



# WORLD HEALTH ORGANIZATION

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

**A/FCTC/INB3/SR**

**Third session**

**22–28 November 2001**

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**SUMMARY RECORDS**

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**PART ONE: SUMMARY RECORDS OF PLENARY MEETINGS**

**FIRST PLENARY MEETING**

**Thursday, 22 November 2001, at 9:30**

**Chair:** Mr C.L. NUNES AMORIM (Brazil)

**1. OPENING OF THE SESSION AND ADOPTION OF THE AGENDA:** Item 1 of the Provisional Agenda (Document A/FCTC/INB3/1)

The CHAIR declared open the third session of the Intergovernmental Negotiating Body on the WHO framework convention on tobacco control.

Dr ASAMOA-BAAH, Executive Director, speaking on behalf of the Director-General, observed that the pace, depth and relevancy of the process of negotiating a document whose principal aim was to prevent death and disease, had been very encouraging. The key challenge currently was to marshal the collective resolve to move forward in the best possible way. Since the first session in October 1999, over 8 million people had died from tobacco-related illnesses, 4.2 million of them in 2000 alone. The Global Youth Tobacco Survey had shown that tobacco use among children was still increasing, that in some countries more than 60% of 13 to 15 year-olds consumed tobacco products and that one in five of children surveyed had begun smoking before the age of 10. Those findings were a cause for considerable concern, for the younger people were when they started to smoke, the more likely they were to develop an addiction, to become heavy smokers and to die from tobacco-related illnesses. It was those realities that were driving countries to strengthen their tobacco control strategies. The force of the emerging convention was its commitment to protect future generations from tobacco.

Since the second round of negotiations several regional and subregional meetings had taken place, all of them attempting to reach, if not consensus, then “convergence” on the key issues. He hoped and expected that the current round of discussions would be less traumatic as a result.

Unfortunately, the tobacco companies had also been active, and had been seeking support for their new “code of marketing” from governments and the United Nations system. Voluntary codes were known to be ineffective, however, and several features of the proposed industry code would erode legislative gains already made in many countries. He called on participants to continue to be alert to such pressures. The goal was to save lives and protect future generations. The opportunity to renew the commitment to public health should be seized. Failure could not be afforded.

The CHAIR announced that, having been assigned to a different post, he would be unable to continue his work as Chair after the conclusion of the current session. Consequently, it would be necessary for the Intergovernmental Negotiating Body to elect a new Chair. Following discussions in the Bureau and in the regional groups, a transparent procedure had been worked out, and he hoped that a result could be reached by consensus. He proposed the addition of an agenda item “Other business” under which the matter could be discussed if deemed necessary and appropriate.

**The agenda, as amended, was adopted.**

**2. REPORTS ON ACTIVITIES SINCE THE PREVIOUS SESSION:** Item 2 of the Agenda (Documents A/FCTC/INB3/4 and A/FCTC/INB3/4 Add.1)

Dr DA COSTA E SILVA (Tobacco Free Initiative) said that, with one life lost to tobacco every eight seconds and over two million lives lost needlessly since the second session in May 2001, the task of formulating a framework convention to safeguard current and future populations from the harms of tobacco had become more important than ever. The Co-Chairs' working papers, the result of over 20 months of consultations among WHO's 191 Member States, represented an exhaustive range of views, concerns and possible solutions.

The task was not an easy one. There were strong opposing forces at work, but public health must always come first. Since the adoption by the Fifty-fourth World Health Assembly in May 2001 of resolution WHA54.18 concerning transparency and vigilance over tobacco companies' influence on global tobacco control, a number of Member States, including Honduras, the Islamic Republic of Iran, Mexico and the Syrian Arab Republic, had initiated formal enquiries into the activities of the tobacco industry.

World No-Tobacco Day, also celebrated in May 2001, had been an occasion to spread the message that second-hand smoke killed. Activities around the world had included the "Smoke-Free Americas" initiative; the initiative of shopkeepers in Singapore not to sell any tobacco product; public petitioning in the Philippines; and street demonstrations in South Africa. Awards had been made to community and other leaders in all six regions. Saudi Arabia had declared the two holy cities of Mecca and Medina smoke-free, ensuring a healthier environment for Haj pilgrims. WHO had already begun work for World No-Tobacco Day 2002, in fact the "Tobacco-Free Sports" campaign was to be launched that very day. It was planned that a number of international sporting events, including the 2002 FIFA World Cup, the Salt Lake City Olympics and the Paralympic Winter Games, would be tobacco-free.

WHO had been busy in other areas as well. The Scientific Advisory Committee on Tobacco Product Regulation, meeting in July in Malaysia, had established working groups on priority research and ingredient labelling, and the WHO monograph *Advancing knowledge on regulating tobacco products* had been launched. WHO and the World Bank were collaborating on technical work concerning the economics of tobacco control. Analytical toolkits and technical consultations were being developed and numerous Member States had already taken part in consultations in India and Malta. WHO was also involved in providing technical assistance to Member States to enhance their ability to develop, plan, implement and evaluate tobacco control policies and programmes. A survey of health professionals in 15 countries was currently being carried out to develop nationally appropriate cessation measures, and global guidelines were being drawn up on the most effective smoking cessation therapies. Regional workshops had been held to assess national capacity and Member States' needs for the implementation of prioritized tobacco control programmes. The Global Youth Tobacco Survey had already been completed in nearly 50 countries. It indicated that large numbers of young people, some as young as 10 years of age, were becoming addicted to tobacco, which should cause great alarm.

WHO regional offices and headquarters had provided technical and legal support to facilitate a number of regional and subregional consultations to review and evaluate in detail the Chair's and Co-Chairs' working papers in preparation for the current session. The text before the meeting had the potential to set in place robust solutions that would reduce the toll of tobacco-related disease and death with far-reaching effects on people's lives in the present and well into the future.

**3. DRAFTING AND NEGOTIATION OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL:** Item 3 of the Agenda (Documents A/FCTC/INB3/2(a), A/FCTC/INB3/2(b), A/FCTC/INB3/2(c), A/FCTC/INB3/3, A/FCTC/INB3/5, A/FCTC/INB3/6, A/FCTC/INB3/7 and A/FCTC/INB3/DIV/4)

The CHAIR put forward proposals concerning the organization of work of the third session of the Intergovernmental Negotiating Body based on his discussions with the Bureau since the second session.

Reviewing the work accomplished so far, he recalled that the first session of the Intergovernmental Negotiating Body had heard a first reading of ideas on the different possible elements of the convention. As a result of that he, as Chair, had been asked to produce a clean text, the “Chair’s text”, for analysis by delegations. At the second session, every delegation or region had been given the opportunity to present amendments to that text, which were reflected in the “Co-Chairs’ working papers”. Clearly, the task of the working groups at the third session was to narrow the differences and options and move forward from the present collection of positions, many of which were not substantively different, to a clearer text in which the important differences were apparent. The working groups were not intended as a rigid structure, but as an instrument for real progress. In his discussions with the Co-Chairs it had been agreed – and the proposal submitted to the Bureau – that some informal drafting sessions would be necessary to tackle problems that were less amenable to discussion in a broader plenary setting.

He stressed that the informal drafting groups were open to all participants, although it was likely that they would attend only those meetings which discussed matters of particular interest to their country or region. More importantly, the informal drafting groups would not take any decisions as such, but would merely submit their conclusions to the appropriate working group or plenary meeting. They would thus be convened by Co-Chairs, as appropriate, to expedite negotiations on particularly difficult themes or parts of the text. It was essential that the current session of the Intergovernmental Negotiating Body should make visible progress, arriving at a text which was easily understood and which highlighted the crucial political issues at stake.

The Co-Chairs’ working papers had deliberately avoided making reference to the authors of the various textual proposals incorporated. In the interests of progress, he relied on delegates to set aside any minor differences and to focus on the really important questions. It was to be hoped that the regional meetings held prior to the opening of the session would facilitate and not obstruct that task.

Turning to the Preliminary daily timetable (document A/FCTC/INB3/DIV/4), he observed that, although the meetings of the informal drafting groups would generally be scheduled for the evening, some meetings might also need to be held at other times of day. Moreover, unlike working group or plenary meetings, some informal drafting group meetings might have to be held in parallel. There would never be more than two meetings at the same time. Working groups would not be held in parallel although a working group and an informal drafting group might meet at the same time, and two informal drafting groups might meet at the same time.

He drew attention to the textual proposals with respect to Articles J, S and T (document A/FCTC/INB3/5) submitted to Working Group 3 for first reading.

He questioned the usefulness of discussing the compilation of terms and definitions (document A/FCTC/INB3/INF.DOC./1) at the present juncture, suggesting that it should be taken up subsequently once the text of the convention had emerged more clearly. He said that he hoped that the organization of work and timetable he had proposed were acceptable to delegates, on the understanding that some degree of flexibility would be required.

Ms BALOCH (Pakistan) acknowledged the confirmation of a maximum of two informal drafting groups concurrently, and noted that, before agreeing to such an arrangement, her delegation would wish to discuss the matter within the regional group. Likewise, if a change in the timeframe of

the informal meetings had been proposed, she would wish to discuss that matter within the regional group before agreeing to it. The Preliminary daily timetable had been acceptable to her delegation and her regional group.

The CHAIR explained that no amendment had been made to the Preliminary daily timetable; the original arrangements allowed for the scheduling of the informal drafting groups to take place in parallel with working groups, should the Intergovernmental Negotiating Body choose to adopt that method of work. He requested that the delegate of Pakistan should at least provisionally accept the programme of work that he was suggesting. A further plenary meeting, or a meeting of the Bureau, could be held if change were needed; that would be done with the delegates' agreement. Progress in the negotiations had to be made at a quicker rate; that was the reason for the provision that meetings might take place simultaneously, although never more than two at a time.

Ms BALOCH (Pakistan) responded that her delegation could provisionally accept that agenda; Pakistan's views would be reflected in the regional group meeting and thus, through the regional coordinator, to the Bureau.

The CHAIR said that, in the absence of any further comments, he took it that his proposal was acceptable to the meeting.

**It was so agreed.**

The CHAIR recalled that, during the second session of the Intergovernmental Negotiating Body, some delegations, including that of Australia, had requested the opportunity to discuss the structure of the convention during the current session, which was a matter outside the terms of reference of the existing working groups.

Ms KERR (Australia) said she welcomed the opportunity to discuss structural issues including the relationships between the convention and protocols, definitions and the internal organization of articles. The structure of the convention had an impact on its legal interpretation and enforcement and therefore on its effectiveness as a public health tool. With regard to protocols, she noted that their content was closely related to the content and specific nature of the provisions of the convention – that should be borne in mind during negotiations in the various working groups. The goal of negotiations was to achieve a comprehensive convention on tobacco control. A key to achieving that was to strike a balance between the convention and protocol obligations. Unless there was consensus on the role and function of protocols, there could be no useful discussion on what topics protocols should cover. Protocols were not normally binding on all parties to a convention but only on those that chose to ratify the individual protocols.

There were at least two potential functions for protocols in relation to the convention. The first one was in those areas where a general convention obligation might require extensive supplementary details with regard to its implementation. Such details could be included in a protocol so as to avoid cluttering the text of the convention with detailed technical information. The second potential function arose in relation to issues on which consensus could not be achieved. In such cases the convention should contain a general obligation which met with the approval of all parties, and the protocols should contain additional detail on more specific obligations. The working groups should adopt a consistent approach regarding the incorporation of such issues in the convention and protocols in order to expedite the upcoming negotiations.

She noted the Chair's earlier comment about definitions but stressed that in her view definitions played an important role in determining the scope and meaning of obligations in the convention. At the very least, key definitions which directly affected the scope of obligations should be considered together with the substantive articles during current and future negotiations. That would avoid

unnecessary confusion and adverse interpretation of provisions and guard against the possibility of negotiations being reopened in the event of an element being left unclear.

She expressed her appreciation of the compilation of terms and definitions (document A/FCTC/INB3/INF.DOC./1); the time had now come to build on that work and reach agreement on the definitions of “threshold” terms. She would welcome the opportunity to discuss that document with other participants during the current session with a view to identifying and refining key terms in the convention and considering how they could be factored into the working group activities.

As some progress had been made in the negotiations, it might be useful to commence discussion on the organization and layout of the convention, although she understood that it would not be possible to finalize such matters until nearer the conclusion of negotiations. A related matter was the question of guiding principles. As both a preamble and a statement of objectives were proposed for inclusion in the convention, the purpose of including a separate section on guiding principles required careful consideration. It was important to ensure that the specific obligations were not clouded by generally-worded, non-specific guiding principles dealing with the same issue.

The CHAIR, clarifying his earlier comment with regard to definitions, said he did not consider it useful to have a separate discussion on definitions at the present stage of negotiations. Such matters would, however, undoubtedly be raised and definitions possibly agreed upon during negotiations in the different working groups.

Dr BERNARD (United States of America) supported the comments made by the delegate of Australia and considered the issues to be critical to a successful outcome. The conventions, protocols and the guiding principles were complementary and could be negotiated in parallel and concurrently to deal with a number of issues as outlined by the delegate of Australia. There were two roles for the protocols: to provide details to elaborate on the general treaty obligations set out in the framework, as well as to set out new obligations and agreements in contested areas. In neither case were negotiations of selected protocols envisaged to replace acceptable treatment of the issue in the framework convention – that point had not always been understood. Even where a protocol were the best solution to move the agenda forward, the language in the convention would not be replaced by the protocol. It was his view that concurrent discussion of the relevant protocol and convention would dramatically accelerate the achievement of a final agreement. While his delegation would deal formally with protocols under the appropriate agenda item, he wished to make an informal comment, namely that the protocol on smuggling provided complementary language to that in the framework convention, although it was too detailed for the framework itself. The text was available to interested delegations for future use. It was the view of his delegation that a strongly worded protocol would dramatically help efforts in the international control of tobacco.

In reference to advertising, there appeared to be a clear divide between those delegations who wanted a general ban on advertising and those who had legal or constitutional constraints to doing so. The main document could contain general language on advertising, leaving the specifics to be dealt with in a protocol negotiated concurrently or subsequently. Disputes of that sort would slow down the conclusion of the agreement.

Referring again to the remarks of the delegate of Australia and endorsing the position outlined, he noted the potential confusion created by the co-existence of general guiding principles and specifics, where the latter carried legal obligations.

Selected protocols negotiated by all interested governments concurrently with the convention seemed to be the best way to make rapid progress and to achieve the objective of a final agreement by 2003.

Mr NOIRFALISSE (Belgium), speaking on behalf of the European Union and its Member States, said that the points of view of the European Community and its Member States would be presented either by Belgium in its capacity as holding the Presidency of the Council of Ministers of

the European Union, until 31 December, or by the European Commission and the Member States of the Community, who would intervene as necessary on particular points as the subjects in the future convention fell within the legal competence of the European Union itself or of its Member States.

The European Union and its Member States welcomed the views expressed by the delegate of Australia concerning structural issues. A series of important questions had been raised: definitions, the relationship between the convention itself and possible future protocols, and the internal organization of the articles, guiding principles etc. Each would have to be considered; the question was one of timing. The structure should not hamper progress in debating the substantive content of the discussion of negotiations.

Regarding definitions of terms, the European Union and its Member States supported the approach outlined. In reference to other points raised by the delegation of Australia, it was clear that the role of protocols and the organization of the articles and guiding principles would have to be dealt with. It was his view, however, that the current session was not the most appropriate forum for such discussion. Those fundamental questions should be raised again later when participants were closer to reaching consensus on the key questions of the convention.

Mr XIONG Bilin (China) said that the structural issues of smuggling, tobacco subsidies, information dissemination and compensation and liability were central to the convention. The discussion of such key issues, especially smuggling and tobacco subsidies, would have a direct impact on the negotiating process. China would pay great attention to those issues and favoured the handling of them as priorities.

He recalled that it had originally been expected that the negotiations would be completed by the end of 2002, enabling the framework convention to be submitted to the World Health Assembly for adoption in May 2003. Negotiation was a process and it was hard to pre-judge its termination date. Nevertheless, efforts should continue to reach that goal given that only two sessions for substantive negotiations remained in addition to the current session.

He observed that the Intergovernmental Negotiating Body had reached an informal consensus that the Rules of Procedure of the World Health Assembly should be applied to the sessions of the Intergovernmental Negotiating Body. However, there were substantial differences: WHO was an administrative organization, whereas the Intergovernmental Negotiating Body was a process for Parties to establish regulations and obligations. According to international practices, especially those of the United Nations, the Intergovernmental Negotiating Body should have its own rules of procedure. His delegation agreed to adopt the Rules of Procedure of the World Health Assembly, with an exception in the case of decision-making mechanisms. Any decision on substantive matters should be made by unanimous consent.

He observed that no documents had been prepared regarding the introductory part of the draft text of the convention. Some countries might have submitted proposals for that section. He expressed the hope that all such proposals would be considered when that part of the text was negotiated at a later date.

Mr AISTON (Canada) expressed his appreciation of the contribution made by the delegate of Australia in raising structural issues; his delegation agreed that the manner in which the convention was structured and framed could impact its legal interpretation and enforcement and therefore its strength and effectiveness as a public health tool. Definitions were important as they determined the scope of the convention. They needed to be developed concurrently with the relevant articles and be understood in the same way by all the working groups.

It would be necessary to limit the number of definitions required; choosing the right ones would be a difficult task. Lengthy negotiation of definitions was undesirable, and too much complexity would create confusion. He supported the concept of an "informal consultation" amongst interested delegations on that subject. In regard to the guiding principles and their relationship to the preamble, and the statement of objectives and obligations, he agreed that those matters needed clarification, in

particular regarding the guiding principles and their role. It was unclear whether those were interpretative or contextual clauses. It would be necessary also to clarify whether certain issues raised in the guiding principles section could best be placed in the preamble.

The internal organization of articles was an issue to be looked at towards the end of negotiations. It was his delegation's view that the focus should be on developing the convention itself before ascertaining whether protocols were needed and in what areas. Considering protocols too early could risk weakening the convention.

He suggested that the subject of the protocols could be discussed at the end of the session. A number of delegations with interest in specific protocols might wish to discuss those aspects with each other on a purely consultative basis.

The CHAIR recalled that the guiding principles had been allocated to the various working groups for consideration; those groups could judge whether the principles were well formulated or not. Eventually a position would need to be taken on whether or not to retain the guiding principles and, if so, where that material should go. It might be appropriate, for example, to move certain parts to the preambular section. He suggested that the Co-Chairs might wish to look at that issue.

Ms KERR (Australia) stated that a paper prepared by her delegation on structural issues would be available to all interested parties.

Mr CHAVES SELL (Costa Rica), speaking as the Coordinator of the regional group of the Americas said in regard to the question of structure that their preference was to give priority first to the work on the convention, and to deal with the protocols towards the end of the negotiations.

Dr DJAMALUDDIN (Indonesia) welcomed in principle the points raised by the delegate of Australia regarding structure, but wished to stress that certain points should seriously be taken into consideration during the negotiation process. The structure of the convention should be kept simple, concise and comprehensive, and should include all issues, elements and parties which could be held responsible. The provisions of the convention should be recognized as being minimum standards. There should be a focus on global and cross-border issues like smuggling. The convention should avoid including obligations that were too specific for certain countries, so as to enable as many countries as possible to actively participate. Protocols should be drawn up as standard references and thus avoid different interpretations during implementation. They should not undermine the convention.

Dr REDDY (India) said that he supported the views of the delegate of Indonesia, and believed that the convention should be developed and adopted as soon as feasible. The protocols did not need to be linked to the negotiating process of the convention. Whilst he believed that it would be advantageous to identify the topics which needed to be the subject of the protocols, it would be counterproductive to link the negotiating of the convention to a simultaneous development and adoption of protocols. The resulting delay might mean that several of the provisions of the convention which were not the subject of the protocols would not be initiated and implemented early enough. He believed that work on the framework convention should proceed while identifying the subjects of the protocols, although not necessarily linking them in a simultaneous time frame. Definitions were critical to the interpretation of the provisions of the protocols and should be considered by the working groups even if they were not decided upon. The technical annexes would provide clarity. Convergence on the agreed text of the main provisions would be greatly facilitated if several of the textual submissions by Member States could be appropriately accommodated in the technical annexes. That matter could be taken up by the working groups, or referred to the informal working groups as the Co-Chairs deemed necessary.

Mr BASSE (Senegal), speaking on behalf of the African Regional Group, said that as the protocols had a complementary aspect to the convention, it was hard to envisage a process whereby the two were negotiated at the same time. For the time being, priority should be given to the substantive issues of the convention. In the course of that enquiry, the subject matter of the protocols would become clear. To attempt to negotiate both simultaneously would dissipate the energy of the participants and would be inappropriate.

Mr MBUYU MUTEBA (Democratic Republic of the Congo) paid tribute to the work accomplished in bringing the negotiations to their present state. He said that, having talked of the need to give structure to the convention it was important to be able to move at a faster pace. He suggested the reading of the texts as presented with no further additions, only improvement of the terms already used. Each article, point, or proposal should be put to the vote and approved before passing to the next one. If by the end of the session the work was still incomplete, the working groups, complemented perhaps by some further members, would complete the procedure. The outcome of that work should then be submitted to the delegates for their study. The aim was to produce a convention text and then to prepare the protocols.

Dr BELSASSO (Mexico) stated that smoking was a serious public health problem because of its far-reaching repercussions on individuals, families and society as a whole. He described the measures taken by his government to tackle that problem, which included higher taxes on dark tobacco products, codes of conduct promoted among tobacco companies, the gradual phasing out of radio and television advertisements and regularization of outdoor and print advertising. Government agencies and civil society organizations had met to coordinate a holistic approach, foster public awareness and lend their support to initiatives and policies. A national legislative tobacco framework had been established, with new objectives and activities defined to combat all aspects of the problem. Those were enshrined in the national health programme and in the recently launched anti-tobacco plan of action. His country promoted cooperation and participation in regional and international initiatives intended to combat smoking as a serious health hazard which affected smokers and non-smokers alike. He strongly supported the development of a framework which would reinforce national strategies to combat tobacco consumption.

Mr ALLEN (New Zealand) endorsed the observations made by other delegations on the importance of definitions in guiding the interpretation of texts and would support the convening of an informal gathering to start that discussion.

Mr INADOME (Japan) said that his delegation shared the views expressed by the delegations of Canada, Senegal and India. Protocols should be tackled only after the establishment of the convention. Given that the negotiation of the framework convention was a new exercise, all energies should be focused on that activity, first and foremost.

The CHAIR observed that the discussions had been useful and progress was being made, however, negotiation was an integrated process and it was important not to get stuck in circular arguments. Working groups had been established to deal with specific issues. Differences regarding definitions should not thwart the overall process. The informal drafting groups were a resource to cope with those types of differences. Some of the definitions were common-sense ones. The aim was not to provide professional definitions but working definitions. Drawing on one of the basic principles of the Vienna Convention, he pointed out that words should retain their ordinary meaning. Only crucial terms like "tobacco" would require definition. The working groups should proceed with common sense identifying the crucial terms and defining them. The guiding principles were also important as the delegate of Australia had pointed out and perhaps some of the language could be transferred to the preambular section. He urged participants not to become over-involved in the interrelationships

between the elements of the framework, but to keep in mind the overall goal, of achieving an agreed framework convention. By definition, a framework could not be excessively detailed. A basic text had to be agreed. Protocols would also be required at some stage. A pragmatic approach would therefore be needed to allow as full a discussion as possible, but to retain momentum towards the main objective. The task at hand for the working groups, supported by the informal groups and given flexibility from all parties, was to reduce the number of brackets and commas if possible, solving problems of a more political nature, eliminating textual problems and reaching a consensus. Discussions on the protocols would resume at the plenary session on the final day.

**The meeting rose at 11:10.**

**SECOND PLENARY MEETING**

**Wednesday, 28 November 2001, at 10:00**

**Chair:** Mr C.L. NUNES AMORIM (Brazil)

**DRAFTING AND NEGOTIATION OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL:** Item 3 of the Agenda (continued) (Documents A/FCTC/INB3/WG2/Conf. Paper A Rev.1, A/FCTC/INB3/WG2/Conf. Paper B Rev.1, A/FCTC/INB3/WG2/Conf. Paper C Rev.1, A/FCTC/INB3/WG3/Conf. Paper A Rev.1, A/FCTC/INB3/WG3/Conf. Paper B Rev.1, A/FCTC/INB3/WG3/Conf. Paper C Rev.1, A/FCTC/INB3/WG1/Conf. Paper A and A/FCTC/INB3/WG1/Conf. Paper B)

• **Reports of the Working Groups**

The CHAIR invited the Co-Chairs to submit the reports of the Working Groups.

Mr AISTON (Canada) said that Working Group 2 had approved the following draft text: Article I, paragraphs 1, 2, 3, 4, 5, 6, 7, 13 and 14; Article F, paragraphs 1 and 2; Article D, paragraphs 4, 5, 7, 9 and 10; Article K, paragraphs 1, 3 and 4; and Article E, paragraph 3, for transmission to the plenary.

The texts had been approved on the understanding that they were subject to modification by Member States and that they were tools for progress and were not binding in character. Phrases such as, “to the extent possible and within the means at its disposal and its capabilities”, had been used by all three working groups and that would need to be addressed at a future session of the Intergovernmental Negotiating Body. Issues that could potentially be referred to other working groups included the role of technical and financial assistance discussed under paragraph D.4, and the prohibition of sales to minors discussed under paragraph I.3.

Ms BALOCH (Pakistan) suggested that a written introduction to the documents should be provided explaining that they were still subject to negotiation and that the fact that, notwithstanding the use of square brackets, it should not be inferred that text outside such brackets had been agreed to.

The CHAIR proposed that such an introduction be provided to indicate that the documents were not agreed texts but rather a tool for further discussion and that the positions of delegations were reserved.

Ms ZIKMUNDOVA (Belgium), speaking on behalf of the European Union and its 15 Member States, as well as Bulgaria, the Czech Republic, Hungary, Romania, Slovakia and Slovenia, requested that square brackets be placed around the phrase “the importer in the country of import” in subparagraph I.3(a).

Mr YI Xianliang (China) said that he had discovered technical discrepancies in the different language versions, some of which were substantive. He said that he hoped that his delegation would have an opportunity to submit them at the next session of the Intergovernmental Negotiating Body.

The CHAIR expressed concern that introducing further amendments might hamper the progress made so far. Moreover, it would be clearly stated that documents had not been agreed. The European Union could, if it so desired, recall that the matter had been raised at the fourth session of

the Intergovernmental Negotiating Body. He invited participants to agree that the text should go forward to the fourth session of the Intergovernmental Negotiating Body as the working text for further negotiations.

**It was so agreed.**

Mr SEDDIK (Egypt) said that Working Group 3 had approved the draft texts of Articles M, N and O, for transmission to the plenary. Articles D and E had not been addressed. He therefore proposed that, together with Articles J, S and T, which had been discussed at a first reading, Articles D and E should be referred to the fourth session of the Intergovernmental Negotiating Body for further consideration. Additional proposals and recommendations relating to Articles J, S and T should be submitted to the secretariat, no later than 60 days before the start of the fourth session of the Intergovernmental Negotiating Body. The working group had also heard formal second readings of Articles L and Q and P and R.

The CHAIR invited participants to agree that the text should go forward to the fourth session of the Intergovernmental Negotiating Body as the working text for further negotiations.

**It was so agreed.**

Professor GIRARD (France), Co-Chair of Working Group 1, said that Working Group 1 had held four formal meetings and two informal meetings in which it had dealt with Article G, paragraphs 1, 2, 3 and 4, Article H, paragraphs 1 and 2, Article I, paragraphs 8, 9, 10, 11 and 12, Article K, paragraph 2, Article D, paragraphs 1 and 2 and Article E, paragraphs 1 and 2.

Three documents had been produced reflecting the outcome of the informal discussions and two documents had come out of the formal meetings of Working Group 1. At its fourth session, the Working Group had considered all the texts submitted by the Co-Chairs, as well as amendments proposed by the delegates relating to both the formal and informal text. It had been decided that all the amendments would henceforth be considered as formal proposals. It had also been decided that the Co-Chairs' texts, as amended, would be regarded as formal documents. With regard to the documents that had already been classified as formal, it had been decided that they would be amended and re-issued as revisions. They would then serve as the basis of the negotiations at the fourth session of the Intergovernmental Negotiating Body.

The CHAIR invited the participants to agree that the documents approved by Working Group 1 at its fourth meeting should go forward to the fourth session of the Intergovernmental Negotiating Body to serve as the working text for further negotiation.

**It was so agreed.**

**• Possible protocols to the framework convention**

Ms KERR (Australia) said that a key factor in ensuring the strength of the convention lay in the way the relationship between the convention and any possible protocols was handled. In her view there were two cases when possible protocols might be appropriate: when a high level of detail was required and when consensus could not be reached on the scope and detail of convention provisions. Having followed the deliberations of the three working groups, she felt that it would be premature to come to a decision on possible future protocols until there had been further discussion on the subject. While it would be appropriate for the allocation of text to be decided by the working groups, they would first have to agree on a consistent approach. To that end, they still needed to decide on the principles they would adopt for determining the subjects that might be appropriate for possible

protocols and those which should be dealt with under the convention. It was also important for delegates to bear in mind that possible protocols were usually optional and the obligations might therefore only be binding on some Parties to the convention. Further discussion was also required to determine whether there were any provisions of such a technical nature that a possible protocol might be necessary to supplement substantive convention obligations and when consensus could not be reached on the scope and detail of convention provisions.

Dr SEKABARAGA (Rwanda), speaking on behalf of the Member States of the African Region, said that in order to avoid weakening the convention itself, the role of possible protocols should be to make its provisions clearer. To that end, there should be a real effort to reach a consensus on the main areas in which action was to be taken to control tobacco consumption. At the present stage in the negotiations, the following areas might be identified as requiring possible protocols: rules and procedures relating to the contents, packaging and labelling of tobacco products (paragraph G.4); rules and procedures relating to the prohibition of tobacco sales by mail order and the Internet (second alternative text for paragraph I.7 on page 17 of document A/FCTC/INB3/2(b); and rules and procedures relating to the elimination of illicit trade in tobacco products (paragraph I.7).

Dr BERNARD (United States of America) endorsed the view outlined by Australia. In some areas, such as smuggling, a possible protocol could set out new obligations and agreements on areas on which consensus could not be reached. Although paragraphs I.1-7, 13 and 14 constituted a forceful negotiating text, he proposed the convening of an informal meeting to discuss further details relating to the implementation of strong constraints on illicit trade and smuggling. Such an informal meeting could become the basis of more formal negotiations as the convention developed. Advertising was another potentially suitable area for a possible protocol, bearing in mind that some countries might want a stricter agreement than others might be able to accept under their constitutions.

Dr HETLAND (Norway) also endorsed the views expressed by Australia regarding the need to clarify the relationship between the convention and possible protocols. To that end, he suggested that the subject of possible protocols be included on the agenda for the fourth session of the Intergovernmental Negotiating Body and urged that a paper be prepared as a basis for discussion. It might also be appropriate to convene intersessional meetings in order to effectively consider issues relating to possible protocols.

Mr EISSA (Egypt) said that, in principle, he had no objections to possible protocols on issues requiring more detailed provision such as liability, smuggling and labelling. However, it was preferable to have a strong convention and care had to be taken to ensure that possible protocols did not weaken it.

Ms ZIKMUNDOVA (Belgium), speaking on behalf of the European Union and its 15 Member States, supported the proposal made by the delegate of Australia on adopting a more pragmatic approach in determining suitable areas for possible protocols. The establishment of principles and criteria would ensure greater transparency in the development of both the convention and possible protocols. Although significant progress had been made, the complex nature of the issues had led to differences of opinion. It was therefore important to find a middle way that would reconcile the need to make more progress and the desire to ensure that all the issues were thoroughly discussed.

Ms MACMILLAN (New Zealand) said that, in the interest of a strong convention, a clear statement of principle should be included in the text of the convention on any issue to be detailed in a possible protocol, in order to establish the context for that possible protocol. She supported the intervention by Australia and agreed that the issues should be discussed at the fourth session of the Intergovernmental Negotiating Body.

Mr YI Xianliang (China), stressing the importance of protocols, observed that discussions on the convention had become highly detailed and the question of whether or not there should be multiple protocols merited consideration. His delegation maintained that priority should be given to specific crucial issues, such as smuggling and licences, which might require possible protocols and informal consultations on them should be included in the agenda of the Intergovernmental Negotiating Body.

Dr ARMADA (Venezuela) considered that possible protocols should be a tool to be used in fulfilling the objectives of the convention, particularly in respect of complex areas, or areas needing frequent updating owing to market changes or developments in knowledge and evidence. Therefore, the need for frequent updating could be one of the criteria used to select topics to be dealt with in the possible protocols. He particularly supported the inclusion of a protocol on eliminating tobacco addiction, which might also serve as a stimulus to research and technology transfer, and might also foster equality of access to treatment.

The inclusion or discussion of possible protocols should not, however, weaken the convention, which should include clear prohibitions on tobacco promotion, advertising, and consumption. The effectiveness of the protocols would be dependent on the convention clearly prioritizing health as a fundamental right.

Mr VARELA (Argentina) said that his delegation took a flexible stance on the negotiation of possible protocols, but thought that the issue might be better addressed after due time and consideration had been given to the convention itself. The possible protocols should therefore ideally be discussed in the working groups, taking into account the observations expressed by Australia. He also supported the suggestion relating to informal intersessional meetings. In addition to smuggling, the areas effectively to be dealt with in possible protocols were: harmonization of prices, disclosure of ingredients and additives, health education, research, and the social and economic impact of the reduction of tobacco consumption in tobacco-producing countries.

Mr PADILLA (Philippines) endorsed the position outlined by Australia. In his view, a suitable subject for a protocol was the settlement of disputes, and in particular the question of “compulsory arbitration”, as set out in paragraph R.3. There, it was clearly stated that only Member States that had approved the mechanism were subject to its application, making that provision consistent with the general principle governing the establishment of possible protocols, namely that they were binding only on their signatories.

The CHAIR said that such legal matters would need to be looked at in depth at a later stage.

Mr BASSE (Senegal) supported the statement by Rwanda. Possible protocols should provide elucidation on points that were not sufficiently explained in the body of the convention. In the framework of the present negotiations, possible protocols should only be drawn up where absolutely necessary, so as to avoid weakening the text of the convention. A decision would need to be taken at a later stage on how the formulation of possible protocols would be conducted within the negotiating process. Finally, a minimum consensus should be reached on any given point before envisaging the possibility of establishing a protocol on that point.

Dr ABOU-DAHAB (Syrian Arab Republic) thought that possible protocols were no less important than the convention and should be considered and adopted at the same time. Their purpose was to deal with matters that had proved sensitive and time-consuming during the negotiations. In any case, the convention had to contain references to the titles and contents of the possible protocols and establish certain regulatory and administrative aspects, as well as define the relationship between the possible protocols and the convention.

Mr ADSETT (Canada) endorsed the intervention by Australia. The first step was to develop a strong main text, in which a number of the topics raised in the discussions that morning could be dealt with. In the course of that process it should become clear which protocols would be necessary.

Mr BATIBAY (Turkey) said that, in view of the volume of work that still remained to be done before agreement could be reached on the text of a draft convention, his delegation had revised its earlier call for parallel discussions on the convention and the possible protocols. The focus should be on completing the framework convention by the deadline set. Nevertheless, discussions on the criteria for possible protocols could be held at the fourth session of the Intergovernmental Negotiating Body and the ideas put forward by Australia would serve as a useful point of departure.

Dr STOJANOVIC (Yugoslavia) said that, whereas a minority of countries had successfully implemented tobacco-free initiatives, the majority still faced major problems and were unlikely to make significant progress in the absence of international action, mutual assistance, and support from WHO. Like Australia, the United States of America, and other delegations, she was in favour of the inclusion of strong measures in the convention and possible protocols. However, she warned against neglecting other WHO special programmes and projects, for example those concerning smoking in the family and children's rights to health, while work on the convention went ahead.

Mr INADOME (Japan), reiterating a point his delegation had made at the beginning of the session, observed that the idea of a framework convention was to formulate general ideas and obligations within which possible protocols could be drawn up. To start negotiations on possible protocols at the current stage would be to prejudge the framework. Moreover, like a convention, a protocol was a treaty containing international obligations and the same energy and resources should be put into negotiating it. Holding two or more negotiations at the same time was not practicable. The question of possible protocols should be taken up by the Conference of the Parties, not by the Intergovernmental Negotiating Body.

Mr BERNARD (United States of America) had noted the broad interest expressed by delegations in further informal intersessional discussions on smuggling. He looked forward to consulting with delegations in the near future about an appropriate time and venue for the discussions, adding that they should be open to all interested delegations.

Dr TADEVOSYAN (Armenia), speaking on behalf of six countries of the Commonwealth of Independent States, supported the move to hold further discussions on the status of possible protocols, their number, names and so on.

The CHAIR summed up the discussion, observing that some speakers favoured further discussions on possible protocols immediately, while others preferred to wait. Taking into account all the practical constraints and the virtual impossibility of holding meetings in parallel, he suggested that one or two meetings be scheduled for the fourth session of the Intergovernmental Negotiating Body to consider general criteria and ideas of the type already mooted by some delegations. It might not be feasible at that stage to discuss individual protocols. It could be decided at that meeting whether to continue the discussions in plenary session or to create an informal group. Meetings of like-minded people were not of course precluded, but they would clearly not have any status in terms of the Intergovernmental Negotiating Body process. The working groups should continue to consider, within their specific fields, where the boundaries should be set between the convention and the possible protocols. In the interests of a more focused debate, he encouraged any delegations who had criteria to offer to submit their ideas to the secretariat for circulation.

**It was so agreed.**

- **Technical annexes**

Mr PRASADA RAO (India) suggested that work should continue on the negotiation and subsequent adoption of the convention and that the possible protocols should be dealt with at a later stage. It was more important to deal with the technical annexes at the present stage as they were an integral part of the convention and therefore had to be negotiated simultaneously with it. It would also lead to a more informed debate at the fourth session of the Intergovernmental Negotiating Body, if the draft annexes could be made available to delegates well before the next round of regional meetings.

He suggested that at the fourth session of the Intergovernmental Negotiating Body informal drafting meetings should not be shown in the preliminary daily timetable. The function of informal meetings should be to provide a forum for consultations in unresolved issues rather than as a means of extending the formal sessions of the working groups.

The regional consultation meetings which took place between sessions of the Intergovernmental Negotiating Body had proved useful in generating consensus texts. It would be helpful in allowing areas of negotiation to be identified if such texts could be circulated among the groups following the regional meetings and before the fourth session of the Intergovernmental Negotiating Body.

The CHAIR noted India's comments regarding the role of formal and informal meetings. Informal meetings had only been intended as an additional possibility, but that intention had been neglected as the session proceeded. The Bureau would consider the points raised and submit proposals to the fourth session of the Intergovernmental Negotiating Body.

He would ask the secretariat to prepare draft technical annexes for discussion at the fourth session of the Intergovernmental Negotiating Body.

Ms BALOCH (Pakistan) said that she would prefer it if such a draft text were to be prepared by the Chair with the secretariat's assistance.

Mr YI Xianliang (China), recalling that the annexes should constitute an integral part of the convention, pointed out that the text of the convention itself had not yet been finalized and therefore the number of annexes was still not known. He therefore proposed that delegates be requested to submit textual proposals at the fourth session of the Intergovernmental Negotiating Body. The secretariat could then prepare a text for negotiation in time for the fifth session.

Mr MBUYU MUTEBA (Democratic Republic of the Congo) observed that even though the text of the convention had not yet been finalized, some technical annexes had been identified. It would therefore be possible for the secretariat to prepare draft texts thereby avoiding delays later on.

Mr BAHARVAND (Islamic Republic of Iran), rising to a point of order, asked whether the annexes would form part of the future convention with the same status as possible protocols, or whether they were intended to facilitate negotiations on the text.

The CHAIR said that as he understood it, annexes provided information on technical aspects such as content or labelling, whereas possible protocols established other obligations.

On the basis of the proposals made so far, he suggested that delegations submit their proposals relating to technical annexes to the secretariat for compilation into a document which would then be used as the basis for further discussion.

Mr PRASADA RAO (India) observed that there might be as many as six technical annexes. It was unrealistic to expect delegations to prepare that number of draft annexes. He therefore proposed that WHO prepare a draft text that would provide the basis for discussion at the fourth session of the Intergovernmental Negotiating Body.

Mr BAHARVAND (Islamic Republic of Iran) said that it was inappropriate to discuss the technical annexes while still discussing the body of the framework convention, particularly where the annexes related to possible protocols, as was the case with advertising and labelling. Furthermore, it was foreseen that the Conference of the Parties would have the task of facilitating such technical issues. Discussion of the annexes should therefore be left until a later stage and priority given to the main text at the fourth session of the Intergovernmental Negotiating Body.

The CHAIR stressed that the annexes in question were referred to in the body of the convention and were quite separate from any that might be associated with the possible protocols. His proposal reflected the wish of several delegations, to have a draft text as a basis for future consideration by the Conference of the Parties. That would not prejudice any future decision by the Intergovernmental Negotiating Body as to the ultimate inclusion of the annexes in the final convention.

He invited the participants to agree that the Chair, assisted by the secretariat, as well as delegations or regional groups, shall present proposals for the annexes which would be compiled in a draft text to be discussed at the fourth session of the Intergovernmental Negotiating Body. He would suggest a deadline for submission of proposals of 60 days before the fourth session of the Intergovernmental Negotiating Body.

**It was so agreed.**

Ms KERR (Australia) recalled that in the opening plenary meeting her delegation had indicated Australia's preparedness to facilitate informal discussions with other interested delegations on a process for advancing the work on definitions. Her delegation had convened two informal sessions, both well attended, a fact that she interpreted as a reflection of the considerable interest in the matter. She summarized some of the points raised in those informal discussions.

First, there had been recognition and appreciation of the work already undertaken by the secretariat in collating inputs on definitions from interested delegations. However, it had been broadly recognized that it would be preferable if, at least in the first instance, any future work on definitions was focused on a relatively short list of key words. Secondly, the potential benefit to the working groups of some informal consideration of definitions had been recognized, especially in view of the often technical nature of the discussions and the fact that some definitions were relevant to the work of all three working groups. Any informal work on definitions should be open-ended with all States invited to participate and contribute, indeed the broader the participation the better; it should have the primary purpose of providing input to the working groups; and it should not preclude consideration of the matter by regional or subregional groups. Lastly, it had been noted that any work on definitions would probably involve input from technical, legal and public health experts.

The proposal that had emerged from the informal meeting was for the creation of an ad hoc, open-ended, informal discussion group on definitions to meet in Geneva immediately before the fourth session of the Intergovernmental Negotiating Body. It should report back to the working groups or the plenary, as appropriate, or as directed by the Chair or the Bureau. Her delegation would be prepared to facilitate the first meeting of the informal discussion group, including preparation of a draft agenda, taking into account any views received from interested delegations. It was hoped to circulate the draft agenda before the fourth session of the Intergovernmental Negotiating Body. It was her belief that the proposal would make for a transparent, fair and practical process for advancing work on definitions which would assist the work of the working groups, and she commended it to the plenary for its consideration.

Ms BALOCH (Pakistan) doubted whether the results of work done in any such informal consultations arranged by a delegation outside the framework of the Intergovernmental Negotiating Body could be the object of further discussions in the plenary or working groups. She recalled such a

proposal having been presented by Australia, but there had been no discussion on the proposal and it had not been adopted by the plenary. She would appreciate clarification.

The CHAIR said that, as he understood it, Australia was proposing an additional ad hoc working group within, not outside, the Intergovernmental Negotiating Body, for its next session. However, he advised against proceeding to a decision by the plenary before all the implications, for example the simultaneous scheduling of meetings, had been thought through. If such a group, even if termed informal, had any sort of “blessing”, it would require approval of some sort, which was exactly what Australia was seeking. He suggested that, in view of the difficulty of removing the question of definitions from the complex broader context of the work, Australia should submit its proposal in writing for consideration by the Bureau which could make a recommendation to the fourth session of the Intergovernmental Negotiating Body. Of course, Australia was free at all times to seek support for a totally informal group and to feed the results into the various working groups on its own responsibility.

Ms KERR (Australia), noting that her delegation did not have the resources to organize an informal meeting the day before the start of the regional meetings without the support of the secretariat, agreed that it would be better to defer discussion of the idea of an informal working group until the fourth session of the Intergovernmental Negotiating Body and, if the plenary agreed, consider how best to proceed after that.

Dr BELLO DE KEMPER (Dominican Republic) suggested that, in the interests of transparency, the Australian document on definitions should be made available through the secretariat so that States that were unable to be represented at the informal meeting also had an opportunity to indicate their positions.

The CHAIR, replying, said that such a procedure would confer a certain status on the document which it did not yet have. It would be better if interested delegations contacted the Australian delegation directly.

Ms KERR (Australia) added that the secretariat had already produced a room paper containing inputs from a number of delegations. The proposal by her delegation was intended to refine that work and take it to the next stage.

**The meeting rose at 12:00.**

**THIRD PLENARY MEETING**

**Wednesday, 28 November 2001, at 16:05**

**Chair:** Mr C.L. Amorim (Brazil)

**1. NEXT SESSION OF THE INTERGOVERNMENTAL NEGOTIATING BODY:** Item 4 of the Agenda

The CHAIR said that after extensive discussions within the Bureau and the regional groups, taking into account all the difficulties involved, it appeared that the most convenient dates for the fourth session of the Intergovernmental Negotiating Body were 18 to 23 March 2002, and for the fifth session 14 to 25 October 2002, on the understanding that, in principle, at the latter session, weekend meetings would be avoided as far as possible.

Mr PÉREZ DEL ARCO (Spain) expressed regret that the dates that had originally been proposed had been unacceptable, since 18 to 23 March coincided with two other meetings in Geneva that were of great interest to his delegation, namely, a meeting of the ILO and a meeting of the Commission on Human Rights. He pointed out that it was extremely difficult for small delegations to cover parallel meetings.

Mrs ZIKMUNDOVA (Belgium), speaking on behalf of the European Union and its 15 Member States endorsed those concerns.

Mr YI Xianliang (China) expressed the hope that the dates of the fifth session might be reconsidered as they were unacceptable to his delegation, at least for the time being.

The CHAIR said that, although they would be reviewed at the fourth session, it was essential that a slot in the meeting calendar was reserved in the meantime.

**On that understanding, the dates of the fourth and fifth sessions of the Intergovernmental Negotiating Body were agreed.**

**2. OTHER BUSINESS:** Item 5 of the Agenda

**Election of a new Chair**

The CHAIR said that after intensive consultations with the regions, it had been agreed in the Bureau that the most practical way of proceeding with the election of a new Chair was to offer a package in which a Vice-Chair would cover the intersessional period, having first been chosen by lot from among the Vice-Chairs, bearing in mind the decision reached at the first session that the office of Vice-Chair was held by countries and not by individuals. Consultations could then continue until the election process was complete.

It had further been agreed that Mr Khorram (Islamic Republic of Iran) would remain in his personal capacity as facilitator in the election process. For seven days after the end of the session, therefore, he would continue to work on the basis of the two candidatures proposed by Brazil and South Africa. Any solution reached during that period would be submitted to the fourth session of the

Intergovernmental Negotiating Body for confirmation. In the absence of a solution a period of one month would then be allowed for the submission of new candidacies, at the end of which consultations on the basis of all the candidacies received would continue. In any case, a final decision would be taken at the fourth session.

**The procedure outlined was agreed.**

**The order of the Vice-Chairs, determined by lot, was United States of America, Australia, India, South Africa, Turkey and the Islamic Republic of Iran.**

The CHAIR confirmed that the United States would hold the office of Chair during the intersessional period until a new Chair had been elected.

In conclusion, the CHAIR announced that, as time was short, it had been agreed that four nongovernmental organizations that had been expected to speak at the beginning of the meeting would submit their statements in writing.<sup>1</sup>

### **3. STATEMENT BY THE DIRECTOR-GENERAL**

The DIRECTOR-GENERAL said that another crucial round of negotiations on the framework convention on tobacco control had come to an end. It had been hard work, but good progress had been made, thanks to the combined determination of all delegations. Many issues remained outstanding, but good tools would be available when discussions were resumed at the fourth session of the Intergovernmental Negotiating Body. The high frequency of intersessional and regional consultations, which were so crucial to the negotiating process, should be maintained.

At the national level, many countries were strengthening their tobacco control programmes and translating the best evidence for change from their research into effective policies and actions, which would complement the negotiating process. The staff of the Tobacco Free Initiative in the regions and at headquarters were ready to support them.

She thanked the growing number of nongovernmental organizations which had participated in the third session. Their enthusiasm, comments and recommendations had been duly noted.

WHO and other United Nations agencies would be increasing their collaboration in the field of tobacco control. The United Nations Ad Hoc Inter-Agency Task Force on Tobacco Control, established by the United Nations Economic and Social Council in 1999, under WHO leadership, would meet for its fourth session on 3 and 4 December 2001 in Kobe, Japan, to review ongoing United Nations work in international tobacco control. The previous week, WHO, its partners and some of the world's top athletes had launched the "Tobacco-Free Sports" campaign. The Winter Olympics and the football World Cup in 2002 would now be tobacco-free events. The campaign had elicited tremendous interest from all over the world, and delegations had already approached the Secretariat with their plans. The Secretariat would work with countries to set up tobacco-free sports events at national level.

The work of the third session had been intensive, and many issues and concerns had been hotly debated. The framework convention was a complex document, but the principle behind it was a simple one – tobacco killed people. One life was lost to tobacco every eight seconds: time was therefore of the essence. The overriding concern of WHO and its Member States must be to protect public health.

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<sup>1</sup> Issued as document A/FCTC/INB3/INF.DOC./2.

She thanked Mr Farrell, the outgoing Co-Chair from New Zealand, who had exhibited such skill and dedication, as well as the Co-Chairs for their continuing efforts, skill and patience in guiding the work of the working groups and the members of the Bureau for their day-to-day work.

The special appreciation of the Intergovernmental Negotiating Body was due to the outgoing Chair, Mr Amorim of Brazil. He had guided the proceedings with a fair hand, and had always managed to find the right balance of compromise and firmness which had kept the discussions and the text moving in the right direction. He had done a great service to public health and would long be remembered for it.

**4. CLOSURE OF THE SESSION:** Item 6 of the agenda

The CHAIR thanked the Director-General and said that he had been most encouraged by the progress made during the third session, progress which had confounded the sceptics and which would count in the opinion of the public. That was not to say that the task ahead was not formidable and it would require both dedication and flexibility.

Following the customary exchange of courtesies, the CHAIR declared the session closed.

**The meeting rose at 16:30.**

**PART TWO: SUMMARY RECORDS OF WORKING GROUP  
MEETINGS**

**WORKING GROUP 1**

**WORKING GROUP 1**

**FIRST MEETING**

**Thursday, 22 November 2001, at 13:50**

**Chair:** Dr HATAI CHITANONDH (Thailand)

**DRAFTING AND NEGOTIATION OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL:** Item 3 of the Agenda (Documents A/FCTC/INB3/2(a), A/FCTC/INB3/2(a) Corr.1, A/FCTC/INB3/2(a) Corr.2 and A/FCTC/INB3/DIV/5)

The CHAIR welcomed the participants on behalf of the Co-Chair, Professor Girard, and himself and expressed his confidence that all possible progress would be made at the current session in preparing the draft framework convention on tobacco control. To achieve that objective, the working group should adopt a constructive and pragmatic approach by following the method of work proposed by the Chair at the first Plenary meeting in order to arrive at a simplified text. In so doing, participants would not be expected to renounce their positions and principles, but rather to make every effort to distinguish between editorial and substantive matters.

The working group had before it a consolidated text in the form of a Co-Chairs' working paper (document A/FCTC/INB3/2(a)) that incorporated or reflected the proposals made at the previous session and a document (A/FCTC/INB3/DIV/5) containing guidelines for reading the working papers, intended to clarify the nature of proposed amendments. The working group would therefore need to look at "units of meaning" within each paragraph or sentence in order to ensure that the final text was both clear and consistent and reflected the purposes of the convention.

The working group had three further meetings scheduled and might also meet as an informal drafting group.

Dr BETTCHER (Tobacco Free Initiative) added that the simultaneous electronic drafting facility used at regional and subregional meetings in preparation for the current session would again be available. Additional proposals should be made on the textual proposal forms, as at the preceding session.

**G. *Non-price measures to reduce the demand for tobacco***

Mr CHAVES SELL (Costa Rica), speaking on behalf of the Latin American group, said that the delegations of Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela, meeting in Rio de Janeiro at the beginning of November 2001, had proposed that paragraph G.1 should read:

**G. *Non-price measures to reduce the demand for tobacco***

1. Each Party shall, within the means at its disposal, adopt legislative, executive and administrative policies and measures and cooperate with other Parties concerned in adopting the international standards to be established by the Conference of the Parties for the development of non-price policies, in order to curb the introduction to and reduce the prevalence of tobacco use and exposure to tobacco smoke. Such measures and policies shall include the following: ...

Professor HUSSEIN (Sudan) said that his delegation preferred the expression “public health measures” to “non-price measures”.

Dr SRINATH REDDY (India), speaking on behalf of the Member States of the South-East Asia Region, proposed that the paragraph should read:

1. Each Party shall adopt legislative, executive and administrative measures and cooperate with other Parties in adhering to international standards set by WHO and in harmonizing appropriate non-price policies in order to reduce the prevalence of tobacco consumption and exposure to tobacco smoke. Such measures and policies shall include, *inter alia*, the following: ...

Dr HETLAND (Norway) supported the Indian proposal.

Dr BERNARD (United States of America) said that his delegation would maintain its preference, stated at the preceding session, for the use of the terms “should” rather than “shall” and “taking into account” rather than “to the extent possible” until the paragraph as a whole became clearer.

Mr MAKONO (Zambia) speaking on behalf of the countries of the African Region, said that at a meeting in Algeria to discuss the Co-Chair’s text, the group had been in favour of a paragraph that would read:

1. Each Party shall adopt effective legislative, executive, administrative or similar measures and policies and cooperate with other Parties in adhering to international standards set by WHO on harmonizing appropriate non-price policies to reduce tobacco consumption and the exposure to tobacco smoke. Such measures and policies shall include the following:

Mr RAJALA (European Commission) said that, since the European Community and its Member States had been unaware of the Chair’s working methods when preparing their positions for the current session, they would be unable to address the textual alternatives in the manner requested.

The position of the European Community at the preceding session remained valid. It wished to ensure in particular that the experience, competence and resolutions of the International Organization for Standardization were maintained but not duplicated and that Organization’s standards were based on public health considerations, particularly those identified in the framework convention, which had not always been the case. Accordingly, the possibility of establishing a totally new system and linking WHO with the activities of the International Organization for Standardization or at least of taking that body’s experience and competence fully into account, should not be overlooked.

Dr ABOU-DAHAB (Syrian Arab Republic) said that his delegation would prefer to retain the term “non-price measures”, because some of the measures referred to in the text were not related to health.

Dr LIU Keling (China) said that his delegation was in favour of retaining the words “non-price measures” and the phrase “to the extent possible within the means at its disposal and its capabilities.”

Ms ZIKMUNDOVA (Belgium), speaking on behalf of the European Union and its Member States, associated herself with the remarks of the representative of the European Commission to the effect that the States concerned were not fully prepared for the method of work proposed by the Chair. Nevertheless, the Union had an agreed position on paragraph 1 of Article G, namely that it was important to take into account all foreseeable measures for protecting people from passive smoking.

Legislative, executive and administrative measures were indeed important, but the text should be kept open to the adoption of other measures that might prove appropriate. Since national differences should be taken into account in considering the appropriateness of measures, the Union would not encourage the inclusion of a reference to international standards set by WHO and considered that the wording should refer to “developing” rather than “harmonizing” policies. Concentration on non-price measures to reduce the demand for tobacco should be encouraged, and an explicit reference to non-price measures should therefore be retained, as well as a specific reference to measures for combating illicit traffic. Emphasis should continue to be laid on the reduction of tobacco consumption, and the Union could therefore accept a reference to the prevalence of tobacco use but not to the prevalence of nicotine dependence.

Mr VUILLÈME (Switzerland) agreed with the two previous speakers that the title of the article should be left as it stood. With regard to paragraph 1, he suggested that the words “harmonizing appropriate non-price policies” be amended to read “developing effective non-price policies” and that the word “reduce” be replaced by the word “eliminate” with respect to exposure to tobacco smoke.

Mr OGANOV (Russian Federation), speaking also on behalf of the delegations of Armenia, Belarus, Kyrgyzstan and Uzbekistan, said that the term “non-price” in the title should be retained and should not be replaced by “public health”. In paragraph G.1 itself, he suggested changing “administrative measures” to “administrative and other measures”.

The CHAIR suggested that the text should be dealt with line by line and invited delegates to comment on the title of Article G.

Mr MAKONO (Zambia), speaking on behalf of the African group, said that since the whole document was related to public health, the term “public health” would be irrelevant in the heading of Article G.

Ms BALOCH (Pakistan) said that it was unwise at that stage to start negotiating titles or subtitles, but that it would be more appropriate to begin with the text of each paragraph. She drew attention to Article F on price and tax measures to reduce the demand for tobacco, which might subsequently be merged with Article G to form a single article on measures to reduce the demand for tobacco.

Mr DILEMRE (Turkey) said that the title of Article G would need to take into account the various subtitles in that section. However, Turkey considered “public health” to be more appropriate than “non-price”.

Dr OTTO (Palau), speaking on behalf of the Pacific Island States, suggested the title “Non-price public health measures to reduce the demand for tobacco” as a compromise solution.

Dr SHEVCHOUK (Ukraine) said that the title should be left as it stood without any reference to “public health”. He endorsed the proposal to add the words “and other similar measures” after the words “legislative, executive, administrative” in paragraph G.1.

The CHAIR asked whether it would be acceptable to keep both “public health” and “non-price” in the title as a compromise solution.

Ms BALOCH (Pakistan) said that the paragraph referred to “legislative, executive and administrative measures and policies”, which might include price measures as well. It was not possible

at that stage to be certain that the text would refer to non-price measures only. It would therefore be difficult for her delegation to accept any title prior to discussion of the ensuing text.

Mr ABDENNACEUR (Tunisia) endorsed those views.

Mr EMMANUEL (Saint Lucia) said that it would be preferable first to examine the various non-price and other issues covered by the paragraph. Since the entire document was a public health document, to speak of public health measures in the title of the article would be redundant. It would be better to discuss the content of the article first, after which it might be possible to devise a more suitable title.

Mr CHAVES SELL (Costa Rica) reiterated that the Latin America group was not in favour of adding "public health" to the title since the entire section dealt with measures that went far beyond public health in the strict sense. The group therefore suggested that the title should remain as it stood in the Chair's text.

Mr MAKONO (Zambia) said that it was generally agreed that the whole document was a public health document. If "public health" were used in the title, it would have to be repeated throughout the text. As, moreover, the issues covered went beyond public health measures, the Chair's text should be retained as it stood.

Mr TADEVOSYAN (Armenia) said that it was reasonable to retain the reference to public health in the title of Article G, in order to stress the public health aspect of combating tobacco use.

The CHAIR suggested, in view of the inability to reach agreement concerning the title, that the text of paragraph 1 from the words "Each Party" to the word "adopt" be considered.

Dr OTTO (Palau) proposed that the words "to the extent possible within the means at its disposal and its capabilities" be deleted and that the sentence should begin with the words "Each Party shall adopt effective, legislative, executive and administrative measures ...".

Mr ALLEN (New Zealand) supported those proposals.

Mr SHIBAIKE (Japan) said that it would be inappropriate to discuss the deletion of the phrase "to the extent possible" only in connection with the chapeau to Article G, as its interactions with subparagraphs (a) to (f) should also be taken into account. It might therefore be advisable to reconsider the clause when all the subparagraphs had been discussed. With regard to the phrase beginning with "taking into account", the amended wording suggested that only the means at a Party's disposal and its capabilities would be considered, and even if the required measures exceeded a Party's means and capabilities, that State would nevertheless be obliged to carry them out. Japan therefore could not support that amendment. His delegation also suggested that the phrase "adopt legislative, executive and administrative measures" should be amended to read "adopt legislative, executive, administrative or other appropriate measures".

Ms ZIKMUNDOVA (Belgium), speaking on behalf of the European Union and its Member States, said that new words were apparently being added to the text submitted for the present session. If that was indeed the case, the 15 States of the European Union could not respond. Its preparation had been based on the documents provided, and Belgium could not reply at once on behalf of 15 States. She appealed to participants not to complicate or modify texts that were already sufficiently complex since, if new amendments were proposed, the European Union would be unable to take a position.

Mrs NASCIMBENE DE DUMONT (Argentina) said that her delegation had participated in the recent regional intersessional meeting of the Latin American Member States at which the countries concerned had agreed that the phrase “within the means at its disposal” should be maintained, as an appropriate lead-in for the series of detailed obligations that would be subsequently set out in the remainder of the text of paragraph G.1. Some of those obligations were so strong that not all countries would be able to fulfil them in the same manner. While assuming such responsibilities in good faith and with the best of intentions, countries should be able to do so according to the means at their disposal.

Ms GOULET (Canada) said that her delegation supported the proposed text for the first line of paragraph G.1 and considered that the phrase “taking into account to the extent possible within the means at its disposal and its capabilities” would have to be discussed in depth at a later stage, since it appeared frequently throughout the framework convention.

Mr SANTHOKI (Suriname) supported the proposal to delete the words “to the extent possible within the means at its disposal and its capabilities” and further proposed that the words “other non-price measures” or “public health measures” be added after “legislative, executive, administrative and”.

Mr BERNARD (United States of America) said that maintaining the word “shall” was acceptable in the light of the discussion that had taken place. His delegation would also accept the deletion of the phrases “taking into account” and “to the extent possible within the means at its disposal and its capabilities”. The words “as appropriate” should nevertheless be inserted after “shall”, to allow for scope and flexibility in the policies and legislation of individual countries.

Dr ABOU-DAHAB (Syrian Arab Republic) observed that an approach was needed that took into account all the different ideas expressed in paragraph G.1.

Mr CASTELLO SANTANA (Cuba) agreed with earlier speakers that the phrase “to the extent possible” should be maintained, in order to reflect differences between individual countries in their development, culture and legislation.

Dr WINAI SAWASDIVORN (Thailand), speaking on behalf of the Member States of the South-East Asia Region, said that the words “to the extent possible within the means at its disposal and its capabilities” should be deleted from the text.

Ms ZIKMUNDOVA (Belgium), speaking on behalf of the European Union and its Member States, said that those countries agreed to the deletion of the phrase “taking into account”, but considered that measures other than legislative, executive and administrative also played an important role and that the word “similar” should therefore be retained to take such appropriate measures into account.

Dr TADEVOSYAN (Armenia) said that the paragraph was repetitive and perhaps contained redundant elements. He questioned the need for the phrases “taking into account” and “to the extent possible within the means at its disposal and its capabilities”.

Ms BALOCH (Pakistan) endorsed the proposals to retain the phrase “to the extent possible within the means at its disposal and its capabilities” and to delete the phrase “taking into account”.

Mr MAKANO (Zambia), speaking on behalf of the Member States of the African Region, reaffirmed their wish to see the words “to the extent possible within the means at its disposal and its

capabilities” deleted, as it was clearly understood that governments would in any event do their utmost to the extent of their possibilities and capabilities. They nevertheless considered that the words “or similar” should be inserted after “legislative, executive, administrative and” and before the word “measures”.

Dr GAMARRA DE CACÉRES (Paraguay) suggested that two draft texts be established, reflecting the two strong trends that were emerging from many potential formulations. The meeting might proceed to take decisions on the basis of two texts that it would refine as it went along.

Mrs KONDAJ (Albania) agreed with earlier speakers that it was unnecessary to retain the words “public health” in the title of Article G. Later in the paragraph, she preferred “developing” to “harmonizing” before “appropriate non-price policies in order to reduce tobacco consumption”.

Mrs ALI HIGO (Djibouti) said that, since the nature of the article was general and its purpose was to introduce measures that were in the process of being defined, the phrase “to the extent possible” was unnecessary.

Ms TKACHENKO (Russian Federation) said that, although there was a clear understanding that countries would in all events do their utmost, it was nevertheless helpful to maintain the explicit wording “to the extent possible within the means at its disposal and its capabilities”, with a view to providing a basis for facilitating national and international agreement.

Mr SHEVCHOUK (Ukraine) suggested that the working group could save time if delegations proposing amendments were to state their reasons for departing from the texts proposed by the Chair, which served as an excellent basis for the work.

The CHAIR proposed the following text as a compromise solution: “Each Party shall, to the extent possible within the means at its disposal and its capabilities, adopt, as appropriate ....”

Mr BERNARD (United States of America) supported that proposal, provided the words “to the extent possible” were omitted.

Ms GOULET (Canada), supported by Mr ALLEN (New Zealand), Professor GRANGAUD (Algeria) and Mr VUILLÈME (Switzerland), said that she did not agree with the proposed compromise. The phrase “to the extent possible within the means at its disposal and its capabilities” could lead to asymmetrical obligations for signatories, and compliance would be difficult to evaluate. No such qualifying language could be found in other multilateral instruments.

Ms ZIKMUNDOVA (Belgium), speaking on behalf of the European Union and its Member States, said that she could accept inclusion of the phrase “to the extent possible within the means at its disposal and its capabilities”.

Dr HETLAND (Norway) supported by Ms ALEXIS-THOMAS (Trinidad and Tobago), Dr KIIMA (Kenya) and Dr SANDA (Romania), considered that the phrase “to the extent possible within the means at its disposal and its capabilities” was superfluous and would have the effect of weakening the convention.

Mr TORRES (Dominican Republic) supported the text as put forward by the Chair, which represented a compromise rather than extreme positions.

Mr CASTILLO SANTANA (Cuba) said that retaining the phrase in question would not necessarily imply asymmetrical obligations. The aim was to build a framework for action that could accommodate different approaches to the same problem. His delegation reiterated its support for retaining the phrase.

Mr CHAVES SELL (Costa Rica), speaking on behalf of the Latin American group, recommended that the text be considered as a whole, rather than line by line, and reiterated the view that the words “to the extent possible” should be deleted.

Mrs NASCIMBENE DE DUMONT (Argentina) said that the proposal of the Latin American countries was a compromise between the text proposed by the Chair and the proposal supported by many delegations to delete the phrase “to the extent possible within the means at its disposal”. The Latin American group had suggested deletion of the words “to the extent possible”, which it considered introduced an inappropriate arbitrariness; it proposed, however, to retain “within the means at its disposal and its capabilities” in order to reflect reality, which the framework convention must do if it were to be truly universal.

Ms LAMBERT (South Africa) commented that consideration of the paragraphs as a whole might help to clarify individual lines. She pointed out that paragraph G.1 merely asked countries to adopt “measures ... to reduce tobacco consumption and exposure to tobacco smoke”. That was the negotiating body’s aim. She agreed that the phrase “to the extent possible within the means at its disposal and its capabilities” should be deleted, because it added nothing and did not impose onerous obligations on any Member State.

The CHAIR, noting that the group had been unable to agree on the wording of paragraph G.1, suggested that its consideration be deferred.

Mr MBUYU MUTEBA (Democratic Republic of the Congo) reiterated his suggestion, made during the first plenary session, that textual proposals be agreed by vote.

Mr BEN SALEM (Tunisia) suggested that each paragraph be considered as a whole in order to bring coherence to the proceedings, and make it possible for agreement to be reached.

The CHAIR said that items on which no agreement had been reached could be discussed during informal evening sessions.

Ms BALOCH (Pakistan) expressed her disappointment at the Chair’s suggestion to move on from paragraph G.1, when it might have been possible to reach agreement on part of the paragraph, leaving the problem phrase in brackets. Throughout the negotiations, solutions would have to be found, rather than abandoning problems for later discussion. She considered that voting was not the solution, as the outcome would not reflect the views of every delegation, and some countries might be unable to ratify the convention as a result. She asked the Chair to guide the discussion in such a way that it was more consensual and more productive.

#### **Subparagraph G.1(a) (*Passive smoking*)**

Dr TATA (India), speaking with respect to the heading of subparagraph G.1(a), noted that the last phrase of the paragraph under G.1 read “Such measures and policies shall include the following:” He pointed out that passive smoking was not a measure but an effect. He therefore proposed changing the heading to read “Protection of the non-smoker”.

Dr BERNARD (United States of America), describing involuntary exposure to tobacco smoke as a preventable public health hazard, sought to expand the Chair's text. First, rather than providing for protection from passive smoking, the convention should systematically prohibit smoking in some places such as those providing services to children, enclosed public spaces, public transport, indoor premises of governmental agencies and restaurants and indoor private workplaces. His delegation also sought a strong provision for effective educational campaigns to inform the public of the health risks of second-hand smoke, and considered that the definition of vulnerable groups be expanded to include people with chronic lung or heart disease. He noted that some final adjustments to the text would be necessary in order to accommodate the particular governmental structure of federal states.

Dr HETLAND (Norway) proposed that the heading of subparagraph G.1(a) be "Environmental tobacco smoke". The expression was widely accepted, and the concept lent itself more readily to measurement of exposure. He agreed with the delegate of the United States that people with chronic diseases should be included in the definition of vulnerable groups. He proposed that the paragraph be amended to read "... indoor workplaces, restaurants, bars, cafes and other public places, and public transport, with particular attention to specially sensitive groups."

Ms ZIKMUNDOVA (Belgium), speaking on behalf of the European Union and its Member States, preferred to retain the heading "Passive smoking". The issue was one of great concern to the European Union, which hoped that cooperation between the Parties would achieve a form of wording that would allow effective action to be taken. It was important to consider the whole spectrum of measures available to combat passive smoking. Mention should be made of both governmental and nongovernmental measures, including the possibility of voluntary agreements; alternatively, the reference to measures at governmental level should be deleted. National differences had to be taken into account. The clear objective of the paragraph was to secure sufficient protection against passive smoking, and further clarification was unnecessary. The restrictions placed on tobacco use, and therefore passive smoking, should not be excessive. Reference to specific places, such as indoor workplaces, public places, public transport, educational institutions, restaurants and bars, was acceptable, but terms such as "crowded" or "frequented by special risk groups" were open to subjective, inconsistent interpretation. The references to governmental authorities were too detailed for a broad framework convention. As for the proposal that each States Party report on its activities in the field of passive smoking, that would be more appropriately included in Article P.

Professor GRANGAUD (Algeria), speaking on behalf of the countries of the African Region, supported the text proposed by the Chair but with deletion of the words "indoor" and "enclosed".

Mrs ALEXIS-THOMAS (Trinidad and Tobago) suggested that the heading be amended to read "Passive smoking/second-hand smoking", as the latter expression was also in common use. In the paragraph itself, the words "and enforcement" should be inserted after "implementation", as enforcement played a critical role in protecting people from exposure to tobacco smoke. The words "at the appropriate governmental level" should be deleted, as policies were implemented at various levels.

Mr CHAVES SELL (Costa Rica), speaking on behalf of the Latin American group, endorsed the Chair's text as it stood.

Dr TADEVOSYAN (Armenia) said that the issue of passive smoking was a fundamental aspect of the draft convention, since more and more infants were born showing the pathological effects of passive smoking. The existing heading "Passive smoking" should be retained, and the text should be amended to read: "implementation of legislative and other effective measures at an appropriate level, providing systematic protection from the effects of tobacco smoke in enclosed areas, in workplaces,

public places and public transport, and paying particular attention to special risk groups such as children and pregnant women”.

Ms WELLS (Australia) said that protection against environmental tobacco smoke was an important, substantive obligation of the draft convention. The heading “Passive smoking” should be retained, since it highlighted the fact that smoking harmed parties other than the smoker, and it was important to ensure that both smokers and non-smokers were protected. The text should be amended to read: “introduce and implement legislation and other systematic measures to provide protection from tobacco smoke in indoor workplaces, enclosed public places and public transport; with particular reference to the needs of special risk groups, such as children and pregnant women”.

Ms TKACHENKO (Russian Federation), speaking also on behalf of Belarus, Kyrgyzstan and Uzbekistan, proposed that the heading “Passive smoking” be retained, as the other options were unwieldy in Russian or difficult to understand. She suggested that the word “governmental” should be deleted to read: “effective measures at the appropriate level”, as should the phrase “with particular attention to special risk groups such as children and pregnant women”. Many other groups, such as chronically ill and disabled people, should be protected from tobacco smoke.

Dr SANDA (Romania) considered that the heading should be changed to “Regulation of environmental tobacco smoke”, which covered the many aspects of the issue, including passive smoking. She said that the Chair’s text of subparagraph G.1(a) should be retained.

Mr MOON (Republic of Korea), while accepting the wording of the Chair’s text in general, emphasized that groups at risk, such as children and pregnant women, deserved greater protection. He therefore proposed replacing the words “with particular attention to special risk groups” by “and prohibition of smoking in areas frequented by special risk groups”.

Ms BALOCH (Pakistan) said that she also preferred the original text, with two amendments, namely replacing “such as” by “including” and making the text more readable and logical by deleting the first one and a half lines, which were already covered under paragraph G.1.

Dr TATA (India), speaking on behalf of the countries of the South-East Asia Region, agreed with the broad thrust of the Chair’s text, but suggested amending it to read: “adoption and enforcement of legislation and implementation of other effective measures at the appropriate governmental and nongovernmental levels that provide for systematic protection from exposure to tobacco smoke in workplaces, including educational institutions, public places and public transport.” Legislation had to be enacted before it could be implemented. The nongovernmental movement was very important, as was action at that level. Educational institutions should be listed, for the protection of children. However, deleting the specific reference to children and pregnant women meant that there would be no excuse for limiting protection to those groups.

Professor HUSSEIN (Sudan) endorsed the proposal of the delegate of India regarding the heading of subparagraph G.1(a). He also supported the proposal made by the delegate of the United States concerning measures to protect non-smokers. It was necessary to use strong language and also to mention vulnerable groups, such as people with cardiovascular disease, asthma or diabetes and children and pregnant women. Smoking should be prohibited in public places, places of worship and sports facilities.

Mr SANTHOKI (Suriname) suggested encapsulating the various strands of the discussion by changing the heading to “Measures against environmental smoke and passive smoking”. It would also be possible to simplify the text by referring only to exposure to smoke in “public places and indoor

workplaces”, as more specific definitions of those terms would be given in Article B. He concurred with the delegate of India on the need to protect non-smokers, adding, however, the words “particularly risk or sensitive groups”, those terms also to be defined in Article B.

Dr AL-HAMDAN (Saudi Arabia) said that subparagraph G.1(a) should refer to “measures to defend and protect non-smokers”. The term “public places” should not be confined to indoor premises but should include public places outdoors, such as sports facilities. He preferred the wording “specially sensitive groups” without the phrase “such as children and pregnant women”, since other groups, people with chronic diseases for example, were also sensitive groups.

Dr ABOU-DAHAB (Syrian Arab Republic) said that the first line of subparagraph G.1(a) should refer to “voluntary agreements and effective and compulsory measures at governmental and nongovernmental level”. Smoking should be prohibited in all sports facilities and places of worship. The groups especially at risk from passive smoking included people with lung disease or respiratory problems, and the text should therefore refer explicitly to “persons affected by chronic or acute diseases”.

Mr EISSA (Egypt) suggested the heading “Protection of the non-smoker and harmful effects of passive smoking”. The text should allow for the possibility of a total ban on smoking in certain places.

Replying to a question from Dr BERNARD (United States of America), Dr BETTCHER (Tobacco Free Initiative) said that any proposed amendments to the text which were not already included in the Chair’s text of the draft convention (document A/FCTC/INB2/2), or the text currently under discussion, namely the Co-Chairs’ working paper (A/FCTC/INB3/2(a)), would be translated into the six official languages of WHO and submitted to delegates in writing as soon as possible.

Dr BERNARD (United States of America) said that he would read his amendments out so that they could be considered immediately. Subparagraph G.1(a) should read “implementation of legislation and other effective measures at the appropriate governmental level”, and be followed by five sub-paragraphs:

- (i) prohibiting smoking in places providing services to children, such as schools, libraries and day care, health care and early childhood development settings;
- (ii) prohibiting smoking in enclosed public places, public transport and the indoor premises of government agencies and authorities and comparable bodies intended for the public and clients;
- (iii) promoting systematic protection from exposure to tobacco smoke in restaurants and indoor private workplaces;
- (iv) promoting the implementation of effective educational campaigns informing the general public of the health risks associated with exposure to second-hand smoke, with special emphasis on the subject of smoke-free homes and protecting the most vulnerable groups, including children, pregnant women, persons with chronic lung diseases such as asthma and persons with heart disease;
- (v) States should be encouraged to promote voluntary smoke-free policies in indoor environments and enforce second-hand smoke restrictions through innovative actions.

Mr DILEMRE (Turkey) considered that the heading “Passive smoking” should be retained as it was broad enough to cover the essence of the paragraph. He suggested that subparagraph G.1(a)(i) should be amended to read: “implementation of legislation and other effective measures at appropriate governmental and nongovernmental levels that prohibit indoor tobacco smoking in order to stimulate smokers to quit, non-smokers not to begin and overall to provide for appropriate protection from

exposure to tobacco smoke in closed indoor workplaces, public places and public transport, with particular attention given to special risk groups such as children and pregnant women”.

Ms ZIKMUNDOVA (Belgium), speaking on behalf of the Member States of the European Union, reiterated that addition of new proposals to the consolidated text at the current stage would endanger progress towards a simpler, clearer text. She could not accept the term “systematic protection” and would prefer “appropriate protection”. She also wished to see reference to voluntary and nongovernmental agreements. The text of subparagraph G.1(a) would then read:

- (a) implementation of legislation, voluntary agreements or other effective measures at the appropriate governmental or nongovernmental level that provide for appropriate protection from exposure to tobacco smoke in indoor workplaces, enclosed public places, and public transport, with particular attention to special risk groups such as children and pregnant women.

Mrs CARLOT-TARY (Vanuatu) proposed that the convention should refer to “vulnerable groups” and that the groups at special risk should be specified in the definitions. The terms “public” and “workplaces” should also be defined. It was best to use only a few terms and to define those terms exactly.

Dr DJAMALUDDIN (Indonesia) supported the proposal of the Indian delegation. Her delegation was concerned about suggestions for the inclusion of more and more detail in the convention. Terms such as “restaurants”, “bars” and “cafes” were interpreted differently from country to country and from place to place.

Mr TEJADA ESCOBOZA (Dominican Republic) said that, in view of the importance of the article, which enshrined the principle of prevention in public health, it should be redrafted as follows:

- (a) the implementation of laws and other effective measures at the appropriate governmental level that would guarantee systematic protection against exposure to tobacco smoke in workplaces and enclosed public places and in public transport, with particular attention to risk groups or specially sensitive groups, such as girls, boys and pregnant women, [persons suffering from] chronic cardiac or respiratory diseases; in places intended for use by children such as schools and libraries, child-minding and health care services and services for the supervision of development in early childhood. Each party must report on its action under this article in a reasonable period, for instance, two years after the entry into force of the convention;

Dr LIU Keling (China) said that her delegation could accept the title “Passive smoking” for subparagraph G.1(a). The convention should be simplified, so as to be accepted widely. The paragraph under discussion was too specific.

Mr EMMANUEL (Saint Lucia) said that the title of subparagraph G.1(a) should be changed from “Passive smoking” to “Protection of non-smokers”. He proposed that the phrase “such as children and pregnant women” at the end of the paragraph be deleted and that special risk groups be defined in Article B. The term “vulnerable groups” was used later on in the document. To avoid inconsistency, it would be necessary to adopt, and define, one or other of the two terms.

Mr EISSA (Egypt) said that the paragraph should ensure the prevention of passive smoking in specific environments. Thus, it should define measures for discouraging smoking in public places, schools and child-care institutions and in public places and workplaces.

Dr SHIBAIKE (Japan) considered that it was unnecessary to prohibit indoor tobacco smoking, as designating smoking and non-smoking areas could be a reasonable, effective measure. He agreed with the delegate of Belgium that the meaning of “systematic measures” was not clear and that the term should be amended to read “appropriate protection.” The convention should focus on basic principles; specific details should, if necessary, be discussed by the Conference of the Parties. He agreed with the suggestion made by several delegations that passive smoking did not affect only children and pregnant women and that the relevant phrase should therefore be deleted.

Ms GOULET (Canada), while supporting the intent of the paragraph, considered that it could be simplified by replacing the phrase “legislation and other effective measures at the appropriate governmental level” by the word “measures”, and defining “measures” elsewhere. She agreed with other speakers that the scope intended by the phrase “systematic protection” was unclear. It would be difficult to achieve consensus on lists of specific risk groups and lists of locations in which smoking should be prohibited. She therefore proposed that subparagraph G.1(a) read:

- (a) implementation of measures that protect both non-smokers and smokers from involuntary exposure to tobacco smoke;

**The meeting rose at 16:30.**

**WORKING GROUP 1**

**SECOND MEETING**

**Saturday, 24 November 2001, at 14:00**

**Chair:** Professor J.F. GIRARD (France)

**DRAFTING AND NEGOTIATION OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL:** Item 3 of the Agenda (Documents A/FCTC/INB3/2(a), A/FCTC/INB3/2(a) Corr.1 and A/FCTC/INB3/2(a) Corr.2, and A/FCTC/INB3/Conf. Paper No.1) (continued)

The CHAIR, drawing attention to the substantial quantity of work still to be covered by the working group, suggested that an additional informal meeting be scheduled.

Ms GONZÁLEZ NAVARRO (Cuba) said that, although her delegation could support that suggestion in principle, it wished the secretariat to ensure that no more than one informal meeting be scheduled at any one time, so that smaller delegations could attend all such meetings.

The CHAIR, while acknowledging the difficulty implied for smaller delegations in attending such meetings, pointed out that the possibility of holding simultaneous informal meetings, which had no decision-making role, had been validated by the Bureau of the Intergovernmental Negotiating Body.

Ms BALOCH (Pakistan) requested clarification of the decision taken by the Bureau.

Dr KEAN (Secretary) confirmed that the Bureau had approved the principle of holding simultaneous informal meetings, as agreed by the regional groups, on the understanding that they were convened only when necessary.

Mr SANTHOKI (Suriname) suggested that provision be made for smaller delegations to submit written contributions to informal meetings that they were unable to attend owing to coincidence with other such meetings.

The CHAIR said that the appropriate arrangements could be made through the secretariat.

Mr MICHELENA (Venezuela) pointed out that, since informal meetings were by their very nature informal exchanges of ideas, written submissions would have no status and would serve no useful purpose. It was indeed regrettable that smaller delegations would be deprived of the opportunity to take part in negotiations when such simultaneous meetings were held.

The CHAIR observed that, although the procedure of holding simultaneous informal meetings was less than ideal, it was necessary for the timely presentation of a draft text to the Plenary of the Intergovernmental Negotiating Body. Written contributions to such meetings would be taken into account.

Turning to document A/FCTC/INB3/2(a), he suggested that the meeting proceed using the Chair's original proposed text as a basis for amendments in the interest of progressing more rapidly.

Mr BAHARVAND (Islamic Republic of Iran) said that the criterion of expediency should not prevent all proposals from being taken into account. It was important for all delegations to have their say in the negotiation of the draft text. Failure to allow the necessary time for discussion at that stage might jeopardize the final ratification of the text.

**G. *Non-price measures to reduce the demand for tobacco***

**Subparagraph G.1(b) (*Regulation of contents of tobacco products*)**

Ms MAYSHAR (Israel) observed that the structure of the subparagraph was illogical, since it called for the adoption of standards prior to their development. The text should therefore be amended to read: “cooperation in the development and harmonization under the WHO minimal standards for regulation of the contents of tobacco products, including standards for testing and measuring, designing, manufacturing and processing such products and subsequent adoption of such standards”.

Mrs NASCIMBENE DE DUMONT (Argentina) said that a draft similar to the Chair’s text had been produced at the recent meeting of the Latin American group, but differed from that text with respect to the body that should set the standards. The Latin American States considered that that body should be the Conference of the Parties, rather than WHO, and therefore proposed that the last phrase, “and cooperation...” to the end, be replaced by “in accordance with the decisions of the Conference of the Parties.”

Mr ZENKEVICH (Belarus), speaking on behalf of the Commonwealth of Independent States, proposed that, since WHO was not competent to develop standards but could issue recommendations on them, the words “under the auspices” should be replaced by “in accordance with the recommendations”.

Mr MOON (Republic of Korea) said that his delegation supported the Chair’s text in principle, but thought that the words “designing, manufacturing and processing” should be deleted.

Ms BALOCH (Pakistan) proposed that the reference to WHO be deleted and replaced by a reference to national standards.

Mr SANNER (Norway) proposed that the first line be amended to read: “adoption of standards and development of the best practices in setting such standards for the regulation of the content of and exposure to tobacco products”.

Mr MOKONO (Zambia), speaking on behalf of the Member States of the African Region, proposed that the words “and implementation” be inserted after “adoption” in the first line and that the words “established by” be substituted for “under the auspices of” in the last line.

Dr SRINATH REDDY (India), speaking on behalf of the Member States of the South-East Asia Region, said that, while broadly agreeing with the Chair’s text, the group had noted three areas of disagreement, namely that the development of standards should precede their adoption, that national standards should be developed for a variety of tobacco products and in consultation with WHO rather than under its auspices, and that the body responsible for bearing the costs of developing and implementing such standards should be identified. The text should therefore be amended to read: “cooperation in the development and adoption of standards for testing and measuring, designing, manufacturing and processing of various tobacco products, and cooperation in the development and harmonization of such standards in consultation with the World Health Organization and towards this end, each Party shall ensure that the costs of implementing such measures are fully covered by the

tobacco manufacturers". The title of the subparagraph should also be amended to read: "Development of standards for tobacco products".

Dr SHOBAYASHI (Japan) endorsed the view expressed during the second session of the Intergovernmental Negotiating Body that it was difficult to set standards from a health perspective. It would be realistic to follow already established standards and he therefore proposed that the words "using the standards of the International Standards Organization" be inserted before "under the auspices of the World Health Organization".

Ms GASH (United States of America) said that, if Member States agreed that it would be useful to develop an international programme to establish model standards that Member States could adopt, a work programme for developing such standards could be agreed by the Conference of the Parties. The list of candidates for developing model standards should not be included in the Convention, in order not to prejudice future discussions. Member States should commit themselves to establishing domestic science- and health-based agencies with enforcement authority. Her delegation proposed the deletion of the words "including standards for testing and measuring, designing, manufacturing and processing", since such language was too detailed for the text of a convention. In conclusion, the United States objected to the use of the word "harmonization", as it was the sovereign right of States to establish their own standards.

Mrs GOULET (Canada) proposed that the text be amended to read "adoption of standards for the regulation of the testing and measuring of tobacco production emissions. Parties shall make every effort to ensure that standards and test methods be developed through internationally recognized standards-writing organizations utilizing experience gathered by Member States."

Dr CASTILLO CAMINERO (Dominican Republic) stressed the importance of adopting standards for testing and measuring during the manufacture of tobacco products. The Conference of Parties should develop appropriate standards in consultation with Member States, the public health community and other interested parties, including tobacco producers and manufacturers.

It should be noted that developing countries like his own were unable to bear the costs of testing and measuring. Special treatment should therefore be granted to such countries within the convention. His delegation supported regulations on measuring the content of smoke through standard testing methods and informing the public of the findings, but did not advocate imposing changes in the composition of tobacco products.

Mr BAHARVAND (Islamic Republic of Iran) stated that the content of the paragraph did not reflect the title. As an impartial health organization, WHO should set standards for the content of tobacco products, but procedures such as testing and measuring did not fall under its purview, and the references to testing and measuring should therefore be deleted. The words "under the auspices of the World Health Organization" were also inappropriate.

Dr OTTO (Palau) endorsed the proposal of the Indian delegation, with the insertion of the word "marketing" after "manufacturing". Since there were two regulatory challenges - product standards to reduce risk and informing the consumer of those risks - the word "marketing" should be inserted, to ensure that marketing claims would be subjected to regulatory approval or prohibition. In addition, tobacco companies should pay for the regulation of their products.

Mr RAJALA (European Commission), speaking on behalf of the European Community, its 15 Member States and Bulgaria, the Czech Republic, Hungary, Romania, Slovakia and Slovenia, stressed the importance of integrating public health criteria in the identification of standards. Duplication of existing international arrangements should be avoided at all costs. Although the

standards of the International Organization for Standardization (ISO) admittedly had shortcomings, those could be remedied by the involvement of WHO and Member States in preparing standards. He therefore proposed that the Chair's text be adopted up to the words "and cooperation," to be followed by the words "... such standards should be formulated and harmonized through cooperation between the World Health Organization and the International Organization for Standardization, integrating the public health criteria identified in this convention and its protocols".

Mr MANGWIRO (Zimbabwe) endorsed the proposals to delete the phrase "under the auspices of the World Health Organization".

Dr ABOU-DAHAB (Syrian Arab Republic) said that both medical and non-medical criteria should be used, WHO being responsible for content, such as the quantity of tar, and the ISO providing descriptions of products. Collaboration was needed between the two organizations and other interested parties.

Dr SOMATUNGA (Sri Lanka), speaking on behalf of the Member States of the South-East Asia Region, said that the group did not agree with standards regulating the content of tobacco products, since, for example, any amount of nicotine was harmful, not only a specific percentage. Sri Lanka also considered that the words "content of tobacco products" should be deleted and supported the text proposed by the Indian delegation.

The CHAIR, noting that the discussion had taken longer than planned, said that there had been three categories of comment from the floor. The first was for delegates to repeat something which had already been submitted in writing, and which perhaps represented an isolated point of view. Such amendments had been recorded and accepted in the summary records of the second session and it was time to move on. The second was comments on matters of form, such as Israel's perfectly logical comment on changing the order of the subparagraphs within paragraph G.1. The third, the key issue, was the question of who would set standards, who would enact them and who would apply them. He suggested noting the absence of consensus on that overriding issue, which was open to negotiation. There was also the subsidiary matter of WHO's role in the standard-setting process. Discussion of subparagraph G.1(b) should therefore be postponed.

Mr SONG Ee Pin (Singapore), speaking on a point of order, asked what would happen to the proposals set out in the Co-Chairs' working papers if delegates did not repeat them. Would they disappear from the record of the third session? If not, much time could be saved.

The CHAIR said that when one written proposal contradicted another he had no alternative but to note the lack of consensus. What mattered was any lack of consensus on major issues, and there had to be a degree of give and take on secondary ones. The role of the Chair was to focus on the key issues, and in that paragraph the key issue was who would set standards. The only course of action open to him was to secure consensus and, of course, to highlight any true lack of consensus.

Ms BALOCH (Pakistan) said she had understood that the proposals formally put forward by various delegations at the second session, and adopted by the Plenary of that session, remained on the table, as they had not been withdrawn. What would the text look like with new proposals added to existing ones? How could it be consolidated?

The CHAIR said that proposals put forward at the second session were no more than that. They had not been adopted by the Intergovernmental Negotiating Body. The objective of the third session was to make progress, and he saw only one solution, which was to note the absence of consensus. There were secondary issues, issues of form, on which delegates had expressed diametrically opposite

views, and such questions had to be left in abeyance. What was important was the question of who would set standards. The role of the Chair was to identify important matters, and Working Group 1 would submit a paper to the Plenary for approval. He reiterated that the objective of the third session was to make progress, and if that meant dropping a few non-essential amendments, well, that was what democracy was about.

**Subparagraph G.1(c) (*Regulation of tobacco-product disclosures*)**

Dr SHOBAYASHI (Japan) endorsed the Chair's text, with two minor modifications: deleting the word "all" before "ingredients and additives", since that was an unrealistic demand; inserting the phrase "consistent with each Party's domestic legislation" after the word "disclosures". Ms GOULET (Canada) associated herself with those views.

Dr ZENKEVICH (Belarus), speaking on behalf of the Commonwealth of Independent States, suggested replacing the words "major constituents" by "all constituents", since it would be difficult to specify the main constituents to be made public.

Mr SOLANO (Costa Rica), speaking on behalf of the Latin American group, agreed with the wording of the Chair's text as it stood.

Dr SRINATH REDDY (India), speaking on behalf of the Member States of the South-East Asia Region, supported the wording of the Chair's text, with some minor amendments – addition of the words "where appropriate by brand" after "manufacturers", in order to highlight disparities between brands, addition of the words "where applicable" after "tobacco smoke", since otherwise the provision would not apply to non-smoke tobacco products, and replacement of the words "major constituents" by "all constituents".

Mr MOON (Republic of Korea) endorsed the views of the delegate of Japan regarding the disclosure of all ingredients, but suggested replacing the word "all" by "toxic". The disclosure of all ingredients could lead to technical problems at a later date and would have to be approved by consensus. He therefore proposed that the Conference of the Parties should draw up a list of toxic constituents and make the disclosure of those constituents mandatory. The text proposed by the Republic of Korea remained unchanged, as follows: "(c) implementation and taking of necessary steps to enforce measures for tobacco-product disclosures by all manufacturers, including toxic ingredients and additives, and major constituents of tobacco smoke, and promotion of availability of such information to the public. The Conference of the Parties or a subsidiary body mandated by the Conference shall specify the toxic ingredients, additives of tobacco products and major constituents of tobacco smoke which shall be subject to disclosure. Each Party shall apply these measures to all tobacco products manufactured or sold under its jurisdiction;".

Mr BOWA (Zambia), speaking on behalf of the Member States of the African Region, whilst accepting the broad intent of the Chair's text, suggested that it be amended to read: "adoption and implementation of effective measures for tobacco-product disclosures by all manufacturers, including all ingredients and additives and major constituents of tobacco products, and the promotion of such information to the public. The Conference of the Parties shall specify the toxic ingredients, additives of tobacco products and major constituents of tobacco smoke which shall be subject to disclosure, and therefore each Party shall apply these measures to all tobacco products manufactured or sold under its jurisdiction;".

Dr PYAKALYIA (Papua New Guinea), endorsing the wording of the Chair's text as it stood, strongly disagreed with the suggestion to delete the word "all", since consumers had a right to know what the products contained, and such information was vital.

Dr VARABHORN BHUMISWASDI (Thailand) endorsed the position adopted by India and the Member States of the South-East Asia Region regarding the disclosure of ingredients on a brand-by-brand basis.

Ms GASH (United States of America), noting that current legislation in the United States required only a disclosure of ingredients in general, supported a broader requirement for mandatory disclosure to the appropriate government authorities. The public needed clear, meaningful information about toxic constituents, and each country should establish its own system for public disclosure of such information, in accordance with its domestic legislation. At a practical level, each country should be responsible for policing the tobacco products manufactured, packaged or imported for sale within its jurisdiction. She proposed that the entire paragraph be amended to read:

- (c) adoption of measures for tobacco-product disclosure, including measures:
  - (i) to require the disclosure by all manufacturers of all ingredients and additives and major constituents of tobacco smoke to appropriate government authorities;
  - (ii) to promote clear and meaningful information about the toxic constituents of tobacco products and the smoke they may produce to the public.

Each party shall apply these measures to all tobacco products manufactured, packaged or imported for sale or distribution within its jurisdiction.

Dr OTTO (Palau) endorsed the wording of the Chair's text, with the addition of brand-by-brand disclosure, as proposed by the delegations of India and Thailand. Moreover, he suggested that the words "and importers" be inserted after "all manufacturers", in order to hold the importer responsible in cases where the manufacturer had no representative.

Ms ALEXIS-THOMAS (Trinidad and Tobago) suggested that the words "by a government agency" be inserted after "necessary steps", since enforcement could only be carried out under legislation or regulations.

Dr LIU Keling (China) suggested that the words "in accordance with the appropriate domestic legislation" be inserted after "by all manufacturers" and that the words "including all ingredients and additives and major constituents of tobacco smoke" be replaced by "including the main toxic ingredient". Such a provision was simple and would be easy to implement.

Mr MBUYU MUTEBA (Democratic Republic of the Congo) said that the title of subparagraph G.1(c) should be changed from "Regulation of tobacco-product disclosures" to "Information to be included on packaging of tobacco products". The text of the subparagraph should be amended to read: "the adoption and implementation by all the Parties of the necessary provisions concerning the information to appear on tobacco products, including the ingredients and additives and the major constituents of tobacco smoke. These measures shall apply to all tobacco products manufactured or sold by each Party under its jurisdiction".

Mr RAJALA (European Commission), speaking on behalf of the European Community and its Member States, supported the Chair's original text.

The CHAIR, summing up the debate, said that the working group seemed to have reached a consensus on subparagraph G.1(c), with only minor points of terminology remaining to be finalized. The main point under discussion had been the inclusion of a reference to tobacco manufacturers. Many of the amendments suggested by delegations were technical points that surely belonged in the protocols, rather than in the main convention, which should be simple and comprehensible to the general public.

**Subparagraph G.1(d)(i) (*Packaging and labelling*)**

Professor GRANGAUD (Algeria), speaking on behalf of the Member States of the African Region, supported the Chair's text.

Ms GOULET (Canada) supported the proposal to prohibit terms such as "light" or "extra light" on tobacco packaging, since they conveyed an erroneous impression about the characteristics, health effects and health hazards of tobacco products and emissions.

Ms MAYSHAR (Israel) supported the Chair's text, but suggested that the word "similar" be deleted, to read: "... any other term that has the aim ...".

Mr SOLANO (Costa Rica), speaking on behalf of the Latin American group, suggested that the second line of the text be amended to read: "... any other terms, trademarks, or similar signs that have the aim or the effect of conveying ...".

Dr ZENKEVICH (Belarus), speaking on behalf of the countries of the Commonwealth of Independent States, suggested that the opening line of subparagraph G.1(d) be amended to read: "Adoption of appropriate measures, in accordance with the legislation of each Party, to ensure that ...". Many States already had appropriate measures in their existing legislation.

Mr PADILLA (Philippines) suggested that subparagraph G.1(d) be amended to read:

Each unit packet, package or outside packaging of tobacco products sold or manufactured under its jurisdiction must contain, in the principal or official language of the country where it is to be marketed, the following:

- (1) a general warning, including a picture or pictogram illustrative of tobacco's harmful consequences, and including an enumeration of its toxic composition, such as, but not limited to, tar, nicotine and carbon monoxide;
- (2) a prohibition of sale to persons under the age of 18 years;
- (3) the name of the manufacturer, the batch number, the dates of production and expiry and a statement that its sale is only allowed in the country where it is to be marketed;
- (4) on the other hand, each unit packet, package or outside packaging of tobacco products should not contain any misleading or false impression which gives the message that it is a product safer than the others, such as, but not limited to, "low tar", "light", "mild" or "ultra light".

The CHAIR pointed out that the working group had agreed to use the Chair's text as the basis for its deliberations and asked delegations to propose amendments related to that text.

Dr SODNOMPIL (Mongolia) supported the Chair's text of the subparagraph.

Ms ALI HIGO (Djibouti) suggested that the last line of the Chair's text of subparagraph G.1(d)(i) be amended to read: "are not used on any unit packet, package, tobacco product or tobacco product packaging".

Mr HOHMAN (United States of America) said that, although his country was opposed to a complete ban on terms such as "low tar", "light" and so forth, it supported provisions which would require each country to prevent the use of terms such as "low tar" in a misleading fashion on product packaging. He would submit a proposed amendment stating that each country should determine when and whether such terms were used deceptively under its own legislation and should determine the appropriate remedy.

Mrs ALEXIS-THOMAS (Trinidad and Tobago) suggested that the opening line of subparagraph G.1(d) be amended to read: "adoption, implementation and enforcement of appropriate measures to ensure that ...".

Professor HUSSEIN (Sudan) supported the Chair's text, since terms such as "low tar", "light" and "ultra light" were very deceptive.

Mr RAJALA (European Commission), speaking on behalf of the European Community and its Member States, supported the Chair's text, but said that a more general wording would cover a broader range of misleading descriptions and avoid potential linguistic problems when the convention was implemented. The European Community therefore supported the alternative version reading: "[ensure that] texts, trademarks and figurative or other signs suggesting that a particular tobacco product is less harmful than others are not used on the packaging of tobacco products".

Ms TRAN THU THUY (Viet Nam) expressed her delegation's support for the Chair's original text.

Mr WAKIMOTO (Japan) suggested that, in view of the possible legal problems associated with a ban on the words "low tar", "light", etc., the Chair's text should be amended to read: "[ensure that] the terms "low tar", "light", "ultra light", "mild" or any other similar term do not convey the impression that a particular tobacco product is less harmful than others".

Mr MBUYU MUTEBA (Democratic Republic of the Congo) suggested the following wording: "adoption of measures prohibiting the inclusion on the packaging of any packet or package of any expression intended to give, or having the direct or indirect effect of giving, the impression that a particular tobacco product is less harmful than others. Such expressions include the terms 'low tar', 'light' or 'ultra light'."

Dr ABOU-DAHAB (Syrian Arab Republic) said that expressions such as "low tar" reassured smokers and encouraged non-smokers to take up the habit. He therefore supported the Chair's text in its original form.

Mr BARHARVAND (Islamic Republic of Iran) said that the list of terms – "low tar", "light", "ultra light" and "mild" – should be replaced by a more general formulation such as "terms that have the aim or direct or indirect effect of conveying the impression that a particular tobacco product is less harmful than others, or which are encouraging in tone". He had in mind a brand of cigarettes in his own country which claimed to be made from "the best tobacco in Iran". A more general formulation would also help States to draw up the prohibition in language consistent with their existing legislation.

Dr EISSA (Egypt) said that the wording “texts, trademarks and figurative or other signs suggesting that a particular tobacco product is less harmful than others are not used on the packaging of tobacco products” was preferable. He agreed with the representative of the Syrian Arab Republic that terms such as “low tar” encouraged people to smoke, without actually claiming that the product was better than any other.

Mr SHEVCHOUK (Ukraine) said that terms such as “low tar”, “light”, or “ultra light” were not the only possibilities: many other synonyms could be found and might prove more difficult to guard against by means of legislation. He therefore supported the alternative version beginning with the words: “texts, trademarks and figurative or other signs suggesting that ...”.

The CHAIR, summing up the discussion, said that there again seemed to be a consensus on the basic content of the subparagraph, and that only minor editorial points remained to be finalized.

**Subparagraph G.1(d)(ii) (*Packaging and labelling*)**

The CHAIR drew attention to an error in both the English and French versions of document A/FCTC/INB3/2(a), from which subparagraph G.1(d)(ii) had inadvertently been omitted. The text to be discussed could therefore be found either in the Chair’s text, document A/FCTC/INB2/2, or in document A/FCTC/INB3/2(a) Corr.2. With regard to that text, he had noted a proposal at the second session simply to delete the subparagraph and certain suggestions at the current meeting to merge subparagraphs G.1(d)(ii) and G.1(d)(i). It had been suggested that such a merger would satisfy those who had called for a clear text which did not use wording likely to mislead consumers. He asked the members of the working group to express clearly any objection they might have to the merger.

Mr MBUYU MUTEBA (Democratic Republic of the Congo) agreed that the text added nothing and said that its deletion would cause no problems.

Professor GRANGAUD (Algeria) said that, although the African group at its meeting in Algiers had approved the Chair’s text as it stood, he had nothing against forming a single subparagraph, except that it should be borne in mind that subparagraph G.1(d)(i) dealt with the content of tobacco, whereas subparagraph G.1(d)(ii) was primarily concerned with packaging and labelling.

Mr BAHARVAND (Islamic Republic of Iran) expressed agreement in principle with the idea of merging the two subparagraphs, provided the content of subparagraph G.1(d)(i) was not subverted by subparagraph G.1(d)(ii).

Mr HOHMAN (United States of America) said that the merging of the two subparagraphs might be a good idea as they were indeed very similar. His delegation considered it important for individual states to be sure that the wording of the final text was consistent with their national laws. The text of subparagraph G.1(d)(ii) would be strengthened by adding the word “unsubstantiated” after “misleading”, in order to cover the important matter of unproven claims.

**Subparagraph G.1(d)(iii) (*Packaging and labelling*)**

Professor GRANGAUD (Algeria) said that the unit packet or package of tobacco products should carry clear and precise information and that such information must be enclosed in tamper-proof packaging. His delegation would submit the relevant text.

Ms ALI HIGO (Djibouti) proposed that the first part of the text be amended to read “each unit packet, package or packaging of any type of tobacco product” and that the words “in the national language” be added after the words “product information”.

Mr SOLANO (Costa Rica) said that the 19 countries of the Latin American region had expressed strong support for the Chair’s text.

Mr HOHMAN (United States of America) said that labelling provisions appeared in several places in the text of the convention and should therefore be considered as a whole and negotiated together in order to avoid overlap and potential conflict.

Ms GOULET (Canada) pointed out that the content of subparagraph G.1(d)(iii) was dealt with in Article I.3 of the convention. Her delegation could not accept the addition of the words “and is enclosed in tamper-proof packaging”.

Mr MBUYU MUTEBA (Democratic Republic of the Congo) observed that the end of subparagraph G.1(d)(iii) referred to an article on “measures related to the supply of tobacco”, leaving the exact reference to be provided. Since each packet had to bear the information stated in the present article concerning content and labelling, he proposed that the references should be to subparagraphs G.1(c) and G.1(d)(i).

**Subparagraph G.1(d)(iv) (*Packaging and labelling*)**

Mr MBUYU MUTEBA (Democratic Republic of the Congo) noted that subparagraph G.1(d)(iv) contained a reference to health warnings, including a picture or pictogram illustrating the harmful consequences of tobacco consumption, and proposed that items (1), (2) and (3) be reworded as follows: “(1) mandatory warnings: the sale of tobacco products to persons under the age of 18 is prohibited; (2) composition: clear information must be provided about the toxic contents of the tobacco product, specifically tar, nicotine and carbon monoxide; (3) languages: the information on the packaging must be given in the principal language or languages of the country in whose territory the product is placed on the market”.

Dr SANNER (Norway) proposed an addition to the Chair’s text, to be placed after the words “in accordance with Annex [INSERT]”, reading “such messages should cover at least 50% of the principal display panel of the unit packet or package and should be conveyed in the main language or languages of the country in which the tobacco product is to be sold”. Norway also proposed the deletion of item (1) of subparagraph G.1(d)(iv).

Mr VUILLÈME (Switzerland) said that, like Norway, Switzerland proposed the deletion of item (1) concerning the prohibition of sales of tobacco products to persons under the age of 18. Such a requirement should be directed at the seller rather than the consumer, and a prohibition of the kind envisaged would make tobacco products more attractive to young people.

Dr DJAMALUDDIN (Indonesia), speaking on behalf of the countries of the South-East Asia Region, suggested the following wording for subparagraph G.1(d)(iv): “[ensure that] each unit packet or package of tobacco products carries rotational health warnings, including a picture or pictogram, which shall be prescribed or approved by national health authorities, illustrating the harmful consequences of active and passive tobacco consumption in accordance with Annex [INSERT]; (2) ... actual measurements of smoke yields, where applicable, to indicate conformity with prescribed national standards; (3) appear in the principal language ... of the country in whose territory the product is placed on the market.”

Mr SOLANO (Costa Rica), speaking on behalf of 18 of the 19 countries of the Latin American region, said that the group had decided to propose dividing subparagraph G.1(d)(iv) into two, making new subparagraphs G.1(d)(iv) and G.1(d)(v), one relating to warnings and the other to provide a series of warnings related to the content or the prohibition or sale of tobacco products.

Subparagraph G.1(d)(iv) would comprise a series of amendments to the Chair's text tabled in written form. The phrase "general health warning" should be replaced by "warnings that were clear, visible and readable and approved by the competent health authorities". Further on, the word "rotative" should be inserted before "pictogram" and the words "harmful to health" after "tobacco consumption". The proposed new subparagraph G.1(d)(v) would read "each unit packet or package of tobacco products must show additional information in the principal language or languages of the country in whose territory the product is displayed or sold". With regard to the existing item (1) of subparagraph G.1(d)(iv), the Latin American group proposed that the words "to persons under the age of 18" be amended to "to persons under age", since the 18-year age limit did not apply in all countries.

Mr LIPAND (Estonia), speaking on behalf of the three Baltic countries, Estonia, Latvia and Lithuania, expressed support for the Chair's text of subparagraph G.1(d)(iv) with one minor change, replacement of the word "carries" by "must carry".

Mr HOHMAN (United States of America) supported the requirement for clear and conspicuous health warnings but opposed the insertion of specific provisions in that regard. Each country should have the flexibility to adopt a warning system appropriate to the audience targeted. The United States had no objection to a statement encouraging the Parties to require the disclosure of tar, nicotine and carbon monoxide content, but pointed out that no method had yet been devised for measuring individual intake, which varied from one person to another. Moreover, any requirement to disclose tar, nicotine and carbon monoxide yields should include a requirement that such disclosure be non-deceptive. His delegation had prepared a text for that subparagraph which it would submit.

Ms MAYSHAR (Israel) supported the Norwegian proposals regarding the size of the health warning and the deletion of item (1) of subparagraph G.1(d)(iv). Israel also considered that the word "general" should be replaced by "rotating". With regard to the health warning, she suggested that the words "and exposure to second-hand smoke" be added after "tobacco consumption". Alternatively, some more general language, such as a warning referring to the "harmful consequences of tobacco smoke", could be used. In conclusion, her delegation had doubts concerning the requirement for specific labelling in connection with tar, nicotine and carbon monoxide.

Mr EISSA (Egypt) supported the Norwegian proposal concerning the size of the warning, which should be placed on both sides of the packet.

Mr WAKIMOTO (Japan) said that his delegation considered the presence of a health warning on each unit packet or package to be very important from the public health perspective and therefore supported the inclusion of that obligation. With regard to the original Chair's text, it had noted some proposed additions regarding health warnings such as "as specified by WHO" or "recognized in all countries" or "costs associated with tobacco products use" and so forth. In Japan's view, it would be more effective for the scope of such health warnings to be decided by each Party in keeping with its particular circumstances and cultural background. It therefore opposed the insertion of such wording and proposed the addition of the phrase "taking into account each Party's circumstances and cultural background" after the words "general health warning".

Dr ZENKEVICH (Belarus), speaking on behalf of the Commonwealth of Independent States, supported the Chair's text but suggested that item (2) be simplified to provide information on the levels of toxic compounds in tobacco products, especially tar, nicotine and carbon monoxide.

Mr RAJALA (European Commission), speaking on behalf of the European Community and its Member States, proposed the insertion of the words “which may be accompanied by” before the words “a picture”. Item (1) should read: “clearly indicate, if provided by national law, the age limits applicable to the sale of tobacco products”. With regard to item (2) of subparagraph G.1(d)(iv), he drew attention to a text proposed at the second session of the Intergovernmental Negotiating Body, which read as follows: “provide clear information about the toxic output of the tobacco product, specifically tar, nicotine and carbon monoxide and, as appropriate, measurement of smoke yields, calculated on the basis of agreed international standards; alternatively, as regards the measurement of smoke yields, provide reference to where information may be obtained or provide this information separately”. In conclusion, he supported the Chair’s text of item (3).

Ms GOULET (Canada) said that Canada supported the Chair’s text, with some changes. In the introductory text to paragraph G.1, the words “and additional health information” should be added after “tobacco consumption”. Her delegation considered that items (1) and (3) should be deleted and endorsed the views expressed by the delegates of Norway and Egypt regarding the size of the warning to be placed on both sides of the packet.

**The meeting rose at 16:30.**

**WORKING GROUP 1**

**THIRD MEETING**

**Sunday, 25 November 2001, at 9:30**

**Co-Chair:** Dr HATAI CHITANONDH (Thailand)

**DRAFTING AND NEGOTIATION OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL:** Item 3 of the Agenda (continued) (Documents A/FCTC/INB3/2(a) and Corr.1 and Corr.2, A/FCTC/INB3/WG1/Conf.Paper A)

**G. *Non-price measures to reduce the demand for tobacco*** (continued)

**Paragraph G.1** (continued)

**Subparagraph G.1(d) (*Packaging and labelling*)** (continued)

Dr ABOU-DAHAB (Syrian Arab Republic) supported subparagraph G.1(d)(iv) but proposed that a reference to carbon monoxide be added, since it was as important as nicotine and tar content. As carbon monoxide could reduce oxygen access to the blood and blood vessels, it was important to take account of its presence in smokers, who could suffer disorders as a result.

Dr REN Minghui (China) said that his delegation agreed in principle with the Chair's text of subparagraph G.1(d), but suggested that the reference to a picture in subparagraph G.1(d)(iv) be replaced by pictures generally showing that tobacco was harmful to health and public health, because China had special legislation in that respect. The question was one of different traditions and habits in different countries.

Dr ZENKEVICH (Belarus) proposed that the word "levels" be inserted in subparagraph G.1(d)(iv)(2), in order to elicit information on the levels of toxic contents in tobacco products.

Professor HUSSEIN (Sudan) supported the Chair's text and agreed with the Syrian delegation that a reference to carbon monoxide should be included. The volume contained should also be indicated. In order to send strong messages and because labelling was very important for combating tobacco consumption, his delegation suggested that the area covered by warnings be increased to at least 75%.

Mr MOON (Republic of Korea) reiterated his delegation's view that the specification of toxic products was a technical matter which should be decided by the Conference of the Parties or by a subsidiary party and therefore proposed that the words "specifically tar, nicotine and carbon monoxide" be deleted from subparagraph G.1(d)(iv)(2).

Professor GRANGAUD (Algeria), speaking on behalf of the countries of the African Region, supported the Chair's text with some modifications. The Member States concerned suggested that the health information message should be defined in consultation with WHO, that the prohibition of sales by persons under the age of 18 should be incorporated in subparagraph G.1(d)(iv)(i) and that the text

should contain a reference to the toxic emissions of tobacco product smoke. The relevant proposals would be submitted to the secretariat.

Mr PRASAD RAO (India), speaking on behalf of the Member States of the South-East Asia Region, reiterated the view that the health warning should be rotational, that warnings, whether in the form of pictures or of messages, should be approved by national health authorities and that the harmful consequences of both active and passive consumption should be covered. The South-East Asia Group had agreed on a revised proposal for the text, reading “each unit packet or package of tobacco products carries a rotational health warning, including a picture or pictogram, which shall be prescribed or approved by national health authorities, illustrating the harmful consequences of active and passive tobacco consumption”.

Ms TKACHENKO (Russian Federation), speaking on behalf of the Commonwealth of Independent States, suggested that, since it was not necessary to include a picture or pictogram in all the cases covered by subparagraph G.1(d)(iv), the word “possibly” should be inserted before “including”. She also proposed that the phrase “including actual measurements of smoke yields” be deleted from subparagraph G.1(d)(iv)(2).

Dr GHANEM (Egypt) pointed out that tobacco products contained many toxic substances, including 25 that were carcinogenic. It had been demonstrated that tobacco smoking could cause lung cancer, and that should be specified. When referring to the contents, it should be stated that certain substances provoked cancer.

Dr ACHARYA (Nepal) said that an act on tobacco control recently drafted in Nepal provided that tobacco products should not be sold by minors. His delegation therefore suggested that subparagraph G.1(d)(iv)(1) be amended to read “clearly indicate the prohibition of sales of tobacco products to and by persons under the age of 18;”.

Ms LE THI THU HA (Viet Nam) supported the Chair’s text in general, but endorsed the Indian delegation’s suggestion to insert the phrase “approved by the national health authority” after the word “pictogram”.

Dr OTTO (Palau), speaking on behalf of the Pacific Island nations, observed that generic packaging was an important strategy with respect to tobacco packaging and labelling and therefore proposed that the chapeau of subparagraph G.1(d)(iv) be amended to read “each unit packet or package of tobacco products carries one of a series of rotating health warnings, messages discouraging smoking, or other mandatory messages, and that generic packaging is required for the parts of the packets other than where the mandatory messages are required. The mandatory messages are such that they:”. The text would be submitted to the secretariat.

Dr ABOU-DAHAB (Syrian Arab Republic) observed that pictures and pictograms were very important for illiterate people who smoked a considerable amount, and that references to them should therefore be retained. His delegation considered that the warnings should occupy 50% of the allotted space, while pictures and pictograms should take up the remaining 50%. There were some 20 to 25 substances to be mentioned on packets, and the warnings concerned should be easy to read and clearly expressed: smokers should be made aware that those substances had been proved by WHO to be toxic. A sentence chosen for printing on packets or packages should convey the information that there were some 4000 toxic substances, the most important of which were carbon monoxide, tar and nicotine.

**Subparagraph G.1(e) (*Education, training and public awareness*)**

Mr WAKIMOTO (Japan) said that, since the meaning of “counter-advertising” in the chapeau still appeared to be unclear, his delegation suggested that the clause “including counter-advertising” be deleted. The same applied to the clause “assure universal access to” in subparagraph G.1(e)(i), as the meaning of “universal access” was also unclear. In Japan, a national health promotion movement entitled “Healthy Japan 21” had been begun in 2000, implementing educational programmes aimed at making all people aware of the health risks of tobacco consumption by 2010. His delegation considered that the use of the word “fully” or “all” was appropriate as the goal for that kind of movement, but not in the text of a convention, and therefore recommended that the word “fully” be deleted from the Chair’s text, in order to make the provision more credible.

Dr REN Minghui (China) agreed in principle with the Chair’s text, but proposed that the words “government civil servants” be added after “educators” in subparagraph G.1(e)(iv). His delegation considered that government civil servants should have the responsibility and obligation to set an example to the whole of society. The proposal would be submitted in writing.

Mrs CARLOT-TARY (Vanuatu) proposed that the words “promote, establish”, be inserted before “develop” in subparagraph G.1(e)(i).

Professor GRANGAUD (Algeria) pointed out that the countries of the African Region had proposed a revised text of subparagraph G.1(e) during the second session of the Intergovernmental Negotiating Body, incorporating subparagraph G.1(e)(ii) in the introductory chapeau. That region had also suggested having a proposal insisting on political commitment. However, he suggested that subparagraph (e)(i) would remain unchanged.

Mrs DELTOUR (Belgium), speaking on behalf of the European Community and its Member States, supported by Bulgaria, the Czech Republic, Hungary, Romania, Slovakia and Slovenia, said that the text before the working group served as a good basis for a discussion of preventive measures, which included education, training and public awareness and should be targeted at priority groups, such as pregnant women and children. She suggested that the term “counter-advertising” in the chapeau be replaced by “smoking prevention campaigns”, which better described the objective of the subparagraph. Moreover, the term “counter-advertising” lost its meaning if restrictions were placed on tobacco advertising and promotion, as proposed elsewhere in the text. Although subparagraph G.1(e)(iii) was useful, it would be preferable to be more specific about the type of information to be covered by that provision. The basis for essential information on the activities of the industry could be provided by the regular company reports usually required under national law. In addition, information on products supplied by companies, such as details of additives, should also be included. Given the volume of information involved, she suggested that information technology be used in circulating the data.

Mr PRASADA RAO (India), speaking on behalf of the countries of the South-East Asia Region, proposed that the words “and electronic” be added between “audiovisual” and “media” in subparagraph G.1(e)(i). With regard to subparagraph G.1(e)(ii), he proposed that the words “smoking cessation” be replaced by “the cessation of tobacco use”.

Mr SOLANO (Costa Rica), speaking on behalf of the 19 countries of the Latin American Group, proposed that the introductory chapeau of subparagraph G.1(e) be amended to read: “facilitation and strengthening of health promotion and prevention programmes that incorporate actions in education, information and communication aimed at public awareness, including counter-advertising and mechanisms to evaluate the impact of such activities”. Secondly,

subparagraph G.1(e)(i) should read: “promote universal access to effective and comprehensive educational and public awareness programmes, based on scientific methods, on the health and environmental risks of tobacco consumption and exposure to tobacco smoke, as well as on the benefits of smoking cessation and also promote the incorporation of the contents of such programmes in school curricula”. Finally, in subparagraph G.1(e)(ii), the word “of” after “health risks” should be replaced by “resulting from” and the words “nicotine addiction” should be inserted after “tobacco consumption”.

Ms TKACHENKO (Russian Federation), speaking on behalf of the six countries of the Commonwealth of Independent States (CIS), proposed that the word “campaigns” in the chapeau be replaced by “programmes”, as the word “campaign” in Russian denoted a short-lived and not very serious event and should not be applied to a long-term effort involving the whole population.

Ms HENSON (United States of America) proposed that subparagraph G.1(e)(i) be amended to read: “develop effective and comprehensive educational and public awareness programmes to ensure that the general public, and notably children, young persons and vulnerable groups are informed about the health risks of tobacco consumption, exposure to tobacco smoke, and the benefits of tobacco-free lifestyles.” She also proposed that subparagraph G.1(e)(ii) be amended to read “implement effective education campaigns educating the general public of health risks associated with exposure to second-hand smoke, with special attention on the subject of smoke-free homes and protecting the most vulnerable groups, including children, pregnant women, and persons with chronic lung diseases and heart disease”.

Professor HUSSEIN (Sudan) suggested that the following sentence be added to subparagraph G.1(e)(ii): “Information on health risks of tobacco consumption and exposure to tobacco smoke should be included in school curricula”.

Dr ABOU-DAHAB (Syrian Arab Republic) proposed that the words “educational and public awareness” in subparagraph G.1(e)(i) be changed to “educational, public and economic awareness”, in order to emphasize the detrimental consequences of economic risks and to increase public awareness of the economic benefits of smoking cessation.

Mr PADILLA (Philippines) observed that the words “various print and audiovisual media” were unduly limiting, and proposed that subparagraph G.1(e)(i) be amended to read: “develop, promote and assure universal access to effective and comprehensive educational and public awareness programmes, in whatever form or medium, on the health risks of tobacco consumption, exposure to tobacco smoke and benefits of smoking cessation and tobacco-free lifestyles”.

Dr GHANEM (Egypt) proposed that the words “and training programmes to stop smoking” be added after “training programmes on tobacco control” in subparagraph G.1(e)(iv).

Mrs ALI HIGO (Djibouti) proposed that subparagraph G.1(e)(ii) be strengthened by replacing the words “ensure that” by “take measures to ensure that”.

Mr SHEVCHOUK (Ukraine), referring to subparagraph G.1(e)(iv), said that it was important to have training programmes not only for educators and health professionals but also for civil servants, in order to reflect their important role at both the local and the national level. Accordingly, he proposed that the following sentence be added at the end of the subparagraph “and create systems of material and other encouragement for responsible officials to demonstrate the benefits of tobacco-free lifestyles through their own example”.

Dr PYAKALYIA (Papua New Guinea) emphasized the importance of Article G in the convention and urged caution in proposing amendments, in order to avoid playing into the hands of the tobacco industry. To that end, he proposed that the words “both nationally and within the framework of international cooperation” be added after “including counter-advertising” in the chapeau of subparagraph G.1(e). He also endorsed the Philippine delegation’s amendment to subparagraph G.1(e)(i).

Mr CHAVES SELL (Costa Rica), speaking on behalf of the Member States of the Latin American Region, proposed that the title of subparagraph G.1(e) be amended to read “Education, training and communication for public awareness.”

Mr PO SAMNANG (Cambodia) proposed that the word “campaigns” be replaced by “programmes” in the chapeau of subparagraph G.1(e) and that the term “counter-advertising” be deleted, since certain countries lacked the financial resources required to counter tobacco industry advertising.

Mrs PRICE (New Zealand) said that subparagraph G.1(e)(i) should include the requirement not only to develop but also to implement and evaluate educational and public awareness programmes.

Dr ABOU-DAHAB (Syrian Arab Republic) said that cigarette advertising played a major role in certain countries. To be effective, counter-advertising should carry the same weight as tobacco industry promotion, but in fact many countries were unable to finance such costly campaigns. He therefore suggested that the wording of subparagraph G.1(e) include the obligation that countries allocate a portion of their taxes and other financial resources to tobacco-related counter-advertising and to tobacco-related diseases.

Mr MBUYU MUTEBA (Democratic Republic of the Congo) said that his country had experienced ineffective public awareness campaigns that had failed to carry the message, such as one targeted at students under the age of 18. The campaign was supposed to encourage them to abstain from smoking, but the message that had been conveyed was that adults were free to choose whether or not to smoke, whereas students should abstain. The campaign had further failed to address the detrimental effects of tobacco or to employ the term “tobacco control”. To ensure that the right educational message was conveyed, his delegation proposed that subparagraph G.1(e)(iv) be amended to include the development of training handbooks for secondary school and university students.

Ms HENSON (United States of America) proposed that the words “of relevance to promoting tobacco prevention and control programmes” be added at the end of subparagraph G.1(e)(iii).

Dr ZAIN (Malaysia) expressed the view that involvement of the tobacco industry in youth anti-smoking programmes would result in confusing messages about tobacco, particularly since such youth-targeted programmes were not peer-reviewed and had not been shown to reduce youth smoking prevalence. Her delegation therefore suggested that a new provision reading “ensure that the tobacco industries do not participate in any education, training and public health awareness activities” be included in subparagraph G.1(e).

Mrs ALI HIGO (Djibouti) said that her delegation considered it important to include a reference to prevention programmes in subparagraph G.1(e)(iv) and proposed that the words following “health professionals” be replaced by “and other persons working in prevention and tobacco control programmes”.

Professor GRANGAUD (Algeria), speaking on behalf of the Member States of the African Region, proposed that the words “endeavour to” before “promote” be deleted from subparagraph G.1(e)(vi).

Mr EMMANUEL (Saint Lucia) said that his delegation endorsed the Chair’s text of the subparagraphs under discussion but considered that the words “the media” should be inserted after “public agencies” in subparagraph G.1(e)(vi), since the media played a very important role in health promotion. Saint Lucia also suggested the addition of a new subparagraph G.1(e)(vii), reading “develop mechanisms for monitoring and evaluating the impact of health promotion programmes.”

Dr AL-HAMDAN (Saudi Arabia) expressed his delegation’s full support for subparagraph G.1(e)(iii), in the belief that anti-tobacco campaigns would be bolstered by information about the tobacco industry and that such campaigns should be designed for students of both sexes. He therefore suggested that the term “of both sexes” be specified in subparagraph G.1(e)(v).

Mr PRASADA RAO (India), speaking on behalf of the Member States of the South-East Asia Region, observed that it was very difficult to list all the information on the tobacco industry required under subparagraph G.1(e)(iii) and therefore proposed that that text be amended to read “facilitate public access to a wide range of information on the tobacco industry as relevant to the objectives of this convention”. With regard to subparagraph G.1(e)(v), the educational programmes should be designed for students as well as for young people outside the educational system, of whom there were many in the developing world. His delegation therefore proposed that the subparagraph be amended to read “develop and implement effective and appropriate formal and informal educational interventions on tobacco control for students at various levels of education and young people.” His delegation had no amendments to subparagraph G.1(e)(iv) but supported the Chinese delegation’s suggestion that training programmes and tobacco control should include administrators and especially political leaders: such programmes required considerable political advocacy at various levels and political leaders needed to be sensitized about that issue.

Mr MOON (Republic of Korea) said that his delegation had two proposals concerning subparagraph G.1(e)(iii). In the first place, the term “tobacco industry” was too broad and comprehensive, and the absence of a clear definition could lead to implementation difficulties. Second, since the disclosure of information of the content of tobacco products and advertising and promotion were already covered in other articles of the convention, subparagraph G.1(e)(iii) could well be deleted, but if it was considered necessary to retain it, his delegation favoured the Co-Chairs’ text reading “facilitate public access to information on the tobacco industry that is publicly available and useful for national tobacco control programmes.”

Mr CHAVES SELL (Costa Rica), speaking on behalf of the 19 countries of the Latin American Region, said that his delegation supported the Chair’s text of subparagraphs G.1(e)(iii), G.1(e)(v) and G.1(e)(vi), but considered that the words “effective and appropriate” in subparagraph G.1(e)(iv) were superfluous in that context and therefore proposed that they be deleted.

Ms GOULET (Canada), referring to subparagraph G.1(e)(iii), reiterated the view expressed at the second session of the Intergovernmental Negotiating Body that disclosure of information on the tobacco industry had to be subject to what it was permissible to disclose under domestic law. Concerning subparagraph G.1(e)(v), her delegation supported the Indian proposal that the measures in question should encompass young people outside the school system as well as students.

Mr LIPAND (Estonia), speaking on behalf of the three Baltic countries of Estonia, Latvia and Lithuania, endorsed the Chair’s text of subparagraph G.1(e) with amendments. He emphasized that

educational training programmes on tobacco control must be based on specialized and recognized manuals and said that he would submit his delegation's proposals to the secretariat.

Mr SHEVCHOUK (Ukraine), referring to subparagraph G.1(e)(v), said that while prevention measures for tobacco control among students and young people were desirable, his delegation had the impression that such an approach to youth was stereotypical. As young people felt remote from tobacco-related diseases, an approach that might have a greater impact on them might be to depict smoking as a first step towards the development of narcotics dependence. His delegation's amendment to that effect would be submitted to the secretariat.

Dr ABOU-DAHAB (Syrian Arab Republic) observed that subparagraph G.1(e)(vi) contained no reference to the private sector, although that sector could also play a promotional role in anti-tobacco campaigns and in connection with advertising, perhaps through incentives such as prizes for the public. His delegation therefore proposed that such a reference be inserted in the subparagraph.

Mr PADILLA (Philippines), referring to subparagraph G.1(e)(iii), said that his delegation regarded public access to information as a right and therefore proposed that the text be amended to read "guarantee the right of access to information on the tobacco industry consistent with this convention." With regard to subparagraph G.1(e)(iv), since the Philippines had a law that distinguished workers from professionals, he proposed that the word "workers" be inserted between "professionals" and "educators". In conclusion, he agreed with the Indian delegation that a reference to "out-of-school youth" should be inserted at the end of subparagraph G.1(e)(v).

Dr OTTO (Palau), speaking on behalf of the Pacific Island nations supported the Malaysian proposal for a new subparagraph on the exclusion of the tobacco industry from participation in educational programmes, but suggested that the new text should begin with the words "disqualification of tobacco companies and their non-tobacco subsidiaries and agents from participation in any ...". He also endorsed the views expressed by the Chinese and Indian delegations on the need to associate political and other public officials with the education process.

Mrs PRICE (New Zealand) proposed that a new text be added to subparagraph G.1(e), reading "that programmes aimed at vulnerable or indigenous groups should be developed by these groups or with significant input from those groups". New Zealand also strongly supported the exclusion of the tobacco industry from any involvement in the development or delivery of educational and public awareness programmes.

Ms HENSON (United States of America) proposed that subparagraph G.1(e)(v) be deleted, as its main ideas were already addressed in subparagraph G.1(e)(i).

Dr ARRIAGA WEISS (Mexico) suggested that subparagraph G.1(e)(iv) should contain a specific reference to university programmes for medical and nursing staff.

Dr GHANEM (Egypt) proposed that the words "and ensure that they are integrated in the relevant educational curricula" be added at the end of subparagraph G.1(e)(v).

Mrs ALI HIGO (Djibouti) proposed that the words "and ensure that the tobacco industry plays no role in any educational, training and public awareness programmes" be added at the end of subparagraph G.1(e)(iii). Her delegation endorsed the Indian proposal to include a reference to "out-of-school youth" in subparagraph G.1(e)(v), as well as the Algerian proposal to delete the words "endeavour to" from subparagraph G.1(e)(vi). Djibouti also supported the proposal to add a new

subparagraph reading “develop qualitative and quantitative evaluations of the promotion and prevention programmes, so as to promote those which are successful in tobacco control.”

Dr FARSHAD (Islamic Republic of Iran) proposed the addition of a new subparagraph reading “ensure that the tobacco industry or persons dealing with packaging, labelling and advertising do not participate in any education, training and public awareness activities”.

Mr VUILLÈME (Switzerland) supported the Chair’s text as it stood, with the amendment proposed by the United States delegation in its first statement on the subject.

Dr GAMARRA DE CÁCERES (Paraguay) said that in her country, the tobacco industry had sought an alliance with the Ministry of Education to develop programmes which promised a lot but delivered little, taking up space with advertisements that had even reached the classroom with the subliminal message that smoking was a pleasure enjoyed by adults. The working group should try to reach a consensus on totally excluding the tobacco industry from sponsorship of any educational activities.

Mr GRBEŠA (Croatia) proposed that the phrase “based on recognized scientific manuals” be inserted after “tobacco smoke” in subparagraph G.1(e)(i) and after “tobacco control” in subparagraph G.1(e)(iv).

Mrs SURENCHIMEG (Mongolia) proposed that the words “development of strategies for tobacco control” in subparagraph G.1(e)(vi) be replaced by “development and implementation of strategies for education, training and public awareness programmes”.

Dr NAGY (Hungary) said that her delegation associated itself with those which were against any participation by the tobacco industry in prevention and training programmes, since such involvement sent controversial messages and was counterproductive. That position should be clearly stated in the text, preferably in subparagraph G.1(e)(v).

Dr TRAN THU THUY (Viet Nam) endorsed the Malaysian proposal to insert a new subparagraph on the disqualification of the tobacco industry from educational programmes.

Mr FARIAS (Peru) associated his delegation with those which wished to ensure that the tobacco industry did not participate directly or indirectly in the educational programmes or campaigns at issue.

Dr THINLEY (Bhutan) proposed that subparagraph G.1(e)(vi) be amended to read “endeavour to promote the participation of private, public and nongovernmental organizations in the development of programmes and strategies for tobacco control.”

Dr HABIB (Iraq) stressed the importance of including tobacco control measures in school curricula, in order to predispose young people against smoking. Counter-advertising did not necessarily prevent smoking and people who had stopped smoking often resumed the habit because of the withdrawal symptoms experienced.

Dr AL-BADDAH (Saudi Arabia) proposed that subparagraph G.1(e)(v) be amended to read: “promote and strengthen the participation of public agencies and the private sector, including nongovernmental organizations, in the development of programmes and strategies, so that the tobacco industry is excluded from legislative and other initiatives”.

Mr BATIBAY (Turkey) said that his delegation endorsed all proposals for the exclusion of the tobacco industry from training programmes in order to avoid any conflict of interest.

Mr SAMNANG (Cambodia) supported earlier proposals to include a reference to “political and other public officials” in subparagraph G.1(e)(iv) and endorsed the Indian delegation’s proposals to include references to “out-of-school youth” in subparagraph G.1(e)(v) and to “the private sector” in subparagraph G.1(e)(vi). Cambodia also associated itself with proposals to exclude the tobacco industry from educational and public awareness programmes.

#### **E. General obligations**

Mr MOON (Republic of Korea) proposed that the words “taking into account its specific circumstance” be inserted after “Party” in paragraph E.1.

Ms KASHINGU (Zambia), speaking on behalf of the Member States of the African Region, suggested that the word “review,” be inserted after “periodically” in paragraph E.1. Otherwise, the African States were in full agreement with the Chair’s text for that paragraph.

Mr CHAVES SELL (Costa Rica), speaking on behalf of the Member States of the Region of the Americas, proposed that the words “develop, implement” in paragraph E.1 be replaced by “adopt” and that the words “comprehensive, multisectoral” and “such as standards” be deleted.

In paragraph E.2, he suggested that the words “to the extent possible” be deleted. In subparagraph E.2(a), he proposed that the word “coordinating” be deleted and the words “preferably coordinated by the ministry of health” be inserted after “mechanism”, as a safeguard against interference from other quarters. In subparagraph E.2(b), he proposed that the words “devising and formulating” should replace “harmonizing”.

Mr SHEVCHOUK (Ukraine) said that the words “where appropriate”, in paragraph E.1, were unnecessary in the context of national policy. In any case, paragraph E.2 contained similarly attenuating language.

Mr PRASADA RAO (India), speaking on behalf of the Member States of the South-East Asia Region, endorsed the text of paragraph E.1 as it stood. The phrase “for reducing tobacco consumption and exposure to tobacco smoke” should be added to the end of subparagraph E.2(b) after the word “policies”, in order to explain their purpose.

Mrs DELTOUR (Belgium), speaking on behalf of the European Community and its Member States, supported by Bulgaria, Hungary, the Czech Republic, Slovakia, Slovenia and Romania, endorsed the Chair’s text of paragraph E.1. As far as subparagraph E.2(a) was concerned, she considered that it would be more appropriate to include the question of financing in the section of the convention dealing with financial resources and therefore proposed that the words “... , and adequately finance a” be replaced by “an adequate”. She was in favour of replacing the word “harmonizing” by “developing” in subparagraph E.2(b) and proposed that the words “and introduce and resource measures to” be inserted before “reduce” in subparagraph E.2(c).

Mr SANDAGE (United States of America) said that, whereas the United States already had in place a comprehensive, multisectoral, national tobacco-control strategy that was quite progressive and effective, his delegation considered that each country should take the action that would be most effective in its own context and therefore reaffirmed the proposal it had submitted at the second session of the Intergovernmental Negotiating Body, namely to replace the words “such as standards, in

accordance with the provisions of this Convention” by “in furtherance of the object and purpose of this Convention”.

Before commenting on paragraph E.2, his delegation would await the outcome of the further discussions he understood were to take place. He shared the reservations expressed by the Belgian delegation concerning the reference to finance in subparagraph E.2(a) and favoured an amendment along the lines it had suggested. At the end of that subparagraph, the reference to “inputs from relevant government and civil society sources” should be broadened to “public inputs”, since strategies involving maximum public involvement in their formulation succeeded best. With regard to subparagraph E.2(b), he endorsed the view expressed by Belgium with regard to the word “harmonizing”. With regard to subparagraph E.2(c), he favoured replacing “in accordance with the provisions of this Convention” by “in furtherance of the object and purpose of this Convention” for the reasons already stated.

Ms TKACHENKO (Russian Federation), speaking on behalf of the Commonwealth of Independent States (CIS), said that, although paragraphs E.1 and E.2 were acceptable in essence, in the CIS countries either there was no national coordinating mechanism or, if any such mechanism existed, it was not adequately financed. She therefore suggested that the beginning of subparagraph E.2(a) be amended to read “establish and adequately finance ...”. While agreeing in principle with the Chair’s text for subparagraph E.2(b), she suggested that it could be rendered more effective by adding the words “developing and” before “harmonizing”. She supported the Chair’s text for subparagraph E.2(c).

Mr INADOME (Japan) said that he was not in favour of the proposal to insert the words “taking into account its specific circumstance” in paragraph E.2, but preferred to retain the Chair’s text. With regard to subparagraph E.2(a), a reference to the financing of national coordinating mechanisms would impose too great a burden on the convention and the words “and adequately finance” should therefore be deleted. In the same subparagraph, he suggested that the word “mechanism” be replaced by “arrangement”. The range of measures mentioned in subparagraph E.2(b) should be broadened and to that end he suggested adding the words “or other appropriate” after “administrative”. In the same subparagraph, the word “harmonizing” should be replaced by “developing”. Since countries had different economic and social backgrounds and it was difficult to regulate them all in the same way, different approaches towards achieving the same target should be acceptable.

Ms GOULET (Canada) said that her delegation was broadly in favour of the text as it stood. She suggested that the words “such as standards” in paragraph E.1 could be understood to be covered by the term “other measures”, and could therefore be deleted. In paragraph E.2, she proposed that the words “to the extent possible within the means at its disposal and its capabilities” be deleted and agreed with Belgium and Japan that the word “harmonizing” in subparagraph E.2(c) should be replaced by “developing”.

Ms ALI-HIGO (Djibouti) expressed support for the purpose of the obligation with its general and financial aspects, and suggested that the word “comprehensive” be deleted from paragraph E.1. She endorsed the Canadian proposal to delete the phrase “to the extent possible” from paragraph E.2, as such wording might weaken the obligations. With regard to subparagraph E.2(a), she supported the words “relevant sources” proposed by Belgium and also the amendment to subparagraph E.2(b) proposed by the Russian Federation.

Ms KAZHINGU (Zambia), speaking on behalf of the Member States of the African Region, suggested that paragraph E.2 be amended to read “To this end each Party shall, subject but not limited to the financial mechanisms contained herein, undertake to:”. She also proposed, with a view to

ensuring the harmonization of policies at regional or subregional level, as appropriate, that the phrase “upwards to the highest standards” be added at the end of subparagraph E.2(b).

Ms MAYSHAR (Israel) expressed support for the Chair’s text subject to an appropriate redrafting of the phrase “to the extent possible within the means at its disposal and its capabilities” in subparagraph E.2(a). If the word “harmonizing” was to be retained in subparagraph E.2(b), the word “upwards” should be added after “policies”.

Mrs KONDAJ (Albania), referring to paragraph E.1, proposed the deletion of the word “multisectoral” and of the phrase “such standards,” which seemed to be redundant as it was covered by the words “and other measures”. In subparagraph E.2(b), she supported the replacement of the word “harmonizing” by “developing”, since policies could not be harmonized unless they had already been developed.

Mr LIPAND (Estonia), speaking on behalf of the Baltic countries of Estonia, Latvia and Lithuania, endorsed the Chair’s text subject to the addition of the phrase “for implementing the provisions of this Convention” at the end of subparagraph E.2(b) and the insertion of the phrase “tobacco dependence and nicotine addiction” after the words “tobacco smoke” in subparagraph E.2(c).

Mr CASTILLO SANTANA (Cuba) supported the text proposed by Costa Rica on behalf of the Latin American Region, subject to the insertion of the word “consumption” between “tobacco” and “control” in subparagraph E.2(a).

Dr AKINSETE (Nigeria) said that it was inappropriate to replace the word “harmonizing” by “developing” in subparagraph E.2(b), since the text was intended to address the issue of policy harmonization; the question of policy development was covered by paragraph E.1.

Dr OTTO (Palau), speaking on behalf of the Pacific Island nations, supported the Chair’s text for paragraph E.1 and endorsed the Canadian proposals to delete the phrase “to the extent possible within the means at its disposal and its capabilities” from paragraph E.2 and to replace the word “harmonizing” by “developing” in subparagraph E.2(b). He also supported the Baltic countries’ proposal with respect to subparagraph E.2(c).

Dr ABOU-DAHAB (Syrian Arab Republic) stressed the need for consistency in the Arabic version of the English term “tobacco consumption”.

Dr KURBANOVICH (Turkmenistan) suggested that subparagraph E.2(c) be incorporated in some way in paragraph E.1. He would submit a written proposal along those lines to the secretariat.

Professor DAGLI (International Union against Tuberculosis and Lung Disease), speaking at the invitation of the CHAIR and also on behalf of the International Nongovernmental Coalition against Tobacco, said there was universal agreement among public health experts that any exposure to second-hand smoke was a significant yet preventable health risk to non-smokers. It was therefore essential to take comprehensive action to eliminate exposure, especially in the workplace. Although legislation on the creation of smoke-free environments existed in many countries, it was rarely enforced; in other countries smoking restrictions, where they existed, were unclear. A ban on smoking in public venues and the workplace would protect children and other non-smokers from second-hand smoke, would increase public awareness about the health risks of smoking and would encourage people to smoke less.

The convention could do much to encourage national efforts for the establishment of smoke-free environments. Signatories of the convention should commit themselves to implementing legislation

and other measures to ban smoking in the workplace and in public. The instrument must maintain a single, science-based standard for the effective protection of non-smokers and must not draw distinctions between different types of workplaces and employees warranting protection. Scientific evidence showed that only a ban on smoking in the workplace would be truly effective. Such a ban must be reflected in the convention as the most effective public health standard. It seemed a reasonable goal for the convention and would ensure the commitment of States Parties to the protection of all non-smokers.

Mrs SULLIVAN (International Union against Cancer), speaking at the invitation of the CHAIR, said that she wished to outline her organization's position on package labelling. In line with the Omani proposal, the convention should establish the following requirements with respect to packaging: at least 50% of the outside of packages should carry warnings; there should be a series of rotated warnings; at least some of the warnings should contain pictures or pictograms; and the exact contents of pictures and texts should be determined by individual countries.

Many studies had shown that the larger the warning the greater its effect and that pictures had far greater impact than text alone. It was worth noting that package warnings entailed no expense for governments but reached all smokers. Pictures were particularly effective in countries with low literacy rates, as the tobacco companies showed in their advertising.

Her organization also recommended generic packaging for parts of the package other than the warning and in that connection endorsed the Sydney Agreement on Tobacco Control. There was considerable evidence to suggest that generic packaging could reduce smoking.

Mr BATES (International Nongovernmental Coalition Against Tobacco), speaking at the invitation of the CHAIR, said that there was no justification for allowing the use of the terms "light", "low tar", "mild" or "ultra light". Such health claims for cigarettes were designed to reassure people who might otherwise give up smoking – a deliberate strategy by tobacco companies, revealed in their internal documents. Although cigarettes might well register different levels of tar and nicotine when measured on machines, human beings were not machines and when the level of nicotine on machines was low, people would adjust their smoking by taking more drags, smoking more of the tobacco or inhaling more deeply, so that in the end they took in the same amount of cancerogenic tar and toxic gases. Smokers might believe they were using smaller quantities of deadly products, but in fact, they were merely the victims of a deadly confidence trick by the tobacco industry.

The convention was not intended to protect automatic smoking machines but human life. His organization therefore recommended support for a text that banned misleading health claims irrespective of whether they were explicit or implicit in the branding. The fact that such health claims might be regarded as the trademarks or intellectual property of tobacco companies was irrelevant: all misleading health claims should be banned.

The CHAIR said that the working group had completed its work and thanked delegates for the spirit of cooperation which had prevailed throughout their deliberations.

**The meeting rose at 11:55.**

**WORKING GROUP 1**

**FOURTH MEETING**

**Tuesday, 27 November 2001, at 19:40**

**Chair:** Professor J.-F. GIRARD

**DRAFTING AND NEGOTIATION OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL:** Item 3 of the Agenda (Documents A/FCTC/INB3/2(a) and Corr.1 and Corr.2, A/FCTC/INB3/3, A/FCTC/INB3/WG1/Conf.Paper A and A/FCTC/INB3/WG1/Conf.Paper B) (continued)

The CHAIR said that the Working Group had before it documents of two kinds, conference papers A and B which related to subjects examined in formal meetings, namely subparagraphs G.1(b), G.1(c), G.1(d) and G.1(e) and paragraphs E.1 and E.2, as well as three other conference papers bearing numbers rather than letters and representing the output of the Group's informal meetings, at which paragraphs G.2, G.3, G.4, H.1, H.2, I.8, I.9, I.10, I.11, I.12, K.2, D.1, D.2 and D.3 had been examined in that order. The current formal meeting would begin with the latter category, in order to enable delegations that had not attended the informal meetings to express their views before the documents in question were given formal status. The Group would then discuss the documents already possessing formal status. All the documents were working papers submitted by the Co-Chairs, who had endeavoured to strike a just balance between all the positions expressed while at the same time making the documents more readable. They hoped that those texts would serve as a useful working basis for fruitful discussion that would allow the negotiations to proceed.

In response to questions and comments by Ms NASCIMBENE DE DUMONT (Argentina), Ms BALOCH (Pakistan), Mr ALCAZAR (Brazil), Dr REDDY (India), Dr BERNARD (United States of America) and Mr YI Xianling (China), the CHAIR said that the documents before the Group represented a synthesis of proposals made at the informal meetings. All the proposals that had been submitted in writing would be reproduced in the record of the current session of the Intergovernmental Negotiating Body, as had been the case for the second session (document A/FCTC/INB3/3). If delegates who considered that their proposals had been ignored in the existing documents so wished, they could resubmit them, so that they would appear in the record of the third session of the Intergovernmental Negotiating Body.

In response to further questions from Ms BALOCH (Pakistan), the CHAIR said that the proposals of delegations and groups of delegations would be circulated to all the States attending the current session of the Negotiating Body within the forthcoming days or weeks. A second document, presenting the results of the deliberations of Working Group 1, would be issued to serve as a basis for further negotiations. That document, which would take account of all the comments and proposals made at the current meeting, would continue to be provisional and would not be binding at that stage of the negotiations. In any case, the current meeting offered delegations an opportunity to make new contributions, to ask questions and to reintroduce issues that appeared to have been overlooked. Those statements would be reflected in the document to be submitted to the Plenary for approval.

**G. *Non-price measures to reduce the demand for tobacco***

The CHAIRMAN invited the Working Group to consider the following text for paragraph G.1:

**G. Reducing the demand for tobacco**

1. Each Party shall adopt the [appropriate] legal, administrative or other similar measures, [according to its capabilities,] and cooperate with other Parties in developing non-price policies, in order to reduce tobacco consumption and exposure to tobacco smoke, including *inter alia*:

Ms ALEXIS-THOMAS (Trinidad and Tobago) suggested that the words “fully protect non-smokers from” be inserted between “and” and “exposure”, in paragraph G.1.

Dr SAADI (Lebanon) proposed the addition of the phrase “in order to reduce tobacco consumption and to protect non-smokers from exposure to tobacco” at the end of paragraph G.1.

Mr MAKONO (Zambia), speaking on behalf of the Member States of the African Region, proposed that the text should read “... similar measures and policies and cooperate with other Parties in adhering to international standards set by the World Health Organization ...”. He also proposed that the original title of Article G, “Non-price measures to reduce the demand for tobacco”, be retained.

Ms BALOCH (Pakistan) endorsed the Zambian proposal concerning the title of Article G.

Mr ALCAZAR (Brazil) suggested that the phrase “concerned with adopting the international standards that will be established by the Conference of the Parties for the development of non-price policies” be inserted after “Parties”.

Ms BALOCH (Pakistan) proposed that the words “cooperate with other Parties in” be placed in square brackets.

Mrs ZIKMUNDOVA (Belgium), speaking on behalf of the European Union and its Member States, proposed that the phrase “including measures to combat illicit traffic,” be added after “and cooperate with other Parties in developing non-price policies”.

Mr ALLEN (New Zealand) suggested that the words “protect non-smokers from” be inserted after “reduce tobacco consumption and”.

Dr DJAMALUDDIN (Indonesia), speaking on behalf of the Member States of the South-East Asia Region, proposed that the words “adhering to international standards set by the World Health Organization.” be inserted after “should cooperate with other countries” and that the words “the prevalence of” be added after “reduce”.

Mr INADOME (Japan) proposed that the word “similar” be placed in square brackets.

The CHAIR said he took it that the Working Group wished to adopt the draft text of paragraph G.1, with the amendments proposed, to serve as a basis for further negotiations at the fourth session of the Intergovernmental Negotiating Body.

**The draft text of paragraph G.1, as amended, was adopted for transmission to the Plenary.**

The CHAIRMAN invited the Working Group to consider the following text:

**G. Non-price measures to reduce the demand for tobacco**

**G.1(a) (Passive smoking)**

(a) measures that provide for [appropriate] protection from exposure to tobacco smoke in [enclosed] public places, [indoor] workplaces, and public transport; special attention shall be given to the protection of vulnerable groups such as people living with chronic illnesses, pregnant women, and children, [and in particular in health care facilities and places providing services to children].

Dr BERNARD (United States of America) proposed the following text for subparagraph G.1(a): “implementation of legislation and other effective measures at the appropriate government level that prohibit smoking in places providing services to children and in enclosed public places, public transport and the indoor premises of government agencies and comparable bodies intended for the public; promote systematic protection from exposure to tobacco smoke in indoor private workplaces and restaurants, with particular attention to special risk groups such as children and pregnant women, and persons with chronic lung diseases and heart disease”.

Mrs ZIKMUNDOVA (Belgium), speaking on behalf of the European Union and its Member States, proposed that the brackets be removed from the word “appropriate”.

Ms BALOCH (Pakistan) proposed that the phrases “vulnerable groups such as” and “special risk groups” in the United States proposal and, finally, the whole of that proposal be placed in square brackets.

Dr REDDY (India), speaking on behalf of the countries of the South-East Asia Region, reiterated the proposal to change the title to read “protection against passive smoking”. In the operative paragraph, he suggested that square brackets be placed round the phrase “special attention ... women and children”, which served only to limit measures against passive smoking.

Ms ALI HIGO (Djibouti) proposed that the word “systematic” be replaced by “appropriate” in brackets, and that the words “measures ... that provide for” be replaced by “measures requiring”. The places where smoking was prohibited should be listed exhaustively, but vulnerable groups should not be specified, since such qualification weakened the text.

Mr INADOME (Japan) said that protection from exposure to tobacco smoke should not be limited to vulnerable groups and suggested that the phrase “special attention shall be ... services to children” be placed in brackets.

Mr MOON (Republic of Korea) said that he generally supported the proposals of the United States and Japanese delegations, but suggested that the text from “special attention” to the end of the sentence be placed in brackets. His delegation would submit an alternative text referring to the prohibition of smoking in areas or places frequented by special risk groups such as children and pregnant women.

Mr EISSA (Egypt) endorsed the Indian delegation’s comments on the title and the subparagraph itself.

Mr MAKONO (Zambia), speaking on behalf of the Member States of the African Region, supported the proposal to retain the original title and considered that the word “appropriate” in subparagraph G.1(a) should remain in brackets. He suggested that the words “enclosed” and “indoor” be deleted and that the words “and in particular health care facilities” be placed in brackets.

Mr LIPAND (Estonia), speaking on behalf of the three Baltic countries Estonia, Latvia and Lithuania, proposed that the sentence should end with the words “public transport” and that the phrase “with particular ... pregnant women” be placed in brackets.

Ms TKACHENKO (Russian Federation), speaking on behalf of the Commonwealth of Independent States (CIS), noted that the proposal she had put forward at the preceding meeting had been widely endorsed. It was unnecessary to list vulnerable groups after “public transport”, since it was extremely difficult to identify who was likely to form part of such a group.

Ms ALEXIS-THOMAS (Trinidad and Tobago) reiterated her earlier proposals to retain the original title of the Article and to expand the heading “passive smoking” to include “secondhand smoking”. With regard to subparagraph G.1(a), she suggested that the word “implementation” be reinserted and that the phrase “and enforcement of legislation and other effective” be added before the word “measures”.

Professor HUSSEIN (Sudan) said that passive smoking was a major problem and that strong language should therefore be used. The words “enclosed” and “indoor” should be deleted and the words “sporting facilities” and “places of worship” should be added after “public transport”.

Dr AL-HAMDAN (Saudi Arabia) supported the preceding speaker’s views, particularly with regard to enclosed public places. Since people could be exposed to tobacco smoke at sports events, the word “crowded” should also be inserted.

Mr MBUYU MUTEBA (Democratic Republic of the Congo) proposed that the title of the subparagraph be changed to “protection of non-smokers”, as the term “passive smoking” was not readily understandable to non-smokers. There was no need to specify risk groups, since everyone was exposed to the danger of passive smoking, and the subparagraph should therefore end with the words “public transport”. Moreover, since many miscarriages were due to parents’ smoking habits and the children of smoking parents were constantly exposed to smoke in closed areas, his delegation proposed that the words “and in the family environment” be added after “public transport”.

Dr ABOUD-DAHAB (Syrian Arab Republic) said that people suffering from respiratory diseases, infants under the age of one year and the elderly should be mentioned among vulnerable groups.

Dr STOJANOVIC (Yugoslavia) said that subparagraph G.1(a) was one of the most important provisions in the whole convention and strongly recommended that it be strengthened. Her delegation supported the United States proposal and did not think that it was possible to go much further with specifying vulnerable groups, because they were categorized differently in different situations. The question of children’s rights and smoking in the family could not be dealt with for the time being, but it should be addressed in the future: as a paediatrician, she considered that smoking in the family environment was the main source of harm caused to children by tobacco.

The CHAIR said he took it that the Working Group wished to adopt the draft text of subparagraph G.1(a), with the amendments proposed, to serve as a basis for further negotiations at the fourth session of the Intergovernmental Negotiating Body.

**The draft text of subparagraph G.1(a), as amended, was adopted for transmission to the Plenary.**

The CHAIR invited the Working Group to consider the following text:

***G. Non-price measures to reduce the demand for tobacco***

2. In addition to measures specified in Article [INSERT], and as long as advertising is permitted, each Party shall commit itself to:

(a) adopting [and gradually implementing] measures [in conformity with its national Constitution], to [prohibit] / [strictly restrict] all forms of direct and indirect tobacco advertising, marketing, promotion and sponsorship, including incentives such as gifts, coupons, rebates, competitions and purchaser programmes, with the aim of reducing the appeal of tobacco products to all segments of society;

(b) requiring that tobacco companies disclose expenditures on sales, advertising, promotion and sponsorship, and make those figures available [in aggregate] to the public;

(c) adopting measures and imposing appropriate regulatory restrictions to ensure that each advertisement carries a clear and conspicuous health warning, and that tobacco advertising, promotion and sponsorship do not promote a tobacco product by any means that are false, misleading or deceptive or that are likely to create an erroneous impression about its characteristics, health and environmental effects, hazards or emissions;

[(d) adopting measures and imposing appropriate regulatory restrictions in order to phase out tobacco promotion and sponsorship of sporting and cultural events, within (...) years after the entry into force of the Convention;]

[(e) adopting measures and cooperating in order to [phase out] / [eliminate] / [ban] cross-border advertising, promotion and sponsorship, by whatever means or medium of communication, as well as any form of sponsorship by the tobacco industry within (...) years after the entry into force of the Convention.]

[3. The Conference of the Parties shall initiate the preparation of a protocol setting out appropriate rules and procedures in the area of tobacco advertising, promotion and sponsorship.]

[4. The Conference of the Parties shall initiate the preparation of a protocol setting out appropriate rules and procedures in the areas of regulation of the content of tobacco products, tobacco-product disclosures, and packaging and labelling of tobacco products.]

***H. [Demand reduction measures concerning tobacco dependence and cessation]/[Fighting tobacco dependence]***

1. Each Party shall take [all practical, effective and culturally relevant] measures, based on scientific evidence and best practices, to treat tobacco dependence and to promote cessation of tobacco use.

2. Each Party shall undertake the following measures [taking into account national circumstances and priorities, and with special attention to the needs of vulnerable groups]:

(a) implementation of promotional and educational programmes and interventions aimed at encouraging cessation of tobacco use;

(b) integration of treatment of tobacco dependence, routine advice, and counselling services on cessation of tobacco use, into national health, education and development programmes, plans and strategies. Support for such actions shall

be provided by trained health workers [including physicians and nurses], pharmacists, teachers, community and social workers;  
(c) establishment in health care facilities and other rehabilitation centres of programmes for diagnosis, counselling, prevention and treatment of tobacco dependence, with priority emphasis on primary health care services.

***I. [Measures related to] / [Controlling] the supply of tobacco***

*[(Elimination of [supply and] / [sales] to and by young persons)]*

8. Each Party shall [take appropriate measures to] prohibit tobacco sales and supply to [persons under the age of 18] / [minors as determined by domestic law]. To this end, each Party shall:

- (a) require that all suppliers of tobacco products post signs at the point of sale which carry a health warning and indicate that the sale of tobacco products to persons under age is prohibited;
- (b) require that all [sellers] / [suppliers] [request that each tobacco purchaser provide appropriate evidence of having] / [take all reasonable steps to ensure that buyers have] reached the age of [18] / [majority as determined by domestic law];
- (c) [Strictly restrict access to] / [prohibit] tobacco vending machines, and prohibit tobacco sales via the Internet.

[9. Each Party shall take appropriate measures to prohibit the sale of tobacco products by [persons under the age of 18] / [minors as determined by domestic law].]

10. Each Party shall [, according to its capabilities,] prohibit the sale [and the free distribution] of cigarettes individually or in packets of fewer than [20] cigarettes.

11. Each Party shall ensure compliance with paragraphs 8 to 10 above and implement appropriate penalties against sellers and distributors for the violation of measures prohibiting sales of tobacco products to [persons under the age of 18] / [minors as determined by domestic law].

12. Each Party shall take [appropriate legal and other] measures to ensure that no criminal penalties are imposed against [persons under the age of 18] / [minors as determined by domestic law] for selling tobacco products or buying them for personal use.

***K. Surveillance, research and exchange of information***

2. The Parties undertake, [according to their capabilities], to develop, promote and coordinate national, regional and global research programmes for the purpose of the Convention. To this end, each Party shall [take appropriate measures to]:

- (a) initiate and cooperate, directly or through competent international bodies, in the conduct of research and scientific assessments, as detailed in Annex [INSERT];
- (b) promote and encourage research to develop surveillance indicators and contribute to the reduction of tobacco consumption and harm from tobacco use, including exposure to second-hand smoke, particularly in developing countries and countries in economic transition, taking fully into account the recommendations of the Conference of the Parties.
- (c) promote and strengthen training and support for all those engaged in tobacco control activities, including research, implementation and evaluation, in cooperation with competent international bodies.

**D. Guiding principles**

To achieve the objectives of the Convention and to implement its provisions, the Parties shall be guided, *inter alia*, by the principles set out below:

1. It should be a public health imperative to prevent and halt the growth of tobacco consumption and to reduce its current impact, in order to protect and promote the health of all individuals and to reduce tobacco-related morbidity and mortality at national and global level.
2. Full information should be provided to the general public about the addictive and lethal nature of tobacco consumption, and everyone should be adequately protected from exposure to tobacco smoke and its health and environmental consequences.
3. Strong political commitment is needed to develop and support comprehensive multisectoral measures and coordinated responses at both national and international level.

The CHAIR opened the debate on subparagraphs G.2(a) and G.2(b).

Mrs ZIKMUNDOVA (Belgium), speaking on behalf of the European Union and its Member States and the associated countries of Bulgaria, Hungary, the Czech Republic, Slovakia, Slovenia and Romania, suggested that the word “adopting” be replaced by “imposing” and the word “measures” by the phrase “appropriate restrictions on all forms of advertising”. The words “direct and indirect” should be placed in brackets pending the decisions of the working group which was considering definitions. Her delegation welcomed the inclusion of a reference to the total ban on cross-border advertising in subparagraph G.2(e), since the specific nature of cross-border advertising was such that it needed to be covered by an international instrument. She suggested that the words “without prejudice to strict national rules” be added at the end of subparagraph G.2(a). Her delegation preferred to leave the issue of disclosure of expenditure on advertising by the tobacco industry to a later stage in the formulation of the convention, but acknowledged that disclosure might be useful if there was no total ban on advertising. Subparagraph G.2(b) should therefore be placed in brackets.

Professor GRANGAUD (Algeria), speaking on behalf of the Member States of the African Region, said that the Co-Chairs were to be congratulated on the current version of paragraph G.2 which was much clearer than the previous text. With regard to subparagraph G.2(a), his delegation was in favour of a ban on advertising. It had also proposed an amendment to subparagraph G.2(b) on the development of laws allowing States to require the tobacco industry to disclose its expenditure. The current text was unrealistic and the opening words of the subparagraph should be amended to read “establishing regulatory measures allowing tobacco companies to be required, ...”.

Dr REN Minghui (China) proposed that the word “commercial” be inserted before “sponsorship” in the third line of subparagraph G.2(a). The phrase “including incentives such as gifts, coupons, rebates, competition and purchaser programmes” should be placed in brackets, as should the whole of subparagraph G.2(b).

Mr INADOME (Japan) said that the words “strictly restrict” in subparagraph G.2(a) should be replaced by “appropriately restrict” and that the phrase “including incentives such as gifts, coupons, rebates, competitions and purchaser programmes” should be placed in brackets, because it was too detailed. He doubted the effectiveness of subparagraph G.2(b) and suggested that it be placed in brackets.

Mrs KRIVELIENE (Lithuania), speaking on behalf of the Baltic countries of Estonia, Latvia and Lithuania, said that only a comprehensive ban on tobacco advertising could be effective as a public health strategy. Her delegation therefore supported the views of those who had proposed the

prohibition of all forms of direct and indirect tobacco advertising, marketing, promotion and sponsorship, including incentives offered by tobacco companies, in order to reduce the appeal of tobacco products to all segments of society. Her delegation would submit a written text for subparagraphs G.2(a) and G.2(b).

Dr REDDY (India), speaking on behalf of the Member States of the South-East Asia Region, said that three States had proposed a complete ban on all direct and indirect forms of tobacco advertising. Although that proposal was reflected in subparagraph G.2(a), the opening sentence of paragraph G.2, “In addition to measures specified in Article [INSERT], and as long as advertising is permitted, each Party shall commit itself to:”, presupposed the continuation of advertising and therefore made it difficult to accommodate a complete ban as an alternative in subparagraph G.2(a). His delegation therefore proposed that the words “and as long as advertising is permitted” be placed in brackets. If all forms of advertising were prohibited, subparagraphs G.2(b) to G.2(e) would become redundant, although his delegation believed that subparagraph G.2(b) should be maintained because the monitoring of tobacco company expenditure would ensure that the ban was observed. The title “Advertising, promotion and sponsorship” should be restored.

Mr MOON (Republic of Korea) suggested that the words “in aggregate” in subparagraph G.2(b) be transferred to follow the word “expenditures”.

Mr EISSA (Egypt) observed that the title of paragraph G.2, “Advertising, promotion and sponsorship”, was missing from the text. His delegation endorsed the view that subparagraph G.2(a) should be a strong provision, imposing measures and ensuring that they were enforced. Subparagraph G.2(b) should be retained because it obliged the tobacco companies to be transparent by disclosing their expenditure on sales and advertising.

Mr PADILLA (Philippines) said that his delegation was in favour of a complete ban on tobacco advertising, but realized that it would take time to carry out that measure and proposed in the meantime that subparagraphs G.2(a) to G.2(e) be consolidated in paragraph G.2, reading “Each Party shall phase out all forms of direct, indirect and cross-border advertising, as well as any form of marketing, promotions and sponsorships of sporting, cultural and other similar events, including the giving of grants and incentives such as gifts, coupons, rebates, discounts competitions and frequent purchaser programmes, within a period of two (2) years from the entry into force of this convention.”

Those proposals would be submitted to the Secretariat.

Dr BERNARD (United States of America) proposed that the words “and domestic law” be added after “its national constitution” in subparagraph G.2(a) and that the word “marketing” in that text be placed in brackets. In connection with proposals to place subparagraph G.2(b) in brackets for possible deletion, it should be noted that expenditure on sales, advertising, promotion and sponsorship constituted important information for public health reasons.

Mrs LE THI THU HA (Viet Nam) said that her delegation would prefer stronger wording for paragraph G.2, and supported the Indian proposal to place the words “as long as advertising is permitted” in brackets. She suggested that paragraph G.2(a) should begin with the words “adopting measures to prohibit all forms of tobacco advertising, ...”.

Mr DILEMRE (Turkey) said that Turkey had adopted a very strong position on prohibiting any type of advertising of tobacco products and would therefore also like the language of paragraph G.2 to be strengthened. His delegation suggested the insertion of a new paragraph G.2 reading “In addition to the measures specified in Article [INSERT], each Party shall commit itself to adopting measures to ban all forms of direct and indirect tobacco advertising, including cross-border advertising, by

whatever means or medium of communication, marketing, promotion and sponsorship, including incentives such as gifts, coupons, rebates, competitions and purchaser programmes, after the entry into force of this Convention.” The text should be placed in square brackets for the time being.

Mrs ALI HIGO (Djibouti) said that her delegation supported the deletion of the words “as long as advertising is permitted” in the introductory text of paragraph G.2 and the replacement of the word “adopting” by “imposing” in subparagraph G.2(a).

Dr AL-HAMDAN (Saudi Arabia) proposed that the words “and as long as advertising is permitted” in the introductory text be replaced by “in addition to measures specified in Article [INSERT], and pending a total ban on advertising, each Party shall commit itself to: “. Subparagraph G.2(b) should be retained because it provided for a degree of monitoring of tobacco companies. The Conference of the Parties should be given information on those issues: for example, any reduction in tobacco company advertising budgets was a clear sign of success.

Ms TKACHENKO (Russian Federation), speaking on behalf of the Commonwealth of Independent States, welcomed the consensus that the CIS States had reached on the Co-Chairs’ text for subparagraphs G.2(a) and G.2(b). Her delegation proposed that the words “if they are not trade or commercial secrets” be added at the end of subparagraph G.2(b).

Professor HUSSEIN (Sudan) said that his delegation endorsed the non-price measures mentioned in subparagraph G.2(a) and fully supported a complete ban on direct and indirect advertising, promotion and sponsorship. Sudan considered that paragraphs G.2(a) and G.2(b) would be in contradiction with each other if the convention was strongly and successfully executed, because in that event the tobacco companies would have nothing to declare with respect to advertising, promotion and sponsorship. The phrase “until the convention is fully executed” should therefore be added to subparagraph G.2(b).

Mr MBUYU MUTEBA (Democratic Republic of the Congo), noting that the Philippine proposal concerning a two-year period for the introduction of an advertising ban related to a transitional measure, suggested that a text entitled “Transitional Measures” be introduced to follow the framework convention, since the body of that instrument should only contain permanently applicable provisions. He proposed that the words “and as long as advertising is permitted”. be deleted from paragraph G.2 and that the opening words of subparagraph G.2(a) be amended to read “adopting and implementing measures to eliminate all forms of direct and indirect tobacco advertising ...”. With regard to subparagraph G.2(b), his delegation considered that the information in question should not be disclosed to the public, but should be made available to certain competent bodies and therefore proposed that the subparagraph be amended to read “each Party shall undertake to require that tobacco companies disclose to the competent body expenditures on sales, advertising, promotion and sponsorship”.

The CHAIR invited the Working Group to comment on subparagraphs G.2(c), G.2(d) and G.2(e).

Ms BALOCH (Pakistan), referring to subparagraph G.2 (d), proposed that the word “progressively” be reinserted before “phase out” and that the words “within (...) years after the entry into force of the Convention” be placed in brackets.

Mr ALCAZAR (Brazil), speaking on behalf of the Member States of the Latin American Region, proposed that the phrase “of sporting and cultural events” in subparagraph G.2(d) be replaced by “of any type of event”.

Dr ARMADA (Venezuela), speaking on behalf of the Member States of the Latin American Region, said that the Spanish text of subparagraph G.2(d) should be aligned on the English version.

Ms MAYSHAR (Israel) proposed that the words “of sporting and cultural events” in subparagraph G.2(d) be placed in brackets.

Dr REDDY (India), speaking on behalf of the Member States of the South-East Asia Region, reiterated his delegation’s view that subparagraphs G.2(c), G.2(d) and G.2(e) would become redundant and should be deleted if a complete ban on all forms of advertising were agreed upon and therefore proposed that subparagraph G.2(c) as a whole be placed in brackets, as subparagraphs G.2(d) and G.2(e) already were.

Mr INADOME (Japan) suggested that the phrase “that each advertisement carries a clear and conspicuous health warning” in subparagraph G.2(c) be placed in brackets until its implications had been more clearly researched. In subparagraph G.2 (e), he proposed that the words “[phase out]/[eliminate]/[ban]” be replaced by “restrict”.

Mrs ALI-HIGO (Djibouti) endorsed the proposal to place subparagraph G.2 (c) in brackets.

Dr BERNARD (United States of America) said that his delegation continued to attach great importance to subparagraph G.2(c), since tobacco advertising, promotion and sponsorship should not promote products by any false, misleading or deceptive means and advertisements should carry clear and conspicuous health warnings. He nevertheless suggested that the words “and environmental” be placed in brackets, as it was out of place in that subparagraph.

Professor GRANGAUD (Algeria), speaking on behalf of the Member States of the African Region, observed that the contents of subparagraphs G.2(c), G.2(d) and G.2(e) were in contradiction with the words “as long as advertising is permitted” in the introductory text and proposed that that phrase be placed in brackets.

The CHAIR invited the working Group to comment on paragraphs G.3 and G.4.

Mr AL-HAMDAN (Saudi Arabia) proposed that the words “rules and procedures in the area of tobacco advertising” in paragraph G.3 be replaced by “rules and procedures in banning tobacco advertising”.

Mrs ZIKMUNDOVA (Belgium), speaking on behalf of the European Union and its Member States and referring to paragraph G.3, expressed the view that the proposed protocol on rules and procedures in the area of tobacco advertising, promotion and sponsorship should not be confined to manufacturers.

Mr PADILLA (Philippines) proposed that paragraph G.3 be amended to read “The Conference of the Parties shall initiate the preparation of a protocol or protocols, as it may deem necessary, setting out appropriate rules and procedures during the phase-out period for tobacco advertising, promotions and sponsorships.”

Mrs ALI HIGO (Djibouti) proposed the addition of a new paragraph G.5, which would introduce the participation of nongovernmental organizations in the control of tobacco advertising. The paragraph would incorporate the words “allowing governmental and nongovernmental organizations specialized in tobacco control to provide the public counter-publicity arguments for situations in which advertising has not been completely eliminated.”

**H. [Demand reduction measures concerning tobacco dependence and cessation]/  
[Fighting tobacco dependence]**

Mr ALLEN (New Zealand), also speaking on behalf of Canada, proposed that the words “and evaluation”, in brackets if necessary, be added after “implementation” in subparagraph H.2(a). With regard to references in Article H and subparagraph G.1(e) to paying special attention to the needs of vulnerable groups, New Zealand and Canada intended to develop language to address the needs of indigenous peoples via the convention, since those peoples were faced with their own specific problems concerning tobacco use, including a prevalence rate of two to three times that of the general population. He suggested that a reference to that issue be included in a conference paper, perhaps in a footnote.

Mr ALCAZAR (Brazil) speaking on behalf of the Member States of the Latin American Region, proposed that the words “including smoke-free environmental programmes in educational institutions, health units, work places and sporting environments” be added after “interventions” in subparagraph H.2(a). He also proposed that the word “promotional” be replaced by “health promotion”.

Mr INADOME (Japan) proposed that the phrase “based on scientific evidence and best practices” in paragraph H.1 be placed in brackets, as it could restrict the measures taken by countries.

Mr MAKOMO (Zambia), speaking on behalf of the Member States of the African Region, proposed that the text “fighting tobacco dependence” in the title of Article H be placed in brackets, as the title “Demand reduction measures concerning tobacco dependence and cessation” was more appropriate. He also suggested that the words “design and” be inserted before “implementation” in subparagraph H.2(a).

Mr ARMADA (Venezuela) proposed the addition of a new paragraph in Article H concerning the preparation by the Conference of the Parties of a protocol setting out appropriate rules and procedures in the area of tobacco dependence and cessation.

Ms BALOCH (Pakistan) suggested that the word “Fighting” in the title of Article H be replaced by “reducing” and that brackets be placed round the phrase relating to “indigenous peoples” proposed by the delegations of New Zealand and Canada, since it might provoke debates concerned with racism, like those experienced during the recent World Conference on Racism.

Ms WELLS (Australia) said that New Zealand and Canada were to be thanked for highlighting the impact of smoking on indigenous populations. Australia also had disproportionately high prevalence rates among indigenous peoples and would continue to work with those communities in considering how best to frame an FCTC response.

Dr GHANEM (Egypt) proposed that subparagraph H.2(c) be deleted, since it was concerned with the issue of dependence already dealt with in subparagraph H.2(b).

Mr CHAVES SELL (Costa Rica), speaking on behalf of the Member States of the Latin American Region, proposed that paragraph H.1 be amended to read: “Each Party shall take all practical and effective measures, supported by scientific evidence and in accordance with its economic, social and cultural characteristics, to secure a better cost-benefit relation to treat tobacco dependence and to promote cessation of tobacco use”.

**I. *[Measures related to]/[Controlling] the supply of tobacco [(Elimination of [supply and]/[sales to and by young persons])]***

Ms BALOCH (Pakistan) reiterated her earlier proposal that the words “within the means at their disposal” be inserted after the word “require” in subparagraphs I.8(a) and I.8(b). She also proposed that brackets be placed round paragraph I.10 and that paragraphs I.11 and I.12 be transferred to Article J, Compensation and liability, which dealt with those issues.

Mr STEIGER (United States of America) suggested that the word “suppliers” in subparagraphs I.8(a) and I.8(b) be replaced by “sellers” and that the words “to persons under the age of 18” be added after “Internet” in subparagraph I.8(c). He proposed that the brackets round paragraph I.9 be removed and strongly supported the words “Each Party shall take appropriate measures to prohibit the sale of tobacco products by persons under the age of 18 as well as to persons under the age of 18”. Finally, he suggested removing the brackets from paragraph I.10 and endorsed the words “prohibit the sale [and the free distribution] of cigarettes individually or in packets of fewer than [20] cigarettes”.

Dr SANNER (Norway) noted that the clauses of Article I concerning measures to reduce smoking among children and young children contained no reference to the role model of parents and therefore supported the proposal for a new subparagraph I.8(c bis) reading “prohibit the manufacturing and sale of sweets and toys in the form of tobacco products”.

Ms GOULET (Canada), noting that paragraph I.12 was intended to protect young people from criminal prosecution when they bought cigarettes for their own personal use, pointed out that the inclusion of the words “for selling” would enable smugglers to avoid criminal responsibility by using underage youth to sell tobacco products on their behalf. She therefore proposed that those words be placed in square brackets.

Mr REN Minghui (China) proposed that paragraphs I.9 to I.12 be replaced by the following text: “I.9 Each Party shall take appropriate measures to prohibit the sale and wholesale of tobacco products, including individual cigarettes, to persons under the age of 18. Violation of these measures shall incur appropriate penalties.”

Dr REDDY (India), observed that the text of paragraph I.11 provided for penalties against the sale of tobacco products to young persons but not against those who were responsible for such sales. The words “and by” should therefore be added after “products to” in the last line of the paragraph. In paragraph I.11, in view of the reference to “compliance with paragraphs 8 to 10”, since paragraph I.10 contained the qualifying phrase “according to its capabilities”, those words should also be inserted in paragraph I.11. In conclusion, he suggested that the word “supplier” be retained in paragraph I.8, since it covered not only sellers but also persons who gave tobacco products to young persons.

Mr INADOME (Japan) proposed that the words “to the extent possible within the means at its disposal and its capabilities” be added at the end of the second sentence of the introductory text of paragraph I.8 and that subparagraph I.8(c) be replaced by the words “require appropriate measures to restrict persons under the age of 18 to access to tobacco vending machines.” He also proposed that the words “in case that it would be necessary to prevent the sales of tobacco products for minors” be added at the end of paragraphs I.9 and I.10 and that paragraph I.12 be placed in brackets, because time would be needed to study the compatibility of the provision with domestic law.

Ms ZIKMUNDOVA (Belgium), speaking on behalf of the European Union and its Member States and the Associated States, said that it was inappropriate to include penalty clauses in the

convention and that paragraphs I.11 and I.12 should therefore be merged to read “Each Party shall implement appropriate legal and other measures to verify compliance with paragraph 8 above, taking account according to national law of the position applicable in case of breaches of law by underage purchasers and sellers of tobacco products.”

Mr ALCAZAR (Brazil) suggested that the brackets round the word “prohibit” in subparagraph I.8(c) be removed and that the following passage be added after “via the Internet” in the same subparagraph:

“... and to ban the selling of tobacco products in shelves or supermarkets, minimarkets, convenience shops and alike establishments where customers can freely pick up the goods and the sale of tobacco products by street vendors and pavement stalls.”

Professor GRANGAUD (Algeria), speaking on behalf of the Member States of the African Region, noted that those States’ concerns had been taken into account in drafting Article I, but proposed that the Chair’s text of the title, “Elimination of sales to and by young persons”, be restored. In general, a choice would have to be made between the terms “minors” and “persons under the age of 18” throughout the text. His delegation preferred the words “persons under the age of 18”, for the sake of consistency with the Convention on the Rights of the Child.

Dr YOUNG (Singapore) proposed that the whole of paragraph I.12 be placed in brackets, since her country had progressive and effective legislation that prohibited smoking by persons under the age of 18. She strongly supported measures to prohibit the sale of tobacco products to young persons.

Mr MOON (Republic of Korea) proposed that, for the sake of consistency between paragraphs I.9 and I.10, the words “and the free distribution” be added after “sale” in the first line of paragraph I.9.

Dr. VARABHORN BHUMISWASDI (Thailand) said that, for practical reasons, it would be preferable to choose the variant “prohibit” in subparagraph I.8(c).

Mr MBUYU MUTEBA (Democratic Republic of the Congo) said that the title of Article I should read “Elimination of sales to or by young persons” and proposed the following wording for subparagraphs I.8(a) and I.8(b):

“8. Each Party shall take appropriate measures to prohibit tobacco sales to persons under the age of 18. To this end, each Party shall:

- (a) impose on sellers of tobacco products the requirement to post a sign at the point of sale indicating that the sale of tobacco products to persons under age is prohibited;
- (b) impose on sellers of tobacco products the requirement to ensure that purchasers are over 18 years of age”.

Mr PADILLA (Philippines) proposed that subparagraph I.8(c) be amended to read “prohibit tobacco vending machines or other similar apparatus.” Paragraphs I.8, I.10, I.11 and I.12 should be placed in brackets, mainly because paragraphs I.11 and I.12 were out of place in Article I and should be transferred to Article J, Compensation and Liability.

**K. Surveillance, research and exchange of information**

**Paragraph K.2**

Mr CHAVES SELL (Costa Rica), speaking on behalf of the Member States of the Latin American Region, proposed that paragraph K.2 be amended to read as follows:

“The Parties undertake to develop, promote and coordinate, to the greatest possible extent, national, regional and global programmes for the purpose of this Convention. To this end, each Party shall, according to the means at its disposal and capabilities:

- (a) initiate and cooperate in research and scientific assessments, as detailed in Annex [INSERT];
- (b) promote and encourage research to contribute to the reduction of tobacco consumption and of the harm caused thereby, particularly in developing countries and to construct surveillance system indicators, taking the recommendations of the Conference of the Parties fully into account;
- (c) promote and strengthen, with the support of competent international organizations, the training and preparation of multidisciplinary teams for the gradual development of assessment systems, research and action programmes in tobacco control.”

The text had been submitted to the Secretariat.

Mr MAKONO (Zambia), speaking on behalf of the Member States of the African Region, said that his delegation endorsed the introductory text of paragraph K.2 and subparagraph K.2(a) but proposed that subparagraph K.2(b) be amended to read:

- “(b) promote and encourage research that contributes to reducing tobacco consumption and harm from tobacco use, and the evaluation of the impact of programmes designed for the control and prevention of tobacco addiction, and the economic and social impact associated with tobacco consumption, particularly in developing countries and countries with transitional economies;
- (c) promote and encourage research activities designed to accelerate diversification of alternative crops, especially in developing countries;
- (d) promote research activities on behaviour and attitudes.”

Ms BALOCH (Pakistan) said that reference to surveillance indicators in connection with developing countries in the United Nations system caused her some concern and therefore proposed that the words “to develop surveillance indicators and contribute to” in the first sentence of subparagraph K.2(b) be placed in brackets and replaced by the words “aimed at”. The words “harm from” in the second line of the subparagraph should be replaced by “harmful effects of” and the words “particularly in developing countries” in the third line should be placed in brackets.

Mr INADOME (Japan) proposed that the words “in accordance with the means at its disposal and its capabilities” be added after “take appropriate measures” in the last line of the introductory text of paragraph K.2. The phrase “exposure to second-hand smoke” in the second line of subparagraph K.2(b) should be placed in brackets, as should the words “taking the recommendations of the Conference of the Parties fully into account”. Finally, the whole of subparagraph K.2(c) should be placed in brackets.

Ms TKACHENKO (Russian Federation), speaking on behalf of the Commonwealth of Independent States, said that the CIS countries did not have a uniform national surveillance system that would allow for full performance of the tasks required by the convention. She therefore proposed that the words “in accordance with the means at its disposal and its capabilities” be added at the end of the introductory text to paragraph K.2. For the CIS countries, the key words in subparagraph K.2(a) would be “the creation of an appropriate national surveillance system” and in subparagraph K.2(b), the phrase “on the basis of cooperation with international bodies, including the World Health Organization”. Those proposals would be submitted in writing.

Mr PADILLA (Philippines) said he shared the concern of the Pakistani delegate regarding the use of the word “surveillance” and suggested that it be replaced by “monitoring”.

The CHAIR noted that it might be difficult to make such a distinction in French.

#### ***D. Guiding principles***

Mr ALCAZAR (Brazil), speaking on behalf of the Member States of the Latin American Region, proposed the addition of a paragraph D.3bis, reading:

“The importance of international cooperation, particularly transfer of technology and financial assistance between Parties, to establish and implement effective tobacco-control programmes, taking into consideration local cultural, social, economic, political and legal factors, should be recognized.”

Professor GRANGAUD (Algeria), speaking on behalf of the Member States of the African Region, said that the language of the Co-Chairs’ text in paragraph D.1 was not as vigorous as that of the Chair’s text, although it covered the same ground. The African countries had proposed that the relevant paragraph should begin by recalling that the priority concern of the convention was the protection of health for all. That principle had been supported by a large number of delegations and should be emphasized more strongly in the text.

Mr MOON (Republic of Korea) said that control of passive smoking by young persons was an essential component of the convention. He therefore proposed the inclusion of a paragraph D.2 bis, to read “The importance of efforts and various measures to control passive smoking of young persons should be recognized”.

Mr ALLEN (New Zealand) proposed that the word “adequately” in paragraph D.2 should be placed in brackets.

Mr INADOME (Japan) said that paragraphs D.1, D.2 and D.3 should be placed in brackets, since discussion of the guiding principles could not take place until after the entire text of the Convention had been prepared.

Dr OTTO (Palau), speaking on behalf of the Pacific Island nations, reiterated his delegation's earlier proposal that the words "tobacco dependence nicotine addiction" be inserted after "exposure to tobacco smoke" in paragraph D.2.

Mr MBUYU MUTEBA (Democratic Republic of the Congo) proposed that paragraph D.1 be amended to read "The reduction of the growth of tobacco consumption and the protection and the promotion of the health of all individuals in order to reduce tobacco-related mortality and morbidity at the national and global levels must be a public health imperative of this Convention".

Mr VOTO-BENALES (Peru) proposed the addition of a paragraph D.2 bis, reading "The importance of health promotion for the development of tobacco-free life styles should be recognized".

Mr STEIGER (United States of America) proposed that the words "and environmental" in paragraph D.2 be placed in brackets.

Mr RAJALA (European Community), speaking on behalf of the European Community and its Member States, welcomed the fact that the text of Article D had become much simpler and clearer. It was to be hoped that that development would continue in the course of future negotiations. He nevertheless reserved the right to revert to some questions of detail at the next stage of negotiations, with a view to further strengthening the language.

Mrs ALI HIGO (Djibouti) supported the Algerian proposal to replace paragraph D.1 by the Chair's text.

The CHAIR said he took it that the Working Group wished to adopt the draft texts of paragraphs G.2, G.3, G.4, I.8, I.9, I.10, I.11, I.12, K.2, D.1, D.2 and D.3, with the amendments proposed, to serve as a basis for further discussion at the fourth session of the Intergovernmental Negotiating Body.

**The draft texts of paragraphs G.2, G.3, G.4, I.8, I.9, I.10, I.11, I.12 and K.2 and Article D, as amended, were adopted for transmission to the Plenary**

**G. *Non-price measures to reduce the demand for tobacco*** (resumed)

The CHAIR drew attention to document A/FCTC/INB3/WG1/Conf.Paper A containing the proposed draft texts for subparagraphs G.1(b), G.1(b bis), G.1(c), G.1(d) and G.1(e) of the framework convention prepared by the Co-Chairs on the basis of discussions at the second and third meetings of Working Group 1 and opened the floor for discussion of subparagraphs G.1(b), G.1(b bis) and G.1(c).

Mr MOON (Republic of Korea) observed that the word "emission" used in subparagraphs G.1(b) and G.1(c) introduced a new concept which had not yet been clearly defined and therefore proposed that it be placed in square brackets pending further discussion.

Ms BALOCH (Pakistan), referring to subparagraph G.1(b) said that it was inappropriate for WHO to impose standards on States in that context, as it was the Conference of the State Parties that should advise governments on that subject. She therefore proposed that the words "as recommended by the World Health Organization" and "and best practices" in subparagraph G.1(b) be placed in square brackets. In subparagraph G.1(b bis), the words "under the auspices of WHO" and "such as the International Standards Organization" should also be placed in brackets. She further proposed that the second sentence of subparagraph G.1(c) be placed in brackets, since the responsibilities of exporters had not been clarified and importers might be unable to implement certain provisions.

Ms RUSTAM (Indonesia), speaking on behalf of the Member States of the South-East Asia Region and referring to subparagraph G.1(b), emphasized that tobacco smoking was harmful to health irrespective of the content of tobacco products, and that it was therefore inappropriate to include the regulation of the content of tobacco products in the convention. Standards for testing, measuring, designing, manufacturing and processing of tobacco products were needed and should be developed in consultation with WHO rather than under its auspices. Her delegation proposed that the title of the subparagraph be changed to “Development of standards of tobacco products” and that the text be placed in brackets.

Ms MAYSHAR (Israel), referring to subparagraph G.1(b), suggested that the word “national” in the first line be placed in brackets and that the word “minimum” be inserted after it as an alternative.

Mr ALLEN (New Zealand) proposed that the word “toxic” in the second and penultimate lines of subparagraph G.1(c) be placed in brackets, to ensure that ingredients, emissions, additives and constituents could, if so decided, be subject to disclosure and thus to public scrutiny.

Dr REDDY (India) speaking on behalf of the Member States of the South-East Asia Region, proposed that the words “as applicable” be added after “tobacco smoke” in the third line, in order to take account of the widespread oral consumption of tobacco and to avoid conflict with the subsequent sentence.

Ms GOULET (Canada), expressing her delegation’s concern regarding the implications of regulation of the content of tobacco products by WHO, proposed that the phrase “as recommended by the World Health Organization for the regulation of the content of tobacco products” be placed in square brackets.

Mr INADOME (Japan) suggested that subparagraphs G.1(b) and G.1(b bis) be placed in brackets. With regard to subparagraph G.1(c), he proposed that the words “consistent with each Party’s domestic laws” be inserted after “disclosures” in the first line and that the phrase “including toxic ingredients, emission, additives and constituents of tobacco smoke” be placed in brackets.

Mr YOUNG (United States of America) said that his delegation strongly supported the broad concepts in subparagraphs G.1(b) and G.1(b bis) and considered that the two texts could be combined. He therefore proposed that subparagraph G.1(b) be placed in square brackets and that subparagraph G.1 (b bis) be amended to read: “cooperation on the basis of public health criteria [and under the auspices of WHO] in the development [and harmonization] of [such] model international standards for the regulation of the content of tobacco products, in consultation with competent international bodies such as the International Standards Organization, the World Health Organization and Codex Alimentarius; and establishment of science- and health-based regulatory agencies with enforcement authority.”

With regard to subparagraph G.1(c), his delegation proposed that the words “by brand” and “emission” be placed in brackets and that the word “under” before “its jurisdiction” be replaced by “within”.

Mr ALCAZAR (Brazil), speaking on behalf of the Member States of the Latin American Region, proposed that the word “national” and the phrase “as recommended by the World Health Organization” be deleted from subparagraph G.1(b) and that the words “as applicable by the Conference of the Parties” be added after “such products” at the end of the text.

Mr CASTILLO SANTANA (Cuba) endorsed that proposal and suggested that the words “as far as possible” be added after “Each Party shall” at the beginning of the second sentence.

Mr REN Minghui (China), referring to subparagraph G.1(c), proposed that the words “based on the domestic laws of each Party” be added at the beginning of the text and that the words “by brand” be placed in brackets.

Mr MAKONE (Zambia), speaking on behalf of the Member States of the African Region, suggested that the word “recommended” in subparagraph G.1(b) be replaced by “established” and that the words “the availability” in subparagraph G.1(c) be placed in brackets.

Mr RAJALA (European Community), speaking on behalf of the European Community and its Member States, welcomed the introduction of subparagraph G.1(b bis) and endorsed the United States proposal, which merited further consideration at a future meeting. He drew attention to a text for subparagraph G.1(b) which the European Commission had proposed at the preceding session and which might be reconsidered. With regard to the text under discussion, he suggested that the word “national”, the phrase “including standards and best practices” and the words “the content and emission” be placed in brackets and that brackets should also be placed round the word “emission” in subparagraph G.1(c).

Dr OTTO (Palau), referring to subparagraph G.1(b bis), said that, since the International Standards Organization had no mandate for dealing with public health matters, it should be subordinate to WHO in that respect. His delegation therefore proposed that the words “in consultation with competent bodies, such as the International Standards Organization” be placed in square brackets.

Mr MBUYU MUTEBA (Democratic Republic of the Congo) proposed that subparagraphs G.1(b) and G.1(b bis) be merged to read “adoption and implementation of national and international standards for the regulation of the chemical content of tobacco products under the auspices of WHO and in consultation with other competent bodies.”

With regard to subparagraph G.1(c), he proposed that the title be amended to read “Regulation of information to be shown on the labels of tobacco products” and that the text be changed to read: “adoption and implementation of measures concerning the regulation of information to be provided by all manufacturers on products of their brand, including toxic ingredients, emissions, additives and constituents of tobacco smoke. Each Party shall apply these measures to all tobacco products manufactured, packaged, sold or imported for sale. The Conference of the Parties or a subsidiary body mandated by the Conference shall specify the toxic ingredients and constituents of tobacco smoke which it is mandatory to display on tobacco products.

Mr ALLEN (New Zealand) said that a reference to the concept of health warnings in the form of pictures or pictograms should be included in subparagraph G.1(d)(iv) for future consideration. With regard to subparagraph G.1(d)(iv)(3), his delegation considered that warnings could take up 50% of the front and rear panels of tobacco packaging. In conclusion, he proposed that subparagraph G.1(d)(iv)(1) be placed in brackets.

Dr OTTO (Palau), speaking on behalf of the Pacific island nations, reiterated the view that a reference to generic packaging be included in subparagraph G.1(d)(iv) and proposed that the following text be added after the word “consumption”: “and that generic packaging is required for the parts of the packages other than where mandatory messages are required. The mandatory messages are such that ...”.

Ms BALOCH (Pakistan), referring to her delegation's earlier statements concerning the need to differentiate between the responsibilities of the exporter and those of the importer, suggested that a footnote reading "proposal to clearly define the responsibilities of importers and exporters" be appended to subparagraph G.1(c).

Ms MAYSHAR (Israel), after endorsing New Zealand's proposal relating to subparagraph G.1(d)(iv), proposed that the words "specifically with regard to tar, nicotine and carbon monoxide" in subparagraph G.1(d)(iv)(2) be placed in square brackets.

Dr REDDY (India), referring to subparagraph G.1(d)(iv), endorsed the proposal to include a reference to pictures or pictograms and suggested the insertion of the words "as prescribed or" before "approved by national health authorities", since the word "approved" alone implied that the initiative should be taken by tobacco companies and subsequently approved by national health authorities, whereas such mandatory health warnings should emanate from those authorities.

Ms GOULET (Canada) expressed support for the basic intent of subparagraphs G.1(d)(i) and G.1(d)(ii), but suggested that in the last-named text the words "low tar", "trademark, figurative sign or other" and "may" be placed in square brackets.

Pending the outcome of discussions under way in other working groups on the question of responsibility for the language on packeting, she suggested that the phrase "in the principal language or languages of the country in whose territory the product is placed on the market" in subparagraph G.1(d)(iii) and the whole of subparagraph G.1(d)(iv)(4) be placed in square brackets. She supported the proposal to include a reference to pictures or pictograms in subparagraph G.1(d)(iv). Studies conducted in Canada had shown that warnings with pictures were considerably more effective than those consisting of texts alone. She endorsed the New Zealand delegate's remarks with regard to subparagraph G.1(d)(iv)(1), expressing concern that it would render tobacco products more appealing to young people who liked to imitate adults.

Mr INADOME (Japan), referring to subparagraph G.1(d)(ii), suggested that the words "may directly or indirectly" be replaced by "would not" and that the words "are not used" at the end of the subparagraph be deleted. Since the contents of the Annex referred to in subparagraph G.1(d)(iv) were not yet known, he suggested that the phrase "in accordance with Annex [INSERT]" be placed in brackets.

Dr AL-HAMDAN (Saudi Arabia), referring to subparagraph G.1(d)(iv), endorsed the idea of including a reference to pictograms. For the sake of accuracy he suggested that the word "national" before "health authorities" be deleted, as not all health authorities used pictures or pictograms. He suggested the deletion of subparagraph G.1(d)(iv)(4), since the idea was already covered in subparagraph G.1(d)(iii), and proposed that subparagraph G.1(d)(iv)(3) be amended to read "appear prominently on the package (or carton) of the tobacco product and occupy not less than twenty-five per cent (25%) of the largest surface of the packet."

Mr MOON (Republic of Korea), referring to subparagraph G.1(d)(iv)(2), suggested that the words "and emissions" and the phrase "specifically with regard to tar, nicotine and carbon monoxide" be placed in square brackets.

Mr SANDAGE (United States of America), referring to subparagraph G.1(d)(i), proposed that the phrase "misleading or deceptive" be amended to read "misleading, unsubstantiated or otherwise deceptive". He further proposed that the phrase "and encourage consumption" be placed in square brackets: given that all package labelling was designed to encourage consumption, it would be difficult to reconcile marketing strategies with that part of the provision. In subparagraph G.1(d)(ii), he proposed that the words "similar terms are not used on any package in any manner" be inserted after

“or other”. He shared Canada’s concerns with regard to the last part of subparagraph G.1(d)(iii) and suggested that the text be replaced by the phrase “or data approved in another form”. Finally, he proposed that the phrase “toxic contents and emissions of the tobacco product” in subparagraph G.1(d)(iv)(2) be replaced by “the constituents of the tobacco products and the smoke they may produce”.

Mr EISSA (Egypt) proposed that subparagraph G.1(d)(ii) be amended to read “no expression, text, trademark, figurative sign or other shall be used to encourage people to smoke or to convey the impression that a tobacco product is less harmful to health than others”. With regard to subparagraph G.1(b bis), he endorsed the proposal to place brackets round the phrase “such as the International Standards Organization”.

Mr MAKONO (Zambia), speaking on behalf of the Member States of the African Region, stressed the need for a reference to packaging carrying a prominent statement and tamper-proof production information in subparagraph G.1(d)(iii) and for a reference to clearly visible and legible messages in subparagraph G.1(d)(iv). He further suggested that square brackets round the words “persons under the age of 18” in subparagraph G.1(d)(iv)(1) be removed.

Mr ALCAZAR (Brazil), speaking on behalf of the Member States of the Latin American Region, proposed that subparagraph G.1(d)(iv) be amended to read “each unit packet or package of tobacco carries a clear and legible warning, which shall be approved by the health authorities, including different rotating pictures or pictograms indicating the negative consequences of tobacco consumption, in accordance with Annex [INSERT]; these warnings shall”. He also suggested the addition of a new subparagraph reading “each unit or package of tobacco products shall also carry the following additional information in the principal language or languages of the country in whose territory the product is sold or placed on the market. Such information shall: (1) clearly indicate the prohibition of sales of tobacco products to legal minors; (2) provide clear information on the toxic contents of the tobacco product, specifically tar, nicotine and carbon monoxide, including actual measurements of smoke yields”.

Mrs ALI HIGO (Djibouti) endorsed the proposals to include a reference to pictures or pictograms in subparagraph G.1(d)(iv). With regard to subparagraph G.1(d)(iv)(3), she suggested that the phrase “[twenty-five per cent (25%)] should read “thirty per cent (30%)”, in line with the Chair’s original text.

Mr MBUYU MUTEBA (Democratic Republic of the Congo) suggested that subparagraphs G.1(d)(i) and G.1(d)(ii) be reworded, together with some of the text incorporated in subparagraph G.1(e). The text of subparagraphs G.1(d)(iii) and G.1(d)(iv) should remain unchanged and the phrase “[minors as determined by domestic law]” should be deleted from subparagraph G.1(d)(iv)(1). Subparagraphs G.1(d)(iv)(2) and G.1(d)(iv)(4) should be deleted in their entirety, since the matters raised therein were covered by subparagraphs G.1(b) and G.1(d)(iii), respectively.

Ms BALOCH (Pakistan), referring to subparagraph G.1(e)(ii), suggested that the word “ensure” be replaced by “promote” and that square brackets be placed around the phrase “and vulnerable groups”.

Dr REDDY (India) speaking on behalf of the Member States of the South-East Asia Region, endorsed the proposal to include a reference to administrators in subparagraph G.1(e)(iii), but considered that politicians should also be the target of appropriate training programmes on tobacco

control and therefore suggested the insertion of the words “administrators, politicians,” before “educators”.

Mrs ZIKMUNDOVA (Belgium) speaking on behalf of the European Union and its Member States, proposed the deletion of the square brackets round “as appropriate” in subparagraph G.1(e). She also stated her preference for the phrase “smoking prevention campaigns” over “counter-advertising” in subparagraph G.1(e)(i).

Dr OTTO (Palau), speaking on behalf of the Pacific island nations, proposed the insertion of the words “tobacco dependence, nicotine addiction” after “exposure to tobacco smoke” in subparagraph G.1(e)(i) and expressed support for the proposal to include a reference to politicians and other public officials in subparagraph G.1(e)(iii).

Mr INADOME (Japan), referring to subparagraph G.1(e)(i), proposed that the phrase “including counter-advertising” be placed in square brackets.

Mrs TKACHENKO (Russian Federation), speaking on behalf of the Community of Independent States and referring to subparagraphs G.1(e) and G.1(e)(i), reiterated her delegation’s view that the word “programmes” was preferable to “campaigns”. Nevertheless, if there were any strong objections to deleting the word “campaigns”, the phrase “public awareness programmes and campaigns” would be acceptable. Since various forms of tobacco consumption, such as chewing tobacco, were prevalent in the CIS countries, she suggested that that fact might be taken into account in the list of definitions.

Mr MOON (Republic of Korea) said that subparagraph G.1(e)(v) required further discussion and should therefore be placed in square brackets.

Mr SANDAGE (United States of America) said that the scope of subparagraph G.1(e)(ii) needed to be broadened and therefore proposed the insertion of the phrase “pregnant women, and persons with chronic lung diseases and heart disease” after the word “children”. The last phrase of subparagraph G.1(e)(iv), “and ensure that the tobacco industry is not involved in any of these activities”, caused his delegation some concern, since under the Constitution and legislation of the United States, all interested stakeholders must be consulted when formulating public policy. Some alternative wording would have to be found to take that into account. In the meantime, he suggested that the text be placed in square brackets. In conclusion, he proposed that the phrase “the objective of the convention” in subparagraph G.1(e)(iv) be replaced by “promoting tobacco prevention and control programmes.

Mrs ALI HIGO (Djibouti) proposed the deletion of the words “and environmental” from subparagraph G.1(e)(i). It would be difficult to assess the impact of tobacco control programmes whose main objective was to improve health if environmental aspects were taken into account. She also suggested the deletion of the words “and professionals” at the end of subparagraph G.1(e)(iii).

Dr GHANEM (Egypt), referring to subparagraph G.1(e)(v), said that some reference must be made to the need to facilitate access to information on the harmful effects of tobacco consumption.

Dr REN Minghui (China) proposed the insertion of the words “civil servants” after “educators” in subparagraph G.1(e)(iii).

Mr ALCAZAR (Brazil), speaking on behalf of the Member States of the Latin American Region, proposed that subparagraph G.1(e) be amended to read “facilitation and strengthening of health promotion and preventive campaigns comprising education, training and communication

activities, including counter-advertising and mechanisms for assessing the impact of such activities. To this end, each Party shall, as appropriate.”. Furthermore, subparagraph G.1(e)(i) should be amended to read “promote universal access to effective and comprehensive educational and public awareness programmes based on scientific methods, about the health and environmental risks of tobacco consumption and exposure to tobacco smoke, and about the benefits of smoking cessation and also promote the transversal incorporation of the contents of such programmes in school curricula”.

Dr AL-BADDAH (Saudi Arabia) reiterated his delegation’s earlier proposal that subparagraph G.1(e)(iv) should be amended to reflect the view that strategies for tobacco control were insufficient and needed to be supplemented by campaigns that were free from any association with the tobacco industry.

Mr VUILLOME (Switzerland) proposed that the words “all available” before “communication media” in subparagraph G.1(e)(i) be placed in square brackets. He further proposed that the text concerning the need to ensure that the tobacco industry did not participate in educational programmes, which the United States delegation wished to be deleted but which several other delegations had supported, be also placed in square brackets.

Mrs ALI HIGO (Djibouti) endorsed the Chinese and Indian proposals to insert the word “decision-makers,” before “health professionals” in subparagraph G.1(e)(iii).

The CHAIR said he took it that the Working Group wished to adopt the draft texts of subparagraph G.1(b), G.1(b bis), G.1(c), G.1(d) and G.1(e), with the amendments proposed, to serve as a basis for further discussion at the fourth session of the Intergovernmental Negotiating Body.

**The draft texts of subparagraphs G.1(b), G.1(b bis), G.1(c), G.1(d) and G.1(e), as amended, were adopted for transmission to the Plenary.**

#### ***E. General obligations***

The CHAIR drew attention to document A/FCTC/INB3/WG1/Conf.Paper B, continuing the proposed draft text for paragraphs E.1 and E.2 of the framework convention prepared by the Co-Chairs on the basis of discussions at the third meeting of Working Group 1.

Mr MOON (Republic of Korea) reiterated his delegation’s proposal to insert the phrase “; taking into account its specific circumstances,” after “Each Party” in paragraph E.1

Mrs ZIKMUNDOVA (Belgium), speaking on behalf of the European Union and its Member States, recommended that the phrase “as well as nicotine addiction” in subparagraph E.2(b) be deleted or at least placed in square brackets.

Mr INADOME (Japan) suggested that the words “within the means at its disposal and its capabilities” be inserted after the phrase “to the extent possible” in the introductory text of paragraph E.2. With regard to subparagraph E.2(a), he proposed that the words “and adequately finance” be placed in brackets and that the word “arrangement” be substituted for “mechanism”. Finally, he proposed that the first six words of subparagraph E.2(b) be replaced by “adopt legislative, executive, administrative or other appropriate measures”.

Mr ALCAZAR (Brazil), speaking on behalf of the Member States of the Latin American Region, observed that health authorities should coordinate the national mechanism referred to in

subparagraph E.2(a) and therefore proposed that the words “preferably coordinated by the ministry of health,” be inserted between “mechanism for tobacco control” and “with inputs from”.

Mr CASTILLO SANTANA (Cuba), speaking on behalf of the Member States of the Latin American Region, supported the Brazilian proposal but considered that subparagraph E.2(a) would be further strengthened by replacing the words “tobacco control” by “control of tobacco consumption”.

Mr SANDAGE (United States of America) proposed that the words “such as standards” in paragraph E.1 be placed in square brackets and that the phrase “in accordance with the objective and provisions” be replaced by language that conformed to customary international law and to the Vienna Convention on the Law of Treaties, namely “in furtherance of the object and purpose”.

Ms BALOCH (Pakistan) supported the proposal to place the words “such as standards” in brackets and further proposed that brackets be placed round the whole of subparagraph E.2(a), since that provision seemed to introduce unnecessary micromanagement into the implementation of the convention.

The CHAIR said he took it that the Working Group wished to adopt the draft texts of paragraphs E.1 and E.2, with the amendments proposed, to serve as a basis for further discussion at the fourth session of the Intergovernmental Negotiating Body.

**The draft texts of paragraphs E.1 and E.2, as amended, were adopted for transmission to the Plenary.**

Professor WARNER (World Bank), raising the topic of advertising and promotion, referred to a state-of-the-art analysis, commissioned by the Bank, of tobacco control measures across dozens of countries. That analysis had concluded that complete bans on advertising and promotion were an effective deterrent against smoking but that partial bans were not effective because of the tobacco industry’s ability to operate in ways that were not banned or even envisaged by health authorities.

The World Bank study of effective control measures had also shown that attempts at direct restriction of sales to minors, as implemented mainly in high-income countries, has not been effective. Success depended almost exclusively on remarkably vigorous enforcement of relevant laws, and the infrastructure and resources for such action were not widely available in low-income countries. Nevertheless, such measures had important symbolic value, even if they were not a cost-effective way of using tobacco control resources.

Mr SALOOJEE (International Non-Governmental Coalition Against Tobacco), speaking at the invitation of the CHAIR, said that his organization wished to make some recommendations about package warnings that would strengthen the convention. Generic packaging should be required for other parts of the package than those for which mandatory messages were required, as had been recommended by the Pacific island nations; warnings should occupy at least 50% of the package; some pictograms should be specifically required as part of a series of rotated messages; and there should be flexibility to allow messages other than a health warning or other mandatory information, for instance regarding the economic savings to be made by quitting smoking. To encourage innovation and flexibility, countries should consider, but not necessarily conform to, WHO criteria for warning requirements. Subparagraph G.2(c) should indicate that health warnings would be required on an interim basis, while advertising was permitted, with flexibility to allow either health warnings or other mandatory messages. He reiterated his organization’s strong support for a total ban on all forms of tobacco advertising and promotion, and welcomed the text adopted by Working Group 1 as an improved basis for negotiation.

Mrs SULLIVAN (International Union against Cancer), speaking at the invitation of the CHAIR, noted the power of advertising by the tobacco industry, for instance to promote the use of tobacco, to undermine the preventive efforts of the public health community and to encourage the uptake of smoking by children. Her organization welcomed the extent and strength of support for a total ban on all forms of advertising, both direct and indirect, at the second session of the Intergovernmental Negotiating Body, since such a total ban was vital to the success of the framework convention. Studies by WHO and the World Bank and the experience of several countries clearly showed that comprehensive advertising bans measurably and sustainably decreased the use of tobacco. Such bans should not be limited to advertising that targeted or appealed to young people, as all advertising reached children and teenagers, whether intentionally or not.

Her organization, recognizing the constitutional constraints preventing the implementation of a total ban reported by some delegations, supported the recommendation of the Framework Convention Alliance that the convention require Parties with such constraints to take all measures up to the limits imposed by an existing domestic constitution. For the Members of the European Community, the obligation could be to adopt restrictions to the extent permitted by the Treaty of Rome.

Mr ARANGO (World Heart Federation), speaking at the invitation of the CHAIR, emphasized the dangers and inefficacy of voluntary advertising codes, such as those which had recently been proposed by the tobacco companies and which for them constituted no more than a public relations strategy. Instead, mandatory, legal and comprehensive bans on advertising, such as could be implemented in the convention, were needed. Implementation of a full ban could cut tobacco consumption significantly. His organization was thus satisfied with the revised text of subparagraph G.2(a), but suggested that it could still be further improved by requiring, first, a specified implementation period and second, that Parties prohibit rather than restrict advertising. He urged all Member States to adopt, within two years of the entry into force of the convention, the prohibition of all forms of direct or indirect advertising, marketing, promotion and sponsorship.

The CHAIR declared that Working Group 1 had completed its work.

**The meeting rose at 00:10 on 28 November 2001.**

**WORKING GROUP 2**

**WORKING GROUP 2**

**FIRST MEETING**

**Friday, 23 November 2001, at 9:30**

**Chair:** Mr E. AISTON (Canada)

**1. TRIBUTE TO THE MEMORY OF THE KING OF MALAYSIA**

The CHAIR announced with regret the death of the Sultan Salahaddin Abdul Aziz Shah (King of Malaysia) and invited the Working Group to observe one minute of silence in an expression of condolence to the people of Malaysia.

**The Working Group stood in silence for one minute.**

**2. DRAFTING AND NEGOTIATION OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL:** Item 3 of the Agenda (Documents A/FCTC/INB3/2(b), A/FCTC/INB3/2(b) Corr.1 and A/FCTC/INB3/2(b) Corr.2)

**Opening of the meeting**

The CHAIR stressed the need to make swift progress during the current session and, in a spirit of compromise, to reach agreement on large portions of the text of the convention, focusing on the issues where substantial commonalities or differences lay. In order to expedite the task of the Working Group, he suggested that, instead of a word-by-word analysis using overhead projections, which posed practical problems, the Working Group should focus its discussion on the broader issues in each paragraph on which different views might emerge. The co-chairs would then collate those views and produce a revised text to be considered at the Working Group's next meeting. That text would not, however, be binding, but subject to further refinement and amendment. If he heard no objection, he would take it that procedure was acceptable to the Working Group.

**It was so agreed.**

**I. *Measures related to the supply of tobacco***

**Paragraph I.1 (*Illicit trade in tobacco products*)**

Dr BOVET (Seychelles), speaking on behalf of the African Group said that mention should be made in paragraph I.1 of the various legislative aspects dealt with in paragraphs I.3-7. He therefore suggested that in paragraph I.1, after the word "counterfeiting" the text should read: "and the improvement and harmonization of national legislation as well as subregional, regional and international agreements are an essential component of tobacco control".

Dr SRINATH REDDY (India), speaking on behalf of the South-East Asia Region said that the Chair's text, by confining itself to manufactured tobacco products, failed to take account of the potential and actual dangers of smuggling in raw leaf tobacco. He therefore suggested the addition of the words "and raw tobacco material" after the words "tobacco products".

Dr TADEVOSYAN (Armenia), speaking on behalf of the Member States of the Commonwealth of Independent States, stressed the importance of a well-coordinated tax policy as a means of preventing the smuggling of tobacco products.

Mr LOM (United States of America), recalling the remarks by the Chair during the first plenary meeting about the need to limit the number of amendments to paragraphs on general issues, said that the Co-Chair's working paper text seemed broad enough to meet all the concerns expressed thus far are on paragraph I.1. Specifics should be left to the later paragraphs. He noted a concern about the proposed use of the term "harmonization" and suggested that it should be replaced by "developing", if necessary.

Mr RAJALA (European Community), speaking on behalf of the European Community and its Member States, expressed support for the original Chair's text. Regarding the amendments proposed, he considered it inappropriate to include reference to the harmonization of national legislation but useful to raise the issue of raw leaf tobacco.

Mr CHAVES SELL (Costa Rica), speaking on behalf of the Latin American Group, expressed support for the Chair's text and endorsed remarks by the delegate of the United States of America in that connection.

Dr OTTO (Palau) supported the Chair's text, but proposed the addition of ", illicit manufacturing" after "smuggling". He also endorsed the amendment proposed by the delegate of India.

Professor HUSSEIN (Sudan) expressed support for the original Chair's text without addition or deletion.

Ms CANTIN (Canada) approved the text in paragraph I.1. Smuggling was not the only form of illicit trade and failing to address the other forms provided an opportunity for abuse. The improvement of legislation might not be necessary for those parties which already had comprehensive measures in place.

Ms QU Meiyu (China) endorsed the Chair's text.

Mr SHEVCHOUK (Ukraine) proposed the addition of the phrase "as well as the improvement and coordination of national legislation to combat illicit trade in tobacco products" before the words "is an essential component of tobacco control".

Dr ABOU-DAHAB (Syrian Arab Republic) said that some mention ought to be made in the text of the fact that tobacco was harmful not only as a manufactured product but also in its raw form, raising concerns about tobacco products containing a high level of nicotine and other additives and raw materials containing pesticides. He therefore proposed the insertion of the following text: "measures related to the supply of raw tobacco (non-manufactured), tobacco growing and manufacturing equipment (additives, paper, filters) and tobacco products (cigarettes, cigars, pipe tobacco, hookah tobacco)".

Mrs LE THI THU HA (Viet Nam) endorsed the Chair's text up to the word "counterfeiting". Thereafter the text should be reworded: "and the improvement and development of national legislation to control illegal trade in tobacco products is an essential component of tobacco control".

Mr SANTHOKI (Suriname), after expressing support for the Chair's text, suggested for the sake of consistency that the title of the paragraph be reworded: "Measures to reduce the supply of tobacco" or alternatively "Measures related to the reduction of the supply of tobacco".

Mr SODNOMPIL (Mongolia) supported the Chair's original text.

The CHAIR said that he and the Co-Chair would try to take into account all the comments and suggestions made in the revised text. The only point of disagreement was the use of the term "harmonization" which would therefore be placed between square brackets.

### **Paragraph I.2**

Mr CHAVES SELL (Costa Rica), speaking on behalf of the Latin American Group, endorsed the Chair's text.

Mr LOM (United States of America) expressed support for the amendment proposed during the second session for a reference to national and international obligations. Reiterating his concern about the use of the term "harmonization", he suggested it should be placed between square brackets as necessary.

Dr SRINATH REDDY (India), speaking on behalf of the Member States of WHO's South-East Asia Region, agreed substantially with the Chair's text but wished to amend paragraph I.2 to read: "The Parties agree that measures to address illicit trade in tobacco products shall be transparent ...". Each formulation should be clear in itself without having to refer to previous formulations. Furthermore, obligations to curb illicit trade were not only international, but also substantively national in scope.

Professor HUSSEIN (Sudan) supported the proposal made by the delegate of India regarding the inclusion of obligations under national law in accordance with international obligations.

Dr ZARIHAH (Malaysia) requested that the wording of paragraph I.2 not be finalized pending clarification from her Government, as currently, her delegation did not agree with the Chair's text.

The CHAIR assured the delegate of Malaysia that the wording of paragraph I.2 would be maintained and that the Working Group would be open to any future comments.

Dr GHANEM (Egypt) proposed the following amendment: "... measures should be transparent, well-defined and non-discriminatory and implemented in accordance with national obligations".

Mr RAJALA (European Community), speaking on behalf of the European Community and its Member States, supported the Chair's text. However, should the amendment on national obligations be retained, he requested that the particular situation of the European Community be recognized. Paragraph I.2 should be amended to read: "... national, internal and international obligations" as the law governing the European Community was neither national nor international but rather a part of their internal market legislation.

Dr FARSHAD (Islamic Republic of Iran) wished to amend paragraph I.2 to read: “The parties agree that measures taken to tackle tobacco smuggling and organized crime take priority over commercial liberalization when being examined for compatibility with international trade agreements”.

The CHAIR suggested that substantial new text should be dealt with later in the session. The current text needed to be agreed and he called on the Working Group to support that approach.

Mrs ALI HIGO (Djibouti) wished to replace “measures to this end” to read: “measures to combat illicit trade in tobacco products”.

Ms QU Meiyu (China) supported the Chair’s text and considered that adding the words “national obligations” would be creating a matter for determination by national law.

Ms BALOCH (Pakistan) queried the Chair’s suggestion that substantive new text should be discussed at a later time. How could the text be negotiated while some delegations wished to present new amendments? Perhaps new proposals could be voiced so that all delegations could prepare their comments on them. It was the sovereign right of States to make proposals up to the last moment and no State should be prevented from so doing.

The CHAIR explained that his intention had not been to prevent the presentation of new texts. In the interest of progress, some order had to be followed. New texts should be considered at a later date. The delegate of Iran had so agreed.

Ms CANTIN (Canada) proposed that the paragraph should be deleted as her delegation had not identified any matter in that section which would require such a provision.

The CHAIR noted the disagreement on the term “harmonization” and stated that he would refer it to a contact group at an appropriate time. He also noted the discussions on the term “national obligations” as well as the European Community’s proposal on its particular situation. Attempts would be made to resolve those differences in the re-drafting.

### **Paragraph I.3**

Mr MBUYU MUTEBA (Democratic Republic of the Congo) questioned the methodology that was being followed. Given the time constraints it was pointless to re-draft and present new amendments to the text. During the two previous sessions of the Intergovernmental Negotiating Body, delegations had had ample opportunity to voice their opinions. They needed to approve the text as a whole and to avoid as many amendments as possible.

The CHAIR agreed that it would be desirable but unlikely simply to approve texts as the meeting proceeded. An approach which produced an evolving text should be used. The objective was to define and limit choices so as to produce a more user-friendly text.

Mr CHAVES SELL (Costa Rica), speaking on behalf of the Latin American Group, supported the Co-Chair’s text for the heading and suggested adding to subparagraph I.3(a): “ensuring that the information appears in the principal language or languages of the country in which the product is to be placed on the market”. He supported subparagraph I.3(b).

Mrs ALEXIS-THOMAS (Trinidad and Tobago) supported the proposal by the delegate of India to expand the title to include raw material. She also wished to replace “unit packets or packages” with

“unit packets and packages”. She further wished to amend “... sold or manufactured...” to read: “... sold and/or manufactured...”.

Mr PADILLA (Philippines) suggested combining the provisions of paragraph I.3 with those of paragraph G.1(d) under the heading “Packaging and labelling” which would encompass all the requirements.

Dr TADEVOSYAN (Armenia), speaking on behalf of countries of the Commonwealth of Independent States, supported the Chair’s text and hoped that the discussions could move forward.

Mr INADOME (Japan) wished to delete the words “batch” and “date of production and expiry” from paragraph I.3(a) as they were unnecessary and had no bearing on illicit trade.

Dr SRINATH REDDY (India), speaking on behalf of WHO’s South-East Asia Region, supported the Chair’s text but suggested that it should reflect the concern raised by the delegate of the Philippines. Paragraph I.3(a) should therefore read: “carry a statement indicating, *inter alia*, ...”. In that way, additional elements related to health warnings and toxic additives could be accommodated and the paragraph read in conjunction with the provisions in paragraph G.I(d).

Mr RAJALA (European Community), speaking on behalf of the European Community, supported the first part of the Chair’s text but suggested that subparagraphs 3(a) and 3(b) should be combined to fulfil the same objective of allowing products to be traced as well as the time and place of manufacture. The following text appearing in square brackets in the Chair’s text should also be added: “They should also carry a marking in any appropriate manner in order to enable the origin of the product to be identified, to ensure traceability and to enable the place and time of manufacture to be determined such as through the use of approved batch numbering or equivalent”.

Ms MAYSHAR (Israel) considered the language of subparagraph 3(b) to be superfluous in the context of labelling a small package; it would not add to the enforceability of the measures. Warnings, components and additives constituted more important information. The labelling requirements in subparagraph 3(a) were sufficient. The wording in subparagraph 3(b) might even, in some places, add to rather than detract from, the prestige of certain products.

Dr ABOU-DAHAB (Syrian Arab Republic) agreed with the Chair’s text in paragraph 3(a) and also 3(b) with the addition of the phrase “ensuring that the information appears in the principal language or languages of the country in which the product is to be placed on the market”, because that would explain 3(a) and prevent misunderstanding. The general warning mentioned at the end of paragraph 3 was very important and necessary. However, in his delegation’s opinion, the packages should also carry a description of the contents, including the nicotine content, the toxicity and the various products used in manufacture.

Mr SHEVCHOUK (Ukraine) asked for clarification from the Armenian delegation regarding exactly which countries of the Community of Independent States it represented when putting forward its amendment. His delegation would wish paragraph 3(b) to include the wording “in the main language of the country in which the product is to be placed on the market”.

The CHAIR, noting that the issue of language was also referred to in paragraph I.4 said that if there could be some flexibility among delegations with an interest in that issue, language matters could be looked at during re-drafting, being reflected in paragraph 3 or 4 but not both.

Dr BOVET (Seychelles), speaking on behalf of the African Group, said that while the group generally agreed with paragraph 3, it would like to have the importer and the country of import mentioned in order to be specific and to improve ways of tracing tobacco products. Subparagraph 3(a) would therefore read “carry a statement indicating the name of the manufacturer, the country of origin, the importer in the country of import, the product batch-number, and the date of production and expiry;”. His delegation further asked that the text “carry a general warning and a health information message, as specified in Article G.1(d)(iv),” should appear as a new subparagraph (c). His delegation acknowledged that health warnings on tobacco packages appeared in other sections of the convention but thought that the issue might be helpful in tracing illegal products.

Mr MOON (Republic of Korea) supported the Chair’s text in principle and welcomed the inclusion of a requirement for a statement on tobacco products which indicated the name of the manufacturer and the country of origin. In his delegation’s view, that kind of statement was a technical matter, and thus the province of the Conference of Parties, which could specify the more detailed items to be carried on tobacco products. The convention should state general principles. His delegation proposed deleting subparagraphs 3(a) and 3(b) and proposed amending the Chair’s text to read: “Each party shall adopt appropriate measures to ensure that all unit packets or packages of tobacco products and any outside packaging of tobacco products for retail or wholesale use that are sold or manufactured under its jurisdiction carry a statement indicating the name of the manufacturer and the country of origin, and other statements decided to specify by the Conference of Parties”.

Dr GHANEM (Egypt) said that he believed it was sufficient to mention the name of the manufacturer and the country of origin. The other information would need more space and it would not be possible for the packaging to carry the nicotine content or a health warning.

Professor HUSSEIN (Sudan) agreed with the text and drew attention to the importance of subparagraph 3(a), especially the dates of production and expiry, because they aimed at protecting consumers.

Dr FARSHAD (Islamic Republic of Iran) supported the Chair’s text with the addition of the words “the importer in the importing country”, between “manufacturer” and “the country” in subparagraph 3(a). He also proposed amending subparagraph 3(b) to read: “carry the statement ‘sales only allowed in the country subnational regional or federal unit where the product is to be placed on the market ensuring that the information appears in languages of the country in which the product is to be placed on the market’”.

Dr TADEVOSYAN (Armenia), in reply to the query raised by the delegate of Ukraine, explained that in September 2001 a meeting of 11 countries in Moscow had looked at a single variant of the convention. As he had noted at his first intervention, he was speaking on behalf of the six countries which had confirmed their support in writing, namely Armenia, Belarus, Kyrgyzstan, Russian Federation, Tajikistan and Uzbekistan. Those countries had formally agreed with the Chair’s text and with subparagraphs 3(a) and 3(b).

Mr LOM (United States of America) proposed deleting subparagraph 3(b) and limiting subparagraph 3(a) to include the name of the manufacturer, the country of origin and the date of production. Several of the proposals presented were of interest to his delegation, in particular that made by the delegate of the European Community. However, he suggested that the word “traceability”, in that proposal should be replaced by the words “identity and tracking”. The proposal made by the delegate of the Republic of Korea was also interesting, but if the phrase “to specify by the Conference of Parties” were to remain, it should be modified to “may be considered by”.

Dr ALIYEV (Azerbaijan), speaking also on behalf of Kazakhstan, agreed with the Chair's text but proposed the replacement of the word "adopt" by "implement", and similarly the replacement of the phrase "its jurisdiction" by "in accordance with the corresponding standard".

Ms CANTIN (Canada) supported the marking of products destined for retail or wholesaler consumption, as that was an important method for identification and tracking. In situations where tobacco products were exported, the requirement for Member States to conform with national legislation or consumer information would be cumbersome and impractical. That would put the onus on the exporting Member State to interpret and enforce the laws of the importing state. Her delegation recommended removing the reference to production of tobacco products in conformity with national legislation on consumer information in force in the country in which the product was sold. Unless hermetically sealed packaging supported combating illicit trade, the text "hermetically sealed" should be removed.

Dr YOONG Ai Len (Singapore) endorsed the Chair's text for paragraph 3 and subparagraph 3(a) but proposed deleting subparagraph 3(b). Singapore would like to explore the European Commission's proposal to include a statement indicating the name of the manufacturer and the country of origin and other statements to be specified by the Conference of Parties.

Dr YANG Gonghuan (China) said that her delegation supported the Chair's text and suggested that the meeting should concentrate on essential points, such as in subparagraph 3(b) "sales only allowed in the country where the product is to be placed on the market". In subparagraph 3(a), her delegation agreed to include the indication of the manufacturer, country of origin, batch number and the date of production and expiry.

Dr ABOU-DAHAB (Syrian Arab Republic) referred to statements by some delegations that the batch number was not important. In his view, it was important because it facilitated the national and international withdrawal of products if countries discovered that there was something wrong with them and helped courts and the judicial process to define quantities in the event of flaws.

Mr INADOME (Japan) clarified that he had not meant that the product number was not necessary, only that "product number" should be written, omitting the word "batch".

Ms ANDONOVA (Bulgaria) said that her delegation supported the Chair's text but stressed that, in order to fight smuggling, it was very important to put the importer's name on cigarette packets.

Mr MBUYU MUTEBA (Democratic Republic of the Congo) agreed with the delegate of the Syrian Arab Republic that batch numbers were very important for seeking and identifying suspect or sought-after products. He proposed the addition of a new subparagraph 3(c) that would prohibit the sale of tobacco to and by minors.

The CHAIR said that the issue referred to was reflected elsewhere in the text. He and the Co-Chair would verify that and ensure that the issue of minors was reflected in the appropriate place. He confirmed that the interventions regarding batch numbers would be reflected in the text to be produced, and that the Working Group would return to that issue. It was useful for the Co-Chairs to hear delegations' views on proposals in order to gain a sense of the level of support for them. He requested the delegate of the European Commission to give further thought to its proposal and consult with other interested delegations in order to arrive at an agreed wording and forward it to the Co-Chairs.

Dr AL-BADDAH (Saudi Arabia) said that the problems his country had had with tobacco companies meant that the question of batch numbers was not in accordance with its legislation. Paragraph 3 should mention the expiry date, including the day, month and year. It should be agreed whether the expiry date would be one or two years later, so that the date of expiry was harmonized across all tobacco products.

Ms BREBNER (Samoa) spoke on behalf of the Pacific Island countries which had met in Sydney in 2001. The group had felt that in subparagraph 3(a) it would be better to specify the objectives of a marking regime rather than trying to define it. It therefore proposed additional wording to the paragraph: “markings for tracking and tracing product batch number including the date of production and expiry.”

Mr MICHELENA (Venezuela) stated that, in order for the fight against illicit trade to be effective, the maximum amount of information possible was required. Information such as the manufacturer’s name, the country of origin, the product batch-number and dates of production and expiry were very important elements aiding monitoring at customs level, without which the objectives in the fight against illicit trade would not be achieved.

The CHAIR said that every effort would be made to reflect delegates’ contributions and differences in a revised text, in particular regarding the issue of batch-numbers.

#### **Paragraph I.4**

Mr PADILLA (Philippines) considered paragraph I.4 to be superfluous and suggested that it be integrated into the earlier text of G.1(d).

The CHAIR expressed his appreciation of the suggestion and said that he would consult with the Co-Chairs in the other Working Groups on merging that point.

Mr ALCAZAR (Brazil) proposed that paragraph 4 be amended to read “Each Party shall adopt appropriate measures to ensure that the packaging information will follow the requirements of the importing country”.

Ms CANTIN (Canada) said that her delegation supported appropriate measures to help identify contraband by requiring packaging information to appear in the language or languages of the territory where the tobacco was sold. That obligation should be on the importer not on the exported.

Mr CHAVES SELL (Costa Rica), speaking on behalf of the Latin American Group, agreed with the proposal by the delegate of the Philippines that paragraph 4 should be deleted.

Professor HUSSEIN (Sudan) supported the view that paragraph 4 was superfluous and that an additional phrase could appear in paragraph 3, as follows: “in the language of the country where the product is to be placed on the market”.

Mr SHEVCHOUK (Ukraine) agreed that paragraph 4 should be deleted and that its sense could usefully be incorporated either into 3(a) or 3(b).

Dr SRINATH REDDY (India), speaking on behalf of the Member States of the South-East Asia Region, supported the Chair’s text in the paragraph as it stood.

Mr RAJALA (European Community), reminding the meeting that he spoke on behalf of the European Community and its 15 Member States, suggested that the text in the brackets should be included so as to read: “or that the data is presented in another approved form.”

Mr LOM (United States of America) expressed concern over limiting the transmission of packaging information to a particular language and felt that there were additional ways of conveying information to enable recipients to determine what was being said. He therefore endorsed the European Commission’s proposal to retain the bracketed text.

Dr ABOU-DAHAB (Syrian Arab Republic) supported the Chair’s text but suggested that it could be added to subparagraph 3(c).

Mr GBOMOR (Sierra Leone) disagreed that paragraph 4 should be deleted; the document was important and some degree of repetition was sometimes necessary for clarity. He therefore proposed the retention of paragraph 4 but with the addition of the words “as required by importing countries are”, after “packaging information”.

Mr EMMANUEL (Saint Lucia) agreed that paragraph I.4 should be deleted as it was similar to paragraph G.1(d)(iv).

The CHAIR acknowledged that several delegates had raised that particular suggestion, which was valuable. He would consult with the other Co-Chairs of the other Working Group so as to ensure compatibility between the wording in each section. A decision on where the wording should appear would be decided at a later date. Until then it would remain bracketed in the text.

Dr ZARIHAH (Malaysia) proposed that paragraph 4 be retained without the bracketed text, since the inclusion of the wording “approved form” implied a requirement to seek clarification by an authoritative body, which would itself need to be defined.

Dr AL-BADDAH (Saudi Arabia), in agreement with other delegates, proposed that paragraph 4 be incorporated into paragraph 3, perhaps within the text ending “sold or manufactured under its jurisdiction”.

Dr SANDA (Romania) proposed that paragraph 4 be incorporated into paragraph 3 as a new subparagraph 3(c), otherwise leaving the Chair’s text as it stood.

Dr OTTO (Palau) agreed with the delegation of Sierra Leone that it was important to retain paragraph 4. He supported the Chair’s text but requested that the wording be amended to read “at least two of the main languages” instead of “the principal language or languages”. That would reflect the fact that in many of the Pacific Island countries there were two main languages, English and the native language. He explained that the burden should be placed on the tobacco manufacturers rather than on where the products were being placed on the market.

Mr SANTHOKI (Suriname) emphasized that the text was a control measure and endorsed the delegate of Palau’s view that the burden should not fall solely on the country where the products were placed. He stated that the provisions should be formulated so as to ensure that they were controllable, understandable and legible for the country where the product would be placed on the market as well as in the country where the product was manufactured, in order to avoid creation of an unequal burden. He also suggested that the wording be amended to read “official language” instead of “principal language”.

Mr SURENCHIMEG (Mongolia) supported the Chair's text and endorsed the suggestions made by the delegates of Malaysia and Palau.

#### **Paragraph I.5**

Mr MBONGWE (Botswana), speaking on behalf of the Member States of the African Region, supported the Chair's text in principle, but proposed specific amendments to paragraphs 5(a) and 5(c). An addition should be made to the end of paragraph 5(a), after "illicit trade", to read "and exchanging information among customs and tax authorities concerned with the trade". That would ensure that different bodies dealing with border controls could collaborate effectively. An addition should also be made to paragraph 5(c), after "destroyed", to read "using environmentally friendly methods". That would emphasize the Convention's major focus on public health.

Mrs CARLOT-TARY (Vanuatu) suggested that paragraph 5(a) be moved to Article K, dealing with surveillance.

Dr SRINATH REDDY (India), speaking on behalf of the Member States of the South-East Asia Region, and in line with his earlier intervention on paragraph I.1, proposed that the words "and raw tobacco materials" should be added after "tobacco products" at the end of paragraph 5 and after "tobacco products" in paragraph 5(a). In paragraph 5(b) after "contraband cigarettes" the wording "raw tobacco materials" should appear before "and other such tobacco products".

Mr INADOME (Japan) proposed amending part of paragraph 5 to read "legislative, executive, administrative or other appropriate measures". In paragraph 5(b) he proposed that "and/or strengthening" be deleted to prevent a disproportionately heavy penalty on tobacco smuggling compared to other goods. Finally he requested clarification of the term "appropriate steps" in paragraph 5(b). What would those steps be? Were there any examples? Until such time as the issue was clarified he would reserve his delegation's position on that point.

The CHAIR invited delegations to clarify that provision.

Mr CHAVES SELL (Costa Rica), speaking on behalf of the Latin American Group, supported the Chair's text under paragraphs 5 and 5(a). In 5(b), he proposed deleting the words "with appropriate penalties" and amending paragraph 5(c) to: "appropriate steps to ensure that all counterfeit and contraband cigarettes and other tobacco products of this type, and all equipment used in its production, are destroyed by environmentally friendly methods".

Dr TADEVOSYAN (Armenia), speaking on behalf of countries of the Commonwealth of Independent States, said that his delegation generally supported the Chair's text in subparagraphs 5(a), 5(b) and 5(c). However, in subparagraph 5(b), the English word "enactment" was translated in Russian as "introduction" and, in the Russian version, his delegation wished to replace it with the Russian word for "application".

Mr RAJALA (European Community) endorsed subparagraphs 5 and 5(a) of the Chair's text. However, his delegation did not consider it appropriate in 5(b) to refer to criminal legislation nor to specify penalties as those were matters of national competence. His delegation proposed saying that production of counterfeit tobacco products and trade in contraband tobacco products should be prohibited and that Member States should then be urged to take the appropriate measures to enforce such prohibition.

In 5(c), his delegation recalled that in certain jurisdictions there was a provision allowing seized contraband tobacco products to be put on the market after the relevant taxes had been paid. He

suggested that wording could be found to address such a situation, one which did not inherently pose a public health problem. He noted that, in fact, were those products to be put back on the market it would result in diminished production as the tobacco industry would not need to replace them.

Dr SANDA (Romania) said that her delegation generally endorsed the Chair's text, with some modifications. In subparagraph 5(a) it supported retaining the words in brackets "and exchanging information among customs and tax authorities concerned with the trade". In subparagraph 5(b) it proposed replacing the word "enactment" with "enacting". In subparagraph 5(c) it suggested deleting "appropriate steps to" and beginning with "ensuring that all confiscated counterfeit and contraband cigarettes and other such tobacco products are destroyed".

Dr FARSHAD (Islamic Republic of Iran) said that his delegation wished to add "and raw leaf tobacco" to the end of paragraph 5, and also to modify subparagraph 5(a) as follows: "establishing data collection mechanisms, including monitoring and collection of data on cross-border trade in tobacco products and raw leaf tobacco, including illicit trade".

Dr SANGALA (Malawi), recalling the proposal by the delegate of India to add "raw tobacco" at the end of "tobacco products" in paragraph 5, observed that the compilation of terms and definitions (document A/FCTC/INB3/INF.DOC./1) presented various definitions of tobacco products, which included raw tobacco. He cited the definition in paragraph 52 of that document from the Tobacco Products Control Act of Thailand, 1992 and asked the Chair if tobacco products could be defined to include all those products described therein.

Mr SANTHOKI (Suriname) said that his delegation supported the text of the Chair with minor amendments. In subparagraph 5(a), not wishing to limit the exchange of information to customs and tax authorities exclusively, it proposed the modification "and exchange information among customs, tax authorities and other appropriate authorities". In subparagraph 5(c) his delegation suggested adding the phrase "in accordance with the criminal justice system" following the word "destroyed" to protect and respect the independent position of his delegation's court and the judges who could hold another opinion on those types of issues.

Ms QU Meiyu (China) said that her delegation generally endorsed the contents of paragraph 5 of the Chair's text, although it considered that subparagraph 5(c) could be deleted. If that was unacceptable, her delegation would support the modifications proposed by the delegate of the European Commission to that subparagraph.

Dr ABOU-DAHAB (Syrian Arab Republic) said that his delegation supported the Chair's text for subparagraph 5(a). He said that he believed that in subparagraph 5(b), when reference was made to penalties, that they should be fairly stringent. In subparagraph 5(c) his delegation proposed that countries should be left free to decide how they would handle confiscated or impounded products which had been smuggled. His delegation suggested that either the authorities could decide on the destruction of the products or that there could be other courses of action depending on the will of those authorities.

Ms CANTIN (Canada) supported the proposal by the delegate of India to include the language "raw leaf tobacco" consistently throughout the text. Her delegation supported the following wording of subparagraph 5(a) "by establishing data collection mechanisms to ensure that information on the production and subsequent distribution of all tobacco products and raw leaf tobacco, including imports and exports, is collected and analysed". Her delegation concurred with the two textual proposals made by the delegate of Botswana. Her delegation also supported subparagraph 5(b) with amendments. The first was that, since some Parties had existing comprehensive measures to combat illicit trade,

strengthening of legislation for all Parties might not necessarily be a requirement. Her delegation therefore recommended removing the word “strengthening” from the text.

Secondly, her delegation recommended removing the word “criminal” since that was too narrow a definition and other criminal options could be equally appropriate. Thirdly, she recommended adding the words “and remedies” to “appropriate penalties”. Lastly, her delegation proposed removing language such as “severe”, “strict”, “harsh”, and “strengthening punitive sanctions”. In subparagraph 5(d) she wished to retain the language introduced in the previous session that read “by adopting measures to monitor, document and control the distribution and movement of duty-free and tax-free tobacco products, including raw leaf tobacco”. Similarly, her delegation also supported the language previously formulated during the second session, namely: “by adopting measures to enable the confiscation of proceeds derived from the commission of criminal offences related to the illicit tobacco trade”.

Mr SHEVCHOUK (Ukraine) said that his delegation fully agreed with the Chair’s text. It felt that the destruction of tobacco products was extremely important and a matter of principle. He would not be in favour of secondary use of the products, and suggested that, after the words “tobacco products are destroyed” in subparagraph 5(c), there be a reference to the need for confiscation of equipment for the production of illegal tobacco products, or illicit products, as well as any other property that was used, contrary to the law, for the purpose of manufacturing tobacco products.

Mr LOM (United States of America) expressed his delegation’s concern about the current draft of the text, in particular the reference in subparagraph 5(b) to criminal legislation. He recalled that other delegates had commented that an international body should not infringe on the sovereign powers of national states in that particular area. He also expressed concern regarding the destruction of contraband products, noting that in the smuggling arena many issues had an impact on law enforcement. Legislation in the United States required that certain contraband tobacco products be destroyed. The definition of contraband cigarettes or cigarette products could be broad enough to include other products that would fall under that definition, which for law enforcement purposes should not be destroyed. Such products were used in covert operations to target criminals and were legal except for the fact that they did not indicate any proof of tax payment.

His delegation proposed amending the Chair’s text by replacing subparagraph 5(b) with the wording “implementing other measures which ensure the collection of revenue and prevent and combat illicit trade in tobacco products”. His delegation suggested amending subparagraph 5(c) to read “taking appropriate steps to ensure that all confiscated counterfeit and contraband cigarettes and other such tobacco products are destroyed, except for those contraband cigarettes and other tobacco products which are contraband only because national or subnational taxes have not been paid on those cigarettes or products.”

His delegation would consider addressing its concerns in the definition section of contraband products. He also supported the proposal submitted by the European Commission which addressed most of his delegation’s concerns.

Ms ANDONOVA (Bulgaria) expressed support for two points made by the delegate of Canada, namely, the inclusion of “raw leaf tobacco” in subparagraph 5(a) and in subparagraph 5(c) “the exchange of information between the appropriate customs and tax authorities”.

Mr PADILLA (Philippines) endorsed the position of the delegate of Romania and others regarding subparagraph 5(c); his delegation strongly believed from the public health perspective, that all counterfeit and contraband cigarettes should be destroyed and not brought back into the market.

Mr DILEMRE (Turkey) expressed support for subparagraphs 5(a) and 5(b) of the Chair’s text, making some minor additions only to paragraph 5, where his delegation wished to add “tobacco and”

before the words “tobacco products”, and in subparagraph 5(c) where he proposed adding after “other such tobacco products are destroyed” the phrase “and other offence-related property, such as tobacco manufacturing equipment and conveyances and to ensure that forfeited tobacco products are destroyed”.

Dr LOUP (Bolivia) wished to recall the proposal made by the delegate of Costa Rica that in subparagraph 5(c) the destruction of either tobacco products or the material used to produce such tobacco products should be destroyed using non-polluting methods.

The CHAIR noted that there was considerable support for using wording that would indicate environmentally friendly methods and that the concept would certainly be incorporated in the text.

**The meeting rose at 11:55.**

**WORKING GROUP 2**

**SECOND MEETING**

**Friday, 23 November at 19:40**

**Chair:** Mr E. AISTON (Canada)

**DRAFTING AND NEGOTIATION OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL:** Item 3 of the Agenda (Documents A/FCTC/INB3/2(b), A/FCTC/INB3/2(b) Corr.1, A/FCTC/INB3/2(b) Corr.2, A/FCTC/INB3/3, A/FCTC/INB3/5, A/FCTC/INB3/INF.DOC./1, A/FCTC/INB3/DIV/1 and A/FCTC/INB3/DIV/5) (continued)

Ms BALOCH (Pakistan), pointing out that the timetable of work adopted by the Plenary did not provide for a formal meeting of the Working Group at that time and that the Working Group had no authority to overrule a decision of the Plenary, proposed that the meeting be considered informal.

The CHAIR saw no objection on the understanding that the work of the informal meeting was taken into account by the Working Group at its next formal meeting.

**It was so agreed.**

**The formal meeting of Working Group 2 was suspended at 19:50.**

**WORKING GROUP 2**

**THIRD MEETING**

**Saturday, 24 November 2001, at 10:00**

**Chair:** Mr T.T. CHIFAMBA (Zimbabwe)

**DRAFTING AND NEGOTIATION OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL:** Item 3 of the Agenda (Documents A/FCTC/INB3/2(a), A/FCTC/INB3/2(a) Corr.1, A/FCTC/INB3/2(a) Corr.2, A/FCTC/INB3/2(b), A/FCTC/INB3/2(b) Corr.1, A/FCTC/INB3/2(b) Corr.2, A/FCTC/INB3/2(c), A/FCTC/INB3/2(c) Corr.1, A/FCTC/INB3/2(c) Corr.2, A/FCTC/INB3/3, A/FCTC/INB3/5, A/FCTC/INB3/6, A/FCTC/INB3/7 and A/FCTC/INB3/DIV/1)

The CHAIR thanked the working group for the cooperation and spirit of compromise it had shown. The Co-Chairs particularly welcomed the efficient method of work adopted: delegations had not repeated points that had been covered by other speakers. He noted that the present meeting was formal; the Co-Chairs would be taking note of delegates' points and developing a text based on them, which after further debate by the working group in a formal meeting, would be presented to the plenary meeting on the final day. He asked delegations to facilitate that schedule by concentrating on the text rather than discussing the process.

Ms BALOCH (Pakistan) looked forward to the text in preparation but sought clarification as her delegation had understood that any text prepared would be on the basis of a formal meeting and that the proposals resulting from informal meetings would be taken to formal meetings to be decided upon.

The CHAIR confirmed that the text would be adopted by the working group only in its formal meetings. The text would not be final until agreed by the working group; the process was incremental, with further improvement and development of the material. The previous day, progress had been made in the informal session; in the present session non-State Parties would be allowed to contribute and their comments noted.

Ms QU Meiyu (China) supported the comments made by the delegate of Pakistan and asked how the content of the previous night's informal meeting would be expressed at the present meeting.

The CHAIR recalled that the procedure originally announced for the working groups was to discuss every article and for the Co-Chairs to develop a text on the basis of those discussions, incorporating comments from all participants. The biggest task for the third session of the Intergovernmental Negotiating Body was to narrow down the text. The previous day's procedure had been for delegations to comment and for the Co-Chairs to try to produce a balanced text reflecting the views of all. That text would then be circulated for consideration in a formal session before the working group reported to the plenary meeting on the final day. Negotiations would not end with the third session, but during that session the text should be narrowed down to a manageable level to ensure progress. The Chair encouraged delegations to focus on the text and return to discussing the process later.

**F. *Price and tax measures to reduce the demand for tobacco***

**Paragraph F.1**

Dr TADEVOSYAN (Armenia), representing six countries of the Commonwealth of Independent States, said that paragraph F.1 was very important because price measures would affect taxes. His delegation proposed amending the text by replacing “are” with “may be” and using the text “a tax policy coordinated between countries is an important means of discouraging illicit traffic in tobacco products”.

Mr INADOME (Japan) said that his delegation regarded paragraph F.1 as being very important, but that the harmonization of tobacco product prices (referred to in the second part of the sentence) would be extremely difficult in all States due to their diverse economic and social situations. Japan therefore proposed deleting the second half of the sentence, finishing after the word “consumption”.

Mr CHAVES SELL (Costa Rica), speaking on behalf of the 19 Latin American countries that had met in Rio de Janeiro in November 2001 to produce a consensus document, proposed a small modification to paragraph F.1 to read “price increase measures” instead of “price measures”.

Mr LEE (Republic of Korea) supported the Chair’s text in principle, but in his delegation’s view, the specific circumstances of each Party should be considered in the harmonization of tobacco product prices. The Republic of Korea therefore proposed the following text: “The Parties recognize that price and tax measures can be an effective mechanism to reduce tobacco consumption, and that they must be combined with effective measures to combat illicit traffic in tobacco products.”.

Dr BOVET (Seychelles), speaking on behalf of the African Group, said that the paragraph was important, as its main message was that increases in prices led to decreases in tobacco consumption and those were possibly the best demonstrated measures for reducing tobacco consumption. His delegation wished that message to be reflected by the sentence “The Parties recognize that price increases are an effective mechanism to reduce tobacco consumption.”. The second part of the sentence should be deleted because the issue of illicit traffic was dealt with elsewhere in the convention.

Dr SRINATH REDDY (India), speaking on behalf of the Member States of the South-East Asia Region, expressed considerable difficulty with the Chair’s text in paragraph F.2. The South-East Asia Region believed that harmonization was a difficult concept to interpret, especially with regard to pricing issues. As the prices of other commodities differed widely across the world, it was impractical to harmonize prices for that particular commodity. The South-East Asia Region therefore proposed the following formulation: “The Parties recognize that increasing prices is an effective means of reducing tobacco consumption and recommend a progressive increase in taxes in accordance with the framework of national policies. The Parties undertake to develop effective measures of regional and subregional coordination for the control of illicit traffic in these products.”. That formulation would clearly indicate that prices needed to be progressively increased. His delegation took note of the African Group’s suggested amendment of harmonization at the highest possible level, but there was still considerable ambiguity. Would that be decided by the Conference of Parties, or by individual States who could decide that their highest level was 1% or 99% tax or price increases. He therefore suggested that the word “harmonization” should be removed and the formulation suggested by the South-East Asia Region adopted.

Mrs CARLOT-TARY (Vanuatu), speaking on behalf of the South Pacific small islands, proposed amending paragraph F.1 to emphasize price mechanisms as the most effective measure for

reducing tobacco consumption, as those mechanisms were important and a component of comprehensive efforts to reduce tobacco consumption.

Dr ZARIHAH (Malaysia) agreed with the delegation of Japan that the word “harmonization” should be deleted because harmonization could be counterproductive and was not an effective strategy for combating smuggling. The text should therefore read: “The Parties recognize that price measures are an effective mechanism to reduce tobacco consumption for various sections of the population and that they must be combined with effective measures to combat illicit traffic of tobacco products.”.

Ms MAYSHAR (Israel) proposed the following additions to the Chair’s text: the words “and tax” to read “price and tax measures”; inserting the words “for various sections of the population, particularly for young people” after “to reduce tobacco consumption”; and inserting the word “upward” after “progressive harmonization”.

Mrs TRAN THU THUY (Viet Nam) supported the proposal by the delegate of Japan to delete the second half of the sentence of paragraph F.1.

Ms QU Meiyu (China) supported the Chair’s text in principle, but noted that the harmonization of prices should take into consideration the individual situations of the various countries.

Dr CASTILLO CAMINERO (Dominican Republic) expressed reservations about harmonization. Since, in his country, tobacco products were currently already heavily taxed, he saw no problem with general tax harmonization but doubted that price harmonization would be workable, as there were considerable differences between markets in production and distribution costs, exchange rates and the ways in which countries levied taxes. Furthermore, as price and tax harmonization would lead to price increases, such an action would widen the gap between legitimate and illicit products.

Mrs ALI HIGO (Djibouti) suggested adding the words “and tax” after the word “price”, and replacing the word “harmonization” by the word “increase” in paragraph F.1.

Mr MILLER (United States of America) suggested that a protocol on smuggling could provide a better vehicle for discouraging illicit traffic in tobacco products, as harmonized taxes could still provide a significant incentive for smuggling because profits were created from tax avoidance rather than through tax differences between countries.

Mr SHEVCHOUK (Ukraine) endorsed the proposals put forward by the delegate of Armenia on behalf of the six countries of the Commonwealth of Independent States.

Mr EISSA (Egypt) said that he supported the Chair’s text, as it reflected targeted objectives very well, particularly regarding price harmonization. He said that Article F would contribute to eventual price increases overall, setting a precedent for upward changes in tobacco prices in developing countries. That was an important point since such increases would lead to a reduction in tobacco consumption in those countries. Additionally, price harmonization would be an effective means to curb smuggling, which existed due to price disparities between countries.

Dr DJAMALUDDIN (Indonesia) endorsed the text submitted by the delegate of India proposing that each country should adopt a progressive increase in tobacco product prices within the framework of national policies. Although acknowledging that price measures were an effective mechanism in reducing tobacco consumption, evidence had shown that they did not guarantee discontinuance of smoking, as smokers simply sought cheaper tobacco products elsewhere. Furthermore, she had reservations about the ability of progressive harmonization of tobacco product prices to discourage

illicit traffic, since such policies tended to ignore cultural, economic or political differences and were time consuming.

Mr RAJALA (European Community), speaking on behalf of the 15 Member States of the European Community and Bulgaria, the Czech Republic, Hungary, Romania, Slovakia and Slovenia, stated that paragraph F.1 was an important part of the convention but reiterated the concerns about the principle of harmonization already raised by several delegations. Measures to reduce tobacco consumption should be targeted at several sections of the population, and in particular at young people. Such measures must also be combined with effective action to combat illicit traffic in tobacco products.

Mr SANTHOKI (Suriname) said that he was unconvinced that price measures would affect illicit traffic in tobacco products, being subject to supply and demand. He proposed that, in paragraph F.1, the word "is" after "prices" be changed to "can be" and "of discouraging illicit traffic in" be replaced by "to the control of traffic and use of tobacco products".

Dr AL-BADDAH (Saudi Arabia) supported the Chair's text but proposed that any reference to illicit traffic be removed since, in practice, price increases tended to lead to an increase in illicit traffic.

Mr PADILLA (Philippines), for reasons already stated by the delegates of the European Community, India, Indonesia, Japan and Viet Nam, suggested that paragraph F.1 be amended as follows: "The Parties recognize that progressive escalation of price and tax measures are an effective mechanism to reduce demand for tobacco consumption."

Dr PYAKALYIA (Papua New Guinea), speaking on behalf of the Pacific island countries, supported proposals made by the delegates of Japan and Philippines with regard to the first part of paragraph F.1. He would prefer to use the wording of the version appearing on page 4, of document A/FCTC/INB3/2(b) which had three subparagraphs, (a), (b) and (c). He endorsed that text, with the exception of subparagraph (c) which should not be included.

Dr GAMARRA DE CÁCERES (Paraguay) stated that her country supported the consensus text proposed by the delegate of Costa Rica, representing the group of Latin American countries, considering paragraph F.1 to be of key importance. Research had proved that increasing tobacco product prices was one of the most cost-effective ways to reduce accessibility, especially among children. Furthermore, as tobacco was an addictive substance, preventing children and adolescents from commencing smoking was essential and price control was a very effective measure in that respect. She agreed that harmonization was an important way to discourage illicit traffic, although by no means the only way. Those other measures also needed attention, and corruption needed to be addressed.

Mr GBOMOR (Sierra Leone) considered that it was too much to deal with both the reduction of tobacco consumption and the discouragement of illicit traffic in tobacco products in one paragraph. He agreed with previous speakers that tax harmonization would be very difficult. He therefore proposed that paragraph F.1 should be amended to read: "The Parties recognize that prices are an effective mechanism to reduce tobacco consumption, and that progressive increases in excise taxes in accordance with national policies may discourage the illicit traffic in tobacco products."

Mr MIQUILENA MARÍN (Venezuela) commented that one of the most effective ways to reduce tobacco consumption was to increase prices but that such action could only be effective if price harmonization and control measures against illicit traffic were in place. He therefore agreed with the

Chair's text, but suggested incorporating the amendments proposed by the Latin American group of countries and other delegations in that respect.

Dr SAADE (Lebanon), whilst acknowledging the difficulty of global harmonization of tobacco prices, agreed that progressive harmonization between neighbouring countries was an important means of discouraging illicit traffic in tobacco products.

Ms LINDBAK (Norway) proposed inserting the words "and tax" between "price" and "measures" in the first part of the paragraph. She suggested either deleting the second part of the paragraph altogether, or inserting the word "upward" between "progressive" and "harmonization".

Dr ABOU-DAHAB (Syrian Arab Republic) supported the addition of "price increases" and "progressive imposition of taxes", which would reduce tobacco consumption, especially among children. He endorsed the proposed addition of subparagraphs (a), (b) and (c) on page 4 of the document. He further proposed an additional phrase requesting countries increasing prices and levying taxes to set aside part of the extra revenue for the authorities responsible for tobacco control measures, which was not reflected in the current text.

The CHAIR, summing up the debate on paragraph F.1, said that there had been a useful exchange, with some delegations expressing the need to link price and tax measures. Some delegations had emphasized the importance of price increases whilst others had felt that such measures did not necessarily lead to a reduction in demand. Delegations had expressed difficulty with harmonization of prices and others had felt that the question of illicit traffic should perhaps be placed elsewhere, although many more delegations had felt that the objective of that paragraph was to address the issue of price and tax measures as well as the need to combat illicit trade. He stated that every effort would be made to try to reflect all of the ideas in a consolidated text, for consideration at the next day's meeting.

### **Paragraph F.2**

Mr ALLEN (New Zealand) stated that his delegation attached great importance to paragraph F.2 and therefore supported quite strong wording. To that end it proposed deleting the phrase "to the extent possible within the means at its disposal and its capabilities" in the first sentence and replacing the words "harmonizing appropriate" with the word "implementing". In subparagraph 2(b) following the word "achieve" he requested that the words "a stable and continuous" be replaced with "achieve a progressive" and in subparagraph 2(c) that "recommended" be replaced with "agreed".

Mr SOLANO (Costa Rica), speaking on behalf of the Latin American Group, said that he proposed a small amendment to paragraph 2 of the Chair's text, substituting "within the means at its disposal and its capabilities" with "in accordance with the means available". The delegation was in agreement with the Chair's text for subparagraphs 2(b) and (c).

The CHAIR recalled that it had been agreed at a previous meeting that delegates would refrain from commenting on the phrase "to the extent possible within the means at its disposal and its capabilities". That phrase was being considered elsewhere and delegates were requested to refrain from commenting on that part of the text.

Mr INADOME (Japan) proposed that the Chair's text might be amended as follows: "Each Party shall, to the extent possible, within the means at its disposal and its capabilities and within the limit it considers necessary, adopt legislative, executive and administrative or other appropriate measures, which are recognized as effective in reducing tobacco consumption and exposure to tobacco

smoke.”. The changes reflected the delegation’s belief that tax policy was a significant component of national policy.

Dr ZARIHAH (Malaysia), referring to her delegation’s position on the same issue in paragraph F.1, requested that the word “harmonization” be removed and clear direction given on use of effective tax policy. The paragraph should read as follows: “Each Party shall adopt legislative, executive and administrative measures, and cooperate with other Parties on policies for continuous tax increases in order to reduce tobacco consumption and exposure to tobacco smoke. Such measures and policies shall include the following:”. In subparagraph 2(a), following “tobacco products” the phrase “within two years of the entry into force of this convention without exceptions or allowances to travellers, diplomats and military or government personnel” should be added. In subparagraph 2(b) the current text should be amended after the words “so as” to read “to ensure that tobacco products do not become more affordable over time and thereby to achieve a continuing reduction in tobacco consumption”. The delegation requested that subparagraph 2(c) be removed.

Dr BOVET (Seychelles), speaking on behalf of the African Group, proposed that in paragraph F.2 the phrase “and exposure to tobacco smoke” should be deleted to be consistent with other places where tobacco consumption only was referred to. The delegation proposed adding “without exceptions” at the end of subparagraph 2(a) as all rules had exceptions but such exceptions were to be avoided as much as possible.

Mrs ALEXIS-THOMAS (Trinidad and Tobago) said that her delegation wished to modify paragraph F.2 by inserting the phrase “sale of tobacco products” following the word “consumption” as reduction of sales was regarded as a critical area of tobacco tax policies.

Mr SOLANO (Costa Rica) wished to suggest the insertion of the phrase “in particular, at the regional and subregional levels” following the wording “cooperate with other Parties” in paragraph F.2.

Mr SANTHOKI (Suriname) explained that his delegation wished to delete the words “and exposure to tobacco smoke” in the third sentence of paragraph F.2 since the subject was not a result of the harmonization of tax policies but rather the result of the reduction of tobacco consumption.

Dr OTTO (Palau) said that his delegation concurred with the comments of delegates in support of a strong convention and wished to be associated with the comments and proposals made by the delegate of Malaysia.

Ms BALOCH (Pakistan) said that her delegation wished to retain the reference “to the extent possible within the means at its disposal and its capabilities” but would like to delete the references to “harmonization of tax policies” and to “the exposure to tobacco smoke”. She would prefer that in the last sentence of paragraph F.2 the word “shall” be replaced with “may” and requested that subparagraph 2(c) be deleted.

Dr SRINATH REDDY (India), speaking on behalf of the South-East Asia Region, expressed support for the recommendation of a progressive tax increase and the prohibition of duty-free sales without exception. Certain portions of the Chair’s text, in particular the word “harmonization”, could be ambiguous. When taken in conjunction with part 2(c) the last line of paragraph F.2 was extremely open-ended and infringed the sovereign rights of nations to determine their own tax policies. He suggested that an alternative formulation be found which protected the sovereign rights of nations to determine their tax policies while recommending, within those national tax policies, a progressive policy of upward taxation.

Paragraph F.2 should be reformulated into two components. The reformulated paragraph F.2 would read: “While recognizing the sovereign right of nations to determine their taxation policy, the Parties recommend progressive taxation of tobacco products intended to stimulate and sustain a steady decline in tobacco consumption.”. The new paragraph F.3 would read “Each Party shall adopt legislative, executive and administration measures for developing and implementing appropriate national tax policies in order to reduce tobacco consumption and exposure to tobacco smoke. Such measures and policies shall include prohibition of tax-free and duty-free sales of tobacco products.”.

Mrs GONZÁLEZ NAVARRO (Cuba) said that her delegation concurred with previous delegations who requested that subparagraph 2(a), referring to the prohibition of duty-free products, be deleted.

Mr SHEVCHOUK (Ukraine) commented that his delegation supported the Chair’s text but proposed incorporating in subparagraph 2(b) the concept that part of the income from price increases and tax measures should be given to the authorities involved with tobacco control, unless such wording was already included elsewhere in the convention. Such a mechanism of self regulation already applied to certain alcohol sales. The higher the sales the more income could be used for preventive measures, which his delegation believed to be an important principle.

Ms MAYSHAR (Israel) said that in paragraph F.2, her delegation believed it important to add the phrase “prevent initiation of tobacco use and to” after the word “consumption”. Her delegation expressed support for the Chair’s text, subparagraph 2(a) regarding the prohibition of duty-free and tax-free sales. However, in subparagraph 2(b) she requested that the words “stable and” be deleted and expressed her support for the amendment proposed by New Zealand regarding subparagraph 2(c).

Mr RAJALA (European Community) proposed that the convention should concentrate on encouragement of a fiscal policy which took account of public health imperatives both nationally and in negotiations of an international agreement and expressed the view that the convention should also provide the mechanism for exchanging information on taxation of tobacco products, methods of calculation and impact of tax consumption. That would provide a valuable resource to justify such measures on a factual basis. The delegation would also be in favour of the convention covering the exchange of available information on the impact of tax- and duty-free sales. That information could also include details of links between such sales and transit and illicit traffic.

Regarding the prohibition of duty- and tax-free sales he wished to recall that such sales had already been phased out in the European Community for travellers within its territory. Such sales were still allowed with quantitative restrictions for travel into and out of the European Community and for certain categories of people, such as diplomats. He suggested that a worldwide prohibition of duty-free tobacco product sales for travellers would require careful analysis with regard to existing international agreements which needed to be considered. It might be very difficult to find a solution for that general situation in the context of the current negotiations.

The complete abolition of duty-free tobacco products would give rise to a number of questions about what kind of successor regime should be put in place. That would be the case for sales of vessels and aircraft in international waters or airspace. Options must be considered carefully and all other alternatives must be looked at.

It would be useful to include a paragraph on information exchange on the impact of tax-free and duty-free sales on tobacco products, including the links between such matters of transit and illicit traffic. His delegation wished to support the third alternative text for paragraph 2 on page 6 of the document A/FCTC/INB3/2(b), ending on page 7, at the conclusion of subparagraph 2(c) with the words “and illicit traffic”.

Dr ROA (Panama) expressed serious reservations on behalf of her delegation concerning the wording of subparagraph F.2(a). The measure as it stood would result, for her country, in prohibition of duty-free goods in shops to which minors could not go and where only other sectors of the population had access. If subparagraph F.2(a) were applied as it was currently worded it would have a major impact on the operation of those tax- or duty-free zones. She asked the Chair to refer to those matters at some later stage in the INB process, emphasizing its wish to reduce tobacco consumption and acknowledging the objective of the convention to bring about a reduction of tax-free and duty-free sales in the future.

Mr MOON (Republic of Korea) said that his delegation would like to propose that detailed measures and policies to reduce tobacco consumption should be discussed in the protocol as that matter was sensitive and required careful consideration. To that end he suggested that the last sentence of paragraph F.2 and paragraphs F.2(a), (b) and (c) should be deleted.

Mr VARELA (Argentina) said that while his delegation fully supported the statement made by the delegate of Costa Rica on behalf of the Latin American countries, he wished to stress the importance of the regional, subregional and intraregional aspects of that issue. Harmonization of tax policies mentioned in paragraph F.2 would be a very complex and difficult operation from a global, regional and subregional perspective. However, it could make a difference to discouraging illicit traffic in tobacco products.

Dr CASTILLO CAMINERO (Dominican Republic) explained that his delegation's position on subparagraph F.2(a) was that tax- and duty-free sales should not be prohibited. Rather, the World Bank's recommendations should be followed, where in certain circumstances those products would be tax-free and duty-free. Some customs specialists had requested automation of systems of control of movement of products to assist authorities in exercising control when necessary, thereby reducing possibilities of illicit sales, fraud and deviating products. He agreed that subparagraphs F.2(b) and (c) should be deleted. The marked economic differences between highly industrialized and developing countries required that sovereign governments determined the level of taxes and the appropriate structures to deal with tobacco products in view of their own needs and objectives. At the same time they should guarantee that price increases resulting from tax increases should not hide counterfeiting and smuggling and should not be a way of assimilating such activity.

Mrs LE THI THU HA (Viet Nam) said that her delegation agreed with the suggestion to delete the word "harmonizing" and to replace it with the words "developing and implementing". She also requested that the phrase "exposure to tobacco smoke" be deleted, and the phrase "without exception" be added to the end of subparagraph 2(a). She concurred with those delegates who had expressed the wish to have subparagraph F.2(c) removed.

Dr DJAMALUDDIN (Indonesia) supported the remarks of the delegate of India, in rejecting the concept of tax harmonization. Countries had established their own standards and methodologies as a basis for calculating tobacco tax. The process of changing national and tax laws was already highly complex without considering the harmonization of tax across every country worldwide. She expressed concern that the convention was venturing too far into well-established systems in various sectors in the convention, and risked exhausting itself before coming to the main obligations of tobacco control.

She urged all Parties to concentrate on the most cost-effective measures in the convention and avoid such experimental efforts as the introduction of new concepts of tax harmonization. She agreed that the Parties should adopt a taxation policy for tobacco products, which supported the stimulation of a steady decline in tobacco consumption. However, she urged removing the tax harmonization concept from the convention. In that regard her delegation supported the new text in paragraphs F.2 and F.3 proposed by the delegate of India.

Mr INADOME (Japan) remarked that his delegation would like to delete subparagraphs F.2(a), (b) and (c), especially (a) because that would result in tobacco products being taxed by both importing and exporting countries. Other appropriate measures should be taken. Secondly, the universal prohibition of tax-free and duty-free sales of tobacco products could conflict with existing international principles of taxation and appeared to be inconsistent with existing conventions which already permitted tax-free and duty-free sales to certain categories. Referring to subparagraph F.2(b), tax was a very important element in each country's national policy, reflecting each country's individual situation. Subparagraph F.2(b) appeared to oblige countries to increase tax on tobacco products. Under subparagraph F.2(c), Parties could be committing themselves to take action before knowing what that action might be, even if the phrase "to the extent possible within the means at its disposal and its capabilities" were adopted. Consequently, his delegation wished to delete all three subparagraphs.

Mr EISSA (Egypt) said that, while acknowledging the apprehension expressed by some delegations in connection with subparagraph F.2(a), the group's aim was to curb the consumption of tobacco and tobacco products, and the problem had to be resolved, even if the convention conflicted with other agreements. His delegation supported the Chair's text generally, and proposed an addition to it. Under subparagraph F.2(b), taxes should be increased, and that should be stated clearly. His delegation also agreed with the proposal that part of the income received from such measures should go to tobacco control entities.

Ms QU Meiyu (China) commented that in the heading to paragraph F.2, the reference to harmonization of tax policies was too detailed. It was a matter for the Parties to decide and it was very difficult to reach a consensus. Her delegation favoured the use of another mechanism for tax policies. In addition, she suggested that subparagraph F.2(c) should be deleted.

Mr PADILLA (Philippines) supported the proposal put forward by the delegate of Malaysia and agreed to by the delegate of Palau, but also agreed that the phrase "exposure to tobacco smoke" should be deleted.

Ms MBONGWE (Botswana), speaking on behalf of the African Region, wished to propose additions to the remarks made by the delegate of Seychelles. Subparagraph F.2(b) should be modified to include the wording "imposition of taxes on tobacco products so as to continuously reduce tobacco consumption". She also referred to text put forward at the second session of the Intergovernmental Negotiating Body in connection with the provision of information on taxation rates and their impact on consumption. That was important information and her delegation was in favour of it, but believed it would be more appropriately located in Article K.

Mr ALCAZAR (Brazil) fully supported the Chair's text in subparagraph F.2(a). Tax-free and duty-free sales were a means whereby illicit trade of tobacco products could be fostered.

Mr MILLER (United States of America), recognizing that price and tax measures were effective in reducing tobacco consumption, said that Parties should cooperate in adopting appropriate policies to achieve this. However, while his delegation was unable to agree to the measures contained in subparagraphs F.2(a), (b) and (c), he considered that the proposals submitted by the European Union and Canada during the second session of the Intergovernmental Negotiating Body constituted a good basis on which to build. In particular, he endorsed the approach outlined by the European Community as well as the views expressed by Cuba, Japan and the Republic of Korea with regard to subparagraph F.2(a). While he supported the goal of reducing tobacco consumption, the tax and price measures proposed in subparagraphs F.2(a), (b) and (c) might conflict with national and federal

obligations in the United States and other countries. He therefore recommended that States Parties should be free to adopt their own price and tax measures.

Dr ABOU-DAHAB (Syrian Arab Republic) said that his earlier comments on paragraph F.1 also applied to paragraph F.2. In particular, he considered the proposal that a part of tobacco revenue be transferred to tobacco control entities was highly relevant and might therefore be added as a new subparagraph. A specific reference to the harmonization of tax policies at regional level should also be included in the Chair's text.

Professor HUSSEIN (Sudan) expressed his support for the text as a whole but proposed the following amendments: the addition of "at regional level, whenever and wherever possible" between "... with other Parties in harmonizing appropriate tax policies" and "... in order to reduce tobacco consumption" in paragraph F.2(b); the deletion of "stable" between "... so as to achieve ..." and "continuing reduction" and the replacement of the wording of subparagraph F.2(c) "part of the revenues from raising tobacco prices and taxes shall be transferred to tobacco control entities".

Mrs DE BELLIS (Uruguay) endorsed the view expressed by previous speakers that the words "respecting the tax policies of each country", needed to be included in the Chair's text.

Mrs ALI HIGO (Djibouti) observed that the inclusion of "to the extent possible" in subparagraph F.2(a) already imposed limitations on the scope of the text. She supported the delegations who had mentioned the need to develop tax policies and encourage harmonization at regional level in order to reduce tobacco consumption sales. Furthermore, the words, "exposure to tobacco smoke" in paragraph F.2, should be retained. With regard to subparagraph F.2(b), she proposed the insertion of "... an increase in ...", between "imposition" and "... taxes on tobacco products ...". She also proposed that the revenue from tax and price measures should be used to combat illicit trade in tobacco products.

Mr MIQUILENA MARON (Venezuela) endorsed the proposal by Costa Rica. In connection with subparagraph F.2(a), he stressed that prohibiting the sale of tax-free and duty-free tobacco products was just one more mechanism in combating smuggling, but, as long as incentives for smuggling existed, harmonizing taxes and raising prices would not in themselves be sufficient.

Ms NOFTLE (Canada) strongly supported an approach which would afford each Member State the appropriate degree of tax policy flexibility. She indicated that the proposals contained in subparagraph I.5(d) could effectively contribute to allaying concerns relating to the movement of tax-free and duty-free products without compromising national tax sovereignty. Her delegation felt that the wording of paragraph F.2 and subparagraphs (a), (b) and (c) should be simplified. She therefore proposed their deletion and the insertion of: "Each Party shall endeavour to take health policy objectives relating to tobacco control into account when establishing national tobacco tax policies".

Dr CHAOUKI (Morocco) endorsed the amendment proposed by Sudan relating to harmonization of tax policies at regional level. He also proposed the inclusion of the following subparagraph on page 8 of the French version of the Co-Chairs' text: "A part of the revenues shall be used for the promotion of healthy life styles and the prevention and rehabilitation of damage to health related to the active or passive consumption of tobacco and nicotine addiction."

Dr SAADI (Lebanon) said that he, too, supported the harmonization of pricing and tax policies at regional and subregional level as a means of reducing tobacco consumption.

Dr SANDA (Romania) endorsed the views expressed by the representative of the European Community with regard to paragraphs F.1 and F.2.

Dr SOMATHUNGA (Sri Lanka) said that in recognition of each nation's sovereign right to determine tax policy, and the problems of harmonization, she recommended deleting the reference to harmonization and adopting instead the text proposed by India on behalf of all South-East Asia Region countries.

Dr EMMANUEL (Saint Lucia), speaking on behalf of Saint Kitts and Nevis, Saint Vincent and the Grenadines, Grenada and Saint Lucia, said that although price and tax measures were effective mechanisms for reducing tobacco consumption, he could not support the Chair's text in subparagraph F.2(a) and he therefore recommended that it be deleted.

Dr TADEVOSYAN (Armenia), representing the six countries of the Commonwealth of Independent States, proposed the addition of the following subparagraph under paragraph F.2: "the aforementioned measures must correspond to the national interests of parties, while according priority to public health".

Dr LOUP (Bolivia) expressed his support for the modification proposed by Costa Rica. He also emphasized the need to retain the reference to "... tobacco consumption and exposure to tobacco smoke".

Mr DILEMRE (Turkey) supported the position outlined by the European Community. However, a subparagraph on the exchange of information on the impact of tax-free and duty-free sales in tobacco products should be included at the present stage.

The CHAIR, summing up the debate on paragraphs F.1 and F.2, said that consensus had still not been reached on the harmonization of prices and taxes. Several speakers had highlighted the difficulties of reconciling harmonization with national obligations, while others advocated its introduction at regional level. References had also been made to the deletion of exposure to tobacco smoke in paragraph F.2. Some speakers had been of the opinion that subparagraphs F.2(a), (b) and (c) should be dealt with in protocols to allow more focused discussions and negotiations.

#### **D. *Guiding principles***

##### **Paragraph D.4**

Mr PADILLA (Philippines) proposed the insertion of "... workers and individual sellers whose primary source of livelihood is the sale of tobacco products ..." between "... economic transition of tobacco growers ..." and "... that may be displaced ...".

Ms MBONGWE (Botswana), representing the African Region, proposed the insertion of: "technical" between "the importance of ..." and "and financial ...", and the addition of "and addressed" after "should be recognized ...".

Mr CHAVES SELL (Costa Rica), representing the group of 19 Latin American countries, proposed the insertion of "particularly in developing countries" between "... tobacco-control programmes ..." and "... should be recognized."

Dr SRINATH REDDY (India), representing the South-East Asia Region, proposed the insertion of "including the creation of a Global Fund mechanism, to enable and" between "... financial

assistance ...” and “... and the economic transition ...” and of “persons engaged in tobacco farming and manufacturers of tobacco products” between “... transition of ...” and “that may be displaced ...”.

Ms WISEMAN (Canada) pointed out that the substance of paragraph D.4 was being dealt with by Working Group 3. She therefore suggested that no decision be taken on the text until the outcome of its deliberations were known.

Mr RAJALA (European Community), speaking on behalf of the European Community and its Member States, stressed the importance of all Parties being able to implement the convention. He was pleased to announce that the first of a number of initiatives designed to allow the progressive mainstreaming of tobacco control into the Community’s development policy would be implemented early in 2002. Numerous instruments had already been established by the European Community to support developing countries’ efforts to formulate policies and introduce reforms, including public health reform, and the countries concerned were encouraged to use those channels to obtain resources to assist them in implementing the convention.

Dr BELLO DE KEMPER (Dominican Republic) observed that the Dominican Republic, as a developing country and a tobacco-producing country, attached great importance to paragraph D.4. She therefore supported the amendments proposed by Costa Rica and Botswana.

Mr YOUNG (United States of America) concurred with Canada’s suggestion to wait for the outcome of the deliberations of Working Group 3 before coming to any decision on the text of paragraph D.4.

Ms QU Meiyu (China) stated that, in her view, technical assistance at international level was just as important as economic assistance.

Ms GONZ;LEZ NAVARRO (Cuba) proposed the insertion of “international cooperation to counter the possible harmful social and economic effects on tobacco growers and workers arising” between “the importance of ...” and “... as a consequence of successful tobacco-control programmes should be recognized”.

Mr VARELA (Argentina) stressed the importance of paragraph D.4, particularly if the convention were to achieve its goals. In that case it would be essential to provide support for tobacco workers and producers, above all in developing countries and in the poorest regions. He therefore supported the amendments proposed by Costa Rica, Cuba and India.

Mr SANTHOKI (Suriname) recognized the importance of providing financial support and technical assistance to Parties with limited resources. However resources should not be confined to the health sector as tobacco control affected many other areas.

Dr TADEVOSYAN (Armenia) said that paragraph D.4 was extremely important for those countries, like Armenia, whose economy depended to a large extent on tobacco manufacturing or tobacco growing. While the member countries of the Commonwealth of Independent States were basically in agreement with the Chair’s text, they had a number of suggestions to make, which they would submit to the Secretariat in due course.

Mr EMMANUEL (Saint Lucia) said that the importance of financial assistance should not only be recognized but it should also be facilitated. He therefore proposed the addition of the words “and facilitated” at the end of paragraph D.4 after the word “recognized”.

Dr ACHARYA (Nepal) expressed support for the amendment proposed by India, subject to the addition of “The Global Fund mechanism should especially address the needs of least developed countries” after “... should be recognized.”.

Mr EISSA (Egypt) said that paragraph D.4 should include a reference to the need to ensure that the amount of financial assistance provided to countries was commensurate with the volume of their tobacco production.

Mrs ALEXIS THOMAS (Trinidad and Tobago) agreed with the suggestions voiced by Suriname and Saint Lucia relating to the establishment of a Global Fund mechanism which should be on a similar scale to the Global Fund to Fight AIDS, Tuberculosis and Malaria.

The CHAIR, summarizing the discussion on paragraph D.4, said delegates had highlighted the importance of providing financial and technical assistance to the developing and least developed countries, as well as the need for the establishment of an appropriate mechanism for that purpose. Some speakers had pointed out that substantive discussions on paragraph D.4 were also taking place in Working Group 3, the outcome of which would be relevant to the work of Working Group 2.

#### **Paragraph D.5**

Dr AL-BADDAH (Saudi Arabia) expressed his reservations regarding paragraph D.5 and the relevant textual proposals which, in his view, ran counter to the objectives of the convention. Some alternative wording would need to be found, possibly based on the relevant textual proposals set out on page 21 of the Arabic version of the Chair’s text.

Ms GASH (United States of America) said that paragraph D.5 underscored the intent of State Parties to develop and apply measures to control tobacco use in accordance with their international obligations. Nondiscrimination was the cornerstone of the international trading system, as embodied in World Trade Organization (WTO) agreements which upheld the sovereign right of nations to pursue their legitimate health policies. However, these were not the only agreements of relevance to the purposes of the convention. She preferred the broader formulation of paragraph I.2, for which there seemed to be more support and which could be amended to serve as a Guiding principle. She suggested the following text to replace paragraph D.5: “The Parties agree that tobacco control measures shall be transparent, nondiscriminatory and implemented in accordance with their international obligations”.

Ms MAYSHAR (Israel) said that paragraph D.5 in its present form was ambiguous and she proposed the insertion of: “be deemed as constituting” between “... should not ...” and “... a means of ...”.

Ms MBONGWE (Botswana), speaking on behalf of the Member States of the African Region, stated her preference for the second alternative text for paragraph D.5 on page 20 of the English version of document A/FCTC/INB3/2(b).

Mr RAJALA (European Community), speaking on behalf of the Member States of the European Community, as well as Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Romania, Slovakia and Slovenia, expressed support for the alternative text proposed by Botswana.

Ms QU Meiyu (China) said that where tobacco-control measures conflicted with other agreements, priority should be given to the protection of public health. She therefore suggested the deletion of paragraph D.5.

Dr SRINATH REDDY (India), representing the South-East Asia Region, proposed the following amendment to paragraph D.5 in order to make it clear that public health interests should take precedence over trade issues: the insertion of “taken to protect human health should not be deemed as constituting” between “... measures ...” and “... a means of ...”.

Dr OTTO (Palau) said that in his view, paragraph D.5 as formulated placed commercial interests above public health. He therefore suggested that the paragraph should be replaced by alternative text (ii) on page 21 of document A/FCTC/INB3/2(b): “in the event of a conflict ... this convention and its protocols shall prevail”.

Dr TADEVOSYAN (Armenia) proposed that paragraph D.5 should be reworded as follows: “Tobacco-control measures should take into account international trade regulations, while according priority to public health interests”.

Mr SOLANO (Costa Rica), speaking on behalf of the group of 19 Latin American countries, expressed his support for the Chair’s text.

Mr EISSA (Egypt) endorsed the comments by the representatives of Botswana and the European Commission in support of the second alternative text for paragraph D.5 on page 20 of document A/FCTC/INB3/2(b).

Mr VIRASAKDI FUTRAKUL (Thailand) expressed support for the amendment proposed by India. It would serve to protect developing countries like Thailand against unfair trade pressures from foreign companies aimed at securing a market for their tobacco products and increasing local tobacco consumption.

Dr SRINATH REDDY (India) emphasized that in order to make it clear that in the event of conflict of interests between the provisions of the convention and WTO agreements, measures to protect human health would take precedence over trade provisions, it was essential to incorporate an amendment along the lines he had already outlined.

Mr INADOME (Japan) said that while public health interests were very important, tobacco-control measures should be treated on an equal footing with international trade regulations. He was therefore in favour of adopting the Chair’s original text.

Ms WISEMAN (Canada) said that paragraph D.5 as drafted was unclear. Some delegates had assumed that there might be a conflict between the convention and other international agreements. However, until the text of the convention had been finalized such an assumption could not be made. Perhaps paragraph D.5 would, in fact, be unnecessary and might be deleted, but that could not be decided until a clearer picture had emerged of what obligations the convention would entail as well as of the precise role of the Guiding principles.

Mr FAZLUR RAHMAN (Bangladesh) suggested the deletion of paragraph D.5, which seemed to undermine the purpose of the convention-control of tobacco use.

Mr SANTHOKI (Suriname) proposed the following alternative wording for paragraph D.5: “tobacco control measures should be comprehensive and should be based on respect for the sovereignty of States Parties and the principle of non-discrimination.

Mr DILEMRE (Turkey) noted that paragraph D.5 dealt with a very sensitive issue. In order to ensure transparency and the non-discriminatory implementation of trade regulations, he supported the Chair's text.

Mr PADILLA (Philippines), supported Palau's proposed amendment but suggested it be reworded as follows: "Tobacco control measures, as far as is practicable, be consistent with the Party's obligations under other international agreements, however, in case of conflict, public health shall take precedence".

The CHAIR, summarizing the discussion on paragraph D.5, said that he had noted the references to a potential conflict between the convention and other treaty obligations of Member States, such as WTO agreements. It was worth pointing out, nevertheless, that the Declaration adopted at the fourth WTO Ministerial Conference in Doha in November 2001, had clearly established the primacy of public health.

#### **Paragraph D.7**

Ms WISEMAN (Canada) said that paragraph D.7 dealt with an extremely important principle which had been of benefit to Canada in devising its national strategies. She therefore supported the Chair's text as formulated.

Ms MBONGWE (Botswana), speaking on behalf of the Member States of the African Region, expressed support for paragraph D.7 subject to some minor amendments, which she would submit in writing to the Secretariat, following consultations with the Member States of her Region.

Dr BERNARD (United States of America) proposed the insertion of "appropriate" before "participation" in paragraph D.7 of the Chair's text.

Professor WARNER (World Bank), speaking at the invitation of the Chair, said he would like to focus on Article F. of the convention. The World Bank's study on the economics of tobacco had emphasized the importance of increasing prices, primarily through increased taxation. As had been observed, the most important effects of increased prices were on children. Although it was true that addiction might reduce price responsiveness among adults, it did not eliminate it. Scores of studies in different countries had demonstrated consistently that adult and child consumption of tobacco products declined when prices increased. The World Bank study estimated that a sustained price increase of 10% across all regions of the world would lead 40 million people to give up smoking and prevent many others from starting. Conservatively, that implied a reduction in tobacco-produced deaths of 10 million, nine million of them in developing countries alone. Although that represented only 3% of total estimated tobacco-related mortality, it was still a huge public health triumph. Moreover, the World Bank had estimated that a 10% increase in cigarette taxes worldwide would increase government revenues by 7%.

The World Bank had concluded that tax harmonization between neighbouring countries would help to reduce the incentives to smuggle. However, it was important to understand that there were two forms of smuggling: informal, typically small-scale, cross-border smuggling of cigarettes bought in low-tax countries and smuggled into neighbouring high-tax countries and organized, large-scale criminal smuggling with the intention of avoiding all taxation. The latter would be most effectively addressed through serious law enforcement. Global tax and price harmonization alone would contribute little to reducing it.

Mr DAGLI (International Union against Tuberculosis and Lung Disease), speaking at the invitation of the CHAIR, and with reference to paragraph F.1, pointed out that while her Organization

appreciated that there was no evidence to support harmonization as an effective anti-smuggling strategy, since most smuggling was carried out by smugglers illegally trading tobacco on which no duty was paid, taxation was, nevertheless, an effective tool for reducing tobacco consumption. However, if taxes were harmonized downwards at the lowest common denominator among countries, it would be rendered ineffective.

Ms MULVEY (Infact), speaking at the invitation of the CHAIR, said that together with other members of the Network for Accountability of Tobacco Transnationals, Infact had recently released a report exposing the worldwide political activities of transnational tobacco corporations such as Phillip Morris and B.A.T. According to the report, many Member States did not require tobacco corporations to expose political contributions, lobbying expenditures or other tactics that might undermine the convention and national tobacco control policies. Since May 2001 tobacco transnationals had sponsored events attended by political leaders around the world, had lobbied on the convention and were promoting weak voluntary marketing standards in an attempt to pre-empt the treaty.

The convention must protect public health policy from interference by tobacco transnationals, their subsidiaries and agents. Through the adoption of resolution WHA54.18 governments had highlighted the need to monitor tobacco industry activities which might undermine global tobacco control efforts. The African Region had further advanced those initiatives through the Algiers Declaration on the Framework Convention on Tobacco Control, and the "Algiers text". She expressed support for the proposals by the African Region, Switzerland, Palau and other Member States aimed at strengthening the convention in order to increase vigilance over the political influence of tobacco transnationals.

The incompatibilities between public health and the tobacco trade made it imperative for the convention to establish the principle that tobacco control measures should take precedence over other international agreements. The proposals by the Islamic Republic of Iran, Oman, South Africa (on behalf of the Member States of the African Region) and Saudi Arabia had made important advances in that respect.

Mr ARANGO (World Heart Federation), speaking at the invitation of the CHAIR, and on behalf of the International Union Against Cancer, said that the evidence suggested that a ban on the duty-free sale of tobacco products at borders and airports would greatly reduce the wholesale trade in untaxed cigarettes which was a primary source of large-scale smuggled tobacco. In that respect there had been some positive developments around the world, notably in the European Union, Canada and Singapore. However, further efforts were required to achieve a comprehensive, global duty-free ban in order to curb smuggling and reduce consumption, particularly among young people and the poor, who were more likely to buy smuggled products.

He proposed that subparagraph F.2(a) should be amended along the lines suggested by Malaysia and Oman, which entailed the adoption of measures and policies for the prohibition of tax-free and duty-free sales of tobacco products within two years of the entry into force of the convention, without exceptions or allowances to travellers, diplomats and military or government personnel.

**The meeting rose at 13:05.**

## WORKING GROUP 2

### FOURTH MEETING

Monday, 26 November 2001, at 13:45

Chair: Mr E. AISTON (Canada)

**DRAFTING AND NEGOTIATION OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL:** Item 3 of the Agenda (Documents A/FCTC/INB3/2(b), A/FCTC/INB3/2(b) Corr.1, A/FCTC/INB3/2(b) Corr.2, A/FCTC/INB3/WG2/Conf.Paper A, A/FCTC/INB3/WG2/Conf.Paper B) (continued)

**I. *Measures related to the supply of tobacco*** (continued)

**K. *Surveillance, research and exchange of information***

The CHAIR introduced texts that incorporated and consolidated the views expressed during formal and informal meetings. Some of the bracketed phrases represented issues that would have to be addressed in a wider context, or by other working groups. Other issues had been omitted altogether, as they were already covered elsewhere. Still other issues had been transferred to more appropriate articles. It remained to be decided whether definitions should be provided for terms such as “tobacco”, “tobacco products” and “raw tobacco materials” within certain provisions or only in Article B. The titles of articles had been left unamended for the time being.

The first two texts were intended to cover the main ideas identified during informal discussions and should serve as working documents. They would be adopted formally at a later meeting of the Working Group.

He invited the Working Group to consider the first of those texts, which read as follows:

**I. *Measures related to the supply of tobacco***

6. In accordance with their national legislation and their obligations under international treaties, the Parties shall promote cooperation between national, regional and international agencies [involved, in promoting investigations, prosecutions and proceedings] relating to illicit trade, in particular smuggling, in tobacco, tobacco products and raw tobacco materials. The Parties shall further cooperate to promote regular exchanges of information to prevent such trade [pursuant to Annex [INSERT] to this convention]. Special emphasis shall be placed on cooperation at regional and subregional levels as the most effective prerequisite for combating smuggling and illicit trade of tobacco products.

7. The Conference of the Parties shall initiate the preparation of a protocol setting out appropriate rules and procedures for the elimination of all forms of illicit trade, in particular smuggling, in tobacco, tobacco products and raw tobacco materials.<sup>1</sup>

*(Licensing)*

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<sup>1</sup> This provision would be omitted if the Intergovernmental Negotiating Body prepares a protocol on this subject to be adopted simultaneously with the convention.

[13. The Parties recognize that an effective licensing system for [retailers, manufacturers, importers, exporters, distributors and wholesalers] [the distribution] of tobacco products [is an] [can be one] important mechanism to curb illicit trade in tobacco products and to prevent sales of tobacco products to persons under the age of 18.]

[14. Each Party shall [, to the extent possible within the means at its disposal and its capabilities,] adopt legislative, executive and administrative measures to [license all tobacco-product [is an] [can be one] retailers, manufacturers, importers, exporters, distributors and wholesalers] [exercise efficient control over all tobacco retailers such as by means of a licensing or tax registration system].]

*(Government support for tobacco manufacturing and agriculture)*

15. [Each Party shall [gradually] eliminate subsidies, including tax exemptions and rebates, for tobacco growing and manufacturing of tobacco products [, consistent with its international obligations].] Each Party shall [, in accordance with the means at its disposal and its capabilities,] promote, as appropriate, alternative economic activities for tobacco workers and growers and provide technical and financial support so that they can move to other forms of agricultural production. International financial and technical support will be required for such purpose.

#### ***K. Surveillance, research and exchange of information***

1. The Parties shall establish joint or complementary programmes for national, regional and global surveillance of the magnitude, patterns, determinants and consequences of tobacco consumption. [To the extent possible,] the Parties shall integrate tobacco surveillance programmes into national, regional and global health surveillance programmes so that data are comparable and can be analysed at the regional and global level, as appropriate. To this end, each Party, noting the importance of financial and technical assistance from international organizations, shall [in accordance with the means at its disposal and its capabilities:]

(a) establish an ongoing national system for the epidemiological surveillance of tobacco consumption and related social, economic and health indicators to be specified in Annex [INSERT];

(b) cooperate with the World Health Organization and other relevant organizations, including government and non-government agencies in regional and global tobacco surveillance and exchange of information on the indicators specified in Annex [INSERT];

(c) cooperate under the auspices of the World Health Organization in the development of general model standards or procedures defining the major collection, analysis and dissemination of surveillance data as specified in the Annex [INSERT].

3. The Parties shall promote and facilitate the exchange of [publicly available] information, in accordance with their domestic legislation, taking into account and addressing the special needs of developing countries. To this end, the Parties, in accordance with their national legislation and without prejudice to their obligations under other applicable international agreements, shall, within the framework of the Conference of the Parties promote and cooperate in the exchange of scientific, technical, socioeconomic, commercial and legal information, as well as information regarding practices of the tobacco industry and the cultivation of tobacco, relevant to this convention. Each Party shall:

(a) compile and maintain an updated database of [national and subnational] laws and regulations on tobacco control and enforcement, and cooperate in the development of complementary programmes for national, regional and global tobacco control;

(b) compile and maintain updated data from national surveillance programmes [in accordance with Article [INSERT] above];

(c) cooperate with international bodies including WHO to establish and maintain a global monitoring system to regularly collect and disseminate information on tobacco production,

manufacture (including additives) and the activities of tobacco corporations which have an impact on the convention, its protocols or national tobacco control activities.

4. [Regional and international health organizations should provide technical and financial resources to the secretariat of this convention to assist developing countries to fulfil their commitments on surveillance research and information exchange. Information to be exchanged pursuant to Article [INSERT] above shall be determined by and provided to the Conference of the Parties.]

Ms MBONGWE (Botswana), speaking on behalf of Member States of the African Region, said that she supported the draft text.

Dr BOVET (Seychelles), speaking on behalf of the African Group, also said that he supported the text. He proposed that the word “viable” be inserted after “alternative” and before “economic activities” in paragraph I.15.

Mr LOM (United States of America), referring to paragraph K.1, expressed concern that square brackets had been kept in some parts of the text but not in others. In respect of paragraph I.15, the word “International” in the last sentence should be placed in square brackets.

The CHAIR recalled that paragraph K.1, which was particularly complex, had been the subject of numerous proposals and that an informal discussion group, chaired by the delegate of Australia, had been set up to discuss it. He invited the delegate of Australia to present the outcome of the group’s work.

Ms KERR (Australia), speaking on behalf of the informal discussion group’s participants, namely, the Seychelles (on behalf of the African Group), Norway, China, United States of America, Canada, Brazil with the assistance of Mexico on behalf of the Latin American countries, Japan and Australia, said that the group had agreed on the text before the Working Group, subject to one amendment: in subparagraph K.1(c), the word “major” should be moved from before “collection” to before “surveillance”.

The group had not discussed the phrases “to the extent possible” and “in accordance with the means at its disposal and its capabilities” as they were being dealt with by Working Group 3. The group had noted the importance of the issue of financial and technical assistance and had agreed that it also was more appropriately considered elsewhere. The need for future review of surveillance data had also been considered as a more appropriate issue for Working Group 3.

The group had urged that the annex referred to in the text be formulated as soon as possible, because of its highly technical nature.

Mr SONG Ee Pin (Singapore) proposed that the first two sentences of paragraph I.6 be combined by inserting “and” in square brackets, as follows: “In accordance with their national legislation and their obligations under international treaties, the Parties shall promote ... [and] the Parties shall further cooperate ...”. That amendment was necessary in order to make it clear that the opening phrase also applied to the second part of the sentence. Furthermore, it reflected that fact that in his country the exchange of information was subject to domestic legislation.

Mr RAJALA (European Community), speaking for the European Community and its Member States, said that he supported the proposal of the United States’ delegate that the word “International” in the last line of paragraph I.15 should be placed in square brackets. To cover the eventuality that discussions on protocols would continue after completion of the negotiations on the convention, the words “[or take forward]” should be added after the word “initiate” in the first line of paragraph I.7.

Mr EISSA (Egypt) thanked the Co-Chairs for a readable text, which would greatly facilitate the work of the Group.

Mrs ZIKMUNDOVA (Belgium), speaking on behalf of the European Union and its Member States, offered some preliminary comments on the question of licensing (paragraphs I.13 and I.14). The words “or registration” should be added after “an effective licensing” in the first line of paragraph I.13. At the end of paragraph I.13, there was a reference to “persons under the age of 18”. As there was no uniform lower age limit in the countries of the European Union, she proposed that the phrase should be amended to read “under the age required in national law”. The words “or provide other means to identify and regulate the retail trade in these products” should be added at the end of paragraph I.14.

Mr PRASADA RAO (India) said that the licensing of retailers mentioned in paragraphs I.13 and I.14 would create problems for national and local governments in countries with large retailing systems. The word “loans” should be added after the words “tax exemptions” in the first line of paragraph I.15, and the word “viable” should be added before “alternative economic activities for tobacco workers” in the fourth line of that paragraph.

The first sentence of paragraph K.1 should refer to the surveillance of both active and passive tobacco consumption, and the same applied to paragraph K.1(a). The phrase “establish an ongoing national system” at the beginning of paragraph K.1(a) was not clear and should be changed to “establish progressively a national system”. Similarly, the phrase “compile and maintain” in K.1(a) and K.1(b) should be amended to read “establish and maintain”.

Ms QU Meiyu (China) said that she would comment later on some minor differences between the Co-Chairs’ text and those in document A/FCTC/INB3/2(b), once her delegation had had time to study the proposed text. Part of the text that required clarification was the reference to “obligations under international treaties” in paragraph I.6 and to “international obligations” in paragraph I.15. Did that refer to obligations under the convention or also to other obligations?

In paragraph I.6, it seemed redundant to speak of “tobacco products and raw tobacco materials”; the term “tobacco and tobacco products” would suffice. In paragraph I.15, only “other forms of agricultural production” were mentioned as alternative economic activities, whereas other types of production might be considered.

Dr ARMADA (Venezuela) said that his delegation would need more time to study the proposed texts. As a preliminary comment, he pointed out the importance of using gender-sensitive language, particularly in the Spanish text.

Mr SANDAGE (United States of America) suggested that slight inconsistencies in the language of paragraph K.3. should be corrected. The first part of paragraph K.3 should be simplified as follows: “3. The Parties shall promote and facilitate 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, relevant to this convention. Each Party shall, in accordance with their national legislation, and taking into account and addressing the special needs of the developing countries:”.

Mr EMMANUEL (Saint Lucia), speaking on behalf of the Caribbean countries, proposed that, in paragraph I.13, the phrase “persons under the age of 18” be changed to “legal minors”.

Mr BEN SALEM (Tunisia) expressed his appreciation for the Co-Chairs’ texts, but he had some suggestions for improving the Arabic translation. He assumed that such discrepancies were the result

of time pressure. As it stood, the first sentence of paragraph I.6 might be interpreted as meaning that national, regional and international agencies allowed illicit trade in tobacco.

Dr ABOU-DAHAB (Syrian Arab Republic) suggested that paragraph I.13 include the licensing of tobacco growers as well as exporters, in view of the importance to the authorities of information on the area of land under cultivation or the number of workers per plantation.

The second sentence of paragraph I.15 as it stood was ambiguous and, for the sake of clarity, should be amended to read: "... promote, as appropriate, alternative economic, industrial or other activities ...".

Mr TORRES (Dominican Republic) reiterated the difficulty that would be involved in licensing all the small-scale retailers scattered throughout his country. The cost of such a licensing operation would probably far outweigh the results achieved.

His delegation fully supported paragraph I.15 in respect of the elimination of tax exemptions and rebates for tobacco growing and the manufacture of tobacco products. Granting credits to that sector should also be curtailed, as that would be tantamount to subsidizing tobacco production.

Dr DJAMALUDDIN (Indonesia), speaking on behalf of the Member States of the South-East Asia Region, requested that the heading of paragraph I.15 be amended to read: "Eliminating tobacco subsidies and creating government support for alternative occupation", in order to ensure consistency between the title and the contents of the paragraph.

Mr CASTILLO SANTANA (Cuba) said that, on a first reading, the texts appeared to reflect the positions of the Latin American countries. His delegation nevertheless questioned the advisability of making specific reference to protocols, as in paragraph I.7, as it might prejudice the possibility of introducing those or other protocols at a later stage. Some general wording on the question of future protocols might be preferable.

The question of subsidies in paragraph I.15 continued to cause difficulties, as it was currently under discussion within WTO. Cuba's difficulties in relation to alternative economic activities for tobacco workers and growers in the tobacco sector, addressed in the second part of the paragraph, had already been reflected in some of the proposals put forward by his delegation at the current session. For the time being at least, the second sentence of paragraph I.15 should be placed in square brackets. His delegation reserved the right to make further comments on the texts after further study.

Dr SOMATHUNGA (Sri Lanka) endorsed the point made by the delegate of India concerning the licensing of retailers. For the reasons stated, her country would also be unable to adopt measures to license retailers.

The CHAIR said that areas of disagreement, including licensing, had been bracketed for further discussion.

Ms BALOCH (Pakistan), recalling the suggestion made by her delegation at the second session that the word "surveillance" in paragraph K.1 should be defined when the text was finalized, requested that a footnote be inserted to the effect that the word would be defined when definitions were discussed.

Professor HUSSEIN (Sudan) suggested that the title of paragraph I.15 should be amended to reflect the content of the paragraph, namely, government support for alternative agricultural and economic activities for tobacco growers or the tobacco industry. Furthermore, the phrase "or other viable economic activities" should be added to the end of the second sentence, after "agricultural production".

Mr VIRASAKDI FUTRAKUL (Thailand), endorsing the concerns of the delegate of Tunisia regarding the clarity of the first sentence of paragraph I.6, proposed that it should be amended to read "... the Parties shall promote cooperation between national, regional and international agencies to eliminate illicit trade in tobacco, tobacco products and raw tobacco materials."

He endorsed the proposal of the delegation of the Syrian Arab Republic to insert the words "tobacco growers" before "retailers" in paragraph I.13. Thailand's licensing system for tobacco growers had proved to be a useful mechanisms for reducing the area of tobacco plantations, thereby tackling the problem of tobacco from the supply side.

Mr SANDAGE (United States of America) requested that paragraph K.3(c) be placed in square brackets, in view of his delegation's reservations, expressed in earlier discussions.

Professor ZELTNER (Switzerland), referring to the concern expressed by the delegate of Cuba about a specific reference to protocols in the convention, said that Switzerland's position was that such references would not affect the freedom of States Parties to create protocols on issues covered by articles of the convention but in which a protocol was not mentioned.

Dr OLIVAR MOCTEZUMA (Mexico) said that further consideration should be given to the question of the licensing of retailers in paragraphs I.13 and I.14, in view of the difficulties that the provisions would cause for certain countries.

The word "agricultural" should be deleted before "production" in paragraph I.15, so that the text would refer simply to "other forms of production".

Dr SANGALA (Malawi) said that he supported the position of the African Group with regard to paragraph I.15. The question of financial assistance to tobacco growers and workers had already been touched upon elsewhere, particularly in Articles D and Q. The last sentence of paragraph I.15 should therefore be retained in its entirety.

The CHAIR said that he took it that the Working Group agreed that the suggested changes should be made to the text, which would be considered as a formal drafting paper at a later meeting of the Working Group.

**It was so agreed.**

**D. *Guiding principles*** (continued)

**E. *General obligations***

The CHAIR introduced texts that incorporated and consolidated proposals to amend the texts of paragraphs D.9, D.10 and E.3 contained in document A/FCTC/INB3/2(b), which read as follows:

**D. *Guiding principles***

[D.9 Developed countries [shall] undertake to [compensate the losses caused to] [aid the economic transition of] economies that depend on tobacco to other economically viable alternatives through the provision of adequate financial and technical assistance as well as access to markets and appropriate technology.]

10. The provision of political will and commitment by Member State Parties in their highest possible offices is of utmost importance in ensuring the success of the objectives of this Convention (NOTE: referred for discussion under the preamble).

*E. General obligations*

[3. The Parties shall undertake to adopt legislative, executive and administrative measures to regulate and to ensure that export of tobacco products and associated packaging conform either to the exporting country's own domestic standards, the importing country's domestic standards or the standards laid down in accordance with this Convention, whichever assures the highest level of public protection. Transitional periods, to allow for specific manufacturing situations may be envisaged.]

3.bis The Parties shall adopt and ensure satisfactory implementation of means to protect public health policy from undue interference by tobacco companies, their subsidiaries and affiliated parties.

He reminded delegates that the texts covered proposals made during informal discussions and would have to be adopted formally at a later meeting of the Working Group.

Mr ALCAZAR (Brazil) requested that the part of the first sentence of paragraph E.3, after the word "conform" to the end of the sentence be placed in square brackets and that his earlier proposal be inserted, so that the text would read: "The Parties shall undertake to adopt legislative, executive and administrative measures to regulate and to ensure that the export of tobacco products and associated packaging conform to the international standards set by the Conference of the Parties to ensure the highest level of public health protection."

Ms MBONGWE (Botswana), speaking on behalf of the Member States of the African Region, acknowledged that most of the principles supported by those countries had been incorporated. However, the end of paragraph E.3 should read "the highest level of public health protection", as in the original text.

Mr VARELA (Argentina) supported the proposal made by the delegate of Brazil. Paragraph E.3.bis should be placed in square brackets for the time being.

Dr OTTO (Palau), referring to paragraph D.9, said that the economic losses suffered by tobacco growers should not be compensated by developed countries but by the tobacco industry, was able to spend some US\$ 8 thousand million per year to publicize its products. It was up to that industry to compensate the growers.

Dr TADEVOSYAN (Armenia) said that the question of compensation should be included in the convention. Compensation was essential for countries whose budgets and agriculture were heavily dependent on tobacco production. Paragraph D.9 fully reflected the concerns of such countries and provided a stimulus for them both to enact anti-tobacco legislation and to accede to the convention.

Mr RAJALA (European Community), speaking on behalf of the European Community and its Member States, said that he considered that paragraph D.9 should be studied carefully in relation to paragraph D.4, owing to a clear overlap. Paragraph D.10 might be more appropriately placed in the preamble to the convention. In regard to paragraph E.3, he asked for clarification regarding the term "associated packaging".

Mr SEKOBÉ (South Africa), responding to the query of the representative of the European Commission, said that the term "associated packaging" had been proposed by the African Group to

cover labelling, health messages and the form taken by those messages, such as words and pictures, as well as their size, the contrast colours used and other related factors.

Mrs GONZ;LEZ NAVARRO (Cuba), referring to paragraph D.9, said that the phrase “to other economically viable alternatives” should be placed in square brackets. Her delegation had proposed a text reading: “Developed countries shall undertake to compensate the losses caused to economies that depend on tobacco through the provision of adequate financial and technical assistance as well as access to markets and appropriate technology”. In some countries, it was not only the tobacco industry but the entire national economy that benefited from the cultivation and export of tobacco.

Ms QU Meiyu (China) said that China agreed with the European Community in regard to paragraph D.10, which should be included in the preamble. In paragraph E.3, her delegation considered that the phrase “or the standards laid down in accordance with this convention” should be deleted. Paragraph E.3.bis should also be deleted.

Mr VIRASAKDI FUTRAKUL (Thailand) said that paragraph E.3 as it stood raised some practical problems for his country. In Thailand, the tar content of cigarettes produced in the country must not exceed 20 mg, whereas that of imported cigarettes was nearly 60 mg. Under the current text, Thailand would be compelled to accept the latter. Therefore, the words “either” and “or” should be replaced by “and”, so that the text would read: “conform to the exporting country’s own domestic standards and the importing country’s domestic standards and the standards laid down in accordance with this convention”, thus requiring foreign cigarette manufacturers wishing to export to a country to meet all three standards.

Professor ZELTNER (Switzerland) asked for clarification of the phrase “whichever assures the highest level of public protection” in paragraph E.3 in connection with the standards to be met. In his view, there were two levels of public good, namely the protection of health and freedom of choice. He asked whether both levels were covered by the word “protection”. The experience of his country with regard to additives was similar to that of Thailand: Malborough cigarettes produced in Switzerland had different additives from those that were imported. The level of danger for public health might be the same in both cases, but no freedom of choice was offered. The text should be amended to refer to the highest level of public health protection as well as protection from counterfeit goods and so forth, to read “public health and consumer protection”.

Mr MBUYU MUTEBA (Democratic Republic of the Congo) observed that paragraph E.3 referred to three levels of standards. In his view, one set of standards should be adopted.

Dr ROA (Panama), referring to paragraph E.3, said that the Conference of the Parties should establish international implementing provisions, as the standards of manufacture varied from one producing country to another, depending on the strength of the legislation. To obtain the highest level of public health protection, implementation by all tobacco-producing countries should be more or less standardized.

Dr OLIVAR MOCTEZUMA (Mexico), referring to paragraph E.3.bis, emphasized that undue interference came not only from tobacco companies but also from other legal or physical entities, such as television companies or advertising companies, which were not necessarily subsidiaries or affiliates of tobacco companies. He would submit a proposal in writing that widened the sources of undue interference.

The CHAIR said that he took it that the Working Group agreed that the suggested changes should be made to the text, which would be considered as a formal drafting paper at a later session of the Working Group.

**It was so agreed.**

**I. *Measures related to the supply of tobacco* (continued)**

The CHAIR invited the working group to consider A/FCTC/INB3/WG2/Conf.Paper A, which contained revised texts of paragraphs I.1-5 based on amendments proposed at the first meeting of the group.

Mr INADOME (Japan) asked that the word “batch” in the last line of paragraph I.3 and the words, “including the date of production and expiry” be placed in square brackets.

Mr RAJALA (European Community), speaking on behalf of the European Community and its Member States, said that in paragraph I.2, recognition should be given to the special status of the European Community, where both standards and legal obligations were established. For paragraph I.3, the European Community and the United States of America had both made proposals; as the Co-Chairs had chosen the United States version, he reserved the right to consult English-speaking members of the Community to ensure that the wording was appropriate. He reiterated the proposal to merge subparagraphs I.3(a) and I.3(b) and to add at the end of paragraph I.4 the words “or data approved in another form”. In regard to subparagraph I.5(b), the Community had reservations about the appropriateness of referring to criminal law penalties and remedies in the convention. The words “appropriate penalties and remedies” should be placed in square brackets. The wording of the phrase in square brackets in subparagraph I.5(c) was complicated, but the idea should be retained. Subparagraphs I.5(d) and I.5(e) should be placed in square brackets.

Mr DE BAENA FERNANDES (Brazil) said that the text of subparagraph [3(c) or 4] should be placed within square brackets, and the following alternative paragraph I.4 should be added: “Each Party shall adopt appropriate measures to ensure that the packaging information will follow the requirements of the importing country”.

Mr MOON (Republic of Korea) said that the convention should not be too detailed, and that the phrase “and to enable the place ... equivalent” in paragraph I.3 should be deleted.

Mr LOM (United States of America) supported the amendments to subparagraph I.5(b) suggested by the European Community. In addition, the phrase “counterfeit and contraband cigarettes and other tobacco products” should be placed in square brackets, as they were referred to in subparagraph I.5(c) and “illicit products”, also in square brackets, should be added. He agreed with the representative of the European Community that the wording of subparagraph I.5(c) was overly complex. In subparagraph I.5(d), the terms “duty free” and “tax free”, which were very broad, should be placed in square brackets, particularly since the issue was already dealt with by the cross-border measures described in subparagraph I.5(a).

Dr AL-HAMDAN (Saudi Arabia) said that the word “or” should be replaced by “and” in paragraph I.5, to read: “... administrative and other appropriate measures ...”.

Mr SONG Ee Pin (Singapore) suggested that paragraph I.2 should be amended to read: “... standards established by their regional economic integration organizations”, or “... regional

economic integration organizations, where applicable”, to make it clear that such standards would apply only to Parties that were members of such organizations.

Dr TADEVOSYAN (Armenia) said that paragraph I.3 went into too much detail. The convention was becoming too complicated. He preferred the Chair’s original text.

Mr VIRASAKDI FUTRAKUL (Thailand) said that, for the sake of consistency, the phrase “prevent and combat illicit trade in tobacco products” at the beginning of paragraph I.5 should be replaced by “eliminate illicit trade in tobacco products”, to harmonize it with paragraph I.1.

Professor HUSSEIN (Sudan) noted that subparagraph I.5(d) referred to “duty-free and tax-free tobacco products”. He had understood that most delegations had been in favour of a complete ban on duty-free and tax-free sales.

The CHAIR said that a ban was provided for in subparagraph F.2(a).

Mr PADILLA (Philippines), referring to the intervention of the delegate of Sudan, said that subparagraph I.5(d) should be enclosed in square brackets, as it would no longer be required if the total ban on tax-free and duty-free sales proposed in subparagraph F.2(a) was adopted.

Ms MBONGWE (Botswana), noting that most of the changes requested by the countries of the African Region seemed to be present in the new text, said that those countries reserved the right to raise further points when they had had a chance to study the document carefully.

Mr PRASADA RAO (India) said that the subtitle of Article I should be amended to read: “Illicit trade in tobacco products and raw tobacco materials”.

Ms QU Meiyu (China) asked whether the “manufacturing equipment” referred to in subparagraph I.5(c) was intended to mean equipment used for producing counterfeit cigarettes. The phrase at the end of the subparagraph should be amended to read: “or placed on the market according to national legislative practices and measures”.

The CHAIR said that, in his understanding, the term “manufacturing equipment” in subparagraph I.5(c) referred to all equipment used to manufacture tobacco products.

Dr ABOU-DAHAB (Syrian Arab Republic) noted that paragraph I.1 had been amended to include a reference to “raw tobacco materials”. Perhaps the text should also cover harmful additives to tobacco products, such as filter tips or other toxic components.

The CHAIR said he took it that the Working Group wished to adopt the draft texts of paragraphs I.1 to I.5 as amended, to serve as a basis for further negotiation at the fourth session of the Intergovernmental Negotiating Body.

**The draft texts of paragraphs I.1 to I.5, as amended, were adopted for transmission to the Plenary.**

**F. *Price and tax measures to reduce the demand for tobacco*** (continued)

**D. *Guiding principles*** (continued)

The CHAIR invited the working group to consider A/FCTC/INB3/WG2/Conf.Paper B, F.1, F.2, D.4, D.5 and D.7, based on the amendments proposed at the second formal reading.

Dr BERNARD (United States of America), supported by Ms MACMILLAN (New Zealand), said that paragraph F.1 should be amended to read: "... price and tax [measures increases] ...". In paragraph D.4, the phrase "including the creation of a global funding mechanism," should be placed in square brackets, as should "and addressed".

Mr VARELA (Argentina) noted that the original Chair's text of paragraph D.5 had been deleted from the text currently before the Working Group. He asked for it to be reinstated in square brackets, as it was the version preferred by the 19 Latin American countries. Such text was traditionally included in international documents, particularly those dealing with the environment but also those for the protection of workers and trade.

Dr ZENKEVICH (Belarus) said that the word "progressive" in paragraph F.1 should be placed in square brackets, to read: "the Parties recognize that [progressive] price and tax increases ...".

Dr ARMADA (Venezuela), speaking about paragraph F.1, agreed with other delegations that a reference to measures related to price increases should be included in either the first or the second sentence. The reference to "persons under the age of 18" should be replaced by "minors", since the age of majority varied from country to country.

Subparagraph F.2(d) should be enclosed in square brackets. His country strongly supported increases in taxes on tobacco products, but it also considered that tobacco control programmes should receive full and independent funding, which should not be linked to taxes.

Dr ROA (Panama) asked that subparagraph F.2(a) be enclosed in square brackets.

Mr INADOME (Japan) said that the first word "While" in paragraph F.2 should be enclosed in square brackets. In paragraph D.4, square brackets should be inserted as follows: "... financial assistance [including the creation of a global funding mechanism,] to aid ... recognized [and addressed, particularly in developing countries]".

Mr PRASADA RAO (India) proposed that paragraph F.2(c) should be placed in square brackets, as such a provision would impinge on the sovereign right of nations to determine their own taxation policies.

Mr ATWOOD (Australia), in a comment on the English version of the text, said that the phrase "sovereign right of nations" in paragraph F.2 should be amended to "sovereign right of States" to bring the language used in the convention into line with that of other international agreements.

Dr PYAKALYIA (Papua New Guinea), supported by Ms MBONGWE (Botswana), speaking on behalf of the African Group, proposed that the expression "public health" should be used instead of "human health" in paragraph D.5.

Mr RAJALA (European Community), speaking on behalf of the European Community and its Member States, proposed that the words "under the age of 18" be replaced by "young people" in paragraph F.1, and reiterated his proposal to add the phrase "and must be combined with effective measures to combat illicit traffic in tobacco products" at the end of the sentence. In paragraph F.2, bearing in mind the particular circumstances of the European Community, he proposed enclosing the phrase "While recognizing the sovereign right of nations to determine their taxation policy" and the word "national" in square brackets, as the powers of the European Community also embraced taxation. He noted, as did Dr BERNARD (United States of America), that paragraphs F.2(a) to F.2(f) were

already in square brackets. As for paragraph D.4, he endorsed the call to put the words “, including the creation of a global funding mechanism” in square brackets, as the issue warranted further scrutiny.

Mr TORRES (Dominican Republic) reiterated that paragraph F.2(a) should be placed in square brackets. The convention already contained enough restrictions. It should not be used to achieve specific objectives against one form of trade. As for paragraph D.4, he supported the view expressed by the delegates of Japan, the European Community and the United States that a funding mechanism was essential to ensure secure financing for the economic transition of tobacco-producing countries. The convention should not be only a source of restrictions designed to foster less polluted lifestyles: it must also establish economic alternatives.

Ms QU Meiyu (China) said she would prefer the term “harmonized” or “coordinated” in place of “progressive” in paragraph F.1. Paragraphs F.2(c) and F.2(d) should be placed within square brackets, as States had a sovereign right to determine their taxation policies.

Dr ABOU-DAHAB (Syrian Arab Republic), supported by Professor HUSSEIN (Sudan), objected to the proposed alternative wording “can be” in paragraph F.1. That implied doubt, whereas both WHO and World Bank publications had shown that price increases did effectively reduce tobacco consumption. Paragraph F.2(d) could also include reference to the revenues from price increases, thus reading: “allocation of a part of the revenues from tobacco taxes and price increases to tobacco control programmes;”.

Mr BEN SALEM (Tunisia) said he considered that the ideal solution for combating illicit traffic was for countries to coordinate their pricing policies. Tax increases per se did not achieve that end; on the contrary, they created the conditions for a black market. Price and tax increases did not always lead to a reduction in consumption but rather to an increase in smuggling, and international cooperation was essential to deal with that. He therefore proposed that paragraph F.2 be amended to include mention of the use of coordinated fiscal policies to control illicit traffic. He would submit a written proposal.

Dr CHAOUKI (Morocco), congratulating the Co-Chairs on their endeavours, said that he supported the text as it stood.

Mrs GONZ;LEZ NAVARRO (Cuba) proposed that in paragraph D.4 the words “, to aid the economic transition of” should be placed in square brackets.

Mrs LE THI THU HA (Viet Nam), supported by Professor HUSSEIN (Sudan), observed that paragraph F.2(d) was particularly important to poorer countries and considered that it should be retained.

Dr TADEVOSYAN (Armenia) reiterated that his delegation’s proposal to add a reference to harmonizing tax regimes in paragraph F.1 was important and should be reflected in the text.

Mr VIRASAKDI FUTRAKUL (Thailand), although supporting the revised draft of paragraph D.5, considered that it did not provide sufficient protection. Developing countries were confronted with pressures from foreign governments, which threatened trade sanctions if those countries did not import their cigarettes. He therefore proposed rephrasing the paragraph in stronger terms: “Tobacco control measures taken to protect human health are paramount when they are examined for compatibility with other international agreements and should not be deemed as constituting a means of arbitrary and unjustifiable discrimination in international trade.”

Mr PRASADA RAO (India), endorsing the statement by the delegate of Thailand, said that merely stating that priority should be given to human health when considering the compatibility of international agreements left a door open for trade agreements to be used in a hostile manner against developing countries. Thailand was a case in point. Concern for public health should override all other provisions governing international trade agreements. Therefore, the unequivocal, strong language of the text submitted by the South-East Asia Region should be retained for paragraph D.5.

The CHAIR said he took it that the Working Group wished to adopt the draft texts of paragraphs F.1, F.2, D.4, D.5 and D.7, as amended, to serve as a basis for further negotiation at the fourth session of the Intergovernmental Negotiating Body.

**The draft texts of paragraphs F.1, F.2, D.4, D.5 and D.7, as amended, were adopted for transmission to the Plenary.**

Mr MBUYU MUTEBA (Democratic Republic of the Congo), said, as a general observation, that the purpose of the various sessions of the Intergovernmental Negotiating Body was to examine and enrich the Chair's text. The convention could not be seen in isolation from other agreements such as those of WTO and the International Organization for Standardization. The text was becoming unwieldy. For example, the Guiding principles had been simpler in the original text but had now become cumbersome. In redrafting the texts for the fourth session, he suggested calling upon the assistance of legal experts who were familiar with the drafting of international agreements but who were not directly involved in the negotiations.

**The meeting rose at 16.35.**

**WORKING GROUP 2**

**FIFTH MEETING**

**Tuesday, 27 November 2001, at 09:30**

**Chair:** Mr T.T. CHIFAMBA (Zimbabwe)

**DRAFTING AND NEGOTIATION OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL** (Documents A/FCTC/INB3/2(b), A/FCTC/INB3/2(b) Corr.1, A/FCTC/INB3/2(b) Corr.2 and A/FCTC/INB3/WG2/Conf.Paper C) (continued)

- I. Measures related to the supply of tobacco**
- K. Surveillance, research and exchange of information**
- D. Guiding principles, and**
- E. General obligations**

The CHAIR invited the working group to consider document A/FCTC/INB3/WG2/Conf.Paper C, which contained revised texts of paragraphs I.6, I.7, I.13, J.14, J.15, K.1, K.3, K.4, D.9, D.10, E.3 and E.3bis, based on the amendments proposed at the second formal reading. He acknowledged that delegations had not had sufficient time to study the texts carefully but said they would have the opportunity to do so during preparations for the fourth session of the Intergovernmental Negotiating Body. He asked delegates to refrain from making substantive changes at present and to propose them orally in the Plenary meeting the following day.

Mr RAJALA (European Community), speaking on behalf of the European Community and its Member States, expressed his satisfaction with the texts.

Dr ABOU-DAHAB (Syrian Arab Republic) noted that the word “additives” had not been added to the end of the first sentence in paragraph I.6 after “raw tobacco materials”. Additives were mentioned in paragraph I.1 in the context of illicit trade in raw tobacco materials and should therefore be added to paragraph I.6 for consistency.

Mr INADOME (Japan) proposed that the words “active and passive” in paragraph K.1 and in subparagraph K.1(a), should be in square brackets.

Mr VARELA (Argentina), supported by Mr DE BAENA FERNANDES (Brazil), reiterated the proposal made with regard to paragraph E.3 by the delegate of Brazil with the support of the Argentine delegation at the previous meeting of the Working Group to place the words “... conform ...” at the end of the sentence, in square brackets, and to add, also in square brackets: “conform to the international standards set by the Conference of the Parties to ensure the highest level of public health protection”. The current wording of the text was ambiguous, as it mentioned a series of standards, without stating who would determine which of them provided the best public health protection. He agreed with the Brazilian delegate that it should be the Conference of the Parties that established the international standards applicable to any type of exported product.

Mr BAHARVAND (Islamic Republic of Iran) proposed that the first phrase of paragraph I.6 “In accordance with their national legislation and their obligations under international treaties” be replaced by “On the basis of this convention” or be deleted. With regard to paragraph I.7 and the related

footnote, he asked whether the Conference of the Parties or the Intergovernmental Negotiating Body had the responsibility for drafting protocols to the convention.

The CHAIR replied that the question of protocols would be addressed in the Plenary meeting.

Professor HUSSEIN (Sudan) endorsed the revised text but proposed that the subtitle above paragraph I.15 should read “Government support for alternative crops and alternative viable economical activities”.

Professor ZELTNER (Switzerland) proposed that the last part of paragraph E.3.bis read: “... undue interference by tobacco companies, their subsidiaries, affiliated parties and other related entities”.

Mr LOM (United States of America) suggested that the word “treaties” in the first line of paragraph I.6 be replaced by the word “law”, a broader concept that included the concept of “treaties”. In the same paragraph, he suggested a reordering of the last few phrases, to read: “... to eliminate illicit trade in tobacco, tobacco products and raw tobacco materials [, and] in particular smuggling.”

Ms BALOCH (Pakistan) requested that the word “laws” proposed by the delegate of the United States for paragraph I.6 be placed in square brackets, as her delegation would prefer to retain the word “treaties”. Paragraph K.1 should also be bracketed.

Mr PADILLA (Philippines) said that, in keeping with a proposal for paragraph D.4, paragraph I.15 should be amended to read: “... alternatives for tobacco workers, growers and individual sellers ...”.

Mr PRASADA RAO (India) observed that it had been agreed that the title of Article I would read “Measures related to the reduction of the supply of tobacco”.

Ms MACMILLAN (New Zealand) proposed that the phrase “and provide technical and financial support for such activities” in paragraph I.15 be placed in square brackets.

Dr TADEVOSYAN (Armenia), speaking on behalf of the countries of the Commonwealth of Independent States, welcomed the reference to maintaining an updated database in subparagraphs K.3(a) and K.3(b). In paragraph I.15, the square brackets around the word “gradually” should be removed.

Mr SONG Ee Pin (Singapore), referring to the amendment proposed by the delegate of the United States to paragraph I.6, asked how it would affect his delegation’s proposal to join the first two sentences, as follows: “... and raw tobacco materials, and to promote regular exchanges ...”.

Mr LOM (United States of America) replied that his proposal had been made in order to simplify the text. He was willing to withdraw it for the present.

Dr BOVET (Seychelles), speaking on behalf of the African Group, proposed that the brackets around paragraph I.15 and subparagraph K.3(c) be removed as previously suggested by other countries of his Group.

Dr SAADI (Lebanon) suggested that the brackets be removed from around “gradually” in paragraph I.15.

Mr EMMANUEL (Saint Lucia) recalled that the Caribbean Region had proposed that the phrase “persons under the age of 18” in paragraph I.13 be replaced by “legal minors”.

Dr GHANEM (Egypt) suggested that the phrase “identify and regulate the retail trade” in paragraph I.14 be amended to reflect a desire to reduce, rather than merely regulate, such trade.

Mr BAHARVAND (Islamic Republic of Iran) proposed that the square brackets be removed from around paragraphs I.13, I.14 and I.15, subparagraph K.3(c) and paragraph K.4, as the concerns of delegates were with particular phrases in those paragraphs and not with the entirety of their content.

Mrs ALI HIGO (Djibouti) pointed out that paragraph F.1 referred to the supply rather than to the demand for tobacco, as it dealt with illicit trade. It would be more logical, therefore, to include financial measures related to illicit trade in Article I on measures for reducing the supply of tobacco.

The CHAIR said he took it that the Working Group wished to adopt the draft texts of paragraphs I.6, I.7, I.13, I.14, I.15, K.1, K.3, K.4, D.9, D.10, E.3 and E.3bis, with the amendments proposed, to serve as a basis for further negotiations at the fourth session of the Intergovernmental Negotiating Body.

**The draft texts of paragraphs I.6, I.7, I.13, I.14, I.15, K.1, K.3, K.4, D.9, D.10, E.3 and E.3bis, as amended, were adopted for transmission to the Plenary.**

Professor WARNER (World Bank), speaking at the invitation of the CHAIR and referring to paragraph I.15, said that a gradual decline in tobacco consumption due to successful tobacco control would mean that job losses, if any, would also be gradual and would be balanced by normal worker attrition.

The estimated increase in the number of tobacco consumers over the next few decades could be accounted for, in part, by population growth. Developing countries would have the greatest increases in the numbers of tobacco consumers. Successful international tobacco control would mean a reduction in the growth rate of tobacco consumption, and not dramatic declines in current levels of consumption. It should also reduce growth in the number of tobacco jobs but not a significant loss in the number of tobacco-related jobs. Rather, fewer new such jobs would be created. Any displaced workers should be assisted during the transition period.

He noted that paragraph F.1 stated that “price and tax measures are an effective mechanism to reduce tobacco consumption”. In fact, it was only higher prices that reduced tobacco consumption: increased taxation was merely a policy used to effect price increases. In many countries, price increases by private tobacco companies, due, for instance, to successful law suits, had often constituted the single most important source of demand-reducing price increases.

Mr SALOOJEE (International Non Governmental Coalition against Tobacco) noted that paragraph F.2 suggested that prohibition of tax-free and duty-free sales of tobacco products and use of tobacco excise taxes to reduce tobacco consumption were optional, not mandatory measures. Such actions were critical elements of a comprehensive tobacco policy and he recommended they be made mandatory. He proposed that paragraph F.2 be divided to list mandatory and optional measures separately.

**The meeting rose at 10:50.**

**WORKING GROUP 3**

**WORKING GROUP 3**

**FIRST MEETING**

**Friday, 23 November 2001, at 13:55**

**Co-Chair:** Mr R. FARRELL (New Zealand)

**later:** Mr I. SEDDIK (Egypt)

**later:** Mr R. FARRELL (New Zealand)

**DRAFTING AND NEGOTIATION OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL:** Item 3 of the Agenda (Documents A/FCTC/INB3/2(c), A/FCTC/INB3/2(c) Corr.1, A/FCTC/INB3/2(c) Corr.2, A/FCTC/INB3/3, A/FCTC/INB3/5, A/FCTC/INB3/INF.DOC./1, A/FCTC/INB3/DIV/1 and A/FCTC/INB3/DIV/5)

The CHAIR said that the two Co-Chairs wished to facilitate effective progress and to play a proactive role in the Intergovernmental Negotiating Body. It was essential to make the text more manageable as the many similar and repetitive options should be narrowed to enable delegations to advance on substantive issues. There were several possible approaches, and the Co-Chairs would be guided by the views of delegations. Either the Group could undertake a second reading of all the relevant articles or, alternatively, informal drafting groups could examine the more complex articles and report back to the Working Group.

He invited the Working Group to consider first the new articles tabled in document A/FCTC/INB3/5.

**Mr Seddik took the chair.**

In response to a question from Mr CASTILLO SANTANA (Cuba), Dr BETTCHER (Tobacco Free Initiative) said that, as explained in the introductory paragraphs of document A/FCTC/INB3/5, there had been discussion at the end of the second session of the Intergovernmental Negotiating Body about the approach to be taken with regard to Articles J, S and T, for which no text had been in the Chair's text (document INB2/2). Member States had been invited to submit textual proposals no later than 60 days before the start of the third session, those proposals to be reproduced and forwarded to Member States for their consideration. By coincidence, all three Articles were within the mandate of Working Group 3. The Secretary had received three proposals from Member States or groups of Member States concerning Article J (Compensation and liability), two concerning Article S (Development of the Convention) and two concerning Article T (Final clauses); all these were set out in document INB3/5.

**J. *Compensation and liability***

Mr TVEITAN (Norway) said that the adverse health effects of tobacco were well documented, as were the economic costs of those effects to the individuals concerned and society in general, including loss of income, health costs and benefits from private and governmental insurance systems. The principle of holding manufacturers of dangerous products accountable for damage arising from their use was also well known, and organizations and private parties in several countries had recently sought compensation from the tobacco industry for their losses.

He recalled that WHO had convened a panel of legal experts to discuss the issue of compensation and liability earlier in the year, which had concluded<sup>1</sup> that the possibilities for including

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<sup>1</sup> Document A/FCTC/INB2/5 Rev.1.

compensation and liability in the convention were limited. It would be difficult to include substantive provisions on civil and criminal liability mainly because the standards in that respect depended on national legislation. It would, however, be useful to draft model laws for consideration by individual States or to include obligations requiring the sharing of information about the means available to claimants within their States. The panel had also suggested the establishment of an international fund for preventive and compensatory measures and had noted that numerous treaties obliged States to enact legislation imposing criminal liability for activities inconsistent with such treaties.

Norwegian courts had dealt with a few cases of claimants seeking compensation for tobacco-related injuries. In one case, an employee had been granted compensation for health damage caused by environmental smoke at the workplace. That and other cases showed the vital importance of access to information concerning the health effects of tobacco and the activities of the tobacco industry for those seeking compensation for health damage caused by the use of tobacco products.

Norway had accordingly proposed a text for Article J that stressed the availability of documentation on the health effects and costs of tobacco use, on national liability and compensation laws and regulations that could be consulted by prospective claimants and other countries, and on court cases, the enactment of criminal liability for activities inconsistent with the provisions of the convention, and the establishment of a fund for compensatory purposes.

He suggested that a first reading of all the proposals be made at the present session and that a Chair's text be prepared for the fourth session of the Intergovernmental Negotiating Body on the basis of those proposals and comments from the floor, so that the revised Article could be discussed on an equal footing with the other articles.

Mr ATWOOD (Australia) said that his delegation acknowledged the potential role of an effective liability and compensation regime in complementing the other components of a global strategy on tobacco control. It commended the intersessional work done on the subject, including the textual proposals that had been tabled and the useful consultations initiated by WHO.

A number of difficulties would have to be overcome to achieve a comprehensive liability and compensation regime, including conceptual problems arising from the fact that many national legal systems did not adequately address liability for the harm caused by tobacco products. More important, however, were the practical difficulties: Australia's experience of other treaty negotiations suggested that discussion on liability and compensation issues would be very time-consuming and perhaps unsuccessful. As for the proposals, Australia considered that the Norwegian text contained constructive suggestions, especially in regard to information exchange and legal cooperation. Subparagraph 2(e) and paragraph 4 might, however, raise difficulties; in that regard, the Chinese proposal suggested a more appropriate way of achieving a balance between international and domestic responses to liability issues.

Ms BALOCH (Pakistan) said that her country had been unable to attend the regional consultation that had resulted in the proposals tabled by the Islamic Republic of Iran on behalf of Member States of the Eastern Mediterranean Region. In consequence, the present text did not reflect the position of her country. Her delegation sympathized with many of those proposals and also with those put forward by Norway and China; however, she would prefer that the framework convention not be too prescriptive. She would make substantive comments during the discussion of each paragraph, but she foresaw difficulty in discussing three different texts simultaneously. One of them would clearly have to be chosen as the basis for negotiation.

Professor HUSSEIN (Sudan) said that he considered the proposal by the Islamic Republic of Iran on behalf of Member States of the Eastern Mediterranean Region to be relevant and logical, and they could be adopted as a basis for discussion, with the addition of a paragraph 9 which would consist of the text of subparagraph 4(b) proposed by Norway.

Mr YI Xianliang (China) said that, although China had put forward comprehensive, carefully drafted proposals for Articles J, S and T, which it considered to be the key to the whole convention, it would welcome any suggestion regarding its proposals during or outside meetings of the Working Group. He considered that it would not be constructive to close the submission of amendments on 22 November and that new proposals should be welcomed throughout the negotiations. In regard to Article J, China considered that the text should be straightforward and general. A comparison of Chinese legislation with that of other countries had illustrated the great difficulties involved. The liability in question was civil liability and not criminal or administrative liability. Recourse should be made to international law in regard to compensation. Every effort should be made to avoid setting a precedent that would be unrealistic and difficult to apply.

Dr TEPPREY (Ghana), speaking on behalf of the Member States of the African Group, said that their recommendations with respect to proposed texts would be submitted in due course.

Mrs ZIKMUNDOVA (Belgium), speaking on behalf of the Member States of the European Union, Bulgaria, the Czech Republic, Hungary, Slovakia, and Slovenia, considered that the future framework convention should be concluded as soon as possible. Article J, however, covered important, new provisions for international law and gave rise to highly technical issues. The countries for which she was speaking considered that the complexity of the issues under discussion might compromise an overall agreement on the content of the draft framework convention and on essential elements of the fight against tobacco use. They therefore proposed that Article J be addressed at a later stage in the negotiations.

Similarly, they considered that it would be impossible to conclude Articles S and T before the end of the negotiations, as their content depended on substantive obligations contained in the convention. The proposals formulated on behalf of the European Union might therefore have to be adapted and further proposals might be submitted as negotiations progressed. The proposals made in respect of Article S reflected reservations about the simplified procedure for adoption of proposals: a system of positive adoption would be preferred to a system in which a text was considered as adopted in the absence of any formal objections.

In respect of Article T, and with particular regard to signature of the convention, she recalled that the Member States of the European Community had given the European Commission competence in a number of the areas covered by the draft convention. In order for the European Community to be a Party to the convention, a provision for signature by regional economic integration organizations was thus necessary as foreseen in the text proposed by Belgium. The formulation used in resolution WHA52.18 of the World Health Assembly in respect of regional economic organizations had been included in paragraphs T.1, T.2 and T.4. The text of paragraph T.5 was acceptable.

Mr ADSETT (Canada) recalled that the complexity of the issue of compensation and liability, addressed in Article J, had become apparent at previous sessions of the Intergovernmental Negotiating Body. One of the main goals of the framework convention was to reduce tobacco consumption. As noted by the delegate of Australia, the question arose of how much effort should be expended on the complex issue of compensation and liability and how much should be devoted to other provisions of the convention. The text before the meeting provided a good basis on which to explore the issues raised. He also shared the concerns of the delegates of Belgium, Australia and Pakistan with regard to the practical issues and technical difficulties involved and the need to avoid making the convention overly prescriptive. As the delegate of China had mentioned, it was difficult to compare liability provisions across jurisdictions. The issues under consideration were essentially related to private international law and were a matter for specialized experts. His delegation would make more substantive comments on the text at a later stage.

Mr CASTILLO SANTANA (Cuba) reiterated his concern that document A/FCTC/INB3/5 had been circulated only recently, and he considered it premature to discuss the textual proposals at the present meeting. His delegation had studied the issues and sought the advice of experts. Their conclusions in respect of compensation and liability had left many questions open, as there were many possible approaches and solutions, which had both advantages and drawbacks in terms of their application, pointed out by other delegates. His delegation had sought to identify provisions relating to compensation and liability in other conventions, which might serve as examples of possible applications. Given the complexity of the issues from legal, political and economic points of view, Member States should be given more time to study the texts in order to identify all the possible implications. It was important to clarify whether the present reading was an initial one or a full examination of the texts.

Mr MILLER (United States of America) also considered that the issues of compensation and liability were difficult and complex. Indeed, the two experts commissioned by WHO to study the possible nature and scope of such provisions, Dr Adede and Professor Murphy, had agreed in proposing that discussion on the question of liability be postponed.<sup>1</sup> They had also agreed that the Intergovernmental Negotiating Body should concentrate on the framework convention itself, not allowing questions of liability to divert attention from other equally substantive issues, and that it should avoid complicated, protracted negotiations over compensation and liabilities. Those experts had recalled the difficult circumstances surrounding negotiation of the Basel Convention Protocol on Liability and Compensation for Damage resulting from the Transboundary Movements of Hazardous Wastes and their Disposal: 10 years of concerted efforts had been required to reach agreement on a text that had been ratified by only 13 States. His delegation suggested that, if the question were to be pursued, it should be the object of a separate protocol.

His delegation considered that the proposals of China and Norway provided a useful basis for proceeding with the issues in hand. Norway's suggestions regarding information sharing were of particular interest. Other aspects of Norway's proposal, such as harmonization of national laws and criminal liability for activities contrary to the convention would be more difficult to accept. In respect of the text proposed by the Islamic Republic of Iran on behalf of the Member States of the Eastern Mediterranean Region, some aspects, such as smuggling, should be included elsewhere in the text. The difficulties associated with industry liability and modifications to national court jurisdictions had been identified at the WHO Consultation.

His delegation was convinced that the framework convention presented an opportunity to make a real difference to important public health concerns such as passive smoking, smuggling, prevention and cessation programmes and protecting children and vulnerable groups. The full energies of the Intergovernmental Negotiating Body should be devoted to those efforts, and discussion on compensation and liability should be deferred to a later date and a more appropriate venue.

Mr CASTRILL[N (Ecuador) drew the attention to the statement by his Government in document A/FCTC/INB3/5, which had been reflected in the statement of the previous speaker. His delegation thus agreed with the recommendations of the legal experts consulted by WHO. The debate on the question of liability should be postponed and negotiated at a later date under a separate protocol and negotiations should focus on the existing draft text of the framework convention.

Mr INADOME (Japan) said that the texts were potentially constructive contributions to the negotiations, but more time was needed so that they could be studied carefully as a basis for future negotiations. The texts contained issues that were not directly related to compensation and liability, such as information sharing, and important ones such as the harmonization of domestic laws and the

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<sup>1</sup> Document A/FCTC/INB2/5 Rev.1.

establishment of a fund based on taxation of the tobacco industry, which required more detailed study. It would therefore be difficult to use the present text as a basis for discussion, and he proposed that consideration of the text be postponed.

Dr ZENKEVICH (Belarus) said that, in view of the complexity of defining criteria for evaluating damage and liability the Article should be of a general nature, as proposed in section 4 of the proposal from Norway, and a separate protocol on compensation and liability should be drawn up.

Mr SHEVCHOUK (Ukraine), acknowledging the complexity of the issues of compensation and liability, proposed that Norway's text be taken as a basis for further discussion in view of its flexible, cautious approach.

Mr SANTHOKI (Suriname) noted some discrepancies in the proposed texts in use of the terms "compensation", "liability" and "claims". His delegation therefore recommended that a new paragraph be drafted to define those terms and that liability, compensation and claims and sanctions be the object of separate paragraphs. Under "sanctions", further distinctions should be made between criminal, administrative and civil sanctions. The paragraph on liability should specify the conditions under which there was a case for demanding liability, to enable individuals affected by tobacco to benefit from the provisions of the convention. The paragraph on compensation should specify the types of compensation that were included in the convention. A fund should be established to support individuals wishing to seek compensation and to enter the claim process. Lastly, he agreed with other speakers that more time should be allowed to address the issues of compensation and liability in a responsible manner.

Mr CERDA (Argentina), noting that the document under discussion was a framework convention, said it ought not to go into too much detail. In common with some other delegates, he considered that compensation and liability should be regulated by national laws; however, it might be useful to take more time to study similar provisions in other conventions. He expressed an interest in discussing the proposed compensation fund.

Dr CASTILLO CAMINERO (Dominican Republic) said his delegation was opposed to including in the framework convention statements encouraging the prosecution of tobacco manufacturers and considered that the provisions on compensation and liability had not yet been clearly defined. Any attempt to establish civil liability under the "polluter pays" theory would be inappropriate and inconsistent with United Nations procedures. To his knowledge, no United Nations convention had tried to impose standards on national legal systems for activities that were not exclusively international. Imposition by an international convention of objective or absolute liability on manufacturers without taking the concept of "blame" into account would constitute a radical change in the legislation of many countries. Furthermore, the convention should not impose liability retroactively. Most legal systems rejected any provisions that changed legal norms of private conduct after the event. It would be discriminatory to impose special legal standards on an industry making a product that was not prohibited by law.

He urged Member States to reject proposals encouraging litigation which would hinder the adoption of reasonable measures. Such changes in national laws on civil liability would have negative consequences for governments that were, or had been, tobacco monopolies and might lead to an increase in litigation, which would not be constructive if important issues of public policy were to be resolved. He considered that it would be more useful to focus on solutions to the problems associated with tobacco use rather than on litigation in relation to past events.

Dr SRINATH REDDY (India) said he shared the misgivings expressed by a number of delegations that discussion of the complex issue of liability could delay negotiation of the draft

framework convention. There were complex technical problems to be addressed, each of which would involve the establishment of different legal parameters. Both national and international laws on liability were at an early stage of development and would be difficult to harmonize in relation to the convention. He was in favour of deferring the question of liability; however, if it was necessary to recognize the principle, he was prepared to support the inclusion of the text proposed by China, which recommended strengthening national laws on liability. Later, after adoption of the convention, the convergence of national laws could be encouraged in order to facilitate strong international legislation. The question of compensation should, however, be left outside the framework convention for the time being.

Mr PADILLA (Philippines), while commending the proposals under discussion, said that it would be difficult to comment on a text that he had received only recently. He queried why the policy of anonymous proposals, which facilitated open discussion, had been abandoned. He concurred with other delegates that it might be necessary to discuss Articles J, S and T at some other time.

Mr OGANOV (Russian Federation) said that, for his country and other Newly Independent States, the matter of compensation and liability was complex. Although tobacco was no longer a State monopoly, it had been in the past and deciding where liability for health damage lay was problematic. He supported those delegates who had proposed postponing discussion of the issue to a later date. Compensation and liability should be dealt with in a general manner, as proposed in the text submitted by China.

Dr OTTO (Palau) stated that compensation and liability were complex matters but acknowledged that they were at the core of tobacco control. Unless the tobacco industry was held responsible in a tangible way for the harm it caused, it would continue to do so. His delegation considered that compensation and liability should be dealt with in the convention itself and within the proposed timetable. Thanking the delegations responsible for drawing up the proposals, he said that his delegation considered the text proposed by Norway to be an appropriate starting point for discussion.

Mrs LE THI THU HA (Viet Nam) agreed with other delegates that the subject of compensation and liability was very complex. Her delegation supported the text proposed by China.

Mr BEN SALEM (Tunisia) also agreed that compensation and liability were complex and sensitive issues. Certain essential points required clarification. For instance, smokers who suffered health damage had chosen to smoke, in the knowledge that smoking was bad for their health. There was a need to clarify the causal link between health damage and tobacco. How could liability be determined with regard to the different forms of smoking? In case of passive smoking, could it be determined whether tobacco or other pollutants had caused health damage? States with national tobacco companies had difficulty in accepting the concept of liability. Should a national fund for compensation be set up that was based on producers' turnover? Those were some of the sensitive legal questions involved.

The CHAIR, acknowledging that compensation and liability were delicate issues, said that it would probably not be possible to produce an agreed text in the course of the session. It would be important, however, to undertake a first reading of the various proposals submitted by Member States and regional organizations, so that a consolidated text could be produced for the next session. He therefore invited delegates to consider the text proposed by China.

Mr YI Xianliang (China), introducing the proposal, said that it had initially been thought that such a provision in the framework convention would not be needed. However, China had submitted a

proposal to address the thorny issues of compensation and liability, which were a matter of private rather than public law. Private or civil law was usually considered a matter for national legislation. China had over 20 years' experience of negotiations on compensation and liability in the context of various treaties such as the Basel Convention Protocol on Liability and Compensation for Damage resulting from the Transboundary Movements of Hazardous Wastes and their Disposal, the Stockholm Convention on Persistent Organic Pollutants and the Antarctic Treaty. Public international law also accepted the concept of liability, yet the International Law Commission and other bodies had discussed the concept at length without producing a result. In the Hague Conference on Private International Law, there was much confusion and many disputes among parties with regard to treaties. For example, negotiations on jurisdiction (Future Hague Convention on International Jurisdiction and Foreign Judgements in Civil and Commercial Matters) had been ongoing since 1992, with no result. The draft framework convention was to be the first treaty deposited by WHO, and was moreover a framework, meaning that issues of compensation and liability could not be covered in detail. China had therefore proposed a simple, general text. A provision framed in general terms was the only appropriate choice, if such a provision was to be included.

Mr CASTILLO SANTANA (Cuba) reiterated the view that discussion of the issue could be postponed.

Mr SANDAGE (United States of America) said that his country had long supported the principle of holding the tobacco industry liable for the consequences of smoking. He therefore supported the text proposed by China, to which he would propose some amendments.

#### S. *Development of the Convention*

Mr SANDAGE (United States of America) observed that the text proposed by Belgium for a simplified adoption of amendments was similar to one considered by the Health Assembly 18 months previously, which had failed to attract much support at the time. The risk with such a text was that amendments might be adopted inadvertently, in the absence of any objections; amending the convention was far too important a process for that. Moreover, in his country, any amendment to a treaty must be referred to the Senate for advice and consent. The text proposed by China followed standard treaty practice; his only reservation was with regard to the requirement for a three-fourths majority vote, while he considered that a two-thirds majority should be sufficient to amend a treaty.

Mr ATWOOD (Australia) commented that the texts proposed by Belgium and China provided a sound basis for advancing the discussion. The Belgian model for simplified adoption of proposals had already been incorporated into a number of multilateral and regional treaties. In theory, it provided an efficient, effective process for adopting amendments, yet such a provision should be included only if it were likely to be used. He asked the Belgian delegation to provide examples of the way the model had worked in the context of other multiregional treaties. It was important to see whether the procedure had proved effective in practice and whether it might be improved.

Mr ADSETT (Canada) said that the draft text proposed by Belgium for *Simplified adoption of proposals* was superior to the original version in the Draft Elements for the Framework Convention, which would have allowed an amendment to be adopted in the absence of any objections. However, subparagraph 1(a) under the heading *Entry into force*, contained a reference to numbering of the parts of the convention that no longer existed, and he requested clarification. He agreed with the delegate of the United States of America that the three-fourths majority required in the Chinese proposal appeared excessive. He also asked whether paragraph 11 in the proposed text from China was complete.

Mr YI Xianliang (China), replying to the delegates of the United States of America and Canada, explained that voting procedures depended on the nature and content of the amendments concerned. Treaties adopted in recent decades had not permitted reservations to amendments, and some of them therefore required a three-fourths majority vote. As the Chinese draft included a provision for no reservations, a three-fourths majority had been proposed. With regard to paragraph 11 under the heading *Protocol*, the word “may” could be used in place of “shall”.

Mrs ZIKMUNDOVA (Belgium), replying to the delegate of Canada, said that the numbering used in the draft text referred to an earlier document, A/FCTC/INB1/2 would be updated.

Mr ALCAZAR (Brazil) said that his delegation had not had time to consider the proposed texts and would prefer to postpone the discussion.

**Mr Farrell resumed the chair.**

Ms BALOCH (Pakistan) suggested that the text proposed by China be used as a basis for future negotiations, since most delegates appeared to prefer that version.

**T. *Final clauses***

Mr ADSETT (Canada), commenting on the text proposed by China, said that in paragraphs 6 and 7, under the heading *Entry into force*, the threshold of 60 States seemed to be high. Furthermore, exactly how was “total tobacco consumption worldwide” to be monitored? He wished to consider the text further. Moreover, language similar to that used in paragraph 11 (*Relation to other international treaties*) had been proposed for other parts of the convention, and all such provisions should be reviewed together.

Mr SANDAGE (United States of America) said that he would discuss with the delegation of Belgium the wording proposed for the participation of regional economic integration organizations in order to ensure that paragraph 1 (*Signature*) of their proposal was sound. As for the text proposed by China, he agreed that the Secretary-General of the United Nations was the appropriate depositary, on the grounds of experience and expertise. He agreed with the delegate of Canada that a threshold of 60 States for entry into force was high, and it might be possible to reach a consensus on a lower figure. He also agreed that it might be awkward to calculate 55% of total tobacco consumption worldwide. Paragraph 10 (*Reservations*) of the Chinese proposal would not be acceptable to the Government of the United States of America, since the Senate considered it a constitutional prerogative to revise treaties and make reservations.

Mr ATWOOD (Australia) said that both the Belgian and the Chinese proposals formed a good basis for negotiation. Both proposals stated that the convention should enter into force only after a certain number of ratifications had been received, which seemed reasonable, although it was perhaps not necessary to specify the exact number of ratifications at present. China’s proposal that the ratifying States should account for a specified percentage of total tobacco consumption worldwide was an interesting one, but it would require thought and discussion if the convention was to win wide-ranging support. Some countries bore a greater proportion of the global tobacco burden than others, and such a provision might unnecessarily delay the timely delivery of the benefits of the convention to all States.

His delegation was prepared to accept either the Secretary-General of the United Nations or the Director-General of WHO as the depositary of the convention, provided, of course, that the governing body of the organization concerned was prepared to accept the task.

Mr BAHARVAND (Islamic Republic of Iran) said that the proposal submitted by Belgium formed a good basis for further negotiations, but adoption of the Final Clauses of the convention should be postponed until the rest of the convention had been finalized.

He asked the delegate of Belgium for two clarifications. What was meant by “regional economic integration organizations” in paragraph 1 of its proposal? Secondly, with regard to paragraph 2, what would be the legal position if a State ratified the convention within its domestic legislation, but a regional organization of which it was a member rejected the convention?

Mr CERDA (Argentina) said that with respect to the proposed text from China, that the convention must allow for the possibility of reservations. His delegation welcomed the suggestion that the convention must be ratified by a certain number of States, representing a certain proportion of total tobacco consumption worldwide, and it would be happy to see the percentage set at 60 rather than 50. However, it was important to ensure that the entry into force of the convention would not adversely affect States with a developing economy which were dependent on tobacco production.

Mrs ZIKMUNDOVA (Belgium), replying to the delegate of Iran, said that the term “regional economic integration organization” referred to the European Community and its Member States, and was the formula used in World Health Assembly resolution WHA52.18 of 1999.

Mrs CONINSX (European Community), replying to the second question asked by the delegate of Iran, explained that the European Community, represented by the European Commission, was competent to define the position on matters that affected the Community as a whole whereas the Member State that held the Presidency of the Union – currently Belgium – spoke on matters that remained within the competence of Member States. If the European Community was competent in all areas covered by the convention, it would sign and ratify the convention on behalf of all the Member States; otherwise, the Member States would decide individually whether to accede to the convention.

Dr BETTCHER (Tobacco Free Initiative) said that a definition of the term “regional economic integration organization” was included in the document “Compilation of terms and definitions” (document A/FCTC/INB3/INF.DOC./1, paragraph 38). The same paragraph contained an alternative definition submitted by China, taken from three other treaties: the Vienna Convention for the Protection of the Ozone Layer, 1985, the Convention on Biological Diversity, 1992, and the United Nations Framework Convention on Climate Change, 1992.

Mr YI Xianliang (China) said that his delegation had given considerable thought to the conditions it had proposed for the entry into force of the convention. The convention was intended to control access to a commodity, and it therefore needed to take into consideration the conditions of production and consumption of that commodity, namely tobacco. It was also important to ensure that the convention was as comprehensive and effective as possible. His Government therefore felt strongly that at least 60 States accounting in total for at least 55% of total tobacco consumption worldwide, must ratify the convention before it could enter into force. His Government was, however, prepared to take a more flexible approach to the subject of reservations: if all Member States agreed, an appropriate paragraph allowing for the possibility of reservations could be inserted in place of paragraph 10 of his country’s proposal. Considerable negotiation would, however, be required in order to decide which articles should be subject to reservations and which should not.

Mr EISSA (Egypt) agreed that the major tobacco producing and consuming countries should ratify the convention before it came into force. He preferred the concept of States which accounted for a certain percentage of total tobacco consumption worldwide, rather than a specific number of States. If reservations were to be allowed, they must not allow States to derogate from the most fundamental articles of the convention.

Mr BEN SALEM (Tunisia) said that more States would ratify the convention if reservations were allowed, but the convention must state explicitly that the most fundamental articles were not subject to reservations. That would be entirely in the spirit of the Vienna Convention on the Law of Treaties.

Professor SZASZ (Tobacco Free Initiative) said that there would be no difficulty in including the provision proposed by China, that States accounting for at least 55% of total tobacco consumption worldwide must ratify the convention before its entry into force. However, the depositary of the convention could not be expected to determine when that condition had been fulfilled. It would be necessary to annex to the convention a table of tobacco consumption in individual States in the year 2000 or to make clear reference to a published table containing those data. That would be necessary whether the depositary was the Secretary-General of the United Nations or the Director-General of WHO.

Mr YI Xianliang (China) said that it would presumably be easy for WHO to compile statistics for tobacco consumption in individual States for the year 2000, using data from the States themselves, and from WHO.

Mr TVEITAN (Norway) recalled a suggestion made earlier in the meeting that the Co-Chairs should prepare a new draft of the text of Article J (Compensation and liability,) which the Working Group should take as its basis for discussion.

Mr BAHARVAND (Islamic Republic of Iran) said that he would be glad to provide any explanations with regard to the text proposed by his country, on behalf of the Member States of the Eastern Mediterranean Region, for Article J.

The CHAIR said that delegations should submit their suggestions for the text of Article J for production of a consolidated text. He suggested that the Working Group return to Articles J, S and T at a later meeting. It had concluded its first reading of Articles J, S and T.

Mr GUEVARA (Infact) speaking at the invitation of the CHAIR, said that the convention provided a critical opportunity to hold the transnational tobacco companies accountable for the harm caused by their products to people around the world. Existing international agreements, particularly those pertaining to hazardous waste, recognized the value of liability mechanisms and institutionalized the principle that corporations should be held liable for the harm caused by their products, practices and/or neglect. In the United States of America, tobacco corporations had been forced to reveal what they knew and how they had covered it up, and had begun to pay some of the social costs of their addictive, deadly products. However, the full burden of the tobacco epidemic had yet to strike the world's poorest countries, which were in no position to sustain the economic impact of caring for millions of sick and dying smokers. The major tobacco companies must be made to accept the true costs of their business.

His organization called upon delegates to include the following issues in the convention. Firstly, the convention should ensure that national legal systems were accessible, whatever the citizenship of the person who had been harmed or the territory in which the harm had taken place. The text proposed by Iran on behalf of the countries of the Eastern Mediterranean Region would prevent the transnational companies from keeping their profits in their home countries, out of reach. Secondly, the convention should help Parties and their citizens to recover costs and damages and ensure that the Parties' legal systems kept track of legal proceedings taking place elsewhere. The text proposed by Norway called upon States Parties to collect legal documents of interest to prospective claimants, including documentation of tobacco industry activities, and directed the Secretariat to compile the information. Thirdly, the convention should ensure that Parties, in seeking redress themselves or in any other way,

did not prevent other persons or Parties from obtaining independent redress for harm caused to them. His organization was concerned about the placing of an upper limit on compensation for tobacco-related damages.

Dr BETTCHER (Tobacco Free Initiative), answering a question from Mr BAHARVAND (Islamic Republic of Iran), said that a conference paper incorporating the proposed amendments to Article J was being prepared.

Mr BAHARVAND (Islamic Republic of Iran) asked for a further debate to be held on Article J when the conference paper was available.

**It was so agreed.**

**The meeting rose at 16:25.**

**WORKING GROUP 3**

**SECOND MEETING**

**Sunday, 25 November 2001, at 13:45**

**Chair:** Mr R. FARRELL (New Zealand)

**DRAFTING AND NEGOTIATION OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL:** Item 3 of the Agenda (continued) (Documents A/FCTC/INB3/2(c) and A/FCTC/INB3/2(c) Corr.1)

The CHAIR suggested that the present formal meeting be changed into an informal one in order to hold two parallel discussions, one on Articles L and Q under his chairmanship and one on Articles P and R under the chairmanship of Mr Seddik. The outcomes of the informal meetings would be discussed at a formal meeting of Working Group 3 at the same time as discussion of Articles J, S and T.

Ms BALOCH (Pakistan) regretted that it was difficult for her delegation to accept such a change. The working groups had no mandate to overturn a decision of the plenary. A timetable agreed by the Plenary of the Negotiating Body could be amended only by the Plenary. The suggested course of action would set a precedent for future meetings. The meeting should remain formal.

Mr YI Xianliang (China), supported by Ms BENNETT (Australia) and Dr TEPPREY (Ghana), said it would be his preference to finish a second reading of Articles L, Q, P and R. The Negotiating Body already had an onerous schedule and it was desirable to forge ahead. Any articles not addressed at the present meeting could be dealt with at the following meeting of the Group.

Mr SANDAGE (United States of America) said that, in his experience, it was not unusual for informal groups to meet simultaneously. Indeed, the Negotiating Body had already had two simultaneous informal group meetings. He did not think a dangerous precedent would be set. He enquired whether there was any prohibition in the mandate of the Negotiating Body for two informal groups to meet simultaneously.

Dr BETTCHER (Tobacco Free Initiative) said that the preliminary daily timetable (document A/FCTC/INB3/DIV/4) scheduled concurrent informal meetings, and the Bureau had agreed that concurrent informal drafting meetings could take place.

Ms DJONEVA (Bulgaria), referring to document A/FCTC/INB3/DIV/4, concurred with that view.

Mr CASTILLO SANTANA (Cuba) said that the elements of the text under discussion were important and called for thorough discussion. Meetings should not continue into the evening. The articles should be discussed in full, in the presence of all delegations. Some smaller delegations did not have the human resources to cover two parallel meetings.

Mr SANTHOKI (Suriname) agreed that smaller delegations could not be fully represented at simultaneous meetings. In addition, he asked whether a quorum was necessary for informal meetings.

The CHAIR said that there was a general impression that informal meetings could be very constructive. The results of such meetings would be commented upon by Working Group 3 in a formal context. Accepting that a number of delegations had indicated their inability to be represented adequately at concurrent informal groups, however, and acknowledging the lack of enthusiasm of some delegations for an evening meeting, he suggested an immediate informal meeting to discuss Articles L and Q, with a further informal meeting to discuss Articles P and R at the next session of the Working Group.

Ms BALOCH (Pakistan), supported by Mr BEN SALEM (Tunisia) and Mr PRASADA RAO (India), enquired why it was necessary for the meeting to be informal.

Mr SANDAGE (United States of America) suggested that, if an informal evening meeting were to be planned, participants should be asked for their approval.

#### **L. Scientific, technical and legal cooperation**

The CHAIR recognized the consensus to remain in formal mode. He invited comments on Article L (Scientific, technical and legal cooperation).

Mrs ZIKMUNDOVA (Belgium), speaking on behalf of the Member States of the European Union, and Bulgaria, Czech Republic, Hungary, Romania, Slovakia and Slovenia, supported the Chair's text, with one minor amendment. In line with proposals she had made for other sections of the draft convention, to add reference to promoting cessation of tobacco use within national tobacco control programmes, she considered that the bracketed phrase "and promoting cessation of tobacco use" at the end of subparagraph L.1(b)(i) should be retained.

Dr TEPPREY (Ghana), speaking on behalf of the African Group, endorsed the Chair's text but proposed a number of amendments. Subparagraph L.1(b)(i) would read "building a strong legislative foundation as well as technical programmes, promoting cessation of tobacco use, and assisting in the treatment of tobacco dependence;". In relation to subparagraph L.1(b)(ii) he proposed addition of the word "viable" before the word "alternate". In subparagraph (iv), the word "objective" should be changed to "aim" or "goal", and that amendment would apply to all instances in which the objective of the convention was mentioned. Finally, he proposed that paragraph L.2 read "The Conference of the Parties shall determine how to establish a mechanism to promote and facilitate scientific, technical and legal cooperation with the financial support required."

Mr ADSETT (Canada) supported Article L in general, with some specific amendments. He suggested simplifying paragraph L.1 by referring to "domestic legislation" in place of "national laws, regulations, practices". In subparagraph L.1(a), he suggested that the word "technology" should be replaced by "relevant skills, knowledge and capacity". Subparagraph L.1(b)(i) should be shortened to read "building a strong foundation for the treatment of tobacco dependence", as a legislative foundation was not the only approach. Subparagraphs L.1(b)(ii) and (iii) concerned important issues which could be dealt with under paragraph L.15. His delegation had no objection to the substance of subparagraph L.1(b)(iv), but it could well be deleted, being covered by the words "*inter alia*" in paragraph L.1(b). He suggested deletion of paragraph L.1(c), as it was not clear to what type of training programmes it referred. The word "necessary" should be deleted from paragraph L.1(d), and the entire paragraph L.2 should be deleted, as the issue was already addressed under paragraph Q.2.

Mr PRASADA RAO (India), speaking on behalf of the Member States of the South-East Asia Region, supported the Chair's text, with some minor amendments. In paragraph L.1, he concurred with the suggestion to add the words "to promote scientific, technical and legal cooperation to

establish and strengthen national tobacco-control programmes, policies and measures” after “developing countries”. Subparagraph L.1(b)(i) should be amended to read: “building a strong legislative foundation as well as technical programmes, and assisting in programmes for preventing tobacco uptake and promoting tobacco cessation; in subparagraph L.1(b)(ii), he suggested replacement of the words “the development of alternate livelihoods” by “identifying alternative livelihoods”.

Dr ABOU-DAHAB (Syrian Arab Republic) remarked that subparagraph L.1(b)(i) referred to “tobacco dependence”, whereas the words “nicotine dependence” were used elsewhere. He proposed that the latter term be used throughout the convention. Although the tenth edition of the *International Classification of Diseases* used the word “dependence” he preferred the word “addiction”.

Mr PECHACEK (United States of America), while supporting the principle of international scientific and technical cooperation, reiterated the concerns expressed by his delegation at the second session of the Intergovernmental Negotiating Body concerning the creation of any new mechanism under paragraph L.2.

Mr BAHARVAND (Islamic Republic of Iran) supported the Chair’s text in the main. However, he proposed deletion of the word “legal” in the title and in paragraph L.2. He also proposed deletion of the words “in accordance with its national laws, regulations practices and international obligations” in paragraph L.1. The basis for cooperation in the context of Article L was the framework convention and not national laws. Furthermore, law-making was the prerogative of sovereign states, whereas the concept of legal cooperation under the convention would imply collective law-making which countries might not welcome.

Mr DUQUE ESTRADA MEYER (Brazil), speaking on behalf of the Latin American Group, supported the Chair’s text in general, with some additions. He supported insertion of the words “, knowledge and capacity” after “technology” in subparagraph L.1(a) and of the words “and material” after “equipment” in subparagraph L.1(d). He proposed addition of an entirely new paragraph L.1(e), which would read: “establishment of technical and financial cooperation and mechanisms for studying cost-effective methods of treating nicotine addiction.”

Mr CASTILLO SANTANA (Cuba) said that his delegation broadly supported the proposals made by the delegate of Brazil on behalf of the Latin American Group in respect of paragraph L.1, but additionally proposed the deletion of subparagraphs L.1(b)(ii) and (iii), and their replacement by a single subparagraph L.1(b)(ii) to read “assisting tobacco workers who might be affected as a consequence of implementation of the present Convention”. in order to reflect the fact that when providing financial assistance, existing financial resources had to be used.

Ms TKACHENKO (Russian Federation), speaking on behalf of the Commonwealth of Independent States, proposed that the words “and of countries with transition economies” be added after “developing countries” in paragraph L.1. In respect of paragraph L.2, she endorsed the proposal of the delegate of Ghana to add “with the financial support required”.

Mr YI Xianliang (China) supported the comments and proposal made by the delegate of Iran. The broader issues of cooperation should be dealt with elsewhere, while the present article should concentrate on scientific and technical issues. He proposed that, in paragraph L.1, the words “international obligations” be deleted, as they were covered by the framework convention itself. He supported Canada’s proposals in respect of paragraph L.1 and subparagraphs L.1(b)(iv) and L.1(c), in the interests of clarity and keeping the text general. Paragraph L.2 should be amended to read “The Conference of the Parties shall establish and review regularly the mechanisms to promote and facilitate scientific and technical cooperation”.

Ms BREBNER (Samoa) supported the Chair's text in general. She endorsed the proposal to replace the term "tobacco dependence" by "nicotine addiction" in subparagraph L.1(b)(i), to make the nature of the problem more transparent. In subparagraph L.1(d), the word "equipment" should be replaced by "resources".

Dr GHANEM (Egypt) supported the Chair's text in general but proposed that, in subparagraph L.1(a), the word "technology" be replaced by "expertise". Paragraph L.2 should be amended by adding the word "financial", to read "scientific, technical, legal and financial cooperation."

Mr SANTHOKI (Suriname) supported the Chair's text, stressing the importance of the subject of training programmes mentioned in subparagraph L.1(c). He proposed that that subparagraph be amended to read "support for the establishment and maintenance of training and education programmes for appropriate personnel in order to implement the provisions of this Convention in an effective manner and to strengthen tobacco control". He suggested that subparagraph L.1(d) should be amended to read "supply of material and logistic equipment for the implementation of this Convention and for an effective tobacco control programme."

Mr INADOME (Japan) agreed that paragraph L.1 be amended by addition of the words "be encouraged to" between "Each Party shall" and "cooperate", as financial commitments might be involved. In subparagraph L.1(b)(i), the words "a strong legislative foundation as well as" should be deleted in order to reflect the fact that, in providing financial assistance, existing financial resources had to be used. The text would then read: "building technical programmes and assisting in the treatment of tobacco dependence;"

Dr BELLO DE KEMPER (Dominican Republic) said that, as her country was a tobacco-producer that had an interest in ensuring that the convention resulted in an effective reduction in the consumption of tobacco products that damaged health, and in the light of the comments of the African Group, Russian Federation and Cuba, she proposed that subparagraph L.1(b)(ii) should be amended to read "assisting workers in the tobacco industry who are affected by application of the present Convention, particularly in developing countries, to find alternative, viable livelihoods". Similarly, subparagraph L.1(b)(iii) should be amended to read "assisting tobacco growers who are affected by application of the present Convention, particularly in developing countries, in shifting agricultural production to alternative, viable crops in an economically viable manner". She also supported the proposal by the African Group to add the words "with the financial support required" to the end of paragraph L.2.

Mrs ALI HIGO (Djibouti) pointed out a discrepancy between the French and English versions of the text of subparagraph L.1(d). She proposed that it read: "supply of necessary equipment and material ...", thereby resolving the discrepancy. In respect of paragraph L.1(b)(ii), she supported the proposal of the delegate of the Dominican Republic.

Mr REJEPMURAD (Turkmenistan) said that his delegation could support the Chair's text. However, he considered that subparagraph L.1(b)(iii) should be changed to read: "creating conditions for tobacco growers to shift agricultural production to alternative crops in an economically viable manner."

Mr CERDA (Argentina) supported the amendments proposed by Brazil on behalf of the Latin American Group. He endorsed the Chair's text, particularly subparagraphs L.1(b)(ii) and (iii).

Mr FAZLUR RAHMAN (Bangladesh) supported the Chair's text, with the amendments proposed by India on behalf of the South-East Asia Region.

Mr BAHARVAND (Iran) said that, in the light of the discussion, he wished to alter his previous proposal. He suggested that the word "legal" should be replaced by "financial" throughout the Article.

Dr HABIB (Iraq) proposed that subparagraph L.1(b) should be simplified, to read: "provision of technical expertise to strengthen tobacco control activities" and that subparagraph L.1(b)(iv) should read "take the necessary action for implementation of the Convention".

Mrs TSETSEGDARI (Mongolia) proposed that subparagraph L.1(d) of the Chair's text be amended to read: "supply of necessary medication and equipment for tobacco-control programmes and activities."

**Q. *Financial resources***

Mr BAHARVAND (Iran) proposed that Article Q should become paragraph L.2, and the current paragraph L.2 should become L.3.

Mrs ZIKMUNDOVA (Belgium), speaking on behalf of the European Union, its Member States and the States she had mentioned previously, said she supported the Chair's text of Article Q, recognizing the importance of all forms of cooperation between developed and developing countries, including financial assistance to support the implementation of the convention. However, it remained to be proved that there was a clear need for a financial mechanism in the Convention, different from existing mechanisms. She therefore proposed deletion of paragraph Q.2.

With regard to paragraph Q.4, although she recognized the need for technical cooperation, she had doubts with regard to the principle that the developed countries that exported manufactured tobacco products had a special responsibility to provide technical support to developing countries. That question was related to the wider, extremely complex matter of compensation and liability, which was dealt with in another part of the text. She proposed a shorter version of paragraph Q.4, namely: "The Parties provide technical support to developing-country Parties to strengthen their national tobacco control programmes." She noted that Article Q was related to Article D, on which she had already made comments.

Dr TEPPREY (Ghana), speaking on behalf of the African Group, reiterated that, in general, the Convention should refer not to "objectives" but to "aims" or "goals". He proposed insertion of a new paragraph Q.3, to read:

3. The Parties recognize that developing countries, especially those whose economies are dependent on the tobacco industry and particularly on tobacco growing, need support to diversify into other viable options. The Conference of the Parties will therefore, through the World Health Organization and other United Nations agencies, use the financial resources raised under voluntary mechanisms:
  - (a) to assist tobacco workers in the development of viable alternative livelihoods;
  - (b) to assist tobacco growers in shifting to alternative agricultural crops or economic activities, with special attention to the environment.

As implementing the convention would imply many financial obligations, especially for poor and developing Parties, he proposed addition of the words "and financial" between "technical" and "support" in the existing paragraph Q.4 which would become paragraph Q.5 through insertion of a new paragraph Q.3.

Mr BUKURU (Burundi) fully supported the proposal made by Ghana on behalf of the African Group. Assistance in the development of viable alternative livelihoods would help to ensure that implementation of the convention would not compel former tobacco workers to seek a move to the forest in order to survive.

Mr INADOME (Japan) said that the reference to financial support for national activities in paragraph Q.1 meant support for a country's own activities and not for those of other countries. It would therefore be difficult to agree to the proposal to insert the words "to the developing countries".

The proposed amendments to paragraph Q.2 referred to a compulsory mechanism in the form of a multilateral global fund. However, he believed that the existing support framework should be used as much as possible, and his delegation would have difficulty in supporting that proposal. Furthermore, he could not support the proposal to target the tobacco industry as a means of raising financial resources.

He supported the Chair's text of paragraph Q.3, as it advocated use of the current support framework.

With regard to paragraph Q.4, he considered that strengthening national tobacco control programmes should be the responsibility of each Party and not only that of the developed countries. He therefore proposed that the paragraph should be deleted.

Mr PRASADA RAO (India) said that Article Q laid too much emphasis on the voluntary principle for the provision of financial assistance, for example, in paragraph Q.2. If that principle were applied, it would be easy to predict the meagre level of resources forthcoming. The phrase "A voluntary mechanism" in paragraph Q.2 should be replaced by "A mechanism in the form of a multilateral global fund". The fund should be financed in two ways: by a tax on tobacco products and by a voluntary element. Paragraph Q.3 should be recast to read:

3. The multilateral fund specified in paragraph 2 shall be financed, *inter alia*, by an export tax on manufactured tobacco products. This fund shall also be voluntarily financed from Parties, and in particular cases, by a decision of the Conference of the Parties, from nongovernmental sources.

To specify the purposes for which the fund should be used, he proposed the replacement of paragraph Q.4 by:

4. The multilateral fund specified in paragraph 2 above shall be used to support, *inter alia*, the economic transition of tobacco growers and workers, technology transfer for tobacco cessation programmes, for creation of testing facilities required under the Convention, and for any other activity to meet the objectives of the Convention.

He noted that compensation and liability were totally different issues from the provision of financial resources, which were required, for instance, for the needs of tobacco growers and for tobacco cessation programmes.

Dr GHANEM (Egypt) proposed that the word "financial" should be inserted in paragraph Q.1 of the Chair's text before "incentives" to cater for those countries with ambitious plans, which needed more financial support than others.

Mr SANDAGE (United States of America) said that his delegation supported paragraph Q.1 of the Chair's text as it stood. He also supported paragraph 3, as it recognized the important role of bilateral, regional and other channels in achieving the objectives of the Convention and encouraged Parties to provide voluntary funding through such channels for comprehensive tobacco control

programmes. He reiterated the proposed amendments to paragraph 2. Paragraph 4 should be deleted: the Parties would make their own decisions about the level of support they intended to provide through existing mechanisms to assist developing countries or others, as they deemed appropriate.

Mr SNYDER (Canada) said that, where possible and appropriate, support should be provided for States Parties, particularly the developing countries, to help them fulfil the serious obligations deriving from the convention. The importance to the developing countries of an assured flow of funding for tobacco control was recognized. Canada had provided similar support in the past and had recently announced a significant increase in funding, including some provision for the area of tobacco control, particularly in respect of capacity building, on the basis of the approach that tobacco control was best promoted by strengthening health systems in developing countries. While not fundamentally opposed to voluntary funding on the lines proposed in the Chair's text and the proposed amendments, therefore, Canada remained sceptical, like the European Union, about the value of or the need for a voluntary fund for tobacco control at present. The Bureau might usefully provide a simple list of existing multilateral mechanisms for giving assistance in that area.

The proposed amendments to paragraph Q.2, concerning the provision of funding for economic transition or support for tobacco workers in new endeavours, should be examined in relation to the realities. A report from the World Bank that had been drawn to his attention indicated that any impact on employment of a reduction in the demand for tobacco products would be felt only gradually. The question of funding for transitional activities might therefore best be covered in a paragraph dealing with economic assistance generally, rather than including a separate reference in Article Q. Existing mechanisms might be used for this purpose.

With regard to paragraph Q.1, Canada reiterated its earlier suggestion that the word "incentives" should be deleted, as it was both ambiguous and, in Canada's case, inappropriate. The idea of an export tax devoted to financial assistance, as referred to by India, was also unacceptable, because Canada's national taxation policy would not permit an outside body or treaty to create obligations in that area.

With regard to paragraph Q.4, Canada, like the United States of America, could not agree to any special responsibility of countries that exported tobacco products being written into the text, even though its own exports of those products were negligible.

Mr CASTILLO SANTANA (Cuba) said that, although generally speaking his delegation supported the Chair's text of Article Q, it proposed that paragraph Q.2 should be amended by inserting the words "without conditions" after "a voluntary mechanism".

It supported India's proposal that the mechanism should take the form of a multilateral fund. However, the proposal made at the previous session that the mechanism should be compulsory on the part of the tobacco industry should for the time being remain in square brackets. The proposals contained in paragraphs Q.2.bis and Q.2.ter and the following unnumbered paragraph also caused difficulties for his delegation and should remain in square brackets.

He called attention to the proposed addition of the word "unconditional" in paragraph Q.3, currently in square brackets. He supported paragraph Q.4 of the Chair's text as it stood.

Mr YI Xianliang (China) said that, generally speaking, his delegation supported the views of Ghana, India and Cuba, but had particular concern about the special fund or voluntary mechanism addressed in paragraph Q.2. Although there were many funds in the world, none was directly for tobacco control. Any convention that imposed a large number of obligations on the Parties should contain provisions for funding for developing countries to enable them to meet their obligations, make the necessary economic transition and perform the requisite monitoring, reporting and other activities. In view of the importance of secure funding for such activities, the single reference to financial support in paragraph Q.1 was not enough.

Ms TKACHENKO (Russian Federation), endorsing the views of India, Cuba and others with regard to the optimization of a mechanism to ensure the availability of financial resources, proposed that the phrase “and countries with transition economies” should be inserted in paragraphs Q.3 and Q.4 after “developing countries”.

Mrs SIBIYA (Swaziland) said that her country endorsed the proposal put forward by the African Group but proposed an amendment to paragraph Q.2 that had, in her opinion, been overlooked. The text should not refer to a “voluntary” mechanism as that might not be sustainable; reference should rather be to “established mechanisms”. The same applied to the last sentence of the new paragraph Q.3 proposed by the African Group, in which the term “voluntary mechanism” should again be replaced by “established mechanisms”.

Dr DJAMALUDDIN (Indonesia) said that her country fully supported the proposal by India on behalf of the South-East Asia Region but wished to stress once again the importance of a multilateral global fund. Much had to be done to achieve the goal of the convention, and maintaining the momentum would require the assurance of long-term financial support. A voluntary mechanism would be too risky. Without the assurance of a multilateral global fund, the developing countries would fall even further behind the developed ones. As the tobacco industry was responsible for spreading the tobacco epidemic in developing countries, it should provide the financial resources to help those countries to counter those efforts and their effects; developed countries, too, must assume their responsibilities in that respect. Indonesia considered that use of the multilateral fund should be focused on the economic transition of tobacco growers and workers. She urged all Parties to give serious consideration to the needs of developing countries for a multilateral global fund and, in particular, to make a global commitment to that effect.

Mr GBOMOR (Sierra Leone) said that the negotiations should result in a convention that all Member States could implement, without having to face problems such as loss of revenue or unemployment. Countries that depended on tobacco production should be given special consideration within that framework. He therefore endorsed the proposal of the African Region regarding Article Q. He had no doubt that other developing countries would benefit from those amendments.

Mr MBUYU MUTEBA (Democratic Republic of the Congo) expressed support for all the suggestions made by the delegate of Ghana for the African Region but considered that one important point had been omitted. In the discussion on establishing a global fund, there had been talk of responding to the needs of countries or economies in transition or those that would be adversely affected by implementation of the convention. No allusion had yet been made to the human victims. If a global fund was established, it should also be used to provide care for the victims of tobacco and tobacco products, who were the very reason for the convention.

Dr GAMARRA DE CACIRES (Paraguay) said that she agreed with the delegates of India and Canada that the mechanism for the provision of financial resources should not be voluntary. If the convention were to be binding for all, it should not include a voluntary mechanism. The success or failure of the convention depended on a satisfactory solution for Article Q. Developing countries wished to make progress; they did not want to prejudice the health of their peoples or to encourage a black market for tobacco and therefore needed effective technical and financial support for the development of alternative crops. She underlined the spirit of paragraph Q.1, which implied that tobacco issues would be given priority in health programmes in every country. If resources were lacking, however, the issues would not be given priority. Each Party implementing the convention should receive the appropriate financial support to do so. In regard to paragraph Q.4, countries that were earning thousands of millions of dollars from tobacco products at the expense of developing

countries did have a special responsibility. The winners in the fight against tobacco were a minority of privileged countries, which should take the necessary action to ensure the survival of the rest of the human species.

Mr MOON (Republic of Korea) said that his country supported in principle the Chair's text. It considered, however, that paragraph Q.4 was too strongly worded to be acceptable to some developed countries. It should either be deleted or, alternatively, amended, either by deleting the phrase "have a special responsibility to" or by replacing the word "responsibility" with "consideration".

Mr CERDA (Argentina), referring in particular to paragraph Q.2, said that enough funds should be available to help workers find alternative livelihoods and to help tobacco growers change to alternative crops or other viable economic activities. A multilateral fund would constitute an important means of dealing with those two problems.

Mr SANTHOKI (Suriname) expressed support for the Chair's text but stressed the importance of establishing a global fund to help the Parties, especially countries with small economies, to achieve the goals of the convention. His delegation proposed that specific reference be made in paragraph Q.2 to financial resources to assist crop substitution, crop diversification and alternative development programmes in the field of tobacco cultivation. A special fund should be established to finance such programmes.

Mrs TRAN THU THUY (Viet Nam), supported by Mr SODNOMPIL (Mongolia), expressed support for the Chair's text of paragraph Q.4 in general but proposed addition of the words "and financial" after "to provide technical".

Dr CAUNITIS (Latvia), speaking on behalf of the Baltic States (Latvia, Estonia and Lithuania), expressed support for the Chair's text for Article Q, with a slight amendment to paragraph Q.4, where, after the words "exporting tobacco products from third countries", the words "or selling tobacco products in third countries" should be added.

Mr CASTRILLÓN (Ecuador) said that his delegation in general supported the Chair's text but proposed an amendment to paragraph Q.2, where the words "a voluntary mechanism" should be replaced by "special multilateral funds". Later in the same paragraph, it would be necessary to change the word "mechanism" to "fund" in the Spanish text for reasons of consistency.

Dr BELLO DE KEMPER (Dominican Republic) said that her delegation endorsed the Chair's text and the reference to the need for multilateral financial support to achieve the objectives of the convention. However, it was necessary to be realistic: identification of viable alternative products would cost money and require market research, whereas subsidies were not permitted by the World Trade Organization. She invited delegates to see for themselves not only the beaches in her country but also the tobacco growing areas, in order to appreciate their importance as a means of livelihood. Tobacco growers must not be allowed to end up in poverty, which would have negative effects on their health. She was confident that a balanced mechanism that was fair to all countries would emerge to make it possible for them to attain the goals of the convention.

Mrs SOSA MÁRQUEZ (Mexico) said that her delegation supported in general the Chair's text and expressed interest in the idea of a fund, which her authorities were evaluating as a suitable mechanism for ensuring resources to finance implementation of the convention. Enough financial resources should be provided to make the instrument viable. In addition to support for alternative livelihoods for tobacco workers and growers, financial resources would also be needed for the

implementation of other provisions of the convention, such as infrastructure to prevent smuggling and for research, epidemiological surveillance, databases, laws and regulations.

Mrs ALI HIGO (Djibouti) welcomed the proposal to create a global fund. Although its establishment might appear difficult at present, it could be achieved if all the Parties were convinced of its benefits for public health. Paragraph Q.3 should be amended as follows: "... comprehensive tobacco-control programmes, including measures to encourage substitution crops, in support of this objective,...". She also supported the proposal by the countries of the African Region for a new paragraph addressing the concerns of tobacco-producing countries.

Mr VIRASAKDI FUTRAKUL (Thailand) supported the Chair's text, with the amendment to paragraph Q.3 proposed by India, concerning the financing of a multilateral fund by an export tax on manufactured tobacco products. That seemed a feasible solution. A recent law in his country had imposed an additional 2% excise tax on cigarettes. The additional revenue, amounting to approximately US\$ 14 million per year, was used to finance programmes to reduce tobacco consumption and encourage tobacco farmers to grow other crops. Similar schemes might be used to finance the proposed multilateral fund.

Dr ABOU-DAHAB (Syrian Arab Republic) pointed out that developed countries sometimes exported raw tobacco to developing countries, which manufactured the tobacco products. He suggested that paragraph Q.4 should be amended as follows: "... developed-country Parties that export manufactured tobacco products or raw tobacco, or have branches ...".

Dr FAROAS ALBUQUERQUE (Peru) supported the Chair's text but considered that the mechanism proposed in paragraph Q.2 should be a special fund rather than a voluntary mechanism. Paragraph Q.1 obliged States Parties to invest resources, which would have to be diverted from other health programmes. It was logical that the tobacco-exporting countries, which had made money from the tobacco industry, should contribute to a fund to support the objectives of the convention.

Dr OTTO (Palau) said that the Pacific Island countries welcomed the Chair's text, with the following amendments. Paragraph Q.2 should read: "A mechanism for the provision of financial resources on a grant or concessional basis to developing countries, including the transfer of sustainable technology, is hereby established to function under the guidance and supervision of ...". Paragraph Q.3 should be amended as follows: "... comprehensive tobacco-control programmes, including actions targeting alternative crops,...". Paragraph Q.4 should read: "... international tobacco companies exporting or selling tobacco products ... have a special responsibility to provide technical and financial support to developing-country Parties to strengthen their national tobacco control programmes as well as to diversify to other economically viable options".

Dr AYUB (Jordan) said that she considered that the phrase "to provide technical support to developing country Parties" in Paragraph Q.4 should be replaced by "to provide technical support adapted to the needs of developing countries", since different developing countries had different needs.

Dr HABIB (Iraq) supported the proposed creation of a global fund. The four paragraphs of Article Q were complementary and were appropriate for the tobacco control campaign.

Dr VILLAMIZAR (Venezuela) supported the Chair's text, but she agreed with other delegates that the phrase "voluntary mechanism" in paragraph Q.2 should be replaced by "multilateral fund".

Mr YI Xianliang (China) said that, when the text of the Article had been finalized, its title might have to be amended, depending on the obligations the Parties had agreed upon.

Ms ISHIDA (International Union Against Cancer), speaking at the invitation of the CHAIR, said that a strong administrative structure and effective implementation mechanisms were critical to meeting the goals of the framework convention. Her organization believed in cooperative implementation of the convention by means of enactment by States Parties, assistance from WHO and collaboration with other sources of expertise. A proper funding mechanism for the convention should be considered as early as possible in the drafting process as, without it, the substantive provisions of the convention would have little effect on tobacco-related health concerns. The working group might wish to look at existing treaties, such as the Vienna Convention for the Protection of the Ozone Layer and its Protocol, which had successfully combined science and policy in a properly funded structure.

Mr COLLISHAW (Commonwealth Medical Association), speaking at the invitation of the CHAIR, said that his organization shared the view expressed by many delegates about the importance of scientific, technical and legal cooperation. Further discussions, conducted in good faith and taking into account the needs of both potential recipients and potential donors, would be needed in order to determine exactly how implementation of the convention could be funded. However, the principles were clear. The work was vitally important and must have guaranteed, long-term funding. People with expertise in tobacco control, wherever they were in the world, should be made available to help countries strengthen their tobacco control programmes. Several important issues discussed at the current meeting all required adequate funding: strengthening of national programmes, international scientific, technical and legal cooperation and administration, monitoring and surveillance of the convention.

Working Group 2, in its discussions on Article F of the draft convention, was moving towards a consensus in favour of increasing tobacco taxes to discourage consumption. Member States might find that the extra revenue gained from increasing taxes would offset the costs of strengthening national and international tobacco control.

**The meeting rose at 16:15.**

**WORKING GROUP 3**

**THIRD MEETING**

**Monday, 26 November 2001, at 9:30**

**Chair:** Mr I. SEDDIK (Egypt)

**Later:** Mr R. FARRELL (New Zealand)

**Later:** Mr I. SEDDIK (Egypt)

**DRAFTING AND NEGOTIATION OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL:** Item 3 of the Agenda (Documents A/FCTC/INB3/2(c), A/FCTC/INB3/2(c) Corr.1 and A/FCTC/INB3/5) (continued)

**P. *Reporting and implementation***

Mr BUKURU (Burundi), speaking on behalf of the African Group, supported the Chair's text in paragraph P.1, but proposed insertion of an additional paragraph before that paragraph, so that the current paragraph P.1 would become paragraph P.2. The text of the new paragraph would read: "Each party shall establish or designate one or several agencies as responsible for collecting and communicating information on monitoring, research, on the technical, socioeconomic, commercial and legal aspects of tobacco consumption, tobacco production and tobacco control programmes, and on the progress achieved in implementing all the provisions of the convention".

He suggested amendments to the text of the new paragraph P.2. The first would be to add after the words "submit to the Conference" the phrase ", through the secretariat of the convention,". In subparagraph P.1(d), he proposed that the words "meeting its objective" be replaced by "achieving the goal of the convention", as he had suggested for other parts of the convention.

Mr SNYDER (Canada) supported paragraph P.1 and its intention but pointed out that the reporting requirements should not be made too onerous or prescriptive, as some countries might find it difficult to furnish certain types of information. Flexibility should be introduced to allow governments to decide for themselves how best to put together the information required. To that effect, he considered the second alternative proposed during the second session of the Intergovernmental Negotiating Body, beginning "Each Party shall establish or designate ..." too complicated. The proposed phrase "information to be exchanged pursuant to Article K" should not be included, nor should that beginning "information on imported, exported ...", as they duplicated points already covered by Article K. He therefore proposed that the Chair's text be retained, with three amendments. Subparagraph P.1(a) should simply read: "information on measures taken to implement provisions of the convention". In subparagraph P.1(c), the word "available" should be inserted before "information". Subparagraph P.1(e) should be deleted.

Mr YI Xianliang (China) stressed the importance of information systems for data exchange, but he expressed reservations about the appropriateness of the word "implementation" in Article P, suggesting that, instead, a link be created between reporting and data exchange. The words "the following data" should be deleted from paragraph P.1, and the words "strategies" and "together with information on enforcement, where appropriate" should be removed from subparagraph P.1(a), as governments were responsible for enforcement. In paragraph P.2, the words "Each other Party included in Annex [INSERT]" should be deleted because the countries being referred to were not yet known. In paragraph P.3, he proposed deletion of the word "monitoring". Paragraph P.4 should be

deleted entirely, as the possibility of establishing a subsidiary body was already mentioned in paragraph P.3. Finally, the last sentence in paragraph P.5 should be amended to read: "Such support shall be provided by the financial mechanism of this convention".

Mrs ZIKMUNDOVA (Belgium), speaking on behalf of the European Union, its 15 Member States, Bulgaria, the Czech Republic, Hungary, Romania, Slovakia and Slovenia stressed the importance of a reporting mechanism as a means of ensuring implementation of the framework convention. She agreed with the delegates of Canada and China that the mechanism should not be too onerous for the States Parties. Accordingly, and in accordance with proposals made by her delegation during the second session of the Intergovernmental Negotiating Body, subparagraph P.1(a) should be changed to read: "information on tobacco control policies and legislation and other measures initiated or implemented as well as measures planned for the implementation of the convention in accordance with the provisions of articles [INSERT]". Subparagraph P.1(c) should read: "information on the consequences of various response strategies adopted to implement this convention and its protocols". Subparagraph P.1(d) and (e) should be deleted. Paragraph P.2 could be simplified in order to extend the deadline for submission of initial reports and to eliminate the notion of a differentiated timetable, which had not been adequately discussed. Paragraph P.2 would therefore read: "Each party shall make its initial communication within one year of the entry into force of the convention for that Party and, thereafter, every [INSERT]." Paragraph P.3 should be deleted, and, in order to ensure that the reporting mechanisms were not overly onerous, paragraph P.4 should read: "In order to provide timely advice in the implementation of this convention, the Conference of the Parties may, as it deems necessary, appoint, according to the rules and practices of WHO, ad hoc panels to provide it with information and advice on specific issues regarding the current state of fields of science and technology relevant to the objective of the convention. The Conference shall decide on the terms of reference and the modalities of work of these panels."

Dr GHANEM (Egypt) supported the Chair's text but suggested that subparagraph P.1(a) and P.1(d) be merged, as they dealt with similar points. The merged paragraph would read: "Information on measures and strategies taken by every Party to implement the convention and any difficulties encountered in its implementation."

Professor HUSSEIN (Sudan) said that his delegation supported the Chair's text, with several amendments to paragraph P.1, which would read "Each Party shall establish or designate one or several agencies to be responsible for gathering and communicating information on research and monitoring and on the technical, socioeconomic, commercial and legal aspects of tobacco production and control programmes and on the progress achieved in implementing all the provisions of the convention", as proposed during the second session of the Intergovernmental Negotiating Body. Furthermore, in subparagraph P.1(c), the word "available" should be inserted after "information" and the word "strategies" replaced by "measures". He endorsed the proposal of Egypt to combine subparagraphs P.1(a) and P.1(d) in the manner suggested.

Dr ABOU-DAHAB (Syrian Arab Republic), referring to paragraph P.1, said that information was important if it gave an accurate account of the extent of the problem. In that regard, his delegation fully supported paragraph P.1 and its subparagraphs. He suggested, however, that a model for the report be annexed to the convention, showing the areas in which information was required and examples of answers. That would facilitate the provision of information by all States Parties. Each State Party should also prepare a preliminary report expressing its degree of interest in implementing the convention and outlining the extent of the problem in its country. Preparation of such a report would incite countries to combat the problem. States Parties should be given 18 months to prepare the report, as a survey of tobacco use would have to be undertaken, analysed and discussed. Many countries did not currently have data on the extent of the problem.

Mr SANDAGE (United States of America) said that, as reporting on implementation of treaties by States Parties was one of the most important means of ensuring a treaty's success, his delegation strongly supported the Chair's text of paragraph P.1 and its subparagraphs and would not wish to see it amended in a reductive way. His delegation endorsed the text of paragraph P.2 but was prepared to accept amendments that reflected potential difficulties with the time limit currently laid down.

His delegation had previously submitted an amendment to paragraph P.3, which was to delete the first dependent clause "To assist the Conference of the Parties in the monitoring, assessment and review of the effective implementation of this convention". The Conference of the Parties might request such assistance, but its scope should be left to them to decide.

With regard to paragraph P.4, he recalled that there had been considerable informal discussion about the possible relationship between the Conference of the Parties and WHO. Many countries had taken the view that that relationship should not be prejudged. For that reason, at the second session of the Intergovernmental Negotiating Body, his delegation had submitted an amendment, suggesting deletion of the words "taking into account the rules and practices of the World Health Organization" and "on the recommendation of the Director-General of the World Health Organization". He reiterated that amendment. Likewise, his delegation had previously submitted an amendment to paragraph P.5, adding the words "within its existing resources" after "by the Secretariat".

Mr INADOME (Japan) reiterated the amendment proposed to paragraph P.1 by his delegation at the second session of the Intergovernmental Negotiating Body, which would read "In accordance with guidelines agreed upon by the Conference of the Parties, each Party shall submit a report on the implementation of the national programme of tobacco control to the Conference. The report may include:".

Ms MACMILLAN (New Zealand) said that, although her delegation considered that strong reporting requirements were important for the convention, the requirements agreed upon should be realistic and not place an undue burden on States Parties. Therefore, subparagraph P.1(a) should be amended to read: "information on programmes, policies, legislation and other measures initiated or implemented in accordance with the provisions of Articles [INSERT], together with information on enforcement, where appropriate". Paragraph P.2 should state that an initial report should be made within 12 months of the entry into force for Parties. Paragraph P.3 should make provision for the Conference to establish a subsidiary body, should that become necessary. Paragraph P.4 should be amended to read "In order to provide timely advice in the implementation of this convention, the Conference of the Parties may, as it deems necessary, appoint ad hoc panels to provide it with information and advice on specific issues regarding the current state of fields of science and technology relevant to the objective of this convention. The Conference shall decide on the terms of reference and modalities of work of these panels".

Mr ADSETT (Canada) said that he agreed with the delegates of the United States and New Zealand that Article P was one of the more important provisions of the draft convention. With regard to paragraph P.2, he concurred with the comments of the delegate of Belgium, but suggested that the initial report should be made within one year and thereafter at a frequency to be determined by the Conference of the Parties. In paragraph P.3, he proposed deletion of the word "effective", as implementation of the convention should be monitored, assessed and reviewed regardless of whether that implementation had been effective. He agreed with the comments of the delegate of the United States and New Zealand concerning paragraph P.4 but proposed deletion of the words "and advice" after "provide it with information", as the Conference of the Parties should decide the output of any ad hoc panel it would establish. In paragraph P.5, the beginning of the first sentence should be amended to read "The Conference of the Parties shall help to identify ways to ensure that developing countries have access to technical support ...", and the second sentence should be reworded to read

“... by competent international organizations or by the Secretariat within its existing resources, as appropriate.”

Dr AL-HAMDAN (Saudi Arabia) proposed that the title of Article P be changed to “Reporting and information”, as it contained no reference to implementation. Paragraph P.1 should read: “In accordance with guidelines agreed upon by the Conference of the Parties, each Party shall submit to the Conference within the timeframe decided by the Conference of the Parties:”. The word “information” should be deleted from subparagraphs P.1(a), P.1(b) and P.1(c), as it would appear in the title of the Article. As the information requested in subparagraphs P.1(d) and P.1(e) was already mentioned in subparagraph P.1(a), those two subparagraphs should be deleted.

Mr CERDA (Argentina) said that his delegation agreed that paragraph P.1 should contain less detail and be less onerous, in order to favour reporting. Paragraph P.2 should provide different timeframes for reporting by developed and developing country Parties, that for developing countries being longer. The question of the creation of a subsidiary body, described in paragraph P.3, could be addressed later, as the structure of the convention should be as light and unbureaucratic as possible.

Dr DJAMALUDDIN (Indonesia), speaking on behalf of the South-East Asia Region on paragraph P.3, said that she supported the monitoring, assessment and review of effective implementation of the convention. Although a specific unit at global level would be needed to facilitate, coordinate, compile and analyse reports continuously, that should be undertaken by WHO rather than by a new subsidiary body, which would be an additional administrative burden. A monitoring protocol, the development of indicators and feedback of the information to the relevant Parties would be important to encourage them to achieve better performance. States Parties should be assisted in establishing management information systems to that end. She would submit a new text of paragraph P.3.

Dr SRINATH REDDY (India), speaking on behalf of the South-East Asia Region, noted that paragraph P.2 categorized countries into three types with respect to the timing of submission of reports: each developed-country Party included in an unidentified annex, each other Party included in that annex and each Party not so listed in that annex. The basis for that categorization was unclear, as was the listing in the annex, how it had been developed and whether it had been borrowed from other conventions, which may or may not have been relevant to tobacco control. In place of that arbitrary and possibly inappropriate classification, he suggested the need for a clear-cut categorization based on principles relevant to the convention. Paragraph P.2 should be amended to read: “Each Party already having established surveillance mechanisms (as included in Annex [INSERT]) shall make its initial report within six months of the entry into force for that Party of this convention. Other Parties not so listed in Annex [INSERT] shall make their initial report within two years of the entry into force for that Party of the convention. The frequency of subsequent communications by all Parties shall be determined by the Conference of the Parties, taking into account the differentiated timetable set by this paragraph.” That text would clearly link the existence of established surveillance mechanisms and the degree of preparedness for reporting to the differentiation of countries.

Dr ROA (Panama) said that her delegation concurred with the Chair’s text of paragraph P.1, with two amendments. The word “available” should be inserted before “information” in subparagraph P.1(c), and subparagraph P.1(e) should be deleted. Regarding paragraph P.2, all Parties that signed the convention should present their report within 12 months, with no distinction made between developed and developing countries. In that way, all countries would present their initial report at the same time. She requested additional information on the subsidiary body mentioned in paragraph P.3, as the convention’s resources should not be used to increase bureaucracy. In paragraph P.4, the Conference of the Parties, and not WHO should appoint ad hoc panels.

Mr SANTHOKI (Suriname) said that his delegation considered that reporting was not an objective of the convention but rather a tool for feedback and monitoring of its implementation. To that end, the reporting system should be flexible, and, in the initial stages of implementation, Parties should not be held to unrealistic time limits and data requirements. Details such as time limits and indicators should be worked out by the Conference of the Parties and not in the convention. Subparagraph P.1(a) should be simplified to read: “information on the status and process of implementation of the convention, the strategic tobacco control plan, the obstacles and the results herewith”. Subparagraph P.1(c) should be amended by addition at the end of the words “the displacement in the field of tobacco control”. In view of the proposed amendment to subparagraph P.1(a), subparagraphs P.1(d) and P.1(e) could be deleted.

Dr OTTO (Palau) endorsed the comments of the delegate of the United States with regard to paragraph P.1. Paragraph P.3 should be amended by the insertion after the first sentence of a new sentence reading: “Persons affiliated with tobacco corporations, their subsidiaries or agents may not participate in the Conference or other bodies established by the convention or its Protocols.” Furthermore, the word “The”, which qualified “guidelines” in that paragraph should be replaced by “Additional”. He stressed the importance of excluding the tobacco industry from the reporting and implementation process. That proposal was in line with World Health Assembly resolution WHA54.18 on transparency in tobacco control.

Mrs ROVIROSA (Mexico) considered that the Chair’s text of paragraph P.1 was acceptable, as it addressed the various aspects of reporting and implementation. She endorsed the proposal made by the delegate of Argentina on setting different deadlines for developed and developing countries. Reporting should not constitute an undue financial burden, and some flexibility should be allowed in the reporting process. She supported the establishment of a subsidiary body as outlined in paragraph P.3 and the possibility of establishing ad hoc panels to act as technical and scientific advisory bodies as mentioned in paragraph P.4. WHO’s role in respect of those panels remained to be determined. She expressed her support for paragraph P.5.

Dr USHIRO (Japan) disagreed with the proposal in paragraph P.2 to set different deadlines for developed and developing countries and proposed a standard deadline for initial reporting of one year after the entry into force of the convention. The frequency of subsequent deadlines should be stipulated by the Conference of the Parties.

Dr PALOMO ESCOBAR (El Salvador) agreed with the delegate of Egypt that subparagraphs P.1(a) and P.1(d) were very similar and could be merged. Subparagraph P.1(e) could be deleted as it added nothing substantial to the text. He endorsed the proposal of the delegates of Japan and Argentina to standardize the initial reporting deadline; however, six months was insufficient and the time limit should be one year.

He proposed that the words “on request” in paragraph P.5 be deleted. The Conference of the Parties should ensure that all countries had the means to meet the reporting requirements.

Mr TVEITAN (Norway) stressed that reporting was an essential instrument for monitoring implementation of the convention. Paragraph P.3 of the Chair’s text should be retained without amendment, as a subsidiary body could lighten the work of the Conference of the Parties and serve as a quality assurance mechanism. He endorsed the proposal made by the delegate of New Zealand.

Mrs HERNÁNDEZ (Venezuela) agreed with other delegates that establishment of a subsidiary body might lead to greater bureaucracy, and she endorsed the proposal by the delegate of Argentina to postpone its establishment.

Ms BALOCH (Pakistan) said that the Conference of the Parties should be free to set guidelines for submission of reports. Paragraph P.1 should be amended to read: "Each Party shall submit to the Conference a comprehensive report on the national experiences and measures taken in implementation of the convention. The reporting guidelines shall be established by the Conference of the Parties at its first session". Reporting should be limited to implementation of the convention and should not extend to other measures taken by States Parties.

She endorsed the comment of the delegate of India with regard to paragraph P.2 that a differentiated reporting system would create confusion. The initial reporting deadline should be within two years of entry into force of the convention. Paragraph P.3 should be retained, as it would be essential to have a subsidiary body to undertake the work of monitoring, assessing and reviewing reports on implementation of the convention. Although she agreed that the reference to WHO in paragraph P.4 should be deleted, she considered that the paragraph as a whole was redundant. She endorsed the text of paragraph 5.

Mr YI Xianliang (China) endorsed the comments of the delegate of India regarding differentiated reporting deadlines in paragraph P.2. The experience of his country with other international treaties, indicated that differentiated deadlines made it difficult to reach consensus. He recalled the lengthy discussions on that issue in the Kyoto Protocol to the United Nations Framework Convention on Climate Change.

The words "with the intention to do so" should be inserted after "each other Party". He requested clarification of the reporting process: what type of report should be prepared, what elements should be included and what duration of surveillance should it cover? Furthermore, as reporting and monitoring required financial resources, a financial mechanism should be established at the first session of the Conference of the Parties, which could become operational by the second or third session.

Mr BATIBAY (Turkey) agreed that reporting was important but stressed that it should not constitute an undue burden for the Parties. He endorsed the amendments proposed by the delegate of Belgium on behalf of the European Union and its Member States.

Mr ZELTNER (Switzerland) noted that the amendment proposed by the delegate of Palau to paragraph P.3 was desirable in principle but did not precisely reflect World Health Assembly resolution WHA54.18. He proposed alternative wording, to read: "Persons affiliated with tobacco corporations, their subsidiaries or agents must disclose their affiliation when participating in the Conference or other bodies established by the convention or its Protocols". That wording did not exclude tobacco companies but rather forced them to be transparent.

## **R. *Settlement of disputes***

Mr BUKURU (Burundi), speaking on behalf of the African Group, endorsed the Chair's text as it stood.

Ms MAYSHAR (Israel) said that her delegation agreed with the text of Article R but proposed that the words "recommendatory award" in paragraph R.6 be replaced by "recommendation".

Mrs ZIKMUNDOVA (Belgium), speaking on behalf of the European Union, its Member States, Bulgaria, the Czech Republic, Hungary, Romania, Slovakia and Slovenia found no problem with Article R, noting that it had been modelled on another treaty of public international law.

Mr EISSA (Egypt) said he was in full agreement with the Chair's text as it stood.

Mr ADSETT (Canada), was generally satisfied with the text of Article R but suggested several amendments. In paragraph R.1, the words “or any of its protocols” should be deleted because the manner of dispute settlement should be determined by the Parties to those protocols as opposed to the Parties to the convention. While paragraph R.5 was an acceptable basis for discussion, his delegation could not agree to the text as final until the parts marked “[INSERT]” in each subparagraph had been clarified. In paragraph R.6, the second sentence should be amended to read: “The commission shall render a proposal for resolution of the dispute, ...”. He was in favour of retaining the two additional sentences for paragraph R.7 proposed at the second session of the Intergovernmental Negotiating Body. The first was important to ensure that Article R did not preclude the application of other dispute settlement provisions, and the second should be retained because it referred to the relationship between the convention and other agreements. The latter should be placed in square brackets until all the relevant provisions were brought into line.

Mr SANDAGE (United States of America) said that his delegation’s position on Article R was unchanged from that stated at the previous round of negotiations. Disputes between States under treaties were best resolved through diplomatic means, and resorting to litigation was seldom productive. Paragraphs R.1, R.2 and R.3 were therefore acceptable, including the provision in paragraph R.3 that allowed States Parties to proceed to arbitration if they chose. The compulsory conciliation provisions contained in paragraphs R.4, R.5, R.6 and R.7 were, however, unacceptable.

Mr ATWOOD (Australia) said that he agreed with the delegate of Canada that the first piece of new text proposed under paragraph R.7 should be retained, to avoid any uncertainty as to how the provisions of the convention interacted with those of other conventions.

Mr ZELTNER (Switzerland) said that he agreed with the delegate of the United States that the process described in paragraphs R.1, R.2 and R.3 would be a good way of dealing with disputes arising in connection with the application or interpretation of the convention. However, in order to avoid excessively long dispute settlement processes, he proposed that a time limit be added, as in other international conventions, by inserting the words “within six months” after the word “negotiation” in paragraph R.2.

Ms TKACHENKO (Russian Federation), speaking on behalf of the Member States of the Commonwealth of Independent States, said the settlement of disputes was an extremely important matter. Fortunately, there were ample precedents in other international instruments which could be referred to. Some mention should be made in Article R of the primacy of the convention in the event of disputes relating to other international instruments which could not be resolved by consensus. She therefore proposed that paragraph R.7 should be reworded to read: “The provisions of this Article shall apply with respect to any protocol, unless otherwise provided therein. In the event of a conflict between the convention or any of its protocols and another international agreement on tobacco, in particular a trade agreement, the framework convention on tobacco control shall take precedence.”

Mr YI Xianliang (China) said that he agreed with the delegate of the United States that the choice between negotiation, mediation or arbitration should be left to the Parties concerned, as the text under consideration was a *framework* convention. Paragraph R.7 was unnecessary, as paragraph R.1 already stated that the settlement of disputes applied to all disputes about the interpretation or application of the convention and any of its protocols.

Dr OLIVAR MOCTEZUMA (Mexico) said that his delegation was generally in agreement with the Chair’s text. He agreed with Switzerland’s proposal to add a time limit in paragraph R.2, but was flexible with respect to its length. He fully supported the Chair’s text of paragraph R.3 on the understanding that it would be optional for Parties to accept compulsory arbitration. He agreed with

the wording of the Chair's text in respect of paragraph R.5, but stressed the importance of specifying the authority or authorities that would appoint the member and chair of the commission in the event of a Party not having done so. He was in favour of leaving paragraph R.7 as it stood. Under framework conventions, the general principles and mechanisms for the settlement of disputes should apply to all protocols, even if their final number and nature were still uncertain. A specific procedure could be established, if necessary, at the time of their negotiation.

Mr BAHARVAND (Islamic Republic of Iran) said that he supported the Chair's text concerning the mechanism for the settlement of disputes, with a few minor amendments. At the beginning of paragraph R.1, before the word "If", he suggested inserting the words "Unless otherwise a mechanism has been established by the Parties to the dispute", to enable Parties, if they so wished, to resolve disputes through mechanisms established outside the convention, for example the WTO mechanism for trade disputes. Also in paragraph R.1, he considered that the words "shall consult" were too strong and should be softened, perhaps to "should consult", as Parties might be unable to negotiate. He endorsed the proposal of Switzerland and the United States for insertion of a time limit in paragraph R.2. Parties to the convention should not be bound to adhere to the steps involved in dispute settlement in the order established by the convention, lest any Party take failure to complete one of those steps as a pretext for prolonging the process.

Mr CERDA (Argentina) agreed with previous speakers on the desirability of limiting the mechanisms for the settlement of disputes to negotiation and mediation. It would not be necessary to establish other mechanisms, and certainly not any of a compulsory nature. Paragraphs R.1 and R.2 and the first part of paragraph R.3 were perfectly adequate to achieve the aims of the convention.

Mr SANTHOKI (Suriname) expressed his full support for Article R. Pointing out that paragraph R.1 referred only to disputes over interpretation or application of the convention, whereas disputes could arise in many other areas including tobacco control policy, the harmonization of law and the implementation of national law, he proposed that a full definition of the word "dispute" be given in Article B *Definitions*. Furthermore, since the procedure for the settlement of disputes was not clearly described in Article R, it should be described in a protocol.

Mr BEN SALEM (Tunisia) endorsed the Chair's text with regard to the settlement of disputes. He also supported the proposal by Switzerland to introduce a time limit into paragraph R.2. In paragraph R.3, the words "or good offices" should be added in the first line, to read: "... by negotiation, mediation or good offices shall not absolve parties ...". He agreed on the need to specify in paragraph R.5 the body that could appoint a member or the chair of the conciliation commission.

Mr DOMINGO (Philippines) questioned how effective the convention would be if a conciliation commission were established only if the Parties concerned agreed to it. The settlement of disputes should first be attempted through voluntary negotiation and mediation. If such attempts failed or if an award made by the conciliation commission was not implemented, the parties could not be absolved of their responsibility to continue to seek to resolve the dispute. That was the purpose of paragraph R.3.

He proposed that paragraph R.6 be amended to read: "All resolutions of the conciliation commission or through compulsory arbitration shall be decided by a simple majority thereof. This resolution must be rendered in writing within a period of 12 months from submission for resolution. The affected Parties shall consider the same in good faith. For Parties who have agreed to be bound by compulsory arbitration, the decision shall be final and immediately executory."

An additional provision should be added to paragraph R.7 reading: "All decisions concerning this convention shall take precedence over all matters or, in case of conflict between convention and any other treaty, this convention shall take precedence".

Mrs CARLOT-TARY (Vanuatu) endorsed the Chair's text for paragraphs R.1, R.2 and R.3, which offered a practical, inexpensive means of settling disputes. Paragraphs R.4 and R.5 should be deleted, as the procedures described therein were likely to be lengthy and costly.

**M. *Conference of the Parties***

**N. *Secretariat***

**O. *Support by the World Health Organization***

Mr YI Xianliang (China) proposed insertion of the phrase “, financial mechanisms” after the word “Parties” in subparagraph M.4(a). Under subparagraph M.4(j), he proposed insertion of the words “by the developing country Parties” after the word “implementation”.

Mr ADSETT (Canada) proposed that the word “protocols” be either deleted or placed between square brackets throughout the text of Article M, as protocols would be added only if the process outlined in the convention was not followed. In subparagraph M.4(1), the phrase “monitoring activities under the convention” was somewhat narrow in scope and should be replaced by the phrase “strengthening the implementation of the convention”.

Mr SANDAGE (United States of America) endorsed Canada's proposal regarding subparagraph M.4(1).

Dr DJAMALUDDIN (Indonesia), speaking on Articles M, N and O, pointed out the widely divergent views on WHO's role in implementation of the convention. The Organization's catalytic role during the sessions of the Intergovernmental Negotiating Body had been of particular importance to developing countries, as its technical and financial support had ensured their full participation. WHO should continue to play a leading role in the more complex phase of implementation. While not wishing to undermine the role of other intergovernmental organizations, they could not be placed on an equal footing with WHO; otherwise the convention would die as soon as it was adopted.

Dr TEPPREY (Ghana), speaking on behalf of the African Group, suggested, in order to simplify matters, that the rules of procedure of the Conference of the Parties and its subsidiary bodies should be the same as those of the Health Assembly.

Dr ROA (Panama) proposed addition of the phrase “subject to verification of their transparency and the quality and accuracy of the information” at the end of subparagraph M.4(1).

Mrs ZIKMUNDOVA (Belgium), speaking on behalf of the European Union, its Member States, Bulgaria, the Czech Republic, Hungary, Slovakia, Slovenia and Romania, thanked the Co-Chairs for circulating an edited, consolidated text reflecting the textual proposals made to Articles M, N and O during an informal meeting, which read as follows:

**M. *Conference of the [States]<sup>1</sup> Parties***

1. A Conference of the Parties is hereby established. The first session of the Conference shall be convened by [the Director-General of the World Health Organization] / [INSERT] not later than one year after the entry into force of this Convention. The Conference will determine the venue and timing of subsequent regular sessions [at its first session].

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<sup>1</sup> It was proposed that the word “States” should always precede the word “Parties”; if this is agreed to, then the text will have to be changed accordingly throughout.

2. Extraordinary sessions of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to them by the secretariat of the Convention, it is supported by at least one-third of the Parties.
3. [At its first session,] the Conference of the Parties shall agree upon and adopt by [two-thirds majority vote] / [consensus] rules of procedure and financial rules for itself and for any of its subsidiary bodies.
4. The Conference of the Parties shall keep under regular review the implementation of this Convention [and its protocols]<sup>1</sup> and take the decisions necessary to promote the effective implementation of [this instrument] / [these instruments] and may adopt protocols, annexes and amendments to the Convention, its protocols and annexes in accordance with Article [Development of the Convention] [and on the basis of scientific evidence]. To this end, it shall:
- (a) periodically examine the obligations of the Parties and the institutional arrangements under the Convention, in the light of its [objective] / [aim or goals],<sup>2</sup> the experience gained in its implementation, and the evolution of scientific and technological knowledge, as well as [prevailing] socioeconomic conditions [, particularly developing country Parties];
  - (b) promote and facilitate the exchange of information [, by the most cost-effective and appropriate means,] pursuant to Article [Surveillance, Research and Exchange of Information];
  - [(c) facilitate, at the request of two or more Parties, the coordination of measures adopted by them relevant to the implementation of the Convention and any applicable protocols;]
  - (d) promote and guide the development and periodic refinement of comparable methodologies, in addition to those provided for in Article [Surveillance, Research and Exchange of Information] and Annexes [INSERT], relevant to the implementation of the Convention and its protocols;
  - [(e) promote, in accordance with Articles [INSERT] as appropriate, the [harmonization] / [development and evaluation] of appropriate strategies, plans, programmes, policies, legislation and other measures;]
  - (f) promote programmes to assist Parties in implementing their obligations pursuant to Articles [INSERT];
  - (g) assess the implementation of the provisions of the Convention and its protocols by the Parties, on the basis of information made available in accordance with Article [Reporting and Implementation];
  - (h) consider and adopt regular reports on the implementation of the Convention and its protocols and arrange for their distribution;
  - (i) make recommendations to the Parties, the World Health Organization, other United Nations bodies and other international organizations and bodies on any matters necessary for the implementation of the Convention and its protocols;
  - (j) seek to mobilize financial resources to support secretariat services pursuant to Article [Secretariat] and to support the implementation of the Convention and its protocols in accordance with Articles [Financial Resources; Reporting and Implementation];

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<sup>1</sup> The question was raised whether the Conference of the Parties should also consider the implementation of protocols. If it is decided that it should not, there should be corresponding deletions throughout this paragraph.

<sup>2</sup> There was a proposal to replace the word “objective” (the title of Article C of the Chair’s text) by “aim or goals”. If this is decided, the change should be made throughout.

[(k) establish such subsidiary bodies as it deems necessary for the implementation of the Convention and its protocols, review their reports, and provide guidance to them;]

(l) seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent intergovernmental and nongovernmental organizations and bodies as a means of monitoring activities under the Convention and its protocols;

(m) exercise such other functions as are required for achieving the objective of the Convention and its protocols, as well as all other functions assigned to it thereunder.

[5. The United Nations, specialized agencies of the United Nations, regional economic integration organizations not parties to the Convention, nongovernmental organizations qualified in matters covered by the Convention, as well as any State not party to this Convention, may be represented by observers at meetings of the Conference of the Parties, subject to the relevant Rules of Procedure and decisions of the Conference.]

#### ***N. Secretariat***

1. [The secretariat of this Convention shall be provided by the World Health Organization [which should make the necessary funds available]] / [The secretariat of the Convention is hereby established. The Conference of the Parties shall at its first session determine permanent arrangements concerning the establishment and operations of the secretariat].

[2. The functions of the secretariat shall be:

(a) to make arrangements for sessions of the Conference of the Parties and its subsidiary bodies and to provide them with services as required;

(b) to compile and transmit reports submitted to it pursuant to this Convention and any of its protocols;

(c) to facilitate support to the Parties, particularly developing country Parties, on request, in the compilation and communication of information required in accordance with the provisions of the Convention;

(d) to prepare reports on its activities under the Convention and any of its protocols and submit them to the Conference of the Parties;

(e) to ensure, under the overall guidance of the Conference of the Parties, the necessary coordination with other relevant international bodies;

(f) to enter, under the overall guidance of the Conference of the Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions;

(g) to perform the other secretariat functions specified in the Convention and in any of its protocols and such other functions as may be determined by the Conference of the Parties.]

#### ***O. [Relations with/between the Conference of the Parties and] the World Health Organization [and other relevant international organization]<sup>1</sup>***

1. The Conference of the Parties may call upon the World Health Organization and other intergovernmental organizations, including the international financial development institutions, to provide technical and financial cooperation in achieving the objective of this Convention or in connection with questions falling within their mandates arising out of the application of the Convention and its protocols. [The Organization shall accord such support in accordance with its programmes and within the limits of its resources [, and also help to find extrabudgetary resources for countries that require them].]

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<sup>1</sup> There was a proposal to replace the word “objective” (the title of Article C of the Chair’s text) by “aim or goals”. If this is decided, the change should be made throughout.

[2. The World Health Organization may, on its own initiative and within its authority, make proposals to the Conference of the Parties.]

That document duly reflected the proposals submitted by the group, for which she was speaking: the adoption of rules of procedure and financial rules by a two-thirds majority (paragraph M.3); facilitating the exchange of information by the most cost-effective and appropriate means (subparagraph M.4(b)); and use of the expression “the development and evaluation” in place of “the harmonization” (subparagraph M.4(e)). The proposal that the secretariat of the convention as well as the funds required for it should be provided by WHO (paragraph N.1) should meet the concerns expressed by the delegate of Indonesia. After endorsing the text proposed for Article O, she again commended the approach adopted by the Co-Chairs, which should be used throughout the session.

Mr ATWOOD (Australia) said, in reference to paragraph M.3, that Australia could not abide by financial rules to which it had not agreed. The rules of procedure and financial rules should therefore be adopted by consensus rather than by a majority vote.

Ms BALOCH (Pakistan), supported by Mr SANDAGE (United States of America) commended the Co-Chairs on the edited text under discussion. It was her understanding that the text, even the unbracketed parts, was still subject to further negotiation and amendment. A case in point was use of the term “States Parties” rather than “Parties” and reference to “protocols”, not only in the articles under consideration, but in the text of the convention as a whole.

**Mr Farrell took the Chair.**

Dr ROA (Panama), speaking on Article N, said that she was in favour of WHO providing the secretariat for the Conference of the Parties.

Mr PRASADA RAO (India) endorsed the views expressed by the delegate of Indonesia with regard to Articles M, N, and O. In relation to Article N, he was also in favour of the secretariat being housed within WHO. Implementation of the convention would require close liaison with WHO. The secretariat would not need to be large but it should be an integral part of the Organization.

Dr TEPPREY (Ghana), speaking on behalf of the African Group, endorsed the Co-Chair’s text of Article N.

Mr BEN SALEM (Tunisia) agreed that WHO should host the secretariat. That solution would both simplify procedures and reduce costs.

Mr BUKURU (Burundi), speaking on behalf of the African Group, supported the text of Article O and was in favour of deleting the brackets, both in the title and in paragraph O.2.

Ms BALOCH (Pakistan), supported by Mrs ROVIROSA (Mexico), proposed that the word “and” be inserted after “financial” in paragraph O.1, to read “... international, financial and development institutions ...” and that the same wording be used in the title of Article O.

Mr ADSETT (Canada) proposed that the words “and its protocols” in paragraph O.1 be placed in brackets for the time being.

The CHAIR said a revised text would be made available for discussion at the next meeting of the Working Group, to be adopted as a basis for future negotiations.

**Mr Seddik resumed the Chair.**

**J. Compensation and liability** (continued)

Mr BAHARVAND (Islamic Republic of Iran), referring to the text proposed by his country on behalf of the Member States of the Eastern Mediterranean Region (document A/FCTC/INB3/5), said that it could be merged with those proposed by China and Norway to form a basis for consensus. The proposal made by China was the very crux of the convention and should be expanded in such a way as to oblige States to implement the convention and to induce the tobacco industry to respect the provisions. His delegation considered that Article J was vital, as the aims of the convention could not be achieved without a mechanism for compensation and liability. The text proposed by his delegation did not relate to tobacco growers; liability started with the sale of tobacco products, and the Article targeted tobacco producers and tobacco smugglers. Compensation and liability could be seen as a preventive, rather than punitive, measure. The text attempted to be fair to all parties involved in tobacco production and was written as simply as possible. The intention of paragraph J.1 was to highlight the harmful nature of tobacco products; logically, where harm was caused, there must be liability and, possibly, compensation. With regard to paragraph J.3, all countries were agreed that smuggling must be stopped; it was insidious, and the paragraph provided for criminal liability in that respect. Most of the provisions were based on conventions agreed by many of the States Parties, such as the United Nations Convention against transnational organized crime, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the Statutes of the International Criminal Court. In relation to health injuries, failure to observe the provisions of the convention would involve civil liability. The content of paragraphs J.4, J.5, J.6, J.7 and J.8 was also reflected in the text submitted by Norway, which focused on information gathering. Paragraph J.7 provided for a series of standards for tobacco products, which would be in the interests of the tobacco industry. Article J on compensation and liability should not be drafted as protocol but should be an integral part of the convention. States were urged to develop domestic legislation.

Mr CASTRILLÓN (Ecuador) spoke on a point of order. At the previous meeting of the Working Group, many delegations had asked that discussion of Article J be postponed to another session, given that the text had been distributed only a few days earlier. He asked whether the current discussion represented a first reading.

The CHAIR confirmed that that was so.

Mr TVEITAN (Norway) reiterated a comment made at the previous meeting, that the Co-Chairs present a text based on the proposals already made and the comments of the Working Group. That would place Article J on an equal footing with the other articles to be considered at the next session of the Intergovernmental Negotiating Body.

Mr PRASADA RAO (India) said that he supported the stand taken by the delegate of Ecuador. His delegation had received the text only a few days before the opening of the current session. The Article should be left in draft form to allow delegations to take it back for discussion at regional meetings. His country might then be able to bring an accepted text from the South-East Asia Region to the next session of the Intergovernmental Negotiating Body. A second or third reading at that time would address issues that had not been dealt with at the regional meetings.

Dr TEPPREY (Ghana) said that the African Group agreed with the comments of the previous speakers. It had not yet taken a position with regard to Articles J, S and T.

Dr TADEVOSYAN (Armenia) said that, when the Commonwealth of Independent States countries had met the previous September to consider the text of the convention, they had not had a text of Article J. His delegation considered the Iranian version to be a good working basis.

Mr TEJADA ESCOBOZA (Dominican Republic) reiterated his delegation's position on Article J. The existence of conflicting laws raised considerable legal problems, as had been demonstrated at the meeting of experts. The Working Group was not a forum in which legal decisions could be taken. The issues involved had major implications for the legal systems of most countries. His delegation had not been able to analyse the text because it had been distributed so late, and he therefore supported the view expressed by the delegates of Ecuador and India that discussion of the text should be postponed to the fourth session of the Intergovernmental Negotiating Body.

Mr BAHARVAND (Islamic Republic of Iran) noted that his country's proposal had been presented within the deadline for submission of proposals.

Dr SANGALA (Malawi) asked whether an edited, consolidated text of Article J could be distributed to delegations before the fourth session of the Intergovernmental Negotiating Body.

Mr INADOME (Japan) asked whether the consolidated text to be prepared for the fourth session of the Intergovernmental Negotiating Body would be based on the proposals of the Islamic Republic of Iran and Norway.

Dr KEAN (Secretary) said that the three textual proposals received on Article J had been compiled and forwarded to Member States on 19 October as document A/FCTC/INB3/5, on which the Working Group had proceeded with a first reading.

The CHAIR said he took it that the Working Group wished to postpone discussion of Article J to the fourth session of the Intergovernmental Negotiating Body.

**It was so agreed.**

Mr DAYNARD (International Union against Cancer), speaking at the invitation of the Chair, noted that many delegates had focused on the difficulties involved in formulating liability and compensation provisions. His organization considered that devising such provisions in the area of tobacco control was no more difficult than in any other area. At least some of the provisions that had been proposed were noncontroversial yet still useful. That of China represented a possible basis for more detailed provisions. Norway's proposals for information gathering and exchange, mutual assistance and drafting of model laws were also useful. While the proposals of the Islamic Republic of Iran were more substantive, close analysis indicated that none would require changes to national legal systems and that the specific legal provisions called for were modest and appropriate.

His organization noted that many advances in tobacco control had come about because of the liability suits that had been laid in the United States. However, the tobacco industry had not yet felt enough legal pressure to change its behaviour elsewhere, and the wealth of incriminating documents, especially about companies and subsidiaries outside the United States, had barely been tapped. Liability was a strong potential weapon in the fight against smuggling, an area in which even courts in the United States could benefit from international guidance.

**The meeting rose at 12:35.**

**WORKING GROUP 3**

**FOURTH MEETING**

**Tuesday, 27 November 2001, at 13:55**

**Chair:** Mr R. FARRELL (New Zealand)

**DRAFTING AND NEGOTIATION OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL:** Item 3 of the Agenda (Documents A/FCTC/INB3/2(c), A/FCTC/INB3/2(c) Corr.1, A/FCTC/INB3/3, A/FCTC/INB3/5, A/FCTC/INB3/DIV/1, A/FCTC/INB3/DIV/5, A/FCTC/INB3/WG3/Conf.Paper A, A/FCTC/INB3/WG3/Conf.Paper B and A/FCTC/INB3/WG3/Conf.Paper C) (continued)

The CHAIR said that the Co-Chairs of Working Group 3, in the light of the amendments proposed at the formal second readings, had integrated the various texts of Articles L, Q, P, R, M, N and O into three conference papers (A/FCTC/INB3/WG3/Conf.Paper A, A/FCTC/INB3/WG3/Conf.Paper B and A/FCTC/INB3/WG3/Conf.Paper C). Articles J, S and T, which had received only a first formal reading, and Articles D and E, which had not been dealt with at all, could be considered, if necessary, at the fourth session of the Intergovernmental Negotiating Body. The Co-Chairs hoped that the proposed draft texts for Articles L, Q, P, R, M, N and O would be adopted to serve as a foundation for further negotiations, in particular at the fourth session of the Intergovernmental Negotiating Body.

He invited the working group to consider A/FCTC/INB3/WG3/Conf.Paper A.

- L. *Scientific and technical cooperation, and***
- Q. *Financial resources* (continued)**

Ms ZIKMUNDOVA (Belgium), speaking on behalf of the European Union, its Member States, Bulgaria, the Czech Republic, Hungary, Slovakia, Slovenia and Romania, warned that it might be difficult to reach agreement on institutional provisions and implementation of the framework convention before the substantive obligations of the convention had been clearly defined. Currently, only a general debate was possible. The aim should be to establish a mechanism that was not too costly or cumbersome and would ensure effective implementation and application of the framework convention, relying as far as possible on existing WHO mechanisms. That would enable available resources to be channelled into specific programmes, especially cooperation programmes designed to further application of the convention in developing countries. On the understanding that all questions were still open, the European Union and its Member States could accept the texts proposed by the Co-Chairs, as a basis for further negotiation.

Mrs GONZÁLEZ NAVARRO (Cuba) agreed with the previous speaker. The convention should be as broad as possible without too many restrictive measures that might complicate its application in practice. Before approving the proposed draft texts, she wished to draw attention to a number of points. Her delegation had spoken in favour of deleting subparagraph L.1(b)(iii), on the grounds that its substance was mentioned elsewhere; it should therefore be placed in square brackets. Similarly, in subparagraph L.1(b)(ii), the phrase “to develop [viable] alternative livelihoods/crops” should either be placed in square brackets or deleted, as her delegation and others had requested. While in agreement with the general thrust of Article Q, she favoured retaining the square brackets around subparagraph Q.2(a) and, in subparagraph Q.2(b), introducing square brackets around the words “and

the economic transition of tobacco growers and workers; in particular the Fund". Subparagraphs Q.2(b)(i) and Q.2(b)(ii), which she wished to see deleted, should be placed in square brackets. A new subparagraph should be inserted under paragraph Q.3 to the effect that "Regional and international health organizations shall provide technical and financial assistance to the developing countries to fulfil their commitments on information exchange, especially the creation and maintenance of databases", an important element that had not been dealt with elsewhere in the text. The Co-Chairs' texts of Articles P, R, M, N and O were acceptable to her delegation as they stood, to serve as a basis for negotiation at the fourth session of the Intergovernmental Negotiating Body.

Mr SNYDER (Canada) associated himself with the comments of the delegate of Belgium regarding the level of detail and the undertakings that were appropriate at the current stage, barring conclusion of a fuller text on substantive obligations. He supported the suggestion of the delegate of Cuba regarding the introduction of square brackets around subparagraphs L.1(b)(ii) and L.1(b)(iii). In subparagraph L.1(d), he suggested placing square brackets around the word "necessary", as that term was vague. Notwithstanding the fact that the whole of paragraph Q.2 was already in square brackets, he favoured adding brackets around the phrase "and without any conditions attached". Lastly, although he had no firm preference in the matter, it would be useful to know whether it was intended, as implied by footnote one, to paragraph L.2, to move that paragraph to Article Q, if only provisionally.

Dr TEPPREY (Ghana), speaking on behalf of the African Group, emphasized that the creation of a fund was crucial to implementation of the convention, particularly to assist poor tobacco-producing countries to diversify into viable alternative economic activities during the transitional and medium-term periods. The square brackets around paragraph Q.2 did not adequately reflect the balance of the discussions that had taken place on that point and should be deleted. With that reservation, he could accept the Co-Chairs' texts of Articles L and Q.

The CHAIR, said that square brackets reflected the fact that views differed on a point and the issue would be the subject of further negotiation.

Mr YI Xianliang (China) said he considered the Co-Chairs' texts of Articles L and Q were well balanced and would serve as a good basis for further negotiations at the fourth session of the Intergovernmental Negotiating Body.

Dr ZENKEVICH (Belarus), speaking on behalf of six countries of the Commonwealth of Independent States, namely Armenia, Belarus, Kyrgyzstan, the Russian Federation, Tajikistan and Uzbekistan, endorsed the Co-Chairs' texts for Articles L and Q. Observing that some of the countries for which he spoke were tobacco producers, he requested that in subparagraphs L.1(b)(ii), L.1(b)(iii) and paragraph Q.1 the words "and countries with economies in transition" be inserted after the words "developing countries".

Dr SRINATH REDDY (India) endorsed the Co-Chairs' text for Article L as it stood. Although paragraph Q.2 encompassed most of the proposals made by the countries of the South-East Asia Region, one important suggestion had been omitted. As it stood, paragraph Q.2 restricted use of the fund, leaving out other activities such as educational work and counter-advertising. A new subparagraph Q.2(b)(iv), should therefore be added, which read: "any other activity to meet the objectives of the convention".

Mr SANDAGE (United States of America) said that the Co-Chairs' text for Article L did not clearly address the position of his delegation, namely, that his country was not currently in a position to establish a new mechanism or to approve provisions dealing with mandatory transfers of

technology. Until his delegation had found a satisfactory alternative, square brackets should be placed around the words “facilitation of the development, transfer and acquisition of” in subparagraph L.1(a), around the words “provision of” in subparagraph L.1(b), around the whole of subparagraph L.1(d) and around the whole of paragraph L.2.

Noting that the text of paragraph Q.1 had been radically changed from that in document A/FCTC/INB3/2(c), the focus having switched from each country’s national activities to an undertaking to provide financial support and incentives to developing countries, he requested that the paragraph be placed in square brackets for further discussion. He strongly supported the concept expressed in paragraph Q.3 that bilateral, regional and other channels had an important role to play in achieving the objectives of the convention. The final phrase of the paragraph, from “including actions to develop alternative crops” to the end, gave, however, undue prominence to one option, potentially diminishing the importance of others. The text would be broader if the paragraph ended with the words “control programmes”.

Mr INADOME (Japan) said that paragraph L.1 should be amended to read: “Each Party shall be encouraged to cooperate ...”. The phrase “particularly in developing countries”, which appeared in subparagraphs L.1(b)(ii) and L.1(b)(iii) should be placed in square brackets, as the needs of developing countries were already mentioned in paragraph L.1.

The new text of paragraph Q.1 was very different from the Chair’s original text, and should therefore be placed in square brackets. Paragraph Q.3 was longer than was desirable for a framework convention. The phrases “including actions to develop ... objective” and “, as well as of Parties with transitional economies” should be bracketed.

Dr BELLO DE KEMPER (Dominican Republic) said that subparagraph L.1(b)(iii) should be amended to read: “assisting tobacco growers, particularly in developing countries, who are affected by the implementation of this Convention, in shifting agricultural production to ...”, as her delegation had requested earlier. The square brackets in paragraph L.2 should be deleted.

Mr EISSA (Egypt) said that paragraph Q.1 should be amended to begin: “Each developed-country Party ...”.

Mr BUKURU (Burundi) said that, for the countries of the African Group, paragraph Q.2, proposing establishment of a global fund, was the most important paragraph in that article. The square brackets enclosing the entire article should, therefore, be removed.

Dr ACHARYA (Nepal) welcomed the addition of the phrase “especially for the least developed ones”, suggested by his delegation, after “without any conditions attached to developing countries” in paragraph Q.2 and trusted that it would remain in the final text. He endorsed the remarks of the Indian delegate about subparagraph Q.2(b).

Mr MOON (Republic of Korea), speaking on paragraph Q.4, said that square brackets should be placed around the phrase “have a special responsibility to”.

Replying to a question from Mr ADSETT (Canada), the CHAIR reiterated that all the square brackets would remain in the text as signals that the phrases in question would undergo further negotiation.

Ms MAYSHAR (Israel) said that paragraph L.1 should be amended to read: “...in accordance with its domestic legislation [and international obligations and its means], taking into account...”.

Mr EISSA (Egypt) said that paragraph Q.4 was merely a repetition of the three preceding paragraphs. It should be deleted altogether, part of the wording being transferred to paragraph Q.1, which would begin:

“Each developed-country Party which exports manufactured tobacco products or raw tobacco, or has branches of international tobacco companies exporting or selling tobacco products in third countries, undertakes ...”

Dr AL-HAMDAN (Saudi Arabia) observed that the Arabic translation of the text for paragraphs L.1(b)(ii) and Q.2(b)(i) concerning “viable alternative livelihoods” was unclear.

The CHAIR said he took it that the Working Group wished to adopt the draft texts of Articles L and Q, with the amendments proposed, to serve as a basis for further negotiations at the fourth session of the Intergovernmental Negotiation Body.

**The draft texts of Articles L and Q, as amended, were adopted for transmission to the Plenary.**

The CHAIR invited the Working Group to consider A/FCTC/INB3/WG3/Conf.Paper B.

**P. *Reporting and exchange of data, and***  
**R. *Settlement of disputes* (continued)**

Ms BALOCH (Pakistan) reiterated her previous proposal for a new text for paragraph P.1, which would read: “Each Party shall submit to the Conference a comprehensive report on national experiences and measures taken in implementation of the Convention. The reporting guidelines shall be established by the Conference of Parties at its first session”. Both the existing version of paragraph P.1 and her proposed version should be enclosed in square brackets, as should paragraph P.6.

Mr BUKURU (Burundi), speaking on behalf of the African Group, Dr TEPPREY (Ghana) and Mr PRASADA RAO, speaking on behalf of the countries of the South-East Asia Region, said that they were in favour of the Co-Chairs’ text for Articles P and R.

Dr ZENKEVICH (Belarus), speaking on behalf of the six countries of the Commonwealth of Independent States for which he had spoken earlier, said that the phrase “economic, social and other” in subparagraph P.1(c) should be placed in square brackets to read: “[economic, social and other] consequences ...”. In paragraph P.5, the text should be amended to read: “... the provision to developing-country Parties and Parties with transitional economies ...”.

Mr YI Xianliang (China), speaking on paragraph P.2, said that, as it was not clear which authority would decide whether a Party to the convention had an established surveillance mechanism, the text should be amended as follows: “... each other Party already having an established surveillance mechanism in place [or having the intention of doing so] shall make its initial report ...”. Paragraph P.3 referred to monitoring of the implementation of the convention by the Conference of the Parties. However, monitoring was a continuous process, which could not be achieved at a five-day meeting. He therefore suggested that the word “monitoring” should be deleted from paragraph P.3, to read: “to assist the Conference of the Parties in the assessment and review of the implementation of this Convention”, and from subparagraph P.3(a), which would then read: “a mechanism for assessing and reviewing the implementation of the Convention”. In paragraph P.5, the words “and financial” should

be inserted after “technical” to read: “... technical and financial support in compiling and communicating information”.

Turning to Article R, he said that it would not be practical to stipulate that the convention should take priority in cases of conflict with other international agreements. If a State was party to two different treaties involving different but equal obligations, the convention could not say which of those obligations took priority. The paragraph should be deleted.

As the content of paragraph R.9 was already adequately covered by paragraph P.1, paragraph R.9 should also be deleted.

Mr INADOME (Japan) said that the phrase “including the following data” at the end of paragraph P.1 should be replaced by “that might include”.

Mr ADSETT (Canada), speaking on paragraph P.6, said that the phrase “one or several agencies” should be placed in square brackets.

Mr EISSA (Egypt) said that paragraph P.1(a) should be simplified to read: “information on measures and strategies taken by each Party to implement the Convention and its protocols and problems encountered in implementation”. Subparagraphs (d) and (e) would then be deleted.

Mr SANDAGE (United States of America) observed that the text of Article P accurately reflected the progress of the discussions. However, paragraphs R.1, R.2 and R.4 referred to “Parties” to the convention, whereas paragraph R.3 referred to a “a State or regional economic integration organization”. He asked whether any substantive difference in meaning was intended. Further, he proposed that paragraph R.7 be placed in square brackets.

Professor SZASZ (Tobacco Free Initiative) explained that paragraph R.3 referred to an action taken on becoming a Party to the convention, whereas the other paragraphs referred to situations that might arise thereafter; therefore the word “Parties” had been used.

Dr AL-HAMDAN (Saudi Arabia) proposed addition of the words “and cultivated” after “manufactured” in subparagraph P.1(f). In paragraph P.3 the words “or tobacco cultivation companies” should be added after “tobacco corporations”. The Arabic translation of Article R.8 did not make it clear that priority should be given to the convention.

Mr MOON (Republic of Korea) concurred with the proposal by the delegate of Canada to enclose the phrase “one or several agencies” in paragraph P6 in square brackets. The whole of paragraph R.8 should also be placed in square brackets.

Mr CERDA (Argentina) reiterated his delegation’s preference for negotiation and mediation as a means of settling disputes, and consequently had profound reservations regarding establishment of a mandatory system under Article R.

Dr ZELTNER (Switzerland) observed that most other international conventions specified that a mediator should be a national of a neutral third party. He therefore proposed that subparagraph R.5(a) should be amended as follows: “... and the two members so appointed shall appoint a third who is a national of a Party non-involved.” Similarly, subparagraph R.5(b) should be amended to read: “... and designate one of these as Chair who shall be a national of a Party non-involved”.

Dr FARSHAD (Islamic Republic of Iran), noting that the convention made no mention of reporting or exchanging data on health, proposed that Article P include a provision for a system enabling that to be done.

Dr CORNELIUS (Fiji), speaking on behalf of the Pacific island nations, supported paragraph R.8. She proposed that the phrase “as this convention aims to protect the health of people” be added at the end of that paragraph.

The CHAIR said he took it that the Working Group wished to adopt the draft texts of Articles P and R, with the amendments proposed, to serve as a basis for further negotiations at the fourth session of the Intergovernmental Negotiating Body.

**The draft texts of Articles P and R, as amended, were adopted for transmission to the Plenary.**

The CHAIR invited the Working Group to consider A/FCTC/INB3/WG3/Conf.Paper C.

**M. *Conference of the Parties***

**N. *Secretariat, and***

**O. *Relations between the Conference of the Parties, the World Health Organization and other relevant international organizations* (continued)**

Ms BALOCH (Pakistan) proposed insertion of the words “at its first session” in square brackets between the words “may” and “agree” in paragraph M.3. Paragraph M.4(d) should be placed in square brackets. In subparagraph M.4(h), the phrase “arrange for their distribution” should also be placed in square brackets as its meaning was unclear. In subparagraph M.4(i), the words “including international financial and development institutions” should be inserted after “bodies”. She reiterated her proposal to amend the title of Article O by replacing the words “international organizations” by “international financial and development institutions”.

Mr INADOME (Japan), although not objecting to the expression “comparable methodologies” in subparagraph M.4(d), proposed that it be left in square brackets until a clearer form of wording was found.

Mr ADSETT (Canada) proposed reinstating the square brackets from the Chair’s text around the words “and may adopt protocols, annexes and amendments to the convention, its protocols and annexes in accordance with Article [Development of the Convention]” in paragraph M.4, as that possibility would be covered under Article S.

Dr TEPPREY (Ghana), speaking on behalf of the African Group, congratulated the Co-Chairs on the text and endorsed it as it stood.

Mr YI Xianliang (China) reiterated his proposal for subparagraph M.4(a) that the words “the operation of the financial mechanism” be inserted, possibly in square brackets, after “obligations of the Parties and” in paragraph M.4(a).

Ms DJONEVA (Bulgaria) proposed that the first sentence of paragraph M.3 be placed in square brackets.

Mr MBUYU MUTEBA (Democratic Republic of Congo) proposed that the word “However” be inserted at the beginning of the second sentence of paragraph M.3.

Dr FARSHAD (Islamic Republic of Iran) suggested that subparagraph M.4(l) should be redrafted, if not deleted, and therefore should be placed in square brackets, since it did not seem to cover a reasonable area of responsibility for Conference of the Parties. Moreover, the term “regional

economic integration organization” was used in paragraph M.5, although it was not used in international organizations law. He understood it to refer to one intergovernmental organization in Europe. Throughout the convention a term should be used that could include other regional economic organizations which might wish to accede to the convention in future.

The CHAIR said he took it that the Working Group wished to adopt the draft text of Articles M, N and O, with the amendments proposed, to serve as a basis for further negotiations at the fourth session of the Intergovernmental Negotiating Body.

**The draft texts of Articles M, N and O, as amended, were adopted for transmission to the Plenary.**

**The meeting rose at 16:10**

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