



WORLD HEALTH ORGANIZATION

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

A/FCTC/INB5/SR

Fifth session

14–25 October 2002

SUMMARY RECORDS

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FIRST PLENARY MEETING

Tuesday, 15 October 2002, at 9:45

Chair: Mr L.F. DE SEIXAS CORRÊA (Brazil)

1. OPENING OF THE SESSION: Item 1 of the Provisional Agenda (Document A/FCTC/INB5/1)

The CHAIR declared open the fifth session of the Intergovernmental Negotiating Body on the WHO framework convention on tobacco control. He extended a warm welcome to the Democratic Republic of Timor-Leste, which had recently become the 192nd Member State of WHO.

The opening of the present session represented a change in gear: as had been agreed at the close of the fourth session of the Negotiating Body, the Chair had prepared a new text (document A/FCTC/INB5/2) which should provide a basis for successful completion of the negotiation. The urgency of the task before them was evidenced by the latest data from WHO indicating that, since the first session of the Negotiating Body, the total of tobacco-related deaths had increased from 4.2 to 4.9 million per year, representing more than nine deaths per minute. There could be no more powerful argument to prompt them towards timely completion of their work and to provide the international community with an effective legal instrument both to control and to prevent the increase of tobacco use worldwide.

The relevant proposals and issues relating to tobacco control had been identified at the fourth session. During the current negotiation phase, delegates would be encouraged to come to grips with the core issues and to find appropriate language that would generate consensus. Delegates should apply their imagination and skills in the interests of achieving a text that would be generally acceptable: an effective convention would be one that preserved a central health perspective while commanding universal adherence. The convention should not be viewed as an end in itself, but as the first step in a process that had begun in 1996 with the approval of World Health Assembly resolution WHA47.19. The negotiations had already significantly strengthened tobacco-control policies at country, regional and interregional levels. The establishment of the Conference of the Parties as envisaged under the convention would ensure continuity. The task of the fifth session, therefore, was to establish a solid conventional basis for the future.

He invited the Director-General to address the meeting, paying tribute to her leadership as a major driving force behind the negotiations and as a source of inspiration in guiding the process from the perspective of WHO with wisdom and determination.

The DIRECTOR-GENERAL said that she had just unveiled a death clock, counting the number of tobacco-related deaths every minute. The death rate had increased to 4.9 million each year and continued to rise. Hence, delays would lead to more deaths, and would indicate a failure on the part of the international community to tackle an epidemic for which solutions existed. A real opportunity for progress had been made possible by the draft of the new Chair's text, representing a consolidation of work commenced four years previously. Inevitably, no country was going to be completely happy with the outcome; but on the other hand, the question was, who would gain from further delay?

Four years previously, the Negotiating Body had decided to embark on the uncharted path of defining global rules to regulate the promotion, production and sale of a product that killed half of its regular users. The verdict of the medical community had been clear for decades, namely that deaths caused by tobacco consumption were preventable by means of tax increases, advertising bans and clean indoor air regulations. On becoming Director-General of WHO, she had made tobacco control a personal priority. Under Article 19 of WHO's Constitution, Member States were empowered to negotiate and adopt binding global rules and standards in the form of conventions. By setting in motion the framework convention process, the Organization was making public health history. While recently attending annual meetings of the regional committees, she had been struck by the commitment of WHO's Member States to work for a strong convention; there had already been success in some areas, for instance all ministries of health had set up and allocated time and resources to a tobacco control focal point. The framework convention had acted as a catalyst for Member States

in activating policy decisions necessary for robust national tobacco control. Moreover, the process had highlighted the core components of public health norms, such as, epidemiology, education, legislation including litigation, communication, economics, and, above all, had underlined the role of the State as the prime mover in public health.

It had wrongly been maintained that tobacco was a rich person's disease, whereas the facts showed that tobacco expenditure had grown fastest among the poorest groups, particularly in developing countries. On the other hand, the vector of the epidemic, the tobacco industry, was thriving whilst continuing to act solely in its own interests. However, there had been some gains, largely attributable to the framework convention process, such as the decision by FIFA to declare the World Cup 2002 tobacco-free, thereby encouraging other sporting organizations to follow suit. While there was some hope that the tide might be turning against the perpetrators of death and disease, the world community had to be alert to the deceptive tactics employed by the tobacco industry, in its efforts to derail work on the convention. She had accordingly dismissed suggested voluntary codes of agreement for advertising and promotion of tobacco products, since the industry's motivation was to gain influence with governments, distort health policy and undermine effective tobacco control measures.

A critical challenge for the framework convention was to protect the world's young people from the scourge of tobacco, a resolve which had been strengthened by some success in abolishing tobacco from the sports field. Thus the focus of World No-Tobacco Day in the following year would be on an area which attracted the youth of the world, namely films and fashion. The Global Youth Tobacco Survey had shown that, in some countries, more than 60% of 13-15 year-olds used tobacco and that nearly one-quarter of 13-15 year-old smokers smoked their first cigarette before the age of 10. It was children who were currently the prime targets in spiralling rates of tobacco consumption worldwide. The tobacco industry was in fact detracting from genuine efforts to prevent young people from starting to smoke and to help smokers to quit, so that she strongly advised governments to refuse any funding by tobacco companies or any form of partnership with them. While tobacco companies were increasingly attempting to position themselves as part of the solution by promoting "youth smoking prevention" initiatives, for instance by developing information campaigns to inform young people that smoking was an "adult choice", studies had shown that, at best, those campaigns had no effect and, in some cases, they might actually encourage young people to smoke. If tobacco companies wanted to be part of the framework convention process, they would be judged on the basis of their efforts in favour of raising taxes and striving for a complete ban on advertising.

Over the years, Member States had come to recognize the important role played by smuggling in contributing to smoking initiation, especially among young people. It was generally known that tobacco smuggling did not only occur as a result of the operation of normal market forces, but was partly a supply-driven phenomenon, designed to increase market shares through fraudulent evasion of taxes. It undermined national pricing policies, deprived governments of revenues used to combat smoking, permitted tobacco companies to subvert international cooperation on tobacco control, and in particular, it undermined legal restrictions and health regulations, such as those dealing with health warnings and sales to minors. At a conservative estimate, smuggling involving some 20 thousand million packs each year accounting for a US\$ 25–US\$ 30 thousand million loss in governments' annual revenue. WHO had concluded that, in most countries, there was considerable room to increase cigarette prices through higher taxes, which would significantly contribute to reduced consumption, especially among the young and the poor. Agreement had been reached on the policy options concerned, and what was now required was political commitment. The elements were in place and the Negotiating Body was entering the final, crucial stages that would determine how strong WHO's first international convention would be. The framework convention could make a real difference to the health and lives of so many people worldwide. She therefore looked forward to a very successful fifth session of the Negotiating Body.

Adoption of the agenda

The CHAIR invited comments on the provisional agenda contained in document A/FCTC/INB5/1.

Mr BASSE (Senegal), speaking on behalf of the 46 Member States of WHO's African Region, pointed out that, when the Chair's text had been presented on 6 July 2002, he had outlined the new working methods he intended to implement at the present session. Those methods represented a break with previous practice and entailed the disappearance of Working Groups 1, 2 and 3. He therefore considered that the new working methods ought to be formally adopted in plenary, in view of the fact that the provisional agenda did not contain any details on that subject, whilst the provisional daily timetable (document A/FCTC/INB/DIV/1) merely referred to the new working methods as a point of information, rather than as an item calling for a decision. His group consequently suggested an amendment to the provisional agenda to provide for the examination and adoption of the new methods of work.

The CHAIR replied that it had been his intention to invite delegations to examine the proposed new methods of work after the agenda had been adopted. However, if there were no objections, an item could be included in the provisional agenda to enable the meeting to adopt the methods formally.

Mr YI Xianliang (China) said that, while he generally supported the adoption of the provisional agenda and the provisional daily timetable, he would prefer that informal meetings be held during the day rather than in the evenings.

The CHAIR urged the meeting to limit its discussions to the provisional agenda and drew its attention to the proposal by Senegal, on behalf of WHO's African Region, to include an additional item in the provisional agenda relating to the proposed new methods of work. The proposal concerned a substantive issue which he recommended for adoption.

He therefore invited the meeting to adopt the provisional agenda, with the amendment proposed by Senegal on behalf of WHO's African Region.

The provisional agenda, as amended, was adopted.

Adoption of new methods of work

The CHAIR said that, at the Bureau meeting convened in Geneva on 23 and 24 May 2002, and at subsequent meetings on 14 and 15 October, extensive discussions had taken place on the method of work for the fifth session of the Negotiating Body. A general consensus had emerged that, while the working group mechanism had produced positive results, the time had come to reconstruct the text in its entirety. He had been instructed to produce a new text based on the proposals made by Member States during previous sessions, and it had been further agreed that a cut-off date of 15 May 2002 would be set for all new textual proposals. In order to prepare the new draft, all the texts submitted thus far had been reviewed. He referred the meeting to his letter contained in document A/FCTC/INB5/DIV/5, which set out in detail the organization and main features of the new Chair's text.

Given that the series of intersessional consultations held by the various regional groups to examine the new Chair's text had been concluded, and in view of the fast approaching deadline to complete the framework convention at the next session of the Negotiating Body, a new method of work needed to be applied to the negotiations on the text. He proposed, having gained the agreement of the members of the Bureau, that in the two weeks of the current session, efforts should be concentrated on the core issues of the negotiation. The negotiation process involving the incorporation

of all proposals into a text had been finalized, and it was currently necessary to embark on a drafting process in order to identify and to reach a consensus on the core issues with a view to achieving a universally acceptable draft text which could be finalized by the Negotiating Body at its next session and adopted by the Health Assembly in May 2003.

He proposed, as reflected in the provisional daily timetable, that the meeting should, in plenary, proceed to a first reading of the text. At the request of Member States, the provisional timetable specified the topics to be discussed in each session, in order to allow delegates to be fully prepared to address the issues concerned. In the interests of time and of streamlining the discussions, he had organized the topics into clusters of related issues, and invited Member States to comment on the particular cluster indicated in the timetable and to make concise interventions, focusing on what they considered to be the fundamental issues underlying that group of articles. He urged delegations to focus on conceptual issues rather than on wording and phraseology, at the current stage, so that the various regional groups would gain an idea of each other's overall reactions to the text. In the interests of time, and following consultations with members of the Bureau, he proposed that each intervention on a particular cluster of articles should be limited to three minutes at each meeting. He urged delegations to be precise in their comments.

The aim of the plenary meetings provisionally scheduled to take place during the first week of the session was to identify the core issues, which he expected to amount to five or six, that required immediate attention. Those issues would be assigned to each of the informal meetings scheduled to take place on 18, 19 and 21 October. Following consultation with the members of the Bureau and interested delegations, he proposed to select facilitators whose experience of a particular issue would contribute towards achieving a consensus. Those facilitators would report to the Negotiating Body, when it reconvened in plenary on 22 October, on the progress achieved at the informal meetings, and would then be instructed to conclude, continue or broaden the scope of their discussions by including additional items. To assist smaller delegations, no more than two informal meetings would take place at any one time. The deliberations would enable a clear idea to be gained of the regional groups' positions on most of the issues, would enable detailed consideration of the more controversial issues and would facilitate the inclusion of areas on which consensus had been achieved in a revised text.

A programme of work for formal and informal meetings, as well as scheduled regional meetings would be issued daily. If discussions in informal meetings reached a crucial stage, he might decide to convene plenary instead of informal meetings. He might also propose, in the interests of saving time, if the plenary debate on a particular cluster appeared to be exhausted, that the plenary proceed immediately to discuss the following cluster instead of waiting until the following session. He urged delegations to confine their comments to the particular cluster of articles concerned. He proposed that nongovernmental organizations should make interventions in plenary at the end of each plenary meeting on articles discussed that day. A maximum of three nongovernmental organizations would be allowed to take the floor for a maximum of two minutes each.

Referring to the comment by the delegate of China as to the undesirability of holding evening meetings, he explained that the rule precluding the holding of more than two meetings at the same time had left him with no option but to propose a meeting of an ad hoc group on definitions on the evening of 16 October.

Mr KINGHAM (United Kingdom of Great Britain and Northern Ireland), speaking on behalf of the 51 Member States of WHO's European Region and the European Commission, said that he welcomed the initiatives in examining the methods of work. He supported the proposals made for conducting the work of the session although he recognized that the holding of parallel sessions, whether formally or informally, could place an additional burden on some delegations. He commended the Chair on the timely production of the Chair's new text, which had contributed towards a more thorough preparation of subregional and regional coordination sessions than had been possible for earlier sessions of the Negotiating Body. He expressed appreciation to the European Regional Office for its support in the preparation of the Fourth Action Plan for a Tobacco-free Europe, the implementation of which would help to meet the challenges of the framework convention. The

Member States of the European Region and the European Commission were prepared to play an active role in considering the issues requiring further discussion and were firmly committed to the objective of achieving a strong framework convention on tobacco control and its adoption by the World Health Assembly in 2003.

Mr IVERSEN (Denmark), speaking on behalf of the European Community, welcomed the proposed new text, which would provide an excellent basis for rapid progress in their negotiations. While generally supporting the text, he believed that it could be strengthened further and the European Community would be submitting proposals to that end. A crucial point in negotiations had been reached and it was essential to keep up the momentum. He fully supported the proposed new working method: it was important to focus on overall negotiating positions, rather than detailed textual proposals. The European Community had followed the new method of work in its preparations for the fifth session of the Negotiating Body and supported the use of that method in proceeding towards the adoption of the framework convention in May 2003. The European Community would continue to play an active and constructive role in that process. He underlined the need for a strong convention on tobacco control in order to achieve a significant improvement in international public health.

Dr NAKATANI (Japan) said that Japan was deeply concerned about the serious health problems caused by smoking in his country and around the world. His Government was committed to improving the relevant policies and measures on tobacco control. For example, Japan had enacted new legislation on health promotion that included an article on protection from passive smoking. Furthermore, a national health promotion measure, *Health Japan 21*, contained quantitative targets relating to smoking. Japan fully supported the development of an appropriate international framework convention on tobacco control. His country wished to contribute to the success of the convention and hoped that there would be maximum participation by other countries and full implementation of the agreed text. He agreed, in principle, to the proposed method of work and would restrict his comments to the most controversial or core issues during the first few days. He expected that there would be discussions on broader issues later and hoped that there would be the opportunity to examine detailed text and articles. Since the preamble contained the core concepts set out in the body of the convention, a detailed discussion on that part should be arranged.

Mr BASSE (Senegal), speaking on behalf of Member States of WHO's African Region, welcomed the proposed new text which had been examined at the Regional Committee for Africa in September 2002. He drew attention to the need for both strength and facility of implementation in the new framework convention. In expressing support for the proposed new methods of work, he was pleased that no more than two informal meetings would be held at the same time as that was an issue of particular importance to smaller delegations. He was sure that the appointment of facilitators would be carried out with absolute transparency and with the usual respect for geographical equity, and different opinions and approaches.

Mr NAIK (India), speaking on behalf of Member States of WHO's South-East Asia Region, congratulated the Chair on the clear new text which would be a good basis for negotiations. The synthesis of all amendments and drafts, avoiding annexes, was appreciated. His country, as others, felt that some elements would require modification or even deletion, but that did not detract from the value of the text. All Member States of WHO's South-East Asia Region would participate actively in the negotiating process with a positive attitude and a willingness to engage and cooperate in efforts to ensure that the framework convention would emerge as a strong and viable document, without compromising the core principles, to which the countries of his Region adhered.

Mr MOJTAHED SHABESTARI (Islamic Republic of Iran), speaking on behalf of the Member States of WHO's Eastern Mediterranean Region, said that the threat to public health posed by tobacco

products cut across national, social and economic borders; it was a scourge that necessitated a multisectoral and international response. Ways and means should be found to assist developing countries to expand their capacities to deal with a broad health agenda, improve related infrastructure and training, mitigate social and economic impacts and expand prevention measures. The convention should be a framework for international capacity-building and cooperation in tobacco control, for which the provision of national and international technical and financial support, including the creation of a global fund in the near future, was of utmost importance. The convention provided an opportunity to affirm principles relating to common but differentiated responsibilities; a rights-based approach to health; the duty to cooperate in the interest of rights to health at an international level; and affirmative action in favour of developing countries. It was important to work towards an effective convention that could be implemented by all countries. Mitigation of the socioeconomic impacts of tobacco control required the creation of diversified substitution options in industry and agriculture, particularly in developing countries. The need to assist developing countries, which would bear the highest adjustment costs, should be addressed in a proper manner and should include support from other sectors. Their success would be measured by their ability to draft a realistic framework convention which, taking into account its legal implications, would still command widespread support, while preserving the major objectives. The framework convention could be further evolved, at a later stage, through annexes and protocols. The framework convention for tobacco control was a first-ever multilateral health convention. All of those involved in the negotiations had been impressed by the depth and relevance of the process. All had been encouraged by the positive momentum created by the new Chair's text, which provided a clear basis for negotiations and made the adoption of the convention by 2003 a strong possibility. In a previous statement at the last plenary meeting of the fourth session, he had emphasized the importance of an efficient structure and methods of work and he commended the objective approach taken in the Chair's text. He recommended that, at the current session, efforts and sacrifices should be made to resolve outstanding differences without undermining the integrity of the concept of international cooperation for the higher common objectives of global health. Success would depend on the good faith of all negotiating parties and on the political will to work for meaningful progress. It was his firm belief that the difficulties involved in intergovernmental negotiations would be overcome through a spirit of cooperation and sense of pragmatism and flexibility. He confirmed the determination of the countries of the Eastern Mediterranean Region to give full cooperation in order to reach a consensus.

Mr RAJALA (European Commission) spoke in appreciation of the proposed text which would provide a good basis for work on the convention. He thanked the Director-General for the reminder regarding the death toll: many years of healthy life were also being lost. Europe had seen an increasing trend of women smoking. The latest research showed that health risks were as high as twentyfold for women who were heavy smokers and the onset of heart disease could be 20 years earlier for smokers than for nonsmokers. He agreed on the need to concentrate on outcomes; however, compromises involving less ambitious and explicit alternatives should not become a rule which would lead to the lowest common denominator. The European Community and its Member States had worked hard in that spirit between sessions and had made progress in finding solutions and constructive compromises. Although much remained to be done, the goal was attainable with genuine will to protect the health of the people of the world.

Mr MORA GODOY (Cuba) said that the recent meeting of the WHO Regional Committee for the Americas, held in Mexico, had achieved successful results thanks to the efforts of the Pan American Health Organization. He commended the Chair's text, which would be a good basis for negotiations and supported the proposed method of work. He drew attention to the meetings of the Bureau and, in view of the work carried out by regional groups, suggested that regional coordinators take part in meetings of the Bureau.

The CHAIR said that he would return to the suggestion made by Cuba later in their discussions.

Dr AHSAN (Bangladesh) said that there could be no doubt that smoking was injurious to health but although cigarette packages in Bangladesh carried health warnings, people of all ages continued to smoke. At present there were only two laws in Bangladesh relating to smoking, the Juvenile Smoking Act 1919 prohibiting the sale or distribution of cigarettes to children under 16 years of age and the East Bengal Smoking Act 1992 prohibiting smoking in certain public buildings in large cities. The Government of Bangladesh had drafted a bill on tobacco control that prohibited the sale of tobacco to children under 18 years of age, smoking in all public places and the advertising of tobacco products. Measures should be recommended to assist tobacco control in developing countries, such as education regarding tobacco-related disease and the effects on family finances, which could be included in the school syllabus. Tobacco growers should be given incentives to derive income through alternative cultivation processes. The anti-smoking campaign could be strengthened through research, training, and workshops to build awareness. Warnings regarding health hazards could be enhanced through electronic media. A global fund should be set up by developed countries to assist the development of alternative production. Alternative production for the tobacco industry and employment for the industry's workers would need to be found. Ethnic minorities in Bangladesh who grew tobacco or smoked should be encouraged to change their values and culture. She requested that WHO support the funding of the cultivation of cotton, vegetables and fruits, rubber and palms in place of tobacco.

Dr BELSASSO (Mexico) welcomed the new text, which would facilitate the process of reaching a consensus, and endorsed the proposed method of work as a means of achieving the desired aim.

Mr ZAPATA (Honduras) said that his delegation shared the general concern about the effects of tobacco products and especially about the increasing number of young smokers. Maximum resources and effort needed to be devoted to educating society about the dangers of tobacco products, even enlisting the aid of parents in making their children aware of those dangers. It was to be hoped that the final document would be balanced and realistic.

Mr IL'KHAMOV (Uzbekistan) said that the considerable progress made, particularly since the fourth round of negotiations, towards the adoption of a strong and effective convention was largely due to the excellent text prepared by the Chair and also to the efforts of WHO's Regional Office for Europe which had organized working meetings serving as a basis for agreement on common positions by all the CIS countries. With regard to the current round of negotiations, the new draft together with the clearly-presented positions of subregional groups gave hope of further progress which could culminate in a near-final version of the framework convention.

The CHAIR observed that the provisional daily timetable and the proposed method of work seemed to be acceptable, making allowance for some flexibility, to allow the informal groups as much time as possible for their work. No more than two concurrent meetings would be held. He would consult with interested parties over the next two days regarding the informal meetings and the facilitators' work and also on the proposal put forward by the delegate of Cuba. In the absence of any objection, he took it that the provisional daily timetable and the method of work were accepted.

It was so agreed.

The CHAIR, noting that nongovernmental organization interventions were permitted in accordance with a decision taken at the first session of the Negotiating Body, suggested that three such interventions, limited to two minutes, should be allowed at the end of each meeting. If there was no objection, he would take it that such a procedure was acceptable.

It was so agreed.

2. ACTIVITIES SINCE THE PREVIOUS SESSION (Documents A/FCTC/INB5/4 and A/FCTC/INB5/4 Add.1)

Dr DA COSTA E SILVA (Project Manager, Tobacco Free Initiative presented a brief update of activities since the fourth session of the Negotiating Body, which had involved several economic, surveillance, communications, research and capacity building projects at global, regional and country level, details of which were set out in document A/FCTC/INB5/4.

WHO had been continuously involved in global research activities in the area of tobacco control. The World No-Tobacco Day, established in 1987, had covered sport in 2002 and tobacco-free events had been organized all over the world. The theme for 2003 would be the film and fashion industries.

The Scientific Advisory Committee on Tobacco Product Regulation established by WHO in 2000 had recently released recommendations based on discussions held at its meeting in Oslo in February 2002 and was due to meet in Australia in November of that year.

Certain projects in which WHO was involved were designed to strengthen national capacity for tobacco control, would pave the way for self-sustaining programmes at country level and would increase the support required for the adoption and implementation of the framework convention.

The Tobacco Free Initiative developed its work in close collaboration with its regional advisers and country representatives and support for tobacco control activities was increasing in the different regions. The Initiative's activities were also designed to convey the message that WHO was ready to support Member States in the assessment, implementation and evaluation of tobacco control.

The CHAIR suggested that, since there were no comments on the report, the meeting should take note of it.

It was so agreed.

The meeting rose at 11:45.

SECOND PLENARY MEETING

Tuesday, 15 October 2002, at 14:00

Chair: Mr L.F. DE SEIXAS CORRÊA (Brazil)

DRAFTING AND NEGOTIATION OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL: Item 3 of the Agenda (Documents A/FCTC/INB5/2, A/FCTC/INB5/3, A/FCTC/INB5/5, A/FCTC/INB5/6, A/FCTC/INB5/INF.DOC./1, A/FCTC/INB5/INF.DOC./2)

The CHAIR introduced the new Chair's text of a framework convention on tobacco control (document A/FCTC/INB5/2). As he had indicated in his letter of July 2002, the text had been divided into 11 Parts, each containing a set of articles arranged according to the titles of articles proposed in earlier versions of the text. He had chosen not to include alternatives or bracketed text, since there had been numerous requests for a clean text at the fourth session of the Negotiating Body. Texts corresponding to the inputs made during the negotiations were being proposed on subjects for which no previous text had existed - the preamble, liability and compensation, amendment of the convention and final clauses. The same was true of definitions, which in accordance with the terminology of the International Law Commission were now to be entitled "Use of terms".

He had tried to incorporate the largest possible number of proposals and ideas put forward during the preceding phase of the negotiations and to devise a text that would be meaningful and effective, one that prescribed clear normative rules and obligations for the Parties and formed a coherent whole, maintaining a central public health perspective while taking into account all relevant national concerns. Three considerations should be kept in mind in negotiating the final version of the text.

The first was urgency: the Negotiating Body must discharge its obligations within the prescribed time-frame. As the Director-General had emphasized at the preceding meeting, tobacco-related problems were being aggravated worldwide. The second was efficacy: a strong convention was one that innovated in terms of standards and productive programmes, while at the same time taking account of national concerns. The convention was not the final goal, but the first institutional step along a long road to the creation of tobacco-control mechanisms at the multilateral level. The third consideration was realism: the convention would ultimately reflect the collective will of the Member States which negotiated it and would have to implement its provisions. Most, and if possible all, Member States should therefore be brought on board in a pioneering initiative in favour of tobacco control, thereby enhancing multilateralism and international cooperation in the field of health. He was greatly encouraged by the momentum generated by the release of the new Chair's text and the reactions thereto at regional meetings.

Inviting delegates to comment on Articles 5-12, he said that Article 5 dealt with the general obligations normally contained in framework conventions, more specific commitments usually being set out in protocols or annexes. Precedents had been found in the United Nations Convention on Biological Diversity, the Convention on Long-Range Transboundary Air Pollution, the United Nations Framework Convention on Climate Change and the Vienna Convention for the Protection of the Ozone Layer. Article 5, paragraph 1, was an undertaking that the Parties would adopt national policies to promote the purpose of the convention: such provisions were standard in framework conventions. To permit a certain flexibility, many treaties, such as the United Nations Convention on Biological Diversity and the United Nations Framework Convention on Climate Change, did not specify what types of domestic legal measures were required. Article 5, paragraph 2, identified more specific measures and policies. Subparagraph 2(a) set out measures to promote general cooperation in tobacco control at the domestic level, while subparagraph 2(b) covered measures to promote international

cooperation in the reduction of tobacco consumption, nicotine addiction and exposure to tobacco smoke.

A number of proposals had been made during the negotiations to include a general obligation addressing the exclusion of the tobacco industry from health policy. Article 5, paragraph 3, incorporated that principle, in so far as the Parties were to avoid “undue interference” by the tobacco industry in setting and implementing their health policies. Paragraphs 4 and 5 provided for general cooperation among the Parties to the convention and between them and international bodies.

Article 6 dealt with price and tax measures to reduce the demand for tobacco. Price was perhaps the most important determinant in reducing demand, and the most direct tool governments had in setting prices were tax levels. Since there had been some resistance to including the concept of harmonization of tax policies, paragraph 1 now referred to “coordinated” measures. Coordination in that context meant that States would consult with one another when developing domestic tax and price policies, in an effort to reduce the demand for tobacco through collaborative efforts. Since the setting of tax policies was such a sensitive issue, Article 6, paragraph 2, retained a reference to national sovereignty in such matters and used the word “should” rather than “shall” in connection with the specific measures that should be contemplated.

With regard to subparagraph 2(a), the question of what constituted a price policy might arise. An example might be Indonesia’s practice of setting a minimum price for tobacco products. As for subparagraph 2(b), he had just pointed out that Article 2 clearly referred to national sovereignty. Moreover, since the proposed recommendations of the Conference of the Parties were non-binding by nature, the problem of sovereignty would not arise in considering them.

Subparagraph 2(c) dealt with the potentially controversial question of duty-free sales. Much thought had been given to the issue, and he had consulted with many experts in law and in public health. The public health rationale for working towards the elimination of duty-free sales was, first, that they were essentially beneficial to wealthy populations; second, that they reduced the price of tobacco products and thereby tended to increase consumption, and third, that the marketing of duty-free products was sometimes associated with illicit trade. The subparagraph established the goal of progressive elimination of duty-free sales and created an obligation to progressively restrict them.

Article 7, on non-price measures to reduce the demand for tobacco, was directly derived from Article G, which had been considered by Working Group 1. Its content should thus be familiar to delegates. The first sentence of Article 8, protection from passive smoking, was directed towards protecting everyone from passive smoking, while the second sentence required governments to pay special attention to the protection of vulnerable groups. In his view, the two provisions were not mutually exclusive, and should be implemented in concert.

In Article 9, regulation of contents of tobacco products, the greatest concern was the question of implementation of standards “in accordance with each Party’s capabilities”. The phrase appeared in other parts of the text, but an effort had been made to retain it only in those provisions in which problems of capabilities truly needed to be addressed. Since the question of adopting standards and best practices was to be left to the Conference of the Parties, and given that such standards would be based on science that was still being developed, the language in Article 9 had been designed to give the Conference the flexibility to consider the most up-to-date data relevant to public health. The language at the end of the paragraph recognized the difficulty of performing tests and measures of the content and emissions of tobacco products. The technical capability to carry out such tests, namely appropriate laboratory equipment, was not to be found in many developing countries and was even rarer in developed countries; hence, the phrase “in accordance with each Party’s capabilities” had been included in the latter part of Article 9, which referred to the performance of such complex tests.

With regard to Article 10, regulation of tobacco product disclosures, concern had been expressed at the fact that tobacco companies were making such disclosures to governments. It had been decided to exclude the public from such disclosures, however, because giving governments control of the dissemination of such disclosures provided some guarantee that the full volume of information was presented to the public in a culturally sensitive, meaningful and accessible way.

The subject of Article 11, packaging and labelling of tobacco products, was also a complex issue. Many delegates had suggested including provisions outlining the size of the health warning to be placed on tobacco products, with anywhere from 25% to 50% of the cigarette package to be occupied by the warning. Some States had even suggested that the actual surface or panel of the package to be covered should be specified. Others believed that further specification was necessary in Article 11, paragraph 2, in order to be consistent with directives recently adopted elsewhere, including the European Union. The article as it stood was already one of the most specific sections of the convention and to make it more so would run the risk of moving the convention away from the framework model that had proved useful and had been agreed upon. In the circumstances, he had thought it best to lay down concrete guidelines and to leave the specifics to national standard-setting bodies. A disclaimer phrase, “in accordance with its capabilities and national law”, had been incorporated out of a concern that health warnings should be tailored to national circumstances. That language was designed to be facilitative, based on public health evidence, without being overly prescriptive; the specific reference to prohibition of sales to minors had been included in view of the support for such a provision expressed at previous sessions.

Lastly, Article 12 on education, communication, training and public awareness was quite a straightforward text and relatively uncontroversial.

With those introductory remarks, he invited delegates to share their general views on Articles 5-12 and reminded them of the three-minute time limit.

Mrs PIERANTOZZI (Palau), speaking on behalf of the Pacific island States, whose representatives had met in Noumea 19-21 August 2002, expressed appreciation for the Chair’s work in developing the clean text now before the session. During the intersessional meeting, the group had reviewed the text in detail and had developed comments, positions and recommendations, while remaining mindful of the Chair’s desire to stay as close to the text as was practicable. The recommendations she was about to make were ones that, it was felt, would help to achieve the collective goal of developing a strong framework convention which would curb the epidemic tide of disease, premature death and economic hardship that in most cases afflicted those who could least afford such hardship.

In Article 5, paragraph 2, the phrase “to the extent possible” should be deleted. Paragraph 3 of that article was extremely important, and a new section should be added, to read: “Except for required consultations and other matters, in accordance with national law, the Parties shall ensure that the tobacco industry is excluded from the development and finalization of public health policy.” The Chair’s text of paragraph 3 would become subparagraph 3(b), and the word “undue” would be deleted.

The phrases “recognizing the sovereign right of States” in Article 6, paragraph 2, and “in accordance with national capacities” in subparagraph 2(b) could serve as a pretext for inadequate implementation efforts, and some clarification should therefore be provided in the text to the effect that those phrases did not excuse Parties from implementing the convention to its fullest extent within a reasonable time-frame. In Article 6, the words “can be” in paragraph 1 should be replaced by “are” and subparagraph 2(c) should be replaced by the phrase “Prohibit duty-free sales of tobacco within five years.” In Article 7, the words “can be” should be replaced by “are” and the word “endeavour” should be deleted. In Article 8, the words “adequate” and “as appropriate” should be deleted.

In Article 11, the words “capacities and” should be deleted from paragraph 1. In subparagraph 1(d), the word “rotating” should be inserted between the words “legible” and “health”, the phrase “taking up at least 50% of the front and rear of the packet” should be inserted after the words “health warning”. The next sentence should begin with the words “The warning” instead of “This health warning” and the phrase “also clearly indicate the prohibition of sales to minors and” should be deleted from the final sentence.

The CHAIR reminded the speakers that textual proposals were to be submitted during the informal meetings and invited delegates to give general comments on the text.

Mr NAIK (India), speaking on behalf of the Member States of WHO's South-East Asia Region, said that they considered Articles 5-12 to be of critical importance, since they addressed several public health measures that were essential for effective tobacco control. The group had several changes to suggest, but he wished now merely to highlight the areas in which it had substantive difficulties with the text. The group favoured complete prohibition and total elimination of all duty-free sales of tobacco products, rather than progressive restriction, as stated in Article 6. A new paragraph should be included in Article 6 to recommend the allocation of part of the revenue from tobacco taxes to tobacco control programmes. The article should contain a clear reference to tax and price increases, rather than to coordinated measures, which could be interpreted in many ways. Coordination of such measures among countries would be difficult, as taxation was a sovereign right of States. The title of Article 9 should be altered to read "Standards for measuring the contents and emissions of tobacco", since the present title suggested that such contents would be regulated and approved as a safe product by the regulatory authorities, whereas the actual purpose was to establish standards for accurate measurement and public information. The text of the Article should be amended to indicate the intent to adopt and implement standards and best practices for testing and measuring the constituents and emissions of tobacco products.

In Article 8 on passive smoking, the reference to vulnerable groups could be deleted, since all human beings were vulnerable to the harmful effects of environmental tobacco smoke. Stronger language concerning the specification of health warnings, including the size of the warnings, should be incorporated in Article 11.

Ms KAZHINGU (Zambia), speaking on behalf of Member States of WHO's African Region and referring to Article 5, paragraph 3, said that, in the interests of achieving a strong convention, the tobacco industry and its affiliates should be excluded from any participation in public health policies, including training and awareness-raising exercises. The words "progressively restricting" should be deleted from Article 6, subparagraph 2(c).

Mr BASSE (Senegal), also speaking on behalf of Member States of WHO's African Region, said that a set of concrete proposals for amendments to Articles 5-12 would be duly submitted. Meanwhile, with reference to Article 11, he emphasized the importance of allowing countries some independence in setting conditions relating to the packaging and labelling of tobacco products and in devising and implementing financial and fiscal measures for combating tobacco use. The Member States of the African Region also had reservations regarding the effectiveness and efficiency of the steps proposed under Article 8 for protecting the public against the harmful effects of passive smoking.

Mr ACHADI (Indonesia) suggested the inclusion of a new subparagraph in Article 6 recommending the allocation of part of the revenue from tobacco taxes to tobacco control programmes. In the interests of offering universal protection from the effects of passive smoking, the reference to prioritizing vulnerable groups in Article 8 should be deleted.

Ms KERR (Australia) said that the wording of Article 8 should be strengthened, in view of its fundamental importance for the protection of entire populations from the harmful effects of passive smoking. Article 9 ought to mention the important role of independent scientific experts in the development of standards for regulating the content and emissions of tobacco products. Language which committed Parties to adopting standards which had not yet been developed should be avoided. With regard to Article 11, Australia supported a strong obligation to include visible and effective health warnings and to facilitate efforts to deal with other elements of packaging and labelling, while taking care to employ terms that did not inadvertently weaken the obligation. Unduly specific wording could create unforeseen loopholes and exceptions or could limit the capacity of countries to respond effectively to new evidence.

Mr KINGHAM (United Kingdom of Great Britain and Northern Ireland), speaking on behalf of the Member States of WHO's European Region, said that there had been broad approval for Articles 5-12 in the Region. There was a feeling that the principle of protection from exposure to the harmful effects of tobacco smoke should apply to smokers as well as non-smokers in both Articles 7 and 8. The debate was continuing on whether the scope of the term "public place" extended beyond an enclosed space. With regard to Article 10, he wondered whether there were any compelling reasons why information on the content and emissions of tobacco products could not be disseminated to the public as well as governments. Concern had been expressed in the region regarding the advisability of including specific references on packaging to the toxicity of the contents and overtly stating that sales to minors were prohibited.

Mr MOJTAMED SHABESTARI (Islamic Republic of Iran), speaking on behalf of the Member States of WHO's Eastern Mediterranean Region, said that his delegation had several conceptual concerns relating to Articles 5-12. In particular, there was a need for a differentiation between the responsibilities and obligations of developed and developing countries which took limited capacities of developing countries into account. For example, the responsibilities of importers, manufacturers and exporters with regard to packaging and labelling had to be clearly defined in Article 11. In that connection, he proposed that a new paragraph be inserted between paragraphs 2 and 3 of Article 5, reading: "The Parties shall adopt legislative, executive and administrative measures to prohibit the export of tobacco products that do not conform to the exporting country's own domestic standards".

In real terms, economic and social development and poverty eradication were the main priorities of most developing countries, but it was also true that good health policy, backed by adequate funding, could generate billions of dollars a year through increased economic growth in low-income countries. By taking into account the limited capability of many developing countries to cope with new obligations, the framework convention could provide a vehicle for mobilizing national and global technical and financial support that could help them to expand their capacities to meet the obligations set, improve the related infrastructures and training, mitigate the social and economic impact of tobacco control and scale up prevention interventions. It was essential to provide adequate assistance to developing countries, since it was they that would bear the highest adjustment costs.

Dr KAHANDALIYANAGE (Sri Lanka) stressed the importance of tobacco control for the developing world. Although the new Chair's text was generally satisfactory, there were a few weak areas that needed strengthening so that the end result would be a strong and effective convention which would in no way be advantageous to the tobacco industry. Sri Lanka had already begun to develop an effective legislative backbone to enable most of the provisions set out in the draft convention to be implemented.

Mr JUREV (Russian Federation), reporting on the subregional position of the Commonwealth of Independent States, worked out in Moscow 6-7 September 2002 and refined in Helsinki 23-24 September 2002, said that while the countries supported the Chair's text, they had identified several groups of problems that had to be solved at the current session. They could be divided into translation and editorial questions which could be handled at Secretariat level; amendments of principle, to make important provisions either more or less specific, such as questions of the opening or closure of premises, whether tobacco consumption constituted narcotics dependency and matters relating to national legislation; and lastly, the complete deletion of specific articles or provisions, which seemed inadvisable for the time being.

On the whole, the subregional group supported amendments concerning the ecological problems related to tobacco consumption, the participation of civil society in the common effort and the provision of comprehensive information to the public and the media. Where regulatory principles of future actions had to be laid down, for instance, for the elaboration of standards, protocols, norms or rules on tobacco control, reporting methods and so forth, national legislation and measures for control

of illicit trade in tobacco products must also be mentioned. The proposals to be made by his group were constructive in nature and aimed at improving the existing document.

Dr HETLAND (Norway) said that the fifth session of the Negotiating Body should provide an opportunity to discuss and resolve core issues. To that end, certain points in the new Chair's text had to be clarified to avoid possible misunderstandings. In view of recent evidence that passive smoking was even more harmful to smokers than non-smokers, it would be appropriate to include a reference to smokers in Article 7; although such an addition might give rise to a demand clarification of the terms used to describe passive smoking elsewhere in the draft convention, that could be addressed during the informal discussions.

Subparagraph 1(d) of Article 11 referred to two separate issues, the prohibition of sales of tobacco products to minors and informative labelling regarding their toxic constituents. In his view, both measures could be counter-productive: mentioning minors specifically could enhance the symbolic effect of smoking as an adult habit and reinforce the attractiveness of indulging in a "forbidden" activity while it would be very difficult to provide clear information on packaging about the toxicity of the contents without running the risk of confusion and possibly even giving rise to new ways of marketing such products.

Mr MOON (Republic of Korea) expressed his delegation's broad support for Articles 5-12 of the new Chair's text.

Mr ASLAM KHAN (Pakistan) endorsed the underlying principles and ideas in Articles 5-12. Nevertheless, certain formulations in Article 5, paragraphs 1-4, Article 6, paragraph 2, and Articles 7 and 9 were too prescriptive and needed reformulation. He proposed that the words "standards" in Articles 5 and 7 and "standards or best practices" in Article 9 be replaced by "guidelines". The reference to the "sovereign right of States" in Article 6, paragraph 2, was no more than a passing reference and should be reworded in more direct and categorical terms in view of its importance. The proposed role of the Conference of the Parties in elaborating standards should be examined carefully in the light of the sovereign right of States to formulate their own health and taxation policies. Appropriate provision should be made in Article 5 regarding financial support for developing countries to enable them to implement the convention and the limited resources available to enable them to carry out the obligations described in Article 12 should be recognized.

The use of the word "minors" in Article 11 and elsewhere was not specific enough and should be replaced by "persons under 18 years of age".

Mr AISTON (Canada), referring to Article 6, affirmed that Canada continued to support the use of taxation as a key element in a comprehensive domestic tobacco control framework and had itself already implemented a series of tobacco taxation measures. At the same time, it was important to maintain sovereign control over all aspects of domestic taxation policy in order to have the flexibility to address unique domestic circumstances. The current text adequately reflected that requirement.

With respect to privacy issues, Canada considered that all obligations relating to the sharing of information had to be consistent with domestic privacy and access to information laws. Where passive smoking and cessation were concerned, the issue of flexibility at the national level arose twice in the articles under consideration and Canada believed that the more local the impact of the measure, the more flexibility was required: in Article 8 it was seeking language that would ensure flexibility in designating specific smoke-free areas and in Article 12, flexibility in determining appropriate strategies in the areas of education and awareness.

With respect to Article 11, his delegation actively supported the inclusion of strong requirements for packaging and labelling and would like to see the introductory paragraph strengthened by replacing the current references to States' capabilities and national law by an obligation that would be subject only to domestic constitutional provisions. The following subparagraphs needed to be strengthened by including a provision that 50% of the package should be

covered, in rotation, by pictograms and health warnings aimed at conveying the health consequences of smoking. Such a provision, together with the complete elimination of advertising, subject to constitutional provisions, would produce a strong core concept for the framework convention.

Dr BERNARD (United States of America) said that caution should be exercised to ensure that the general obligations set out in Article 5 were not allowed to go beyond the specific obligations in later articles. In Articles 7 and 9, *inter alia*, the Conference of the Parties should not be empowered to set ongoing and additional obligations beyond those carefully negotiated in Articles 8-13. Regarding Article 6, the term “price” did not contribute to the discussion on taxation, since it would be noted that a price increase did not necessarily mean that the money thus generated would be used to combat tobacco use and indeed often tended to end up as profit. Furthermore, the prohibition of duty-free sales of tobacco products referred to in subparagraph 6(c), could be better dealt with in Article 15 on illicit trade. He supported the comments made by the delegate of Norway on Article 11, subparagraph 1(d), and suggested that the text be either deleted or transferred to Article 10. He also endorsed the view expressed by the delegate of Pakistan that some of the standards and requirements in Article 12 might be too broad and therefore unrealistic and considered that the current wording of Article 8 would require further discussion.

Mr ALLEN (New Zealand) said that his delegation was anxious for the text of Article 8 to be strengthened towards a sharper focus on the right of the public and workers to full protection from exposure to second-hand smoke rather than on vulnerable groups and would welcome a link between Article 9 and Article 2 to ensure that any standards adopted were seen as minimum standards which States were encouraged to exceed. The text of Article 11 should be strengthened to provide guidance on the prominence of warnings and the reference to the prohibition of sales to minors should be deleted. Article 12 should also include a reference to changing people’s behaviour, for example through discouraging the uptake of tobacco use, promoting cessation and respecting the rights of non-smokers to protection from passive smoking.

Mr RAJALA (European Commission), speaking on behalf of the 15 Member States of the European Community, Bulgaria, Czech Republic, Hungary, Malta, Poland, Romania, Slovakia and Slovenia, expressed support for the proposal to delete the reference to vulnerable groups from Article 8. With regard to Article 6, the European Community recognized the effectiveness of price and tax measures in reducing tobacco consumption and had already made remarkable progress in implementing its own taxation policies. It proposed that the word “States” in paragraph 2 be replaced by “Parties” and that the words “new or existing” be inserted between “Such” and “measures”; the text should also ensure that the provisions on taxation did not indicate or imply any limitation of sovereignty over taxation policy. In subparagraph 2(b) the reference to “recommendations” should be deleted, as the nature of the recommendations remained unclear. Subparagraph 2(c) should mention “tax- and duty-free sales” and the reference to prohibition or progressive restrictions should be deleted. Article 8 should include a clear statement of the aim to protect the entire population from passive smoking rather than referring to specific groups. The text of Article 9 was somewhat obscure and the recommendations mentioned in it should be left to the discretion of the Parties.

With regard to Article 11, a reference to “trademark and figurative signs” should be added in subparagraph 1(c). The Community supported the recommendation made by the delegate of Australia that the warnings on unit packets should be clear and visible and considered that pictograms were desirable but should not be obligatory. The reference to minors in subparagraph 1(d) should also be deleted and the health warning should be separated from information on constituents and emissions.

Mr REN Minghui (China), referring to Article 12, said that education, communication, training and public awareness raising could be effective ways of educating the tobacco industry, as well as the

public, about the problems of tobacco use. His delegation therefore proposed the insertion of an additional subparagraph relating to the tobacco industry.

Articles 9 and 11 needed to reflect the importance of respecting the laws and capacities of individual countries.

Mr IGAWA (Japan) said that his country had two major concerns, already referred to by the delegate of the Republic of Korea. The first concern was the extent to which the convention would dictate tax policy and the second was the extent to which it would govern package labelling and product names. In regard to Article 6, taxation policy was a critical part of any national agenda. Since the factors underlying tax policy decisions were left to each individual Party it was inappropriate for the convention to dictate a uniform objective for national tax policies. In regard to Article 11, subparagraph 1(b), the false impression created by terms such as “mild” or “light” could be avoided by measures to inform consumers that such terms did not signify less harmful effects on health but only a difference in flavour. The elimination of such wording should therefore not be mandatory but seen as one of various possible measures to achieve the goal of the article. In his country, moreover, certain brands used such words in the names given to their products, not just as indicators of differences in flavour. A ban on such terms would create many legal problems. Each Party should be allowed discretion, in keeping with national laws and conditions, regarding the measures referred to in that subparagraph. He expressed the hope that both points would be adequately addressed in the informal meetings.

Mr YONG CHANTHALANGSY (Lao People’s Democratic Republic) expressed his trust in the Chair’s direction of the debate and his confidence that the session would make progress towards a strong convention on tobacco control. In early September, his country had met with the other Member States of ASEAN to study the new Chair’s text. Both the substance and the wording of all articles had been examined. The delegate of Indonesia had already stated the position of the countries from ASEAN on Articles 6 and 8. He would therefore comment on Article 9, which should be made more specific by referring to standards for testing and measuring toxic constituents and additives. In Article 10, the information about tobacco products’ contents and emissions should be provided by brand as well as in a general way for tobacco products. In regard to Article 12, paragraph (f), the ASEAN countries considered that public awareness should be raised on the issues of the economic, health, and environmental consequences of tobacco consumption as well as of tobacco production. An amendment along those lines would be proposed later.

Ms DE BELLIS (Uruguay) said that Uruguay generally supported the new Chair’s text for Articles 5-12, which created an excellent basis for the present negotiation. In relation to Article 8, it was essential to refer to “vulnerable groups” but it was also important to refer directly to the population in general as well to show that the aim was to protect everyone against passive smoking. Uruguay also supported the strengthening of the article on packaging and labelling of tobacco products, especially the requirement for clear, rotated health warnings.

Mr KIVANC (Turkey) said that the new Chair’s text provided an excellent basis for discussion. Turkey supported the position taken by the European Union on Articles 5-12, with the exception of Article 6. Turning to Article 8, and speaking on behalf of the south-east European countries, namely Bosnia and Herzegovina, Bulgaria, Croatia, Romania, The former Yugoslav Republic of Macedonia, Turkey and Yugoslavia, he suggested that the word “adequate” be replaced by the word “effective” in the event of a lack of consensus regarding the former term.

Ms LLORENTE DÍAZ (Cuba), speaking on behalf of the countries of Latin America and the Caribbean, referred to a recent regional meeting held in Mexico with a view to advancing discussion and negotiation at the present session. Three categories of article had been identified: firstly, where the present text could be accepted as it stood; secondly, articles in need of improvement but with no

substantive differences from the text proposed, and a third group of articles with substantive differences. The group she represented wished to share its views with other countries or regions in order to make progress with the discussion in Plenary. The majority of Articles 5-12 were considered to be open to improvement without differences in substance. Specific suggestions would be tabled for discussion at a subsequent informal meeting. However, Article 6, subparagraph 2(c) was an area where there were major differences in content between her group's text and that proposed by the Chair. As various other views had been expressed concerning that article, it needed to be considered in an informal meeting.

The CHAIR said that the foregoing discussion on Articles 5-12 had been very useful and had provided much food for thought regarding the sensitivities and concerns of Member States. The question of packaging and labelling stood out as an area in need of further discussion. Questions concerning the different treatment of developed and developing countries should be clearly addressed. The issue of sales to minors needed further reflection, and a great many comments had been made on price measures and taxation policy. He did not wish to comment on the debate since he might overstate or understate some important contributions, all of which had been carefully noted. He invited those delegates who had not yet spoken, or who wished to amplify their comments or to react to other comments, to take the floor.

Ms BALOCH (Pakistan) drew attention to a point that had been overlooked in her country's statement earlier. Certain provisions of the draft convention used language that suggested a concern with the micromanagement of implementation at the national level. Such a suggestion should be avoided. The national coordination mechanism, for example, was not a practical proposal for all countries, especially those with a federal structure. Account also needed to be taken of different legal and constitutional systems. Similarly, a phrase repeated in several places, including the second line of Article 7, namely, "the Conference of the Parties and national authorities" did not seem appropriate: national authorities should not be distinguished from the Parties, since both referred to governments. Separate lines of communication should not be established between them. For the sake of clarity, and to avoid complications, she suggested that the words "and national authorities" in Articles 7 and 9 be deleted.

The CHAIR said that the reason for including that reference in the text was to suggest that progress should not be limited to the multilateral or national level. Both should be involved. The aim was to stimulate progress at both levels.

Mr VARELA (Argentina) joined other speakers in thanking the Chair for an excellent text. As many of his country's concerns had already been voiced he would simply comment on two of the articles. In his view, Article 6, on price and tax measures to reduce the demand for tobacco, lacked a reference to regional and subregional dimensions, where coordination was particularly important in order to ensure effectiveness. The formula "in accordance with its capabilities", which appeared in other articles, including Article 11 and Article 13, should also be included in Article 12, which contained obligations requiring economic and institutional resources that were not always available in developing countries. It was important for the State's obligations to be kept within its real capabilities and include the commitment to increase those capabilities with the help of international support.

The CHAIR said that the delegate of Argentina had raised a point that gave him the opportunity to elaborate on the phrase "according to national capabilities" which could be found throughout the text. The phrase concerned almost all the articles of the convention since there would always be a problem with the implementation of articles arising from national capabilities and circumstances in general. An attempt had been made to refine the concept to see where it should be retained and where omitted. Some people thought it could be dispensed with. However, in certain cases, for example,

where federalism or financial issues were concerned, the inclusion of such a phrase was essential. In other cases, such as Article 12, it was not felt to be decisive and his view was that such a “disclaimer” should be avoided since it tended to weaken or tone down the provisions. He had applied that standard throughout the text, as would appear when other areas were discussed. As everything was subject to review and revision, he welcomed the opportunity to restate the criteria he had employed in that case.

Dr TADEVOSYAN (Armenia) said that the Chair’s text gave an excellent opportunity to see what was needed to make the convention more effective. As the delegate of Uzbekistan had said earlier, the Commonwealth of Independent States had met in Moscow and produced some clear ideas with the help of the Regional Coordinator. They had agreed entirely with 17 of the 38 articles in the original text and in some other cases had comments of a purely editorial nature. He felt that their work would be more successful if discussion proceeded article by article in order to select in each case the most sensible wording.

The CHAIR said that the present discussion had been intended to focus only on major points. Clearly, more contentious issues would be discussed in greater detail article by article. Many proposals had been received and they would certainly be taken into account.

Mr ZAPATA (Honduras) said that the Chair’s excellent text would greatly help progress towards the objectives of the convention. It merely needed a little refining. In general it appeared to be sufficiently realistic. Honduras wished expressions such as “to the extent possible” in Article 5, paragraph 2, and the reference to “national capabilities” to be retained. All countries had limits of different kinds and they obviously could not exceed them. The question of interference by the tobacco industry was an extremely important factor which needed to be handled responsibly. Article 10 specified the executive, administrative and legislative measures requiring the tobacco industry to provide information about the contents and emissions of tobacco products, etc. In his view, the same requirement could be applied in Article 5, paragraph 3, and in Article 12 where it referred to educational and training programmes. It would be useful to mention the need for some kind of contribution from the industry in the framing of policies, since a more fully informed government would frame a better policy. With reference to Article 6, the question of taxation was still being discussed with the relevant agencies in Honduras. His country was not yet entirely in agreement with the text on taxation but was closely examining the issue.

Dr SALAMA (Egypt) affirmed his country’s commitment to the success of the convention, which should be made as strong as possible. In Article 5, paragraph 3, which referred to undue interference by the tobacco industry in the implementation of public health policies, he supported the views expressed by the delegate of Pakistan, that the text should include a recognition of the limited resources of developing countries. The same applied to communication and education in Article 12. In Article 6, subparagraph 2(c), the banning of duty-free sales was more practical than simply a move towards restricting them. Lastly, his country supported the view, expressed by the delegate of Canada, that information-sharing should respect the privacy laws of the various countries.

Ms HERNÁNDEZ (Nicaragua) said that Nicaragua supported the position taken by the Latin American and Caribbean countries, as expressed by Cuba, regarding their general agreement with the text of Articles 5-12, although it was felt that certain articles needed further work on certain points. Examples were Articles 6, subparagraph 2(c) and Article 11. Like Argentina and Honduras, her delegation was concerned about the financial aspects of the obligations in Article 12 as there was no mention of any financial mechanism to support the least-developed countries and countries facing serious economic problems. She wondered how far the need for financial support to enable countries to meet the obligations of the convention was recognized.

Mr SEADAT (Islamic Republic of Iran) stressed the importance of making financial resources available to developing countries to help them meet their obligations under the convention. The Chair had referred to the importance of such resources in the wording of the twelfth preambular paragraph.

His country was considering proposing a new paragraph to be included in Article 5 regarding the need for Parties to cooperate among themselves in order to raise new and additional financial resources through bilateral or multilateral funding mechanisms or the setting up of a global fund. The rationale was to help developing countries accept the kinds of obligations that were being defined in the various articles.

The CHAIR said that the issue had been raised in several statements. If a provision to that effect were included in every article in which implementation was mentioned, including areas such as research and cooperation, it would be necessary to repeat the same idea again and again. He drew delegates' attention to the three paragraphs of Article 26 which dealt with financial resources, suggesting that, as that particular area would require further discussion, such debate should form part of the discussion of Article 26.

Ms ALI-HIGO (Djibouti) congratulated the Chair on his rapid work of synthesis and thanked WHO for its efforts and encouragement. Referring to Article 9, she suggested that a reference to location be included with regard to the analysis of tobacco product content, since certain countries did not possess the necessary facilities for such a process.

Ms BALOCH (Pakistan), responding to the remarks by the Chair on financial obligations and to the statement by the delegate of the Islamic Republic of Iran, said that Pakistan had no problem with discussing that issue in the context of the article on financial resources but wished to keep the provision for the time being among the general obligations as well, because the obligation under Article 5 was clearly on a different level to that under Article 26.

The CHAIR said that the matter could be looked into. He had started from the premise that a provision's strength did not necessarily spring from the frequency of its repetition but from the substance of the obligation expressed.

Ms HÁKANSTA (ILO) said that, overall, the new Chair's text stressed political commitment at national and international levels. Endorsing that commitment, she emphasized the importance of eliminating all exposure to second-hand tobacco smoke in the workplace. In order to achieve a safe, healthy working environment, it was essential for the national authorities responsible for health and work matters, normally the Ministry of Health and the Ministry of Labour, to work together. Workers' organizations and employers' organizations also had important responsibilities in that respect and at international level, ILO and WHO were natural partners. With regard to Article 8 on protection from passive smoking, she was pleased to see the specific mention of indoor workplaces. However, the phrase "adequate protection" could be interpreted in many ways and, for her part, she believed that people should be protected from all exposure to second-hand tobacco smoke. With regard to Article 12 on education, communication, training and public awareness, she stressed the importance of the workplace as an entry point into the lives of many people. Education programmes could be carried out in the workplace. Employers should ensure that social workers and health personnel connected with the workplace were able to offer smokers guidance and treatment, and that all sections of the workforce participated in developing a policy on smoking at work. Workers' organizations moreover had a responsibility to educate workers and to defend workers who found themselves in a difficult situation because of noncompliance with a non-smoking policy or discrimination because of their tobacco habit. She announced that ILO would hold a tripartite meeting in Geneva on the future of employment in the tobacco sector 24-28 February 2003, to be attended by representatives of governments, employers and workers.

Ms MULVEY (Infact), speaking at the invitation of the CHAIR, said that if the framework convention was to succeed, it must include provisions to prohibit interference by the tobacco industry in public health policy. The convention should therefore require tobacco corporations, and their subsidiaries and agents, to disclose their political activities and should give States and international bodies the power to monitor such activities. In line with Health Assembly resolution WHA54.18, which urged, *inter alia*, Member States and WHO to be aware of the tobacco industry's activities and affiliations that might have an effect on public health policy, Infact and the Network for the Accountability of Tobacco Transnationals had been actively monitoring the influence of transnational tobacco companies. They had just released a new report, entitled *Dirty Dealings*, which showed that the tobacco industry's efforts to derail the convention and national health policies were intensifying. She therefore called upon countries to strengthen Article 5, paragraph 3, by removing the word "undue" before "interference". That provision should be firm and clear rather than voluntary. Infact supported the texts proposed by delegates representing the African Region, the Pacific island States and Switzerland, texts which would oblige the Parties to take all necessary measures to prevent interference by the tobacco corporations and their subsidiaries, affiliates or agents. Philip Morris had called for the collaboration of "all interested parties" to achieve a "meaningful" treaty, but she maintained that the tobacco transnationals had disqualified themselves from playing any role in public health policy. She therefore supported Article 12(e) of the Chair's text, which, by implication, would exclude those nongovernmental organizations affiliated to the tobacco industry from developing and implementing intersectoral programmes and strategies for tobacco control. She further expressed her support for proposals made on behalf of the African Region and the Pacific island States to strengthen Article 12 by adding wording which would prevent tobacco corporations and their affiliates from participating in any way in public education with regard to tobacco control.

Mr BLANKE (International Union against Tuberculosis and Lung Disease), speaking at the invitation of the CHAIR, commented that, while the Chair's text recognized the duty of governments to protect their citizens from second-hand smoke, it was regrettable that it failed to treat the problem with the urgency demanded by the facts, and based on the evidence that the only effective measures were those that eliminated smoking in public places. Three flaws marred the new text and turned it into a potential weapon in the hands of tobacco manufacturers, which would insist that the weak standard portrayed was the new global norm. First, the proposed text called only for "adequate" protection, ignoring the scientific fact that smoke was deadly at any level of exposure. Second, it gave priority to certain locations such as schools and hospitals, implying incorrectly that other settings were less important. The text did not call for elimination of smoking in those areas, whereas even Philip Morris had conceded that smoking should be banned there. Lastly, the text erred in placing emphasis on "vulnerable" populations, implying that the protection of others was less urgent, when the only group that mattered was people who breathed. He urged the Negotiating Body to honour the medical evidence and to require the elimination of smoking in public places and workplaces.

Dr CUNNINGHAM (International Union against Cancer), speaking at the invitation of the CHAIR, highlighted two issues. There was no compelling argument in favour of duty-free sales of tobacco products; the problem was solely one of political will. He therefore called for the convention to ban duty-free sales, if necessary phasing them out over several years. On the subject of packaging and labelling, while supporting the provision to ban terms such as "light" or "mild", he nevertheless recommended that such a ban be straightforward without the additional provisions found in the current text. He endorsed the requirement that warnings contain pictures or pictograms but said that it was essential for warnings to cover at least 50% of the area of the package: that requirement had already been supported by many countries, and larger-sized warnings had been shown to be far more effective. However, he supported those who had recommended deleting the requirement to indicate the prohibition on sales to minors, as well as the requirement to provide information on toxic emissions, which might encounter problems with testing methodologies in many countries. As a minimum, the

convention should require States to consider the use of plain packaging for parts other than where the mandatory messages appeared.

In order to expedite the discussion, the CHAIR suggested that he proceed to introduce Articles 13-17 in the Chair's text.

Article 13 – Advertising, promotion and sponsorship of tobacco products; Article 14 – Demand reduction measures concerning tobacco dependence and cessation; Article 15 – Illicit trade in tobacco products; Article 16 – Sales to minors; Article 17 – Elimination of tobacco subsidies and provision of government support for other economically viable activities

Mr BASSE (Senegal), stating that his delegation needed more time to examine those Articles, reserved the right to speak the following day.

The CHAIR said that Article 13 concerned a potentially contentious issue. Banning advertising, promotion and sponsorship was desirable from a public health perspective, since it was one of the most effective strategies available to reduce demand, and many countries had supported an outright ban. Others, however, had expressed reservations, on constitutional or practical grounds, and the question must be considered in the wider context. The new Chair's text had taken account of the many comments made on that subject over the past years and mentioned in a footnote the suggestion, which was based on discussions in earlier sessions of the Negotiating Body, that a separate protocol on advertising, promotion and sponsorship might be negotiated and adopted. The issue therefore warranted a thorough discussion.

There had been much support in the past for Article 14, although since then regional meetings had queried the use of the words "endeavour to" in paragraph 2. Those words had been inserted to allow a degree of flexibility, in view of the resources which would be necessary in order to implement the provisions of the article. Moreover, the term "tobacco dependence" had been used in preference to "nicotine addiction" in subparagraph 2(b), since it was formally classified by WHO as a disease.

Coming to Article 15, he said that the International Conference on Illicit Tobacco Trade had been held in New York 30 July – 1 August 2002. Since the Chair's text had been prepared before that conference, it would be as well to review it in the light of the conclusions of the conference. Overall, there had been a feeling in the previous sessions of the Negotiating Body that Article 15 could also be the subject of a separate protocol, and one of the conclusions of the meeting in New York had been an acceptance of the public health benefits of tracking movements of tobacco products across borders. Moreover there had been several valuable precedents in previous international agreements and multilateral instruments, such as for example conventions on explosives, narcotics or endangered species, which had included measures to combat illicit trade.

He noted that there had been much discussion as to whether Article 16 should cover sales both to and by minors, but the new Chair's text had restricted it to covering sales to minors. Much of the new wording had been designed to address the concerns previously expressed that measures to protect minors were being developed in isolation, and not as part of comprehensive domestic programmes. Paragraph 5 was intended to remedy that and support synergy with other measures. There had been a marked polarization of the issue of vending machines, and the new wording of subparagraph 1(c) gave those countries which had vending machines time to phase them out, while giving those countries which did not have them a basis for a ban. Further, many textual proposals had been submitted concerning the number of cigarettes per packet, with some developing countries pointing out that it was difficult to regulate packet sizes or sales of single cigarettes. Paragraph 3 was therefore intended to highlight the importance of that issue whilst facilitating flexibility in implementation for developing countries.

Lastly, while it was known that subsidies made tobacco products more affordable, thus increasing demand, he noted that subsidies were a complex issue and said that Article 17 on that topic had been inserted in order to flag that issue as being a public health concern.

Mr SHEVCHOUK (Ukraine) said that his delegation considered Article 13 to be particularly important. He requested a clear definition of the concepts used. For example, paragraph (d) required full disclosure of all expenditures by the tobacco industry on advertising with such disclosures being made in monetary terms. The definition should therefore be revised to indicate where advertising ended and promotion or sponsorship began. For technical reasons, it would be difficult for many countries, including Ukraine, to comply with the requirement in Article 15, subparagraph 3(a) that all packages of tobacco products carry a marking, including the name of the manufacturer, the country of origin, the product and batch number, and the date of production. The Russian version of Article 15, subparagraph 5(c) stated that confiscated goods should be destroyed or disposed of, and he proposed deleting the words “disposed of”. While supporting the thrust of Article 16, he proposed adding the words “if the seller has doubts about the purchaser having reached full legal age” in subparagraph 1(a).

Mr AISTON (Canada) wished to strengthen the provisions of Article 13 by replacing the words “national capabilities” by “constitutional provisions” in the opening paragraph, together with a complete ban on advertising. Paragraph (d) on the disclosure of all expenditures on advertising raised the issue of access to information by governments and by the public. The provisions needed to be qualified by a mention that such access should be in conformity with national law. The same applied to Article 15, paragraph 6, regarding information on illicit trade. Many of the measures governing tobacco dependence listed in Article 14 needed to be interpreted in the light of local conditions and such provisions must be flexible. He further proposed deleting Article 15, paragraph 2, since the concepts to which it referred were already covered by other international treaties and conventions. Article 15, paragraphs 3 and 4, involved issues of extraterritorial jurisdiction which he did not wish to see included in the framework convention.

Mr CHANTHALANGSY (Lao People’s Democratic Republic), speaking on behalf of the Member States of ASEAN, wished to strengthen Article 13 on advertising, promotion and sponsorship of tobacco, and therefore proposed deleting in the opening paragraph the words “in accordance with its capabilities”, “gradually” and “endeavour to”, although his country and Singapore had reservations with regard to those deletions. In the same paragraph, all ASEAN Member States, with the exception of Malaysia, Singapore and Viet Nam, proposed adding the words “within an agreed timeframe” after “eliminating”. The ASEAN Member States moreover unanimously proposed using the word “prohibiting” instead of “phasing out” in paragraphs (b) and (c), and instead of “impose strict restrictions on” in paragraph (e). In Article 16, paragraph (b), they further proposed adding the words “vending machines” after “store shelves” in the list of places where customers had direct access to tobacco products, thus allowing countries with vending machines to phase them out under paragraph (c) and countries without vending machines to ban them under paragraph (b).

Dr SALAMA (Egypt) aired the possibility of an alternative approach in Article 17, one which would refer not to subsidies but to the possibility of using international funds to finance a shift from tobacco to other agricultural sectors.

The meeting rose at 16:55.

THIRD PLENARY MEETING

Wednesday, 16 October 2002, at 9:45

Chair: Mr L. F. DE SEIXAS CORRÊA (Brazil)

DRAFTING AND NEGOTIATION OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL: Item 3 of the Agenda (Documents A/FCTC/INB5/2, A/FCTC/INB5/3, A/FCTC/INB5/5 and A/FCTC/INB5/5 Corr.1) (continued)

Article 13 – Advertising, promotion and sponsorship of tobacco products; Article 14 – Demand reduction measures concerning tobacco dependence and cessation; Article 15 – Illicit trade in tobacco products; Article 16 – Sales to minors; Article 17 – Elimination of tobacco subsidies and provision of government support for other economically viable activities (continued)

The CHAIR invited the Negotiating Body to continue discussion of Articles 13 to 17 in document A/FCTC/INB5/2.

Mr LOKENI (Samoa), speaking on behalf of 12 Pacific island States, said that the provisions of Article 13 on advertising, promotion and sponsorship of tobacco products provided only minor controls on tobacco product advertising and did not contribute towards achieving the objectives of the framework convention. His group advocated a total ban as being the only effective public health measure to combat tobacco addiction, a dependence which led to disability or early death. In general, he supported the provisions contained in Article 14 on demand reduction measures concerning tobacco dependence and cessation, particularly the treatment of tobacco dependence. He proposed that the emphasis of subparagraph 2(d) be amended in view of the many potential alternatives for treatment of tobacco dependence. Such amendments would highlight accessibility of affordable treatment rather than the present emphasis on pharmaceutical products. The illicit trade in tobacco products, covered by Article 15, was an important issue and he looked forward to the conclusions and recommendations of the recent International Conference on Illicit Tobacco Trade being reflected in the final text. He proposed the addition to that article of a provision in subparagraph 5(b) which would address all duty-suspended tobacco in transit. Referring to Article 16 on sales to minors, subparagraph 1(c), he proposed that a time-frame should be specified for phasing out existing vending machines since a gradual phase-out could take many years. Recalling the previous discussions on the issue he said that subparagraph 1(d) of that article should prohibit the export as well as the import of sweets and toys in the form of tobacco products. Referring to Article 17, his delegation favoured including a specific time-frame for the elimination of subsidies for tobacco growing and the manufacture of tobacco products. Without such parameters the provision could be rendered meaningless.

Mr NAIK (India), speaking on behalf of the Member States of the South-East Asia Region, thanked the Chair for his clear text. Referring to Article 13, he urged that the convention, in both the introductory paragraph and the subparagraphs of that article, should completely prohibit all forms of tobacco advertising, both direct and indirect as well as surrogate, since restrictions on advertising would be an incomplete response to the tobacco industry's aggressive efforts to market tobacco products. Referring to Article 15, he proposed the deletion of subparagraph 5(d), since duty-free sales should be prohibited without delay, and its replacement by a new subparagraph which would enable the adoption of measures to confiscate proceeds derived from criminal offences related to illicit trade in tobacco. He proposed that both the title and the text of Article 16 should ensure the prohibition of sales by minors as well as to them, and should impose penalties for such offences on the adults

responsible for them. He also recommended a complete ban on vending machines to sell tobacco. He suggested that such machines were more dangerous than self-service displays as at least there minors could be checked at the counter when paying. With regard to Article 17, he supported the phasing out of subsidies and recommended the creation of a mechanism for diverting persons engaged in tobacco farming or production to economically viable alternatives and the establishment of a global fund. He urged the Negotiating Body to recognize that a reduction in global tobacco production would contribute to effective tobacco control. All the textual changes proposed by the group he represented would be submitted in writing.

Ms KERR (Australia) said that Article 13, which was crucial to attaining the convention's objective, needed strengthening because, in her country's view, only a comprehensive global ban on advertising, promotion and sponsorship of tobacco products could effectively reduce tobacco use. It was essential to set a date for the phasing out of tobacco sponsorship of sporting and cultural events, and she urged the adoption of 2006 in that regard. Referring to Article 15, her country supported strong measures to combat both the domestic and the international aspects of illicit trade in tobacco products, although she could not at the present time support calls for a global system of tracking and tracing such products since there was insufficient evidence to support that approach. In conclusion, she welcomed the reference in Article 17 to the elimination of direct tobacco subsidies. Her country's drafting suggestions on Article 17 would be made in the informal discussions.

Mr KAHANDALIYANAGE (Sri Lanka), referring to Article 16, endorsed the concerns expressed by the delegate of India over the sales of tobacco products to minors. Knowledge of the smoking patterns and attitudes of teenagers enabled tobacco companies, through aggressive advertising, to target teenagers as their potential regular customers of the future. It was essential that the article provided clear measures to prevent minors from having access to tobacco. It should thus prohibit the sale of tobacco products both to and by minors and should subject adults responsible for such sales to legal penalties. The argument that allowing teenagers to sell tobacco created youth employment was untenable since it would scarcely be acceptable if it were applied, say, to the sale of handguns. His country also called for the complete and immediate ban of all tobacco-vending machines as an essential measure to restrict the sale of tobacco products to minors. It was illogical to ban sales of such products in self-service displays or store shelves, where checks on age could be carried out, when sales through vending machines involved no checks at all.

Mr MANIT TEERATANTIKANONT (Thailand) expressed his appreciation of the Chair's text, which greatly facilitated negotiations. Referring to Article 13, he said that the World Bank had recently concluded that bans on tobacco-product advertising and promotion were effective in reducing cigarette consumption only if they were comprehensive, covering all media and all uses of brand names and logos. Restricted bans had no effect on overall consumption. The Global Youth Tobacco Survey developed by WHO and the Centers for Disease Control and Prevention showed that countries whose adolescents were more exposed to direct publicity, whether in the form of billboards or printed media, had higher prevalences of young smokers. It was therefore essential to impose a total ban on tobacco advertising. His country's experience was that a partial ban was difficult to define and enforce. Per capita cigarette consumption in Thailand had dropped following a ban on both the direct and indirect advertising of tobacco products imposed in 1992. His country now faced the problem of cross-border advertising and the advertising of tobacco companies' names as opposed to their products. He therefore supported the proposal of the delegate of India, on behalf of the Member States of the South-East Asia Region, to prohibit all forms of tobacco advertising. It was essential that the text of the framework convention, as a legally binding instrument, should be as comprehensive and as robust as possible on the subject of banning tobacco-product advertising. Thailand's drafting proposals would be submitted in writing.

Dr BERNARD (United States of America) said that his delegation could not accept a convention that imposed a total ban or any language that indicated an eventual ban on tobacco-product advertising as it would contravene his country's laws and constitution. The wording would therefore require amendment. In Article 15 on the illicit trade in tobacco, he agreed with the Chair on the possible need to modify the text. He would propose amendments relating to the type and scope of information sharing on tobacco products to ensure adequate safeguards. He shared the concerns expressed by the delegate of Canada about the inappropriate extraterritoriality provisions. He suggested that the World Customs Organization, which had a Memorandum of Understanding with WHO, took part in the discussions on international smuggling. With regard to Article 16, he would propose amendments concerning the definition of legal minors as that issue caused difficulties for several countries. He would also propose that paragraph 2 of that article should be moved elsewhere. He could not agree with Article 17 on the elimination of tobacco subsidies. WTO was currently negotiating the reduction of domestic support tariffs and export subsidies for agricultural commodities, and the United States had urged that Organization to set a date for the eventual elimination of all trade-distorting domestic support, including that for tobacco. The issue of tobacco subsidies should be dealt with by WTO, as it was currently doing.

Mr ALLEN (New Zealand) said that his delegation could not agree with Article 13 as currently drafted. Tobacco products had no inherent merit. Moreover, evidence clearly showed that advertising, promotion and sponsorship encouraged the use of tobacco products and normalized smoking behaviour. Evidence also showed that, to be effective, a policy on tobacco advertising, promotion and sponsorship needed to constitute an absolute ban. New Zealand therefore sought stronger language for Article 13. Its provisions should also cover marketing and promotional activities that used tobacco company names, trade marks and associated branding and not simply the tobacco product.

Mr MOJTAHED SHABESTARI (Islamic Republic of Iran), referring to Article 13, said that the situation differed from country to country. In his country, for example, there was no tobacco advertising nor were there vending machines. The words "reduce" and "gradually eliminating" used in the text might imply that advertising was acceptable until total elimination could be achieved. With regard to Article 14, subparagraph 2(d), access to pharmaceutical products or other methods of treating tobacco dependence should be affordable to developing countries. He also proposed that such services should be integrated into national primary health care systems. Article 15 was particularly important in view of the extent of the illicit trade in tobacco products in his country and the consequent risks to health. Tracking measures could include a unified and codified labelling system, such as that used to stop the illicit trade of caviar. Referring to the footnotes to Articles 13 and 15, he pointed out that it was normal practice to adopt protocols following the adoption of a convention. However, certain articles of the framework convention could, where needed, stipulate the subject and even the time-frame of a protocol to be negotiated at a later stage.

Ms KAZHINGU (Zambia), speaking on behalf of the 46 Member States of the African Region, said that Article 13 should call for the adoption and implementation of effective measures to ban all forms of direct or indirect tobacco advertising within two years of entry into force of the convention. Effective action to ban publicity to minors was important as they could be misled by advertising. The current wording, that each Party should adopt such measures "in accordance with its capabilities", was weak: it would enable some countries to ban and other countries to continue tobacco advertising. Referring to Article 16, she proposed that the title should read: "Sales to and by legal minors". She also proposed that subparagraph 1(c) should be amended to read that the use of vending machines should be phased out "within three years of entry into force of this treaty". The gradual phasing out of vending machines would take a long time and would thus weaken the convention and make its implementation difficult. She suggested that subparagraph 1(d) should prohibit the export as well as the import of sweets and toys in the form of tobacco products.

Mr YI Xianliang (China) supported in principle the provisions of the articles under consideration. Article 15, which was one of the most important articles of the convention, should provide for capacity-building measures to enable developing countries to combat illicit trade in tobacco products. The article should also contain detailed measures to that end and should provide for the future formulation of protocols. Subparagraph 1(c) of Article 16 should differentiate between countries that had and those that did not have vending machines to sell tobacco products, and it was for the former to consider solutions to the issue. He fully supported Article 17 on the elimination of tobacco subsidies. Although negotiations on the issue should take into account similar or related negotiations conducted by other bodies, the negotiations currently being undertaken by WTO could not be considered to be a substitute for WHO's own negotiations on the issue. He proposed the inclusion of a reference to commercial loans in the article since all tobacco companies were legal companies involved in commercial activities.

Mr SEDDIK (Egypt) said that Article 13, as currently drafted, did not adequately address the crucial issue of advertising. While he did not favour obligations of endeavour rather than obligations of result, in order to retain the balance that the current wording was attempting to achieve, he proposed additional wording in the introductory paragraph to the effect that each Party should endeavour to implement measures within reasonable (not gradual) time-frames to be determined by national authorities. All further references to phasing out of various tobacco advertising activities would then be superfluous and could be deleted. Paragraphs (c) and (e) appeared to be contradictory but were not. However, he proposed the deletion from the former paragraph of "cross-border tobacco advertising" so that only sponsorship was prohibited. With regard to paragraph (e), it was unclear what was meant by the imposition of strict restrictions on tobacco advertising. If it was an obligation of endeavour, Parties would not be obliged to impose such restrictions immediately, and the paragraph could therefore be drafted in stronger language. He proposed adding two elements to paragraph (c) on the promotion of tobacco advertising to the effect that film and other media should avoid the indirect promotion of cigarettes and to request that Parties should increasingly reduce the public areas in which smoking was allowed. Referring to Article 14, he welcomed subparagraph 2(b) on the facilitation of access to treatment of tobacco dependence. On Article 16, he agreed with the proposal of the delegate of China and others to prohibit the export as well as the import of sweets and toys in the form of tobacco products.

Dr TADEVOSYAN (Armenia) observed that some delegations had stated their opposition to the use of the term "gradually" in Article 13, in connection with phasing out the advertising of tobacco products. At its recent meeting in Moscow, the Commonwealth of Independent States had proposed that the advertising of tobacco products be restricted with a view to its eventual elimination. Advertising through the mass media, such as television and radio, should be banned with immediate effect, although advertising hoardings would need to be phased out more gradually. Some members of the mass media had been lobbying against an immediate ban; that body might be approached with a view to reaching a mutually satisfactory agreement for counter-advertising. It had been pointed out that the advertising of tobacco products had often been carried out by stealth through the indirect use of a brand name. He suggested that a way of preventing such action should be sought during the current negotiations.

Mr JUREV (Russian Federation), speaking on behalf of a subregional group of the Commonwealth of Independent States, including Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Republic of Moldova, the Russian Federation, Tajikistan and Uzbekistan as well as the Ukraine, endorsed the statement made by the delegate of Armenia with regard to the use of the term "gradually" in Article 13. Regarding Article 16, paragraph 3 on the prohibition of the sale of cigarettes individually or in small packets, he recommended that that paragraph should be applied to the whole of the population and not limited to minors. Turning to Article 17, the group had also requested that criteria be established in order to define the competent international and regional intergovernmental

organizations and their roles. With regard to the articles under discussion in general, and to Article 15 in particular, he suggested that a number of overall recommendations made in the report of the International Conference on Illicit Tobacco Trade be taken into consideration. He said that the subregional group relied upon the balanced approach of the Chair in respect of the whole text of the convention and on his patience in considering the various points raised.

Mr ABDULLAH (Maldives) affirmed the position taken by the Member States of the South-East Asia Region, as stated by the Regional Coordinator, the delegate of India. It was imperative that the clauses of the framework convention be strengthened, especially those concerning the issue of advertising tobacco products. He said that the Maldives had had a national ban on any form of tobacco advertising, promotion or sponsorship since the mid-1980s, and he recommended that a total ban be included in the framework convention. In respect of Article 15, paragraph 5, he supported the proposal made by the delegate of India that a clause should be included to enable the confiscation of the proceeds arising from criminal offences related to smuggling.

Mr IGAWA (Japan) said that his country supported Article 14 in principle. He said that Japan was very concerned about sales of tobacco products to minors. In Japan, the “Law for the prevention of smoking by minors” concerned the prevention of tobacco-product sales to those under the age of 20. He therefore supported Article 16 with a few comments. He suggested that the words “to minors” be added to the end of the sentence in paragraph 2. With regard to subparagraph 1(d), he had a problem concerning the underlying evidence, and requested further scientific information as to the effects of limiting sweets in the form of tobacco products on the consumption of real tobacco products. With respect to Article 13, he supported the implementation of restrictions on tobacco advertising, especially in relation to the prevention of smoking by minors. However, the total abolition of advertising, promotion or sponsorship presented difficulties for Japan because it was incompatible with the national legislation. With respect to Article 15, his delegation fully supported the elimination of illicit trade in tobacco products. However, he suggested that the text be made more general in order to facilitate its implementation as well as acceptance by as many countries as possible. In his opinion, paragraph 3 was too detailed and should be left for the talks on protocols. Concerning Article 17, he said that, as mentioned by the delegate of the United States, rules on agricultural subsidies, including tobacco subsidies, were under discussion within the framework of WTO and he regarded that Organization as the ideal forum to deal with that matter. He also said that tobacco subsidies varied in form and function, including price support, direct payment, quality improvement and the prevention of national disasters. There were also tobacco-specific and non-tobacco-specific subsidies. Therefore, the reduction of every subsidy had a different influence, and occasionally no influence, on the reduction of the supply of tobacco. Also, the reduction of tobacco subsidies would not reduce the supply of tobacco if such supplies were then increased through imports. He recalled that, according to the 1999 World Bank Report, “Curbing the epidemic”, supply side interventions had limited effects and it was not clear how the removal of subsidies would affect global production. He therefore proposed that the first sentence of Article 17 be deleted. Regarding the second sentence, he recommended that the promotion of other economically viable alternatives should be carried out at the discretion of individual countries, according to their respective conditions and not be uniformly enforced by the framework convention.

Mr HANSEN (Denmark), speaking on behalf of the European Community and its Member States, as well as on behalf of Bulgaria, the Czech Republic, Hungary, Poland, Romania and Slovakia, said that the text prepared by the Chair for Article 13 provided a good basis for further work. In line with other delegations, the European Community considered that article to be one of the most important in the convention. He therefore suggested that the text be strengthened and the obligations clarified. He proposed that the references in the first paragraph to “national capabilities” and “national law” be replaced with wording such as “in accordance with its national constitution”. Current European Community legislation on advertising, which included a ban on television advertising, was

currently limited, but work was ongoing on a Commission proposal for more comprehensive European Community legislation on tobacco advertising and sponsorship. Following the current session of the Negotiating Body, the European Community would, with a view to finalizing its position at the next session, pursue its work on the matter and in particular on the precise scope of the commitments in Article 13 and deadlines. He said that it was premature to discuss a protocol at the present stage and that every effort should be made to have a strong provision on advertising in the main body of the convention.

With regard to Article 15, he supported a strong text in order to combat illicit trade in tobacco products, as proposed by the Chair. However, he would be submitting proposals for minor technical changes to the text during the course of the session. He supported the aim of reducing tobacco consumption among young people and considered that Article 16 provided useful guidelines. However, he urged that each party be allowed flexibility concerning the choice of instruments, including the possible prohibition of sales of cigarettes individually or in small packets. Concerning Article 17, he strongly supported the promotion of cooperation between parties to define viable alternatives for tobacco growers. The European Community was however not in a position to support a suggestion to phase out subsidies for tobacco growing, although it would support a commitment to use a part of those subsidies to finance reconversion or adaptation.

Mr MOLLOY (Ireland), speaking on behalf of Belgium, Bulgaria, Croatia, the Czech Republic, Estonia, Finland, France, Hungary, Iceland, Ireland, Israel, Italy, Latvia, Lithuania, Macedonia, Malta, the Netherlands, Poland, Portugal, Slovakia, Sweden, Turkey, the United Kingdom of Great Britain and Northern Ireland and Yugoslavia, said he believed that the question of the prohibition of advertising, sponsorship and promotion of tobacco products, as proposed in Article 13, was one of the most important elements of the framework convention. Those 24 countries therefore, in accordance with national constitutions and constitutional principles, supported a total ban on all forms of advertising, promotion and sponsorship of tobacco products and brands, that should be written in the body of the framework convention itself.

Dr HETLAND (Norway) said that the tobacco industry would not spend money on advertising if it had no impact on consumption. From a public health point of view, there was no reason to exempt certain areas of the media from an advertising ban. A total ban on advertising would have an impact on consumption if it was comprehensive, covering all media and users of brand names and logos. His delegation, therefore, strongly recommended that the first paragraph of Article 13 be strengthened. It supported the proposal made by the delegates of Ireland, India and others on a total ban. In addition, he proposed that a time-limit for implementation of a total ban be added to the Article. He submitted that the first paragraph of Article 16 could be strengthened through the replacement of "restrict" by "prohibit". He also supported the proposal made by the delegate of Zambia with regard to subparagraph 1(c) or Article 16.

Dr WAN MAUNG (Myanmar) supported the proposals made by the delegates of India, Thailand, Norway and Ireland regarding Article 13 on advertising, promotion and sponsorship. He said that, at previous sessions of the Negotiating Body, the majority of Member States had supported a total ban of all forms of direct and indirect advertising for all tobacco products. There was no truth in the messages put forward through tobacco advertising or sponsorship. Scientific evidence showed that partial advertising bans had little or no effect and provided opportunities for a transfer to other forms of media and indirect advertising through brand stretching. It would be counterproductive to enforce a total advertising ban in one country while allowing advertising in other countries, since cross-border advertising would undermine tobacco control efforts in the countries which had imposed the ban. Advertisements would be beamed in by satellite and distributed through glossy international magazines. A total ban should include indirect and surrogate advertising through sponsorship of sports and cultural events by tobacco companies which sought to glamourize the use of tobacco. Failure to ban all tobacco advertising, promotion and sponsorship would dilute the effectiveness of the

convention and jeopardize the health of people around the world. He therefore supported a total ban on all forms of tobacco advertising and sponsorship.

Mr DILEMRE (Turkey) said that his country had joined with 23 other countries to call for a total ban on the advertisement of tobacco. In his opinion, certain parts of Article 15 on illicit trade should be put into a protocol. He would comment on specific paragraphs in the coming meetings. Regarding the crucial issue of subsidies, he said that, although as a general rule countries associated with the International Monetary Fund policies did not concern themselves with government subsidies in agriculture, his country did. In his experience, phasing out an agricultural subsidy involved the introduction of alternative products and collaboration with other international organizations. He therefore requested that those points be highlighted in Article 17 rather than a commitment to the elimination of subsidies at that stage.

Mr ACHADI (Indonesia), referring to Article 17, recommended that subsidies, including tax exemptions, loans and rebates for tobacco growing and the manufacture of tobacco products should not be provided or should be eliminated. In his country, there were currently about 900 tobacco product manufacturers who were associated with several thousands of tobacco growers. He said that tobacco-related activities presented more hazards than benefits to human beings and should therefore be abandoned even though, in most cases, that should be carried out gradually. He said that economically viable alternatives should be sought and pilot projects should be started in several areas. Cooperation and support from donors and international communities were needed and financial arrangements should be made through a global fund. He recommended that Article 17 should include a time-frame for the elimination of subsidies and proposed the year 2015 as the target date. He expressed the hope that, by that time, a better alternative would have been found for tobacco growers to make their living.

Mr LEÓN GONZÁLEZ (Cuba), speaking on behalf of Latin American and Caribbean countries, said that most of the group of articles under review could be improved, although in some cases, substantive changes were not needed. His comments would refer in particular to Articles 13, 15 and 16, with proposals regarding specific wording given to the informal groups. The modifications to Article 13 should be subject to consultation. Those discussions should include, *inter alia*, the elimination of tobacco advertising by radio television and all national electronic media and the progressive rather than gradual phasing-out of sponsorship, publicity and cross-border advertising. With regard to Article 15, he suggested that it was necessary to clarify in paragraphs 5 and 6 that the information to be exchanged would be information which was in the public domain. He also recommended that Article 16 be reinforced through the total ban of the sale both to and by legal minors, as well as a total ban on the sale of cigarettes individually or in small packets.

Mr MOON (Republic of Korea), referring to Article 15, paragraph 3, agreed that reasonable measures should be taken to prevent the illicit trade of tobacco products, taking into account each Member State's discretion and capabilities. Specifically, he agreed that the packets or packaging of tobacco products should be subject to measures to ensure that they could be tracked and traced. However, it was his understanding that the outer packaging, made to protect, preserve and deliver tobacco products, would not be subject to those measures. He said that, in his view, the requirements of subparagraph 3(a) were too detailed and technical and might cause a failure to reach consensus. Technical differences among countries should be carefully considered prior to the introduction of batch-number marking systems. He said that, in the view of his delegation, the measure set out in subparagraph 3(b) limiting sales outlets might be against the free-trade principle. He therefore recommended that the paragraph be further discussed. Article 17 was a very sensitive topic in political and economic terms. In his opinion, the subsidy issue was covered in the basic stipulations of the World Trade Organization's Agreement on Subsidies and Countervailing Measures and would

therefore best be left to that Organization. If it were to be also reflected under the framework convention, the provisions should retain flexibility to accommodate the different socioeconomic circumstances of individual Member States.

Mr ASLAM KHAN (Pakistan) said that Articles 14 and 15 appeared to be prescriptive in nature whereas his delegation would prefer the use of more general language which took account of the limited resources of developing countries. Certain provisions in the text referred to international organizations; in his opinion, those references should be contextualized within the specific expertise of the organization concerned. Those international organizations should be intergovernmental in nature and their mandates should be relevant to the activities perceived under the convention. Referring to Article 16, he said that the issue of sales to minors was an important provision in the convention. He supported the new Chair's text which deleted references to sales by minors. He reiterated that his delegation had requested a clear definition of minors in that connection. The previous Chair's text referred to persons under 18 years of age; that clear definition placed similar obligations on all States Parties. He therefore recommended a return to the previous terminology, noting that paragraph (c) placed different obligations on parties. His delegation would prefer the prohibition of vending machines. In relation to Article 17, he agreed that subsidies were a very sensitive issue and his delegation would examine how agreements reached by the Negotiating Body would be aligned with the ongoing negotiations on agricultural subsidies at the World Trade Organization.

Mr METSCHER (Germany) reiterated his country's support for the comments made by the delegate of Denmark on the articles currently under consideration. Referring to Article 18, he recalled that a number of Member States had asked for a total ban on all forms of advertising. He said that Germany was not in a position to support such proposals in a convention. His country was limited by the jurisprudence of the Constitutional Court, through which advertising was protected as a form of freedom of expression. Restrictions were explicitly allowed, with the proviso that they be proportional. In his opinion, a total ban was not proportional and was therefore likely to be unconstitutional. For that reason, Germany had introduced nationally a strategy of special restrictions and special tobacco prevention measures. His proposal was, therefore, that Member States should be given the option of either a total ban or the placing of strict limitations on advertising.

Dr KIENENE (Kiribati) expressed support for the new Chair's text. However, the gradual elimination or phasing out of advertising, promotion and sponsorship of tobacco products would play into the hands of tobacco multinationals, therefore prolonging the agony and increasing tobacco-related deaths. His interpretation of Article 13, paragraph (a) was that it indirectly encouraged tobacco companies to advertise, promote and sponsor their products with the requirement that they must do so by giving true, non-misleading and non-deceptive information. He agreed with the statement made by the delegate of Myanmar in that respect. He said that the wording of the new text presented a problem in that he did not understand how a manufacturer or seller of a deadly toxic product could advertise such a product in the positive manner required. Lies had been disseminated through tobacco advertising for decades. It was therefore his opinion that a total ban on advertising was the only meaningful way forward to reduce the demand for tobacco.

Mr ALCAZAR (Brazil) stressed the need for a time-frame for implementation of the provisions of Article 13, which otherwise were rather vague. Turning to Article 15, which dealt with both trade and public health issues; there were more appropriate forums than the Negotiating Body for discussing the former and for that reason he recommended deleting paragraph 2 from Article 15.

Dr AL-BEDAH (Saudi Arabia) expressed the hope that the framework convention could be adopted at the earliest opportunity. Articles 13-17 constituted the very pillar of the framework convention, the prime concern of which was public health. Political and commercial considerations could not be permitted to take precedence over public health if present and future generations were to

be protected. Consequently, the wording of Article 13 needed to be strong, clear and precise. Some previous speakers had referred to the need for freedom of expression in connection with advertising, but tobacco advertising was giving publicity to a deadly product. In order to strengthen the impact of Article 13, he suggested amending the wording of the first sentence to read "... implement effective, legislative, executive, administrative or other measures to completely eliminate the advertising, promotion ...". With regard to paragraph (b), he was opposed to progressive or gradual phasing-out and supported the proposal made by the delegate of Australia to set 2006 as a target date. Similarly, he favoured setting a limit of three years from the entry into force of the convention for the elimination of the advertising, promotion and sponsorship referred to in paragraph (c).

Ms UDON (Bhutan), speaking on behalf of the Member States of the South-East Asia Region, supported the proposal made by the delegate of Egypt to delete every instance of the wording "endeavour to" in Articles 13, 14, 15 and 16 because it weakened the text.

Mr ZAPATA (Honduras) said that, with regard to Article 13, fairly robust regulations already existed in Honduras to control tobacco advertising, and it only remained to put the legal process into action to bring about total prohibition. With regard to Article 17, tobacco subsidies were also under discussion in other forums and he would prefer discussions to be coordinated with those negotiations. In connection with Article 16, his country took the situation of young people very seriously and Honduras had a proposal which had been accepted by the Latin American and Caribbean countries to strengthen Article 16 by broadening the title and adding an extra paragraph. He asked his colleague to expand on the proposal.

Dr BATRES (Honduras) said that the proposal involved changing the heading to read "Sales to and by minors", a position apparently shared by the Member States of the African Region. In addition, there had been consensus at the meeting of Latin American and Caribbean countries held in Mexico in September 2002, to incorporate a new subparagraph 1(e) to prohibit the sale of tobacco by minors. The convention did not prohibit the sale of single cigarettes and so left open the possibility of young people handling cigarettes. Young people were the most precious asset of any society and had to be protected from such lethal instruments.

Mr BASSE (Senegal) confirmed that the Member States of the African Region supported the proposal to change the title of Article 13 to include "sales by minors". His comments favoured those of the delegate of Zambia who had spoken on behalf of the 46 Member States of the African Region. It was considered that, in addition to advertising, the issue of the availability of tobacco products to minors needed to be addressed and in that context, vending machines ought to be banned within a reasonable period of time.

Even though negotiations on subsidies were taking place in other international organizations, the aim of the framework convention was tobacco control and since subsidies constituted the first stage in making tobacco products available, they were a legitimate subject for discussion. It was not the intention to ban subsidies at a stroke, but rather that the Conference of the Parties should monitor them.

In relation to Article 15, the Member States of the African Region had some revisions to the wording to propose and also considered that a protocol might prove necessary at some date in the future and would continue its discussions to that end.

Mrs DE BELLIS (Uruguay) endorsed the statement made on behalf of the Latin American and Caribbean countries. In common with many other speakers, she considered Article 13 to be of fundamental importance and as such its wording concerning the total ban on advertising, promotion and sponsorship of tobacco products needed to be clear and powerful. With regard to Article 15, paragraph 2, she agreed that it should be deleted.

Dr ROA (Panama) supported the comments made by the delegate of Cuba. She also added her agreement to the previous speakers that Article 15, paragraph 2 should be deleted, as well as Article 2, paragraph 3, and Article 4, paragraph 5, where similar references were made. In Article 15, subparagraph 5(d), no reference should be made to Article 6, subparagraph 2(c).

Mr BEN SALEM (Tunisia) said that the text of Article 13 did not very clearly express the idea that it was the tobacco companies that were sponsoring sporting events and wondered whether the title and the introductory paragraph ought to be changed to take account of this. Concerning subparagraph 13(a), the provisions should apply during the transitional period.

With regard to Article 16, he supported a complete ban on vending machines. In Article 16, subparagraph 1(d), he was in favour of adding the word “sale” to the text, so that it would read “prohibiting the manufacture and sale of ...”. He further had a proposal to make concerning the Arabic term used in the text to translate “vulnerable”.

Mr EMMANUEL (Saint Lucia), speaking on behalf of Barbados, Jamaica, Saint Lucia, Saint Vincent and the Grenadines and Trinidad and Tobago, said that his delegation supported Article 13 in principle, but were in favour of expanding the content to restrict the inclusion of logos, brand names and the names of tobacco companies. With a view to strengthening the article, that group also favoured establishing a time-frame for the elimination of advertising promotion and sponsorship, and of deleting the phrase “vulnerable groups” from Article 13, paragraph (e).

Mrs ALEXIS-THOMAS (Trinidad and Tobago), speaking on behalf of the same group supported the deletion of Article 15, paragraph 2 which did not reflect the idea that public health should take priority over other considerations. In the absence of any support for deleting the paragraph, she would submit an alternative text.

Dr ABOU-ALZAHAB (Syrian Arab Republic), referring to Article 13, said there should be a total ban on advertising, particularly advertising targeting minors. Satellite and Internet advertising were cross-border phenomena and must also be banned. He was in favour of putting an end to tobacco-product sponsorship, particularly at sporting events. He proposed the addition of a new paragraph to oblige countries to introduce a system of counter-advertising. In connection with Article 14, there should be more supporting scientific detail. Dependence should be considered a disease and ought to be included in the Article. Concerning Article 15, paragraph 8, licensing was obligatory, rather than “where appropriate”. Illicit trade included agriculture, industry, export, import, wholesale and retail and everything involving tobacco, tobacco products and information about them. The text of the article needed to be strengthened in that regard.

In Article 16, he was in favour of banning sales by, as well as to, minors, and also in public parks and in the vicinity of schools and universities. With regard to Article 17, subsidies could perhaps be provided during a transitional period to be specified until substitute crops and industries could be found.

Mrs LE THI THU HA (Viet Nam) stressed the importance of Article 13 and fully supported the views expressed by the delegates of Myanmar, Thailand and many other delegations with regard to a total ban on advertising, promotion and sponsorship of tobacco products.

Mr CASTILLO (Dominican Republic) supported the comments made by the delegate of Cuba in relation to Articles 15 and 16, but raised an objection to the provisions in Article 13, paragraph (d) which went against the law concerning free enterprise in his country. He also wished to see the deletion of “vulnerable groups” from Article 13, paragraph (e). With regard to Article 14, his country lacked the resources to deal with tobacco dependence and would require financial support to that end. Turning to Article 17, he wish to propose wording to the effect that each Party would undertake, in

conformity with its existing national and international obligations, to gradually eliminate subsidies, including tax exemptions, loans and rebates, for tobacco growing and manufacturing of tobacco products. Each Party should, in cooperation with other parties and with the competent international and regional intergovernmental organizations, promote, according to its economic, social and geographical conditions, other economically viable alternatives for tobacco workers and growers. The first part of the wording of the Article was of vital importance because of agreements his country had with WTO in the context of duty-free zones.

Dr SANDA (Romania) referred to the sensitive nature of Article 13 and, as a candidate country for accession to the European Union, was keen to see a united European Union commitment to a total ban on tobacco product advertising, promotion and sponsorship as an effective measure for tobacco control.

Mrs KRIVELIENE (Lithuania), speaking on behalf of Estonia, Latvia and Lithuania, gave her support to the position expressed by the delegate of Ireland on Article 13, but added that she would like clarification on the rate at which phasing-out and elimination of cross-border tobacco advertising would be implemented. She also proposed the addition to Article 16 of a list of instruments designed to achieve the aims of the article. She said that the optimum quantity of cigarettes in a pack should not be less than 20.

Dr GAMARRA (Paraguay) supported the position expressed by previous speakers on the total banning on advertising within a firm deadline. Where public health was concerned, national constitutions could be expected to be accommodating and usually were constructed so as to give some flexibility. The convention had to ban misleading advertising that encouraged young people to smoke an addictive and lethal product. Clearly, banning advertising had negative implications for freedom of expression, but every country had an obligation to protect its people. To that end she supported the deletion of Article 15, paragraph 2 and provisions relating to it because public health was fundamental to the convention. Finally, she pointed to the problems posed by Article 14 and the lack of resources for treatment of tobacco dependence in third-world countries. Could the answer to this lie with proceeds from increased taxation?

Ms RAMOS BARRIENTOS (Peru), referring to Article 17, was in favour of the gradual elimination of all types of subsidies, including export subsidies which ought to be mentioned specifically. As the issue fell within the competence of other forums, current international obligations ought to be taken into account.

Summing up, the CHAIR said that the discussion had been very useful, revealing a need for deeper and wider discussion of Article 13, which was a key issue. Other items that had commanded attention were sales to minors, illicit trade and subsidies.

Dr TWEELEH (Palestine), speaking at the invitation of the CHAIR, recalled that he had taken part in the International Conference on Illicit Tobacco Trade in New York, and recognized the amount of effort that had been invested in the drafting of such an international instrument. He informed the meeting that, in the Palestinian territory, laws and regulations had been enacted which curtailed the use of tobacco and tobacco products, in particular the sale of tobacco to minors. A bill was at present going through the Palestinian Legislative Council which would totally ban the sale of cigarettes to adolescents, as well as stopping publicity for tobacco products in the media. It would also ban vending machines. His country's treatment of those crucial issues reflected its genuine concern and its recognition of the cultural and educational dimension to the issue.

Professor WARNER (World Bank), speaking at the invitation of the CHAIR, said that, with regard to Article 13, the World Bank's evaluation of effective tobacco control had concluded that a complete ban on all forms of tobacco advertising and promotion constituted an essential component of a comprehensive tobacco control programme. Such a ban would decrease cigarette consumption by 6% to 7%, thereby representing a major contribution to public health. It had been established that partial bans did not work, whereas a complete ban would have not only practical but also considerable symbolic importance. The tobacco industry had thrived on its successful use of symbolism for decades and tobacco control should adopt the same approach now.

While the discussion had indicated that a sizeable majority of delegations strongly supported a complete ban, a few countries had expressed reservations due to constitutional limitations. In response, a delegate had recommended calling for a complete ban on advertising and promotion, to the extent permitted by a nation's constitutional law. In the interest of maximizing the effectiveness of the Negotiating Body, that proposal would enunciate a crucial aspect of comprehensive tobacco control, while respecting the integrity of national law.

Mr HAYES (International Union Against Cancer), speaking at the invitation of the CHAIR, described the tobacco industry's task of trying to sell a product that nobody needed, where consumption would result in the unnecessary and avoidable premature death of half of its customers. The industry's claim that it had to advertise in order to provide product information and thus to generate fair competition was totally spurious. Its advertising relied on seductive imagery to create desire where there was nothing to desire. The industry's target audience consisted of young people needed to replace the market loss suffered daily as a result of smoking-related disease. The industry never had and never would provide factual, honest information about tobacco; it had to be prevented from telling lies, which meant a complete ban on all forms of direct and indirect advertising.

Article 13, however, was a weak and ineffectual statement of good intent, lacking substance or clout. As presently worded, it was insufficiently precise on the requirement for a complete ban on all forms of tobacco promotion, in all media, and lacked a sufficiently clear and tight timetable, with a specified time limit subsequent to entry into force of the convention.

Mr GUNASEKERA (International Non Governmental Coalition Against Tobacco), speaking at the invitation of the CHAIR, addressed the question of the US\$ 25 thousand million loss in tobacco-tax revenue to governments as a result of tobacco smuggling. The key to tackling smuggling was to reverse the incentives that encouraged manufacturers, traders and wholesalers to abuse the tax-free privileges of the international transit system. If tobacco companies had to face strong financial disincentives against encouraging smuggling of their own products, they would have positive incentives to secure the distribution system, and avoid diversion of the goods to the black market. Governments needed to strengthen the security of the tobacco distribution system through licensing and accountability of wholesale traders, prior approval of international shipments, as well as maximum tracking and tracing activity. The International Conference on Illicit Tobacco Trade had placed many bold anti-smuggling ideas on the agenda for the first time; the Negotiating Body could take those forward by establishing basic obligations and principles, articulated in a protocol with specialist input from customs and law enforcement officials. Work should start straightaway.

Subsidies to tobacco growing in developed nations cheated poor farmers in developing countries of their livelihood. Taxpayers in developed countries were also cheated by being forced to subsidize those crops that no one wanted. Even subsidized farmers would be better served by diversification and development of a new infrastructure. The framework convention should offer tobacco farmers in the developing world an end to all tobacco subsidies within five years, thereby demonstrating sensitivity to such concerns and putting an end to a particularly unjustifiable form of intergovernmental fraud.

Article 18 – Protection of the environment; Article 20 – Research, surveillance, monitoring and exchange of information; Article 21 – Reporting and exchange of information; Article 22 – Cooperation in the scientific, technical and legal fields and provision of related expertise

The CHAIR, introducing consideration of Articles 18 and 20-22, described issues raised in discussions held prior to their drafting.

He suggested that Article 18, dealing with protection of the environment, which was a new proposed Article, had perhaps not been considered in depth in previous framework convention negotiations and might therefore benefit from more ample discussion in the current session. Some delegates had suggested shortening that part, in view of the fact that there were other instruments dealing with pesticides, whereas other delegates had expressed concern that that Article might be legitimizing tobacco-growing indefinitely and ought therefore to be deleted. In his opinion, despite the existence of other instruments dealing with the same subject, the language of Article 18 highlighted the intersection of tobacco-control and tobacco-growing issues and ought to be retained in the text.

The subject matter covered by Article 20 had frequently been covered in other agreements, and considerable support had already been expressed for the inclusion of detailed provisions in the convention. Naturally it would always be possible to modify the language in future to take account of technological progress.

One of the objections raised in connection with Article 20 concerned the wording “shall endeavour to” used in paragraph 1, as there was a preference for an explicit, mandatory obligation. His intention had been to take account of concerns expressed by developing countries with limited resources to dedicate to expensive surveillance tasks.

Referring to Article 21, he pointed out that the present draft incorporated proposals made in previous discussions and contained cross-references to other articles relating to the need to collect and exchange information. All such cross-references would be checked at the end of the negotiations. The text of paragraph 3 was based on the precedent of the Framework Convention on Climate Change.

The present text of Article 22 reflected discussions in previous sessions of the Negotiating Body, as well as in informal meetings at which significant progress had been made. Some concern had been expressed about the phrase “non-trade-distorting” contained in subparagraph 1(b)(ii); that aspect would be considered during discussion of the relation of the framework convention with other trade obligations. It was a core issue: his intention had not been to subordinate the convention to others, but rather to promote a sense of mutual supportiveness between different legal instruments.

Mr MAYEYA (Zambia), speaking on behalf of the 46 Member States of the African Region, supported a reduction in the use of pesticides and wood fuel in tobacco growing and processing, referring specifically to Article 18, paragraph (a), and voicing concern for environmental protection in connection with tobacco production. The thrust of Article 18, paragraph (c) was to oblige tobacco farmers as well as the industry to develop sustainable fuel sources for tobacco curing; an approach favoured by the group he represented. He further suggested deleting paragraphs (d) and (e), on the grounds that training in the use of pesticides should not only be confined to tobacco growers, but should include all farmers using such chemicals.

Mr BASSE (Senegal) added to the previous speaker’s comments. He agreed with previous speakers that, although the protection of the environment was the subject of a number of treaties, the existence of such instruments should not prevent the Negotiating Body from taking the environment component into account in the framework convention. Every effort should be made to avoid any basic contradiction between the desire to combat tobacco consumption while at the same time explicitly or implicitly encouraging its production. The group of countries he represented consequently favoured a minimalist option for Article 18, i.e. recognition of the principles of environmental protection, together with temporary provisions, so as to avoid creating the impression that the convention encouraged continued tobacco growing.

Dr AHSAN (Bangladesh), referring to Article 18, paragraph (c), proposed the inclusion of a reference to bio-fertilizers, instead of “alternative technologies”, in order to protect the environment. With regard to Article 18, paragraph (e), she was also in favour of promoting research on bio-fertilizers prepared on the basis of waste products, rather than “alternatives to the use of pesticides”, as

constituting an environmentally-friendly product for tobacco growers as well as other agricultural workers.

Mr ASLAM KHAN (Pakistan) voiced his opinion that protection of the environment under Article 18 was a new concept which had not been included in the original Chair's text. Since that Article might create problems for developing countries, he proposed its deletion.

Referring to Article 20, he said that, although Pakistan had been requesting a definition of the terms "surveillance and monitoring" since the first session of the Negotiating Body, the list of definitions unfortunately still did not include those issues. Without clarification of those terms, it would be very difficult for Pakistan to accept their inclusion in the articles. In his view, research programmes under Articles 20 and 22 should also refer to research on economically viable alternative crops. He further considered that Article 20 was too prescriptive and consequently proposed that subparagraphs 2(b) and (c) should be deleted.

Dr BHUMISWASDI (Thailand), speaking on behalf of the Member States of ASEAN, expressed her concern that the language proposed in the new Article 18 might be used by tobacco manufacturers in advertising their products as being environmentally friendly, although the opposite was the case. She therefore suggested its deletion. On the other hand, she expressed the group's full support for Articles 20, 21 and 22, being convinced that international scientific and technical cooperation as well as information-sharing were crucial to effective combating of the health hazards caused by tobacco.

Mr YI Xianliang (China) said that in his view, the new Article 18 was superfluous since, as the Chair had explained, various countries and international organizations had already adopted relevant treaties to deal with the protection of the environment. If it were to be retained, that Article should be restricted to protection of the working-place environment, in connection with the harmful effects of smoking. His country was particularly concerned by the references to wood fuel. That was a highly complex issue, each country had its own circumstances, and the use of petroleum as a fossil fuel had aroused wide criticism as being responsible for climate change. On the other hand, in China, wood was sometimes regarded as a renewable source of energy, so that its replacement would not necessarily be environmentally friendly. He consequently proposed the deletion of the reference to wood fuel in paragraphs (a) and (c).

Referring to Article 21, he favoured the deletion of the reference to Article 19, paragraph 2 in subparagraph 1(d). In paragraph 2, a distinction should be made between developing and developed countries; it was unrealistic to ask all countries to reach the common goal within two years of the entry into force of the framework convention.

The meeting rose at 12:25.

FOURTH PLENARY MEETING

Wednesday, 16 October 2002, at 14:25

Chair: Mr L.F. DE SEIXAS CORRÊA (Brazil)

DRAFTING AND NEGOTIATION OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL: Item 3 of the Agenda (Documents A/FCTC/INB5/2, A/FCTC/INB5/3, A/FCTC/INB5/5, A/FCTC/INB5/6, A/FCTC/INB5/INF.DOC./1 and A/FCTC/INB5/INF.DOC./2) (continued)

Article 18 – Protection of the environment; Article 20 – Research, surveillance, monitoring and exchange of information; Article 21 – Reporting and exchange of information; Article 22 – Cooperation in the scientific, technical and legal fields and provision of related expertise (continued)

Mrs LLORENTE DÍAZ (Cuba), speaking on behalf of the Latin American and Caribbean countries, said that Article 21 was acceptable in its present form, whereas Articles 20 and 22 would be improved by minor changes. Article 20, paragraph 1(a) should include a specific reference to nicotine addiction and the impact of tobacco-control measures on risk awareness. Likewise, paragraph 2 should also mention the need for dedicated tobacco-control surveillance systems. In paragraph 3, health should be included among the subjects on which an exchange of information was proposed. It should also be made explicit that information relating to practices of the tobacco industry and the cultivation of tobacco only applied to information that was publicly available.

Article 22 should mention the need to reduce the cost of pharmaceutical products used in the treatment of nicotine addiction and to make it easier for developing countries to obtain such products. Subparagraph 1(b)(ii) should mention that tobacco workers referred to both growers and manufacturers of tobacco products.

Mr TSUNODA (Japan) had no major concerns regarding paragraphs 21 and 22. In his view, however, the subject matter of Article 18 was more suited to a convention on the environment and should therefore be deleted from the framework convention on tobacco control which should focus on the core issue of smoking and health. With regard to Article 20, paragraph 3(c), the content and scope of information relating to the activities of the tobacco industry needed further clarification.

Mr NAIK (India), speaking on behalf of the Member States of WHO's South-East Asia Region, pointed out that Article 18 was a new addition to the framework convention and had not been discussed in previous sessions of the Negotiating Body. It contained a number of provisions relating to the manufacturing process which would be more appropriate in a convention dealing with the environment. The introduction of such a clause would impose responsibilities on countries that ought more properly to be considered in the broader context of global environmental treaties. Consequently, he felt strongly that Article 18 should be deleted to avoid delaying adoption of the framework convention.

With regard to Article 22, subparagraphs 1(b)(ii) and 1(b)(iii), the formulation "non-trade-distorting manner" should be deleted. It was generally agreed that the long-term success of tobacco control was dependent on good supply-side interventions. Public health had to be given primacy over trade when considering methods for reducing global production. Such wording was more appropriate to a trade rather than a health agreement. The same subparagraphs also mentioned assisting workers or growers who would be affected by implementation of the convention, however, steps had to be taken

to rehabilitate growers without waiting for them to be affected, since a fundamental aim of the framework convention was to reduce tobacco production in the long term.

Dr LEWIS-FULLER (Jamaica), speaking on behalf of Caribbean countries, said that although the importance of protecting the environment was widely acknowledged, the inclusion of Article 18, paragraphs (b), (c), (d) and (e) conflicted with the spirit and focus of the framework convention and ought therefore to be deleted. Paragraph (a) could then be combined with the introductory paragraph to form a general statement recommending that steps be taken to protect the environment from the effects of tobacco growing and processing activities.

She was concerned that substantial constitutional and legislative obstacles might impede the implementation of significant segments of the framework convention in some countries. If those constitutional and legislative principles were maintained in their current form, it would be impossible to implement the framework convention successfully. Historically, every major change in society had required the introduction or amendment of laws and constitutions in order to bring about positive changes in the process of civilization. The framework convention was being drafted in order to address a major public health problem that was the scourge of humankind and represented a new process that ought not to be taken lightly. Consequently, the legislative and constitutional obstacles encountered by some countries had to be addressed as a matter of urgency. To that end, it might be appropriate to convene a special group to consider the matter.

Mr PECHACEK (United States of America) suggested that it would be appropriate to recognize, in Article 20, the two technical documents on surveillance and research, contained in Annexes 3 and 4 of A/FCTC/INB4/INF.DOC./1.

Although Article 21 discussed guidelines to be developed by the Conference of the Parties, it did not mention how they should be adopted. In his view, a formulation was required which made it clear that guidelines should be adopted by consensus. The requirement in Article 21, subparagraph 1(a) that Parties report on “planned” measures was a cause for concern as it raised complicated definitional issues and would be difficult to operationalize. He also proposed that subparagraph 1(e) be deleted. Furthermore, it might be appropriate to consider the financial requirements raised in Article 21, paragraph 3, within the more general discussions on the issue.

His Government supported the principles addressed in Article 22 and recognized that efforts might be made within the discretionary authority of Parties. In particular, the exchange of scientific, technical and legal information should be left to the discretion and capabilities of individual countries. Additionally, the requirements defined in Articles 20 and 22 should respect national standards protecting privacy and proprietary information.

Mrs TKACHENKO (Russian Federation), speaking on behalf of the Commonwealth of Independent States, referring to Article 21, paragraph 2, said that it would be desirable to hold further discussions on the proposed two-year reporting format. She further observed that the word “pravovoi” was a better translation of “legal” than “juridicheskii” in the Russian text of Article 22.

Mrs HERNÁNDEZ (Venezuela) supported the views expressed by the delegate of Cuba on behalf of the Latin American and Caribbean countries and emphasized the importance of retaining a reference to environmental protection in the framework convention. As a developing country, Venezuela was aware that tobacco production was harmful to the environment, for example, through soil contamination and deforestation. Studies had clearly demonstrated too the effect of tobacco cultivation on the health of men, women and children resulting from the handling of leaves at harvest time and the use of pesticides and agrochemicals without protection.

Mr ACHADI (Indonesia), referring to Article 20, said that surveillance and monitoring were crucial as they represented the sole means of measuring the progress made in implementing the framework convention. At the very least, monitoring activities should be focused on countries' efforts

to reduce supply, as well as the harmful effects of tobacco use. Naturally, the data collected should include information on input, processing, output and the outcome of those efforts. He proposed strengthening Article 21 by the inclusion of two additional subparagraphs under paragraph 3 relating to the need to set up a comprehensive information system on tobacco control and to establish a specific global fund for research activities under the auspices of the proposed global fund for tobacco control. Moreover, to achieve an effective implementation of the framework convention, certain information-gathering activities needed to be carried out, namely, periodic national reporting and an international review and he requested, therefore, that specific reference be made to them in an additional subparagraph to paragraph 3 under Article 20. The need for a global research fund for tobacco control could also be included in paragraph 4 of Article 20.

He joined other countries in requesting the deletion of Article 18 and of Article 22, subparagraphs 1(b)(ii) and 1(b)(iii) which contained references to a “non-trade-distorting manner”.

Dr SHTEINKE (Kyrgyzstan) supported the retention of Article 18 as it highlighted the need to ensure safe working conditions for tobacco workers, an aspect that should also be reflected elsewhere in the framework convention. Article 20 should refer explicitly to the need for specific resources, particularly for developing countries, to allow epidemiological surveillance and monitoring activities to be undertaken and specialized scientific research to be carried out. With regard to Article 21, developing countries such as her own, with tobacco production constituting a preponderant part of their agricultural output and accounting for a large part of their national budgets, would find it difficult to report on their implementation of the convention within two years of its entry into force.

Mr PADILLA (Philippines) supported the position expressed by the delegate of Thailand on behalf of the Member States of ASEAN. Article 18 should be deleted as it could be interpreted as promoting tobacco and tobacco products. He also endorsed the delegate of India’s comments, on behalf of the Member States of the South-East Asia Region, to the effect that Article 22, subparagraphs 1(b)(ii) and 1(b)(iii) should be re-examined with a view to deleting the phrase “in an economically viable non-trade-distorting manner, consistent with the international obligations of Parties”.

Mr LISKIA (Papua New Guinea), speaking on behalf of 12 Pacific island States, referring to Article 18, broadly agreed with the new Chair’s text, with the proviso that the costs of environmental rehabilitation, as well as the development of new environmentally sound technologies should be borne by the tobacco industry. To that end, “encourage” in paragraph (c) and “promote” in paragraph (e) should be replaced with “require industry”, and a new paragraph (f) should be added to read: “Ensure the costs of environmental and worker protection are entirely borne by the tobacco industry”. He proposed the deletion of “endeavour to” as it appeared in Article 20, and in Article 22, the deletion of subparagraphs 1(b)(ii) and 1(b)(iii) as assistance to tobacco growers and workers should be funded by the tobacco industry and not by the Parties.

Dr KAHANDALIYANAGE (Sri Lanka) endorsed the comments made by India and Thailand regarding Article 18 which, in his view, could be manipulated by the tobacco industry and used to support claims that certain tobacco products were environmentally friendly. He also endorsed the deletion of the phrase “non-trade-distorting” in Article 22, subparagraphs 1(b)(ii) and 1(b)(iii) as it was unclear how tobacco workers would be able find viable alternative employment in a way that was non-trade-distorting. He supported Articles 20 and 21 as set out in the Chair’s text.

Mr LEE (Republic of Korea), said that, while he commended the spirit of Article 18, its aims exceeded the scope of the framework convention and would be better dealt with under other international agreements on the environment. His delegation had no difficulty in accepting Articles 20, 21 and 22.

Mr VALLAT (Switzerland) could not accept Article 19, paragraph 3 as it stood and proposed amending it as follows: “The Parties shall afford one another assistance in legal proceedings relating to the objective of this Convention within the limits set by their national legislation”.

Mr BASSE (Senegal), speaking on behalf of Member States of WHO’s African Region, observed that mutual support in the pursuit of common objectives was now a fact of international life and numerous international agreements lent themselves to that end. That support was especially important in the realm of public health which had a bearing on most areas of daily life. International cooperation was the underlying theme in Articles 20 to 22 and without true voluntary international cooperation, many of the provisions in the framework convention would remain no more than empty words. In order to achieve concrete results, he suggested the use of a more robust style, for example, in Article 20, subparagraph 1(a) “endeavour to initiate” should be replaced by “initiate” and “endeavour to establish and maintain” in subparagraph 3(a) by “establish and maintain”. The research areas mentioned in subparagraph 1(a) should be expanded to include the cultivation and manufacture of tobacco. It would be helpful in rehabilitating tobacco workers if reliable data on tobacco cultivation and manufacture, as well as consumption, were available. Furthermore, support for such rehabilitation should be provided unconditionally and not in a “non-trade-distorting manner” as stated in Article 22, subparagraphs 1(b)(ii) and 1(b)(iii). The rehabilitation of tobacco workers was of sufficient importance in public health terms to warrant special attention. The above objectives could only be achieved if the framework convention contained provisions that were sufficiently clear to encourage action while retaining the flexibility at national level to prevent barriers to international cooperation. It was crucial to establish a balance between the exigencies of international cooperation and the need to respect national interests.

Mr HANSEN (Denmark), speaking on behalf of the European Community and its Member States and Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia, said that, while the European Community respected the spirit and aims of Article 18 in respect of both the environment and tobacco workers, the Member States felt, like several other delegations, that it exceeded the scope of a convention on tobacco control and should therefore be deleted. With regard to Article 20, while the European Community favoured a text that acknowledged the importance of surveillance, research, monitoring and the exchange of information, existing programmes and systems should be fully utilized in order to avoid duplication. The same applied to Article 21. Furthermore, Article 20, paragraph 4 should be referred to Article 26 on financial resources in the interests of achieving a comprehensive approach. Article 22 was acceptable as it stood although more emphasis should be placed on the provision of structural assistance.

Mr AISTON (Canada) said that exchanges of information were extremely important in assisting Parties to improve their tobacco control capacity. However, Article 20 should include a reference to respect for national confidentiality and privacy laws and regulations. Such references appeared throughout the text and it was to be hoped that a common agreement could be reached across them on the provision of information. With regard to Article 22, subparagraphs 1(b)(ii) and 1(b)(iii), while Canada could understand the concerns of tobacco workers and those delegations that had tobacco economies, the World Bank report had stated that the issue was not currently a cause for concern and would be unlikely to become so in the foreseeable future, so there was little point in having a specific provision on it. Finally, he agreed with the delegate of India that the formulation “non-trade-distorting manner” was inappropriate in a WHO convention.

Dr TADEVOSYAN (Armenia) said that protection of the environment was an extremely important topic that could not be bypassed, since contamination of the soil by waste water and the use of pesticides had direct effects on health. The recent Johannesburg Summit had stressed the need to focus on protection of the environment with special stress on water management, since 18 million

people currently had no access to clean water. Article 18 of the framework convention must therefore be retained although it might need to be redrafted to strengthen the reference to environmental protection, which could be regarded as a final goal of the prohibition of tobacco growing. His delegation fully supported Articles 19 and 20 and with regard to Article 21, paragraph 2, considered that the Conference of the Parties should also determine the form of subsequent reports. In conclusion, Armenia supported the views of the Russian Federation concerning Article 22 and a more accurate translation into Russian for the term “legal”.

Mr MOJTAMED SHABESTARI (Islamic Republic of Iran), referring to Article 18, stressed the importance of health surveillance of workers in agriculture and the tobacco industry, who were exposed to hazards such as pesticides causing lung and skin diseases. That concept should be mentioned in Article 18. The Eastern Mediterranean countries considered that research into the identification or development of economically viable alternative crops should be promoted and that a text to that effect should be added to the end of Article 20, subparagraph 1(a). They also considered that, in addition to the exchange of scientific, technical, socioeconomic, commercial and legal information, information on manufacturing, marketing and advertising practices of the tobacco industry should be added to the current formulation of subparagraph 1(b). With regard to Article 22, paragraph 2, Iran suggested the addition of wording to the effect that the Conference of the Parties, at its first meeting, should determine the modalities of establishing a mechanism to promote and facilitate such cooperation.

Dr BATRES (Honduras), referring to the problem of the cost of medicines for patients wishing to stop smoking with medical help, observed that in his country a packet of cigarettes cost the equivalent of 70 cents, as against \$150 for a month’s medical treatment to stop smoking. With regard to Article 22, the meeting of the Latin American and Caribbean countries held in Mexico in September 2002 had agreed that subparagraph 1(e) should contain a specific reference to the need to reduce the cost of pharmaceutical products used to treat nicotine addiction and proposed that the text be amended to read “study of methods for tobacco control, including support to reduce the cost of medicines for the treatment of nicotine addiction”. The text would complement Article 14, subparagraph 2(d), which established the need to collaborate with other parties to facilitate the access to pharmaceutical products for the treatment of tobacco dependence. In that way, the convention would encourage access to low-cost generic medicines, particularly in the poorest countries.

The CHAIR, before turning to the next group of articles, commented on the discussion of Articles 18 and 20-22. Most speakers had focused on Article 18, on the protection of the environment. He was aware that there had been little discussion on the subject at previous sessions of the negotiations, but he had gathered enough material to serve as a basis for further reflection on the subject.

Naturally, the environment was referred to in other conventions and obligations to which States were Parties. The topic had been included in the framework convention because that draft dealt with such subjects as the cultivation of tobacco, fuel and pesticides which were related to tobacco control and omission of the reference to environment might suggest that it was considered to be irrelevant to tobacco control activities. On the other hand, it was not possible to introduce new norms of environmental law in a convention on tobacco control. In his view, the subject should be included because it related to the objective of the convention, but further discussion on it was certainly needed.

A number of comments had been made on the term “non-trade-distorting” used in Article 22, subparagraph 1(b)(ii). The whole question of trade would become more apparent when the next group of articles came up for discussion, but it could already be stated that no action taken to eradicate tobacco in the agricultural or industrial sectors should be directed in such a way as to create problems or undue competitive advantages affecting the rights and interests of other States in other sectors. Failure to include that concept in the convention might be seen as legitimizing other actions by States

that distorted trade. He therefore invited delegations to reflect and comment on the matter possibly in the context of the next group of articles.

Article 2 – Relationship between this convention and other agreements and legal instruments; Article 3 – Objective; Article 4 – Guiding principles

The CHAIR, introducing the discussion on Articles 2-4 said that Article 2 related the draft convention under discussion to other international agreements and legal instruments. The language of the provision called for implementation of the convention through national measures and used a standard wording found in other instruments such as the international labour conventions and certain multilateral environmental agreements. He observed that national measures meant measures left to State discretion within the obligations established by the framework convention. The main purpose of paragraphs 1 and 2 was to improve health protection. Although all framework conventions laid down minimum standards, States should be encouraged to adopt stricter standards than the ones in the convention as part of their domestic implementation programmes, provided such programmes were compatible with international law. Paragraph 2 contained the obligation for States Parties to the convention entering into other agreements to communicate such agreements to the Conference of the Parties. The provision was designed to improve transparency in implementation and was similar to Article 11 of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. It was an application of what might be called “mutual supportiveness” between international agreements: issues relevant or additional to the framework convention on tobacco control could be negotiated in other international instruments, but care should be taken to ensure continuity and equilibrium in legislation on tobacco control at the international level. The provision in paragraph 1 should be read as complementary to the one in paragraph 2: when elaborating new instruments, the States Parties should implement more rather than less restrictive measures than those contained in the convention. Certain international instruments, such as the Basel Convention and the Cartagena Protocol on Biosafety, focused more specifically on multilateral, regional or bilateral agreements, but such instruments should not diminish the rights and obligations in the convention by lowering standards.

Paragraph 3 of Article 2 contained a principle often found in international agreements, such as the Convention on Biological Diversity, the Cartagena Protocol on Biosafety and the International Treaty on Plant Genetic Resources for Food and Agriculture. If the provision were regarded as placing other objectives above health objectives, it would be clearly difficult to accept, but he saw it in different terms in the light of the principle of equality: many international agreements stated that their provisions did not imply a change in rights and obligations under other international agreements but at the same time specified that they were not subordinate to other international treaties. Examples included the aforementioned Cartagena Protocol, which stated that “*Understanding that the above recital is not intended to subordinate this Protocol to other international agreements*”, and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (1998). Such instruments stressed the principle of non-hierarchy in international agreements. The provision could also be interpreted in terms of mutual supportiveness. In focusing on their own tasks and competences, health regimes and other international regimes should be mutually supportive, with each regime remaining responsible for issues in its primary area of competence. Other international agreements might well contain rules which affected health and health regulations which had an impact on other agreements, but the fact that each regime should focus on the area of its primary competence did not preclude it from adopting measures affecting other regimes, provided the concerns and interests of those regimes were taken into account. In his view, the proposed Article 2, paragraph 3, expressed the very essence of mutual supportiveness but he realized that time would be needed for further discussion to clarify the scope and consequences of the provision.

With regard to Article 3, conventions normally stated their underlying purpose in the broadest terms and in the case at issue, emphasis had been laid on the health, social, environmental and

economic consequences of tobacco consumption as the basis for national, regional and global action on tobacco control.

Where Article 4 was concerned, the statement of guiding principles, as in other instruments of a similar type, such as the Framework Convention on Climate Change and the Convention on Biological Diversity, was intended to guide development and implementation. Paragraph 1 concerned the dissemination of information on the harmful effects of tobacco, the protection of non-smokers and the special needs of vulnerable groups. The guiding principles in paragraph 2, subparagraphs (a) to (e) sought to heighten the response of States to the consequences of tobacco consumption and exposure to tobacco smoke and to foster a strong political commitment to take action. The Article amounted to a list of goals to be achieved by measures that governments were urged to develop. The use of the term “legitimate expectation”, in all the subparagraphs was a deliberate attempt to show that those goals corresponded to the interests of the entire population and should therefore constitute a major policy objective of each Party.

Article 4, paragraph 3, emphasized the importance of international cooperation, especially the transfer of essential technical resources, in order to establish effective tobacco control programmes that took account of local cultural, political and social factors. The next paragraph recognized the need for coordinated cross-disciplinary action at the national and international levels to reduce tobacco consumption.

Paragraph 5 was very important in that it provided for a means of preventing conflicts between health and trade in cases where tobacco control measures might run counter to rules laid down in international trade agreements. The paragraph sought to prevent such conflicts by identifying three principles, namely mutual supportiveness, the transparency of tobacco control measures and the prohibition of arbitrary and unjustifiable discrimination in international trade. He stressed that the specific rules of any international regime, including health regulations and trade rules, should not be interpreted in isolation from other bodies of international law. When governments developed health provisions, it was important for them to take account of the relevant trade rules in order to ensure the mutual supportiveness of the two regimes. The future framework convention on tobacco control and various trade agreements had an equal status in international law and should recognize each other in order to achieve the common goal of sustainable development. A regime could adopt measures that affected other regimes, but in so doing it should take account of their concerns and interests and respect their areas of competence. Moreover, it was in no one’s interest for tobacco control measures to create unfair trade advantages. That was why the prohibition of arbitrary or unjustifiable discrimination in international trade lay at the centre of the interface between health and environmental protection and trade rules. That point had been emphasized in Principle 12 of the Rio Declaration on Environment and Development, which read: “Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade”. That important principle needed to be thoroughly understood as a means of ensuring that a Party was acting in good faith when restricting trade in its pursuit of health or environmental goals.

The text of paragraph 6 had been developed from proposals by States submitted in the course of negotiations and concerned the harm done by the tobacco industry and the need to maintain national sovereignty in determining that industry’s responsibility. Paragraph 7 recognized the impact that tobacco control measures might have on persons dependent on tobacco for their livelihood and the need to find appropriate methods of assistance. In conclusion, paragraph 8 recognized the critical role of civil society in tobacco control.

Mr CAUGHLEY (New Zealand) said that his country wanted an effective convention with a strong public health focus and would advocate explicit promotion of that position in the negotiations. It supported much of the text proposed for Articles 2 to 4, which lay at the heart of the convention. New Zealand strongly supported Article 2, paragraph 1, for the articles of the convention should be regarded as a minimum standard which countries should be encouraged to surpass whenever possible.

With regard to Article 2, paragraph 3, and Article 4, paragraph 5, New Zealand recognized that Article 20 of the General Agreement on Tariffs and Trade permitted measures to protect public health provided they did not constitute arbitrary or unjustifiable discrimination. The question was so important, however, that the framework convention should confirm and support each government's right to prioritize and protect public health in relation to tobacco control measures, on condition that unjustifiable or discriminatory measures were avoided. The language used in those articles should therefore acknowledge obligations under other international agreements while recognizing the right to protect and prioritize public health. As everyone had been reminded by the Director-General, the convention under discussion addressed a vital public health issue.

Mr OGANOV (Russian Federation) said that the Commonwealth of Independent States, meeting in Moscow, had reached agreement on the articles under discussion. The framework convention being of a general nature, they had supported without change the Chair's text for paragraphs 1 and 2 of Article 2, which encouraged the Parties to assume obligations beyond what was required and to conclude bilateral and multilateral agreements that focused on public health and the environment. The wording of Article 2, paragraph 3, was rather complicated and needed to be simplified, perhaps by changing the text to read "The provisions in this Convention and its related Protocols shall not affect the rights and obligations of the Parties under international agreements by which they are bound." In Article 4 on guiding principles, the primacy of public health over political, economic and other decisions needed to be more precisely established and in paragraph 1 of that Article, the translation into Russian of the word "addictive" needed to be changed since the Russian term used related to drug addiction and use. In paragraph 2, the words "the legitimate expectation" at the beginning of each subparagraph should be transferred to the opening paragraph.

Ms KERR (Australia) said that her delegation supported much of the text in Articles 2-4 and thanked the Chair for his excellent introduction to their complexities. It was important to confirm that Parties could take measures additional to those in the convention. Australia also supported the language used in Article 2, paragraph 3, which ensured that the Parties continued to comply with their existing international obligations, and in Article 4, paragraph 5, which recognized the importance for trade and health measures to operate in a mutually supportive manner. It stressed that legitimate health measures should take precedence over trade, that health objectives should not be compromised through protectionist actions and that the convention should not be used to protect domestic tobacco industries.

Australia had noted some overlap between Article 2, paragraph 3, and Article 4, paragraph 5, and the need to consolidate certain other areas of the text. More generally, in connection with Article 4, any agreed guiding principles should be reviewed later in the light of the entire finalized text. All substantive obligations should be set out in binding articles and the guiding principles should reflect those obligations but should not detract from them. The Chair himself had given examples of other instruments which adopted that approach.

Mr AISTON (Canada) said that his delegation supported much of the text of Articles 2-4 but considered that Article 4, paragraph 5, should be deleted since the framework convention was not a trade or agricultural agreement. Canada supported a strong public health focus; trade obligations were dealt with in other agreements and treaties, which was their proper place. Most of the countries participating in the negotiations were signatories of major international trade agreements and accepted their obligations, so that there was no need to reiterate them in the current text. While he did not fully endorse the Chair's view that agreements needed to be "mutually supportive" in all circumstances, he acknowledged the need for a reference to other international agreements at some point, although it would be impractical to refer to all such agreements, for example, those dealing with cultural, economic and human rights. Canada would work with the Chair and other delegations to ensure that the principle of mutual support was expressed at some point in the agreement.

Mr PADILLA (Philippines), speaking on behalf of nine of the 10 Member States of WHO's South-East Asia Region – Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, the Philippines, Thailand and Viet Nam – said that Article 2, paragraph 3, should be deleted and Article 4, paragraph 5, redrafted to emphasize the primacy of health over trade. Clearly, health should take precedence over a mere commodity, especially one such as tobacco which produced harmful effects. When the framework convention came into effect, its status would be equal to that of other treaties, including agreements developed by WTO. It was, in fact, superior to the latter, since it was more recent and dealt specifically with tobacco, while WTO texts covered all commodities. Indeed, public health had already been recognized as an exception in trade matters. The framework convention therefore should not include articles that would tempt WTO to reclaim its priority status.

Mrs GONZÁLEZ NAVARRO (Cuba), speaking on behalf of the Latin American and Caribbean countries, said that, without needing substantive changes, Articles 2 and 4 could be improved. There had been a consensus within her group to avoid using wording in Article 3 which qualified the terms already defined in Article 1, for example, the word “integrated” could be deleted before “tobacco control”. There had also been a consensus to delete the words “the effects of” before “exposure to tobacco smoke” in Article 4, paragraph 1. Article 4, paragraph 4, was ambiguously worded as the word “reduce” should be applied solely to the consumption of tobacco products, while marketing and trade of such products should be “regulated”.

Mrs TARY (Vanuatu), speaking on behalf of the Pacific island States, noted that the objective of the session was to produce a framework convention that could be submitted to the Health Assembly in 2003. She endorsed Articles 2, paragraphs 1 and 2, and Article 3, but proposed rewording Article 2, paragraph 3 to read: “In the event of a conflict between this convention or any of its protocols and international agreements, this convention and its protocols shall prevail.” On the grounds that public health should always take priority over trade, she proposed replacing Article 4, paragraph 5, by part of a proposal made by the delegate of Thailand at the fourth session, to read: “The Parties agree to take all necessary measures to ensure that no person acting on their behalf shall attempt to: (a) remove, weaken, undermine or otherwise interfere with tobacco control measures in force or under consideration in another State, or (b) promote tobacco exports or tobacco use in another State. In the event of a conflict between this convention or any of its protocols and an international agreement, this convention and its protocols shall prevail.”

Mr RAJALA (European Commission), speaking on behalf of the European Community, its Member States and Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia, and reserving the right to return to the subject following informal consultations to be held that evening, speaking on Article 2, paragraph 3 and Article 4, paragraph 5, supported the views expressed by other delegations that the text must recognize that public health should take priority when examining the convention for compatibility with other international agreements. While respecting the need for balance, he said that the text should refer to international law only in order to ensure that measures were not applied in a manner that might constitute arbitrary or unjustifiable discrimination or disguised restrictions on trade. Since there was some overlap between Article 2, paragraph 3, and Article 4, paragraph 5, it might be possible to modify the text of both in the course of further discussions. Article 4, paragraph 6, was linked to Article 19, and the European Commission would state its position when the latter article was discussed. The European Community and its Member States would submit further textual proposals regarding the group of articles under discussion at a later stage.

Mr NAIK (India), speaking on behalf of Member States of WHO's South-East Asia Region, proposed substituting the phrase “being in conflict with the” for “implying in any way a change in” in

Article 2, paragraph 3, in order to prevent the possibility of the provisions of the convention being nullified by existing international treaties. Similarly, he proposed redrafting Article 4, paragraph 5, to read: "Tobacco control measures taken to promote human health shall not be deemed as constituting a means of arbitrary or unjustified discrimination in international trade", so as to eliminate the possibility of trade treaties weakening tobacco control measures. Article 4, paragraph 7 was of particular importance as the need for a financial mechanism to support the transition from tobacco to alternative crops and industries, including people engaged in tobacco-related occupations should be made a priority. The United Nations Economic and Social Council Ad Hoc Inter-Agency Task Force on Tobacco Control Report of the Secretary-General issued in April 2002 had indicated that, especially in developing countries, the number of smokers would continue to grow until 2050, pointing to the need for programmes to reduce the amount of tobacco produced and marketed. He would submit textual proposals in writing.

Ms KAZHINGU (Zambia), speaking on behalf of the Member States of WHO's African Region, said that the provisions of Article 4, paragraph 1, should protect everyone from tobacco smoke, not just non-smokers. She agreed with the mention of strong political commitment in Article 4, paragraph 2, but proposed deleting subparagraphs (a) to (e) and amending paragraph 2 to read: "Strong political commitment is necessary to develop and support tobacco control measures", thus leaving States free to adopt and implement measures to protect their own populations. Further, tobacco-control measures under the convention should pay special attention to gender-specific risks and the needs of indigenous peoples. While recognizing that tobacco control and trade measures could be implemented in a mutually supportive manner, she said that Article 4, paragraph 5, should reflect that, in the event of a conflict between public health and trade, public health should prevail. She endorsed the comments of the delegate of India with regard to Article 4, paragraph 7, on aid for the economic transition of tobacco growers and workers; the convention should recognize the need for technical and financial assistance in such cases, including the creation of a global fund, otherwise, there would be little chance of reducing tobacco production in tobacco-dependent countries. Lastly, she proposed deleting the word "appropriate" in Article 4, paragraph 8.

Mr VIRASAKDI FUTRAKUL (Thailand) echoed the views expressed by previous speakers on behalf of WHO's South-East Asia Region, the ASEAN countries, the Pacific island States and other delegations, that a convention which embodied the fundamental human right to life must take precedence over other conventions. In that connection, he was concerned that the wording of Article 2, paragraph 3, could be interpreted as undermining the primacy of public health issues and he therefore proposed redrafting that article to read "Nothing in any international treaty, convention or agreement shall be interpreted in such a way that would derogate the rights and obligations of the Parties under this Convention and its Protocols."

Mr WATANABE (Japan) said that he had no major difficulties with Article 2, although he intended to put forward a number of minor proposals and would request clarification on some issues at a later stage; in particular, he welcomed paragraph 1, which encouraged countries to take active tobacco-control measures. He agreed, in broad terms, with most of Article 4. He was concerned that an appropriate formulation be found to express the objective of the convention as set forth in Article 3, and elsewhere in the text. As to the specific question of reducing tobacco use, there were arguments for setting fixed targets for reduction, just as there were arguments for encouraging people to take an informed decision to stop smoking, the latter approach having already proved successful in Japan. His delegation would listen carefully to other opinions before making a final decision.

He queried the feasibility, in legal terms, of introducing new arrangements for liability that targeted the tobacco industry alone and Article 4, paragraph 6, which appeared to go beyond established product liability law, should be discussed thoroughly in the informal groups, as should Article 19.

Mr JACOB (United States of America), speaking on Article 2, paragraph 2, could not accept the limitations placed on the ability of Parties to enter into future bilateral or multilateral agreements as that would be inconsistent with general treaty practice and the Vienna Convention on the Law of Treaties. However, he supported the balanced approach expressed in Article 2, paragraph 3, which provided that the framework convention should not be interpreted as implying the abrogation of pre-existing treaty obligations. Article 4 needed to be redrafted in several places, to make it clear that guiding principles did not constitute obligations independent of those included elsewhere in the convention. He proposed that Article 4, subparagraph 2(b) be deleted as it would create new and extensive rights, which his delegation could not recognize: adequate safeguards for the protection of individual health rights were given in subparagraph 2(a). In Article 4, paragraph 4, he proposed inserting the words “promotion of” in front of “trade”. Lastly, while agreeing that the tobacco industry should be held responsible for the harm caused by its wrongful conduct, he could not agree that it should be held liable for all harm caused by its products.

Mr TVEITAN (Norway) agreed in general with the text of Articles 2-4. He supported the views expressed by New Zealand and others that it was important to recognize the right of governments to protect public health, as provided for under international agreements. He proposed adding the words “with adverse health effects” after “tobacco use” in Article 3, in order to enhance its focus. The precautionary approach contained in Principle 15 of the Rio Declaration on Environment and Development (1992) and incorporated in the Cartagena Protocol on Biosafety could be included in the guiding principles under Article 4, paragraph 4.

Dr ASHAN (Bangladesh) applauded the inclusion of Article 4, subparagraph 2(e), which called for gender-specific risks to be addressed when developing tobacco control strategies. In many developing countries, women and children undertook tobacco-related tasks, including land preparation and the curing of tobacco, therefore broadening the movement to include major groups specifically at risk would be an essential contribution to the success of their negotiations.

Mr YI Xianliang (China) said that the issues of human health and the right to life were core obligations under the framework convention. He proposed, therefore, that the reference to the environment in Article 2, paragraph 1, be deleted as it could undermine the key objective of protecting human health. Reference to the environment should also be deleted in Article 3. Consideration of human health should prevail in the drafting of Article 4, paragraph 5. Since 1992 there had been many conferences and treaties concerning the relationship between the environment and trade, for example the Cartagena Protocol on Biosafety, the Doha Declaration and the Johannesburg Declaration: such conventions and declarations made a distinction between the environment and health, as should the framework convention. He therefore supported the position expressed by the delegates of Australia and India, in regard to paragraph 5 that measures to protect human health should not lead to arbitrary discrimination in trade. Moreover, the language used in the articles currently under discussion, and in other articles, was not that usually employed in conventions. For example, the term “every person” used in Article 4, paragraph 1, was too generalized, and the term “political commitment” used in Article 4, paragraph 2, was not a term found in treaties. It was rather the task of the convention to set forth binding undertakings.

Ms DE BELLIS (Uruguay) shared the views expressed on behalf of the Latin American and Caribbean countries. In principle, she favoured the deletion of Article 2, paragraph 3, Article 4, paragraph 5, and Article 15, paragraph 2, since the protection of public health should take precedence over other considerations, however, she agreed that the matter could be discussed in detail in the following days.

Mr BASSE (Senegal), speaking on behalf of Member States of WHO's African Region, said that defining the relationship between the convention and other international agreements would be a decisive factor in its effective implementation. Caution was called for since, for the first time, the relationship in international law between a public health convention and other international agreements was to be established. Although precedents existed for the counterpoise of such international negotiations, the specific nature of public health, the precondition governing all human activities, must be taken into consideration. He proposed therefore incorporating the concept of compatibility into Article 2, paragraph 3, by substituting the phrase "existing rights compatible with this convention" for "under any existing international treaty". Thus, instead of implying modification of existing international treaties, the convention would enhance and complement them. He would submit an amendment simplifying Article 4, paragraph 2. As regarded Article 4, paragraph 5, the Member States of the African Region were unequivocal in their view that, in the event of a conflict with trade agreements, the framework convention should take precedence. Such a position was justified by the moral supremacy of public health objectives over considerations of trade, for without health, there could be no trade. Although it was useful to stress the importance of economic transition in Article 4, paragraph 7, it was also important to establish appropriate modalities for aid, including the creation of a global fund. Lastly, he wished to add a further guiding principle recalling that tobacco killed and affirming that the lack of evidence of the effectiveness of certain measures should not be allowed to hinder the combat against it. That principle could be incorporated into Article 4 in an additional paragraph.

Mrs ALEXIS-THOMAS (Trinidad and Tobago) echoed the views of previous speakers in calling for the deletion or redrafting of Article 2, paragraph 3 and Article 4, paragraph 5, since the convention should make clear that health issues took precedence over trade.

Dr ARRIAGA (Mexico) endorsed Cuba's comment on Article 2, paragraph 3, Article 3 and Article 4, paragraph 5, noting that if Article 2, paragraph 3 were to be redrafted, any reference to the compatibility of tobacco control measures in relation to other international agreements must give precedence to measures to protect public health. He proposed substituting the term "everyone" for "every person" in the Spanish version of Article 4, paragraph 1, and also substituting the word "right" for "legitimate expectation" in subparagraphs (a), (b), (c) and (d) of Article 4, paragraph 2. A further subparagraph should mention the right of smokers to receive help to stop smoking. In Article 4, paragraph 3, the reference to international cooperation should include the training of human resources. Article 4, paragraph 5, could be improved, by recognizing health as a fundamental human right and, since tobacco led to disease and death, that measures that could promote the consumption of tobacco were wholly inappropriate. The role of women should be considered in formulating and applying tobacco control measures. It would also be necessary to state that tobacco created inequalities in health care and therefore all Parties should implement measures to protect all sectors of society, particularly those most affected by tobacco.

Mr KIVANC (Turkey), while agreeing with the spirit of the Chair's text, endorsed the view expressed on behalf of the European Community that Article 4, paragraph 6 and Article 19 were linked and should be considered jointly. He further asked whether it would be possible to distribute the text of the Chair's introductory statement, elaborating and clarifying the reasoning behind each group of articles, as an informal working paper to aid discussion.

Dr RAMOS BARRIENTOS (Peru), referring to the Spanish version of the text, and, in particular, to the use of the term "gender-specific" in Article 4, paragraph 2(a), preferred the more specific biological term "sex".

Mr VARELA (Argentina) endorsed the views expressed by Cuba on behalf of the Latin American and Caribbean countries. His delegation agreed broadly with the Chair's text, and, in particular with Article 2, for the reasons put forward by the Chair in his introduction. It could be said

that Article 2, paragraphs 2 and 3, were two sides of the same coin, the one referring to the compatibility of future agreements with the framework convention and the other to the compatibility of the framework convention with existing treaties. They enshrined the principle that States Parties to a convention should not undertake obligations which were in conflict with their obligations under previous treaties, otherwise they would be in breach of Article 60, paragraph 3, of the Vienna Convention on the Law of Treaties. Turning to Article 3, he queried the reference to the devastating environmental consequences of tobacco consumption: while the production and processing of tobacco could be said to have consequences for the environment, the environmental effects of tobacco use were not clear. Similarly, he expressed reservations regarding the reference to political commitment in Article 4, paragraph 2. Mention of that seemed redundant, since governments would already have shown commitment by adopting and ratifying the treaty. He further queried the use of the term “legitimate expectations” and, since its implications were unknown, he wished to see it discussed in the informal groups, and perhaps included in the list of definitions. His delegation’s views on Article 4, paragraph 4, had already been voiced by the delegate of Cuba, and he agreed with the Chair’s text of Article 4, paragraph 5. For his part, he saw no contradiction between the principle that public health should take precedence over trade and the principle that measures in the framework convention should be transparent and non-discriminatory. However, as other delegations had said, it was important to avoid measures taken under the framework convention being used as a commercial loophole or to allow protectionism.

Mr MOJTAMED SHABESTARI (Islamic Republic of Iran) said that the countries of WHO’s Eastern Mediterranean Region were proposing the deletion of Article 4, paragraph 5, since Article 2, paragraph 3, which was a standard provision, obviated the need for it. The Eastern Mediterranean countries supported the statements made on behalf of the Member States of WHO’s African Region and others regarding the supremacy of the framework convention over other instruments.

Mr LEE (Republic of Korea) said that, since Article 2, paragraph 3, simply set out the general principle of mutual support found in most international agreements, his delegation supported its retention. It also did not consider that Article 4, paragraph 5, deprived States Parties of the authority to restrict trade for public health reasons, but was prepared to discuss the issue further if it gave rise to interpretation problems. Article 4, paragraph 6, needed to be clarified: if it was designed to impose unconditional liability on the tobacco industry irrespective of relevant domestic laws, the Republic of Korea would have difficulty in accepting it.

Mr ASLAM KHAN (Pakistan) said that Article 4, paragraph 3, needed to be strengthened: in particular, a stronger word than “recognized” should be found. He agreed with the delegate of Turkey that it would be helpful to have the Chair’s introductory statements on the various clusters of articles.

Dr ROA (Panama) said that Article 2, paragraph 3, and Article 4, paragraph 5, should be either deleted or revised to give primacy to public health over any measures that might be decided. In subparagraph 2(a) of Article 4, the word “expectation” should be replaced by “right”, since the reference was truly to a right, and not just a wish, of the population: the right to protection of health should indeed be the focus of the convention.

Mrs HOMANOVSKA (Ukraine) said that Articles 2-5 were entirely acceptable to her delegation and agreed with the delegate of the Russian Federation on the need to clarify the reference to the addictive nature of tobacco consumption in the Russian text of Article 4. She endorsed the view that Article 4, paragraph 6, should be considered in conjunction with Article 19 and drew attention to the need to clarify the definition of the term “tobacco industry” in the Russian text. Lastly, she endorsed the Turkish proposal for dissemination of the Chair’s explanatory statement on the text.

Dr KIENENE (Kiribati), supplementing the statement made on behalf of the Pacific island States, said that his country placed public health squarely above other issues, especially those of trade. Accordingly, with respect to Article 2, paragraph 2, and Article 4, paragraph 5, if a conflict were to arise between the convention or any of its protocols and any other international obligation, the convention and its protocols would prevail. In negotiating for a strong instrument, many delegates had quite correctly stressed the need to take due account of other international treaties but he would urge them to pay equal attention to public health within the relevant articles of the framework convention.

Ms MAYSHAR (Israel) supported the views expressed by many delegations regarding the priority of public health. Israel was in favour of deleting Article 2, paragraph 3, and agreed with the proposal to amend Article 4, paragraph 5, to read: "Priority should be given to measures taken to protect health when tobacco control measures contained in this convention and its protocols are examined for compatibility with other international agreements".

Mrs LLORENTE DÍAZ (Cuba) said that her delegation supported the inclusion of Articles 2 to 4 as proposed by the Chair, since those texts facilitated the setting of priorities and the protection of health. Nevertheless, it considered that Article 4, paragraph 6, as now drafted, was unacceptable. A convention on tobacco control could not impute responsibility for the harm done to health to the tobacco industry alone and that industry could not be given the opportunity to participate in prevention efforts. Many players were involved in tobacco control, but it was the State that held the primary responsibility for promoting health by implementing all the provisions of the future convention. Each State Party must take responsibility for health promotion, supporting its citizens in the face of the harm done by smoking, and must determine, within its jurisdiction, the extent of the responsibility held by the various players.

Dr GAMARRA (Paraguay) agreed with what had been said about health and trade. The Chair was to be commended on the preamble, especially paragraphs 17 and 18, which provided a firm foundation for defence of the values proclaimed by the convention. The reference to the International Covenant on Economic, Social and Cultural Rights, which affirmed "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health", and the phrase from the WHO Constitution that "the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being", were extremely apposite. It was therefore indisputable that, in the event of a conflict, health must always supersede all other interests.

The CHAIR pointed out that the preamble had not yet been submitted for discussion: that would be done after a text on all substantive issues had been agreed upon.

Mr YONG CHANTHALANGSY (Lao People's Democratic Republic) endorsed the comments made by other delegations on the reference to strong political commitment in Article 4, paragraph 2, and proposed that the phrase be replaced by the words "strong funding commitment". His delegation agreed with others that in the context of Article 4, paragraph 5, public health should prevail over other issues. Lastly, he endorsed the proposal to include in Article 4, paragraph 7, a reference to the creation of an international fund to assist tobacco growers who needed to find alternative livelihoods.

Mr OLUWAFEMI (Infact), speaking at the invitation of the Chair and addressing Articles 20 and 22, said that the tobacco giants were pursuing their long-established practice of using underhanded means to meddle in public health. Their representatives had been covertly attending the negotiations. Moreover, internal corporate documents revealed that one tobacco company had hired a public relations firm to advise it on how to thwart the framework convention and had been trying to influence national and international policy through a food products subsidiary.

To protect public health policy from interference by the tobacco industry, Article 20 must require disclosure of the political activities and affiliations of the tobacco corporations, their

subsidiaries and agents; encourage and support efforts to identify and publicize the roles of fronts and surrogates; and provide for the exchange of information acquired through surveillance and litigation. Financial assistance should be provided to support such actions.

Article 22 should obligate parties to facilitate discovery in connection with legal proceedings in other countries. The sharing of information gathered through lawsuits – for example, in the United States of America – could help governments or individuals to recover damages. Transparency was necessary for the development of an effective framework convention, free from conflict of interests and consistent with resolution WHA54.18. Infact supported the texts proposed by certain countries on legal cooperation and exchange of information and would welcome an opportunity to provide additional proposals for consideration in the negotiations.

Article 19 – Liability and compensation; Article 27 – Settlement of disputes; Article 28 – Amendments to this convention; Article 29 – Adoption and amendment of annexes to this convention; Article 30 – Reservations; Article 31 – Withdrawal; Article 32 – Right to vote; Article 33 – Protocols; Article 34 – Signature; Article 35 – Ratification, acceptance, approval, formal confirmation or accession; Article 36 – Entry into force; Article 37 – Depositary; Article 38 – Authentic texts

The CHAIR, announcing that the meeting had completed its consideration of Articles 2-4, submitted for consideration the articles relating to organizational and institutional aspects: Articles 27-38. Article 19, on liability and compensation, had been included in that group because its consideration in conjunction with institutional aspects had seemed to be desirable.

The contents of Article 19 had given rise to much debate. The text was derived from several proposals submitted by Member States. The subject was handled in such a way as to give priority to the exchange of information and cooperation, rather than to lay down a detailed regime for liability, which in any case was under domestic jurisdiction. The issue was an extremely complex one: it had taken 10 years to negotiate a liability protocol to the Basel Convention. Although nothing of that kind should be attempted in the context of the framework convention on tobacco control, it was important to include some mention of the issue, because of its connection to tobacco control. Delegates could consider the possibility of dealing with liability and compensation later, in a separate protocol.

Article 27, on settlement of disputes, offered a variety of procedures, both diplomatic and judicial. As a first resort, diplomatic means such as negotiation, good offices and mediation would be employed, but if they did not succeed, States could resort to binding arbitration. Arbitration procedures would be elaborated and adopted by the Conference of the Parties. Paragraph 3 specified that States could resort to dispute settlement procedures provided for in other treaties in force between two or more of the Parties in relation to disputes covered by those provisions.

Article 28 dealt with amendments, a question that arose in many similar instruments. The proposed text had been based mainly on the United Nations Framework Convention on Climate Change. As the supreme organ for the implementation of the convention, the Conference of the Parties was to take such important decisions as on amendments to that instrument. Amendments would be decided upon by consensus or, failing that, by a two-thirds majority of the Parties.

Article 29, on annexes to the convention, had also been drawn largely from the Framework Convention on Climate Change and provided that annexes were to be adopted and amended by the same procedure as for the convention itself.

Article 30 dealt with the very important issue of reservations. The proposed text provided that no reservations could be made to the convention. That standard procedure in the global environmental conventions adopted over the past 20 years was especially justifiable in framework conventions, since they were general in scope and were designed to lay down basic elements that needed to be gradually strengthened over time, as international cooperation developed. The exclusion of reservations also protected the integrity and promoted the universality of the convention, because its provisions were meant to be applied to all the Parties.

Article 31, on withdrawal, was a standard provision in most multilateral agreements, and the language had again been drawn from the Convention on Climate Change. Article 32 on the right to vote set out standard procedure in international law but also took into account the special situation of regional economic integration organizations: for example, the European Community had jurisdiction in some matters related to tobacco control and in that context could be a party to international conventions, with the right to vote and with a number of votes equal to the number of its Member States that were Parties to the convention.

With regard to Article 33, on protocols, as a general rule only States Parties to a convention were invited to become Parties to its protocols. The procedure was particularly appropriate for framework conventions, as it provided the basis for the development of instruments with more specific content. An analogous provision was that States could not adhere to protocols if they were not party to a convention.

Article 34 dealt with signature, the first step to becoming a party to any convention, which signalled the intent of the State to become a party but did not immediately create an obligation. It was understood, however, that upon signature, the State would not take any action to frustrate the object and purpose of the treaty. That rule was derived from Article 18 of the Vienna Convention on the Law of Treaties.

Article 35 was concerned with ratification, acceptance, approval and accession, which were the ways by which a State expressed its consent to be bound by a convention that it had signed. The Article also provided for acts of formal confirmation by regional economic integration organizations to be bound by the convention. That rule was also stated in the Vienna Convention and had consistently been applied in international instruments.

Article 36 related to entry into force, an interesting topic on which there were differing views. A framework convention was designed to provide the foundation for a set of international regulations, not to be comprehensive or exhaustive: the regulations were to be further elaborated in protocols, amendments, guidelines and so forth. Such conventions accordingly never required an unduly large number of ratifications for their entry into force. A study of existing practice showed that the number of ratifications required for framework conventions was generally limited to 20 or 30. There was one major exception, the Convention on Climate Change, which had required 50 ratifications because of the specific political circumstances surrounding its negotiation. For the framework convention on tobacco control, it was suggested that 30 ratifications should be required, as that seemed to be a good average and one that would enable the machinery to be put in place relatively quickly.

Articles 37 and 38, on the depositary and authentic texts of the convention, were standard provisions.

In conclusion, he commended delegates on the good progress being made in the consideration of the text and said he looked forward to hearing their comments at the next meeting on the group of articles he had just introduced.

The meeting rose at 17:00.

FIFTH PLENARY MEETING

Thursday, 17 October 2002, at 9:45

Chair: Mr L.F. DE SEIXAS CORRÊA (Brazil)

later: Miss J. BENNETT (Australia)

DRAFTING AND NEGOTIATION OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL: Item 3 of the Agenda (Documents A/FCTC/INB5/2, A/FCTC/INB5/3, A/FCTC/INB5/5, A/FCTC/INB5/6, A/FCTC/INB5/INF.DOC./1 and A/FCTC/INB5/INF.DOC./2) (continued)

Article 19 – Liability and compensation; Article 27 – Settlement of disputes; Article 28 – Amendments to this Convention; Article 29 – Adoption and amendment of annexes to this Convention; Article 30 – Reservations; Article 31 – Withdrawal; Article 32 – Right to vote; Article 33 – Protocols; Article 34 – Signature; Article 35 – Ratification, acceptance, approval, formal confirmation or accession; Article 36 – Entry into force; Article 37 – Depository; Article 38 – Authentic text (continued)

The CHAIR invited the Negotiating Body to proceed with the discussion of Articles 19 and 27-38.

Mr FETISOV (Russian Federation), speaking on behalf of the Commonwealth of Independent States, recommended that Article 19, paragraph 3, be clarified and the existing discrepancies between the Russian, French and English versions of the text removed. The other articles of the group under consideration were acceptable to the countries concerned.

Mr JENSEN (Denmark), speaking on behalf of the European Community and its Member States as well as Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey, endorsed the Chair's view that the debate on Article 19 should concentrate on matters of information exchange and assistance in the legal field. Further to Article 4, paragraph 6, the European countries recognized that the tobacco industry should be held responsible for the harm caused by its products and attributable to its actions, but had serious doubts concerning the possibility of including the question of liability and compensation in the framework convention. In any event, the provision in question should allow for greater flexibility and should be clearer in its intended scope. In particular, it should be left to each Party to decide on the need for possible legislative action, which might be linked to existing laws.

With regard to Article 28, paragraph 3, the adoption of amendments should require a two-thirds majority of all the Parties to the convention, rather than "a two-thirds majority vote of the Parties present and voting at the session". Such a higher measure of agreement would serve to strengthen the convention.

The European Union wished to reserve its position on Article 29, paragraph 3, until a later stage when the possible content of annexes would have been made clear and further considered that there should be one common procedure for the adoption of amendments, annexes and amendments of annexes. The question whether a procedure for the adoption of protocols should be included in the convention was also raised.

Mr ACHADI (Indonesia), speaking on behalf of the Member States of ASEAN, said that, following ASEAN's meeting in Bangkok in 2002, he was able to express its full support for the articles under consideration, with two minor changes in Article 27, paragraph 1.

Dr CORNELIUS (Fiji), speaking on behalf of the Pacific island States, said that those countries could accept Article 19 in principle and considered that a protocol should be developed as soon as possible to set out appropriate rules and procedures in the field of liability and compensation for permanent damage to human health and economic losses due to illicit tobacco trade. Such a protocol might replace Article 19, paragraph 1. With regard to the need to be informed of the activities of the tobacco industry in accordance with Health Assembly resolution WHA54.18, the Pacific island States suggested that a subparagraph (c) on the acquisition of information on the structure and activities of the tobacco industry be added to Article 19, paragraph 1, and endorsed the remainder of Article 19 and the Chair's text for Articles 27-38.

Mr AISTON (Canada) said that his country supported the general principle set out in Article 4, paragraph 6. Tobacco manufacturers were responsible for the harm their products caused to public health and the environment and each Party should determine the scope of such responsibility within its jurisdiction. With regard to legislative action required in Article 19, paragraph 1, Canada was already amending its existing laws to address the issue of liability and compensation in order to promote tobacco control and was providing assistance to other levels of its Government in that field. Article 19, paragraph 3, should take account of current bilateral legal assistance treaties and domestic law on the protection of confidential or privileged information. Language or principles might be borrowed from other treaties, such as the International Convention for the Suppression of the Financing of Terrorism. Article 19, paragraph 4, raised a number of questions which needed further consideration, such as the identity of international and regional intergovernmental organizations to be consulted by the Conference of the Parties and the modalities of such consultation.

Part X, on the development of the convention, needed some clarification and revision. In particular, Article 28 should be revised to present the process of amendment in chronological order and to clarify the procedures whereby proposals would be circulated and considered by the Conference of the Parties; it might be desirable to impose the requirement of a certain minimum support for proposals to be considered by the Conference of the Parties, in order to eliminate unconvincing proposals. The three-quarters majority required by the United Nations Framework Convention on Climate Change seemed to be more appropriate than the two-thirds majority referred to in Article 28, paragraph 3.

Canada supported the views on annexes expressed on behalf of the European Community and considered that more attention should be paid to the question of protocols. There might be significant advantages for Parties to the convention to allow non-Parties to become Parties to a protocol in certain cases. Canada supported the inclusion of a no-reservations clause, agreement on which must await decisions on the obligations assumed under the convention. With regard to entry into force, his delegation believed that while 50 ratifications might be too high, 30 might be too low.

Mr MOJTAHED SHABESTARI (Islamic Republic of Iran), speaking on behalf of the Member States of the Eastern Mediterranean Region, said that they had proposed a text on liability and compensation to the third session of the Negotiating Body and now recommended that a protocol on that issue should be negotiated. His delegation also considered that Articles 28 and 29 should be supplemented by a paragraph 6, reading "The provisions of this Article shall be applicable with respect to any protocol unless otherwise provided therein".

With regard to Article 19 on liability and compensation, points to be taken into consideration included the capacities of developing countries, and the importance of envisaging capacity-building and cooperation measures in the convention to assist in identifying situations related both to supply and demand in view of the vast range of possible activities and protagonists that could harm public health. Also, in view of the essential deterrent effect of the proposed article, its consideration and negotiation should not be delayed and because of the complexity of the issue, it would be useful to look at other liability regimes such as the protocol on liability and redress of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal. With regard to the consideration of a protocol after the adoption of the convention, an enabling paragraph, based on

Article 12 of the Basel Convention might be envisaged, to provide a time-frame for the commencement of the negotiations of the protocol.

Mr IGAWA (Japan) requested a clarification of the meaning of Article 19, paragraph 1. He said that, if that Article related to compensation for damages caused by a design defect or fault arising out of the manufacturing process, those damages should be covered by existing national liability law. However, if it related to special liability and compensation for the consequences of tobacco use, there should be a careful examination of its necessity and rationale as well as its congruity with existing law. He said it was crucial to advance negotiations in order to produce a convention which as many countries as possible could accept without reservation. He therefore recommended that the provision regarding reservations in Article 30 be discussed at the final stage.

Ms MAYSHAR (Israel) said that Article 19 might prove to be a useful part of the convention, although the issue of compensation and liability was relatively new in the field of tobacco control. In paragraph 1, the word “shall” should be replaced by “should”, since the best practice in the matter was not yet clear. She suggested that paragraph 3 be deleted and dealt with under other conventions or expanded, as proposed by the delegate of Canada.

Mr NAIK (India), speaking on behalf of the Member States of WHO’s South-East Asia Region, observed that Article 27 contained no reference to judicial settlement and therefore suggested that the Article be amended to provide for the submission of a dispute to the International Court of Justice if the parties to the dispute so agreed. That might be applicable where there was a difference of opinion concerning an overlap with rights and obligations under other treaties. With regard to Article 28, the procedure for amending the framework convention should have a broader base and proposed amendments to the convention should therefore be required to have the support of one-quarter of the Parties before they were presented to all Parties for consideration. The Member States of the South-East Asia Region supported the proposal that the required majority for the adoption of an amendment should be three-quarters of the Parties present and voting.

Ms LLORENTE DÍAZ (Cuba), speaking on behalf of the Latin American and Caribbean countries, said that Articles 28, 31-35, 37 and 38 were acceptable and recommended that Article 29 be modified to include a clear definition of the nature of the annexes. Her delegation suggested that Article 26, paragraph 3, be strengthened by the requirement of a multilateral global fund and requested a clarification of the meaning of the last sentence of that paragraph and of Article 32, paragraph 2.

Article 23 – Conference of the Parties; Article 24 – Secretariat; Article 25 – Relations between the Conference of the Parties and competent international and regional intergovernmental organizations; Article 26 – Financial resources

The CHAIR introduced the group of Articles 23-26. Referring to Article 23, he said that the establishment of a Conference of the Parties was a standard provision in conventions, such as the Convention on Biological Diversity and the Framework Convention on Climate Change. It was the central institution created by a framework convention, facilitating implementation of its provisions. In regard to paragraph 1, he proposed that the conference of the Parties should meet no later than one year after entry into force of the convention. Thereafter, it would establish its own calendar. Paragraph 2 represented a standard provision in comparable conventions, enabling the parties to act in exceptional circumstances. Paragraph 3 had been drafted on the basis of discussions held at the fourth session, proposing that the Rules of Procedure of the World Health Assembly should be used on an interim basis until the Conference of the Parties adopted its own Rules. Paragraph 4 dealt with the specific functions to be assigned to the Conference of the Parties.

With regard to Article 24, it was standard procedure in international conventions to provide for the establishment of a permanent secretariat. It was also customary to include provisions for an interim secretariat and for the international organization under whose auspices the negotiations took place to be named as the interim secretariat. There were also precedents where the Conference of the Parties was endowed with authority to select the permanent secretariat.

Article 25 dealt with the competence of the Conference of the Parties to mobilize technical and financial means for the implementation of the convention. Under Article 26, paragraph 1, the Parties were to provide their own resources for national activities, which was seen as a way of encouraging them to demonstrate their willingness to implement the framework convention. The fulfilment of the obligation had to be assessed in the light of the capacities of the States Parties. Other treaties, such as some conventions adopted by IAEA, contained similar provisions. Funding on a bilateral, regional and multilateral, as well as on a national basis, would also be encouraged. In the context of paragraph 2, it was understood that international organizations could not be compelled to provide technical and financial assistance, although they could be encouraged to do so. The paragraph was targeted at organizations with an interest in the tobacco area. Finally, under paragraph 3, provision was made for the establishment of a global fund, to be modelled on those set up under other conventions such as the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. The kinds of financial mechanisms envisaged could be discussed in informal meetings. The new Chair's text stipulated that those States that were Parties to the convention would be involved in decisions concerning the establishment of an appropriate financial mechanism.

Mr NAIK (India), speaking on behalf of the Member States of WHO's South-East Asia Region, stressed that Article 26 was a key component of the framework convention, because it aimed to ensure that developing countries obtained the resources required for effective implementation of the convention. The current text did not provide any time-frame or mechanisms for identifying and providing such resources, but left it to the Conference of the Parties to "consider" the matter "in due course". Accordingly, the group that he represented reiterated its proposal to create a multilateral global fund, financed *inter alia* by special levies on exported tobacco products, as well as by voluntary contributions from the Parties. The fund would be utilized to support technology transfers for tobacco cessation programmes, creation of testing facilities, redeployment of tobacco growers in alternative occupations, as well as other activities enabling countries to meet the objectives of the convention.

He was aware that the proposal to assist the movement of tobacco growers and workers to alternative occupations had been criticized on the grounds that a World Bank study had suggested that global demand for tobacco would decline very slowly, if at all, over the next 50 years and that fears of net job losses were unfounded. However, a report of the United Nations Economic and Social Council Ad Hoc Inter-Agency Task Force on Tobacco Control issued in July 2002 had indicated that the best-case scenario for tobacco was a 1% annual decline in global prevalence. Even then, the absolute number of smokers in developing countries would continue to rise by over 10% by the year 2050. Furthermore the report forecast that growing global income, expanding global population and trade liberalization would lead to increased tobacco consumption, especially in the developing countries. It also maintained that tobacco production would progressively shift to those countries. In view of such alarming projections, the Negotiating Body should actively consider ways of reducing tobacco production and severely restricting its trade, recognizing that strong supply-side action was needed to complement strong demand-side action. In order to achieve the objectives of the convention, financial resources were urgently needed, on a par with the Global Fund to Fight AIDS, Tuberculosis and Malaria. He pointed out that tobacco-growing developing countries had inherited tobacco cultivation as a colonial legacy imposed upon them to benefit foreign economies, and there should be an international commitment to redeem them from that burden. He would submit his detailed textual proposals in writing.

Mr MOJTAMED SHABESTARI (Islamic Republic of Iran), speaking on behalf of WHO's Eastern Mediterranean Region, emphasizing the need to establish a financial mechanism, proposed

that the first phrase of Article 26, paragraph 3, be reworded to read: “The Conference of the Parties shall establish an appropriate funding mechanism ...”. From the point of view of the developing countries, Article 26 ought to reflect the crucial role played by financial resources in effective implementation of the framework convention. Such resources, provided through bilateral and multilateral channels, ought also to include new and additional financing dispensed by a multilateral global fund; with the sources to finance the fund to be identified upon entry into force of the convention. The channelling of the financial contributions would have to take into account the need for predictability, adequacy and timely flow of funds, so as to guarantee the sustained implementation of the convention by all Parties. At its first meeting, the Conference of the Parties should determine the policy, strategy and programme priorities, together with criteria and guidelines for eligibility in regard to accessing and utilizing such resources.

Dr SALAMA (Egypt), speaking on behalf of the Member States of WHO’s Eastern Mediterranean Region, voiced the need for the Negotiating Body to clarify its objectives. In regard to Article 26, developing countries did not need assistance in monitoring implementation and control, as adequate national plans already existed. Rather, the international community should heed the call for collective action, financial support and exchange of best practices to reinforce national efforts. The multilateral fund should be established with the entry into force of the convention, so that it was essential to define the potential sources of its financing. Revenue might be generated by taxation of tobacco advertisements and promotion, thereby establishing the liability of tobacco companies in practice for the damage they caused. A second source might be from a percentage of the assets confiscated from illicit trafficking operations. Moreover, developing countries were willing to participate and to commit their own funds, but they also considered that there should be voluntary contributions from private sources. Hence, there were a number of sources from which funding could be derived and an open-minded discussion should now take place to establish clear principles on which shared responsibilities would be based.

Mr JENSEN (Denmark), speaking on behalf of Member States of the European Community and Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey, preferred that, in regard to Article 23, paragraph 3, a consensus of the Conference of the Parties be required for the adoption of rules of procedure and financial rules, in order to obtain a firm anchoring of those two important sets of rules in the framework convention, thereby providing a strong basis for future work.

He considered that Article 23, paragraph 4, should contain a reference to a periodic examination by the Conference of the Parties of the obligations in relation to implementation of the convention. Furthermore, the Parties should not be prevented from going further in the area of tobacco control than was required by the terms of the convention. Hence he proposed the deletion of the word “harmonization” in Article 23, subparagraph 4(c). Moreover he urged that the areas in which the Conference of the Parties was entitled to make recommendations should be clearly circumscribed. The only other mention of recommendations in the convention was in Article 6, in connection with taxation, which was not an area in which it was appropriate for the Conference of the Parties to submit recommendations, as it was a complex area with wide differences between the national systems applied by Parties.

With regard to Article 24, European Union Member States would prefer a statement to the effect that the secretariat functions would be provided by WHO on a permanent basis, and not merely as an interim measure. Such a decision would provide stability and constitute a cost-effective solution.

In connection with Article 26, he said that the European Union was the largest donor of development aid in the world and the issue of health and tobacco was an important element in its overall strategy. His group of countries had recognized the developmental aspects associated with promoting effective tobacco control and as a concrete example of its policy, would be hosting a high-level round table on tobacco and development before the next session of the Negotiating Body. He

stressed, however, that development had to be sustainable and, therefore it was necessary to pursue the most cost-effective approach in promoting tobacco control, making full use of existing funding mechanisms. As adequate mechanisms were already in place, there was no need for a new fund which would entail additional administrative costs. He proposed therefore the deletion of Article 26, paragraph 3. The text of Article 26 should also make it clear that the European Community, as an independent Party to the convention and an organization for regional economic integration, was covered by Article 26, paragraph 1 and not by Article 26, paragraph 2.

Dr SHTEINKE (Kyrgyzstan), referring to Article 26, said that developing countries needed financial and technical assistance in order to find economically viable alternative employment for tobacco growers and vendors. His country had frequently raised that issue as a point of principle. As he did not want it to impede Kyrgyzstan's ratification of the convention, he wanted a clear idea of the alternatives that would be made available. He proposed that Article 26, paragraph 2, should include a reference to Article 17, as well as to Articles 20 and 22.

Mr ADZMY (Malaysia), speaking on behalf of the Member States of ASEAN, said that the Association supported the text of Articles 23, 24 and 25. With regard to Article 26, all the Member States of ASEAN agreed on the necessity of establishing a mechanism to be funded by developed countries with the exception of Singapore, producing or exporting tobacco and tobacco products. That multilateral global fund, guided by the Conference of the Parties, would provide unconditional financial assistance, as well as the transfer and development of sustainable technologies, to developing countries, especially the least-developed ones. It was fair that those who prospered from the tobacco trade should share the burden of poorer countries.

Mr AISTON (Canada), referring to Article 23, paragraph 3, considered that the adoption of rules of procedure and financial rules should be by consensus, reflecting the procedure laid down in a number of other conventions. With regard to the financing of the operations of the Conference of the Parties, in particular the running costs of a secretariat, which he did not anticipate would be heavy, it would be appropriate for the funding to be shared by the States Parties. Canada had already submitted a draft, providing for a budget and scale of assessment based on the United Nations scale.

With regard to Article 26, he supported the concept of linking rights with obligations in the provision of financial resources. Although Canada recognized that some States Parties would need assistance in capacity-building and in meeting the obligations set out in the convention, he continued to be sceptical about the need for a new financial mechanism. He had asked the secretariat for information on existing mechanisms in WHO and elsewhere, to which donors might contribute, so as to make use of currently available channels.

His country was opposed to structural support for diversification of tobacco-dependent economies on practical grounds. As the delegate of India had said, since, regrettably, there was no transition nor any prospect of one, there was no point in funding something that did not exist.

Mr CHANTHALANGSY (Lao People's Democratic Republic) supported the views expressed by the delegate of India on the crucial importance of Article 26, dealing with financial resources. His country wished to see a stronger commitment to providing financial support and incentives to developing countries, so as to assist them in achieving the objectives of the convention. He joined previous speakers, including the delegates of Cuba and Egypt, in stressing the need to create a global fund for that purpose, which he proposed should be explicitly mentioned in Article 26, paragraph 2. It should be financed by an export tax on manufactured tobacco products and used to help tobacco growers find alternative employment and substitute crops. He was also in favour of a provision mentioning technical assistance and support to be provided by developed tobacco-exporting countries to developing countries through bilateral, regional and multilateral channels.

Ms KAZHINGU (Zambia), speaking on behalf of the Member States of WHO's African Region, proposed that in Article 23, subparagraph 4(f), the word "mobilize" should be substituted for "seek to mobilize".

She stressed the importance of financial resources for developing countries as outlined in Article 26 as it would enable them to comply with their obligations under the framework convention and help them to diversify into other economically viable options. She supported the views expressed by the delegate of India, *inter alia*, in regard to the establishment of a global fund. In her view, the text was unclear and non-committal. Hence, she proposed the deletion of the words "shall consider" in paragraph 1 and "in due course" in paragraph 3. She intended to submit drafting proposals to strengthen the language of that Article.

Ms GONZÁLEZ NAVARRO (Cuba), speaking on behalf of the Latin American and Caribbean countries, said that her group accepted the text of Articles 24 and 25 as they stood. In her view, greater importance should be attributed to the establishment of subsidiary bodies under Article 23, subparagraph 4(g), which should include a technical committee responsible for examining information or evaluating the extent to which obligations had been fulfilled by the parties. Furthermore, she proposed that the text of Article 26, paragraph 3, should be made more specific by stipulating that the Conference of the Parties should set up a multilateral fund.

Dr TADEVOSYAN (Armenia) recalled that, at a regional meeting in Moscow, he had expressed support for the Chair's new text of Articles 23 and 24. However, he suggested that Article 23, subparagraph 4(h) should be deleted and that the point it raised should be included under Article 25, which made specific reference to international organizations.

In connection with Article 26, he agreed with the delegate of Kyrgyzstan that the loss of jobs in the tobacco sector was a constant problem for countries with transitional economies. He proposed that Article 26, paragraph 2, should refer to specific alternative forms of employment, as well as to the voluntary nature of contributions to funding. With regard to the multilateral global fund proposed under Article 26, paragraph 3, he urged that the transfer of financial resources or technology should be free of charge, or at a discounted rate where appropriate.

Ms KAZHINGU (Zambia), speaking on behalf of the Member States of WHO's African Region, stressed the importance in Article 19, paragraph 1, of holding tobacco corporations accountable for the harm to individuals caused by their products and reaffirming their responsibilities, which covered health, the environment and economic losses as a result of illicit tobacco trade. In relation to paragraph 3 of that Article, she emphasized the need for special assistance in legal proceedings, especially in connection with work on compensation for the victims of the use of tobacco products. She endorsed Articles 30 and 36, and reiterated the view that, in order to achieve a strong convention, the group she represented favoured a requirement of 30 instruments for ratification.

Mr HONG Yong (Democratic People's Republic of Korea) aligned himself with the views previously expressed by the Member States of WHO's South-East Asia Region. He endorsed the suggestion made by the delegate of India, concerning amendment to Article 27.

Mr MOON (Republic of Korea), said that the meaning of Article 19, subparagraph 1(c) was unclear. He proposed submitting detailed comments to the relevant informal meeting. Referring to Article 23, in view of the importance of the rules of procedure and financial rules for the operation of the Conference of the Parties, he proposed that they be decided, either by consensus, or by a two-thirds majority vote rather than by a simple majority.

Dr AMATYA (Nepal) expressed her appreciation of the very efficient way in which the session had been organized. As one of the signatories of the Yangon Declaration on drug control, May 2001, Nepal endorsed the Declaration's statements, in particular in relation to the request for the

international community to provide support. She expressed the hope that the Negotiating Body would agree to the setting up of a global fund which would be particularly important for resource-poor countries such as her own.

Dr SALAMA (Egypt), referring to Article 19, said it was important to cross-reference the text with Article 4, paragraph 6, which dealt with the same subject matter. In paragraph 1 he favoured changing the word “promote” to “enhance”, to take account of the fact that national legislation might need to be extended. In relation to paragraph 2, he preferred to change the wording “approaches to liability ...” to “cooperation in the field of liability ...”. He proposed deleting Article 30. The Vienna Convention on the Law of Treaties guaranteed that no reservation incompatible with the object and purpose of the convention to which it related was admissible. Being a framework agreement rather than a procedural device, reservations would not impede its functioning. Lastly, from a practical perspective, some strong positions had been taken; to accommodate those, reservations had to be allowed. It was preferable in that way to combine a general wish to raise the standard of protection with the need for universality.

Mr ASLAM KHAN (Pakistan), while being in general agreement with Articles 27 to 38, considered that Article 27, paragraph 3, should be deleted since it would lead to duplication of dispute settlement mechanisms. He proposed that, in line with the commonly-used language in multilateral framework treaties, the provisions of Article 28 on amendments should also apply to protocols, unless otherwise stated. In relation to Article 30, the Vienna Convention of the Law of Treaties provided for States to enter reservations upon accession or ratification of the agreement, a right which needed to be given careful consideration. The text of the draft convention had developed from a framework convention to a more comprehensive convention and Article 30 needed to be examined in the light of that development. With regard to Article 36, he proposed that the minimum number of ratifications for the entry into force of the convention be increased to 50.

Dr KAHANDALIYANAGE (Sri Lanka) endorsed the position expressed by the delegate of India on behalf of WHO’s South-East Asia Region. Tobacco use in developing countries would increase considerably in the future unless urgent steps were taken to implement the convention effectively and rapidly. That would require considerable financial resources especially in view of activities such as crop diversification, and consequently the Negotiating Body needed to make a firm commitment to the establishment of a global fund. Article 26 therefore needed to be strengthened and WHO’s South-East Asia Region would submit suitable textual proposals in due course. Turning to Article 28, it was imperative that stringent conditions be imposed on any future changes to the convention, so as not to jeopardize its objective. He proposed that the support of one-quarter of the parties be required for any change to be considered by the Conference of Parties, and that a three-quarters majority vote be considered for adoption if no consensus could be reached. He would submit proposals to that end.

Dr HAMAD (Sudan) supported the amendments proposed on behalf of WHO’s Eastern Mediterranean Region. He also fully supported the statement, made on behalf of WHO’s African Region, that the tobacco industry should be held accountable for the damage caused by their toxic products. With regard to Article 28, he enquired whether amendments to the framework convention could include the protocols and, if that were the case, he proposed changing the heading to read “Amendments to this convention and its protocols”.

Dr ARRIAGA (Mexico) had some comments to add to those already made by the delegate of Cuba on behalf of the Latin American and Caribbean countries. Article 19, paragraph 1, could give the impression that legislative measures relating to state liability were being proposed, whereas in fact it was important to establish the liability of the tobacco industry within the context of each state’s legal and constitutional framework. In Article 19, subparagraph 2(a), a reference to exposure to tobacco

smoke should be added, and he agreed with previous speakers that it would be worth clarifying the scope of liability for compensation in that article. He proposed amending Article 27, paragraph 2, to provide for compulsory arbitration. Turning to Article 29, paragraph 2, he said that the process of amendment ought to involve the participation of a group of experts set up by the Conference of the Parties in conformity with the provisions of Article 23, subparagraph 4(g). Finally, he considered that the annexes should contain only scientific, technical or procedural information.

Mr YI Xianliang (China), referring to Article 19, said that the issue required very serious consideration since it involved a very complicated law of civil liability. The framework convention, on the other hand, was a convention of public law. Feasibility and uniformity had to be taken into account. In terms of current international law practices, an oil pollution civil liability convention adopted in 1969 had solved the problem of liability and compensation through the International Oil Pollution Compensation Funds. The Basel Convention had adopted a type of protocol, but that protocol had been under negotiation for more than 10 years and had still not yet entered into force. However, that protocol had considerably obstructed the normal operation of the Basel Convention. So far, no such laws existed in the civil codes of any country in the world and the convention would need the support of domestic law for its implementation. In China, it was not possible to establish a special court for tobacco products or a special law on tobacco. Such litigation would impose a heavy burden on the courts in all Member States. Tobacco-product manufacture was still a legitimate activity; smoking was a voluntary and lawful activity. Establishing a concept of liability would pose a serious challenge to civil law and the litigation system and also to international and national legislation. He was not opposed to a discussion of that important topic, but it had to be taken very seriously.

Regarding Article 28, paragraph 3, he could support the proposal that any amendments should be adopted by three-quarters of the Parties.

Turning to Article 29, he said that, as annexes were an integral part of the framework convention, the procedure for their amendment should be the same. He supported the comments made by the delegate of Denmark on behalf of the European Community and its Member States in that connection.

With regard to Article 33, paragraph 1, he foresaw a possible problem. Since the convention and the protocol were independent of each other, there was no reason to restrict the right of any party to select which element they would accept. Being a party to the convention should not be a prerequisite for being a party to a protocol. Therefore he suggested deleting paragraph 1 from Article 33 to facilitate the participation of more countries in activities to control the use of tobacco. Referring to Article 36, while he fully agreed that every effort should be made to ensure that the convention entered into force as soon as possible, it should be adopted by as many parties as possible. To that end there could be two prerequisites: the content of the convention should be reasonable; and its entry into force should be conditional upon its acceptance by an adequate number of Member States. Thirty Member States would constitute only one-sixth of those negotiating the convention and that could be problematic. He suggested making involvement in the production and consumption of tobacco an important qualification for the entry into force and implementation of the convention and suggested the support of 60 countries which had had a total global tobacco consumption of not less than 55% in the year 2000. He did not wish to delay the entry into force of the convention, rather he wished to exhort those major tobacco-producing countries, including his own, to accept and join the convention.

Mrs HOMANOVSKA (Ukraine) said that, in common with some other speakers, she was concerned about differences between the various language versions of the text, and in particular Article 19, paragraph 3, which she felt needed further analysis and legal expertise. Other specific comments would be made during the detailed consideration of the text.

The CHAIR assured the delegate of Ukraine that any linguistic issues would be taken into account.

Mr SULLIVAN (United States of America) shared the concerns expressed by the delegate of Pakistan in connection with Article 27, paragraph 3. Referring to the arbitration procedures that the Conference of the Parties was required to set up under Article 27, he understood that there was no intention of creating an arbitral body within the Conference of the Parties and that the adoption of any procedures should be by consensus.

He was concerned that Articles 28 and 29 imposed different standards for the adoption of amendments and annexes and proposed that Article 29 conform to the procedures outlined in Article 28, since both created binding obligations.

He shared the concerns expressed by the delegates of Egypt and Pakistan on the subject of reservations and suggested that the framework convention preserve the right of parties to make reservations which had, in any event, to be consistent with the object and purpose of the convention. He also proposed reducing the four-year waiting period for withdrawal provided for in Article 31, paragraphs 1 and 2, which he felt was unusually long.

He agreed with the points raised by the delegates of Canada and China concerning the linkages in Articles 31 and 33, the likely effect of which would be to reduce, rather than increase, participation in control measures. Accession to a protocol should not be conditional upon ratification of the convention, any more than withdrawal from the convention should mean withdrawal from a protocol.

Mr BEN SALEM (Tunisia) agreed with the views expressed on behalf of the Member States of WHO's Eastern Mediterranean Region. However, in relation to Article 30, reservations ought to be permitted, since that would encourage accession to the convention by a greater number of states and since the Vienna Convention on the Law of Treaties itself permitted reservations.

Mr TOURON UNDA (Venezuela) had two proposals to make for amendments to Article 27. The first concerned the ad hoc arbitration procedures referred to in paragraph 2, which could be established at its first meeting, and he suggested wording to that effect. He further suggested using the 1992 Convention on Biological Diversity as a basis for the text. His second proposal was the inclusion in Article 27 of a paragraph to allow for conciliation, to the effect that, if arbitration was not accepted as compulsory by all of the parties to a dispute in accordance with paragraph 2, the dispute should, unless the parties agreed otherwise, be submitted to conciliation.

Ms GONZÁLEZ NAVARRO (Cuba) reiterated her view that Article 19 had no place in the convention, because of its links with Article 4, paragraph 6. Referring to Article 30, she favoured modifying it to permit reservations, especially while other issues such as those in Article 19, remained undefined.

The CHAIR invited the Secretariat to respond to some of the specific questions that had been raised.

Dr ADEDE (Legal Consultant, Tobacco Free Initiative) referred to the question raised by the delegate of Cuba concerning the relevance of Article 32, paragraph 2. The text in question had become a standard text in treaties that envisaged giving regional economic integration organizations the right to become Parties. Such organizations could not exercise more votes than were required. The formula meant exactly what it said, namely that, if members of such an organization that were Parties to the Treaty were exercising their right to vote, the organization itself could not exercise its right to vote. That clarification was always required where such organizations were expected to be parties to a convention.

Most of the other points raised could be dealt with in the informal groups. A suggestion had been made to increase the numbers required for ratification and reference had been made to the 1982 United Nations Convention on the Law of the Sea. However, that had been a specific attempt to address a particular question. Each convention had to rely on its own text and agree on the numbers

required so reliance on such examples which had a specific rationale needed to be examined in the light of the facts associated with them.

The CHAIR read out, for the benefit of delegations, a provisional list of the groups of articles arranged according to each of the five areas for discussion in the informal meetings: Article 11, packaging and labelling of tobacco products; Article 13, advertising, promotion and sponsorship of tobacco products and the linked Article 1, paragraphs (e), (i) and (j) on the use of terms; Article 4, paragraphs 6, 19 and 1(g) for liability and compensation; Article 4, paragraph 7, Article 20, paragraph 4, and Article 26, on financial resources; and the linked Article 4, paragraph 3, Article 20, paragraph 2, Article 21, paragraph 3, Article 22, paragraph 2, and Article 25; Article 2, paragraph 3, Article 4, paragraph 5, Article 6, subparagraph 2(c) and Article 17, tobacco and trade, including subsidies; and Articles 15 and 1, paragraph (a) on illicit trade in tobacco products.

Miss Bennett took the Chair.

Mr ATWOOD (Australia), referring to Article 23, paragraph 3, said that, since the Conference of the Parties would be entrusted with the important function of monitoring the convention's implementation, every State Party to it should have an equal stake in the outcomes of its decision-making processes. It was therefore essential that decisions be adopted by consensus. He noted that consensus was prescribed in the equivalent provisions of the United Nations Framework Convention on Climate Change and the Convention on Biological Diversity, on which the Chair had indicated that he had modelled the text.

Dr THINELY (Bhutan) said that the availability of financial resources, particularly for developing and least developed countries, was a prerequisite for successful tobacco control, and many countries, especially those of WHO's South-East Asia and Eastern Mediterranean Regions, had emphasized the need for a global fund. Article 26 should therefore explicitly provide for the establishment of a multilateral global fund for the provision of financial resources and the transfer and development of sustainable technology on a grant or concessional basis, without any conditions attached in regard to the developing and the least developed countries.

Mr SULLIVAN (United States of America), referring to Article 23, said that, while it was important to ensure that the Conference of the Parties had the authority necessary to implement the convention effectively, that authority should not be unlimited. The Conference of the Parties should not be authorized to resolve technical issues or be empowered to alter the outcome of the current negotiations. He therefore proposed that subparagraph 4(i), which would give the Conference unlimited discretion, should be deleted. He also objected to the notion implied by subparagraph 4(e) that the Conference of the Parties should act as a policing mechanism to ensure implementation of the convention since standard mechanisms to address such issues already existed. Subparagraph 4(g) should specify that the authority of the Conference of the Parties to establish subsidiary bodies must be restricted to bodies necessary to support the objectives of the convention. In regard to Article 24, various options could be pursued in establishing a secretariat under the convention, and careful consideration should be given to alternative arrangements before the default position set out in paragraph 1 was accepted. He could not agree with subparagraph 2(d), which empowered the secretariat to undertake substantive activities on its own initiative, rather than at the direction of the Conference of the Parties. With regard to cooperation with international organizations, he questioned whether Article 25 was necessary in the light of the extensive authority that Article 23, subparagraph 4(h) gave to the Conference of the Parties. On Article 26, the current financing mechanisms should be fully utilized. While he agreed to the need for and supported the concept of voluntary mechanisms to provide the necessary financial and other means to fulfil the objectives of the convention, he could not support any mandatory funding or transfer mechanisms. He proposed that the

second sentence of Article 26, paragraph 2, be deleted as it could be interpreted to require all Parties who were members of international organizations to use their authority in those organizations to secure technical and financial assistance, which would be an inappropriate infringement of the governance of those institutions.

Mr ASLAM KHAN (Pakistan) said that the text of Article 23 and subsequent articles assumed that sovereign States and regional economic integration organizations would be Parties to the convention. To avoid any confusion, he suggested that an article be added specifying the entities entitled to become Parties to the convention. Such an article was generally included in treaties to which accession by entities besides sovereign States was expected. He also proposed that the rules of procedure and financial rules of the Conference of the Parties should be adopted by a two-thirds majority and not a simple majority. The mandate of the Conference of the Parties, provided for in Article 23, paragraph 4, needed to be harmonized with the agreements reached in other parts of the convention. The harmonization of legislation and policies, covered by subparagraph 4(c), required further discussion. The functions of the secretariat, as provided for in Article 24, paragraph 2, needed to be rationalized: those functions should be to serve and to work under the directions of the Conference of the Parties and to enter into administrative or contractual arrangements only upon the latter's direction.

Referring to Article 26, he emphasized the importance of financial resources for developing countries. He supported the views expressed by the delegate of Egypt on behalf of the Eastern Mediterranean Region and by other delegations that a global fund should come into being with the entry into force of the convention in order to strengthen existing bilateral and multilateral funding mechanisms. Developing countries that were tobacco producers and exporters would lose much of their income as a result of the entry into force of the convention, and to impose obligations on such developing countries without financial assistance for crop diversification would deter many of them from becoming Parties to it.

Mr ACHADI (Indonesia) supported the proposal by several delegates that Article 26 should specifically provide for the establishment of a multilateral global fund to provide financial and technical assistance to developing countries and countries with transitional economies to help them build their capacities in the required areas so that they might effectively implement the convention and achieve its objectives. Such areas should include the adoption and implementation standards for testing and measuring the contents and emission of tobacco products and seeking economically viable alternative employment for tobacco workers and growers.

Dr AKE (Tonga), speaking on behalf of 12 Pacific island States, supported the views expressed by the delegate of India on the need for a global fund, which had also been advocated by Member States of WHO's Eastern Mediterranean and African Regions and on behalf of the Member States of ASEAN. He urged Member States to remember that the purpose of the convention was to place health above economic and trade issues.

Mr YI Xianliang (China) proposed that Article 23, paragraph 1 should make it clear that the Conference of the Parties was the central institution of the framework convention. Referring to paragraph 3, he proposed that the rules of procedure and the financial rules should be adopted unanimously or at least by a two-thirds or three-quarters majority. Concerning paragraph 5, the rules governing the participation of observers at proceedings of the Conference of the Parties should be similar to those of WHO. Referring to Article 26, he said that it was vital to establish a multilateral global fund to enable developing countries to implement the convention. In addition, every country should, according to its ability, provide financial support to the national activities required for the convention's implementation.

Dr VARABHORN BHUMISWASDI (Thailand) supported the call by the delegates of India, on behalf of Member States of WHO's South-East Asia Region, Malaysia, on behalf of the Member States of ASEAN, and Tonga, on behalf of the 12 Pacific island States, that Article 26 should provide for the creation of a provision of a multilateral global fund. The international community had established the Global Fund to Fight AIDS, Tuberculosis and Malaria, and it was therefore incumbent upon it to create a global fund to combat the epidemic of tobacco-related diseases, which claimed nearly five million lives each year.

Mr YAMAGUCHI (Japan), referring to Article 26, suggested that the issue of financial resources, which assumed considerable importance for many countries, should be thoroughly discussed in the informal meetings. With regard to Article 23, paragraph 3, he proposed that rules of procedure and financial rules should be adopted preferably by consensus or at least by a weighted majority system, such as a two-thirds majority, rather than by a simple majority.

Mr ZAPATA (Honduras), referring to Article 26, said that specific financial resources were needed to ensure that the convention was implemented effectively, and he therefore supported the establishment of a global fund. The development of alternative crops mentioned in paragraph 1, which implied a transitional period to overcome problems such as trade barriers, and the retraining and relocation of tobacco workers were examples of activities needing specific financial resources.

Mr HAN Sok Chol (Democratic People's Republic of Korea) agreed with the Chair's text concerning Articles 23-25. His delegation supported the creation of a multilateral global fund for the reasons given by previous speakers and proposed that Article 26 should specify when it would be established and how it would function.

Mr WARREN (World Bank) said that, although the World Bank appreciated the concern over the availability of adequate funding with which to implement the convention effectively, all countries had the means to generate most of the required funding internally. The earmarking of tobacco tax increases would generate ample revenue with which to implement the convention, as well as additional resources for other governmental purposes, and was also an effective tobacco-control measure. With the exception of the control of smuggling, supply-side measures, such as agricultural diversification, did not represent effective tobacco control. As some delegates had already observed, the success of tobacco control depended on slowing the rate of growth of tobacco consumption so that there was less need for additional tobacco-industry workers, and so that existing workers did not lose their employment. He urged delegates to focus on tobacco-control measures that would be the most cost-effective.

Mr SHAPIRO (International Union against Cancer), speaking at the invitation of the CHAIR, said that he firmly supported the rules-based international trading system. The success of the convention depended on delegates' recognition that the lethal nature of tobacco products required that they be treated differently from the beneficial products to which international trade rules normally applied. His organization therefore supported the efforts of the many delegations that had urged the deletion of Article 2, paragraph 3 and Article 4, paragraph 5 because, as currently drafted, they subordinated the convention to other international treaties, thereby allowing commercial considerations to rank above public health concerns. The convention should clearly state that its public health provisions and those of its protocols took precedence over the more general international trade rules if conflicts arose between them. His organization also supported provisions that would give the convention's signatories maximum assurance that the tobacco-control measures they enacted would not be subject to successful challenge by another signatory. Parties to the convention should undertake not to challenge the tobacco-control measures enacted by another Party or to promote tobacco exports.

In conclusion, it should not be necessary for countries to demonstrate scientific certainty to justify the enactment of particular tobacco-control measures.

Ms BERENS (Infact), speaking at the invitation of the CHAIR, said that the majority of countries had emphasized the need for the convention to give precedence to measures to protect public health over commercial interests. Some tobacco corporations, however, appeared to favour the language of the Chair's text, citing existing rules that allowed governments to take legitimate actions to impose health-related measures that might affect international trade in tobacco products, while other tobacco-industry representatives manipulated such rules to their advantage and to the detriment of public health. As currently drafted, Article 2, paragraph 3, and Article 4, paragraph 5, would do more harm than good. While global mechanisms and institutions to govern trade were developing at a rapid pace, global measures to protect the environment and health lagged far behind. Some governments seemed to fear the precedence that would be set by a convention that explicitly subordinated commercial interests in tobacco products to health concerns, although people globally would welcome such a step. Some tobacco companies also opposed the convention's provisions on liability and compensation, claiming that regulation was a more effective means of resolving tobacco issues. It was essential, however, that the convention should establish a framework for penalizing the tobacco industry for misconduct because it would deter the spread of tobacco addiction and require the tobacco transnationals to internalize the true cost of their business. Article 19 should therefore be retained as an integral part of the convention and its provisions strengthened by additional measures to facilitate cooperation and information sharing among Parties in order to recover costs due to the harmful effects of tobacco.

Mr DAYNARD (International Union against Tuberculosis and Lung Disease), speaking at the invitation of the CHAIR, said that the principle of recognizing the accountability of tobacco manufacturers for the harm they caused was a necessary complement to the requirements of the convention. The tobacco industry had evaded regulatory restrictions through clever stratagems, such as developing sponsorship of tobacco products when banned from advertising them. Although no convention could be drafted that would avoid all loopholes, the more the industry was made liable for the harm it caused, the stronger would be its financial incentive to minimize that harm. As the text of Article 19 made clear, each Party would be free to determine the scope of that liability so that it was consistent with its own legal system. Thus, a Party whose legal system normally held manufacturers liable only in cases of fault would be free to apply the same criterion under the terms of the convention. As demonstrated by recent American lawsuits, fault-based liability was able to impose liability awards large enough to attract the tobacco industry's attention and motivate it to change its ways. It was important that the principles articulated in the Chair's text should be retained and not be postponed pending the successful negotiation of a protocol.

The CHAIR noted that the reading of Articles 23 to 26 completed the reading of the entire Chair's text, and she thanked delegates for their interventions, which would serve as a valuable basis for discussions in the informal groups.

The meeting rose at 12:30.

SIXTH PLENARY MEETING

Tuesday, 22 October 2002, at 9:40

Chair: Mr L.F. DE SEIXAS CORRÊA (Brazil)

DRAFTING AND NEGOTIATION OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL: Item 3 of the Agenda (Documents A/FCTC/INB5/2, A/FCTC/INB5/3, A/FCTC/INB5/5, A/FCTC/INB5/6, A/FCTC/INB5/INF.DOC./1 and A/FCTC/INB5/INF.DOC./2) (continued)

The CHAIR said that the purpose of the meeting was to discuss the progress achieved in the recent informal consultations. He thanked the facilitators and the participants of the ad hoc meeting on use of terms for the excellent work done. He invited the facilitators to outline the state of the negotiations on advertising, illicit trade, liability and compensation, financial resources and packaging and labelling.

Article 11 – Negotiations on packaging and labelling of products

Mr CAUGHLEY (New Zealand) reported that the negotiations had been constructive. The issues had been addressed squarely, before the drafting work had commenced. There had been a dilemma as to whether the key provisions on packaging and labelling should be mandatory or discretionary. There had also been discussion on whether the regime should be operational from the day the convention entered into force or whether there should be a period of time for Parties to bring their laws into conformity with the new obligations. There had been a strong preference for deleting the words “in accordance with its capabilities and national law” in the introductory paragraph, and for maintaining the figure of “50%” in subparagraph 1(c) in relation to the surface area covered by the health warning. The figure now related to the entire outside surface area of the packet, a smaller overall amount than in the earlier proposal, which had covered only the front and back of the packet.

It had been proposed to delete the word “trademarks” in subparagraph 1(a) due to the divergence of views as to the degree of specificity with which the convention should deal with actual or future instances of false, misleading or deceptive packaging and labelling. There had been a tendency to prefer a formulation that would be more generic than specific. He was confident that the working method established would enable further progress to be made.

Article 13 – Negotiations on advertising, promotion and sponsorship of tobacco products

Mr AISTON (Canada) said that the informal group had met three times and that contact groups had been formed on several occasions. There had not been agreement as to whether the first sentence in paragraph 1 of Article 13 should refer to the gradual or more immediate elimination of advertising. While there appeared to be agreement on subparagraph (a), no consensus had yet been reached on subparagraph (b), which called for the prohibition of advertising on radio, television and print media intended for youth. Subparagraph (c) was still under discussion with respect to the prohibition, restriction or elimination of tobacco sponsorship and the time-frame to be applied. Subparagraph (d) had been the subject of vigorous debate with respect to the feasibility and possible scope of a ban on cross-border advertising, and those issues had not yet been resolved. Subparagraph (e), requiring the disclosure of expenditures, and subparagraph (f), enjoyed broad support.

Paragraph 2 was a new text and had been generally accepted, with the exception of the reference to trade. It had been agreed that the text could perhaps reflect the outcome of the ongoing discussions

on trade issues in the context of Article 2, paragraph 3, and Article 4, paragraph 5. Paragraph 3 was roundly endorsed.

Some countries did not share the majority view of the Article and would prefer a formulation within the framework convention itself calling for restrictions on advertising, with all other issues being referred to a protocol.

The participants in the consultations had worked with energy and vigour and he thanked all who had contributed to them and shown flexibility in the development of the text.

Article 4, paragraph 6 and Article 19 – Negotiations on liability and compensation

Dr HETLAND (Norway) reported that three informal meetings and four meetings of the smaller contact group had taken place and delegates had made considerable efforts to achieve consensus on the text of Article 4, paragraph 6, and Article 19. Preliminary proposals had been made on revisions to Article 19, paragraphs 1, 2 and 3 which had not yet been discussed by the informal meeting. An amendment to Article 19, paragraph 4, had been proposed by the informal group; a second option, favoured by the majority at the meeting, was to refer the modified text to Article 23, paragraph 4, through which alternatives might be decided upon later, in which case Article 19, paragraph 4, might be deleted.

With regard to Article 4, paragraph 6, work would continue by the contact group, however, four alternative texts had been proposed and needed to be considered at an informal meeting. No consensus had been reached on whether that paragraph might be deleted altogether.

Article 4, paragraph 7 and Article 26 – Negotiations on financial resources

Mr PADILLA (Philippines) said that there had been three informal meetings and three meetings of the contact groups. Three new paragraphs had been proposed and agreed, in principle, to replace Article 26, paragraphs 1 and 2, of the Chair's text. Although an amendment to the text of Article 26, paragraph 3, relating to the proposed global fund, had been prepared and discussed, there had been such wide disagreement over the wording that it had been deemed prudent to revert to the Chair's text. Furthermore, some delegates had stated that their provisional acceptance of the revised text of Article 26, paragraphs 1, 2 and 3 would depend on whether they could accept Article 26 as a whole. Several proposed new revisions also had to be considered.

Article 2, paragraph 3; Article 4, paragraph 5; Article 6, subparagraph 2(c) and Article 17 – Negotiations on tobacco and trade

Mr EMMANUEL (Saint Lucia) said that his group had had three informal meetings and that the contact groups had met three times. With regard to Article 2, paragraph 3, and Article 4, paragraph 5, progress had been purposeful, but slow. The contact group had agreed on a formulation that reflected, *inter alia*, the principles of recognition of the right to protect public health, mutual supportiveness, consistency with other international instruments and agreements and the prohibition of arbitrary or unjustifiable discrimination in international trade, and which it was generally felt would provide a basis for further discussions. The text had been submitted for consideration to the informal group which had recommended delaying its presentation to the plenary.

Some delegations had suggested that Article 6, subparagraph 2(c) should be placed under Article 15 on illicit trade in tobacco products, some had proposed modifications, for example, prohibition of duty-free sales within a specific time limit, while others had rejected the Chair's text altogether. The need to clarify the term "duty-free" had also been raised. Flexibility was urgently needed if progress was to be made.

The contact group that had discussed Article 17 had proposed that the first sentence be deleted and replaced by preambular text. There was a feeling that it was premature to address subsidies in the framework convention since the issue was already being discussed at WTO. Consideration of the

language used in the second sentence had been postponed pending the outcome of negotiations on Article 26. When the proposed preambular text had been presented to the informal meeting, most delegates had found it unacceptable and the Chair's text had been modified instead, although agreement had not been reached.

Article 15 – Negotiations on illicit trade in tobacco products

Dr SANGALA (Malawi) reported that progress had been made; several paragraphs had been accepted in the informal meetings as a basis for further negotiations, while others, prepared by the contact groups, had not yet been considered by the informal group. Article 15, paragraph 1, had been accepted. Finalization of Article 15, paragraph 2 was dependent on the outcome of the informal meeting that was considering Article 2, paragraph 3 and Article 4, paragraph 5, although a majority of delegates had favoured deleting it. A revised text had been accepted for Article 15, paragraph 3, with a minor point pending resolution by the contact group. It was proposed to develop a new subparagraph 3(a) and a revised text for subparagraph 3(b), previously subparagraph 3(a), was discussed and accepted. The revised texts of paragraphs 4, 6, and 7 were still under discussion. One phrase still remained unresolved in subparagraph 5(c) although the remainder had been accepted. There had been consensus on accepting the revised text proposed for subparagraphs 5(a), (b) and (d). Subparagraph 5(e) contained a new provision which had been widely supported, although the language needed refinement in the group's next meeting.

The CHAIR commended the facilitators on their work which had enabled significant progress to be made in the areas covered in their discussions. It was essential to build on that momentum in the future informal meetings. He said that he would coordinate with the facilitators regarding the continuing discussions on the issues assigned to the informal groups. The time had come to deal with the remaining aspects of the draft convention which might be more appropriately considered in an informal committee of the whole. He therefore proposed to adjourn the plenary meeting and convene an informal meeting where written suggestions concerning the remainder of the text could be discussed. The same approach could be adopted on the following day when the institutional and procedural issues, contained in Articles 23–25 and 27–38 would be examined. The question of the protocols would be discussed at a later date. The situation would be reviewed constantly in the hope that consultations would be completed by the evening of 23 October with a view to the presentation of conclusions on 25 October.

Ms BALOCH (Pakistan) said that she fully agreed with the proposed method of work, which would facilitate progress in all areas, including those that had not yet been discussed in informal meetings. However, the scheduling of discussions on illicit trade in tobacco products and tobacco and trade at the same time would create problems for some delegations with few experts on trade. She hoped that the arrangements could be adjusted to enable such delegations to follow negotiations. Similarly, the scheduling of a number of contact group meetings during the lunch break might place certain delegations in the awkward position of feeling pressured into accepting the outcomes of those meetings, as presented to the informal groups, without having had the opportunity to participate in the discussions concerning them. She requested that future meetings be planned and communicated to delegates in a more careful manner.

Turning to the negotiations on financial resources, she said that it had not been her understanding that agreement had been reached on the first three paragraphs of Article 26.

Dr PADILLA (Philippines) said that, at the informal meeting on the previous evening, agreement had been reached in principle on paragraphs 1, 2 and 3 of Article 26, subject to the reservations of some delegations whose acceptance was provisional upon their agreement to the text of

Article 26 as a whole. However, as he had said earlier, the text still required further amendment in order to reflect the most recent positions.

The CHAIR said that no delegation's position would be pre-judged or taken for granted. The procedure used was intended to facilitate discussion on some highly complex issues. The discussions were approaching a delicate phase and he expressed the hope that the current momentum would be maintained. Concerning the procedural points raised by Pakistan, he agreed that the two topics connected with trade should not be scheduled at the same time.

Dr KEAN (Secretary) suggested that, in order to accommodate the concerns expressed by Pakistan, the informal meeting on illicit trade in tobacco products could be held that afternoon, thereby postponing the meeting on liability and compensation until the evening.

The CHAIR assured the delegate of Pakistan that all the facilitators had taken note of her comments in connection with the contact groups whose purpose was to accommodate delegations particularly concerned with specific issues. In reply to a comment by Dr SANGALA (Malawi) about scheduling their meetings, he asked delegations to be as flexible as possible since time was short. Every effort would be made to accommodate their wishes.

The meeting rose at 10:25.

SEVENTH PLENARY MEETING

Thursday, 24 October 2002, at 15:25

Chair: Mr L.F. DE SEIXAS CORRÊA (Brazil)

DRAFTING AND NEGOTIATION OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL: Item 3 of the Agenda (Documents A/FCTC/INB5/2, A/FCTC/INB5/3, A/FCTC/INB5/5, A/FCTC/INB5/6, A/FCTC/INB5/INF.DOC./1 and A/FCTC/INB5/INF.DOC./2) (continued)

Discussion of possible protocols to the framework convention

The CHAIR recalled that, in May 1999, the World Health Assembly had adopted resolution WHA52.18, paving the way for negotiation of a framework convention. In the first meeting of the working group on the WHO framework convention on tobacco control, the secretariat had been asked to prepare a further elaboration of the proposed draft elements of the framework convention, a draft text and possible protocols thereto. The key areas identified for tobacco control¹ were: prices; smuggling; tax-free tobacco products; advertising and sponsorship; the Internet; testing and reporting of toxic and other constituents; packaging and labelling; tobacco in agricultural policy; and cooperation and information sharing. For the second meeting of the working group, the secretariat had prepared a document,² proposing the technical components of protocols on advertising, treatment of tobacco dependence and smuggling.

Proposed draft elements for the framework convention and its protocols, as set out in document A/FCTC/INB1/2, were adopted by the Negotiating Body at its first session. The document included several model provisions on possible protocols, namely under the articles in Part II, Obligations, on advertising, promotion and sponsorship (section B) and on measures to eliminate smuggling (section D). At the final plenary meeting of the second session, several Member States had requested that, at its third session, the Negotiating Body should pay particular attention to the technical details of protocols and how they related to the convention, while others indicated their intention to submit a proposed text in due course. Prior to the third session, the Bureau decided that an entire plenary meeting should be devoted to the discussion of protocols, their technical elements and the timing for their negotiation and adoption. Two main issues had emerged during the third session; whether protocols should act as tools for clarifying obligations already laid out in the framework convention, and whether they should be included in their own right, negotiated simultaneously with the convention or following its finalization. Smuggling and advertising, promotion and sponsorship were among the possible subjects of protocols discussed.

At the fourth session of the Negotiating Body, Australia had produced a paper entitled "Convention and possible protocols"³ and related issues which identified two main criteria that could be used to decide whether a protocol was required: where the elaboration of obligations in the framework convention required great detail, or where consensus could not be reached. At the Chair's suggestion, an ad hoc committee on definitions and protocols, subsequently renamed the ad hoc meeting on use of terms, had been established, but protocols had not been discussed by it and it had

¹ Document A/FCTC/WG1/3.

² Document A/FCTC/WG2/4.

³ See summary record A/FCTC/INB4/PL/SR/3.

been suggested, in plenary, that the subject might be better addressed at the fifth session in an informal committee of the whole. He invited delegates to consider the development of guidelines on the format and applicability of possible protocols in relation to the convention. Document A/FCTC/INB5/2, footnote 1, suggested that the negotiation of a protocol could be initiated either by the Negotiating Body before the framework convention was adopted, or by the Negotiating Body following adoption of the framework convention (although a satisfactory interpretation of resolution WHA52.18 would first be required), or at a later stage by the Conference of the Parties.

Ms KERR (Australia) welcomed the opportunity to provide copies of Australia's paper on Conventions and possible protocols to any delegates who might not have seen it and to discuss its contents.

Dr BERNARD (United States of America) said that his country had always considered that the framework convention should be negotiated at the same time as protocols for areas regarded as either too technical to be covered by the convention itself or too controversial to achieve consensus. It still held that view but hoped that the negotiation of the framework convention itself would be completed before substantive discussion of the protocols took place. The Chair, whose excellent introduction to the question might fruitfully be circulated in written form, had mentioned several potential subjects for protocols. The time had come for a realistic discussion about setting up a mechanism for establishing protocols. In regard to advertising, Article 13 of the Chair's text could be negotiated as it stood and, as had been suggested in a working group, made the subject of a parallel document to be signed by countries able to do so. That would be one way of dealing with the problem faced by his country. Excellent work had also been done on the issue of illicit trade: serious discussion of a protocol could go ahead since there seemed to be general agreement in the working groups on the language to be used in the framework convention. Clearly, other protocols would not be adopted before the completion of the framework convention but it was time to think more specifically about what protocols might be needed. He looked forward to hearing other views on the subject.

Mr AISTON (Canada) said that the negotiations had proved to be a highly complex process and it had been wise not to negotiate the convention and protocols at the same time especially for smaller delegations for whom the difficulties of such an approach were obvious. Most delegations seemed to feel that the work on the framework convention, a difficult task in itself, should be completed first. After the successful completion of negotiations it would be necessary to establish the Conference of the Parties and organize the complex and difficult transition phase. In his view, a "breathing space" was needed to assimilate what had been done and prepare for future work. There might be some value in leaving the Conference of the Parties to decide on the advisability of proceeding with protocols, but he agreed with the delegate of the United States that some areas had been identified where work could be done and where it might not be a good idea to wait too long to begin. Those areas included illicit trade in tobacco products and cross-border advertising.

Mr HANSEN (Denmark), speaking on behalf of the European Community and its Member States, said that significant progress in negotiation had been made during the present session. However, the European Community considered it premature to discuss protocols at the present stage, preferring to concentrate efforts on achieving strong provisions in the main body of the convention. The placing of difficult or controversial issues in protocols might simply delay the implementation of the convention. His delegation therefore strongly recommended continuing the negotiations to finalize the language of the various articles before discussing protocols.

Dr HETLAND (Norway) thanked the Chair for his excellent introduction to the subject and expressed his agreement with previous speakers. At earlier sessions of the Negotiating Body, his country had expressed reservations about discussing protocols before the adoption of the framework

convention. It therefore preferred the Chair's second option which, however, should not preclude starting their discussions immediately after the Fifty-sixth World Health Assembly.

Ms PASEA (Madagascar), speaking on behalf of the 46 Member States of WHO's African Region, said that, in keeping with their desire for a strong framework convention, the protocols ought to supplement the text on specific issues already the subject of provisions, although it was recognized that their multiplication might weaken essential aspects of the framework convention. However, certain provisions, especially those concerning illicit trade and certain aspects of cross-border advertising, could usefully be supplemented by the preparation of protocols. As for the negotiation of such protocols, as previously stated, the group she represented would prefer that to take place after the adoption of the framework convention by the Health Assembly and was therefore in favour of option 2.

Mr MORIMOTO (Japan) said that Japan took a cautious position on the question of protocols and wished to continue discussions regarding potential subjects. However, in accordance with Article 33, paragraph 1, it was first necessary to ascertain the Parties to the convention before starting a detailed discussion of possible protocols. The framework convention also needed a solid basis, including a secretariat, before such issues were discussed. It might not be wise to engage in different and difficult tasks at the same time. He recalled assertions by certain delegations that any country could become party to a protocol without being party to the convention. That was not his understanding: a State wishing to sign a protocol had to be a Party to the framework convention. He asked for clarification from the Secretariat.

The CHAIR said that the question had been discussed during the debate on the article concerned; at that time it had been pointed out that, as a general rule, the interpretation referred to by the delegate of Japan was correct. However, certain delegations had considered the framework convention to be a special case. The fact that it went into detail made it possible to apply the same rule to protocols as to reservations. That might be a way to solve the problem.

Dr KUMMER (Legal Consultant, Tobacco Free Initiative) explained that, in formulating framework conventions, the foundations were laid for further work and the related protocols adopted concerned specific matters which were narrower in scope than the convention; for example, a protocol on smuggling might be negotiated in connection with the framework convention on tobacco control. A well-known example was that of the United Nations Framework Convention on Climate Change, which contained a protocol establishing specific obligations of certain Parties on the basis of that instrument. As a general rule for both framework and standard conventions, States that became Parties to the protocols of a convention were also required to be Parties to that convention.

Ms BALOCH (Pakistan) agreed with earlier speakers that the legal implications and obligations of the convention as a whole must be considered before accepting the additional obligations arising from protocols. It was, moreover, the responsibility of the Parties to the convention to negotiate protocols in connection with the Conference of the Parties, which implied that such instruments could be negotiated only after the convention had been ratified. It was unnecessary to negotiate protocols covering all issues: for example, the positive outcome of discussions on smuggling and other forms of illicit trade currently precluded the need for a protocol on that subject. While her delegation considered that a protocol was required to deal with the technicalities involved in cross-border advertising, it did not support the proposal that the entire article on advertising, promotion and sponsorship of tobacco products be made the subject of a protocol.

Dr REDDY (India) said that from the outset of the current negotiations, the Member States of the South-East Asia Region had consistently advocated that protocols should only be considered after

the completion of the framework convention, since that instrument should clearly enunciate the principles providing global guidance for tobacco-control programmes. The purpose of protocols was to elaborate the practical aspects of implementing the specific provisions indicated by those principles and protocols should therefore serve as operational pathways, not as by-passes for evading inconvenient decisions on difficult issues, consensus on which was a prerequisite for a truly global framework convention. Since some of the difficulties had already been eliminated during negotiations, there seemed to be grounds for hope that the progress made on the question of protocols would become clearer at the next session of the Negotiating Body.

Mr EMMANUEL (Saint Lucia), speaking on behalf of the Caribbean countries, and Mr MOJTAHED SHABESTARI (Islamic Republic of Iran), speaking on behalf of the Member States of the Eastern Mediterranean Region, agreed with earlier speakers that it would be prudent to complete the discussions on the framework convention before considering protocols.

Ms KERR (Australia) also agreed that it was premature to address protocols at that stage. Protocols were an elaboration of detail and implementation issues arising from general obligations under convention. Although substantial progress had been made in defining the obligations, a considerable amount of work remained for the next session of the Negotiating Body, when the obligations would be finalized and progress could be made in identifying matters to be dealt with in future protocols. With regard to timing, Australia supported the option that protocols should be considered at a later stage by States which were likely to be Parties to the convention. Nevertheless, in the interests of keeping the goodwill of States wishing to build on the results of negotiations, her delegation would have no objection to informal discussions on protocols, for instance, one on cross-border advertising.

Mr SALAMA (Egypt) said that his delegation agreed on the need for time to produce a clear convention as a basis for later action. Protocols should not be allowed to become an easy way out. The document should strike a balance between universality and effectiveness. It was time to set specific standards, the value of which would become evident through the functioning of the framework convention.

Dr BERNARD (United States of America) observed that the convention under consideration with its 38 articles was broader and more comprehensive than those more simply worded framework and other conventions in which there was a link between accession to a protocol and accession to the instrument itself. Moreover, there were many precedents for allowing accession to protocols independently of accession to the convention. It might be advisable to examine the text for topics which might become the subjects of protocols such as illicit trade, on which substantial progress had been made during the negotiations and which might be taken up without awaiting the notification and entry into force of the framework convention.

Mr DILEMRE (Turkey), observing that progress would have been slower if the convention and its related protocols had been discussed simultaneously, reiterated his delegation's view that protocols should be dealt with after the target date of May 2003. The Negotiating Body should continue in its present format and should start negotiations on specific issues on the basis of the Chair's text.

Ms LE THI THU HA (Viet Nam) said that her delegation endorsed the view that the framework convention be completed before negotiations on the protocols began.

Mr LISKIA (Papua New Guinea), speaking on behalf of the Pacific island States, said that those countries agreed that the protocols should be negotiated only after the adoption of the framework convention, since the protocols would elaborate on specific articles of the convention and supported the proposal that the negotiation of the protocols be left to the Conference of the Parties.

Ms HAN Yingda (China) endorsed the view that it would be premature to begin considering protocols. Negotiations must continue to focus on the framework convention itself and, since progress had been made, delegates should not dissipate their efforts by tackling a different set of negotiations. Moreover, smaller delegations found it difficult to send representatives to several meetings simultaneously.

Mr AL-BEDAH (Saudi Arabia) said that his delegation agreed with those who advocated waiting before tackling the protocols and producing a strong convention by May 2003, or any other date depending on circumstances.

The CHAIR observed that a consensus had been reached on the fact that it would eventually be necessary to negotiate protocols to the framework convention, but that those protocols should not be negotiated before the framework convention had been adopted by the Health Assembly. A difference of opinion lay in the timing of the negotiations: there had been suggestions that negotiations should commence immediately after adoption of the text of the convention by the Health Assembly or alternatively that they be postponed until the entry into force of the convention and the establishment of a Conference of the Parties. The first option would have the advantage of keeping the momentum of the negotiating process going between the adoption of the convention and its entry into force, whereas the second would have the advantage of ensuring that only States Parties to the convention would be involved in negotiating the protocols. He therefore suggested that delegates to the fifth session of the Intergovernmental Negotiating Body should decide that protocols would be necessary, but that they should be negotiated only after the text had been adopted. Delegates should also agree on the way forward, the options for negotiations being to proceed either immediately after the adoption of the convention or after its entry into force. Moreover, the areas to be covered by the protocols remained to be defined. If the first option were pursued, it would make sense, as some delegations had suggested, to wait until a clear text was available, for as negotiations proceeded the need for protocols in specific areas would become more evident. Once the sixth session had completed its negotiations and had submitted its recommendations on future procedure to the Health Assembly, the work of the Negotiating Body could only continue with a mandate from the Health Assembly. If such a mandate were sought, the areas to be covered by the protocols should be indicated.

Dr BERNARD (United States of America) said that a decision could be taken in plenary on how to deal with the linkage between the convention and its protocols at the next session. It was possible that the Conference of the Parties might not be established for a number of years, in which case, pending the outcome of the next session of the Negotiating Body, there might be grounds for technical experts to meet to discuss those issues on which there was clearly a desire to make progress, such as cross-border advertising or illicit trade. Such meetings would not constitute an undue burden on resources as they would not require the presence of a broad range of public health experts. Some of the issues that required further consideration might even add to the global public health impact of the convention.

The CHAIR said that, as many delegations preferred to see work on the convention completed first, he did not believe it was necessary to take the decision on how to deal with the linkage immediately. His suggestion, therefore, was to take a decision at the present time only on the need for future protocols and that they would not be negotiated before adoption of the framework convention. After approval of the draft convention at the sixth session, a decision would be taken whether to commence negotiations immediately after adoption of the framework convention by the Health Assembly or to wait until the Conference of the Parties had been established.

Dr KUMMER (Legal Consultant, Tobacco Free Initiative) said that when the Vienna Convention for the Protection of the Ozone Layer had been adopted negotiations on a related protocol

had begun immediately thereafter. A resolution of the conference had contained a mandate for the establishment of a working group of technical experts to negotiate the protocol, which had been adopted before the convention entered into force. It was, therefore, perfectly feasible to follow such a precedent and to begin protocol negotiations as soon as the framework convention had been adopted, if such was the will of the conference adopting it.

Mr MORIMOTO (Japan) agreed with the Chair's summary of the situation. However a protocol was an instrument intended to implement the detail of a convention. Consequently, it would be illogical for a Member State to become a Party to the protocol without being a Party to the convention. The first step should be to establish a solid basis for the convention and to identify those Member States that were eager to become Parties to it: to attempt to negotiate a protocol at that stage would be premature.

Mr MORA GODOY (Cuba) while agreeing that there were many precedents to support the options that had been put forward, said that at the present stage of negotiations the exact nature of the convention was still unclear and it would therefore be illogical to decide whether a protocol was needed. He considered that the discussion regarding protocols should be postponed until the negotiations were at a more advanced stage, in particular with regard to the more sensitive issues, which could be discussed at WHO and other meetings to be held before the next session of the Negotiating Body.

The CHAIR noted that, while resolution WHA52.18 imposed no mandatory requirement in that regard, it none the less referred to the drafting and negotiation of "possible related protocols". A substantial body of opinion appears to consider that approach as compatible with the spirit of resolution WHA52.18. Accordingly, if he heard no objection, he would take it that the Negotiating Body agreed with the course of action that he had proposed on the need for future protocols and the timing of their negotiations.

It was so agreed.

Mr MISRA (Consumers International), speaking at the invitation of the Chair, said that the framework convention represented a major breakthrough in international public health policy. He urged all Member States, particularly those that had chosen to obstruct the convention, to ensure that it contained explicit measures to reinforce the primacy of public health over commercial interests in the tobacco trade, both at the national and international levels; that it prevented any Party from claiming the primacy of any trade agreements that conflicted with the framework convention's principles and objectives; and that it enabled Parties to protect tobacco-control measures from any other international trade agreements, and the covert and overt activities of the tobacco industry. Article 2, paragraph 3, and Article 4, paragraph 5 of the Chair's text, as currently drafted, would negate the work undertaken at previous sessions of the Negotiating Body and at intersessional meetings, for it would serve the commercial interests of the tobacco industry and open the framework convention to future challenges by it. He also urged Member States to demonstrate their commitment to consumer rights by ratifying strong provisions on compensation and liability. In that context, he noted the United Nations Guidelines for Consumer Protection of 1985, which endorsed eight consumer rights, including the right to redress. His organization called upon Member States to ensure that the framework convention contained provisions that made national legal systems accessible to people harmed by tobacco regardless of their citizenship or the territory in which the injury occurred; that facilitated the ability of other governments and public institutions, and of individuals to recover costs and damages; and that ensured that their actions, in seeking redress or otherwise, did not prejudice the ability of others to obtain independent redress for the harm caused to them. The framework convention should not set ceilings on compensation for tobacco-related damages, because the threat of unlimited liability was an important means of deterring the tobacco industry from misconduct. Since the negotiations were

already near a close, he urged that the framework convention should include a commitment that signatories would adopt, as soon as practicable, an additional protocol on liability to provide for an international civil liability regime. Finally, with regard to Article 19, paragraph 4, while his organization supported the establishment of an advisory committee of experts to set up a database of information collected pursuant to Article 21, the database should be placed at the disposal not only of States Parties but of any individual or organization in support of their liability claims.

Mr SALOOJEE (International Nongovernmental Coalition Against Tobacco), speaking at the invitation of the CHAIR, said that Member States could no longer avoid the choice between the adoption by consensus of a framework convention that was acceptable to the major cigarette-exporting States, but that was weak and full of loopholes and ineffective measures, or the adoption by a majority of a strong, progressive convention whose text contained explicit, evidence-based measures. The right choice was the latter one. His organization recommended that, first, all future negotiating sessions should adopt texts favoured by the majority and be prepared to exclude the views of the small number of States that had consistently opposed progressive measures; second, States that were unlikely to ratify a progressive treaty should stand aside at the current session and allow the majority to adopt a framework convention that could be ratified by more than 100 Parties; third, Parties that found the progressive text unacceptable at the current stage could ratify it at a later stage when political circumstances changed or new legal precedents emerged; and, lastly, the majority of Member States that supported a progressive framework convention should refuse to allow its text to be weakened. Consensus should have lower limits. Substantive differences must be faced at the present session and not left to the next. Most Member States favoured a strong convention that would tackle the epidemic of tobacco-related diseases, and it was time to abandon the effort to reconcile public health needs with the commercial needs of the tobacco trade.

Mr COLLISHAW (Commonwealth Medical Association), speaking at the invitation of the CHAIR, endorsed the statements made by previous speakers for nongovernmental organizations and commented on the financial resources required to establish a strong framework convention. As key issues in global tobacco control requiring adequate funding, he listed the strengthening of national programmes, international scientific, technical and legal cooperation, administration of the framework convention and the monitoring and surveillance of that instrument. The costs of financing those four activities could be offset by revenue raised through new taxes on tobacco products. Member States were encouraged to view such new sources of revenue not only as a way of reducing tobacco consumption, but also of offsetting the costs associated with more stringent national and international tobacco control measures. His organization recommended the inclusion in the section on institutional arrangements of a reminder that tobacco taxes imposed by the Parties on tobacco companies' revenue would be regarded as a preferred source of revenue in funding their obligations under the convention.

For administration, monitoring and surveillance, he proposed that funding be assured by obligatory contributions from Member States, using a funding formula based on the WHO model. Here too, Member States should be encouraged to offset such payments by income from taxes on tobacco, tobacco companies, or both.

In order to strengthen national programmes for transitional economies, as well as to improve scientific, technical and legal cooperation, all possible sources of funding should be mobilized, including obligatory contributions, voluntary contributions from Member States, and contributions from intergovernmental organizations, nongovernmental organizations and foundations. Their shared objective was a strong framework convention and it was consequently their duty to ensure that it was backed by adequate financial resources.

Mr MALEK ABISAAB (Infact), speaking at the invitation of the CHAIR, said that the framework convention contained ambiguous terms which played into the hands of transnational tobacco corporations. He urged delegates to beware of loopholes that would water down the treaty and

drew attention to vague wording, including such terms as “should”, “consider” or “endeavour”, which might hinder the attainment of the desired objectives. Phrases such as “in accordance with national laws and capabilities” undermined any incentive for action. Moreover, on the issue of advertising, promotion and sponsorship the worldwide initiative should not be hampered by a narrow interpretation of a few countries in which transnational tobacco corporations had major interests. In a dangerous and violent world threatened by war, it was essential to protect young people from predatory corporations peddling deadly products.

Tobacco companies would inevitably try to dilute the text of the framework convention and delay the negotiating process, while nongovernmental organizations were striving to develop, implement, update and enforce comprehensive strategies to expose the subversive efforts of the tobacco industry. He therefore encouraged countries favouring a strong and enforceable instrument to stand their ground.

Dr EHSAN LATIF (International Union Against Tuberculosis and Lung Disease), speaking at the invitation of the CHAIR, welcomed recent progress on advertising issues, especially the fact that an overwhelming number of countries were calling for a total ban, subject to constitutional limitations. He nevertheless reiterated his appeal for a total ban on all forms of direct and indirect advertising and promotion, which he considered should be incorporated in the convention, and not relegated to a protocol. In view of its impact on both adults and children, such a ban would constitute one of the most important components of the convention in terms of improving global public health.

With regard to package warnings, he expressed his satisfaction with the widespread support for warnings covering at least 50% of the principal display surfaces containing pictures or pictograms. Such a measure had been demonstrated to be effective and its incorporation in the convention would contribute to a worldwide reduction in tobacco use.

The meeting rose at 16:50.

EIGHTH PLENARY MEETING

Friday, 25 October 2002, at 9:40

Chair: Mr L.F. DE SEIXAS CORRÊA (Brazil)

- 1. DRAFTING AND NEGOTIATION OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL:** Item 3 of the Agenda (Documents A/FCTC/INB5/2, A/FCTC/INB5/3, A/FCTC/INB5/5, A/FCTC/INB5/6, A/FCTC/INB5/INF.DOC./1 and A/FCTC/INB5/INF.DOC./2) (continued)

The CHAIR said that excellent progress had been made in the negotiations. The facilitators of the informal groups had enabled the discussions to go to the heart of highly complex and controversial issues and to achieve a broader understanding of what still needed to be done in the little time available. He invited the facilitators to give a brief overview of progress achieved in the areas covered.

Article 13 – Negotiations on advertising, promotion and sponsorship of tobacco products

Mr AISTON (Canada) said that the text of Article 13 represented a key element of the framework convention and had been keenly debated in the informal group. A range of views had been expressed in regard to paragraph 1, from those delegations who supported the progressive restriction of advertising, promotion and sponsorship of tobacco products to those who favoured their complete elimination. New texts had been drafted for subparagraphs 1(a), 1(b), 1(c), 1(d) and 1(e), as well as for paragraphs 2, 3 and 4. There appeared to be consensus on the new text of subparagraphs 1(a), 1(d) and 1(e). There had not been agreement on whether to include a reference to billboards in subparagraph 1(b) while subparagraph 1(c) again reflected the current indecision regarding the gradual or immediate ban on advertising. Paragraphs 2, 3 and 4 dealt with cross-border advertising. It remained to be decided whether the elimination of cross-border advertising, as envisaged in paragraph 2, would apply to advertising originating within a country. Paragraph 3, as redrafted, had been generally accepted, apart from the reference to trade agreements, as had new paragraph 4. There was now a strong basis for discussions that could bring consensus closer. It might be possible, for instance, to include an obligation that restricted advertising, promotion and sponsorship of tobacco products while encouraging countries that so wished to ban them altogether. Although achieving consensus was not the supreme virtue, any proposal that might lead to it should not be lightly discarded.

Article 15 – Negotiations on illicit trade in tobacco products

Dr SANGALA (Malawi) was pleased to report that substantial progress had been made. Consensus had been reached in respect of paragraphs 1, 3, 4, 5, 6, 7 and 8, while the final acceptance of paragraph 2 would depend on the outcome of discussions concerning Article 2, paragraph 3, and Article 4, paragraph 5.

Article 4, paragraph 6 and Article 19 – Negotiations on liability and compensation

Dr HETLAND (Norway) said that, while the texts that had been formulated could not be seen as representative of the views of all delegations, they did reflect efforts to achieve a middle ground. Discussions in the contact group and informal meetings had been conducted on condition that structural issues, such as deleting paragraphs or transferring paragraphs to other articles of the

convention, would not be the focus of attention. Some delegations had considered that the word “compensation” should not be used either in the title or in Article 19. In his view, that issue should be discussed later in a more formal setting as such a change might radically change the focus of the Article. In regard to Article 4, paragraph 6, agreement had been conditional upon an acceptable definition of the term “tobacco industry”. Further reflection on the texts would be necessary to achieve a consensual wording at the next session of the Negotiating Body

Article 4, paragraph 7 and Article 26 – Negotiations on financial resources

Mr PADILLA (Philippines) said that there had been three informal meetings, four meetings of the contact group and one meeting of a smaller working group on textual proposals. Article 4, paragraph 7, had not been discussed. It was proposed that Article 26 of the Chair’s text should be replaced by four new paragraphs, although it was thought that it would be difficult to finalize the wording before agreement had been reached on the issue of the global fund. The discussions on Article 26, paragraph 3, of the Chair’s text had been spirited, candid and enlightening, and he congratulated delegates on the spirit of compromise shown. However, in the absence of complete agreement, he had drafted an alternative form of wording in which he had endeavoured to reconcile the various positions. There had been agreement to submit his text, as well as texts proposed by G77 and China, and by JUSCAN, the European Community and Canada. All delegates had endeavoured to be flexible in their proposals, which would make it easier to bridge the gap between their positions at the sixth session.

Article 11 – Negotiations on packaging and labelling of tobacco products

Mr CAUGHLEY (New Zealand) was pleased to report that steady progress had been made during the course of the four meetings held. Although no consensus had emerged, on some points a broadly acceptable form of wording had been agreed. A large number of delegations, in particular from the developing countries, had wished to see clear and firm requirements in respect of packaging and labelling that would enable them to oblige tobacco suppliers to place effective health warnings and other information on tobacco packets, and to refrain from deceptive promotion of the product. Accordingly, there had been widespread, although not universal, resistance to the inclusion of the phrase “in accordance with its capabilities and national law” in paragraph 1. A middle way between a mandatory and a discretionary provision might be one that allowed the Parties a period of three years following the entry into force of the convention to implement the packaging and labelling requirements. There had also been a divergence of views on the size of the warnings and, although consensus had not been reached, a large majority had favoured the option of warnings that covered 50% of the packet. It had also appeared that the two issues were linked, with many delegations considering that the greater the flexibility given to the Parties to implement Article 11, the higher the convention should set the standards on health warnings to be met by the industry. Some delegations had pointed out that it would not be the responsibility of their health authorities to issue such warnings. In any event, the need for and formulation of Article 11, subparagraph 1(c), would depend on the outcome of discussions on Article 15. While some differences remained, for example, with regard to the use of the term “trademark”, he was sure that if delegations were able to approach negotiations at the sixth session with a similar degree of flexibility, consensus would be within their grasp.

Article 2, paragraph 3; Article 4, paragraph 5; Article 6, subparagraph 2(c) and Article 17 – Negotiations on tobacco and trade

Mr EMMANUEL (Saint Lucia) said that in the absence of consensus his group had proposed three alternative forms of wording to be considered alongside the Chair’s text of Article 2, paragraph 3, and Article 4, paragraph 5. Two alternative forms of wording had also been proposed for

Article 6, subparagraph 2(c). No significant progress had been made in regard to Article 17 and it had therefore been agreed to retain the Chair's text as a basis for further discussion.

The CHAIR expressed his sincere appreciation for the unceasing efforts of the facilitators in their attempt to reach a consensus. Before inviting delegations to take the floor, he emphasized the informal nature of the texts that had been discussed. He assured delegations that they would simply serve as a guide for a revised Chair's text, in the drafting of which he would seek the advice and expertise of the facilitators so as to take account of all the proposals that had been put forward.

Mr MORA GODOY (Cuba) was extremely concerned that his delegation's request, which had been made on no less than six occasions, to place the words "and compensation" in square brackets in both the title of Article 19 and in paragraph 1, had not been taken into account. Each delegation, however small, had the right to put forward proposals and requests for the deletion of text. He requested that his proposal be taken into account.

The CHAIR recalled that the facilitator of the negotiations on liability and compensation had referred to the preference of some delegations for the deletion of the reference to compensation. He assured the delegate of Cuba that his comment would appear in the summary record of the meeting.

Mr ATWOOD (Australia) reported on discussions conducted, at the Chair's recommendation, by a group of legal experts on the legal, institutional and procedural provisions of the convention. The group had concluded that there would be considerable value in forming an informal or contact group on legal issues to assist in finding consensus on some of the legal, institutional and procedural issues and that any such group should engage in substantive discussions and negotiations, but not in questions of technical legal drafting, as, customarily, those would be left until finalization of the substantive text. Such a group should be open to participation by all delegations and its mandate could cover Articles 23-25 and Articles 27-38, although it might be useful if the group were empowered to consider relevant issues referred to it by other groups or discussions as they considered appropriate. It might not be necessary to hold another formal reading of the text of the relevant articles of the Chair's text before the group commenced its considerations, such a decision to be subject to review if substantial changes were introduced prior to the next session of the Negotiating Body. Finally, while the secretariat clearly had a role to play in providing expert information on the methods of dealing with institutional and procedural issues in other treaties, it was important to recognize that the value of such examples was for guidance only. A preliminary exchange of views had already taken place on issues that included the amendment of annexes, and the mandate and rules of procedure of the Conference of the Parties, demonstrating that future exchanges and negotiations on such questions could assist the timely resolution of legal, institutional and procedural issues.

Ms LAMBERT (South Africa), reporting on the progress made in the ad hoc meetings on use of terms, said that two meetings had been held. The group's efforts were very much a work in progress that would run in parallel to the discussions on the framework convention itself. It was proposed that the group's suggestions could be considered for inclusion in the forthcoming Chair's text.

The CHAIR suggested that, on the basis of the discussions held at the current session, the proposals put forward and subsequent consultations with individual delegations or groups of delegations, he would produce a new Chair's text to set the stage for the final session of the Negotiating Body. He would endeavour to draft a text without any square brackets that took account of all the views expressed and that proposed solutions for the remaining core issues. Despite the pressure of time, he would strive to have the text ready by 15 January 2003. As in the past, it would be forwarded to delegations in the official languages and accomplished by an explanatory letter.

It would be helpful to hold regional meetings, and, although WHO would face financial constraints, ways might yet be found to overcome them. As was customary, the day preceding the next session would be reserved for regional and, possibly, interregional meetings.

Hearing no objections, he took it that that approach was acceptable.

Mr BASSE (Senegal), speaking on behalf of the Member States of WHO's African Region, said that the current Chair's text had facilitated substantial progress. The African Region welcomed the Chair's commitment to producing a new text in order to consolidate the achievements thus far. While aware of the constraints involved, he requested that the text be prepared as soon as possible so that it could be considered at regional meetings with a view to reaching a consensus and concluding the negotiations at the next session. Regional meetings made a fundamental contribution to the negotiating process by creating a collective momentum.

Mr MORA GODOY (Cuba), speaking on behalf of the Latin American and Caribbean countries, said they supported the Chair's proposal and could go along with any approach that permitted progress to be made in the negotiating process. Owing to the financial constraints mentioned, the countries for which he spoke wished to suggest that a regional meeting be held in Geneva, with secretariat support, two or three days prior to the next session.

Dr AHSAN (Bangladesh) commended the Chair on his untiring leadership. The discussions that had taken place during the fifth session had been instructive and would pave the way towards an eventual consensus on tobacco control, an issue that gained in relevance as it became more widely recognized that tobacco smoking was harmful to health.

Ms JENSEN (Denmark), speaking on behalf of the European Community and its Member States, agreed with the delegate of Senegal that it would be helpful to have a copy of the new Chair's text at the earliest opportunity and asked whether the different language versions of the text might be published on the WHO web site as they became available.

Mr KINGHAM (United Kingdom of Great Britain and Northern Ireland) agreed that an early publication of the revised text would be appreciated in order to allow delegations to prepare for the next session.

Dr LEWIS-FULLER (Jamaica), speaking on behalf of Caribbean countries, said that under the purposeful leadership of the Chair, progress had indeed been made. However, at the sixth session, delegates should resist the temptation to renegotiate text that had already been broadly accepted. She paid tribute to the Director-General's courage in initiating the framework convention which represented a bold step towards ridding the global population of a veritable health scourge.

Dr REDDY (India), speaking on behalf of the Member States of WHO's South-East Asia Region, welcomed the progress made thus far, while recognizing that several difficult issues still remained to be thoroughly negotiated. The South-East Asia States felt strongly that advertising, particularly cross-border advertising, should be dealt with effectively in the framework convention. Not only should Member States undertake and discharge obligations to eliminate cross-border advertising, but the tobacco industry should also be deterred from such pernicious practices by the threat of a ban on the import of tobacco products thus advertised.

Other unresolved areas of concern included trade and health and financial resources. Concerning the latter, he reiterated the request that had been expressed during consultations in the informal and contact group meetings on financial resources, that the secretariat, with the participation of bilateral, multilateral and regional funding channels, as well as the developing countries, should carry out an intersessional review of existing financial mechanisms that had provided support for

tobacco control activities in developing countries over the past five years, in order to better inform discussions on the topic at the sixth session of the Negotiating Body.

The South-East Asian States felt cautiously optimistic, although they would reserve their position on the framework convention until the remaining areas of legitimate concern had been appropriately addressed and resolved. They would continue to cooperate fully in striving to advance the process during the sixth session, in the hope that it would culminate in a strong convention that would empower the global community to effectively combat the increasing threat posed by tobacco.

Dr SALAMA (Egypt) endorsed the statement made by the delegate of India and expressed his appreciation for the useful discussion on financial questions. He believed that the framework convention, which he hoped would be concluded at the next session, would constitute an important factor in mobilizing resources and raising awareness. His country was taking the issue extremely seriously, in view of the increase of tobacco consumption in developing countries, and would therefore welcome a study by the secretariat on existing financial mechanisms, on the reasons why there was insufficient recourse to them and from those countries which similarly benefited from them: that would help countries which were not sufficiently familiar with already existing possibilities to make better use of them. The secretariat might also reflect on potential nongovernmental sources of finance.

Mr MOJTAMED SHABESTARI (Islamic Republic of Iran), speaking on behalf of the Member States of the Eastern Mediterranean Region, said that, although the Chair's new text and method of work had proved helpful in eliminating differences and finding generally acceptable language, there were still some core issues that had to be tackled in order to reach a consensus. In view of the fact that tobacco constituted the single largest preventable cause of death worldwide, Iran strongly believed that consensus should not be allowed to undermine the supremacy of health over other issues. His delegation looked forward to the Chair's new text, to be considered at the next meeting of his regional group, and urged that every effort be made to ensure the success of the process.

Dr OTTO (Palau), speaking on behalf of the Pacific island countries, endorsed the comments made by the delegates of India, Egypt and Iran, especially with regard to the preparation of a document on financial resources.

Dr ZARIHAH (Malaysia), speaking on behalf of the Member States of ASEAN, said that the Negotiating Body was indeed confronted by a daunting task, in view of the fact that millions of lives had already been lost to tobacco since the start of the negotiation process in 1999. Her delegation urged the participants to respect the wish of the vast majority for a strong and effective framework convention and not to allow themselves to be influenced by a few powerful Parties with an interest in weakening the language of the convention.

Mr OGANOV (Russian Federation), speaking on behalf of the Commonwealth of Independent States, said that the framework convention was of great importance to the countries in question, since it would contribute greatly to their tobacco control efforts. They were confident that the Chair would prepare an excellent text for the next session and considered that in so doing, he should pay special attention to the financial issues that had been discussed. The task was a difficult one, since the convention should be strong and at the same time should serve as a framework.

Mr XIONG Bilin (China) expressed his delegation's hope that the new text would be ready by the end of 2002 at the latest, so as to allow sufficient time for deliberation on the draft framework convention prior to its signature in May 2003. However, in view of the fact that it involved a series of political, legal, economic and technical issues, it would have to take the form of an extensive convention, if Parties were to reach consensus within a short period. His Government was fully aware of the harmful effects of tobacco use and was therefore playing an active role in negotiations on the

convention and supported its timely completion. The work of the Negotiating Body had given an impetus to tobacco control work in his country and since 1995, many tobacco factories had been closed down and financial support had been provided for the resettlement of tobacco workers. The Government had also opposed the establishment of new tobacco factories as well as joint ventures with foreign companies and had consistently controlled tobacco production through such measures as structural adjustments of the tobacco industry. Public campaigns against smoking had been conducted and a law to protect young people from the harmful effects of tobacco use had recently been promulgated. China was a developing country with a population of 1300 million people which was facing numerous difficulties and conflicts involving employment problems as well as health threats. Many other developing countries had to face similar problems. His delegation therefore considered that in the existing circumstances, it would be difficult to establish a strictly-worded and detailed convention, as that would inevitably delay the introduction of the necessary measures. The alternative was to adopt general wording encompassing principles acceptable to all Parties on a global scale.

Mr RAJALA (European Commission) expressed the European Union's agreement that the papers reporting on the work of the informal groups should be used for guidance only at the current session. It should be noted, however, that in certain areas the rather concise reports did not reflect the wide variety of views and reservations that had been expressed during the discussions and in the facilitators' oral reports. That criticism applied in particular to Article 6, subparagraph 2(c) and Article 17. Like other participants, the European Union looked forward to receiving the Chair's new text as soon as possible, so that it could make proper preparations for the next session of the Intergovernmental Negotiating Body.

Mr MUGARISANWA (Zimbabwe) said that his delegation supported the views expressed on behalf of the African Group concerning the need for prompt distribution of the proposed new text so as to enable countries to receive it in time for consideration and preparation of substantive and constructive comments before the next session. In view of the important role of financial resources in enabling Member States of the African Group to comply with some of the obligations in the convention, Zimbabwe endorsed the Indian delegation's request for information on existing funding mechanisms.

The CHAIR said that a background paper on financial resources would be provided by the secretariat.

Mr MORIMOTO (Japan) said that his Government had implemented a national health promotion programme as part of its tobacco control strategy and had recently adopted new legislation to ensure greater awareness of tobacco-related health problems. Since issues such as advertising, packaging and labelling of tobacco products and taxation were linked with the national sovereignty and constitutional framework of individual countries, the convention needed to be sufficiently flexible in accommodating such issues to enable it to attract the broadest possible participation and to be implemented effectively. His delegation looked forward to continued discussions of those topics.

Ms SULLIVAN (International Union Against Cancer), speaking at the invitation of the CHAIR and also on behalf of the Commonwealth Medical Association, Consumers International, the International Nongovernmental Coalition Against Tobacco, the International Union Against Tuberculosis and Lung Disease, Infact and the World Heart Federation, said that those organizations were united in their desire for a strong framework convention which would reduce the enormous toll of human suffering and premature death caused by tobacco. Member States had clear public health obligations to support such a convention. Tobacco was not an article of taste for adults, but a deadly and addictive poison. It destroyed lives, the environment and economies and affected the health of smokers and non-smokers alike. It was the only legally available consumer product which killed when used as intended and therefore should not be treated like other consumer products.

Ms RATTE (International Union Against Cancer), speaking at the invitation of the CHAIR and on behalf of the same nongovernmental organizations, continued, saying that the framework convention should set a worldwide standard for tobacco control and should put public health above the interests of trade. There was a profound and widespread suspicion that the achievement of that goal was being frustrated by a small minority of States which set profit and the interests of the tobacco multinationals above the health and well-being of the world community. Although Member States would continue to have legitimate differences over how to draft a convention which promoted public health and how to advance the cause of tobacco control, it had become clear that some States did not wish to see a meaningful convention and that any “consensus” that included those Parties would have a limited effect on promoting public health. As the Chair had stated at the fourth session of the Negotiating Body, the goal of consensus was a good one, but should not be achieved at the expense of public health. One of the most encouraging features of the Chair’s text was the proposed rule on entry into force, which required only a small number of ratifications for that purpose.

Nevertheless, the new draft text gave cause for further concern. In some cases, such as that of tobacco and trade, starkly contrasting alternative provisions were offered, compelling delegations to the next session of the Negotiating Body to choose between the interests of public health and those of the tobacco industry. In other provisions, particularly those on packaging and labelling, all references to bans on descriptives such as “low tar”, “light” and “mild” and requirements for pictures or pictograms had been omitted. In some instances, such as that of liability and compensation, the provisions were unnecessarily weak and restricted. On the other hand, the new texts on advertising and smuggling had been improved.

Mr BIANCO (Infact), speaking at the invitation of the CHAIR and also on behalf of the same nongovernmental organizations, added that at the beginning of the current session the nongovernmental organizations had joined the Director-General in a moving ceremony commemorating the lives of the millions of men, women and children who had been lost to tobacco. The convention provided an important and historic opportunity to put an end to the carnage caused by tobacco. The organizations he represented recommended that the convention should include strong language on compensation and liability and urged progressive States with a will for a strong and meaningful convention to use their greater numbers to secure such a treaty and bring it into force. They also urged Member States to remain vigilant against the attempts of the influential tobacco industry to frustrate international efforts to reduce tobacco consumption.

The CHAIR thanked all the nongovernmental organizations for their participation in the proceedings.

2. NEXT SESSION OF THE INTERGOVERNMENTAL NEGOTIATING BODY

The CHAIR suggested that the next session of the Intergovernmental Negotiating Body should take place from 17 to 28 February 2003 at the Palais des Nations, Geneva.

It was so decided.

3. CLOSURE OF THE SESSION: Item 5 of the Agenda

Dr DA COSTA E SILVA (Project Manager, Tobacco Free Initiative) reiterated WHO's commitment to providing full technical and other support to Member States in their efforts to develop and implement tobacco control programmes in the interim period before the next round of negotiations. Through the significant contributions received from many Member States, the Organization hoped to produce tools to provide countries developing tobacco control measures with evidence-based background materials tailored to their local needs. Member States would soon start to prepare for the World No-Tobacco Day in 2003, which would target tobacco in the fashion and film industries. Feedback from Member States on new developments in their national tobacco control programmes would enable WHO to compile an updated report on such programmes for the Negotiating Body's sixth session. She thanked the nongovernmental organizations for their active participation in the discussions and noted with satisfaction the increased diversity of countries represented at the session. She looked forward to collaborating with Member States during the critical months ahead.

The DIRECTOR-GENERAL said that the multisectoral nature of tobacco control presented a public health challenge that needed to be overcome without delay if more deaths due to tobacco use were to be avoided. She thanked the delegations for the work they had accomplished and expressed her appreciation of the untiring efforts of the Chair, the members of the Bureau and the facilitators. Nevertheless, Member States needed to be prepared to take advantage of the benefits provided by the framework convention, and she therefore urged Governments to address the tobacco problem actively at the national level. She intended to convene a meeting of commissioners of health of the European Community to discuss resource needs for tobacco control prior to the Negotiating Body's sixth session. The framework convention on tobacco control would break new ground by being WHO's first multilaterally negotiated convention on public health, and would become the reference instrument for national and international tobacco control. She looked forward to a successful sixth session of the Intergovernmental Negotiating Body and to the adoption of the framework convention by the World Health Assembly at its fifty-sixth session in 2003.

The CHAIR reiterated the Director-General's call for strengthened national action on tobacco control, which would reinforce the Organization's activities in multilateral intergovernmental areas. After the customary exchange of courtesies, he declared the session closed.

The meeting rose at 11:30.

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