedure for nominating the experts.

The CHAIR explained, in reply to the United Arab Emirates, that the Bureau acted as the interim government of the Conference between Conference sessions. The words “under the direction of the Bureau” should therefore be retained. The choice of four experts to be nominated, was intended as a balancing factor, since the regions differed considerably in size. The procedure could perhaps be modelled on that followed for nominating experts on the International Health Regulations (2005).

Dr BETTCHER (Secretariat) confirmed that the intersessional work would be carried out under the direction of the Bureau. Experts could be nominated through focal points in regional offices, based on predetermined competencies required for the successful execution of each expert group’s wants. The Committee would have to decide on the number of experts to be nominated in each Region.

Dr AL-MUTAWAA (United Arab Emirates) said that he could agree to retain the words “under the direction of the Bureau” and “up to four experts”.

Dr EL-ZAHAB (Syrian Arab Republic) requested that the terms of reference for experts, and the competence standards required, be laid down. Since persons with expertise in advertising, promotion and sponsorship would not necessarily be health experts, it should be made clear that the designated experts must have expertise in the health aspects of tobacco use. Before attending expert committee meetings, they should consider the draft protocols at regional meetings organized by the Regional Office. He further asked whether regions could nominate experts from States non-Parties.
The CHAIR said that experts participating in an informal group need not necessarily be from States Parties to the Convention. As to the particular qualifications of experts, he considered that the regions should have discretion to nominate on their own criteria.

Dr RAJALA (European Community) and Dr DA COSTA E SILVA (Brazil) said that they could agree to the amendment proposed by New Zealand.

The meeting was suspended from 16:55 to 17:05 in order to enable delegations from the WHO African Region to consult on the proposed amendment.

Mr MUTOMB MUJING (Democratic Republic of the Congo) said that the delegations from his Region were willing to agree to the proposed amendment.

Mr AITKEN (WHO Secretariat), in response to a request by the CHAIR, explained the procedures followed for appointing experts. When a decision was urgent, the six members of the Bureau would conduct consultations quickly within a Region to find two persons acceptable to the Region. Normally, however, the regional committees decided during their meetings between August and October each year how to fill vacancies due to arise in the subsequent year. Regional Directors could also be asked to initiate consultations in a given Region.

The CHAIR suggested inserting the words “appropriately qualified” before “experts”.

Mr CHOINIERE (Canada) and Mr CASO GONZÁLEZ (Mexico) said that they considered the addition redundant.

Dr DA COSTA E SILVA (Brazil) said that WHO’s normal practice was to seek experts through the health ministries of its Member States. However, since the kind of expert needed would not necessarily come from the health sector, it might be better to require the Bureau to conduct its own consultations.

Mr SAMO (Federated States of Micronesia) expressed his support for the amendment proposed by New Zealand.

Dr RAJALA (European Community) said that he fully trusted the capacity of the Bureau, representing as it did all the regions, to guide the secretariat in its choice of experts.

Dr BIANCO (Uruguay) agreed but emphasized that experts should not be from the tobacco industry.

Mr AITKEN (WHO Secretariat), replying to a query by Mr MUTOMB MUJING (Democratic Republic of the Congo), said that care would be taken to ensure that the experts appointed were from States Parties to the Convention. Replying to a question by Dr AL-LAWATI (Oman), he said that the method chosen to find them would depend on the timing. The secretariat should have full latitude to decide on an appropriate mechanism.
The CHAIR invited the Committee to consider the document for submission to the plenary with the incorporation of Option 6, as amended.

The draft decision, as amended, was approved.\(^1\)

The meeting rose at 17:20.

\(^1\) Transmitted to the Conference of the Parties in the Committee’s second report and adopted as decision FCTC/COP1(16).
SIXTEENTH MEETING
Friday, 17 February 2006, at 10:25

Chair: Dr C.T.O. OTTO (Palau)

1. REPORTS OF COMMITTEE A (Documents A/FCTC/COP/1/10, 11, 13 and 15)

The CHAIR drew attention to the draft second report of Committee A in document A/FCTC/COP/1/10 containing a decision for recommendation to the Conference of the Parties on elaboration of protocols.

The draft second report was adopted.¹

The CHAIR drew attention to the draft third report in document A/FCTC/COP/1/11 containing a decision for recommendation to the Conference of the Parties on elaboration of guidelines for implementation of the Convention.

The draft third report was adopted.¹

The CHAIR drew attention to the draft fourth report in document A/FCTC/COP/1/13 containing a decision for recommendation to the Conference of the Parties on reporting and exchange of information.

The draft fourth report was adopted.¹

The CHAIR drew attention to the draft fifth report in document A/FCTC/COP/1/15 containing a decision for recommendation to the Conference of the Parties on establishment of a study group on alternative crops.

The draft fifth report was adopted.²

2. CLOSURE

After an exchange of courtesies, the CHAIR declared the work of Committee A closed.

The meeting rose at 10:35.

¹ See page 223.
² See page 224.
COMMITTEE B

FIRST MEETING

Tuesday, 7 February 2006, at 17:50

Acting Chair: Mr D. AITKEN (WHO Secretariat)

OPENING OF THE COMMITTEE

The ACTING CHAIR declared open the first meeting of Committee B.

Election of officers

The ACTING CHAIR announced that Mr M. Seck (Senegal) had been nominated for the post of Chair of Committee B.

Decision: Committee B elected Mr M. Seck (Senegal) to serve as Chair.¹

The ACTING CHAIR announced that Mr P. Oldham (Canada) and Mr H. Al Husseini (Jordan) had been nominated for the two posts of Vice-Chair.

Decision: Committee B elected Mr P. Oldham (Canada) and Mr H. Al Husseini (Jordan) as Vice-Chairs.¹

The meeting rose at 17:55.

¹ Decision FCTC/COP1/3.
SECOND MEETING

Wednesday, 8 February 2006, at 10:20

Chair: Mr M. SECK (Senegal)

MATTERS IDENTIFIED IN THE CONVENTION FOR ACTION BY THE CONFERENCE OF THE PARTIES AT ITS FIRST SESSION: Item 4 of the Agenda

Adoption of the Rules of Procedure for the Conference of the Parties (Article 23 Conference of the Parties, paragraph 3): Item 4.1 of the Agenda (Document A/FCTC/COP/1/2)

The CHAIR announced that Committee B would consider the draft rules of procedure of the Conference of the Parties. It had been proposed that the floor should first be given to the coordinators of regional groups. Where there was no common regional position, Parties would express their views individually.

The Committee should not reopen the discussion on the many draft rules on which the Intergovernmental Working Group had reached consensus. In some cases the Working Group had reached consensus on the substance but had not had time to agree on a wording. The regional groups had been unable to reach consensus on a number of other draft rules. The Committee would begin by considering the draft rules on whose substance consensus had been reached.

Replying to a question from Dr LASSMANN (Austria), speaking on behalf of Parties in the European Union, he suggested that any questions relating to the wording of agreed draft rules in the various language versions should be submitted to the interim secretariat in writing.

Dr BETTCHER (WHO Secretariat) said that Annex 6 in the Annex to document A/FCTC/COP/1/2 provided an overview of the position regarding the draft rules of procedure at the end of the second session of the Intergovernmental Working Group. Consensus had been reached on most of the draft rules; a few, however, remained bracketed. Of those, a first category contained new language proposed by the Working Group, reflected in bold text in Annex 6. A second category contained language proposed by the interim secretariat at the request of the Working Group. The third category contained language that was contingent on the final wording of the rules in the two preceding categories. The interim secretariat had drafted language based on the parallel Rules of Procedure of the Executive Board for draft rules 2(10), 2(11) and 2(12), but no decision had been taken at the Working Group’s second session, for lack of time. New language had been proposed in draft rule 7 and the directly related draft rule 9. Draft rules 27(2) and 31 were to be reviewed following the decisions on draft rules 2(10), 2(11) and 2(12). Draft rule 28(2) was bracketed text that the Committee would need to discuss further. Draft rules 29 and 30, on participation of States non-Parties and other observers, existed in a number of sometimes overlapping alternative formulations. The differences generally related to the questions of eligibility for observer status, the procedure for applying for such status, and the extent of participation. Draft rule 49 concerned voting in situations in which consensus could not be reached. The language of draft rules 61 to 64, which the Working Group had not considered for lack of time, was based on that of the parallel provisions of the Rules of Procedure of the World Health Assembly.

Rules 61 and 62

Dr AL-LAWATI (Oman), supported by Ms VALLE (Mexico) and Dr LASSMANN (Austria), the latter speaking on behalf of Parties in the European Union, said that the 48-hour time-limit for
submission of corrections to the summary records, provided for in draft rule 61, was too short. He
proposed a time-limit of between 15 and 30 days.

In response to a question by Mr TSUJI (Japan), Dr KEAN (Secretary) said that the 48-hour
deadline was calculated from the date of receipt of the summary records. In practice the rule, which
replicated the provisions of Rule 93 of the Rules of Procedure of the World Health Assembly, was
applied with considerable flexibility.

Dr OGWELL (Kenya), supported by Dr DA COSTA E SILVA (Brazil) and Dr ROA (Panama),
proposed a two-week time-limit calculated from the date of receipt of the records.

Mr GOU Haibo (China), supported by Mr KIVANC (Turkey), endorsed the previous speakers’
comments and proposed that, in draft rule 61, the word “provisional” should be inserted before
“summary records”. The term “delegations” should also be clarified, perhaps by harmonizing it with
the language of draft rule 62. Dr ROA (Panama) supported the latter proposal.

Mr RUÍZ GAYTÁN LÓPEZ (Mexico) proposed using the simpler formulation “delegations”,
used in draft rule 61, in both draft rules.

Ms LAMBERT (South Africa) supported the proposals by China and proposed the formulation
“15 working days”.

Mr BAYAT MOKHTARI (Islamic Republic of Iran) supported the proposals by Oman and
China. On the proposal by South Africa, he noted that the concept of a “working day” differed from
State to State.

Dr MUÑOZ (Chile) said that if, as seemed implicit, the documentation was to be transmitted
electronically, a 15-day time-limit was more than ample. It should be calculated from the date of
publication of the provisional records on the web page, as it would be difficult accurately to establish
the date on which they had been received.

Ms VALLE (Mexico), noting that it had not previously been the practice to transmit the
summary records electronically, asked for clarification on that point.

Dr LASSMANN (Austria), speaking on behalf of the European Community and its Member
States in its capacity as a Contracting Party to the Framework Convention, asked whether it was
envisioned to transmit the records to regional economic integration organizations that were not Parties.

Mr GOU Haibo (China) said that all participants entitled to speak at the sessions should be
entitled to correct the summaries of their speeches. He proposed rewording draft rule 61 to read: “The
provisional summary records referred to in Rule 59 shall be sent as soon as possible to the Parties and,
where appropriate, to non-Party States and non-Party regional economic integration organizations
invited to attend the session.”

Mrs EFRAT-SMILG (Israel) supported the view that participants must be entitled to correct the
summary records, but expressed reservations regarding the proposal to refer to “15 working days”.

Dr KEAN (Secretary) confirmed that the purpose of draft rule 61 was to enable those who had
spoken to check the provisional summary records for accuracy. Responding to the question raised by
Mexico, he said that the provisional summary records were transmitted in hard copy only, as they did
not constitute a formal record of the proceedings until approved by the participants.
Mr BURCI (WHO Secretariat, Legal Counsel) said that the generic term “delegations” had been used in draft rule 61 in an attempt to capture concisely the notion of all persons who had spoken at the meeting. Draft rule 62 referred to the finalized documents, which were transmitted to all States and organizations that had been invited to attend the meeting.

Dr MAHMOUD (Egypt) said that the vague term “as soon as possible” needed to be clarified.

Mr BURCI (WHO Secretariat, Legal Counsel) suggested a new wording of draft rule 61, to read: “The provisional summary records referred to in Rule 59 shall be sent as soon as possible to delegations, who shall inform the Secretariat in writing, not later than 15 days from the day of receipt, of any corrections they wish to have made.”

Mr GOU Haibo (China) said that, in the light of the Legal Counsel’s explanation, China could accept his suggested formulation.

Dr AL-LAWATI (Oman) drew attention to the difficulty of accurately ascertaining the day of receipt.

Dr FOSTER (Namibia) supported the formulation suggested by the Legal Counsel. He suggested, however, that a definition of the term “delegations” might usefully be included in Rule 2.

Dr LASSMANN (Austria), speaking on behalf of the European Community and its Member States, said that it would be more accurate to refer to the “provisional version of the summary records…”.

In response to requests for clarification by Mr TSUJI (Japan) and Dr AL-LAWATI (Oman), Mr BURCI (WHO Secretariat, Legal Counsel) confirmed that the expression “private meetings” should read “restricted meetings”. Replying to a request from Mr BAYAT MOKHTARI (Islamic Republic of Iran) for clarification of the issues raised in the footnote to draft rule 62, he said that there was no legal reason why the finalized documents should not be sent to entities other than those invited to attend the sessions. Indeed, Rule 94 of the Rules of Procedure of the World Health Assembly, on which draft rule 62 was based, provided that the final documents of the Health Assembly would also be transmitted to the United Nations and to all specialized agencies with which the Organization had entered into effective relations.

**Rules 61 and 62, as amended, were approved.**

**Rule 63**

Mr HETLAND (Norway) said that, as there seemed to be a connection between draft rule 63 and draft rules 2 and 7, it might be premature to take a decision regarding draft rule 63.

Mr BURCI (WHO Secretariat, Legal Counsel) confirmed that a decision on draft rule 63 hinged on the decision to be taken on whether the three categories of meetings currently defined in draft rule 2 were to be retained.

Dr MAHMOUD (Egypt) proposed incorporating draft rule 63 in draft rule 59 as a separate paragraph. The time frame for publication should also be specified.

In reply to a question from Dr AL-LAWATI (Oman) whether, pursuant to draft rule 63, the reports of all subsidiary bodies would be distributed to States and organizations other than the Parties, Mr BURCI (WHO Secretariat, Legal Counsel) said that the reports of subsidiary bodies could be oral
reports to the plenary, in which case they would be recorded in the verbatim record, or written reports. As the plenary normally met in public, in either case the reports would be public documents.

Mr MBUYU MUTEBA (Democratic Republic of the Congo) said that it should be specified where the published materials could be obtained.

The CHAIR suggested that further consideration of draft rule 63 should be deferred pending consideration of draft rule 2. At that stage, the comments made by delegations thus far would be taken into account.

It was so agreed.

(For continuation of the discussion, see summary record of the fourth meeting.)

Rule 64

Dr LASSMANN (Austria), speaking on behalf of the European Community and its Member States, said that the words “as he or she may consider practicable” were unclear and should be deleted.

Mr BAYAT MOKHTARI (Islamic Republic of Iran) said that it should be made clear that the Journal covered only public meetings.

Ms VALLE (Mexico) proposed that, in line with Rule 90 of the Rules of Procedure of the World Health Assembly, draft rule 64 should specify that the Journal should be drawn up in the six working languages of the session.

In reply to a question from Dr ASQUETA (Uruguay), who supported the proposal by Mexico, Dr KEAN (Secretary) said that the Journal did not constitute an official document of the Conference within the meaning of draft rule 58. Nevertheless, it would be a good idea to specify in draft rule 64 that it was to be issued in the six working languages.

Dr BABA (Nigeria) proposed amending the word “session” to read “sessions”.

Mr MBUYU MUTEBA (Democratic Republic of the Congo) proposed the wording “… for the convenience of the Parties … a daily Journal in the official languages, pursuant to Rule 56 …”.

Mr AL HUSSEINI (Jordan) proposed aligning draft rule 64 more closely with draft rule 61 by retaining the words “participating delegations” while deleting “and organizations”.

Mr BURCI (WHO Secretariat, Legal Counsel) suggested the wording: “The Head of the Secretariat shall issue in the working languages for the convenience of participating delegations, in the form of a daily Journal of the session, a summary account of the proceedings of plenary meetings, and of public meetings of committees and subcommittees.”

Thus amended, draft rule 64 was approved.

Rules 2(10), 2(11) and 2(12)

Mr MBUYU MUTEBA (Democratic Republic of the Congo) proposed incorporating the two definitions contained in draft rule 38(2) as new paragraphs 13 and 14 of draft rule 2.

Dr FOSTER (Namibia) proposed that a new paragraph 13 should be inserted, to read: “‘Delegations’ means all participants, including Parties, States and regional economic integration
organizations that are not Parties, the Secretariat, as well as intergovernmental and nongovernmental organizations.”

Dr ROA (Panama), supporting the proposal, also proposed including accredited nongovernmental organizations participating in special working groups in the list, set out in draft rule 2(11), of those entitled to attend open sessions or meetings.

Ms LAMBERT (South Africa), supported by Ms FUJINO (Japan), said that there was no need to include a definition of the term “delegations” in draft rule 2. The dictionary definition was sufficient.

Mrs EFRAT-SMILG (Israel), supporting South Africa’s view, asked whether a corresponding definition was to be found in the rules of procedure of any other conference.

Dr OGWELL (Kenya) asked why nongovernmental organizations were permitted to attend “public” sessions and meetings but not “open” sessions and meetings.

Ms FUJINO (Japan) and Mrs GILDERS (Canada) proposed including references to draft rules 29 and 30bis in draft rule 2(10).

Dr LASSMANN (Austria), speaking on behalf of the Parties in the European Union, said that he could only give general indications of the direction in which the European Union’s thinking on the bracketed language in the draft rules of procedure was evolving, as its position on those questions was still under review. The European Union might in due course propose the inclusion in draft rule 2 of the definition of the term “Bureau”, to be found in draft rule 21.

The CHAIR noted that the Conference could not be expected to interrupt its search for consensus pending decisions by regional groups regarding their final position on various issues. It was to be hoped that in the course of the session the European Union would agree on a common position, of which due account could then be taken in the search for consensus.

Ms VALLE (Mexico) said that her Government had consistently favoured the inclusion of nongovernmental organizations – regional and national as well as international. However, she could not see what difference there would be between public and open meetings if the proposal to admit nongovernmental organizations to open meetings were to be approved.

Mrs GILDERS (Canada), supported by Dr DA COSTA E SILVA (Brazil), Mrs MATLHO (Botswana) (speaking on behalf of the Parties in the WHO African Region), Dr OGWELL (Kenya) and Dr BRISTOL (Saint Lucia), said that, while there were obviously circumstances in which Parties might wish to discuss issues privately, wherever possible the principle of transparency should prevail. She could not see the rationale behind a category of “open” meetings that excluded selected groups of observers. She therefore proposed reducing the categories of sessions and meetings to two, namely, public and restricted, by deleting draft rule 2(11).

Mr JORBON (Marshall Islands), supporting the proposal by Canada, asked whether the reference to “States” also covered governments.

Ms FUJINO (Japan) said that, while Japan agreed on the need for inclusiveness, it favoured retaining the category of “open” sessions and meetings, as forums which prospective States Parties could attend. She requested that draft rule 2(11) be retained, in square brackets, pending further discussion.
Dr ROA (Panama) said that the difference between public and open meetings was that nongovernmental organizations and the public were excluded from the latter. That exclusion conflicted with the principle of seeking the broadest possible participation. The proposal by Japan to retain draft rule 2(11) in square brackets was unnecessary, as prospective Parties were in any case permitted to attend public meetings. Accordingly, she supported Canada’s proposal to delete draft rule 2(11).

Mr HETLAND (Norway), supporting the proposal by Canada, said that, if he was correct in assuming that draft rule 2(12) referred also to regional meetings, he would propose replacing the words “purpose and” by “purpose or”.

Mr BURCI (WHO Secretariat, Legal Counsel), replying to the question by Israel, said that he was not aware that the rules of procedure of any other conference defined the term “delegations”.

The formulation proposed by Namibia posed a problem, as the Secretariat was not a delegation. The meaning of the term “State”, as used in the rules of procedure, was contingent on the final decision to be taken regarding draft rule 29. As to the proposal by Norway, to the best of his knowledge, meetings of regional groups in the United Nations system were not considered to be meetings of organs of an assembly or conference.

Mr HETLAND (Norway) said that in the light of the Legal Counsel’s explanation he would withdraw his proposal.

Responding to a suggestion by Dr MAHMOUD (Egypt) that the words “can be attended”, in draft rule 2(12), were too imprecise, Mrs EFRAT-SMILG (Israel) said that small delegations such as her own were not always able to exercise their right to attend. The current wording allowed for that contingency. The same wording was in any case to be found in draft rule 2(10).

Dr LASSMANN (Austria), speaking on behalf of the Parties in the European Union, said that the European Union took note of the discussion regarding the proposal to delete draft rule 2(11), to which it would revert in due course.

Mr RASOLONJATOTOVO (Madagascar) said that in draft rule 2(10) the expression “intergovernmental and nongovernmental organizations accredited by the Conference of the Parties” should be placed within square brackets pending a final decision on draft rules 30 and 30bis. He asked for clarification of the scope of the term “members of the public”.

Mr BURCI (WHO Secretariat, Legal Counsel) said that “the public” meant individuals not belonging to any of the other categories of participants, who were entitled to view the proceedings from the public gallery. The term also covered representatives of the media.

Mr BAYAT MOKHTARI (Islamic Republic of Iran), referring to draft rule 2(12), proposed the wording “sessions or meetings that should only be attended by…”.

Dr BRISTOL (Saint Lucia) proposed the wording “have the right to attend…”.

Mrs GILDERS (Canada) proposed the wording “that are open to Parties and essential Secretariat staff”. On draft rule 2(11), she did not see that it was necessary to exclude nongovernmental organizations from any meetings other than restricted meetings.

Mr BURCI (WHO Secretariat, Legal Counsel), replying to a request for clarification by Mr TSUII (Japan), said that the reason why only rule 30 was referred to in draft rule 2(10) was that the only reference to an accreditation mechanism in the various provisional formulations of draft rules 29, 29bis, 30 and 30bis was the one in draft rule 30 relating to nongovernmental organizations. A solution could be found once the final formulations of draft rules 29 and 30 had been agreed upon.
On the disputed wording “can be attended”, in draft rules 2(10) and 2(12), he suggested that a possible wording, based on Rule 19 of the Rules of Procedure of the World Health Assembly, might be: “… sessions or meetings that are open to attendance by Parties…”.

Mr BAYAT MOKHTARI (Islamic Republic of Iran), speaking on behalf of the Parties in the WHO Eastern Mediterranean Region, and Dr TSHERI NG (Bhutan), speaking on behalf of the Parties in the WHO South-East Asia Region, asked for consideration of draft rule 2(11) to be suspended pending informal consultations among Parties of their respective regional groups.

The meeting rose at 13:10.
THIRD MEETING
Wednesday, 8 February 2006, at 15:20

Chair: Mr M. SECK (Senegal)

MATTERS IDENTIFIED IN THE CONVENTION FOR ACTION BY THE CONFERENCE OF THE PARTIES AT ITS FIRST SESSION: Item 4 of the Agenda (continued)

Adoption of the Rules of Procedure for the Conference of the Parties (Article 23 Conference of the Parties, paragraph 3): Item 4.1 of the Agenda (Document A/FCTC/COP/1/2) (continued)

Rules 2(10), 2(11) and 2(12) (continued)

The CHAIR invited comments from the regional groups on the proposal to delete draft rule 2(11).

Mr BAYAT MOKHTARI (Islamic Republic of Iran), speaking on behalf of the Parties in the WHO Eastern Mediterranean Region, supported deletion. There was no reason to exclude nongovernmental organizations: States non-Parties could speak in public meetings in the presence of those organizations.

Dr LASSMANN (Austria), speaking on behalf of the Parties in the WHO European Region, Ms LAMBERT (South Africa), speaking on behalf of the Parties in the WHO African Region, Mr DEL PICÔ (Chile), speaking on behalf of the Parties in the WHO Region of the Americas, and Dr TSHERING (Bhutan), speaking on behalf of the Parties in the WHO South-East Asia Region, supported deletion.

At the request of Mr TSUJI (Japan), Dr KEAN (Secretary) explained that Rule 7 of the Rules of Procedure of the Executive Board had been amended, in the interests of transparency, to open previously restricted or private meetings, including those at which the Director-General was elected, to all Member States. The feeling in the Intergovernmental Working Group had also been that all meetings should be public.

Mr TSUJI (Japan) said that in the light of that explanation, and in the interests of consensus, his delegation would agree to the deletion of draft rule 2(11).

The CHAIR said that there appeared to be consensus on the deletion of draft rule 2(11).

It was so agreed.

The CHAIR invited the Committee to consider draft rules 2(10) and 2(12) in the light of Egypt’s comments at the Committee’s previous meeting on the use of the words “can be attended by…”, the Legal Counsel’s suggestion that those words should be replaced by “are open to attendance by…” and Canada’s proposal to include a reference to draft rule 30bis in draft rule 2(10).

Mr BURCI (WHO Secretariat, Legal Counsel) explained that his proposal had been to use the wording from Rule 19 of the Rules of Procedure of the World Health Assembly, “…are open to attendance by…” in both draft rule 2(10) and draft rule 2(12). Responding to the suggestion that draft
rule 2 should include a definition of “Bureau”, he said that it was not necessary to repeat the definition that already existed in draft rule 21. At the request of Ms LAMBERT (South Africa), he explained that, as instructed by the Intergovernmental Working Group, the interim secretariat had defined “public,” “open” and “restricted” meetings on the basis of the definitions used in the Rules of Procedure of the Executive Board. Rule 29 had not been referred to because observers were not subject to accreditation, but the rule could be added if the Conference so wished.

Ms LAMBERT (South Africa), speaking on behalf of the Parties in the WHO African Region, said that draft rule 2(10) should remain as it stood.

After a brief discussion, it was agreed that the wording proposed by the Legal Counsel should be used in both draft rules, and that the phrase in draft rule 2(12) “sessions or meetings held for a specific purpose and under exceptional circumstances” should be retained, in line with Rule 7 of the Rules of Procedure of the Executive Board.

Rules 27(2) and 31

Dr DA COSTA E SILVA (Brazil) suggested that the Committee should first consider draft rule 30 and decide whether an accreditation system was needed for nongovernmental organizations in order to determine whether there were any links to the tobacco industry.

Mrs MATLHO (Botswana), speaking on behalf of the Parties in the WHO African Region, proposed that the first sentence of draft rule 27(2) should read: “In principle, the meetings of the Conference of the Parties or the subsidiary bodies concerned shall hold public sessions, with the possibility of restricted sessions in exceptional circumstances.”

Mr RASOLONJATOVO (Madagascar) and Ms VALLE (Mexico) supported that proposal in view of its consistency with draft rule 2.

Mrs GILDERS (Canada) proposed, in order to establish public meetings as the norm, that the first sentence of draft rule 27(2) should read: “Meetings will be held in public unless the Conference of the Parties decides otherwise”, in line with draft rule 31.

Dr ROA (Panama) endorsed that position, emphasizing the useful contribution to be made by nongovernmental organizations, provided they had no connection with the tobacco industry.

Dr BETTCHER (WHO Secretariat), replying to a question by Dr LASSMANN (Austria), said that the reference to Article 5.3 of the Framework Convention had been included at the first session of the Intergovernmental Working Group to ensure that the commercial and other vested interests of the tobacco industry had no influence on the work of the subsidiary bodies.

Ms TOR-DE TARLÉ (France) suggested that Rule 20 of the Rules of Procedure of the World Health Assembly should be used instead of a new formulation; it met the Committee’s concerns to ensure public meetings as the norm and to provide for restricted meetings where necessary.

Mr BAYAT MOKHTARI (Islamic Republic of Iran) suggested that the content of draft rule 27(2) would be more appropriately located in draft rule 31.

Ms LAMBERT (South Africa) and Mr RASOLONJATOVO (Madagascar) endorsed that proposal.

The CHAIR suggested that the proposal by the Islamic Republic of Iran might form the basis of consensus.
Mrs EFRAT-SMILG (Israel) said that subsidiary bodies should themselves be allowed to decide whether a meeting should be public or restricted. To that end draft rule 27(2) should be retained and the words “The Conference of the Parties or” deleted.

Ms FUJINO (Japan) said that as subsidiary bodies would not necessarily be meeting at the same time as the Conference of the Parties, and would in any case have different mandates, provision should be made for them in draft rule 27(2) to make their own decisions, as Israel had suggested. However, the wording of the rule should be based on that of draft rule 31, which should remain unchanged, covering the sessions of the Conference of the Parties in general.

Mr GOU Haibo (China) wondered how the wish to ensure maximum transparency and inclusiveness by making public meetings the norm could be reconciled with Article 5.3 of the Framework Convention, which specifically excluded representatives of the tobacco industry. Subsidiary bodies, the type and number of which could not be foreseen, should be able to decide for themselves whether their meetings should be public or restricted.

Dr ASQUETA (Uruguay) proposed that draft rule 27(2) should be amended to read: “The meetings of the subsidiary bodies shall be subject to the provisions of Rule 31 governing the sessions of the Conference of the Parties”, and that a consequential amendment should be made in draft rule 31 to cover the conduct of all business, including that of subsidiary bodies.

Mr TRIVEDI (India) said that he could endorse that proposal provided that no reference was made in draft rule 27(2) to the Conference of the Parties.

Mr MBUYU MUTEBA (Democratic Republic of the Congo) observed that, despite best efforts, the tobacco industry would find a way of obtaining the information it wanted. Rather than trying to exclude the industry, therefore, it might be better to engage with it.

Dr AL-LAWATI (Oman) suggested that reference to public and restricted meetings should be made in draft rule 27(2) for subsidiary bodies and in draft rule 31 for the Conference of the Parties, requiring in both cases that implementation should be in conformity with Article 5.3 of the Framework Convention.

Mr RUÍZ GAYTÁN LÓPEZ (Mexico) sought the advice of the Legal Counsel on where best to include the contents of draft rule 27(2).

Dr SHRESTHA (Observer, Nepal) said that the positions of the Islamic Republic of Iran, Israel and South Africa were justified. Draft rule 27(2) should be retained, with the reference to open meetings deleted. The words “and subsidiary bodies” should be inserted in draft rule 31 before the words “shall be held in public”. Use of the full title of the Convention in draft rule 31 was unnecessary.

Dr BABA (Nigeria) suggested that in order to make progress the Committee should concentrate on the general principles and leave the final wording to the interim secretariat.

The CHAIR invited the Committee to consider the following formulation as a basis for consensus on draft rule 31: “Sessions of the Conference of the Parties and the subsidiary bodies shall
be held in public unless the Conference decides, in exceptional circumstances, to hold a restricted meeting.”

Mr RUÍZ GAYTÁN LÓPEZ (Mexico) said that he could support the Chair’s proposal provided that draft rule 27(2) was then deleted.

Ms FUJINO (Japan) said that the Chair’s proposed formulation would require deletion of draft rule 27(2) or at least its amendment, and was therefore unacceptable. She wanted draft rule 27(2) to be retained in order to provide for decisions by the subsidiary bodies themselves.

Mr JORBON (Marshall Islands) said that the only amendments necessary were the deletion of the words “open meetings” from draft rule 27(2) and the insertion of “and subsidiary bodies” in draft rule 31.

Dr ROA (Panama) queried the absence of the reference to Article 5.3 of the Framework Convention in the Chair’s proposed wording.

Ms LAMBERT (South Africa), noting that the Committee was close to consensus, suggested that in order to help the process, her delegation’s original proposal should be withdrawn and that, instead, draft rule 31 should read: “Sessions of the Conference of the Parties shall be held in public unless the Conference of the Parties decides otherwise” and that draft rule 27(2) should be amended to read: “Sessions of the subsidiary bodies shall be held in public unless the Conference of the Parties decides otherwise.”

Mr BURCI (WHO Secretariat, Legal Counsel) suggested that South Africa’s proposal for draft rule 27(2) might be further amended to read: “Sessions of the subsidiary bodies shall be held in public unless the Conference of the Parties or the subsidiary body concerned decides otherwise.”

Mr BAYAT MOKHTARI (Islamic Republic of Iran) said that South Africa’s proposal would provide a good solution if specific reference were made to restricted meetings.

Mr BURCI (WHO Secretariat, Legal Counsel) said that, in order to meet that concern, draft rule 31 might read: “Sessions of the Conference of the Parties shall be held in public unless the Conference of the Parties decides that they shall be restricted. This rule shall be implemented in conformity with Article 5.3 of the WHO Framework Convention on Tobacco Control”. Draft rule 27(2) might read: “Sessions of subsidiary bodies shall be held in public unless the Conference of the Parties or the subsidiary body concerned decides that they shall be restricted. This rule shall be implemented in conformity with Article 5.3 of the WHO Framework Convention on Tobacco Control.”

Dr LASSMANN (Austria), speaking on behalf of the European Union, said that his group needed more time to arrive at a common position on the proposed text.

Mr GOU Haibo (China) asked whether, as the subsidiary bodies reported to the Conference of the Parties, it should be up to the Conference to decide whether a subsidiary body should hold a restricted meeting.

Mr BURCI (WHO Secretariat, Legal Counsel) pointed out that either body could decide, but if the Conference were to do so, it would limit the flexibility of the subsidiary body to decide on a restricted meeting, for example in the case of negotiations. The issue was not a legal one, however, and needed to be decided by the Conference.
Mr RAFFAY (Hungary) said that as “Convention” was defined in draft rule 2, it should not be necessary to use its full title elsewhere in the text.

Mr RASOLONJATOVO (Madagascar) expressed support for the Legal Counsel’s last proposal and for the proposal by France for a text based on Rule 20 of the Rules of Procedure of the World Health Assembly.

Dr TUALA (Samoa), supported by Mr MBUYU MUTEBA (Democratic Republic of the Congo), asked whether the Legal Counsel could prepare a new text, reflecting the different views expressed, for consideration at the Committee’s next meeting.

The CHAIR replied that, in view of its heavy agenda, the Committee did not have the time to go back over its work. There had been no objections to the Legal Counsel’s proposal and it was therefore a good basis for consensus.

Dr LASSMANN (Austria) said that the European Union was not ready to join a consensus and asked to be allowed time for reflection overnight.

Dr BABA (Nigeria) said that the delegate of Austria might usefully explain what problems the European Union had with the proposed text.

The CHAIR said that in the absence of any objection he took it that the proposals by the Legal Counsel were a basis and framework for consensus.

Dr ASQUETA (Uruguay) proposed that, in view of the requests for more time and of the need to ensure accurate translations of the proposals, further consideration of draft rules 27(2) and 31 should be postponed until the following day.

It was so agreed.

(For continuation of the discussion, see summary record of the fourth meeting.)

**Rule 28(2)**

Mr BURCI (WHO Secretariat, Legal Counsel), responding to a request by the Islamic Republic of Iran, explained that draft rule 28(2) had been left in square brackets because there had been two conflicting positions in the Intergovernmental Working Group: first, that in principle a presiding officer should not exercise his delegation’s right to vote; secondly, that allowing a presiding officer to vote could help small delegations. In general, presiding officers did not vote, but exceptions included the Executive Board of WHO, where the Chair continued to represent his or her delegation, and the United Nations Security Council.

Mrs EFRAT-SMILG (Israel) suggested that the problem might be solved by adding at the end of the sentence the phrase: “in the absence of another representative of the same Party”.

Mrs MATLHO (Botswana), speaking on behalf of the Parties in the WHO African Region, proposed that the draft rule should be moved to draft rule 49 on voting.

Ms VALLE (Mexico) suggested replacing draft rule 28(2) by Rule 29 of the Rules of Procedure of the World Health Assembly, and adding at the end that, in the absence of another delegate or alternate delegate, the president or vice-president might vote.
Ms FUJINO (Japan) said that rather than indicating that a president or vice-president might vote in certain circumstances, the text should convey the principle that the presiding officer should not vote.

Mr GOU Haibo (China) pointed out that under draft rule 21(4) the President of the Conference of the Parties could not vote. As the chairperson of a subsidiary body had the same functions, there was no reason why he or she should not be subject to the same rule, as was the case in other conventions. However, the rule should not prevent the delegation from exercising its right to vote.

Dr ROA (Panama) said that draft rule 28(2) should be incorporated into draft rule 48 on voting, with the added provision that the chairperson should be allowed to vote if he or she was the Party’s only representative.

The CHAIR said that Mexico’s proposal was a useful compromise between those in favour of the chairperson voting and those against, and might serve as a basis for consensus.

Mrs MATLHO (Botswana) said that the Parties in the WHO African Region maintained their proposal and did not support the notion that the chairperson should be able to vote.

Dr BABA (Nigeria) added that the African Parties’ objective was to guard against any conflict of interest by ensuring that the chairperson could not add his or her vote to that of the delegation.

Mr BURCI (WHO Secretariat, Legal Counsel) said that draft rule 28(2) was not intended to give any Party more than one vote. Rather it was intended to ensure that a Party whose sole representative was the chairperson was not deprived of its right to vote. One advantage of allowing the chairperson to vote, a question raised by Mr KIVANC (Turkey), was that it helped single-person or small delegations. On the other hand, it blurred the distinction between the chairperson’s role in working for the committee and his/her role as government representative. Mexico’s proposal was a good compromise. Replying to a question by Mr MBUYU MUTEBA (Democratic Republic of the Congo), he said that the Presidency of the Security Council rotated every month. As the Member State held the Presidency, the President could exercise its right to vote.

Mr JORBON (Marshall Islands) agreed that Mexico’s proposal was a good compromise.

Ms FUJINO (Japan), supported by Mr GOU Haibo (China), insisted that a chairperson should not be allowed to vote in any circumstances. If he/she was the only member of the delegation present, the vice-chairperson could always be asked to chair the meeting during voting to enable the chairperson to vote.

Dr AL-LAWATI (Oman) strongly opposed that position. A delegation should not be prevented from exercising its right to vote, especially when that delegation consisted of a single person who happened to be chairperson of a subsidiary body.

Ms LAMBERT (South Africa) said that Israel’s proposal would give the draft rule the flexibility to allow a single-person delegation to accept the office of chairperson without giving up his delegation’s basic right to vote. It was important not to narrow down the pool of potential chairpersons by default.

At the request of the CHAIR, who had noted support for her earlier proposal, Ms VALLE (Mexico) suggested that rule 28(2) should be amended to read: “The chairperson of a subsidiary body shall not participate in the voting but, exceptionally, if no other member of his/her delegation is present to act as representative of his/her Government, the Chairperson shall have the right to vote.”
Thus, if the Chairperson was the only member of his/her delegation present in the room, he/she could exercise the right to vote as provided for in draft rule 48.

Mrs MATLHO (Botswana), acknowledging the attempts to protect the interests of small delegations, said that the Parties in the WHO African Region would not block a consensus on a text along the lines proposed by Mexico.

Dr DA COSTA E SILVA (Brazil) suggested that draft rule 28(2) should be replaced by draft rule 21(4), given the similarity of the functions of President of the Conference and chairperson of a subsidiary body, which China had earlier pointed out.

Dr ASQUETA (Uruguay) noted that in procedural matters, usually settled by a simple majority, chairpersons tended not to vote even when they had the right to do so. The problem would arise in connection with matters of substance, usually requiring special majorities, where the chairperson had the casting vote, a matter almost impossible to regulate. Draft rule 48(1) had wide implications and, bearing in mind the interests of small delegations, the Conference needed to decide whether it was more important to protect procedural traditions in the subsidiary bodies or the State Party’s right to vote.

Dr BRISTOL (Saint Lucia) proposed that, to meet all concerns, draft rule 28(2) should read: “The Chairperson of a subsidiary body shall not at the same time exercise the right to vote as a Party representative unless the Party is a single-person delegation. In that case, the Chairperson shall hand over to a Vice-Chairperson in order to exercise his/her right under Rule 48(1).”

The CHAIR suggested that, in view of the difficulty of finding a point of convergence among the various positions that had emerged, the Committee should work on Mexico’s proposal in an effort to reach consensus.

Dr LASSMANN (Austria), speaking on behalf of the European Union, said that as Saint Lucia’s proposal was also a valid one it would be useful to have Mexico’s and Saint Lucia’s proposals in writing so that delegations could consider them overnight.

It was so agreed.

It was further agreed that the two proposals would be translated into the official languages and distributed the following morning.

The meeting rose at 18:10.
FOURTH MEETING
Thursday, 9 February 2006, at 10:15
Chair: Mr M. SECK (Senegal)

MATTERS IDENTIFIED IN THE CONVENTION FOR ACTION BY THE CONFERENCE OF THE PARTIES AT ITS FIRST SESSION: Item 4 of the Agenda (continued)

Adoption of the Rules of Procedure for the Conference of the Parties (Article 23 Conference of the Parties, paragraph 3): Item 4.1 of the Agenda (Document A/FCTC/COP/1/2) (continued)

Rules 2(10) and 2(11), 27(2), 31 and 61 to 64 (continued)

Mr BURCI (WHO Secretariat, Legal Counsel) reviewed the outcome of the Committee’s discussions at its previous two meetings on draft rules 2, 27(2), 31 and 61 to 64. Following the deletion of old draft rule 2(11), old draft rule 2(12) had become new draft rule 2(11). Draft rules 2(10) and 2(11) (old 2(12)), 61, 62 and 64 had been approved.

Draft rules 2(10), 2(11), 31 and 63 read:

DEFINITIONS

Rule 2

10. “public” sessions or meetings means sessions or meetings that are open to attendance by Parties, States and regional economic integration organizations that are not Parties, the Secretariat, intergovernmental and nongovernmental organizations accredited by the Conference of the Parties pursuant to Rule 30 and members of the public.

11. “restricted” sessions or meetings held or meetings held for a specific purpose and under exceptional circumstances means sessions or meetings that are open to attendance by Parties and essential Secretariat staff.

SUBSIDIARY BODIES

Rule 27

[2. Session of subsidiary bodies shall be held in public, unless the Conference of the Parties or the subsidiary body concerned decides that they shall be restricted. This rule shall be implemented in conformity with article 5.3 of the Convention.]

CONDUCT OF BUSINESS

Rule 31

[Sessions of the Conference of the Parties shall be held in public, unless the conference of the Parties decides that they shall be restricted. This rule shall be implemented in conformity with Article 5.3 of the convention.]
LANGUAGES AND RECORDS

Rule 63

Verbatim and summary records of [public] meetings and the reports of all subsidiary bodies shall be published.

He suggested two minor editorial changes. In draft rule 2(11) the phrase “means sessions of meetings” should be relocated in the sentence so as to precede the word “held”. At the beginning of draft rule 27(2), the words “or meetings” should be inserted after the word “Sessions”.

Mr YANG Xiaokun (China) said that the Parties in the WHO Western Pacific Region considered that draft rule 27(2) should remain in square brackets. In the light of draft rule 49, he asked for clarification of the relationship between draft rules 27(2) and 49. Was the decision whether to hold open or restricted meetings to be made by consensus or by voting? Was it a procedural or a substantive matter?

Mr BURCI (WHO Secretariat, Legal Counsel) pointed out that draft rule 49 still existed in a number of formulations. The reply to the question would depend on the wording finally approved. To the best of his knowledge, in other bodies, the decision whether to hold public or restricted meetings was normally treated as a procedural question. However, the decision-making body could decide to treat it as a substantive matter.

Mr RASOLONJATOTO (Madagascar) said that draft rule 2(11) defined restricted sessions on meetings as those “held for a specific purpose and under exceptional circumstances”. In order to be faithful to the spirit of Rule 20 of the Rules of Procedure of the World Health Assembly, draft rules 27(2) and 31 should be amended so as to specify that sessions or meetings were to be restricted only “under exceptional circumstances”.

Mr BURCI (WHO Secretariat, Legal Counsel) wondered whether, in view of the definition in draft rule 2(11), it was necessary to repeat that phrase in draft rules 27(2) and 31.

Dr MUÑOZ (Chile), speaking on behalf of the Parties in the WHO Region of the Americas, said that he favoured retaining the current wording of draft rules 27(2) and 31.

Mr HETLAND (Norway) said that the relationship between draft rules 2 and 63 had been clarified and that the square brackets around the word “public” in draft rule 63 could be removed.

It was so agreed.

Dr LASSMANN (Austria) speaking on behalf of the Member States of the European Union and the European Community as Parties to the Convention, said that he had been instructed to make it clear that any consensus reached by the removal of square brackets was to be regarded as provisional. It was a fundamental rule of diplomacy that nothing was finally agreed until the whole package had been scrutinized. Important differences remained to be resolved in areas such as draft rule 49. In addition, issues such as the reporting system were still under negotiation in Committee A. In the light of the outcome of those negotiations, the Member States of the European Union might have to revert to certain draft rules to which they had agreed provisionally. Subject to that proviso, which applied also to all future negotiations in Committee B, the Member States of the European Union could agree to the proposed wording of draft rule 27(2), and of draft rule 31 with the amendment suggested by the Legal Counsel. He proposed establishing a separate drafting group on the highly problematic draft rules 29 and 30, to meet in parallel with the Committee and to report back to it.
The CHAIR, noting the reservation expressed by the representative of Austria, drew a distinction between a static consensus, i.e. one that was hard and fast, and a dynamic consensus, i.e. one that was a basis for further action. He did not believe that a drafting group was necessary. Furthermore, some delegations were not large enough to be able to participate in two or more simultaneous meetings. Moreover, it would not be possible to provide interpretation services for such a drafting group.

Mr BAYAT MOKHTARI (Islamic Republic of Iran) strongly opposed the proposal to establish a drafting group.

Mr HETLAND (Norway) suggested that the participants should attempt to resolve the thorniest issues in a more informal setting.

Ms VALLE (Mexico) supported the CHAIR’s suggestion regarding the method of work.

(For continuation of the discussion of Rules 29 and 30, see summary record of the fifth meeting, section 2.)

**Draft rule 28(2) (continued from the third meeting)**

The CHAIR said that, at the previous meeting, the Committee had requested the delegations of Mexico and Saint Lucia to submit their proposals for draft rule 28(2) in writing. The proposals had been distributed to all delegations.

Dr BRISTOL (Saint Lucia) said that the two delegates had come up with a merged text, which, subject to editorial amendment by the Secretariat, would read: “2. Neither the Chairperson nor the Vice-chairperson, while chairing, shall vote, unless they are members of a Party which is a single-person delegation. In that case they may exercise the right to vote according to Rule 48.1.”

Support for the merged proposal was expressed by: Dr TSHERING (Bhutan), on behalf of the Parties in the WHO South-East Asia Region; Dr LASSMANN (Austria), on behalf of the Parties in the European Union and the European Community, Mrs MATLHO (Botswana), on behalf of the Parties in the WHO African Region; Dr MUÑOZ (Chile), on behalf of the Parties in the WHO Region of the Americas; Mr RASOLONJATOVO (Madagascar); and Ms MORRIS (Jamaica).

Mr BAYAT MOKHTARI (Islamic Republic of Iran) proposed the wording: “The officers of a subsidiary body shall exercise the right to vote only in the capacity of the representative of their national delegations in the absence of any fellow-delegate from their respective countries in the body.”

Mr AL HUSSEINI (Jordan) proposed the deletion of the paragraph.

Mr SAWERS (Australia) requested clarification of the implications of the expression “a single-person delegation”.

Mr YANG Xiaokun (China) asked whether there were any precedents for a rule permitting a vice-chairperson to vote.

Mr BURCI (WHO Secretariat, Legal Counsel) said that, subject to correction, he would read the expression “unless the party is a single-person delegation” to mean that there was only one person registered for that session or meeting. The only relevant precedent for a rule concerning voting by a vice-chair of which he was aware was Rule 26 of the Rules of Procedure of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal.
After a discussion in which Ms VALLE (Mexico), Dr MUÑOZ (Chile), Mr BAYAT MOKHTARI (Islamic Republic of Iran), Mr SAWERS (Australia), Mr TRIVEDI (India) and Dr OGWELL (Kenya) participated, Mr BURCI (WHO Secretariat, Legal Counsel) suggested that the paragraph could be amended to read:

Neither the Chairperson of the subsidiary body, nor the Vice-chairperson while chairing, shall vote unless they are the only members of their respective delegations. In that case, they may exercise the right to vote in accordance with Rule 48.1.

It was so agreed.

Rule 7(a), [(e)], (f) and [(g)]

Mr YANG Xiaokun (China), speaking on behalf of the Parties in the WHO Western Pacific Region, said that in draft rule 7(a) the provisional agenda should not be too broad, the bold bracketed text should be deleted, so that the provision would then read: “(a) Items arising from the Articles of the Convention, including those specified in its Article 23;”

The brackets around draft rule 7(g) should be deleted. The provision would then read: “(g) any other item relevant to the implementation of the Convention proposed by a Party and received by the Secretariat prior to circulation of the provisional agenda.”

Dr LASSMANN (Austria), speaking on behalf of the European Union and the European Community, supported the amendments proposed by China. To ensure that the provisional agenda did not become overburdened, the Bureau should be assigned the task of screening proposed agenda items, or else a minimum threshold for support should be introduced.

Dr ROA (Panama) said that draft rule 7(a) could not be discussed without taking into consideration proposed subparagraphs 7[(e)] and 7[(g)]. Some procedure would have to be agreed on for the presentation of proposals; otherwise the agenda might become unmanageable.

Dr MAHMOUD (Egypt) asked why Article 23 had been singled out in draft rule 7(a).

Mr BURCI (WHO Secretariat, Legal Counsel) said that Article 23 spelt out the functions and the activities of the Conference of the Parties. It had presumably been felt that a specific reference would highlight its importance.

The CHAIR asked whether, pending consideration of the remaining paragraphs of draft rule 7, there was a provisional consensus on China’s proposal regarding draft rule 7(a).

It was so agreed.

Mr BAYAT MOKHTARI (Islamic Republic of Iran) proposed that draft rule 7[(e)] should be amended to read: “(e) reports of the Secretariat and information received from Parties, pursuant to Article 21 of the Convention.”

Dr LASSMANN (Austria) said that a decision on draft rule 7[(e)] was contingent on the outcome of the work being done in Committee A on the report system. It would not be feasible for the Conference of the Parties to review 100 plus reports. Perhaps the secretariat might be requested to prepare a synthesis of the reports for discussion by the Conference.

Dr ROA (Panama) pointed out that the substance of draft rule 7[(e)] was already reflected in draft rule 7(a), which contained an implicit reference to Article 23, paragraph 5(d), of the Convention.
She also supported the principle of a summary report prepared by the secretariat, as did Mr BAYAT MOKHTARI (Islamic Republic of Iran).

Mr GOU Haibo (China) agreed on the difficulty of reviewing more than 100 reports. The Bureaux of Committees A and B and of the Conference should discuss the issue.

If draft rule 7[(e)] was to be retained, it should begin with the words “consideration of the …”, as should draft rule 7(f).

Reacting to a drafting proposal by Mrs EFRAT-S MILG (Israel), Mr AL HUSSEINI (Jordan) endorsed the comment by Panama and proposed the wording: “reports presented by the Secretariat in accordance with Articles 21 and 24”.

Dr ASQUETA (Uruguay), supported by Dr OGWELL (Kenya), agreed that the secretariat would probably not be able to synthesize 100 plus reports unaided. It might be necessary to create a subsidiary body to perform that task.

Ms MAFUBELU (South Africa) said that, as a matter of principle, it might suffice to refer simply to “the Articles of the Convention” – the wording provisionally agreed for draft rule 7(a) – rather than attempting to single out every individual article applicable. Article 21(1) required each Party to submit periodic reports “through the Secretariat”; the modalities for such reporting were under consideration in Committee A; and she did not see how the substantive outcome of those deliberations, once known, could usefully be incorporated into draft rule 7.

Mr OLDHAM (Canada) supported the comments by South Africa. Pursuant to the Occam’s Razor principle, the simplest solution should always be adopted unless there was good reason to elaborate further.

Mr HETLAND (Norway) stressed the importance of the reports, of which special mention should be made in a separate subparagraph 7(e). He supported the proposal of the Islamic Republic of Iran, which should, however, be further amended by inserting the word “synthesized” before “reports”.

Mr KIDDLE (New Zealand) said that if draft rule 7(a) were amended to read: “items arising from the articles of the Convention and any other item relevant to the implementation of the Convention”, thus merging subparagraphs 7(a) and 7[(e)] / [(g)], draft rule 7(d) would probably not be needed. The second element of the current paragraph [(e)] should be retained in some form, to allow the Conference to consider a consolidated report of the reports by Parties; and there should probably be some mention of reports by subsidiary bodies.

Mr BURCI (WHO Secretariat, Legal Counsel) pointed out that questions relating to reports of the Parties, the mechanism for submission, their content and Secretariat action did not fall under draft rule 7, which merely stated which items would be on the agenda. Draft rule 7[(e)] was based on the simple formulation to be found in Article 23.5(d) of the Convention. Questions of mechanisms and elaboration of reports would be considered elsewhere.

Dr ROA (Panama) agreed with the Legal Counsel. However, if paragraph [(e)] was retained, it should be explicitly stated that the reports to be considered would be summary reports.

Mr TSUJI (Japan) supported the comments by the Legal Counsel and Canada on the advantages of a simple formulation.

Mr BAYAT MOKHTARI (Islamic Republic of Iran) said that, in the light of the explanation by the Legal Counsel, paragraph 7[(e)] should read: “the reports of the Parties, which shall be presented in accordance with the modalities approved by the Conference of the Parties”.

Mr HETLAND (Norway) stressed the importance of the reports, of which special mention should be made in a separate subparagraph 7(e). He supported the proposal of the Islamic Republic of Iran, which should, however, be further amended by inserting the word “synthesized” before “reports”.
Ms MAFUBELU (South Africa) said that she did not see how the Iranian proposal differed in substance from the existing formulation. Article 21.2 already specified that the frequency and format of reports were to be determined by the Conference of the Parties.

Dr BRISTOL (Saint Lucia) said that it was impossible to overemphasize the importance of the reports, on the basis that the Convention would be implemented. Paragraph 7[(e)] need only read: “consideration of reports pursuant to Article 21 of the Convention”.

Mr BAYAT MOKHTARI (Islamic Republic of Iran), responding to the comment by South Africa, said that divergence of views existed, not over the frequency and format of reports, but the way in which the information received from Parties would be processed and presented to the Conference. These modalities, which were not covered in the Convention itself, were currently being considered by Committee A.

Dr LASSMANN (Austria) said that, subject to consultation with the delegations of the European Union Parties and that of the European Community, he favoured the latest Iranian proposal.

The CHAIR noted that there appeared to be consensus on paragraph [(e)], as amended by the Islamic Republic of Iran.

It was so agreed.

The CHAIR invited comments on the alternative of draft rule 7(f) proposed during the first session of the Working Group.

Mr AL HUSSEINI (Jordan), supported by Mr JORBON (Marshall Islands), expressed a preference for the wording “reports from the subsidiary bodies”. Not all the reports of subsidiary bodies needed to be submitted to the Conference of the Parties.

The CHAIR noted that there appeared to be consensus in favour of the current wording proposed by Jordan.

It was so agreed.

Ms MAFUBELU (South Africa), supported by Mr KIVANC (Turkey), noted that subparagraph [(e)][(g)] appeared to exclude the provisional agenda items relevant to the Convention but not relevant to its implementation, such as those relating to amendments to the Convention. The words “the implementation of” should be deleted.

Ms FUJINO (Japan) suggested that the difficulty might be overcome by incorporating the substance of subparagraph [(e)][(g)] in subparagraph(a).

Mr BAYAT MOKHTARI (Islamic Republic of Iran) supported the South African proposal. However, he suggested adding the words: “subject to approval by the Bureau”, in order to ensure that the Conference agenda did not become overburdened.

With regard to the proposals to merge subparagraphs [(e)][(g)] and (a), he pointed to the need to distinguish between those items that should automatically be placed on the agenda, arising from the Convention, and those requested by Parties.

Dr LASSMANN (Austria), speaking on behalf of the European Union and the European Community, supported the Iranian proposal subject to his earlier proviso regarding paragraph [(g)]. Paragraph [(e)][(g)] should be left in square brackets for the time being.
Mr BURCI (WHO Secretariat, Legal Counsel) suggested that a text merging the South African and Iranian proposals, and introducing the concept of a filter mechanism, might read: “any item relevant to the Convention proposed by a Party and received by the Secretariat prior to the circulation of the provisional agenda, subject to approval by the Bureau”.

Mrs EFRAT-SMILG (Israel) pointed out that the involvement of the Bureau in the process was already provided for in draft rule 6.

A discussion took place on the role of the Bureau, in which Dr DA COSTA E SILVA (Brazil), Mr JORBON (Marshall Islands), Dr LASSMANN (Austria) on behalf of the European Union and the European Community, Mr KIVANC (Turkey) and Mr GOU Haibo (China) on behalf of the Parties in the WHO Western Pacific Region participated. Following that discussion, Mr BURCI (WHO Secretariat, Legal Counsel) said that there seemed to be support for the idea that items proposed by Parties under subparagraph [(g)] should not automatically be included in the agenda, but that there should be some kind of filter mechanism, in order to avoid overloading the agenda. The two considerations involved were, on the one hand, the right of a Party to propose an item, and on the other, the practical matter of the size of the agenda. One possible mechanism, proposed by Dr ROA (Panama), was that the proposal by a Party should be supported by a specified number of other Parties. The disadvantage of such a mechanism was that it would involve the Secretariat in extensive and lengthy correspondence with a view to ascertaining the level of support. The second possibility was to give the Bureau authority either to approve or reject a proposal from a Party outright, or else to recommend in the provisional agenda its deletion or deferral to a future session for approval by the Conference.

The meeting rose at 13:05.
FIFTH MEETING
Thursday, 9 February 2006, at 15:15

Chair: Mr M. SECK (Senegal)

1. MATTERS IDENTIFIED IN THE CONVENTION FOR ACTION BY THE
CONFERENCE OF THE PARTIES AT ITS FIRST SESSION: Item 4 of the Agenda
(continued)

Adoption of the Rules of Procedure for the Conference of the Parties (Article 23 Conference of
the Parties, paragraph 3): Item 4.1 of the Agenda (Document A/FCTC/COP/1/2, Annex, Annex 6)
(continued)

Rule 7 (continued)

Mr BURCI (WHO Secretariat, Legal Counsel) proposed the following text based on the
discussion at the previous meeting: “any other item relevant to the Convention proposed by a Party
and received by the Secretariat prior to circulation of the provisional agenda (subject to approval by
the Bureau)”.

Mr GOU Haibo (China) said that the Parties in the WHO Western Pacific Region preferred the
words “the implementation of” to be retained in square brackets pending the outcome of further
consultations.

Mr BIO BIGOU (Benin) said that his preferred formulation would be: “any item relevant to the
Convention proposed by a Party and submitted to the Secretariat prior to circulation of the provisional
agenda”.

Mr BAYAT MOKHTARI (Islamic Republic of Iran) recalled that the amendment that he had
proposed at the previous meeting, namely, to add the words “subject to approval by the Bureau”, had
been intended to meet the concerns of some delegations about the need to filter items for inclusion in
the provisional agenda. “Consultation” as mentioned in draft rule 6 did not necessarily convey the idea
of filtering; it might be appropriate for items submitted under draft rule 7(a) to 7(f), as there was little
danger that they would overload the agenda, but not for items submitted under draft rule 7[(g)].

Mrs EFRAT-SMILG (Israel), supported by Mr MBUYU MUTEBA (Democratic Republic of
the Congo), proposed that “subject to the approval of the Bureau” should not appear in draft rule 7 as
“in consultation with the Bureau” was already included in draft rule 6. In any case, the same language,
whether “approval by the Bureau” or “in consultation with the Bureau”, should be used throughout.
There should be no specific reference to subparagraph [(g)].

Mr GOU Haibo (China) endorsed the views of the Islamic Republic of Iran. One category of
items, 7(a) to 7(f), was prepared by the secretariat in consultation with the Bureau but another category
7[(g)] were items put forward by the Parties, for which there was no filter mechanism. He could accept
either “in consultation with the Bureau” or “subject to the approval of the Bureau”.

Mr AL HUSSEINI (Jordan) said that the phrase “in consultation with the Bureau” implied
agreement by the Bureau and should be used in draft rules 6 and 7.
Dr ROA (Panama) said that no item could appear on the agenda unless the Bureau had been consulted, as laid down in draft rule 6. Reference to the Bureau’s approval in draft rule 7 would therefore be redundant. The best solution, in order to make the situation absolutely clear, might be to merge draft rules 6 and 7.

Mr BAYAT MAKHTARI (Islamic Republic of Iran) said that he had no objection to deleting the reference to approval by the Bureau from draft rule 7.

The CHAIR said that, if there was no objection, he would take it that there was consensus on the formulation: “(g) any other item relevant to the implementation of the Convention proposed by a Party and received by the Secretariat prior to circulation of the provisional agenda”.

It was so agreed.

(For continuation of the discussion, see summary record of the sixth meeting, section 2.)

Rule 9

Mr GOU Haibo (China), speaking on behalf of the Parties in the WHO Western Pacific Region, said that the group wished the brackets to be removed, but the content retained. It had been unable to agree whether reference should be made to draft rule 7(a) to (d) or draft rule 7(a) to (g), and sought the advice of the Legal Counsel.

Mr BIO BIGOU (Benin) suggested that since draft rule 9 had almost the same content as draft rule 7(g), draft rule 9, or at least the sections in brackets, might be deleted.

Mr BURCI (WHO Secretariat, Legal Counsel) said that the language in brackets in draft rule 9 was not entirely clear to him, because it introduced the qualification that Parties could propose inclusion of a supplementary item after the provisional agenda had been dispatched, provided that the proposed item fell within the scope of draft rule 7(a) to (d).

Responding to China’s question, he said that the only paragraph he would not include would be paragraph (g) because it was somewhat circular and it was not clear how the provision would work. It was difficult to give a clear-cut reply in respect of paragraphs (e) and (f) because it would depend on the nature of the proposed item. A Party might, for example, react to a report appearing on the agenda under draft rule 7 by proposing an additional item, a situation that was improbable but not inconceivable. Theoretically, therefore, reference to paragraphs (a) to (f) could be included in draft rule 9 for that same reason.

Mr KIDDLE (New Zealand) added, further to China’s comments, that the Parties in the WHO Western Pacific Region proposed deletion of the brackets and retention of most, if not all, of the language at the end of draft rule 9, in order to ensure that no extraneous unrelated items were submitted to the Conference of the Parties by way of supplementary agenda items, that the agenda as always focused on the aims, articles and implementation of the Convention, and that no other political topic was put forward for discussion. In view of the Legal Counsel’s statement, he proposed that reference to the paragraphs should be deleted so that the last phrase of draft rule 9 would read quite simply: “…provided that it falls within the scope of Rule 7”.

Mr AL HUSSEINI (Jordan) said that, in view of the Legal Counsel’s explanation, it would be more appropriate to refer to paragraphs (a) to (f). New Zealand’s proposal might cause difficulties, given the consensus on paragraph 7(g).
Mrs EFRAT-SMILG (Israel) proposed the deletion of draft rule 9 as there was only a minor difference between that and paragraph 7(g). If draft rule 9 were retained, language should be added indicating the urgent nature of the proposed item.

Mr MAHMOOD (Egypt) said that he disagreed with New Zealand and Israeli proposals. Draft rule 9 was necessary because it referred to items proposed by a Party and received by the secretariat after the dispatch of the provisional agenda whereas paragraph 7(g) referred to items proposed before circulation of the provisional agenda.

Mr TSUJI (Japan) said that the language in brackets should be retained. His delegation could support either the New Zealand proposal to refer only to draft rule 7 or the proposal to refer to draft rule 7(a) to (f).

Dr ASQUETA (Uruguay) favoured retention of draft rule 9. There should be a mechanism for including in the supplementary provisional agenda any serious or urgent matter related to the Convention that would otherwise be prevented from inclusion by the 60 or 90 days’ rule. It was true that extraordinary sessions could be held under Article 23.2 of the Convention, but they required a certain majority of support. A matter might be urgent but not merit the convening of an extraordinary session.

Dr LASSMANN (Austria), speaking on behalf of the European Union and its Member States, saw merit in New Zealand’s proposal to refer only to draft rule 7: it would be simpler and balance the broader statement “any item proposed by a Party”. In the event of urgency or unexpected development, the Conference could always modify the provisional agenda under draft rule 10.

Mr KIDDLE (New Zealand) said that he saw the necessity of circulating supplementary provisional agendas, precisely for the reasons that had been outlined by other delegations. He could not support the deletion of draft rule 9, as proposed by Israel. A blanket reference to draft rule 7 was preferable. If there were to be a reference to the paragraphs of draft rule 7, it ought to include all paragraphs. If paragraphs (f) or (g), for example, were omitted, a subsidiary body might deliver a report within two months of a session of the Conference of the Parties that would not be on the Conference agenda.

Ms LAMBERT (South Africa) said that she could support a formulation ending at “within the scope of Rule 7”. Some of Uruguay’s concerns were dealt with by draft rule 10, which provided that the Conference of the Parties might decide to add, delete, defer or amend items when adopting the agenda for a regular session.

Mr GOU Haibo (China), in order to meet the concerns of delegations that doubted the need for such a rule, proposed that a wording modelled on Rule 10 of the Rules of Procedure of the Executive Board, “is of an urgent nature and” should be inserted after “provided that it”.

Mr BIO BIGOU (Benin) supported the draft rule but said that the part in brackets should be deleted.

Mr MBUYU MUTEBA (Democratic Republic of the Congo), referring to Panama’s proposal in respect of draft rule 6 and 7, proposed merging draft rules 6, 7 and 9, all of which dealt with the provisional agenda.

Mr KIVANC (Turkey) supported the proposal to omit reference to the different paragraphs of draft rule 7. He questioned whether urgency was the only criterion for the inclusion of an item in the supplementary provisional agenda. It was also important that the Conference of the Parties should have a final check on the agenda.
Mr JORBON (Marshall Islands) proposed that the words “of an urgent nature” as proposed by China should be inserted in draft rule 9 after “any items” in order to satisfy the concerns expressed by many delegations.

Dr MOLINARI (Observer, Argentina) said that it was necessary to retain draft rule 9 for the reasons expressed by many delegations, but supported the South African proposal to omit reference to the subparagraphs and to refer only to draft rule 7.

Dr ROA (Panama) endorsed the view that the closing words of draft rule 9 should be “within the scope of Rule 7”. She cautioned against introducing the notion of urgency, as it was not clear who would determine it.

Mr GOU Haibo (China) asked who would decide whether a matter was urgent, and under what rule or constitutional provision.

Mr BURCI (WHO Secretariat, Legal Counsel) said that, as draft rule 9 stood, the final arbiter of the urgency of a proposed agenda item was the Conference of the Parties which, under draft rule 10 had full power to decide whether a proposal made under draft rule 9 was of an urgent nature. He would not read the expression “the Secretariat shall in consultation with the Bureau”, at the beginning of draft rule 9, as implying any authority of the Bureau or the secretariat to exclude an item from the supplementary provisional agenda.

Ms VALLE (Mexico) said that the notion of urgency was implied by the 10-day rule, so that it was not necessary to use the word “urgent”. In any event, any urgency would be determined by the Secretariat and the Bureau.

Mrs EFRAT-SMILG (Israel) said that it might be advisable to add language in draft rule 9 to refer to the aspect of urgency, since items presented within the 10-day limit would only be available to the Parties at a very late stage. It would also balance the possibility of last-minute changes that existed under draft rule 10.

Mr GOU Haibo (China) fully supported Israel’s comments. In view of the precedent for including the notion of urgency in the Rules of Procedure of the Executive Board and the explanation by the Legal Counsel, such an amendment was practical.

Mrs MATLHO (Botswana) supported the text as drafted, but ending at the words “Rule 7”.

Dr ASQUETA (Uruguay) said that it was difficult to express an opinion on the proposals without a proper translation. What was important was not the inclusion or otherwise of the word “urgent” but the need to ensure that delegations knew in advance what was on the agenda. Any items for inclusion in the supplementary provisional agenda and received less than 10 days before the opening day of the session should therefore be posted on a web page, so that delegates could arrive at the session properly prepared.

Dr MAHMOUD (Egypt) pointed out that there should either be a reference to the urgent nature of an item to be included in the supplementary provisional agenda or a provision that the item should fall within the scope of draft rule 7, but not both. Because of the discrepancy between draft rule 7(g), concerning items received by the secretariat prior to circulation of the provisional agenda, and draft

---

1 Participating by virtue of Rule 47 of the Rules of Procedure of the World Health Assembly whose provisional application was agreed on by the Conference of the Parties in decision FCTC/COP1(5).
rule 9, concerning items received after dispatch of the provisional agenda, the reference to draft rule 7 (a) to (f) would have to be retained in draft rule 9.

Mr AL HUSSEINI (Jordan), supporting Egypt’s views, asked whether there was a contradiction between the time limits proposed in draft rule 7(g) and draft rule 9.

Ms MAFUBELU (South Africa) suggested that the Committee should try to find a form of words that would be acceptable in order to then proceed with other work.

Dr LASSMANN (Austria) said that the European Union and the European Community supported New Zealand’s position but asked for clarification about whether the question of urgency was judged by the Bureau and the secretariat or by the Conference under draft rule 10. In the latter case there were sufficient safeguards against undesirable developments, so that the amendment by China and the Marshall Islands could be dispensed with. With regard to the suggestion by South Africa, the Chair could invite the delegations most concerned for informal discussions and then present a solution to the Committee.

Mr BIO BIGOU (Benin) said that urgency was already implied by the 10-day deadline. It was therefore not necessary to use the word “urgent”, provided that the matter fell within the scope of draft rule 7.

The CHAIR announced that further discussion of draft rule 9 would be deferred to allow for informal consultations.

(For continuation of the discussion, see summary record of the sixth meeting, section 2.)

2. ORGANIZATION OF WORK

Rules 29 and 30

Mr BURCI (WHO Secretariat, Legal Counsel) drew the Committee’s attention to Annex 4 of the Annex to document A/FCTC/COP/1/2, which summarized the discussions of the Intergovernmental Working Group on Rules 29 and 30, and indicated the main points still to be agreed upon. Delegates might usefully consult the annex as a possible indication of how to approach their negotiations.

Mr GOU Haibo (China) suggested that the best approach might be to decide which of the four options could be the basis for discussion and ascertain whether any amendments were required.

Mr AITKEN (WHO Secretariat) said that, as negotiations on draft rules 29 and 30 had proved difficult in the Intergovernmental Working Group, the Committee might first confine itself to the major points and to deciding which items were most suited to informal discussion in a drafting group.

An extensive procedural discussion ensued in which Mr KIDDEN (New Zealand), Mr GOU Haibo (China), Mr JORBON (Marshall Islands), Ms LAMBERT (South Africa), Mr RASOLONJATOVO (Madagascar), Mrs VALLE (Mexico), Mr BAYAT MOKHTARI (Islamic
Republic of Iran), Mr HETLAND (Norway), Mr HOHMAN (Observer, United States of America),
Mr MBUYU MUTEBA (Democratic Republic of the Congo), Dr BELLO DE KEMPER (Observer,
Dominican Republic), Mr BIO BIGOU (Benin), Mr KOLI (Solomon Islands),
Mrs MATLHO (Botswana), Mrs GILDERS (Canada), Mr AL HUSSEINI (Jordan),
Ms FUJINO (Japan), Dr OGWELL (Kenya), Dr ROA (Panama), Dr MOLINARI (Observer,
Argentina), Dr BABA (Nigeria), Dr LASSMANN (Austria), Dr MUÑOZ (Chile),
Dr TSHERING (Bhutan), and Mr OLDHAM (Canada) participated. Points covered included the
difficulties of small delegations and the need to ensure, wherever possible, that drafting groups and
other subgroups did not meet in parallel; the need to reflect the provisions of Articles 5.5, 23.5(g),
33 and 23.6 of the Convention in drafting rules 29 and 30 and in particular to include the four different
categories of observers; the composition of a drafting group, whether it would be open to observers
and whether they would have access to the relevant documentation; the availability of proposals from
the regional groups; other inputs; the composition of a drafting group; whether key principles should
be discussed by the Committee before the convening of a drafting group; the use of a Chair’s text as
the basis for discussion in the Committee the following day; and drafting assistance by the Chair’s
Friends.

All other options having failed, the CHAIR proposed that, with the help of WHO’s secretariat
and the use of any texts submitted by groups or delegations, he would prepare a text, translated into all
official languages, for discussion the following day. If no consensus was achieved in the Committee, a
drafting group would be formed.

It was so agreed.

The meeting rose at 18:10.

1 Participating by virtue of Rule 47 of the Rules of Procedure of the World Health Assembly whose provisional
application was agreed on by the Conference of the Parties in decision FCTC/COP1(5).
1. **ORGANIZATION OF WORK** (continued)

**Rules 29 and 30 (continued)**

The CHAIR said that, for the time being, the Committee would continue to discuss rules 29 and 30 in full session, thereby enabling observers and nongovernmental organizations to follow the debate and state their views. If intractable difficulties arose, however, a drafting group, chaired by Mr Oldham (Canada) with the assistance of Mr Al Husseini (Jordan), would meet during the lunch break in order to try to resolve the difficulties. Each regional group would be invited to nominate one representative.

After a procedural discussion, in which Mr GOU Haibo (China), speaking on behalf of the Parties in the WHO Western Pacific Region, Mr TSUJI (Japan), Mrs VALLE (Mexico), Mr JORBON (Marshall Islands), Ms LAMBERT (South Africa), Mr BAYAT MOKHTARI (Islamic Republic of Iran) and Dr MUÑOZ (Chile), speaking on behalf of the Parties in the WHO Region of the Americas, participated, the CHAIR said that, if a drafting group needed to be convened during the lunch break, it would discuss draft rule 29 only. If any Region did not have a common position, individual Parties would have an opportunity to express their views.

_It was so agreed._

(For resumption of the discussion on Rules 29 and 30, see section 2, below, page 156.)

2. **MATTERS IDENTIFIED IN THE CONVENTION FOR ACTION BY THE CONFERENCE OF THE PARTIES AT ITS FIRST SESSION:** Item 4 of the Agenda (continued)

**Adoption of the Rules of Procedure for the Conference of the Parties (Article 23 Conference of the Parties, paragraph 3):** Item 4.1 of the Agenda (Document A/FCTC/COP/1/2) (continued from the fifth meeting, section 1)

**Rule 7 (continued)**

The CHAIR said that some delegations had asked to speak on the draft of rule 7(g).

Dr LASSMANN (Austria), speaking on behalf of the European Community and the Parties in the European Union and the WHO European Region, and Mr GOU Haibo (China), speaking on behalf of the Parties in the WHO Western Pacific Region, said that either of the proposed alternative wordings for draft rule 7(g) would be acceptable.
The CHAIR said that, if he saw no objection, he would take it that the Committee wished to delete the square brackets around the words “the implementation of” in subparagraph 7(g).

It was so agreed.

Rule 9 (continued)

The CHAIR asked whether a consensus had been reached regarding the proposals by China and the Marshall Islands to add a reference to urgency.

Mr GOU Haibo (China) and Mr JORBON (Marshall Islands) said that, in the absence of a clear precedent, they were prepared to withdraw their proposals.

The CHAIR said that, if he heard no objection, he would take it that the Committee wished to approve the text without the additional wording proposed by China and Marshall Islands.

It was so agreed.

Rules 29 and 30 (resumed)

The CHAIR invited the Committee to consider a new draft text of rules 29, 30 and 30bis, prepared by himself in response to a request by the Committee at its fifth meeting, which read:

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, of a specialized agency or of the International Atomic Energy Agency may attend the 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 deliberations of the Conference of the Parties and its subsidiary bodies and may speak after the Parties.

Rule 30

1. Any intergovernmental organization, and any regional economic integration organization which is not a Party to the Convention, may apply to the Secretariat for observer status, which may be granted by the Conference of the Parties.

2. Observers under this Rule may participate without the right to vote in meetings of the Conference of the Parties and its subsidiary bodies and may speak after the observers referred to in Rule 29.

Rule 30bis

1. International and regional nongovernmental organizations, competent in matters falling within the purview of the Convention, and whose aims and activities are in conformity with the spirit, purpose and principles of the Convention, may apply to the Secretariat for observer status, which may be granted by the Conference of the Parties.
2. The Conference of the Parties shall grant observer status to nongovernmental organizations referred to in paragraph 1 taking into account the 17th and 18th preambular paragraphs as well as Article 5.3 of the Convention.

3. The Conference of the Parties may exceptionally grant observer status to national nongovernmental organizations that meet the criteria provided for in paragraphs 1 and 2, in consultation with and subject to the agreement of the State Party concerned.

4. Observers under this Rule may attend sessions of the Conference of the Parties and meetings of its subsidiary bodies and may, at the invitation of the presiding officer, make a statement after the observers referred to in Rules 29 and 30.

Mr JORBON (Marshall Islands) thanked the Chair for his efforts to draw up a consensus text. Draft rules 29 and 30 would have a great influence on the implementation of the Convention. However, he was disappointed that the Chair’s draft for rule 30bis had omitted a number of elements of the original second proposal for rule 30,\(^1\) which had allowed for very wide-ranging cooperation with outside bodies and agencies. He called for all the elements of the original draft text to be restored.

Dr LASSMAN (Austria), speaking on behalf of the Contracting Parties in the WHO European Region, said that the Chair’s draft text constituted a good basis for discussions and negotiations.

Mr BAYAT MOKHTARI (Islamic Republic of Iran), supported by Dr TSHERING (Bhutan), speaking on behalf of the Parties in the WHO South-East Asia Region, commended the Chair’s draft, which formed a valuable basis for consensus. He proposed amending the text of draft rule 29(1) by inserting the word “public” before the words “sessions” and “meetings”, since observers were not permitted to attend restricted meetings. The words “meetings” and “sessions” in draft rule 30(2) and 30bis(4), respectively, would likewise need to be replaced by “public meetings” and “public sessions”.

Dr MUÑOZ (Chile) said that the Parties in the WHO Region of the Americas could agree to the Chair’s draft, which provided a good synthesis of the many options available. However, draft rule 29(2) referred to “deliberations”, while draft rule 30(2) referred to “meetings”: the language should be harmonized.

Mr GOU Haibo (China), speaking on behalf of the Parties in the WHO Western Pacific Region, Mrs MATLHO (Botswana), speaking on behalf of the Parties in the WHO African Region, and Mr TSUJI (Japan) supported the Chair’s draft as a basis for negotiations.

Dr RAJALA (European Community), supported by Dr LASSMANN (Austria), speaking on behalf of the Parties in the WHO European Region and the European Community, said that regional economic integration organizations should be included in draft rule 29 rather than draft rule 30 of the Chair’s draft text, since the former covered States or organizations that were potential Parties to the Convention.

Dr MAHMOUD (Egypt) proposed deleting the phrase “and may speak after the Parties” from draft rule 29(2).

Dr LASSMANN (Austria), speaking on behalf of the Parties in the WHO European Region said that the phrase “of a specialized agency” in draft rule 29(1) should read “of its specialized agencies”.

\(^1\) In document A/FCTC/COP/1/2, Annex, Annex 6.
Mrs MATLHO (Botswana), speaking on behalf of the Parties in the WHO African Region, supported the proposal to include regional economic integration organizations in draft rule 29(1). In draft rule 29(2), the phrase “participate without the right to vote in” should be replaced by “attend without the right to vote”. The words “may speak after the Parties” should be replaced by “may read a statement after the Parties, at the invitation of the presiding officer”.

Mr BIO BIGOU (Benin) supported the Iranian proposal that the text should refer to “public” meetings and sessions. In draft rule 29(2), the word “participate” should be replaced by “attend”.

Mr RASOLONJATOVO (Madagascar) suggested the wording “participate and speak”.

Dr ROA (Panama) said that either “participate” or “attend” should be used consistently throughout draft rules 29, 30 and 30bis. The words “at the invitation of the presiding officer” appeared in draft rule 30bis(4), but not in draft rules 29(2) and 30(2).

Mr GOU Haibo (China) supported the amendments proposed by the European Community, the Islamic Republic of Iran, Benin and Egypt. In draft rule 29(1), the phrase “may attend” should be replaced by “may be invited to attend”.

Mr RASOLONJATOVA (Madagascar), speaking on behalf of the Parties in the WHO African Region, said that draft rule 30bis should be renumbered so as to constitute a rule in its own right.

Dr BELLO DE KEMPER (Observer, Dominican Republic) noted that, if observers were merely allowed to “attend” meetings, they would not be permitted to speak.

Mr OLUWAFEMI (Corporate Accountability International), speaking at the invitation of the CHAIR, welcomed the support by Parties for the principle of transparency and the shift towards a default setting of public meetings of the Conference of the Parties and its subsidiary bodies under draft rule 27(2). The rules regarding observers should be drafted so as to prevent non- Parties from delaying the progress of the Conference, and to ensure that the tobacco industry did not gain access to its proceeding in the guise of a nongovernmental organization. On draft rule 29, the rules of procedure should not spell out different rights for different kinds of observers. In particular, States that had signed but not ratified the Convention should not be accorded special consideration. Parties to the Convention were the only States with legal standing; differentiating between States non-Parties and other observers would therefore set a dangerous precedent. The Conference should also protect itself from injury by any entity not bound by the obligations of the Convention: rather than granting any observer an unchallengeable right to speak, it must make the participation of observers contingent on the invitation of the presiding officer.

Dr LASSMANN (Austria) suggested that, once Parties had had an opportunity to comment on draft rules 30 and 30bis, it might be useful to convene the drafting group in order to consider the various proposals during the lunch break.

Mr MBUYU MUTEBA (Democratic Republic of the Congo) said that it was important to consider draft rules 29 and 30 together. The text of draft rule 29(2) should explicitly state that observers were allowed to take the floor. The possibility of submitting views in writing, included in some versions of the original draft, was no longer present in the Chair’s draft.

1 Participating by virtue of Rule 47 of the Rules of Procedure of the World Health Assembly whose provisional application was agreed on by the Conference of the Parties in decision FCTC/COP1(5).
Dr ASQUETA (Uruguay) said that apparently trivial issues of language might have major implications for the implementation of the Convention. It must be explicitly stated that an observer was allowed to speak at a meeting, in case the word “participation” was, at some point, interpreted to mean that the observer could be present in the room, but could not take the floor. He suggested the following wording for paragraph 2, in two alternative versions: “Observers under this Rule may participate without the right to vote in the sessions of the Conference of the Parties and its subsidiary bodies[; they may speak after the Parties.][; being permitted to speak after the Parties.]”

Mr KIDDLE (New Zealand), supported by Mr TSUJI (Japan), said that the proposed wording of draft rule 29(2), “may be invited to attend”, did not authorize observers to attend a meeting; it merely authorized the Conference of the Parties to invite them. He suggested the wording “may attend and participate in ...”.

Dr RAJALA (European Community) noted that the Chair’s draft and the amendments displayed on screen during the meeting did not reflect all the proposals made. The European Community had made a proposal relating to the coverage of regional economic integration organizations which had not been taken up. What were the reasons for the Chair’s selectiveness?

The CHAIR said that, if he had inadvertently failed to reflect a delegation’s proposal, it was at liberty to repeat it.

Mr BURCI (WHO Secretariat, Legal Counsel), replying to points raised by the observer of the Dominican Republic and Mrs GILDERS (Canada), said that, in general, the word “attend” implied mere physical presence, without the right to take the floor or other rights – such as the right to receive documentation or distribute statements outside the meeting room – which were sometimes accorded to observers. The Committee might wish to retain the word “participate”, or to replace it with “attend”, while retaining wording to the effect that observers would be allowed to speak or to read a statement.

Replying to a point raised by Mr TSUJI (Japan), he said that the presiding officer formally invited all participants to take the floor. However, the phrase “at the invitation of the Chair” was often used to indicate that the speaker in question did not have an automatic right to take the floor, as in the case of nongovernmental organizations in official relations. Responding to comments by Mrs GILDERS (Canada) and Mr BAYAT MOKHTARI (Islamic Republic of Iran), he said that he saw no reason why the phrase “public meetings” should not be used wherever it made the meaning of the text clearer, although it would be obvious from a careful reading of draft rule 2 that observers could be present only at public meetings.

Ms VALLE (Mexico) said that the phrase “of a specialized agency” in draft rule 29(1) should be replaced by “of the specialized agencies”. She did not favour the insertion of the phrase “be invited to” proposed by China. Draft rule 29(2) should specify that observers might “participate” rather than “attend”, without the right to vote. It was important to make it clear that they were allowed to take the floor after the Parties. If the wording proposed by the Parties in the WHO African Region was approved, the formulation should read “make a statement”; however, the wording “may speak after the Parties” was to be preferred. The phrase “at the invitation of the presiding officer” should be included, for consistency with rule 30bis of the Chair’s draft.

With respect to the proposal by the European Community, that body currently had a unique status and should be treated differently from other regional economic integration organizations.

Mr MANINRAKA (Kiribati) asked for clarification of the implications of draft rule 29 in its current form for the wide-ranging cooperation envisaged in Articles 5.5 and 13 of the Convention. He would not be able to endorse the revised texts of draft rules 29 and 30 if they deviated significantly from the true spirit of the Convention.
Dr LASSMANN (Austria) proposed inserting the words and “[any regional economic integration organization which is not a Party to the Convention]” after “International Atomic Energy Agency”, in draft rule 29(1).

Mr TSUJI (Japan) said that, if regional economic integration organizations were to be included in draft rule 29, it should be made clear in draft rule 29(2) that they could speak only on matters falling within their area of competence.

Dr MUÑOZ (Chile) said that the Chair’s draft divided observers into three categories: States, intergovernmental and nongovernmental organizations. The fact that certain observers might later become Parties was immaterial. It was illogical to move regional economic integration organizations into the first category, and he appealed to the European Community to withdraw its proposal.

Dr LASSMANN (Austria), speaking on behalf of the Parties in the WHO European Region, said that observers could be classified in different ways: the matter remained open for negotiation. He welcomed the amendment proposed by Japan.

Mr OLDHAM (Canada), supporting the remarks by Chile, said that at first glance it seemed more logical to classify regional economic integration organizations with intergovernmental organizations rather than with States. The European Community was already a Party to the Convention; were any other regional economic integration organizations actually likely to seek accession soon?

Dr RAJALA (European Community) said that only regional economic integration organizations within the meaning of Article 1(b) of the Convention were to be considered as observers. Whether any such organizations were likely to accede to the Convention soon was immaterial: if and when that situation arose, it would be most unfortunate if the Rules of Procedure had to be changed to accommodate them.

After a procedural discussion in which Mr OLDHAM (Canada), Mr BAYAT MOKHTARI (Islamic Republic of Iran), Mr MBUYU MUTEBA (Democratic Republic of the Congo), Mr DE CASTRO SALDANHA (Brazil), Mr JORBON (Marshall Islands) and Dr ASQUETA (Uruguay) participated, the CHAIR suggested that a small drafting group should be convened during the lunch break, to be chaired by Mr Oldham (Canada), and assisted by Mr Al Husseini (Jordan), to consider draft rule 29. The group would consist of representatives of those delegations that had proposed amendments to draft rule 29, namely, Austria, Botswana, China, Chile, the European Community, the Islamic Republic of Iran, Japan, Mexico, South Africa and Uruguay. Any other delegation that wished to participate was free to do so.

Mr BAYAT MOKHTARI (Islamic Republic of Iran) proposed that the Committee should suspend its discussion of draft rule 29, and continue to discuss draft rules 30 and 30bis at its afternoon meeting. Rather than meeting during the lunch break, the drafting group should meet after the Committee’s afternoon meeting, in order to discuss draft rule 29 and any remaining unresolved issues in draft rules 30 and 30bis.

It was so agreed.

(For continuation of the discussions, see summary record of the eighth meeting.)

The meeting rose at 13:00.
SEVENTH MEETING
Friday, 10 February 2006, at 15:35

Chairman: Mr M. SECK (Senegal)

MATTERS IDENTIFIED IN THE CONVENTION FOR ACTION BY THE CONFERENCE OF THE PARTIES AT ITS FIRST SESSION: Item 4 of the Agenda (continued)

Adoption of the Rules of Procedure for the Conference of the Parties (Article 23 Conference of the Parties, paragraph 3): Item 4.1 of the Agenda (Document A/FCTC/COP/1/2)

Rule 30

Mr JORBON (Marshall Islands) said that, in the interests of implementing the Convention as the negotiating parties had intended and in order to ensure that their achievements were not lost, all the elements of the Intergovernmental Working Group’s text should be incorporated into the Chair’s text so that it reflected the provisions of Articles 5.5 and 23.5(g), and the four categories of observers to which the Solomon Islands had drawn attention at the Committee’s fifth meeting, namely: competent and relevant United Nations bodies; competent and relevant international and regional intergovernmental organizations; competent and relevant nongovernmental organizations; and other competent and relevant bodies which did not fall into any of the first three categories.

Draft rule 30(1) should therefore be amended to read: “Any international and regional intergovernmental organization ... Party to the Convention, and other bodies which are engaged in matters covered by the Convention, may apply to the Secretariat for observer status ...”.

Dr MUÑOZ (Chile), speaking on behalf of the Parties in the WHO Region of the Americas, said that the Chair’s draft of rule 30 was acceptable, provided that “nongovernmental organizations” was replaced by “intergovernmental organizations” in the Spanish text, to bring it into line with the English.

Dr LASSMANN (Austria), speaking on behalf of the European Community and the Parties in the European Union and the WHO European Region, said that the Chair’s draft was an acceptable basis for negotiation. As he had indicated at the previous meeting, regional economic integration organizations that were not Parties should be covered by draft rule 29, since they were potential Parties to the Convention. Draft rule 30(1) would need to be amended accordingly. The last phrase of paragraph (2), from the words “taking into account” should then be repeated in paragraph (1).

Mr BIO BIGOU (Benin) proposed that, in paragraph (1), the word “and” should be replaced by “or”, so that the wording would be: “Any intergovernmental organization or any regional economic integration organization ...”.

Mr TSUJI (Japan) said that, in line with his proposal on draft rule 29, draft rule 30(2) should state that regional economic integration organizations could speak only on matters falling within their area of competence.

Following proposals by Mr BAYAT MOKHTARI (Islamic Republic of Iran) and Mr GOU Haibo (China) that the word “meetings” in paragraph (2) should be replaced by “public meetings” and “sessions”, respectively, Ms LAMBERT (South Africa) suggested the formulation
"meetings or sessions" in line with paragraphs (10) and (12) of draft rule 2. Supported by Mr RASOLONJATOVO (Madagascar), she emphasized the need to ensure that draft rules 29, 30 and 30bis were similarly worded.

Mr GOU Haibo (China), referring to the Marshall Islands’ proposals, said that he could agree to the inclusion of "international and regional" in paragraph (1) but not to the inclusion of a reference to other bodies engaged in matters covered by the Convention. The issue in question in draft rules 29 and 30 was the accreditation of observers to meetings of the Conference of the Parties, to which the provisions of Articles 23.3 and 23.6 of the Convention applied. Articles 5.5 and 23.5(g) were not relevant as they covered cooperation activities that did not constitute official working relations.

Mr OLDHAM (Canada) asked which other bodies the Marshall Islands had in mind.

Dr LASSMAN (Austria) asked why additional wording at the beginning of the first paragraph was considered necessary. The expression “any intergovernmental organization” was perfectly clear.

Dr ROA (Panama), supported by Mr BAYAT MOKHTARI (Islamic Republic of Iran), said that “international” covered “international and regional”; no further qualification was needed.

Mr JORBON (Marshall Islands) explained that the wording used in paragraph 1 of the Intergovernmental Working Group’s second proposal for draft rule 30 was broad enough to include national governmental bodies or agencies engaged in matters covered by the Convention. The involvement of such bodies was essential for the full implementation of the Convention, in particular Article 13 on advertising, Article 15.4 on illicit trade and Article 19 on civil and criminal liability, as they worked together across borders and exchanged data to assist the investigation, prosecution and punishment of illicit trading in tobacco. The reference to “other bodies” appeared in Article 5.5 of the Convention, but was missing from the Chair’s text, and his delegation felt strongly that it should be reinstated.

Mr KIDDLE (New Zealand) said that the words “international and regional” were unnecessary. The phrase “other bodies which are engaged in matters covered by the Convention” was too broad and required further clarification. The formulation “attend and participate”, as used in draft rule 29 and in the Rules of Procedure of the World Health Assembly, might also be used in draft rule 30. Observers should be permitted to speak in the debate.

Mr GOU Haibo (China) pointed out that the articles cited by the Marshall Islands referred to action by Parties. They had no relevance to the accreditation of observers in draft rules 29, 30 and 30bis. He called upon the Marshall Islands to withdraw the proposal.

Dr TSHERING (Bhutan), speaking on behalf of the Parties in the WHO South-East Asia Region, said that, if a regional nongovernmental organization sought observer status with the Conference of the Parties, its country of origin, or the WHO Representative in the country, should be consulted before accreditation was granted.

Mr JORBON (Marshall Islands), responding to China’s comments, said that Articles 23.5(g) and 23.6 required the Conference of the Parties to request services, cooperation and information from outside actors, including international and regional intergovernmental organizations and nongovernmental organizations and bodies. These provisions could not be ignored.

Dr OGWELL (Kenya), speaking on behalf of the Parties in the WHO African Region, supported by Dr ASQUETA (Uruguay), proposed that draft rule 30 should be referred to the drafting group with draft rule 29, in view of the need to ensure consistency.
Mr DE CASTRO SALDANHA (Brazil) said that the Conference of the Parties could cooperate with organizations in the sense meant in Article 5.5 of the Convention, without having to grant them observer status. The inclusion of “other bodies” was not necessary.

Mr TSUJI (Japan) asked for clarification of the terms “international” and “regional” as applied to intergovernmental organization.

Mr BURCI (WHO Secretariat, Legal Counsel) replied that the term “intergovernmental” generally referred to both international and regional organizations. He agreed with Brazil that a partner in the cooperation described in Article 23.5 would not require observer status.

The CHAIR said that, if there was no objection, he would take it that the Committee wished to refer draft rule 30 to the drafting group.

It was so agreed.

(For continuation of the discussion, see summary record of the eighth meeting.)

**Rule 30bis**

Mr BAYAT MOKHTARI (Islamic Republic of Iran) suggested that paragraph (1) should be amended to read: “International and regional nongovernmental organization accredited with WHO and competent…”, and that in paragraph (4) “sessions” should be replaced by “public sessions”.

Dr DA COSTA E SILVA (Brazil), supported by Ms LAMBERT (South Africa), speaking on behalf of the Parties in the WHO African Region, pointed out that as WHO had only recently begun screening nongovernmental organizations for possible links with the tobacco industry, it would not be appropriate to refer to nongovernmental organizations accredited by WHO. The Conference of the Parties should therefore develop its own accreditation criteria. In view of the Intergovernmental Working Group’s preference for the term “accreditation”, clearly stated in paragraph 6 of Annex 4 of the Annex to document A/FCTC/COP/1/2, she proposed that the formulation “in keeping with the accreditation mechanism” should be used at the end of paragraph (2).

Paragraph (3) should be deleted: national nongovernmental organizations would be able to participate in the proceedings of the Conference of the Parties through international or regional umbrella organizations, which had their own procedures for screening their members for possible links with the tobacco industry. If the principle of participation by national nongovernmental organizations was retained, however, their observer status should not be subject to the approval of the Party on whose territory they were based. Nongovernmental organizations had a special status, independent of their governments, and Parties should not have the right of veto over them.

For consistency with draft rules 29 and 30, she suggested the following wording for paragraph (4): “Observers under this Rule may speak after the observers referred to in Rules 29 and 30”.

Mr BAYAT MOKHTARI (Islamic Republic of Iran) withdrew his proposal in the light of these comments.

Mr RASOLONJATOVO (Madagascar), speaking on behalf of the Parties in the WHO African Region, supported by Mr BIO BIGOU (Benin), proposed that in paragraph (1) the words “nongovernmental organizations” should stand alone, without qualification. Paragraph (3) could then be deleted. The wording of paragraph (4) should be consistent with the corresponding paragraphs of draft rules 29 and 30. Draft rule 30bis should then be renumbered 31, as the three rules dealt with three different categories of observer.
Dr LASSMANN (Austria), speaking on behalf of the European Community and the Parties in the European Union and the WHO European Region, supported the proposal to renumber draft rule 30bis.

Ms FUJINO (Japan) asked what the terms “international”, “regional” and “national” nongovernmental organizations meant. Could national nongovernmental organizations also work at regional level?

Dr ROA (Panama) agreed that “international and regional” should be deleted from paragraph (1) and proposed the addition, at the end of paragraph (2), of the phrase “in conformity with the accreditation procedures established by the Conference of the Parties, as laid down in Article 23.6 of the Convention”. Paragraph (3) should be deleted, since it might restrict the right of nongovernmental organizations to participate and give Parties the right of veto over them. Paragraph (4) should be harmonized with draft rules 29(2) and 30(2) and state that observers could “participate” rather than just “attend”. She endorsed Brazil’s view that observers should have the right to speak, but not to vote, and had no difficulty with the term “public meetings” as proposed by the Islamic Republic of Iran.

Mr GOU Haibo (China) said that the words “international and regional” should be retained: it would be very unusual for a national nongovernmental organization engaged in implementing the Convention at national level to attend meetings of the Conference of the Parties. Only nongovernmental organizations already accredited with WHO should be eligible to apply for observer status: the Conference of the Parties would then carry out any further investigations necessary to identify possible links with the tobacco industry. He therefore proposed the restoration of the Iranian proposal “International and regional nongovernmental organizations accredited with WHO and competent ...”. As requests for observer status were always initially addressed to the secretariat, the corresponding phrase should be deleted from paragraph (1), which would then read: “may apply for observer status, which may be granted by the Conference of the Parties”.

Dr ASQUETA (Uruguay) noted that some delegations had proposed that the current paragraph (4) should be replaced by the same wording as in draft rules 29(2) and 30(2), mutatis mutandis. If the current wording was retained, the phrase “at the invitation of the presiding officer” should be deleted. Participating nongovernmental organizations had the right to speak at a meeting, and should not have to ask permission.

Dr BRISTOL (Saint Lucia) said that, for the sake of consistency, the underlying principle that observers did not have the right to vote should be included in paragraph (4).

Dr DA COSTA E SILVA (Brazil) said that Brazil was against the granting of observer status to national nongovernmental organizations: many of those working in the agricultural sector in tobacco-producing countries undoubtedly had links to the tobacco industry, which would not necessarily be revealed in the accreditation process.

Mr TSUJI (Japan) said that paragraph (2) appeared to meet Brazil’s concerns. There should be no need for further qualification.

Mr BURCI (WHO Secretariat, Legal Counsel) said that the accreditation alternatives appeared to be to allow either only nongovernmental organizations already in official relations with WHO to apply for observer status or any nongovernmental organization to apply and go through the Conference’s own accreditation procedures in paragraph (2). Organizations from the first group could always be required to go through the second procedure as well, but that might be going too far.
Mrs VALLE (Mexico) said that the reason for including “international and regional” was that nongovernmental organizations accredited with WHO were international organizations which, to qualify as such had to operate across more than one continent. Many Latin American organizations were thus excluded, unless they were accredited through international nongovernmental organizations, most of which were European. If “international and regional” were deleted, organizations in official relations” or “accredited with WHO” would also have to be deleted.

Dr LASSMANN (Austria), speaking on behalf of the European Community and the Parties in the European Union, suggested that as the Parties in the European Union would be submitting a new and very different draft of rule 30bis, taking into account as many proposals as possible, to the Committee’s next meeting, it might be better to defer discussions on the draft rule until that time.

Mr MBUYO MUTEBA (Democratic Republic of the Congo) noted that the term “accreditation”, although provided for in the Convention, did not appear in the current draft of the rules of procedure, despite the wishes of the Intergovernmental Working Group. As some delegations were opposed to adopting the standard WHO accreditation procedure, it would be necessary to add either a definition of “accreditation”, or a new rule, after the current draft rule 30bis, setting out the procedure to be followed.

Mr LIBERMANN (Framework Convention Alliance on Tobacco Control), speaking at the invitation of the CHAIR, said that the Alliance supported proposals to delete the reference to WHO’s accreditation procedure for the reasons given by previous speakers. The Conference of the Parties should devise its own criteria and describe its accreditation mechanism in the rules of procedure. He suggested that the European Union’s new material on review mechanisms and procedures should be set out precisely. The modalities of participation should be consistent in draft rules 29, 30 and 30bis. Parties should not have veto rights over nongovernmental organizations applying for observer status.

Ms MULVEY (Corporate Accountability International), speaking at the invitation of the CHAIR, endorsed the statement by the previous speaker and emphasized the need for the Conference of the Parties to operate in a manner consistent with Article 5.3 of the Convention. Transnational tobacco corporations often hid their operations behind non-tobacco-related subsidiaries, formed trade associations with front groups and alliances with retailers, and made strategic philanthropic donations. In order to prevent infiltration by nongovernmental organizations that were in the pay of the tobacco industry, she suggested that wording along the following lines should be added to draft rule 30: “Consistent with Article 5.3 of the Convention, such observers shall not be affiliated with, nor shall they receive financial support from, nor work on behalf of any tobacco corporation or subsidiary of a tobacco corporation”.

The CHAIR proposed, in view of the number of proposed amendments, including the text still to be presented by the European Union, that draft rule 30bis should be referred to the drafting group.

Dr MAHMOUD (Egypt) suggested, in order to avoid further lengthy debate in the full Committee, that the text produced by the drafting group should either be accepted without further discussion, or that it should be discussed only among the chairs of the subgroups and the Secretariat.

Mr RASOLONJATOVO (Madagascar) noted, for the benefit of the drafting group, that the Constitution of WHO and the Principles Governing Relations between the World Health Organization and Nongovernmental Organizations contained provisions which might be of use in the redrafting of rule 30bis.

Mr JORBON (Marshall Islands), responding to suggestions that his proposed amendment to draft rule 30 should be withdrawn, said that his main concern was to preserve the principle of inclusiveness and openness laid down in Article 23.5(g) of the Convention. The “other bodies” which
he wished to include were public or governmental agencies that would have the authority to take effective action to implement the Convention. Their cooperation was likely to be even more valuable than that of nongovernmental organizations. He amended his original proposal to read: “and other bodies which are not covered by rules 29 and 30bis but having the competence/governmental authority to implement the matters falling within the purview of the Convention”.

The CHAIR said that, if there was no objection, he would refer draft rule 30bis to the drafting group. Responding to a request by Mr JORBON (Marshall Islands), he said that any proposals in respect of draft rules 29, 30 and 30bis should be submitted to the WHO Secretariat in writing.

It was so agreed.

It was further agreed that the Chair would prepare a draft of rule 49, translated into the official languages, for the Committee’s next meeting.

The meeting rose at 18:00.
MATTERS IDENTIFIED IN THE CONVENTION FOR ACTION BY THE CONFERENCE OF THE PARTIES AT ITS FIRST SESSION: Item 4 of the Agenda (continued)

Adoption of the Rules of Procedure for the Conference of the Parties (Article 23 Conference of the Parties, paragraph 3): Item 4.1 of the Agenda (Document A/FCTC/COP/1/2) (continued)

The CHAIR announced that Cambodia and Togo had become Parties to the Convention.

Rules 29 and 30 (continued)

The CHAIR invited the Committee to consider a text, setting forth the outcome of discussions in an informal drafting group, which read:

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 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 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 to the Secretariat for observer status, which may be granted by the Conference of the Parties, taking into account the 17th and 18th preambular paragraphs as well as Article 5.3 of the Convention.

2. Observers under this Rule may participate without the right to vote in public meetings of the Conference of the Parties and its subsidiary bodies and may speak after the observers referred to in Rule 29.

Mr OLDHAM (Canada), speaking as chair of the informal drafting group, said that the new consensus text of draft rule 29 consisted of two paragraphs. The first described the States or other bodies that were entitled to attend the sessions and meetings of the Conference of the Parties: the term “attend” was used in that paragraph. The second paragraph described the prerogatives enjoyed by each category of observer under that Rule: the more active term “participate” was used. The adjective “public” had been inserted before “sessions”, and the word “deliberations” had been replaced by
“public meetings”. Observers were permitted to “speak”, rather than “make a statement”. The proposed wording “at the invitation of the presiding officer” had been omitted. Regional economic integration organizations, which might at some point become Parties to the Convention, were covered by draft rule 29 rather than draft rule 30.

Draft rule 30 covered other international intergovernmental organizations, such as MERCOSUR, ASEAN and the Southern African Development Community, which might wish to attend as observers. The word “international” had been inserted to make it clear that agencies that operated exclusively at national level, such as those in federal States, were excluded. It was assumed that the term “international” also covered regional organizations. The reference to the 17th and 18th preambular paragraphs and Article 5.3 of the Convention had been retained, but the proposal to include a broad-ranging reference to “other bodies” had gained no support.

He hoped that the text could be approved without further discussion.

Mr JORBON (Marshall Islands) commended the drafting group’s efforts, but expressed disappointment that his proposal to include a reference to “other bodies not covered by Rules 29 and 30bis but having the competent governmental authority to implement the matters falling within the purview of the Convention” had not been reflected in the draft.

Dr MUÑOZ (Chile), speaking on behalf of the Parties in the WHO Region of the Americas, said that the text submitted by the drafting group was acceptable as it stood.

Mr HETLAND (Norway), Mrs MATLHO (Botswana), speaking on behalf of the Parties in the WHO African Region, Dr TSHERING (Bhutan), speaking on behalf of the Parties in the WHO South-East Asia Region, Mr GOU Haibo (China), and Mr BAYAT MOKHTARI (Islamic Republic of Iran), speaking on behalf of the Parties in the WHO Eastern Mediterranean Region, likewise supported the drafting group’s text.

Mr MANINRAKA (Kiribati) said that, like the representative of the Marshall Islands, he wished to ensure that draft rules 29 and 30 were consistent with the inclusive and open spirit of the Convention.

Mr JORBON (Marshall Islands) said that his original proposal, which had been supported by Kiribati, had not been withdrawn.

Mr OLDHAM (Canada), speaking as chair of the informal drafting group, said that, to the best of his knowledge, the representatives of the Marshall Islands and Kiribati had not been present at the drafting group’s meeting, even though they had been invited to attend. Accordingly, their point of view had not been represented. They appeared to be engaged in a wilful attempt to destroy the consensus.

Mr JORBON (Marshall Islands) said that his principal concern was to secure the full implementation of Article 5.5 of the Framework Convention.

Mr BURCI (WHO Secretariat, Legal Counsel) said that he would confine himself to the procedural aspects of the debate. It had been agreed that the Conference of the Parties and its subsidiary bodies would operate by consensus pending the final adoption of the rules of procedure. Consensus meant the absence of any formal objection to the adoption of a decision; it did not necessarily mean that all delegations fully supported it. The drafting group had produced a new version of draft rules 29 and 30, without square brackets, which was before the Committee. Any further amendment to that text would likewise need to be approved by consensus.

The CHAIR suggested that the issue could best be resolved in informal consultations.
Replying to a request for clarification by Mr JORBON (Marshall Islands), Mr BURCI (WHO Secretariat, Legal Counsel) said that there was no question of an informal drafting group overruling the Committee on any issue. The drafting group had produced a new draft at the Committee’s request. The Committee could approve that draft by consensus, or it could approve amendments to it, also by consensus. A formal objection by a single delegation would block the process.

Mr JORBON (Marshall Islands) reiterated that his proposal, regarding draft rules 29 and 30, which had been supported by Kiribati, still stood.

**Rule 30bis (continued)**

Dr LASSMANN (Austria), speaking on behalf of the Parties in the European Union, submitted their proposals for amendments to the Chair’s draft text of rule 30bis, which might later be renumbered draft rule 31. The main point in the proposal was that nongovernmental organizations that had participated in the negotiations on the Convention should automatically receive observer status. Also covered were procedural aspects of the accreditation of other nongovernmental organizations and a review mechanism. A new paragraph would read:

[International and regional] Nongovernmental organizations which were already accredited to participate in the Intergovernmental Negotiating Body and in the Open-ended Intergovernmental Working Group are admitted as observers to the Conference of the Parties.

Paragraph 2 was based on paragraph 1 of the Chair’s text, and would read:

2. Other [international and regional] nongovernmental organizations, [competent in matters falling within the purview of the Convention], 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 recommendations 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 90 days before the opening of the session.

Paragraph 3 was a new paragraph, and would read:

3. The Conference of the Parties may review its collaboration with each nongovernmental organization at each of its sessions and thus determine the desirability of maintaining its observer status.

Paragraph 4 was substantially the same as paragraph 3 in the Chair’s text and would read:

4. [The Conference of the Parties may exceptionally grant observer status to national nongovernmental organizations that meet the criteria provided for in paragraph[s 1 and] 2, in consultation with [and subject to the agreement of] the State Party concerned].

New paragraph 5 corresponded to paragraph 4 of the Chair’s draft, aligned to draft rules 29 and 30 as agreed upon by the drafting group, and would read:

5. Observers under this Rule may participate without the right to vote in public 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.

He suggested that, as a first step, delegates should discuss the proposed new text in an informal drafting group, rather than in the Committee.
The CHAIR suggested that an open-ended drafting group chaired by Mr Oldham (Canada) and consisting of the two Vice-Chairs, the coordinators of the six regional groups and other delegations that had proposed substantive amendments should meet during the lunch break in order to discuss rule 30bis.

After a procedural discussion in which Mr HETLAND (Norway), speaking as the regional coordinator for the Contracting Parties in the WHO European Region, Dr LASSMANN (Austria), speaking on behalf of the Parties in the European Union, Mr OLDHAM (Canada), speaking as chair of the informal drafting group, Mrs EFRAT-SMILG (Israel), Mrs VALLE (Mexico) and Mr RASOLONJATOVO (Madagascar) took part, the CHAIR suggested that the drafting group should meet later that day in order to enable the regional groups to discuss the text beforehand.

**It was so agreed.**

(For continuation of the discussion, see the summary record of the tenth meeting.)

**Rule 49**

The CHAIR invited the Committee to consider a draft text of rule 49, prepared by himself at the Committee’s request, which read:

*Rule 49*

1. The Conference of the Parties shall make every effort to reach agreement by consensus.

2. If all efforts to reach consensus have been exhausted and no agreement has been reached, the Conference of the Parties shall proceed as a last resort as follows:

   (a) decisions on substantive matters shall be taken by a two-thirds majority vote of the Parties present and voting, unless otherwise provided by the Convention, by the financial rules referred to in Article 23.4 of the Convention, or by these Rules;

   (b) decisions on procedural matters shall be taken by a majority vote of the Parties present and voting.

3. The President shall rule on any question of whether a matter is procedural or substantive. Any appeal against this ruling shall immediately be put to the vote. The President’s ruling shall stand unless overruled by a majority of the Parties present and voting.

4. If a vote is equally divided on a matter other than an election, the proposal shall be regarded as rejected.

Mrs EFRAT-SMILG (Israel) said that a decision on a substantive matter should require a three-fourths majority of all Parties to the Convention, rather than a two-thirds majority of Parties present and voting. In some circumstances, such as those covered by draft rules 9 and 32, Parties might be presented with a draft decision at very short notice. To cover that eventuality, a new subparagraph should be added after paragraph 2(a) indicating that that subparagraph did not apply to items submitted in accordance with draft rule 9.

Mr GOU Haibo (China), speaking on behalf of the Parties in the WHO Western Pacific Region, said that they supported the Chair’s draft text as a basis for negotiations. Decisions on substantive matters should be taken by a three-fourths rather than a two-thirds majority. He also proposed the addition of a paragraph 2(a)bis, to read: “Notwithstanding paragraph 2(a), decisions on budgetary and
financial matters shall be taken by consensus and in conformity with the financial rules referred to in Article 23.4 of the Convention”.

Paragraph 1 called upon Parties to make “every effort” to reach a consensus. Were there any precedents to indicate what “every effort” meant in practice?

Mr RASOLONJATOVO (Madagascar), speaking on behalf of the Parties in the WHO African Region, welcomed the inclusion of his Region’s suggestions in the Chair’s draft. In many other bodies and organizations, including the Health Assembly, the Executive Board, UNEP and WIPO, decisions on substantive matters required a two-thirds majority of members present and voting; procedural decisions could be taken by a simple majority vote.

Dr LASSMANN (Austria), speaking on behalf of the Parties in the European Union, supported by Mr HETLAND (Norway), said that paragraph 2 should refer explicitly to those articles that required a majority other than a two-thirds majority, such as Article 28.3 on amendments to the Convention and Article 33.2 on protocols. The words “financial rules” should be amended to read “financial and budgetary rules”.

Dr MUÑOZ (Chile), speaking on behalf of the Parties in the WHO Region of the Americas, said that paragraph 4 was unnecessary and should be deleted. In the absence of a simple majority, a proposal could not be approved.

Dr MAHMOUD (Egypt) said that the phrase “Parties present and voting” in paragraphs 2 and 3 should be replaced by “Parties present” in order to avoid possible confusion. Parties might be present, but choose to abstain.

Mr MINAMI (Japan) said that the last sentence of paragraph 3 should be amended to read: “The President’s ruling shall stand unless overruled by a two-thirds majority of the Parties.”

Mr BURCI (WHO Secretariat, Legal Counsel) said that the decision on whether a matter was substantive or procedural was itself considered to be a procedural matter, and would thus require a simple majority.

Responding to the proposal by Egypt, he noted that the term “Parties present and voting” was defined in draft rule 2(9). Parties that chose to abstain were considered not to have voted. The phrase was a term of art in the rules of procedure of many bodies.

On the request for clarification by China, he said that the expression “make every effort” derived from the draft rules of procedure of the Conference of the Parties to the United Nations Framework Convention on Climate Change.

Dr ASQUETA (Uruguay) said that an abstention counted as a vote against the motion.

Ms VALLE (Mexico) said that the phrase “Parties present and voting” was the standard formulation and should be retained. In her experience, only votes for and against a motion were taken into account: abstentions and absences were not.

Mr RASOLONJATOVO (Madagascar) asked what would happen if no consensus could be achieved in a financial or budgetary matter.
Dr BELLO DE KEMPER (Observer, Dominican Republic)\(^1\) said that attempts to achieve a consensus on financial or budgetary matters should continue, throughout the night if necessary.

The CHAIR suggested that draft rule 49 should be entrusted to the informal drafting group for further discussion along with draft rule 30bis.

It was so agreed.

(For continuation of the discussion, see summary record of the tenth meeting.)

**Designation of the permanent secretariat and arrangements for its functioning (Article 24 Secretariat, paragraph 1):** Item 4.2 of the Agenda (Documents A/FCTC/COP/1/2, A/FCTC/COP/1/5 and A/FCTC/COP/1/5 Corr.1)

Dr BETTCHER (WHO Secretariat), introducing agenda item 4.2, said that the proposed model for the permanent secretariat of the Conference of the Parties was the result of extensive discussion at the two sessions of the Open-ended Intergovernmental Working Group. The permanent secretariat would be housed in WHO’s headquarters in Geneva, but would be an entity within WHO. It would report to the Conference of the Parties on issues related to the Convention, and to the Director-General on technical and administrative matters. It would cooperate closely with WHO’s Tobacco Free Initiative. The permanent secretariat would carry out the core functions related to the Convention, while WHO would provide technical support for implementation.

The head of the permanent secretariat would be proposed by the Conference of the Parties, in close consultation with the Director-General, and appointed by the latter. He or she would report to the Conference on issues related to the Convention and to the Director-General on technical and administrative issues. The staff of the permanent secretariat would be WHO staff, although they would be appointed by, and report to, the head of the permanent secretariat.

The lines of reporting and communication between the permanent secretariat, the Conference of the Parties and the Health Assembly were set out in document A/FCTC/COP/1/2, Annex, Annex 2. More details about coordination between the permanent secretariat and WHO’s Tobacco Free Initiative were contained in document A/FCTC/COP/1/5, paragraphs 9 to 19.

WHO’s core function of providing interim secretariat services had been revised in order to focus on facilitating technical support for implementation of the Convention, in consultation with the permanent secretariat. A technical liaison function would be added in order to ensure the maximum synergy between its own activities and those of the permanent secretariat.

Under the “research and policy development” core function of WHO’s Tobacco Free Initiative, its accumulated expertise would be available to support targeted research undertaken by the Parties in compliance with obligation under Article 20.1 of the Convention. Emphasis would be placed on compilation of evidence to support national strategies and the drafting of guidelines and protocols to the Convention.

Under “surveillance and monitoring”, the Initiative’s expertise would be available to support the Parties in fulfilling their obligation under Article 20.3(a). The tobacco industry’s activities, including those designed to undermine efforts to comply with the Convention’s provisions, would be monitored. The Initiative would also support Parties’ efforts to collect data pursuant to their obligations under Article 20.

Under “capacity building and training”, the Initiative would provide developing country Parties or those with economies in transition with technical support for immediate action and longer-term planning in order to enable them to implement the Convention’s provisions. Under “communications

\(^1\) Participating by virtue of Rule 47 of the Rules of Procedure of the World Health Assembly whose provisional application was agreed on by the Conference of the Parties in decision FCTC/COP1(5).
and media”, it would provide support to Parties for the development and implementation of communication plans in order to mobilize broad-based support. Under “global network”, it promoted tobacco control at regional and country levels through cooperation with WHO collaborating centres, other organizations of the United Nations system, for example, through the United Nations Ad Hoc Interagency Task Force on Tobacco Control, and nongovernmental organizations. It would continue to expand cooperation with international and regional intergovernmental organizations, bilateral development organizations and civil society, in collaboration with the permanent secretariat.

Document A/FCTC/COP/1/5 gave more detail about how the Initiative would continue to provide technical support for the implementation of the Convention, a key consideration in the establishment of the permanent secretariat. The document also set out a results-based workplan and budget for the core functions of the permanent secretariat described in Article 24 of the Convention.

The expected outcomes of the deliberations on agenda item 4.2 were the establishment of a permanent secretariat and further definition of its interactions and mechanisms for coordination with WHO’s Secretariat and the Health Assembly.

Mr HETLAND (Norway) said that the wealth of information presented would need to be digested and might have to be discussed further in the regional groups. The functions of the permanent secretariat, as laid down in Article 24.3 of the Convention, must be reconciled with the core functions of WHO’s Tobacco Free Initiative. It would take some time for the relationship between the two bodies to become completely clear and mutually supportive; a step-by-step approach would be needed. The permanent secretariat must be able to deliver reports derived from its own expertise and should be financed by voluntary assessed contributions based on the WHO scale of assessments. A job description for the head of the permanent secretariat must be prepared as soon as possible.

Mr BAYAT MOKHTARI (Islamic Republic of Iran) said that the structure proposed was unique: the permanent secretariat, WHO’s Tobacco Free Initiative and other parts of WHO would share responsibility for the implementation of the Convention. However efficiently the Initiative performed its task, there was a danger of conflict between its Convention-related activities and its other work. The Conference of the Parties was responsible for ensuring the implementation of the Convention, but in technical matters WHO’s Secretariat would not even report to the Conference, but to the Health Assembly. Who would decide which aspects of the task were technical and should be entrusted to WHO? Could WHO decline to take on certain technical responsibilities? What if the Conference of the Parties changed its approach to an issue, but WHO wished to maintain its previous approach? Furthermore, there was no provision for coordination or reporting between the Conference of the Parties and the Health Assembly. At the very least, the head of the permanent secretariat should report to the Health Assembly on the work entrusted to it.

He noted that WHO would continue to provide assistance to States non-Parties. That approach seemed inconsistent with the principle of the universality of the Convention, since it might mean that States had less incentive to accede to it.

Ms FUJINO (Japan) shared Norway’s concern that many of the functions entrusted to the permanent secretariat were also covered by WHO. The permanent secretariat should confine itself to the functions listed in Article 24.3 of the Convention, although WHO might be able to take over some of those as well, in the interests of efficiency and avoidance of duplication. The work of the two bodies must be closely coordinated, and funding for the permanent secretariat must be restricted to those functions which it alone could carry out. She agreed that a step-by-step approach was required: it was to be hoped that the functioning of the permanent secretariat could be modified in the light of experience as more Parties acceded to the Convention.

Ms LAMBERT (South Africa) said that, like the representative of the Islamic Republic of Iran, the Parties in the WHO African Region were concerned about the proposed structure for implementation of the Convention. No other agreement had such an implementation structure. It was not clear who was ultimately accountable. The Parties in the African Region regarded the Conference
of the Parties as an independent international legal entity, which should itself be directly accountable to the Health Assembly and the United Nations system as a whole.

Article 24.3(g) of the Convention stated that the permanent secretariat should carry out “such other functions as may be determined by the Conference of the Parties”. She suggested that an informal working group should meet to discuss what those other functions might be.

Dr LASSMANN (Austria), speaking on behalf of the Parties in the European Union, said that any overlap between the work to be done by the permanent secretariat, the Initiative and other parts of WHO’s Secretariat must be clearly identified. On the financial implications, the Committee’s discussions were closely linked with the discussion on finance in Committee A.

Dr DA COSTA E SILVA (Brazil) said that WHO’s expertise should be exploited to the full. The permanent secretariat should concentrate on treaty support areas and WHO on technical areas, as recommended by the Open-ended Intergovernmental Working Group at its second session (document A/FCTC/COP/1/2, Annex, Annex 1, paragraph 6). That would be more cost-effective than trying to duplicate the Initiative’s activities within the permanent secretariat. WHO would require strengthening in order to discharge those additional responsibilities.

The coordination of the activities of the permanent secretariat and WHO would be a major challenge. She asked how WHO’s Secretariat proposed to proceed in order to avoid duplication and potential conflicts in areas such as fund-raising. Perhaps a liaison officer could be appointed.

Dr RAJALA (European Community) asked why reports on technical issues relating to the Convention were to be submitted to the Director-General rather than directly to the Conference of the Parties. The European Community was a Party to the Convention in its own right, but it was not entitled to attend all WHO meetings. While fully appreciating the importance of ensuring the greatest possible synergy between the activities of the permanent secretariat and those of WHO, his delegation believed that Convention-related matters were primarily the concern of the Conference.

Mr BLOOM (Framework Convention Alliance on Tobacco Control), speaking at the invitation of the CHAIR, said that the Conference of the Parties must maintain as much authority over the activities of its own secretariat as was legally possible. It must not hand over control to any non-Party, including the WHO Secretariat. Convention-related activities funded by Parties should be considered as treaty support activities, and reports on them should go to the Conference of the Parties.

The Conference must not compromise its authority under Article 24.3(g) of the Convention, which entitled it to decide on other functions it should assign to the permanent secretariat. While WHO should continue its excellent technical work, the Conference, through its permanent secretariat, should retain an active role in all technical work related to the Convention.

Ms ST LAWRENCE (Canada) said that it was not clear what the treaty support functions of the permanent secretariat would be. From the discussions during the session so far, it had become clear that the permanent secretariat would need to take on some specific function, perhaps in areas such as funding mechanisms and the preparation of protocols or guidelines. The Conference was authorized to define those functions under Article 24.3(g) of the Convention; the roles and responsibilities of the various bodies needed to be clarified.
Dr MOLINARI (Observer, Argentina)\(^1\) said that it was essential to make the most of the extensive experience of WHO, but also to strengthen the permanent secretariat in order to avoid duplication and reduce the financial burden on existing and potential Parties.

(For continuation of the discussion, see summary record of the ninth meeting, section 2.)

The meeting rose at 13:00.

\(^1\) Participating by virtue of Rule 47 of the Rules of Procedure of the World Health Assembly whose provisional application had been agreed on by the Conference of the Parties in decision FCTC/COP1(5).
1. ORGANIZATION OF WORK

The CHAIR, outlining arrangements for the Committee’s work on the remaining agenda items at the current session, said that the meetings to discuss the designation of the permanent secretariat and the draft budget would be chaired by the two Vice-Chairs.

Mr Oldham took the Chair.

2. MATTERS IDENTIFIED IN THE CONVENTION FOR ACTION BY THE CONFERENCE OF THE PARTIES AT ITS FIRST SESSION: Item 4 of the Agenda (continued)

Designation of the permanent secretariat and arrangements for its functioning (Article 24 Secretariat, paragraph 1): Item 4.2 of the Agenda (Documents A/FCTC/COP/1/2, A/FCTC/COP/1/5 and A/FCTC/COP/1/5 Corr. 1) (continued from the eighth meeting)

Dr BETTCHER (WHO Secretariat), responding to questions raised at the previous meeting, agreed with Norway that the relationship between WHO’s Tobacco Free Initiative and the permanent secretariat would be an iterative, step-by-step, two-way process of learning and feedback at all levels.

In reply to the question whether WHO might decline to take on certain technical responsibilities, he pointed out that the Intergovernmental Working Group had recommended, in Annex 1 of the Annex to document A/FCTC/COP/1/2, that the Tobacco Free Initiative and other programmes in WHO should be equipped to provide the necessary levels of support, and, in particular, in paragraph 12 of that Annex, that the Health Assembly should consider strengthening the Tobacco Free Initiative so that the necessary resources would be available to cover the urgent needs of the Conference of the Parties.

Japan had recommended re-examination of the functioning of the secretariat in the light of experience. As indicated in document A/FCTC/COP/1/5 and recommended by the Intergovernmental Working Group, the process would need to be re-examined over time to ensure the efficiency and utility of those mechanisms.

In reply to the comment by South Africa on the tripartite structure of the model, he said that the Intergovernmental Working Group had preferred an adapted version of the second of the three possible models identified by the interim secretariat from a study of more than 300 treaties within the United Nations system. FAO, for example, had secretariats with a similar tripartite arrangement.

The European Community had noted that reporting from the head of the secretariat to the Conference of the Parties covered only treaty matters. Because of the complexity of the model, not all points had been finalized, but the intention had been that the permanent secretariat would report to the Conference of the Parties on technical and administrative details.

In response to Brazil’s comment on coordination, he said that there was a core workplan and a mechanism for a focal point arrangement within WHO’s Tobacco Free Initiative, to meet the technical needs of the permanent secretariat.
The Islamic Republic of Iran had asked whether the provision of services to States non-Parties might be inconsistent with the principles of universality of the Convention. The mechanisms for the mobilization of funds under the treaty would be available only to the Contracting Parties, although different types of technical assistance to States non-Parties were also envisaged. States non-Parties would still require, for example, awareness-building workshops to help build their capacity to become Parties to the Convention. Such support functions would in no way erode the capacity to provide support to Contracting Parties.

Canada had referred to the review in Committee A of non-binding guidelines under Article 7 to 13 and of other guidelines for implementation of the Convention. Different working methods were being discussed, and the provision of technical support was seen as a viable two-way form of collaboration for the purposes of the workplan. It was envisaged, for example, that the permanent secretariat would report back to the Conference of the Parties on the drafting of guidelines and protocols on cross-border advertising. WHO’s Tobacco Free Initiative could make a functional contribution into that type of work.

He had been asked to provide a compendium of the work that had been done since the inception of the Initiative, and of the types of recommendations and guidelines that had already been developed in collaboration with scientific groups and other partners. A document, distributed earlier, that reviewed work on guidelines, evidence-based research and evidence-based best practices might be useful in that connection.

Mr BURCI (WHO Secretariat, Legal Counsel) added, on the question of coordination between the Conference of the Parties and the Health Assembly, that the head of the permanent secretariat would be a WHO staff member and, therefore, under the ultimate authority of the Director-General. Reports submitted to the Health Assembly would be reports by the Director-General, and reports from the head of the secretariat would be submitted to the Health Assembly through the Director-General. The head of the secretariat would be able to participate in Health Assembly debates on matters within his or her area of responsibility, making the voice of the Convention secretariat heard, and putting forward the needs and concerns of the Conference of the Parties.

Dr MOCHIZUKI-KOBAYASHI (WHO Secretariat) said that the aim of coordination between WHO’s Tobacco Free Initiative and the permanent secretariat was to support Member States in procedural development and capacity-building through the provision of technical support and presentation of substantive policy options. A workplan had been prepared to achieve the Organization-wide expected results for the area of work related to tobacco, set out in WHO’s Programme budget 2006-2007. The work included provision of products and services to the regions and countries; continued support to Member States in developing national tobacco-control policies and plans of action; collection of data to be integrated into a further database for wider use in order to support and reinforce surveillance and research capacity; support for advocacy and awareness-raising through communication and media functions, including World No Tobacco Day, and tobacco industry monitoring. In the area of research and development, a series of technical meetings were planned on different aspects of product regulation.

The CHAIR, emphasizing the need to build on the work of the Intergovernmental Working Group, said that the Committee first needed to be sure that it fully understood the complex model of the secretariat structure and the secretariat’s relationship to WHO and the Conference of the Parties, as set out in Annex 2 of the Annex to document A/FCTC/COP/1/2, and the core principles and recommendations for the establishment of a permanent secretariat, set out in Annex 1.

The Committee needed to determine, in particular, the respective roles of WHO and the permanent secretariat. As a result of a series of compromises, the division of labour between those two bodies had been somewhat arbitrary, and although the model proposed had some logical consistency, it begged the question whether all the technical matters would be assigned to WHO’s Tobacco Free Initiative and the procedural matters to the secretariat. It was unlikely that those matters could be decided at the first session of the Conference of the Parties, although proposals would certainly
emerge, and there might be some agreement on the nature and role of the permanent secretariat, and its method of funding. The Committee would therefore need to devise a transition plan in order to determine how quickly funds should flow and how quickly current tasks of WHO would pass to the secretariat.

Dr LASSMANN (Austria), speaking on behalf of the Parties in the European Union, said that, as indicated in paragraph 11 of Annex 1, the functions of the secretariat were mandated by Article 24 of the Convention. It was not clear, however, whether the secretariat support to developing country Parties and Parties with economies in transition in the compilation and communication of information, provided for in paragraph (c) of Article 24.3, was in fact technical support, which he had understood to be the responsibility of WHO’s Tobacco Free Initiative.

Dr DA COSTA E SILVA (Brazil) asked how the WHO Secretariat intended to organize the process of establishing the permanent secretariat and a coordination mechanism between the secretariat and WHO’s Tobacco Free Initiative. Who would make sure that such a mechanism was in place and how would it operate?

Ms LAMBERT (South Africa), speaking on behalf of the Parties in the WHO African Region, said that there were no major areas of disagreement with the core principles. In building on them, however, the Committee needed to establish a clear picture of the relationship between WHO and the secretariat to ensure that a two-headed structure did not result. To that end some searching questions needed to be raised on such matters as reporting, the difference, if any, between treaty support and technical support, management of the transition, and budgets. Perhaps such matters could be entrusted to a working group.

Mr BAYAT MOKHTARI (Islamic Republic of Iran) endorsed the views of South Africa. The replies to his questions on the chain of command and the work to be performed by WHO’s Tobacco Free Initiative had been incomplete. The Parties in the WHO Eastern Mediterranean Region wished to know precisely what WHO’s Tobacco Free Initiative’s role would be, how it would collaborate with the secretariat, and whether it would take orders from the Conference of the Parties. There were also questions to be answered about the possible infiltration of the tobacco industry through States non-Parties participating in the Health Assembly.

Dr ROA (Panama) asked how a decision on technical or treaty support matters by the Conference of the Parties would be incorporated in the workplan of WHO’s Tobacco Free Initiative, given that the lines between the secretariat and WHO on those matters were collaboration lines with no capacity for decision.

Dr MOCHIZUKI-KOBAYASHI (WHO Secretariat) replied that there was a clear distinction between treaty and technical support. WHO’s Tobacco Free Initiative would deal with the more substantive issues, and the secretariat with procedural issues, such as choosing between proposed solutions. Replying to the Islamic Republic of Iran, she said that WHO would provide support to a country wishing to draft new legislation. Clear guidelines on the avoidance of intervention by the tobacco industry were in preparation and industry-monitoring work was continuing.

Dr BETTCHER (WHO Secretariat), replying to Austria and South Africa, said that information on secretariat functions under Article 24 could be found in document A/FCTC/IGWG/2/2, some aspects of which had been updated and would be made available to delegations. The three possible structures set out in that document had all been described as feasible, but the difference in cost implications had been a significant factor: in the first draft, the voluntary assessed contributions for the first model had amounted to some US$ 5 million, for the second model, subsequently adopted by the Intergovernmental Working Group, US$ 12 million, and for the third, US$ 36 million.
Mr AITKEN (WHO Secretariat) added that the permanent secretariat would be established within the WHO Secretariat as a separate unit, reporting directly to the Director-General and the Conference of the Parties.

Mr HETLAND (Norway) said that, although it was unlikely that the permanent secretariat could be set up before the closure of the session, delegations should at least be able to go away with a clear idea of what was wanted. The Committee therefore needed to know, for example, when the secretariat would be able to start operating, whether there was a job description for the head of the secretariat, and whether, once the secretariat had started to function, the Conference of the Parties would wish to give any instructions on priorities. Perhaps a Chair’s paper might be prepared, possibly with the assistance of a working group as suggested by South Africa, to give some guidance on the process.

The CHAIR suggested that Annexes 1 and 2 should be considered as a starting point.

Mr ILILONGA (Consumers International), speaking at the invitation of the CHAIR, endorsed the Iranian position, supported by South Africa. The mechanisms for accountability and lines of reporting for the permanent secretariat were extremely important and were vital for the successful implementation of the Convention. It was the task of the Conference to decide what work was to be carried out under Article 24.3(g). The Conference of the Parties must have authority over all substantive decisions related to the Convention, including its budget. He therefore suggested that a memorandum of understanding should be drawn up between the Conference of the Parties and the Health Assembly defining and formalizing reporting lines and cooperation between the permanent secretariat and WHO’s Tobacco Free Initiative or other programmes within WHO. The Conference of the Parties must have sufficient funding and oversight of the use of funds in order to meet obligations.

The CHAIR, in response to the question by the Islamic Republic of Iran, said that the chain of command seemed to be clear: the Tobacco Free Initiative was within the WHO structure, it reported through an Assistant Director-General to the Director-General, and its budget, in the order of US$ 29 million for the 2006-2007 biennium, was approved by the Health Assembly.

The Committee might usefully consider whether, in endeavouring to safeguard the secretariat’s independence, any new rules might not work against it. His belief was that the Conference would have to learn to work within the structure set out in the one model already put forward, and be more ready to accept that WHO was as dedicated as the Conference to implementing the Convention.

Mr TRIVEDI (India) advocated an all-inclusive approach to cooperation between the permanent secretariat and WHO’s Tobacco Free Initiative. However, some unforeseen situations might arise in which timely delivery by that programme was impossible, perhaps because of a temporary gap in staffing. He asked whether paragraph 6 of Annex 1 precluded the possibility of outsourcing in technical matters. He also asked whether the Director-General could guarantee adequate funding for the Tobacco area of work for the next 10 years; if that were not the case, the fate of the Conference of the Parties might be at risk. The Conference of the Parties was not dealing with mere technicalities but with a vision. Technicalities followed vision, and not vice versa. While a linkage might therefore be made between finances and structures, the political mandate that the Conference of the Parties intended to bestow on the secretariat must always be borne in mind.

Ms LAMBERT (South Africa) said that document A/FCTC/COP/1/5 on the designation of the permanent secretariat and arrangements for its functioning, dated 23 January 2006, was more relevant to discussions at the current session than document A/FCTC/IGWG/2/2, dated a year earlier. The delegations discussing the functioning of the secretariat in the Intergovernmental Working Group at that time were not all Parties, unlike the delegations at the current meeting. She wondered whether the current meeting was the correct forum for the presentation of detailed thoughts and questions, or whether the Chair intended a broader overview, for which there was another time and place. If that question could be clarified, she would feel better able to represent the Parties in her Region.
The CHAIR said that he had in mind a high-level scrutiny of the chart in Annex 2 of the Annex to document A/FCTC/COP/1/5, in order to determine whether it was workable. Any problems identified would need to be solved before discussing the roles of the different entities; those matters might best be discussed in a smaller, more focused group.

Mr BLOOM (Framework Convention Alliance), speaking at the invitation of the CHAIR, asked whether the reporting line on technical matters between the head of the secretariat and the Director-General meant that the Conference of the Parties had no residual authority in that area.

The CHAIR replied that he interpreted that line as meaning that the head of the secretariat reported to the Director-General on management and administration issues. The secretariat would be working within a WHO management structure, so there was a natural reporting relationship.

Mr AITKEN (WHO Secretariat) stated that, as far as administrative matters were concerned, that interpretation was correct.

One delegation had asked whether technical matters should be reported only to the Director-General or to the Conference of the Parties as well; another question concerned the relationship with Article 24.3(g), which gave the Conference of the Parties the responsibility to ask the secretariat to perform other functions that might be determined by the Conference. As envisaged in the chart, reporting by the head of the secretariat would be to the Director-General and then, as appropriate, to the Conference of the Parties or the Health Assembly, in order to avoid the overlap mentioned by Austria.

If the Conference of the Parties were to decide to ask the Convention Secretariat to perform technical functions, it would be a matter for its budget, part of the logic being to hold the budget at US$ 8 million.

Dr OGWELL (Kenya), endorsing South Africa’s comments, asked whether the technical, treaty support and administrative matters on which the secretariat would be reporting to the Director-General had been defined. Also, could WHO refuse to release funds to the secretariat for activities assigned to it by the Conference of the Parties on the ground that the matter was an administrative one that had to be cleared by the office of the Director-General?

Ms ST LAWRENCE (Canada) asked how, if WHO’s Tobacco Free Initiative retained responsibility for technical matters, work was to be assigned to it by the Conference of the Parties, given that there was no linkage between them, and how the secretariat would be able to report to the Director-General on technical issues if the Initiative did not report on those issues to it.

Dr LASSMANN (Austria) suggested that a collaboration line should be drawn from the Conference of the Parties to the Director-General, since the head of the secretariat would be designated by the former and appointed by the latter. He further suggested, in view of the emphasis on increased cooperation and coordination between the Conference of the Parties and the Health Assembly, that it would be more appropriate to replace the reporting lines between the two by collaboration lines. As the Conference of the Parties was an independent body, he wondered whether it was conceivable that it might ask the Health Assembly to pass a resolution to provide, for instance, sufficient budgetary funds for WHO’s Tobacco Free Initiative.

The CHAIR proposed, for the sake of expediency, that a small group, including Norway and South Africa, should be set up to work out terms of reference for a larger open-ended working group that would examine the issues that had been raised.

It was so agreed.
Mr KIDDLE (New Zealand) suggested that it would be more profitable for the working group to focus on the composition and structure of the permanent secretariat, many of whose activities were already outlined in the provisional budget set out in Annex 1 to the Annex of document A/FCTC/COP/1/5. Apart from a precise definition of staffing levels and numbers, there was enough detailed information in that document to establish the secretariat. Once the interim secretariat had confirmed that the level of recruitment suggested by the Committee corresponded to the budgetary figures proposed, the Committee could then discuss the budget. If it then agreed on a figure of US$ 8 million, the Conference would at least end its first session with a budget and a precise definition of the staff necessary to implement the Convention. The interim secretariat could then be requested to advertise the posts and fill them as funds came in. Once established, the secretariat would find out by experience how best to liaise with WHO and to establish the best possible synergies with the existing apparatus.

The CHAIR said that he did not believe there was sufficient confidence in the chart for either the Committee or the small working group to proceed as New Zealand had suggested. The group should therefore focus principally on the new and existing points and produce a list for discussion by the Committee the following day.

(For continuation of the discussion, see summary record of the tenth meeting.)

The meeting rose at 17:00.
TENTH MEETING

Tuesday, 14 February 2006, at 10:35

Chair: Mr P. OLDHAM (Canada)

MATTERS IDENTIFIED IN THE CONVENTION FOR ACTION BY THE CONFERENCE OF THE PARTIES AT ITS FIRST SESSION: Item 4 of the Agenda (continued)

Adoption of the Rules of Procedure for the Conference of the Parties (Article 23 Conference of the Parties, paragraph 3): Item 4.1 of the Agenda (Document A/FCTC/COP/1/2) (continued from the eighth meeting)

Rule 30bis (31) (continued from the eighth meeting)

The CHAIR, speaking as chairman of the informal drafting group on draft rules 30bis and 49, drew attention to a new text of draft rule 30bis (31), the outcome of the informal drafting group, which read:

Rule 30bis (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 90 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 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.

The Committee would recall that the Parties in the European Union had proposed a new text. The purpose of its paragraph 1 was to relieve the secretariat of the burden of deciding how to accredit nongovernmental organizations and which organizations should be accredited. Since some nongovernmental organizations might be infiltrated by the tobacco lobby, it had been felt that there ought to be provision for a review procedure; that procedure was set forth in paragraph 3. In paragraph 2, the words “and regional” had been retained because, in WHO, “international” nongovernmental organizations were defined as covering more than one region, which created problems for nongovernmental organizations in Latin America that did not span more than one region.
but spanned more than one country. Paragraph 4 reflected the provisions of paragraphs 2 of draft rules 29 and 30.

Dr MUÑOZ (Chile), speaking on behalf of the Parties in the WHO Region of the Americas, supported the new text of draft rule 30bis (31).

Mr GOU Haibo (China), speaking on behalf of the Parties in the WHO Western Pacific Region, endorsed the outcome of the informal working group on draft rule 30bis. He recalled that during the negotiations he had requested that a list of accredited nongovernmental organizations should be annexed to the rules of procedure or included in the report.

Dr BETTCHER (WHO Secretariat) said that the interim secretariat had distributed, as a non-paper outside the conference room, a list of all nongovernmental organizations that had participated either in at least one session of the Intergovernmental Negotiating Body on the WHO Framework Convention on Tobacco Control, or in at least one session of the Open-ended Intergovernmental Working Group.

Mr YANG Xiaokun (China), speaking on behalf of the Parties in the WHO Western Pacific Region, requested that the list should be incorporated in the Committee’s report.

It was so agreed.

Ms MATLHO (Botswana), speaking on behalf of the Parties in the WHO African Region, requested the interim secretariat to formulate a criterion for accreditation of nongovernmental organizations that could be made available to Parties, so that the procedure would be public and transparent.

Draft rule 31 (old 30bis) was approved.

Rule 49 (50) (continued from the eighth meeting)

The CHAIR, speaking as chairman of the informal drafting group, drew attention to a new text of draft rule 49 (50), which read:

Rule 49 (50)

1. The Conference of the Parties shall make every effort to reach agreement by consensus.

2. If all efforts to reach consensus have been exhausted and no agreement has been reached, the Conference of the Parties shall proceed as a last resort as follows:

   (a) decisions on substantive matters shall be taken by a three-fourths majority vote of the Parties present and voting, unless otherwise provided by the Convention, or by these Rules;

   (b) decisions on budgetary and financial matters shall be taken by consensus and in conformity with the financial rules referred to in Article 23.4 of the Convention;

   (c) decisions on procedural matters shall be taken by a majority vote of the Parties present and voting.

3. The President shall rule on any question of whether a matter is procedural or substantive. Any appeal against this ruling shall immediately be put to the vote. The President’s ruling shall stand unless overruled by a majority of the Parties present and voting.
Every effort had been made to protect the various Parties’ interests. The draft text from the Chair submitted at the Committee’s eighth meeting had been amended by raising the threshold in paragraph 2(a) from a two-thirds to a three-fourths majority vote. A new subparagraph 2(b) required decisions on budgetary and financial matters to be taken by consensus. It had been decided to leave rulings on whether a matter was procedural or substantive to the wisdom of the Chair.

Mr HETLAND (Norway) said that there seemed to be a logical inconsistency between the introductory text of paragraph 2 and paragraph 2(b). Read in conjunction, the two texts stipulated that where all efforts to reach consensus had failed, certain decisions must be taken by consensus. He therefore proposed that paragraph 2(b) should be deleted, so that the matter would then be covered by paragraph 2(a).

The CHAIR, supported by Mr SAWERS (Australia) and Mr MINAMI (Japan), suggested that as an alternative the wording of subparagraph (b) could be relocated so as to form a separate paragraph.

Dr LASSMANN (Austria) asked whether, given that paragraph 2(a) currently provided for a three-fourths majority, the proviso “unless otherwise provided by the Convention” was still necessary.

Mr BURCI (WHO Secretariat, Legal Counsel) said that Article 23 of the Convention required consensus for the adoption of the rules of procedure and the financial rules. Should the Conference of the Parties wish to replace its rules of procedure, and when it came to adopt its financial rules, it would have to do so by consensus, so that the proviso was still relevant.

Mr RASOLONJATOVO (Madagascar), speaking on behalf of the Parties in the WHO African Region, supported Norway’s proposal to delete paragraph 2(b).

Mr KIDDLE (New Zealand) supported the Chair’s suggestion but said that he could not support Norway’s proposal.

Following a consultation with Mr BURCI (WHO Secretariat, Legal Counsel), the CHAIR suggested that paragraph 2(b) should be reformulated as a separate new paragraph 3, to read: “Notwithstanding the above, decisions on budgetary and financial matters shall be taken by consensus and in conformity with the financial rules referred to in Article 23.4 of the Convention.”

Mr MINAMI (Japan) opposed a proposal by Mr HETLAND (Norway) to place the paragraph in square brackets, pending further study.

The CHAIR noted that the representative of Norway, in his capacity as chairman of the informal working group on terms of reference on issues relating to the secretariat, had been prevented from attending the meeting of the informal drafting group on draft rule 49. Accordingly, he suggested that consideration of draft rule 49 should be deferred briefly, to allow further time for reflection.

Dr MUÑOZ (Chile), speaking on behalf of the Parties in the WHO Region of the Americas, noted Norway’s comment regarding the logical contradiction between the introductory text of paragraph 2 and its subparagraph (b), and supported the Chair’s suggested approach.

The CHAIR said that he took it that the Committee wished to suspend its consideration of draft rule 49 pending informal consultation.

It was so agreed.

(For resumption of the discussion, see page 188 below.)
Designation of the permanent secretariat and arrangements for its functioning (Article 24 Secretariat, paragraph 1): Item 4.2 of the Agenda (Documents A/FCTC/COP/1/2, A/FCTC/COP/1/5 and A/FCTC/COP/1/5 Corr.1) (continued from the ninth meeting, section 2)

The CHAIR invited Mr Hetland (Norway) to report on the outcome of the first meeting of an informal working group on terms of reference on issues relating to the secretariat.

Mr HETLAND (Norway) drew attention to the outcome of an informal working group, which read:

1. A brief examination of the projected functions of the permanent secretariat with reference to document A/FCTC/COP/1/5. Are there any essential functions that are missing?

2. What arrangements should be made to manage the collaborative relationship between the Tobacco Free Initiative and the permanent secretariat? Who decides what is treaty support and what is technical support?

3. How do we insert the permanent secretariat into the fabric of WHO? Is the independence of the permanent secretariat sufficiently secured in the existing chart in Annex 1? If not, what adjustments are needed?

4. Is the reporting hierarchy as covered in the chart in Annex 1 sufficiently clear and if not, what adjustments are needed? Should we open the chart in Annex 1 for readjustment?

5. What functions should the head of the secretariat have? What would the level of these functions be?

6. What other posts and levels should we consider for immediate posting?

7. What is the financial threshold for starting to hire people for the permanent secretariat?

8. Should there be an interim prioritization of the tasks from Article 24 Secretariat, paragraph 3 (a) to (g)? In other words, what should the permanent secretariat be doing in its first months of work?

9. Transition period: Who will draw up the job description for the head of the permanent secretariat? Who will run the recruitment process? Who will conduct the interviews?

The point of departure had been the discussions in Committee B; the possible outcome of discussions in Committee A would have to be incorporated at a later stage. The main intention was to have the nucleus of an optimally constituted permanent secretariat fully operational. It was for the Chair and the Committee to decide how those questions could be taken forward.

Dr MUÑOZ (Chile), speaking on behalf of the Parties in the WHO Region of the Americas, said that the working group’s report raised the most important questions regarding the functions of the permanent secretariat and its relations with the Conference of the Parties and WHO. His regional group had also discussed whether the permanent secretariat should have technical functions, given the importance of WHO’s Tobacco Free Initiative in technical matters. It had also been agreed that those questions should be ranked in order of importance.

Ms XING Zhaohong (China) said that although the Parties in the WHO Western Pacific Region welcomed the outcome of the working group, they were concerned at the slow pace of negotiations. She requested the interim secretariat to prepare a draft resolution on the designation of the permanent
secretariat, focusing on questions on which there was already a consensus, with a view to speeding up the process.

Mr KIDDLE (New Zealand) said that some of the questions posed in the first report of the working group might not be finally settled at the first session of the Conference of the Parties. It was especially important not to stray into management decisions that fell within the purview of the Health Assembly. Aspects of the relationship between the secretariat and the Tobacco Free Initiative would have to be worked out. He supported China’s proposal: a resolution should be drafted that would establish a secretariat, empower it to appoint staff, draw up a programme of work and issue a call for financial contributions in accordance with the budget that would be adopted later.

Dr TSHERING (Bhutan), speaking on behalf of the Parties in the WHO South-East Asia Region, fully supported the establishment of an effective secretariat by the close of the current session. He asked whether the permanent secretariat would best serve the interests of Parties by being accorded an equal or a higher status than WHO’s Tobacco Free Initiative.

Mr JORBON (Marshall Islands) supported the proposal by China and New Zealand.

The CHAIR suggested that the working group should formulate a draft resolution on the establishment of a permanent secretariat, for submission to the Committee at its next meeting.

It was so agreed.

(For continuation of the discussion, see summary record of the eleventh meeting, section 2.)

Adoption of financial rules for the Conference of the Parties, and financial provisions governing the functioning of the secretariat (Article 23 Conference of the Parties, paragraph 4, and Article 24 Secretariat): Item 4.3 of the Agenda (Document A/FCTC/COP/1/2)

Adoption of the budget for the first financial period (Article 23 Conference of the Parties, paragraph 4): Item 4.4 of the Agenda (Documents A/FCTC/COP/1/2, A/FCTC/COP/1/5 and A/FCTC/COP/1/5 Corr.1)

Dr BETTCHER (WHO Secretariat) presented an overview of the discussions in first and second sessions of the Open-ended Intergovernmental Working Group regarding the adoption of financial rules for the Conference of the Parties and financial provisions governing the functioning of the secretariat. The interim secretariat had prepared a background document for the first session, outlining arrangements for financial rules for other treaty bodies. Typically, where a secretariat was established within an existing organization, the financial regulations and rules of the parent organization applied. The brief discussion on the matter held at the end of the second session of the Intergovernmental Working Group was reflected in paragraphs 154 to 157 of the report annexed to document A/FCTC/COP/1/2. Given the proposal that the permanent secretariat should be established within WHO, it had been questioned whether there was a need to adopt separate financial rules. If the Conference of the Parties were to adopt the Financial Regulations and Financial Rules of WHO, it would be able to adopt supplemental decisions regarding situations not fully covered by those regulations and rules. Such a situation might arise if, for instance, the Conference decided to finance its budget through voluntary assessed contributions. Annexes 2A and 2B to document A/FCTC/COP/1/5 Corr.1 set out two possible models for assessed contributions. Under the Financial Regulations and Financial Rules of WHO, internal auditing was conducted continuously in order to ensure the appropriate use of funds. If the Conference of the Parties accepted the recommendation of the Intergovernmental Working Group, it would then proceed by adopting the Financial Regulations and Financial Rules of WHO. If it took another decision, it would then have to elaborate its own financial rules.
The CHAIR said that, if he heard no objection, he would take it that the Committee wished to approve the recommendation that the Financial Regulations and Financial Rules of WHO should apply to the operation of the Conference of the Parties.

It was so agreed.

Dr BETTCHER (WHO Secretariat) gave an illustrated presentation on the adoption of the budget for the first financial period. Pursuant to Article 23.4 of the Convention, the Conference must determine its budget and the mode of contribution from Parties. The proposed provisional budget for the permanent secretariat for 2006-2007 appeared as Annex 1 of document A/FCTC/COP/1/5, and was based on the US$ 8.01 million budget to be found in Annex 3 to document A/FCTC/COP/1/2. It included the total cost of the second session of the Conference of the Parties and preparations for its third session, envisaging support for the travel costs of an estimated 70 Parties. The budget estimates, key expected results and detailed secretariat activities under each secretariat function enumerated in Article 24.3, subparagraphs (a) to (g), were set out in Annex 1 of document A/FCTC/COP/1/5.

The tables in Annex 2 of document A/FCTC/COP/1/5 Corr.1 showed potential assessed contributions to the Convention, based on WHO’s scale of assessments for 2005 and the model approved by the Intergovernmental Working Group, including the 112 States that would be voting Parties by the close of the first session of the Conference and the European Community. Annex 2A showed the contributions without a maximum assessed contribution, and Annex 2B showed the contributions with a maximum assessed contribution of 22%.

As explained in paragraph 6 of document A/FCTC/COP/1/5, because the text of the Convention did not contain an obligation for Parties to contribute, all contributions, assessed or not, must be voluntary, unless the Conference of the Parties decided otherwise. However, a specific amount was expected periodically from each Party, in accordance with the agreed scale of assessments. In calculating the assessments, each of the States Parties had been assigned a percentage based on WHO’s scale of assessments for 2005; since there were fewer Parties to the Convention than Member States of WHO, that scale was increased proportionately, bringing it to a total of 100%, and the resulting figure was taken as the WHO Framework Convention scale for 2005. On the basis of its contributions to other similar treaties, it was proposed to use 2.5% as the assessment of the European Community, which was a Contracting Party but not a WHO Member State. A number of multilateral environmental agreements had adopted a scale of assessments based on voluntary assessed contributions.

The expected outcomes of the deliberations were the adoption of a budget for the first financial period and a decision on how it was to be funded.

The CHAIR asked whether there was a consensus that the permanent secretariat should be funded through voluntary assessed contributions.

Replying to a question from Mr BAYAT MOKHTARI (Islamic Republic of Iran), Dr BETTCHER (WHO Secretariat) stressed that the adoption of a system of voluntary assessed contributions would not call into question the decision to adopt the Financial Regulations and Financial Rules of WHO, as the Conference could adopt a supplemental decision to cover that contingency.

Mr MINAMI (Japan) said that his delegation did not support the principle of voluntary assessed contributions. Contributions should be entirely voluntary.

Ms VALLE (Mexico) said that, if the Conference wished to see the Convention vigorously implemented, contributions should be compulsory.

Responding to a request for clarification by Mr RASOLONJATOVO (Madagascar), Mr BURCI (WHO Secretariat, Legal Counsel) said that the study of precedents had largely focused on
United Nations environmental conventions, which had served as models for several provisions of the Framework Convention. All those conventions were financed through voluntary assessed contributions, partly because there was no legal basis in the conventions for compulsory assessed contributions. Document A/FCTC/IGWG/2/2 contained a broad overview of other models, such as ILO conventions, and human rights conventions that were financed from general assessed contributions.

Dr BETTCHER (WHO Secretariat) said that, since about 95% of treaties within specialized agencies had secretariats that were fully integrated in the technical fabric of the respective organization, the issue of voluntary assessed contributions seldom arose. The governing bodies of the organizations adopted their budgets and made provision for secretariat support. Either compulsory contributions would have to be mandated by the Convention, or else the Conference of the Parties would have to opt for a system of entirely voluntary contributions, a system of voluntary assessed contributions or one of compulsory contributions.

Mr HETLAND (Norway) said that the financial burden should be shared equally between the Member States that were Parties to the Convention. He therefore favoured voluntary assessed contributions in accordance with the WHO scale.

Dr LASSMANN (Austria), speaking on behalf of the Parties in the European Union and of the European Community, said that the Committee should wait for the outcome of the working group on issues relating to the secretariat before considering budgetary matters. The Parties in the European Union were not yet in a position to take a common stand, since opinion among them was divided. The European Community was not in a position to make decisions extending beyond the financial period 2006-2013. It would be helpful if the Secretariat could make available a list of all the conventions whose secretariats were financed through voluntary assessed contributions.

Mr MBUYU MUTEBA (Democratic Republic of the Congo) said that without budgetary clarity it would be difficult to implement the Convention. He asked whether it was inconceivable to have two forms of contributions, voluntary and compulsory.

Mr AITKEN (WHO Secretariat) said that it might be necessary to reserve judgement on the question whether formal assessed contributions would be permitted. It was not clear whether the Convention itself must explicitly permit formal assessed contributions, or whether the Conference of the Parties could decide to introduce them.

The CHAIR suggested that discussion of the distinction between voluntary assessed contributions and voluntary contributions should be suspended pending informal consultations.

It was so agreed.

(For continuation of the discussion, see summary record of the thirteenth meeting.)

Adoption of the Rules of Procedure for the Conference of the Parties (Article 23 Conference of the Parties, paragraph 3): Item 4.1 of the Agenda (Document A/FCTC/COP/1/2) (resumed)

Rule 49 (50) (resumed)

The CHAIR reminded the Committee of his suggestion to create a new paragraph 3 in draft rule 49, beginning with the words “Notwithstanding the above”, followed by the language currently found in paragraph 2(b).
Following a discussion in which Mr HETLAND (Norway), the CHAIR and Mr AITKEN (WHO Secretariat) took part, Ms LAMBERT (South Africa) said that she agreed with the representative of Norway that the text proposed by the Chair was self-contradictory.

Dr ROA (Panama) suggested that paragraph 2(b) was perhaps redundant: paragraph 2(a) ended with the proviso “unless otherwise provided by the Convention”; and Article 23.4 of the Convention expressly stipulated that decisions on budgetary and financial matters should be taken by consensus.

Mr BURCI (WHO Secretariat, Legal Counsel), responding to the comment by Panama, said that Articles 23.3 and 23.4 of the Convention provided that rules of procedure and financial rules would be adopted by consensus. Draft rule 49.2(b) referred not to “financial rules” but to “decisions on budgetary and financial matters”. The rules were to be adopted by consensus, but the Convention did not specify how decisions on budgetary and financial matters were to be adopted.

Ms LAMBERT (South Africa) insisted that, even with the Chair’s proposed new paragraph, draft rule 49 simply went round in circles. Furthermore, should the Conference fail to reach consensus on a budgetary issue, how would it function without a budget?

Mr KIDDLE (New Zealand) suggested that the solution might be to relocate the Chair’s proposed new paragraph 3 as paragraph 1 of draft rule 49, to read: “Decisions on budgetary and financial matters shall be taken by consensus…”. The remaining paragraphs would be renumbered in consequence, and the words “For all other decisions” inserted at the start of former paragraph 1 (new paragraph 2).

Mr SAWERS (Australia), supporting the proposal by New Zealand, further proposed that the words “on other decisions” should be inserted between “if all efforts to reach consensus” and “have been exhausted”.

Mr BURCI (WHO Secretariat, Legal Counsel) suggested that the problem could be solved by using the formulation: “If all efforts to reach consensus on decisions referred to in paragraph 2 have been exhausted….”.

Dr LASSMANN (Austria), speaking on behalf of the Parties in the European Union, said that he could support the proposal by New Zealand. It should be borne in mind that consensus did not imply the right of veto: as the representative of South Africa had pointed out, the Conference of the Parties could not function without a budget.

Dr MAHMOUD (Egypt) suggested that paragraphs 2(a) and (b) might be merged.

Dr OGWELL (Kenya) said that, if the Committee was agreed on the question of principle, namely, that decisions on budgetary and financial matters should be taken by consensus, the task of coming up with language that reflected that principle could safely be entrusted to a drafting group.

Mr RASOLONJATOVO (Madagascar), echoing the concern voiced by South Africa, proposed that decisions on budgetary and financial matters should be taken by a three-fourths majority, in order to ensure that the Conference was not left without a budget.

Ms LAMBERT (South Africa) said that, while the proposals by New Zealand and Australia had eliminated a contradiction, the question of principle remained: if consensus was not achieved, would the Conference be left without a budget? That vital question must be answered.

Mr AITKEN (WHO Secretariat) said that experience in the United Nations system had shown that voting brought with it doubt as to whether the budget was really supported by the organization as
a whole. In WHO and the United Nations no effort had been spared to avoid voting, despite the existence of rules that allowed for it. The sense of unity was lost when a budget was voted.

Mr SAWERS (Australia) said that those points had been thoroughly discussed at a well-attended meeting of the drafting group. In the case of budgetary and financial matters, consensus was indeed the rule.

Mr MINAMI (Japan) endorsed the remarks by the WHO Secretariat: the sense of unity was lost if the budget was voted. Furthermore, if some countries were not happy with the result of the voting, they might decide not to pay their contributions. His own Government spared no pains in its efforts to achieve consensus.

Ms LAMBERT (South Africa), speaking on a point of clarification, said that her initial intervention had been intended to support the comment by Norway regarding a formulation that was self-contradictory. It was emphatically not her intention to propose that budgetary and financial matters should be decided by a vote. Her question had been whether there had ever been an occasion when consensus had not been reached, and, if so, what the implications had been for the budget.

Mr AITKEN (WHO Secretariat) said that, as far as he recalled, budgets had not been adopted by a vote in the United Nations system since the 1980s; in WHO the last such occasion had been in the late 1980s. In the event that no consensus was reached, the likeliest outcome would be a “continuing resolution”, to allow basic operations to continue until such time as the Parties were able to renegotiate the budget.

The CHAIR noted that there was provision for such contingencies in most parliamentary traditions.

Dr DA COSTA E SILVA (Brazil) joined with those delegations that had expressed concern about the consequences of failure to reach consensus. It would be useful to know what precedents existed under other treaties. Apparently there were instances of the work of a Conference of the Parties being almost totally blocked because a consensus had not been reached on financial matters. It would be useful to establish a mechanism to prevent that situation from arising.

Mr HETLAND (Norway) expressed support for the text in its latest version.

Mr SAWERS (Australia), supported by Mr JORBON (Marshall Islands), proposed that the Committee should approve the text in its latest version. Discussion about what would happen in the event of failure to reach consensus could continue when the Committee came to discuss the budget under item 4.2 of the Agenda.

The CHAIR noted that the Committee would doubtless have occasion to discuss the rules of procedure at future sessions.

Mr HAMMOND (Framework Convention Alliance on Tobacco Control), speaking at the invitation of the CHAIR, said that during the plenary a number of Parties had pointed out that, unless drastic action was taken, some 1000 million lives would be lost in the present century owing to tobacco use. Yet, at the present meeting, several delegates had seemed to question the very modest amount of funding called for in the interim secretariat’s report. Many of those present had spent five years negotiating the Convention, which had already paid enormous dividends. In recent years tens of millions of United States dollars had been allocated to combating emerging health threats such as avian influenza. What was the sense in investing millions of dollars in negotiating a treaty, only to starve the secretariat of resources?
The CHAIR said that he took it that the Committee wished to approve the text of draft rule 49 (50), as amended by New Zealand, Australia and the Legal Counsel.

**Draft rule 49 (50), as amended, was approved.**

The CHAIR invited the Committee to consider the draft rules of procedure of the Conference of the Parties to the WHO Framework Convention on Tobacco Control, as amended.

**The Committee approved the draft rules of procedure, as amended.**

He also invited the Committee to consider whether to adopt the Financial Regulations and Financial Rules of the World Health Organization as the financial rules referred to in Article 23.4 of the Framework Convention.

**It was so agreed.**

**The meeting rose at 12:35.**

---

1 Transmitted to the Conference of the Parties in the Committee’s first report and adopted as decision FCTC/COP/1(8).

2 Transmitted to the Conference of the Parties in the Committee’s first report and adopted as decision FCTC/COP/1(9).
ELEVENTH MEETING
Wednesday, 15 February 2006, at 10:30

Chair: Mr P. OLDHAM (Canada)

1. FIRST REPORT OF COMMITTEE B (Document A/FCTC/COP/1/7) (draft)

   The CHAIR drew attention to the draft first report of Committee B to the Conference of the Parties and the rules of procedure annexed therein.

   The report was adopted.¹

   Mr KIDDLE (New Zealand) said that he wished to place on record his country’s understanding that Rule 30, relating to observer status, would apply to the Secretariat of the Pacific Community.

2. MATTERS IDENTIFIED IN THE CONVENTION FOR ACTION BY THE CONFERENCE OF THE PARTIES AT ITS FIRST SESSION: Item 4 of the Agenda (continued from the tenth meeting)

   Designation of the permanent secretariat and arrangements for its functioning (Article 24 Secretariat, paragraph 1): Item 4.2 of the Agenda (Documents A/FCTC/COP/1/2, A/FCTC/COP/1/5 and A/FCTC/COP/1/5 Corr.1) (continued from the tenth meeting)

   The CHAIR drew attention to a draft decision on establishment of the permanent secretariat, which was the outcome of the second meeting of an informal working group and which read:

   Reaffirming the objective of the WHO Framework Convention on Tobacco Control as described in Article 3:

   The Conference of the Parties decides:


   2. The Bureau shall compile a job description for the Head of the Treaty Secretariat, drawing on the following requirements: eligible candidates must be nationals of Contracting Parties; possess clear communication skills suitable for a lead advocate of the global movement to control tobacco availability and use; demonstrate a commitment to tobacco control, a track record of public administration at a senior management level, international experience, an understanding of WHO’s organizational structures, be fluent in one or more of the

¹ See page 224.
United Nations official languages; knowledge of work in the field of tobacco control, possess resource mobilization skills, and be sensitive to developing country needs, amongst others.

3. To invite the Director-General of WHO to advertise the post of Head of the Treaty Secretariat as submitted by the Bureau, at the earliest opportunity, and to utilize WHO secretarial support services to screen applications, compile an initial shortlist of no more than 10 candidates, and to forward those applications to the Bureau.

4. The initial shortlist of no more than 10 candidates for the Head of the Treaty Secretariat shall be considered by the Bureau of the Conference of the Parties, with a view to further shortlisting three candidates for recommendation to the Director-General for final decision.

5. The appointment of the Head of the Treaty Secretariat shall be made by the Director-General of WHO.

6. The term in office of the Head of the Treaty Secretariat shall be for a period of [five] years, with the possibility of renewal for a maximum period of a further [five] years.

7. The Head of The Tobacco Control Treaty Secretariat shall report on all its activities to the Conference of the Parties, with the annual report copied to the Director-General of WHO.

8. The Head of the Treaty Secretariat shall report to the Director-General of WHO on administrative and staff management matters to maximize coordination, administrative synergies, efficiency and cost-effectiveness, and avoid duplication; this should include implementation activities, where appropriate.

9. The Head of the Treaty Secretariat shall recruit all staff in accordance with and subject to the staff regulations of WHO, unless otherwise provided for in this decision; appointments should take into account equitable geographical balance, gender equality, and balanced representation between developed and developing countries.

10. In matters other than those in paragraphs 7 and 8, the Head of the Treaty Secretariat shall be accountable and responsible to the Conference of the Parties.

11. The Treaty Secretariat shall conduct a work programme based on the Articles of the WHO Framework Convention on Tobacco Control, especially Articles 21.3, 22.2, 23.5 and 24.3, as well as any additional tasks assigned to it by the Conference of the Parties, and according to priorities and within budgetary allocations agreed by the Conference of the Parties.

12. The Treaty Secretariat shall request the opening and maintenance of financial accounts to support its operations and activities, in accordance with the Financial Rules.

13. Until the appointment of the first Head of the Treaty Secretariat is confirmed, the interim secretariat will continue to serve in its current capacity.

Ms LAMBERT (South Africa), introducing the draft decision as one of the co-chairs of the informal working group, said that the group had worked on the assumption that the permanent secretariat would be fully integrated into the structure of WHO, in accordance with the decision taken at the second session of the Intergovernmental Working Group. The group had discussed the following chart which indicated that the Conference of the Parties would issue instructions to the secretariat, and that the secretariat would in turn be accountable to the Conference. Through the Director-General, the secretariat would have links with several programmes within WHO, including the Tobacco Free Initiative (“WHO departments” in the chart). The idea of having a Memorandum of Understanding
between the Director-General and the Conference of the Parties had been suggested in the chart but not made explicit in the text of the draft decision.

Dr TSHERING (Bhutan), speaking on behalf of the Parties in the WHO South-East Asia Region, expressed concern that the recommendations of the second session of the Intergovernmental Working Group were not reflected. No relationship was foreseen between the Tobacco Free Initiative and the future secretariat. The term of office for the head of the secretariat, five years, was not in WHO’s Financial Regulations and Financial Rules. The reporting system suggested by the working group was not mentioned in the chart, and the Conference of the Parties was envisaged as being separate from, or parallel to, WHO, which might lead to confusion, duplication and waste of resources. The Intergovernmental Working Group had suggested that the Tobacco Free Initiative provide support to the future secretariat (document A/FCTC/COP/1/2, paragraph 17), but that was not indicated in the chart. The establishment of a permanent secretariat should be based on the second model presented at the second session of the Intergovernmental Working Group, namely a permanent secretariat internalized within WHO.

Mr BAYAT MOKHTARI (Islamic Republic of Iran), speaking on behalf of the Parties in the WHO Eastern Mediterranean Region, noted that, although the draft decision was intended as a compilation of the ideas raised during discussion, a number of entirely new ideas had been introduced. The term “Treaty Secretariat” had never been used by the group, and no mention had been made of a Memorandum of Understanding between the Conference of the Parties and the Director-General.

Dr DA COSTA E SILVA (Brazil) said that the draft decision failed to reflect the idea that the secretariat should be internalized within WHO, not within WHO’s Tobacco Free Initiative, although it would take advantage of the Initiative’s expertise and resources. The lines of reporting and cooperation should be identified, as in the chart contained in Annex 2 to the report of the Intergovernmental Working Group (document A/FCTC/COP/1/2), which should be used as the basis of discussion. Any chart should refer to cooperation between the Initiative and the permanent secretariat. Paragraph 1 of the draft decision envisaged the permanent secretariat within the headquarters of WHO, but it could be located elsewhere in the structure of the Organization.
Mr ZAMAN (Bangladesh) said that further consultations should be held before approving the draft decision. He was concerned that no link was demonstrated between the Conference and the Initiative. The Initiative should continuously engage in implementation of the Convention. The draft decision failed to answer how follow up and technical support would be provided.

Mr JANG Chun Sik (Democratic People’s Republic of Korea), endorsing the statement made by Bhutan and supported by Dr SOMATUNGE (Sri Lanka), expressed regret that the chart had shown no collaborative relationship between the permanent secretariat and WHO, in particular the Tobacco Free Initiative. He urged discussion of the model recommended by the Intergovernmental Working Group.

Mr RUÍZ GAYTÁN LÓPEZ (Mexico) said that the problem was how to establish an independent secretariat that could draw on all the resources of WHO. He questioned the direct line of contact between the Health Assembly and the Conference of the Parties. The relationship that should exist between the permanent secretariat and the Tobacco Free Initiative was not made clear.

Mr KIDDLE (New Zealand), supported by Mr MINAMI (Japan) and Mr SAWERS (Australia), suggested that the chart should be discussed separately by a small drafting group.

Dr AL-LAWATI (Oman) endorsed the comments by Mexico and Brazil. WHO’s Tobacco Free Initiative should be given more prominence and shown as separate from other WHO programmes, as in the chart contained in Annex 2 to the Annex in document A/FCTC/COP/1/2. The Memorandum of Understanding was an entirely new concept. He could not see why the Conference of the Parties should be accountable to the Health Assembly, in which States non-Parties to the Convention were represented.

Dr ROA (Panama) said that the draft decision reflected the working group’s discussion but did not answer the question of how technical cooperation between the secretariat and the Initiative would be effected. Clarification was needed as to who would be the signatories to the Memorandum of Understanding. There should be collaboration between the Conference of the Parties and the Health Assembly as the Conference would be independent in decision-making.

Mrs EFRAT-SMILG (Israel) said that the underlying principle of the draft decision was that the Conference was separate from WHO, although for budgetary reasons its permanent secretariat would be connected to the WHO Secretariat. There could thus be no lines of accountability between the Conference of the Parties and WHO. She supported the view that the chart should be kept separate from the draft decision.

Mr BURCI (WHO Secretariat, Legal Counsel), replying to requests for clarification, explained that the Conference of the Parties was an organ created by a treaty and as such had its own independent existence, although it could not assume contractual obligations or enter into agreements like a legal person. While the secretariat of the Convention would be housed in WHO, it would nevertheless have functional autonomy because it had been established to perform certain functions.

He pointed out that because the secretariat would be part of WHO, concluding a Memorandum of Understanding between the Director-General and the Conference would be tantamount to concluding a Memorandum of Understanding between WHO and itself. Normally, a Memorandum of Understanding clarified a division of labour. That could be achieved by a clear decision from the Conference of the Parties defining responsibilities, and the channels of support and communication between the different organs.

Mr MBUYU MUTEBA (Democratic Republic of the Congo) pointed out that Article 3 of the Framework Convention stated the objective to protect generations from the consequences of tobacco consumption – essentially a technical mission. The secretariat’s administrative role would only
support that. Clear delineation of the relationship between WHO’s Tobacco Free Initiative and the secretariat was needed. The secretariat’s responsibilities must include technical matters.

Mr BAYAT MOKHTARI (Islamic Republic of Iran) said that he too favoured basing the discussion on the original chart in document A/FCTC/COP/1/2, Annex 2, with minor amendments. For example, the Conference of the Parties clearly had jurisdiction over technical issues according to Article 23.5(b) of the Convention. The Initiative should be linked directly to the Director-General and the permanent secretariat, so that reports from the permanent secretariat to the Conference of the Parties included reports on technical activities handled by the Tobacco Free Initiative.

Mr HETLAND (Norway), speaking as one of the co-chairs of the informal working group, supported the views expressed by the Islamic Republic of Iran. The risk that the permanent secretariat might have to submit two separate reports could be avoided if it reported on technical matters to the Conference of the Parties.

Dr TSHERING (Bhutan), speaking on behalf of the Parties in the WHO South-East Asia Region, and Dr MOLINARI (Observer, Argentina), also supported the proposal by the Islamic Republic of Iran.

Ms LAMBERT (South Africa), speaking on behalf of the Parties in the WHO African Region, said that she could accept the original chart with the improvements suggested. The chart should indicate a two-way relationship between the permanent secretariat and the Conference of the Parties, covering treaty, technical and administrative matters, with reports from the secretariat to be copied to the Director-General.

Mr RUÍZ GAYTÁN LÓPEZ (Mexico) said that he too could accept adoption of the original chart, amended as proposed. Even if, as the Legal Counsel had explained, the Conference of the Parties was not fully autonomous, it should be able to adopt certain decisions independently, and a legal formulation appropriate to that purpose must be found.

The CHAIR, responding to concerns expressed by Dr AL-LAWATI (Oman), said that, although according to the original chart the role of the Health Assembly was to approve technical and administrative budgets, that did not mean that it had power to veto technical work that the Conference of the Parties might wish to undertake. He suggested that “treaty matters” be amended to read “treaty and technical matters”.

Dr DA COSTA E SILVA (Brazil) endorsed the views expressed by the Islamic Republic of Iran.

Mr TRIVEDI (India) said that for the implementation of protocols many technical areas needed the permanent secretariat. He favoured a symbiotic relationship between the two bodies. The Initiative would deal with scientific and biological areas and help Parties with capacity building and database construction.

Mr BAYAT MOKHTARI (Islamic Republic of Iran) endorsed the suggestion by the Chair.

The meeting rose at 12:05.

---

1 Participating by virtue of Rule 47 of the Rules of Procedure of the World Health Assembly whose provisional application had been agreed on by the Conference of the Parties in decision FCTC/COP1(5).
TWELFTH MEETING

Wednesday, 15 February 2006, 15:20

Chair: Mr P. OLDHAM (Canada)

MATTERS IDENTIFIED IN THE CONVENTION FOR ACTION BY THE CONFERENCE OF THE PARTIES AT ITS FIRST SESSION: Item 4 of the Agenda (continued)

Designation of the permanent secretariat and arrangements for its functioning (Article 24 Secretariat, paragraph 1): Item 4.2 of the Agenda (Documents A/FCTC/COP/1/2, A/FCTC/COP/1/5 and A/FCTC/COP/1/5 Corr.1) (continued)

The CHAIR invited the Committee to resume consideration of the arrangements for the functioning of the permanent secretariat which had also been discussed in an informal working group.

Mr AL-LAWATI (Oman), speaking also on behalf on the Islamic Republic of Iran, said that the version of the chart that was being projected in the meeting room reflected recently discussed changes but did not indicate the range of tasks of the permanent secretariat; it was more a job description for the head of that secretariat. Such changes should be reflected in an official document.

The CHAIR said that the chart could be included in a final document.

Ms LAMBERT (South Africa) recalled a proposal for the following phraseology: “to give guidance on technical and treaty-related matters”. Contracting Parties in the WHO African Region would support that, and they would also like the arrangements to specify two-way communication between the head of the secretariat and the Conference of the Parties. They further requested that all technical, treaty and administrative matters should be communicated to the Conference of the Parties. A different kind of reporting was envisaged than between the head of the permanent secretariat and WHO’s Director-General. The view that the head of the permanent secretariat and his or her staff would facilitate the implementation of the Framework Convention “with respect to treaty support matters” was far too narrow; the text should read “… facilitate implementation of the Framework Convention”.

Mr DE CASTRO SALDANHA (Brazil) said that it should be made clear that the Conference of the Parties would providing guidance rather than reporting to the permanent secretariat.

Mr BAYAT MOKHTARI (Islamic Republic of Iran) considered that the word “permanent” before “secretariat” should be deleted.

Mr AITKEN (WHO Secretariat) explained that in the chart the word “reporting” meant “having responsibility towards”. In that sense, the permanent secretariat would report on administrative matters to the Director-General and on technical and treaty matters to the Conference of the Parties.

Mr KIDDLE (New Zealand) said that he was not clear what status the chart would have. He strongly favoured using it merely as an information tool. The definitions of the roles of the Health Assembly and WHO’s Tobacco Free Initiative were not appropriate.
Mr AITKEN (WHO Secretariat), replying to a query by Dr LASSMANN (Austria), said that in areas where the Tobacco Free Initiative and the Conference were both working, the permanent secretariat would need to report both to the Conference of the Parties and to the Director-General.

Mr BAYAT MOKHTARI (Islamic Republic of Iran), speaking on behalf of the Parties in the WHO Eastern Mediterranean Region and supported by Mr SÁNCHEZ (Mexico), said that the chart was a first step towards implementation of Article 23.5(c) of the Convention and should be retained.

The CHAIR suggested that further consideration of the chart should be deferred.

It was so agreed.

Dr BABA (Nigeria) identified three missing elements. Given that the Convention was knowledge based, the head of the secretariat had to have scientific expertise or a scientific background, especially as there would be large quantities of data to be analysed. Secondly, there was no time scale: the head would need to start as soon as possible. Thirdly, the position had not been defined - would the incumbent be the chief executive, executive director, executive secretary or what?

Mr DE CASTRO SALDANHO (Brazil) urged reference to the core principles and recommendations set out in Annex 1 of the Annex to document A/FCTC/COP/1/2.

The CHAIR suggested proceeding by considering each paragraph in turn.

Paragraph 1

Mr BAYAT MOKHTARI (Islamic Republic of Iran), speaking on behalf of the Parties in the WHO Eastern Mediterranean Region, suggested that the word “Treaty” before “Secretariat” should be deleted. With regard to the term in office, currently suggested as five years (paragraph 6), care should be taken to avoid coincidence of the end of term of the head of the secretariat with the end of term of the Director-General of WHO. For the sake of continuity, the term of office of the head should be calculated so as to expire halfway through the tenure of the Director-General.

For the secretariat, the CHAIR suggested “Convention Secretariat”.

Dr BETTCHER (WHO Secretariat), in reply to a question from Mr SÁNCHEZ (Mexico), said that the secretariat was expected to have a total of 10 staff.

Ms LAMBERT (South Africa), speaking on behalf of the Parties in the WHO African Region and supported by Mr DE CASTRO SALDANHA (Brazil), said that the phrase “within the headquarters of the World Health Organization” might prove unduly restrictive and suggested “within WHO”. With regard to the title, she supported the Islamic Republic of Iran.

Mr KIDDLE (New Zealand) recalled that the original intention had been to ensure that the secretariat was established in WHO in Geneva, hence the reference to the headquarters of WHO. He wished to retain an unambiguous reference to the secretariat being in Geneva. With regard to its title, he explained that a descriptor was needed to avoid possible confusion with the WHO Secretariat and the interim secretariat; the term “Convention Secretariat” could serve.

The CHAIR recalled that the Convention referred to the “permanent Secretariat” (Article 24).

Ms FUJINO (Japan), supporting New Zealand, wanted a clear articulation that the secretariat would be based in Geneva.
COMMITTEE B: TWELFTH MEETING

Dr DA COSTA E SILVA (Brazil) agreed that physically the secretariat should be in Geneva but stressed that the phrase “within the headquarters of the World Health Organization” should mean that the secretariat would include individuals not only from Geneva but regional and country offices.

Mrs EFRAT-SMILG (Israel) said that she interpreted Article 24 of the Convention as meaning that there would be a treaty secretariat on a permanent basis. The secretariat should be separate but within WHO, with a title such as Treaty Convention Secretariat.

Dr LASSMANN (Austria) noted that Article 24 was entitled merely “Secretariat”; the word “permanent” with its lower case letter was only adjectival. He preferred the title FCTC Secretariat.

The CHAIR took it that the Committee accepted the term “Convention Secretariat”.

It was so agreed.

Paragraph 2

The CHAIR remarked that the paragraph appeared to be a shopping list of desirable qualities for a head of the Convention Secretariat, and suggested that a practical approach would be to focus on the instructions the Conference gave for finding a suitable person.

Mr SAWERS (Australia), speaking on behalf on the Parties in the WHO Western Pacific Region, said that at the informal regional meeting it was agreed that, although a discussion of desirable qualities would be useful, the WHO Secretariat would have to identify the various competences, draw up a job statement and make the appointment. The Conference should not anticipate that work but could usefully propose qualities that it would like to see. In order to leave the WHO Secretariat some measure of discretion in selecting a head for the Convention Secretariat, the list of requirements for the post should be deleted from the draft decision but captured instead in the summary records. The paragraph could then begin: “The Bureau shall compile, with the assistance of the WHO Secretariat, a job description for the head of the Convention Secretariat, drawing on the discussion in the Conference of the Parties”. The draft decision should also contain the principle that candidates must be nationals of Contracting Parties.

Mr TRIVEDI (India), speaking on behalf of the Parties in the WHO South-East Asian Region, said that the details might be left to the WHO Secretariat. Speaking as the representative of India, he proposed that the job description and the specification of the qualities and qualifications of the incumbent could be formulated by the WHO Secretariat.

Ms LAMBERT (South Africa), speaking on behalf of the Parties in the WHO African Region, favoured the inclusion of more specific recommendations or requirements for the post into the record, which would then serve as a guideline rather than a prescription. She concurred that candidates should have technical knowledge of work in the field of tobacco control, be nationals of Parties to the Convention and, in addition, be non-smokers. Removal of the specifications from the draft decision would result in a crisper text.

Mr DE CASTRO SALDANHA (Brazil) supported the proposal by Australia. The record should include the principles, one of which was multilingualism within organizations of the United Nations system. The head of the Convention Secretariat should be fluent in at least two of WHO’s official languages. A second principle was the importance of a technical and scientific expertise or background.

Dr LASSMANN (Austria), speaking on behalf of the European Union, said that he could be flexible on the procedure to be followed for specifying the post requirements. He suggested adding to
paragraph 2 the following sentence: “When compiling the job description, the Bureau shall take into consideration the close relationship between the administrative level and the head of the Convention Secretariat, the budgetary resources allocated to the Convention Secretariat, and the number of other staff members.”

The CHAIR asked whether such elements were not taken into consideration in the classification process in the United Nations system.

Dr LASSMANN (Austria) noted that statement and said that he would reconsider his position.

Dr MUÑOZ (Chile) said that the list of desirable characteristics for the head of the Convention Secretariat should be contained in a document to which reference could be made in paragraph 2. If it was decided to rely on the record of the meeting, that should indicate that proven ability in public administration at senior management level should not be a prerequisite; it would be an asset, but a candidate from the private sector should not be excluded if he or she possessed the other required competencies.

Mr BAYAT MOKHTARI (Islamic Republic of Iran) said that it was important to ensure that the head of the secretariat should have no conflict of interest, such as involvement with or private financial interests in the tobacco industry.

Mr AITKEN (WHO Secretariat) said that all senior staff members of WHO were rigorously screened to avoid conflicts of interest, including any relationship with the tobacco industry.

Mr ZAMAN (Bangladesh) asked about the legal implications of removing the requirements from the draft decision and placing them in the summary records; he favoured retaining the text in the draft decision. He also drew a distinction between those requirements and terms of reference. Technical and scientific skills and knowledge were important; candidates must have a postgraduate qualification and be conversant with the rules and regulations of WHO. Selection must be based on merit, not on political considerations, after open competition.

Ms LAMBERT (South Africa) said that the requirements should not be unrealistically high. It was important to trust the Bureau, in consultation with the WHO Secretariat, to find a suitable individual who would act as an advocate for international tobacco control. Staff members of the Convention Secretariat could have some of the professional skills being discussed.

Dr MAHMOUD (Egypt) asked whether the qualities required of the future head would also be required of professional staff members of the Convention Secretariat. It would be appropriate to apply those qualifications and duties to all such staff in the secretariat.

Mr MBUYU MUTEBA (Democratic Republic of the Congo) said that the future head of the secretariat and the various staff members should, between them, have all the characteristics necessary to run the secretariat and implement the Convention. The qualifications required of the head of the secretariat, and perhaps also of staff members, should be listed in an annex to the Rules of Procedure of the Conference of the Parties to the Convention.

Dr SOMATUNGE (Sri Lanka) said that paragraph 2 should place more emphasis on technical competence. He agreed with Bangladesh on the need for a postgraduate qualification, a scientific background and technical competence.

Mr KIDDLE (New Zealand), supported by Mr HETLAND (Norway), proposed that paragraph 2 be amended to read: “The Bureau, in consultation with WHO, shall compile a job...
description for the head of the Convention Secretariat, taking account of the desirable experience and characteristics identified in the report of the meeting.”

Mr SÁNCHEZ (Mexico) also supported the proposal. The head of the secretariat must have a command of two official languages of the United Nations and be familiar with the subject of tobacco control. As for the other desiderata, WHO already had ample experience of recruitment.

Mr KIVANC (Turkey) said that the Bureau should consult the States Parties to the Convention, as well as the WHO Secretariat. In response to the CHAIR’s comment that consultation with the WHO Secretariat was intended because of the administrative and technical aspects of recruitment, he added that consultation was essential because the Bureau alone could not decide.

Mr ZAMAN (Bangladesh) asked whether a job description in a decision of the Conference would have the same legal force as a job description in the summary record of the meeting.

Mr BURCI (WHO Secretariat, Legal Counsel) said that both solutions would be acceptable, but a decision of the Conference would be more authoritative. A flexible approach, however, would be preferable, because a series of binding requirements would complicate the appointment process for WHO.

Dr MUÑOZ (Chile) supported the wording proposed by New Zealand.

Mr BAYAT MOKHTARI (Islamic Republic of Iran) said that he could support the proposed wording provided that the Committee’s meeting was defined, in particular as being in the first Conference of the Parties.

Ms LAMBERT (South Africa), speaking on behalf of the Parties in the WHO African Region, supported the draft text as modified by the Islamic Republic of Iran.

Dr MOLINARI (Observer, Argentina) supported South Africa’s position and urged that the draft decision specify that the Convention Secretariat should have its seat in Geneva.

Dr LASSMANN (Austria) said that, on the understanding that the summary record of the meeting reflected its views, the European Union could accept a shortened and possibly further improved text.

The CHAIR took it that that wording was acceptable.

**It was so agreed.**

**Paragraphs 3 and 4**

Ms LAMBERT (South Africa), speaking on behalf of the Parties in the WHO African Region, suggested that after “Conference of the Parties” in paragraph 4 the words “in consultation with the Director-General or a representative of the Director-General” should be inserted, and that the words “in order of preference” should be inserted after “three candidates”. She also proposed the addition of the sentence “The WHO Secretariat support services shall forward to the Bureau a complete list of all candidates screened, together with brief reasons for their non-selection”.

---

1 Participating by virtue of Rule 29(2) of the Rules of Procedure of the Conference of the Parties to the WHO Framework Convention on Tobacco Control.
The CHAIR noted that that was part of the standard appointment procedure in WHO.

Mr TRIVEDI (India) suggested that “in order of preference” should be replaced by “in order of merit”.

Dr LASSMANN (Austria), speaking on behalf of the European Union, suggested that independent assessments should be made of the candidates. It might also be appropriate for regional groups to be consulted. He suggested that in paragraph 4, after “shall be considered by the Bureau of the Conference of the Parties”, the words “with a view to selecting, after consultation with the Director-General, a single candidate for appointment” should be added.

Mr AITKEN (WHO Secretariat) said that appointments had to be made by the Director-General. In the case under discussion, that would be done on the basis of a recommendation from the Bureau.

Dr BABA (Nigeria) asked whether it was necessary to tell unsuccessful candidates the reasons for their non-selection.

The CHAIR said that the reasons would be given to the Bureau.

Mr ZAMAN (Bangladesh) pointed out that candidates could not be listed “in order of preference”, as proposed by South Africa, unless there were clear criteria for preferring one to another. Consulting regional groups might prove to be a lengthy and complex process. A short list of three candidates, selected on the basis of qualifications or merit, should be recommended to the Director-General for the final decision.

Mr KIDDLE (New Zealand) supported the South African proposal as amended by India except that the word “merit” should be used instead of “preference”. He also shared Nigeria’s concern, proposing that the Secretariat should “forward to the Bureau a list of unsuccessful candidates” or even forward a list of “all applicants screened together with brief reasons for its recommendations”. He also recalled that in previous discussions agreement had been reached that the identification of three candidates was a delegated authority to the Bureau of the Conference of the Parties which had no requirement to consult regional groups.

Ms FUJINO (Japan), while supporting the amendments proposed by South Africa, said that she did not see why the Bureau should have to receive a complete list of all candidates.

The CHAIR said that it was standard procedure for the officer responsible for recruitment to handle all applications.

Mr KIDDLE (New Zealand) inferred that the WHO Secretariat should provide the Bureau with the full list of applicants, together with brief reasons for its recommendations.

Dr DA COSTA E SILVA (Brazil) said that reasons for a recommendation should be given, but not those for non-selection.

Mr BAYAT MOKHTARI (Islamic Republic of Iran), speaking on behalf of the Parties in the WHO Eastern Mediterranean Region, supported the original South African proposal (but with the word “merit”), which would give more transparency. The first sentence in paragraph 3 could end with “at the earliest opportunity” and the new sentence replace the rest.

Mr BURCI (WHO Secretariat, Legal Counsel), replying to a question by Mr KIVANC (Turkey) about the appointment of the Director-General, said that the process was set out in the Rules of
Procedure of the Executive Board. If there were more than five candidates, the Executive Board would draw up a shortlist of candidates who met the specific criteria for the appointment.

Dr LASSMANN (Austria) recalled that according to a decision by the Intergovernmental Working Group, the head of the secretariat would have to be proposed by the Conference of the Parties in consultation with the Director-General of WHO, and be appointed by him. However, since the Conference was not an organ of WHO, there were some doubts as to the procedure to be followed. He suggested that paragraph 4, after “Conference of the Parties”, should be amended to read: “with a view to recommending a single candidate to the Director-General for his final decision.”

Mr AITKEN (WHO Secretariat) said that the Conference of the Parties could not make a selection but could make a single recommendation to the Director-General.

Ms LAMBERT (South Africa) said that her proposal had been based on standard employment practice. She welcomed the suggested use of the term “order of merit” for the listing of recommended candidates. She pleaded that the head of the Convention Secretariat should be referred to as “he or she”.

Mr TRIVEDI (India) said that the Director-General should not be confronted with a fait accompli; he should be able to choose one out of three recommended candidates in order of merit.

Mr BLOOM (Framework Convention Alliance), speaking at the invitation of the CHAIR, said that his understanding was that the Parties wished to decide who would head the Convention Secretariat. Paragraph 4 should therefore state that the Conference, in consultation with the WHO Secretariat, would forward its recommendation to the Director-General for a final decision.

Mr KIDDLE (New Zealand) said that paragraph 3 should remain as originally drafted, indicating the sequential steps to be carried out before the Bureau took action.

Dr LASSMANN (Austria), noting that the Convention Secretariat and its head were at the service of the Conference of the Parties and not WHO, suggested that the text read: “with a view to recommend, after consultations with the Director-General, a single candidate to him for final decision.” In response to a suggestion from Mr AITKEN (WHO Secretariat) for use of the term WHO Secretariat instead of Director-General, he observed that he was using the language of the Intergovernmental Working Group.

The CHAIR proposed that reference to the reasons for non-selection could be deleted. Agreement had been reached on the use of “merit”.

It was so agreed.

Paragraph 5

Paragraph 5 was approved.

Paragraph 6

Ms LAMBERT (South Africa), speaking on behalf of the Parties in the WHO African Region, said that the term of office of the head of the secretariat should be at least four years, so that measurable progress could be made. She suggested the addition of a sentence reading “There shall be a mid-term review of the performance of the head of the Convention Secretariat, to be presented to the Conference of the Parties …”, with the timing to be decided.
Mr AITKEN (WHO Secretariat) pointed out that the staff evaluation process in WHO involved an annual performance review by the staff member’s supervisor, with an opportunity for the staff member to make his or her own comments. A decision to renew an appointment was taken in the light of successive evaluations. If the Committee proposed having an external evaluation, he would have to seek legal advice.

Ms LAMBERT (South Africa) withdrew her suggestion.

Mr AITKEN (WHO Secretariat), in reply to a question by Dr DA COSTA E SILVA (Brazil), explained that every WHO appointment was subject to a one-year probationary period.

Mr ZAMAN (Bangladesh) considered that a five-year term would be too long. For the sake of accountability, there should also be provision for a review by the Conference of the Parties.

Dr LASSMANN (Austria), observing that an initial term of five years was not appropriate, suggested three years or a shorter period subject to subsequent revision by the Conference of the Parties.

Mr RUÍZ GAYTÁN LÓPEZ (Mexico) noted that experience had shown that short terms of office had not been at all successful, especially in cases like a convention that required at least medium-term planning. Further, the outcome of programme implementation would not be visible over a short period. Mexico had pertinent experience, including in public administration, on the basis of which it was currently trying to extend the three-year period in certain areas of government precisely because it was not possible to plan over the longer term. He supported the proposed length of the term of office, or at least one year’s probation and a contract of three years.

The CHAIR suggested that the paragraph should specify an initial period of four years, with the possibility of an extension for a further three years.

It was so agreed.

**Paragraphs 7-12**

Mr KIDDLE (New Zealand) said that it was not clear in paragraph 7 whether the Conference of the Parties would receive an annual report on the activities of the Convention Secretariat if it did not request one. Moreover, an annual report could not be synchronized with a Conference meeting every two years. He suggested that the word “annual” should be deleted, and the words “as appropriate” added at the end of the sentence. Convention Secretariat reports and other reports referring to activities or services of WHO would be copied to the Director-General.

Dr LASSMANN (Austria) considered that reporting on “all its activities” was too broad; the head of the Convention Secretariat should report on treaty issues.

Ms LAMBERT (South Africa) could accept “to report on all its activities” and agreed with New Zealand’s proposals.

Following interventions by Mr DE CASTRO SALDANHA (Brazil) and Mr DEANE (Barbados), the CHAIR read the revised text: “The head of the Convention Secretariat shall submit a report to the Conference of the Parties, copied to the Director-General of WHO as appropriate”.

Mr AITKEN (WHO Secretariat) drew attention to the need to include in paragraph 8 a requirement to report on technical activities, where appropriate.
Dr MUÑOZ (Chile) said that a new paragraph was needed near paragraph 8, which would indicate that an link also existed from the head of the secretariat to WHO’s Director-General with regard to technical information, which could read: “The head of the Secretariat shall also inform the Director-General of WHO about the technical aspects of the Secretariat’s work programme, in particular with regard to progress made and collaboration with WHO’s Tobacco Free Initiative and other concerned programmes.”

Mr BAYAT MOKHTARI (Islamic Republic of Iran) observed that the Convention Secretariat had two “bosses”: the Conference of the Parties and the Director-General. Paragraph 7 referred to submitting a report and not to reporting lines. Paragraph 8, however, instructed the head of the Convention Secretariat to report to the Director-General; it was unnecessary to spell out the reasons for reporting to the Director-General of WHO. The issue was whether the Secretariat reported to the Director-General or not.

Dr DA COSTA E SILVA (Brazil) drew attention to paragraph 6 of Annex 1 to the report of the Intergovernmental Working Group (in document A/FC TC/COP/1/2), which provided a framework for coordination between the permanent secretariat, WHO’s Tobacco Free Initiative and other concerned programmes. That paragraph should be incorporated into the draft decision. The CHAIR proposed that a working group should give further consideration to the paragraph.

Mr SAWERS (Australia), speaking on behalf of the Parties in the WHO Western Pacific Region, proposed that paragraph 9 should be amended to read “… appointments should be based primarily on merit, and should …”. Speaking as the representative of Australia, he said that since the Convention Secretariat would not be competent to recruit staff otherwise than in accordance with the staff regulations of WHO, the phrase “unless otherwise provided for in this decision” was unnecessary.

Dr LASSMANN (Austria) said that paragraph 9 should begin “The head of the Treaty Secretariat should recruit all staff in accordance with the Staff Regulations and Rules of WHO…”, with deletion of the phrase beginning “unless otherwise provided for”. He could accept use of the term “merit” as the basis for appointment if that reflected the terms “competence and integrity” used in the Staff Regulations.

Ms LAMBERT (South Africa), returning to paragraph 7, proposed “The head of the Convention Secretariat shall submit reports on its activities to the Conference of the Parties, copied to the Director-General of WHO as appropriate.”

With regard to the subsequent paragraphs concerning lines of reporting, she questioned their necessity. The permanent secretariat, once established, would determine its own way of working. The lines of working as envisaged by the Intergovernmental Working Group (document A/FCTC/COP/1/2, Annex, Annex 2) should provide a sufficient basis.

Mr KIDDLE (New Zealand), in response to a point raised by Mr AITKEN (WHO Secretariat), said that he understood “shall report on” to mean “shall submit written reports on”. The CHAIR suggested that the wording “The head of the Convention Secretariat shall submit reports on its activities to the Conference of the Parties, copied to the Director-General of WHO as appropriate” in paragraph 7 might meet the wishes of representatives. It was so agreed.

Mr BURCI (WHO Secretariat, Legal Counsel) agreed that the words “unless otherwise provided for in this decision” in paragraph 9 could be deleted.
Dr LASSMANN (Austria), supported by Ms FUJINO (Japan), proposed that paragraph 11 should be amended to read: “The Treaty Secretariat shall conduct a work programme based on Article 24.3 of [the Convention] as well as Articles 21.3, 22.2 and 23.5 and any additional tasks …”.

Ms LAMBERT (South Africa), speaking on behalf of the Parties in the WHO African Region and seconded by Mr BAYAT MOKHTARI (Islamic Republic of Iran), requested the text to remain as in paragraph 11.

Paragraph 13

Ms LAMBERT (South Africa), speaking on behalf of the Parties in the WHO African Region, suggested the addition at the end of the paragraph of the words “with the exception of work assigned to the Bureau or any subsidiary body created by the first Conference of the Parties”.

The CHAIR proposed that a drafting group be set up to finalize the text already in square brackets, the wording of paragraphs 8, 9, 10, 11 and 13, and the chart of the functioning of the permanent secretariat.

It was so agreed.

The meeting rose at 18:00.
THIRTEENTH MEETING
Thursday, 16 February 2006, at 10:20

Chair: Mr P. OLDHAM (Canada)

MATTERS IDENTIFIED IN THE CONVENTION FOR ACTION BY THE CONFERENCE OF THE PARTIES AT ITS FIRST SESSION: Item 4 of the Agenda (continued)

Designation of the permanent Secretariat and arrangements for its functioning (Article 24 Secretariat, paragraph 1): Item 4.2 of the Agenda (Documents A/FCTC/COP/1/2, A/FCTC/COP/1/5, A/FCTC/COP/1/5 Corr.1) (continued)

The CHAIR drew attention to a revised draft decision representing the outcome of the Committee’s meetings and an informal working group held the previous day which read:

*Reaffirming* the objective of the WHO Framework Convention on Tobacco Control as described in Article 3 thereof:

The Conference of the Parties decides:

1. To establish a permanent secretariat of the Convention, within the World Health Organization and located in Geneva (hereafter “the Convention Secretariat”).

2. The Bureau, in consultation with the WHO Secretariat, shall prepare a job description for the head of the Convention Secretariat, taking account of the desirable experience and characteristics identified in the report of Committee B of the first session of the Conference of the Parties.

3. To invite the Director-General of WHO to advertise the post of head of the Convention Secretariat as submitted by the Bureau at the earliest opportunity, and to utilize WHO Secretariat support services to screen applications, to compile an initial shortlist of no more than 10 candidates and to forward those applications to the Bureau.

4. The WHO Secretariat support services shall forward to the Bureau a complete list of all applicants screened, together with brief reasons for its recommendations.

5. The initial shortlist of no more than 10 candidates for the head of the Convention Secretariat shall be considered by the Bureau of the Conference of the Parties in consultation with the WHO Secretariat, with a view to recommending, after consultations with the Director-General of WHO, a single candidate for final decision.

6. The appointment of the head of the Convention Secretariat shall be made by the Director-General of WHO.

7. The term of office of the head of the Convention Secretariat shall be for a period of four years, with the possibility of a single renewal for a further three years.

8. The head of the Convention Secretariat shall be responsible and accountable to the Conference of the Parties for the delivery of treaty and technical activities as specified in paragraph 12 and shall
submit reports on its activities to the Conference of the Parties, copied to the Director-General of WHO, as appropriate.

9. The head of the Convention Secretariat shall be responsible and accountable to the Director-General of WHO on administrative and staff management matters and also on technical activities where appropriate.

10. The Convention Secretariat shall cooperate and coordinate with the Tobacco Free Initiative and relevant WHO departments on implementation of the Convention, with a view to ensuring transparency, efficiency, cost-effectiveness, and avoidance of duplication.

11. The head of the Convention Secretariat shall recruit all staff in accordance with and subject to the staff regulations and rules of WHO taking account of the desirable characteristics identified in the report of Committee B of the first session of the Conference of the Parties.

12. The Convention Secretariat shall conduct a work programme based on Article 24.3 of the Convention, as well as Articles 21.3, 22.2, and 23.5 thereof, and any additional tasks assigned to it by the Conference of the Parties, according to priorities and within budgetary allocations agreed by the Conference of the Parties.

13. The Convention Secretariat shall request that WHO open and maintain financial accounts to support the Convention Secretariat operations and activities, in accordance with the Financial Rules.

14. Until the first head of the Convention Secretariat is appointed and until the Convention Secretariat is operational, the interim secretariat will continue to assist in its current capacity as provided in Article 24.2 of the Convention.

Ms LAMBERT (South Africa) asked whether a resolution of the Health Assembly would be necessary in order to bring the secretariat into being and when work on setting it up could begin.

Mr BURCI (WHO Secretariat, Legal Counsel) said that WHO’s Secretariat would introduce the item on the permanent secretariat on the agenda of the Fifty-ninth World Health Assembly in May 2006, seeking its authorization for the Director-General to provide the permanent secretariat of the Convention.

Mr AITKEN (WHO Secretariat) confirmed that the process of establishing the Convention Secretariat would in fact begin the following week.

Mr DE CASTRO SALDANHA (Brazil) said that the principle of ensuring synergy between the permanent secretariat and the Tobacco Free Initiative, the twelfth of the principles laid down by the Intergovernmental Working Group at its second session (document A/FCTC/IGWG/2/7, Annex 1), was not adequately reflected in the document. He proposed adding, at the end of paragraph 10, the sentence: “To that end, the Conference of the Parties calls upon the World Health Assembly to continue to support the Tobacco Free Initiative at all levels.”

Mr BAYAT MOKHTARI (Islamic Republic of Iran), reserving the right to return to Brazil’s proposal, asked whether the chart of the functioning of the permanent secretariat would be retained in the records of the Committee.

The CHAIR confirmed that it would.

Mr KIDDLE (New Zealand) disagreed with the proposal by Brazil. The Conference should be concentrating on its own business, not on that of the Health Assembly. Any decision on the future of
the Tobacco Free Initiative would be the prerogative of the Health Assembly. In the long term it was to be hoped that all tobacco control work would be covered by the Convention, with the result that the work at present done by the Tobacco Free Initiative would be transferred to the organs of the Convention.

Dr MUÑOZ (Chile), speaking on behalf of the Parties in the Region of the Americas, supported the proposal by Brazil.

Mr KIDDLE (New Zealand) said that, if the Committee wished to adopt it, the proposal should take the form of a separate decision.

Dr DA COSTA E SILVA (Brazil) attached great importance to strengthening the Tobacco Free Initiative in funding and extending tobacco control at country level. There was a danger of its budget or activities being curtailed when the permanent Convention secretariat was established.

Dr MOLINARI (Observer, Argentina) said that she agreed with the previous speakers.

Mr SAWERS (Australia) and Ms LAMBERT (South Africa) expressed agreement with New Zealand that support for the Tobacco Free Initiative should be bolstered through a resolution of the World Health Assembly.

The CHAIR said that, while full consensus was lacking on the subject, he took it that the Committee agreed to approve the draft resolution as it stood; the concern expressed by the representative of Brazil would be reflected in the Committee’s draft decision on the budget.

The draft decision was approved.

Adoption of the budget for the first financial period (Article 23 Conference of the Parties, paragraph 4): Item 4.4 of the Agenda (Documents A/FCTC/COP/1/2 and A/FCTC/COP/1/5) (continued from the tenth meeting)

The CHAIR explained that the budget for 2006-2007, as set out in Annex 1 to document A/FCTC/COP/1/5, would have to be accepted as soon as the two Committees met later in the day. The total of slightly over US$ 8 million might seem rather low; however, he was confident that voluntary contributions would start to flow in for the technical work of the secretariat once it became fully operational. As the first year of the biennium was already well under way, the new secretariat might well have difficulty in spending the allocation for 2006 effectively. Nevertheless, the budget estimate seemed about right to enable the secretariat to act with some flexibility in the first instance, and to advance the technical work to which a quarter of the total budget was allocated. When the first resource-based budget was prepared, there would be scope for either reducing or increasing the allocations according to need. It should also be borne in mind that some States Parties would inevitably fail to make their voluntary contributions.

Dr HATAI CHITANONDH (Thailand), speaking on behalf of the Parties in the WHO South-East Asia Region, Mr DE CASTRO SALDANHA (Brazil), Ms LAMBERT (South Africa), on behalf of the Parties in the African Region, Ms ST LAWRENCE (Canada), Dr MUÑOZ (Chile),

---

1 Participating by virtue of Rule 29(2) of the Rules of Procedure of the Conference of the Parties for the WHO Framework Convention on Tobacco Control.

2 Transmitted to the Conference of the Parties in the Committee’s second report and adopted as decision FCTC/COP1(10).
Ms XING Zhaohong (China) and Dr ROA (Panama) welcomed the budget and pledged payment of their countries.

Mr BAYAT MOKHTARI (Islamic Republic of Iran), speaking on behalf of the Parties in the WHO Eastern Mediterranean Region, said that the countries of the Region would make every effort to honour their budget commitments. He asked for clarification regarding budgetary allocations.

Mr AITKEN (WHO Secretariat) replied that the secretariat was likely to authorize expenditure of US$ 1.1 million saved in the first year of the biennium for technical activities resulting from the decisions of Committee A for which there was no budget provision.

Dr LASSMANN (Austria), speaking on behalf of the Parties in the European Union and the European Community, said that it was important to ensure that all activities were cost-effective and to avoid duplication of the work between the permanent Secretariat and of the Tobacco Free Initiative. As the major contributor to the budget, the European Union needed more information on the financial implications of the decisions taken by Committee A in order to satisfy itself that the total figure was compatible with the activities proposed for the intersessional period.

Mr MINAMI (Japan) expressing agreement, suggested that the budget be reviewed at the next session of the Conference. He could accept the idea of voluntary assessed contributions, provided a ceiling was set of 22% of the total for any one contributing country. As explained in a footnote to Annex 2B of document A/FCTC/COP/1/5 Corr.1, that was the practice in WHO. It also applied in other organizations in the United Nations system.

Ms ST LAWRENCE (Canada) agreed with Japan over the 22% ceiling for individual voluntary assessed contributions.

Mr KIDDLE (New Zealand) said that he favoured a maximum assessment rate of 22%.

Dr LASSMANN (Austria), speaking on behalf of the Parties in the European Union and the European Community, reserved his position on the provisional budget pending further information on how the assessment was calculated.

Mr AITKEN (WHO Secretariat) said that the large specialized agencies, unlike the small ones, followed the United Nations scale. Treaty-based organizations tended to set a ceiling on assessed voluntary contributions.

The CHAIR said that, subject to provision of the additional information requested by the representative of Austria, he would take it that the Committee approved the provisional budget set out in Annex 1 of the Annex to document A/FCTC/COP/1/2.

It was so agreed.

The meeting rose at 11:30.
MATTERS IDENTIFIED IN THE CONVENTION FOR ACTION BY THE CONFERENCE OF THE PARTIES AT ITS FIRST SESSIONS: Item 4 of the Agenda (continued)

Adoption of the budget for the first financial period (Article 23 Conference of the Parties, paragraph 4): Item 4.4 of the Agenda (Documents A/FCTC/COP/1/2, A/FCTC/COP/1/5 and A/FCTC/COP/1/5 Corr.1) (continued)

Dr LASSMANN (Austria), speaking on behalf of the Parties in the European Union and in the WHO European Region, said that he was prepared to accept the indicative figures in Annex 2 to documents A/FCTC/COP/1/5 and its Corr.1, thereby joining the consensus that the budget should be financed from voluntary assessed contributions. That decision applied only to the first budget; it did not prejudice any decision regarding the subsequent biennium.

The Conference of the Parties had decided, for reasons of convenience, that the Secretariat of the Convention should be based at WHO headquarters and administered according to the Financial Regulations and Financial Rules of WHO. That did not, however, mean that the funding of the Convention Secretariat should automatically follow the practice of the United Nations system and certain conventions.

The decision to finance the budget from voluntary assessed contributions was clearly to the advantage of a single country. It did not exclude additional contributions from governments, nongovernmental organizations or eligible enterprises.

The figures in the original budget proposal had been a useful basis for discussion but were still open to question and revision. For example, he questioned the need for such a high budget for the transmission of reports in the modern era of electronic communication. Since the permanent secretariat would be operational not earlier than mid-2006, the consequent savings in staff costs should be carried over for activities in 2007. He requested that a review of the secretariat’s budgetary performance be submitted to the Conference of the Parties at its second session.

The CHAIR invited the Committee to consider the following draft decision on the budget and workplan for 2006-2007:

The Conference of the Parties

DECIDES:

(1) to adopt the budget for the financial period 2006-2007 as follows:

<table>
<thead>
<tr>
<th>Section</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. Sessions of the Conference of the Parties</td>
<td>US$2 100 000</td>
</tr>
<tr>
<td>(Article 24.3(a))</td>
<td></td>
</tr>
<tr>
<td>II. Reporting system under the Convention and support to Parties in fulfilling this obligation</td>
<td>US$2 500 000</td>
</tr>
<tr>
<td>(Article 24.3(b) and (c))</td>
<td></td>
</tr>
</tbody>
</table>
III. Report of the Convention Secretariat (Article 24.3(d)) 665 000

IV. Coordination with other relevant bodies and administrative arrangements (Article 24.3(e) and (f)) 1 180 000

V. Elaboration of guidelines and protocols and other activities (Article 24.3(g)) 1 565 000

Total 8 010 000

(2) to adopt the workplan for the financial period 2006-2007 as indicated in document A/FCTC/COP/1/5 as revised by the decisions taken by the first session of the Conference of the Parties;

(3) to adopt the table showing the distribution of voluntary assessed contributions for the financial period 2006-2007 as indicated in the Annex to this decision; and

(4) to authorize the Convention Secretariat to receive voluntary extrabudgetary contributions for activities under items II and V of paragraph (1) above.

ANNEX

DISTRIBUTION OF VOLUNTARY ASSESSED CONTRIBUTIONS TO THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL FOR THE FINANCIAL PERIOD 2006-2007

<table>
<thead>
<tr>
<th>Parties to the WHO Framework Convention (as of 20 November 2005)</th>
<th>%</th>
<th>US$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Armenia</td>
<td>0.00310</td>
<td>248</td>
</tr>
<tr>
<td>Australia</td>
<td>2.46579</td>
<td>197 509</td>
</tr>
<tr>
<td>Austria</td>
<td>1.33047</td>
<td>106 571</td>
</tr>
<tr>
<td>Azerbaijan</td>
<td>0.00774</td>
<td>620</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>0.01549</td>
<td>1 241</td>
</tr>
<tr>
<td>Barbados</td>
<td>0.01549</td>
<td>1 241</td>
</tr>
<tr>
<td>Belarus</td>
<td>0.02788</td>
<td>2 233</td>
</tr>
<tr>
<td>Belgium</td>
<td>1.65573</td>
<td>132 624</td>
</tr>
<tr>
<td>Benin</td>
<td>0.00310</td>
<td>248</td>
</tr>
<tr>
<td>Bhutan</td>
<td>0.00155</td>
<td>124</td>
</tr>
<tr>
<td>Bolivia</td>
<td>0.01394</td>
<td>1 117</td>
</tr>
<tr>
<td>Botswana</td>
<td>0.01859</td>
<td>1 489</td>
</tr>
<tr>
<td>Brazil</td>
<td>2.35891</td>
<td>188 949</td>
</tr>
<tr>
<td>Brunei Darussalam</td>
<td>0.05266</td>
<td>4 218</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>0.02633</td>
<td>2 109</td>
</tr>
<tr>
<td>Cambodia</td>
<td>0.00310</td>
<td>248</td>
</tr>
<tr>
<td>Canada</td>
<td>4.35694</td>
<td>348 991</td>
</tr>
<tr>
<td>Cape Verde</td>
<td>0.00155</td>
<td>124</td>
</tr>
<tr>
<td>Central African Republic</td>
<td>0.00155</td>
<td>124</td>
</tr>
<tr>
<td>Chile</td>
<td>0.34540</td>
<td>27 666</td>
</tr>
<tr>
<td>China</td>
<td>3.17981</td>
<td>254 703</td>
</tr>
<tr>
<td>Cook Islands</td>
<td>0.00155</td>
<td>124</td>
</tr>
<tr>
<td>Cyprus</td>
<td>0.06041</td>
<td>4 838</td>
</tr>
<tr>
<td>Democratic People’s Republic of Korea</td>
<td>0.01549</td>
<td>1 241</td>
</tr>
<tr>
<td>Democratic Republic of the Congo</td>
<td>0.00465</td>
<td>372</td>
</tr>
<tr>
<td>Denmark</td>
<td>1.11208</td>
<td>89 078</td>
</tr>
<tr>
<td>Parties to the WHO Framework Convention (as of 20 November 2005)</td>
<td>%</td>
<td>US$</td>
</tr>
<tr>
<td>---------------------------------------------------------------</td>
<td>----</td>
<td>-------</td>
</tr>
<tr>
<td>Djibouti</td>
<td>0.00155</td>
<td>124</td>
</tr>
<tr>
<td>Egypt</td>
<td>0.18586</td>
<td>14 888</td>
</tr>
<tr>
<td>Equatorial Guinea</td>
<td>0.00310</td>
<td>248</td>
</tr>
<tr>
<td>Estonia</td>
<td>0.01859</td>
<td>1 489</td>
</tr>
<tr>
<td>European Community</td>
<td>3.87215</td>
<td>310 159</td>
</tr>
<tr>
<td>Fiji</td>
<td>0.00620</td>
<td>496</td>
</tr>
<tr>
<td>Finland</td>
<td>0.82554</td>
<td>66 126</td>
</tr>
<tr>
<td>France</td>
<td>9.33978</td>
<td>748 117</td>
</tr>
<tr>
<td>Germany</td>
<td>13.41670</td>
<td>1 074 677</td>
</tr>
<tr>
<td>Ghana</td>
<td>0.00620</td>
<td>496</td>
</tr>
<tr>
<td>Guatemala</td>
<td>0.04647</td>
<td>3 722</td>
</tr>
<tr>
<td>Guyana</td>
<td>0.00155</td>
<td>124</td>
</tr>
<tr>
<td>Honduras</td>
<td>0.00774</td>
<td>620</td>
</tr>
<tr>
<td>Hungary</td>
<td>0.19516</td>
<td>15 632</td>
</tr>
<tr>
<td>Iceland</td>
<td>0.05266</td>
<td>4 218</td>
</tr>
<tr>
<td>India</td>
<td>0.65207</td>
<td>52 231</td>
</tr>
<tr>
<td>Iran (Islamic Republic of)</td>
<td>0.24317</td>
<td>19 478</td>
</tr>
<tr>
<td>Ireland</td>
<td>0.54210</td>
<td>43 422</td>
</tr>
<tr>
<td>Israel</td>
<td>0.72332</td>
<td>57 938</td>
</tr>
<tr>
<td>Jamaica</td>
<td>0.01239</td>
<td>993</td>
</tr>
<tr>
<td>Japan</td>
<td>22.00000</td>
<td>1 762 200</td>
</tr>
<tr>
<td>Jordan</td>
<td>0.01704</td>
<td>1 365</td>
</tr>
<tr>
<td>Kenya</td>
<td>0.01394</td>
<td>1 117</td>
</tr>
<tr>
<td>Kiribati</td>
<td>0.00155</td>
<td>124</td>
</tr>
<tr>
<td>Latvia</td>
<td>0.02323</td>
<td>1 861</td>
</tr>
<tr>
<td>Lesotho</td>
<td>0.00155</td>
<td>124</td>
</tr>
<tr>
<td>Libyan Arab Jamahiriya</td>
<td>0.20445</td>
<td>16 376</td>
</tr>
<tr>
<td>Lithuania</td>
<td>0.03717</td>
<td>2 978</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>0.11926</td>
<td>9 553</td>
</tr>
<tr>
<td>Madagascar</td>
<td>0.00465</td>
<td>372</td>
</tr>
<tr>
<td>Malaysia</td>
<td>0.31442</td>
<td>25 185</td>
</tr>
<tr>
<td>Maldives</td>
<td>0.00155</td>
<td>124</td>
</tr>
<tr>
<td>Mali</td>
<td>0.00310</td>
<td>248</td>
</tr>
<tr>
<td>Malta</td>
<td>0.02168</td>
<td>1 737</td>
</tr>
<tr>
<td>Marshall Islands</td>
<td>0.00155</td>
<td>124</td>
</tr>
<tr>
<td>Mauritania</td>
<td>0.00155</td>
<td>124</td>
</tr>
<tr>
<td>Mauritius</td>
<td>0.01704</td>
<td>1 365</td>
</tr>
<tr>
<td>Mexico</td>
<td>2.91650</td>
<td>233 612</td>
</tr>
<tr>
<td>Micronesia (Federated States of)</td>
<td>0.00155</td>
<td>124</td>
</tr>
<tr>
<td>Mongolia</td>
<td>0.00155</td>
<td>124</td>
</tr>
<tr>
<td>Myanmar</td>
<td>0.01549</td>
<td>1 241</td>
</tr>
<tr>
<td>Namibia</td>
<td>0.00929</td>
<td>744</td>
</tr>
<tr>
<td>Nauru</td>
<td>0.00155</td>
<td>124</td>
</tr>
<tr>
<td>Netherlands</td>
<td>2.61757</td>
<td>209 668</td>
</tr>
<tr>
<td>New Zealand</td>
<td>0.34230</td>
<td>27 418</td>
</tr>
<tr>
<td>Niger</td>
<td>0.00155</td>
<td>124</td>
</tr>
<tr>
<td>Nigeria</td>
<td>0.06505</td>
<td>5 211</td>
</tr>
<tr>
<td>Niue</td>
<td>0.00155</td>
<td>124</td>
</tr>
<tr>
<td>Norway</td>
<td>1.05168</td>
<td>84 239</td>
</tr>
<tr>
<td>Oman</td>
<td>0.10842</td>
<td>8 684</td>
</tr>
<tr>
<td>Pakistan</td>
<td>0.08519</td>
<td>6 824</td>
</tr>
<tr>
<td>Palau</td>
<td>0.00155</td>
<td>124</td>
</tr>
<tr>
<td>Panama</td>
<td>0.02943</td>
<td>2 357</td>
</tr>
<tr>
<td>Peru</td>
<td>0.14250</td>
<td>11 414</td>
</tr>
<tr>
<td>Philippines</td>
<td>0.14714</td>
<td>11 786</td>
</tr>
<tr>
<td>Portugal</td>
<td>0.72796</td>
<td>58 310</td>
</tr>
</tbody>
</table>
Mr AITKEN (WHO Secretariat) said that Committee A that morning had approved draft decisions on protocols and guidelines.¹ Committee A was also expected to adopt a decision that afternoon on reporting, but the expenditure for that activity had been included in the proposed budget presented in document A/FCTC/COP/1/5.

With respect to section I of the draft decision on budget and workplan 2006-2007 he noted that the Conference of the Parties had decided to restrict its second session to one week, which reduced the proposed budget from about US$ 3.2 million to US$ 2.1 million (US$ 1.8 million for the second session of the Conference of the Parties and US$ 0.3 million for the finalization of the first session). The figure of US$ 2.5 million in section II covered support to Parties in fulfilling their reporting obligations and transmission of the reports (sections (b) and (c) of the original draft of the budget contained in document A/FCTC/COP/1/5, Annex 1). The figure of US$ 665 000 in section III covered the Convention Secretariat’s report on its activities. Section IV, with its US$ 1.18 million, covered coordination with other relevant bodies and administrative arrangements (sections (e) and (f) of the original draft in document A/FCTC/COP/1/5, Annex 1).

¹ Transmitted to the Conference of the Parties in the Committee’s second and third reports and adopted as decisions FCTC/COP/1(16) and FCTC/COP1(15) respectively.
Section V had been expanded to include elaboration of guidelines and protocols, in addition to other activities. The resources saved by holding only a one-week session in 2007 would be allocated to those activities, giving a budget increase of about US$ 1.5 million. From the discussions in Committee A, it appeared likely that activities regarding protocols and guidelines would initially focus on Articles 8 and 9 of the Convention. Committee A had suggested the holding of preliminary regional meetings to discuss the elaboration of protocols to the Convention on illicit trade and on cross-border advertising. Secretariat activities for implementing the decision on financial resources and mechanisms of assistance would also need funding. A small sum had been set aside as a contingency fund for activities which might prove necessary. For example, Committee A was due to consider a draft decision on economically viable alternatives to tobacco growing that might have implications for the secretariat’s budget. It would be possible to make financial provision for all the activities suggested by Committee A at the current session within the proposed budget.

Paragraph (2) of the draft decision stated that the workplan for 2006-2007 would be revised in the light of the decisions taken by the Conference of the Parties at its first session; and paragraph (3) dealt with voluntary assessed contributions, listed in the Annex to the draft decision.

Paragraph (4) authorized the Secretariat to receive voluntary extrabudgetary contributions. The Committee might wish to discuss whether such contributions should be used only for sections II and V of the workplan (reporting activities and protocols, guidelines and other activities), since for the other essentially administrative sections the existing budget should suffice.

The voluntary assessed contributions listed in the Annex were the same as those in the original draft budget (document A/FCTC/COP/1/5 Corr.1).

A separate paragraph would recommend to the Health Assembly that support for the Tobacco Free Initiative be strengthened to facilitate effective implementation of the Convention.

Replying to a question from Mr RUÍZ GAYTÁN LÓPEZ (Mexico), Dr BETTCHER (WHO Secretariat) said that document A/FCTC/COP/1/5 Corr.1 had been issued with revised figures, following a technical error in the original document, and was consequently the document currently applying.

Mr HOHMAN (Observer, United States of America) asked whether guidelines on extrabudgetary contributions would be produced to determine such issues as the appropriateness of contributions in individual cases, whether they could be earmarked, and whether an offer of extrabudgetary resources could be refused.

Mr AITKEN (WHO Secretariat) said that, since it had been decided to follow the Financial Regulations and Financial Rules of WHO, under which offers of extrabudgetary funding were vetted for any possible conflicts of interest, WHO’s guidelines would be applicable to voluntary funding in respect of the Conference of the Parties.

Dr LASSMANN (Austria), speaking on behalf of the Parties in the European Union, the European Community, and the Parties in the WHO European Region, asked whether it would be possible to shift resources between the various sections of the workplan if necessary. He requested an informal breakdown of resources from section V likely to be allocated to preparing guidelines, drawing up protocols, and other activities. In addition, the Annex should include a footnote stating that the figures listed were valid for 2006-2007 only.

Mr AITKEN (WHO Secretariat) said that resources might indeed be transferred between the various sections of the budget, in which event the Conference of the Parties would of course be kept

---

1 Participating by virtue of Rule 29(2) of the Rules of Procedure of the Conference of the Parties to the WHO Framework Convention on Tobacco Control.
fully informed. The WHO Secretariat had a rule that not more than 10% of each section could be transferred in such circumstances, but that applied to larger amounts. The informal breakdown requested by the previous speaker would be provided promptly. The footnote in question, a matter for the Committee, might state that the table did not prejudice the distribution of voluntary assessed contributions for the financial period 2008-2009.

Ms LAMBERT (South Africa) said that it was probably desirable to increase funding for the Tobacco Free Initiative, but the budget was for the permanent secretariat. Either a separate decision on financing of the Initiative should be adopted or, preferably, the concerned Parties should submit a draft resolution on the matter to the World Health Assembly themselves.

Mr DE CASTRO SALDANHA (Brazil), concurring with South Africa’s first option, said that a separate decision calling for the strengthening of the Initiative would be consistent with the principles laid down by the Intergovernmental Working Group.

The CHAIR invited the Committee to consider the budget and workplan for the financial period 2006-2007, as amended.

The Committee approved the draft decision, as amended.¹

The CHAIR said that, if he saw no objection, he took it that the Committee approved the separate draft decision recommending the strengthening of WHO’s Tobacco Free Initiative to the World Health Assembly as elaborated during the meeting.

Replying to a question from Ms PATTERSON (Australia), he said that both decisions would make it clear that they applied only for the financial period 2006-2007 and did not prejudice any future decision.

Mr AITKEN (WHO Secretariat) said that, after consultation among delegations, the following wording was being proposed:

“DECIDES to recommend to the Health Assembly to continue to support and, where appropriate, strengthen the Tobacco Free Initiative in 2008-2009 in order to assist the Convention Secretariat in the implementation of the Convention.”

The Committee approved the draft decision, as amended.²

The meeting rose at 16:00.

¹ Transmitted to the Conference of the Parties in the Committee’s third report and adopted as decision FCTC/COP1(11).

² Transmitted to the Conference of the Parties in the Committee’s third report and adopted as decision FCTC/COP1(12).
1. SECOND AND THIRD REPORTS OF COMMITTEE B (Documents A/FCTC/COP/1/9 and A/FCTC/COP/1/12)

The CHAIR drew attention to the draft second report of Committee B contained in document A/FCTC/COP/1/9, with the text of a draft decision.

The draft report was adopted.¹

The CHAIR drew attention to the draft third report of Committee B contained in document A/FCTC/COP/1/12, with a draft recommendation to the Health Assembly.

Mr AITKEN (WHO Secretariat) said that the word *évaluées* would be used instead of *fixées* in the French version of decision FCTC/COP1(11).

Dr LASSMANN (Austria), speaking on behalf of the Parties in the European Union and the European Community, stated that he understood the term “assessed”, as used in the title of the annex to the decision on the budget and workplan 2006-2007, to refer merely to the contributions that governments were expected to make voluntarily to reach the target amount of US$ 8.01 million.

Mr AITKEN (WHO Secretariat) explained that any new members joining the Conference of the Parties following the adoption of the decision would be asked to pay an amount based on a proportionate calculation. That money would be additional to the total given in the document and be kept in a miscellaneous income account. The Conference of the Parties would decide how to dispose of that income as part of its consideration of the budget in the following year or biennium.

Following a comment by Dr ASQUETA (Uruguay), he confirmed that the reference in paragraph (2) to document A/FCTC/COP/1/5 was correct; that document referred to the workplan only, whereas its corrigendum 1 referred to figures for voluntary assessed contributions.

The draft report was adopted.²

Mr Seck took the Chair.

¹ See page 224.
² See page 225.
2. CLOSURE

After an exchange of courtesies, the CHAIR declared the work of Committee B closed.

The meeting rose at 11:15.
PART II

REPORTS OF COMMITTEES
The text of decisions recommended in committee reports and subsequently adopted without change by the Conference of the Parties have been replaced by the serial number (in square brackets) under which they appear in Section 1, Decisions. The verbatim records of plenary meetings at which these reports were approved are reproduced in Section 2.

CREDENTIALS

First report

[A/FCTC/COP/1/6 – 7 February 2006]

1. The Bureau of the Conference of the Parties examined the credentials delivered to the Secretariat in accordance with Rule 18 of the draft rules of procedure of the Conference of the Parties.

2. The credentials of the representatives of the Parties listed at the end of this report were found to be in conformity with the draft rules of procedure. It was therefore proposed that the Conference of the Parties recognize their validity.

3. The Bureau examined notifications from the Parties listed below, which, while indicating the names of the representatives of the Parties concerned, could not be considered as constituting formal credentials. It was therefore recommended to the Conference of the Parties that they should be entitled to participate provisionally in the session with all rights in the Conference, pending the arrival of their formal credentials:

   Armenia, Australia, Barbados, Belarus, Belgium, Benin, Bolivia, Brunei Darussalam, Bulgaria, Cape Verde, Cook Islands, Denmark, European Community, Fiji, Hungary, Israel, Jamaica, Japan, Kiribati, Lesotho, Libyan Arab Jamahiriya, Luxembourg, Madagascar, Maldives, Mali, Mauritius, Nauru, Niger, Niue, Norway, Oman, Palau, Panama, Saint Lucia, Samoa, Saudi Arabia, Singapore, Sri Lanka, Syrian Arab Republic, Thailand, Tonga, United Arab Emirates.

States whose credentials it was recommended should be recognized as valid (see paragraph 2 above)

Austria, Bangladesh, Bhutan, Botswana, Brazil, Canada, Central African Republic, Chile, China, Cyprus, Democratic People's Republic of Korea, Democratic Republic of the Congo, Egypt, Estonia, Finland, France, Germany, Ghana, Honduras, Iceland, India, Iran (Islamic Republic of), Ireland, Jordan, Kenya, Latvia, Lithuania, Malaysia, Malta, Marshall Islands, Mauritania, Mexico, Micronesia (Federated States of), Mongolia, Myanmar, Namibia, Netherlands, New Zealand, Nigeria, Pakistan, Peru, Philippines, Portugal, Qatar, Republic of Korea, Rwanda, Senegal, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sudan, Sweden, Turkey, Tuvalu, United Kingdom of Great Britain and Northern Ireland, Uruguay, Vanuatu, Viet Nam.

1 Amended and approved by the Conference of the Parties at its third plenary meeting.
Second report\(^1\)

[A/FCTC/COP/1/14 – 17 February 2006]

1. The Bureau of the Conference of the Parties examined the formal credentials of the representatives of the following Parties who had been seated provisionally pending the arrival of their formal credentials: Armenia, Australia, Benin, Denmark, European Community, Fiji, Lesotho, Madagascar, Mauritius, Nauru, Norway, Oman, Saudi Arabia, Singapore, Solomon Islands, Tonga.

2. The Bureau also examined the formal credentials of the following Parties which had not previously submitted credentials: Azerbaijan, Djibouti.

3. The Bureau also examined the formal credentials of the representatives of Cambodia, Guatemala and Togo, which became Parties to the Convention during the course of this session of the Conference.

4. The credentials listed in the preceding paragraphs were found to be in conformity with the Rules of Procedure. It was therefore proposed that the Conference of the Parties recognize their validity.

COMMITTEE A

First report\(^1\)

[A/FCTC/COP/1/8 – 17 February 2006]

At its fourteenth meeting the Committee decided to recommend to the Conference of the Parties adoption of one decision relating to the following agenda item:

4. Matters identified in the Convention for action by the Conference of the Parties at its first session
   4.5 Review of existing and potential sources and mechanisms of assistance (Article 26 Financial resources, paragraph 5)
   Financial resources and mechanisms of assistance [FCTC/COP1(13)].

\(^1\) Approved by the Conference of the Parties at its fifth plenary meeting.
Second report

[A/FCTC/COP/1/10 – 17 February 2006]

At its sixteenth meeting the Committee decided to recommend to the Conference of the Parties adoption of one decision relating to the following agenda item:

5. Additional matters identified in the Convention for consideration by the Conference of the Parties
   5.3 Elaboration of protocols [FCTC/COP1(16)].

Third report

[A/FCTC/COP/1/11 – 17 February 2006]

At its sixteenth meeting the Committee decided to recommend to the Conference of the Parties adoption of one decision relating to the following agenda item:

5. Additional matters identified in the Convention for consideration by the Conference of the Parties
   5.2 Elaboration of guidelines for implementation of Article 7 (Non-price measures to reduce the demand for tobacco) and Article 9 (Regulation of the contents of tobacco products)
   Elaboration of guidelines for implementation of the Convention [FCTC/COP1(15)].

Fourth report

[A/FCTC/COP/1/13 – 17 February 2006]

At its sixteenth meeting the Committee decided to recommend to the Conference of the Parties adoption of one decision relating to the following agenda item:

5. Additional matters identified in the Convention for consideration by the Conference of the Parties
   5.1 Reporting (Article 21 Reporting and exchange of information)
   Reporting and exchange of information [FCTC/COP1(14)].

1 Approved by the Conference of the Parties at its fifth plenary meeting.
At its sixteenth meeting the Committee decided to recommend to the Conference of the Parties adoption of one decision relating to the following agenda item:

6. Consideration of a programme of work for the Conference of the Parties Establishment of a study group on alternative crops [FCTC/COP1(17)].

COMMITTEE B

First report

At its eleventh meeting the Committee decided to recommend to the Conference of the Parties adoption of two decisions under the following agenda items:

4. Matters identified in the Convention for action by the Conference of the Parties at its first session
   4.1 Adoption of the Rules of Procedure for the Conference of the Parties (Article 23 Conference of the Parties, paragraph 3)
      Adoption of the Rules of Procedure of the Conference of the Parties to the WHO Framework on Tobacco Control [FCTC/COP1(8)]
   4.3 Adoption of financial rules for the Conference of the Parties, and financial provisions governing the functioning of the Secretariat (Article 23 Conference of the Parties, paragraph 4, and Article 24 Secretariat)
      Adoption of the Financial Rules of the Conference of the Parties to the WHO Framework on Tobacco Control [FCTC/COP1(9)].
4.2 Designation of the permanent Secretariat and arrangements for its functioning (Article 24 Secretariat, paragraph 1)
   Establishment of a permanent secretariat of the Convention [FCTC/COP1(10)].

Third report¹

[A/FCTC/COP/1/12 – 17 February 2006]

At its fifteenth meeting the Committee decided to recommend to the Conference of the Parties adoption of two decisions under the following agenda items:

4. Matters identified in the Convention for action by the Conference of the Parties at its first session
   4.4 Adoption of the budget for the first financial period (Article 23 Conference of the Parties, paragraph 4)
       Budget and workplan 2006–2007 [FCTC/COP1(11)]

6. Consideration of a programme of work for the Conference of the Parties
   Recommendation to the Health Assembly [FCTC/COP1(12)].

¹ Approved by the Conference of the Parties of its fifth plenary meeting.