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ON THE WHO FRAMEWORK CONVENTION
ON TOBACCO CONTROL
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WHO framework convention on tobacco control

Co-Chairs' working papers: final revisions

Working Group 3

1. The following pages contain a consolidated text of the final draft revised versions of the Co-Chairs' working papers as prepared by the Co-Chairs of Working Group 3 and accepted during the third session of the Intergovernmental Negotiating Body as a foundation for future negotiations.¹ In this document the sections addressed by Working Group 3 are presented in the order they appear in the Chair's text:²

L. Scientific, technical and legal cooperation

M. Conference of the Parties

N. Secretariat

O. Support by the World Health Organization

P. Reporting and implementation

Q. Financial resources

R. Settlement of disputes.

2. Throughout this document, square brackets are used to distinguish those words or phrases that remain controversial. Such brackets normally indicate that the words enclosed within them can either be included in or excluded from the text; when bracketed words appear within a text that is already bracketed, those words within the innermost brackets should be dealt with first. Bracketed texts separated by a solidus ("/") are alternatives of each other.

¹ The following documents containing the revised versions were distributed during the third session of the Intergovernmental Negotiating Body: A/FCTC/INB3/WG3/Conf.Paper A Rev.1 (Articles L and Q), A/FCTC/INB3/WG3/Conf.Paper B Rev.1 (Articles P and R), A/FCTC/INB3/WG3/Conf.Paper C Rev.1 (Articles M, N and O).

² Document A/FCTC/INB2/2.

L. Scientific and technical [and legal] cooperation

1. Each Party shall [be encouraged to] cooperate in accordance with its domestic legislation [and international obligations] [and its means], taking into account the needs of developing countries and countries with transitional economies, in promoting, directly or through the secretariat of the Convention or other competent international bodies, the following:

(a) [facilitation of the development, transfer and acquisition of] technology, knowledge, skills and capacity related to tobacco control by other Parties;

(b) [provision of] technical, scientific[, legal] and other expertise to establish and strengthen national tobacco control programmes, policies and measures aiming at, *inter alia*:

(i) assisting in the development of [a strong legislative foundation as well as] technical programmes, including programmes for the prevention of tobacco uptake and for the promotion of tobacco cessation;

[(ii) assisting tobacco workers[, particularly in developing countries] [and countries with transitional economies,] who are affected by the implementation of the Convention[, to develop [viable] alternative livelihoods/crops];]

[(iii) assisting tobacco growers[, particularly in developing countries] [and countries with transitional economies,] [who are affected by the implementation of the Convention,] in shifting agricultural production to alternative crops in an economically viable manner;]

(iv) carrying out other activities to achieve the [objective]/[aim/goal]¹ of the Convention and its protocols.

[(c) support for the establishment and maintenance of training and educational programmes for appropriate personnel as provided in Article [INSERT] in order to implement the provisions of the Convention in an effective manner;]

[(d) the supply of [necessary] material, equipment and pharmaceutical supplies, as well as logistical support, for tobacco control programmes and activities;]

[(e) the establishment of technical and financial cooperation and of mechanisms to study cost-effective methods for treating nicotine addiction.]

[2. The Conference of the Parties shall establish and review a mechanism to promote and facilitate scientific and technical[, and legal] cooperation [with the required financial support].²]

¹ 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 It was suggested that this would be more appropriately addressed in Article Q (Financial resources).

M. Conference of the [States]¹ 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] not later than one year after the entry into force of this Convention. The Conference will determine the venue and timing of subsequent regular sessions [at its first session].

2. Extraordinary sessions of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to them by the secretariat of the Convention, it is supported by at least one-third of the Parties.

3. [Unless it otherwise decides, the rules of procedure of the Conference of the Parties and of any subsidiary body shall be the Rules of Procedure of the World Health Assembly.] [However,] The Conference of the Parties may[, at its first session,] 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]² 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[, the operation of the financial mechanism] and the institutional arrangements under the Convention, in the light of its [principles and objective³]/[aim/goals], the experience gained in its implementation, and the evolution of scientific and technological knowledge, as well as [prevailing] socioeconomic conditions[, particularly in 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;]

¹ 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 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.

³ 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.

(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[, including international financial and development institutions] 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];

[(k) [establish such subsidiary bodies as it deems necessary for]/[arrange for the assistance of the WHO secretariat in connection with] 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]/[strengthening the implementation of] the Convention [and its protocols], verifying the transparency, the reliability and the accuracy of the information;]

(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 the 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 between the Conference of the Parties, the World Health Organization and other relevant international organizations [and international financial and development institutions]]

1. The Conference of the Parties may call upon the World Health Organization and other intergovernmental organizations, including the international financial and 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].]

[2. The World Health Organization may, on its own initiative and within its authority, make proposals to the Conference of the Parties.]

P. Reporting and exchange of data

1. [In accordance with guidelines agreed by the Conference of the Parties and the relevant provisions of this Convention, each Party shall submit to the Conference through the secretariat of the Convention reports [on its implementation of the national programme of tobacco control,] [including the following data]/[that might include]:

- (a) [information on measures taken to implement provisions of the Convention [on tobacco control institutions, strategies,] [plans, programmes,] policies, and on legislative and administrative [as well as any additional] measures planned or implemented in accordance with the provisions of Articles [INSERT][, together with information on enforcement, where appropriate];]

or

[information on procedures and strategies initiated by each Party and implementing the Convention and its protocols, and on any problems encountered;]

(b) information on steps taken to carry out actions in accordance with Article [Financial Resources];

(c) information available on the [economic, social [and other]] consequences of the various measures adopted to implement the Convention [and its protocols];

[(d) information on measures, in addition to those described above, that the Party has taken to implement the provisions of the Convention, on any constraints or barriers encountered in such implementation, and on the measures taken to overcome these and on the effectiveness of such measures;]

[(e) description of measures planned by the Party to implement the Convention, including national tobacco control targets;]

[(f) [data]/[information] on [tobacco growing] and imported, exported and nationally manufactured tobacco products, and on consumption and smoking rates;]

[(g) information available on the health impact of tobacco consumption.]]

or

1. [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 the Parties at its first session.]

2. [Each developed country Party [and each other Party [already having an established]/[with the intention to establish a] surveillance mechanism [in place]] shall make its initial report within [six months]/[one year]/[eighteen months]/[two years] of the entry into force of this Convention for that Party. Each other Party shall make its initial report within [two]/[four] years of the entry into force of the Convention for that Party.]¹ The frequency of subsequent reports by all Parties shall be determined by the Conference of the Parties[, taking into account the differentiated timetable set by this paragraph.]¹

[3. To assist the Conference of the Parties in the [monitoring,] assessment and review of the implementation of this Convention, the Conference may establish a subsidiary body should this become necessary [or may request the World Health Organization to render such assistance], arranging to receive regular reports from such body or the Organization. Guidelines for participation in such a body, as well as its functions, will be determined by the Conference. [Persons affiliated with tobacco corporations [or tobacco growing and manufacturing companies], their subsidiaries or agents, may not participate in such monitoring body and must disclose their affiliation when appearing before such body.] The [World Health Organization, in consultation with the] Conference of the Parties shall:

(a) develop a mechanism for [monitoring]/[assessment] and reviewing the implementation of the Convention and its protocols;

¹ It was proposed that there be no differentiation as to the timing of the initial report.

- (b) develop indicators for [monitoring] the progress of such implementations;
- (c) provide information to interested Parties on the progress of implementation by and make recommendations to the Parties based on the best practices applied by other Parties;
- (d) assist the Conference of the Parties in establishing a management information system to be utilized in the monitoring of such implementation.]

[4. In order to provide timely advice in the implementation of this Convention, the Conference of the Parties may, as it deems necessary, appoint[, taking into account the rules and practices of the World Health Organization,] *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[s] of the Convention. The members of these panels shall be appointed by the Conference [on the recommendation of the Director-General of the World Health Organization,] and shall serve in their personal capacity. The Conference shall decide on the terms of reference and the modalities of work of these panels.]

5. Starting at its first session, the Conference of the Parties shall arrange for the provision to developing country Parties [and Parties with transitional economies], at their request, of technical [and financial] support in compiling and communicating information under this Article. Such support [may be provided by other Parties]/[shall be provided by the financial mechanisms under this Convention], by competent international organizations and by the secretariat of the Convention within its existing resources, as appropriate.

[6. Each Party shall establish or designate one or several agencies to be responsible for gathering and communicating information on surveillance, 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 this Convention.]¹

Q. Financial resources

1. [Each Party undertakes to provide financial support and incentives to the developing countries [and countries with transitional economies,] to facilitate their national activities to achieve the [objective]/[aim or goals]¹ of this Convention.]

or

[Each Party which is a developed country and produces and exports tobacco undertakes to provide financial support and financial incentives to developing countries in order to facilitate the implementation of their national activities to achieve the objective of this Convention.]

or

[Each Party undertakes to provide financial support in respect of its national activities intended to achieve the objectives of this Convention, in accordance with its national plans, priorities and programmes.]

¹ It may be preferable to include this paragraph in Article K (“Surveillance, research and exchange of information”).

[2. A [voluntary] mechanism, in the form of a multilateral Global Fund, is hereby established, for the provision of financial resources and the transfer and development of sustainable technology on a grant or concessional basis [and without any conditions attached] to developing countries especially for the least developed ones[, as well as to countries with transitional economies]. The Fund shall function under the guidance and supervision of the Conference of the Parties. Pursuant to the objective¹ of this Convention, the Conference shall determine the policy, strategy and programme priorities, as well as detailed criteria and guidelines for eligibility for, access to, and use of, the financial resources, including regular monitoring and evaluation of such use. The Conference shall decide on the arrangements to give effect to this provision after consultation with the World Health Organization, to which the operation of the Fund shall be entrusted. In particular:

[(a) the Fund shall be financed, *inter alia*, by an export tax on manufactured tobacco products. It shall also be voluntarily financed by Parties and, in particular cases, when so decided by the Conference of Parties, by nongovernmental sources;]

[(b) the Fund shall be used to support, *inter alia*, technology transfer for tobacco cessation programmes, the creation of testing facilities required under the Convention[, and the economic transition of tobacco growers and workers]; in particular the Fund shall assist:

(i) tobacco workers in the development of viable alternative livelihoods;]

(ii) tobacco growers in shifting to alternative agricultural crops in an economically and environmentally friendly manner;]

(iii) victims of tobacco and of tobacco products;

(iv) any other activity to meet the objectives of the Convention.]]]

or

[2. The Parties recognize the important role that bilateral, regional and other channels can play in achieving the objective of this Convention. They shall consider providing, in accordance with their capabilities and national law, voluntary funding through such channels for comprehensive tobacco control programmes in support of this objective, taking into account the needs of developing countries.]

3. The Parties recognize the important role that bilateral, regional and other channels can play in achieving the objective¹ of this Convention. They shall consider providing, in accordance with their capabilities and national law, [unconditional] [voluntary] funding through such channels for comprehensive tobacco control programmes [[including actions to develop alternative crops in support of this objective], taking into account the needs of developing country Parties[, as well as of Parties with transitional economies]].

[3bis Regional and international health organizations shall provide technical and financial assistance to developing countries to meet their commitments in respect of exchange of information, surveillance and research as set out in this Convention.]

¹ 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.

[4. The Parties recognize that the developed country Parties that export manufactured tobacco products or raw tobacco, or have branches of international tobacco companies exporting or selling tobacco products in third countries, [have a special responsibility to] provide technical and financial support to developing country Parties, as well as to Parties with transitional economies, to strengthen their national tobacco control programmes as well as to diversify to other economically viable options.]

or

[Countries exporting tobacco undertake to provide financial assistance to developing countries.]

or

[Each Party which is a developed country and exports manufactured tobacco products and raw tobacco, or on the territory of which branches of international tobacco companies are operative, undertakes to provide financial support and financial incentives to developing countries to facilitate the implementation of their national programmes to achieve the objective of this Convention.]

R. Settlement of disputes

1. If a dispute¹ arises between two or more Parties concerning the interpretation or application of this Convention, those Parties should, unless another mechanism has been established between them, consult among themselves with a view to resolving the dispute by negotiation.

2. If the parties to the dispute cannot reach agreement by negotiation within [three]/[six] months, they may jointly seek the good offices of, or request mediation by, a third party.

3. Failure to reach agreement by negotiation, good offices or mediation shall not absolve parties to the dispute from the responsibility of continuing to seek to resolve it. When ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a State or regional economic integration organization may declare in writing to the Depositary that, for a dispute not resolved in accordance with paragraph 1 or 2 above, it accepts, as compulsory, arbitration in accordance with procedures to be adopted by the Conference of the Parties.

[4. If all the parties to the dispute have not, in accordance with paragraph 3 above, accepted arbitration, the dispute shall, unless the parties otherwise agree, be submitted to conciliation. A conciliation commission shall be established as set out in paragraph 5 below at the request of one or more parties to the dispute.]

[5. Unless the parties otherwise agree:

(a) if the dispute is between two parties, each party shall appoint one member of the commission, and the two members so appointed shall [appoint]/[nominate] a third, who [is not a national of either party to the dispute and] shall serve as chair. If within three months of the appointment of the first member the second member has not been appointed, or within three months of the appointment of the second member the third has not been appointed, such appointment shall be made by [INSERT] at the request of either party;

¹ It was suggested that the term “dispute” should be defined in Article B (“Definitions”).

(b) if the dispute is between more than two parties, the parties shall agree on three members of the commission and designate one of these as chair [who shall not be a national of any party to the dispute]. If within three months of the first request for the establishment of the commission no such agreement shall have been reached, the members of the commission shall be appointed and the chair designated by [INSERT] at the request of any party.

6. Unless the parties agree otherwise, all matters concerning the conciliation shall be determined by the commission, acting by simple majority. The commission shall, within twelve months, render a written proposal for the resolution of the dispute, which the Parties shall consider in good faith.]

7. This Article does not preclude the application of the dispute settlement provisions of any other treaty in force between two or more of the Parties in relation to disputes covered by those provisions.

[8. In the [case]/[event] of conflict between [this]/[the] Convention [or any of its protocols] and [the application of another] [other] international agreement[s] [to] [concerning] tobacco [such as trade agreements], [the]/[this] Convention shall take [priority]/[precedence] [as it aims to protect the health of the people].]¹

[9. The provisions of this Article shall apply with respect to any protocol, unless otherwise provided therein.]

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¹ It was suggested that this provision might be better accommodated in Article E (“General obligations”).