



# WORLD HEALTH ORGANIZATION

**INTERGOVERNMENTAL NEGOTIATING BODY  
ON THE WHO FRAMEWORK CONVENTION  
ON TOBACCO CONTROL  
Second session**

**A/FCTC/INB2/DIV/1  
10 January 2001**

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## **Framework convention on tobacco control**

### **Letter from Ambassador Celso Amorim, Chair, Intergovernmental Negotiating Body**

I wish to thank Member States, a regional economic integration organization, and observers for their active participation in the first session of the Intergovernmental Negotiating Body on the WHO framework convention on tobacco control (Negotiating Body). To recall, it was agreed at the tenth meeting of the Negotiating Body, that in my capacity as Chair of the Negotiating Body, I would work to prepare a Chair's text that would indicate possible compromises, a reduced number of options as compared to the reference documents,<sup>1</sup> and would also contain some reorganization of the draft elements on the basis of the comments made during the first session.<sup>2</sup>

During the same meeting of the Negotiating Body it was also agreed that I would undertake to complete the Chair's text by early December. I am pleased to report that the work has been completed on time, thus ensuring that the text will be dispatched well in advance of the second session of the Negotiating Body (30 April to 5 May 2001). This will allow Member States adequate time to review the Chair's text, and to prepare their comments accordingly. I am therefore pleased to forward for your consideration a copy of the Chair's text of a framework convention on tobacco control.

The task of drafting the Chair's text encompassed the steps described below.

1. Each of the textual proposals submitted by Member States (listed in documents A/FCTC/INB1/Conf. Paper Nos. 1 to 15 and various corrigenda), and recommendations made by Member States (as outlined in the provisional summary records)<sup>3</sup> were thoroughly reviewed and compared with the reference documents.

2. On the basis of comments submitted by Member States during the first session of the Negotiating Body, the structure of the proposed draft elements was streamlined. In this regard, the following major changes were made:

(a) the general obligations section (Article E) was restructured to include only provisions that can be considered to be truly "general";

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<sup>1</sup> Documents A/FCTC/INB1/2 and A/FCTC/INB1/2 Add.1.

<sup>2</sup> See document A/FCTC/INB1/PL/SR/10.

<sup>3</sup> Documents A/FCTC/INB1/PL/SR1 to 10.

(b) the substantive tobacco-specific obligations have now been regrouped under the following headings: Price and Tax Measures to Reduce the Demand for Tobacco (Article F); Non-Price Measures to Reduce the Demand for Tobacco (Article G); Demand Reduction Measures concerning Tobacco Dependence and Cessation (Article H); Measures Related to the Supply of Tobacco (Article I); Surveillance, Research and Exchange of Information (Article K); and Scientific, Technical and Legal Cooperation (Article L);

(c) other substantive provisions regarding reporting and the implementation of the convention and its related protocols have been merged into a new section entitled Reporting and Implementation (Article P). Issues pertaining to financial and technical resources to implement the convention and its protocols are included under the heading Financial Resources (Article Q);

(d) the section addressing Compensation and Liability (Article J) does not contain textual proposals. As will be recalled, it was suggested during the first session of the Negotiating Body that WHO should convene a panel of legal experts to make recommendations to the Negotiating Body on the nature and scope of potential liability and compensation provisions. The panel will meet in Geneva in early April 2001;

(e) with regard to the sections focusing on the Conference of the Parties (Article M), Secretariat (Article N), Support by the World Health Organization (Article O) and Reporting and Implementation (Article P), I do not feel, based on the rather limited discussions on these topics during the first session of the Negotiating Body, that I can offer definitive recommendations in these areas. I would hope, however, that the suggestions which I have made as to these sections represent a reasonable basis for more focused discussions;

(f) The provisions addressing the settlement of disputes are contained in Article R. On the basis of comments made during the first session of the Negotiating Body, I have expanded the non-binding channels for the settlement of disputes, in particular good offices, mediation, and conciliation. The language pertaining to the possible establishment of a conciliation commission is a new proposal drafted for the Chair's text and has not been discussed by the Negotiating Body. For this reason I have left it in brackets, pending further consideration. Based on the discussions in the first session of the Negotiating Body, I have included optional arbitration as the sole binding means for the settlement of disputes;

(g) the sections covering Preamble (Article A), Definitions (Article B), Development of the Convention (Article S), and Final Clauses (Article T) contain no textual proposals as these topics were not discussed during the first session of the Negotiating Body. As noted in the Chair's text, provisions in these areas will need to be elaborated at a later session of the Negotiating Body.

3. The draft provisions contained in the Chair's text represent a compromise that I have made after reviewing the proposals and recommendations made during the first session of the Negotiating Body, taking into account its request that I prepare a clean text and exercise my best judgement in so doing.

For the portions of the text where discussions were limited, I did not feel that I could easily make judgement calls or propose a compromise. I have bracketed therefore, certain text, for example, in the Conference of the Parties section (Article M), to indicate parts that will require further discussion. Further, in some sections the word "INSERT" in square brackets [INSERT "Article(s)" or "Annex(es)"] indicates that additional text could be inserted in the light of future negotiations.

4. Lastly, during the first session of the Negotiating Body there was considerable discussion on the distribution of particular elements and provisions between the framework convention and its protocols. With this in mind, I have proposed the option of negotiating initial protocols, either before the adoption of the convention, under the auspices of the Negotiating Body or after its entry into force, by the Conference of the Parties, in the areas of tobacco advertising, promotion and sponsorship; the elimination of illicit trade in tobacco products; and regulation of the contents of tobacco products, tobacco product disclosures, and packaging and labelling of tobacco products. To my recollection, a considerable degree of support was expressed during the first session for protocols to be formulated on these subjects.

It is my impression that a positive momentum for the negotiations was created during the first session of the Negotiating Body. It is my hope that by submitting the Chair's text of the framework convention on tobacco control well in advance of the second session, delegations will have considerable time to prepare for the challenging work ahead.

During the second session, work will be divided between plenary meetings, and consecutive meetings of the three working groups that were established during the first session. A detailed agenda will be circulated to Member States closer to the date of the second session. Considerable preparation will be required by delegations, so that we can make substantial progress in the negotiations (including the possible negotiation of protocols).

Once again, I would like to thank all those who took part in the first session of the Negotiating Body, and I would encourage them to continue their active participation in these important negotiations.



Ambassador Celso Amorim

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